

BOSN: Welcome to the Judiciary Committee. I am Senator Carolyn Bosn from Lincoln, representing the 25th Legislative District, and I serve as chair of this committee. The committee will take up bills in the order posted. This public hearing is your opportunity to be part of the legislative process and to express your position on the proposed legislation before us. If you're planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Print clearly and fill it out completely. When it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are yellow sign-in sheets on the back table; these 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 your first and last name, and spelling both to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, by anyone wishing to speak in the neutral capacity. We will finish with a closing statement by the introducer, if they wish to give one. We are using a three-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have one minute remaining, and the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may be coming and going, although probably not so much today since there aren't any other committee hearings. If you have handouts or copies of your testimony, please bring up 12 copies 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 will be cause for you to be asked to leave the hearing. 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 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 person, but you may not do both. I will now have the committee members with us today introduce themselves, starting to my left.

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

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

STORER: Good afternoon. I'm Senator Tanya Storer. I represent District 43; 11 counties in north-central Nebraska: Dodge, Sheridan, Cherry, Brown, Rock, Keya Paha, Boyd, Garfield, Loup, Blaine, and Custer, and I write them down to make sure I don't forget one.

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

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

ROUNTREE: Good afternoon. I am Victor Rountree and I represent District 3, which is comprised of west Bellevue over to eastern Papillion, down from Blackhawk all the way up to Harrison.

BOSN: Thank you. Also assisting the committee today, to my left is our legal counsel, Denny Vaggalis, and to my far right is our stand-in committee clerk, Barb Dorn. If the pages for today would mind standing and introducing themselves?

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

ELIZABETH LOCKE: Hi, I'm Ellie. I'm a senior at the university, studying business and law.

ALBERTO DONIS: I'm Alberto Donis. I'm a first-year political science student [INAUDIBLE].

BOSN: Thank you. With that, we will begin today's hearings with LB-- sorry. LB350, and Senator Cavanaugh. Welcome.

J. CAVANAUGH: Thank you, Chair Bosn. I actually have a handout, and if I-- if a pages could come over. Let's see. Here it is. All right. Good afternoon, Chair Bosn, and members of the Judiciary Committee. My name is Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here today to introduce LB350. LB350 is the first of two bills you'll hear today that came out of the recommendations from the Legislative Mental Health Care Capacity Strategic Planning Committee. By way of background, the committee was established in 2022 with the passage of LB921. It was tasked with hiring a consultant to make recommendations on mental health care capacity, who could report back to the committee. The consultant, Rural Policy Associates, delivered a report in late October of 2024, and the handout is the relevant pages of that report for these two bills. The committee consisted of myself as chair, Senator Sanders as vice chair, Senator Hansen as then-chair of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

Health and Human Services Committee, Senator McKinney as the designee of the Judiciary Committee, Senator Armendariz as the designee of Appropriations, and former Senator Day and Senator Fredrickson. Many of the recommendations in the report involve larger changes to mental health care delivery and things that will require more study over the interim, or large discussions over criminal justice reform that this committee has grappled with, with for several years. LB350 focuses on some specific recommendations from the report to provide more timely hearings and improve communications with all parties involved. LB350 reduces the time for a commitment hearing to five days after a report is filed and similarly reduces the time for competency hearing to 5 days after an order is entered. It is-- also requires the report shall be filed with the court, instead of simply shared with the county attorney. The goal of these changes is to improve communication and try to reduce the opportunity for delay, which contributes to overextension of capacity. I took the 5-day timeline from the recommendation of the report, but I'm willing to consider other timelines, and I'd be happy to take any questions. So, if you-- you can see in the report there, they specifically recommend changing from 21 days to 5 days, and from 60 days to 5 days, which is more in line with what's happening in other states. So, I'm happy to take any questions.

BOSN: Thank you. Any questions? Are you staying to close?

J. CAVANAUGH: I'll stick around.

BOSN: Awesome.

STORER: [INAUDIBLE]

BOSN: Sorry, I didn't see your hand.

STORER: I'm a, I'm a slow question-asker. One quick question, Senator Cavanaugh. Would, would it be appropriate or helpful if we were-- if we did allow tele-hearings to help accommodate the-- what you're trying to achieve here with the reducing the timeline?

J. CAVANAUGH: It may be helpful. I, I suppose it's not necessarily what's contemplated in the, in the recommendations for the-- basically, this bill, this just comes out of the recommendations from the, the study. There may be other things that would help,--

STORER: OK.

J. CAVANAUGH: --but this is one that-- and I, I think we've had some conversations about allowing for those tele-hearings in the past, and I would, I would just tell you my position would be I don't have a problem with them being available; I have a-- I would have an issue with them being required-- the required way to do the hearing.

STORER: Sure. But, but an option for anyone to--

J. CAVANAUGH: But an option is-- yeah.

STORER: OK. Thank you.

BOSN: All right. Thank you very much. Can I see a show of hands, how many individuals wish to testify in some capacity on LB350? All right. There are one hand raised. OK, we will start with proponents.

SPIKE EICKHOLT: Good afternoon, 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 on behalf of the Nebraska Criminal Defense Attorneys Association and the ACLU of Nebraska in support of LB350. I was gonna testify neutral, but I'm probably gonna be testifying opposed to everything else today, so I thought I'd try to balance it. I don't mean that lightly, because I think this is a good bill. The primary part that we are supportive of is Section 1, the competency timeline that's on pages 2 and 3 of the bill. I'm having passed out-- the issue of competency, and you've probably heard before in different bills, that if someone is charged with a crime and they're-- at the time that their case is being filed and the case is being litigated, they're just not able to actively participate and appreciate and understand the proceedings that they're involved in, the judge or the prosecutor or their defense lawyer could request that they be evaluated for competency. If they are not competent, then they can be transferred to the Regional Center to be restored to competency. And usually what that is, is medications is being either forcibly administered to them, or they try to figure out what the appropriate level of medication ought to be. And what has happened, really, across the state is there has just been a backlog due to inavai-- unavailability at the Regional Center where people are sitting in jails for extended periods of time awaiting for placement at the Regional Center to be restored to competency. What I'm handing out is from-- the Lancaster County Corrections tracks the competency sort of wait-list that's been such a problem over the years, and you've got to hear the-- and I just wanted to kind of illustrate that to the committee, because I think this bill does speak to it by trying to shorten the timelines that are in statutes for when someone is referred and a report is given back to

the court relating to competency and so on. If you look at the historical timeline in what I distributed, the numbers have actually been trending down, so I want to credit this committee and the Legislature for doing various things statutorily and financially to address that. It's still a problem. There's still a wait-list issue. You probably hear it from your jails. But it has overall gotten better. And I remember this very well, this bill-- or this statute, 29-1823, was amended by the Legislature, I think, in 2020 with the cooperation of the defense lawyers and the county attorneys. It's one of the few times we actually sort of worked together collaboratively to shorten some of these deadlines and some of these dates. So, the dates you see in statute right now were at one time even longer, and it didn't really make that much of a difference when there wasn't a wait-list and a capacity issue at the, at the Regional Center, but this bill tries to improve upon that. I can't speak to the reason for the, the actual number of days being shortened to five, but there must be some sort of rationale in the report itself. But I just wanted to highlight that to the committee, and answer any questions if you have any.

BOSN: Thank you. Questions for this testifier? Senator Hallstrom.

HALLSTROM: Just a quick one on, on the three sections that are amended to require the county attorney to submit the individualized treatment plan with the court. The court doesn't have access to that currently?

SPIKE EICKHOLT: I saw that too. I-- the court does, and I don't know if it's the-- if it's a logistical issue where if it's sent to the court, the court doesn't immediately share it with the parties. It-- it's just to shorten that timeline. I, I don't know the reason, to be honest, why that was the proposed change.

HALLSTROM: It, it seems to me that the subject gets a copy of it,--

SPIKE EICKHOLT: They do.

HALLSTROM: --and if it's of significance to the court in making a final decision, the subject would be free to submit that to court.

SPIKE EICKHOLT: Right.

HALLSTROM: OK. Thank you.

SPIKE EICKHOLT: I don't know why that was changed in statute.

HALLSTROM: Thank you.

BOSN: Senator McKinney.

McKINNEY: Thank you, Chair Bosn. Thank you, Spike. What would you say to the opposition that says the bill creates unrealistic timelines?

SPIKE EICKHOLT: Well, I don't have a chance-- I'm not able to review the online opposition. I suppose logistically, it may be difficult for, for the professionals, the treatment team that's working with the person to try to restore competency to sort of have their input, write a report, and send it to the court. And that may be logistically-- that may take more than just a few days. That's the only response I have, and, and perhaps that's genuine. I'm not sure. But time is an issue here because if you-- again, if you talk to your jails, and this is a statewide issue, they will tell you that they are tasked with having to house people who they're just not really geared toward housing, that would be better seated-- suited and better treated in a regional center-type setting.

McKINNEY: Thank you.

BOSN: Thank you for being here. Any other proponents? Opponents? Neutral testifiers? Senator Cavanaugh, welcome back up. I will note while you're making your way that we had 3 proponent, 2 opponent, and 1 neutral comment submitted for the record. Welcome back.

J. CAVANAUGH: Thank you, Chair. Thank you, members of the committee. And I appreciate Mr. Eickholt in that, and I did get a chance to look at that chart he handed out. And that is a demonstration of the problem that we're attempting to address here, which is the length of time people are sitting. And we're not trying-- you know, obviously there's a lot of things we can't control, but the one thing we can control is once the work is done, which is that they've done-- written the report that's needed for the courts, that we're cutting down the wait time to get into court and actually make a determination about what's happening. That's what the recommendation does. You can look at-- it's page 12 of the report, and we can certainly provide the whole report to folks, but I just provided the two pages that are relevant to these two bills. So, it's the second page of the handout I gave you, page 12; their recommendation is, is the-- down from 21 days for the-- from 21 days to 5 days for the one report, and then from 60 days to the other to hold the hearing to 5 days. And obviously, if the report's generated and the court is waiting to have-- the, the court's been waiting for that report, after the report is generated, of course, we should get the hearing done as quickly as possible. I think there is some concern, as Senator McKinney pointed out, in the

submitted statements that that might be too short a timeline. And I would tell you, my conversations with the consultants was that five days is basically what they do in other states, but I can totally see how this Legislature would think a jump from 60 to 5 might be a big jump. But really, any reduction would-- if we can cut it from 60 to 30, 60 to 20, 60 to 10, those are days that people aren't going to be filling up the mental health beds that we need for other folks waiting for a court date. So, that's really the reason for that. And Senator Hallstrom, your question's a good one; it's another recommendation is-- the recommendation was just essentially making sure that all communication goes directly to the courts, and you might be correctly identifying one of the issues here is that maybe it needs a more fine-tooth approach to that than all communication. But it's essentially that-- the, the-- that recommendation has to do with cutting out the middle man, because what happens is the only requirement is it goes to the county attorney, and then if it sits on the county attorney's desk for even a day, then that's another day that somebody's sitting there before it gets filed and starts moving down the process. So, requiring that the mental health professional report gets submitted directly to the courts cuts out that potential in-transit time, so that's really the reason for that. But you may be right that there's some additional reporting that we might have cut too broad a swath with that, that part there, so. Happy to take any questions.

BOSN: Questions? Thank you very much.

J. CAVANAUGH: Thank you.

BOSN: That will conclude our hearing on LB350. Next up, we have LB351. Welcome back

J. CAVANAUGH: Thank you. Thank you. All right. Good afternoon, Chair Bosn, members of the Judiciary Committee. My name is Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here to introduce LB351, which is the second bill to come out of the recommendations of the Legislative Mental Health Care Capacity Strategic Planning Committee. LB351 strikes language in statute relating to priority of admission at the Regional Centers, specifically striking the categories for voluntary admission of indigent patients and language enacted in 20-- 2022 that placed specific percentages of beds for each category in the Lincoln Regional Center. The goal of these changes is to center the priority of the state's hospital on public safety. The specific bed requirements, which were contained in my priority bill in L-- in 2022

as part of a bill from Senator Matt Hansen were meant to ensure that beds were made available for competency restoration, but, in practice, have tied the hands of the DHHS in administering the number of beds available at the Lincoln Regional Center. The consultants recommended that these requirements be removed from statute. Thank you, Madam Chair, and I'd be happy to take any questions. And again, that's-- so, page 1 of the handout I gave you, again is-- it'd be page 7 of the total report, but it's page-- the page that's referencing to this. And basically, the recommendation was our hospital, the Lincoln Regional Center-- our problem is we don't have enough beds, and that causes the backlog and the wait. And their recommendation is that we make it clear the Regional Center is firstly for these sort of court-involved cases for restoration and, and for evaluation and-- rather than specifically the indigent, you know, admission for indigent patients, patients. It's not the hospital of last resort; those hospitals are-- should be some of our other hospitals, and if we continue to use it for that, we're gonna use up beds and have people sitting in jails waiting for a competency restoration. So, that's really the reason for that recommendation.

BOSN: Thank you. Questions from the committee? Senator Hallstrom.

HALLSTROM: On page 3 of the bill, we're striking subsection (b). And if, if you touched on that, I apologize, I didn't capture it. We're taking out a provision that says the judge can determine that if the public safety is at risk, that they're not eligible to be treated in certain facilities. What-- what's the rationale behind removing the public-safety language?

J. CAVANAUGH: You're on--

HALLSTROM: Oh, excuse me. I got-- I didn't push-- nevermind. I pushed to go to the next bill and I was reading the old bill, so it's-- I apologize for that, Senator Cavanaugh.

J. CAVANAUGH: Well, that's all right.

STORER: You had us all looking.

HALLSTROM: Yeah, I thought it looked quite a bit like the first bill. I'm done.

BOSN: OK. Thank you. Any other questions? All right. I assume you're staying to close?

J. CAVANAUGH: I will stick around.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

BOSN: Show of hands, how many here for LB351? One, two. Got it. Thank you. We'll start with proponents, anyone here to testify in support of LB351. Opponents. Good afternoon.

BRAD JOHNSON: Hi. Good afternoon, Chair Bosn, and members of the Judiciary Committee. My name is Brad Johnson, spelled B-r-a-d J-o-h-n-s-o n. I am appearing before the committee in my capacity as Director of Lancaster County Corrections. I am here to testify on behalf of the Lancaster County Board and my department in opposition to LB351. We are in the midst of a behavioral crisis in our jail, and it is my strong belief that detainees who need to be restored to competency should not be housed in a correctional facility any longer than is necessary. LB921 was adopted in 2022, and among other provisions, set forth specific minimum bed requirements for individuals who had been found incompetent to stand trial, ordered to the Regional Center, and, and remained lodged in the county jail. At the time LB921 was enacted, the average wait time to be transferred to the Regional Center had skyrocketed to 145 days. In addition, the Lancaster County Jail had 16 individuals housed in our facility who had been ordered to the Regional Center, and on average, they had waited 97 days. We were housing an individual who had been on the visit list-- I'm sorry, on the wait-list for 356 days, almost a full year. Moreover, at the time-- at that time, full financial costs of these unacceptable wait times were being borne by the taxpayers of Lancaster County. Since LB921 was adopted, wait times have improved dramatically; the current average wait for competency restoration is 33.75 days, and three individuals housed in our facility who have been ordered to the Regional Center have waited so far on average 19 days. With these improved waiting times, current DHHS payments to the county mandated by LB921 have reduced by 89%, making LB921 a resounding legislative success. As a core component of the overall policy advanced in LB921, minimum bed requirements have been integral to the success we have seen. From where we stand on the front lines of the behavioral health crisis in county jails, eliminating minimum bed requirements for our population inevitably will lead to even longer stays in our jail to the serious detriment of individuals who have been ordered to receive behavioral health care at the Regional Center. We ask this committee not to undo the success of LB921 because we owe it to these individuals and their families to ensure that incarcerated individuals receive their court-ordered treatment. Thank you for the opportunity to testify, and for your service to our great state. And I'll take any questions.

BOSN: Thank you. Senator DeBoer.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

DeBOER: So, if we pass this bill, you think we're going to end up back where we were before with the wait times?

BRAD JOHNSON: I'll-- I guess what I would say to that is we were at 145 days. I had been fighting this issue--

DeBOER: Yeah.

BRAD JOHNSON: --for five years. We get LB921 passed, and it's dropped down to 33 days. Now, is it solely because of that reason? Probably not. I can tell you, I've been back here since this has passed every year fighting to keep it in place, so I, I hate to see us mess with something that I'm confident contributed to it in some manner. I mean, I can't say that's the only reason.

DeBOER: It was pretty night-and-day, I recall, when we passed it. It, it had an effect on the--

BRAD JOHNSON: I hear you.

DeBOER: --on that very quickly. Thank you.

BOSN: Thank you very much for being here. Oh, I'm sorry, did you have a question? Senator McKinney. Sorry.

McKINNEY: Thank you. So, I guess what are we to do with those that are mentally ill, that need priority admissions into the Regional Center?

BRAD JOHNSON: Well, all I can-- what I can speak to is the director of a jail, all right? I have 786 beds. It doesn't matter how many people come to my jail; I gotta figure out a way to house them. I don't get the say and say no, and it seems to me that the Regional Center-- I have complete total respect for a lot of them that work there-- is-- this is their mission. It's in the statute that this is their mission. They need to figure out a way to accommodate the need in this state. And if that means they got to find other beds, if they got to hire more staff; whatever that takes, figure out what you got to do to do your job. That's, that's where I'm at. I'm at the front line, my staff are dealing with people who are severely sick, need treatment, and this is the only option we have. The court has ordered them there based on their doctor's recommendation. So, I just-- I strongly advocate that they should not be in the jail because when, when they're found incompetent-- and I know you know this, Senator, but just for the record, they are in limbo. Their entire case comes to a stop, and they're just sitting there 90 days, 145 days. Nothing's happening. And in a lot of cases, they're getting sicker. So, I, I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

can't answer the question for the Regional Center, but they're, they're, they're pretty smart folks.

McKINNEY: Yeah. I know Douglas County was looking at opening up, like, a mental health-- I don't know if it was a wing, but building a mental health facility, or some sort of thing. Have you guys looked at that?

BRAD JOHNSON: I have brought that to the folks that I answer to as a possibility. We're actually in the midst of conducting a system-wide analysis within Lancaster County for criminal justice issues and the increase of the jail population, and that is something that we are looking at as well.

McKINNEY: OK. And have you seen an increase of individuals coming in your facility with mental illness, or dealing with mental health issues due to, like, homelessness and things like that?

BRAD JOHNSON: I can tell you that the preliminary results that I've seen from this study says that it's held pretty flat since COVID. I can tell you that, because of other population increases, it puts pressure on housing assignments, and we often find ourselves without enough room to house folks that are seriously ill. We have to get very creative with where we house, house them.

McKINNEY: All right, thank you.

BRAD JOHNSON: Thank you.

BOSN: Thank you very much for being here, and your testimony.

BRAD JOHNSON: Thank you.

BOSN: Yes. Next opponent. Good afternoon and welcome.

PATRICK KREIFELS: Good afternoon. Good afternoon, Chair Bosn, and members of the Judiciary Committee. My name is Patrick Kreifels, and I am the administrator for Region 5 Systems Behavioral Health Authority. Today, I'm here on behalf of the Nebraska Association of Regional Administrators and Region 5 Systems' governing board. Our counties are listed that we serve-- 16 counties in southeast Nebraska-- in the handout, and I want to begin by thanking you for your profound-- for your contributions to this state and your leadership. I'm here to testify in opposition of LB351 as submitted, to change the requirements for priority adminis-- or, admissions to state hospitals for people presenting with mental illness. The six regional behavioral health authorities were established 50 years ago in 1974, with the

duty to deliver publicly-funded mental health services. That was expanded in 1977 to include substance use services, and in 2004, LB1083 reconfirmed and replaced those legislative bills and-- with a focus of transitioning from institutional care to community-based services for people with mental health and substance use services. Efforts have occurred over the years to build a comprehensive behavioral health service array to engage people with serious mental illness and encourage wellness and living in the community. Individuals are committed to inpatient mental health treatment at the state hospital. After receiving rehabilitative treatment, the regions work collaboratively to return them to community-based services. In 2004, LB1083 was signed into law, reforming Nebraska's behavioral health services, enacting a paradigm shift from an overreliance on state-owned regional centers to create or expand treatment, rehabilitation, and supportive services in the community. During this behavioral health reform process, promises were made by the Nebraska Department of Health and Human Services to community hospitals that access to the state hospital would be available if someone in crisis could not be safely served in their facility. From 2005 through 2009, there were 100 beds at the Lincoln Regional Center available to the regions and community-based hospitals. Over the years, the number of Lincoln Regional Center beds allocated to the regions continued to reduce to 90 beds, and eventually 40 beds; these reductions occurred at the direction of Health and Human Services leadership. In 2022, LB922 [SIC] was passed, as was described, and that allocates 30% of those beds to mental health, board commitments, sex offenders, and other folks directed by district court. As of March 16, Health and Human Services' website stated that LRC had 243 beds, with 90 people or 37% capacity allocated. The public behavioral system continues to share those with restoration, as described by Brad Johnson before me. While LB921 is not perfect, it does add some guardrails for our system so that we do have access and that-- so that Health and Human Services cannot decide on a whim to change our access to the, the hospital. I just ask that you respectfully not advance LB351, and I'm available for questions. Thank you for your time.

BOSN: Questions for this testifier? Senator McKinney?

McKINNEY: Thank you, Chair Bosn. Thank you. I, I sat on the mental health committee that looked over this, and I think if I remember right, one of the issues with the percentages was the lack of flexibility, and that causing a lot of issues with getting people admitted because a certain percentage of beds would be for a certain population, and it wouldn't allow for somebody that probably needed a bed to be, to be able to be admitted because of that. So, is there a

way, or is there openness to a conversation about some type of flexibility in those percentages due, due to that issue?

PATRICK KREIFELS: I think that the bill outlines different percentages for different sub-populations, and it's-- and it talks about if they're at a minimum. So, at a minimum, mental health boards and sex offenders is 30%, and they're currently at 37%. There's also another subsection in my understanding, Senator, of that bill is-- where 30% are unallocated, so the department has some wiggle room and some autonomy within their allocation to determine which portion of those beds should be applied to what sub-population.

McKINNEY: Do you think that might be the issue? The way they're-- they are possibly using their autonomy that, that might be create-- creating an issue? I don't-- I'm just asking.

PATRICK KREIFELS: You know, I, I, I don't know for sure all the [INAUDIBLE] problems at the Lincoln Regional Center, but I do know that over the years, we've been promised 100 beds. The community-based hospitals agreed to serve people. The majority of people are served in the community already. It's a small subset that go to the Lincoln Regional Center, and it's the individuals that have high safety risks and high serious emotional disturbances. And so, I, I, I-- it seems like this has been a challenge for many years, but it's-- we've gone down to 40 beds from 100, which puts a big strain on law enforcement officers within our community, on county attorneys, on behavioral health providers, on service providers in responding to those needs by not having that access.

McKINNEY: Yeah. What-- I guess, what reasoning have they presented of-- to go from 100 to 40? Is it funding? Is it a lack of--

PATRICK KREIFELS: I've heard, I've heard funding is an issue, I've heard staffing as an issue over the years. Yeah. I-- I've heard licensing accreditation, I've heard construction-- capital construction, not having a unit open. I mean, there's been a variety-- those are just coming off the top of my head, Senator.

McKINNEY: All right. Thank you.

PATRICK KREIFELS: Thank you for the questions.

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

PATRICK KREIFELS: Thank you.

BOSN: Appreciate it.

PATRICK KREIFELS: Appreciate it

BOSN: Any other opponents? Now, we'll move to neutral testifiers; anyone here in the neutral capacity. All right. Well then, while Senator Cavanaugh makes his way back up, I will note also on LB351 there were 3 proponents, 1 opponent, and 1 neutral testifier. Welcome back.

J. CAVANAUGH: Thank you, Chair, and thank you, committee, for your attention and interest. And I appreciate Mr. Johnson's comment. LB921 was my bill, and I think he said it was a resounding success, is what he said, so. I agree. But-- yeah, so, the-- again, this is one of the recommendations-- and Senator McKinney, you did hit on the-- down at the bottom of page 7, the-- where they say the flexibility is critical to maintaining a responsive and effective state hospital system, enabling LRC to optimize its capacity and improve patient outcome based on current needs rather than being constrained by statutory requirements. So, the recommendation, if you look at the bill, basically just strikes out all the percentages. It does strike out some populations, and the recommendation was just exactly what you hit on, Senator McKinney. There's a possibility that as things change, we may hit our cap of how many available beds we have under this number, but we have more people who need it. And then, those folks end up just sitting in jail waiting longer to get into the Lincoln Regional Center. And if our goal is to get folks through as quickly as possible, we shouldn't artificially hold a bed for someone who isn't going to use it when we have someone who needs it, and that person's locked up in county jail. That's the reason for the recommendation. I think there are some realistic concerns that-- and I apologize, Mr. "Kreitholtz" [SIC] maybe is how I wrote it down. If there is a realistic-- obviously, health/safety danger to the community, maybe that's something we would need to explicitly put in there as an included group that would qualify but still maintain the flexibility for the Regional Center, but it's really just about giving the Regional Center the flexibility to maximize its ability to respond to the population as it exists at the time, as opposed to when the Legislature passed this bill-- LB921-- which was a resounding success, and my bill-- but did put into-- did put into statute in flexibility that potentially hampers the Regional Center's ability to respond. And so, I think if flexibility is what's needed to get us where we need to get, which is more folks getting care quicker, then I think that's a fair thing to do, so. Happy to take any questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

BOSN: Questions? Thank you very-- oh, Senator Hallstrom.

HALLSTROM: Just to give you some more time, are there any other self-aggrandizing statements [INAUDIBLE]

J. CAVANAUGH: Well, I, I-- a number of my--

HALLSTROM: Just a question.

J. CAVANAUGH: A number of my other bills are also resounding successes.

BOSN: Thank you very much. All right, that will conclude our hearing on LB351. Next up, fresh face; LB316, John Cavanaugh.

J. CAVANAUGH: LB616.

BOSN: What did I say?

J. CAVANAUGH: LB316.

BOSN: LB616. I'm pretty sure you don't support LB316.

J. CAVANAUGH: I-- you know, I think that's true. Good afternoon, Chair Bosn, and members of the Judiciary Committee. My name is Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here to introduce LB616, which allows for the use of automatic license plate readers on red light cameras to enforce traffic light violations, and provides for a civil enforcement mechanism. LB616 is my attempt to reconcile the desire for public safety and traffic enforcement with the real due process and constitutional concerns about red light camera enforcement. I'm not sure whether this bill strikes the right balance, or even if there's a way to strike that balance, but this is my best effort. A violation under this bill would result in a civil fee which can be waived if the driver participates in a driver safety program. No points would be assessed, and no warrant would be issued for a violation. If the driver failed to pay the fee or complete the program, the fee would be assessed as a condition of renewing the vehicle's registration. And the cameras or automatic license plate readers can only be used for enforcement for this section of the law. Thank you for your time. I'd be happy to take any questions. And obviously, this is a complicated issue and I'm sure folks have questions, but basically, I-- you know, city of Omaha approached me about this, and some constituents, about a desire to have an opportunity to use red light cameras. And I listed off a number of my

concerns, and of course I've read the Nebraska Supreme Court cases about enforcement of traffic infractions; they are, are treated or considered by the courts to be criminal infractions which require due process, presumption of innocence, opportunity to confront your accuser and, and alike, and-- which is problematic with a photographic mail service. So, my attempt here was to make this a non-criminal infraction, if possible. And I attempted to do that by making the no-- the no actual fee, meaning that you can't assess-- actually assess a monetary penalty, but to-- the requirement is if some-- if the car is seen to go through, photographed going through a-- the owner of the vehicle would have to take a rehabilitative STOP class in an attempt to, you know, in the future, not violate traffic laws. And then, if they choose not to do that, then they could pay a-- basically, get-out-of-stop-class fee, and then that fee would be used to pay for someone else to take the class. So, there's no cost to take the class; the only cost is if someone wants to not take the class, and then again, to reduce the potential for a criminal penalty associated with this. The-- there would be no points assessed against a license, and that a warrant would not be issued, meaning that someone is not going to find themselves incarcerated as a result of a red light camera, is really what I'm trying to accomplish here. Like I said, I'm not sure it gets to where it would need to be to withstand that sort of scrutiny, but I thought it was a-- worth an effort, so. I'm happy to take any questions.

BOSN: Senator DeBoer.

DeBOER: What if it wasn't you?

J. CAVANAUGH: What do you mean, if it was me?

DeBOER: Driving.

J. CAVANAUGH: Oh.

DeBOER: I own the car, I wasn't driving the car; McKinney was driving the car.

HOLDCROFT: McKinney.

DeBOER: Mm-hmm.

J. CAVANAUGH: Yeah.

DeBOER: McKinney was driving the car; McKinny ran through every red light in town--

ROUNTREE: Oh, yes he did.

DeBOER: --knowing that I was going to get all these tickets.

J. CAVANAUGH: Mm-hmm.

HOLDCROFT: Mr.-- Senator.

DeBOER: We parked next to each other. He said, "Ha ha! DeBoer's car is unlocked." Right? This seems like him. Now what?

J. CAVANAUGH: Yeah, that's the-- that is one of the fundamental problems, that the, the punitive nature of this is assessed against the owner of the car and not necessarily the driver. And if you were to contest it, then it, it is essentially a burden shift, right? To you, to prove that it was not you, as opposed to the state would be required to prove it is you. So, that is admittedly a problem here. My intention, I guess, with this was to make it non-criminal.

DeBOER: But-- let's say it's non-criminal; let's say we-- because I am all for "we can do this if we put our minds to it." Mr. Eickholt is smiling back there, but we can do it, I believe we can. So, McKinney runs all over town, and he's running through red lights in my car, and-- does he have to take the STOP class, or do I?

J. CAVANAUGH: You would.

DeBOER: OK. Now imagine that I am driving my own car, and I am on a red light spree; I find every light I can find and I go through all the red lights. Do I have to take the STOP class for every time I go through a red light?

J. CAVANAUGH: Probably would, but one caveat I would say is that, in reality, the enforcement would be on hot spots, so it wouldn't be on every intersection.

DeBOER: Well, I know where they all are. I seek them out, I go to those red light hotspots; I wait till the light turn reds; I sit in the green, everybody's honking at me. As soon as it turns red, I go through.

J. CAVANAUGH: Mm-hmm.

DeBOER: Every time.

J. CAVANAUGH: You would probably have to take it however many times you were assessed a ticket, yeah.

DeBOER: OK.

BOSN: Senator McKinney.

McKINNEY: Thank you. Thank you, Senator Cavanaugh. Does this-- being criminal, is it only in the state of Nebraska? Because I remember when I was in school in St. Louis, they had the red light cameras, and I had friends who got in trouble by their parents for running red lights and the, the parents getting the letter in the mail saying, hey, you got a ticket or whatever for running the red light. Is that only--

J. CAVANAUGH: So, the specific issue I'm talking about here about the service, the infraction being treated criminally, that is a Nebraska-specific, Nebraska Supreme Court opinion, and how our Supreme Court has interpreted these things. Other states may interpret it differently, and they may-- their statutes might be different, where-- in that their infractions may be more clearly non-criminal [INAUDIBLE] which is sort of where I was getting with the no use in other cases, no points assessed, no warrants issued. So, taking away some of the things that-- by virtue of those being attached to-- if you get a speeding ticket and you don't pay it, they'll issue a warrant for you, right? That pushes it more from the civil, because the traffic ticket, if you're-- say you're driving to Lincoln and you get pulled over on your way here, and you're going 85 in a 75, they're going to give you a \$123 ticket. I don't, don't have any specific knowledge about that, but-- but anyway. So, if you fail to pay that by, say, March 1, then, then they would issue a warrant for that. And so, that-- in addition to the fact that you're required to pay that fine, and the fact that, that you could be detained as a result of that, that's what pushes it more into the criminal, akin to criminal, is, is our-- the interpretation, interpretation of our Supreme Court.

McKINNEY: All right. And then, the last thing is the reliability of them. Because I remember just riding with somebody who took a right and got-- and the light just flashed.

J. CAVANAUGH: Yeah.

McKINNEY: And, like, you would just kind of not even take the right anymore because you don't want to be running-- you would inadvertently be running a red light when you're essentially turning a corner.

J. CAVANAUGH: Yeah. So-- and I can't speak to, I guess, the necessarily reliability of it, but I would say one caveat that came up after I wrote this bill, but Senator von Gillern's bill that I think will, will all be on rear-facing only license plates, I-- my understanding is that most of these cameras only do rear license plates anyway, but going forward, we'll only have that option to take pictures of rear license plates, which means you wouldn't even have the opportunity to have a picture of a person in the front seat, which I guess presents another issue.

McKINNEY: All right. Thank you.

BOSN: Senator Roundtree.

ROUNTREE: Thank you, Chair Bosn. And Senator Cavanaugh, this is my one question for today, as this is part of the last bill you're having a hearing.

J. CAVANAUGH: It is.

ROUNTREE: I wanted to say that last night I did have an email that said I had some unpaid tolls over in Colorado.

BOSN: I got that, too.

ROUNTREE: Oh yes, so. But I do know over across the river in Council Bluffs-- we travel over since we're right close by, and they have some red light cameras, or at least my little GPS say "Hey, there's a camera ahead" on that. So, have you had a chance to look over at them, how their process is working? Anything maybe to identify in comparison with what we're proposing here?

J. CAVANAUGH: Well, I haven't looked at Iowa specifically. I, I think I looked at South Dakota had some stuff.

ROUNTREE: South Dakota?

J. CAVANAUGH: But-- and again, to Senator McKinney's question, is we have-- we present a unique situation in the state of Nebraska because of this case law that we have here, which is one of the reasons that folks have attempted to do this before. I believe there was a bill some years ago that created enabling language for red light cameras that was struck down as well. And so, this is sort of my attempt to answer some of those questions in there, which is why it has this part about the, the class is the requirement, and that the class is free.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

It's sort of-- it may seem clunky, but it's my attempt to make it as non-punitive as possible.

ROUNTREE: All right, that sounds good. Thank you. And I have taken the class for speeding tickets, so [INAUDIBLE] how it works.

J. CAVANAUGH: Oh, there you go. No judgment.

BOSN: Senator Hallstrom.

ROUNTREE: Thank you.

HALLSTROM: Senator Cavanaugh, I am reading the right bill now, I think. What I'm interested in, it kind of hearkens to the STOP classes for speeding. I think there's a limitation on how many times that you can take the STOP class. And in this case, I'm assuming that if people run red lights frequently-- not on a spree like Senator DeBoer, but they run them frequently-- accidents can occur that could affect insurance rates and so forth. Are, are you open to putting some type of limitation on the number of times that you can qualify for this free pass type of-- or does that defeat the purpose of getting away from the criminalization?

J. CAVANAUGH: Well, I admittedly had not thought about someone going on a spree of running stoplights. I was-- you know, I get-- I'm, I'm just not that imaginative. But yeah, so the one thing about the STOP class that you're talking about, or-- there's the STOP class and then there's the other class, and I can't remember which one's which, but one of them is about the running the stop lights, and one of them is about speeding. There is a limitation, and part of that reason for that is you take that class to avoid the points assessed against your license. So, when you're going 10 over, that's two points against your license or something like that, and you get 12 points over a period of two years before your license gets revoked. And so, if you take the class, then you're back to zero or whatever number you were at. In this case, since there are no points assessed against the license, I don't know if it has that, that-- it wouldn't have that same implication. And from an insurance standpoint, I hadn't really thought about how insurance companies are going to view folks, or how it would be recorded for that purpose, so I don't have an answer.

HALLSTROM: And you may not have any evidence of the fact that they've--

J. CAVANAUGH: Right.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

HALLSTROM: --run the red lights, and you've got somebody out there that's putting themselves and others at risk, so. Just food for thought.

J. CAVANAUGH: Yeah.

BOSN: Well, now that we've all confessed our traffic pattern driving skills, thank you very much. Are you staying to close?

J. CAVANAUGH: I will stick around.

BOSN: Can I see a show of hands, how many individuals are here to testify in some capacity on LB616? One, two, three, four, five, six. Got it. Thank you. We'll start with proponents; anyone here to testify in support of LB616.

JOHN ROSS: Chair Bosn and fellow senators of the Judiciary Committee, good afternoon. My name is John Ross, J-o-h-n R-o-s-s, and I guess I'm here in a little bit of a selfish reason. I was in this fair city of Lincoln, Senator Bosn, one day, going down a two-lane street-- four-lane street, divided. And I was involved in an accident at an intersection. I was in the left lane, someone was in the left turn lane at that intersection, and someone was beside me, and I was involved in an accident with another vehicle crossing in front of me. I was alone. I still think I had a green light, but the people in the vehicle that I hit said I ran the red light. So in my case, there would have been something there that would have proved which one of the vehicles ran a red light. And I think with having these cameras, it's going to make a lot of people think twice before they run a red light, because you're going to-- somebody's going to get a ticket, and I understand taking the back end of the vehicle, who is driving it. You know, I could probably think in my younger day, I'd have done the same thing and pin-- try to pin it on one of my enemies. But I, I think it's a good bill. I think there is a lot of this being used in foreign countries, and they say you don't get out of it. If you trip the speeding camera or you trip this-- in this case, the red light that Senator Cavanaugh wants, it's pretty much a done deal. Thank you.

BOSN: Thank you. Any questions for this testifier? Seeing none. Thank you for being here, sharing your story. Next proponent.

TIMOTHY ADAMS: Hello, my name is Tim Adams, T-i-m A-d-- Timothy Adams, T-i-m-o-t-h-y A-d-a-m-s. Chairperson Bosn and members of the Judiciary Committee, thank you for the opportunity to speak today in support of LB616. I'm here to advocate for this critical legislation which

enhances safety and saves lives on Nebraska roadways. As a professional engineer and roadway safety professional, I've dedicated my career to improving transportation safety and ensuring that roadway design and policies prioritize the well-being of all users. But more importantly to my identity is my role as a father and a husband. Once, exactly six years ago, my fiance was struck by a driver who ran a red light at Antelope Valley just blocks from this location. We were lucky that everyone walked away with minor injuries, and my wife and I were married a few weeks later. I'm sure everyone has a story, though, that they can tell of a close call or a tragedy that's impacted themselves or a loved one. Every year, we lose far too many lives in preventable traffic crashes. Red light running is one of the leading causes of urban crashes, contributing to hundreds of deaths and thousands of injuries nationwide. But just in the past five years, 80 people have died in, in Lincoln and Omaha region alone at signalized intersections. These deaths are more than just numbers; they represent family members, friends, and neighbors who have-- whose absences leave a permanent void. LB616 is a necessary step toward reducing these tragedies. Red light cameras have extensively been studied and shown to be highly effective in reducing danger-- dangerous intersection crashes. On average, cities using red light cameras experience a 40--14% reduction of fatal crashes at signals. Therefore, this bill's passage would save dozens of lives here in Nebraska. This bill aligns with evidence-based strategies that have been successful in other states and cities working towards reducing traffic fatalities. States that have adopted red light running laws include Florida, Alabama, Missouri, Iowa, Ohio, Tennessee, and Texas, to just name a few. By adopting these measures, Nebraska can proactively address dangerous driving behaviors, improve enforcement mechanisms, and create safer conditions for all users. Critically, red light cameras also provide a fair and consistent means of enforcement. Unlike traditional police enforcement, which may be limited by officer availability, it can reduce-- increase-- introduce potential biases. Automated enforcement ensures that all violators are treated equally. Additionally, these cameras serve as a strong deterrent, leading to long-term behavioral changes that make our roads safe. Opponents may raise concerns about personal freedoms or enforcement challenges, but this bill addresses many of these concerns, and the fundamental freedom at stake here is the right to arrive safely at our destinations. LB616 balances effective safety improvements and fair implementation, ensuring policies are data-driven and unbiased. I urge the committee to support LB616 and help Nebraska take its meaningful step towards safer streets. Thank you for your time and consideration. I welcome any questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

BOSN: Thank you very much. Any questions for this testifier? I noticed there's a couple of blue hyperlinks there. Are these the ways to read those articles?

TIMOTHY ADAMS: Yep, yep.

BOSN: That's very helpful. Thank you. Any other questions in light of that? All right, thank you very much for being here.

TIMOTHY ADAMS: Thank you.

BOSN: Next proponent. Good afternoon.

JULIE HARRIS: Hello. I'm Julie Harris, J-u-l-i-e H-a-r-r-i-s. I'm the director of Bike Walk Nebraska, the state bike and pedestrian advocacy organization. I want to thank Senator Cavanaugh for bringing this bill, and thank NDOT for being in the audience, and I'm hoping they'll step up as a proponent as well. According to a 2023 traffic safety report published by Forbes, Nebraska ranked in the bottom 10 states in passing traffic safety laws and countermeasures to combat dangerous driving. Consider that in, in contrast to a Governor's Highway Safety Administration report published just a few weeks ago, showing Nebraska currently leads the nation in percentage increase in pedestrian fatalities from January to June, 2023 to 2024, showing 150% increase during that time period. And this is an 83%-- this is 83% more than the next-highest state. There are always hypotheticals that can be taken into consideration when considering these laws. Senator DeBoer and Senator McKinney may need to mediate their friendship a bit if they're having problems with their car, but, but those are hypotheticals, and we do have actual real data about what is happening on our roads, and what this kind of enforcement could help. With automated enforcement, reports show that there's a 21% decrease in fatal red light running crash-- crashes, and a 62% reduction in the likelihood of a vehicle traveling 10 miles per hour over the speed limit. A different Governors Highway Safety Administration [SIC] report says that, quote, the objective is to deter violators, not to catch them. Signs in publicly-- in public campaigns typically warn drivers that photo enforcement is in use. Revenue may be generated from violator fees, but this is a fundamental component, component of all traffic enforcement programs. The goal of traffic enforcement is to increase motorist compliance with safety laws, which means that when drivers no longer run red lights, the revenue from automated enforcement cameras will decline. Automated enforcement allows jurisdictions to use camera technology to enforce traffic laws while achieving more equitable outcomes, with the inclusion of an equity

analysis for installation; these bills focus on license plates, and decreases the perpetuation of inequitable enforcement. And further, having these system in-- systems in place can take some of the burden off of already-overworked law enforcement officers. The photo of a license plate is a drop in the bucket for privacy concerns compared to what's being tracked by our cell phones every day as we drive down the street. We really encourage you to pass this bill. It will really make a meaningful improvement to safety for our vul-- most vulnerable road users, and I'm happy to answer any questions that you have.

BOSN: Thank you. Any questions? Senator Hallstrom.

HALLSTROM: Thank you for your testimony. Would you agree that the prospect of getting caught is part of the deterrent effect?

JULIE HARRIS: Yes, for sure. I think the studies will show that once you are caught, so-to-speak, and once you do receive one of these, that you're less likely to do it again. And in some cases-- and you'll hear my testimony for the next bill-- it shows that once a person received a ticket, they did not receive a subsequent one, so that meant their behavior actually changed.

HALLSTROM: OK. And, and I guess my question related to this bill is, is there any data that shows that if we kept the current consequences compared to giving a free pass, so-to-speak, with a, with a fee or, or taking a, a safety class, is there any difference between those two, from a deterrence effect?

JULIE HARRIS: Well, the, the current environment is, is not sustainable. It-- you know, 150% increase in pedestrian crashes in the last year. I, I don't think we want to see the continuation of the current--

HALLSTROM: My-- yeah, my question's not about the, the effectiveness of the system; it's whether or not having a, a stronger penalty is the deterrent effect, as opposed to giving a free pass.

JULIE HARRIS: Well, we can certainly-- there's all kinds of data on this from a multiple of sources, so we can pull that up for you, for sure.

HALLSTROM: Thank you.

BOSN: Thank you very much for being here.

JULIE HARRIS: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

BOSN: Next proponent. All right, we'll move to opponents. Anyone here in opposition?

SPIKE EICKHOLT: Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in opposition to LB616. You're getting copies of my testimony for both ACLU and the defense lawyers, and you're also getting a copy of uniform citation and complaint that I'll talk about in a bit. No one's really talked about the license plate readers that are going to be used, apparently, to enforce this mechanism, but the ACLU has significant concerns about those; those companies, the contracts that they have currently in the state, how they harvest and collect and sell that data. The way the license plate reader systems work is they record all plates that go through the intersection, all of them. Or, or pass a moving-- a police vehicle that has the cameras themselves. And then, on request with the contracting agency, they will provide the information about the plate and the time, date, location, that kind of thing. But I can answer any questions if anyone has anything about that. But the real concern that we have with this bill-- and Senator John Cavanaugh alluded to it, and I talked about this last week-- traffic infractions in Nebraska are criminal. That means that if you are cited by an officer or charged with a criminal violation, even if it's a speeding ticket or a red light camera, you have a right-- or a red light violation-- you have a right to have a trial, and you have all the rights that go along with the criminal case. I told Senator DeBoer about this issue, I told Sen. John Cavanaugh, I told a few others, and they're like, "Oh, is that what you say, Spike?" That's not me. That's what our Supreme Court said in 1977 immediately after we recodified and wrote our criminal code. I'm handing out, or have handed out a copy of the uniform citation and complaint. Our Supreme Court, pursuant to court rule, has developed a uniform standard citation and complaint for all traffic and misdemeanor crimes. All law enforcement agency uses those. The officers that will follow me tell you that they have the standard form as well. If you look on the second page that I've stapled, that's the back of the form. I printed it off of the Supreme Court's website over lunch. This is the notice that's given to somebody who's issued a citation and they want to plead by waiver. The court has got all the crime-- or, all the rights that accompany a criminal defense-- the right to have a trial, the right to be presumed innocent, the right to confront witnesses, and all those other things. I understand what Senator John Cavanaugh is trying to do, and that is to create a civil consequence, but he's doing it on a criminal traffic infraction that,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

according to our code, is criminal. In other words, I don't think that the Legislature can make something that is criminal civil just due to the enforcement mechanism that happens to be different than an officer actually observing a red light violation and writing a citation, doing this kind of thing, if I was clear on that. And I'll answer any questions if anyone have any, because I'm kind of just stuck talking at that point.

BOSN: Senator DeBoer.

DeBOER: Well, I'm kind of cheating here because I'm not going to be able to ask you questions on my next bill, so I'm going to ask them about this concept in general. I understood this-- and I hadn't heard this point before, and I think it's interesting-- that if it's-- if a police officer could issue a criminal citation for the exact same act that we are saying is a civil, then you would argue that it's actually-- that we can't make it civil.

SPIKE EICKHOLT: Well, maybe-- I'll have to concede that maybe the Legislature could try to do so, but that's just kind of unfair, it's kind of unequal, it is kind of odd. And I don't know that a court's going to interpret it being civil when it's for a criminal law, law. You broke a criminal law, you broke a red light criminal law; that's a traffic infraction. But for some reason, the consequence is going to be considered not a penalty under law, but taking a class and paying a fine with no points, and if you don't ever pay it, you're not going to be arrested for missing court.

DeBOER: In Nebraska, can we have civil violations of criminal actions? Let's start with an easy way to talk about it. If I'm a corporation, I obviously can't go to jail, so if I break the law criminally, they must sue me-- they must sue me for money, right? They must fine me.

SPIKE EICKHOLT: No, you can be a prosecuted as a company and pay a fine.

DeBOER: Right. They must-- OK, I pay a fine.

SPIKE EICKHOLT: And that goes to the school fund--

DeBOER: OK.

SPIKE EICKHOLT: --because that's considered a penalty.

DeBOER: OK, so can I get a civil penalty in Nebraska, as a company?

SPIKE EICKHOLT: Senator Hallstrom might know something about this. I, I don't know if that's clear. For instance, people say in Nebraska you can't get punitive damages, but-- you can, but the courts have considered, when private parties are suing each other and there's a judgment entered against the defendant that is beyond the harm that's compensated to the plaintiff but is meant to punish the defendant, it goes to the school fund because it's considered a penalty.

DeBOER: I mean, I don't mind if this money goes to the school fund. I suspect the director is not super happy about that back there, but-- I mean, I'd be OK with it going to the school fund.

SPIKE EICKHOLT: And if that's the case, then it is a criminal-- I'd argue it is criminal process. And I don't think-- the way that these red light cameras sort of work, the reason they're so-- it's a shortcut way of holding people accountable, right? The way it becomes effective is that you--

DeBOER: What if I--

SPIKE EICKHOLT: Sorry.

DeBOER: No, I-- what if I say you only get the privilege of driving on the public roads-- you can drive on any private roads you want at any speed you want, but this is a civil action that says you cannot drive on our public roads unless you do so in a way that is not caught on the cameras in this-- you know what I mean? Like, go around it backwards.

SPIKE EICKHOLT: Well, you could try to do that, but that would be a real fundamental rewrite of the rules of the road. Now, I-- if I-- you weren't here last week and I mentioned your name, and this brings me to the point I wanted to mention, but I mentioned it at the other committee-- this is something what Senator McKinney tried to do with the bill we heard last week; to make some offenses regarding the effects of a motor vehicle and so on sort of non-criminal, non-effective. I remember the committee sort of said, are you kidding me? Oh my god, people are going to drive around, they'll never pay a-- the'll never renew the registration and so on. Because that's the way we look at this in our state; these are criminal. They've kind of always been, since we've had our code.

DeBOER: So, OK, I'm willing to take on a big thing-- because this is a problem, right? We heard that, and we know that; we know that it's a problem. We know that the-- you heard the previous testifier who said

that, you know, we're now leading the country in most people that are dying because of, you know, pedestrian deaths on our road. So-- and there can be a lot of reasons for that, fine. But still, I don't want to lead the country in that, so I want to do something about this problem.

SPIKE EICKHOLT: OK.

DeBOER: So, how do I-- and I don't care if it takes me a long time to figure it out. What's the thread I start pulling on to create a civil enforcement mechanism for dealing with-- or is that just not possible under our constitution?

SPIKE EICKHOLT: I don't know that it's not possible under our constitution, and I should preface my comments with I don't know that either of my clients are ever going to embrace a scenario where we allow for surveillance of our citizens to enforce, even if it's civil things.

DeBOER: OK. Fine.

SPIKE EICKHOLT: Just saying that. I don't know that our constitution necessarily would prohibit some sort of a civil, less-than-criminal, sanctioned, for lack of a better word, way of doing something with our traffic infractions. I don't know. I don't know that that--

DeBOER: What if I just send you a nasty letter?

SPIKE EICKHOLT: That's--

DeBOER: We've got a picture of you going through the red light. We can't do anything about it, but you're a jerk.

SPIKE EICKHOLT: Well, that might-- I mean, you could do that, because, again, this-- there's-- I don't have to go to court, there's no points on my license, I'm not paying a fine; I'm just getting offensive mail from my elected officials. Which, which happens, I suppose.

DeBOER: We just put your-- we put your name on a list.

SPIKE EICKHOLT: Well, that might be a little-- that might be something. I mean, there's got to be some sort of a, a legitimate administrative purpose for that, not just meant to punish.

DeBOER: All right. Yeah, that was maybe crazy, but we could send you a letter and say your car was seen going through this, you better watch your car a little better.

SPIKE EICKHOLT: You could. You could. And if you do create some sort of offenses or lack of a better word that allow for that sanction, you're kind of going through another room, and that is if a law enforcement officer sees you doing one of those things, they don't have probable cause because they are not observing a crime being committed.

DeBOER: Yeah, that's what I was just going to-- but, if you could concurrently have a civil-- tort? I don't know what the, the word is for it. But I will make it up-- a civil tort for doing something wrong on the road, I don't know why you wouldn't be able to concurrently have a criminal, because it wouldn't be double jeopardy because they're different things?

SPIKE EICKHOLT: I-- if I was-- if the state-- if the Legislature would pass something like that, I would, I would certainly raise double jeopardy--

DeBOER: Yeah.

SPIKE EICKHOLT: --on behalf of my client because I would argue that you're simply rebranding a criminal process because you got a concurrent criminal process that's working in conjunction with it. You choose one or the other, and that's what our court did do for civil forfeiture for quite a long time. There might be a way to do it, admittedly, and I, I may not be the person who's willing to spend time and effort doing so-- not to be disrespectful--

DeBOER: No, understood.

SPIKE EICKHOLT: --just because it's contrary to what my clients expect. But it's, it's, it's kind of complex, and it's fundamentally different. And I'm sure other states do it. Other states do all kinds of things. Right? And you could probably even have a traffic enforcement method that still let it be criminal, right? That-- you could take a picture and somehow send it to them, and make sure somehow you actually got it to the person; probably have to actually deliver it to them for purposes they have notice. There's a statute that requires someone signs a citation.

DeBOER: Well, and then you'd have to make sure it was them driving, and how do you do that?

SPIKE EICKHOLT: Right. And that, that defeats the purpose of sort of having it, because it's efficient. It's quick, and we collect a lot of money, and we have an immediate presumptive penalty for people whose cars are observed violating it. But if they're going to go to court and contest it, then we might as well just stick with the old-fashioned system.

DeBOER: Yeah, but we don't have-- we can put many cameras--

SPIKE EICKHOLT: Right.

DeBOER: --on many corners, many stoplights; we're never going to be able to hire-- hire that many police officers. There's a police officer is going to come and testify after you. He'll tell you it's hard to hire people.

SPIKE EICKHOLT: It is.

DeBOER: So, if we can't hire people to do the job and people are dying because we're not doing the job, can we provide a technological option-- and I get that you're objecting to it on due process grounds-- is there a way, though-- yeah-- I'm-- OK. Thanks.

BOSN: If there was a way to confirm that the driver was also the person driving. So, you take a picture from the front as you're going through the front of the stoplight, and they take a picture of your now only license plate-- which I also don't support-- from the back angle--

SPIKE EICKHOLT: No one talked about this. It's odd that that bill just flew through, and no one even thought about this angle.

BOSN: Not with my vote, but-- and you can compare my face to my driver's license photo, which is on record. And you can send me a letter that says, this is your face, turns out this is also your face, here's the date and the time. I don't think it's the same due process concern that we've alluded to when Senator McKinney is driving Senator DeBoer's car. If we can prove that it is my face and my car, and at that time--

SPIKE EICKHOLT: Right.

BOSN: Do you think that's still the same due process concern?

SPIKE EICKHOLT: It's not a-- yes, I absolutely do, because it's still a criminal-- I'm still presumed innocent. I mean, these officers will

tell you, they observe people firsthand and see they are speeding. And they still-- and you-- I don't know if you did the traffic docket when you were in the county attorney's office-- people still go to court on a red light camera and they've got one or two state's witnesses, they may even have a video from a cruiser video or something like that. The person still says, "I didn't do it. I want my trial." And they have a trial. They have that right because they are presumed innocent, they have the right to confront witnesses against them, and the state's got to prove it beyond a reasonable doubt. Your example might be very good proof, it might be effective, and the technology probably is there to make it be effective as a practical matter to establish that conviction. But the process is still-- the person's still entitled to that process.

BOSN: And why can't they have-- and I'm not trying to be difficult,--

SPIKE EICKHOLT: Right.

BOSN: --but why couldn't they have it in that fact scenario? I mean, you'd have to have a-- someone to lay the foundation for those photos.

SPIKE EICKHOLT: Right.

BOSN: They would come in and offer those photos,--

SPIKE EICKHOLT: Right.

BOSN: --and, and--

SPIKE EICKHOLT: Well, the way I think this works is that you don't-- you're not sent just a citation; you're sent a bill basically saying you've been-- you sent a verdict, basically. You've been found guilty, you have to pay this by the certain date or take a class.

BOSN: OK, but in my scenario, I'm telling you that we send you this stuff instead--

SPIKE EICKHOLT: You send the citation to them [INAUDIBLE].

BOSN: You send the citation. Sorry, I am not using the right words, but you get my point. And then, you do have your day in court, and if--

SPIKE EICKHOLT: Right.

BOSN: --you can come in and say that was my evil twin and so you haven't met your burden beyond a reasonable doubt, and then I am found innocent,--

SPIKE EICKHOLT: Right.

BOSN: --it's, it's different. We have given you the opportunity to the defense and all of those things.

SPIKE EICKHOLT: Right. I think that there's, there's a couple of statutes you've got to change on the citation because, as you know, there's requirement that a person has to sign it. I think you're still going to have a, a logistical issue that you are matching the address that was registered to the vehicle to the actual person. What happens if they don't? I suppose you could issue a warrant and have people arrested if they don't show up for their trial.

BOSN: Or you can't pursue that ticket.

SPIKE EICKHOLT: Or you-- that could be an option, too.

BOSN: But the goal here isn't just the tickets, as the one testifier said; it's-- you're going to scare people into compliance, and perhaps save 80 lives a year between Omaha and Lincoln alone. That may be enough of a deterrent that--

SPIKE EICKHOLT: It, it might be.

BOSN: Yeah.

SPIKE EICKHOLT: It might be. And the tech companies that provide the service would love to sell the policymakers that.

BOSN: Sure.

SPIKE EICKHOLT: And, and that's editorializing a bit, not answers to your question. But that's just a concern we have.

BOSN: OK. Senator DeBoer.

DeBOER: So, let me follow up with that. So, the problem is the cursory nature. So, if in fact you just get a-- we think you might have done it, this is your notice that you might've done it, we have probable cause to believe that you've run a red light. And you can come in and say "No, it wasn't me," and the prosecution has to prove beyond a

reasonable doubt that it was you by the picture plus the license plate, then it's OK?

SPIKE EICKHOLT: I don't know that it's OK.

DeBOER: That it is due-process-OK.

SPIKE EICKHOLT: Again, I don't-- I'll have to kind of research what you're sort of entitled to, as far as being notified that a criminal charges be against you, whether mailing is sufficient.

DeBOER: OK, fine. I get that.

SPIKE EICKHOLT: So, I'm not sure. I don't want to concede that, but it might be. It might be-- maybe it's weighed to how serious a crime is. I don't know that it is. The, the argument against-- I mean, that sort of defeats the purpose of it, because that doesn't sound very easy, effective, cost-effective, efficient.

DeBOER: I think we're-- I think we're willing to pay for the lawyer time, because not very many people are going to take advantage of the-- come in and have the trial.

SPIKE EICKHOLT: They'll opt for the \$100 thing that's proposed in this bill.

DeBOER: They'll, they'll do the \$100 instead, just because \$100 is not worth their time to bother with it. Frankly, that's what people do. And so, they won't bother to challenge the speeding ticket, the whatever,--

SPIKE EICKHOLT: Right.

DeBOER: --and instead, they'll just say, OK, I waived these rights and I'm going to pay for it. So long as they have the, the ability to defend themselves if they want, and that they have to sign the waiver if they don't want to defend themselves.

SPIKE EICKHOLT: That might be. I mean, there might be-- yeah, I'll have to kind of-- I never thought of it that way. There might be, but I suppose I was thinking, you know, this is an Omaha-driven issue.

DeBOER: This one is, but mine is not.

SPIKE EICKHOLT: Right. Yours is not, but it is a state law violation, right, this envisions. It's not a city ordinance thing.

DeBOER: Right.

SPIKE EICKHOLT: So then, you would have that option of paying \$100, not having points unavailable for really most of the state, and that might be another problem. Now, maybe it's not, as I say, you're thinking out loud, because we don't have diversion and STOP programs statewide in every jurisdiction, either. And we have state laws. But I think this just overintensifies that disparity.

DeBOER: OK. Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: Is it your opinion that we have to have express statutory authority for the automatic license plate readers and things that flow from them?

SPIKE EICKHOLT: No, we have-- yes. Well, not necessarily. I think we-- but we do have-- the Legislature, I think in 2018 or 2019, did pass some legislation that controls what local governments can do in contracting with automated-- AL, AL-- license plate readers.

HALLSTROM: OK. And so, the next question is, are, are, are red light violation and criminal penalty statutes have any reference as to whether or not you are-- the violation occurs in the presence of a police officer, pursuant to one of these license plate readers?

SPIKE EICKHOLT: No.

HALLSTROM: So, it-- if--

SPIKE EICKHOLT: No, it's silent as to enforcement.

HALLSTROM: And so, if we were to put something into the statute for the criminal penalties that says except as provided in Senator Cavanaugh's law, couldn't we get around the issues that you initially raised in that regard?

SPIKE EICKHOLT: The issues relating to this as a criminal case?

HALLSTROM: Yeah.

SPIKE EICKHOLT: Maybe, because the sanctions are different than it is for a truly criminal offense; that's one way the court could look at it. The counter is, is all the-- all this Legislature has done is

circumvented the protections entitled to a criminal defendant based on an alternative means of enforcing this criminal law.

HALLSTROM: Is there any difference in due process based on a criminal or a civil case in this, in this respect?

SPIKE EICKHOLT: Yeah. I think that if somebody didn't want to pay the \$100, doesn't want to take the class, maintains their innocence, then you run right into the disparity.

HALLSTROM: And you mentioned Senator McKinney's bill. Did you support that bill on behalf of the criminal defense attorneys?

SPIKE EICKHOLT: I was neutral on that, and I talked about that. I think ACLU supported it. I was neutral because-- you know, that's one thing-- if I could speak-- you know, there's a certain utility to have traffic infractions be criminal, right? It gives law enforcement a lot of discretion to do what some would consider good community police work. You can stop vehicles and make contact with drivers and pull drunk people off the road, that kind of thing, right?

HALLSTROM: And I think that goes back to my deterrence question,--

SPIKE EICKHOLT: Right.

HALLSTROM: --as to whether or not the deterrence results from the fact that you might get caught, or if it's coupled with the fact that the penalty's more severe if and when you get caught.

SPIKE EICKHOLT: Right. I think it's probably likely-- it's probably a mixture of both, I suppose.

HALLSTROM: Thank you.

BOSN: Senator McKinney.

McKINNEY: Thank you. Spike, is the other issue the reliability of the, the, the technology? Because I've seen them, and they're, they're not rel-- maybe since my last time in, in St. Louis, they, they might have updated the technology, but they're not very relia-- I would say they're not very reliable.

SPIKE EICKHOLT: Right. Well, I can't speak to that. And I don't know if anyone's going to be from the license plate reader companies, but my understanding is that they actually focus on the plate themselves, and that's why we have-- there's, like, a new standard plate that all

states are supposed to follow that is accommodating for those license plate readers, and I-- there's a bill that they're passing that's going through-- it's either passed or being considered by this Legislature now that would clarify that you can't obscure or tamper with the plate number by putting certain reflective tape on it that some people do. So, as far as the license plate readers, I don't know that they necessarily always capture the driver as much as they capture the plate of the vehicle and focus on that.

McKINNEY: Well, I think I-- I've-- I think I've seen where they could take a picture of the driver, but also where you could take a right turn and you're not running--

SPIKE EICKHOLT: Right.

McKINNEY: --the red light and it flashes. And I've seen it flash when you're really not running the red light.

SPIKE EICKHOLT: Yeah, I-- somebody mentioned something about other countries. In the UK, people are cutting those cameras down all the time, right? So, there's that issue, too, I suppose, but-- but yeah, I mean, I can't speak to the technology, but that is something that is kind of an issue, right? I mean, there's-- you have to have-- you have to have confidence in actual police officers doing that police work instead of just relying on cameras and technology.

McKINNEY: Yeah. Thank you.

BOSN: Thank you for being here. Next opponent.

BRYAN WAUGH: Good afternoon, Senator Bosn, members of the Judiciary Committee. I'm Bryan Waugh, B-r-y-a-n W-a-u-g-h, chief of police, Kearney Police Department; president of the Police Chiefs Association of Nebraska. I appear today on behalf of Police Chiefs Association of Nebraska and the Nebraska Sheriff's Association in opposition of LB616. I would first start by saying we thank Senator Cavanaugh for presenting this. We also agree that traffic safety and public safety is, is paramount for all of us. However, I'm going to go into a few details about our concern with this particular bill. Over the past three years, the responsible use of automated lights plate readers in Nebraska has proven to be a highly-valuable, critical piece of technology for public safety. The ALPR cameras have significantly assisted law enforcement in investigating crimes by providing objective evidence, including license plates and vehicle characteristics. They have also been instrumental in proactively

preventing crime by sending real-time alerts. When a stolen car, for example, or a wanted person from another state or a national crime database-- from a national crime database enters the jurisdiction. The ALPRs have been able to send alerts when a vehicle associated with a missing person or an amber alert, endangered mission-- or an endangered missing advisory alert is detected. In-- at the Kearney Police Department, we have the largest deployment of ALPRs in the state today; we have 28 ALPRs throughout the city of Kearney. And we've put a strict-- I've put strict policy in place regarding the usage of the ALPR system. All provisions of Nebraska state statutes, including the Automated License Plate Reader Privacy Act, are strictly enforced, and, and, and we also provide annual reporting requirements to the Crime Commission, and they're strictly adhered to. The cameras are a crucial tool in our crime-fighting arsenal, are used to solve and reduce property and violent crime, and are not intended for minor traffic or parking violations. To ensure transparency and demonstrate proper use of this system, our ALPR transparency portal is available for viewing on the website as well. While we appreciate the, the, the focus on traffic safety, we believe intermingling this technology for traffic enforcement may negatively impact the effective use of the technology for crime prevention, solving crime, and keeping communities safe from crime. For these reasons, on behalf of the Police Chiefs Association of Nebraska and the Nebraska Sheriff's Association, I'm appearing today in opposition, and we respectfully request that you not advance this bill. I would be available to answer any questions. If I could add one other note, just listening to some of the other testimony this afternoon-- we do agree right away, violations are definitely one of the major contributing factors to vehicle collisions at intersections. However, it, it is also-- I've, I've studied this a couple of years ago as well, because I used to live in the Omaha area; Iowa has this technology. And there are other studies out there that, that are, that are contradictory to, to some, indicating that a red light camera will increase the likelihood of traffic collisions at intersections, because people will inadvertently slam on their brakes. So, you may have-- you may have following-too-close style inter-- crashes; rather than a right-of-way crash, it'll be a-- it'll be a, a rear-end collision, because somebody wants to avoid getting a traffic camera citation in the mail. I would open up for any questions. Thank you.

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

BRYAN WAUGH: Thank you so much.

BOSN: Next opponent.

WILLIAM RINN: Good afternoon.

BOSN: Good afternoon.

WILLIAM RINN: My name is William Rinn, W-i-l-l R-i-n-n. I'm the Chief Deputy of Administration for the Douglas County Sheriff's Office. Rather than read from my testimony, which you can read for yourselves, we'll kind of freestyle here. We, we echo the sentiments of the Nebraska Sheriff's Association and, and the Kearney Police. We do applaud, believe me, Sheriff Hanson and, and the sheriff's office is deeply committed to traffic safety. We have a special community action team that handles those problem sites and problem areas specifically, and we've had great success with that. But part of that great success has to do with the ability to interact with the citizens of Douglas County and Omaha directly to have those exchanges, use discretion, gain their trust, and, and we've put a lot of the time and energy into doing that, as well as the notion of using ALPRs-- we have 18 in use in Douglas County; we're trying to achieve more. Obviously, it's a funding issue, but-- and, and we're currently trying to build that network of intelligence-gathering, solving crimes. We've had great, great success with solving, you know, homicides, gun crimes, et cetera, and we don't want to disrupt that in any way; it can be problematic with legislation dealing with data sharing, data retention. So, for-- it's for those reasons that we oppose it. We are-- I did find it intriguing, the notion that the Senator brought forward about reducing the amount of people who are on warrants. I can tell you as the chief of agency who's responsible for warrant service in the Douglas County area, we would much rather be serving criminal warrants than logging up time on traffic warrants. [INAUDIBLE] I would suggest maybe a pilot study for one specific charge that, that everybody can live with to see how that goes for a year, to see if that in fact actually reduces the number of people that get picked up on fines. That's, that's more of a Will Rinn thing than it is a sheriff's office thing. I'll take any questions that you have.

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

WILLIAM RINN: Thank you.

BOSN: Next opponent. Good afternoon.

SCOTT THOMAS: Good afternoon, Chair Bosn, Judiciary Committee. My name is Scott Thomas, S-c-o-t-t T-h-o-m-a-s, with Village in Progress Nebraska and USIDHR. "If tomorrow all the things were gone I'd worked for all my life // and I had to start again with just my children and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

my wife // I'd thank my lucky stars to be living here today // because the flag still stands for freedom, and they can't take that away // And I'm proud to be an American where at least I know I'm free // and I won't forget the men who died, who gave that right to me // And I'll gladly stand up next to you and defend her still today // because there ain't no doubt I love this land // God bless the U.S.A." Due process is the cornerstone, the bedrock of American law. There is a, a problem with the Fifth Amendment of the 1787 U.S. Constitution; there's various breaches for articles of the 1948 Universal Declaration of Human Rights. And this is not China, it's not even Missouri; this is Nebraska. It's God's country. Any questions for the senators?

BOSN: Senator Hallstrom.

HALLSTROM: Thank you for your testimony, Mr. Greenwood.

SCOTT THOMAS: Thanks. I appreciate it. Yeah.

BOSN: Thank you for being here.

SCOTT THOMAS: Yeah, all-- already. I don't want to take credit for that. Of course, credit goes to Mr. Greenwood. Appreciate it. OK.

BOSN: Next opponent. Anyone here in the neutral capacity? While Senator Cavanaugh makes his way up, I will note for the record on LB616 there were 6 proponent, 11 opponent, and 1 neutral comments submitted for the record. Welcome back.

J. CAVANAUGH: Thank you, Madam Chair. Thanks, members of the committee. Well, I appreciate the hearing. I learned a lot. I thought it was very interesting. I appreciate Mr. Adams, the road engineer, testifying. And actually, one of the things I didn't mention in my opening was one of reasons I came to this bill was having conversations about ways we can decrease traffic injuries and fatalities, and it had to do with that we need to basically build our streets differently, right? To addressing our built environment and making-- slowing things down and making traffic just less-- or, more safe. And I had a conversation with some traffic engineers, and they basically said that the State Department of Roads has a calculation that they use to determine whether an intersection requires some sort of road diet or change for safety, and that calculation is based off of-- they assess dollar value to injuries to folks, and then if that dollar value reaches high enough in proportion to what the cost of the change would be, then they can make the ch-- the streets safer. So, we

have this problem, and that's a bigger problem that I don't know how to address, but I guess this one's a big problem too. But the-- you know, enforcement's not the only way we can fix this, right? And we have-- we do know things we can do, we're just not willing to pay that price. And we had a big-- part of this conversation was one of the things about these cameras is that their virtue is their efficiency. And preserving people's rights and due process is inefficient, and so the-- we're butting up against cost, safety, protecting people's rights, and efficiency. So, I think it was a very interesting conversation. One of my takeaways from Mr. Eickholt's conversation with Senator DeBoer is that I've got more things I need to think about in here if I was gonna try and keep going. Mr. Eickholt, I think, correctly pointed out that I don't really have a mechanism for somebody to object, to say that they-- you know, I just sort of shifted the burden to people. I don't have an answer to that at this point. I'm gonna keep thinking on that. I appreciate-- you know, it's always good if I can bring the ACLU and the sheriffs and the police association together. I'm not sure how many people have done that, but I-- you know, that's a real accomplishment for me. And, you know I-- it's Friday afternoon, so I don't need to belabor the point, but-- oh, and Ms. Harris's testimony, I thought, was really interesting about deterrence, and not necessarily about the penalty. And that was another reason I settled on this was-- you know, I think Senator Hallstrom hit on this quite a bit-- is what is the penalty and whether-- I don't think-- my read of things, I generally agree that we shouldn't be enforcing criminal penalty via photographs through the mail, and I think that this is really a convoluted way to try to get to that. But I do think there's value in trying to find a way to make people safer, and maybe we need to not be so concerned with how much of a penalty is assessed, but more in terms of how we can get people to, to be a little safer. So, I'm happy to take any questions, and I hope you guys aren't here too late tonight.

BOSN: Questions? Senator McKinney.

McKINNEY: Thank you. Thank you, Senator Cavanaugh. One thing I was thinking about here-- I know the city of Omaha has been looking at speeding on 30th and how to address it,--

J. CAVANAUGH: Mm-hmm.

McKINNEY: --and I don't know if they've discussed red light cameras or anything. Have you talked to them about that?

J. CAVANAUGH: I've talked to the city of Omaha. I don't know specifically what intersections they-- they're thinking about, and I think, yeah, you hit on something. And actually, Ms. Harris also mentioned on this, on equity analysis. So, one of the concerns that I have about any type of this enforcement is-- my understanding is what you would do is you'd set it up at a certain intersection. It might not always live there, and you would move it-- you might move it around, right? And I do think that there's a risk in a place like Omaha where it might-- be it 30th and Ames, we'll say-- and might be there a lot, and never at 144th and Maple. And for those folks who are not Omaha native geography speakers, 30th & Ames is a predominantly-- in a predominantly African-American neighborhood, and 144th & Maple is a predominantly white neighborhood. And what I'm saying is that sometimes one of the problems we have with this type of enforcement can be disproportionate enforcement against racial minorities who sometimes are often over-policed already. And I guess I'm saying that to think-- I think there may be further constraints you'd have to put on if someone were to uptake this to try to address that concern, and I, I don't-- I'm not unaware of what Ms. Harris was talking about of the equity analysis, but I'm certainly-- would look at that. Does that answer your question?

McKINNEY: All right. Yeah.

J. CAVANAUGH: OK.

McKINNEY: Thank you.

BOSN: It seems like you could fit it to be at intersections where there's a certain number of accidents or something so that then there's a more non-discriminatory-- like, this is a problem here, we know it because of these factors, and that's how you trigger where you put it.

J. CAVANAUGH: Yeah. And I, I just don't have an answer for you today.

BOSN: Fair enough.

BOSN: Oh, Senator Hallstrom. Sorry.

HALLSTROM: Quick technical question. Do you think the statute needs to establish the fee as opposed to just saying you, you will pay a fee?

J. CAVANAUGH: I thought about that, and I think that what my, I guess, imagination of how this would work is that we're creating a mechanism by which the City of Omaha could create this, and that they could-- as

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

I think somebody pointed out, not everybody has the STOP class. So, not, not trying to say everybody has to use a STOP class, and the STOP class costs \$100. So, I mean-- but-- so, I don't know if that's necessary or not, and that might, that might just take further study, I guess.

HALLSTROM: Thank you.

BOSN: Thank you for being here. That will conclude our hearing on LB616, and next up, we have LB600 with Senator DeBoer. Before we get started, could I just see a show of hands-- how many individuals are testifying on LB600? One, two, three, four, five, six, seven, eight, nine, ten. OK. Just a reminder, you're always welcome to echo the comments of someone who may have taken the same comments you wish to say when you get up here. Just as a reminder. Thank you.

DeBOER: In a complete shock as to the content of this bill-- good afternoon, Chair Bosn, and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent District 10 in beautiful northwest Omaha. I appear today to introduce LB600, which is about using these traffic cameras, amongst other things. Last September, I was invited and attended a tour of a nighttime road work zone in Omaha with the director of our Department of Transportation, Vicki Kramer. It was a great experience, and during the tour, we had a long conversation about highway safety. This led to today's bill. LB600 is about ensuring our roadways are safe for those traveling and for those working on our roads, and it does this through a few different means. The first component is an important piece to better protect those repairing and improving our highways. LB600 allows the use of speed control enforcement systems in highway work zones. Think portable, temporary, traffic speed cameras in work zones. It kind of operates as I've been-- it's been described to me the way when you have a light flashing at you and it tells you "your speed is"-- it shows you what your speed should be, and then it flashes what your actual speed is, or it doesn't flash if you're, you know, fine or something. So, LB-- for lawful operations of this system, a work-- a worker must be present in the work zone; there must be signage indicated "a speed control enforcement system may be in use;" the operators must keep a daily log of where the system is located in the work zone, the dates and time in which it was used, and whether workers were present during its operation. If all the above has occurred, and a vehicle exceeds 11 miles per hour over the speed limit in a work zone, the system would record a photo of the license plate of the car, and the owner would be assessed a penalty. LB600 also allows for the use of these systems-- same systems in school crossing

zones along state highways. While these would be permanent fixtures, on-- unlike those used in construction zones, they are also only operated lawfully if the school crossing zone warning lights are activated. There is signage at the entrance of the school-crossing zone indicating a speed control enforcement system may be in use. An individual must exceed six miles per hour over the maximum speed limit in a school crossing zone in order to be cited per this section. Third, LB600 addresses removal of debris from the roadways. Current law authorizes only peace officers to remove debris from roadways in the event of a wreck, or other such obstructions endangering the safety of roadways. LB600 grants NDOT personnel the same authority, which will greatly help our already overextended troopers. This is especially helpful when wrecks happen near work zones. Traffic is already impeded due to construction; with debris in the road, traffic conditions only gets worse, which also makes it harder for law enforcement to arrive on the scene safely. This permissive authority should help greatly when the situation calls for its use. The fourth element of the bill permits NDOT to make downward "adjustments"-- adjustments-- only downward adjustments-- to the maximum lawful speed limit in certain dangerous conditions on state highway. These variable speed limits can only be used in specific conditions, and those are: weather or environmental conditions which reduce visibility to one-quarter mile or less; road conditions reducing traction for objects in the highway-- or for objects on the highway; emergency situations; or other bad traffic conditions. These variable speed limits are lawfully implemented if any of the above conditions are met, and there is a prominently-displayed electronic or digital sign indicating the reduced maximum speed limit, that the normal speed limit does not apply until there is another sign indicating a return to the normal speed limit. LB600 tasks NDOT with developing and maintaining standards for when to implement variable speed limits, should they do so. Variable speed limits are not a new concept. In fact, some of our border states have variable speed limits already in place. When bad weather hits, they lower their maximum speed limits. Unfortunately, and contrary to the best practices, this can create a 20 mile per hour or greater speed limit difference between us and our border states when variable speed limits are used, introducing a new danger to driving in already less-than-ideal conditions when you're going over straight line-- state lines. This is another tool in the toolbox for NDOT to have to continue to-- have to continue to ensure safety along our roads. I'll note for the record that there was an objection that allowing NDOT to change the speed was a delegation-- unlawful delegation of our authority, but it's my understanding that NDOT has the rights already to reduce the speed limits; they simply

can't raise the speed limits. Finally, the last provision of LB600 is an expansion of our move-over law. Current law indicates if there is an emergency vehicle with lights flashing on the shoulder, drivers are to move over a lane if they are able, or to slow down when passing the emergency vehicle. LB600 expands this requirement to be for any vehicle which is pulled over to the side of the road and has their emergency lights flashing. Before I open up for questions, I do want to acknowledge that thus far, I've been intentionally vague about the enforcement and penalty provisions of this bill. Obviously, the Nebraska Criminal Defense Attorneys Association highlighted issues with the penalties laid out in the green copy of LB600, their concerns similar to the ones they had on the last bill. I kind of wish we had addressed this earlier. Not-- it's not their fault, it is mine; I wish I had caught it immediately so that I could have figured this out earlier. So, I've been in conversations with various stakeholders to try and figure out how we can do this. After this last conversation, I'll say that there's probably-- I am convinced we could do this civil-- this criminally, for sure. We would just have to allow for due process, the way you do with a speeding ticket. But we could also specifically, explicitly create-- I think-- a civil penalty, so I think there's a couple of routes we could use. I am int-- we have had too many people die on our roads, and I am interested in making this work because I think it will be effective. So, I would ask the committee and the folks in this committee room to try to help me make this work, because I think that they're-- it's, it's sort of our job to do that. So, let's figure out a way to make this work and see if we can pass something this year. Thank you. I'll answer any questions.

BOSN: Questions for Senat-- Senator McKinney?

McKINNEY: Thank you, Chair Bosn. Thank you, Senator DeBoer. So, who would be sending these citations out, essentially? Would it be NDOT, or, or the-- or somebody else?

DeBOER: According to the green copy of the bill, it would be NDOT, but I envision a way in which we could do that. Apparently, Iowa does it through a-- some law enforcement.

McKINNEY: Are they set up to do something like that?

DeBOER: Who?

McKINNEY: NDOT.

DeBOER: So, I'll let you ask that directly to the director since she'll be testifying, because I think she would probably be able to answer that more directly.

McKINNEY: OK. Are you-- I guess my other concern is I don't view NDOT as an agency that deals with matters of the courts. Are you cons-- are-- have you thought about that?

DeBOER: Yeah. So, what we're trying to develop is a civil penalty that, that-- I mean, they do deal with matters of the-- NDOT is-- does deal with matters of the, of the court. But I think what you mean is a criminal, and we're thinking about civil, so-- I mean, this is all what we are talking about today, is how do we find the correct enforcement mechanism for these particular kinds of violations. And the answer is, working on it. And I think you could do it criminally; what we have envisioned is civilly, and that's why NDOT would be the ones that would sort of shepherd the process.

McKINNEY: OK. I'm trying to think. So, where would these readers be positioned?

DeBOER: Yeah. That's a good question. So, as I understand it, if you go to the work zones, they're in the work zone themselves. And you can ask-- I think one of the engineers is going to testify how, how they do it. But what-- it's like those-- as I said, the ones that flash the yellow speed that you're driving. So, there's a point, and then there's another point, and it determines when you hit both points to determine your speed, so they, they take your speed that way.

McKINNEY: OK. So, I guess it would be tracking what you-- your speed as you pass those points, or your speed as you're going through the work zone.

DeBOER: So both-- my understanding is both points would be within the work zone.

McKINNEY: OK. Well-- no, what I'm trying to understand is, could I still speed through the work zone?

DeBOER: Well, I mean, you could.

BOSN: Can you?

DeBOER: You can. But my understanding is that it would, it would track your speed as you made your way through the work zone. So, it would take one point and see when you passed that point, and another point

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

and see when you passed the point. And I can't remember, but they did tell me, but I can't remember how far those are apart.

McKINNEY: OK.

DeBOER: But they are-- both points would be within the work zone, so it would be able to determine how fast you passed both points within the work zone.

McKINNEY: Because I've, like, seen the signs, like "work zone for the next five miles"--

DeBOER: Right.

McKINNEY: --like, can I, can I pass that first point and speed for 4.9 miles and slow down?

DeBOER: I believe you could probably game the system if you were-- I know how smart you are, so I bet you could do it. I bet that you could say, I see this thing here; because of that hearing with Senator DeBoer when I asked someone more competent than her how far apart those two places are, I'm able to determine that probably it's located here and here, and if I slow down through this part and then speed through the rest of the work zone-- I bet you could find a way to do it, but I doubt as though many people would put that much effort into it.

McKINNEY: I was just asking. Thank you.

DeBOER: You're welcome.

BOSN: Thank you very much. Next-- or, first proponent. Sorry. Proponents. Welcome.

VICKI KRAMER: Good afternoon, Chair Bosn, and members of the Judiciary Committee. My name is Vicki Kramer, V-i-c-k-i K-r-a-m-e-r, and I'm the director of the Nebraska Department of Transportation. I'm here today to testify in support of LB600 and DOT's 2025 Highway Safety Bill. I would like to thank Vice Chair DeBoer on her-- for her partnership and expertise in addressing the highway-- the safety of our highways. I'd also like to share-- say that I share in her passion in finding a way to make this work. Understanding the challenges that have been laid out in the previous bill as well as in the opening, I think we can make this work, and we need to make it work for the safety our roadways. Driving is the most dangerous activity your constituents will do on an average day. In 2024, Nebraska experienced a 17-year

high in roadway fatalities, despite national statistics for crashes have been trending down since 2021. This alarming trend motivated the department to dig into proven federal safety countermeasures to identify and address the compounding issues creating an unsafe environment. Our goal? Reduce fatalities and keep Nebraskans on the-- and those on our roadways safe. We've offered an amended version in your packet that really focuses on two areas. Authorization of speed safety cameras in our work zones, which are recognized-- which is recognized as a National Highway Traffic Safety Administration's five-star countermeasure, and enforcement of variable speed limits to address driver expectations on Interstate 80. According to the Federal Highway Administration, 2023 national statistics show 34% of work zone crashes are caused by speeding, and we continue to see drivers drive in excess of posted speed limits throughout the state. On average, there's about six fatal crashes in Nebraska's work zones every year, and more than 100 resulting in injuries. Traditional enforcements of work zones' speed limits can be challenging given the availability of laws enforcement and constraints of the work zone. As such, states have turned to speed safety cameras to protect both workers and drivers. Data from USDOT shows use of these devices may reduce injury and fatal crashes by up to 44%. LB600 would allow for speed safety cameras to be used for enforcement of reduced speed limits in select, signed locations on the state highway system. These safety cameras would detect drivers operating in excess of 11 miles per hour over the speed limit when workers are present, and automatically take a picture of the rear license plate of the vehicle, which would be used to generate an administrative civil penalty sent to the registered owner of the vehicle. A handout in your packet has details about implementation such as the process and guard rails that are in place to protect individual privacy and create transparency in the process. This portion of the bill is largely modeled on legislation implemented in Indiana, Virginia, and New York State, though approximately 30 states utilize speed safety cameras in some form between work zones, school zones, or statewide enforcement. It's important to note that the provisions is not intended to generate revenue, but to influence driver behavior. For that reason, the first violation results in a warning rather than penalty. Data from other states shows warnings are highly effective at altering driver behavior, such as in Connecticut's pilot where 24,000 cars were issued warnings, but only 724 drivers were issued repeat citations. In Pennsylvania, 1.2 million warnings were issued between 2020 and 2023, while only 180,000 actual violations were sent. This proves they're effective. LB600 also authorized the department and law enforcement to implement variable speed limits, particularly on I-80. This would revise Nebraska law to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

allow NDOT officials to reduce speed limits temporarily when just-- when conditions justify. I'd be happy to answer any questions and/or address previous testimony.

BOSN: Senator McKinney.

McKINNEY: Thank you, Chair Bosn. First question, why the 11 miles per hour?

VICKI KRAMER: So, what we found when digging into legislation in other states is this is really a reckless driving issue. It's not people that are going two to three over that we're looking at; it's people that continually driving 20 over in work zones, with no regard for public safety. And so, the 11 miles over is when you're really going to see a catastrophic incident result in a fatality. So, like I said, we're not looking at revenue, we're not look to get you going five over, six over; we're looking for those drivers who are continuously presenting reckless behavior behind the wheel.

McKINNEY: OK. And to follow up on my question with Senator DeBoer, what would be the distance between the, the light-- both the-- I guess the lights or the camera?

VICKI KRAMER: So, it would depend on the, the length of the work zone. One thing that we have to have is we have to have it signed prior to you entering the work zone. So, there'll be notification with a, "you're going five over," "you're going 65 in a 55," however it is. You'll be notified of that speed when you enter the work zone, and also told that the warning camera is in use. As you enter work zone, then you're going to be able to have that secondary device that's going to show that's going to usually be on a trailer, that's calibrated to take that, and that's what the ticket will-- or, that's what the penalty will be assessed off of. And that's the way the picture will be taken.

McKINNEY: So, they would have the opportunity to slow down before they pass the camera.

VICKI KRAMER: Yes.

McKINNEY: OK.

VICKI KRAMER: That's our primary goal.

McKINNEY: Do you have the ability to enforce this through your agency?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

VICKI KRAMER: We-- so, this is an interesting question, and one that I know we've worked our way through over the last hour or so. There are other states that use their state police department to actually enforce this. In conversations with law enforcement and conversations with stakeholders, NDOT chose to take this on as a, as a way to handle an administrative penalty or administrative fine. We have the ability to assess it; there is no fiscal note assessed to it. So, at this point, we think that this is the right thing for us to handle internally.

McKINNEY: How has the courts-- has the courts reached out, reached out to you about it?

VICKI KRAMER: We've received the same notification that Senator DeBoer received, and where we are very interested in finding a way to make this work. I will have legal counsel behind me that will testify on some of the beliefs that we have in contrast to the opinions that have been stated.

McKINNEY: All right. Thank you.

VICKI KRAMER: Mm-hmm.

BOSN: Senator Rountree.

ROUNTREE: Thank you so much, Chair Bosn, and thanks so much for our testimony. Mine's just a very simple question. Right now, as we are entering to work zones, we see the signs that are normally posted, fines double during the work zone. Would those be removed now because we have the signs that says we have the cameras; you may be tracked as you go through?

VICKI KRAMER: So, they're only-- they will not be on every work zone. And so the-- we-- if you're on the camera, you will not be doubly fined, so there will not be those two things. You will not receive the doubled fine for work zone, or workers present; it'll just be the \$75 for the second instance within three years. But we still will keep our signs up, if, if-- so, if there is a law enforcement official that gets you, then you'll still be the fines doubled.

ROUNTREE: All right, thank you so much.

VICKI KRAMER: Mm-hmm.

BOSN: Thank you for being here.

VICKI KRAMER: Thank you, Senator.

BOSN: Next proponent. Good afternoon.

NICHOLE BOGEN: Good afternoon. Good afternoon, Chair Bosn, and members of the Judiciary Committee. My name is Nichole Bogen, N-i-c-h-o-l-e B-o-g-e-n, and I am an assistant attorney general for the Transportation Bureau. I'm testifying in support of LB600. With increasing traffic volumes and greater demands on law enforcement resources, it's essential that we leverage technology to more effectively address public safety concerns on our highways. The speeding control enforcement system in this bill is designed to detect and record the speed of the motor vehicle and obtain a clear picture of the rear area of the vehicle or the vehicle's trailer-- the picture of the plate. Concerns about speed enforcement cameras are balanced against worker safety by limiting the scope of this bill and enforcement to work zones. We're mindful of the expectation of privacy in one's vehicle, and this bill includes an advanced warning sign to drivers about the presence of the speed cameras via appropriate signage. The camera only captures a photo of the rear plate after it is activated by an excessively speeding vehicle, 11 miles over the speed limit in the work zone. This method avoids invading the privacy of the vehicle's occupants, and the data is only used for the purpose of enforcing this act. This technology applies violations consistently across all vehicles without regard to a driver's personal attributes or characteristics, and without requiring police interaction with drivers. The method of enforcement-- the first violation is a warning, allows drivers to modify their behavior, reduce speed, and avoid a civil penalty that comes with a second violation. Vehicle owners have a rebuttable presumption that they were not operating the vehicle at the time of the violation; owners can contest the civil penalty and offer evidence to rebut that presumption, as well as other defenses that, that we've offered. Drivers cannot receive both a police citation and a civil penalty for the same violation in a work zone, and the intent of the speed safety camera is to change driver behavior to protect workers and prevent crashes in work zones. The penalties we have are not extreme, but they are significant enough to induce drivers to slow down. Studies have shown that this type of work zone speed enforcement system is very effective. On the enforcement of the variable speed limits, that would be the same as any other speed limit posted for the traveling public. The variable speed limits do not create new obligations on drivers who are always required to monitor their speed and drive appropriately for the conditions present. There will be multiple digital signs within the variable speed zones to provide adequate notice to drivers of the applicable speed limit. And

by utilizing variable speeds, we help close the speed differential among vehicles and manage drivers' expectations. Thank you for your attention and consideration of this important safety bill. I'm happy to address any questions that have come up today.

BOSN: Senator McKinney.

McKINNEY: Thank you. Thank you for your testimony. I know you said drivers can't get-- will violate the speeding in the, in the work zone and get a ticket from a cop, but what's stopping the, the officer from speeding the-- pulling them over?

NICHOLE BOGEN: So, if an officer is present, an officer could pull them over. If they also were on the camera, then that camera violation that the department would receive would not be enforced against that individual.

McKINNEY: So, it'd just kind of wipe it out?

NICHOLE BOGEN: Right. That one, we have a provision in the bill that that one would not be enforceable if they already got a citation for the same violation. So, they're not getting hit twice.

McKINNEY: What if you get the camera violation first?

NICHOLE BOGEN: Well, it would show up as the same day, and it-- it's certainly a defense that the person could raise. They could say, "Hey, I got a citation on that day. Why are you sending me this as well?" And we say, OK, then this one goes away per the limits, the guideposts that we've put in the bill.

McKINNEY: I guess that's some-- so also-- so, what has the court said about this?

NICHOLE BOGEN: So, courts-- as mentioned by director, there are a lot of states that have this, and courts have generally upheld it-- these types of mechanisms, and they're done different ways; some are criminal, some are quasi-criminal, some are strictly civil. As mentioned by Mr. Eickholt, the-- we do have a state Supreme Court decision that says the way our traffic laws are written and the potential impel-- penalties that could be brought against people, then we're gonna say traffic infractions-- even though the code originally said they're civil-- we're going to say in substance they're criminal, because people can be pulled over for probable cause, they can be arrested, incarcerated, so on-- and misdemeanors and felonies. Here, we're want to carve out from that Supreme Court decision, because you

as the Legislature can decide what's, you know-- this is a civil penalty or this is criminal penalty. But to do that, the substance of the law that we pass has to meet civil requirements. And the U.S. Supreme Court has says we're going to look at what the intent of the Legislature is-- if the Legislature says that it's civil-- and then the actual substance of the law. Is it civil in nature, the outcome? Or is it more criminal, where there's criminal penalties? And I believe we've met that here with LB600 because it's a minor penalty, they can't be arrested, there's no warrant, it's not a misdemeanor, it's going on your insurance or your license, those outcomes. And so, we believe we've craft-- carved it out of the criminal provisions.

McKINNEY: OK. How reliable is the technology?

NICHOLE BOGEN: The technology is very reliable, and especially in this circumstance where you're not trying to identify individuals, but you're just getting a close-in picture of the plate. And I think in the handout materials, there's maybe a photo from a plate available for you there. If not, we can get you one. But at least a study that-- or, the reporting that was done from Pennsylvania's program, they're pretty-- have a lot of these. They were able to send out, based on the, the plate, being able to identify, read the plate in the photo, and then match it to a name; about 84% success rate in sending out their notifications.

McKINNEY: Will the data be stored in-- on, on a server that you control? Or will it be stored on a-- in, in a, in a sep-- on a separate place somewhere else?

NICHOLE BOGEN: So, that's a good question on how we would implement that. I think we would probably work with a contractor, but again, we may be able to develop that in-house, and I don't think that's been determined yet. And but the data, it does-- again, we've put guideposts and, and boundaries around that in the legislation that that data cannot be used for any other enforcement matter. And it's not a steady-state camera like your-- or the ALPRs that are recording every vehicle that goes by; this camera would only be triggered once that vehicle has gone over the 11 miles per hour.

McKINNEY: I'm thinking less of an enforcement manner and more of a data sharing manner, or sharing of data.

NICHOLE BOGEN: We don't-- right. In the bill, we've limited the use of the data to enforce this specific act. So, by doing that, it'd be-- in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

my opinion, that would prevent it from being used or shared for any other purpose.

McKINNEY: Is-- will that be in the contract with the contractor as well?

NICHOLE BOGEN: If we use a contractor, we'd want them to comply with the law, so yes, I, I would recommend that that be in the contract.

McKINNEY: OK. Thank you.

NICHOLE BOGEN: Certainly. Any, any other questions?

BOSN: Seeing none. Thank you for being here.

NICHOLE BOGEN: Thank you so much, Senators.

BOSN: Next proponent. Good afternoon.

JULIE BUDNICK: Good afternoon, Chairman Bosn, and members of the Judiciary Committee. My name is Julie Budnick, J-u-l-i-e B-u-d-n-i-c-k, and I am testifying today on behalf of the Associated General Contractors Nebraska chapter in strong support of LB600 because safety isn't just a policy for highway contractors; it's a daily reality. Every worker deserves to make it home safely at the end of the day. Unfortunately, the greatest risk they face is one they have no control over: the behavior of drivers passing just feet away from where they work. Making our roads safer will take more than just having laws on the books; it requires enforcing these laws. When enforcement is more effective, behavior changes. That can mean the difference between a close call and a traffic-- or a tragic accident in a construction zone. In the past five years, as part of my full-time job, I've managed 12 I-80 night road construction projects. These projects are between Minden on the west end and Goehner on the east end. While on these projects, I personally witnessed lots and lots of drivers not slowing down. They speed right past as you're setting cones up. One night, while I was on the I-80 York project, I was riding along with the first truck driver delivering the first load that night. It was approximately 11 p.m. We, we slowed down, we used our turn signals, we entered the closure. We have to come in fairly quick, and we have to stop very fast. Well, a young lady was following us very close. She decided she's coming right in behind us, coming in hot. And she now found herself trapped between a fast-stopping truck and an asphalt machine. We jumped out and checked on her. She said she never read one sign, she never saw a speed limit sign, and she never, never saw a cone. I can't believe that. I mean, it's just crazy. Well,

she was actually reading on her tablet and not paying attention at all to her driving. We were able to get her back into live traffic and safely on her way. Well, this is just one of many many stories we could talk about that demonstrate the fact that construction industry is working in very dangerous conditions. I started including the Nebraska State Patrol in all project scheduling meetings. I made sure Nebraska State Patrol knew what evenings and exact times the crews were going to work. It was very effective when they were able to patrol the work zone and enforce speeding violations. We benefited from their preven-- presence on the project. All construction workers in Nebraska are asked to trust thousands of passengers-- strangers every day driving who pass within inches of the work zone. Either-- neither the AGC or the legislator [SIC] can wave a magic wand and make more attentive drivers, but what we can do is take steps to provide for better enforcement of our laws. Again, my crews personally benefited from having law enforcement presence, and I'm very thankful for that. I feel that LB600 is a thoughtful, balanced approach toward a safer transportation system for everyone. It's another tool for our industry. We thank Senator DeBoer for bringing this bill, introducing it, and urging the committee to advance it for General File. Thank you, and I would be happy to take a question.

BOSN: Questions? Thank you for being here. Next proponent. Good afternoon.

CHRIS ROLLING: Senator Bosn, members of the Judiciary Committee, my name is Chris Rolling. I'm a registered professional engineer in Nebraska, specializing in traffic safety. I currently serve as a group leader for Olsson, which is a member agency of the American Council of Engineering Companies, and I'm here to testify on behalf of ACEC to express our support for LB600. We'd like to thank Senator DeBoer for introducing this bill, which would enable the Nebraska Department of Transportation to improve the safety of Nebraska's roadways. NDOT has adopted the Towards Zero Deaths Initiative, which is a national strategy coordinated to eliminate facil-- fatalities on our state's-- on our state's roadways. Similarly, Nebraska's two largest cities, Lincoln and Omaha, have committed to a vision zero philosophy. Our state and municipal governments are clearly prioritizing traffic safety, and it's incumbent upon us as private sector traffic safety professionals and Nebraska residents to support that vision. Nebraska's Strategic Highway Safety Plan, Omaha's Vision Zero Action Plan, and several, several others like it across the state are built on something called the safe systems approach. This core approach states that traffic deaths can be eliminated not through a single solution, but by layering several effective countermeasures

implemented by professionals across multiple sectors. The use of speed cameras in work zones and variable speed limits as proposed in LB600 are two such essential tools that can improve safety during risky driving conditions. As stated in the previous testimony by NDOT, variable speed limits can reduce fatal and serious injury crashes by over 50%. Variable speed limits are being used by DOTs in Colorado, Wyoming, Georgia, South Carolina, Nevada, Arizona, and others. Similarly, mobile speed enforcement like what is proposed in LB600 can have up to a 20% reduction in fatal and serious injury crashes. These data speak to the effectiveness of the tools proposed and the urgency to which they should be added to our practitioners' toolboxes. So, in summary, ACEC supports this bill for the following reason-- reasons: it supports the state's commitment to eliminate traffic fatalities; it does so by supporting the safe systems approach; and it activates two very effective tools within that approach for us to layer on road safety tools. Our member firms understand the immense responsibility we have to improve safety on our roadways. With your help, we can help our public agency partners do just that. And moreover, we are citizens, family members, and friends who use Nebraska's roadways every day. We are committed to making sure that these loved ones make every trip safely, whether by car, bike, foot, or otherwise. Therefore, ACEC injure-- urges the committee to advance LB600 and give road safety professionals highly-- additional highly-effective tools to use in achieving our goal of eliminating traffic fatalities. Thank you for your time, and I'll take any questions.

BOSN: Thank you. Questions for this testifier? Seeing none, thank you very much for the hyperlink for those articles. Next proponent. Anyone else here in support? Welcome back.

JOHN ROSS: Yes. Chairman Bosn, members of the Judiciary Committee, my name is John Ross, J-o-h-n R-o-s-s. I'm testifying as a citizen. I use con-- cruise control set at the speed limit if road conditions are good. When road conditions are bad, slick with rain, ice, or snow, I slow down to match the road conditions. I have people honk their horn and give me the friendly one-finger wave when passing me while texting with the other hand. A lot of this is on two-lane roads; sometimes it's uphill. I have had to go in a ditch and oncoming traffic go in the ditch also. They don't respect speed limits. Omaha has reduced major crime, which is great, but has a large increase of fatalities due to the lack of enforcement of speeding. I follow the local newspaper, and to show you, I think sometimes the fines aren't high enough. I saw one, 85 in a construction zone: \$300. In this economy today, that's, that's not a lot of money. Another one, 72 in a 45-- this is within the city of West Point-- \$200. 69 in a 55; 75-- 79 in a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

55: \$200; 80 in a 65: \$75. There's no penalty for speeding, not, not to speak of monetarily that would get their attention. I think the same thing is true with running these red lights. If a law enforcement officer gives somebody a ticket for running a red light, I think that fine should be pretty high. But I don't know if it is, but I, I, I, I hear the civil and criminal argument here, which-- I understand that. But I think we've got one tool, I've been told, that our fines have not been addressed for over 30 years. I think it's time to raise the penalty for speeding, running stop signs, any other willful reckless driving, whatever. That concludes my testimony.

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

ROUNTREE: Thank you so much, Chair Bosn. Just very quickly, as you've testified with the fines, if you have something to offer to the committee today to put on the record, what would you say would be an appropriate fine in the cases that you read? Just minimum going in, you don't have to do each one, but--

JOHN ROSS: Well, it--

ROUNTREE: What would be minimum going in?

JOHN ROSS: I, I-- I'm not sure on that, Senator Rountree. Sometimes, I wonder if it isn't up to the individual judges whether it's a minimum, maximum. I'm not sure. So, I-- I'm sorry, I can't answer your question,--

ROUNTREE: No, that's fine.

JOHN ROSS: --but I hear what you're saying. I think we need something concrete to where if you're doing 25 mile an hour over the speed limit in a 55 construction zone, this is the fine. So, maybe if it's a second offense, maybe it's even higher. So, I-- I've-- if I could find out where the fines-- who sets the fines-- I'm not sure.

ROUNTREE: OK. All right. Thank you so much. I appreciate it.

BOSN: Thank you very much for being here.

JOHN ROSS: Thank you.

BOSN: Next proponent. Good afternoon.

BRIAN ORTNER: Good afternoon. Chair Bosn and members of the Judiciary Committee, my name is Brian Ortner, B-r-i-a-n O-r-t-n-e-r, public

affairs specialist for AAA Nebraska, and on behalf of AAA and its more than 224,000 members in Nebraska and our roadside service technicians, thank you for the opportunity to speak today in support of LB600. I also want to thank Senator DeBoer for introducing this bill, and emphasizing the importance and responsibility that comes with sitting behind the wheel. Implementing laws that benefit and protect our vulnerable road users, road workers, and students is crucial, just as equal as the enforcement for those who fail to follow basic rules of the road and Nebraska law. A few weeks ago, I was here testifying in, in support of another bill and made this comment: severe injury or loss of life is not and should not be acceptable when preventable measures are available and enforceable. And you've heard in other testimony today, change in behavior of drivers is paramount to making these things happen. You heard about the safe system approach, which is used not only by communities in Nebraska, but other states across the country. And it was touched on a little bit, but want to talk about a safe system approach and a-- and the principles that it incorporates. It says that death and serious injury are unacceptable, that humans make mistakes, humans are vulnerable, responsibility is shared, safety is proactive, and redundancy is crucial. That is what LB600 brings to the table; it brings responsibility to drivers, it brings responsibility to enforcement, it brings responsibility to all of us, and accountability to all of us that the roadways are the responsibility of everyone. Every year, we see crashes that could have been prevented with more stringent safety measures. LB600 offers an opportunity to address these concerns. With new technological advancements and enforcement efforts, and an increasing number of vehicles on the road engaging in risky driving habits, it's more critical than ever to implement modern safety measures that will keep up with the growing demands placed on our infrastructure. And the impact of LB600 goes far beyond just safety improvements; better roadways and more comprehensive safety standards can significantly reduce the economic costs associated with crashes, including medical expenses, property damage, and lost productivity. In addition, by improving roadway safety, we help reduce the burden on educators, students, construction workers, emergency responders, tow truck drivers, and health care systems, ensuring that they can focus their resources, resources where they are needed most. Nebraska has a responsibility to ensure the safety of its citizens. Personal choice is made when a driver gets behind the wheel. The driver should be prepared to accept the outcomes for not driving responsibly in those situations. LB600 is a necessary and timely piece of legislation that will have profound positive impact on the safety and lives of Nebraskans, and I urge you to advance this bill, and continue working

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

toward a safer, more prosperous future for Nebraska and on our roadways. I'm happy to take any questions, if you have any.

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

BRIAN ORTNER: Thank you so much.

BOSN: Next proponent. Last call for proponents. Opponents? Anyone here in opposition to LB600?

SPIKE EICKHOLT: Good afternoon, 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, appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in opposition to LB600. The ACLU is primarily opposed to this for the reasons that this bill envisions using the license plate reader system to enforce a traffic infraction. And I can talk about that if anyone has any questions, you can see my testimony. But we have fundamental concerns with the use of those technology companies and that equipment to compile, harvest, and store data on Nebraska citizens. The defense attorneys and the ACLU, to a lesser extent, are opposed to other components of the bill. I talked about the concerns that we had on the last bill, so you sort of know the issues, but since this bill has its own separate record, this bill purports to give the Department of Transportation the authority to craft a criminal law, call it civil, and then enforce it, circumventing the entire criminal procedure itself. And that's something that can't be done, constitutionally. You've got my testimony. I think there's three issues I wanted to lift up. And Senator DeBoer referenced this in her introduction: the Legislature itself makes crimes. I don't care if you call it civil or not; this is a crime. They can't delegate that to an agency. You can't delegate to the Department of Corrections to say what contraband it is, you can't delegate to other agencies to create substantive crimes. And perhaps I overstated it, but I think there's something to this, that this gives the Department of Transportation a lot of latitude to determine what an offense is due to road conditions, and all the different conditions over there. Maybe I'm wrong on that, but I wanted to raise that issue. Secondly, for the reasons I argued in the last bill-- and I think that Senator DeBoer considered-- or acknowledged-- this envisions an enforcement of a traffic infraction simply by presuming that the registered owner committed the offense, and then sending them essentially a guilty verdict and a judgment, and telling them to pay the cost. I understand it's claimed to be civil, but if you look on page 8, the law clearly envisions a punitive process with enhanced

offenses, with second and third violations receiving more of a penalty, and it actually directs, on page 8, lines 28 to 30, that the civil penalties go to the school fund, which is where penalties in criminal cases go. So, calling it a civil penalty to bypass the procedure doesn't make it a civil penalty. And finally, one part I wanted to bring because no one has talked about this-- on Section 14 on Page 9, the bill delegates the Department of Transportation to set an administrative fee for the enforcement of all these different criminal sanctions and doesn't set any kind of dollar amount for what that fee may be, but allows the fee to be imposed for the cost of carrying out the administrative duties and operational costs for issuing the warning or citation. Only the Legislature can impose a tax, and that is a tax; the court has interpreted fees to be taxes. The agencies do have some ability to enforce and adjust fees if they are conditional to a regulatory scheme. Senator Hallstrom had a bill that's on Final Reading, a kratom bill, where you do delegate that they can assess a fee that's reasonable, but that's for purposes of enforcement regulation. If it's a fee that's assessed for purposes raising revenue, which this is to do, only the Legislature can set that dollar amount. That's what we do in court costs, that's what we do for judges' retirement fees, and all those other things. So, that's one other issue that I think is very suspect. I'll answer any questions, if anyone has any.

BOSN: Senator McKinney.

McKINNEY: Thank you. Thank you, Spike. Do you think this is an unlawful delegation to a state agency?

SPIKE EICKHOLT: I think so. Two grounds: one, on the ability for the Department of Transportation to create a substantive crime; and two, to allow the Department of Transportation set whatever amount for that fee is going to be. If it's to cover the cost, that could be a \$1,500 a citation until they can sort of capture the cost for investing in the equipment and stuff.

McKINNEY: All right. And I had asked the question earlier that-- of the hypothetical that somebody could potentially get, get stopped for speeding and run this-- whatever this light is, and get the ticket-- two tickets at--

SPIKE EICKHOLT: That's right.

McKINNEY: --virtually kind of the same time, and that creating problems. What do you think of that?

SPIKE EICKHOLT: That's good. I'm glad that you brought that up, because that shows that this claiming it to be a civil penalty is just nothing but labeling. In other words, it's interchangeable with an actual criminal citation issued by an officer, and it says you can have it two different ways, but only one way it can apply. So, that is an acknowledgement-- arguably an explicit acknowledgement-- that this is to work just like a criminal case does. But the only difference is we're going to send it to the registered owner, they've already been found guilty, and if they want to have something that doesn't even resemble a trial but some sort of appellate or some sort of hearing where they can only really allege two or three different arguments as a defense, then that-- that's-- that doesn't meet due process.

McKINNEY: And also-- I guess, something I just thought of while you were talking. I know sometimes it say fines are doubled in work zones. So, I think they might have said it, and I-- maybe I missed it. Are the fines not doubled anymore?

SPIKE EICKHOLT: I think they might be. I mean, the Legislature always has ability-- the-- one of the proponents talked about the penalties not being enough. LB530 increases penalties; I didn't op-- we didn't oppose that provision. The Legislature has the ability to create the penalty scheme for traffic offenses. So, that can be done, and I, I think it-- and the Legislature has authorized for double imposition of penalties in work zones. There's an offense for that. I don't even I think it's amended in this bill, but absolutely.

McKINNEY: Because I was just wondering, like, you get the speeding for the going through the flashing light, and then you cross it and get hit for speeding, and then, get the double penalty.

SPIKE EICKHOLT: Right. Oh, yeah.

McKINNEY: That would be interesting.

SPIKE EICKHOLT: Yeah.

McKINNEY: I don't know. Just thinking of that. But thank you.

BOSN: Senator Hallstrom.

HALLSTROM: And you've been in the committee hearing room. I, I think one of the prior witnesses may have suggested that retaining the double fine capability may only apply when an officer actually apprehends somebody for speeding as opposed to use of automatic license plates. Did you hear that testimony?

SPIKE EICKHOLT: If-- I might not have. [INAUDIBLE] that would be a separate, separate infraction, separate offense.

HALLSTROM: So that, that would not be problematic if the double fines were limited to an actual police apprehension, as opposed to use of the automatic license plate reader?

SPIKE EICKHOLT: It would not be problematic for a double jeopardy perspective. It would be problematic for-- if I wanted a trial on the speeding from the law enforcement officer, I can get a trial date and go. And the other one is, is-- then, for the other offense, if that's ever done, for the red light or whatever, the ex-- other examples is, or vice versa, they're going to send me, basically, my bill. And I can request an ap-- some sort of administrative hearing, I don't even know with who. I guess the Department of Transportation, somewhere, maybe in Lincoln. But if I happen to be in York, I've got to drive all this way. I can't raise the defense of maybe the machine wasn't working properly, because that's not one of the two grounds that I can argue at this appeal hearing. I don't know if I have subpoena power.

HALLSTROM: And do you, do you agree that enhancement of public safety is a worthy objective to try and work something out on this bill?

SPIKE EICKHOLT: Yes.

HALLSTROM: And I guess if you're looking at the reliability of the license plate readers-- and I know you weren't around in 1931 when the drunk-o-meter was established, or in 1954 when the breathalyzer came on the scene, but I assume the criminal defense attorneys at that time would have argued about the reliability. But don't you still have the-- and maybe we have to make some changes--

SPIKE EICKHOLT: Right.

HALLSTROM: --but wouldn't you just still argue that you can go in and challenge the reliability of a speed gun, of a breathalyzer, of radar guns, of the license plate reader?

SPIKE EICKHOLT: Absolutely. And if you look, Senator, there's a series of-- there is a statute, two or three statutes actually apply for the reliability of radars, and what the state has to show for foundation to rely on the result. There's the statutes, and there's a series of regulations of what the state has to establish to esta-- to show that the reliability of the intoxilyzer result is accurate. And those can be contested.

HALLSTROM: And, and would those similar types of protections in statute assist your consideration of this [INAUDIBLE]?

SPIKE EICKHOLT: Absolutely, because this bill is just simply silent on it. Unless the Department of Transportation set-- I mean, there may be a general delegation that can create regs for this somewhere in the bill-- I guess it didn't catch that-- like they always have in bills. But this doesn't even address anything like that.

HALLSTROM: Yeah. And, and I know you're always willing, but I would encourage you to, to work with Senator DeBoer and the committee to see if we can work some of these things out.

SPIKE EICKHOLT: I'm always here.

HALLSTROM: I appreciate that. Thank you.

BOSN: Senator McKinney.

McKINNEY: Thank you. Spike, what do you-- in this bill, what do think will happen if somebody doesn't pay the fine or fee? Will they get their cars impounded, or will they face collections?

SPIKE EICKHOLT: You know, it doesn't speak to that, because if somebody doesn't show up for your-- if you, you get a citation from a law enforcement officer and you don't go to court, or you go to court and plead and you don't pay it, then that's something the court can issue a warrant for. And I don't know how this would work if you just didn't pay it. Maybe they would refer it to the state or the county attorney to somehow pursue whether there's some sort of way to enforce this. I mean, there's not-- this doesn't envision a criminal case being filed, so I don't know what the county attorney would do with that. Maybe it would go to the DMV, and the DMV would treat it like an unpaid court judgment, and not allow you to renew your license, or suspend your insurance or something like that. I don't know.

McKINNEY: All right. Last thing. What about out-of-state drivers? How do we hope?

SPIKE EICKHOLT: Oh, that's a-- I know Rhonda Lahm knows a lot about the interstate recip-- you know, reciprocal sort of work on enforcing. I've, I've only represented people who have DUIs out of state, and had their license be suspended here and vice versa, but I know there are some interstate agreements where other states have to sort of work with them. I'm not sure how they work with this kind of a thing. I mean, again, other states have, like, a civil sanction regulatory

scheme for the driving things, and somehow we must work with those states somehow. I just, I just don't know how that would work. But, I don't know that the bill really envisions that, either.

McKINNEY: All right. Thank you.

BOSN: I just have-- because you and I had talked about this, but I don't think this portion of your letter on behalf of the ACLU is something you and I talked about.

SPIKE EICKHOLT: Right.

BOSN: If I'm summarizing your concern on page 2, it's that the license plate readers are collecting data,--

SPIKE EICKHOLT: Right.

BOSN: --surveilling citizens. But are, are you saying that in her bill that they're, they're constantly tracking that? Or are you say they're only tracking it when you're violating the law? Because there's a, there's a distinction, right?

SPIKE EICKHOLT: Right. Well, the bill does a couple of things. It authorizes some sort of a speed control device that the DOT can set up at the areas, but if you look, it also amends the statute-- the general statute that regulates the use of license plate readers to sort of work for this. So, at least it envisions-- if you'd look on page 12-- or page 13, for instance, lines 9 through 10, it amends the license plate reader statute to say that the license plate readers can be used for purposes of enforcing the maximum speed laying in Section 4, which is the DOT setting it. So that-- the earlier proponent from the Department of Transportation didn't talk about that, license plate readers, but the bill gives them the authority to do the license plate reader system to do that.

BOSN: So, am I understanding correctly that right now, the license-- automatic license plate readers--

SPIKE EICKHOLT: Right.

BOSN: --while you may not love that they're there, you feel like they're narrowly enough tailored that they are not violating that civil rights--

SPIKE EICKHOLT: Well, the-- yes and no. I mean, we do have regulations for them now, that they can be used for, for purposes that the

Legislature earlier determined they're for. And we do limit how long law enforcement and, presumably, the Department of Transportation can keep the information that they have access to from the licensed reader system. But I will tell you, I've looked at those contracts-- and I actually brought a portion of the contract that Lancaster County has with their license plate provider companies; it explicitly provides that all data collected belongs to the company providing the service. They keep it all. It can't be used or sold without their permission.

BOSN: But it can't be destroyed, then, either, is your concern.

SPIKE EICKHOLT: That's right. And if you Google right now-- I know the Attorney General is here right now. Attorney General, Google, the company and "settlement;" a couple of years ago, our state, thanks to the work of Attorney General Hilgers, entered into a settlement agreement with Google and a number of other states because Google was tracking user data on phones. You know when you get an app that says track while using or never track or whatever? Even though the users were choosing "don't track," they were still tracking. There's a certain value in all this data, this movement data. And it's our opinion, and it doesn't necessarily be a paranoid one, that the companies that provide this service at affordable cost to law enforcement agencies are really interested in compiling this data, for whatever reason.

BOSN: That makes sense. OK. Thank you. Senator Hallstrom.

HALLSTROM: Yeah. One last question, Mr. Eickholt. I thought I heard you suggest that there were some potential problems in a fee--

SPIKE EICKHOLT: Right.

HALLSTROM: --on a civil matter violating the penalties prohibition in the Constitution, or not?

SPIKE EICKHOLT: No, the problem I had with that-- and if you look on my-- I talk-- I cite the Schumacher case. Section 14 of the bill lets the DOT assess an administrative fee as part of the collection, but it doesn't say how much that is. And it says it's to cover the cost of running this program. In other words, it's for revenue, income purposes. That, even though it's called a fee, it is a tax. It is--

HALLSTROM: Yeah, and I understood that. I thought you'd also mentioned something, maybe it was in connection with the, the last hearing as well, with the, the civil penalty. Because, I-- it-- and my point is,--

SPIKE EICKHOLT: Oh, yeah.

HALLSTROM: --there's a number of statutes, one in particular in the Nebraska Wage Payment and Collection Act, that allows for a civil fee or fine to be paid has to be paid over to the state, to the--

SPIKE EICKHOLT: That's right.

HALLSTROM: --permanent education fund as you suggested.

SPIKE EICKHOLT: That's right.

HALLSTROM: But there are-- I mean, would that ease-- if, if it was provided that that goes to the permanent school fund?

SPIKE EICKHOLT: It does-- the bill actually does provide that it go to the school fund.

HALLSTROM: OK.

SPIKE EICKHOLT: Which is my argument that it actually is a penalty, that it is actually punitive. Just like the wage control act, it may not be criminal, but it certainly is punitive.

HALLSTROM: So, you think that's unconstitutional?

SPIKE EICKHOLT: I think in this case it does, because it's, it's, it's clearly a criminal statute.

HALLSTROM: Because of the nature of the offense?

SPIKE EICKHOLT: That's exactly right.

HALLSTROM: OK. Thank you.

BOSN: Thank you for being here. Next opponent. Welcome back.

WILLIAM RINN: Good afternoon, Madam Chair, members of the Judiciary. I am William Rinn, 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 here on behalf of the sheriff's office and Sheriff Aaron Hanson. We are opposed to this bill. I won't reiterate a bunch of the testimony that my colleagues have already established. I think what's really encouraging about this legislation and legislation like it is the safety aspect of it. So, overwhelmingly, the majority of this bill is attempting to do very good things, and, and I think we should all continue to work towards doing things that, that would have-- what

we're trying to achieve here. Where we-- where our opposition rely-- lies, of course, is with regard to the data access. We established a very important network-- or-- and, and are still building an important network. We presume that this technology would require a license plate reader, or ALPRs, but what it doesn't speak to is the nature of that. Is it a private company? I mean, there's any number of-- half a dozen, dozen LPR companies that work well with law enforcement, or are off on their own. We try and partner with our local law enforcement agencies, both in the state of Nebraska, other states, and federal to try and use the same systems so that we can use it as a network, like a net when you're fishing. We can actually upload information as well as gather information. If we have a-- there-- under this bill, there's no mechanism to-- it says, you know, this could be available by a court order, but we have no-- under this-- the way it's drafted, we have no idea how we'd be alerted to that data even being available, whereas if something happens in a network-- an ALPR in-- within the system that we already networked, we do get an alert, and it's an immediate alert that this particular license plate just did this, and it's available for data, and then we can go retrieve that and continue to work our case. Not knowing how this ALPR system or company would interplay with the systems that are already in, already in place, we would not be able to upload, necessarily, plates for AMBER alerts, kidnappings, and whatnot. And, and that person could potentially pass right by that, that reader without notifying anybody until it's too late. So, we would certainly like to see some more defining language about how that would actually work out. With that court order system, I understand it; that can be cumbersome under exigency circumstances when we need to get that information not only out there but returned to us so that we can take action on it. And then, I think Spike spoke to this a little bit. The APR-- LPR companies, they, they work to establish how long they're going to hold onto that data, and, and we follow the reg-- the legislation and, and keep it or have access to it [INAUDIBLE] these companies for a defined period of time. If a private company or a different ALPR company decides they're only going to keep it for a day or, or ten days, we may not get that court order in time to, to-- now, I suspect that's probably not the case if they're, they're trying to, you know, keep that data for money, but-- it looks like my time is up, so I'll answer any questions that you may have.

BOSN: Thank you. Questions for this testifier? Have you had a chance to talk with Senator DeBoer about some of these suggestions?

WILLIAM RINN: I have not.

BOSN: OK. All right. Are you willing to follow up with her, then?

WILLIAM RINN: Absolutely.

BOSN: Thanks. Awesome Thank you for being here.

WILLIAM RINN: Thank you.

BOSN: Next opponent. Neutral testifiers. Welcome back.

JULIE HARRIS: Thank you. Julie Harris, J-u-l-i-e H-a-r-r-i-s. I'm the executive director of Bike Walk Nebraska. Frankly, I was prepared to be here today as a proponent-- a strong proponent for this bill, and I had to change my testify-- testimony to be in the neutral capacity based on the fact that we didn't realize there was an amendment that removed the language that would also include school zones to be included in, in this bill. So, I guess I'm here to make a hail mary to find-- if we're going to work on this bill to include school zones, not just road construction work zones for the use of this technology. In a crash report that we released in 2024, 25% of pedestrian crashes were minors; many of these were kids walking to or from school. And a reduction of speed decreases the risk of pedestrian fatalities and crashes, and in the information I handed out in my last testimony, there's a graphic there that shows the ability to, to survive a crash at a lower speed than at a higher speed. According to the Metro Area Planning Agency, 4,225 crashes over the last five years in Cass, Douglas, Sarpy, and Washington Counties were due to speeding, and I was alarmed when I heard the Nebraska State Patrol issued 1,000 citations in 2024 to people driving 100 miles per hour and over. While it is safe to assume that the majority of those tickets were not issued on local streets, it is safe to assume that someone who's willing to drive 100 miles per hour over on the highway is probably also very likely to exceed the speed limit in town, and especially in school zones. Our state desperately needs policy to help curtail this upward trend of speeding, especially in light of the fact that our vehicles just kidding-- keep getting bigger and bigger, and heavier and heavier. The goal of automated enforcement is to, is to deter unsafe driving practices. One study from Chicago in 2019 showed that 92.7% of drivers who were issued a ticket for speeding in a school zone and 87.2% of drivers that were issued tickets for speeding in a park zone did not receive a second ticket during the year, indicating they had changed their driving behavior. The same study showed that in 2018, crashes resulting in a fatality or serious injury increased by only 1% near speed cameras compared to 19% citywide. Having these systems in place takes the burden off of an already-overworked law enforcement officer, reduces the need for agencies to rely on highway safety office grant programs to pay for special enforcement

activities. Those grant programs come from the federal government, and those funds are getting slashed as we speak; I'm not sure we can continue to rely on those as ways to fund this enforcement that's needed in our school zones. Road construction workers are vulnerable to road users, and we have advocated for their safety in other bills, but kids walking and biking to school are also vulnerable to speeding, and they deserve the same consideration under this bill. We'd like to be at the table when working on trying to find a way to make this bill work, and think that our kids deserve the same consideration as road construction workers in terms of being vulnerable on the road.

BOSN: Thank you very much. Any questions for this testifier? Do you know why the carve-out was changed? I mean, I'm sure I could probably ask the introducer later, but--

JULIE HARRIS: I-- we didn't know until we were sitting here today, so I don't know.

BOSN: OK. OK. Thank you for being here.

JULIE HARRIS: Thank you.

BOSN: Next neutral testifier. All right. While Senator DeBoer makes her way back up to close, I will note for the record there were 4 proponent, 11 opponent, and 1 neutral comments submitted for the record. Welcome back, Senator DeBoer.

DeBOER: Thank you very much, colleagues, for your attentiveness in this bill. Obviously, I know that we're not at the end of the road yet, it's not quite ready for prime time yet. We're-- we've still got a little work to do. I will address a couple of questions. The double fine question-- you don't get two tickets. So, if in the same work zone on the same day you are caught speeding by one of these traffic cameras, and also there happens to be a law enforcement officer who pulls you over in the same speed zone-- work zone in the day, then what will happen is you get the criminal offense from the law enforcement officer that pulls you over, and NDOT will have the ability to look at the fact that you've received that traffic offense, and will just throw out the camera offense. And the purpose of that is not to say that both are criminal in nature and therefore we're worried about double jeopardy; rather, it was a policy decision to say that the same instance of speeding should not result in both a civil and a criminal penalty, so that was the purpose behind that. In the amendment-- which I should have filed. I'm not entirely sure why I didn't, so we would've all had it in front of us, so that's on me. An

administrative hearing is already required to be an APA hearing, and we amended the list of additional objections or offenses that you could have. So, happy to work on that as well. With respect to the Douglas County Sheriff's objection, I'm not really sure I totally understood it, but if the objection is that they don't have access to this information for their purposes when determining something about an individual, that was intentional. We do not want them to have access to the civil penalties because they are a criminal enforcement agency, and so that was intentional to not share that data with them. Our amendment took it out of the ALPR statute; I don't even know what that means, but I was told that, so I will tell you that. I'll work on this. Happy to answer any questions.

BOSN: Questions from the committee? Thank you for your efforts, regardless of the struggles. That will conclude our hearing on LB600. Next up, we have our last but certainly not least hearing of our entire session: LB386, with our very own Senator Storer. Welcome.

STORER: Hello. You saved the best for last, right?

BOSN: Always.

STORER: Not that I'm standing between all of you and the last hearing of this session, and a Friday. Thank you. And it is still afternoon, so good afternoon, Chair Bosn, members-- fellow members of the Judiciary Committee. I'm Tanya Storer, T-a-n-y-a S-t-o-r-e-r, and I represent Nebraska Legislative District 43, which happens to be the largest district by landmass, and I say that because it has some relevance to LB386. I'm here today to present LB386, the Mental Health Pilot Program Act [SIC]. This legislation directly addresses the concerns raised by law enforcement officers during regional meetings with the Attorney General-- Attorney General Hilgers as he visited all 93 counties over the last year. These officers have consistently emphasized the challenges they face when responding to individuals experiencing a mental health crisis, particularly the lack of mental health facilities and the extensive travel distances required to transport individuals in crisis, especially in rural areas. These issues have placed a substantial burden on our law enforcement agencies in those areas. Currently, when law enforcement responds to an individual experiencing a mental health crisis in public, they often place the individual in what is known as emergency protective custody, EPC, to ensure their safety and the safety of others. However, due to the limited number of mental health beds across the state, officers may be forced to transport individuals for hours, only to discover that no bed is readily available. This situation not only

pulls officers away from their communities and strains already scarce resources, but also significantly delays necessary care for the individual themselves experiencing a mental health crisis. For perspective, in, in terms of distance, many of-- so our, our-- Cherry County, where I served as a county commissioner, we were in Region 4 behavioral health; the nearest, the nearest regional facility was approximately a two-hour drive. There are some counties where it may be even a little further than that, but for, for some perspective of the distances that we're talking about. So, to address these pressing issues, LB386 proposes a pilot program in which the Nebraska Crime Commission will select one county law enforcement agency to add some mental health beds to an existing jail or other suitable local facility. And we'll address some of the concerns; I know some concerns have been raised about the use of the word "jail" in, in our legislation, and we'll come back, back to that. These beds will provide a safe, non-incarcerated space where individuals in EPC can receive prompt and appropriate mental health care. This bill offers a multifaceted solution, and benefits multiple stakeholders. It benefits the individuals first and foremost who are experiencing a mental health crisis by ensuring improved and faster access to care, and eliminating the need for long-distance transport and potential delays in treatment. It also provides benefits to local law enforcement-- officers and agencies-- by significantly reducing the time and resources spent on extended transports, enabling them to remain in their communities and focus on their primary duties of maintaining public safety. And thirdly, it provides a benefit for the broader community by providing a regional solution to a persistent shortage of mental health services, and serves as a potential model for future expansion across the state to improve our overall access to mental health care for all the citizens of Nebraska. The need for enhanced access to mental health care is a critical challenge that disproportionately affects rural Nebraska. Law enforcement officers should not be burdened with spending countless hours transporting individuals in crisis, and communities should not have to endure the consequences of inadequate mental health resources. LB386 represents a crucial step toward ensuring that individuals in crisis receive timely, effective care while also supporting the law enforcement officers who are often the first responders to these crisis-- crises. I'm happy to, to answer any questions that you may have. We'll have some individuals coming up behind me, including Attorney General Hilgers, that can also address some of those questions. So, with that, happy to answer any questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

BOSN: Questions for Senator Storer? Seeing none. Thank you. First proponent.

MIKE HILGERS: Good afternoon, Chairwoman Bosn, members of, of the Judiciary Committee. My name is Mike Hilgers, M-i-k-e H-i-l-g-e-r-s. I currently serve as Nebraska's Attorney General, and I'm here to testify in support of LB386. And I first want to thank Senator Storer for-- and her team for their work on this, and for introducing this. I, I truly think this is a, a Nebraska-based solution that will result in a win-win, win-win-- four wins for the state of Nebraska. And let me, let me explain why. Senator Storer really did a great job of explaining the current problem, and this bill really is addressed to rural Nebraska. Big picture, we have a mental health problem in this state, we know that. We know there are upstream causes of mental health, and we also know there are downstream issues with how we use our limited resources to help people who are in crisis. This really falls into that second bucket. And Senator Storer sort of described the challenges of the lack of beds and the distances that, that impact people in rural communities when they go through this EPC, which is not a-- it's-- no one has been charged with a crime; it's, it's an emergency protective custody to help people be safe from themselves and not harm others. I want to double-click on her state-- on her description, because if you actually go in a little bit deeper, it's far more in many of these cases, and we've heard literally dozens of stories around the state of Nebraska. It's far more than just a two-hour, three-hour, four-hour drive. In some cases, this could be a 24, 48 or 72-hour impact on law enforcement. And the reason why is because, in many cases, if someone gets picked up near Valentine, they may not have a bed open at their local regional hospital; they may actually have to go to a separate hospital beforehand, wait for three, four, five, six hours to get an initial diagnosis or medical clearance before they can-- then are pre-cleared to-- cleared to go to that hospital. Even when they're at the hospital, they may have to wait for several hours after they get admitted. Sometimes, local law enforcement, the sheriffs have to stay 24 hours, 48 hours to help guard the, the particular individual. So, the, the impact on the agency is-- can be incredibly burdensome, especially if they only have two, three, four deputies. Some of these agencies are very small. The impact on the individual themselves-- they're not getting treatment right away, they're getting the opportunity to get stabilized-- and on the community are significant. This flips what I think currently is sort of a lose-lose for everyone to something that will impact positively everyone. Starting with the agency, it will reduce the burden by having this local regional opportunity for them to go and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

get immediate care for people who need it, who are in crisis. That's a win for the agency, it's less of a burden; it's a win for the individual themselves because they're getting stabilized, which I think is really important for them and for their families; it's a win for the community because they are getting stabilized before there's harm; and it's a win, I think, for our criminal justice system, as Senator McKinney knows from our-- Senator Bosn from our LB50 work. We have a mental health care crisis that's impacting the population of our prisons. If we can get upstream before they've committed a crime and done harm to others and actually do get arrested, I think that's a win for our system overall. There's some questions. I'm almost out of time. If I have time afterwards, if there are questions-- I know some behind us may have some questions about the videoconferencing component; I'm happy to address that or the fiscal note, or any other questions that the committee might have, but I'd urge the committee advance this to General File. Thank you.

BOSN: Thank you. Questions from the committee? Senator McKinney.

McKINNEY: Thank you. And thank you, AG Hilgers. Just thinking about, even with the expansion, how do we deal with the labor force issue that's a part of this problem?

MIKE HILGERS: For this-- I'm sorry, Senator. With this-- with the law enforcement agencies?

McKINNEY: No, more so with the mental-- on the mental health side.

MIKE HILGERS: Oh, in terms of, like, getting some of the mental-- like, the, the medical resources?

McKINNEY: Yeah.

MIKE HILGERS: Ah, the good-- it's a great question. Thank you, Senator. So, I think there's-- for this particular one-- and we're giving some guidance to the Crime Commission to help set the-- to pick the first, the first regional facility. I think either it will be in a place like Scottsbluff, say, where they already have some of those resources on the ground, or I think there were-- are some telemedicine components.

McKINNEY: OK.

MIKE HILGERS: I will say that the, the jails-- the-- and Senator Storer mentioned this. This is not incarcerating anyone. The reason why we use jail in the, in the, the bill is because we want to layer

this on top of a relationship of trust. And right now, today, some of the best, most trusted, most highly-effective working relationships in the state of Nebraska are between sheriffs who have relationships with sheriffs who have jails. And so, our thought was if there's a sheriff who's already got a great working relationship with other sheriffs, other peop-- other law enforcement agencies, they can set up some safe, warm space that's not a jail cell to be able to house these people that either has, like in Scottsbluff, actual on-the-ground medical professionals, or can do a telemedicine component.

McKINNEY: OK. Thank you.

MIKE HILGERS: Yes, sir.

BOSN: You asked someone to ask you about the video conferencing. I'll ask.

MIKE HILGERS: I'm happy to-- if-- in the event that you were curious about the video conferencing.

BOSN: I am very curious about the video conferencing.

MIKE HILGERS: One of the-- and this whole bill came from, as Senator Storer mentioned, talking with law enforcement on the ground. And they're saying this is just a big burden on us. One thing we also heard from the county attorneys is the, the mental health board hearings themselves being in person can be very burdensome on a-- on our very stretched prosecutorial teams out west. So, the language of the bill currently, I think there is some concern that that would mandate or could create a path to mandating video conferencing. I think there's some due process concerns that Mr. Eickholt, I think, will articulate, as well as the bar. From my perspective, our goal is to-- really, to provide empowering and authorizing language to allow the video conferencing, but I think it is absolutely reasonable to do it in a way where the defense counsel, and there's due, due process, and there could be objection, and it can't be-- you know, it doesn't have to be mandated. I just think there's concern out west that it's maybe-- they, they were looking for the authorization. So, I do think, for the opponents who will come up behind me, I think there's a real path to get something that will be workable that addresses that issue.

BOSN: The other thing you asked someone to ask you about, perhaps, was the almost-million-dollar fiscal note.

MIKE HILGERS: Yes. I don't-- we're having some conversations with the Crime Commission. That is-- I think there might be some misimpression

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

of what the bill is intended to do for the Crime Commission. So, I don't-- we'll work with them. I don't think that that-- there's something that they either misinterpreted, or something that we would propose fixing to eliminate-- the, the concept behind this bill, Senator, would have no-- should have no real incremental fiscal impact on the Crime Commission.

BOSN: And quite frankly, the goal here is to save costs and reduce the time that someone who's experiencing a mental health crisis is sort of displaced from their--

MIKE HILGERS: Absolutely. That's right. I think it will have positive cost impact on our prison system. I will say the goal of this bill is either to-- there's two sources of funding; this is not general funds, no taxpayer dollars. I think there's two sources of funding that are available. One, actually, the Crime Commission thinks that-- I don't, I don't speak for them, but I-- in talking to Director Tuma, he thinks there's grant funding that would be available for this. And another option would be the opioid funds that contained opiate-- opioid settlement dollars that our office collected from those lawsuits.

BOSN: OK. Senator Hallstrom.

HALLSTROM: Yeah, I'll just tee this up so we can talk off the mic. But when I'm looking at this, it appears that we're expanding the pilot program to allow the jail facilities or the sheriffs that have ability or capacity for mental health beds in the jail or off-site. And as I look through this, we're, we're making some changes to existing references to medical facilities, and there's, there's still continuing references to medical facilities somewhere in the statute here and other places we make the changes. And I don't know whether that's overlooked or whether there's a reason why we have medical facilities in some positions of the statute and not others, but I'd like to explore that to make sure we're consistent in our application.

MIKE HILGERS: Sure, I'll make a note. My techno-- my technical expert will look at that, Senator Hallstrom. We'll address that.

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

MIKE HILGERS: Thank you, Senator. Thank you.

BOSN: Next proponent. Good afternoon.

MICHEAL DWYER: Good afternoon. I can't believe we're the last testimony of this year's session. Good afternoon, Chairman Bosn, and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

members of the Judiciary Committee. My name is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r, and I appreciate the opportunity to testify in support of LB386. Thank you, Senator Storer, for your work on this incredibly important issue to address significant gaps in emergency response in Nebraska to mental health "criseses." I'm a 40-year veteran of volunteer fire and EMS, and current co-chair of the Nebraska EMS Task Force, and author of The Future of EMS in Nebraska, the fourth version that's updated biannually. Yes, Nebraska is facing serious issues in its mental health system; and yes, law enforcement and EMS are frequently required to respond; and, yes, the confluence of these issues is much more severe in rural areas. In my former world-- I'm still licensed, but largely retired-- I have seen the increase in mental health calls in my career go from rarely to as much as 30% of rural EMS's response that have some mental health component. What typically happens on a call is that dispatch, PSAP, receives a call for anxiety, an overdose, or a possible suicide, and if that call has ante-- any health connection, then EMS is paged to respond-- to co-respond with law enforcement. In 78% of Nebraska, that's a volunteer that's responding to do that. Rural EMTs, including myself, are rarely trained specifically in mental health response, so we're a little bit at the edge of our knowledge band, and certainly you know-- and as LB386 points out-- resources in rural areas can be very limited. EPCs require a patient to be at risk to themselves or others, and that can be difficult to justify. In a recent call, I with-- happened to be with a good friend that was in serious distress, but medically, was cleared. But we spent another two hours on the call trying to decide between whether or not she was going to be given an EPC, and if that happens, where we would go, as that patient sat here-- sat there, continued to be in distress, waiting for us to make the decision. Additional resources to address the mental health crisis is a significant piece of the puzzle in crafting a sustainable future for EMS. I believe the fiscal note certainly is the question, but I would reiterate that public safety in Nebraska is your most important responsibility. I believe LB386 is well written, and would be a great step towards improving public safety. And I would be happy to answer any questions.

DeBOER: Thank you very much. Let's see if there's any questions. Questions for this testifier? Thank you so much for being here. Let's have our next proponent.

BRYAN WAUGH: Good afternoon. Thank you, Chair-- Chairwoman DeBoer, and members of Judiciary Committee. I'm Bryan Waugh, B-r-y-a-n W-a-u-g-h, Chief of Police, Kearney, Nebraska, President of Police Chiefs Association of Nebraska. I appear on behalf of the Police Chiefs

Association of Nebraska and the Nebraska Sheriffs' Association in support of LB386. Thank you, Senator Storer, for introducing this legislation, which was born-- as the, as the Attorney General mentioned, was, was something that came from intentional conversations and meetings with law enforcement leaders from all over the state, with, with the AG, as well as the Crime Commission and other law enforcement and public safety leaders. Through these conversations, the pressing gap and challenges facing police in communities today, and for many years over the past decade in response to the rising mental and behavioral health needs, is the lack of inpatient bed space and the long distances some must travel for treatment. LB386 presents an opportunity to leverage existing partnerships and provide much-needed relief through regional mental health placement, thereby significantly reducing the burden on law enforcement from the long-distance travel to find safe placements for consumers in mental health crisis who require immediate care. I recently visited with the Chadron Police Chief Hickstein, who stated that the current system in Nebraska is significantly overburdened on law enforcement, especially in rural Nebraska. The impacts on law enforcement are profound, including staffing issues for back-filling shifts during transports, overtime, mileage, maintenance on police cars, fuel costs, long hours, overnight stays-- police officers drive day and night to find an adequate placement for persons in crisis. Until such time as there is realistic bed space in regional inpatient facilities, this is the best solution that we can envision to offer relief for local police and EMS, as was just mentioned, and members-- to avoid placing members of our community in jail simply due to the unavailability of bed space in a proper facility. For these reasons, on behalf of the Police Chiefs Association of Nebraska and the Nebraska Sheriffs' Association, I want to reiterate our strong support for LB386, and respectfully request that you advance it to General File. I'm available to address any questions you may have.

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

BRYAN WAUGH: Thank you much. Have a wonderful weekend.

BOSN: Yes, thank you. Next proponent. Good afternoon.

ELAINE MENZEL: Whoops. Chair Bosnan [SIC] and members of the Judiciary Committee, for the record, my name's Elaine Menzel-- that's E-l-a-i-n-e M-e-n-z-e-l-- appearing here today on behalf of the Nebraska Association of County Officials. I won't go into a lot of the same reasons that the prior testifiers have given, because we would

echo those reasons for our basis of support for this legislation. I will just state to you that for those of you haven't-- who have not seen me testify before, I have testified on these issues for several years about the lack of availability of mental health resource options for our law enforcement, for EPCs. And also in some situations, I've testified on a program that-- it started with our National Association of County Officials, but 14 counties have adopted that here in Nebraska, and that's called Stepping Up, and that deals with mental health issues, and they look at the data and do various other things for purposes of addressing mental health issues. Douglas, Lancaster, Saunders, and a few other counties; I'm not remembering them at this point. But if you ever have infor-- a desire to learn more about that program, I'd be glad to share that with you. With that, I'll open it up to questions, if you happen to have any.

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

ELAINE MENZEL: Thank you.

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

SPIKE EICKHOLT: Good afternoon, 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, appearing on behalf of the Nebraska Criminal Defense Attorneys Association. We are in opposition just really to one component of the bill, and the Attorney General did reference that earlier, and I did reach out to Senator Storer to explain our concern. We're not opposed to the pilot program and the use of the jails; that's not our issue. The issue that we have is that many of our members, particularly public defenders, are appointed in mental health board and Sex Offender Commitment Act cases. And the bill does provide for video conferencing, but the bill is silent as to when the video conferencing can be used, with the exception of the provision-- the statute that's amended on page 8 which allows a mental health professional to determine whether the video conferencing should happen. But there's no process as far as the party or the defendant, or the person subject to mental health board to object or to be heard, if you will, before they have video conferencing type hearing. We're not necessarily even opposed to having those type of hearings, but you can imagine that some of the people who are before the mental health board may be low-functioning, they may be paranoid, they may delusional, and the hearings sometimes can be difficult enough logistically, and having the sort of extra layer of "Zoom court," "Zoom interference" that

happens sometimes be there, it could just be-- it could just be an issue. I don't know how to fix it necessarily. When I reached out, I-- I don't-- I didn't know if my request would necessarily even be invited, so I didn't really propose any actual language to fix it. In the court system, there's a, there's a number of court rules that provide for how remote hearings are done. There's a requirement that exhibits have to be submitted to the parties I think 48 hours beforehand and stuff, but there's not really a series of rules that describe how mental health board hearings work; that's done statutorily. But one suggestion might be to allow HHS to have rules for how those hearings are done, or the alternative is to have something in statute that provides that if the parties agree, unless a party objects kind of thing, to have it done that way. And the specific references are on pages 4, 5, 8, 11, 15, 16, and 20 that amend the different statutes. I'll answer any questions that anyone has.

BOSN: Senator DeBoer.

DeBOER: Thank you. Are there currently time limits on when these hearings have to take place?

SPIKE EICKHOLT: Yes, generally. I mean there's practical time limits and there's constitutional time limits. You just can't be sort of indefinitely held before you go in front of the mental health board.

DeBOER: Sure.

SPIKE EICKHOLT: And there's review hearings, they have to follow a certain statutory timeline, and-- even though it's been years since I've done mental health board stuff, so I can't remember. But there are.

DeBOER: The reason I ask you, in part because I can't remember either,--

SPIKE EICKHOLT: Right.

DeBOER: --and also because last year, if you recall, I worked on a bill with this committee to create first appearances--

SPIKE EICKHOLT: Right.

DeBOER: --within a certain timeline, and the way that I did the-- handled the video conferencing portion was to say that the defendant

waives their right to object to how long it takes if they will not accept the video conferencing option.

SPIKE EICKHOLT: Right.

DeBOER: So, the video conferencing option is the-- is there if they want it, and if they don't want to do it within that timeframe-- if they do not want to do it by video conferencing, then the court or whoever is not required to do it--

SPIKE EICKHOLT: Right.

DeBOER: --within that time frame. So, there might be a way to do a similar approach here, where, you know, you get it within the time frame of this if you, if you agree to do by video conferencing, and if not, then it'll take longer.

SPIKE EICKHOLT: That's right. And, and a lot of these mental health board hearings are not necessarily contested. You'll have a lot of stipulations, so, I mean, there are ways to make it work. It's just that what I heard from my members was that you're dealing with a client who's just-- it's going to be-- there's a new set of issues besides the issues that you talked about with your bill last year.

DeBOER: Including that they may just have a, an interaction with technology in general that is problematic.

SPIKE EICKHOLT: Right. That could be a manifestation of their mental health.

DeBOER: OK. Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: The video conferencing allows for both hearings and evaluations. Are you just concerned about the hearing aspect of it?

SPIKE EICKHOLT: Both, because sometimes evaluations may be contested. There might be a recommendation that's an issue. So, it's both of them.

HALLSTROM: And, and who conducts those evaluations?

SPIKE EICKHOLT: Depends if the person is an inpatient, it will be somebody at the regional center who does that. Usually, there's input from the treatment team. Sometimes people are in the community,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

there's an evaluator in the community they may see that may recommend that.

HALLSTROM: OK. Thank you.

BOSN: Seeing no other questions, thank you for being here. Next opponent. Good afternoon and welcome.

DELORES EDEN: Hi. Thank you. My name is Delores, D-e-l-o-r-e-s; Eden, E-d-e-n. And I am horribly unprepared to do this, but I saw on Channel 10 that this bill had been proposed, and I'm just so vehemently against it, I said, I've got to show up and say so. By what's my qualifications, I am a licensed alcohol and drug counselor; I'm also a registered nurse, but I'm not here speaking on behalf of anybody other than myself. But I just think this is the most abhorrent thing I've ever heard. I know that people have said now here today, well, it's not jail. It maybe won't be jail. It might be somewhere else. When I downloaded a copy of the bill, it says in there, again and again, "jail." And again, you know, if it's anywhere near a jail, and you're the person who's being brought there, and you're sleeping on a similar bed to what jails provide, and you've got a stainless steel toilet, my guess is I'm gonna feel an awful lot like I'm in jail. And whether you say I'm incarcerated or not, I'm going to feel like I'm, you know-- yeah, I'm held there against my will, that's a given of the safety, but that I'm also being punished, you know? And I get that Nebraska's a big state. I get that it's not efficient in terms of, you know, miles driven and how to provide care to folks, and that there's not enough beds. But let's address the problem, then. Let's don't treat people like criminals when they're not criminals. And that's-- I can't tell you how passionately I feel about it, but I just-- I think it's a horrible-- you know, one of the words that we've heard today, and we've heard before when it was talked about was "efficient." Well, caring for people isn't efficient. You know, sometimes people need help. And it may not be efficient, but if we don't-- if we make efficiency the, the litmus test for care, what are we going to do with our, you know, mentally and physically disabled folks? What are we gonna do with our elderly? You know? It-- because it-- they're not very efficient to take care of elderly people. I guess I've-- I pretty much said what I've got to say, but yeah, I am vehemently against this. I feel like we've got to clear up the language. And I think the other questions to be explored is, OK, just because we do something different, I don't know that that means we have the providers out there. You know? Who's going to see the day-to-day interactions with these people? Yeah, you may get a psychiatrist on telehealth, but who's going to be the one that says, do you need a sandwich right now?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

You know, who's going to be the one that, you know, monitors, you know, gee, we gave them this med; how is this affecting them? What kind of outcome are we getting? If, if what their training is is a jail background, again, it's not to discredit our criminal justice system, but that's not their training. OK. I'm sorry. I'll take questions.

BOSN: Questions of this testifier? Senator DeBoer.

DeBOER: I absolutely agree with you that we shouldn't take someone who's just-- has a mental health issue and put them in something that's even a facsimile of jail. I agree with that. What I would ask, do you-- because I'm still working on all this myself-- do you have an objection to taking folks who have mental issues, mental health issues, that are in jail because they violated some ordinance or crime or something, and putting them into a mental health wing? Do you see what I'm saying?

DELORES EDEN: Well-- and again, if you're talking about somebody who's broken the law-- and I realize there's a common subset of people who have broken the law and also have mental health problems. That's a horse of a different color. But if you are talking about--

DeBOER: Someone who hasn't--

DELORES EDEN: --a person who has done nothing other than say, you know what, I'm really thinking about walking into traffic, I've just had it-- they've done nothing at this point to deserve that kind of incarceration. And again, I know they're not using the word incarceration, but it sure sounds like it.

DeBOER: So, an EPC-- you would have-- you would object to an emergency protective custody hold at a facility that reminds one of a jail. Is that--

DELORES EDEN: If there's not better-trained staffing, if there's not facilities appropriately made for people who have, perhaps, a mental health crisis, if there's not the provision to allow them for that socialization and connection,--

DeBOER: Mm-hmm.

DELORES EDEN: --which is, I think, a big part of healing for people. And again, what's showed on the news was somebody showing a cell. Well, OK, if that's not it, then show me. Is there a day room where they can interact? Do they have a-- you know, and again, I'm not

saying they have to be a licensed anything, but somebody who's going to facilitate some interactive groups that helps people connect. I don't know--

DeBOER: I don't think it's asking too much to say you want an appropriate facility for folks and their needs. I don't think-- I don't think anyone here would object. I don't think Senator Storer would object to that, wanting an appropriate facility.

DELORES EDEN: Then I don't know why we have the word "jail" in here.

DeBOER: No, I, I agree. Thank you for your testimony, and thanks for coming out.

DELORES EDEN: Thank you.

BOSN: Any other questions? Seeing none. Thank you for being here.

DELORES EDEN: Thank you.

BOSN: Next opponent.

TIM HRUZA: Good afternoon, Chair Bosn, members of the Judiciary Committee. My name is Tim Hruza, last name spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association in opposition to LB386. I want to start by thanking Senator Storer for our conversation about our position, and Attorney General Hilgers as well. In similar fashion to what Mr. Eickholt testified to, my appearance today is very, very much limited to the video conferencing provisions in the bill. So, those of you that have been around for a couple of years may recall several bills coming out of the COVID era related to video conferencing and trials, evidentiary hearings, those sorts of things in the court aspect, or in the, the medium of the courtroom, right? The bar association has had a consistent position opposed to the requirement of video conferencing, or I guess I should say allowing video conferencing decisions to be made by someone other than the parties in the case, particularly with respect to issues where evidence is offered against a party. We've, we've had this discussion on a couple of bills over years, we've been working with the Supreme Court on the court rules that Mr. Eickholt mentioned, right? Court rules that apply to these sorts of situations. In this context, it's a quasi-judicial sort of process before a board where a person's rights are at stake. We feel that our consistent position with respect to those rules about video conferencing probably should apply in this instance, too. And so, that's what we've been talking about. If the intent is to authorize the use of video conferencing in

the hearing situation, I think we're fine with that; no problem whatsoever. I think what we would-- what we would ask for is consideration of language that would say "so long as both parties to the case agree," and, and even if you wanted to allow certain hearings that may not affect fundamental rights of a party and/or that don't allow the offering of evidence against either party, for or against either party, those decisions can-- you know, we, we would agree a judge can have discretion to make those decisions, the, the board may be able to make those decisions. We just-- we have-- we feel very strongly that when evidence is being introduced against somebody in a, a hearing that may affect their fundamental rights that they ought to have the ability to object to that. So, willing to work with anybody on language that accomplishes those goals. We understand the need, and I think you hear from attorneys on both the defense side and the prosecutor, prosecutor's side about the difficulty of the geography and just the way that our state's set up. We just have that consistent position with respect to video conferencing and video hearings in trials, so. With that, I'm happy to answer any questions, and thank you very much.

BOSN: Questions for Mr. Hruza? Senator Hallstrom.

HALLSTROM: Is there anything inherent in video conferencing that disallows your ability to object to evidence?

TIM HRUZA: Not necessarily, Senator. I would tell you that having gone through the-- and, and so, maybe back to the, the first bills that were introduced post-COVID that really dealt with the expansion of video conferencing in the trial context, the bar put together an ad hoc committee made up of judges, lawyers, prosecutors, civil attorneys, and kind of went through-- from both a technology aspect, from a-- this courthouse hearing video conferencing tools that are available in different parts of our state, as well as kind of the fundamental questions of what's fair and what's-- what-- how you can ensure veracity, so-to-speak, when you have live-- things like live witness testimony that might be offered. Again, so long as both parties think that they'll have sufficient ability to confront the witnesses used against them--

HALLSTROM: And that was my point.

TIM HRUZA: --and ensure that, like, a witness isn't being coached from behind, right? I've had some weird stories, guys, in-- Senator, of, of, like, a divorce trial where attorneys agreed to do the trial video-- by video, where there were accusations then, post-hearing,

that a witness was being coached by someone off-camera. Then, there's questions of how do you ensure that the camera sees enough of the room, and that sort of stuff. So, like, our position has been to avoid any of that, and to ensure that you have fairness; you make sure that as long as both parties agree, we'll proceed that way. And even in that case, in that trial, right? The two-- the parties had agreed, they'd waived their right to the in-person side. We just feel very strongly that if there's evidence being presented, a party should be able to object to that.

HALLSTROM: And that was my interest in determining--

TIM HRUZA: Yeah.

HALLSTROM: --whether it was more of an issue with confronting the witness in person as opposed to objecting to evidence.

TIM HRUZA: A little bit of both, right? So, it's not, it's not that you can't-- you wouldn't preserve your objection, but you ensure the confrontation and the person has the ability to do that. But then, you also ensure that there are no questions of, you know, veracity in terms of the evidence being presented and how.

HALLSTROM: Thank you.

BOSN: Thank you for being here.

TIM HRUZA: Thank you.

BOSN: Next opponent.

JEANIE MEZGER: Good afternoon. My name is Jeanie Mezger, J-e-a-n-i-e M-e-z-g-e-r, and I ask you to oppose this bill. LB386 talks about adding mental health beds, but I didn't see a definition of those beds. What kind of care would need to be available? How would a mental health bed be distinguished from a jail bed? People sent to jail are routinely denied their prescribed medications. So, will the person in a mental health bed be able to take his or her meds? And also, everything that Dolores said, I think, is really important. In the Sex Offense Commitment Act [SIC]-- SOCA-- hearings that I have attended, the psychiatrist or psychologist has appeared by phone. Technological difficulties plague these hearings, just as they do any other virtual meeting. For instance, I don't think that people can testify virtually for these things, right? For that reason. The idea of relying on the testimony of someone who is unseen and whose audio is unreliable should worry everyone when an indefinite term of commitment is on the

line. Not only is someone testifying by phone, the person whose future is in question is shackled, hands and feet, ensuring the perception that this is a dangerous person. I've been told that virtually all SOCA hearings result in commitment, which should make you wonder how that even-- how even that playing field is. I don't know how often these emergency calls involve SOCA hearings, but existing statutes already make it too easy to put someone suspected of being a dangerous sex offender in jail. The definition of dangerous sex offender is troubling. It says that you have to be-- suffer from a mental illness or a personality disorder and be convicted of one or more sex offenses, and a law enforcement can take someone into custody if the officer has probable cause to believe a person is a, a dangerous sex offender. The only piece of the definition of dangerous sex offender that is not subject to the officer's wild speculation is that the person has been convicted of, of sex offenses, which absolutely does not mean that the person is dangerous. Without access to a person's medical records, the officer has no way to know if a person has a mental health diagnosis or personality disorder. A mental health board hearing could clear up those questions, but until then, the person sits in jail. The bill says the Legislature does not intend to "criminalize mental health issues or result in the incarceration of individuals for mental health issues, and nothing in the act should be so construed." And yet, the idea is to hold people who are mentally ill in jails. Compassion is a Nebraska value, but I'm not seeing it here. I urge you not to advance this bill. Thank you.

BOSN: Questions for this testifier? Seeing none. Thank you for being here. Next opponent. Neutral testifiers. All right. While Senator Storer makes her way up, I will note there were 2 proponent, 4 opponent, and 2 neutral comments submitted for the record. Welcome back, Senator Storer.

STORER: Thank you, and thank you for your attentiveness and your patience, and for all of those who came to testify today. I just want to address a couple of the things that were brought up in, in the testimony that we heard. And one thing that does become evident-- again, I represent a big chunk of rural Nebraska; my entire district is rural. The distances are hard to fathom if you haven't lived there or had to access things like a hospital or mental health facilities. And so, if money were no object and we had access-- a variety of access to resources, there would not be a need for LB386. This is intended to make a situation better. This is intended to not only help the individuals, but also alleviate pressure on local law enforcement. And just, just as-- on a side note, I had a couple of individuals in law enforcement that really wanted to come and testify today who this

impacts directly, but you know why they couldn't be here? Because they're short-staffed, and they couldn't leave their county. And so, the use, again, of the word-- I just want to give you one example to help people understand why "jail" was included in the bill. So, it allowed the ability for the local law enforcement to have a memorandum of understanding with those facilities. I'm going to give you the example of Cherry County. Cherry County has, has a beautiful new facility; it's called the Justice Center. Under that roof, you have the actual jail, we have dispatch, we have the court system, we have the county court offices. And even within the jail facility, there are, there are different segments in that secure facility that allow for separation from inmates, but yet are in a secured facility. And for those that don't understand-- and I was not familiar with what EPC meant prior to serving as a county commissioner-- but EPC, we're not changing the, the regulations or the basis by which somebody is taken in under EPC. They have to be placed in a secure facility in that event, and in many of our small communities, those, those facilities that we would refer to as "the jail" that may contain other things other than just a jail-- but those are oftentimes, probably most oftentimes, the only place that would be a secure facility which you need to take an individual to. Our regional facilities provide that. But the intent here is that we don't have direct access in a, in a timely manner to the regional facility, so we have to find a temporary measure. You will hear stories-- if, if, if those officers were able to come today, you probably would have heard more stories, but I will tell you that the alternative to this is an individual having a mental health crisis riding around in the back of a cruiser for hours or sitting in a waiting room somewhere for hours. That's the alternative to this. So, what we are trying to bridge the gap of is how can we get an individual into a private setting where they can have access, and in the-- and then the suggestion is telemedicine-- have access to some more timely treatment in order to, to stabilize them and to keep them safe, which is the-- really the intent of what EPC does. So, with that, I, I would address the-- again, just the fiscal note. We were all a little bit shocked. I do think there's some misunderstanding. Again, this bill does not request or intend any tax dollars in the form of General Fund dollars from the state of Nebraska. The intent is and remains to access grant dollars or opioid dollars to help fund this program. And so, I guess I just ask you to please take that into consideration when you evaluate that fiscal note. With that, any other questions? I know I'm standing between you and the weekend, so.

BOSN: Seriously. Senator Hallstrom.

HALLSTROM: I, I just wanted to clarify if the video conferencing is a secondary aspect of your interest in the bill.

STORER: Yeah, the reason it, it-- that's included primarily is if, if you are EPCed, you have the right to request a mental health hearing to be released from that sooner than you may otherwise be authorized to be released under the direction of a doctor. So, if you're already not at the regional facility, then we need some option for them to receive that request.

HALLSTROM: And there would be nothing to prevent the parties from agreeing to video conferencing.

STORER: True. Correct.

HALLSTROM: Thank you.

BOSN: Senator DeBoer.

DeBOER: Yikes. So, in that case, if the-- you have the right to request the, the hearing so that you can get out sooner, you could waive the right to the sooner if you didn't want to take the video conferencing hearing.

STORER: Absolutely.

DeBOER: So, that might be a solution for you.

STORER: Absolutely. This is just to provide that as an option. Otherwise, it would, it would be very difficult if we're trying to provide that safe, stable place that's not at the regional facility because there's no space at the regional facility, then we also need to provide them an option for that hearing.

DeBOER: So, the other question I have is with respect to the nature of these facilities. Is it your intention that the facilities, should it be by chance in a jail, that those individual cells or whatever you want to call them will be modified so as not to have the same sort of--

STORER: Space shared with inmates. Absolutely. There is a--

DeBOER: And additionally, not look like a jail.

STORER: Absolutely. And again, when an individual is EPCed, they-- the regional facilities are what's considered a secure facility. I, I want

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 28, 2025

people to keep that in mind. So, just the example real quickly in, in the Cherry County facility. Enter-- there's a way that you can enter where legal representation enters, clergy enters; a different door, not the same door that inmates enter. In a-- there-- there's space-- there happens to be in that facility, I know, a room when that was built that was intended for medical use, then they've never fully utilized it the way they envisioned, but it's sort of an unused room that is down a hallway, a foyer separates it; there's no visual-- shared visual experience with the inmates.

DeBOER: So, that's what you were thinking in, in, in that instance, is that you would renovate that room to be an appropriate facility.

STORER: Yes. I can envision that.

DeBOER: As an option.

STORER: As an option.

DeBOER: OK. But you are not envisioning someone sitting in a cell with bars--

STORER: No.

DeBOER: --because they are having a clinic in a can--

STORER: Not at all.

DeBOER: --because they're having a mental health crisis.

STORER: Not at all.

DeBOER: OK. Thank you.

BOSN: Senator Rountree.

ROUNTREE: Very quickly. Thank you so much, Chair. So, as you renovate that room, would you-- would it-- and I don't know what it looks like, but would it be to accommodate multiple people at a time, or is there a necessity of separation?

STORER: Yeah, I don't, I don't-- I think most of these facilities are going to be small enough. There needs to be some privacy, and--

ROUNTREE: OK.

STORER: Yeah. It would, it would not be multiple individuals.

ROUNTREE: Thank you.

STORER: Yeah, absolutely. So, with that--

BOSN: Seeing no other questions, and before anyone else decides to raise their hand, that will conclude our hearing on LB386.

STORER: And we're done. It's a wrap.

BOSN: I want to really quick thank everybody for all their work on this, certainly our committee clerk and our pages.