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Judiciary Committee February 12, 2026

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**DeBOER:** Welcome, everyone, to the Judiciary Committee. My name is Senator Wendy DeBoer, and I represent the 10th Legislative District in vibrant northwest Omaha. I'm also the Vice Chair of this committee. The Chair is not available today, so I will be running hearings for her. The committee will take up bills in the order posted outside the room. The bill hearing-- this bill hearing is your opportunity to be a 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. Please be sure to print clearly and fill it out completely, listing every organization you represent. Use the back if necessary. If you say an organization when testifying that is not listed on your sheet, it will not be included on the committee statement. 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 also yellow sign-in sheets back on the table for each bill. These sheets will be included as an exhibit in the official record of the hearing. When you come up to testify, speak clearly into the microphone. Tell us your name, and spell your first and last name 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 speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. In Judiciary today, we will be using a 3-minute timer 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 1 minute remaining. And when-- the red light indicates that you need to wrap up your final thought and stop. After that, questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard. It's just a part of the process, as senators may have bills to introduce in other committees. A few final items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring up at least 10 copies and give them to the page. Please note that thumb drives, CDs, DVDs, oversized documents, books, lists of signatures and similar things will not be accepted as exhibits for the record. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing room. Finally, committee procedures for all committees state that written position comments on a bill to be included in the

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Rough Draft

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 legislature.nebraska.gov. Written position letters will be included in the official, in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. You may submit a position comment for the record or testify in person, but not both. I will now have the committee members with us today introduce themselves to us starting on my left.

**HALLSTROM:** Bob Hallstrom, Legislative District 1, southeast Nebraska, representing Otoe, Johnson, Nemaha, Pawnee, and Richardson County.

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

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

**ROUNTREE:** Victor Rountree, District 3, Bellevue and Papillion.

**DeBOER:** Also assisting the committee today to my left is our legal counsel, Tim Young, and to my far right is our committee clerk, Laurie Vollertsen. Our pages for the committee today are Kyanne Casperson, Kleh Say, and Thomas Guinan. So we thank them very much for helping us out today. So with that, we will begin today's hearings with LB957 and Senator John Cavanaugh.

**J. CAVANAUGH:** Good afternoon. Good afternoon, Vice Chair DeBoer 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 LB957, which strengthens safe storage laws and, and helps keep guns safely stored and out of the hands of children. LB957 is modeled after similar, similar law in our neighboring state of Iowa. It provides for strict liability for injuries resulting from a parent or guardian or spouse of a parent and guardian knowingly allowing the use or possession of a handgun by a child under the age of 14. There are exceptions for Armed Forces, National Guard, ROTC, and temporary loan for instruction under the immediate supervision of a parent, guardian, or adult instructor. In short, the strict liability only applies in situations in which it is already illegal for the child to possess or use a handgun. If a parent or guardian knowingly allows a child to illegally use a handgun, I think it's clear that the parent or the guardian should be held legally responsible. The other part of LB957 creates a new Class I misdemeanor offense for failure to securely store a firearm if all

of the following elements are proven. A person stores or leaves a loaded firearm which is not secured by a trigger lock mechanism, placed in a securely locked box or container, or placed in some other location which a reasonable person would believe to be secure from a minor under the age of 14 years. Such person knows or has reason to believe that a minor under the age 14 years is likely to gain access to the firearm without the permission of the minor's parents or guardian, so it has to be-- has been foreseeable. The minor gains access to the firearm without the consent of the minor's parent or guardian. And the minor exhibits the firearm in a public place or uses the firearm to cause bodily injury or death to another person. There are exceptions if the minor obtains the firearm as a result of unlawful entry by any person or the use of force is justified for the defense of self or others and property under Nebraska statutes. This bill won't, won't prevent anyone from teaching their kids how to use guns safely or responsibly. It won't prevent fathers from taking their sons out hunting. It won't prevent the use of force when it is justified. It is something that is already the law in our neighboring state of Iowa. It is simply a way to ensure that loaded weapons are stored safely and securely, and that if children are allowed to illegally use handguns, the parents or guardians are responsible for the injuries that result. I thank the committee for your time, and I'd be happy to take any questions.

**DeBOER:** Thank you, Senator Cavanaugh. Are there questions?

**J. CAVANAUGH:** And this is my first time in Judiciary this year.

**DeBOER:** Welcome. Are there questions? Senator Hallstrom.

**HALLSTROM:** Senator Cavanaugh, I've got just a technical issue maybe for you to look at. As I read 28-1406 to 1416, those statutory sections in a, in a broader sense allow for privileges and immunities that are tied to justification or justifiable. I don't know whether you have to use privileges and immunities, but it seems to me that the statutes use [INAUDIBLE] justified, but throughout the statute it talks about justifiable. A technical issue, but take a look at that.

**J. CAVANAUGH:** I'm certainly happy to make sure that the language matches. I'm, I'm a big fan of that type of technical criticism.

**HALLSTROM:** That's why I brought it to you. Thank you.

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Rough Draft

**DeBOER:** Thank you, Senator Hallstrom. Other questions? Thank you, Senator Cavanaugh. Are you staying around to close?

**J. CAVANAUGH:** I will.

**DeBOER:** Thank you very much. Can I see a show of hands-- this helps us just for processing-- how many people are, are going to testify on this bill in any capacity? One, two, three, four. All right, thank you. We'll take the first proponent, please. Proponents, anyone in favor of the bill? Good morning-- or afternoon.

**MARY KELLY:** Good afternoon, Senators. My name is Mary Kelly, M-a-r-y K-e-l-l-y. I'm with the League of Women Voters of Nebraska. The League of Women Voters of Nebraska believes in-- I'm sorry, of the United States, believes in gun policies that protect the health and safety of citizens through limiting the accessibility and regulating the ownership of handguns and semi-automatic weapons. League of Women Voters of Nebraska supports the intent of LB957 to codify the responsibility of parents to protect children from access to loaded firearms. After the 2010 Supreme Court ruling that made the Second Amendment right to keep and bear arms for the purpose of self-defense applicable to the states, many states sought to define how the Second Amendment would be implemented. Some focused on safety measures and others on freedom of access. Unfortunately, the states with more permissive gun laws experienced a rise in pediatric deaths from firearm injuries between 2011 and 2023. In the states with the most permissive laws and permissive laws, there was an increase of 6,029 and 1,424 more child deaths respectively than anticipated for that period. The good news is the states that focused on safety saw 55 fewer deaths than their previous averages. This shows that although gun accidents have been the primary cause of death in children aged 1 to 17, and suicide is the second cause of death for 10- to 24-year-olds, with guns being the most used method, these deaths are avoidable. We are not helpless to prevent them. As parents, we are responsible for protecting our children. When we bring a child home for the first time, we put plugs in all the outlets and locks on all the cabinets. We understand that without help, our children can find themselves in dangerous situations. This bill reminds us that part of having a firearm in a home with children means ensuring that they will not be able to access it. Half of pediatric gun deaths occur when a child is looking at or showing a gun. Preventing access to older children reduces the means and completion rates of suicide. Additionally, a significant portion of school shootings are perpetrated by current students at both the elementary and secondary

level. We could reduce the number of school shootings by over 40% by simply preventing children's access to these weapons. Not only are we responsible to protect our children from physical harm, but as we're bringing them up, we bear some responsibility for what they do. In 2024, we saw the first parents be sentenced for their child's school shooting due to the failure to prevent their son from possessing a firearm and killing four students. If adopted, this bill will communicate to families the safest way to exercise their Second Amendment rights and protect vulnerable children from loaded guns. Please advance LB957 to General File.

**DeBOER:** Thank you very much. Let's see if there are any questions. I don't see any today. Thank you for being here. Next proponent.

**CHLOE FOWLER:** All right.

**DeBOER:** Welcome.

**CHLOE FOWLER:** Welcome. Chairwoman and members of the Judiciary or Vice Chairwoman and members of the Judiciary Committee, my name is Chloe Fowler, that is C-h-l-o-e F-o-w-l-e-r, and I am the Child Welfare Policy Analyst for the Nebraska Children's Commission. I'm here to testify in support of LB957 on behalf of the Children's Commission. The Children's Commission was created to strengthen Nebraska's child welfare and juvenile justice systems, improve cross-system coordination, and promote policies that prevent harm before it occurs. A central focus of our work is reducing preventable injury and trauma to children, particularly trauma that increases the likelihood of child welfare involvement, behavioral health needs, or juvenile justice contact. Through the Commission's work with DHHS, probation, families, behavioral health providers, and community partners, we consistently see how exposure to violence in unsafe environments compounds risk for children. Unsecured firearms in the home present a clear and preventable risk factor. When a minor gains access to a loaded handgun, the consequences are often catastrophic, resulting in unintentional injury, suicide, harm, homicide, or system involvement that permanently alters a young person's trajectory. The State Child Welfare Plan emphasizes, one, prevention and early intervention, two, reducing adverse childhood experiences, otherwise known as ACEs, and, three, strengthening accountability structures that protect children from avoidable harm. LB957 is aligned with each of these priorities. By creating accountability for adults who allow minors access to handguns and establishing consequences for leaving loaded firearms accessible to children, this bill reinforces a basic child safety

principle: adults are responsible for creating safe environments. We have long recognized this principle in other contexts, like car seats, unsafe housing conditions, and access to controlled substances. Firearm safety should be no different. Importantly, LB957 does not criminalize children. It places responsibility where it belongs on adults with legal authority and capacity to secure dangerous weapons. From a systems perspective, that is critical. Preventing a single avoidable firearm injury reduces human tragedy and downstream strain on child welfare, courts, probation, and behavioral health systems, and, importantly, families at hand. LB957 is a policy lever that strengthens upstream prevention and reduces the likelihood of child welfare or juvenile justice involvement caused by preventable firearm access. For all of these reasons, the Children's Commission supports LB957 and respectfully urges this committee to advance it. Thank you for your consideration. I welcome any questions.

**DeBOER:** Thank you very much. Are there questions for this testifier? I don't see any today. Thank you so much.

**CHLOE FOWLER:** Keeping it easy.

**DeBOER:** Next proponent. Anyone else like to testify in favor of the bill? Then we'll move to opponents. Welcome.

**DARA DELAHANT:** Good afternoon. Thank you, Vice Chairwoman DeBoer and Judiciary Committee. My name is Dara Delahant, D-a-r-a D-e-l-a-h-a-n-t. I'm a Deputy County Attorney with Douglas County Attorney's Office and I'm testifying on behalf of the Douglas County Attorney's Office. While we thank Senator Cavanaugh for bringing this issue and for his commitment to protecting the children of Nebraska from gun violence, I'm respectfully testifying in opposition to this bill. I am the head of the Child Victims Sexual Assault Unit within our office, which prosecutes all of the cases involving child victims. This includes cases where children are severely injured or killed. And some of the most heartbreaking cases that we see are those involving kids that were injured or were killed with a gun belonging to their parent, where a child got a hold of that gun and shot themselves or another child. Unfortunately, in Douglas County, we have seen an increase in the number of cases like this in recent history. In the past 12 months, we have filed three of these cases. In two of those cases, the child was killed. And in the third, the child had a through and through gunshot to their own arm. In all three of those cases, more than one sibling was present at the time of the shooting. There was also another case this past October in Omaha where a 4-year-old

brought a loaded gun in her backpack to daycare for show and tell. Luckily, she told her teacher what she had in her backpack before she brought that out of her backpack and the teacher was able to remove it and secure it safely. When law enforcement then inspected the gun, it had six live rounds chambered. However, to think of the harm that could have happened if that child had not told the teacher about her show and tell item before getting it out, it is terrifying. I want to be very clear that the Douglas County Attorney's Office absolutely supports holding accountable parents and guardians that do not properly secure their firearms and a child gets a hold of it. However, LB957 makes it significantly more difficult to prosecute such cases, even though I do not believe that is Senator Cavanaugh's intent. Right now, in cases where a child gets a hold of their parent's gun and it results in the death or serious injury of another child, our office charges it as negligent child abuse resulting in death, which is a Class IIA felony punishable by 0 to 20 years in prison. If the child victim is only injured but does not die, we charge it as negligent child abuse resulting in serious bodily injury, which is a Class IIIA felony, punishable 0 to 3 years in jail. The elements we need to prove beyond a reasonable doubt to prove that a parent or guardian is guilty of either of those offenses is that the parent or guardian negligently caused or permitted the child to be placed in a situation that endangers his or her life or physical or mental health resulting in serious bodily injury or death. That's it. Those are the three elements we need to prove. To find someone guilty under the language in LB957, the list of elements that the state would need to prove is significantly longer. And the penalty for breaking that law is significantly lower. Much of the language that is also present in LB957-- may I continue?

**DeBOER:** Yes, sorry, I was looking where you were pointing.

**DARA DELAHANT:** Nope. Thank you. Much of the language in the different subsections in LB957 is problematic as currently written. A lot of the terms are too vague or ambiguous and that would leave far too many loopholes for this bill to be effective if it was passed. For just one example, under Section 5, subsection (1)(a), what does loaded mean? Is that with a magazine? Is that with a clip? Does that mean just with a round in the chamber? Is it some combination of those? As prosecutors, we need terms to be very well-defined. Otherwise, it allows for loopholes, and for parents who should be held responsible for this to not be held responsible. In subsection (d), what does exhibits a firearm mean? What is required for a minor to exhibit it? And why is it exhibits versus possesses a firearm in a public place? Simply

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Rough Draft

possessing it is dangerous itself without having to pull it out and show it. That also leads to what is a public place? How is that defined? Would this law not apply if a minor exhibited or possessed a firearm if they were in their yard with other children present? The result of the language in LB957 is that it would be much more difficult for the state to prove this offense, and it would be much more difficult to prosecute these cases versus the existing state of the law, the elements are fewer, and the penalty is higher. So the result, if this was passed, is likely that it would not be used, because the law that we have is easier for prosecutors to prove, and the penalty is more severe. Or if this was used, it would undermine the law that we have now and the cases that we have. Because if parents started thinking this is OK, I'll only get a misdemeanor, that undermines the seriousness of this offense. If there were jurisdictions that started only charging misdemeanors for this, whereas other jurisdictions are charging felonies.

**DeBOER:** OK, I probably need to stop you now at this point.

**DARA DELAHANT:** We are very willing to work with Senator Cavanaugh on drafting language to accomplish what I believe our shared goal is. We have ideas for how to do that. And I, I would be very willing to answer any questions.

**DeBOER:** Are there questions? Senator Rountree.

**ROUNTREE:** Thank you so much, Vice Chair. And thank you so much, you kind of answered the question. I wanted to see how you would work with him on strengthening it. So you agree the intent of this is good?

**DARA DELAHANT:** Absolutely.

**ROUNTREE:** [INAUDIBLE]

**DARA DELAHANT:** Absolutely.

**ROUNTREE:** OK. And you didn't have a chance to reach out to him prior to this hearing?

**DARA DELAHANT:** We, we did not connect with him ahead of time. We were working kind of within our office on brainstorming what some of our ideas would be. And if you would like, Senator, I can briefly bring those up.

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Judiciary Committee February 12, 2026  
Rough Draft

**ROUNTREE:** No, that's OK. You said that you would be willing to work with him so [INAUDIBLE].

**DARA DELAHANT:** Yeah, absolutely. Absolutely. We are more than willing to work with him. And I, I-- like I said, I believe we have the shared common goal of protecting kids and holding parents accountable, parents or guardians. So I, I think--

**ROUNTREE:** OK.

**DARA DELAHANT:** --I think we all want to get to the same place.

**ROUNTREE:** All right. Thank you.

**DeBOER:** Thank you, Senator Rountree. Other questions? Thank you so much.

**DARA DELAHANT:** Thank you.

**DeBOER:** We'll take our next opponent. John, you're bringing people together today.

**SPIKE EICKHOLT:** Good afternoon, Vice Chair DeBoer, 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 in opposition to LB957. I told Senator John Cavanaugh that we would be opposed to it. We're opposed to it for similar, not similar reasons necessarily, but I'm handing out, or have being handed out, the child neglect statute that the county attorney just referenced. And it's our concern, the concern we have with this bill, is that what this bill does is it recriminalizes things that are already criminal. As you heard the earlier testifier speak, she was implicit in her testimony and no one asked her, but they do charge this now as child neglect. And, generally speaking, the law requires an adult to not negligently place somebody or place a minor child in a situation where they could be dangerous to themselves or others, depending on the severity of harm or risk hits the level of penalty. The concern that we have with this bill is that there will be a companion charge to things that are already criminalized. And I've tried to make this point before that as practitioners that makes it difficult or more challenging, at least, for us to effectively defend our clients when you just have a succession of additional charges stacked against them for the same factual basis. I don't need to belabor the point. It was a similar argument I tried to make on the swatting, that these things are already illegal. You pass a new law,

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Judiciary Committee February 12, 2026  
Rough Draft

you get specific and you rebrand it with a different thing, it doesn't really do-- it just makes it more illegal and makes it difficult, as I said before, for us to sort of navigate these cases through the court system. I don't have to repeat myself. I'll answer any questions if anyone has any.

**DeBOER:** Any questions? Senator Holdcroft.

**HOLDCROFT:** Thank you, Vice Chair. But doesn't it kind of be, be more of a deterrent because it sets up some details as to what, what level of prevention you have to have in place for a 14-year-old child. So--

**SPIKE EICKHOLT:** Yes.

**HOLDCROFT:** --isn't there value in that, I mean, as far as maybe reducing the number of incidents that would happen?

**SPIKE EICKHOLT:** There might be, although I don't know putting it in a criminal statute as elements is deterrence. One, I don't know that people know the law as well as they should. Secondly, as the county attorney, and I can't believe I'm arguing the county attorney's point again, as she made before, the more general a statute is, the more simple the language is, it's easier for the state to establish guilt. In other words, we have an assault statute that says you can't intentionally or knowingly or recklessly cause bodily injury to somebody. You don't have to put down every instance in the statute. You don't have to say assault by kicking or by slapping or by punching. You just simply say you do something to hurt somebody else. I know that guns are different and maybe amending 28-707 to specifically isolate negligent access to firearms for children might make some sense. And that might be a way to approach it. But I do understand your point, but I don't know if putting things into substantive criminal law is really the clear deterrent to the public, as we hope.

**HOLDCROFT:** Well, I would think of it as an advertising promotion for, for people who provide these security systems to say this system satisfies Nebraska's law such and such, such and such for the protection of 14-year-olds and younger, whatever [INAUDIBLE].

**SPIKE EICKHOLT:** You've done things like that before, by you I mean the Legislature, when you did the assault on health care workers, you put a requirement that all health care facilities have a sign displayed

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Judiciary Committee February 12, 2026  
Rough Draft

telling them that. So that might be a way to approach something like this, I suppose.

**HOLDCROFT:** Thank you.

**DeBOER:** Thank you, Senator Holdcroft. Other questions? Thank you, Mr. Eickholt. Next opponent. Welcome.

**SCOTT THOMAS:** Good afternoon, Vice Chair DeBoer and the Judiciary Committee. Article 25, Section-- my name is Scott Thomas, S-c-o-t-t T-h-o-m-a-s. I'm with Village in Progress and U.S. Institute of Diplomacy and Human Rights. Article 25, Section 2 of the 1948 Universal Declaration of Human Rights guarantees children born out of wedlock a right to social protection, on par with that children-- of children born with their father in the home. Our position is that there are already sufficient laws on the books to address this issue. We often see that there's a law for everything you can do, there's a law of everything you can't do, and there are even laws for how to enforce those laws. So there are 90 chapters in the Nebraska state statutes, over 100 chapters in Chapter 20-- I mean-- excuse me, 100 laws in Chapter 28, which deals expressly with criminal conduct and case in point, Don Kleine has charged out the Barfield case in Douglas County as negligent child abuse resulting in death. The statute is Nebraska Revised Statute 28-707. We believe this is categorically prudent. It keeps the focus on the proper caretaking of children rather than the vilification of inanimate objects. Yolanda Barfield's attorney's statement at arraignment specified that she was relying on protection orders prior to the shooting to use the state to force the father of one of her children out of proximity. And so while we support the accountability component, we would need to see a carve out for a parent who could show any level of state facilitated estrangement from the child's life at any point in time to use as an affirmative defense at trial before we would endorse this bill. Thank you for your attention to the matter.

**DeBOER:** Thank you very much. Let's see if there are any questions. I don't see any.

**SCOTT THOMAS:** Thank you.

**DeBOER:** Thank you for being here. Next opponent. Is there anyone here who would like to testify in the neutral capacity? While Senator Cavanaugh is coming back up, I will announce for the record that there

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Judiciary Committee February 12, 2026  
Rough Draft

were five proponent comments, and 15 opponent position comments, and zero neutral comments.

**J. CAVANAUGH:** No neutrality on this one. Thank you, Vice Chair DeBoer and members of the Judiciary Committee for your attention. I appreciate everybody coming and testifying. And I would correct the record, I, I received a message from the Chair, who is watching from wherever it is that she is disposed, that fathers also take their daughters hunting. So she wanted to make sure that I clarified that. And I appreciate that constructive criticism. And I appreciate Ms. Delahant being here. And I always appreciate her perspective, and certainly willing to work with the County Attorney's Office, I have no intention of making it easier for someone to negligently injure kids with guns. The intention here is just to find another way to address this issue. There's, I think, according to the Nebraska study, there's 94 deaths a year of youth, so 17 and under in this study, 10 of those are by suicide by gun. So it's 10% of the kids who die in this state die as a result of shooting themselves with a gun. And, you know, there's other accidental and these other instances that Ms. Delahant was talking about. And my goal is to try to find more ways to constrain that. I'm certainly willing to work and answer some of these questions that were raised by both Ms. Delahant and Mr. Eickholt. You know, I think there are changes in the definition and changes in the structure to maybe make sure that this is addressing some of those instances that are maybe not covered by the negligence resulting in bodily injury or death. So, you know, some of the-- maybe that incident that Ms. Delahant was talking about where the child brings the gun, but nothing else really-- you know, we avoided a great tragedy because of the disclosure. So certainly willing to work on this and find other answers to the solution. You know, nobody spoke on the, the liability portion. The bill really does have two approaches. So, certainly, willing to figure out a way to make sure that we can get a, a bill that will encourage folks to store guns more adequately. And I appreciate Senator Holdcroft's suggestion about the notice, and perhaps we have some requirement that at least there would be a notification when people buy a gun that they, you know, to be in compliance with this law if they have a, a 14-year-old or under in the house that they need to have some adequate storage. This may be helpful in achieving the goal, so I appreciate that comment. And it's the last day of the week, so I'll stop.

**DeBOER:** Thank you, Senator Cavanaugh. Senator Hallstrom has a question.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 12, 2026  
Rough Draft

**HALLSTROM:** Yeah, I, I didn't want to overlook the liability provisions in the bill either. Within the last couple weeks, you and Senator Bosn and I and Senator Sanders and Senator Dungan worked out an amendment to LB320. And I usually find you, whether this is accurate, that unqualified immunities are not your favorite. And I find it a bit surprising that you would bring a bill with a strict liability standard without some type of simple negligence, gross negligence, or willful misconduct. Any willingness to look at those issues?

**J. CAVANAUGH:** Oh, oh, of course. I mean, I think your, your-- I think an adequate assessment of my personality in that description.

**HALLSTROM:** And mine, and mine as well.

**DeBOER:** Any other questions or commentary on Mr.-- thank you for being here.

**J. CAVANAUGH:** All right. Thank you. Have a good weekend, everybody.

**ROUNTREE:** [INAUDIBLE]

**DeBOER:** That will end our hearing on LB957, and that will bring us to our next hearing, LB1079. Josh, thank you for coming and opening for us today.

**JOSH KESTER:** Yeah, thank you very much, the senator has, has commitments elsewhere, so you have to make do with me. Good afternoon, Vice Chair DeBoer and members of the Judiciary Committee. For the record, my name is Josh Kester, that's J-o-s-h K-e-s-t-e-r. I'm legislative aide to Senator Brad von Gillern of District 4, which is west Omaha and Elkhorn. I'm here to deliver opening remarks for LB1079 on his behalf. Our office developed LB1079 in collaboration with Douglas County Sheriff's Office in response to the prevalence of high-dollar thefts from construction sites. In Douglas County, law enforcement and builders have achieved cooperating together around a 38% reduction in the number of construction site thefts over the course of 2025. However, the dollar value of stolen property remains high at around a cumulative \$400,000 for the year, which is not a huge deviation from the prior, from the prior year. In other words, thieves are stealing less often, but taking more valuable items when they do. This isn't just a Douglas County problem, a pair of researchers in 2019 analyzing FBI crime data concluded that theft of construction equipment, materials, tools resulted in around \$1 billion in annual direct losses to the U.S. construction industry. Lancaster County also

has seen significant thefts in August of 2025. Lincoln experienced a theft of an estimated \$50,000 worth of copper wire from a single job site. The crime analysis unit at LPD was kind enough to put together a one-page brief on some data from Lincoln since 2021, which the page has distributed to you a moment ago. These crimes hit especially hard given rising construction costs. Measures of, of construction costs indicate that they're up around 40% from where they were in February of 2020. And this dramatic rise is broadly reflective, among other things, of rising material and equipment costs, meaning that it's more expensive to replace stolen property from the job site. Higher replace-- high-- sorry, higher replacement costs ultimately translate into higher insurance premiums and higher construction prices. In the midst of a housing shortage, what many call an affordability crisis, we need to minimize unnecessary cost drivers like theft. This issue also affects state projects. We've got, you know, pretty, pretty substantial transportation needs over the next two decades, and theft of heavy construction equipment common at these sites, like the two Bobcat loaders stolen from a job site in Lincoln last June is certain not to help matters. Having outlined kind of the nature of the problem that LB1079 is attempting to address and its impacts to the community, the question emerges, what does the bill propose to do about it? As it stands, LB1079 amends Nebraska's habitual criminal provision to lower the bar to penalty enhancements under certain conditions.

Specifically, habitual criminal enhancements could be invoked upon a person's third felony conviction for theft, even if the person does not meet the ordinary threshold of having served at least 1 year in prison for each of the prior convicted offenses. Developing this bill, a number of approaches were considered for how to combat the trend described above, and law enforcement officials advised us that repeat offenders are a major part of the problem. So the rationale behind the approach taken in LB1079 was that lowering the bar for enhancements would allow, not require, prosecutors to obtain longer sentences for these repeat offenders either directly by actually pursuing enhancements or indirectly by invoking the possibility to try to get more out of, out of plea deals. Other approaches considered, for example, making theft from construction sites a specific offense on its own and then grading repeat convictions for the higher value offenses as higher tier felonies, this raised concerns among county attorneys, among others who conceded that while theft-- repeat theft offenses are often under-penalized in current law, they were concerned about, first, the utility of creating an entirely new offense based solely on location and also the proportionality associated with some of the penalty enhancements. Ultimately, the language was settled on,

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Judiciary Committee February 12, 2026  
Rough Draft

as it appears in front of you today, as a conversation starter. Senator von Gillern recognizes there are many stakeholders with interests at play in this conversation: law enforcement, builders, prosecutors, defense attorneys, and their clients. And sensitivity to this is important to the senator. As such, we are no way wed to LB1079 in its current iteration. Senator von Gillern hopes that this hearing will form the basis for a serious conversation about how to take an integrated approach to the problem. With that, on behalf of Senator von Gillern, I respectfully ask for your openness to further discussion about what can be done to combat theft of valuable materials and equipment from construction sites. Hopefully, subsequent testimony will indicate a sound direction to move the ball down the field. Senator von Gillern is interested in any conversation about how this bill might be improved. Thank you for your time and consideration. If you have any questions or-- sorry, if you have any questions you can reach out to our office afterward and either Senator von Gillern or I would be happy to try to answer them.

**DeBOER:** Thank you very much.

**JOSH KESTER:** Thank you.

**DeBOER:** All right, we will take our first proponent.

**MICHAEL DECHELLIS:** Hello, that's Deputy Mike Dechellis, M-i-c-h-a-e-l D-e-c-h-e-l-l-i-s. I'm here representing the Douglas County Sheriff's Office. I'm a criminal investigator with 19 years of experience in law enforcement, 8 of that specifically in investigations, largely in theft-related offenses. So the point that I wanted to make is that I've been doing this for a long time and I see the same faces again and again and again and they're always committing the same crimes. And the fact that theft-related offenses do not have any enhancement for committing the same crime again and again, I think, has been an oversight, something that's lacking from the habitual criminal statute. But I want to get, without naming people very specifically, I just want to tell you that we do see repeat offenses all the time. We'll have years where we have \$200,000 worth of, or more worth of furnaces and AC units disinstalled from homes under construction, sold under the table to, to rental, homeowners, whatever. There's a gentleman named John B., we'll use just his last initial, he's currently serving second prison sentence that I've-- my investigations have put him in there for. He went to prison. Those thefts don't happen anymore. They just don't happen at all. He is the repeat offender that this statute is geared towards. Auto theft: frequently

my colleagues at Omaha auto theft can tell you who stole a particular car by the make and model because these people aren't inventive. They learn how to do one thing and they do it again and again and again. Mail theft with subsequent financial crimes such as forgery, unauthorized use of credit cards that are stolen from the mail. There's probably 10 to 15 people in Omaha who are doing this every single day. But they're rarely able to steal more than \$5,000 from any one victim. So we catch them. I get the video from, from the bank where they're cashing the stolen check that they forged or from the store where they're buying gift cards with the stolen credit cards and know exactly who they are. And they get a F4 felony with presumption of probation. And they never go away, and they never stop doing it. And so I'll just say that these thefts impact not just the businesses, but the livelihoods of the people that work for those businesses. Because if you're a construction worker and you have \$10,000 worth of tools stolen, or your entire job site's worth of equipment stolen and materials, that's not a loss you can come back from. That might be your entire profit margin for that half of the year. So these thefts have real impacts on people who are productive to society. And the same people are doing them again and again and they're not being treated as repeat offenders under the current law. They're being treated as if it's their first time making a mistake. And I'm open to any questions.

**DeBOER:** OK, are there any questions? I have one for you.

**MICHAEL DECHELLIS:** Yes, ma'am.

**DeBOER:** This is somewhat of an unfair question. Have you-- so you've worked with a lot of these folks over and over again, you said you've seen the same people. Do you have a sense, is this drug related, like are the folks generally that you're seeing people who are making these kinds of big money thefts because they're trying to support a drug habit?

**MICHAEL DECHELLIS:** Almost always. I would say that-- I, I work a lot of financial crimes and some of those are not drug related, they're pure greed, but generally when you have people going out to physically steal something in person from a stranger, yes, it's-- they're supporting a drug habit.

**DeBOER:** Because I'm just, I'm just thinking about, and since we were invited to have this conversation today, I'm thinking about the fact that we keep trying to plug holes in the sieve that is, you know,

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Judiciary Committee February 12, 2026  
Rough Draft

prescribing every behavior, and we're not trying to get at the-- I don't know that we will ever plug all the holes if we don't try and get at the reason that people are in this situation.

**MICHAEL DECHELLIS:** I'll speak for myself rather than the sheriff's office. I am completely in favor of restorative justice measures like drug court. I've seen people really turn themselves around, people that I arrested on the street who look like scarecrows. You know, they're barely functioning as humans and then they go through that program and have a driver's license. They have a job and they look healthier. I agree that the root is the drug use. However, I'll say that a lot of these dedicated offenders who I could name-- in, in a more private setting, I could, I could give you exact names and the, and the crimes that they commit. Some of them you're talking about people in their 40s, 50s, they're on their 9th, 10th, 12th felony and they don't exist in a sober capacity outside of custody.

**DeBOER:** So that's where I'm wondering if, like, something like this is actually going to have any real effect on them.

**MICHAEL DECHELLIS:** Well, I'll say that to me, it's a tool for prosecutors when they see that dedicated offender, that person who literally cannot exist on the outside without stealing to support themselves. It's not a cudgel that's going to be, you know, employed against everyone.

**DeBOER:** I get that. I get that. But when I hear-- sometimes when I hear tool for prosecutors, I wonder at that point, are we too late? If the tools we're giving out to prosecutors, we might be too late. Like, maybe we need to be giving tools to someone further up the stream, but.

**MICHAEL DECHELLIS:** I, I would agree that, that all resources that can be dedicated towards drug treatment in the state should be put in place. I would say that there are some people who have spent 40-plus years showing that they will never live drug free and that they will never support themselves by legitimate means, and I think that this law is designed so that you don't get probation on your 12th felony just because you stole \$4,999 worth of property from an innocent stranger.

**DeBOER:** Are there other questions? We'll start with Senator Storm.

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Judiciary Committee February 12, 2026  
Rough Draft

**STORM:** Thank you. Thank you for being here. Would you agree, though, if someone's behind bars, they're not able to steal?

**MICHAEL DECHELLIS:** Yes, and that's, that's why I think the importance is there for the habitual criminal, not the person who's having a bad couple of years and is working to improve themselves. There are people who that is literally all they do is steal, and if they're out of custody, they are victimizing innocent citizens. And, realistically, the longer they are in jail or in prison on those offenses for which they're convicted you're preventing victimization that entire time.

**STORM:** Thank you.

**DeBOER:** Senator Rountree.

**ROUNTREE:** Thank you so much, Vice Chair. And thank you so much for your testimony today. Last year we dealt with a bill that dealt with people stealing in storm damaged areas. We heard that. Have we had any progress on that or did you see any reduction or are those still high-value things and also what other types of measures have you implemented to help to reduce the worksite theft?

**MICHAEL DECHELLIS:** So the sheriff's office regularly meets with the construction industry. I may have to ask you to repeat-- I'll start with the last question first. We have a representative who meets with Metro Area Builders Association to address the trends that they're seeing that maybe they don't take the time to report to us. We have specialized patrol units, specialized plainclothes units that go after both surveillance of high-theft areas, but then also because we know who-- we have roofing theft that's very common, particularly after there's a storm, there's a lot of it around. We know exactly who's doing that. I could take you to his house and Council Bluffs, right? And so we have specialized units that will conduct surveillance, then, on that individual and attempt to build that case or however many cases they can observe him committing crimes in. So there's surveillance methods, obviously, that are put, put in place, physical surveillance, electronic surveillance. Cell phones are a big source of evidence for law enforcement, obviously. And I'll say that for what we've done at the sheriff's office, not me, but what Sheriff Hanson has done is prioritized bringing more investigators into the unit so that we can actually have the time to work these often slow burn, difficult to prove cases. So it's about resources, it's about communication with the industry, and it's about responsiveness to evolving trends. And from a level of management much higher than where

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Judiciary Committee February 12, 2026  
Rough Draft

I am at the sheriff's office, that's, that's what we're doing. And then I, I believe you had some other questions.

**ROUNTREE:** That, that, that was sufficient for me.

**MICHAEL DECHELLIS:** OK. Thanks.

**ROUNTREE:** Thank you.

**DeBOER:** Any other questions? Thank you for being here.

**MICHAEL DECHELLIS:** Thank you.

**DeBOER:** We'll have our next proponent. Would anyone else like to testify in favor of the bill? Let's switch to opponents. Anybody in opposition to the bill?

**SPIKE EICKHOLT:** Good afternoon, Vice Chair 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 ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in opposition to the bill. I visited with Senator von Gillern a couple times about this bill and also Mr. Kester. I'll just respond to some of the things that have been said before. If you look at 28-518, that's the theft statute that delineates the penalty level when you commit any of the related crimes of theft. And if you commit any kind of a theft involving an item that is \$5,000 or more, it's a IIA felony. That's 0 to 20 years imprisonment. So I mention that, and that can be on your very first offense. So the courts already have the option, if you will, to give somebody significant time. So I think there's a couple of things that are driving this bill. One is maybe a frustration with the level of sentence that's being imposed in these theft offenses. And that's something that the county attorney can appeal for excessive lenient or can be resolved differently than this bill proposes. What the bill does do and what we're opposed to is it does change Nebraska's three strikes and your out law, the habitual criminal law. This may sound familiar to you because in 2000, I think it's '23, Nebraska revised its three strikes law, the habitual criminal law, to create this lesser category of habitual criminal offense and it was at the time for crimes that did not involve violence and certain other types of crimes. Senator Bosn brought a bill last year, and that proved to be sort of unworkable, if you will, in the court system, because there's always a disagreement as to what a crime of violence was and that sort of thing. Senator Bosn brought a bill last year that would repeal

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 12, 2026  
Rough Draft

altogether a lesser category, but after some discussion, the committee and the Legislature decided to narrow it to drug offenses, simple possession offenses, and these category of theft offenses, because as our-- the CSG group suggested, or CJI, I can't remember which one it was, recommended so many of these people getting caught up in these charges are drug users. It didn't include the forgeries, that's Chapter 28-600s, whatever that is, and it didn't include the bank fraud type things, that can still be the 10 to 60, but it did target these street theft type offenses and possession offenses. So that's only been law for about 4 months now, right, so this would undo that even further to make it an exception for thefts. And we don't think that's really the appropriate way to go. I understand there's frustration with repeat offenders. It's the difference between a mandatory minimum of 3 to 20 or a 0 to 20, and the difference, if you will, is something that the prosecutors have some sort of control over on whether to charge somebody, and I don't know if they're necessarily driving this bill. So I would encourage the committee to not act on the bill. For what it's worth, a couple of years ago, I actually-- we-- my Association of Defense Attorneys had a senator bring a bill to create like a new category of theft, actually a new felony classification between a 0 to 20, something like a 10 to 30, if you will, something like that. And we had it for thefts involving, I think it was \$25,000 or more, and the reason was that you have, you know, \$5,500 cars is a lot of cars. That's different than an embezzlement from a business of 200 and some thousand. Didn't go anywhere, unfortunately, because what you see in our criminal code, and I've talked about this before, is just a big gap between the 0 to 20 and the 1 to 50, 3 to 50 that we have now.

**DeBOER:** Thank you, Senator Eickholt-- Mr. Eickholt. Are there questions from the committee? Senator Rountree.

**ROUNTREE:** Thank you so much, Vice Chair. And thank you so much, Mr. Eickholt, for your testimony. So knowing that Senator von Gillern is not beholden to the language of the bill, but just having a conversation starter, is there, and hearing your testimony, is there any way that you could come to an agreement or massage the language so that the bill would be one that's viable or stay on the sideline.

**SPIKE EICKHOLT:** I think there, there might be. I mean, this is not the kind of crime that, and I can't speak for the deputy, but my impression is the people that are able to catch are pretty easy to catch. So you don't really need to change the elements of the crime. Chances are the drug addicts, they're just not very good at it,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 12, 2026  
Rough Draft

they're probably not really even trying to conceal their activities. They're just doing it and hope they don't get caught. The penalty range is there, and maybe there's a way to somehow provide for a more proportional punishment, if you will, if you have somebody that steals a lot of property, a lot of value, versus somebody that's just over the \$5,000 range. That might be something that's worthwhile looking at.

**ROUNTREE:** OK. All right. Thank you so much.

**DeBOER:** Thank you, Senator Rountree. Senator Hallstrom.

**HALLSTROM:** With regard to the 0 to 20 and the 3 to 20, a prior witness talked about the presumption of probation that we talked a little bit about earlier. Does that apply in the 0 to 20?

**SPIKE EICKHOLT:** No, it's only for the Class IV felonies.

**HALLSTROM:** Thank you.

**DeBOER:** Other questions? Thank you for being here. Next opponent. We'll switch to neutral testimony. Anyone here in the neutral capacity? Seeing none, that will-- I will announce for the record that we got three proponent comments, two opponent comments, and one neutral comment. That will end the hearing on LB1079 and bring us to LB1097 with Senator Conrad. Senator Conrad, welcome.

**CONRAD:** Thank you. Hello, Vice Chair DeBoer, members of the committee. My name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I represent north Lincoln in the Nebraska Unicameral Legislature. I'm here today to introduce LB1097. LB1097 would create an explicit civil cause of action for victims of child sexual assault and abuse and individuals with developmental disabilities who are victims of sexual abuse. This bill would waive sovereign immunity for state agencies and political subdivisions in these very specific cases. LB1097 creates a pathway outside of the current tort claims framework in response to recent Nebraska Supreme Court interpretations that have significantly limited the ability of sexual abuse victims to pursue civil remedies and ensure that they can be made whole. There's good reason for us to make a distinction for these victims. Children and individuals with developmental disabilities are some of the most vulnerable people in society. And particularly when those children and people with developmental disabilities are placed under the care, trust, supervision, custody, and control of government entities, they deserve

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 12, 2026  
Rough Draft

protection, the utmost protection. For most of the modern era, our legal framework struck the right balance, in my opinion. There was a rapid departure and divergence away from that balance in favor of big government actors when the Nebraska Supreme Court decided *State v. Moser* in 2020, and then a few years later, *Joshua M. v. State*, providing really breathtaking exemptions to previously existing law that have left significant gaps in accountability. So this leaves in place a dizzying maze, usually with dead ends at every turn for victims. And it restricts their ability to be made whole by the law. So if these same victims were to be harmed in a similar way at a private school or by a private entity, they would have a pathway to justice. When big government has a part to play in regards to the harm that they suffer, they get special privileges. And that's wrong. Let me be clear, this bill does not mean that a political subdivision is automatically liable for every injury a child suffers. In other words, if someone wants to sue a political subdivision like a school for sexual assault that happens to a kid, they must still prove that school officials were negligent in failing to protect that child or in failing to prevent the harm. This bill does not change the burden of proof. This bill would also provide for a 12-year limitation period beginning at the age 21 for child victims, along with extended timelines recognized delayed discourse amongst victims with developmental disabilities. Recent legislative discussions since the decisions in *Moser* and *Joshua M.*, have attempted to take up the Supreme Court's invitation that was clear on the face of those decisions, asking the Legislature to act and to clarify-- to remedy this unjust result. Additionally, I am committed to bringing this bill for my friend, Taylor Woods. She is an amazing young person. And she is a Lincoln resident with special needs. She was sexually assaulted on a school outing with LPS years ago. As her parents had a case pending against LPS, the *Moser* decision was decided and her case was abruptly dismissed. Taylor and her mother appeared before this committee many, many times, along with other families advocating for basic change and justice. Thank you to Senator Wayne's leadership and strong bipartisan support in this Legislature in recent years, we were able to adopt a measure that finally sought to remedy that wrong that the Supreme Court had identified in their decisions. Governor Pillen needlessly and heartlessly vetoed that measure, and there was no opportunity to override that veto. In the course of that experience, I came to get to know Taylor and her mom, Loree, and I promised them that after Senator Wayne left that I would be happy to take up their cause and to keep fighting for as long as it takes to get the law changed. Shortly thereafter, Taylor's parents were killed in a tragic

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Judiciary Committee February 12, 2026  
Rough Draft

accident and can no longer fight for her. But I'm going to keep that promise to Taylor and to her parents to keep telling her story and to keep fighting for her and others like her so that big government doesn't get special privileges when little kids get sexually assaulted. I'd ask for your favorable consideration of this measure. I'm happy to answer questions.

**DeBOER:** Thank you, Senator Conrad. Are there questions? Senator Hallstrom.

**HALLSTROM:** Senator Conrad, what would the applicable statute of limitations be if this goes into law?

**CONRAD:** So I think that if you look at the measure itself, it provides for, I think, a 12-year statute of limitations and that it would be, I think, have some tolling provisions based upon the age and the disability.

**HALLSTROM:** With regard to 21st birthday that's in--

**CONRAD:** Yes, that's right.

**HALLSTROM:** --other areas. OK. And you mentioned the difference between something of this nature happening at a private school versus in a public arena. You probably aren't suggesting that private and public schools ought to be treated equally and, and the same in, in all areas of the law.

**CONRAD:** I'm not, and we don't treat them the same in all areas of the law, but we do treat them the same in some areas of law. And when it comes to little kids getting sexually assaulted at their school, I think we should treat them the same.

**HALLSTROM:** Thank you.

**CONRAD:** Yeah.

**DeBOER:** Are there other questions, other questions?

**CONRAD:** Thank you.

**DeBOER:** Thank you, Senator Conrad. Are you going to stick around to close?

**CONRAD:** Yes.

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Judiciary Committee February 12, 2026  
Rough Draft

**DeBOER:** OK, we'll have our first proponent, please.

**SAM COLWELL:** Good afternoon, Vice Chair DeBoer, members of the Judiciary Committee. My name is Sam Colwell, S-a-m C-o-l-w-e-l-l. And I'm an attorney at the Rembolt Ludtke Law Firm. I'm here testifying in support of LB1097 on behalf of the Nebraska Association of Trial Attorneys. If my math is correct, in the 6 years since Moser, this is now the 12th time that a Moser fix has been brought before the Judiciary Committee. There have been different versions of the bill, but the through line has always been the same, that vulnerable populations and vulnerable people who have been sexually assaulted due to the negligence of their government should be allowed to hold their government accountable under Nebraska law. And if you look across the country, states differ significantly when it comes to their tort claims acts. Sometimes cases are tried to a jury, sometimes they're tried to a judge. Caps are different. There's different provisions regarding notice, different provisions regarding statute of limitations. Some states have intentional tort exceptions. Some states don't. They're certainly not a uniform Tort Claims Act. But despite all of these differences, there is one overwhelming consistency, the courthouse doors are not shut for victims of sexual assault. Nebraska is one of maybe three states where kids and parents are entirely unable to hold their school districts accountable under state law when those school districts negligently allow a kid to be sexually assaulted. To my review, those 47 other states, sexually assaulted children and developmentally disabled individuals have a path to potential recovery in negligence action against the subdivision or the state. In Nebraska, there is no path whatsoever. The most heartbreaking and difficult conversations that I have are with parents of developmentally disabled kids who have been assaulted and having to look that mom in the eye and tell her, sorry, Mom, there's nothing that we can do under Nebraska law. And the natural question then is from the mom, well, why not? I have to tell her because the government said so. I'm aware that it makes sense for Nebraska to deviate from the majority of the country on certain issues. There may be some underlying policy rationale that Nebraska has adopted that the rest of the country hasn't, but I don't know what policy rationale exists when it comes to sexually assaulted children and developmentally disabled Nebraskans. In these 47 other states, 1983 claims are available. In these 47 other states, they have criminal justice systems that hold perpetrators accountable. In these 47 other states, I am sure their taxpayers complain that their property taxes are too high. But none of these justifications have resulted in the state giving itself blanket

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 12, 2026  
Rough Draft

immunity. And I just want to close real quickly by thanking Senator Conrad for continuing to champion this issue on behalf of Loree and Taylor Woods. I also got to know-- sorry, I also got to know Loree and Taylor very well. And Loree was an absolute force who would do anything for her daughter. And I know that she made it her life's mission to change this. And the fact that she passed away before that happened breaks my heart every single time this comes before the Legislature. So I sincerely appreciate your time and consideration. And I hope that the 12th attempt at a Moser fix is the charm.

**DeBOER:** Are there questions? Senator Holdcroft.

**HOLDCROFT:** Thank you, Vice Chair. Well, there's not, there's not nothing that they can do, because they can go after the perpetrator, can they not? And there's no, no limitation on, on time for that to happen.

**SAM COLWELL:** Potentially. I mean, under--

**HOLDCROFT:** What-- potentially-- I mean they can, they can go after the individual who did the crime, can they not?

**SAM COLWELL:** Not always civilly, Senator Holdcroft, because the Political Subdivision Tort Claims Act, if they're acting within the course and scope of their employment, that perpetrator is entitled to immunity as well. Now we can make the argument that they fall outside the course and scope when they sexually assaulted a child, but-- and some courts have found that, but other courts have not. Because there is-- I would love to say it's as simple as saying a sexual assault is never in the course and scope, but one of the things that you look for when you are assessing whether something is in the course and scope of employment is the time and place where this occurred. And so if the sexual assault occurred during school hours or after school at extracurricular events or if it occurred, you know, on school grounds, there's a potential argument that the employee will also be immune and--

**HOLDCROFT:** He still committed the crime and he can still be prosecuted for that crime, can he not?

**SAM COLWELL:** You're absolutely correct, but there is no civil justice for the, the victim. And there's the civil justice system, and there's a criminal justice system. And in the civil system, the whole goal is to make the victims whole. And in the civil justice system making a

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 12, 2026  
Rough Draft

victim whole means money damages. That's how we do that. And in the criminal justice system, it's punishing. And the civil justice system is not meant to punish. So you are entirely correct that the criminal justice system can pursue the perpetrator and they should with all their might. But as it relates to the victim's ability to actually recover and be made whole, as it stands right now, it's impossible.

**HOLDCROFT:** And this would also open up for not just schools, but also for counties, cities, anyone who could be found liable for allowing this to happen.

**SAM COLWELL:** Correct any, correct any political subdivision or, or state.

**HOLDCROFT:** OK. Thank you.

**DeBOER:** Thank you, Senator Holdcroft. Senator Hallstrom.

**HALLSTROM:** Yes, sir, are you aware of any concept in the law in other states that addresses the issue that you've raised in terms of course and scope of employment that the commission of a sexual assault, for example, is deemed by law not to be within the course and scope?

**SAM COLWELL:** Yes, that's-- you're, you're correct. Some courts have found that, per se, that a sexual assault will never be in the course and scope. Some courts have.

**HALLSTROM:** Outside of courts, have any states put that into their statutes?

**SAM COLWELL:** That's a good question.

**HALLSTROM:** If you're aware.

**SAM COLWELL:** I'm not, I'm not aware. I'll, I'll look into it for you, Senator.

**HALLSTROM:** Thank you.

**DeBOER:** Thank you, Senator Hallstrom. I don't see any other questions, but I do have one for you. In these 40 other-- you said there are 47 other states that allow someone who is the subject of sexual assault because of the negligence of a political subdivision or of the state to sue. Have you-- do you have information on whether or not there have been sort of a rash of awards given or whether there have been,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 12, 2026  
Rough Draft

you know, problems with the state's solvency or the political subdivision solvency?

**SAM COLWELL:** Not, not to my knowledge, Senator, and, I mean, these-- thankfully, you know, these cases are not super common, but when they occur, they're serious, and other states have recognized that. In fact, Texas just last year implemented a similar piece of legislation to what-- to LB1097, and so states are still enacting laws to help remedy these sorts of situations. So no.

**DeBOER:** So is it-- this is asking for speculation, which we can do here. You can't in the courtroom. But will you speculate for me about whether or not you think that if we were to pass this law, there would be a number of folks who would come forward and bring lawsuits?

**SAM COLWELL:** I would be happy to speculate and tell you no. I don't think that would be the case. And we know that because if you look at pre-Moser, which was before 2020 when the Moser decision came down, political subdivisions in the state were not being decimated by sexual assault litigation. They, they just weren't. And so I, you know, I, I do not think we have any risk of, of these cases bankrupting political subdivisions of, you know, resulting in any sort of floodgates being opened.

**DeBOER:** Do you think there would be a deterrent effect for political subdivisions and school districts and all of those groups in terms of trying to make sure that folks weren't committing these assaults? I mean, I would assume that they're already doing that. Do you think there would be an additional deterrent effect?

**SAM COLWELL:** Absolutely. Absolutely. I mean, that is part of the, the reasons that we have the tort system generally is to deter negligent conduct and to help facilitate conduct that we want to see as a society.

**DeBOER:** All right, let's see if there are any other questions. Senator Hallstrom.

**HALLSTROM:** I'm trying to read through this quickly, Senator DeBoer's question. Is this, is this not retroactive in that as long as they're within the statute of limitations for some of those instances where somebody might come forward over time that they would be eligible on a retroactive basis to maintain claims?

**SAM COLWELL:** Sure, Senator. I think it's specifically retroactive to developmentally disabled Nebraskans. But as it relates to children with sexual assault, I think it's just the 12 years from the date. And because this would be a new statute that would be enacted, children who have been sexually assaulted, who have not pursued the claim or who are not otherwise time barred, it's my understanding that they would be permitted to bring suit.

**HALLSTROM:** OK. Thank you.

**DeBOER:** Other questions? Thank you for being here.

**SAM COLWELL:** Thank you.

**DeBOER:** Next proponent.

**ELIZABETH GOVAERTS:** Good afternoon, everyone. My name is Elizabeth, E-l-i-z-a-b-e-t-h, Govaerts, G-o-v-a-e-r-t-s. I'm here on behalf of the Nebraska Association of Trial Attorneys in opposition or in support of this bill. I want to just briefly talk about what I anticipate, anticipate our opponents argument will be, because in the other 12 times, the argument was, well, there are other remedies available for kids who are raped at school, Title IX and 1983. This is absolutely incorrect and the hurdles for bringing cases under these federal statutes are so high that they are almost insurmountable. First of all, with respect to Title IX, that was a statute initially to bring parity in education so that everybody has equal access to education. And the goal was to end discriminatory practices. Title IX did not even have a compensatory component to it, number one. 1983 is a little broader, although it seems like in these federal cases that the Title IX and, and 1983 claims get kind of overlapped and conflated with each other. They're actually separate claims. When you think about like a, a due process or equal protection kind of claim, it is a little bit broader and it does allow for compensatory damages. But in those types of cases you have to prove an almost impossible legal standard. And, again, Title-- or 1983 is a discrimination situation too, wasn't really meant to address sexual assault. But you have to prove in these cases against the school that the school was deliberately indifferent to known acts of discrimination that occurred under its control. So if you are the child, the only child raped at school, you will never ever meet that burden under 1983. We had a case 10 years pre-Moser. It involved a little boy in Lincoln who was raped in a school bathroom by a man who had walked into the school in full view of the entire school, was actually talked to by various teachers.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 12, 2026  
Rough Draft

And he went into a bathroom and forcibly raped a kindergartener. We brought that case and it is memorialized in A.W. v. LPS. And the Supreme Court went through a very reasoned discussion about the tort liability responsible-- the school's duty and the foreseeability of this conduct. And that's a heavy burden, too. So these cases will be analyzed as they should be under this law, which is under a negligent standard. Does the school have a duty and is the conduct foreseeability and it allows for them to recover civil damages.

**DeBOER:** Let's see if there are any questions. Senator Hallstrom.

**HALLSTROM:** This may be only in the context of the statute of limitations, but we've had, I think Senator Dungan had a bill to remove the statute of limitations for certain sexual assault. And I dealt with statute [INAUDIBLE] issues before. Can you speak to the element of the passage of time and the memory is fading and things of that nature and what your thoughts are on the statute of limitations of the period of time that can elapse from when the act occurs to when the action may be brought?

**ELIZABETH GOVAERTS:** I want to be sure that I'm understanding your concern. Are you saying that--

**HALLSTROM:** It's not a concern, I'm just wanting you to expound on what sometimes is an argument with regard to the statute of limitations and having too long of the statute of limitations can, can prove to be unfair to some of the litigants.

**ELIZABETH GOVAERTS:** Yeah, yes, and that is a common argument when the farther you are away from the acts, the harder it is to mount a defense. That is an understandable concern. The other concern, the counterweight to that, is the fact that we're talking about vulnerable plaintiffs, children who may not tell, and developmentally disabled individuals who may not be able to tell. And I-- you know, is that eventually harder to defend, also probably harder to prove from the plaintiff's side, too, the farther you get away from the actual sexual assault.

**HALLSTROM:** Thank you.

**DeBOER:** Other questions? OK, let me just ask you this. If this goes into place, you still have to prove that they were negligent.

**ELIZABETH GOVAERTS:** Absolutely.

**DeBOER:** You still have to show with the preponderance of the evidence that they had a duty, they breached the duty, and that the breach caused the damages, right?

**ELIZABETH GOVAERTS:** Absolutely.

**DeBOER:** So this doesn't change anything about that.

**ELIZABETH GOVAERTS:** It doesn't. And the A.W. case had a pretty high bar in foreseeability because you have to realize that the whole issue in that particular case was, was it foreseeable when this man walked into the school in full view of several other teachers, was it foreseeable that he was there to, to commit a sexual assault? And, of course, LPS vigorously defended that case. So, yeah, it's-- these, these cases are, are going to be put to a strict burden of proof, like all the negligence cases are.

**DeBOER:** OK. Senator Hallstrom.

**HALLSTROM:** Since you're a different witness than the last one, your thoughts on course and scope of employment. I'm trying to do some quick research here, and I'm finding some support that if you have a criminal activity that's clearly not related to the, to the purposes of your, of your employment, that you are not within the course and scope of your unemployment or could be found not to be within the course and the scope of your employment, and, therefore, there would be personal liability against the individual who's perpetrated the offense against the, the victim.

**ELIZABETH GOVAERTS:** Yeah, and-- but I want to just add a practical consideration to that scope and course thing. Let's say you bring a successful lawsuit against someone who has committed sexual assault against a child. Where is that person going to be for the next 10 to 15 years? They will be incarcerated and will be essentially judgment proof anyway. So, yes, it is true that if all the stars aligned and if our courts would interpret the scope and course issue as to not include the commission of crimes, a child can get a judgment against that individual.

**HALLSTROM:** Or you can provide so in the statute.

**ELIZABETH GOVAERTS:** Sure.

**HALLSTROM:** And if, and if this occurred in a private setting, no public Political Subdivision Tort Claims Act protection, you obviously

don't have that, that protective net for, for better or in this case for worse, but that's all you have to go after is the private individual who's going to be incarcerated just the same.

**ELIZABETH GOVAERTS:** I don't think that's-- we're talking about-- or I guess I was talking about schools, I don't think that's necessarily true that you would-- what if you have a private agency taking care of developmentally disabled people that's not the state. I, I don't think there's any difference with respect to holding employers responsible if they have a duty to that individual and a private actor can still have a duty of care for a disabled individual or a child, so I don't think that part is any different.

**HALLSTROM:** Other, other than if they don't have that duty and if they're not held responsible then you've got an individual and there's no deep pocket behind it.

**ELIZABETH GOVAERTS:** And if a, a trial court would hold in, in one of these cases that there was no duty of care on behalf-- because we still have to prove all that with school, or DHHS that Joshua was a foster care case, a horrific foster care case. And, and so if it was a, you know, I don't know, a private day program or something like that, you would still have probably an employer and an employee and you would still arguably have duties to your person that's in your custody.

**HALLSTROM:** OK. Thank you for your answer.

**ELIZABETH GOVAERTS:** Yeah.

**DeBOER:** Any other questions? Thank you for being here. Next proponent. Welcome.

**ELIZABETH EYNON-KOKRDA:** Thank you, Senator DeBoer, members of the Judiciary. My name is Elizabeth Eynon-Kokrda, spelled E-l-i-z-a-b-e-t-h E-y-n-o-n-K-o-k-r-d-a, and I'm General Counsel for Education Rights Counsel, which is a nonprofit whose mission is to protect every child's access to education. I don't want to reiterate what the prior testimony has said, but what I think I want to do today is tell you how real and how important this is because we see it at Education Rights Counsel more often than we would like. We represented an intellectually disabled child who was raped by a peer on a back stairwell. However, that back stairwell was known to have been a place where a prior sexual assault had happened. It wasn't monitored. There

was no camera. There was security measures. That doesn't necessarily mean that the school was negligent. It would have to be proven. But somebody should be able to raise that issue. ERC has represented another intellectually disabled child who again was raped by a peer who was part of a group that was known to be specifically targeting disabled children for sex. The rape was in a bathroom that locked from the inside and the child returned bloodied to her classroom where no one noticed or even asked about these visible harms. Across Nebraska, we have seen case after case of teachers and paras sexually assaulting minor children: Madison, Maywood, Omaha, North Platte, Norris, Grand Island, Franklin, Stapleton, Loup County, Papillion-La Vista, and just last week in Palmyra. These situations do not necessarily arise due to the negligence of the district, but sometimes it can be. So for instance, in the Omaha case that I referenced, the teacher that had been hired had a history of hugging and tickling other children and had been terminated for employment for inappropriate behavior with children before. Again, current law doesn't even permit us to raise the possibility that that school's negligence contributed to these serious sexual assaults. By creating a clear avenue for possible liability in the very limited circumstance of sexual assault of a child, we can reinforce the standard that protecting students is an option. Children, especially disabled children, can't advocate for themselves. They rely on adults in institutions like Education Rights Counsel and like this Legislature to protect them. The Nebraska Supreme Court has, as you heard, expressed frustration in the Moser case and the Joshua case where they've said there's no debating that the abuse of a child entrusted in this case to the foster system is deplorable and stated that the Legislature can narrow the scope through its lawmaking process. And that's what this bill proposes to do. As a matter of public policy, the creation of a narrow exception would permit a claim when a child is sexually assaulted. We should stand with children. We thank Senator Conrad for her commitment and urge you to move LB1097 out of committee for consideration by the Legislature. And I'd be happy to take any questions.

**DeBOER:** Let's see if there are any questions. Thank you for being here.

**ELIZABETH EYNON-KOKRDA:** Thank you.

**DeBOER:** Next proponent. Anyone else here to testify in favor of the bill? We'll move to opponents. Anyone in opposition to the bill? Welcome.

**CHUCK WILBRAND:** Good afternoon, I'm Chuck Wilbrand, I'm a partner with Knudsen Law Firm, and that's C-h-u-c-k W-i-l-b-r-a-n-d, and I'm here on behalf of ALICAP. ALICAP is a risk liability pool for school districts. I oppose LB1097, but I am not unsympathetic to the situations that these families and these individuals have to go through. ALICAP is committed to providing training to school districts and the first semester alone over 200 public school districts provided in-- training provided by ALICAP to assign their staff to complete various trainings including trainings on sexual misconduct, sexual assault, mandatory reporting, and everything else. The problem with this bill is, that I have with this, is several areas. Number one, it takes it completely out of the Political Subdivision Tort Claims Act, which means there's no notice. The statute of limitations changes. The caps change. There's no caps once this bill-- under this bill. There's reasons for those notices. It allows the political subdivision to prepare. There's reasons for those caps, which is to prevent the liability of having those large verdicts. I've heard testimony today that there is no other avenues. I disagree with that. There is the Section 1983 claims. There are Title IX claims. I have defended school districts in both of those. And to say that it's impossible to bring those claims, I would disagree with, because I have seen them and I have defended them. And some of those have been settled because of the viability of their claim. The issue that will be arising out of this statute is that I understand the equity to say, well, private school districts can be held liable for this. Private school districts can't be held liable under 1983 or Title IX. Those two statutes also do not have caps and it provides for attorneys' fees, something that, again, this doesn't. And, finally, you know, I've touched on it, but once this goes through, if you remove caps, you remove it out of the Political Subdivision Tort Claims Act, it is going to have an impact on, on the taxpayers because that, ultimately, will be passed out. I understand in some cases, there may or may not be insurance, but if you get a big enough judgment, there's not going to be insurance coverage for that. That will get passed on to the school district itself, which will, ultimately, get passed on to the taxpayers. I'd be happy to answer any questions that you may have.

**DeBOER:** Are there questions? I have a few questions for you. Since the Moser decision was made, have the premiums for ALICAP gone down for their-- for the school districts?

**CHUCK WILBRAND:** I don't have any knowledge to that one way or the other.

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Judiciary Committee February 12, 2026  
Rough Draft

**DeBOER:** OK. If Senator Conrad were to amend her bill to put in notices, to put in caps, to put in attorneys' fees, whatever of that, that, that, you know, were the subject of your objections, would that, would that change your standing on the bill?

**CHUCK WILBRAND:** Well, as it relates to political subdivisions, I know State Tort Claims Act doesn't have caps. They have notices as well. The issue, though, is-- with that is, I think that could be a step forward to work with it. But as it stands right now, that's a big concern that they have.

**DeBOER:** So she puts caps in, she puts in the awarding of attorneys' fees and notices, doesn't have to mirror anything else, she just puts those into this statute, then are you guys neutral?

**CHUCK WILBRAND:** I think the other issue that we will have with this is once-- this is only related to sexual abuse.

**DeBOER:** Sexual assault of a child.

**CHUCK WILBRAND:** Sexual assault of a, of a child, correct. What we also fear is that it will begin the declaration of sovereign immunity across the board. So once this domino falls, there is the concern that all the other dominoes will fall from it.

**DeBOER:** You know, I hear that a lot in the Legislature over the last 8 years is, oh, well, if we let this, then all these other things. I'm afraid that this Legislature would just do nothing if we listen to all the times that I hear that question or that concern. But I do think there is something uniquely heinous about the sexual assault of a child. You've heard the cases that we heard sexual assault of a child, a lot of these times, a developmentally disabled child, something like that. I think you can come up with a pretty sound argument that that would be able to be treated differently. And I've seen in the last, what, 6, 8, however many years it's been that we've been bringing these bills that they have been focused, and the ones that have been the most successful have been focused.

**CHUCK WILBRAND:** And I have seen those sexual assault cases, too. And they-- yeah, they're all-- they are horrific. And, you know, everybody wishes it did not happen. Now, that gives them-- there are the ways, and the ways I've seen them were under 1983 in Title IX. And those were-- that's how they came across my desk.

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Judiciary Committee February 12, 2026  
Rough Draft

**DeBOER:** Would you agree that not everything could be a 1983 or a Title IX case?

**CHUCK WILBRAND:** Sure, not everything is. Correct.

**DeBOER:** So then there will be some people in the state of Nebraska who are children who are sexually assaulted due to the negligence of a school district or a political subdivision who will not have a recourse either under Section 1983 or Title IX for their harm.

**CHUCK WILBRAND:** That, that is possible, yes.

**DeBOER:** Thank you. Any other questions? Thank you for being here.

**CHUCK WILBRAND:** Thank you.

**DeBOER:** Next opponent. Welcome.

**BRANDY JOHNSON:** Vice Chair DeBoer, members of the committee, my name is Brandy Johnson. Good afternoon. I serve as General Counsel for Nebraska Intergovernmental Risk Management Association known by its acronym NIRMA. I'm testifying on behalf of the 85 county members of NIRMA. I want to start by saying NIRMA takes assault very seriously. We're dedicated to ways to prevent assaults from happening. We provide HR services, training in law enforcement, legal consultations. We attack it from a prevention standpoint. Our members share the concern that victims of crime deserve these efforts when they get prevention and redress for the harm done to them. NIRMA respectfully opposes LB1097 because it could hinder those crime prevention efforts and it isn't a fiscally responsible way for the Legislature to approach redress for these crimes. This bill would, again, create litigation outside of the Political Subdivision Tort Claims Act. So I want to just start by revisiting why that Tort Claims Act was enacted and why public entities are treated differently. The Tort Claims Act actually got rid of traditional sovereign immunity for most negligence cases. It retained it for the unusually severe cases like these. And it put some procedural guardrails in place that have been talked about already on the claims it did allow. Because these are suits when it's against a public entity that implicate taxpayer dollars that are already budgeted and very much needed for public services. So when for cases arising out of assault, retaining immunity doesn't reflect a lack of concern for crime victims or any special treatment, it reflects the Legislature's responsibility as stewards of the public fisc. Because when a county for instance incurs an unfunded monetary

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Judiciary Committee February 12, 2026  
Rough Draft

obligation and in these cases for counties, I don't think we're talking about frequency, we're talking about severity of a single case. And it shows up in one or more of three ways. It either diverts money away from the public purposes that that government entity is serving: risk management prevention, law enforcement, prosecutorial work, victim services, the things that prevent these types of crimes in the future and address them in other ways. It shows up as higher property tax levies that can last many years, or the county is coming back to the Legislature to ask for state aid or other tax increases. So when it comes to the, the negligence standard that has been discussed that would be opened up under this bill, these are overwhelmingly tragic cases and the lower standard really does become more like strict liability on the taxpayers and shifting the burden, the burden away from the criminal perpetrator. When we talk about course and scope of employment, if, if this cause of action were to be allowed and if the argument was that the employee was acting within the course and scope of their employment, then it is strict liability. It would be responding at [INAUDIBLE] or the entity would be held responsible for the act of the criminal perpetrator on a strict liability basis. So I think there is that misperception in these cases, especially if they're tried to a jury that the, that the public entity is a deep pocket that's not going to be affected by a large judgment, but the reality is that public entities-- suits against public entities that they do affect all Nebraskans, that if we have a seven figure jury verdict that could collapse a small entities budget. So I see my time is up. I just want to close by saying respectfully, we ask that the committee not advance this bill and instead consider other ways that the good intentions behind this bill can be honored without regarding the fiscal stewardship that's built into the Tort Claims Act. Thank you.

**DeBOER:** Senator Holdcroft.

**HOLDCROFT:** Thank you. Would you mind spelling your name for us?

**BRANDY JOHNSON:** Oh, I apologize. I, I forgot that step. It's B-r-a-n-d-y J-o-h-n-s-o-n. Thanks for the reminder.

**DeBOER:** Other questions? I have one for you. Right now, can someone sue the state or a school district or a political subdivision if, for example, they slip on some ice and the state is found negligent for that in their parking lot?

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Judiciary Committee February 12, 2026  
Rough Draft

**BRANDY JOHNSON:** Yep, that, that would be one of the types of cases and negligence that the Tort Claims Act currently allows. And, again, the distinction here is that these are unusually severe cases that represent a, a much larger exposure.

**DeBOER:** So because what we have let happen as a state is a much more heinous thing that is unusually severe, you're saying that the state shouldn't accept liability for a much more heinous, much more unusually severe thing than if they were negligent in the upkeep of their parking lot?

**BRANDY JOHNSON:** Well, I think that the, the fiscal guardrails are there because of the severity of the case. So this particular bill would take away all those guardrails as has been discussed earlier.

**DeBOER:** Speak to me about what you mean by guardrails.

**BRANDY JOHNSON:** I mean a pre-suit notice requirement, statute of limitations.

**DeBOER:** Slower, sorry, I can't, I can't keep up.

**BRANDY JOHNSON:** I apologize. Pre-suit notice requirements that give the entity a chance to examine the facts, decide whether early settlement is, is a viable option. The requirement of trial to the bench instead of to a jury to, to keep the focus on the law and to avoid that risk of it becoming collapsing into a strict liability standard. The, the caps in the Political Subdivision Tort Claims Act wouldn't apply to the state but would apply to the counties in the school subdivisions.

**DeBOER:** Pardon me. So if we were to put those guardrails, as you call them, into place, would that change your position?

**BRANDY JOHNSON:** I would have to see the measure that would be proposed. I never want to be closed-minded about, about these things. And so--

**DeBOER:** OK.

**BRANDY JOHNSON:** --we would definitely be willing to--

**DeBOER:** Senator Storm.

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Judiciary Committee February 12, 2026  
Rough Draft

**STORM:** Thank you. Thank you for being here. So can we put caps on these, like medical malpractice? Can you say we're going to cap this at \$1 million?

**BRANDY JOHNSON:** Under the Tort Claims Act, there would be a \$1 million cap per incident, \$5 million for multiple in the Tort Claims Act, currently. This bill would not have any caps.

**STORM:** Yeah, but say if we passed something like this and we had a cap on it, so we're not looking at a \$30 million judgment, maybe a million-dollar judgment cap, that would be something, correct? I think it would.

**BRANDY JOHNSON:** That would be, I think, an improvement over the, the current bill when you consider the fiscal responsibility side of it.

**STORM:** So, OK. Thanks.

**DeBOER:** Thanks, Senator Storm. Thank you for being here. Next opponent. Welcome.

**JENNIFER HUXOLL:** Thank you. Good afternoon, everyone. My name is Jennifer Huxoll, J-e-n-n-i-f-e-r H-u-x-o-l-l. I'm the Civil Litigation Bureau Chief for the Nebraska Attorney General's Office. My office is, is primarily responsible for any litigation brought against the state of Nebraska or any of its officials or employees. I'm testifying in opposition to LB1097. LB1097 is not going to reduce crimes against children or individuals with developmental disabilities. They are going to simply-- it is simply going to make our friends and neighbors, the taxpayers of Nebraska, financially responsible for judgments resulting from the harms caused by criminals who commit these crimes. And I think that's one of the primary differences between the slip and fall case that you just asked about Senator DeBoer, because you do not have an intentional tortfeasor that is in between you and the liability. In these cases, in every single one of them, there is someone involved who has committed a criminal act against a child or against a disabled individual. The reason that the Attorney General was concerned about this is the bill erode-- this bill erodes a fundamental protection that state sovereign immunity affords. Sovereign immunity is, at its heart, a protection for Nebraska taxpayers. It is essential to the ongoing operation of our government by limiting potential claims for damages, which may be brought against the government, claims that must be paid by our tax dollars. Each time sovereign immunity is waived, it becomes easier to

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Judiciary Committee February 12, 2026  
Rough Draft

waive taxpayer protection for the next category of claims. If you allow claims for victims of sexual assault under LB1097, how will you distinguish future claims by victims of other serious criminal conduct? What's the difference? The result is potentially unlimited exposure to claims for damages against the state of Nebraska and its political subdivisions. All of which must be paid again with taxpayer dollars. Unlike the federal government, Nebraska must have a balanced budget and can't print money. While each of the situations described by proponents of the bills are heartbreaking, we must think carefully about who should be held financially responsible for the harm caused by bad actors and bad actors themselves. Is it the bad actors or is it the Nebraska taxpayer? Some of the other specific concerns I agree with, they have been outlined. This takes it outside the State Tort Claims Act. The State Tort Claims Act allows the state to investigate claims on a timely basis to preserve records, issue litigation holds, make sure that evidence is preserved in the event that a claim is brought. We, we would lose that if you-- if this bill is, as written, takes it outside the State Tort Claims Act. The other concerns we have is just that the-- essentially, negligence claims where the standard becomes that the state knew or should have known. And I always speak on behalf of the state, obviously, that something bad might occur is a very low standard compared to Section 1983 and I must be doing something wrong as your chief litigator for the state because I see 1983 claims all the time and I've settled three cases involving-- arising out of, arising out of a tort or battery and arising out of an HHS sexual assault just since I've been chief. So you can't sit here and tell me that they don't exist. And those claims, you all know about them. You can go back and look at the claims bill where the, the subsequent appropriation had to be made in the claims bill to pay it.

**DeBOER:** Just going to note your red light there for you.

**JENNIFER HUXOLL:** Thank you.

**DeBOER:** OK.

**JENNIFER HUXOLL:** I'm happy to take any questions.

**DeBOER:** OK, thank you. Let's see if there are any questions. Senator Hallstrom.

**HALLSTROM:** Yeah, I asked a couple of witnesses, and just for your opinions, if you have any on the issue of criminal activity impacting

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Judiciary Committee February 12, 2026  
Rough Draft

whether or not the employee is considered to be within the course and scope of their employment?

**JENNIFER HUXOLL:** It's a great question. Under this state statute, which I know better than any of the political subdivision statutes, our, our provision provides that we have the ability to not provide indemnification or representation in the event of malfeasance. And so I'm aware of no time when a state employee has been charged with a crime where we provided representation or, or that, that we came in, in that situation and found that it was arising out of the employment of the individual. A good example of that is when the State Patrol had the crime lab individual. She was charged with a crime, obviously all of that was happening in the course and scope of her employment, but we did not [INAUDIBLE] with this information and we found that the criminal act itself was one step removed from any course or scope of her employment.

**HALLSTROM:** I think there was Investigator Kofoed with regard to the Murdoch murders. Do you know whether there was criminal and/or civil liability for that individual personally?

**JENNIFER HUXOLL:** I don't recall. I know there was-- I don't recall. I'd have to check on that, Senator.

**HALLSTROM:** Thank you.

**DeBOER:** Other questions? Thank you for being here.

**JENNIFER HUXOLL:** Thank you.

**DeBOER:** Next opponent. Oh, no, Elaine.

**ELAINE MENZEL:** Sorry.

**DeBOER:** No problem.

**ELAINE MENZEL:** Vice Chair DeBoer and members of the Judiciary Committee, for the record, my name is Elaine Menzel, that's E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials, the Nebraska County Attorneys Association, the Nebraska Sheriffs' Association, and the League of Municipalities in opposition to LB1097. I'm not going to repeat the same testimony that the previous opponents testified to because they did a good job explaining our concerns about that. But first I-- well, I guess it becomes second because I made that statement. I'd like to

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Judiciary Committee February 12, 2026  
Rough Draft

state sexual abuse, particularly of children, individuals with developmental disabilities, and vulnerable individuals is awful. Their trauma and lasting harm must never be minimized or diminished by our society. Our opposition is not to the validity of victims' experiences, but to the substantial legal, structural, and fiscal consequences LB1097 would create for counties and other political subdivisions. But now what I'll do is go a little bit into the history of the Political Subdivision Tort Claims Act and the State Tort Claims Act. Back in 1969 is when they were enacted into statute. They were enacted after the year before there had been a legislative study or interim study, I should say, and the legislative history does not explain why the exemption was adopted for intentional torts, but it does-- but it likely drew from Iowa's similar framework because that is where a lot of the framework of the Tort Claims Act and the State Tort Claims Act came from. For decades, the Nebraska Supreme Court has interpreted and applied this exemption. The court has now issued several published decisions addressing whether claims involving assaults or batteries fall within the exemption. These decisions are described in the most recent and most definitive case as described by Senator Conrad and others, the Joshua case, which provides a historical perspective of those cases. There are, as I recall, 10 or 11 cases that have been discussed. LB1097 would disrupt a nearly-- a 57-year-old statutory legal structure with the Tort Claims Act that were built with defined boundaries around sovereign immunity as those before me have discussed. The suffering of survivors is real and their voices must be heard, but policy changes with legal and fiscal consequences require careful consideration. For these reasons, we ask that you please oppose this legislation, and I'd be happy to answer any questions at this time.

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

**ELAINE MENZEL:** Thank you so much.

**DeBOER:** Thank you. OK, next opponent. Is there anyone here in the neutral capacity? Senator Conrad. As Senator Conrad is approaching, I'll tell you that for LB1097, we had 45 proponent comments, one opponent comment, and one neutral comment.

**CONRAD:** Great. Thank you, Vice Chair. Thank you members of the committee. I'll be brief. I want to thank everybody who took time to come out and share their perspective on this legislation, including opponents. Believe me, I can appreciate how hard it is to take an unpopular position on a matter of public concern. Believe me, I know

as a civil rights attorney and as a policymaker how challenging that is. And I know that the people who came forward to share their perspective are serious professionals and they take their role very seriously and they do a great job representing their clients' interests. But what I do want to put a fine point or reaffirmation on is a couple of things. One, opponents were here, only, only government lawyers and lobbyists. The opponents that you heard from today didn't include a chorus of voices from Nebraska taxpayers or everyday citizens. They're government lawyers and lobbyists who came to ask for special protection for government. OK? I want to make sure to be clear about that. The other thing is this: there was a lot of [INAUDIBLE] testimony from opponents today that they were concerned that this approach took things out of the framework that they're used to operating within for the State Tort Claims Act or for the Political Subdivision Tort Claims. Friends, friends, I introduced LB156 last year. It's carried over to this session. It's pending before your committee. It was responsive to Governor Pillen's veto that found LB25 to be too expansive. And it was narrow within the confines of the State Tort Claims Act and the Political Subdivision Tort Claims Act only for sexual assault at school. And the exact same opponents opposed it that came today. So if they prefer a remedy that works within those structures, we can take it up. I introduced it last year. We had a great hearing on it. Opponents disliked that as well. LB156 was so narrow that the Nebraska Association of Trial Attorneys opposed it because it was too narrow, as did a cadre of government lawyers and lobbyists, like you heard it from today. I prioritized that measure. I made it my personal priority bill last year and it didn't even get out of this committee. But it's alive, it also didn't get killed. So if there's a preference to have a super narrow focus within existing structures of the law, that exists and is pending before you in LB156. And go back and check the exact same opponent arguments on your transcript from March 26, 2025 on that incredibly, incredibly narrow approach to addressing this frustrating issue. Senator Holdcroft, I know you and I have talked about this issue many times. I know that you have looked at it many times. I know you are a thoughtful and serious legislator. Let me just provide a few examples of why solely a criminal justice response to this situation doesn't help to provide victims with the services and restitution that they need to address the harm. So in the case of my friend Taylor, for example, she was assaulted by another student in her program. And here's where things went awry. So the other student who assaulted her is a young person with a developmental disability. There weren't criminal charges brought for a variety of different reasons. But here's the problem, so

there was no criminal response there. And even if there was, it would include locking away not a little kid, but a young adult with developmental disabilities. And it would be unlikely that Taylor and her family would be able to recover civil remedies or restitution from that individual for a variety of different reasons. OK? But the problem was LPS knew that the perpetrator had a history of inappropriate touching and sexual assaults and things like that. And the reason that the school was negligent in that regard is because they knew it. They were on notice, and they didn't have the right staff in place to prevent the assault between people. So the same thing happened in Moser, where a nonviolent offender was double-bunked with a murderer. And both parties told the Department of Corrections if you keep us in this tinderbox, one of us is going to end up dead. If you keep in this tinderbox, I'm going to kill this guy, and he did. The Department of Corrections knew when they put together a murderer and a nonviolent offender, and there were multiple instances that he said he was going to kill him and he killed him, the Supreme Court said, sorry, out of our hands, we're going to change the precedent and the Legislature can fix it. In Joshua M, there was four or five little kids whose mom got killed in a car wreck and their dad was an alcoholic and nobody could take care of them. So they went into the foster care system and their foster dad abused them viciously. Sexual assault, physical assault, verbal assault, emotional assault, and HHS knew about it. And just a few years ago, the Nebraska Supreme Court turned its back on 40 years of precedent and let HHS off the hook. So this is what we're working within here, and the narrow, narrow remedies that I'm bringing forward in LB156 or in LB1097 can and should be examined, because criminal punishment or restitution, related thereto, isn't always going to keep the victim whole. And if somebody has the ability to pay, many times they're judgment proof, but even if they do, and the court orders restitution, there's-- those restitution orders are inferior to other things like child support orders or other judgments. So those crime victims are last in place if there's even-- if the assailant is, is even able to pay. So let's take, for example-- and, again, this is a negligent act, so let's just say school X doesn't do its due diligence and negligently hires and negligently supervises a custodian with a history of sexual assault and a kid gets assaulted. My bills would change that and ensure when the school has a hand in the negligence that caused the harm, somebody can pay for the victim's medical bills, and counseling bills, and respite care, and things like that that sometimes haunt the victim for a lifetime. Many instances, that janitor, once he can and should be held accountable in the criminal justice system, let's say he's making

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Judiciary Committee February 12, 2026  
Rough Draft

minimum wage, he's not going to be able to pay for those bills. And he isn't solely responsible for what happened. There was also a negligence component there. And I'm sorry, but opponents were absolutely-- and perhaps they misspoke or perhaps they're confusing it with the other 12 attempts that we've seen before, my bill before you today does not vitiate a requirement of a finding of negligence. The lawyers on this committee know how it works. To establish negligence, you have to have duty, breach, causation, damages, generally speaking. You have to prove those, not just allege those, you have to prove those. It does not change the burden of proof. It does not create a strict liability. If opponents would prefer to go within the caps that exist within the State Tort Claims Act, the State Tort Claims Act doesn't have that, but the political subdivisions do. I'd be happy to do that. I have that bill pending before you in LB156. If Senator Hallstrom or others want to work on statute of limitations, this is modeled after the 12-year statute of limitations for other areas of sexual assault. I'm happy to do that. I think tort claims has, what, about four, give or take, for their statute of limitations. Whatever the mechanics are to reopen the courthouse door and unlock justice for our most vulnerable who are sexually assaulted and their government has a hand in it, I will work with you to figure out how to shape that key. Thank you.

**DeBOER:** Thank you, Senator Conrad. Are there questions?

**CONRAD:** Thanks.

**DeBOER:** Senator Roundtree has a question for you.

**CONRAD:** OK.

**ROUNTREE:** Thank you so much, Vice Chair. And thank you so much. I was out at another hearing, so I missed a lot, but I'm going to go back and look so I can digest everything. I think this is the 12th time this has come, and I appreciate the closing. We have 47 other states, I believe, that have moved forward. Is there anything that we can pull from them that can help to unlock our, our lock here?

**CONRAD:** Yeah, I hope so.

**ROUNTREE:** OK. Thank you.

**DeBOER:** Thank you. Other questions? Thank you, Senator Conrad.

**CONRAD:** Yes.

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Judiciary Committee February 12, 2026  
Rough Draft

**DeBOER:** That will end our hearing on LB1097 and bring us to LR299CA. Senator McKinney, who is unavailable, so Mr. Lee will be opening for him.

**MICHAEL LEE JR.:** It's been a long time since I've been back up here.

**DeBOER:** Let's give it just a second. I love you. OK. Go ahead, Mr. Lee.

**MICHAEL LEE JR.:** Perfect. Thank you. Thank you, Vice Chair DeBoer and members of the Judiciary Committee. Senator McKinney couldn't be here today due to some family members-- family matters. My name is Michael Lee Jr., M-i-c-h-a-e-l L-e-e Jr., and I'm here representing Senator McKinney. I'm his legislative aid, and I'm here today to present LR299CA. LR299CA is about modernizing Nebraska's commutation process so that it is a-- that is fair, transparent, and grounded in evidence, accountability, and rehabilitation. This constitutional amendment would transfer the power to commute sentences from the current Board of Pardons to a newly created Nebraska Board of Commutation, composed of individuals with relevant expertise, expertise and lived experience. Under our current system, commutation decisions are concentrated in a small executive body with limited transparency and limited capacity to fully assess rehabilitation, mental health considerations, and restorative justice outcomes. LR299CA proposes a different approach, one that it recognizes that justice does not end at sentencing. This resolution creates a seven-member nonpartisan Board of Commutation appointed by the Governor and confirmed by the Legislature with members who bring expertise in mental health, criminal law, law enforcement, restorative justice, and lived experience with incarceration and victimization. The goal is not to weaken public safety, but to strengthen it by ensuring commutation decisions are thoughtful, informed, and consistent. Commutation is not about erasing accountability, it's about recognizing transformation, rehabilitation, and the possibility of redemption, particularly in cases where continued incarceration no longer serves justice, public safety, or the interests of victims and communities. Ultimately, LR299CA places the question before the people of Nebraska that allows voters to decide whether the state-- our state should adopt a more transparent-- transparent, community-informed, and restorative approach to commutation decisions. I look forward to hearing your testimony, and the senator will be engaging in thoughtful discussions, I'm sure, with members of this body, on how Nebraska can build, can build a system that balances accountability with fairness and second chances. Thank you, guys.

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Judiciary Committee February 12, 2026  
Rough Draft

**DeBOER:** Thank you very much, Mr. Lee. We'll take our first proponent. Welcome.

**JASON WITMER:** Good afternoon, Chair-- Cochair DeBoer and committee. My name is Jason Witmer, J-a-s-o-n W-i-t-m-e-r. I'm a Policy Strategist with the ACLU of Nebraska and we are here in support of LR299CA. LR299CA does not create a new clemency power, expand eligibility for release, shorten sentences automatically, and it does not eliminate victim participation, nor does it remove legislative oversight. What it does is transfer existing power, commutation, from the current three board-- from-- sorry, from the current three-member Board of Pardons to the seven-member Nebraska Board of Commutation. Today, commutation authority rests with the Governor, Attorney General, and Secretary of State. Those officials will retain their authority to grant pardons, respites, and reprieves. LR299CA affects only commutations, which can modify a sentence of conviction. Under LR299CA, commutation decisions would be made by a board appointed by the Governor and confirmed by the Legislature. That means to start that the public still votes on the constitutional amendment before it is or is not enacted. The Governor still appoints and the Legislature still confirms, as well as defined procedures, voting thresholds, transparency requirements, and victim notification standards. This does not remove democratic accountability. It redispute-- it redistributes authority within the executive branch while retaining appointment of power and legislative confirmation. In fact, it introduces more structured accountability by requiring expertise in mental health, restorative justice, criminal law, law enforcement, and lived experience of incarceration and victimization. That is not a dilution of accountability, it is an expansion of perspective. Commutation decisions are often highly individualized and technically complex. They involve medical issues, long-term incarceration effects, evolving legal standards, and demonstrations of rehabilitative-- rehabilitation. A board structured to include subject-matter expertise may provide more consistent and specialized review while remaining subjective-- subject to an executive appointment and legislative commitment. For those that may worry that this will increase early release or weaken, or weaken public safety, it does not. The amendment does not change eligibility criteria, sentencing law, the parole process, or standards for relief. It simply changes who evaluates requests for a commutation. Any change in the release volume would depend entirely on statute standards adopted by this body. LR299CA does not reduce the executive branch's overall clemency authority, it does not remove victims from the process, it does bypass the

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Judiciary Committee February 12, 2026  
Rough Draft

legislator [SIC], and it does create automatic sentence reductions. It modernizes one narrow component of Nebraska's clemency framework. And at its core, this is a governance, governance decision. Not whether commutation should exist, it already does, not whether sentences should be shortened, that authority already exists, but whether Nebraska wants a commutation decision made by three elected officials or by a structured board designed to incorporate expertise and lived experience while remaining subject to appointment and confirmation of oversight. And we would respectfully ask that LR299CA be moved to the General File. Thank you.

**DeBOER:** Thank you. Let's see if there are any questions. It's a little thin today, but no questions. Thank you for being here. Next proponent. Is there anyone here who would like to testify in opposition to this bill? Is there anyone here who would like to testify in the neutral capacity? I don't see anyone. I will announce that for LR299CA, there were four proponent comments, six opponent comments, and zero neutral comments. That will close our hearing on LR299CA. And I am now going to turn it over to ranking member Holdcroft.

**HOLDCROFT:** Thank you, Vice Chair DeBoer. We will now move on to our last bill, LB1032, introduced by our own Senator DeBoer. Welcome.

**DeBOER:** Good afternoon, Senator Holdcroft and Senator Rountree. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent the 10th Legislative District in vibrant northwest Omaha. I'm here to introduce to you today LB1032. LB1032 seeks to establish recognition of tribal customary adoptions in Nebraska law. Being passed around is the report generated as a result of my interim study, LR176, which I did last summer to examine tribal customary adoptions, and LB1032 is a result of that interim study. LB1032 provides for the recognition of tribal customary adoptions, or TCAs, under Nebraska law. There will be experts behind me who might be better equipped to answer technical questions, technical questions about the legislation than I, but I wanted to provide you a foundation on the intersection between current Nebraska adoption law and TCAs. Adoption is a very specific legal process within our legal system. In any situation involving a youth in foster care, the priority is the rehabilitation and reunification of the original family. As we know, that's not always achievable. Before a child can be adopted by another family, the original family has to have their parental rights terminated. Historically and shamefully, our adoptive processes were used against Native families. In the mid-20th century, over one-third of Native children were forcefully

removed from their homes and adopted into non-Native families to assimilate them away from their tribal culture. Such practices were incredibly traumatic and effective, with tribes still working to rebuild, reconnect, and make up for lost relationships today. Even today, adoptions of Native youth into non-Native homes can be associated with and perpetuate this trauma and harm. Our adoptive process views the legal family as exclusive to the two biological parents and children, which gets cut off, the termination of parental rights, and then replaced by the adoptive family. This conflicts with the belief of many tribes, which traditionally view children to be the responsibility of the community rather than merely the biological family. Many tribal customs don't follow those same limits, instead recognizing more communal and broader relative caretaking. If a Native child's relationship with their biological parents is cut off, they risk being disconnected from their tribe, tribal customs, traditions, language, rights, and more. This severance is consequential to the youth and the tribe as it cuts off the youth's ability to learn, practice, and develop such essential pieces of their identity. And the tribe's ability to continue such things through the youth and generations after them. In some circumstances, it could also affect the child or their progeny status within the tribe, altering their rights and relationships to it. For those reasons and more, many tribes practice TCAs, which allow the child to be adopted typically by a relative or member of their tribe without having to sever the relationship with their biological family. This allows the child to find permanency through adoption, while guaranteeing that they can maintain their connection to their biological family, tribe, culture, and the benefits that come with it. Importantly, TCAs do not result in an unlimited number of adults being the child's parent. Instead, the TCA parents assume all of the rights and responsibilities of a legal parent, including the child's care, custody, and control. However, the biological parents can, in some cases, maintain some limited rights, if agreed upon, like continued contact, visitation, or inheritance rights. TCA-- TCAs have long been practiced amongst tribes. Many have TCAs codified into their tribal codes and laws, including three of the four tribes headquartered in Nebraska: the Winnebago, the Omaha, and the Ponca Tribes. These tribes practice and conduct, and conduct TCAs for their children according to their traditions, customs, and tribal codes, and once they are finalized, the TCA family is recognized as a legal family. However, while recognized as lawful adoptions and families for the purpose of tribal laws, TCAs are not recognized as adoptions for purposes of Nebraska state law currently, especially because they do not comply with the state right-- law requirement that

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Judiciary Committee February 12, 2026  
Rough Draft

the biological parents' rights be severed completely for the child to be adopted. As a result, TCA families and parents are not considered legal families or parents, affecting how they exercise their familiar-- familial decision-making rights, access to accurate, vital documents, and so much more. This incongruity between tribal and state law creates logistical challenges and legal and financial barriers for Native children. To fix this, other states recognize TCAs in their state laws, including Iowa, Minnesota, Nevada, California, Oregon, and Washington. Most commonly, these states add TCA sections to their state's Indian Child Welfare Acts, ICWAs, speaking to how a TCA would work in state courts. When applicable, they allow for a TCA as a permanency option just like a traditional adoption if it is in the best interest of the child and the tribe consents. Then the child's tribe can complete the TCA according to their traditions, laws, and customs, which the state court is to then accept, with some exceptions. Across states, the tribes and state work together in different ways to achieve the final TCA, but ultimately giving the tribes TCA full faith and credit is very important. LB1032 is about respecting the culture, customs, and beliefs of our sovereign Native communities and ensuring that our laws, our statutes aren't structured in such a way that cause undue harm to Native families. Thank you. I'm happy to answer any questions.

**HOLDCROFT:** Thank you, Senator DeBoer. Senator Rountree, you got any questions?

**ROUNTREE:** I do, Senator. Thank you so much for calling me out on that. And thank you so much, Senator DeBoer, for this, especially for the LR. I'm just trying to read through it as we were going through and looking at the numbers and so forth, but other states have been able to implement this and put it into place. For those states, have you looked further, were there any other issues that might have been generated and created? I know we got some nice synergies and things that really helped our tribes out. What is the one stopping point or blocking point here for Nebraska that we need to get past to get into this game as well?

**DeBOER:** I think we just have to do it.

**ROUNTREE:** Just got to do it.

**DeBOER:** The stopping point is that we haven't passed this law yet. We need to pass it with an emergency clause so they can get on their way.

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Judiciary Committee February 12, 2026  
Rough Draft

**ROUNTREE:** OK. And so have we been at this point before? I know we just did a study-- interim study, but--

**DeBOER:** This is the first time that, in my tenure here in the Judiciary Committee, I've heard, I've heard a law similar to this. So if it happened prior to 8-- you know, the last 8 years, I don't know.

**ROUNTREE:** OK.

**DeBOER:** But at least in the last 8 years, this is the first time that I have seen it brought, and I'm a little shame-faced about that, probably should have gotten on that a lot sooner.

**ROUNTREE:** All right, thank you so much. If it's been done successfully in our neighboring states, then I say it's time that we move forward as well. Thank you.

**HOLDCROFT:** Any other questions from the committee? Seeing none, I assume you'll be here for closing. With that, our first proponent, please. Welcome.

**ALLISON DERR:** Thank you. Good afternoon, my name is Allison Derr, A-l-l-i-s-o-n D-e-r-r. I'm an attorney with Nebraska Applesed and we are here to support LB1032. The Nebraska Indian Child Welfare Act declares Nebraska's commitment to protecting an Indian foster child's relationship with their tribe that shall include pursuing placements that reflect the unique values of their tribal culture and maintain a political, cultural, and social relationship with their tribe. While helpful, adoptions under Nebraska current law conflict with this commitment because generally to be adopted out of foster care, the rights of your biological parents must be severed to make room for the adoptive parents to step into that role. But for Native youth that's violative to a lot of their sincerely held beliefs, cultures, and traditions of their tribe and also cuts off that really vital relationship to their tribes. That creates a conflict where children have to, have to decide between an adoption that violates their beliefs and the principles of ICWA, or not pursue adoption at all. LB1032 helps resolve this conflict by creating a new culturally respective permanency option called tribal customary adoption, which again allows the child to be adopted without the severing of their biological parents' rights, allowing them to find permanency, but also maintain that really important relationship with their family, community, and tribe. While the path is different, it's really important to be clear that the end legal effect is the same as all

other adoptions. Because while those biological parents' rights aren't severed, they are transferred to the adoptive parent. So at the end, all rights, responsibilities, and benefits of being parents transfer to the adoptive parents, unless specifically retained in that adoption order. Tribal customary adoptions aren't just beneficial to children, they also benefit tribes because they uphold their compelling governmental interest in their children. And it also financially benefits the state of Nebraska, as discussed by the department in the fiscal note. Right now, because customary adoptions aren't respected or acknowledged in state law, they aren't eligible for adoption subsidies. So as a result, a lot of those families will instead enter into a guardianship, which are eligible for subsidies. But in Nebraska, very few Native children, and sometimes none, are eligible for federally funded guardianship subsidies. Instead, though, customary adoptions and many Native youth are eligible for federally funded adoption subsidies. So if we recognize customary adoptions in Nebraska, those young people could instead receive adoption subsidies, which would be supported by federal rather than state funds. In conclusion, as already talked about, tribal customary adoptions have been successfully recognized by many tribes for a very long time and recognized in other states. LB1032 helps Nebraska do the same, and also bring Nebraska law more in compliance with ICWA, tribal sovereignty principles, and helps the state and courts follow suit. We respectfully request you advance LB1032, and I'm happy to answer questions, in particular about the bill draft, or elements of the bill, and also had additional thoughts about your questions, Senator Rountree, if, if interested.

**HOLDCROFT:** OK. Thank you, Ms. Derr. Any questions for this testifier? Senator Rountree.

**ROUNTREE:** Thank you so much, Chair Holdcroft. And if you wanted to expound more on my question, I definitely want to listen.

**ALLISON DERR:** Sure. So, in particular, the question about other states that have already worked to recognize tribal customary adoptions in their statutes. I think it's important to be clear that a lot of states do this in really different ways. There's a handful of states that really robustly recognize tribal customary adoptions in state law, and we've talked to folks in those states as well as states that don't really recognize them as robustly. They'll have a reference in state statute to acknowledge their existence and folks in those states where the statutes recognize them more subtly, there's challenges because they don't think about all of the practical implications of

recognizing tribal customary adoptions, which is why this bill draft airs on the side of being more robust. One challenge we've heard from other states is the adoption subsidy piece because there are certain findings that have to be-- that have to happen in an adoption order or a child welfare case for that child to qualify for federally funded or even state-funded adoption subsidies so statutes don't go far enough to recognize or take that step to say these adoptions are eligible, that can be a barrier. So I think Senator DeBoer's bill draft does a really good job of mentioning that multiple times to being sure that's really, really clear that these are meant to qualify for those subsidies.

**ROUNTREE:** All right, thank you so much. I appreciate the--

**ALLISON DERR:** You're welcome.

**ROUNTREE:** --explanation

**HOLDCROFT:** Any other questions from the committee? Seeing none, thank you for your testimony. Next proponent. Welcome.

**DEBORAH DANCER:** Hello. Good afternoon. My name is Deborah Dancer, D-e-b-o-r-a-h D-a-n-c-e-r, and I'm serving as the Executive Director of the Nebraska Indian Child Welfare Coalition, where it's also called NICWC. NICWC is a statewide nonprofit organization that works to strengthen compliance with the Indian Child Welfare Act and to support the safety, permanency, and well-being of Native children and families across Nebraska. I am here today in support of LB1032. Tribal customary adoption is important because it reflects how many tribes define family, responsibility, and permanency. Under tribal law, customary adoption allows children to achieve permanent stable homes while maintaining important connections to their biological family, extended kin, stable homes while maintaining important connections. Oh, I'm sorry, extended kin and tribe. Sorry about that. For many tribes, permanently severing those relationships is inconsistent with cultural values and long-standing traditions related to kinship and caregiving. Maintaining a child's social and cultural ties to the tribe is consistent with the purposes of the Indian Child Welfare Act and supports the child's identity, stability, and long-term well-being. When state law does not recognize these connections, families are often pushed toward permanency options that may function legally but do not fully serve the child. Currently, Nebraska law does recognize tribal, tribal customary adoption even though it is practiced under tribal law. As a result, families pursuing this

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Judiciary Committee February 12, 2026  
Rough Draft

permanency option face legal uncertainty and are unable to access adoption assistance that is otherwise available to families who adopt under state-recognized processes. This creates barriers for families who are already providing permanent, loving homes for our children. LB1032 is important to me and to the community I serve and live in because it addresses this gap in Nebraska law. The bill does not ask the state to create or define tribal customary adoption. Instead, it provides a clear framework for recognizing and enforcing customary adoptions that occur under tribal law while respecting tribal sovereignty and supporting the best interests of children. Without changes to Nebraska law, families will continue to face unnecessary barriers to culturally appropriate permanency. And LB1032 would help remove those barriers and bring Nebraska law into closer alignment with the Indian Child Welfare Act and with how Native families care for their children. So I thank you for your time and consideration, and I respectfully ask you to vote to advance LB1032.

**HOLDCROFT:** Thank you, Ms. Dancer.

**DEBORAH DANCER:** Yeah.

**HOLDCROFT:** Let's see if there are any questions from the committee? Seeing none, thank you very much.

**DEBORAH DANCER:** Thank you.

**HOLDCROFT:** Next proponent. Welcome.

**GRACE JOHNSON:** Thank you. My name is Grace Johnson, G-r-a-c-e J-o-h-n-s-o-n. I am an Ogala Lakota Tribe member. I am here to give my support to LB1032. I'm a therapist and drug and alcohol counselor. I am taking this opportunity to share my experience with ICWA law, culture, and customary adoption. In my tribe, we call it making of relatives. This was a specific ceremony that was developed to acknowledge adoptions. When you, when you make a relative, or as you guys would say, adopt, that bond was considered closer than biological. It is a spiritual bond that we see in our tribes. Adopting people into your family was a significant event that we have done for time immemorial. So enacting customary adoption into the state child welfare law and DHHS would be a natural fit and meet our cultural ways. Another idea I want to talk about is how we measured wealth. We measured our wealth by how many relatives we had and by how many children we had. We also said that if you could feed others and take care of them, you would be wealthy. I'm stating this to give you

context to our culture. Our children were our most precious items in our tribes, so much so that we have a specific name for our children, a specific word. The word for children in my tribe is wakanyeja, and this means sacred people. Our children were so important we designated mentors for them. Another interesting bit of information I learned was that prior to European arrival, we never had a word for orphans. Orphans didn't exist in our culture, the idea of them. We had large extended families and integral to our culture was taking care of one another. So the idea of an orphan was foreign before Europeans arrived. We always made sure we took care of our children and had relatives available to do this. Customary adoption or making of relatives, as we called it, was built into our culture to ensure that our tribal members and children were always taken care of. We had our own versions of social safety nets as you would call it today. We recognize that it takes more than a mom or a dad to raise a child, but aunties, uncles, grandparents, relatives, and members-- and mentors. And many times, if these were not already a part of our extended family, we would adopt them into our family. The term in my tribe for this was called a hunka relative. Your term is customary adoption and we call it making of a relative. And these adoptions for us transcended biological relatives and it was seen as spiritual relatives because these were chosen ones and the comment-- and the commitment of this adoption was taken very, very seriously. I would also like to add that this bill helps to meet the best interests of the children and to keep the child connected to their culture by acknowledging customary adoption. Customary adoption and cultural ceremony of making of relatives, both have the same goal of helping to ensure the safety of our tribal members and that they are taken care of. Thank you for your consideration.

**HOLDCROFT:** Thank you, Ms. Johnson. Any questions from the committee? Seeing none, thank you for your testimony. Next proponent. Proponent. Welcome.

**KAMERON RUNNELS:** Hello. Good afternoon, my name is Kameron Runnels, I'm the Vice Chairman of the Santee Sioux Nation in Santee, Nebraska.

**HOLDCROFT:** Would you mind spelling your name for us, please?

**KAMERON RUNNELS:** K-a-m-e-r-o-n R-u-n-n-e-l-s.

**HOLDCROFT:** Thank you.

**KAMERON RUNNELS:** Santee, like, like pretty much all tribal nations across North America, have a long history of our, our children and our families being separated, whether because of, of a conflict with the United States or from federal policies that are put in place that, that encourage a separation of children and families from their, from their communities. You know, my ancestors, over 160 years ago, were forcibly removed from, from our ancestral land, and women, children shipped away, men sent to prison. Anyone else that, that remained fled into the northern plains. And, and we remain that way. We remain disconnected today because of those things. The Indian boarding school era is another example of, of our children being separated from families, you know, which, in turn, you know, caused the loss of the, the dramatic decline of our culture, our language, our customs, and the loss of our identity. You know, and in some form, you know, this is still occurring recently with children being adopted into or are placed into nontribal families and adopted, severing ties with their tribal family and their tribal community. Tribal customary adoption can help prevent these things from happening, you know, keeping our, our, our children together within a community or with their family and extended family helps, helps that child and helps the community hold on and preserve our customs, our, our traditions, our language, and it's not something that, that-- this isn't something that's just recent, you know, this is something that's been practiced and handed down generationally for thousands of years, and it's also reflected in our language. You know, this bill will, will help our children, our, our families, and our future. I'd encourage you all to please pass this bill. Thank you.

**HOLDCROFT:** Thank you, Mr. Runnels. Next-- any questions from the committee? Seeing none, thank you very much. Next proponent. Welcome.

**LIZ LOVEJOY BROWN:** Hello. Good afternoon. My name is Liz Lovejoy Brown, L-i-z L-o-v-e-j-o-y B-r-o-w-n. I am a member of the Omaha Tribe of Nebraska and the Executive Director of the Dr. Susan La Flesche Picotte Center. Thank you for the opportunity to testify my support on LB1032. Customary adoptions are important because they reflect how tribal communities have always cared for children. Long before state systems existed, our people relied on extended family networks to ensure that every child was safe, supported, and connected. Grandparents, aunts, uncles, and relatives stepped in when parents needed help or when it was in the child's best interest. It was not seen as unusual. It was seen as love, responsibility, and community. Maintaining social and political ties to a child's tribe is important because identity is directly connected to well-being. For Native

children, belonging is tied to language, relatives, ceremony, and community. When children grow up knowing who they are and where they come from, they are more grounded, more confident, and more supported. I have seen the importance of this in my own family. I had a young relative who was placed in the child welfare, child welfare system and ended up living in a suburban area with a non-Native family. At only 6 years old, she was treated more like a housemaid than a child. She was far from her relatives, her culture, and everything familiar to her. Eventually, our family was able to take her in and she came back home. She was surrounded by people who knew her, loved her, and understood her. When her parents completed their case plan and were ready to unify, she was already in her community. She did not have to go through another major transition or adjustment. She was already home. That is the strength of our kinship system. Our families step in for one another. Our communities help carry the responsibility of raising children. Customary adoption reflects those same values. It allows children to remain within their family, their culture, and their tribe while still providing the stability they need. LB1032 is important to my community because it recognizes that our traditional ways of caring for children are valid and effective. It respects tribal sovereignty and allows tribes to determine what is in the best children [SIC] of their own children according to their customs and laws. At the Dr. Susan La Flesche Picotte Center, we work-- our work is rooted in those same values. Dr. Picotte believed in caring for the whole person and the whole community. Today, we continue that vision by supporting families, strengthening culture, identity, and creating spaces where our children can grow up knowing who they are and where they come from. This legislator [SIC] can help support customary adoption by advancing LB1032 and recognizing the importance of culture, family, and community in the lives of Native children. Thank you, and I respectfully ask that you vote to advance LB1032.

**HOLDCROFT:** Thank you, Ms. Brown. Are there any questions from the committee? Senator Rountree.

**ROUNTREE:** Thank you so much, Senator Holdcroft. And thank you so much for the testimony. As I'm listening to you, I understand what you're saying, it takes a village, [INAUDIBLE] the community. So if we recognize the customary adoptions, we won't have adoptions, then, outside of the reservation? Is that kind of what you're saying, because you talked about this young lady who was in a non-Native home?

**LIZ LOVEJOY BROWN:** This case that I was talking about specifically was in Omaha.

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Judiciary Committee February 12, 2026  
Rough Draft

**ROUNTREE:** It's in Omaha. OK.

**LIZ LOVEJOY BROWN:** Yeah, it wasn't on the reservation.

**ROUNTREE:** OK, but what we're talking about really when we recognize these would be to keep attachments to our history and our heritage.

**LIZ LOVEJOY BROWN:** Yes.

**ROUNTREE:** OK. Thank you.

**HOLDCROFT:** Any other questions from the committee? Seeing none, thank you very much.

**LIZ LOVEJOY BROWN:** Thank you.

**HOLDCROFT:** Next proponent. Proponent. Welcome.

**COURTNEY CHAVEZ:** Good afternoon. My name is Courtney Chavez, C-o-u-r-t-n-e-y C-h-a-v-e-z. I serve as the CEO of Tribal Affairs for the Ponca Tribe in Nebraska. I'm also the Chair for the Ponca Tribe's ICWA Advisory Board. LB1032 is more than just a policy change. It is recognition of tribal governance, tribal law, and tribal responsibility to our children. Tribal customary adoption is a permanency option that allows a child to achieve safety and legal stability without requiring termination of parental rights. Rather than permanently severing the legal and cultural ties between a child and their parents, it preserves those relationships when appropriate and safe. And this ensures long-term stability. For many tribal communities, permanency does not mean disconnection. Permanency means responsibility, accountability, and continuity across generations. Tribal customary adoption reflects traditional child-rearing practices, grounded and extended family networks, and collective responsibility, values that have sustained tribal nations long before modern child welfare systems existed. From a governance perspective, this legislation is critical. Tribal customary adoption is already written into the law and order code for the Ponca Tribe in Nebraska. And it's codified tribal law that was adopted through our sovereign legislative process. The Ponca Tribe supports tribal customary adoption as a preferred permanency option when reunification is no longer possible, but maintaining parental rights and cultural connection remains in the best interest of the child and of the tribe. LB1032 strengthens compliance with the Indian Child Welfare Act. ICWA requires active efforts and prevention, the necessary break up of Indian families. Tribal customary adoption provides a culturally

appropriate permanency option consistent with these principles. It also protects children from unnecessary termination of parental rights. Termination is one of the most severe actions a court can take. It permanently severs that parent-child relationship where tribal customary adoption allows for stability without legal erasure. Nebraska would not be alone in adopting this framework. California recognizes tribal customary adoption in state statute and their experience demonstrates that it is workable, legally sound, and fully compatible with judicial oversight and child safety. In California, tribes define the terms of adoption under their own laws and state courts give full faith and credit to those orders. It reinforces tribal sovereignty while strengthening state-tribal collaboration. California is just one example, however, several other states, including Nevada, Washington, Oregon, New Mexico, Minnesota, and Iowa also have adopted legislation that recognizes tribal customary adoption. Most importantly, tribal customary adoption promotes better long-term outcomes. Native children who maintain connection to their tribe and their culture and extended family demonstrate stronger identity formation and resilience. Children should not have to lose their identity to achieve permanency. LB1032 does not weaken the courts and does not compromise safety, it provides an additional culturally grounded tool that respects tribal jurisdiction and protects their children. At its core, this bill ensures that Native children in Nebraska can achieve safety and stability without sacrificing who they are and where they come from. On behalf--

**HOLDCROFT:** Ms. Chavez, that's your time, can you wrap it up here?

**COURTNEY CHAVEZ:** Yep. On behalf of the Ponca Tribe, I respectfully urge you to advance this bill.

**HOLDCROFT:** Thank you very much. Any questions from the committee?

**COURTNEY CHAVEZ:** Thank you.

**HOLDCROFT:** Seeing none, thank you very much. Next proponent. Welcome.

**RENAE HELPER:** Good afternoon, Nebraska Legislation [SIC]. My name is Renae Helper, R-e-n-a-e H-e-l-p-e-r. I am an enrolled member of the Santee Sioux Nation and serve as our tribe's Indian Child Welfare Specialist. I have worked in this role for 7 years serving families across Indian Country. I first learned about tribal customary adoption, the law, during my first year as an ICWA specialist when Iowa began transitioning from termination of parental rights to tribal

customary adoption in ICWA cases. Through the process, I worked closely with the Department of Health and Human Services and saw how this permanency option can better serve Native children and families. Under ICWA, reunification is always the priority. If reunification is not possible, placement follows ICWA guidelines prioritizing relatives in tribal connections. When a child cannot return home relatives may become permanent caregivers through the tribal customary adoption. In these cases, the state court grants concurrent jurisdiction to the tribal court, the adoption is finalized in tribal court and then recognized by the state court. This approach preserves family relationships rather than permanently severing them. However, one significant challenge remains, adoption subsidies are not currently attached to the tribal customary adoptions. Many relative caregivers take in children, sometimes large sibling groups, without asking for any financial help, even when they are struggling. Providing adoption subsidies would greatly support these families and strengthen long-term stability for our children. Tribal customary adoption is deeply important because it reflects who we are as Indigenous people. In our culture, no child is ever an orphan. Termination of parental rights can create profound trauma, children lose parents, and parents lose children who are still very much alive. Tribal customary adoption offers a way to achieve permanency without erasing identity, family, and culture. Among the Isanti Dakota people, our kinship system teaches that maternal aunts are mothers, paternal uncles are fathers, and cousins are siblings, our children grow up surrounded by belonging and support. This is how we have cared for our generations for thousands of years. I respectfully ask the state of Nebraska to support tribal customary adoption and include adoption subsidies with this permanency option. Doing so would honor tribal sovereignty, strengthen families, and improve outcomes for Native children. Thank you for your time and consideration.

**HOLDCROFT:** Thank you, Ms. Helper. Are there any questions? Senator Rountree.

**ROUNTREE:** Thank you so much, Senator Holdcroft. And thank you so much for your testimony. In your statement you said when you first learned about the tribal customary adoptions you were following the transition in Iowa and you kind of followed that through. So what was their process as far as once we were-- [INAUDIBLE] in our tribal customary adoptions that they were able to draw down funds as well?

**RENAE HELPER:** They haven't.

**ROUNTREE:** They have not.

**RENAE HELPER:** They haven't figured it out.

**ROUNTREE:** OK. All right. Thank you.

**RENAE HELPER:** You're welcome.

**HOLDCROFT:** Any other-- wait, wait and see if there are any other questions. Yes, Senator-- Ms. Helper.

**HALLSTROM:** Would there be any situations in which the child didn't have connections to the tribe before changes had been made or disconnected from the parents?

**RENAE HELPER:** Before tribal customary adoption?

**HALLSTROM:** Yeah.

**RENAE HELPER:** Yeah, we had-- in late 1990s to early 2000s we had about 11 children displaced in non-Native homes adopted and they never had connection with their biological family, their customs. They have called me when they are 18 and want to know who they are and they also suffer from substance abuse and mental health, mental health discrepancies.

**HALLSTROM:** OK. Thank you.

**RENAE HELPER:** You're welcome.

**HOLDCROFT:** Any other questions? Thank you, Ms. Helper, appreciate--

**RENAE HELPER:** You're welcome.

**HOLDCROFT:** --your testimony. Next proponent. Welcome.

**PATIENCE TEBOE:** Good afternoon. My name is Patience Teboe, P-a-t-i-e-n-c-e T-e-b-o-e, and I serve as the Culture Director for the Ponca Tribe of Nebraska. I respectfully offer this testimony in support of LB1032 and the recognition of tribal customary adoption within Nebraska law. As Culture Director, my responsibility is to ensure that Ponca values, teachings, and traditions remain at the center of the systems that affect our people, especially our children. In our community, child welfare is not simply a legal issue. It's cultural, spiritual, and intergenerational. It touches our identity, our sovereignty, and our future. Within Ponca culture, family has

never been narrowly defined. Our children are not raised only by parents, but by grandparents, aunties, uncles, relatives, and community members who share responsibility for their care and guidance. This kinship system reflects our belief that children belong to the tribal community as much as they belong to a single household. Historically, when a parent faced hardship, the response was not permanent severance, it was support. A child might be cared for by extended family, but their identity, lineage, and connection to their parents remained intact. The goal was continuity, restoration, and stability within the circle of family. The permanent termination of parental rights does not reflect Ponca traditional approaches to family. While child safety and accountability are essential, our teachings emphasize maintaining relational bonds whenever safely possible. Identity is inherited through family, culture, and community. Severing those ties can have lasting cultural and emotional consequences. Tribal customary adoption aligns with Ponca traditions because it allows permanency without erasing relationships. It provides stability and legal security for the child while preserving parental identity and extended family connections. It ensures continued access to language, ceremony, teachings, and community. And it recognizes our tribe's inherent authority to define family according to our customs. For Ponca children, belonging is foundational. A child must know where they come from, who their relatives are, and why they fit within the larger circle of the community. Cultural identity is not symbolic, it's protective. It, it strengthens resilience, self-worth, and long-term well-being. Permanency planning that overlooks cultural ties risks severing the foundation of a child's identity. Tribal customary adoption offers a path that secures stability while preserving a child's place within the Ponca Tribe. Recognizing tribal customary adoption in Nebraska law would promote child well-being through cultural continuity. It would reduce trauma in child welfare proceedings by offering an alternative determination of parental rights. It would strengthen government-to-government relationships by respecting the Ponca tribe of Nebraska's sovereign authority over matters involving our children, and it would reflect Nebraska's commitment to culturally responsive child welfare practices. In my role, I see every day how language revitalization ceremony and community gatherings and intergenerational teaching strengthen our youth. When children understand who they are as Ponca people, they carry themselves differently. They are grounded, they are resilient. LB1032 offers Nebraska the opportunity to align its child welfare framework within-- with the cultural realities of the Ponca Tribe of Nebraska and other tribal nations within this

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Judiciary Committee February 12, 2026  
Rough Draft

state. Thank you for your time and consideration. I am prepared to answer any questions.

**HOLDCROFT:** Thank you, Ms. Teboe. Any questions from the committee? Seeing none, thank you for your testimony. Next proponent. Welcome.

**CHEYENNE ROBINSON:** Thank you. Good afternoon. My name is Cheyenne Robinson, spelled C-h-e-y-e-n-n-e R-o-b-i-n-s-o-n, and I serve as the Treasurer of the Omaha Tribe of Nebraska, and I appear before you today as both an enrolled tribal citizen and an elected official to express my support for LB1032 and for the recognition of tribal customary adoptions within Nebraska law. For Omaha people caring for children through extended family and kinship systems is not a new concept. Tribal customary adoption reflects long-standing cultural practices rooted in responsibility, identity, and community care. These practices prioritize stability for children while maintaining their connection to family culture and tribal citizenship. Importantly, the Omaha Tribe already recognizes tribal customary adoptions within our tribal codes and our court processes. Our nation has exercised its sovereign authority to develop child welfare practices that align with our cultural values and legal framework. LB1032 does not ask the state to create a new system, it asks the state to acknowledge and respect determinations that tribal nations have already lawfully made for their own relatives. As a tribal member, I have seen how critical it is for our children to remain connected to who they are. Identity, culture, and belonging is, is not abstract concepts. They are protective factors that support long-term well-being. As a tribal leader, I also understand the importance of a collaboration between tribal nations and the state of Nebraska. State recognition of tribal customary adoption creates clarity for families who must navigate both tribal and state systems. It reduces unnecessary barriers, prevents conflicting court outcomes, and reinforces the government-to-government relationship-- relationship that is foundational to effective child welfare policy. This legislation aligns with the principles behind the Indian Child Welfare Act by recognizing that tribal nations are best positioned to make decisions regarding their children. By supporting LB1032, the state affirms respect for tribal sovereignty while strengthening outcomes for our Native families. I respectfully ask the committee to, to support LB1032 and to continue working in partnership with tribal nations to protect our children and uphold culturally grounded solutions. Thank you for your time, and I appreciate your consideration on the importance of recognizing our kinship systems and the responsibility

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 12, 2026  
Rough Draft

we carry as people to care for our children in ways that reflect who we are. Wibthaho. Thank you.

**HOLDCROFT:** Thank you, Ms. Robinson. Any questions from the committee? Yes, Senator Hallstrom.

**HALLSTROM:** Would, would there be situations in which the parents have voluntarily removed themselves from the tribal culture and, subsequently, the children are removed from their parents so that they had not have a connection to the tribal culture, does that have any impact on the desire of the children or the need for the appropriateness of authorizing or allowing the customary adoption under those circumstances, or does it have any impact?

**CHEYENNE ROBINSON:** Absolutely. We-- sadly, that's, you know, quite common. Obviously, there's factors in there going to mental health disparities, substance abuse. Yes.

**HALLSTROM:** And so is it, is it appropriate to recognize the customary adoption in that situation if they're, for whatever reason, they, they had not been indoctrinated into the tribal culture?

**CHEYENNE ROBINSON:** Absolutely.

**HALLSTROM:** OK.

**CHEYENNE ROBINSON:** Yeah.

**HALLSTROM:** Thank you.

**HOLDCROFT:** Any other questions from the committee? Seeing none, thank you very much. Next proponent. Welcome.

**SHANNON GIBSON:** Good afternoon. My name is Shannon Gibson, S-h-a-n-n-o-n G-i-b-s-o-n. I am a preschool through fifth grade school counselor at Omaha Nation School and Child and Family Services liaison serving with the Omaha Tribe in Nebraska. I have worked in this role for the past 15 years. I am also a certified foster parent for the tribe. Due to the length of time that I have been working with the reservation, I am considered a non-Native kinship placement. I have specialized training in adoption-competent mental health and attachment-centered play therapy. My husband and I have fostered over 17 children. We currently have guardianship of two siblings who have lived with us for 9 years and we're in the process of a TCA for our 4-year-old who has been with us since birth. In May of '24, our family

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Judiciary Committee February 12, 2026  
Rough Draft

was also invited to participate in Strolling Thunder in Washington D.C. That's a national early childhood advocacy event. During this time we met with Senator Deb Fischer in her office to speak specifically about the importance of early childhood stability and attachment. So when I speak about TCA, or tribal customary adoption, I'm not speaking from theory, I'm speaking from lived experience. Our 4-year-old foster son knows his tribe, he knows his relatives. He knows where he belongs and where he came from. We are active in the tribe, we attend celebrations, memorials, and we dance. Tribal customary adoption allows children to grow up with permanency and stability without losing their identity or connection to their people. As you've heard, historically, Native children were removed from their families and communities at disproportionate rates. Too often, permanency meant severing legal ties to family, tribe, and culture. That loss has generational impact. Tribal customary adoption provides another way. It allows children to achieve stability and legal permanency without erasing their biological connections or their tribal identity. It reflects the understanding that in our communities, family is broader than one household. Parenting is shared. Children belong not only to individuals, but to a people. As a school counselor on the reservation, I see every day how deeply identity impacts mental health. Children who know who they are, who see their culture reflected and honored, are more secure, more resilient, and more grounded. Tribal customary adoption ensures that Native children do not have to choose between permanency and identity. They deserve both. I respectfully urge you to support tribal customary adoption in Nebraska law, doing so honors their sovereignty, aligns the intent of the children-- Child Welfare Act, and, most importantly, protects the long-term well-being of Native children. Thank you, and I'm open--

**HOLDCROFT:** Thank you, Ms. Gibson. See if there are any questions from the committee. Senator Hallstrom.

**HALLSTROM:** Maybe I'll try to reframe this, I've just trying to get to the heart of my question.

**SHANNON GIBSON:** Yes.

**HALLSTROM:** If you have a child that has not been raised on tribal land--

**SHANNON GIBSON:** Right.

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Judiciary Committee February 12, 2026  
Rough Draft

**HALLSTROM:** --and is with another family after removed, are there, are there ever any situations where that child, pursuant to an adoption ends up going back to the parents from which they were removed?

**SHANNON GIBSON:** Right. And I can-- I see where you are coming from and I understand that. From a therapist point of view, my statement would be anyone pulled from any birth-- biological birth home will always look for their identity. They will always go back to their true identity depending if it was a beautiful home or not a well home.

**HALLSTROM:** And I'm not questioning-- I'm--

**SHANNON GIBSON:** No, but I'm just saying that you're always going to have that wish. They definitely-- they can look at that and say I have chosen not to be part of, of my doings, but--

**HALLSTROM:** And I think that's, that's, that's one step removed from the question. I understand looking back from the culture, are there situations where the adoption is used that results in them, irrespective of the culture issue, going back to the parents who were neglecting or abusing them?

**SHANNON GIBSON:** I have not come across anything to that point.

**HALLSTROM:** Thank you.

**SHANNON GIBSON:** A lot of the children I work with have always been staying with us.

**HALLSTROM:** Thank you.

**HOLDCROFT:** Any other questions from-- yes, Senator Rountree.

**ROUNTREE:** Thank you so much, Senator Holdcroft. And thank you so much for all that you do and for this testimony. I wanted to ask about the 4-year-old foster son, how they came to you and where we are and where we'll go?

**SHANNON GIBSON:** Right, so he came to us about a month after he was born. His mother surrendered him because she was not able to care for him--

**ROUNTREE:** OK.

**SHANNON GIBSON:** --due to her addictions. So she took him to the CFS office and said here's my son. They had a point with-- the way I work with the tribe that they call me to do emergency placements. So I'm there just to step in to be able to help with any placements that are there. It just kind of fell into family. I knew a lot of the family. I've worked with a lot of the families. I've been there a long time. I'm not too super young. So I worked with generations of families and everything was supported through the tribe that they had asked us to go ahead and look into permanency. And that's when we opened the doors to looking into the long-term placements. Both parents are involved. We invite them to everything. The kids are involved in the tribal-- all of the activities. And it's a very open situation.

**ROUNTREE:** OK. So has the birth mother been able to get the help that she needs, and so forth, and to get back to this integration?

**SHANNON GIBSON:** Unfortunately not. Her addiction is very strong and she is still in Sioux City on the streets.

**ROUNTREE:** OK. So, but, now it's the tribe that has stepped in.

**SHANNON GIBSON:** Yes, and all families, aunties and uncles and elders, yes.

**ROUNTREE:** OK. All right. Thank you.

**SHANNON GIBSON:** Yes.

**ROUNTREE:** Appreciate it.

**HOLDCROFT:** Any other questions from the committee? Senator Hallstrom.

**HALLSTROM:** I'm just taking a little while to get here, so apologize for my thickness. Is there a difference between permanency as it relates to cultural tribal activities and permanency as it relates to parentage?

**SHANNON GIBSON:** No, not to my-- I would say no.

**HALLSTROM:** But, but if the result of the customary adoption is reuniting the person if they had that connection to the cultural issues, what does it have to do with the parentage issues?

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Judiciary Committee February 12, 2026  
Rough Draft

**SHANNON GIBSON:** It's more of not an individual basis. It's a community basis. So they're not looked at being raised by one individual, it's a community raising.

**HALLSTROM:** OK. Thank you.

**HOLDCROFT:** Any other questions? Seeing none, thank you, Ms. Gibson. Next proponent. Welcome.

**THOMAS SNOWBALL SR.:** Good afternoon, members of the committee. My name is Thomas Snowball, Sr., T-h-o-m-a-s S-n-o-w-b-a-l-l, Sr. I'm a member of the Winnebago Tribe of Nebraska. I currently serve as the Cultural Coordinator for the Winnebago Tribe of Nebraska. I've previously served on a-- was an elected member of the Winnebago Tribal Council, and I'm here to testify in support of LB1032. And I would like to thank Senator DeBoer for introducing this legislation. LB1032 would, rightfully, recognize tribal adoptions and tribal customary adoptions even when parental rights have not been terminated. Unlike Nebraska law, Winnebago tribal law does not require termination of parental rights in order to finalize adoptions. To terminate parental rights goes against our traditional belief system and our kinship system. It is, it is important that state law recognize tribal adoptions in accordance with tribal law. Doing so will allow Winnebago children to have a stable home life with the relatives that they are placed with and to retain a cultural connection with their biological relatives. Many Winnebago, or Ho-Chunk, words have no true English equivalent. Wakanjak translates closely to sacred but it does-- it does not truly convey the Ho-Chunk meaning which is far more powerful. Wakanjka is something that has the power of good. It has the power to create. It has the power to, to give life. Wakanjka also describes our relationships with our parents and our families. We have strong spiritual beliefs as, as a people, we believe that to terminate parental rights to sever the wakanjka relationship between a parent and child would, would destroy the family, would destroy the child, and would destroy the parent. So we do not do this. In our ways, we are taught that the Creator brings us into this world. We choose our family and we choose our parents. Just as water and food, we are provided a gift from the Creator, so too are the parents and family that we choose. Due to this, we do not terminate parental rights. Even if the parent may be unable to take care of the child, the child is placed with another relative or person. To terminate parental rights is too extreme of a punishment. The Winnebago Tribe has its own kinship system that is broader and more communal than the western system. We have no distant relatives. The family ties last forever and

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Judiciary Committee February 12, 2026  
Rough Draft

in each relationship we have a specific duty and responsibility. For example, our mother's sisters are also our mothers, our father's brothers are also our fathers, with all the duties and responsibilities that come along with that relationship. If a biological parent cannot care for their child we try to find placement for the child in accordance with our kinship system. Ideally we place them with another one of their mothers or fathers or another relative. We do this without terminating parental rights because in our kinship system you always remain connected to your bio--

**HOLDCROFT:** I'm sorry. No, that's your time. Can you wrap it up here?

**THOMAS SNOWBALL SR.:** Yes. OK. LB132 [SIC] would finally recognize tribal adoptions and tribal customary adoptions under state laws. This has long been needed and will result in better long-term outcomes for Winnebago children. I support this bill. On behalf of the Children and the Tribes, I thank you for your kind attention. Heskekxjeno.

**HOLDCROFT:** Thank you very much, Mr. Snowball. I appreciate it. Any questions from the committee? Yes, Senator Rountree.

**ROUNTREE:** Thank you so much, Senator Holdcroft. And thank you so much for your testimony today. This question has probably already been answered, but I'm going to ask it again because I want to make sure I get everything. So in the customary tribal adoptions, I say that for the birth mother and father. We don't sever that relationship, but the adoption can be throughout the tribe. Is there ever a time then for that individual they come back to the birth mother and father?

**THOMAS SNOWBALL SR.:** In our way of life, in our teachings and our traditions, that connection is never broken, they're never severed.

**ROUNTREE:** OK.

**THOMAS SNOWBALL SR.:** So they always understand and know who their parents are, their biological parents, but also the other relatives, as most of the people in this room address me as grandfather, address me as brother, address me as uncle. And I have a granddaughter over here that's on the Tribal Council just testified that she probably don't even know, but in that kinship system, it's that close, it binds us more closer together, and our children are taught that from, from the time they're born, from the time they can understand.

**ROUNTREE:** All right. Thank you.

**HOLDCROFT:** Yes, Senator Hallstrom.

**HALLSTROM:** Just to clarify, and thank you Senator Rountree for your, your question. My question is aside from the cultural connection and not forgetting who their parents are. They've been removed from their parents for a particular reason, are they physically returned to the parents in any situations notwithstanding the fact that it could have been abuse or it could've been something else that led to the removal?

**THOMAS SNOWBALL SR.:** Each, each, each case is unique, I, I believe, and that's, that's the long-term outcome, I believe. And, and it can happen at any time during a child's life. Even after he's grown up, they could reunite with their mother and father, their biological parents. And-- but to me, it's, it's, it's always there, that bond, you'll always have them.

**HALLSTROM:** Do, do you know of any situations where close in proximity to time that having been removed from parents for a specific reason that they end up right back there?

**THOMAS SNOWBALL SR.:** My, my older sister, she has three children, two sons and a daughter, and, and she took them from the hospital right after being born and raised them, and they know who their parents are. But to, to, to my nieces and nephews, they, they know who raised, raised them, provided for them, my sister did, but they know who their, who their biological mother and father is.

**HALLSTROM:** I'm, I'm thinking, and maybe I'm, maybe I'm reading this wrong, if, if a child's been removed because of abuse. Continuing to know about their culture and continuing to know who their parents are is one thing and that could extend over a period of years, but in the shorter term are there situations where that child pursuant to a customary adoption would be returned physically right back to the parents who, in my example, if that is appropriate, had been abusive?

**THOMAS SNOWBALL SR.:** There would have to probably be a lot of resources given to the parent that, that-- and the parent has to do a lot of healing depending upon the situation that can reunite that. But we, we care about the well-being of our children. You know, our children are, are, are there for us in the future. You know, they're going to take care of us when, when we're no longer able to care for us. So that's, that's the main-- that's always been the way our history and our teachings and our traditions have been, so.

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Judiciary Committee February 12, 2026  
Rough Draft

**HALLSTROM:** Thank you.

**HOLDCROFT:** Any other questions? Thank you for your testimony, Mr. Snowball.

**THOMAS SNOWBALL SR.:** OK. Thank you.

**HOLDCROFT:** Next proponent. Welcome.

**KITTY WASHBURN:** Thank you. Senator Hallstrom, I might have some answers for you for the questions you were asking.

**HALLSTROM:** Thank you. And I might have a better question. I don't know.

**KITTY WASHBURN:** All right. Good afternoon, members of the Judiciary Committee. My name is Kitty, K-i-t-t-y, Washburn, W-a-s-h-b-u-r-n, and I am here today to testify in support of LB1032. I have over 23 years working with children and families, including 11 years in the Child and Family Services Department for the Winnebago Tribe of Nebraska. Throughout my career, I've worked alongside Native families, tribal and state courts, and community partners to help keep children safe while honoring and respecting their identity, culture, and connections. What I learned again and again is that permanency for Native children does not always look the same as it does in the dominant culture. For many tribal nations, permanency is not about severing anything. It's about strengthening and protecting children. It's about ensuring a child remains connected to their cultural identity, extended family, and tribal community. Tribal customary adoption is a culturally rooted permanency option that allows a child to achieve stability without terminating parental rights. It helps preserve relationships with children's biological families and with the tribe, relationships that are crucial to emotional well-being and long-term success. During my years with the Winnebago tribe, I witnessed how devastating it can be when families are forced into all or nothing choices, like relinquishments or termination of parental rights. I also saw how children can thrive when solutions are flexible, culturally grounded, and guided by tribal values. LB1032 supports compliance with the best interest standard that's in Nebraska Indian Child Welfare Act, by promoting outcomes that maintain a child's political, cultural, and social relationship with their tribe. This bill recognizes that tribes are experts in their children and families. It respects tribal sovereignty while giving Nebraska courts a clear legal framework to recognize and enforce tribal customary

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Judiciary Committee February 12, 2026  
Rough Draft

adoption. This bill does not weaken child safety or permanency standards. It strengthens them by aligning outcomes with what we know works for Native children. I respectfully ask you to advance LB1032 and stand with Native children, families, and tribes in supporting permanency solutions that truly honor their best interests. Thank you.

**HOLDCROFT:** Thank you, Ms. Washburn. Any questions for this testifier?  
Sen--

**HALLSTROM:** Yeah, I might just say it. My questions may result from a need to better understand, but they're driven by child safety. So I appreciate your comments in that regard.

**HOLDCROFT:** Any other questions? Thank you, Ms. Washburn, for your testimony. Next proponent. Proponent. Welcome.

**DANIELLE LaPOINTE:** First timer.

**HOLDCROFT:** Hey.

**DANIELLE LaPOINTE:** All right, guys. Well, good afternoon. I know it's almost suppertime. I'm Danielle LaPointe. My name is spelled D-a-n-i-e-l-l-e L-a-P-o-i-n-t-e. I'm here on behalf of the Santee Sioux Nation Social Services over in Santee, Nebraska. I'm currently the Director. I have been in this role for the last 8 years. The data in the study was generated from the DHHS Department with an agreement between it and the Santee Sioux Tribe. I'm here to speak for our department that provides services to those families that make up some of the data. When families come into Child and Family Services care, it is highly likely our children will be placed with relatives first. If this cannot happen, we then move on to kinship placement, foster care placement, or facility placement, in that order. Families don't always get their children out of care, so we do end up finding permanent homes for them. It is common for the relatives, kinship, or foster care parents who become the permanent guardians to receive a state-approved subsidy for that child or children they are now raising. With a tribal customary adoption law for Nebraska, this opportunity would allow our subsidies to remain in place for those who opted with this approach to permanency. In turn, we may be able to update our tribal code while continuing to provide the hands-on work we do for our families and continue our positive relationship with the state DHHS. Our relatives losing custody really just want their children to continue being connected to their tribal customs and community. That's what we experience.

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Judiciary Committee February 12, 2026  
Rough Draft

**HOLDCROFT:** Thank you, Ms. LaPointe. Senator Rountree.

**ROUNTREE:** Thank you so much, Senator Holdcroft. And thank you so much for your testimony and for more clarification and for doing the hands-on work. So we talked earlier and spent earlier testimonies about being able to-- if we push this through, then we might be qualified for federal funds. It might take some of the funding off in the state, but be able to draw down federal funds.

**DANIELLE LaPOINTE:** Yeah, they call them IV-E funding.

**ROUNTREE:** Yeah, the IV-E.

**DANIELLE LaPOINTE:** Mm-hmm.

**ROUNTREE:** OK. How labor intensive is it to draw the IV-E funding?

**DANIELLE LaPOINTE:** It's a lot of paperwork between, like, our office and, like, the state department that do guardianship subsidies or adoption subsidies or kinship subsidies, so it's really a team effort. We're one of three tribes that have an agreement with the state DHHS. So we really work together with everything and we run that agreement July 1 to June 30 every year.

**ROUNTREE:** OK. All right, thank you so much.

**DANIELLE LaPOINTE:** Mm-hmm.

**HOLDCROFT:** Any other questions from the committee? Senator Hallstrom.

**HALLSTROM:** So the customary adoption will be recognized by state law. It serves as an adoption without legally terminating the parental rights.

**DANIELLE LaPOINTE:** Mm-hmm.

**HALLSTROM:** And the, the procedures in the bill retain some parental rights and allow the court to determine whether or not there should be modifications to the customary adoption. So I'm starting to get it a little better?

**DANIELLE LaPOINTE:** OK.

**HALLSTROM:** OK.

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Judiciary Committee February 12, 2026  
Rough Draft

**HOLDCROFT:** Any other questions from the committee? Seeing none, thank you Ms. LaPointe.

**DANIELLE LaPOINTE:** Yeah, we were like, he asked that question three times. I think someone can get it for him.

**HALLSTROM:** I'm slow.

**HOLDCROFT:** Thank you.

**DANIELLE LaPOINTE:** OK.

**HOLDCROFT:** Next proponent. Welcome.

**KATHRYN O'HAGAN:** Thank you. Good afternoon. Almost evening. All right. Good afternoon, members of the Judiciary Committee. My name is Dr. Kathryn O'Hagan, K-a-t-h-r-y-n O-'-H-a-g-a-n, and I am the Director of Programs for the Division of Children and Family Services in the Department of Health and Human Services. I am here to testify in support of LB1032. LB1032 provides recognition of tribal customary adoption in state law. Tribal communities have unique cultural traditions and legal frameworks around family and child rearing. Tribal customary adoption is a culturally rooted practice that many Native families use to ensure children have stable, permanent family connections without unnecessarily severing ties to parents, extended family, and the, the child's tribal community. Federal law recognizes tribal customary adoption under the Indian Child Welfare Act. However, without explicit state statutory authority, state courts lack a clear mechanism to implement or recognize tribal customary adoption in foster care cases that remain under state jurisdiction. When Native children are removed from their homes due to abuse or neglect, establishing permanency as safely and quickly as possible, and in culturally appropriate ways is critical to their long-term safety and well-being, as well as reducing prolonged stays in foster care. Currently, tribal courts utilize some tribal customary adoptions, however, guardianship is more commonly used to support families, particularly when access to a subsidy is needed. When a Native child is involved in a case with DHHS, guardianship is typically the permanency option utilized instead of a standard adoption, in part to maintain those tribal connections. Currently, DHHS has 363 youth who are ICWA eligible, and there are an additional 331 tribal youth. Combined, this would result in 694 youth who would potentially be eligible for tribal customary adoption should their cases progress to adoption as a permanency objective. LB1032 helps state and tribal

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Judiciary Committee February 12, 2026  
Rough Draft

systems work more effectively together in the best interest of children and families while aligning Nebraska child welfare law with the spirit and goals of ICWA. Recognition of tribal customary adoption further strengthens the department's core values of safety, permanency, and well-being by providing a legally recognized permanency option that maintains existing safety requirements while supporting continued family and tribal connections. We respectfully request that the committee advance the bill to General File. Thank you for your time. I'd be happy to answer any questions that I can.

**HOLDCROFT:** Thank you, Dr. O'Hagan. Are there any questions? Yes, Senator Halloran. I mean-- what's your name again? Hallstrom.

**HALLSTROM:** Started to question it. You've been here when I've asked my question.

**KATHRYN O'HAGAN:** I have.

**HALLSTROM:** Can you address, then?

**KATHRYN O'HAGAN:** I want to make sure I am getting to your question. So you're asking-- this, this is a permanent adoption. So the parents in this tribal customary adoption are as responsible for that youth as a traditional adoption. So they are not-- there's not a tribal customary adoption, and then immediately they're taken back to the family that may have been found responsible for abuse and neglect. They're still responsible, these tribal customary adoptive parents are still as responsible. Does that answer your question?

**HALLSTROM:** Yes.

**KATHRYN O'HAGAN:** OK.

**HALLSTROM:** And then in your testimony, with regard to the guardianship, does that have to do with eligibility for some type of benefit or subsidy?

**KATHRYN O'HAGAN:** We have guardianship subsidies and adoption subsidies. Tribal customary adoption, should it be recognized in state statute, would allow it to have the same claiming as we do for traditional adoption subsidies?

**HALLSTROM:** So they wouldn't have to be a guardian if this is enacted?

**KATHRYN O'HAGAN:** Correct.

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Judiciary Committee February 12, 2026  
Rough Draft

**HALLSTROM:** OK. Thank you very much.

**KATHRYN O'HAGAN:** You're welcome.

**HOLDCROFT:** Any other questions?

**HALLSTROM:** And I didn't, I didn't have to ask my question a fourth time.

**KATHRYN O'HAGAN:** Nope.

**HOLDCROFT:** Senator Rountree.

**ROUNTREE:** Thank you so much, Senator Holdcroft. And, and, Dr. O'Hagan, thank you so much for being here. And I must say that this is one of the, one of the first hearings that I've been to that our DHHS is coming fully in support. So I am ecstatic. I'm excited for it.

**KATHRYN O'HAGAN:** Our, our director couldn't be here and I was like I will do it. We're, we're proponent, I'm here for this.

**ROUNTREE:** So I'm ecstatic, I just want to say that to you.

**KATHRYN O'HAGAN:** Yes.

**ROUNTREE:** But I do want to go back to our 363 and 331.

**KATHRYN O'HAGAN:** Yes.

**ROUNTREE:** Down next to the bottom. So 694 youth who could potentially be eligible to be in a permanent situation.

**KATHRYN O'HAGAN:** And that was at the time of pulling this--

**ROUNTREE:** At the time of pulling it.

**KATHRYN O'HAGAN:** --so that can change, certainly. Yes.

**ROUNTREE:** Absolutely. So how do we progress and go forward? We've got to pass the bill. If we pass the bill, we can do it.

**KATHRYN O'HAGAN:** OK. Yes we do have to pass the bill, certainly. So that's if all 694 move to an adoptive permanency plan. It's unlikely that all of them will. We do hope that reunification, and that's the goal, nine times out of ten, but if they do, and tribal customary

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Judiciary Committee February 12, 2026  
Rough Draft

adoption is an option, we would certainly hope that that's a possibility for these youths.

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

**KATHRYN O'HAGAN:** Yeah.

**ROUNTREE:** Thank you.

**HOLDCROFT:** Any other questions? Thank you, Dr. O'Hagan.

**KATHRYN O'HAGAN:** Thank you.

**HOLDCROFT:** Next proponent. Welcome.

**CHLOE FOWLER:** Hello, long time no see. OK, would that make you vice vice?

**HOLDCROFT:** Vice Vice Chair.

**CHLOE FOWLER:** Second Vice Chair

**HOLDCROFT:** Yes.

**CHLOE FOWLER:** Second Vice Chair Holdcroft, members of the Judiciary Committee, I'm Chloe Fowler, C-h-l-o-e F-o-w-l-e-r, the Child Welfare Policy Analyst with the Children's Commission, and I'm here to testify in support on behalf of LB1032 for the Children's Commission. So our statutory charge includes evaluating systemic barriers, recommending legislative improvements, and ensuring Nebraska's child welfare framework promotes safety, permanency, and well-being for all children. It is the opinion of the commission that LB1032 advances each of these three objectives. Tribal customary adoption is a permanency pathway grounded in tribal law, culture, and sovereignty. Unlike traditional state adoption, it may preserve certain parental rights while establishing a permanent custodial relationship according to tribal custom. This model reflects the values and family structures of tribal communities and is explicitly consistent with the purpose of the federal Indian Child Welfare Act, or ICWA, and it protects Indian children and promotes the stability and security of tribes and families. LB1032 provides necessary statutory clarity by recognizing and enforcing tribal customary adoption orders in Nebraska courts. Clear recognition reduces procedural barriers, prevents duplicative litigation, and ensures that children do not experience unnecessary delays in achieving permanency. Permanency delayed is permanency

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 12, 2026  
Rough Draft

denied. This bill helps ensure that Indigenous children can exit foster care into stable, legally secure family relationships without being forced into processes that are inconsistent with tribal law. The Children's Commission also houses the Nebraska's Strengthening Families Act Committee. The federal Preventing Sex Trafficking and Strengthening Families Act emphasizes timely permanency, youth well-being, and system accountability. LB1032 is aligned with the principles of these federal laws, and this bill expands legally recognized permanency options, supports culturally responsive placements, and strengthens coordination between state and tribal systems. Research in Nebraska's own data consistently show that Indigenous children are overrepresented in the child welfare system. Addressing disparities requires structural clarity and respect for sovereignty. Recognizing tribal customary adoptions, it is not symbolic. It is a practical step that strengthens placement stability, reduces reentry into care, and honors a child's cultural identity as a protective factor for long-term well-being. LB1032 also improves system coherence, it respects jurisdictional boundaries, it promotes permanency without unnecessary termination of parental rights when tribal law provides a different path, and it ensures that Nebraska courts give full faith and credit to lawful adoption orders. The Children's Commission views this bill as consistent with our statutory mission and Nebraska's broader commitment to child welfare reform. For these reasons, we respectfully urge the committee to advance LB1032. I welcome any questions, and I see our main questioner is out of the room.

**HOLDCROFT:** Thank you, Ms. Fowler. Any questions from the committee? Seeing none, thank you very much.

**CHLOE FOWLER:** Hallelujah.

**HOLDCROFT:** Next proponent. Welcome.

**JUDI GAIASHKIBOS:** OK. Thank you so much for your patience. It's been a long afternoon. I am Judi gaiashkibos, the Executive Director of the Nebraska Commission on Indian Affairs, and that is spelled J-u-d-i g-a-i-a-s-h-k-i-b-o-s. I'm an enrolled member of the Ponca Tribe and I'm Santee Sioux as well. I would like to thank everyone that came today. In my 30 years as the Director of the Commission on Indian Affairs, I would have to say this is one of the most well-attended and testified hearing. And I think that is because we-- our children are our most precious part of who we are. They are our future. And so everybody today came to support protecting our children. They're our

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 12, 2026  
Rough Draft

greatest resource, and I want to thank Senator DeBoer. I want to thank Appleseed. I've been working with them for a couple of years as much as I could, Zoomed in with them. They have been diligent. This wasn't done in a hurry. Last year we weren't ready, so we took another year. And we had all of the different organizations represented here today, NICWC, they have been really wonderful to be a part of all of this. The tribes present, the staff. As you can see, we had people come all the way from the Santee Sioux Nation, 4 hours away, where Senator DeKay lives. The vice chairman was here. There are many people from Winnebago, Omaha, and why they're all here and coming so far at this late hour, they won't get home to their, to their homes and their children till dark time, it's because they believe that this bill can change our lives and our children's lives. So it is my honor today to say on behalf of the Nebraska Commission on Indian Affairs, after looking at all of the bills we have this year, which we have about five bills, our board voted two Fridays ago to select this bill to be the state-tribal relations priority bill. And we have sent that to the committee. They then will take their action. And, therefore, we hope that this will elevate it so that this can happen and we can start getting some of those children placed in homes of permanence but that are culturally intact. So with that, I want to thank, again, everybody that came today. I appreciate their support. I'm honored to be as a mother and grandmother here to advocate for our future's children and other lives that they can-- remembering that, we as Indian people, we're dual citizens, but, firstly, our tribal affiliation and who we are as Indian people always comes first. Wibthaho.

**HOLDCROFT:** Thank you, Ms. gaiashkibos.

**JUDI GAIASHKIBOS:** That is great, Senator.

**HOLDCROFT:** Any questions from the committee? OK, thank you very much.

**JUDI GAIASHKIBOS:** Thank you so much. Safe travels.

**HOLDCROFT:** Next proponent. Do we have any other proponents? Any opponents? Anyone testifying-- oh, we do have an opponent. Welcome.

**SCOTT THOMAS:** Thank you, Co-cochair Holdcroft, and the Judiciary Committee. My name is Scott Thomas, S-c-o-t-t T-h-o-m-a-s, with Village in Progress and U.S. Institute of Diplomacy and Human Rights. And respect for everybody, their sincerity and their bravery that spoke here today. So not to diminish any of that. But in regards to the issues raised by Senator Hallstrom, ICWA had a very specific

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Judiciary Committee February 12, 2026  
Rough Draft

intention when enacted by Congress. And the consequence of it, what we see is just trades one government for another. But there are a couple problems with this bill. I think there's a test case out of Texas. I don't know if it's been heard or not. But it speaks to the concerns that you have, sir, that we, we-- I think we just saw, I think we just saw expressed for us by the Director of Children and Family Services of the state of Nebraska. A dual preference, I guess you could say, outside of objective child protections, which is what we believe takes priority when you're dealing with children. It's what's in the best interest of the child, nothing else. Nothing else should, should be considered in that regard. Just what's in the best interest of the children and the child's safety. I mean, you have problems all around with this. I'm not sure how you get around, like the Fort Laramie Treaty of 1868. It says state law holds stateside. It even says state laws holds for U.S. citizens on reservation land. I mean, I'm not sure what treaty or case law any of this is brought under or operating under. So I'm just kind of-- I would, I would say that, that you have-- I appreciate the intention, but I think you have problems logistically with the bill. There's-- like I said, there's the, there's the question of discrimination that's been brought before the court. And that's the Texas case. But same, same, same issue. If it's an ICWA case, you know, what's, what's priority? Is it the child's interest? So any questions from the senators? I hope I have touched on some of the things you were interested in.

**HOLDCROFT:** OK, let's see if there are any questions from the committee. Seeing none, thank you, Mr. Thomas.

**SCOTT THOMAS:** Thank you.

**HOLDCROFT:** Appreciate it. Any other opponents? Opponents? Anyone testifying in a neutral capacity? Welcome.

**MONIKA GROSS:** Thank you. Senator Holdcroft and members of the Judiciary Committee, my name is Monika Gross, M-o-n-i-k-a G-r-o-s-s, and I'm the Executive Director of the Foster Care Review Office. The FCRO is the independent state agency responsible for tracking children in out-of-home care in Nebraska, reviewing children's cases, utilizing local volunteer citizen review boards, collecting and analyzing data related to the children, and making recommendations on conditions and outcomes for Nebraska's children in out-of-home care. I'd like to share some data with you today related to American Indian and Alaska Native children in out-of-home care to provide some context around LB1032. The first set of data is point-in-time data as of December 31,

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Judiciary Committee February 12, 2026  
Rough Draft

2025 and will be included in our March 1 quarterly report. The second set of data comes from our September 2025 annual report and consists of data collected during fiscal year '25 case reviews. The FCRO receives race and ethnicity data from DHHS for all children and youth in out-of-home care. The following data outlines similarities and differences between children and youth with the U.S. Census race/ethnicity category of American Indian or Alaska Native compared to all other race/ethnicity categories. The American Indian or Alaska Native group does not include Native children who fall into the Hispanic or the multiracial/multiethnic categories. Additionally, these outcomes do not include Native children and youth who are in out-of-home care under the jurisdiction of a tribal court because we don't have access to that data. So on 12-31-25, there were 118 American Indian children spending 483 [INAUDIBLE] days in out-of-home care. 40.9% of those children were placed in relative and kinship foster homes. 45.2% were placed in nonrelative homes. On our fiscal year 2025 case review data, our boards reviewed 110, the cases of 110 American Indian children. Of those, 60.9% were ICWA qualified. And of those, 39.1% had an ICWA cultural plan. 33.7% of the American Indian children we reviewed in fiscal year '25 had adoption or guardianship as a primary permanency objective. And of the American Indian children that we reviewed in fiscal '25, 43.7% were placed in a relative or kinship home. The termination of parental rights has been mentioned in 29.1% of the cases that were reviewed by our boards. Grounds for termination of parental rights appeared to exist. And in 17.3% of the cases, termination of parental rights was determined to be in the child's best interest by our boards. That doesn't mean that termination occurred. It just means that those were findings that the board made. Thank you for the opportunity to speak with you today, and I'm happy to answer any questions.

**HOLDCROFT:** Thank you, Ms. Gross. Any questions? Senator Hallstrom.

**HALLSTROM:** Are there any-- I guess I'm trying to get to the, the child safety issue. Are there any existing provisions by which the tribal courts, separate and apart from what we're doing here, can get involved in neglect cases?

**MONIKA GROSS:** If, if the child is, is an Indian child as defined in the Indian Child Welfare Act, then that child's tribe is able to intervene in the juvenile court case.

**HALLSTROM:** So if there's a state juvenile court proceeding for neglect or abuse--

**MONIKA GROSS:** Correct.

**HALLSTROM:** --the tribal court can intervene within the existing proceedings?

**MONIKA GROSS:** Yes, that's correct. The tribe can intervene and, and can-- they can move to have the case transferred to the tribal court.

**HALLSTROM:** OK. And if such a case is transferred to the tribal court, what are the options? I mean, does the tribal court treat that case in the same fashion that the juvenile court would in terms of the remedies that are available?

**MONIKA GROSS:** I can't answer that because I'm not familiar with tribal court procedure. I've not practiced in those courts.

**HALLSTROM:** So you don't, you don't know if one of the ultimate findings or remedies of the court would be that the, the neglect or abuse is such that they ought to be placed with someone else with or without termination of parental rights? And I'm assuming through the tribal court they don't, because of their customs and traditions, don't sever or terminate those parental rights. But they-- the court-- do you have any idea if the court can place them with someone else in the tribe?

**MONIKA GROSS:** I think based on the testimony that we heard today, I, I believe that that's correct.

**HALLSTROM:** OK. And, in your opinion, if you have one, would that, would that serve the same purpose as a customary adoption?

**MONIKA GROSS:** I guess-- you know, the tribal court would still have its processes to go through. And in our state courts, you know, the child's in a foster care placement until that guardianship or adoption is completed and then the court no longer has jurisdiction. I can only assume it's the same in the tribal courts. Like I said, I'm, I'm not familiar with their procedures.

**HALLSTROM:** Then presumably once it's transferred to the tribal courts, they take, they take control then.

**MONIKA GROSS:** Correct, correct. Our state courts would no longer have jurisdiction.

**HALLSTROM:** Thank you very much.

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Judiciary Committee February 12, 2026  
Rough Draft

**HOLDCROFT:** Any other questions? I do have some guidance from above, which I'm trying to bring up here. Let's see here. OK, Chairwoman Bosn has, has texted me a question for you.

**MONIKA GROSS:** OK.

**HOLDCROFT:** It says you can ask Monika the questions about whether or not the tribe can request transfer of these cases to the tribal court? Maybe we've already answered that question.

**MONIKA GROSS:** Yes.

**HOLDCROFT:** OK. Oh, I see, so you have-- you're ahead of me on that one. OK. OK. Any other questions from the committee? OK. Thank you very much.

**MONIKA GROSS:** Thank you.

**HOLDCROFT:** Any other neutral testimony? OK, with that, Senator DeBoer, you, you can close. I will tell you that of the comments, the online comments, there were 29 proponents, no opponents, and no neutral.

**DeBOER:** Thank you. And thank you to all the testifiers who drove and thank you for all the people who have worked on this bill. So just to reiterate what, what was already said, the State-Tribal Relations Committee has indicated a desire to prioritize this bill, just so that's in the back of your head. With respect to the opponent, he was talking about the, the test case in Texas. That case did, in fact, work its way through and up to the Supreme Court, and in 2023, in *Brackeen v. Haaland*, ICWA was upheld by the U.S. Supreme Court. So there's that recent case there for upholding ICWA. The kids that we're talking about are kids who are within the ICWA statute. And to sort of make sure we're all very clear about the question that Senator Hallstrom kept asking. Once a tribal adoption has taken place, a customary adoption as a state, the TCA, there we go, tribal customary adoption, the care, custody, and control of that child is transferred to the parents, the adoptive parents. The care, custody, and control of that child goes to those adoptive parents. The care, custody, and control of that child legally belongs to those adopted parents. It doesn't go back. It doesn't-- there is a section of the bill, Section 26, which provides for if there needs to be a modification for some reason of the tribal customary adoption in extraordinary circumstances a county court might have the opportunity to modify the tribal customary adoption. But there's a mechanism that is set out within

this bill with respect to transferring from-- to the tribal court. That transfer within the bill, we have a mechanism that, that says it's transferred only for that specific purpose of the tribal customary adoption. I think that's basically the question, so I'll just open myself up to questions and say that there are others who probably can answer them better than me, too, that I will direct you to if I don't know the answer.

**HOLDCROFT:** OK. Any questions? Seeing none, I think that's it. That concludes our hearing on LB1032 and our hearings for today. Thank you, everyone, who came.