

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 13, 2019

**PANSING BROOKS:** Good afternoon, and welcome to the Judiciary Committee. My name is Patty Pansing Brooks. I represent Legislative District 28 right here in the heart of Lincoln. I am Vice Chair of the Judiciary Committee. I'd like to give some-- a few basic rules regarding this about the Judiciary Committee and, and activities in this room and then we'll go forward and introduce the other members of our committee. Today assisting the committee are Laurie Vollertsen, our committee clerk, and Josh Henningsen, who is our legal counsel. We may be joined later by Neal Erickson, who is our other legal counsel. The committee pages are Alyssa Lund and Dana Mallett, both students at UNL. And on the tables inside the doors in which you came you will find the yellow testifier sheets. If you're planning on testifying today, please fill out-- fill one out and hand it to the page when you come up to testify. This helps us keep an accurate record of the hearing. There is also a white sheet on the table if you do not wish to testify but wish to record your position on a bill. Also for future reference if you're not testifying in person on a bill and would like to submit a letter for the record, all committees have a 5-- a deadline of 5:00 p.m. the day before the hearing to submit letters. We will begin bill testimony with the introducer's opening statement. Following the opening, we will hear from proponents of the bill and then opponents. And finally by anyone speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your name-- your first name and your last name and spell them for the record. We utilize an on-deck chair up here on my right, your left, and we ask that you keep the, the chair filled with the next person ready to testify in order to keep the move-- the hearing moving. If you have any handouts, please bring up at least 12 copies and give them to the page. And if you don't have enough copies, the page can help you make some more. We'll be using the light system that's right up here in the box. And when you begin your testimony, the light-- the green light will turn on meaning proceed and then the yellow light will give you your one-minute warning. And when the red light comes on, we ask that you finalize your, your comments and, and stop speaking. We have many hearings today and we need to get to all people and those wishing to testify. As a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during the hearings though some senators may use them to contact staff or to take notes. And so at this time I would ask that everyone check your cell phones, please, and make sure that they're in silent mode. And also any verbal

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outbursts or, or applause are not allowed and not permitted in the hearing room and so such behavior might, might be cause for you to, to be asked to leave the hearing room. And one other thing just to note is that committee members may be going to and from this hearing and that-- it has nothing to do with the importance of the bill or their interest in it, but senators may have other bills to introduce in other committees or other hearings to attend or meetings to attend. So with that, we'll-- I would like to have my colleagues introduce themselves. We'll start on my right.

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

**MORFELD:** Senator Adam Morfeld, District 46, northeast Lincoln.

**CHAMBERS:** Ernie Chambers, District 11, Omaha.

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

**DeBOER:** Wendy DeBoer, District 10, that's Bennington, and surrounding areas in northwest Omaha.

**PANSING BROOKS:** Thank you. And with that, we open the hearing on LB457, and we have Chair Lathrop ready to present. Thank you.

**LATHROP:** Thank you, and good afternoon, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12, and I'm here today to introduce LB457. This bill updates Nebraska law to reflect the federal government's new approach to hemp that was included in the most recent farm bill which President Trump signed into law in December. We aren't trying to build a whole regulatory framework with this bill. What we're doing with LB457 is acknowledging as the federal government has done that hemp and marijuana are different and should be treated differently in our criminal code. By legalizing hemp, the federal government has given states an opportunity to cultivate a valuable crop. Its seeds are considered a superfood, rich in fatty acids, proteins, vitamins, and minerals. The oil can be used for anything from cooking to cosmetics and hemp fiber can be used in construction materials, textiles, plastic composites, and more. This is all from a plant that can be grown safely in a controlled environment under the watchful eye of the state and or the federal government. Other states are already jumping at this opportunity.

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LB457 helps ensure Nebraska doesn't get left behind in an area where our state should have a competitive advantage. It's my understanding that Nebraska has some of the richest varieties of wild hemp in the world and our climate and growing conditions are highly conducive to producing hemp particularly for fiber and grain. LB457 also helps clear up a discrepancy between state and federal law that has caused headaches for our law enforcement. County attorneys will no longer be put in the awkward position of prosecuting people for something the federal government considers harmless. It is also-- pardon me, it also helps avoid the possibility that Nebraska would unintentionally interfere with interstate commerce. I want to thank former Senator Bob Krist for all the work he's done bringing people together on this issue. There is a lot of excitement surrounding this change and the potential for hemp in Nebraska. This is just the first step, but it's a necessary step that will get us on track to join the other states that recognize the value of this crop. I should also add I want to thank Senator Wayne who has worked on this issue as well and who is carrying the bill that was heard in Ag Committee yesterday that provides the regulatory framework for producers in this state to grow this crop and processors to process the product. We have one small amendment, AM32, which strikes references to industrial from the bill. So it more closely mirrors the federal bill. And with that, with that, I would ask for your support on LB457. And I'd be happy to try to answer any questions.

**PANSING BROOKS:** Thank you, Senator Lathrop. Any questions from the committee? Seeing none, hope-- are you gonna be here to close?

**LATHROP:** Sure.

**PANSING BROOKS:** OK, thank you. Now we will take proponents-- first proponent. And just as a reminder, people could sit in that on-deck chair and it helps people be more efficiently ready to proceed. Thank you. Welcome.

**JENNIFER DAVIS:** Thank you, good to be here.

**PANSING BROOKS:** Thank you, go ahead.

**JENNIFER DAVIS:** I'm Jennifer Georgi Davis, and I am co-owner of Safe Haven Nutrition in Omaha and we had drafted a letter actually to the senators to support any opportunity to follow the federal regulation with hemp. The agricultural benefits are just one of the many benefits with hemp. I'm a certified aroma therapist. I love plants and all the

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chemicals in them are very important to me. From a health perspective, there are many benefits. Agriculturally, hemp actually cleans the soil so a lot of the things that we have issues with soil that hemp could help with that as well. Industrially, we can build so many things with hemp. Hemp has a growing cycle of 110 days. The possibilities are endless. The economic revenue for Nebraska would be extremely beneficial and we would like to as retailers be able to sell this product to consumers as we also want to educate the community. We offer a lot of free education around this and other plants that are beneficial to health and wellness. And if we want to talk about environment in our education we can do that as well. We just very much would like to, to have the wording in all of the laws be, be something where we're not, we're not scared to sell this. So as an aromatherapist, I really would like to see this pass.

**PANSING BROOKS:** Thank you for coming to testify. Could you spell your name for the record just to--

**JENNIFER DAVIS:** Last name is Davis, D-a-v-i-s, first name is Jennifer, J-e-n-n-i-f-e-r. Does anybody have any questions?

**PANSING BROOKS:** Great. Thank you, Miss Davis. Any questions for Miss Davis? Seeing none, thank you for coming today.

**JENNIFER DAVIS:** Thank you.

**PANSING BROOKS:** We appreciate it. Next proponent. Welcome.

**JACOB BISH:** Hello, Senators and members of the committee. Thank you for your time today. I am Jacob Bish, J-a-c-o-b B-i-s-h. And I'm here today in support of this bill. I wanted to clear up one facet I heard this past week. I heard that the university did not have appropriate testing equipment, and so I wanted to verify that. I reached out to Professor Ismail Dweiket, who is the only person in Nebraska who's been allowed to grow hemp for the university so far. And he has confirmed the university does have appropriate testing equipment. They have several types of HPLC, high performance liquid chromatography, that is standard in testing. They cannot only-- they can detect presence as well as concentration of THC. So that is not an issue for them. The Department of Food Science and Technology actually lists prices for testing of HPLC and they range from \$55 to \$150 so it does not seem to be a cost prohibitive test. So I just wanted to clear that

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up from what I've heard in this discussion in the past week. So that is my testimony. Is there are many questions I can answer?

**PANSING BROOKS:** Thank you, Mr. Bish, for coming today. Are there any questions for Mr. Bish? No, thank you very much.

**JACOB BISH:** Thank you.

**PANSING BROOKS:** Next proponent. Welcome.

**JAMES WILSON:** Hi, everybody. I got some granddaughter crud, so if you can't hear my-- exactly what I'm saying please yell at me and I'll repeat.

**PANSING BROOKS:** Just pull the mike a little bit closer because--

**JAMES WILSON:** How's that? Is that better?

**PANSING BROOKS:** Wonderful, thank you.

**JAMES WILSON:** I'm James Wilson, J-a-m-e-s, Wilson, W-i-l-s-o-n, Omaha, Nebraska. I'm a professor in the Department of Psychiatry. I taught at the Med Center 27 years, and then I was in neuroscience for GlaxoSmithKline for 13 years, worked in the area of neuroscience. My testimony today has to do with CBD oil, or cannabidiol oil. It's a wonderful product coming out of both sets of plants. And even today at lunch, I heard confusion between marijuana plants and hemp plant providing this particular oil. There is a distinct difference between the two. There's a lot of genetic engineering on the marijuana side. The goal of which is to get up near 40 percent THC worldwide. Whereas, the hemp plant is negligible. And-- excuse me, I would also reaffirm we got lots of HPLCs in Nebraska to measure this particular compound. We don't have to pay \$500,000 or whatever I heard the other day. We can get that done pretty cheap. Today, I'm interested in CBD oil. It has been proven now in the area of the treatment of seizures. We got good data, and I'm not talking about Internet data, I'm talking about scientific publications. We got some data in inflammation and some data in nausea associated with different cancers and things like that. So there is a need for that particular oil and I see no reason why if we're gonna be producing fiber and other products here in Nebraska from Nebraska hemp that we cannot take some of it and produce our own oil. And I need it certified and tested and properly bottled and manufactured. And also I would like the CBD oil to be given out by pharmacists across the state, not as a prescription drug, but as a

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preparation like naloxone, which is behind the counter and a person asks for it, but then they would receive proper counseling on side effects and drug interactions especially with our children that are using this for Lennox-Gastaut seizures. The, the parent has to be properly counseled and the physician has to be involved in monitoring that child. I'm very, very worried about that little piece of it. It's not little, but there's not many cases. Lennox-Gastaut is a very, very serious seizure disorder in children and so we got to kind of, kind of clear the way for that. And so I would like CBD oil to be behind the counter just like naloxone. Naloxone is used for the treatment of opiate overdose. A person can ask for it through the pharmacist and get proper use information on it. And I'll stop there for the questions I guess.

**PANSING BROOKS:** Thank you very much, Mr. Wilson. Are there some questions? OK, Senator Slama has a question.

**SLAMA:** Just to be clear and kind of refocus where we're at here, this bill has nothing to do with CBD, right, it's just the hemp-- production of hemp?

**JAMES WILSON:** OK, but as a result, the production of using that hemp comes down to the next step of using the oil. We've got to think about that. For a farmer or rancher that's a lot of money. If they have ten acres of hemp and they can produce-- let's say, a gallon or two of oil out of that, that's a lot of revenue for our farmers and ranchers. And I don't know about anybody, anybody else but I have to-- I'm also a rancher in Holt county and I got to-- an individual who is trying to build a herd and he's losing money day and night and this would be an opportunity for someone like him to have a little extra income because we got hemp in every feedlot you can name up there just about.

**SLAMA:** Yeah, but just LB457 doesn't--

**JAMES WILSON:** So just restricts it to that.

**SLAMA:** Just, just hemp.

**JAMES WILSON:** OK, so I over spoke.

**SLAMA:** OK, thank you.

**PANSING BROOKS:** What was the last thing you just said, I'm sorry.

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**JAMES WILSON:** I, I think I over spoke then.

**PANSING BROOKS:** OK, OK. And so then also I just wanted to clarify you mentioned the THC that the marijuana plant is that, that you said worldwide. It is-- people are attempting to increase the--

**JAMES WILSON:** Yes.

**PANSING BROOKS:** --THC levels. But again, that's not what we're dealing with here. Is that correct?

**JAMES WILSON:** That's correct, we're not dealing with that. I hope not, but I keep hearing people mix it up. They're, they're like it's the same deal here and we've got a lot of confusion-- even in the-- like I said the cafeteria this noon. A lot of-- I heard confusion about and I go, oh my gosh, they don't-- nobody has it. They don't understand what's going on here.

**PANSING BROOKS:** OK, I just--

**JAMES WILSON:** Because we're dealing with just hemp. I don't even want to talk about medical marijuana.

**PANSING BROOKS:** OK. Well, that's what I thought we were discussing, so I just want to make sure that we are clear that this is not about medical marijuana. This is about hemp--

**JAMES WILSON:** No, we are talking about CBD oil, hemp-- Nebraska CBD oil--

**PANSING BROOKS:** OK.

**JAMES WILSON:** --from hemp-- Nebraska hemp.

**PANSING BROOKS:** OK.

**JAMES WILSON:** Is that OK? Am I,--

**PANSING BROOKS:** Yes.

**JAMES WILSON:** --am I confusing you?

**PANSING BROOKS:** No, I'm just trying to make certain, but-- and, and then-- yes, I think we're fine. Thank you. Any other questions?

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**JAMES WILSON:** OK, thank you.

**PANSING BROOKS:** Thank you for coming, Mr. Wilson. Next proponent.  
Welcome.

**BLAIR MacDONALD:** Thank you. Vice Chair Pansing Brooks and members of the Judiciary Committee, my name is Blair MacDonald, B-l-a-i-r M-a-c-D-o-n-a-l-d, and I'm appearing before you today on behalf of the 21st Century Agricultural Opportunities Coalition in support of LB457. And we would really like to thank, Senator Lathrop, for bringing this bill this year. The 21st Century Agricultural Opportunities Coalition is a recently formed 501(c)(4). The purpose of our organization is to bring together key stakeholders who are invested in Nebraska agriculture and with the intent of exploring and developing emerging products. The ultimate goal of building this coalition is to unite in net purpose to grow the future of agriculture in Nebraska as it results-- or as it relates to further development of textiles, medicinal, and nutritional products, construction and building materials, and any number of other opportunities for additional cash crop development. We believe that crop is hemp and that Nebraska should be at the forefront of this emerging market as it was actually back in the World War II era. The first step we must take before we grow, process, and handle, and sell hemp is to legalize and clearly define hemp as a separate entity in Nebraska criminal code. Nebraska needs to harmonize its statutes with the federal farm bill of 2018 to give our farmers and entrepreneurs this great opportunity to be a leader in the hemp industry once again. And I urge you to please advance this bill. Thank you for your time. And actually to go back to the previous testifier, this bill does just deal with hemp. That's all just product that would have a THC percentage of .3 percent or less.

**PANSING BROOKS:** Thank you, Ms. MacDonald. So I'm presuming that that is what the, the-- part of the bill says the delta-9 of THC concentration. Is that what--

**BLAIR MacDONALD:** Yes, it would be that .3 percent THC.

**PANSING BROOKS:** Point 3 percent.

**BLAIR MacDONALD:** Yep.

**PANSING BROOKS:** Right. Thank you very much. Any questions? Thank you, Ms. MacDonald.



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**BLAIR MacDONALD:** Thank you.

**PANSING BROOKS:** Next proponent. Any more proponents?

**ANDREW BISH:** Thank you.

**PANSING BROOKS:** Welcome.

**ANDREW BISH:** Hello, Senators and members of the committee. My name is Andrew Bish, A-n-d-r-e-w B-i-s-h. Thank you for your time today. I speak to you as a third-generation agricultural manufacturer, business operator, job creator, private citizen, proud hemp supporter, and a member of the 21st Century Agricultural Opportunities Coalition headed by Senator Bob Krist. I come today in support of this bill but reject the fiscal note claims that have been attached. First, I've supplied some handouts. Some of those in the black folder have been printed on hemp paper. You'll notice a distinct difference. And then my brother spoke extensively about HPLC and our current in-state capabilities. I'm not gonna repeat any of that. Frankly, he's much more intelligent in that regard than I am anyway. I have provided a quote from a manufacturer I'm familiar with, Orange Photonics. Orange Photonics makes portable HPLC testers for cannabis testing. I'm sure you will hear or may have heard stories of how it's impossible to quickly identify a roadside-- in a roadside stop whether or not hemp is exceeding the acceptable level of THC. If you review the packet I've provided you will see that not only is that a false claim but the price tag is less than \$20,000 for the entire system. I know of another company that builds high-grade stationary systems for less than \$60,000. Testing is not expensive. Most labs today do this for under \$50 per test, even less if the THC content is being-- if only the THC content is being sought. Anyone that says otherwise is not being forthright. What is expensive is processing and nobody is asking the state to build processing equipment. Secondly, I need this bill to pass to protect myself and my company. In the past five years I've been working with hemp, I've had all-- I've had to do all of my product testing out of state. I've been faced with traveling extensively incurring a high cost to the company. In addition to the high cost of travel, the potential cost due to incarceration is staggering. Nebraska has its-- has drug its feet on this issue for far too long. As a person that attempts to do what is good and right over what is socially acceptable, I found myself on far too many occasions to be outside of the law in the state in Nebraska. As a matter of fact until we change a controlled substance act in Nebraska, my activities put me in the same category as a drug dealer or a drug trafficker. I

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am not a drug dealer. I am not a drug trafficker. I am, however, subject to the same consequences and fear of prosecution as they are. I have inadvertently transported more weight of hemp to this state than most drug traffickers all for the sake of research and advancing the cause I know to be correct. As a matter of fact, due to the fact that we are a small business, an abundance of daycare options are not available in my tiny community. I am sometimes in a position to commit these so-called felonious acts with my children with me. It fascinates me actually, I can combine a field of hemp with my daughter in the state of Kentucky in a completely legal and ethical fashion yet potentially face years of prison when I see the Welcome to Nebraska sign. Can you imagine how for-- both frustrating and embarrassing it would be for both me and the state to catch me in the act when I'm driving a 20-foot-wide combine header laden with product residue that is federally legal. These fears aren't something I should be dealing with and statements otherwise are ridiculous and nonsensical. I implore this committee to consider what I've said and reject the stance of naysayers as those that speak against this most appropriate of actions are truly fear mongers and enemies of human advancement. I know my actions are on the correct side of history. I hope I can persuade all of you today to join me on this side. Thank you, everyone.

**PANSING BROOKS:** Thank you. Any questions for Mr. Bish? Yes, Senator DeBoer.

**DeBOER:** I just wanted to be clear because there was a little bit of confusion earlier. Just to clear for the record that the type of hemp you're talking about is a different cultivar from the type that would be used for say, marijuana. Is that correct?

**ANDREW BISH:** The type of hemp I'm referring to has less than .3 percent THC.

**DeBOER:** And so does that mean that it is a distinct species, cultivar, whatever? I don't know what the terms are that would be from the type that they would-- that would be hybridized to include a higher level of THC?

**ANDREW BISH:** Typically, they are different, yes. You will not find the same cultivars that produce a high level of THC that also produce a low level of THC. No, those would be, those would be different.

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**DeBOER:** So it's literally a different plant?

**ANDREW BISH:** They are genetically different in what they produce. It's like an apple tree or an orange tree. They're both trees, one produces apples and one produces oranges.

**DeBOER:** Yeah, thank you.

**PANSING BROOKS:** Thank you. Any other questions? I, I have one question, Mr. Bish. I was-- so you brought the information regarding Orange Platon-- Orange Photonics.

**ANDREW BISH:** Orange Photonics. Yes, Ma'am.

**PANSING BROOKS:** Yes. And so it shows \$16,000, and you said under \$20,000. Who, who would have these? Does-- is-- does every law enforcement agency need to have these-- this equipment? Or what--

**ANDREW BISH:** No, I just brought an example of-- I've heard consistently that, that portable testing equipment doesn't exist and that portable testing equipment is hundreds of thousands of dollars. And I'm just submitting that that's factually incorrect.

**PANSING BROOKS:** OK. Thank you very much. I appreciate it.

**ANDREW BISH:** Thank you.

**PANSING BROOKS:** No further questions. Thanks. Thanks for coming. Any other proponents? OK, opponents? You have-- are you a proponent back there? OK, sorry. We're asking that people that are proponents come down to the on-deck chair. So if you are intending to testify, please come down. Proponents? Thank you.

**BILL HAWKINS:** Sorry, Senators, I just walked in. My name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s. I'm an organic farmer and herbalist that has over 45 years of experience of growing plants. It's something-- I'm, I'm with the Nebraska Hemp Company and we've worked for a long time to get this economic stimulus for farmers and manufacturers and producers for a long time. And I appreciate this committee and, Senator Lathrop, to bring this issue to a forefront because we need to change the law. There are people who right now all over the state are treating themselves with CBD products. And according to the Attorney General, they are breaking the law. They need relief. We have an opiate epidemic that we don't really talk about anymore. We have a "metham" epidemic here in this state. And

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these kind of products help people get off of that. And so as a farming economic benefit there are companies ready to come into this state with processing facilities. We can have economic development in every one of our towns where there is a, a group of industries that can start up that produce local sustainable jobs. I encourage this committee to really consider this. I appreciate the time. As a organic farmer, I, I mentioned at one of our first hearings five or six years ago that I'm in the process of putting in a earth berm passive solar greenhouse with high tunnels to start growing and breeding and producing this product. So there is all kinds of economic development. We just need to get the law straightened out. So I thank you for your time, and, and again all, all the senators that are working on this.

**PANSING BROOKS:** Thank you, Mr. Hawkins.

**BILL HAWKINS:** You bet.

**PANSING BROOKS:** Any questions?

**CHAMBERS:** Just a comment.

**PANSING BROOKS:** Yes, Senator Chambers.

**CHAMBERS:** Sam Cooke sang a song, it's a long time coming. It's been a long time coming but I know a change is gonna come.

**BILL HAWKINS:** You bet. I appreciate that sure-- sir. And I-- this is my Iron Forge Hemp Patagonia Barn Coat and it's one of the best coats we could have. And industrial hemp has not produced fabric in this country, in Canada, for 30 years. Nebraska can jump ahead on this if we get some economic stimulus to produce fabric in this state. Thank you and have a good day.

**PANSING BROOKS:** Thank you, Mr. Hawkins. No further questions. Thank you. Next proponent. Welcome.

**JOHN HANSEN:** Good afternoon, members of the Judiciary Committee. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I am the president and also the lobbyist for Nebraska Farmers Union. We are the second oldest, second largest general farm organization in the state. The first time that we brought a bill to the Legislature for consideration on this issue with the help of Senator Schrock was, I believe, 2001. So, Senator Chambers, we have, we have been on the path forward for a long time. And I, I want to report that there has been a very substantial sea change on this issue as we've been working this

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issue for a long time. We simply want the opportunity as agricultural producers to have one additional crop that we can produce as we would make an economic decision about all of the other crops that we raise and produce. So what is the crop that you can use that makes the most sense that provides you the opportunity to diversify your production and would be nice if we had a crop that we could produce that we actually made some money at. And so the last farm bill is a, a, a game changer. That farm bill was passed that clearly put the decision-making process back in the state's court relative to making the decision about whether or not this crop should be grown in their state or not. It, it is a-- it is historic when this is included in the farm bill. And so now it's up to the state as this is an economically beneficial thing for our state to do. And ag producers across the state as evidenced by the fact that the state's two largest farm organizations both support these efforts that the time has come for the state of Nebraska to step up and move forward. In that regard when the farm bill passed, there's two things that in our view had to happen. And one is that we had to go through the process of making it clear that we have redefined the terms relating to industrial hemp under the Uniform Controlled Substances Act which is what this does. It removes it from that list. That is the first step forward. Senator Wayne's bill yesterday is the regular-- regulatory regime which the Nebraska Department of Ag is in agreement with. They testified neutral yesterday relative to the protocol for the growing, the monitoring, the inspections, and all of the, the matters relative to complying and comporting with the farm bill itself. So this is the time to move forward. It is timely. It is appropriate. And that we welcome the opportunity to start catching up with what other states are already doing. And so thank you for your time. Thank you for your consideration. I'll be glad to answer any questions to the extent that I'm able to do so.

**PANSING BROOKS:** Thank you, Mr. Hansen. Any questions for Mr. Hansen? Nope. Seeing none, thank you for coming.

**JOHN HANSEN:** Thank you very much.

**PANSING BROOKS:** Any more proponents? Proponents? Any opponents? Opponents? Any in the neutral? Welcome.

**MARVIN HAVLAT:** Welcome. Good afternoon, Judiciary Committee. My name is Marvin Havlat, that's H-a-v-l-a-t, and my address is 1010 Carriage Way, Lincoln, Nebraska. And I've been out in California with my cousin who's been growing medical marijuana for 20 years. And I know some

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people that are in the hemp industry in Colorado. And I also know Dr. Dweikat from the University of Nebraska for 25 years maybe. So-- and I kind of know what he's doing over there, but I want to direct you to the first white page where it says, Cannabis sativa L. Well, that's what hemp is in this state. But really what happens is if you stay with that cultivar and genera or that-- you're gonna rest-- risk total crop failure at least one out of every ten years. And this is when the temperature hits 98 degrees and the humidity goes up to 90 percent. Basically, these plants will smother and this happens near the end of July and the first part of August before they actually go into flowering. You're gonna have to bring-- it's called-- the plants have lentil cells and stomata which pass the gas water vapor through their leaves. And when it hits a high humidity they'll literally drop over dead from powdery mildew before you can get a sprayer out there. It's like you cook them or something. So Dr. Dweikat is bringing other strains that helped increase the lentils and stomata size of the plants. I wrote the organic farming bylaws for the state of Nebraska four decades ago when we first started. I'd like this plant to be growing organically. There's several reasons, I got poisoned by some ag chemicals one time in my life and I'm very susceptible to it. These plants when you get going, they're gonna grow up to 30 feet tall and you're gonna have spray plants just putting all the sprays airborne and you're gonna have to because the Mexican marijuana brought in a pest called the budworm and it's so voracious it can like destroy all your seeds overnight, too. Now another is-- a concern of mine is in Colorado there was a farmer in Fort Morgan had a 4.0 crop. The federal government came in and had him take it down. For all the growers I talked to that's crazy. I think there was a professor over at Wesleyan decades ago went around and checked the THC level of the local plants and they, they ranged anywhere between .01 and .05. And these plants, unless you get a cultivar, they're not homogeneous. If you take the right plant you could get a .03. You take the wrong plant, you get a .05. There's also THC-- not all forms of THC are psychoactive, THC [INAUDIBLE] is not. There are other forms of THC that are not psychoactive. In California-- let's jump over here to the land prices-- in Los Gatos, two years ago you could have had farm land for \$25,000 an acre. Now it's a quarter of a million an acre because of the medical marijuana. And I'm wondering what's that gonna do to our taxes.

**PANSING BROOKS:** Mr. Havlat, the red light is on.

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**MARVIN HAVLAT:** Oh, I'm sorry.

**PANSING BROOKS:** No, that's OK. So this little red light [INAUDIBLE]--

**MARVIN HAVLAT:** All right, I'll close. Thank you for your time.

**PANSING BROOKS:** Thank you. Wait a minute. Are there any questions for Mr. Havlat? Did you, did you have a recommendation on what plant you think since-- I think you criticized the fact that it's the, the sativa L.

**MARVIN HAVLAT:** The, the sativa was gonna be crossed in order for it to do well because of our humidity situations. We're gonna have to have larger breathing pores on our plants. OK.

**PANSING BROOKS:** All right. Well, thank you very much for your information and--

**MARVIN HAVLAT:** OK.

**PANSING BROOKS:** --thank you. Any other neutral testifiers? Nope. Seeing none, Senator Lathrop to close.

**LATHROP:** Just very briefly. You can see that this is kind of a three-step dance. The first step was to have the federal government take it off the Controlled Substances Act, which has been done in the farm bill. This is now not an illegal substance. We need to do the same thing in Nebraska. That's what this bill does-- deals with it. This one's very simple and it's very straightforward. The third step in this process is Senator Wayne's bill which involves setting up a regulatory system far more complex than simply taking it off the Controlled Substances Act. I know a lot of you sat through the hearing yesterday. There's a lot of crossover between this committee and, and Ag. And so I think you're familiar with the issues and I'd appreciate your support of this bill.

**PANSING BROOKS:** Thank you, Senator Lathrop.

**LATHROP:** Thank you.

**PANSING BROOKS:** Any questions? Senator Brandt.

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**BRANDT:** Yeah, one real quick. The fiscal note in here was \$229,000. Is that no longer relevant because there's-- he testified that the university is able to test?

**LATHROP:** Well, that's something we're gonna work on. That's kind late-- that, that fiscal note came in late. We're working on with the State Patrol to find out if there's some other-- if-- first of all, if we already have the capacity to do that testing. That-- they tell us that what they have now is the ability to determine if a plant has any THC but not to discriminate between the low THC from the higher THC. The device that they've put in the fiscal note would be able to make that discrimination, and it would tell us what is the level of THC. We're looking to see who has that capability in the state. Is that already available as a public resource. And then we'll work with the State Patrol on that fiscal note. The reality is, and I know you all heard the speech on the floor, we can't spend any money, we're not going to take bills to the floor, or they may not pass. This is an opportunity even if that fiscal note were correct. And even if we couldn't get that to be lower, this is a \$299,000 investment in a billion dollar opportunity. So I think Senator Wayne's bill gonna generate some fees as I'm-- if, if I'm reading it correctly. And I suspect we can attempt to find some money somewhere and pay it back with some of those fees, too. So it's early on that fiscal note.

**BRANDT:** Thank you.

**PANSING BROOKS:** Thank you. Any other questions for Senator Lathrop? Seeing none, we do have some letters. We are no longer reading who, who sends letters anymore and they are part of the official record. But they are not going to be read because there are times when we get voluminous numbers of e-mails that we couldn't even finish the hearing in the day to read all the, the e-mails and who they're from. But they are part of the official record. So that closes the hearing on LB457. Thank you.

**LATHROP:** With the close on that bill, brings us to LB500 and Senator Morfeld. Welcome to the Judiciary Committee.

**MORFELD:** Thank you, Chairman Lathrop, members of Judiciary Committee. My name is Adam Morfeld, that's A-d-a-m M-o-r-f-e-l-d, representing the fighting 46th Legislative District here today to introduce LB500. LB500 would broaden traffic offenses which are eligible for people to participate in pretrial diversion program to include first offense driving under influence offenses. Under current law, people are able



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to participate in a pretrial diversion program for certain traffic offenses and criminal offenses. However, Section 29-3604 expressly excludes people who are charged with driving under the influence. This bill would change that. Pretrial diversion is an alternative to prosecution usually available to first-time offenders for minor charges. The prosecutor agrees to allow an offender to participate in diversion program. The criminal charge is generally dismissed upon successful compliance with a diversion program. People in diversion are required to complete conditions of their program which can include drug and alcohol treatment, payment of restitution, drug testing, taking self-improvement courses, and other rehabilitative efforts. Those who successfully complete a diversion program will have their cases diverted from the court system and their charges are either dismissed or not filed. For participants who fail to comply with the expectations of the program, charges are then filed and those defendants end up resolving their cases within the normal court system. LB500 would not mean that everyone charged with a first offense DUI would have their cases dismissed. This decision as to whether or not to have a diversion program and who should be allowed to participate will be up to the prosecutors. This bill is not seeking the mandate that prosecutors create diversion programs for DUI offenses. I want to make that clear. Instead, it is removing the blanket statutory ban to allow them to do so if they wish to. Diversion programs can be very effective and I think you'll hear from one prosecutor today about that at reducing recidivism. Diversion programs are sound public policy and consistent with other alternatives to incarceration that the Legislature has encouraged in recent sessions including drug courts, veteran treatment courts, mental health courts, and other problem-solving courts. I urge your consideration on this bill. I'm happy to answer any questions. And just so you're aware, I do have another bill up in the Health Committee so I, I may waive closing and have to leave in a few minutes.

**LATHROP:** OK. Any questions for Senator Morfeld? Seeing none. Doesn't Sarpy County already have a diversion program?

**MORFELD:** They do and I think that they, they have an exemption under the current law actually. And I think they can talk a little bit more about that today. I think, I think they're here. So--

**LATHROP:** OK, thank you.

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**MORFELD:** Thank you.

**LATHROP:** Appreciate your introducing LB500, and we'll take proponent testimony. If you're going to testify on this bill, if you don't mind coming up and sort of getting into the on-deck row here, we'll-- it helps us move the hearings along a little more expeditiously. Welcome, Joe.

**JOE NIGRO:** Thank you, Mr. Chair, members of the committee. I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I'm here to urge you to support LB500, which would allow for pretrial diversion programs for nonaggravated DUI first offenses. Pretrial diversion programs are set up by county attorneys. The County Attorney decides which offenses are eligible and the other criteria for eligibility such as prior criminal history. Successful completion of a diversion program means the case is dismissed and a conviction is avoided. People must pay fees to participate. They do community service. They sometimes take classes. If they're identified as having a substance abuse problem, they can be required to go to treatment. Sarpy County has operated such a program for DUI since 1976. At some point the Legislature restricted the use of diversion for DUIs but Sarpy County was allowed to continue operating their program. Their program has been incredibly successful with less than 10 percent of participants getting arrested for another DUI compared to 25 percent nationally. The Sarpy County Attorney-- I spoke with him and he recommends that the bill which only allows for nonaggravated DUIs actually should be broadened and amended to include aggravated DUIs because they've found just as much success with those offenders in Sarpy. And there is-- there are people here from Sarpy to speak about their program. Most people who go through the court system for a first-offense DUI get a seven-day jail sentence. Whether they serve the seven days in jail or on house arrest, those with a drinking problem receive nothing to address it. People will try hard to enter and complete a diversion program. Most of these people won't drive drunk again but in diversion those with an alcohol problem can be identified and ordered into treatment. This reduces the risk that they will drive drunk again. Prosecutors don't have to set these programs up or allow everyone in but it gives them another tool. This can also be a significant moneymaker for local governments. But that's not the reason to allow diversion for first offense driving under the influence. The reason is that it will reduce drunk driving. I'm a defense attorney but I drive these streets, too, and I also have an

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interest in having fewer drunk drivers on the streets. I urge you to advance LB500. Thank you.

**LATHROP:** Thanks, Joe.

**JOE NIGRO:** All right.

**LATHROP:** Appreciate your testimony.

**JOE NIGRO:** You're welcome.

**JUSTIN KALEMKIARIAN:** Mr. Chairman, Senators, my name is Justin Kalemkiarian, J-u-s-t-i-n, last name, K-a-l-e-m-k-i-a-r-i-a-n, and I come to be with you today as a member of the Nebraska Criminal Defense Attorneys Association. I am a practicing criminal defense attorney here in Lincoln and we urge you to support this bill. Much of what Senator Morfeld said, and what Mr. Nigro said, is, is exactly what I would say. To add to that-- to emphasize what Senator Morfeld said, it did, it-- what we like is it doesn't require prosecutors to allow diversion. It can be taken on a case-by-case basis and if somebody has a history of alcohol abuse seen through MIPs or alcohol-related assaults, other types of behaviors, that person can go through the court process as normal. But for people that make mistakes have, have a BAC that is within the realm that prosecutors deem appropriate that person can go through diversion. And one thing I've seen in my practice with other types of diversion programs is people that go through diversion they take it seriously. They do the work. They don't call me again. And that's, that's really important. They-- I don't get those repeat calls from people that are in diversion. In fact, I get a call six months later or a year later depending on the case thanking me for, for getting them into diversion and, and I always ask them-- you know, how did the program go. It went well. I've learned a lot. It helped me to identify some problems. At first I was a little hesitant, but I, I now know, I, I now know more. I have better tools to allow me to go forward and not commit another such crime. So for those reasons, we would urge you to support this bill. And, and to speak to Sarpy County, Sarpy County has had tremendous success with that. I assume that you're gonna hear from them today. It also closes a, a loophole that could be used, could be used to have defendants that go through diversion when they're not charged first. I think that could possibly be a-- an issue that this bill would deal with. So for those reasons, we would ask that you support this bill. Thank you.

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**LATHROP:** Very good. Thanks, Justin. Appreciate your testimony. Good afternoon.

**JENNIFER THOMAS:** Hi. Good afternoon, Chairperson Lathrop, Lathrop, members of the Judiciary Committee. My name's Jennifer Thomas, J-e-n-n-i-f-e-r T-h-o-m-a-s. I'm the assistant director of Sarpy County Diversion for the Sarpy County Attorney's Office. On the behalf of Sarpy County Attorney, Lee Polikov, I am here--

**LATHROP:** Could you pull that mike a little closer to you, please.

**JENNIFER THOMAS:** Sorry. I'm appearing here today as a proponent of Senator Morfeld's LB500. Public safety is a major concern with our office and we think diversion can play in a critical role in helping achieve better public safety. With first-time DUI offenders, we feel that diversion can be the best way to halt such dangerous behavior. We ensure that those offenders never do it again. I know that the committee has had a lot of other matters before it today so I will be brief. I would like to point out several aspects of diversion. We base our program on the client's needs. We get to know the client as a person and a member of our society. We provide guidance with accountability that includes AA education such as DUI traffic that is taught by a law enforcement, drug and alcohol education that can vary from 8 to 12 hours, a victim impact panel that we've gathered with Project Extra Mile's influence and MADD Mothers. We also do extensive drug and alcohol testing and treatment when necessary. Some numbers that I've calculated and would like to bring to you. In the past five years in 2014, we had 315 DUI clients that were referred to diversion, 63 of them were under 30 years of age. In 2015, we had 294 DUI offenders, 60 percent of them are under 30 years of age. In 2016, 275 DUI offenders and 61 were under 30 years of age. In 2017, we had 247 DUI clients and 64 were under 30 years of age. And then lastly in 2018, we had 288 DUI offenders and 55 were under the year-- under 30 years of age. We believe with people being this young we have a chance to change their behaviors with education, guidance, accountability, and support. I welcome-- and thank you for letting me speak and welcome any questions.

**LATHROP:** I do have a question for you.

**JENNIFER THOMAS:** Sure.

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**LATHROP:** Sarpy County-- they apparently have an exemption from the, you can't do diversion for DWIs?

**JENNIFER THOMAS:** I'm not an attorney.

**LATHROP:** OK.

**JENNIFER THOMAS:** Lee Polikov has said to me that we have been grandfathered in for years.

**LATHROP:** OK.

**JENNIFER THOMAS:** And we've been doing diversion longer than I've been there. I've been the assistant director since 2008. I've been with the county since 1995 and I've seen great success with it.

**LATHROP:** OK, I have another question for you.

**JENNIFER THOMAS:** Sure.

**LATHROP:** Since Sarpy County is the only place doing this, they've set their own criteria for who they will offer diversion to and who they will not offer diversion to. Is that true?

**JENNIFER THOMAS:** That's the prosecutor's discretion through Lee Polikov.

**LATHROP:** OK. And my question is do we need to put any criteria in this bill or shall we leave it to the discretion of the prosecutor in each county?

**JENNIFER THOMAS:** I'm not an attorney.

**LATHROP:** OK.

**JENNIFER THOMAS:** I don't feel qualified to answer that.

**LATHROP:** OK. All right. I see no other questions, but thank you for coming here today.

**JENNIFER THOMAS:** You're welcome.

**LATHROP:** We appreciate what you're doing in Sarpy County.

**JENNIFER THOMAS:** Thank you, thank you.

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**LATHROP:** Next proponent. Good afternoon.

**KELLEE MORENO:** Hi, my name's Kellee Moreno, K-e-l-l-e-e M-o-r-e-n-o. I'm here on behalf of people with chemical dependency problems. People who drink and drive. I know a lot of people who have benefited from the pretrial diversion. The problem I have with is that it needs to expand more than just people that are-- have first-time offenses. When you have a disease and this is a disease-- the addiction, you don't get it the first time. You know, and I don't think that there should be-- the, the prosecutors I don't think need to make a moral decision on who, who deserves it and who doesn't. Incarceration does not work. We have a huge problem now that we already have to address, and I think we need to expand this program. Thank you.

**LATHROP:** OK, thank you, Kellee. We appreciate your testimony once again. Anyone else here to testify in the favor of this bill? Anyone here in opposition who cares to be heard? Opponent testimony? Good afternoon.

**JESSICA KERKHOFS:** Good afternoon. Hi, my name is Jessica Kerkhofs, J-e-s-s-i-c-a, Kerkhofs, K-e-r-k-h-o-f as in Frank-s as in Sam. I'm the chief prosecutor at the City Attorney's Office here in Lincoln and I'm here to share a letter that I had wrote to the committee in opposition of this bill. The city of Lincoln prosecutes a large majority, if not almost all of the first offense nongroup-- nonaggravated DUIs in the greater Lincoln/Lancaster County metro area. In the last five years, we've filed 1,777 charges of this particular offense that is not including, that is not including aggravated or enhanced offenses. Our office takes these violations very seriously. The national trend continues to be one of tightening and enhancing DUI penalties, not relaxing them. For example, agencies such as the National Safety Council, the National Academies of Sciences, Engineering and Medicine, and the National Transportation Board all support a reduction of the BAC for DUI offenses from the current .08 to .05. Utah recently passed a .05 law and bills have been introduced in other states to follow suit. Social host and procuring laws are becoming much more prevalent with serious penalties attached. Currently, I believe only eight states permit some form of diversion for DUI offenses. I presume the proponents of this bill believe that offenders have made mistakes and that they should be allowed to correct those mistakes by participating in a diversion program. I do disagree with this position and I couldn't disagree with this position more strongly. A DUI is a 100 percent preventable offense. It's not a

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mistake. It's a premeditation-- premeditated violation of the law where the outcome of the decision to drink and drive is unpredictable and, frankly, left to fate. Just because the worst possible result doesn't occur, doesn't make the violation any less contemptible. Public safety demands a record of people who choose to drink and drive and drive under the influence. It is our intention to maintain, maintain those public records and we would likely not offer a DUI diversion program. It is our hope that this committee sees the value in continuing to hold drunk drivers to the current standard of the law. I thank the committee for the opportunity to testify in front of you today and, and would welcome any questions.

**LATHROP:** OK, I see no questions. Thanks for your testimony, Jennifer. Anyone else here in opposition to LB500? Anyone here in a neutral capacity that wants to be heard? Seeing no additional testifiers, Senator Morfeld to close. And I will note that we do have some letters in support as well as some in opposition. They have been shared with the committee members. And with that, Senator Morfeld.

**MORFELD:** Thank you, members of the committee. I certainly understand certain people's concerns about it but the great thing about this bill is it's still up to the prosecutor's discretion. So if there is a county or a city that does not want to provide any diversion for first-time offenders then they don't have to. But for prosecutors that think that this has value and that there is a offender that would be well-served by this and the public would be well-served then they can take advantage of it. With that, I'd be happy to answer any questions.

**LATHROP:** All right, thank you. I see no questions, Senator Morfeld.

**MORFELD:** Thank you.

**LATHROP:** OK. With that, that'll close our hearing on LB500, and bring us to LB579 and Senator Quick. Hello, Senator Quick, and welcome to Judiciary Committee.

**QUICK:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Dan Quick, D-a-n Q-u-i-c-k, and I'm here to today to introduce LB579 which would add option for an interlock device to be used during sentencing, sentencing for a DUI which results in a serious bodily harm. Currently, the statute requires that as, that as a punishment for a serious driving offense such as driving under the influence, DUI, or driving under revocation the judge shall revoke a person's driver's license as part of the sentence. During a

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period of revocation, a person cannot drive a motor vehicle. For DUI offenses, the term of revocation can mean anywhere from six months for a first offense DUI to 15 years for a subsequent DUI or a more serious DUI. Other serious driving crimes would require that licenses be revoked for a period of time as well. But the law does provide that a judge may allow a person to operate a motor vehicle during a revocation period with, with an igni-- ignition interlock device. An ignition interlock device is a machine that a driver installs in their vehicle at his or her own expense which requires a person to breathe into the device to start and to drive the vehicle to ensure that the driver has not consumed alcohol. Judges will typically require drivers to obtain an interlock device for a first offense DUI and even for more serious DUI offenses if the court places such a person on probation or imposes a mini-- minimum sentence or decides for any other reason that the person should be allowed the ability to drive during the revocation period. The issuance, issuance of an interlock order is part of the sentence and is, is the discretion with the judge. Part of the policy argument for interlock is that these devices provide a, provide a control on offenders are a way to ensure that if they drive they are not drinking. Being able to drive ensures that the former offenders can be employed and can live a productive life-- productive lawful life after conviction so that they do not offend-- reoffend. A number of years ago, the interlock requirement was broadened to a variety of offenses. For some reason, an ignition interlock device is not an option for a DUI resulting in seriously-- serious bodily injury in violation of Section 60-6,198. There is no apparent reason for this, for this exception because the law does allow for an interlock order for more serious cases such as a DUI resulting in death or third, fourth, or even fifth offense DUI as a result a variety of other enhanced felony driving crimes. In the-- in reality, the omission of Section 60-6,198 appears to have been an oversight. This bill would fix this inconsistency and provide that a judge may allow a defendant to obtain an interlock-- ignition interlock device for, for Section 60- 6,198. DUI interlock devices provide an important tool to help those who have committed these crimes to receive treatment and live a productive law-abiding lives. And I think it is important to allow a judge to have this discretion at sentencing. I look forward to working with the committee and other stakeholders on this bill and I'm happy to try to answer any questions you may have. And I understand there's supposed to be some other changes that may have to occur to help this bill along. So thank you.



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**LATHROP:** Thank you, Senator Quick. I see no questions. Are you gonna stay around to close?

**QUICK:** Yeah, I can.

**LATHROP:** OK, perfect. Proponents can come forward.

**JUSTIN KALEMKIARIAN:** Good afternoon. Thank you, Senators. My name is Justin Kalemkiarian, J-u-s-t-i-n, Kalemkiarian, K-a-l-e-m-k-i-a-r-i-a-n, and I appear on behalf of the Nebraska Criminal Defense Attorneys Association. I appreciate your time. Thank you to, Senator Quick, for his comments. And, and the reason why we support this is for many of the same reasons that he gave just, just now. Number one, it clears up a possible oversight. I was not around when this bill was drafted and introduced but it seems to be that it was simply left out. As Senator Quick said, you can get it for a fifth offense DUI, but if it's a first offense DUI and somebody breaks their arm and you're charged with a serious bodily injury DUI now you can't get the interlock. So we do believe that it was a possible oversight. This bill closes that gap and, and allows for those people to reintegrate-- reintegrate into society. Number two, the re-- second reason why we support it is it gives judges' discretion. The judge, the judge has the PSI in many cases if there was a PSI done. The judge is familiar with the case and the judge is familiar with whether or not this person should be given the privilege of an interlock-- the specific defendant. I mean, I'll give a specific example from a case I had recently in Sarpy County. It was a first offense DUI. There was a car accident and there was an injury. And my client ended up taking responsibility and, and pleaded no contest to that charge. And Judge Cox allowed the interlock device to be installed in the car. Now he made the comment, I don't know if the DMV will allow this, but I think it's appropriate so I'm gonna put it in the order and he put it specifically in the order. But under the, under the current regulation, I don't believe he's gonna be allowed-- my client will be allowed to get that interlock. He will be in prison for a significant period of time. And when he gets out, as we all know, there are reintegration issues with people that get out of prison, convicted felons especially. So this bill would allow people in his situation once they're released from incarceration to reintegrate themselves to be-- to go back to becoming good citizens-- productive citizens-- allow them to get work, support their families, etcetera. So because it clears up a possible oversight and because it would give a judge discretion to allow the interlock for DUI with serious bodily injury,

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the Criminal Defense Attor-- the Criminal Defense Attorneys Association asks that you support this bill. Thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you, Mr. Kalemkiarian. I'm-- could you just repeat again what you said about the fifth offense versus the-- that you said that there is a discrepancy there?

**JUSTIN KALEMKIARIAN:** Yes, so for example, a person accused and convicted of a say, a fifth offense DUI can be ordered to have their license revoked for up to 15 years but be allowed to get the interlock. Where if somebody who-- it was a first offense DUI that causes serious bodily injury that person would, under the current framework, not be allowed to get an interlock permit, and their, their license could be revoked for less period of time. I mean, again, there's a wide range in that revocation period, but that is a significant gap we believe.

**PANSING BROOKS:** Thank you for your explanation, Mr. Kalemkiarian.

**LATHROP:** See no other questions. Thank you.

**MICHELLE WEBER:** Good afternoon, Senators. My name is Michelle Weber, M-i-c-h-e-l-l-e W-e-b-e-r. I'm testifying in support of LB579 on behalf of the Nebraska County Attorneys Association. The Association is generally supportive of allowing for the option of ignition interlock devices during periods of license revocation for DUI offenses. According to the CDC, ignition interlocks reduce repeat offenses for driving while intoxicated by about 70 percent while they are installed. The National Highway Traffic Safety Administration reports that due to the low use of interlocks, the maximum potential reductions in alcohol-impaired driving and related deaths are not being achieved. This bill would simply allow for more instances of interlock use and allow the option of-- for DUIs resulting in serious bodily injury making it consistent with other DUI offenses. We respectfully request the committee advance the bill.

**LATHROP:** I see no questions. Thank you for your testimony. Next proponent, please.

**KELLEE MORENO:** Hi, Kellee Moreno, K-e-l-l-e-e M-o-r-e-n-o. I have a question about testifying. Who has access to what we testify up here? Is this to benefit--

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**LATHROP:** When you testify, it's transcribed and shows up in a book.

**KELLEE MORENO:** Is it, is it for the benefit of the other senators or just the Judiciary Committee?

**LATHROP:** Anybody, anybody can look at the testimony.

**KELLEE MORENO:** Thank you. First of all, like I said about addictions earlier, is addictions are a medical issue. One of the symptoms of, of drinking or, or using is that you have impaired judgment. People do drink and drive. And to be-- you have to address the problem. And if people aren't out in the community getting help for their addiction and they're locked up and punished for something it doesn't benefit anybody. My husband is incarcerated and I, I don't have the benefit of his income at all. So that's like 40-some thousand dollars out of our household income. The state is paying for-- you guys are paying for him to be incarcerated and there's no benefit of it. We need to quit incarcerating people for making mistakes. And if you do, if you do make a mistake you need to be out here, be self-supporting and not locked up.

**LATHROP:** OK. Thank you, Miss Moreno.

**KELLEE MORENO:** Thank you.

**LATHROP:** Are there any other proponents to LB579? Anyone here to testify in opposition? Anyone in the neutral capacity? Seeing none, we do have-- we have no letters in support or in opposition, but one in the neutral capacity. And with that, Senator Quick, to close. He waives closing. That will close our hearing on LB579, and bring us to Senator Matt Hansen, who is on his way. So the next bill up is gonna be LB335, and if you intend to testify in this bill if you could come to the front row that will help move things along for us. Proponents a little closer to the desk. Senator Hansen, you're up.

**M. HANSEN:** All right.

**LATHROP:** Welcome back, Senator Hansen.

**M. HANSEN:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26, northeast Lincoln. I'm here today to introduce LB335, a bill that would create the 24/7 Sobriety Program Act to set statewide standards to guide Nebraska counties in their implementation of 24/7 sobriety programs. The idea, the idea behind

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these programs is to conduct twice daily on-site drug and alcohol testing. Most often a breathalyzer test as a condition of bond for those who have committed alcohol or drug-related offenses usually, instead of more traditional methods such as an interlock device, ankle monitors, or pretrial detention. Under this bill, counties would, if they choose to start a program, set up site facilities and protocols through their sheriff's department or someone they designate using statewide minimum standards and recommendations. The state, in turn, would issue special 24/7 Sobriety Program driving permits to qualifying program participants similar to the current interlock driving permits now in use. Participation would be voluntary and participants would undergo immediate consequences if alcohol or drugs are detected and be ineligible to continue the program after six failed tests. Research so far has shown that these programs are more effective at reducing recidivism of drug and alcohol related offenses than traditional monitoring methods. Seeing the same facility staff twice day-- twice daily every day creates a unique sense of accountability that is often lacking with just an interlock device or a suspended license. Unlike off-site monitoring devices, alcohol use is caught right away and has immediate consequences. Early evidence shows that not only increased rates of sobriety among the participants but also a reduction in alcohol-related traffic accidents and in even domestic violence among the population. The first pilot program started in South Dakota in 2005, and they continue to have a successful and popular program. Since then many other states have followed including Iowa, Montana, Wyoming, and North Dakota with many other counties and other stable-- states implementing programs. From 2005 through February 2017, more than 30,000 unique South Dakotans participated in a 24/7 program and more than 99 percent of the breathalyzer tests were taken and passed. This bill was brought to me by stakeholders in Lancaster County who have already launched a pilot 24/7 program. Although they are off to a great start, we need this legislation for three reasons. First, legislation would allow participants to apply for a special driving permit through the DMV. Program staff report that the ability to drive and the independence that brings is a major incentive to sobriety in the program. Second, as 24/7 programs become more popular it is important to set minimum statewide standards based on best practices that are more likely to bring effective results. Third, statewide minimum standards allow for counties to apply for national grant funding only available to states that do have those statewide legis-- legislation. The version of this bill is a result of discussions with the Lancaster County Community Corrections staff. The County Attorney's Office and the County Public

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Defender. The amendment I brought today, and I'll have a page help me hand out. The amendment I have brought today makes the changes required-- changes requested by their counterparts in Douglas County. This team effort has resulted in a measured first step in implementing this popular and effective program. With that, I will allow the experts behind me to take over and extol the virtues of this program. But I'd be happy to answer any questions the committee has, and look forward to you advancing LB335.

**LATHROP:** Senator Hansen, I don't see any questions.

**M. HANSEN:** Thank you very much.

**LATHROP:** Thank you for introducing LB335. The first proponent may step forward. Welcome.

**KIM ETHERTON:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Kim Etherton, K-i-m E-t-h-e-r-t-o-n. I'm a licensed mental health practitioner and I'm the director of Lancaster County Community Corrections. My agency works closely with local criminal justice systems by administering programs that provide alternatives to incarceration. I'm here today in support of LB335. The 24/7 program was started in South Dakota to address repeat DUI offenses. As a result of the success experienced in South Dakota, multiple jurisdictions throughout the U.S. have implemented this effective sobriety program. Because of its growth, a National Advisory Council has been established and best practice standards have been developed. The best practice standards were used to guide the drafting of LB335 with these goals in mind: promoting sobriety and recovery, providing an alternative to incarceration, reducing recidivism, improving public safety, and providing accountability. Lancaster County Community Corrections offers a 24/7 program which began in the fall of 2017. Seventy percent of the current participants are facing felony DUI charges which means they are repeat DUI offenders, second aggravated third offense or above. In our efforts to establish our program we determined that Nebraska's DUI statutes have a gap in early identification and intervention for repeat DUI offenses, specifically the DUI second which is charged as a misdemeanor offense. In Lancaster County an individual cited for a DUI second is typically placed at The Bridge detox facility. This person remains at detox until they're sober and released to a responsible party. This person has provided a date for an arraignment and at that arraignment the typical bond conditions are no drinking and no driving without a valid interlock permit and device. There is no incentive at this juncture in the

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criminal justice process to par-- participate in a sobriety program. With an average of over 150 DUI seconds being charged each year in Lancaster County, we believe the pretrial conditions established through a 24/7 legislation will provide an incentive for those charged with a DUI second to participate in this 24/7 Sobriety Program. Inability is a key component of 24/7 programming and 24/7 programming provides abstinence monitoring that is difficult to enforce under current bond conditions. As important as accountability, is behavior change, 24/7 face-to-face daily interaction allows for quick identification of those who may benefit from additional community resources or treatment and participants are incentivized by praise and positive support. Each test they pass is a positive reinforcement for a long-term abstinence. The use of swift, certain, and moderate sanctions for 24/7 rule violations provides accountability and supports the behavior change process. For individuals with a DUI second, the goal is to significantly reduce the likelihood of receiving a DUI third which is a felony offense. And I see my time's up and you have the rest of my testimony so I can take questions.

**LATHROP:** OK. I don't see questions. I do have one for you. Tell me why this can't just-- if you guys are doing a pilot program why do you need legislation to make this happen? Why can't sheriffs just-- and judges just require somebody to come in as a condition of their release and do this from the bench without the Legislature's intervention?

**KIM ETHELTON:** Well, there are current statutes that dictate what, what is allowed for someone being put-- placed on bond for, for a DUI offense. There are mandatory minimums for jail time and there are conditions placed on them for interlock device requirements. This, this legislation allows us to give that individual access to a driving permit immediately rather than having to wait the allotted 45 days before they can, can drive. It also allows somebody who cannot afford the interlock device an opportunity to test pos-- to test clean for the first 30 days in the program and then apply for that permit as well. So the other piece for me that's significant is the grant funding that's available to make those programs available statewide.

**LATHROP:** OK. All right. Thank you for your testimony. I don't see any-- oh, pardon me, Senator Slama has a question.

**SLAMA:** Sorry, I just had a quick question with the way this bill was structured that Senator Lathrop's question kind of brought up in my

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mind. So the individual participating in this program is expected to drive to the facility. Right?

**KIM EHERTON:** They have to get there somehow, yes.

**SLAMA:** Yeah, so presumably they drive or have somebody--

**KIM EHERTON:** Bring them.

**SLAMA:** --driving them. My concern is with the sanctions if you're found to be in violation of this because the first violation is a 12-hour sanction. Correct? Where you're kind of held and detoxed.

**KIM EHERTON:** It's a 12-hour sanction in, in custody or-- yeah, [INAUDIBLE] facility.

**SLAMA:** And then you're released back into the-- so presumably there's a decent chance that the person in violation of this program has driven himself to the facility. Correct?

**KIM EHERTON:** There is, yes, there is that possibility.

**SLAMA:** And even if he's done that his punishment for failing to pass the sobriety test would still be the 12-hour hold and then released-- I'm assuming to drive home?

**KIM EHERTON:** Well, they-- if their-- they can't-- they won't be released unless they're sober within 12 hours. I think that will happen. But, yes, they would--

**SLAMA:** But I mean my big question is, is that they've now driven to this facility under the influence, they've failed this test and their blowback is a 12-hour hold and release?

**KIM EHERTON:** Their first, their first positive test is a 12-hour hold, their second is 24, and their third is 48 with conditions of seeing a judge before they're released from custody.

**SLAMA:** OK, so they could drive drunk up to five times in this program, take the test, fail it, and then eventually still be released scot-free in 48 hours or less?

**KIM EHERTON:** After a third positive, they would see a judge and the judge has a pos-- has the opportunity at that point in time to change the conditions of their bond.

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**SLAMA:** OK. So up to three times they're just getting this hold and release?

**KIM ETHERTON:** Yes.

**SLAMA:** Thank you.

**KIM ETHERTON:** I would like to mention that 99 percent of the people that we test at our facility test clean. We very rarely have tested someone and they've tested positive. It does happen but--

**SLAMA:** Thank you.

**KIM ETHERTON:** Yep.

**LATHROP:** OK. Thanks, Miss Etherton. Good afternoon, again.

**JOE NIGRO:** Good afternoon, Mr. Chair-- Senator, members of the committee. I'm, I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of Lancaster County and the Nebraska State Bar Association in support of LB335. I want to thank, Senator Hansen, for introducing this bill. LB335 authorizes 24/7 programs and most importantly creates 24/7 operator's permits which are essential to expanding these programs. The first 24/7 program was created in South Dakota by a judge who was frustrated by drunk driving cases. He created a program to reduce drunk driving and has proven to be wildly successful. In a 24/7 program, a judge releases a defendant on bond with the condition that they must appear twice a day to take a breath test to determine the presence of alcohol. The tests are 12 hours apart. Normally, the first time a person test positive for alcohol they go into custody immediately for 12 hours, a second time to go into custody for 24 hours, a third time 48 hours. And if they have a fourth positive test, they have to go before a judge to see if they need a higher level of care. People pay \$2 a day to be in the program. The compliance rate is something like 98 percent. The program was so successful in South Dakota they started using it statewide and they started using it for other offenses. South Dakota allows some flexibility in the program to accommodate issues in rural areas. A study by the RAND Corporation found that not only did drunk driving decrease in South Dakota, domestic violence decreased and the mortality rate in the communities where it was being administered decreased due to 24/7. South Dakota allows drivers with DUI charges to get a 24/7 permit to drive. This is crucial because people have to be able to drive to testing and to their jobs. A South Dakota judge can



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order interlock, but 24/7 has proven to be more effective. Other states, such as Montana, have started to adopt 24/7 programs. Douglas County and Lancaster County have each established 24/7 pilot programs and each has been very successful so far. Hopefully, this legislation will encourage more counties to set up 24/7 programs. There's a great story in the World-Herald this morning about the success of 24/7. The most important part of this bill is that a judge can authorize a 24/7 operator's permit. Currently, someone charged with DUI can only drive if they get an ignition interlock installed in their vehicle. The cost of these devices prevent many people from driving. Interlock does not prevent someone from driving a different vehicle or having someone else blow to start the car. We saw a case where a mom had her kid blow so that she could start the car to drive to a bar. In most situations, no one is receiving the data from the interlock devices to see if the person's been drinking. With 24/7 you cannot beat the test because if you show any alcohol in your system you immediately go into custody. It's essential that people be able to drive to the test site and to their jobs. The court can also still order interlock, but this gives the court more tools. The fees can be waived if someone can't afford them. So unlike interlock no one will be denied access. Some may be concerned that this proposal will weaken DUI laws but I urge them to look at South Dakota, 24/7 works, 24/7 reduces drunk driving, 24/7 will make our streets safer. I urge you to advance LB335. And I know I'm-- my statement is basically done, but I wanted to address Senator Slama's questions for, for Kim. If somebody came to the test site, if they blow anything above .000, that's considered a positive test. So if, for example, they were a .03, they're not under the influence to drive, but they're in violation of the program and they would go into custody. Now I'm certain if somebody showed up and they were under the influence and there was evidence that they had driven, in all likelihood, the staff would contact law enforcement and the person probably would be charged with drunk driving. So the concern you had that people could have five DUIs, that's not going to happen because the standard here is total zeroes. And, and, as I've indicated, it's been incredibly successful in South Dakota. And counties don't have to adopt these programs, but for it, for it to really take off we need the, we need the driver's permits and, and this gives people the option to be able to do that if they can comply with the terms of the program. I'm happy to address any other questions, if anybody has any.

**LATHROP:** I do have one for you. So in the bill it says: Each county, through its county sheriff, may participate in the 24/7 Sobriety

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Program. If the sheriff is unwilling or unable to participate in the program, the sheriff may designate an entity to provide the service.

**JOE NIGRO:** Yes.

**LATHROP:** Makes me a little nervous to have entity in there like is it gonna be Project Extra Mile or the MADD Mothers or,--

**JOE NIGRO:** Well, I think that,--

**LATHROP:** --or a for profit?

**JOE NIGRO:** I think that-- I mean, certainly the committee could amend that language. But I think it was trying to account for, for example, Lancaster County has a Community Corrections Department, and that's a completely separate county department who administers this program along with our pretrial release house arrest-- a variety of programs. And, and so we wanted-- with the legislation you want the flexibility for counties to be able to have other county departments but some smaller counties are not going to-- they'll probably just have the sheriff run it if they want to do it. And that's certainly what happens in a number of counties in South Dakota.

**LATHROP:** OK, but at least we can agree that it should be some, some state or county agency.

**JOE NIGRO:** Yeah, I think, I think it would be fine.

**LATHROP:** They're not gonna delegate this out to a Project Extra Mile or--

**JOE NIGRO:** No, no, I think that-- I think changing the language to say another county department or, or state agency would be fine.

**LATHROP:** OK.

**JOE NIGRO:** And, and I really would encourage everybody to look at that World-Herald article today. It,--

**LATHROP:** OK.

**JOE NIGRO:** --it really, really lays out the benefits.

**LATHROP:** All right.

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**JOE NIGRO:** Thank you.

**LATHROP:** Thank you very much for your testimony. Good afternoon.

**PATRICK CONDON:** Good afternoon, Chairman Lathrop, members of the Judiciary. My name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am the Lancaster County Attorney. I'm here speaking on behalf of the Lancaster County Attorney and also on behalf of the Nebraska County Attorneys Association. I, too, would like to thank Senator Hansen for bringing this bill and working with the different agencies and different organizations to put forth this bill. You've heard the testimony from other individuals about this program. I forget how I technically heard about it but I did travel up to South Dakota and witnessed the testing procedures go on up there with Kim Atherton, who you heard testify, and also Paul Cooney with the Public Defender's Office here and it was eye opening. The, the individuals who went into the program, they would talk to the technicians, they would say good morning to them. The technicians would note on one occasion, you're dressed nice this morning you got something going on? Yes, I'm going to a job interview. They would ask about the kids. They would have a connection with these individuals that you don't see with an interlock where they're just-- somebody is blowing into the, blowing into the interlock device. They went through about 300 participants in about a two-hour time frame. And that was very interesting to see that. I think one of the reasons for the program working is what I call they have a skin in the game, they're paying that two-- they're paying that dollar-- two dollars every time they go in and they see the benefit of that and that, that-- and also talking with those, talking with those individual testers. So I think that makes a difference. I did-- when I was assisting or helping in, in writing this, I, I looked at the interlock language that is in the statute now. I tried to mirror that as you see an individual still has a wait time-- with interlock there's a wait time for a first offense, second offense, and third offense. I mirrored those in the-- I-- we tried to mirror those in the bill that the individuals would wait the 30 days while waiting to get into this-- while waiting to obtain a permit. That 30 days they would be in the program showing the judge that they can follow the program rules. That they cannot test-- or that they can test negative for any alcohol during that 30 days and then after that 30 days for like first-time users I believe they can then apply for this permit that would then allow them to continue to drive to work and to school and to the program as Senator Slama mentioned. The value of, of this is, is-- and we've heard the interlock device can cost up to \$50 to \$100

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for installation, \$70 to \$90 monthly. There are-- I will state there are programs that allow that to be waived or funding that can be used for that. But as Miss Etherton said, there's also grant money available for this program. I did contact MADD Mothers Against Drunk Driving last summer-- kind of let them know this is where I was gonna be looking to present this type of a law or try to find a senator to support this type of a law. We also did talk with the Department of Motor Vehicles prior to putting forth this law. We were under the understanding that they were-- they, they didn't have any problems with it-- how the law was set forth in the program. I understand they do have some with-- some questions in regards to that and we're happy to work with them to deal with those, to deal with those questions. And I see my time's up so if anyone has any questions.

**LATHROP:** Any questions? Senator Wayne.

**WAYNE:** I don't-- it's not really a question. It's more of a statement. While there's a lot of good to the 24- hour program, there's also a lot of negative. This is truly one with money, one who has a vehicle. It hurts those in poverty. And I-- we're at a point in my practice and the people that are in my building, we won't recommend the 24-hour program in Douglas County because if you don't have a car you're gonna fail because you're not gonna get there. Our transportation system in Omaha is not worth anything. So if you can't get there and you can't get that second test when you get off your job, you're in a bad situation. So it's only those who have the means, who have a car would this law benefit. And I keep trying to look through this lens of what about all the people who work two jobs or don't have a job and don't have a car. This program won't be offered to them. There's nothing out there but sitting in jail for them to sit out their time that's gonna be offered to them.

**PATRICK CONDON:** I, I-- I'm, I'm not gonna disagree with you, Senator Wayne. I think, I think there is some benefit to it regardless. I mean, I think the benefit is-- and as you can probably see that you, you could-- if your client can get to that program-- even though they're not, they're not able to drive or they don't have a vehicle and they can't drive. But if they can get somebody to take them to that program-- as a defense attorney, I think then you would be able to stand up in front of the judge and say look, my guy has been on-- my, my client has been on this program for the last four months has tested twice a day for four months and has not tested positive for alcohol, give him a chance on probation.

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**LATHROP:** Seeing no other questions, thanks for your testimony.

**PATRICK CONDON:** Thank you.

**JUSTIN KALEMKIARIAN:** Good afternoon, Senators. Justin Kalemkiarian, J-u-s-t-i-n K-a-l-e-m-k-i-a-r-i-a-n. I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association and I, and I will be very brief. Number one, I have personally represented clients. Again, I'm a defense attorney, a person representing clients that have benefited tremendously from 24/7 programs in Lancaster and Douglas County. One gentleman, in particular, was facing a fifth offense DUI and he was put on 24/7 in Lancaster County. He didn't have one positive test. I believe the case lasted approximately a year. Not one positive test in that year. Not one missed test in that year. And as it went on-- I mean, he said, I'm, I'm proud of myself for being able to comply with the terms and conditions, keep up on the financial aspect. He had the interlock and be able to continue to use his interlock permit or his-- excuse me, the interlock device. And I've stayed sober longer than I have you know in many, many years. So I know-- you know, is anecdotally, based on my practice it has worked. Number two, and Pat-- excuse me, Mr. Condon touched on this very briefly. One thing I tell my clients is listen, to be honest with you, if, if, if you're facing multiple DUIs-- second, third, fourth, fifth and you can't comply with 24/7, it's gonna be very difficult for you to comply with probation. And Mr. Condon did touch on that. Conversely, we can say to our clients hey, if you, if you do well on 24/7, you can prove to the judge that you can be trusted in the community that helps. That could help persuade a judge to give probation on a subsequent DUI and, and keep that person out of incarceration-- keep that person from-- well, they'll have to do some jail time, but keep that person out of jail as long as possible and allow them to be a productive members society. And then, finally, to address a, a couple of issues: the possibilities for alternatives to having a test in person. I know that there was some talk about continuing alcohol monitoring devices. I think there could be some ways, especially to address Senator Wayne's point. There could be some ways to help those people that can't get to and from-- there could be alternative methods-- you know, interlocks that don't-- that aren't installed on vehicles could be an, an option. So I think some of those, those issues can be addressed. And again, I, as a, as a member of the Criminal Defense Attorneys Association, we urge this committee to consider LB579.

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**LATHROP:** Very good. Senator Wayne has a question for you.

**WAYNE:** Just to stay on this theme for a second. But, but I want this body and I want people to be conscious of the system we're creating, right. So I know Senator Chambers has a bill a little bit later on about debtors' prison. But what we're truly creating in this 24-hour program is the ability for me as an attorney to say, look, I have all this evidence so why this guy should go or, or lady should go on probation. But if I'm poor and I can't make that trip-- not, not an addiction problem, just simply do not have transportation-- reliable transportation. Then at the end I take away that argument. So when I'm in front of that person I don't get to say he made a mistake. Look at all these months of tests where you did everything right. But because he's poor, the judge doesn't have that evidence or that ability to look at that. So he's gonna go do 60 days or 90 days plus six months' probation. So we're continuing to create the same system to allow poor folks to stay in jail. That's, that's where I'm struggling. Don't get me wrong, I'm, I'm supportive of the concept but the practical implications of it is we are continuing to create a system that at the end if I have money I have a better defense.

**JUSTIN KALEMKIARIAN:** Yep.

**WAYNE:** Is that a fair-- I mean, in practicality, is that a fair statement?

**JUSTIN KALEMKIARIAN:** Absolutely, Senator. I, I completely agree and, and I know these bills regarding bond are coming up. It-- I, I completely agree that we create these-- we create barriers-- we're trying to create a benefit. We're trying to create a system, but we're, we're in actuality enacting barriers. And then you get in-- once you get into that system and you're not able to pay for those fines or you're not able to pay for those costs and now you're subject to a sanction. I absolutely agree with you that that becomes, that becomes an issue. And, and I would respectfully defer to the committee and defer to the Legislature to deal with those types of issues. But you, you know, there-- I, I think there are a lot of benefits to this program. Nothing's perfect. I think those, those issues can be addressed. I completely agree with you, Senator, that we don't want to create a, we don't want to create a wide-- we don't want to widen that gap that already exists. And in criminal defense, I see it all the time and I agree.

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**LATHROP:** Seeing no other questions, thank you for your testimony. Anyone else here as a proponent of LB335? Anyone else or, or is there anyone here in opposition to LB335? Good afternoon.

**RHONDA LAHM:** Hi, Chairman Lathrop. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. I'm, I'm Rhonda Lahm, R-h-o-n-d-a L-a-h-m, director of the Department of Motor Vehicles. I'm appearing before you today in opposition to LB335. If someone is arrested under the influence of DUI, their driver's license can be administratively revoked by the department and most administrative orders otherwise issued. Eligible drivers may receive a temporary license for 15 days after, after which time they may apply for an ignition interlock permit. This administrative process is separate to the court process which may impose separate revocation requirements. The 24/7 permit provided for in LB335 would allow a person to operate a motor vehicle without the need for an ignition interlock permit. The introduction of the 24/7 permit could cause confusion and potentially additional expense for the holder. First offense DUI holders are eligible for an ignition interlock permit 15 days following the expiration of their temporary license. This means the person will have the option to drive after 15 days with an ignition interlock or after 30 days under the 24/7 permit. This could prove costly for participants who choose to switch or are no longer in the program partway through their revocation period. Should the 24/7 permit be revoked later by the court for noncompliance, the individual will be allowed to obtain an ignition interlock permit resulting in additional cost. The 24/7 program may also prove a more expensive option for those choosing between an ignition interlock permit and a 24/7 permit. While the initial fee is lower for the 24/7 permit, the monthly costs would likely be higher. The 24/7 permit could incur a cost of up to \$3 per day resulting in monthly costs of approximately \$90. The installation of an ignition interlock device varies by company but is typically in the \$70 to \$80 range. The monthly maintenance fee is generally around \$70 dollars per month. Holders of ignition interlock permits who meet eligibility requirements have access to funds from the ignition interlock indigent fund to pay for the installation and maintenance fees. Should a person be eligible, the cost borne by the individual would be the \$45 for the permit itself. Those opting for a 24/7 permit would have no resource to those funds. The 24/7 permit may also put federal highway trust funds at risk. Repeat DUI offenders or those refusing to take the test, face a mandatory hard suspension of their driver's license for 45 and 90 days respectively. LB335 would allow a repeat offender to obtain a permit to drive after 30 days.

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Failing to meet the hard suspension periods may be interpreted as noncompliance, therefore, placing highway trust funds in jeopardy. There are a number of areas which need clarification in advance of implementation. When a person has their driver license revoked by the court, the court typically provides credit on day-to-day basis for the length of time under which the person has been administratively revoked. This credit could be challenging to assess if the revocation is dismissed and the person that obtained the 24/7 permit. Further consideration also needs to be given about how the ignition interlock device could effectively be used outside motor vehicles. The bill also does not specify an expiration date for the permit to be included on the document. Should the permit no longer be valid, time and sentencing, it's under clear when the ignition interlock permit would then be required after the court revocation starts. It's tied to an administrative license revocation which can be dismissed at an administrative hearing due to insufficient sworn report or no sworn report filed by law enforcement. This has the potential to cause a creation situation where a person could obtain a 24/7 permit through a court order but then would have lost their-- would not have lost their license administratively. They would also be eligible for a regular class O license at that time. And then just lastly, I would just ask you to consider, consider the implementation. This would require hundreds of hours of programming on our part and our vendor and so 90 days is not long enough to implement the bill. Thank you. And I'll be happy to answer any questions.

**LATHROP:** I don't see any questions. Let, let me ask this. Are you willing to work with these-- with the bill introducer to try to iron these things out?

**RHONDA LAHM:** I'm not, I'm not fully understanding why they want to have the [INAUDIBLE]. The program-- we have no concerns with the program. That's not the issue. Where we run into trouble is-- so right now when you have somebody arrested for DUI and say they're not administratively revoked for whatever reason they're perfectly legal to drive and I have no statutory authority to suspend them, to suspend them. So now they would be applying for a 24/7 permit when they-- they're entitled to drive however they want to drive. They're, they're not under any suspension or revocation, so I'm gonna to be required to issue a permit that is restrictive when really they haven't been restricted by statute. So that's-- there's some-- I'm not sure how we fix that piece. If the concern about ignition interlock is the cost-- you know, if indigent people have access to those funds it doesn't pay



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for the permit. You know, the policy is for the Legislature to decide. They could make access to those funds for the permit if they so choose to do that. You know, that's out of our control. That when people apply for those, those are processed by our department-- you know, those get processed when we have all their paperwork that day or the next day so there's not a delay then for them to get the permit. As far as records-- to clarify some information was presented earlier, we get hourly real time updates from providers on data from the ignition interlocks. So they're required to have a camera. So they're required to be able to have a photo of who's blowing into the permit. And if somebody blows into the permit and it registers, that's being required to be reported to us and we get those reports on an hourly basis. So we do get some data and they effectively would have to be tested every time they blow into the machine because if it has alcohol it's gonna register. If they drive to work and back from work, they're tested twice a day plus the ignition interlocks go off while they're driving and then they have to blow on them to continue to have the car stay running. I actually, as an examiner, administered a drive test and it went off in the middle of the drive test and the person has to blow over or the car shuts off. So certainly, I'm willing to work with them but the time, the time frame is really not practical at all to get it implemented by that date. The program in itself in South Dakota works. One thing in South Dakota, they have no administrative license revocation there. So they have a little bit different logistics.

**LATHROP:** We sort of have a two-tier system. There's a criminal proceeding, then there's the administrative proceeding, and then we have the criminal law, and we have the interlock stuff going on, and now we would be adding this 24/7. It sounds like there's some benefit to this--

**RHONDA LAHM:** I think the program [INAUDIBLE]--

**LATHROP:** --to-- so somebody-- if somebody gets released from jail-- the judge says I'm gonna release you, I'm gonna put you on an interlock and they're waiting a trial or disposition of their case. They can sit around and drink all they want until they need to drive the car and then they lay off the beer or whatever long enough to get to Hy-Vee and back.

**RHONDA LAHM:** And generally what we hear prohibits people that-- to address Senator Wayne's concern, is-- you know, getting insurance for a vehicle is expensive-- that's very challenging for people because insurance rates are very high if you have DUI or have that on your

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record. So when we talk to people, what they tell us the biggest obstacle is, is getting their vehicle insured so that they can then qualify for the ignition interlock permit so that is a difficult deterrent for people. Policywise for the program, I'm-- I do-- I'm not familiar with it, that has no concerns, it's just using this instead of an ignition interlock when they are entitled to drive during administrative-- when they're not administratively revoked is a real challenge in how we do that in recordkeeping and the time frame for establishing is a huge challenge.

**LATHROP:** And did I see a fiscal note of like \$77,000 or so?  
[INAUDIBLE]

**RHONDA LAHM:** Right, right. The fi-- that is what-- that's the minimum we would have to pay our vendor to establish that card. That's separate because it's a completely different credential we're creating here.

**LATHROP:** OK.

**RHONDA LAHM:** That doesn't include the hundreds of hours that we'll have to do internally, and we believe we'll have to pay the OCIO extra. But we don't know what that is at this time, so we didn't put it on the note.

**LATHROP:** OK. I see no other questions. Thanks for your appearance today.

**RHONDA LAHM:** Thank you.

**LATHROP:** Next opponent.

**ANDREA FRAZIER:** Thank you, Mr. Chairman and members of the committee for allowing me to testify today in opposition of LB335. My name is Andrea Frazier, that's A-n-d-r-e-a F-r-a-z-i-e-r. I'm the program manager with Mothers Against Drunk Driving. MADD is concerned about LB335 as it would allow drunk drivers to avoid an ignition interlock order if they enter into the 24/7 program. MADD urges you to please oppose this bill unless it is amended to also require all participants to use an ignition interlock. Since January 2009, ignition interlocks have been required for all convicted drunk drivers. Since 2006, ignition interlocks in Nebraska have stopped over 30,000 attempts to drive drunk with an illegal blood alcohol concentration of .08 or greater. Research and data has proven that ignition interlocks are the

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best way to stop a drunk driver from operating a motor vehicle. While 24/7 is a promising program addressing alcohol abuse, it fails to separate an impaired driver from their vehicle. A drunk driver using continuous alcohol monitoring can still drive without being stopped-- or still drive drunk without being stopped. Similarly, a drunk driver required to blow twice per day could provide a breath test sample at 7:00 p.m., drive immediately to a bar, consume enough alcohol to reach .08, and then register a clean blow at 7:00 a.m. Once more, that same offender could drive drunk and hit my family or your family and never make it to that 7-- 7:00 a.m. required check in. LB335 removes the ignition interlock requirements for repeat offenders and instead would require alcohol ankle bracelets, twice-a-day alcohol testing, random blood, urine, or oral fluid testing. None of these technologies will actually stop a drunk driver from starting his or her car. In conclusion, MADD urges you to please oppose LB335 unless it is amended to also require all 24/7 participants to use ignition interlock. Thank you.

**LATHROP:** Thank you. I see no other questions. Thank you, Miss Frazier. Anyone else here in opposition? Anyone here in a neutral capacity? Good afternoon.

**BILL MICKELSON:** Good afternoon, Mr. Chairman and members of the committee. My name is Bill Mickelson. It's M as in Mary-i-c-k-e-l-s-o-n. I'm here visiting from South Dakota. I was the seminal program director for then Attorney General Larry Long in developing, implementing, and directing the 24/7 sobriety programs. So I've got many, many years under my belt. I'm here representing a nonprofit organization. It's called the 24/7 Sobriety Council. It's a group of experts from across the United States that got together and we review best practices and essential elements and, and publish a document every year about what they are from the most successful 24/7 programs. Just a 10,000 foot view, we started in 2004 and launched in 2005. We are almost statewide. We're not in Indian country in South Dakota, but we're operating in all the other counties. We're a population of about 820,000. To date, we've had almost 36,000 people placed on twice-a-day testing for the program. We've had a-- about 10,000 people placed on drug testing to go along with a 24/7 sobriety alcohol testing. We've got a pass rate which means these people are showing up on time and blowing clean tests 99 percent of the time. We've administered over 10 million breath tests. We've had the same kinds of luck and results with our drug testing. The reason why 24/7 works is because there is an immediate sanction for a program

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violation. They come in, they blow a hot test, we march them across the hall and they pay a penalty and released back on the program. To date with predictability and confirmation from the National Highway Traffic Safety Administration and Mountain Plains Evaluation that did a study on 24/7 and the RAND Corporation that's doing a long-term study on 24/7, we've assisted in the management of jail and prison populations. We've reduced recidivism for multiple offenders, that's 2 offenders or more by over 50 percent. We've reduced auto crashes in that population 18 to 40. We've reduced overall mor-- mortality in counties that have adopted the 24/7 Sobriety Program. It's had a cascading effect on lots of different crimes. For example, domestic violence families who have children who have been adjudicated as neglected or abused. The parents have to be on 24/7 to get the kids back. We've changed probation and parole strategies. We've instituted the 24/7 driver's license that's issued from the bench to address all the scofflaw violators. And we've-- you know, we've really addressed the mandatory minimums and, and driver's license suspensions with that DL. So it's, it's been a positive move. And with that, I'll take questions.

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

**BILL MICKELSON:** Thank you.

**LATHROP:** Other neutral testimony? Oh, I'm sorry, I didn't see--

**PANSING BROOKS:** No, I changed my--

**LATHROP:** Mr. Mickelson.

**PANSING BROOKS:** Sorry, Mr. Mickelson. I'm just interested in your take on what-- the woman who testified previously about the interlock-- the necessity that-- of, of the interlock test?

**BILL MICKELSON:** Ignition interlock has value. It's not been used but very sparingly in the 24/7 Sobriety Program. And the reason why is because it has an effect when it's on a vehicle, once the vehicle is taken off there's no long-term effects on recidivism. Another reason is because about a third of the people who are or-- excuse me, of all the people that are sanctioned across the country to have interlocks installed on their vehicles, over a third do. So you've got about 60, 65 percent of the people aren't being monitored and that's not acceptable. And 24/7 Sobriety Program, you're, you're either gonna be

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on the 24/7 Sobriety Program or you're gonna be sitting in jail, one of the two. But at least twice a day when you show up to blow a test, we know you're sober. Now is it foolproof? It is not. That's when 24/7 becomes a screening device. If these people cannot maintain sobriety through a discipline program, the judge has to do something else with them.

**PANSING BROOKS:** OK. And do you have-- what times do they generally come in?

**BILL MICKELSON:** We leave that up to the testing agency to determine the hours of operation because they need to be able to supervise the people that are doing the testing.

**PANSING BROOKS:** OK, thank you very much.

**BILL MICKELSON:** Um-hum.

**LATHROP:** I think--

**BILL MICKELSON:** OK.

**LATHROP:** --that's it on the questions for you today. Thank you for your appearance. Next neutral testifier.

**MICHAEL MYERS:** Good afternoon, Senators. My name is Michael Myers, M-i-c-h-a-e-l M-y-e-r-s. I am the director of corrections for the Douglas County Department of Corrections. We have operated a 24/7 program in Douglas County for nearly five years now. I can give you some statistics and answer and, and maybe fill in some gaps from some of the previous questions. We currently have enrolled a total of 1,447 individuals since our program started. As of this morning, we conduct-- we have conducted 147,843 breath tests. Of those, 515 tested positive for alcohol. To the point earlier in the-- in, in this hearing regarding individuals driving to the testing center while intoxicated, of those 515 people who did have alcohol in their system, I can't give you an exact number who were actually legally above the limit but it were-- if it was more than, if it was more than ten I would be surprised. It, it doesn't say it doesn't happen, but the people who we do catch drinking alcohol they have small amounts in their system by and large. We have done-- we also used an alternative method, the, the SCRAM, or the continuous alcohol monitoring device. We have done over 40,000, actually nearly 41,000 days of SCRAM monitoring. It is an effective alternative for people who have work

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schedule problems, child care issues, things of that matter that they can't show up during the testing times. We, about a year and a half ago, added drug testing to our 24/7 Sobriety Program. We have two mechanisms for that as well. We do saliva testing. And we also do a drug patch that individuals wear for a couple of weeks and then we send that in for processing. That also accommodates individual's schedules and their own personal needs. The goal of this program is to increase public safety-- while not-- while, while avoiding and mitigating the impact of potential incarceration or involvement in the criminal justice system. I think this program shows that you can do both at the same time. You can make the public safer and allow people to maintain productivity in their lives and take care of their responsibilities. Douglas County at this point is remaining neutral on this bill. We've operated a program successfully of like I said for nearly five years now. If this bill does advance, we encourage the, the committee to not lock in the specific testing methods into state statute. There are lots of emerging technologies and, and new methods that may increase our effectiveness of supervision and we wouldn't want to have to come back through the legislative process in order to try those methods. Thank you.

**LATHROP:** Very good. I see no questions, thanks, Mr. Myers. Anyone else here in a neutral capacity? Seeing none, Senator Hansen to close. We do have some letters in support and some in opposition and they have been shared with committee members.

**M. HANSEN:** All right. Thank you, Mr. Chairman and members of the Judiciary Committee. So closing up just kind of why I brought this bill. So this has been an issue that's been on my radar for I couldn't even tell you how many years. So every year the Lancaster County Board does an annual retreat with department heads, other county elected officials and the state senators. And they talk about emerging issues for the county, and 24/7 for Lancaster County has been on the agenda most of the years I've attended in my, in my tenure as something that's been on the horizon is coming. And we finally got to the point and I forgot to mention, Senator Pansing Brooks, and her office and her staff worked on the earliest drafts-- the early drafts of this bill. When it got to the point where the county attorney and the public defender agreed on a bill, agreed on a program, having served on this Judiciary Committee, I can tell you how uncommon that is especially at the outset at the introduction of a bill to have them both being planning and testifying on the same side. And I just-- I could not resist making sure this got presented to the Judiciary

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Committee. So broadly kind of-- you know, why this bill that kind of came up, that's, that's, that's kind of I guess my fundamental reason why of looking at our alternatives because, as Senator Wayne pointed out, that many times in the situation if there isn't some current alternative to cash bail oftentimes these individuals are just going to stay in jail and we could see how disruptive even a short stint before you get, get arraigned can be. Addressing some of these other things, the interlock as I, as I understand it you have the opp-- you can get the 24/7 driver program after you've either been clean for-- clean and tested sober continuously for 30 days or you've had an interlock in between. So there's definitely kind of an avenue to, to, to go on. It's not an immediate shift to driving without an interlock or without testing, you've either been sober for a complete month and have complied for a complete month or you've had at least a stint with an interlock in between and been sober. Looking at some of the other ones, Senator Slama, I know one of the follow-up testifiers addressed your additional question. I'll point out in the bill that we have an additional penalty for driving on a 24/7 drivers permit with a .02 limit is an additional crime. That's kind of my presumption is if you show up-- if you drive to the facility and then blow you're gonna be in front of a sheriff deputy in all odds, and all odds that's gonna be an additional charge tacked on to you and probably be very quickly ending the program. Senator Wayne, you were talking about kind of the disparate impact, I, I agree with you that was a concern I had and that was something that I was kind of aware of the fees the whole time. We do have an opportunity in this bill for fees to be waived upon motion of the court. That's a may from the court and I understand there's probably some-- sometimes when you have the court may waive the fees, it doesn't happen all the time, but that's at least where we're starting. And it was something in our mind and kind of the fundamental issue with this and, and is-- public transportation is tough in many instances. So you know, for other counties without like a 24/7 permit you just couldn't have the program and all. I'm just trying imagine Valentine and Cherry County running this program with, with just the distances you'd have to cover without some way for them to get to and from the center. And kind of fundamentally to be in this program you had to have gotten a DUI which means you had access to a car at the beginning. I'd be happy to work with the DMV. Driver's licenses-- I've waded into this once before and by, by far the most complicated issue I think I've had to deal with in front of-- just in terms of the layers and overlapping statutes. And, and with that, I'd be happy to take any questions from the committee.

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**LATHROP:** I don't see any other questions. I do look forward to working through some of those. I know that we've complicated it by having the criminal, the administrative, and we have the interlock, and then we layer on 24/7. If we can get there working through that with DMV and when somebody can have a license and what kind they can have, is--

**M. HANSEN:** Um-hum, absolutely.

**LATHROP:** --gonna necessarily need to be worked through. OK, thank you.

**M. HANSEN:** Thank you.

**LATHROP:** That'll close our hearing on LB335.\*\*

**PANSING BROOKS:** And now we're going to open the hearing on LB282. Senator Matt Hansen, again.

**M. HANSEN:** Sorry, I wasn't sure it was me. Hello, everyone. Good afternoon, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here today to introduce LB282 which would eliminate money bond for some low-level misdemeanors and all city and county ordinances and also require defendants to be appointed counsel if the court sets a money bond and they are unable to pay it. This bill was a result of LR415, an interim study that my office undertook this past year to look more closely at, to look more closely and examine the use of money bonds especially for low-level offenses that require little or no jail time. Through discussions and as part of that work, we've reaffirmed that there are instances with people serving jail time because they are unable to pay a money bond that has been set for them even for offenses where the maximum sentence if they were found guilty requires no jail time at all. Imagine someone in a scenario where they are arrested for trespassing, booked and jailed, and then ordered to pay a money bond of \$250 before they could be released. Because they're unable to pay money bond, they must wait in jail for the first court date. This could easily result to them waiting for jailed-- for the court date longer than if they would've served under their eventual sentence. This is a system that unfairly hurts those unable to pay bond even those set at very small amounts. Research shows that setting bond is not always associated with increased court appearance rates. Additionally, money bond system is expensive and puts additional strain on our already overcrowded jails. According to the U.S. Bureau of Justice Statistics, nationally 95 percent of the county growth-- 95



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percent of the county jail population growth since the year 2000 was because of an increase in inmates who were held because they were ordered to pay bail and could not. In fact, use of money bonds is a negative unattended consequence. Research shows that those unable to pay their bond and who serve pretrial jail are more likely to plead guilty and get harsher sentences than those who are able to pay their bond and who are accused of similar crimes. This results in an unfair result of serving more jail time both before and after the sentence based solely on how much money you have. Being jailed also keeps them from their work and family responsibilities which can turn to-- lead to [INAUDIBLE] such as, such as giving-- such as rent and car payments and all those related issues. I'm sure most of you are at least somewhat familiar with the research and subsequent trend away from money bonds. While I recognize that the research pointing to the benefits of elimination of money bonds, I also recognize that smaller steps are necessary in order to make changes that ensure the safety of the public especially for more violent offenses or for those involving domestic violence. With exceptions for these instances, this bill is a measured way to address the population of people accused of low-level offenses sitting in jail for pretrial detention for-- who for most would not otherwise be sentenced to serve any jail time at all or very little jail time if they were able to pay their bond. I will note that I brought an amendment that is a continuation of discussions that I've had with both the defense attorneys and county attorneys that involves negotiated changes such as one specifically the court is required to appoint counsel and that money bonds can still be set if the defendant has failed to appear in the previous six months. And thank you to the page for handing it out. With that, I would encourage the body-- the committee to advance LB282, and I'd be happy to take any questions.

**PANSING BROOKS:** Thank you, Senator Hansen. Any questions? I don't see any right now. But are you gonna stay around to close?

**M. HANSEN:** Planning on it.

**PANSING BROOKS:** OK, good. Thank you, Senator Hansen. Welcome.

**SPIKE EICKHOLT:** Thank you. Good afternoon, Madam Vice Chair--

**PANSING BROOKS:** Proponent testimony.

**SPIKE EICKHOLT:** Thank you. Good afternoon, Madam Vice Chair. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB282. You've got a copy of my

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written testimony. It's lengthy. I'm not going to read it. I'll just try to hit some of the top lines and some of the highlights. I want to thank Senator Hansen for introducing this bill. This committee, this committee, and most of the members on it, may remember that Senator Hansen and Senator Morfeld did a couple of bills a couple of years ago to look at the issue of bonds and the process of defendants sitting out fines and imposition of fines. And that was passed and signed by the Governor in LB259 in 2017. There are still some provisions of that law, that bill that was signed that need to go into effect in July of this year specifically dealing with courts discharging fines and allowing defendants the opportunity to have hearings before they suffer additional sanctions for not paying of fines. But the part of the bill that was passed, LB259, did at least change the statutory guidelines that courts are to consider when they set money bonds. But what we've seen as practice is that some of the judges at least in Lancaster County I can tell you are implementing some of the changes. But for the most part courts are still setting bonds somewhat arbitrarily at, at standard amounts even for minor charges. And this bill hopefully will curtail that. Senator Wayne mentioned this earlier when we talked about 24/7. That what you have now is a scenario typically where judges will just almost reflexively just set a standard money amount of bond based on the charge and the charge alone. Whether that defendant can pay that bond, or whether it's even feasible, generally is not considered in most cases. And as a consequence, what happens is, is that people sit in jail if they cannot post bond pretrial and they sit in there for minor charges. LB282 addresses at least some of these problems by eliminating, or at least restricting the opportunity to require money bond for minor misdemeanors and city ordinance offenses. People are arrested in Lincoln-- I can't say so much in Omaha, but certainly in Lincoln for city ordinance violation-- trespass. They are arrested, held in jail. If they want to plead not guilty, the court will set a money bond. One thing the bill particularly does that's important is that the constitution under Gideon-- and I can't remember the other Supreme Court case, says that you're entitled to an attorney if you cannot afford one. And there is a likelihood that you're going to be given a jail sentence. Even if the jail sentence is just one day, you get a lawyer if you can't afford one. You're not gonna get a lawyer if you're just gonna get a fine. What happens typically-- particularly in the city docket, is that a defendant will appear. The state will indicate, we're not asking for jail, Judge. So the defendant will plead not guilty and then they'll set a money bond. And what you have, is you have the situation where somebody is not given a lawyer but

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they still have to pay money to get out. And what you create is that snippet of debtors' prison where somebody after a two or three days sitting in jail will change their plea. The law allows-- 29-2412 allows \$150 per day in jail to apply toward a fine. So on paper it looks like somebody is just getting a \$500 fine. But what they're really getting is three or four days in jail and that's devastating for many people who are already marginal for many times minor things. This bill at least this curtails that, because it doesn't allow somebody to have to get a money bond posted if they don't have a lawyer and vice versa. So we would urge the committee to advance the bill.

**LATHROP:** Senator Wayne.

**WAYNE:** So what do we do in those situations where-- I'm smiling because we all have if you practice as a criminal defense attorney, you, you will have this client, I'd rather just sit out my three days. I don't want to pay the fine.

**SPIKE EICKHOLT:** And that's-- what do we do about that? I mean, that's it's so integral almost in our money bond system because sometimes you almost suggest that your client do that because-- you know, if they don't pay by a certain date they're gonna get arrested for it. And in some weird way then people are kind of choosing their punishment. Right? And they kind of develop that as part of their life at just being incarcerated. It's-- I mean, it's tough because in that individual instance and the individual client, you kind of are bound to do what that client wants you to do. But ultimately I think this committee determines what the appropriate policy ought to be. And that-- it doesn't make sense to warehouse people at pretty significant expense for nuisance crimes. Many times these people have medical issues also that sort of turn up and the county is on the hook for that. So I still think it's worthy to consider even though in some individual instances somebody may prefer just to sit out a fine.

**LATHROP:** This still-- this process though, you get arrested, you get put in jail. And they should probably should be writing a ticket for this stuff.

**SPIKE EICKHOLT:** Arguably--

**LATHROP:** But they, but they pick them up, they put them in jail and then they go in front of a judge. And this creates sort of a presumption that they should be released on their own recognizance if

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it's a low enough misdemeanor unless there's some-- one of these conditions exist.

**SPIKE EICKHOLT:** That's correct. That's right.

**LATHROP:** I think I get it.

**SPIKE EICKHOLT:** Thank you.

**LATHROP:** There are no other questions. Thank you for your testimony today. Good afternoon.

**JOE NIGRO:** Good afternoon, again. Mr. Chair, members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear in support of LB282. LB282 would limit the use of money bond on minor misdemeanors and municipal ordinance violations to individuals who previously failed to appear on a case or who pose a risk to the community. Money bond punishes poverty. Any limitation on the use of money bond is a good thing. We should not detain people based on wealth. Legislation and litigation across the country is ending and restricting the use of money bond. Nebraska needs to reform its bond system. This bill also requires the appointment of counsel for indigent defendants if a bond is set. This is a very good thing. Judges do not appoint counsel if they know the conviction will not result in jail and sometimes people will languish in jail unable to make bond on a minor charge. In 2016, I was volunteering for our office at Project Homeless Connect which is a wonderful event held at Pinnacle Arena each year to provide services of various types to homeless people. And a man came up to our table and he wanted to tell me a story. He didn't really need help. When he arrived in Lincoln from California, he was behind a building and the police arrested him for trespassing. They took him to jail. The next morning he appeared by video arraignment on a TV screen in the courtroom, and he pled not guilty because he didn't see a sign that post-- that was posted behind that building that said no trespassing, so he thought he had a valid defense. Now the judge set a \$1,000 percentage bond so he had to post \$100 to be released. The case was set for trial. Attorney-- no attorney was appointed because I'm sure the judge thought if you're found guilty you're only gonna get a fine. This person didn't realize they could request a bond review. They didn't request it. They, they didn't realize they could request that an attorney be appointed and they didn't request-- they didn't realize they could set up an early change of plea. He sat in jail for 36 days. When he went to court-- I'm guessing what happened is, the prosecutor had a conversation with

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him since he was representing himself and probably said, you're just gonna get a fine and instead of having the trial, because he'd waited that long, he decided to just plead. He received a \$50 fine. You know, at that time you could sit out at \$90 a day. So with fine and costs, he would have been done in two days. He sat 36 days. It costs Lancaster County \$100 a day to incarcerate somebody. So we would've spent \$3,600. Now LB259 in 2017 said judges have to take an individual's ability to pay into consideration setting bond. Some of our judges are taking that very seriously. But some still set bond based on a scheduled-- on the type of offense or at the prosecutor's request. And in my opinion this bill and LB646 would go a long ways towards improving the system because detaining people based on wealth is wrong. And I urge the committee to advance LB282. Thank you.

**LATHROP:** Senator Pansing Brooks.

**JOE NIGRO:** Yes.

**PANSING BROOKS:** Thank you for coming, Mr. Nigro. So I, I was just-- I meant to ask the previous testifier, but do, do you know of any statistics that show that because you're in poverty you're less likely to either come to the hearing or, or do what's required of you?

**JOE NIGRO:** No, no, there's, there's no relationship between how much money somebody has and whether they're more likely to come to court. And you know, I'm gonna be testifying on this second bill. But there are places that don't use money bond anymore and people come back to court. There's no-- there isn't any relationship between the money and people coming back to court or people being less likely to commit crimes or being more of a risk in the community. It just means people with money get out. And people who don't have money-- and people in custody are more likely to be convicted and they're more likely to receive a harsher sentence. So that's the system we have and it-- it's unjust. This bill is a good first step. But you know, I looked at the detention numbers from one day a couple of weeks ago-- I mean of the people in Lancaster County Jail on a municipal ordinance, it would be 17 and some of those are probably people who would still be held here because of prior failures to appear. So you know, there is obviously a bigger impact from LB646, but this would be an important first step and I hope the committee will look at both of these bills because we really need to reevaluate the money bond system.

**PANSING BROOKS:** Thank you.

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**LATHROP:** OK.

**JOE NIGRO:** Thank you.

**LATHROP:** Thank you for your testimony.

**JUSTIN KALEMKIARIAN:** Good afternoon, Justin Kalemkarian, J-u-s-t-i-n, last name, K-a-l-e-m-k-i-a-r-i-a-n. I appear on behalf of the Nebraska Criminal Defense Attorneys Association and I urge this committee to support LB282. I'm not gonna reiterate what the prior testifier said. I am-- we are in agreement with that. What I want to do is just explain to those of you who have not practiced criminal law or who have never watched city arraignments or, or those video arraignments, say in Lancaster County. What will happen is somebody will be paraded into a video room, there on a video screen, and for some of these low-end misdemeanors or these low end-- or some of these city ordinance violations as, as we see in LB282, the judge will ask the county attorney or the city attorney about a criminal history. Frequently, these people have some criminal history. And then the judge will ask if they're seeking-- if, if there's jail being sought-- say no. The person will then ask for a PR bond. The judge will sometimes ask what-- you know, if you can afford-- what you can afford, what you can post. A lot of times the person doesn't know or they're, or they're upset and, and, and says a number. And then the judge a lot of times will say-- the person will ask for a PR bond. You know, get out on their own recognizance and then you know the judge will deny that and the person will ask, well-- and the judge will say, well, you know, if you plead-- you know, we're looking at a fine only. The state's not asking for jail. The person pleads guilty to get out of jail. And then if they ever reoffend again they come in and when that criminal history is talked about now that person has this lengthier criminal history and it creates this cycle and, and I think Senator Wayne discussed in, in another discussion about the cycle of poverty and what bond does. And that's realistically what it does, is it creates this cycle where people-- they, they plead guilty so they can get out of jail, go back to work, and, and they don't, they don't fight their case. Some of these people, they might have a valid defense like Mr. Eickholt was talking about or Mr. Nigro was talking about. They might be able to fight this case and, and to help preserve that criminal history and preserve their innocence. But they can't because they can't afford an attorney and they can't afford to bond out so they plead guilty just to get it over with. And I, as a criminal defense attorney, that drives me crazy when I see that and

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it, it makes me sick in a lot of cases, is why are we doing this? And this bill would help to alleviate some of that pressure. It also-- and what I like about it is, is the bill also gives the judge discretion if a person has a lengthy history of failure to appear or if they have a, a significant criminal history, or criminal history that indicates violence or a serious threat to society, we can evaluate, we can evaluate it. It's a case-by-case basis. So it gives that judge discretion while, while presuming-- keeping that presumption of innocence and allowing a person to be out on their own recognizance so that they can take a look at the case and figure out whether or not they actually do want to plead guilty or if they're just gonna do it to get out of jail and that's, that's what's important about this bill. So for those reasons, we would urge this committee to consider this bill.

**LATHROP:** OK. I see no questions. Thank you for your testimony.

**KELLEE MORENO:** Kellee Moreno, K-e-l-l-e-e M-o-r-e-n-o. This is very important. If you have no money you have no money. If you do have money you get out. It's just that simple. Ninety percent of the people that are going to jail don't have money. I would say that's probably a fair assessment. The people that can bail out are probably the drug dealers and that's not really a fair assessment there. I don't know anybody that, that gets arrested that can bail out. Anyway-- I forgot what I was going to say. I would like to thank the Judiciary Committee. They have-- you guys have went to Oversight Comm-- you've, you've researched this. So whoever is listening to this outside of you guys, the system will work if they do things the way that you say. Everything needs changed. The cash bail is only one aspect of it. Personally, my husband got incarcerated this time. We could not make the cash bail which was \$2,000. I barely came up with \$1,000 and the judge would not work with us. Once you, once you end up in jail you lose everything. There goes the job, the fam-- family, everything. To most of us, every day is important. You know, they just pulled the rug out from underneath our, our lap. It's not a matter of a \$2,000-- can you pay that cash bill, there's a lot of other things that need to take into consideration. Are you gonna be able to go out in the community and get treatment? Can you function? Can you help your family? The least restrictive environment is gonna be the best for people to make changes. When you-- when people say, if you do the crime you do the time, that's not, that's not accurate. There is the person that doesn't necessarily commit a crime but they end up with the revoked probation, parole, or whatever. I know that this-- If

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people listen to the Judiciary Committee and, and what is asked of them that, that this is important. And I think people need to remember, too, if you don't know something, you don't know it. You're just gonna have to trust and have faith that Senator Chambers knows this because he's been working with it for 40 years. You know that Patty Pansing Brooks and Senator Lathrop, thank you for what you've done. I have not been active in, in this until last year. And I appreciate what you-- what senators do for us because I thought we were out there by ourselves. This also motivates people to want to do, to do better. I have a homeless person that he stayed with me before and he is a nuisance. He ends up in jail all the time-- long history. For some reason, I asked him if he wanted to stay with me. I don't know, divine intervention, whatever. Being in my house-- didn't say that he was gonna stay clean or sober, but the fact that I took him to treatment two times and he tried it two times was a success to me. He is now sitting in the city/county jail again with his schizophrenia, with his alcoholism, and addressing no issues. This is a good thing. Thank you.

**LATHROP:** Thank you for your testimony. Appreciate it. Anyone else here in support of LB282? Anyone here to testify in opposition to LB282? Anyone in the neutral capacity?

**PATRICK CONDON:** Good afternoon again, Senator Lathrop and members of the Judiciary. My name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am the Lancaster County Attorney and I'm speaking on behalf of the Lancaster County Attorney's Office and also on behalf of the Nebraska County Attorneys Association. I would like to thank Senator Hansen for working with the Association to address some of the concerns that we have had with this bill. Through those contacts with Senator Hansen, we were able to work through a majority of those concerns that the Association had. There were some others that I have not seen the amendment that may have been dealt with in the amendment of the-- that Senator Hansen did offer and I would need to look at those to see if that is the case. I, I anticipate just with the working knowledge that we've had with Senator Hansen that we can continue to work with Senator Hansen and try to address any of the issues that we have. So with that reason the Association and the Lancaster County Attorney's Office is coming in, in a neutral capacity in regards to this bill. I do have a little bit of time and I'm just-- and again, as a prosecutor I'm proud of the profession that I have chosen and, and it does cause me some angst when I hear individuals suggest that we as prosecutors are putting people in jail because they are rich or because they are



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poor or letting them out because they are rich, that's not the case. What we do as prosecutors is we prosecute crimes that this Legislature has passed and has told us that we need to prosecute. We hold people accountable for that and part of that means they have to place a bond or they may have to be-- may have to post a bond. That is not because they are poor, that is because they are alleged to have committed a crime. And we've had several defense attorneys that have come up here in support of this bill and perhaps will come up in support of Senator Chambers' bill later. And perhaps a question to ask the Judiciary to ask is in those instances attorneys-- defense attorneys where your client has pled guilty maybe at your-- with your consulting on that, were they guilty? A lot of times defendants plead guilty because they're guilty. Not because they're poor, not because they're rich, but because they're guilty. And I just, I, I just had to say that. And, and again, it has nothing to do with this bill and, and I-- and Senator Hansen has done well in working with the Association in addressing our concerns. Thank you.

**LATHROP:** Senator Wayne.

**WAYNE:** I have to challenge that thought process for the record especially when you're looking at a \$200 fine or less and you have to miss work multiple times, they do plead guilty because it's less of an-- it's a bigger of a nuisance to have a \$50 fine, a \$75 fine versus missing a whole day at work. So it's a cost benefit analysis. And I will grant felonies are better-- are more absolutely. But what people don't think about is that \$50 fine driving under suspension, that one day in jail, and they do it multiple times and then they get hit with a more serious misdemeanor. The judge goes back and looks at that record and says, you had a run in with the law for the last five years. No, I was working a good job and I made some stupid mistakes. But I had to plead guilty, so I don't lose my good job. So I, I would suggest that when we make blanket statements like that we make them in a, in a way that maybe pertains to felonies. But when you look at our, our Class III misdemeanors and our Class II and our infractions they do plead guilty because it's a cost benefit analysis not whether it's a guilty or not guilty.

**PATRICK CONDON:** But, Senator, I think you would also agree with me that all your, your clients that plead guilty are not pleading guilty-- are, are pleading guilty that are not guilty is that what you're suggesting?

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**WAYNE:** I'm suggesting to you is that when you look at lower classes of crimes they are pleading guilty just like you would and we have a name for it called the offered plea. Sometimes you plead because it's a better thing for you to do as an individual than go through the process over a \$50 fine. Would you lose a \$1,000 just to make sure-- a \$1,000 dollars a day just to make sure you have to, to fight a not guilty for littering? No. Some people would just say you know what, I'll pay the fine because they don't think about the long-term consequences of 50 or 60 of those or 10 of those nuisance just going away because those individuals who are living paycheck to paycheck which is a lot of my community. They're thinking about today. They're not thinking about their next paycheck. They can't afford to take off court and sit in Douglas County from 9:00 to 11:00, and then sometimes be told to come back at 1:30 because we couldn't get through the caseload on a Monday. So yeah, I'll plead guilty to a \$50 fine. That's my experience and that's probably the majority of the people, not just that I've represented, but the majority of the people that I see at 9:00 on arraignment day in Douglas County.

**PATRICK CONDON:** And, and, Senator, we've-- and, and I'm, I'm not disagreeing with you on that. I, I-- you know, does that happen? I'm sure it does. But in the same sense as we have had programs here in Lancaster County where we've let people come in on warrants. We say, come on in. We won't go-- we're not gonna arrest you. We're gonna let you bond out. You're gonna bond out. You're gonna get another-- you're gonna-- you know, get a PR bond or if you've posted a bond we're gonna reinstate that bond if it's been, if it's been forfeited and we're gonna give you another court date. Guess what? They don't fail-- they fail to appear for that next court date. And, and it's like-- you know, and I guess what I would say to you, is how would it be if, if today I decided I can't come in and, and argue these bills in front of this Judiciary. But tomorrow I decide you know what, I want to come in and argue these. So I come in and I say you know what, I'm here today I want to argue these. It can't-- we have an orderly society and I think you, you would-- I mean, you would-- I would think the defense attorneys would be just as frustrated if the prosecutor would get to say, I want to call this individual today because my witnesses are here today. There are several times when individual-- when, when we as prosecutors have witnesses who have taken time off, who we've subpoenaed. They've taken time off and they come into court along with the, with the officers that have been pulled off the street to, to

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have these cases tried that the defendant doesn't show up. They get frustrated, too.

**WAYNE:** And I understand that but let's give a real life example why I won't practice in Lancaster County. I won't practice in Lancaster County because I have to take off two weeks to figure out when I'm gonna have a court date. And most of my clients will say, I'm going to plead, Justin, I can't just hold out there for two weeks so I, so I know when my trial starts. Yes, that happens in Lancaster County. You have a, you have a window of when your trial are you are in line on that and it could be day one on a Monday or could be the following two weeks.

**PATRICK CONDON:** And you're talking jury trials, yes?

**WAYNE:** Jury trials.

**PATRICK CONDON:** Yes.

**WAYNE:** Absolutely. So when my client would rather pay a fine of a \$1,000 and be done with, done with the case versus have a two-week window when he may or may not tell his boss I could be gone today or maybe next week or whenever. No, I'll pay a \$1,000 fine because I'm living paycheck to paycheck. I'm not thinking long-term. So, yes, the system is set up for that-- for people to plead, plead guilty to make sure they can continue to live their regular life than whether they're actually guilty or not. And I think to make a blanket statement, is it-- it's not fair to what really happens in our system happens right here in Lancaster County.

**PATRICK CONDON:** And the same thing I'm saying, I don't think it's fair to make a blanket statement that we put people in jail because they're poor. That's not why they are in jail.

**WAYNE:** Thank you.

**LATHROP:** I do have a question or maybe an observation. Do you think that if we pass this that we will see law enforcement more inclined to issue tickets for these offenses versus arrest them and put them in jail?

**PATRICK CONDON:** Well-- and again, I think-- I mean, generally-- and again, here in Lancaster County generally tickets are what are done. I mean, individuals are issued citations to appear. If they don't sign the citation, they can be arrested. That's in statute. But generally,

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they're gonna be issued a citation and they're gonna be told you come to court in three weeks or four weeks if you want to have an attorney. They know they can have one if they want to ask for an attorney they can ask for one. Generally, that's how that's gonna occur. When they come into court three or four weeks down the line-- if they come into court, the court's not gonna put a bond on them. And that's-- and, and, and so like for these--

**LATHROP:** When they come in for their arraignment on--

**PATRICK CONDON:** Right, when they come in--

**LATHROP:** --[INAUDIBLE]they get a ticket.

**PATRICK CONDON:** Right.

**LATHROP:** But my point is this, if this bill is aimed at the lower-level misdemeanor--

**PATRICK CONDON:** Right.

**LATHROP:** --letting these people out without posting a money bond. If that's the law, do you think law enforcement are less likely to arrest them simply write them a ticket and we accomplish the same purpose?

**PATRICK CONDON:** I, I think they would. I mean, I think they would write them a ticket. I think that's what they would do. I don't, I don't think they-- it serves us no, no, no benefit to have somebody in jail. I mean, there's no benefit to the county or the prosecutors to have these people sitting in jail.

**LATHROP:** OK. Senator Morfeld.

**MORFELD:** So I, I just came in. If this was answered a little bit earlier, I, I apologize. So I, I guess my question is, is how do prosecutors know what is reasonable in terms of setting bond if judges and prosecutors do not do an individualized assessment of their ability to pay?

**PATRICK CONDON:** Well-- and, and again, Senator Morfeld, one what-- where-- as prosecutors what we do is we look at what-- you know, one what the charge is and two-- and what I mean by that if it's a, if it's a low-grade offense that they're looking at a fine, that they don't have any criminal history or maybe even if they do have criminal history. I-- do we think they're gonna appear? They've appeared on

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other cases that they've, that they've been charged with. We're probably gonna say, PR bond them. Just release them on a PR bond.

**MORFELD:** I get that. But in practice-- and I've been down there once or twice now and seen some of this in practice. I mean, for somebody like me a \$500 bond is not a big deal. It just isn't. I have the resources. I'm fortunate to have the ability to pay. But for some people-- you know, that's a big deal. So if you're not doing a personalized assessment for financial ability to pay, even if you believe those things and believe as though they are risk. What--

**PATRICK CONDON:** I, I mean--

**MORFELD:** --how do we know?

**PATRICK CONDON:** And again, in, in the personal assessment that's another-- I mean, the, the judges ask them-- you know, a lot of times, are you working? You know, how much you making? I mean, the judges do make inquiries into that [INAUDIBLE], but the other thing-- and, and again-- and I-- you know, I'm, I'm not saying it's a, it's a perfect system. I mean, we're putting a lot of people through there. I mean, there's a lot of people going through it a certain time. I mean-- you know, you know what do you, what do you do? I mean, do you want to-- if, if we're gonna do this and, and I'm not saying that we, we shouldn't or we can't do it. But I think you're gonna be running courts-- you know, probably 12, 14 hours a day to, to take the processed to run these people through and individualize.

**MORFELD:** I guess-- you know-- I get that there's costs, and I get there, there are limitations but we're not talking about public [INAUDIBLE] here, we're talking about people's constitutional rights.

**PATRICK CONDON:** And, and I, I don't, and I don't disagree. We're also talking about taxes, Senator. I mean, that's gonna mean an increase in taxes.

**MORFELD:** You know, then I, I would expect that you and other members of the bar make the case for the increase in taxes in order to make sure that people's constitutional rights are protected and that we're doing an assessment of everybody's financial ability to pay. Because from what I'm-- from what I understand that's not happening. And from what I've seen, I've seen, that's also not happening.

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**PATRICK CONDON:** Well, I-- well, like I said, Senator, what we do in our office and, and what, what I direct our attorneys to do is take a look at the individual, have they been showing up in court? Are they, are they likely to be coming back to court. What's the type of charge they're facing? I mean, of course, we have a-- you know, a felony-- we're gonna be asking for more bonds. This doesn't include that, but, but we do make that-- we do try to make an assessment on that.

**MORFELD:** OK. I, I-- from what I've heard and what I've seen personally, I, I have not seen that assessment occur. And I think that the alternative actually, if we're talking about limited resources, it's much more expensive spending time in jail.

**PATRICK CONDON:** And, Senator-- and, and again, I-- like I said I, I had three days last fall I think it was that I, that I invited people to-- with the court's approval to come in. We wouldn't, we wouldn't arrest them on their bond-- their warrants. We said, come on in. We'll, we'll reinstate your bond. We'll do whatever we can. The next time somebody suggested, could you do it at night? We did it at night. We said, come on and at night. We do-- we are trying this. I mean, we are, we are trying. It-- but, but the fact of the matter is, we had people repeat-- come in the first time that we had this warrant kind of amnesty and then come back in the second time because they failed to appear again. And again, at what point in time do we-- I mean, I, I sometimes wonder do you as senators think, well, you should try three times and if you don't get them prosecuted throw your hands up and say, can't prosecute them anymore because you've tried three times and they haven't shown up so they get to win. I mean, what do you-- what, what do the senators want us to do as prosecutors to ensure that the laws are being enforced if people don't show up?

**MORFELD:** I think the problem is that there are people that show up.

**PATRICK CONDON:** I don't disagree with you.

**MORFELD:** And so that's my concern. OK. Repeat offenders three or four-- sure, I get what you're saying. But my understanding is that there are people that show up, there are people that would likely show up. But we're getting them locked into a system and making a choice that Senator Wayne, I think, illustrated pretty, pretty clearly earlier. But we can talk more off the mike on this sometime. I--

**PATRICK CONDON:** Sure.

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**MORFELD:** --appreciate your answers. I appreciate your time here today.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for coming County Attorney Condon. So I am very grateful for the work that you're doing on the, on the warranty days and bringing people in and giving them a chance to clear up that record. And I don't think anybody here is, is blaming the county attorneys for enforcing the law as we've written it. Our question is just has it become too onerous on one group of people than another? I don't, I don't think that it's a matter of you-- of, of the county attorneys across the state purposefully being more burdensome on poor people. It's just, just how the law is written and, and what we can do to help this matter. Do you think that if the, if the bill does pass out of committee and is passed on the floor, do you feel that the communities will be less safe? And if we add Senator, Senator Matt Hansen's amendment that you are working with him on--

**PATRICK CONDON:** Um-hum.

**PANSING BROOKS:** --feel that for some reason we'll be less safe?

**PATRICK CONDON:** I, I-- in general, I would say, no. I, I-- the, the thing that you have to understand and I'm sure you do, but people, people sometimes don't think about it. And that is when a warrant is issued, if an individual doesn't appear when a warrant is issued and somebody is arrested on that issue or on that, on that warrant, we don't know what that person's condition is or where, where they are at the time. That puts officers at risk. It puts the individual at risk. It also-- you know, here in Lancaster County again, and, and I know this is a statewide bill, but here in Lancaster County when an officer has to-- has an arrest and if there is an arrest warrant out there, there's state statute that says the officer-- if they know of the arrest warrant they have to arrest. That's gonna take that officer off the street for about an hour. So does it make it less safe? Yes and no. I mean, there's, there's less officers out there working the street trying to maintain, trying to maintain the law. But so, so-- you know,--

**PANSING BROOKS:** OK. So--

**PATRICK CONDON:** --it's a concern.

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**PANSING BROOKS:** --thank you for that answer. So-- but the same goes-- holds true for somebody who has paid their PR bond. You could still have somebody not show, just [INAUDIBLE]--

**PATRICK CONDON:** Absolutely.

**PANSING BROOKS:** --their bond. So there's that same risk whether or not they pay the bond or not or they're held in jail or-- you're not saying here that people who are poor are less likely to show up to their hearing.

**PATRICK CONDON:** No, no, absolutely not.

**PANSING BROOKS:** OK. Thank you for your work and for coming today.

**WAYNE:** Briefly, yes, briefly.

**LATHROP:** Senator Wayne, one more time.

**WAYNE:** So this my first year on Judiciary and I, I now understand Senator Chambers a lot more. And you know, my, my confrontation with you was not necessarily directed at everything you said, but I'm, but I'm really frustrated by these bills. And I'm not so much frustrated by these bills and this will be my last rant, Chairman Lathrop, and we'll, we'll get things rolling. But I'm frustrated about the participation in the audience. We sat through many juvenile hearings and I had all these advocacy groups walk in about juvenile. But the most important people in the juvenile's life are the parents oftentimes. And this is one of the most filed charges in Douglas County is when somebody is sitting in jail on a low-level, and they're charged with neglect. Yet nobody's here. How much stronger of a case can we build in this committee if everybody's here understanding the importance of this issue. So I'm saying this now preemptively hoping that they'll run over here for Senator Chambers' bill and I won't be so upset. But we're talking about how we can terminate parent rights and how we've got to protect these kids. But oftentimes, as simply as getting somebody out of jail and getting them the help they need, and they're nowhere to be found. We have attorneys arguing about this. Put the other side of the face to this equation, which is the kids. Whether, they're somebody's brother, dad, uncle, cousin, grandparents, that's what's bothering me about this and why I'm getting a little emotional. Now I understand why Senator Chambers get so passionate in here and sometimes goes on rants and I promise I'm not gonna do this anymore. But it's in our community that we see it every day. Our



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community where there's an automatic bond on Friday night and that person won't get their hearing until Wednesday or Thursday. So they spent all weekend, four to five days and get out on an ROR-- automatic bond-- that's five days. And guess what? Juvenile court moves in. You're incarcerated, charged with neglect. Now the kids at a foster care. What's the real issue? Oh, he had a DUI or he was drinking. Now the kid's in the system, parent's in the system, but he got out on an ROR five days later. And now I'm in six months of juvenile court. That's a waste of taxpayers' money. I understand, Chambers, I knew I shouldn't of came to this committee. I'm done, got to take a break.

**LATHROP:** One last thought, you came in here in a neutral capacity.

**PATRICK CONDON:** I did. And I still am in a neutral capacity.  
[LAUGHTER]

**MORFELD:** Last time he comes in--

**LATHROP:** We've asked you questions like maybe you were in opposition.

**PATRICK CONDON:** No.

**LATHROP:** I make that point because you were going to run the traps to see if other members of the association had a problem with this. Otherwise, it will have been worked out with Senator Hansen and good to go.

**PATRICK CONDON:** Yes.

**LATHROP:** Check in with him if you can run the traps so we can exec on something like--

**PATRICK CONDON:** Thank you.

**LATHROP:** --and we appreciate your testimony and your-- yeah, answering the questions here today. Thank you. Anyone else here in a neutral capacity? With that, Senator Hansen to close. We do have one neutral letter that's from the Women's Fund.

**M. HANSEN:** Thank you, Chairman Lathrop and members of the committee. First, let me start by thanking all of the testifiers we've had today including, including Mr. Condon, and everybody who testified as a proponent. This has been a really good process. I think we've actually had some very good discussions on what's best to move forward and I appreciate everybody coming to the negotiating table with sincerity

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and being able to kind of take a holistic view of the process and throw out suggestions. I will say, I meant to mention this in my opening. I passed out a potential amendment to you. There was something bill drafters caught at about like 1:15 before I went into hearing in just in terms of qualifying what exact type of bonds so we'll make sure that gets to the committee and committee counsel. But I just wanted to flag that for your attention. Going to kind of the overall thought here-- Senator Wayne. So I've had-- I had two years on this committee and seeing some of these problems and you just see them from-- it's not that any individual person, it's not that any individual bill, it's not that any individual senator has done anything, it's not any individual county attorney, defense attorney, whoever. It's just the system and how quickly you get that rolling and how quickly one minor mistake can completely change things. I know you spoke about this. The-- when you see how quickly-- you know, a three-day jail stint, a four-day jail stint-- I mean, your kids are-- your kid's gonna be in the juvenile justice system. You're getting fired. You're getting evicted. Just like that, overnight. And that's where we see in these situations where if you're being told that, hey, you can get out of jail today if you plead guilty or you're gonna stay in jail because you can't pay the fine until your court date. You'd be nuts to not plead guilty. You get out of jail today and you can go back to work and go back to your kids. You can make sure you pay your rent. Well, that's kind of the disproportionate impact where that's not necessarily what we want. That's somebody who's pleading guilty because it's in his economic best interests to plead guilty. Not necessarily because he has remorse for his crime. Not necessarily because he even acknowledges he admitted a crime. He might be factually innocent but it's-- there's this weight of systems on top of him that says it's primarily him-- I know, I know it happens to women, too, that says, right now that your best self-interest is to plead guilty even though the long-term discussions of that have significant complications including you know the next time you apply for a job, the next time you end up in court, or what have you. Fundamentally, the issue that I had here and why I chose these crimes. I didn't mention this in my opening, but you know, IIIA, IV, and V are seven days or less in jail. City, city ordinances can go up to six months but are often charged as fines especially for first offense and city ordinances are different because they don't have a jury trial. These are people who just by waiting for their trial date probably spent more time in jail than had they just been convicted on day one or plead guilty on day one. And that's just a fundamental issue that I think we as a Legislature have to address. I'm happy to address it and

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excited that we have a potential addressing with this bill and would ask for your support.

**LATHROP:** All right. I see no other questions.

**M. HANSEN:** Thank you.

**LATHROP:** Thank you, Senator Hansen. That'll close our hearing on LB282, and bring us to our last bill of the day, LB646, and Senator Chambers. Good afternoon, Senator Chambers.

**CHAMBERS:** It hasn't been so far, Chairman Lathrop, but I reciprocate as far as the greeting. I'm Ernie Chambers. I represent the 11th Legislative District in Omaha and I am offering this bill. To tell you how it came into being, I have for some time been interested in doing away with money bonds. I didn't have any time to do enough research to offer a bill. I had been discussing the matter with a long-time Omaha attorney, named David Herzog, who had done research. He had told me about various states which had done away with money bonds. And he thought that it would be the best thing in Nebraska that could happen because he practiced criminal law. And contrary to what the gentleman from Lancaster County said, he was aware as lawyers are aware, and judges, too, and prosecutors how charges are stacked with the intention of persuading somebody to plead guilty and that is what happens. Studies have been undertaken and judges have participated especially federal judges where it is acknowledged that false pleas of guilty are not unusual at all. Prosecutors know how to make the future look very bleak. And a person, for some of the reasons that Senator Wayne mentioned, will plead guilty. But before I get too far into that, I want to go into this bill. Lancaster County Public Defender, Joe Nigro, was also interested in legislation. So I told him if he could get a bill drafted, get an idea firmed up enough to become the subject of a bill, I would have a bill drafted. I would introduce it. The discussion needs to take place and it needs to be led by somebody like me who knows what prosecutors are. Who has no fear of judges, no fear of prosecutors, and will pull the cover off them and show what they are. The favoritism and how a man who professes to be a prosecutor and a county attorney can be ignorant of the disparate application of the law when it comes to race. Look at the percentage of black people in Lincoln which would be very small. Then look at the percentage of those who are in pretrial detention because they can't pay a cash bond-- money bail. It's like that all over the country, all over the state. The ACLU did a detailed study based on facts, observation, interviews that showed the disproportionate impact of all

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of these things on people of color. So when I hear a man like the one who just got through talking, there is no credibility he has as far as I'm concerned and it's not my job to play games with him or placate him. My job is to make sure that what they do comes to an end. And I'll give you a concrete example of something. They used to send a man to represent the county attorneys every time I had a bill to abolish the death penalty. He was a county attorney in Grand Island, whatever county that is. He was very much in favor of the death penalty. Then something happened, a white man was offended because of the way his divorce had been handled. So he got a high-powered rifle, ambushed his wife, and killed her. He pleaded guilty and was given a life sentence in that. But before that happened, he committed another murder. He went to a different county. One was in Buffalo. The other was in another county so there were two counties-- county attorneys. He waylaid the lawyer, waited in a parking lot till the lawyer emerged from his office and with the same high-powered rifle, shot him and killed him. This white county attorney who came down and always spoke for the death penalty. How you needed it for a deterrent. How these dangerous people could not be allowed in the general population of the prison because they're so dangerous. He knew that this man had copped a plea and was serving a life sentence for murdering his wife. And then he said, if you'll plead guilty, I'll take the death penalty off the table. So this mass murderer does-- you qualify as a mass murderer if you commit two murders, was allowed to plead guilty. He now is among the general population. And that man-- I wish I could think of his name, but anybody who knows what happened would be aware of his name. He has been appointed and is now a district judge. And when the judge's salary bill comes up I'm gonna have all of those names and facts because I want the record to show what these judges do. What these county attorneys do. And I'm gonna take a little time now because I didn't speak on the other bill. No questions. There was a white teacher at Nathan Hale Junior High sexually mishandling young black girls. Nothing was done. One young girl complained and the principal put her out of school because she defamed this teacher so she had to transfer to another school. Another young black girl complained about it and she was told that it was understood that she'd like to go to-- I won't mention the school, but one of the colleges, and it was not UNO, and play basketball. And if they came-- became aware that she had accused a teacher she would not get that scholarship and she would not be allowed to play basketball and the parents called me to see if I could persuade her to say something and she acknowledged what he had done but she would not say anything and did not want to say anything. I talked to Donald Knowles. I gave him

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this information that it was known what this teacher was doing. Nobody at the school would make the report that they should. And Donald Knowles, not Donald Knowles, he was the one before, Donald Kleine wouldn't do anything. And I kept talking to him. I wrote columns in the Omaha Star. Mentioned this teacher and the number of instances. There was a black woman who was-- who is the wife of the current president of the Omaha City Council, Ben Gray. She was the president of the school board. She would not do anything. They got together at the school board and decided not to take any kind of action that nothing would be said to the principal. The superintendent, who was John Mackiel, knew about it and wouldn't say anything. They could point at me as the loudmouthed troublemaker. Then some things began to unfold and the man was charged because there was a female police officer who conducted an investigation and she found out there was very credible evidence. And I talked to Donald Kleine. And I'm mentioning it on the record as I always do. And I went down to his office and his assistant was there. And I said what you ought to do is call these teachers and put them on the witness stand and force them to testify. He said, well, Senator, I've talked to some and they said that they would not testify. And they would take the Fifth. I said, that's perfect. They are going to have to get on the witness stand and say I will not testify about not reporting and so forth because I might incriminate myself. I said that's what the public needs to know. Here's why I tell you that-- oh, and finally the thing broke open and he got about five or six years. I got all the articles that I wrote. Now that these teachers are doing things to white girls, they're being prosecuted. There's not all this cover-up and you're seeing it on a regular, regular basis. And at Fontenelle grade school some teachers told the principal about a teacher who was improperly touching these little girls and the principal did not report it so he's facing charges now. That's what these prosecutors do. That's what these white people do when black children or black men and women are involved. In Douglas County, our population is black people might be 11 to 16 percent if it's that much. Yet at the Youth Detention Center, black children always make up more than 50 percent of those locked up. Sometimes it's as high as 80 percent. And this man is gonna say that these prosecutors don't misbehave. I know they do. And I'm going to go after them. The reason this his bill is here-- I told Mr. Nigro that we need to start this discussion on getting rid of money bail and we'll get the bill and introduce it. Time was running out to introduce a bill. He scrambled around and got enough information for a bill to be introduced. And I had it drafted and we knew there were some things that needed to be modified. But I told him that that's what our

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amendatory process is about. This is, this is why you all will have a thick amendment that starts out strike all the original contents and replace. There were numerous statutes that had to be coordinated. There were considerations that we didn't have time to adequately address or the period for drafting bills would have been exhausted. You have an amendment before you. It has 39 pages. The original bill has 35. And the reason that amendment is thicker is because it's single-sided. The green copies are double-sided, so the number of pages roughly are the same. Now I'm gonna read my statement of intent and I do this because I want the record to be clear if somebody wants to read the transcription of what went on. "Based on the acknowledged fact that innumerable poor persons remain in jail awaiting trial or other court action solely because they lack the financial wherewithal to post bond, not because they represent a flight risk or any danger to the public. LB646 eliminates cash bail, appearance bonds, and related provisions. Personal recognizance and conditional release will be requirements unless the court in its discretion determines 'that such a release will not reasonably assure the appearance of the defendant as required' or 'that such a release could jeopardize the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community.' Current law mandates that 'the court shall consider all methods of bond release and conditions of release to avoid pretrial incarceration.'" I'm departing from reading right now, and I say that for the sake of the transcribers. Judges are not doing this. Many of the judges are lazy. There are requirements in the law right now indicating that the policy of the state is to avoid at all costs unless danger to the public or credible threat of flight to do away with pretrial lockup. They don't do it. The only way to try to address this problem is to do away with the money bail. "LB646 does not touch any of the provisions of Article I, Section 9 of the Nebraska Constitution which enumerate specific unbailable offenses." We all know that a statute cannot amend the constitution anyway. But I want to state that for the record. "Other states have implemented such a system and have met with success in achieving its aims." Now there was a white boy, his case was famous. He was drunk. He was driving. He ran into a car and killed several people. And the judge, because he came from a rich family-- the boy-- said, well, he did not ever learn how to be responsible for his actions because of his wealth and therefore he cannot be held completely responsible for what he did. And he is a, he is a victim of what I will call-- the judge-- affluenza. He was affluent so he gave him probation. Everybody was outraged. The boy and his mother left the country. And then the judge who said that he was giving him a break

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because he had not learned how to be responsible then gave him a soft sentence which carried on what the judge was doing, the boy was doing, and it's because of the wealth. For this prosecutor to say that people are not sitting in jail because they're poor, either he's a fool, a liar, or a racist. That's why you have so many more black people sometimes with lesser-- less serious charges sitting in jail because they cannot post a bond. You all get nervous when I say this. I'm just talking. I'm talking about people who are in jail right now because of that. And you all can accept it because it doesn't happen to you. I gave you an example of what that prosecutor did out in his town when a white man committed what amounts to mass murder after coming down here saying there should be a death penalty. What Lancaster County-- Correctional-- Department of Corrections said, is that if this bill passes it will reduce the-- that population of people sitting in jail because they can't post a bond by so many that they can get rid of five officers and they will save six hundred and something thousand dollars. Look at the fiscal note. When the impact was looked at by Lancaster County Department of Corrections they put the amount, not in the expenditures column, but in the revenue column. Six hundred and sixty-six thousand dollars or something like that and it would go on at that amount. This is releasing people who shouldn't be in jail. There is a presumption of innocence. But these innocent people are sitting there, and for the reasons that Senator Wayne was discussing, they will cop a plea and county attorneys know that. I believe in second chances. And I certainly believe that people who have not been convicted of anything should not be in jail. What has been described as debtors' prisons in Nebraska now exists because the only reason the people are there is because they don't have money. Let's say that they plead guilty to an offense that doesn't carry jail time. So the judge imposes a fine and they don't have money to pay the fine so they sit in jail and retire that fine at \$90 a day. And then there are court costs that are assessed also which they cannot pay. And they sit off that time in jail for an offense that doesn't carry any jail time. You all don't believe this happens because it doesn't happen to you. And it's a good thing there is somebody like me who's willing to bring this up. And there is a bonding travesty now in Douglas County that even falls on white people. They're setting bonds like a million dollars-- \$750,000. You all's constitution has a specific provision against excessive bail. I'm going to begin to wrap this up. The way the bonding system works, they used to have bondsmen. And if you can't post a bond you call one of these guys and he puts up the money. Then you have to pay him his fees for putting up that bond and he puts up 10 percent of what the bond is. If it's a \$1,000, he puts up a \$100

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and then he charges you whatever he wants to. And if you don't pay him right away then he starts tacking on fees, too. And this happens to poor people. I was one of those who was instrumental in doing away with that bondsman racket and we created a system which has its own defects. Instead of paying the money to a bondsman-- if you can get the 10 percent or get somebody to put it up for you, it's paid into court. But if you show up and do everything you're supposed to do, then 90 percent of that is returned and the court keeps \$10 as an admin-- 10 percent as an administration cost. Well suppose my bond is \$100,000 and somebody puts up \$10,000, then the court keeps a \$1,000. If my bond is a \$100 and somebody puts up \$10, the court keeps 10 percent of that. It doesn't cost any more for the court to administer whatever the paperwork is for that \$100,000 bond than it does for the \$100 bond. So why should they have a flat 10 percent that they keep no matter what the amount of the bond is. The court hustles money, too. Judges are involved in this and people don't want to acknowledge what is going on in the court system and why people have so much contempt of it-- for it and why they have so much fear of it. I won't give the names of people but what I have done on condition that the person and the family not tell people because I don't have money to post everybody's bond. I've posted bond for people and wouldn't accept any payback from them because the situation would be so egregious that there was no way the person who is in jail should have stayed there. I should not have to post bond. As the song says, I'm a man of means by no means. But I have integrity. I have a sense of responsibility toward my community and the people who look like me. I wanted the record to be clear on why there is such an extensive amendment. It will get rid of all of the money bonds. But as you'll notice-- because I figured some county attorneys would come running down here saying, well, what about those people who might not show up. Well, the judge will conduct a review and make those determinations. It-- it's not enough to say that a person who is poor is automatically going to run. But you know what was discovered when the ACLU did a study by observing bond settings, arraignments, watching trials, that the bond for black people for identical charges on white people might be 39 percent more. And if it was a crime of violence it was higher than that the percentage automatically because the person was black. Now the man who just talked from Lancaster County will say, well, they probably know that black people are more likely not to show up. They know that from experience. And that's why I'm sick of them and I want him to know that because you all are nice. I'm not nice, but I'm dead serious. And some of my colleagues, as we proceed through the session, are going to see just how serious I am. I think I've given enough to



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explain why I brought the bill. But there are others here who will testify and can go into more details and they need not say the kind of things that I'm saying. I'm always the garbage man. I allow others to show and manifest dignity, courtesy, professionalism. But I'll tell you what, you let those dogs get after you and you'd rather have somebody like me who knows how to deal with them, defend you and come to your aid than somebody who's gonna say, please little doggie. I'm not saying this to despair as those who are going to speak. But it's to let you know that any specific questions that you may have they will answer. We are going to handle this in a way that allows each person to play to his or her strength. A linebacker doesn't do what a defensive back does. A quarterback doesn't do what a split end does. A center does what nobody else does. You all understand football in Nebraska so I thought I'd throw that out there. Do you have any questions you like to put to me other than why am I like I am?

**LATHROP:** I guess not.

**SLAMA:** No wait, I have one.

**LATHROP:** Oh, I'm sorry, Senator Slama has a question for you, Senator Chambers.

**SLAMA:** I'm sorry. Just off of your last analogy, could you define what a split end is?

**CHAMBERS:** I didn't understand what you said.

**SLAMA:** What is a split end in football?

**CHAMBERS:** Oh, a split end.

**SLAMA:** Yeah.

**CHAMBERS:** That's somebody who stands outside of the, the other players. Goes way out-- is on the line, but apart from where the other players line up.

**SLAMA:** Good. Thank you.

**CHAMBERS:** Oh, you probably thought it was two people or one guy you--

**SLAMA:** No, I was trying to figure out what it was because I know there's [INAUDIBLE]--

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**CHAMBERS:** OK. OK, I follow you.

**LATHROP:** OK. Thank you, Senator Chambers. And I assume you're gonna stick around to close.

**CHAMBERS:** Yes.

**LATHROP:** So we'll have--

**CHAMBERS:** [INAUDIBLE]

**LATHROP:** OK.

**CHAMBERS:** [INAUDIBLE]

**LATHROP:** I would say that's an option for you if you want. But generally it's not done, but how about we have you close. We give you an opportunity to answer any questions that might come up.

**CHAMBERS:** OK.

**LATHROP:** Good afternoon, once--

**KELLEE MORENO:** Hi. Kellee Kucera, K-e-l-l-e-e, actually it's Kucera-Moreno, K-u-c-e-r-a hyphen M-o-r-e-n-o. Well, I do have a lot to say and I asked Mr. Nigro if I could go after Mr.-- Senator Chambers because I've got some more to dump, too. And then Mr. Nigro has facts-- you know, and facts should speak louder than words if people are objective. I don't believe from what I've seen and I can have opinions here. You all have had the facts. The Judiciary Committee has been doing a wonderful job. You guys know what to do and you haven't done it. And I want to give the Governor a break and Scott Frakes a break and I've, I've tried talking to both of them. And I was told if I keep bugging Scott Frakes, I'll probably get in trouble. I've talked to a lot of you guys. You know this is a problem. And as a person in the community, as a wife of an incarcerated person, as a person who knows people that are incarcerated, I know what the, I know what the consequences are. And it's not fair. One thing that I did learn about-- learned from Senator Chambers when he listened to me going on and on about how to make you guys understand this. How to get people to change, is that you can't change people. And you can't change whoever is getting incarcerated and you can't change the prosecutors. You can't change the judges. You got to do what you need to do because it's the right thing to do. And if we're talking about laws and legislation, we need to do the right thing. I think it's

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pretty clear that most people aren't gonna want to live in a, in a cage with six other people that they don't know. These men and these women are living in a cage with six people that they don't know and expected to get along without treatment, without medication, without a lot of skills in many cases and they're doing it. My husband-- I bought my husband a treatment plan. A Native American treatment plan, sent it to prison so him and the guys could start doing treatment. So when people talk about money and how, how expensive this is, my husband tells people you're accountable for yourself. He holds people responsible that go in there. It's not the prosecutors who make changes, it's not the judges who make people change, people change because they want to and you have to have motivation, too. Racial inequality are just words. I'm, I'm not gonna pretend that-- I can't empathize because I'm not in someone's shoes. I really can't and nobody else can either. I don't know how you guys do it but you do. You seem to be able to muster enough empathy for people. But when you picture a prison full of white men with black guards that picture looks different. So it is about color and the reason that we judge people of color so bad is because we keep locking them up. They're all in a group you know. That's all. Thank you.

**LATHROP:** Thank you, Ms. Moreno, for your testimony. Welcome back.

**JOE NIGRO:** Good afternoon, Senator Lathrop, members of the committee. I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender and I strongly support LB646. LB646 would end money bond in Nebraska. The money bond system criminalizes poverty. Legislatures and judges around the country are deciding that keeping humans in cages based upon their wealth is wrong. Since the days of Anglo-Saxon England, the purpose of bond has been to assure that someone appears in court. Now in 2009, the first year after Senator Chambers had to leave the Legislature due to term limits, the Legislature added safety of the community to factors for courts to consider in setting bond. What people have figured out around the country is that money bond does not assure that people come back to court, nor does it protect the community. It just means that people with money get out of jail. People in poverty and people of color are disproportionately kept in jail. Most of the people in this room wouldn't lose their job if they missed work tomorrow. Many of the people I represent would lose their job if they missed one shift. Then they lose their housing and their children can be taken away. And these are people who are presumed innocent. Five hundred dollars to some people might be the same as a million to others. The District of Columbia stopped using money bond

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years ago. Ninety percent of the people arrested there are released. Ninety percent of those people return to court without committing a new offense. And 98 percent of the people released do not commit new violent offenses. Litigation against money bond has been successful in New Orleans, Houston, and California. And in California that litigation motivated the Legislature to pass legislation last year ending money bond. The Legislature should take action here before a court finds our bond system unconstitutional. People in jail are more likely to be convicted and they receive harsher sentences. Pretrial release programs are more likely to get people back to court and they keep communities safer than money bond. This bill will require communities to make greater use of these proven pretrial release programs. Now Senator Chambers has this amendment to the bill which resolves a constitutional question that was raised and it also sets up a processing criteria if a court wants to keep someone in custody. Courts can still hold people who are a threat to flee or who are dangerous. Out of 604 people in Lancaster County Jail on a single day 2 weeks ago, 401 were pretrial detainees. It costs \$100 a day to incarcerate someone, \$14 billion a year is spent nationally incarcerating pretrial detainees. People may tell you that this bill will let scary people out of jail. It's not true. It's not true in D.C. or anywhere that has reformed its system. Ask opponents if they're OK with a system that keeps humans in cages based on how much money they have. Wealth-based detention is wrong. The money bond system punishes poverty. The time to end the money bond system is now. I urge you to advance LB646. Thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for coming, Mr. Nigro. So I, I finally got-- because I know that the ACLU had some information for us regarding a book that they've just created on bail and, and modern day debtors' prison. So I just had that brought to me because I thought I was gonna have it for the day and I didn't bring it up. So one of the things that's talked about is that people of color are asked to pay more in bail for the same offenses than white Nebraskans. Can you talk about that a little bit? Have you seen that and [INAUDIBLE]--

**JOE NIGRO:** Well, there's no question that people of color are disproportionate that, that-- they're prosecuted at disproportionate rates. They're incarcerated at disproportionate rates. And some of it has to do with a connection to the percentage of people of color who are in poverty because the system mistreats people in poverty. But I,

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I don't know how you-- when you look at those kinds of numbers it's hard not to reach the same conclusion Senator Chambers has reached about how our system works. And racism is frequently not overt but it's there. And, and we should be honest about it and try to remedy it.

**PANSING BROOKS:** Another statistic talks about the fact that nonviolent offenders who cannot post bond spent an average of 48 days in jail which is quite a bit of time and quite a bit of money-- taxpayer money.

**JOE NIGRO:** Well, it's \$100 a day in the Lancaster County Jail. And as I indicated-- I mean, we-- our jail-- over like 67 percent of our incarcerated people right now are pretrial detainees.

**PANSING BROOKS:** Do you, do you-- just being an attorney and watching all of this occur, do you think that this is all come about just mainly because of our laws or do you think it's societal? And for-- what, what do you think has caused this? I think it's an, an increase of, of, of the use of, of a, of a type of debtor's prison. Can you explain what do you think has happened?

**JOE NIGRO:** Well, you know I tie a lot of this to-- you know, under Richard Nixon the war on drugs ramped up. And, and if you look at the last 50 years we've had a dramatic increase in America in the number of people incarcerated. A dramatic increase in the number of people incar-- of color incarcerated. So a lot of it is tied and, and very much connected to the war on drugs. This idea of adding community safety to a criteria for bond is a recent development. It, it had happened federally in 1984 and, as I indicated, Nebraska didn't do it until more recently. That's resulted in more people being incarcerated. And you know, I think when we look at how-- who's incarcerated-- I mean, I know in our state prison system I think it's like 60 to 70 percent of the people who are in our state prisons are there for nonviolent offenses. And I think in all of these things and when you're talking about juvenile justice, adult criminal justice we should lock up people we're scared of, not people we're scared for. And, and-- you know, when we're talking--

**PANSING BROOKS:** [INAUDIBLE]

**JOE NIGRO:** --start taking about things like drug issues we ought to treat that as a health problem. And, and the same thing with juveniles and when you're talking about nonviolent offenses, the huge majority

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of our clients have mental health or substance abuse issues. If we address those problems, a lot of these people wouldn't be in trouble. But I think that the results of these years of the system working the way it is, but I think that it's really hard. This ending money bond is hard for people because we've had this system forever. And so you've got to think in a different way about who should be detained. And this idea-- I mean, the thing about bonds is so many judges have set bonds that they set for certain offenses. I know that the way arraignments work in Lancaster County. The county attorney who's filing the charges makes a bond recommendation and that, as Mr. Condon indicated, that's based on criminal history and the nature of the offense. And then they have one person at arraignments. Well, they're gonna go by what's in the file. Well, you're not gonna know the individual circumstances until they talk at arraignment. So those recommendations are not tailored to individuals' needs. And, and, and judges frequently will lean on prosecutors for their recommendations. We have judges in Lancaster County really doing a good job of applying the changes from LB259. But there are judges in Lancaster County and there are judges across the state who do not. It's hard for them to change their practices. And all of this and the things going on around the country have convinced me that money bond is just wrong and it should end. And if you use pretrial pro-- release programs effectively they're way more effective at getting people back to court. They can send court reminders. They can get people into treatment and, and mental health services that help address underlying problems and they can have people on electronic monitoring, they can do all kinds of things. Just setting an amount of money-- if somebody is accused of domestic violence and they get a \$5,000 percentage bond-- the fact that they have \$500 doesn't mean that they're less of a risk to go and abuse again. It just means they have \$500. We have to change the way we think about this. Now I can tell you that with California and with, and with this proposal here, there are defense attorneys who would be concerned that some judges will incarcerate way more people because they'll say, well, you're a danger. This bill-- the amendment particularly-- I mean, it sets out some criteria. But there are judges who may wind up incarcerating more people but it won't be based on wealth. And that has to stop. And New Jersey severely restricted money bond and they saw a 36 percent drop in detentions. District of Columbia's done it. The bail bond industry is trying to drive a referendum in California so that bill there hasn't taken effect yet. There are judges in-- a judge in New Orleans and Houston who found its system to be unconstitutional and there were thousands of people released in Houston because people are not being detained for the

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correct reasons under the constitution. And-- but I, I, I just don't think there's any way to fix the money bond system. I think we need to get rid of it. But I think a pretrial release program is a way, a way smarter and more effective system.

**PANSING BROOKS:** Thank you. I just want to add that, that Voices for Children shows that one in ten children in Nebraska have a parent who's behind bars which speaks to Senator Wayne's previous comments and the fact that we are affecting more than one person's life. There-- it, it just it, it, it turns into a whole vicious cycle affecting families, affecting jobs, work force developments. The number one issue for the State Chamber and we are precipitously hindering people from being able to complete their employment and do what they need to do to live their lives until the hearing or the court proceedings. So thank you for coming.

**JOE NIGRO:** You're welcome.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Attorney Nigro, for testifying today. I'm the nonattorney on the panel. So when I get arrested and I make bail, how does that work? Do-- does the court administer that if we don't have bail bondsmen?

**JOE NIGRO:** Well, what happens is it depends on the type of offense because for some less serious offenses there may be a preset bond on the lowest level felonies. The police can set a pre-arraignment bond so, for exam-- and, and the way Lancaster County works on a pre-arraignment bond is if you can make bond-- so let's say you get arrested on the weekend as long as you make bond by 6:00 a.m. on Monday-- so it's a \$3,000 percentage pre-arraignment bond. If you come up with three hundred bucks you get out if you come up with it before 6:00 a.m. If you don't come up with it before 6:00 a.m. you have to go to court. So if it's a felony charge you're gonna go to court at 2:00. At 2:00, county attorney makes a recommendation. The judge hopefully makes inquiries of the defendant of what they can afford. The judge sets bond. The bond may not be anything like the \$300. And you know, I can remember talking-- be on call on the weekends and telling a client on a Sunday it's like you better do everything you can to come up with the \$300 or \$500 because I would look at the charge and I think it's pretty likely you're gonna need \$1,000 if you wait until Monday and, and, and so that's how it works for pre-arraignment. Once the person has been arraigned, then it's whatever the bond the court sets. And

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you can request a bond review. But if you come up with the bond, then people just bring it down to the jail and post it.

**BRANDT:** But the bond is run through the court system. There is no outside bail bondsman or any--

**JOE NIGRO:** That's correct.

**BRANDT:** OK, so--

**JOE NIGRO:** When Nebraska went to the percentage bond system, which actually predates me as an attorney, and I started in 1983, that pretty much got rid of bail bondsmen in Nebraska which is a really good thing because there are a lot of abuses that go on around the country. And, and they're a huge obstacle to progress.

**BRANDT:** OK. And then the second part is actually probably a little more of a statement based on the savings of that \$662,000 in Lancaster County which is 17 percent of the population of Nebraska. If you just extrapolate that out, would be a \$3.8 million savings just on manpower alone. I don't know how much more savings we would have if we eliminate all the rigmarole inside the court system. The clerks and the-- you know, all this money has to be accounted for and there's a long tail on that usually also.

**JOE NIGRO:** Yeah.

**BRANDT:** And I don't see any numbers in here on that. But it could be a significant savings to the state of Nebraska.

**JOE NIGRO:** Well, I don't think there's any question there would be a significant savings. I mean, there's obviously costs for pretrial release programs but they're far cheaper to administer than incarceration. Incarceration is the most expensive thing we do as a society. If we were able to be as effective as the District of Columbia where 90 percent of the pretrial detainees are released, the savings would be way more than the \$3.8 million you've described. And, and, and the District of Columbia, nobody can look at that location and say, well, they don't have serious crime and yet 90 percent of the people are released and 90 percent come back to court without getting in trouble. So why couldn't it work here?

**BRANDT:** All right. Thank you.



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**JOE NIGRO:** You're welcome.

**LATHROP:** I have a couple of questions for you.

**JOE NIGRO:** Sure.

**LATHROP:** Is it possible that we would have an unintended consequence of having more people remain incarcerated? So if a judge has to decide-- what we're doing is taken the middle option away. Right? So we can release them without a bond or we can leave them sit or we have this middle lane here that's the subject of this bill where somebody posts some money to ensure their appearance or at least that's the idea behind it. If the judge only has option A or B, are we going to see more people who are left in, in jail pending because the judge is uncomfortable letting them out on their own. They might post a bond or the judge might set a bond if that's an option. But it's gone, and so the judge just says, well, I'm just gonna leave this guy in there.

**JOE NIGRO:** Well, I--

**LATHROP:** Let me give you a--

**JOE NIGRO:** Yeah.

**LATHROP:** --hypothetical. Somebody is charged with a-- we'll call it a middle class. Say he's shot at a house.

**JOE NIGRO:** Yeah.

**LATHROP:** OK. Not, not at a person but just drive-- does a drive-by, shoots at a house and on his record he has two witness tampering's and a failure to appear. What's the, what's the judge supposed to do with that guy if this bill passes?

**JOE NIGRO:** Well, ideally, they would have that person screened by the pretrial release program and--

**LATHROP:** Well, it's gonna show that he's, that he's charged with shooting at a house and that he's twice been convicted of witness tampering and has a failure to appear.

**JOE NIGRO:** Well-- and, and so once they've done that screening-- I mean, part of it is-- you know, those, those pretrial release agencies use risk assessments. This proposal tries to make sure those risk assessments in and of themselves don't discriminate but you have that

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risk assessment. And our experience with our Community Corrections program is they're not afraid at all to say, we don't think this person can be safely released in the community. But if they do think they can be released, they use those criteria also to say, well, this per-- you know, one person may not need any supervision at all. Another person may need-- you know, some relatively frequent contact. Some people need to be on electronic monitoring. Some people need to have daily check-ins. And so the, the criteria you're describing-- I'm guessing that person's probably not gonna get out. But if they get out that it's gonna be on a fairly high level of supervision. But it would be based on, on some criteria both in the amendment Senator Chambers has submitted and, and the science behind the risk assessments. So it's really not-- you're completely free or you're in custody because you can be supervised. But I do agree with you. I know it was a concern in California when their bill ultimately passed that some judges might just keep a lot more people in jail. Personally, I look at the system and I'm willing to take that risk because I know the current system doesn't work. It punishes poor people and at least that system-- because what you have now, too, is you have judges who pretend to be fair by setting a dollar amount that nobody's ever really going to make. Well, maybe they ought to just be honest about it if they don't want to let the person out. But again judges shouldn't just say, well, I'm never gonna let anybody for this offense. They really should look at the circumstances of the individual. And this proposal requires them to make, make findings if they're going to detain someone, what the basis is.

**LATHROP:** OK. You've cited the, the statistics from Washington D.C.

**JOE NIGRO:** Yes.

**LATHROP:** I'd like to just have somebody somewhere along the way do some kind of a comparison on whether these people show up under one system better than the other or at least as well, right. So that-- I mean, when you say Washington's done it-- Washington, D.C.'s done it and 90 percent of the people get out and of that 90 percent show up,--

**JOE NIGRO:** Yeah. Well--

**LATHROP:** --that 10 percent aren't. And I don't know if that's better or worse than what we have for a system right now. I, I fully understand the point of this bill.

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**JOE NIGRO:** Yeah.

**LATHROP:** I fully understand the point of this bill. But this gets on the floor and I know what the arguments are gonna be. And I'd like to know if there is data that supports that the system that you would substitute for the current system is more effective ensuring people show up because at the end of the day we have a problem with too many people sitting in jail. And I understand that and I hear it. But we also need to make sure that people show up for court and they don't skip out.

**JOE NIGRO:** Well-- and I think that-- you know, I don't have the numbers right in front of me. I'm, I'm pretty certain if you, if you look at a system where you're using pretrial release along with people being released on their own recognizance it's going to have better results than a money bond system. But the other part that skews the statistics is-- you know, at least we can look at District of Columbia and we know people there are, are being released and there's no relationship to their wealth. I mean, so to say if, if another system would have better results. But it's, it's just rich people, it's like well that-- that's wrong.

**LATHROP:** I'm not saying that's not important to me. It's important to me.

**JOE NIGRO:** But, but I--

**LATHROP:** But I'm, but I'm gonna to tell you I think that the flip side of this that this is a problem, right?

**JOE NIGRO:** Yeah.

**LATHROP:** That, that people who have means get out and people that don't sit. And the other question is, is the system you're proposing good at ensuring people show up?

**JOE NIGRO:** Yeah.

**LATHROP:** Because I'll tell you if you have a system where people can get away with not showing up then we're gonna have people more and more not show up. And, and that's gonna promote disrespect for the law, won't it?

**JOE NIGRO:** Well, you know I would also point you to-- you know, Brooklyn and the Bronx both have bail funds that have been really,

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really effective. I mean like 98 percent compliance. They're-- they have a pool of money and they're posting bond for people who wouldn't-- who can't get out otherwise. And those people come back to court and they don't get in trouble. So again, that's another example of when you can take away the, the money part of the equation, these people do come back to court. The other thing-- you know, I would point you to in the amendment is-- I mean, those, those-- the failure to appear history-- there are some specific criteria for courts to consider so if people aren't showing up and courts can-- they can take that into consideration. And you know, yeah, we all, we all want people to come back to court. But I, I think that the examples of the bail funds and the places that have reformed their systems would show that people will come back when it's not their money.

**LATHROP:** OK. I see no other questions. Thanks, Mr. Nigro.

**JOE NIGRO:** Thank you very much.

**JUSTIN KALEMKIARIAN:** Senators, I'm sorry you have to see me once more today. I think this is the last time though. Again, Justin Kalemkiarian, J-u-s-t-i-n K-a-l-e-m-k-i-a-r-i-a-n. Thank you, Mr. Chairman, Senators. We've sat and now listened to testimony and statements from two bills relating to bail. I'm not gonna rehash what's already been said. I'm just gonna say a couple of things that based on the Attorney-- the Nebraska Criminal Defense Attorneys Association. A couple of things: number one, in a prior-- Mr. Condon, in prior testimony stated, that-- you know-- and, and engaged in a conversation with Senator Wayne about people that plead guilty because they're guilty. And that's absolutely true. As a defense attorney, I often advise my clients, listen the evidence is overwhelming, there is a plea agreement on the table. Here's what I think the outcome is gonna be. And people plead no contest or, or, or do plead guilty because they are. However, they don't start out as guilty. They are presumed innocent. They start out as innocent. And so to suggest that somehow it, it makes a difference that people plead guilty because they're guilty down the road ignores the fact that they are innocent when they start out this court process. And if they do plead guilty because they're guilty down the road that's fine. However, they were at least given the opportunity to engage in the court process, engage with an attorney and figure out-- listen, I can, I can defend this charge. I can put up a defense. Here's-- here-- here's everything that I know. And at that point, if they plead guilty, they plead guilty. They've gone through the analysis. They participated in the system. So

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revising the bond system would help people to be able to participate in the system in a meaningful way. Number two, one thing-- and, and Mr. Nigro touched on this. One thing that's always driven me crazy as a defense attorney is when judges ask prosecutors what the prosecutors want as a bond. I have no problem with prosecutors providing information to the judge. In fact, that's necessary because at the time of an arraignment and initial appearance, the state has all the information. As a defense attorney, I rarely have anything, I rarely have anything besides the probable cause affidavit. I don't have criminal history. I don't have a history of persons-- somebody's failure to appear anything like that. So there's no problem whatsoever with the judge-- a judge asking the county attorney, hey, what's going on with this person? But county attorneys are not in charge of setting bonds. Just as I'm not in charge of setting a bond. The judge never asked me, Mr. Kalemkiarian, at the outset, what do you want? They always start with the prosecutors and then they ask what I want. That's always been a, a problem and these, these bills address that. Number three, I want to give Your Honor-- excuse me, Senators, a, a little explanation how this bill could work in progress-- in practice. I practice in federal court as well. And in Nebraska, federal court does not have a bail bond system. You're either, you're either retained-- you're either detained or you're released and you can be released either with conditions or without conditions. I don't believe I've ever had anybody released without conditions. So what will happen if somebody is arrested either on an indictment or a complaint and the, the pretrial services does a report on this person for the judge. It goes through their financial information, work, criminal history, family ties, ties to the community, employment, and as-- then as an attorney, I'm given that report prior to going to court for the first time. It might only be an hour before I go-- show up to court. But at least I have this information. Would Your Honors allow me to finish my statement?

**LATHROP:** Go ahead.

**JUSTIN KALEMKIARIAN:** Thank you. I mean, Senators. I'm use to addressing judges. And so that-- I have this report in front of me. We go into the initial appearance and the judge asks, asks pretrial services about this person and, and the, the pretrial services goes to the report. The judge will then ask the, the government what's your position on detention? And then they ask the defense attorney. The judge though makes that decision based on those criteria. Based on that information in the report as to whether or not that person is

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going to flee, whether or not that person is a risk to the community and whether or not that person is, again, going to come back to court. It's an analysis done of the person as a whole. And, and I've had clients that are facing significant prison sentences-- decades, that are released with conditions. They come back, they come back to court. They have-- they-- they are supervised in the community. They have contact with pretrial services and they come back. And, and you know, it's a, it's a system that I see that works. Now I don't have the financial details. I'm not in your position to understand all the intricacies of where the money that is taken in with-- from bonds goes and all that, but from a, from a-- from my perspective as a criminal defense attorney, I would ask this body to consider LB282 [SIC].

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for coming, Mr. Kalemkiarian. I, I love that you reminded us that, yes, they may plead, but at some point-- but prior to that they are innocent until proven guilty which is the basis of our entire justice system. And in this case I'm wondering about the use of the word justice. But I really appreciate that reminder that, yeah, at some point they may be found guilty but until then they are innocent. So thank you for that.

**JUSTIN KALEMKIARIAN:** Absolutely. And, and give them the opportunity to participate.

**PANSING BROOKS:** Yes, thank you.

**LATHROP:** Thank you.

**SPIKE EICKHOLT:** Good evening, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of this bill. You've got a copy of my written testimony. I won't read it. I thought I would just sort of respond to some things that were discussed before. This is sort of a continuation of the earlier bill, this issue of bonds. And I think that someone said earlier that I-- that perhaps the history of bonds are to, to require people who are charged with a crime to invest in their case so that they actually show up and can be held accountable if they're convicted. But the reality is and the practice is that bonds are set arbitrarily high and what they really do is just slow people down a little bit who have the money to post bonds and they simply incarcerate poor people. And as Senator Wayne and as Senator Chambers indicated earlier and other people have as

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well, it flows one way against people of color. In our 2016 report that Senator Pansing Brooks was talking about before, we demonstrably show that pretrial detainees, really the whole court system, the criminal justice system, is disproportionately adversely impacts minorities all along. But for-- particularly for issues of bond which relates to so many other things, it hurts people of color more. Anything from the present system I would submit it's just going to improve that because we know what we're doing now hurts poor people and we know what we're doing now hurts minorities. It can be demonstrably shown. That as a 2016 report, if anything the numbers have stayed constant if not worse. It does relate to juvenile justice. If you are locked up and held on a bond even if you get time served a few days later, because you can't control that, because you can't just turn yourself in or explain to your employer I've got to do four days jail, they pick you off the street you just lose that job. Your kids are left home alone, and now CPS is there. When you're in custody you don't get the same kind of defense that you get if you're out of custody. I'm not talking about public defenders and that kind of thing. I'm talking about your calls might be recorded. I might not be able to get a laptop in to see you to talk about the dash cam video. The things that you've heard and other bills earlier this year. This is all related. I understand what Senator Chambers says that was--it's difficult because our system is so enmeshed in this and this may be difficult just to pull the plug on it and stop it. But I would say that there are some things that are being done that can be done. First, Senator-- or Pat Condon talked earlier about warrant amnesty. That was a good thing. The ACLU helped support that we promoted it on our social media. We put up flyers. And Pat Condon was quoted in the paper as saying, that that was their response to what we did at the ACLU of Nebraska with our community bail fund. We had a small amount of money where we bonded people out. We didn't represent them. We simply went down there and posted their bond and most of those people showed up. We still have a number of people out on bond. But the percentage of people who showed up were consistent with those people who actually posted their own bond. So that shows in our-- I would submit that the arbitrariness of it. In other words, if you not gonna post the bond, you're not gonna get it back when you come back. What's your incentive of coming back? People generally do, but the people who don't are people who are not represented. We were bonding people out who didn't have lawyers because, again, it wasn't a serious enough charge but we're making their bond. They typically don't show up. The Brooklyn and Bronx bail funds, they have a very high return rate in part because they engage people who are out on bond to encourage them

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to send court reminders. And a lot of that is just intimidation of the court system-- like what Senator Wayne talked about, he doesn't know as a practicing lawyer when his court date is gonna be and that's why he can't practice down here. How someone who maybe doesn't even have a high school education is gonna navigate that representing themselves and that kind of a thing. I just-- I mean, one other thing is that other jurisdictions have faced this issue and they change has been spurred not just by legislative change but by legal challenges. And in my letter I point out a number of instances around the country where the ACLU has sued. The bonds are excessive. If people can't post them and the courts know it, they're excessive per se. And you simply can't continue that without having to defend at some time at some point. I'll answer any questions that anyone has.

**LATHROP:** Would you walk us through what the alternative is. So if I go in there and I'm the guy that just shot at a house, right?

**SPIKE EICKHOLT:** Right.

**LATHROP:** Which is not an uncommon sort of an offense in Omaha.

**SPIKE EICKHOLT:** Right.

**LATHROP:** We, we have a certain number of drive-bys or I'm a burglar or I'm whatever. Not a-- not homicide where they're not likely to get a bail or a bond set, right?

**SPIKE EICKHOLT:** Right.

**LATHROP:** But something in the middle, not the things that we dealt with in the previous bill. Tell me about the assessment they're going to do. Because we hear a lot about assessments that are done by probation in a presentence, an assessment done at D&E and then we get another assessment done by Parole. What kind of an assessment is done to determine the amount of supervision a pretrial detainee or a pretrial release person's gonna get? Can they assess their likelihood to flee or not show up for a, a court hearing?

**SPIKE EICKHOLT:** They can. I know that what the federal court uses and what other jurisdictions use is just that, someone from the supervising entity, the Community Corrections Office or the Probation Office that's going to be supervising that person will go and meet with that person. Where do you live? How long have you lived there? Who's your family? Have you appeared in court before? Do you have a



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job? And they'll confirm those things and inform the court. What's done now as a matter of practice is, if a person is arrested for shooting at an occupied dwelling, they're arrested, they're put in the jail. The next morning they go in front of the judge and they'll say, a hundred and fifty thousand percentage, because he shot at a house.

**LATHROP:** Well, who has talked to them about doing an assessment before they go in front of the judge currently?

**SPIKE EICKHOLT:** As a matter of practice, generally, no.

**LATHROP:** OK. So federal court-- I always think of that as sort of the Cadillac system, right?

**SPIKE EICKHOLT:** Um-hum.

**LATHROP:** And, and that sounds like it's the case. If I'm charged with something in federal court somebody's gonna sit down and talk to me in advance.

**SPIKE EICKHOLT:** Right.

**LATHROP:** Somebody's gonna put a little work into this and then there's gonna be an assessment that, that is shared with the court in trying to decide is this person going to show back up when it comes time for the trial or not.

**SPIKE EICKHOLT:** Right.

**LATHROP:** Do we need to put that in place?

**SPIKE EICKHOLT:** I think that's something that's got be developed here eventually. I think it would make more sense. It's what they did in California.

**LATHROP:** Can we, can we end the, the bail bonds-- the, the-- this-- the current system without having that in place? How do we, how do we-- how does the judge decide? And I'm playing a little bit of a devil's advocate--

**SPIKE EICKHOLT:** Right.

**LATHROP:** --here because there's a lot of significant questions, I think, with just ending this process and not having something in place where we say this person is a flight risk or they're not, or this

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person-- these are the conditions that should be imposed. Which is the other thing, because otherwise we're just gonna have judges guessing at that. And probably the same people that are getting high bonds are going to have a bunch of conditions that we'll hear are onerous in a year from now. So how does a judge decide is this person a flight risk? And if I'm gonna let him out without require-- if I'm gonna let him out because that's the only option, right? What do they got to do? Do they have to report every day? Do I make him wear a bracelet or an ankle bracelet? What, what-- what's the system gonna look like if we pass this bill? And are we tooled up for it?

**SPIKE EICKHOLT:** I acknowledge that perhaps we're not ready for it immediately. And I think what you're saying with-- I think you're saying is right. If we just stop this, how is this going to work? And I think we need to start thinking about that. Because to go back to your example, right now you-- if somebody comes up with a \$150,000, 10 percent is \$15,000, they're out. It's no nothing. It's no monitor. It's nothing. That's all that does and it's completely arbitrary and you see instances where bad things happen. But to answer your question, I think that we need to get ready for it. I think we are at the local level. I mean, you heard the 24/7 bill. That's some county, central Lancaster County, trying to come up with an alternative to incarceration for these kind of things to have supervision so I think it's there. And whether it needs to be done at the statewide level for the Supreme Court, it just depends. But I think needs to be developed either through the probation office perhaps or some sort of pretrial type entity. And maybe with the savings that you'll get from not warehousing people at pretrial because it's probably gonna be cheaper no matter how you look at it, it could be somehow afforded to transition. I would say that our Supreme Court is developing a text reminder system for citations. And when you get-- they have-- they developed a uniform citation. They're going to have an option for text or e-mail reminders because that's been more effective certainly than sending-- mail letters and requiring the bonding through the court system. So I think there are some things that are developing maybe through the Supreme Court or the court system operation or some similar thing. But I, I acknowledge that it's tough just to stop and then start all over again. But something's got to be done because arguably what we're doing now just isn't working.

**LATHROP:** Well, what would the timing of all that look like then? I, I don't have any trouble buying into this but I do have, I do have a concern if we just say, no, no bail. We're not going to do that

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anymore. And now the judge has to decide, frankly, with little more than just somebody's previous criminal record, right?

**SPIKE EICKHOLT:** Right.

**LATHROP:** Whether we're gonna let him out or make him sit. And to compare it to the federal system which apparently requires or includes an assessment followed by some post-release supervision pending, pending court appearances. Right?

**SPIKE EICKHOLT:** Right. Yeah, I don't--

**LATHROP:** What, what do we got to do?

**SPIKE EICKHOLT:** Well, I think we should prepare for it, of course. And perhaps it'd be something this bill could generate, and I think that's what Senator Chambers-- I think what he said when he was introducing the bill. This is, this is the conversation to start having. How we're gonna switch from it? Because the alternative is do nothing and have a court strike down your system as violating the Eighth Amendment the excessive bond. That's a pattern of practice to setting excessive bonds is disproportionate as minorities.

**LATHROP:** Well, I don't think anybody wants to see that happen.

**SPIKE EICKHOLT:** I know that.

**LATHROP:** When these things come in front of me-- and we do have people that stop me in the hall and they go, I just want to start a conversation.

**SPIKE EICKHOLT:** Right.

**LATHROP:** I don't think that's what we're doing here.

**SPIKE EICKHOLT:** Right, no. I meant more than-- I didn't mean that.

**LATHROP:** This doesn't sound like a conversation starter, it sounds like a bill that Senator Chambers is serious about and would like to see. And we've certainly heard enough evidence today about the, the problems attendant with bail and the people who most often have to sit because they can't afford it. And it is adversely affecting people who don't have means. And if we're gonna change it, particularly as it relates to felonies, it seems to me that we need to have something

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that works in its place or be prepared to switch from one to the other.

**SPIKE EICKHOLT:** I agree with you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. So I guess I'm just trying to find out more information because it's my-- from the, from the book that you passed out talks about the, the Bearden case and that the Supreme Court basically ruled 30 years ago that to imprison someone because of their poverty and inability to pay a fine or restitution would be fundamentally unfair and violate the Equal Protection Clause of the Fourteenth Amendment. So basically what-- I mean, I think what they set-- were indicating 30 years ago, that-- is that our bond system is based on, on wealth and basically is arbitrary for those who are poor. I presume that in cases where there's somebody that has a fel-- a serious felony, whether you pay or don't pay, you may not get out. I mean, you're gonna,--

**SPIKE EICKHOLT:** Right.

**PANSING BROOKS:** --be, you're gonna be detained. So the, the cases that I'm reading about where somebody was either panhandling or somebody was-- I don't know-- I mean, you have a number of different cases that are, that are quite insignificant where people were held for 30 days before they finally got their hearing. They are presumed innocent until we get to that point. So unless they are somehow a danger to themselves or others, I don't think it's that difficult a case.

**SPIKE EICKHOLT:** I would agree with you.

**PANSING BROOKS:** Could you see about that?

**SPIKE EICKHOLT:** I would agree with you. I mean, now it's, it's almost a matter of practice like Mr. Kalemkarian was saying, that when a person appears there, the state-- which in many respects is the most important player in the system. They start and they'll say a bond amount, five thousand percentage, and they'll say something like, he's got a record. He's got a history. He hasn't missed-- he's missed court before. They don't have \$500. That's the negotiating part. If I'm able to be there as that person's lawyer, I'll say, well, he can come up with \$200, and the judge might cut it in half and might not. It's problematic because again that's how the system works. When you set

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bonds, even nominal bond amounts for these minor, nuisance, city ordinance type offenses, then that is just the floor or the ceiling, or whatever word I'm trying to get, for those more serious cases. It's all relative. And it all goes up from there. And you do have people who are held on bonds even for felony charges that are not violent. That people who do have a-- who will show up, who have options on the case that might be able to go to diversion. They can't because they can't make the bond. So I could talk to it forever. But that's-- it's all just a-- it's a marbled problem.

**PANSING BROOKS:** I think when, when you were talking in, in your previous responses,--

**SPIKE EICKHOLT:** Um-hum.

**PANSING BROOKS:** --you said it's going to be a major problem overcoming. I don't see it as that major of a problem. But, but maybe it's my understanding of the system. But to me, again, if you're a danger to self or others, then you detain them.

**SPIKE EICKHOLT:** Yeah.

**PANSING BROOKS:** But if you're-- I mean, most people if asked would think that the, that the bond system was to make sure that the person arrives at court.

**SPIKE EICKHOLT:** Right. No, I see what you're saying now. You're absolutely right, most of the people who are held are not being held for violent offenses. You're right.

**PANSING BROOKS:** OK. Thank you, Mr. Eickholt.

**LATHROP:** Senator DeBoer.

**DeBOER:** Thank you for testifying. I may have lost the thread of this at some point, but to create a system where we actually have one of those pre-arraignment investigations or whatever we'd call it. Do we have the labor force in place that does that kind of investigatory work?

**SPIKE EICKHOLT:** Not in a comprehensive systematic way for all cases, I would acknowledge, no. We don't have that yet. I think that the means are there. I think the resources could be reshuffled. You know, we spend a lot of money on jails. We spend a lot of money employing people to run the jails. All four of the larger county jails are full

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or close to full. Now in Lancaster County, we have a Community Corrections Office and the staff there is able to do some screening for some people but not everyone. If you were to add-- to move that-- the money around there'd be some way to do that. I mean, it's just a way of looking at this issue differently than just the reflexive, take him to jail. He has to post money and that person is out.

**DeBOER:** The other question I have is whether we have some data and I'm-- there's a lot that's been given to me today so it's probably, probably in there. But do we have some kind of data on what these misdemeanor or lower offenses, infraction type offenses-- what percentage of, of folks don't appear? Because I mean, it's, it's been 20 years and it was in the criminal clinic in the law school, but I--

**SPIKE EICKHOLT:** I think that the appearance rate, and somebody might be the audience to correct it, is around maybe a high 70 percent for Lancaster County. I think for all offenses and more of those are gonna be traffic and misdemeanor and minor offenses. We count, not just failing to appear in court, but we also count failing to pay a fine by a certain date. Because if you agree to pay a certain fine by a date and you don't show up or pay the fine on that date, that's generally marked on your criminal record as a failing to appear.

**DeBOER:** That's what I remember, is that the, the failure to appear was a fairly common--

**SPIKE EICKHOLT:** Right.

**DeBOER:** --thing that we saw on a lot of these-- you know, very small offenses that and-- you know, there wasn't texting back then so maybe now something like that will help but it, it may also be that someone just can't get off work to go to these things.

**SPIKE EICKHOLT:** And maybe that someone's in the wrong courtroom when they first call a case and they enter in the computer a failing to appear charge, and by the time later that day they're there that's still there on their NCIC, their criminal record.

**DeBOER:** So roughly 30 percent you'd think on those are?

**SPIKE EICKHOLT:** I think so. And I don't know if there's any way to actually do that. And you know, my-- this isn't anecdotal, people who don't show up don't flee necessarily, they just are living a marginal life already. They can't get off work. They had transportation

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problems. They've got substance abuse problems. They don't go anywhere, right. They just get, they just get arrested at some point. That's my experience. And I think if you count those-- you know, in other words, if you fail to appear is it to prevent people from fleeing the jurisdiction and never being held accountable. That's what people sometimes think when they think fail to appear, that person's never gonna come up or come back but they generally do.

**DeBOER:** Can you remind me what it takes to get a bench warrant?

**SPIKE EICKHOLT:** A couple of ways. One, if a person fails to appear, the court can issue one just on sort of the motion-- the oral motion of the prosecutor to issue a warrant. The court makes a preliminary finding that that person did not appear or has failed to comply with their bond and then they issue a warrant. It goes to the sheriff and then it's-- they look for that person.

**DeBOER:** OK.

**SPIKE EICKHOLT:** Another way they can do it, is a person can actually sort of write up a factual narrative even before a person is found saying why this person should be arrested and it's sworn to and then a warrant's issued.

**DeBOER:** OK. Thank you.

**LATHROP:** See no other questions. Thank you for your-- the background, too. I appreciate you answering my questions. Anyone else here as a proponent of LB646? Seeing none, anyone here in opposition?

**PATRICK CONDON:** Good evening, Senator Lathrop and members of the Judiciary. Again, my name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am the Lancaster County Attorney speaking on behalf of the Lancaster County Attorney's Office and also on behalf of the Nebraska County Attorneys Association in opposition of LB646. Generally-- my, my testimony from Senator Hansen's bill, LB282, was-- kind of got into the issues of, of why I think there is a need for bail bonds, cash bonds in this-- in these instances. Senator Lathrop, and the questioning to the individuals that were here before me on this bill, I think you kind of, kind of hit the nail on the head is what do we do on those instances where you have somebody that maybe shot into a house on one side and then-- you know, do you let them out or do you, do you, do you get them into some type of a program? I do believe that having individuals put up money whether it's their money,

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whether it's family money, whether it's friends money, that does give them an incentive to come back into court. I, I, I know the ACLU has set up their bond program here in Lancaster County. I believe they were keeping statistics on it so I think it'd be worth looking into that and to see what those statistics show. But we are-- they-- the Lancaster County Attorney and the Nebraska County Attorneys Association is in opposition to this bill. I do again tell you I would look forward to working with Senator Hansen in regards to LB282 in that bill. And perhaps just for a little bit of-- and I know we've heard people talk about the federal system. I believe the statistics are 5 percent of the criminal cases in the United States are handled in the federal system. The rest are handled here on the local level. So it is a, a considerably larger number. I do note that in Senator Chambers' bill-- I believe it's on page 26-- sorry on 27-- excuse me, sorry, on page 25 on 29-909. He does offer the ability for a county to create a pretrial service agency. And I would assume much like what the federal system has. I just note that that is a may and not shall. So again, it would be, be up to the counties to determine whether or not they will or they shall. And I guess one question for the Judiciary is maybe, is that a better entity to have on a state level? A state level pretrial like a federal pretrial program to, to look into that, a statewide pretrial service agency to deal with pretrial release programs. With that, I would answer any questions.

**LATHROP:** Would the county attorneys have a different point of view about this bill if the pretrial or the pre-- the pre--

**PATRICK CONDON:** Pretrial services.

**LATHROP:** --the, the pretrial assessment were done?

**PATRICK CONDON:** I, I think we-- I, I think it'd be worth taking a look at. I mean, I'm, I'm not-- you know, I know it, it does tend to work in the federal system. But again, you're dealing with a much smaller group of individuals, group of individuals in that, in that program. And-- but, but I think it's-- you know, we're willing to look at it.

**LATHROP:** OK. Questions, anyone? I see no questions. Thank you for your--

**PATRICK CONDON:** Thank you.



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**LATHROP:** Anyone else here to testify in opposition to LB646? Anyone here in a neutral capacity? Were you here in opposition or in neutral?

**KIM ETHERTON:** In neutral.

**LATHROP:** OK. Come on.

**KIM ETHERTON:** I wasn't planning on doing this, but listening to the-- my name is Kim Etherton, K-i-m E-t-h-e-r-t-o-n. I'm the director of Lancaster County Community Corrections. And one of the, one of the first programs my department implemented was a pretrial release program. And so I can talk to the questions you have about screening and information that's provided to the courts. We currently have-- I have a staff person-- two staff persons actually that go to the jail every day and look at a select-- there-- it is a very select group of offenders. The nonviolent felony offenders that we, that we look at for pretrial release. We give these individuals about three days in jail to see if they can collect the bond to bond out. If they are still there, we will screen those that are eligible using a validated instrument that we-- when we started this program, we contacted the University of Nebraska in Omaha criminal justice program and they helped us identify a risk assessment instrument that had been validated to a jurisdiction that was similar to our jurisdiction. We have never actually formally validated it in Lancaster County but it did fit the profile of what we were looking for. That instrument gives us the opportunity to identify what level of supervision an individual would need on pretrial release. So it can be from 1 to 5. And if you are a 1 or a 2, you really probably don't need my supervision; 3 is questionable. But those individuals who score 4 and 5 based on our assessments are individuals that get a pretty high level of supervision from my agency. They are considered high-risk, high-needs people. We've currently-- or recently implemented a validated risk needs assessment called the RANT that gives us a little more information about what their needs are and how we can better help them. We assess them for trauma.

**LATHROP:** Mike just a little closer.

**KIM ETHERTON:** We, we assess their-- we assess them for trauma using the ACE scale, which is the adverse child experience scale, and we take all of that information, pull it together and provide it to the court. It goes to the, to the judge. It goes to the prosecutor and it goes to the defense counsel-- that information, and then a bond review is scheduled and a decision is made as to whether or not that, whether

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or not that person can be released from custody into our supervision. So we have a system in place in Lancaster County. This legislation could make my staff very busy. We, we would have-- I would have to probably add staff to accommodate those numbers. And if we were going to do this without considering ca-- the cash bond issue, we would definitely want to get that assessment done upon booking into the jail. It wouldn't be something we would want to wait three days to do. So I just wanted to offer that we are doing it. That is how we've been doing it. When I, when I researched this subject 10 years, 15 years ago, I knew that we needed to use the best practice standards that were available. So the risk assessment instrument that I have is based-- kind of based on that research that I did back then. So anyway I can answer questions. Yes.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for coming forward. So do you know what percent of your-- of the people whom you test are 1's and 2's versus-- and, and what percent are 3's and what percent are 4's and 5's?

**KIM EHERTON:** I can tell you that we-- I can't think of the last-- the last individual we had that scored as a 1 was someone who engaged in a pretty destructive behavior in this community but had no criminal history. And so it-- that, that is like-- that doesn't happen very often. Generally speaking, the individuals that we are screening are people who have some criminal history behind them and substance-- definitely substance abuse and have a little bit-- usually a little bit higher felony crime that they're in custody for. So felony, felony 3's and 4's.

**PANSING BROOKS:** And then what-- do you know what percent of, of-- do you have any idea the number of, of counties that have-- are using a similar risk assessment tool to yours?

**KIM EHERTON:** I am not aware of any other jurisdiction that uses the risk assessment instrument I use and I don't know if Douglas County uses a risk assessment instru-- instrument. Douglas County-- I, I visited Douglas County before I started our pretrial release program to, to gauge what was happening there and it wasn't-- their programming wasn't what I felt like was a good fit for Lincoln-- for Lancaster County. And so at that time our, our programs were pretty different. Now I don't know if they've changed any of the way they

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function with their pretrial release programming up there or not, but we do things just a little bit differently.

**PANSING BROOKS:** Thank you.

**LATHROP:** I have a couple of questions. Are you an employee of Lancaster County?

**KIM EHERTON:** I am.

**LATHROP:** And in-- so it sounds like you're doing this but nobody else is, so tell us how you got going on this--

**KIM EHERTON:** Well,--

**LATHROP:** --assessment of people that are sitting in Lancaster County awaiting trial?

**KIM EHERTON:** Well, back in about 2000, I believe, Lancaster County engaged in a jail assessment basically. They brought in a consultant to assess what they needed to do to delay building a new jail. And the recommendation from the consultants was, you really need to start looking at alternatives to incarceration. And so in 2003, I was hired to start researching and developing programming that would be alternatives to incarceration. That's, that's how it started. I believe I was hired because I have a mental health background and I also was running the Lancaster County Crisis Center. So I have a little bit of background with the criminal justice system as well. And that's, that's how it started. We started with the basics doing-- making sure people-- community service was an option for the courts to use but they weren't because nobody could supervise that or monitor it. So my agency created a program that was following up and doing placement-- community service placements for folks who needed an option to pay fines. And then the next program we looked at was the pretrial release program. And that started in about 2004 and took a while to take off. It's-- while changing a system is difficult and-- but we are now in a position, I think, in my agency where the program is to the best that we can right now is, is utilized. I think the judicial system has confidence in what we do. And I've been working pretty closely with the Public Defender and the County Attorney's Office through the course of the past five years.

**LATHROP:** Are these people mostly folks with misdemeanors or do you focus on felony?

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**KIM EHERTON:** My agency generally works with felony offenders.

**LATHROP:** And as a result of the assessments that you do, are-- is the-- do you follow them up? So you make an assessment, the judge lets them out or puts them on bail and are you doing a follow up as a result of the recommendation or the assessment that you do?

**KIM EHERTON:** Yeah, actually my agency does all the supervision. So when someone is released on pretrial-- on a pretrial bond they report to my department. And depending on their, their risk level, we'll make it-- we make a decision on how often they need to see us. We have a really-- I don't have my data in front of me so I don't want to misquote it, but we have a very high success rate with our pretrial release program because we have frequent contact with them. We're available to help problem solve. We provide a variety of programming that is probably not something that most jurisdictions or all juris-- jurisdictions could do but we do-- we have the ability to do it because not only do I run the pretrial release program but I administer the Adult Drug Court and all the diversion programs as well.

**LATHROP:** If we can just focus on the pretrial diversion for a moment. Does the assessment that you conduct and you provide to the court and I understand you let them-- you give them three days to sort of pan out and see what's left. Right?

**KIM EHERTON:** Right.

**LATHROP:** See who, who isn't able to post bond and then you do the assessment. Then are their-- is their bond reviewed after you do the assessment?

**KIM EHERTON:** Yes.

**LATHROP:** And is the court inclined to release people on their own recognizance after you come in and say, I've done my assessment, they're a 2?

**KIM EHERTON:** Generally speaking, those individuals that we are assessing are individuals who are not gonna be released on their own recognizance.

**LATHROP:** Just because that's the current system or because you, you wouldn't recommend that even after the assessment?

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**KIM ETHELTON:** I'm-- it's the current system. I, I will tell you that when we screen somebody that we do not feel confident that we could, could supervise, we will let the courts know that. We do not make recommendations to the courts. But if we-- the other issue that I have with my pretrial release program is that in order to supervise them they need to have a stable place to live because my staff have to be able to check on them. Plus, we know that, that housing is a foundation of, of managing your life from day-to-day. You have to have a stable place to live. That is one of our biggest issues, is stable housing and a place that we know is not going to be detrimental to their success. And so generally speaking, we are not, we are not screening individuals who are capable of managing without some level of supervision. So they're not gonna get released--

**LATHROP:** The next logical question would be, what's the point in screening them if you screen them and then they just sit there?

**KIM ETHELTON:** That happens a lot. I mean, we screen them. We provide, we provide the reports to the court and they are often denied bond to my program. It does happen. It happens frequently.

**LATHROP:** Completely denied bond?

**KIM ETHELTON:** Yes, it happens--

**LATHROP:** So Mr. Nigro, I think, told us earlier that of the 600 people in the Lancaster County Correction Center, 400 are awaiting trial.

**KIM ETHELTON:** Um-hum.

**LATHROP:** They all been screened?

**KIM ETHELTON:** No, no. There are, there are classifications-- there are charges that we can't screen. We cannot screen violent offenders. We cannot screen domestic violence or DUI offenses. We will screen a DUI, a felony DUI offender if the judge gives us permission to do so.

**LATHROP:** How many assessments do you do in a week?

**KIM ETHELTON:** I would say anywhere-- it depends. There-- it ebbs and flows. But I would say between five and 10. That-- that's-- that could be low. I mean, it just-- it really just does depend on, on-- like last week I got an e-mail from my screener that said there was nobody eligible tonight so he didn't screen anyone. Sometimes he has so many

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that he has to screen in one evening that he has to do it the second--  
a second night. So it depends.

**LATHROP:** Have you made any study of the federal model?

**KIM ETHELTON:** I have not.

**LATHROP:** OK. Do you have an opinion about what would happen if we passed this bill? Would we see more people? This is sort of the question, if we pass it without, without all these assessments and without all the supervision that's going on in federal court apparently, are we going to see more people held with no opportunity to even bail out?

**KIM ETHELTON:** I would say that's more likely at the county court level than the district court level.

**LATHROP:** More likely at the county court level?

**KIM ETHELTON:** It's more difficult for me to take a case in front of the county court judges and have it approved than it is at the district court level. So--

**LATHROP:** So the lower the offense the less likely it is that they're gonna get out?

**KIM ETHELTON:** Well, it-- that logically it would seem that way. I mean, based on-- yeah.

**LATHROP:** OK.

**KIM ETHELTON:** I mean, I-- again, I, I don't-- I can't-- I don't know that.

**LATHROP:** I know you-- believe me, I really appreciate the fact that you came up here and I know you didn't come to testify on this bill,--

**KIM ETHELTON:** Right.

**LATHROP:** --but nobody's doing what you're doing and it's the closest thing we've got to federal court by any, by any jurisdiction it sounds like. But I do know that a number of us toured the Douglas County Corrections Center or at least sat through a-- after I got elected we sat through a "jeez, are we full?"

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**KIM ETHEERTON:** Um-hum.

**LATHROP:** Right?

**KIM ETHEERTON:** Right.

**LATHROP:** And we may be addressing two problems with the same sort of legislation but it sounds like we need some groundwork or some system in place.

**KIM ETHEERTON:** I would say that though if somebody screened at level 1, 2 or 3 in our county jail they are probably not somebody that my agency would supervise. For me to protect the integrity of what I do-- the reason why we can do it is because I have adequate staff and programming in place. If I had those kinds of numbers come through my doors, a lot of things would have to change in my agency. So when I looked at this bill and read through it, my thinking was if somebody-- with the current assessment instrument that I use, if somebody screened a 1, 2, or 3, we would want to find a different option for that population and not necessarily my agency. So--

**LATHROP:** OK. Any other questions? Senator Wayne.

**WAYNE:** When you're in court or your staff is in court and they don't follow the recommendation or the score or recommendation, do they often give factual reasons why-- judges?

**KIM ETHEERTON:** Not usually. They're just-- not-- my staff don't usually don't, no, we don't get information about why they're being denied.

**WAYNE:** So if you're recommending the program or the numbers said you should go to a program, is it the prosecution I guess-- in Douglas County they give a number. The judge asks how many. Tell me more about his background. And everybody kind of forgets about the number and we just--

**KIM ETHEERTON:** Um-hum.

**WAYNE:** --make reasonable arguments as attorneys why we think they should get out on ROR. I guess I'm-- you have that kind of system in place. I just wanted to kind of-- I don't understand why a judge would say, no, if [INAUDIBLE].

**KIM ETHEERTON:** Well, I, I don't know that there's a discussion about it necessarily. I mean, we, we send information to the appropriate

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parties and then the judge-- then the court process to the bond hearing takes place. That would be the discussion, is the bond hearing.

**WAYNE:** Thank you.

**KIM EHERTON:** Yep.

**LATHROP:** I see no other questions. I really appreciate the fact that you came forward. It was very helpful for me at least and I think hopefully the committee. So thank you very much.

**KIM EHERTON:** Thanks.

**LATHROP:** Anyone else here to testify in a neutral capacity? Seeing none, Senator Chambers to close.

**CHAMBERS:** Mr. Chairman, remaining members of the committee [LAUGHTER], Robert Louis Stevenson wrote a book-- a story Dr. Jekyll and Mr. Hyde. One man was both of them. Dr. Jekyll through various chemical ministrations to himself-- ministrations, was able to divide what is considered the evil part of his nature and Mr. Hyde did bad things. Dr. Jekyll was the good guy. As it turned out Hyde, when he first came into being, was a small person and when Jekyll became Hyde he-- all he had was his own clothes to wear and Hyde had to roll up the pant legs and so forth. But as Hyde did more and more wicked things that Jekyll could not control, Hyde began physically to grow larger until he filled up Dr. Jekyll's clothes and became a full-size being and Jekyll saw what was happening. He couldn't control Hyde. Hyde mocked him but there was a kind of a thrill that Jekyll got from what Hyde was doing. I'm working up to a point. The only way Jekyll could make things right was that he wound up killing himself because that's the only way you could get rid of Hyde. Well, I had to be Mr. Hyde to deal with some comments that had been made earlier that I thought were ill-advised by the gentleman from Lancaster County. I'm glad he did not leave because everybody has a bit of Hyde-- some to a greater extent than others, and a bit of Dr. Jekyll. What set me off was his comments about-- he has to remember everybody does. I'm 82 years old and I've been black all my life. I had to listen to racist stories in grade school like Little Black Sambo. And I was the only black child in the classroom, white teacher, all white students. They laughed at me and they were allowed to. And at first I wouldn't have thought anything of it except that before she read that story if somebody dropped a book or stumble and the class laughed she'd stop everything and say, we don't laugh at



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each other. Well, that was the way it should be. That's the way I was raised. But then when she read this story and held up the picture which was a caricature of a black person that like Eddie Cantor and these people did when they put on blackface except there was a child. When the little white kids laughed she didn't say, we don't laugh at each other. And there were other things that happened, which didn't happen to the white students. The song that we sang and we had to all the time. My parents taught me to be obedient from Little Black Sambo as a child Old Black Joe. Nothing that was uplifting. Nothing that made me feel like a person. My feelings were often hurt. There was nobody I could go to. The teacher knew I could not fight. I didn't even know how to fight. But I was absorbing all of these things that were being done by the person who was white and all the children were white and they were allowed to do these things and the teacher never corrected it. So I have been conscious of things that happen to you when you're my complexion from early on because white people taught me. When I hear somebody in 2019 suggest that there is not racism in the criminal justice system that black people are not disproportionately prosecuted and put in jail. When a statement is made that people are not in jail because they're poor but because they committed crimes. What he doesn't realize is that some of those people refuse to plead because they're actually not guilty and when they go to trial they're found not guilty. They served all of this time not ever having been convicted. So for him to presume that everybody who's in prison in jail locked up is guilty shows he's not fit to be a prosecutor because the presumption of the law is innocent to prove guilty. And you have to be proved guilty by admissible, credible evidence that establishes your guilt beyond a reasonable doubt. Well, he sees all these black people, they're there because they committed crimes. I know that's not true. But here's what I will say, because a man is a racist doesn't mean he lacks intelligence. Hitler was a horrendous anti-Semite. But Hitler also in my mind wasn't crazy. Hitler was very intelligent. What he did was vicious. But it's too easy to let people off who do things like that by saying they're crazy. There are people fully sane who can calculate and do those things on purpose. So I listen to what the gentleman from Lancaster County said and he raised a point. On page 26, and I have an answer. His point dealt with the word may. If you're on page 26 it would start on line 11, "Each county may create a pretrial services agency." Well, the word is may because the county may not want to create an agency. They may have some means of doing this without creating a separate agency. They may not want to delegate it. If the word were shall, then that is an unfunded mandate because there are counties who could do

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what this bill requires without creating an agency. These are the kind of issues that I don't mind being raised on any bill that I bring. I don't mind if somebody rips it apart. If it is not correctly drafted, then I want people to look at that. I'm the one who always says that the law that we put on the books is designed to notify the public of what they may do and what they shall not do. And it ought to be clear enough so that a person without a legal education-- I'm not talking about technical things like the commercial code and so forth, but when you're defining conduct criminalizing it, the language that does that should be clear enough so that an ordinary person can read it and understand. If a criminal statute is not drafted like that the court will throw it out because it's ambiguous. It's vague. And a person will not know what is allowed and what is not. So if this bill had been attacked, I wouldn't have responded the way that I did. And remember he didn't say that about my bill. It was on another bill. But for me life is a seamless web. Everybody has seen those orbed webs that the spiders make. And anything that touches any part of that web will make it vibrate and that message goes to the spider and the spider knows that something is in that web. And the spider knows exactly where it is and can calculate the likely size of it. Life for me is like that seamless web, and I am aware of what people say. I'm aware of what goes on around me. And as a member of the Legislature, I have imposed a rule on myself that makes me work harder than most people do. But I've never condemned anybody for not conducting their affairs the way I conduct mine. But people need to know if they're going to interact with me or be in a set of circumstances where I am present and opinions are allowed to be expressed. I'm going to express mine without biting my tongue. We are all adults. Remember people who are prosecutors can initiate action to take people's children. To send people away for decades. To send people to the death house. That's what they do. And I'm supposed to treat them with kid gloves when they cross a line. Not I. What I would suggest if anybody wants to have kind of an understanding of some of the issues that Senator Lathrop was raising and they're valid, pages 16 through 24 will describe the steps that a judge would go through in making these determinations as to whether somebody should be released. How you determine whether or not there is a danger or a genuine threat of flight. And if you want to know the sections and look at it that way they would be sections 14 through 18. And there is on page 23 Section 18-- these are not my real glasses so I got to do the best I can with them, they're dollar gla-- Dollar Tree glasses. There is, "Any party shall be entitled to a review of the court's findings regarding release on personal recognizance or release under conditions of release upon filing a

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written request for such hearing." And the judge is to give-- make specific written findings of the decision that is taken and the word party, as all those trained in the law know, will be those individuals' not just members of the public but who have an involvement with the action. And some people thought maybe I had not taken this into consideration. But on page 24 and starting in line 5, and I know this will be in the transcript. "When a defendant bailable under Article I, Section 9, of the Constitution of Nebraska appears"-- that language is to draw attention to the fact that under Article I, Section 9 there are some offenses that are not bailable so you would have to be entitled to bail while falling within what's allowed under Article I, Section 9 of the constitution. So there are questions that I could answer, but there are questions you all might not be able to ask because you just got the amendment today. But it's such a serious matter. It's something that I think this idea its time has come. I hope you will read it and if you have any questions about any part of it, it's my obligation to answer it or get the answer. And if there are things that I cannot answer and I cannot find an answer for then it might be something that shouldn't be in the bill. I'm not going to be offended at the way anybody attacks anything I do but an attack invites a response. I will have a different response if the work product is attacked and not the reality that I've faced for 80-- I'll say 82 years because I'm in my 82nd year. I'm not gonna let any white man deny the reality that I know from what I've lived all those years. And see I haven't been known as somebody living on the sidelines. When I was in high school, high school, people in my community would call on me when they had a problem with the police, with the housing authority, with the public school system. And I graduated a year before other kids' graduated from high school. And people were putting on me responsibilities that they as adults either were afraid to try to cope with or didn't know how. But since people were coming to me, I did a lot of reading, a lot of studying, paid attention so that I could try to help them where nobody else could or would. This last thing, then I'm going to let it go, but it's a poor car that won't toot its own horn. There are things I do that people don't know about. People don't know me at all. There was a family who had lost a baby and they were doing as poor people were doing in those days and some do it now standing on the street with signs begging for money. There was a lady, she was a social worker, or she had some connection with them, so I called her. I said, how much would it be for that baby to have a funeral? And she contacted the funeral home and told me and I paid for it. And I told her don't tell anybody. And she told her mother who was a member of the Legislature and it wound up in the

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paper. I did not want that known. When I do something like that, it's because I see people who are hurting and they shouldn't have to beg for help when they're hurting that much. And if somebody is going to help it ought to be done quietly and to use biblical language decently and in order. I'm not gonna tell you the names of the people-- I've purchased tombstones for people whose children have been killed in shootings and I don't even believe in funerals. I don't believe in any of that, but I take into consideration what other people believe. And when you live life in the way that I do-- when things come your way that are inappropriate, there is an obligation to meet them head on right there and I'll do it in the presence of the one who committed what I consider to have been offensive. But even somebody who does that because of his position as a county attorney or whatever he is needs to know that there will be other situations where our paths will cross. And if he's a big enough man we will cooperate. If he's not then I'll work around him and do what I think needs to be done. I'm saying that for the benefit of the committee and so that you all may have an understanding of the way I operate. And that's the way I'll continue. And I asked the chair what his preference was with reference to this bill. Whenever I'm on a committee and one of my bills is up, I, I ask questions. I ask more questions than anybody else. Former City Attorney, Marty Conboy, said that when people go before the Judiciary Committee and I'm questioning they'd better know what they're talking about. And he said as a result of that some of the lawyers that prosecute, they, they didn't want to show up. That's why sometimes I would say when one came, you got the short straw didn't you? Well, if we're all adults and we're dealing with serious issues and all that's going to happen is we're exchanging words, no fisticuffs, no choking, no kung fu, no judo, why would one man be fearful of talking to another man if he's going to tell what he considers the truth and if he believes it's the truth and he knows it's not going to result in any physical harm to him? Now this is the last time you all will probably hear me take this much time and do this much explaining. Nobody's here but us chickens. So that's kind of why I'm doing it. But if you do have any questions about the bill whether now or later on, just ask me and I will answer your questions. But I do think this bill ought to at least be advanced to the floor. And once there, it's my obligation to try to persuade my colleagues to see the value of it. But if you have any questions you want to ask me right now then I'm prepared to answer civilly.

**LATHROP:** Well, I'll take a stab at this and not to prolong the hearing, Senator Chambers, but I have some concern as I've listened to

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the testimony. If we don't have a system in place for someone to do an assessment on people who are in the county jails awaiting trial if, if all the judges have is the opportunity to either keep somebody in jail or let them out and we don't have a system in place before this bill becomes effective that more people will end up sitting in jail with no opportunity to get out than we do right now.

**CHAMBERS:** Well, we'll put an effective date January 1, 2020. That gives them time. They can see whether or not the people who do probation and these kind of things right now. And the judge is entitled to conduct hearings and make inquiry himself or herself. And if these judges know that the presumption is going to be that a person should be released then they're not just willy-nilly because a prosecutor says, I think I want this guy off the street put a heavy bond. The judge is not going to do that. The judges are going to be required to behave in a judicial manner. And I will give you some of my ideas and thoughts, but not here because I don't want to keep us here all night, but--

**LATHROP:** That's fine.

**CHAMBERS:** --I, I do--

**LATHROP:** That's fine.

**CHAMBERS:** --do want to discuss it further.

**LATHROP:** And, and I just want to make one comment which is I don't-- I never would attempt to silence you. And that was not my point. I thought it was our tradition to not talk on or ask questions on our own bills.

**CHAMBERS:** Oh, I didn't think,--

**LATHROP:** OK.

**CHAMBERS:** --I didn't think that at all.

**LATHROP:** OK.

**CHAMBERS:** No. I'd have told you if I did. [LAUGHTER]

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

**CHAMBERS:** OK.

**LATHROP:** Thank you. And that'll close our hearing on LB646. Thank you.