

LATHROP [00:00:00] Good afternoon. Welcome to the Judiciary Committee. My name is Steve Lathrop. I'm from Omaha, representing Legislative District 12, and I chair the Judiciary Committee. On the table inside the doors when you came in, you'll find yellow testifier sheets. If you are planning on testifying today, please fill out one of those yellow sheets 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 you would like 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 official record, all committees have a deadline of 5:00 p.m. the day before the hearing for submitting those letters. We will begin bill testimony with the introducer's opening statement. Following the opening, we will hear from proponents of the bill, then opponents, and then finally, 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 first and last name and spell them for the record. We utilize an on-deck chair to the left of the testifier's table. And in fact, we have an on-deck row up here. So as we get going, when we're on proponents or opponents, if you would, come up to the front and fill up the chairs so that-- that helps us keep the hearings moving along. If you have any handouts, please bring up 12 copies and give them to the page. If you don't have enough copies, the page can make more for you. We will be utilizing a light system and if you haven't done this before, these are the lights I'm referring to. The light on the table will turn green. That will be green for two minutes, then it will turn to yellow. That's your one-minute warning. So you get a total of three minutes to testify. If you brought prepared testimony and you have more than three minutes' worth of testimony to read, you might want to pare it down because when the light comes on red, we'd ask that you wrap up your final thought and stop. You may get questions from committee members after you stop your testimony. As a matter of committee policy, I'd like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes and stay in contact with staff. At this time, I'd ask everyone to look at their cell phones and make sure they are on the silent mode. Also, verbal outbursts and applause are not permitted in the hearing room. Such conduct may be cause to have you excused from the hearing room. You may notice committee members coming and going. This has nothing to do with how they regard the importance of the bill before the committee, but senators have bills to introduce in other committees or may have other meetings to attend. We are holding our hearings in the Warner Chamber, as you all obviously know, while our regular hearing room is being renovated. Please remember water bottles, soda cans, and cups are not permitted on the desks, and that's to avoid any water damage and stuff like that. Assisting the committee today are Laurie Vollertsen, our committee clerk; Neal Erickson and Josh Henningsen are our two legal counsel. The committee pages are Alyssa Lund and Dana Mallett, both students at UNL. And finally, I'll have the senators that are on the panel introduce themselves beginning with Senator Wayne.

WAYNE [00:03:45] Senator Wayne, out of District 13. I had to pause to think of what I was saying. I thought I was testifying. Sorry. I was still-- I was going to-- I was going to spell my name and everything-- District 13 which is north Omaha and northeast Douglas County.

SLAMA [00:04:01] Julie Slama, District 1, Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties.

MORFELD [00:04:08] Adam Morfeld, District 46, northeast Lincoln.

PANSING BROOKS [00:04:10] I'm Patty Pansing Brooks, District 28 right here in the heart of Lincoln.

BRANDT [00:04:15] Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

DeBOER [00:04:20] I'm Wendy DeBoer. I'm from District 10 which is Bennington and the surrounding areas and northwest Omaha.

LATHROP [00:04:28] And with those introductions, we will begin with our first bill, and that will be LB478, and brings us to Senator Vargas. Welcome, Senator Vargas.

VARGAS [00:04:40] Thank you very much, Chairman Lathrop. Members of the Judiciary Committee, said this earlier to Chairman Lathrop that I know this is a-- a loaner room and apparently it gets a little hot, and I'll try to keep this very brief. I'm here to testify. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s, and I'm proud to represent District 7 of downtown and south Omaha. I'm here today to introduce LB478, a bill that prohibits the use of consent by a minor as a defense, mitigation of damages, or liability in certain civil actions arising from sexual assaults. Now this testimony is pretty straightforward. I'd hope that this is an easy principle to vote on. Boiled down, the premise of this bill is this. It should be easy to say that an eight-year-old cannot provide consent to a person of authority, and it should be equally easy to say that a victim and their family should not be further victimized by a statutory framework that can result in the defense "victim blaming" their way out of paying damages. However, the way our current statutes are written, it is allowable, and in some civil cases stemming from sexual assaults, for the defense to say that a child consented to sexual activity and, therefore, shared culpability exists between the child and the perpetrator. Now you may be asking yourselves if this really happens in Nebraska. The sad answer is, yes, it does. The issue was brought to me by a constituent who has experienced the harmful repercussions that this defense can have on a victim and their family. Now because their case is ongoing and in the interest of their respect and privacy, I'll not delve into any specifics, but I can tell you that across the nation there have been horror stories of proceedings where the defense is in effect

engaged in the victim blaming of young children. And I'm actually going to hand out a couple different articles for your reference before I dive a little deeper. So for instance, a court in Florida found that four third graders were "careless and negligent" and old enough to know better when a teacher molested them. Right now there is nothing in Nebraska statutes that stops victims in civil cases from being blamed under a defense known as comparative negligence, the basis of which is reliant upon establishing consent. Now comparative negligence splits the responsibility between the victim and the party accused of negligence. This technique can then be used to reduce how much is paid to the victim. While this defense may have its merits in certain instances, it certainly has no place in shifting the blame onto the child victims in our state. Several states have begun to take action on issues similar to this. States like California have very recently taken legislative action, while others have left this issue to the courts to decide. However, I don't think we can afford to do the latter. It is clear that the courts have not adequately dealt with these defense practices, as Nebraskans are still being impacted. I want to be clear that this bill does not shift the burden of proof or any other standard operating procedures in courts. It's simply forbids only one defense. Now there will be a few individuals that have submitted testimony or will be testifying in support, a few of which including the Nebraska Association of Trial Attorneys and Voices for Children. But I want to reiterate this specific point. It should be easy to say that a third grader cannot consent to sexual activity, a third grader cannot be careless and negligent or old enough to know better when a teacher molests them. We have a duty as elected officials to protect the most vulnerable among us and I am happy that this committee has shown a willingness to do this, this session. It is my hope that we can continue to work together to advance this bill out of committee and protect victims from further being victimized. With that-- and I just want to thank you. The articles that you have in front of you provide a lot more instances that you see across the country and examples of some of the-- the different testimony and language that is used to do some of this sort of shared negligence. I'm also going to enter into the record here to pass out a letter of support from Voices from [SIC] Children supporting this, this bill. And with that, I'm happy to answer any questions you may have.

LATHROP [00:09:17] Senator Brandt.

BRANDT [00:09:20] Thank you, Chairman Lathrop. Thank you, Senator Vargas, for bringing this bill. Just a point of clarification. It's very obvious to me a third grader is not going to provide consent. Is there an upper age limit on this bill? I mean, does it go all the way to a 17-year-old?

VARGAS [00:09:36] Yes. This is up to 17, under 18 years of age.

BRANDT [00:09:41] OK. Thank you.

LATHROP [00:09:46] OK. I don't see any other questions. Thanks, Senator Vargas.

VARGAS [00:09:48] Thank you very much.

LATHROP [00:09:49] If you intend to testify, if you wouldn't mind coming up to the front row in the on-deck circle, if you will. Good afternoon.

JOHN LINDSAY [00:10:04] Senator Lathrop, members of the committee, for the record, my name is John Lindsay, J-o-h-n L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys in support of LB478. As you heard in the opening, the bill came from a constituent of Senator Vargas'. We did not-- it's not our bill, I want to make clear, not our bill, but we saw this and said, wow, that's a-- that's a hole in the law that we have not recognized before. So we appreciate Senator Vargas bringing this to your attention. I want to make clear the operative portion of the bill is-- is the first five lines of the bill. That's-- and that is where it provides that this-- that consent by a minor cannot be used as a defense to try to establish contributory negligence or comparative fault. And I think the red-- and make clear that before you even get to this, each element of the defense must be proven by the plaintiff. So it's not a burden shifting or anything like that. It's that-- the question when defense brings forward their defense, they can't use to mitigate or to provide as comparative fault or to provide as a-- an affirmative defense to a case that a minor consented. Under 28-319, the-- the Nebraska Legislature for years has said a minor under the age of 16 is incapable of consenting. It would be absurd to say we've determined you cannot consent, but your consent can be used against you. So we-- we do believe that-- that-- that illegal act-- activity on the part of the perpetrator should not be available to help the perpetrator out of the problem that he or she has created. In answer to Senator Brandt's question, as we read the bill, yes, it would extend to 16- and 17-year-olds because 28-319 does not.-- well, 28-319 does not cover those who are 16 and 17. They can consent. But the bill does cover them under the portion-- the remainder part of the bill deals with undue influence in a position of authority and whether that's a coach, whether that's a minister, whether that's a teacher, somebody who is in a position of authority and knows better than to abuse that position to abuse a child. We would be happy to answer any questions. We would urge the advancement of the bill.

LATHROP [00:12:47] I don't see any questions. Thanks for being here today, for your testimony. Anyone else here as a proponent of LB478? Anyone here to testify in opposition? Anyone here to testify in a neutral capacity?

BILLIE DOUGLASS [00:13:12] I am two copies short. Thank you.

LATHROP [00:13:16] Good afternoon.

BILLIE DOUGLASS [00:13:21] Good afternoon. My name is Billie Douglass, B-i-l-l-i-e D-o-u-g-l-a-s-s, and I'm here today to testify neutral on LB478. While I absolutely support

the very beginning of LB478, Section 1, which you all have copies so I won't read verbatim at this moment, however-- however, I would stop it as the perpetrator was an adult. Because LB478 does not stop there, that's why I can only remain neutral. Due to how it specifically sets guidelines for how an adult would be considered in a position of power, I sit here in front of you today stating that anyone who is taking advantage of a minor should always be considered to be in a position of power. If that person is picking up that minor in a car, that adult should be considered to be in a position of power. Just because they are not a coach, a teacher, an official, doesn't mean they are not in a position of power. When I was 13 years old, I was invited to a park over Facebook by a 20-year-old man. He drove to that park in a car that he paid for and had licensed each year so he could meet me and have sex. He did this not only to me but a 15-year-old, as well, and who knows how many victims before that who decided not to come forward. I was only 13. His second victim was only 15. This person was not our coach. He was not our teacher. He was not a relative. He was a 20-year-old adult. This bill would not have applied to him. He could have claimed, since we-- since we consented, he should have not been held liable and he would be right in that defense. I run an after-school club right now and I teach middle school boys and girls about history for an hour a week. I look at their faces. I look at their excitement. I look at their trust. While this bill might protect them from teachers and coaches, it wouldn't save them from a person on-line that isn't a teacher or a coach. This bill, if enacted, could send a dangerous message. It says that if you are just someone off the street or on-line that you thought-- that the-- that, sorry, the victim thought they could trust, you're no longer protected. Even though you were too young and too fearful to say anything, this person could use that against you and testify and said that it was OK even if you were just 13, and that would be liable since they weren't under the specific position of power. When it comes to safety of children, I don't like putting specifics on who is or who is not worthy of their respect and trust. Whether it be a 20-year-old teacher or a 20-year-old driving a car, they both should be considered to be in a position of power. Enacting LB478 with the current language in regards to what defines a person in a position of power sets a dangerous precedent. If you're a teacher, you cannot do these things. If you're not a teacher, you can do these things and possibly testify that they consented and can possibly free yourself from any wrongdoing. I ask you to consider strongly adding-- adding a committee amendment to LB478 to change this language. And I thank you for your time.

LATHROP [00:15:54] Thank you. I appreciate your testimony. Senator Pansing Brooks.

PANSING BROOKS [00:15:58] Thank you for coming. Ms. Douglass. Did you talk to Senator Vargas about this?

BILLIE DOUGLASS [00:16:03] I called-- I called his office the other day and they did mention that they-- the person I talked to in the office referred to they weren't-- they did-- I guess they weren't quite sure how to answer the question at the time. And I did want to bring it up a little bit earlier, but I-- like I am in support of this and hearing, I guess, the

proponent that testified a little just before me, it is important for-- I-- the, you know, 16- and 17-year-olds who are considered an age of consent for a teacher. I guess I would also pursue-- I guess just considering that gap though is my biggest thing when it-- in regards to minors. So I-- I wanted to talk, too, and I should have taken more time and I recognized that.

PANSING BROOKS [00:16:43] OK. And it does include that. It defines adult as one that-- or that a position of authority is defined as-- as those various titles of adults. But it does-- it does say including but not limited to.

BILLIE DOUGLASS [00:17:00] OK.

PANSING BROOKS [00:17:00] So it can extend, I believe, to others but--

BILLIE DOUGLASS [00:17:04] OK.

PANSING BROOKS [00:17:04] --anyway, maybe you can-- maybe you could speak with his office again. Thank you.

BILLIE DOUGLASS [00:17:06] OK. Yes. Thank you.

LATHROP [00:17:10] I don't see any other questions, but thanks for coming down here today. Anyone else here to testify in a neutral capacity? Seeing none, Senator Vargas, you are free to close. We do have one letter of support from Mary Sullivan at the National Association of Social Workers.

VARGAS [00:17:30] Chairman Lathrop, members of the Judiciary Committee, I want to thank you. Like I said, I want to really be brief. I think there's a lot of things that we can agree on and I think this bill addresses a gap. And I just want to provide a little bit more clarity. So in at least eight states I'm able to find, Colorado, Massachusetts, Oregon, Pennsylvania, South Carolina, Washington, and Utah, have passed some level of legislation change to remove this line of defense. We would not be alone in this. Others have done it through litigation. And to be clear, this bill does not shift the burden of proof or any other standard operating procedures in courts. It simply prevents this one type of defense, and I hope we can all agree this defense, this mitigation of damages on civil actions from sexual assaults and this victim blaming, is not-- not a pathway that we want to be able to allow in the state in Nebraska under these circumstances. So I thank you and I appreciate the time.

LATHROP [00:18:29] Very good. Thank you, Senator Vargas. That will close our hearing on LB478 and bring us to LB519, Senator Slama's bill regarding statutes of limitation. Before you start, you want to change that little tent there? Perfect. Thank you.

SLAMA [00:18:59] Absolutely. OK. Good afternoon.

LATHROP [00:19:03] Welcome.

SLAMA [00:19:03] Oh, we good?

LATHROP [00:19:04] Yeah, we're good.

SLAMA [00:19:05] Good. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Julie Slama, J-u-l-i-e S-l-a-m-a, and I represent District 1 in southeast Nebraska. LB519 extends the statute of limitations for human trafficking and child pornography and also allows law enforcement officials to seek a wiretap order to investigate allegations of human trafficking. Human trafficking is the fastest growing criminal industry globally. It was made a federal crime in 2000 and Nebraska likewise made it illegal in 2006. In the years that have followed, lawmakers have tried to give law enforcement officials the tools they need to crack down on this horrendous crime. Nebraska, unfortunately, is part of a regional and national system of human trafficking. With I-80 running across the state and I-29 running along our most populous city, Omaha, human traffickers are active, and most Nebraskans are none the wiser. Human trafficking doesn't just impact our big cities. Cities and towns across Nebraska, like North Platte, Hastings, Grand Island, Sidney, Lexington, and York, see trafficking as well. Just this past weekend, there was an article in the Kearney Hub shedding light on the problem in Kearney. It happens in truck stops and hotels and it's happening right now somewhere in Nebraska. The Internet accounts for 25 to 33 percent of trafficking cases discovered. The average age for someone to become a victim of trafficking is 16. There are many factors that play into why a person is vulnerable and ends up a victim. Those factors include poverty, family dysfunction, sex abuse, or a feeling of isolation in their community. Many people who become victims of human trafficking report the traffickers made them feel loved, like they belong. They shower the victim with gifts, food, and a place to live, but all these things that make the victim feel loved and accepted come at a steep price. The need to crack down on these traffickers is great. Trafficking is expanding-- an expanding and growing industry because there is a perception among traffickers that they just won't get caught. They find there is little risk in trafficking because of a lack of strong penalties, a low risk of arrest, a lack of public awareness, and knowledge that they can threaten or bully their victims into not reporting the crime. Again, many people are unaware of how frequent this crime is happening because it's an out-of-sight, out-of-mind crime. The victims of human trafficking need to feel that they can come forward and report the crimes against them. However, many victims feel shame, embarrassed that they were trafficked. Many victims fear retaliation or violence against them or their families by their traffickers if they do report. Many also have a lack of trust in the system or in our law enforcement, and the effects of beatings, rapes, and abuse can stay with the victim long after they are removed from their trafficker. By the time these victims report the crime, the statute of limitations has elapsed and charges

cannot be filed. Because of these reasons, I've introduced LB519. The statutes-- statute of limitations in LB519 will be extended to seven years for a trafficker of an adult, for labor or sex trafficking, or within seven years after a victim's 18th birthday. It will also apply the same statute of limitations to those who benefit from labor or sex trafficking. For a person who has been found to be in possession of child pornography, the statute of limitations for that crime will also be extended to seven years, up from three years, or within seven years after the victim's 18th birthday. For a trafficker of a minor for labor or sex trafficking, there will be no statute of limitations applicable for the prosecution or punishment of said trafficker. The changes I make in LB519 will apply to offenses committed prior to the date whose statutes of-- statute-- to offenses committed prior to this date whose statute of limitations have not yet expired and to those offenses that occur on or after the date this bill goes into law. Finally, because these traffickers-- getting-- finding these traffickers and getting them behind bars for their crimes is so important, I've included language that would allow the Attorney General or any county attorney the ability to obtain court approval to wiretap for investigation purposes for labor or sex trafficking of both adults and minors. The AG and county attorneys already have this ability for other serious felonies. Approximately 47 Nebraska school girls are trafficked each year through exploitation by force, fraud, coercion, and deception. Human trafficking is modern-day slavery. We need to be able to help the victims of human trafficking and allow them time to heal and feel comfortable about reporting the crimes that occurred against them. We also need to ensure that law enforcement have the tools necessary to crack down on human trafficking. LB519 serves both purposes and comes with a zero fiscal note. As such, I ask for the committee's support of LB519. Thank you, and I will answer any questions that you may have.

LATHROP [00:24:07] I do not see any questions, Senator Slama.

SLAMA [00:24:09] Thank you.

LATHROP [00:24:10] Thank you for introducing that bill. I will take proponent testimony. Good afternoon.

ANNA BREWER [00:24:31] Good afternoon Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Anna Brewer, A-n-n-a B-r-e-w-e-r. I was employed as an FBI special agent for just over 20 years and I currently lead the Nebraska Attorney General's Office Human Trafficking Task Force. I come here today as a representative of the Attorney General's Office in support of LB519. My testimony will focus on the wiretapping provisions of LB519. Corey O'Brien will follow me to speak on the statute of limitations provision of this bill. As a law enforcement officer for over 21 years, I have investigated over 200 criminal investigations. The majority of my work has focused on crimes against children and violent crimes. I established and manage the FBI's Child Exploitation Task Force which had the primary responsibility of-- of investigating child sex trafficking. In my career, I have trained over 20,000 law

enforcement officers, healthcare providers, attorneys, educators, and other professionals on sex trafficking and violent crimes. Sex traffickers commonly use electronic devices to advertise children and vulnerable people for sale and often communicate with sex buyers to arrange the sale of children and other vulnerable people. In addition, sex traffickers often communicate via electronic devices to direct, manage, and control the people that they exploit. Being able to intercept these communications will enable law enforcement officers to collect and prove or disprove, disrupt, and dismantle the criminal enterprises that engage in human trafficking. It is important to note that human trafficking in essence has three components, the trafficker, the buyer, and the victim. If we are able to intercept communications, we are not only able to hold the trafficker responsible, but we are able to identify the buyer and prevent another child or vulnerable adult from being the victim of a sexual assault. The end result would be to hold the trafficker and the buyers accountable, as well as emancipate and recover the victim. The combination of the three is the goal of the intercept of the communication. Electronic intercept is not the first investigative technique to be used during the investigation. There is a pathway or a trajectory in the investigation that will lead to this use of the investigative technique. After having exhausted less intrusive techniques, I would opt for the electronic communication interception. Having the ability to use this technique when appropriate is an invaluable tool. For example, I am currently investigating a group that has been communicating using electronic devices. This group has been recruiting teenage girls from local high schools in the greater Omaha area and luring them into sex trafficking. In this investigation, if I had the ability to intercept their communications, I would have been able to rescue at least 20 females from daily sexual abuse and rape, I would have been able to identify the traffickers and arrest the buyers. There is no better evidence than one's own words. Oftentimes, persons who are trafficked do not self-recognize as a victim of these crimes and it is not until much later that their victimization is identified. In my experiences, the average duration of a federal investigation is two to three years.

LATHROP [00:28:17] Ms. Brewer--

ANNA BREWER [00:28:17] One must take into consideration all of the resources. Thank you very much. I would welcome any questions.

LATHROP [00:28:25] OK. Senator Chambers.

ANNA BREWER [00:28:25] Yes, sir.

CHAMBERS [00:28:26] Mine relates to the language of this. And I know some of it tracks existing law, but by mentioning that the indictment is found by a grand jury, that doesn't mean only a grand jury, correct?

ANNA BREWER [00:28:44] I would defer to my prosecutors and legal experts regarding the legalese.

CHAMBERS [00:28:49] OK.

ANNA BREWER [00:28:49] Thank you, sir.

LATHROP [00:28:53] Senator Pansing Brooks.

PANSING BROOKS [00:28:54] I'm just going to take this moment to thank you for your incredible work over the years on trafficking and helping to save the lives of really vulnerable people, also the work of the-- of Attorney General Peterson and the Women's Fund and others like the Nebraska Family Alliance and others that have worked so hard to really protect very vulnerable Nebraskans. Thank you.

ANNA BREWER [00:29:17] Thank you.

LATHROP [00:29:19] I see no other questions. Thank you, Ms. Brewer. Good afternoon.

COREY O'BRIEN [00:29:34] Good afternoon, Chairman Ashford [SIC]. Members of Judiciary Committee, my name is Corey O'Brien, that's C-o-r-e-y O-'-B-r-i-e-n, and I'm the criminal bureau chief for the Nebraska Attorney General's Office. I appear here today on behalf of Attorney General Doug Peterson and the Nebraska Attorney General's Office in support of LB519. As Senator Slama so eloquently put in her opening statement, there are two primary purposes for LB519. The first is to extend the statute of limitations. It would extend the statute of limitations for seven years when it involves adults that are victimized by these offenses, and it also extends the statute of limitations for possessory crimes of child pornography. The second change made to the statute of limitations proposes to impose no statute of limitations when the victim of the sex trafficking is a minor and also makes a change to the child pornography laws when the crime being committed is the actual manufacture of child pornography, so that there would be no statute of limitations when the victim was the-- the subject of child pornography that was made. As Senator Slama pointed out, it is so difficult for us to uncover both of these crimes within the statutory period currently available, the three years. In many cases we can, but in a lot of cases we can't put all the pieces together. And it's not necessarily justice to make these victims not whole again or have any recourse in these particular kind of cases because of the failings of law enforcement not to properly be able to have the tools to find all these allegations and these crimes within a three-year statute of limitations. The second component of the bill is what my colleague just testified to, and that being adding human trafficking offenses to the offenses for which we can do wire intercepts. As Ms. Brewer pointed out, we are working an extensive human trafficking case that is very pervasive, and it's been very frustrating at times that we did not have that tool in our tool bag, particularly when we know that many of these human trafficking operations that we investigate are operating using cell phones and social media. This particular case, there is extensive use of social media that would have allowed us to shut

down this organization over a year ago had we had that ability, so we thought it fitting that this kind of crime warranted inclusion under the intercept statutes given the fact that it is so dependent upon electronic communications in order for them to commit their offenses. With that, I would certainly entertain any questions the members of the committee have on this bill, but we'd ask you to send LB519 to the floor. And if you have any issues with the bill, we'd certainly be willing to discuss those and try to resolve those.

LATHROP [00:32:57] OK. Thank you. Senator Chambers.

CHAMBERS [00:33:00] Mr. O'Brien, as I had indicated, this language follows existing law. But why does it say within six months-- or seven years, if a grand jury brings an indictment? That's not the only way that this can be implemented, is it?

COREY O'BRIEN [00:33:16] No, sir. There is a separate statute that allows county attorneys and Attorneys General to bring charges by way of information in addition to a grand jury, so--

CHAMBERS [00:33:27] OK.

COREY O'BRIEN [00:33:27] --that language is probably in need of some update.

CHAMBERS [00:33:30] And that's for the record. Now it does say-- it mentions the magistrate. Who is the magistrate under Nebraska law? Would that be the same as a judge?

COREY O'BRIEN [00:33:44] I believe that under, again, some archaic language, it's referring to judges. But we actually do have clerk magistrates that-- that serve throughout the state of Nebraska. A lot of times they're glorified clerks of district courts, but I think that the-- what was intended there was probably courts. And in my opinion, it should be limited to judicial officials to be described as magistrates.

CHAMBERS [00:34:13] So are you saying that a complaint of this kind would be filed with the magistrate, with the clerk magistrate?

COREY O'BRIEN [00:34:22] Or the clerk of the court.

CHAMBERS [00:34:26] Well, this doesn't say clerk magistrate. It just says magistrate.

COREY O'BRIEN [00:34:28] I know it doesn't so--

CHAMBERS [00:34:29] Would it be a problem if-- if this language was-- was modified even though some of it is in the existing law? I don't-- I haven't read every criminal

statute, by the way, and I've become aware of some things when they are not directly at issue in the bill that's brought to us. But that's something I can talk to you about later. I just wanted it to be brought to your attention and you can be thinking about it. Other--

COREY O'BRIEN [00:34:50] I don't think it's a crucial part of the bill and certainly any language to modernize Nebraska statutes, I'm always in favor of.

CHAMBERS [00:34:59] OK. I don't have anything else. Thank you.

LATHROP [00:35:03] We're a-- hang on one second--

COREY O'BRIEN [00:35:05] I'm sorry.

LATHROP [00:35:06] --because I do have a question.

COREY O'BRIEN [00:35:07] Yes, sir.

LATHROP [00:35:09] For one of these we have-- we're going to eliminate the statute of limitations?

COREY O'BRIEN [00:35:13] It's actually for two offenses, and the first being sexual trafficking or labor trafficking-- trafficking of a minor.

LATHROP [00:35:22] Of a minor-- we would just completely get rid of the statute of limitations?

COREY O'BRIEN [00:35:25] There would be no statute of limitations.

LATHROP [00:35:27] Tell me right now, in what crimes fall into that category where we have no statute of limitations?

COREY O'BRIEN [00:35:33] Normally, murder.

LATHROP [00:35:35] Murder, that's it?

COREY O'BRIEN [00:35:36] No, sexual assault of a child.

LATHROP [00:35:37] OK. In-- in both, those are the only two right now where we don't have a statute of limitations?

COREY O'BRIEN [00:35:45] My statute book is over there. I'd have to look but I--

LATHROP [00:35:45] That's OK. I just wondered.

COREY O'BRIEN [00:35:46] I mean there are-- there are a couple others.

LATHROP [00:35:47] I appreciate this is a horrible thing to do, right?

COREY O'BRIEN [00:35:49] Sure.

LATHROP [00:35:49] But we do have a policy reason for having statutes of limitation and I just wonder if this is on par with like a first degree murder.

COREY O'BRIEN [00:35:58] I would say--

LATHROP [00:36:01] It's bad. It's bad, to be sure, but what I-- as the Chair of Judiciary Committee, there's a lot of bad things that we see and there can be, you know, taking money from old people and-- and violating people's trust and all kinds of things. And I just wonder if we are maintaining the appropriate balance, if you will.

COREY O'BRIEN [00:36:21] If I can answer that just quickly--

LATHROP [00:36:22] Yeah. No, please.

COREY O'BRIEN [00:36:23] I guess my-- my opinion would be the reason why-- for instance, sexual assault of a child, the Legislature crafted that out. I've gone back and I reviewed the legislative history and, again, one of the things that I think the Legislature was cognizant about when they designated sexual assault of a child to have no statute limitations is the fact that we do know now about repressed memories that we didn't know about before. And so when children are the victims of crimes, horrible crimes like being forced into prostitution, we want to give them an allowance in order to come forward and-- and tell their stories and have some means of justice available to them. And so that's why I think that to be consistent, these types of horrible offenses committed against children, knowing the fact that a lot of them will not initially come forward and-- and we're dealing with the Catholic church situation right now--

LATHROP [00:37:27] Sure.

COREY O'BRIEN [00:37:27] --and I've got people coming forward from the '70s talking about things that they never addressed before in the past. And so I think that is the rationale behind it and-- and we wanted to stay consistent with what [INAUDIBLE] sexual assaults.

LATHROP [00:37:39] So the statute of limitations has really two policy bases. One is that a person at some point ought to have some peace, right? That ought to-- they ought to have it behind them, and that's both in the criminal world and in the civil world. But it's

also about the availability of evidence, right? So somebody could have, if we-- were we to accept this bill and make it the law, 30 years later somebody is bringing a charge and now, you know, they can't find their-- they don't know where they were on April 26 in-- 30 years ago.

COREY O'BRIEN [00:38:15] I'm not saying they're easy cases to prosecute or defend.

LATHROP [00:38:17] Right.

COREY O'BRIEN [00:38:18] But in some cases they-- they can be and they can be brought, especially with the way that technology is archiving things and things are becoming a little bit easier to do those. But I-- I get the challenges and I think, you know, one of the things that the statute of limitations recognizes is that some crimes are so reprehensible and we understand potentially why certain victims may not come forward, that that's why we crafted out a narrow exception.

LATHROP [00:38:42] Right. I don't know the answer to it other than as soon as-- I just don't want to have statute limitations creep where pretty soon we say we're done with statutes of limitation and anything is open forever.

COREY O'BRIEN [00:38:52] And I don't think that's our purpose. It's just in-- in specific limited exceptions when we're talking about minor victims that have been subjected to horrific things.

LATHROP [00:39:00] Right. OK. Senator Pansing Brooks.

PANSING BROOKS [00:39:03] Thank you. Just to follow up on this, Mr. O'Brien, so I believe we have-- you said the statute of limitations, that we have no statute of limitations on sexual assault of a child. So human trafficking is sexual assault of a child. So--

COREY O'BRIEN [00:39:17] Agreed.

PANSING BROOKS [00:39:18] --it's pretty-- it's pretty darn consistent with our current laws and the fact that our really sea change that has occurred in the past five years of understanding that we have been, you know, arresting the wrong person for a number of years, we haven't-- we've been more focused on the victim than we have been on the trafficker or the purchaser, who are the actual criminals. And, you know, just a couple of years ago, we-- we defined that-- that-- before three years ago, we were still prosecuting and arresting a child for prostitution, even though they cannot-- they cannot have the consent necessary to-- to commit that crime. So clearly we-- we've made a huge change and I just want to clarify for the record that this is not inconsistent with our current laws, it's not really an expansion of the law. It's an understanding that a child is really vulnerable and may tamp down some things, may not understand what's really

happening until much later, and so they have to have an ability to-- obviously we want to protect any kind of erroneous charges against a-- against a perpetrator. But we also ought to allow the child to grow up and understand what really happened to them in-- in adult terms. Thank you.

COREY O'BRIEN [00:40:44] Thank you, Senator. You said it much better than I did, and I want to thank you for all that you've done in this area. Before this, before you got to the Legislature, there was very little in the way of human trafficking awareness and legislation. And I also want to thank Senator Slama for agreeing to carry this bill for us.

LATHROP [00:41:03] OK.

COREY O'BRIEN [00:41:04] Thank you.

LATHROP [00:41:04] I don't see any other questions. Thank you. Next proponent. Good afternoon.

MEGHAN MALIK [00:41:26] Good afternoon. Chairman Lathrop and members of the Judiciary Committee, my name is Meghan Malik, M-e-g-h-a-n M-a-l-i-k, and I am the trafficking project manager at the Women's Fund of Omaha. I'm speaking today in support of LB519 to lengthen the statute of limitations for prosecuting the trafficking of both minors and adults. I want to thank Senator Slama for bringing this really important bill forward, for also signing on to the critical package of trafficking bills this year not only before this committee but also in the HHS Committee. Of course, I want to say thanks, Senator Pansing Brooks, for her tremendous leadership, for cosponsoring this bill and leading other bills and really leading the legislative fight against trafficking. LB519 will increase opportunities for justice and offender accountability, as well as provide law enforcement tools for investigation and prosecution of traffickers. Trafficking survivors pursue a number of paths to heal from their experiences, such as substance abuse recovery, mental health counseling, work and antitrafficking initiatives, or seeking justice and accountability for the traffickers who exploited them. Unfortunately, the option for justice is often unavailable to survivors in Nebraska because our current statute of limitations bars survivors from pursuing legal action if they were victimized more than three years ago. Three years is an incredibly small amount of time, particularly given the nature of trafficking. Survivors of sex trafficking endure tremendous pain and trauma while trafficked. Trafficking survivors suffer painful health consequences from their victimization. One study found that 62 percent of survivors experience PTSD, 81 percent develop depression, and 96 percent suffer from any number of psychological health problems. Due to the severe physical and emotional abuse survivors endure, fear of retaliation by their traffickers, and confusion over complicated legal proceedings, many survivors do not pursue justice within the legal system until after Nebraska's three-year statute of limitation has passed. I'll just note, I think that this is accurate, but I believe that all first-degree sexual assault has no statute of limitations. So I would say

that this would be really consistent, this law, with existing laws on our books. Passing LB519 and lengthening the statute of limitations for trafficking offenses will give survivors the pathway they deserve to legally hold accountable the individuals who have raped, tortured, and exploited them. Twenty-three states have already eliminated statutes of limitations for criminal trafficking prosecutions entirely. Our neighbors have also increased their statutes of limitations for trafficking. Survivors in Wyoming, Colorado, North Dakota, South Dakota, and Missouri all have seven or more years to pursue legal action. Passing LB519 will aid our antitrafficking efforts in numerous ways. It will provide survivors with an opportunity to hold their traffickers accountable and seek justice. It will allow law enforcement and prosecution more time and resources to protect Nebraska citizens. And lastly, it will send the message to survivors, traffickers, and ordinary citizens across the state that Nebraska will not tolerate the sexual exploitation and abuse of its people. We respectfully request the Judiciary Committee advance LB519. I'm happy to answer any questions.

LATHROP [00:44:49] I don't see any questions but thanks for being here today.

MEGHAN MALIK [00:44:51] Thank you.

LATHROP [00:45:06] Good afternoon.

NATE GRASZ [00:45:06] Good afternoon, Chairman Lathrop and members of the committee. My name is Nate Grasz, N-a-t-e G-r-a-s-z. I am the policy director for Nebraska Family Alliance and would like to express our support for LB519. This legislation helps ensure justice for victims of heinous crimes, the trafficking of children and possession of child pornography. By passing this bill and extending the statute of limitations for trafficking of adults and children and for the possession of child pornography, the state can recognize the severity of these crimes and ensure that our laws reflect Nebraska's commitment to ending human trafficking in our state while protecting women, children, and all citizens. LB519 also empowers law enforcement to go after both traffickers and buyers by providing an option for the authorization of law enforcement to use wiretaps to intercept communications relating to trafficking. This proved useful and effective in disrupting trafficking rings just recently when a major trafficking investigation in Florida, which has received national attention, led to the breakup of a large-scale trafficking ring spanning multiple states and countries. This committee needs no reminder of the severity of this issue or its presence in our state, so I would simply like to extend our support for LB519 and thank Senator Slama for introducing this bill, as well as Senator Pansing Brooks for cosponsoring, and commend the Judiciary Committee's tremendous efforts as a whole to better combat trafficking and ensure justice for survivors in our state. Thank you for your time and we'd respectfully encourage the committee to advance LB519. Thank you.

LATHROP [00:46:36] Very good. Thank you.

NATE GRASZ [00:46:40] Thank you.

LATHROP [00:46:40] I don't see any questions. Anyone else here to testify as a proponent? Anyone here in opposition to LB519? Good afternoon.

SPIKE EICKHOLT [00:46:58] Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is spelled E-i-c-k-h-o-l-t, appearing on behalf of the Criminal Defense Attorneys Association opposed to LB519. The portion of the bill that we are opposed to is the lengthening, and primarily the elimination, of the statute of limitations. If you look on page 4 of the bill, lines 17 through 27, that's the portion of the bill that would eliminate the statute limitations for the two offenses that Senator Slama mentioned earlier. Statute of limitations serve a purpose. Mr. O'Brien was correct that older cases are difficult to prosecute, but they're also very difficult to defend. That's one consequence of or one purpose of a statute of limitations is it provides some sort of finality for life, if you will, that a person can sort of move on and they're no longer in danger. Another consequence or another purpose that statute of limitations provide is that they serve as a motivating factor or a reason for the prosecutor to actually charge a case. In other words, the Legislature really cannot directly compel prosecutors to bring charges against anyone. If the state has the evidence, it's up to them when to choose it. The statute of limitation is sort of the motivation. A prosecutor can't sit on other charges beyond three years or five years or seven years depending what the statute of limitations is. If you remove that, there is no impetus, there is no motivation for a prosecutor to bring a charge. And that goes back to the first sort of reason for it, and that is at some point a person ought to be free of risk of prosecution. Now I know it's difficult when you're talking about this subject to simply say no or not to extend or eliminate it. But if you look at the list that we have now, and this is the reason our association opposes the elimination of statute of limitations, because once you start going down that road for one offense, it's so much easier to do it for other offenses. If you look at the current list now, we have no statute of limitations for treason, murder, and that would make sense. I think that Ms. Malik said that there is no statute limitations for sexual assault of a first degree, and she's correct, there is none. But we also don't have it for arson or forgery. At some point, for whatever reason, that was important to the Legislature, and maybe it was as important as this subject is now. And I don't mean to compare the two or to diminish the seriousness of human trafficking, but I'm just saying for whatever reason those two categories have no statute of limitations. It's a very easy step to simply add more and more crimes to it. And that really relates to our-- our reasons for opposing the elimination of the statute of limitations. I didn't mention that to Senator Slama earlier today. So for that reason, we are opposed to that portion of the bill.

LATHROP [00:50:05] Senator Pansing Brooks.

PANSING BROOKS [00:50:07] Thank you, Mr. Eickholt. I'm trying to understand what is the difference in your mind between sexual-- I mean we could have said-- it could have had sexual assault of a child, including trafficking, in-- in the first degree. I mean, if you want to argue it, a child that has been trafficked is raped multiple, multiple times. So I-- I'm just trying to figure out why-- why the differentiation between a child of-- who's been sexually assaulted in the first degree and a trafficked-- child who's been trafficked.

PANSING BROOKS [00:50:40] If you look at-- it's not just sex trafficking of a minor, but it's also labor trafficking of a minor. Those are ongoing commissions. In other words, a sexual assault is an act. The date can be pinpointed. If you're attempting to defend a person charged with that, you might have an alibi that could point to that date. You might have a witness who may be able to remember what was going on 30 years ago. When you have the ongoing crimes of trafficking, either labor trafficking or sex trafficking, those are more difficult to defend, arguably, and that could be one reason for the distinction. I understand there probably isn't a reason, but I think we opposed eliminating the statute of limitations probably for the sex trafficking-- or for sexual assault, as well, for similar reasons, and we were perhaps equally successful.

PANSING BROOKS [00:51:30] OK. Well, I can understand maybe-- I mean there could be some discussion about labor trafficking depending on what that was.

SPIKE EICKHOLT [00:51:36] Right.

PANSING BROOKS [00:51:37] But if-- if you've seen things like the boys in the tent or whatever that story is about, some men-- mentally challenged people in Iowa that were forced to live in very subhuman conditions and continued to-- forced to work for little to no pay and not be able to see their families, not able to eat appropriately, and so I don't know. I think that's just-- you know, if you'd come in just on the labor part of it, maybe I could have sort of gone with you on that. But as it is, it should comply-- our statutes should coordinate, in my opinion.

SPIKE EICKHOLT [00:52:15] I mean I-- I'm not-- I'm not disputing what you're saying, but the-- the reason is-- that we're proposing is more basic because you have this very clear illustration of how horrible sex trafficking is on one side, and then you have forgery on the other, and there's just such a gap. It's just such easy-- once you start going down there, it's just so easy to add to that list.

PANSING BROOKS [00:52:37] Well, why don't you have us bring another bill?

SPIKE EICKHOLT [00:52:40] Well, that's probably true, I suppose, but--

PANSING BROOKS [00:52:42] OK. Thank you, Mr. Eickholt.

LATHROP [00:52:44] I think that's it. Thank you for your testimony today. Anyone else here to speak in opposition? Anyone here to testify in a neutral capacity on LB519? Seeing none, Senator Slama, we have no letters on this, so you're good to close.

SLAMA [00:53:05] All right. I'll be brief. I just wanted to thank Senator Pansing Brooks for her work that started long before I got here on this issue and for cosponsoring this bill and I thank the committee for their consideration on LB519.

LATHROP [00:53:21] Thank you, Senator Slama. I appreciate it. I don't see any other questions. That will close our hearing on be LB519 and bring us to LB173 and Senator Pansing Brooks. So if you are going to speak as a proponent, if you wouldn't mind filling up the front row so we can-- and coming-- otherwise coming down so we can keep the hearing moving along. Welcome, Senator Pansing Brooks.

PANSING BROOKS [00:54:10] Thank you. Thank you, Chairman Lathrop and fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I am introducing LB173 today to create a yes-means-yes standard so that victims of sexual assault are better protected under the law. The yes-means-yes standard is often-- also often known as affirmative consent. Last year, I felt that it would be particularly appropriate to introduce this bill in light of the #MeToo and the #TimesUp movements. Since the original bill, I've been fortunate to work with county attorneys and others and we rework some of the language to better fit with existing statutes. Affirmative consent is knowing, voluntary, and a mutual decision among all participants to engage in sexual activity, according to Chandler Delamater with the Albany Law Review. Consent can be given by words or actions, as long as those words or actions create clear permission to engage in sexual activity. Silence or a lack of resistance in-- in and of itself does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. This is exactly what this bill is working to address. This bill is more than a definitional change. This bill is about empowering survivors of sexual assault who seek justice from their attacker. It does not change the intimacy of consensual sexual activity. Instead, it reframes the way our legal system will approach situations in which individuals did not give voluntary, conscious-- conscious and mutual consent in sexual encounters. Under this bill, consent is present when it is knowingly and voluntarily given, either verbally or through overt actions. When there is no indication through words or conduct that someone is willing to engage in an intimate encounter with another, consent has either not been given or has been withdrawn. It is important to remember that consent can be withdrawn at any time if either-- either participant feels unsafe, threatened, or violated. Regardless of previous or current relationships, consent must be present before engaging in a sexual activity. And I would add that if-- if someone is confused and claims that they need auth-- notarized evidence, it might be time to find a new partner. In 2017, Montana enacted a law similar to the one before you today as their statutes at the time did not account for victims who

were unable to consent due to freezing during the attack. Missoula Deputy County Attorney Susan-- Suzy Boylan has now-- has pointed out that offenders were able to take advantage of victims who neither said yes or no before Montana implemented their affirmative consent law. For those who think that this may not be a relevant-- or who may not think that this is a relevant problem, I want to take a minute to stress the importance of action on this issue. Delamater from the Albany Law Review has stated, "It is still the case in many jurisdictions today that a mere lack of consent is insufficient to establish rape." In fact, a constituent of mine reached out to my office regarding this piece of legislation to express her support. She explained that as a juror in a sexual assault case, her jury had trouble convicting the alleged attacker in the case due to the fact that the victim never said no, though she also never said yes. Consent is not passive. The current no-means-no standard presumes that when there is not a no, sorry about the double negative, but when there is not a no, then there must be a yes. It implies that an individual, often a woman, is constantly-- that we are all constantly consenting to have sex unless we are able to say no. Under the no-means-no standard, we are in a constant state of acquiescence to sex unless we say no. That just makes no sense, really. I want to stress that this bill does not put the burden of proof on the person who has been accused. Bobbie Villareal, executive director of the Dallas Rape Crisis Center, has explained that, "Rape is the only crime in which we turn the lens onto the survivor, the victim, and not onto the perpetrator." When someone gets shot, we don't ever ask them, why didn't you get away from the bullet?" Right now the burden of sexual assault falls squarely onto the shoulders of those victims of this terrible crime, unquote. This bill can give survivors the courage to come forward with the knowledge that they will be protected under better standards for consent and we will have-- and we will not have their cases dismissed because they were so brutalized, unconscious, or threatened that they could not say no. There are some that will claim that this is just another "he said, she said." But tightening the definition of consent does not change that legal-- that-- that legal issue either way. That's why we require county attorneys to prove their case. I do have one amendment to the bill from the Attorney General's Office. AM105 will tighten up the language and avoid potential mis-- misinterpretation of the words "freely given." Finally, for those of you that may be struggling with this different way of approaching consent, I want to refer you to a video, and I hope you'll see it on-line, but I have passed it out to you, that-- that-- and it's-- it's a fabulous video, especially if you listen to the British version, because it's about consent as-- as compared to getting a cup of tea. And I've sent it out to you, last year I read it to you, but I know that there are things that are in-- in our future that people want to attend at some point, so I'm not going to read it all out to you. But in summary, it talks about how consent is as simple as-- as a cup of tea. If you offer someone a cup of tea and they say, yes, that would be wonderful, then you can give them a cup of tea. If someone did not want a cup of tea, you would not force them to drink it. Someone-- sometimes people even change their minds and first say they would like a cup of tea and then, while it could be annoying because they prepare the tea for you and they warm the milk, you should not force them to drink that tea. And there is no way that someone who is unconscious

could ever answer that they don't want a cup of tea, so there's no point of even-- even making them tea. Clearly, people who are unconscious do not want tea and, I would add, do not want sex and-- just because they did earlier. So just because you made someone tea last week, doesn't mean that-- that they would want a-- the next time they see you. So if you can understand that about a cup of tea, I think that you can understand that the same thing should happen with sexual relations. So I ask you to advance LB173 and AM105 to General File. And again, let me be clear that somebody's-- somebody questioned again, well, gosh, it's he said, she said, what are we going to do about that? And my-- my point is if you-- if you think you need a notarized agreement to-- to prove that you have consent, then maybe you need to find a new partner and probably shouldn't go forward. And I'd like to thank Brodey Weber, who's an intern, that came to me with this bill a year ago. He's-- he's an amazing young man and he has worked on this for part of his senior thesis, and I-- I hope you'll enjoy listening to his-- his vision and brilliance on this issue. Thank you.

LATHROP [01:02:33] Thank you. I do not see any questions. First testifier. Good afternoon.

BRODEY WEBER [01:02:57] Good afternoon. Thank you, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Brodey Weber, B-r-o-d-e-y W-e-b-e-r, and I will be speaking in favor of LB173. In fact, this bill is quite personal to me as I've been working closely with Senator Patty Pansing Brooks and her extremely talented staff for both last year and this year. And thank you for your kind words, Senator. I would like to share why I care so deeply about affirmative consent and the standard. I proudly attend the University of Nebraska-Lincoln as a junior in political science, as well as communication studies. In communication studies we learn gender communication and that involves sexual activity. Starting college a few years ago was an exciting and intimidating challenge. Luckily, because of my great network of friends, I had a strong support system. My friends were always there for me and I tried, in turn, to always be there for them. One of my best friends is an incredible person and in-- for the-- for the interest of her privacy, I'm going to refer to her as "Olivia." In May of 2017, I had to be there for Olivia as she became another addition to a terrible statistic. She was sexually assaulted by an acquaintance, someone who we all knew, while she was attending a social event off campus. Olivia and other friends ran into this person while I studied for my very last final of my freshman year. That next morning, I woke up around 5:00 a.m. to a phone call, and this was not a normal call from Olivia. She had lost her bubbly tone, her infectious optimism, and her knowing humor. For the first time since I'd met her, Olivia sounded broken. Right then and there, I knew something was wrong and something had to be done. Later that day, she underwent tests and interrogations I would never wish upon my very worst enemy. When I asked her why she would not go to the authorities to seek the justice I felt she deserved, it was because she did not say no during the assault. I continued to ask her other questions, and she never once said yes. And in fact, her actions showed that she was not welcoming the activity. Olivia was unable to say

anything and while her voice was unheard, she was attacked, and I would say she passively resisted, as this piece of legislation is working to do. Though she did not say no, she tried resisting. And I find that loophole disturbing and unacceptable and that's why I'm here for not only Olivia but survivors of all sexual assault. I also want to note that according to Delamater and the Albany Law Review, he states that we need to no longer teach people to look for the no but, rather, to look for a yes, whether it's confirmed verbally or, you have to remember, through overt actions. Actions can indicate consent if they are overt. Before I go-- or-- and then one last thing. Senators, I want to leave you with this one final thought. Every day you walk these halls and you have the incredible opportunity to create history. Today you get a choice. You get to choose if you are on the right side of history and you get to choose if you are going to fight for survivors like Olivia and for their justice, or to maintain a system that leaves far too many voiceless. I have confidence in all of you to make the right choice for Olivia and all of the other Olivias out there. Thank you so much for your time and I would love to answer any questions that you may have.

BRANDT [01:06:14] Thank you, Mr. Weber. Does the committee have any questions? I don't see any. Thank you for your testimony.

BRODEY WEBER [01:06:21] All right. Thank you, Senator.

BRANDT [01:06:23] Next proponent.

LEXIE KARKAZIS [01:06:34] Thank you, Judiciary Committee. My name is Lexie Karkazis, L-e-x-i-e K-a-r-k-a-z-i-s. I'm currently a sophomore computer science major at the University of Nebraska-Lincoln. I'm a member of Delta Gamma, a panhellenic sorority at UNL. I serve as the vice president of programming and membership development on the Panhellenic Executive Council which oversees the panhellenic sororities at UNL. Part of my job is overseeing risk management, so I-- I am here on behalf of the panhellenic community to express why we're in support of LB173. Coming to college is one of the most exciting yet confusing transitions in life. Many women choose to join a sorority which not only brings them into one chapter's sisterhood but the Greek community as a whole. This large new social scene can bring tons of fun memories but also unexpected situations. I personally know many women who have been put in compromising positions and have not known how to react when someone is pressuring them to partake in acts that they do not want to partake in. It becomes very hard to say no and fight back when someone is coercing you, using fear tactics, or taking advantage of your mental state. Too many cases of sexual assault have gone unreported because victims feel that their absence of saying the word "no" will make their experience less legitimate under the law. We need to eliminate this gray area in order to decrease the chance of nonconsensual-- nonconsensual sexual relations taking place not only in the panhellenic community but on UNL's campus as a whole. Affirmative consent is a key movement in being proactive about risk on college campuses and in the Greek community. The

no-means-no movement was only the beginning of changing the culture of how our society views sexual assault. I believe our campus, city, and state are ready to acknowledge that no-means-no omits justice for many victims of sexual violence. Adopting this affirmative consent bill will prove to the state that we are serious about holding people accountable for their actions. it will prove to the citizens that we take sexual-- sexual assault seriously. It will prove to the victims of sexual violence that we care about their stories and recognize that what happened to them was not acceptable. You have an opportunity to reshape what real consent means to Nebraska's law and I implore you to choose affirmative consent. Thank you.

LATHROP [01:08:50] Thank you. I do not see any questions. Appreciate your testimony today.

LEXIE KARKAZIS [01:09:03] Thank you.

BRUCE PRENDA [01:09:03] Chairman Lathrop, members of the committee, my name is Bruce Prenda, B-r-u-c-e P-r-e-n-d-a, and I'm in the Lancaster County Attorney's Office, on behalf of the Nebraska County Attorneys Association. The association is giving this favorable and supportive testimony of LB173. I'll join in thanking Senator Pansing Brooks for bringing this bill. LB173 provides greater clarity, meaning, and strength to the term "without consent" in the context of the offense of sexual assault. It makes clear that consent, if given, must be knowingly and voluntarily given and not the product of fear, threat, force, or coercion. Specifically, LB173 incorporates the definition of coercion into the law from a recent Nebraska Supreme Court case and addresses a situation in which a victim withdraws consent. Finally, LB173 states that all surrounding circumstances to the specific issue of consent must be considered on the charged offense. Be happy to answer any questions.

LATHROP [01:10:08] I don't see any questions. Thanks for being here today.

ELI SOELL [01:10:17] Hello.

LATHROP [01:10:18] Good afternoon.

ELI SOELL [01:10:19] So to start off, I'd like to introduce myself. My name is Eli Soell and I'm speaking in favor of LB173. A little about myself, I'm a sophomore at the university--

LATHROP [01:10:28] One second.

ELI SOELL [01:10:28] Huh?

LATHROP [01:10:28] Could you spell your--

ELI SOELL [01:10:28] Oh, yeah. E-I-I S-o-e-I-I. So a little about myself, I'm a sophomore at the University of Nebraska-Lincoln studying advertising and public relations and psychology. I currently serve as the president of my fraternity, Theta Psi, as well as the risk manager of the Interfraternal Council that oversees all fraternities' life at UNL. The main duties of my position as risk manager is to create ways that we as a UNL fraternal system are being as safe and smart as we can in all areas of chapter operations. This translates over to my position as president of my chapter because it is my job to oversee that my fraternity is doing everything in its power to promote positive habits and improve the quality of our members' lives over the time they spend obtaining their degree. Having the responsibility for the development of young men coming through our system and turning them into safety-conscious and beneficial members of our Greek community, university, and society as a whole is not an easy task. A big part of this is holding people accountable for their neglectful actions they make and showing them where they went wrong and providing-- providing a corrective action plan to ensure that this mistake does not happen again in the future. There's a theme of ideas I use when coming up with ideas to promote better habits among members of Greek life. It's be safe, be smart, and you're ensured to have a better time. This is highly applicable to affirmative consent. The affirmative consent bill makes sure that those who commit these crimes are the ones held responsible for their actions rather than making it the victim's responsibility for them to prove their unwillingness to engage in sexual activity. In an article written by Megan Garber, she explains that during an attack victims are typically in shock during the situation occurring and then that turns into paralysis, rendering the victim unable to move or say anything to stop the attacker. To put this into context, if I were to walk up to you and say, hey, I'm going to take your wallet, and before you have a chance to reply, I just take it and run and you're never getting it back, but, hey, you never said no, right? So it made it okay for me to take something that is extremely valuable of yours, right? Wait a second. No. I forgot that's theft and substantial punishments come along with that charge. But why isn't it the same with sexual violence? It's not too much to expect individuals who are engaging in intimate activities to reach a clear agreement to do so. For there to be true justice for those victims who have had these crimes committed against them, there needs to be a change and it needs to hold those who committed the crimes accountable for their actions. If there isn't a change and those who aren't charged for their crimes are able to walk away without any punishment, they do not learn from their mistakes. Their current-- the current statistics taken from the Web site endrapeoncampus.org states that most perpetrators of sexual violence are serial perpetrators, they commit 90 percent of sexual assaults, and they tend to assault on average six times. Through my positions, I get to speak with many people about topics such as sexual violence. And like most of you, I know multiple people who are victims. The thing that bothers me the most about it when I'm involved in these conversations is when people tell me that they're too scared to come forward or report the assault due to people not believing them or not wanting to make it a big deal because it's taken such a huge toll on them personally. If I was shot, I would have no problem reporting it. If you had your car stolen, you'd probably report it. But when it comes to one of the most

degrading acts a human can do to another human, people are too scared to come forward due to them having to prove how they showed they were unwilling to participate in that sexual activity. To be frank, it's ridiculous. Victims need to be able to come forward without being blamed for the assault to happen. The attacker needs to be the one who is responsible for defending their actions and making sure that there was a true agreement between individuals before they engage in that sexual activity. The passing of the affirmative consent bill reflects the values of our Greek system where, when we are engaging in certain activities, we need to make sure that we are doing them in the safest and smartest way possible. And if we can figure out those first two, then there's a really good chance we will have a good time as a result. Thank you for your time and I'll answer any questions.

LATHROP [01:13:59] OK. I don't see any questions for you today but thanks for being here.

ELI SOELL [01:14:05] Thank you.

LATHROP [01:14:18] Good afternoon.

BRIANNA FULL [01:14:18] Hello. Hello, Chairperson Lathrop and members of the Judiciary Committee. My name is Brianna Full, B-r-i-a-n-n-a F-u-l-l, and I'm from Legislative District 6 in Nebraska. I'm a student at the University of Nebraska-Omaha and an undergraduate sexual health researcher. I am here in support of LB173 to change the definition of consent to a yes-means-yes standard. One in four undergraduate women will experience some-- some form of sexual assault before graduation. Additionally, 46 percent of the 1,000 college men and women surveyed by the Kaiser Family Foundation said it is unclear whether sexual activity when both people have not given clear agreement is sexual assault. Only 47 percent call that scenario sexual assault. I believe it is the job of the Nebraska Legislature to provide clarity where there is too much ambiguity in the law which can affect the quality and results of sexual assault investigations. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. LB173 would make it clear that Nebraska does not tolerate sexual coercion or violence in any way. It would establish that consent is an affirmative, conscious, voluntary agreement to engage in sexual activity. Nebraska has the opportunity to be at the forefront with states like New York and California who have already passed bills like LB173. LB173 is important because it will set the standard for expectations around consent for sexual activity. These standards will empower the state of Nebraska to hold sexual assault perpetrators accountable. Thank you.

LATHROP [01:15:55] Thank you very much for your testimony.

BRIANNA FULL [01:15:59] Thank you.

LATHROP [01:15:59] We appreciate you being here. Good afternoon.

LAUREN WILLIAMS [01:16:11] Good afternoon. Chairman Lathrop and members of the Judiciary Committee, my name is Lauren Williams, L-a-u-r-e-n W-i-l-l-i-a-m-s, and I'm here today to read a letter in support of LB173 for my friend could not be here today because she is currently serving as a Peace Corps volunteer in Ukraine. And I've provided you all with a copy of her letter, which I've condensed. My name is Alexis Lipson, and I'm a resident of Lincoln, Nebraska. One year ago, I testified in support of this bill. I've been-- I've spent the last seven years advocating on sexual assault issues both as a volunteer, as an-- as an employee, and today I'm testifying as a survivor. I was raped while as a student at Doane University, in Senator Brandt's district. My rapist was someone I knew, someone I looked up to, and someone I'd had consensual sex with once before. I say this to emphasize that survivors know the difference between regret and assault. Last year, some individuals said otherwise. Following the first incident, I felt guilty because my rapist was married and I informed him of this. He requested we speak about this in person and I reluctantly agreed. Instead of speaking, he climbed on top of me as I sat in the passenger seat of his car. He claimed that this was an attempt at convincing me to do it again. Let me note that I weigh approximately 95 pounds and I'm 5'2", so it would be very difficult for me to physically overpower anyone, especially someone holding me down in the passenger seat of a small sedan. After resisting and repeating the word "no" a few times and being ignored, I finally accepted that there was no viable way out of the car. The only way I was getting back out of that car was to shut up and take it. My rapist assumed that because I said yes the first time, I would say yes again. He assumed that he could push for that second yes and once there was a lack of a verbal no, he assumed he was free to do as he pleased. He continued to contact me after this event, not-- not even realizing that he had removed my bodily autonomy. Rape culture and the negative stigma around sex and the legal language around consent told me then and continues to tell me now that I am to blame, I shouldn't have agreed the first time, I shouldn't have gotten into his car, I should have kept saying no, and according to a man that testified last year, I should have taken more self-defense classes so that I could get out of my car once pinned down. My rapist was and is, to my knowledge, still a generally respected, talented athlete. I had no ground to stand on were I to come forward. The advocate in me today wants to shake the younger me into going to the police anyway, into talking to someone other than our coach, who ignored me when I merely asked that this individual not be around as an assistant to the team so that I can continue doing what I love. The changes proposed will not only give victims ground to stand on in the court of law, it will give them ground to stand on in the public eye. It will confirm something that I as a survivor still have to remind myself: It was not my fault. This January, affirmative consent became the law in my host country of Ukraine, and I've provided a news article outlining this legislation. I hope that upon my completion of service next year, LB173 will have become law and my autonomy will mean as much in Nebraska as it does in Ukraine. Thank you.

LATHROP [01:19:21] Thank you for that addition. Yeah, appreciate it. Next testifier.

DREW PODZIMEK [01:19:26] Thank you, Chairman Lathrop. Members of the Judiciary Committee, My name is Drew Podzimek, for the record, that is D-r-e-w P-o-d-z-i-m-e-k, and I'm a senior at the University of Nebraska-Lincoln and here today as the vice president of PREVENT, a registered student organization through the Women's Center at UNL working to end relationship and sexual violence through the university and our communities through peer education on bystander intervention. And over the past year we have presented to 4,006 students, faculty, and staff at the University of Nebraska. I've handed you one of our most popular presentations called "Myths, Facts, and How to Act," which focuses on teaching bystander invention and the myths surrounding sexual assault. Affirmative consent is-- is a simple definition in the eyes of PREVENT, which, as we define, is-- is-- as enthusiastic participation, is verbally expressed, sober, conscious, freely given, can stop at any time, and is true for all participants. And while PREVENT strives to teach affirmative consent to all students at UNL, different legal codes have different definitions regarding the wording that legally defines consent. Affirmative consent is something that most rational adults would agree is needed to have open and honest communication during any sexual activity, and would not be difficult to understand in the moment. The current legal definition can lead to survivors of sexual assault not being able to pursue justice through the criminal court system simply because they did not say the correct word or do the correct actions to stop their rapist. And this can happen due to-- to the-- to the psychological shock and trauma of sexual assault that every survivor has a different reaction to. Sexual assault is not a he-said-she-said type of event as false reports account for 2 to 10 percent of all sexual assaults reported, which is the same or lower than any felony crime. In reality it would be much lower, as an estimated 77 percent of survivors choose not to report their various assaults, which, for the reasoning of that, would take a lot longer than three minutes to go into. There are many stories, and I have one of them, that survivors can tell where they know where they were sexually assaulted, but along that path to recovery they encountered a legal figure that says they were not sexually assaulted. LB173 would be an incredible step for the rights of survivors of sexual assault as the state of Nebraska would adopt a yes-means-yes standard for sexual assault. I urge you to advance LB173 to General File and look forward to any questions that you may have.

LATHROP [01:22:22] I don't see any questions but thanks for being here today.

DREW PODZIMEK [01:22:24] Yep. Thank you.

LATHROP [01:22:34] Hello.

ABBI SWATSWORTH [01:22:35] Hello. Thank you, Senator Lathrop and members of the Judiciary Committee, for the opportunity to give testimony today. My name is Abbi Swatsworth, A-b-b-i S-w-a-t-s-w-o-r-t-h. I am the executive director of OutNebraska,

Nebraska's statewide organization working to empower and celebrate lesbian, gay, bisexual, transgender, and queer questioning Nebraskans. OutNebraska supports LB173. Sexual violence affects every demographic and every community, including LGBTQ-plus people. According to the Centers for Disease Control and Prevention, lesbian, gay, and bisexual people experience sexual violence at similar or higher rates than heterosexual people. Studies suggest that around half of transgender people and bisexual women will experience sexual violence at some point in their lifetimes. On a personal note, I am a rape survivor. Opposition to this update in state statutes may claim that it will lead people to make false rape accusations. As you've just heard, false rape allegations are rare. The reality is that the barriers to lodging and pursuing a rape accusation are high enough that even most real sexual assaults go unreported. Mine did. It is a very low probability that false reporting will dramatically increase as a result of this update. Affirmative consent doesn't have to change the burden of proof. It just changes whether we assume the people we're having sex with are in a state of already consenting or whether they're in a state of not consenting until we find out otherwise. The truth is, we already practice affirmative consent in most other parts of our social lives. Sexual cues may be nuanced but they are copious and familiar. People lean in or pull away. They intensify or slow down. They use verbal and nonverbal signals familiar from everyday life to collaborate in mutual initiation or to evade, ignore, or reject propositions. In sexual and nonsexual contexts, people are highly skilled at discerning between rejection and acceptance, and they know when signals are too ambiguous to make a solid call. Affirmative consent is an accurate description of what we do when we are having sex that is not abusive or coerced. We seek confirmation that our partner is a willing participant. The idea that there are circumstances in which someone may be unable to give meaningful consent is not new or radical. Most states already include such clauses in their criminal sexual assault codes. LB173 simply updates our statutes to do this. We respectfully encourage you to forward this legislation to the full body for consideration, and I'd be happy to answer any questions.

LATHROP [01:25:24] Good. I don't see any questions but thank you for your testimony.

ABBI SWATSWORTH [01:25:35] Thank you.

LATHROP [01:25:35] Good afternoon.

ANDI CURRY GRUBB [01:25:36] Good afternoon Senator Lathrop and members of the Judiciary Committee. My name is Andi Curry Grubb. That's A-n-d-i C-u-r-r-y G-r-u-b-b. I'm the executive director for Planned Parenthood in the state of Nebraska and I'm here freely giving my-- my informed, enthusiastic, and specific support for LB173. Thank you, Senator Pansing Brooks, for bringing this bill again. Planned Parenthood's vision is one where communities recognize sexual and reproductive rights as basic human rights and where every person has the opportunity to live a healthy and meaningful life. This vision only becomes reality if people have bodily autonomy, which is the ability to make

decisions about what is and what is not right for that person and their body at any and all times. Planned Parenthood of the Heartland supports LB173 because this bill returns bodily autonomy and respect to all individuals. Seeking permission instead of assuming it is exceptionally important in many ways power imbalances present themselves in potential sexual relationships in our country. When there is a power imbalance between two people, one person may fear saying no or actively resisting may negatively impact their entire career, their education, their job, their family, and so on. Requiring the initiator to receive affirmative approval restructures the power dynamic and allows for people to actively set their own boundaries. In shifting from a no-means-no to a yes-means-yes framework, the public will need a re-education in sexual relationships and, in my opinion, they're ready for that. I started my career as a health educator and I taught many lessons on affirmative consent and positive communication in relationships to middle and high school age students. Consent was at times a challenging concept for them to understand and they asked a lot of questions. Many students fully embraced the idea of affirmative consent and were happy to have a better understanding of what it meant. Unfortunately, there were always a few students who resisted the idea and did not think that it applied to them. Both groups of students deserve clarity around the issue and the Legislature-- Legislature can provide this clarity with LB130-- LB173. Affirmative consent leads to healthier and more fulfilling relationships, it makes for a more sex-positive community, it may lead to more open communication about potential risks like STDs and pregnancy, and it also challenges stereotypes that rape is a women's issue. Imagine a world where instead of grilling a sexual assault survivor on the witness stand about what she was wearing, how hard she resisted, and whether or not she audibly said no, instead, we ask two questions of both parties involved: Did you ask, and did they say yes? Thank you.

LATHROP [01:28:37] Thank you for your testimony. We appreciate it. Anyone else here in support of LB173 wants to be heard? Anyone here in opposition?

SPIKE EICKHOLT [01:28:54] Good afternoon, 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 Nebraska Criminal Defense Attorneys Association, opposed to the bill, at least as it is written. Sexual assault is a serious crime, it's a serious accusation, and if a person is convicted of it, they are looking at a serious prison sentence and looking at other collateral consequences from that conviction. Our association regularly-- our members regularly defend people charged with sexual assault. And despite what some of the assertions are, there are instances in which people are falsely accused, not simply because they weren't the person who was there, but because the circumstances, the nature of this crime is sometimes prone to result in misunderstandings between the parties involved. It's clear when you hear from the people today who have suffered from sexual assault, it's-- it's clear to side with them and understand, but there is another side to not those instances necessarily, but to other instances. I'm trying to say this as carefully as I can. But you have-- many times you have situations where people meet one

another, particularly young people, people who are intoxicated, who don't know people very-- the other person very well. They know each other just for a couple of hours. They become intimate. Those things aren't discussed at arm's length. I'm not trying to trivialize it by suggesting that Senator Pansing Brooks had-- that there should be some sort of notarized statement. But the reality is it's subtle. You're dealing with layers of subtlety. You're dealing with things that aren't explicitly discussed. I would submit that the law is not as stark as Senator Pansing Brooks explained, and I think that Mr. Prenda acknowledged that when he explained that the language in the bill is essentially a restatement of some recent cases that have interpreted the existing law. I did meet with Senator Pansing Brooks's office before she introduced the bill because I think I saw a draft of it, and I did recommend some proposed changes that our association could live with, but, and I understand why, but she didn't agree to those. But I would state those for the committee because I think they are consistent with existing law and I don't think they necessarily detract what Senator Pansing Brooks is trying to do. If you look at page 3 of the bill, line 17, the-- the language "withdrawn or was the result," the-- the opportunity where if a victim gave consent but then withdrew that consent that is included in there, we think that it would make some sense if consent is given, and it is actually given but later withdrawn, that that withdrawal also be communicated or at least the state be required to show that that withdrawal or the decision to not consent anymore be actually communicated somehow and the state be required to do that. Now maybe the state has to do that in existing law on page 3, lines 20 through 23. I would propose that perhaps some clarification be incorporated in there. The other three changes that we have are the striking of the words "lack of" on page 3, line 28, which would state, in other words, "consent may be inferred based on all of the surrounding these circumstances," I think that-- and then the other two changes are on pages 4, lines 14 and lines 31, that would strike the term "without," because I think what you have when you look at this and when the law is passed, is you have this notion where a court might interpret this to mean that you can look at all of the surrounding circumstances when you're talking about lack of consent or without consent, but you can only look at certain limited things when you're talking about the issue of consent. And I know that's just maybe some wording, but I think that's clear that I think ultimately the state needs to prove absence of consent and that burden is on the state and the defendant ought to be able to use all the surrounding facts and circumstances to defend him- or herself. So with those changes, I'd ask the committee to consider those proposed changes.

LATHROP [01:33:14] Senator Chambers.

CHAMBERS [01:33:17] Mr. Eickholt, this isn't exactly a question, but I get concerned when new offenses are being created, when there are already laws that cover whatever the issue is. But in view of that other one that did away with statute of limitations, statutes of limitation, a person could have given consent, then time passed, and then the mind could be changed and the issue could be raised again, regardless of whether there would be a conviction. The issue could be raised again and the one who was filing the

complaint could indicate there was nothing actually said but the person should have known. These are very close questions and that's why I wasn't questioning the people who came here to speak. I believe everybody is very sincere. But as one who has to enact laws, there has to be more shown to me to change the law and create an entirely new universe from what exists now, it's not an easy thing for me to do. And I'm letting those who testified know that because I didn't ask a lot of questions, doesn't mean that I was convinced or that I think a case was made to adopt the changes that are being presented. There are opportunities I'll have to speak with Senator Pansing Brooks and maybe some of the other people who spoke on these matters, if they want to talk to me. But your coming and your being in the position you are, will not feel that you're being attacked, that your credibility is being questioned, but it's purely in the realm of how criminal laws should be created. Nothing in Nebraska is a crime unless the Legislature says that it is. I think there should be clear lines of demarcation between the conduct that is allowable and that which is not. And if it becomes fuzzy and uncertain, in a state like Nebraska, the doubt always goes to the accused and it does not mean that if sufficient evidence is presented. That is something different from what I'm talking about. This creates opportunities for ambiguity to exist from the very beginning or throughout. And what people need to know about the way men function, if you say yes and then this activity has gone on for a while, then you say, well, I don't really mean yes, stop, there are realities that have not been addressed here today, and maybe people are embarrassed to bring it out. So I'm going to be delicate in what I'm saying, but I'm saying enough to suggest what my concerns are. You don't have to respond to that, but if you wanted to, you could.

SPIKE EICKHOLT [01:36:46] You said it better than I could, but those are some of the concerns that we have.

LATHROP [01:36:53] I see no other questions. Thanks for your testimony. Anyone else here in opposition? Good afternoon.

JOHN MEZGER [01:37:16] Good afternoon. My name is John Mezger, J-o-h-n M-e-z-g-e-r. I am not against the bill as such. When an assault has taken place, that is something serious and should be taken-- taken care of and criminalized. What I object to, or what I'm concerned about, is unemployment and homelessness. We had a speaker here, a proponent of this Legislature, of this bill, say that one out of four college girl-- girls have been assaulted. That is really scary because the opposite of that is there's got to be a lot of people there that have committed a sexual crime who will end up on the registry for 25 years or for life. There's many people that are on the registry that could-- that break up homes, that cannot find housing, cannot find jobs, they're living on the streets or they're living in the Siena/Francis home or whatever. And I think when we make these laws, when we think about trying to provide safety for some, we also need to know what the consequences are for others. I'm not saying they did-- I'm not-- I'm not a dinosaur. I'm not trying to defend what they did, but I'm trying to look beyond that, that after they've

served their-- their payment to society, what becomes of them and their families? And so we need to take these things into account when we-- we make these laws. I'm not against the law. I want to say that. I don't have anything-- I just said that. I just want to make sure that we think about what the consequences are beyond that act. There's-- there's the victim but there's also the perpetrator who becomes the victim because the society, the Legislature makes them the victim. Thank you.

LATHROP [01:39:37] Thank you. Anyone else here in opposition to LB173? Anyone here to testify in a neutral capacity? Seeing none, Senator Pansing Brooks, we have five letters: Elijah Sherman, Amber Kelly, Sydney Butler, Suzannah Rogan, and Mary Sullivan with the National Association of Social Workers.

PANSING BROOKS [01:40:03] In support or--

LATHROP [01:40:05] All in support, pardon me.

PANSING BROOKS [01:40:06] OK. Thank you. Well, I-- I just wanted to add a couple things. First all-- of all, I appreciate that Mr. Mezger came, and clearly there are issues with the sex offender registry, but this bill is not dealing with the sex offender registry. And, you know, at some point we do probably need to look at the-- make clarifications and improvements to that. This bill makes improvements to the sexual assault laws. I would like to say that, first off, it's pretty clear in there that-- that due process standards apply, number one. Number two, I understand that it is difficult for somebody who has begun sexual intercourse to be told that they're not going to be able to continue because the person rethought it or because they're in the middle of it and are scared or maybe they've become violent. At that point, I'm sorry if you have a problem with that. And these laws were created by men. I have to say it. I-- these laws are something where people say, oh, it's so hard when you start something, it's too hard for us to stop it. Stop it. Pull out. These are things that you can do. And to say that people who are sexually assaulted have to just sit back and say, well, it's confusing for me if you say yes and then you say no? People do it because they're scared. People do it because people are-- have authority over them and they feel they have to comply. This changes the standard to say you better make sure that you have consent. That's not a difficult thing to do. And if you cannot get consent or don't feel clear about your consent, then keep things zipped. This is-- this to me is-- is very surprising. There are due process standards that are set forth in this bill. Nothing is-- is said that-- you know, I'm willing to work with Mr. Eickholt on-- on semantical statements and-- and working on some of that. But to-- to argue, oh, well, my gosh, there are so many that are falsely accused, we just heard that that's not true that there are that many falsely accused, number one. We also heard that one in four college students is-- does-- has been sexually assaulted. So I don't know. I guess because it's a big problem, we should just continue how we are, don't listen to the hue and cry of the survivors, of those that are hurting, of those that feel that they have no power, and instead just say we're fine with things as they are. We're-- why would we change this and

allow the victim to be the one to consent? This makes no sense. And again, this is the change that's going-- that's coming across this-- this nation. And I guess I'll just keep bringing it back if that's what I'm hearing that there's this issue. The same kinds of issues arose, by the way, when we first brought the human trafficking bills: Oh, no, you know, these are-- these are people-- this is mutual, consensual sex. We have got to get our minds around the fact that we have misunderstood many of these areas for a millennium. Thank you, Mr. Chair.

LATHROP [01:44:07] Thank you. I don't see any additional questions or comments, so thank you, Senator Pansing Brooks. That'll close our hearing on LB173 and bring us to LB164 and Senator Hunt.

HUNT [01:44:52] Thank you.

LATHROP [01:44:57] Good afternoon. Welcome to the Judiciary Committee.

HUNT [01:45:02] Thank you very much. Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. I'm Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8 which includes the neighborhoods of Dundee and Benson and Keystone in midtown Omaha. Today I'm presenting LB164, a bill to prohibit the sharing or distribution of sexual photographs or videos without the consent of the depicted individual, an act commonly referred to as revenge porn. I've also suggested-- I have a suggested amendment here that I'm passing out that addresses concerns brought to me by various interests that this bill would hold Internet and telecommunications companies responsible when other people distribute revenge porn, and a couple other concerns from interested parties. So I know my office reached out to give notification to the committee about this amendment and I just wanted to distribute that as well. For this amendment, we pulled the new language from the Intimate Privacy Protection Act of 2016 which is a federal bill that has been thoroughly vetted. It provides protections for Internet service providers and media organizations without impeding the spirit or the effect of the bill. Our increased dependence on technology to do everything from working to shopping to dating brings with it new and evolving challenges. LB164 seeks to address one of those issues, nonconsensual pornography, a horrible violation of privacy which occurs on-line. This happens when sexually explicit content of an individual is published to a Web site or disseminated via e-mail without the consent of the depicted person. Perpetrators are often vengeful ex-partners, opportunistic hackers, rapists, or sex traffickers. A simple search of the victim's name can turn up dozens of links leading to images of their body and within a matter of hours, their inbox can fill up with threats of sexual and physical violence. This can cause devastating and often irreparable harm to a victim's personal relationships, mental health, and employment or educational opportunities. We've even seen victims tragically take their own lives. Beyond the harm this can cause to individual victims, we see far-reaching impacts on society as a whole. If we don't take action on curbing revenge porn in Nebraska, we're sending a message that

sexual exploitation is acceptable. This message is particularly harmful to the status of women and girls in American society. Ninety percent of revenge porn victims are women and girls. Throughout history, rape, sexual harassment, and voyeurism have been used to "put women in their place," and this is no different. It's no surprise that successful women are often targets of this sort of behavior. I myself have been targeted by people who wanted to hurt my reputation and my business by distributing nude photos of me. There's even a growing market for this. On-line, you can easily find people willing to doctor or edit pictures to create fake nude photos of women, which is what happened to me. I believe we're entering a time when the market for incriminating photos of people is just going to get stronger and that's why we have to be proactive about stopping that by passing this bill. I'm not alone in the belief that these forms of abuse cannot go unpunished. That's why we see other bills introduced by my colleagues that attempt to address the same issue. Over the last six years, the social, technological, and legal landscape on this issue has changed dramatically to ensure that victims of this act have support and methods for legal recourse. Today, 41 states have criminalized revenge porn, including our neighboring states of Iowa, Kansas, Colorado, South Dakota, and Missouri. It's time to catch up with the rest of the nation and bring our legal code closer to a modern standard that recognizes the unique impacts of a technologically interconnected society. I also wanted to address the penalties in this bill. I am totally open to working with the committee to make those penalties fair, to make sure that there's something that we can all agree on. What-- what I believe is that there needs to be a penalty for this kind of thing, that this needs to be a criminal act, that it should not just be something you can take civil action on, and that there need to be criminal penalties for it. I would be open to-- to discussing having these people be put on the registry, things like that. The important thing is that we get some statute in our books in Nebraska condemning revenge porn and saying that it's not OK to disseminate that in our state. And with that, I'll take any questions.

LATHROP [01:49:39] I don't see any questions.

HUNT [01:49:41] Thank you.

LATHROP [01:49:43] We'll take testimony.

HUNT [01:49:48] Have a question here.

LATHROP [01:49:47] If you are a proponent, you can come forward.

PANSING BROOKS [01:49:48] Senator Chambers has a--

LATHROP [01:49:48] Oh, I'm sorry, Senator Chambers. I didn't see that.

CHAMBERS [01:49:49] It's all right. Would you turn to page 2 of the amendment. In line 9, it says, "Subsection (2) of this section does not apply to: The activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses." It doesn't say the offenses have to be connected, that these depictions have to be connected to what is being investigated. And once again, it's one thing to understand what is being aimed at. But if the language doesn't hit the target, then I have to call attention to it, and all this says is criminal offenses. That means any criminal offense, even if it does-- even if this transmission has nothing to do with establishing the offense or even the offense itself. So can you tell me who drafted this amendment?

HUNT [01:50:54] Thank you for bringing that to my attention. You're right.. That's not the intention of the bill, and so we have to bring attention to those things to fix them. This language came from model language from a federal bill that's currently in committee in--

CHAMBERS [01:51:09] A model bill?

HUNT [01:51:09] Yeah, it-- it's not a model bill. It's from a federal bill brought by Senator Kamala Harris.

CHAMBERS [01:51:15] [INAUDIBLE] somewhere else-- the language was lifted from somewhere else and presented here in this amendment?

HUNT [01:51:21] I think that we may actually have written this.

CHAMBERS [01:51:25] And I'll-- I'll talk to you about some of the flaws in it because I am concerned about the creation of new crimes and new offenses. I'm going to give you an example, and this is not off the subject, as far as I'm concerned. People are very upset with what R. Kelly has done with those young women, very upset. But when I mention that this is the very kind of conduct engaged in by George Washington, Thomas Jefferson, Patrick Henry, Alexander Hamilton, all of the so-called "Fathers" of this country, people want to act like that doesn't make sense. Well, if it's all right for George, Pat, Alexander, then it's got to be all right for R. Kelly. And if it's not all right for R. Kelly, it's not all right for those so-called "Fathers" and it shouldn't be swept under the rug. And I get tired of being in the Legislature and seeing things come before us in statute to honor these rapists, these sex traffickers, these abusers of young girls, the selling of their own children that result from these illicit relationships. So my view of all this is different. I know that it's different strokes for different folks, and people are just going to have to be offended at what I say because I'm offended at the attitude of this Legislature and the legislators when they want to act like because George Washington and these white men were considered great, then they shouldn't be condemned. Thomas Jefferson took young black girls to other places in the world when he was traveling because his needs had to be met. So it's got to be freedom for everybody, freedom for nobody, justice for everybody, or justice for nobody. And this is why when you have homogeneity,

everybody is the same, and they look at everything that pertains to them and they all say the same thing about it and it's all right, but somebody who is on the outside and looks at it and knows that those of his or her kind have been subjected to it, but it wasn't considered bad because it happened to us. So whenever these bills come and that opportunity presents itself, I'm going to bring it out. And when I see flaws in the drafting, I tried to show that in that Education bill that will pass. There are things put into the statute which I think should not be there. And by this being a model bill, or coming from a model bill, I don't accept it just because it's aiming at a problem. Not everything offered as a solution meets the standard of what a criminal law ought to be. And that is all I'll have to say since I know that it's a model statute. I thought maybe somebody from Nebraska had contrived this. But since I called attention to it, I have to indicate the direction that I was going to head if it was somebody from Nebraska. That's all that I have.

HUNT [01:55:11] Thank you, Senator Chambers. I don't disagree with the points you made at all, and I agree that we need to go through this with a fine-tooth comb and make it in as good of shape as possible, so thank you.

LATHROP [01:55:23] I see no other questions. Thanks, Senator Hunt.

HUNT [01:55:26] Thanks.

LATHROP [01:55:27] We will take proponent testimony at this time. Good afternoon.

DIANE PARRIS [01:55:45] Good afternoon. Chairman Lathrop and members of the Judiciary Committee--

LATHROP [01:55:51] You move that mike a little closer--

DIANE PARRIS [01:55:52] Yep.

LATHROP [01:55:52] --and maybe speak a little louder for me?

DIANE PARRIS [01:55:53] OK. Is that better?

LATHROP [01:55:54] Better.

DIANE PARRIS [01:55:55] OK. My name is Diane Parris, D-i-a-n-e P-a-r-r-i-s. I'm a resident of District 14 and I have personal knowledge of this situation. My husband ran for the Nebraska Legislature in 2018. Three weeks later-- or three weeks before the election, he received a demand via e-mail that he drop out of the race. The letter referenced the fact that we had married each other twice and said, you remarried to her is not really the good life Nebraska needs. We had a family meeting. He decided to stay in. Two days later

someone e-mailed him a sexually explicit photo of me taken 24 years earlier. I knew who had taken it. The day after the night that this came in, my husband went to the La Vista Police Department and he took the e-mails, he took the photo, and he was told that there was nothing they could do, that that's just how politics is these days. I felt outraged. I felt helpless. I left an abusive relationship in 1994. I thought I was gone. The FBI didn't see it the same way. My husband has a top-secret sensitive compartmentalized clearance. He had to report any blackmail attempts. That afternoon, the FBI and a La Vista police officer went to see my ex. He admitted to doing this. He said he did it alone, he did it to get my husband to drop out of the race, and he would cease and desist. I don't know if he did much research, but I feel firmly that he did not-- he would not have put that picture on-line if it was against the law. I believe that would have stopped him and if it hadn't, we would have gotten a different reaction from the police than that's just how politics are. My ex has not yet been indicted. I have been afraid for almost five months. Now I have new fears. I'm afraid that my ex saw me on the news today or read the Omaha World-Herald article I'm in. He could be watching me now. The last e-mail my ex sent was one line: Are we not entertained? The answer is no. There is nothing entertaining about this, not unless you're taunting your ex with a decades-old pornographic image and you know there is nothing she can do to stop you. Please change that. Please put this bill forward. Please don't put anyone else in that helpless situation that I've been in. Thank you for your consideration of this vital legislation. I urge you to move the bill forward, support victims of nonconsensual pornography, and provide us with a method of legal recourse. Thank you.

LATHROP [01:59:04] Thank you for your testimony.

DIANE PARRIS [01:59:07] Is that all?

LATHROP [01:59:09] That's all. Thanks. Anyone else here to testify in support of LB164? Anyone here in opposition?

SPIKE EICKHOLT [01:59:32] Members of the committee, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association, opposed to LB164. I did visit with Senator Hunt earlier to explain some of the reasons for our opposition. If the Legislature is going to act on this issue, we would propose that the committee look at existing laws or perhaps modifying those. Extortion is already a crime. It's criminalized at 28-513, theft by extortion. There's also a crime regarding the unlawful intrusion or distribution of intimate images, and that's at 28-311.08.

LATHROP [02:00:16] Say that again?

SPIKE EICKHOLT [02:00:17] 28-311.08. And there's some other statutes that are also effective and I can provide those to the committee. If you look at page 2 of the

amendment to LB164, lines 29-30, it explicit-- the bill proposes to state that this is going to be, this new crime is going to be a separate offense and shall not merge with any other offense. That's really at the heart, if you will, of our opposition. When the Legislature makes new crimes and provides that a separate new crime can be added, then you just have the stacking of new charges, and that is something that in practice is just fundamentally unfair. The Legislature really cannot limit what prosecutors do with crimes and the more you make, the more they charge; the more they charge, the more that results in imbalance in the system. We do have some concerns with some of the terminology, and I think Senator Chambers mentioned that earlier. On page 2, with respect to the exceptions or the immunity parts where people won't be prosecuted, some of those terms, and I'll just briefly highlight those, are arguably somewhat ambivalent. And I think that Senator Hunt said that she got those from some other state or some other federal law, but the term "legitimate" on page 12, page-- or, excuse me, line 12, line 17 on page 2, "commercial purposes." And then on page 2, line 24, there is the exception for public interest or concern. That would presumably exempt the situation that the proponent just testified to because a public concern is an election, is a political-type thing. And I don't think that's Senator Howard intent. One other thing that I'll mention on this bill, and I'd mention on the other bills, is that this-- a violation of this new law would require registration under the Sex Offender Registration Act. And I suppose that at first glance, that might make some sense but-- because this deals sort with sex-type stuff or sex crimes. But a lot of these crimes and offenses are motivated by simple scam artists or by a vengeful ex, and it maybe doesn't make sense to have those type of people who are found guilty have to register. The purpose of the sex offender registry is to sort of give the public notice of who might be a risk to them and somebody who's just retaliating against an ex or someone who's just trying to extort money for whatever purpose really isn't very descriptive to the community to have them on the Sex Offender Registration Act. So that's one point I'd also make.

LATHROP [02:02:51] Where's the section in the bill that you said this isn't combined with another or a--

SPIKE EICKHOLT [02:02:59] It's on page 2 of the amendment. I got--

LATHROP [02:03:01] Whoa, whoa, whoa.

SPIKE EICKHOLT [02:03:01] Senator Hunt gave me a copy of the committee amendment. It's in the original bill, too, and I can't remember where, and I left it up there on the desk. But if you look at page 2, lines 29-30.

LATHROP [02:03:15] And you also said you think this is covered in 28-311.08?

SPIKE EICKHOLT [02:03:22] Right.

LATHROP [02:03:23] OK. What's that do?

SPIKE EICKHOLT [02:03:25] That's the--

LATHROP [02:03:27] I feel like we dealt with this in the past.

SPIKE EICKHOLT [02:03:29] We did. That was when Senator Amanda McGill did that bill regarding "up-skirting" and surreptitiously recording and distributing videos without sort of the person's depicted consent. Now maybe it doesn't capture what would-- people would consider as revenge porn. I mean arguably it could. And in some respects, we use the term "revenge porn," but we're really talking about a couple of things. We're talking about retaliation, the use of intimate images in sort of an embarrassing way. And the other instance we have is somebody just sort of getting caught up in a scam, right? They're sort of compelled to do something on-line, it's captured on video, and then it's just the age-old scam artist trick: You pay me or I'm going to distribute this to somebody. So I think that if-- because there's different instances of how this-- this thing could be prosecuted, this thing called revenge porn, we would submit the Legislature look at a couple of other existing laws that are already criminalizing this conduct. Otherwise, you've got this new law and you've got other crimes out there and you've just got this splintering, further splintering the criminal code, and that's just something that we've at least tried to be consistent in testifying against.

LATHROP [02:04:44] OK. Senator Chambers.

CHAMBERS [02:04:47] Mr. Eickholt, again, I'm going to use you as a sounding board. You're a lawyer. I watch what happens to black people right now. That young black man who claimed, and they say falsely and they're trying to establish it, that he had been attacked by the two African men and called names and a noose was fashioned and put around his neck, well, all of that's being processed now, but here's what I'm disgusted about. I have seen where white people have been charged with perjury, but they don't take each statement that was made and make it a separate offense of felony grade. I've seen where people were charged with lying to the FBI. And they may have taken various statements to establish that lies were told to the FBI, but each lying statement, each misleading statement was not a separate offense so that you come up with 16 felonies out of one situation. That's happening right now. And I have to say white people because they are the ones doing it and they don't do it to white people I can't even call the name of this woman now, but she's got her cooking show back on television, and she was-- I think she was involved in some kind of investment or stock fraud. Well, they didn't make each transaction or each statement she made a separate felony. And when I watch that and then I see how calmly new crimes are committed which are not going to be applied to white people like they are applied to us right now, I have to try to head it off at the pass, so to speak. And when there are already statutes existing that cover that particular conduct, skeptic that I am, even though the one who brings the bill may not be aware of

it, there are people who have plans to use it against certain unpopular people or unpopular groups in a way that it will not be across the board. And this one final statement: When the case of Furman against Georgia was decided by the U.S. Supreme Court, each judge wrote a separate Opinion and they struck down all existing death penalty laws. And in one way or another, the ones who voted to strike down those laws pointed out that these laws and this penalty is applied to racial minorities, to the poor, to the friendless, to the unpopular in a way that would not be tolerated if it were applied the same way to everybody across the board. And that's why there is a division of the law that applies to black and poor people and it does not apply to white people, when you have a situation in Douglas County where over 80 percent of the young people in detention are black, when we don't make up anywhere near 80 percent of the population, and white youngsters who have committed worse offenses than those for which these black kids are locked up will be turned over to their parents. I gave one example where this white kid not only had attacked his parents, but he shot a deputy and he may have hit two of them. He was given probation and he was not locked up. A black child may have smarted off to a teacher or done some other thing that didn't involve hurting anybody and he or she is now locked up. So I'm going to bring these matters up, make them a matter of record. And then when they are played out, I will clip the articles and bring them to the Legislature, as I do on occasion, and say this is what I was talking about. And they'll just say, oh, yeah, this-- that's too bad, but then nothing will be done to correct it. So people are going to have to get used to hearing me say what I've got to say, just as I would expect anybody who belongs to a group which is treated unfairly and laws are proposed which will further aggravate that situation, I would expect them to speak up. But because they may not, for whatever reason, I will. It's my responsibility. And we don't need a proliferation of more and more criminal statutes. What happens a lot of times is a course of conduct becomes popular when it's shown on television, on the Internet. And then some legislature will enact a law, then that goes all the way across the country, the monkey-see-monkey-do syndrome. And I'm going to do what I can to at least slow it down if I cannot stop it. By the same token, when I see people who are oppressed by the criminal law, I'll speak up for them when nobody else will, just to make it a matter of record and maybe appeal to some people who are not members of the Legislature to talk to their senators, to get these church groups that profess to be so interested in the uplift of society to say something and do something that maybe the senators will respond to. And once again, I'm using you as a sounding board. And if your sensibilities are so tender after being a lawyer for as long as you have, then you ought to thank me for toughening you up a little bit. That's all that I have. Thank you.

LATHROP [02:11:26] Senator Pansing Brooks.

PANSING BROOKS [02:11:27] Thank you, Mr. Eickholt. So I-- I understand what Senator Chambers was talking about, the stacking of-- of crimes, and that is a hideous thing that is happening more and more and is-- is leading to the overcrowding in our prison system. It's leading to the overrepresentation of people of color, people with special

needs, mentally challenged people, people with mental health disorders in our prisons. But when new areas come up, I mean, in the past ten years, the Internet has-- has grown to such a standard that people can really be injured by just the press of a button. You know, when we were all growing up, certainly I, you know, you could maybe have a telephone call and talk to some people and try and get them to call some other people. Now you just go on a Facebook chat room and 500 people can see whatever this picture is that this woman is talking about. That-- that's a new realm. It's a new standard. I don't know. I mean, I agree we don't want to continue stacking and adding and doing all of this. But what do we do about these new areas that are so damaging just to the normal civilian person? How do we deal with the fact that people can be-- their reputations, their livelihoods, everything can be so irreparably harmed with the click of a button. And this is something that is beyond any of us. So do you believe that every law we have can take care of this right now? Extortion, the blackmail, that's enough? That's-- that's plenty that our defamation laws are sufficient to handle? I guess you're going to say yes because that's what you're here to say, but I question whether or not--

SPIKE EICKHOLT [02:13:24] Well, not necessarily.

PANSING BROOKS [02:13:26] --we are sufficiently prepared for this world that's in the cloud.

SPIKE EICKHOLT [02:13:31] You asked, what do you do? One thing you do is look what you have now. One thing you could also do is, why wasn't this person prosecuted in the Parris case? Apparently he admitted to trying to extort something. Now maybe the prosecutor has got an explanation for why that charge has not been filed yet. But even if for whatever reason, if the-- if that prosecutor is not going to charge that crime, new crimes are being passed aren't going to compel prosecutors to charge that crime. I'm not certain that our existing law would capture every instance of sort of the digital criminal activity. I think arguably it would. I would acknowledge that the theft by extortion, that depending-- how that's penalized depends on value, and you might have difficulty showing what value is. You know, if you're stealing money from somebody, that value is clear; or if you are going to get someone fired, the loss of that income, that's value. But the personal harm, that might be something the Legislature could do. But just pages and pages of new felony crimes that are registerable as pursuant to the Sex Offender Registration Act is something that we just oppose.

PANSING BROOKS [02:14:45] I know you do. Thank you.

LATHROP [02:14:48] Senator Chambers.

CHAMBERS [02:14:50] There is a legal maxim: Let the buyer beware. There are certain things that have to be done by people to protect themselves, and they know and they tell these children don't put stuff out there because it never goes away. And if people are

going to be careless and disregarding, then you make it a crime when their own conduct put them in that situation, they need to start applying some of these principles that you find in other areas of the law. If I get in the ring with Muhammad Ali, I get in the ring because I chose to. But even though I've been a fighter and he has been a fighter, the referee still gives that-- that admonition before every fight starts, before the first blow is struck: Go to your corners and protect yourself at all times, at all times. If you're not going to protect yourself, don't ask the Legislature to create new crimes to punish conduct you engage in which goes where you didn't want it to go. Now if somebody stripped you and took photographs of you, or depictions, that's not what we're talking about. We're talking about people who are unlucky in love, who made bad decisions about the people they would trust, who were simpleminded enough to engage in activities which could come back and bite them. Well, in those instances, the crime carries its own punishment. In this case, the bad judgment carries its own punishment. This might sound harsh, but we're talking here about laws. We're not in a debate to see who's going to present the most evidence and win the debate. We're talking about putting words in the law which if violated can cause people to go to prison, can cause them to pay fines and, worst of all, can be discriminatorily applied. Somebody I would like anywhere in this country to show me where any white person convicted of perjury was charged with a separate felony for every statement that could go to create the offense for which they were convicted. Oh, the Lord is looking out for me. I heard it whispered in my ear: Martha Stewart, Martha Stewart, Martha Stewart. I couldn't think of her name, so I know that I'm being spoken to by the right forces. And every time we have these kind of bills, I'm not saying that maybe there is not a circumstance where something should be done, but to have a broadside like this where some of the things that will not be considered a violation of the law, based on an interpretation in another part of the law, it is a violation of the law, the exact, almost same conduct. And that's why I wanted to know who drafted this. I thought I might hear that the Attorney General did, and I'd have had some specific things to say about whoever did the drafting in that case. But sometimes these bills that are templates or paradigms or models, or whatever it's to be called, are offered with the proviso that if it's to be used, it should be modified, it should be tailored to fit the state where it's being used. For example, it would be foolish for us to put a law on the books that say if a person who constructs houses builds a seaside house on the prairie and an ocean wave washes it away, then the one who constructed it is liable. That might apply where you have ocean-side communities but not here. So you have to pick and choose what might apply to your circumstances, and that's why I'm saying what I'm saying. It's been hard for me not to talk on some of these other bills, but we'll have a chance to do some of it in the Exec Session. But it was just heaping up so much that I didn't want people to misunderstand my silence to be consent, because that definitely is not the case. That's all that I have.

LATHROP [02:20:06] So I read the statute that you made reference to. It was a McGill bill back in my previous service; 28-311.08 dealt with taking a picture of somebody when--

when you're violating their privacy doing it. It's someone taking a picture of somebody else and then disseminating it, a practice called "up-skirting."

SPIKE EICKHOLT [02:20:33] Right.

LATHROP [02:20:34] Among other things, it would be the same as if somebody looked in your bathroom window and took a video of you taking a shower. That-- that's the-- that's the subject matter of that particular-- of that particular statutory scheme which is different than-- than at least the intent of the Hunt bill, in my estimation. And to me, I'm a little surprised that this stuff happens. I don't-- I'm 62 years old pretty soon and I don't understand why teenagers, and I'm talking seventh and eighth graders, are sending pictures of their body parts to their friends or a girlfriend or a girl is sending them to her boyfriend. But that's really what this is about. These start out as an exchange of pictures by kids, and this committee knows well that their minds aren't fully developed. They-- it is ridiculous that it's happening, but it does and it's not just occasionally. It is a phenomenon, am I right?

SPIKE EICKHOLT [02:21:41] I think you're probably right.

LATHROP [02:21:43] And what this bill aims to do is-- is essentially to say it's one thing to send the picture to the boyfriend, but it's a problem when the boyfriend sends the picture to somebody else, and that isn't covered by statute, am I true? Am I right about that?

SPIKE EICKHOLT [02:21:58] I think arguably it could be, just because the-- the intrusion, the act of what's now clearly called "up-skirting," or outside the house, that's something that you're not consenting, that the victim is not consenting to. And I think you could make a pretty good argument that the later distribution, because it does include dissemination, is not something that the person sending the picture to the boyfriend is agreeing to. Now maybe that's-- and I acknowledge that perhaps, and I said in my testimony, that that is something that the Legislature could look at modifying to accommodate that new sort of way of doing it. You know, and it's-- it's tough to criminalize all of these things. It's tough to-- maybe it's not time to criminalize. But as Senator Chambers pointed out, if you make these new crimes, I mean, those things are registerable, they're felonies. If kids--

LATHROP [02:22:46] I don't know-- I don't know that I'm on board with the registerable part--

SPIKE EICKHOLT [02:22:50] Right.

LATHROP [02:22:50] --because I think that ought to be reserved for people who are at risk for assaulting somebody else in the future. And I-- it's a challenge if we go into this

area when we legislate. If a 15-year-old girl-- I'll make it lower than that. A 14-, 13-year-old girl sends a picture of body parts to a boy of similar age. I'm going to tell you, it happened in Ralston, right, where a kid killed himself after this happened? A girl put the picture out and he took his own life. And I get that these are-- these are young kids that are doing this primarily. I don't know how many full-grown adults. The Parris story probably is more the exception than the rule. That probably is covered in extortion that we'll talk about here in the next two bills. But I don't know that this is something that we should just say she never should have sent the picture in the first place and then let the--

SPIKE EICKHOLT [02:23:51] Right.

LATHROP [02:23:51] --let the kid that gets it do what he wants with it.

SPIKE EICKHOLT [02:23:53] I mean, you're probably right. In some respects, the machinery of the Internet and social media is just too much for the kids. It just overwhelms them. They don't quite realize that. And I know the bill doesn't speak to that actually because it specifically exempts the social media, the Internet companies. All those are not even-- it's the-- it's someone else who's held criminally liable, to that scenario.

LATHROP [02:24:17] Well, we have young kids that are doing something stupid when they send it--

SPIKE EICKHOLT [02:24:21] Right.

LATHROP [02:24:21] --and young kids that are doing something stupid when they send it out and/or pass it along. And I don't know what the solution is. I don't know that we need to put them in prison.

SPIKE EICKHOLT [02:24:34] Right.

LATHROP [02:24:34] But it can be-- in the case of one particular family I know, their son literally took his own life, so it is a-- I think a serious matter. I don't know if it should be a registerable offense, but--

SPIKE EICKHOLT [02:24:50] Yeah. I mean, we're not-- as an association, we're not saying it's not a serious matter, but layering of new crimes on top of that, it just sort of confounds that.

LATHROP [02:25:01] OK. I don't see any other questions. Thanks. Anyone else here to speak in opposition to LB164? Anyone else here-- or wants to speak in a neutral capacity? Good afternoon.

JOHN IDOUX [02:25:30] Good afternoon. Thank you, Senator and Chairman. Thank you, members of the committee. My name is John Idoux, J-o-h-n I-d-o-u-x. I'm with CenturyLink. I am their director of governmental affairs for here in Nebraska. As many of you know, CenturyLink is a telecommunications company that provides services throughout the state in large communities and small, from Omaha to Scottsbluff, from Valentine to McCook. We've been in the state for over 111 years and today I'm here to testify as a neutral supporter and to offer an amendment with LB164. The amendment that CenturyLink proposes is something that the sponsor brought to your attention, something that we've been working with. LB164 proposes to address some very serious, some legitimate privacy concerns. CenturyLink does not take a position regarding the underlying bill, but I am here today to express our concerns that the liability protection provisions for Internet companies such as CenturyLink is not adequately addressed with the initial bill. However, the amendment that was offered does address our concerns. Specifically, the initial bill provides companies like CenturyLink and other Internet service providers with the rebuttable presumption that we did not know the content of such electronic transmissions. Since the perpetrators of these serious events uses the Internet, that's where our companies and similar companies come into play. They're using our services and could potentially be subject to either civil or criminal liabilities. And that's kind of what we want to address up-front and propose some very direct language that we are not held liable in those situations. We have proposed some language. It was adopted in the amendment that was put before you. And it's model language that comes from multiple of coalitions, specifically the State Privacy and Security Coalition, which is a coalition of major media communications and Internet technology companies, retail and payment, that partner together. And as these type of legislations come up across the country, we try to work with the sponsors in advance of the legislation being proposed. So we strongly urge your support of the amendment. Like I said, I'm here not to address the serious and legitimate concerns that this bill addresses, but to specifically talk about the Internet liability for companies like CenturyLink and other Internet providers. And with that, sir, I will stand for questions.

LATHROP [02:28:43] Senator Chambers.

CHAMBERS [02:28:43] I'm not disputing what you say, but there are things that have been put on the Internet encouraging parents to not allow their children to be vaccinated. And some of these Internet companies are saying, at least one of them I saw on the news, is going to no longer allow that to appear. So it was not criminalized, but there was enough political pressure and public pressure to affect the provider who was putting it out there. So not everything that is a problem in society should be criminalized. And that's when we have the proliferation of all these criminal laws. And there used to be a comic strip called "There Ought to be a Law!" against, then each person could tell whatever it was that bothered them the most and that would be turned into a crime. Here's what I'm working up to. A lot of times technology and other advancements go beyond the capability of human beings to appropriately make use of those advances.

More harm than good is done, not because of the advancement itself, but it lends itself so easily and readily to abuse. And maybe people ought to start paying attention to fiction. There was a book written by a young-- well, all teenagers are young, but Mary Shelley, called Frankenstein. And to me, I read the whole book, nothing like Boris Karloff in the movie depictions of this individual. And Frankenstein was the name of the doctor. The name of the creature, as he turned out to be, was Adam because he was the first one brought to life by this process. But the line that stands out to me, and the book was to address the runaway nature of science as it was developing, Frankenstein, the doctor, was told by the monster, "You are my creator, but I am your master," and he became Frankenstein's master by the way he hounded, harassed him, and even murdered his wife. Science, the Internet, these things are created by people, but there is no mechanism of control installed at the same time. The moral fabric, the intellectual development, the sense of moral, social responsibility do not exist to the extent where these things will be governed, regulated, and guided. Money becomes the primary driving force, and anything that brings money in America is considered, ipso facto, to be good. The only reason you all's President grounded those 737 MAX 8 and 9 was because other nations around the world grounded them. Trump had to admit that he was following Canada's lead. America is supposed to be the leader. But these planes are manufactured by Boeing, an American company. So rather than run the risk of hurting the financial status of this huge American corporation which has sold these planes all over the world, it's the most used plane in aviation, America, the FAA said that they had done all of their investigations, they saw nothing that suggested to them these planes should be grounded. Other nations took leadership. They grounded these planes. Then the President issued an order countermanding what the FAA said and grounded all of them. It's not because of moral principles. It's because America is falling behind the rest of the world, and it was clear that Boeing's economic interest transcended the concern for the safety of people would be in those airplanes. Maybe what you all are trying to do with this amendment can help give some fullness to the discussion. Because of the good that can come from the-- I'll call it the communications industry, to include the Internet, telephones, wire, everything. It cannot be allowed to reach the point where the bad outweighs that which is of value. You've reached a point of diminishing returns and what was good is now toxic. One spoonful of this medicine is a cure. Two spoons will be poison. So what I'm suggesting is that there has-- there has to be more thought given to creating new crimes. If there is a legitimate basis for a particular identifiable type of conduct to be criminalized because of the harm it does and criminalization is the only way to handle it, that's one thing. But to take a broad brush and sweep it across the waterfront is what I'm opposed to. I see that happening not just with the criminal law. I see it in a bill that's before us, but I was beaten back on that so I had to become a guilty participant in trying to minimize the damage that I thought it would do. And my colleagues are going to hear me talk on the floor and at these hearings, and every opportunity I get to make the Legislature my bully pulpit, I'm going to take that opportunity. And once again, I waited until a lawyer was in that chair and I'm addressing my comments to you because you are a provider. You have offered an amendment. And I

don't know if the amendment constitutes an exoneration, no matter what the provider does, and I don't know what this federal regulation is. But the direction that your amendment is taking is not what I'm objecting to. Having just now seen it, I cannot say that it's adequate, but it is better than what was in that statute. So I used you as a sounding board and I'll tell you why. You make a lot of money. And the lady that works with me has CenturyLink as a provider and their lines keep going out and she loses telephone service. She has called them repeatedly, time and time again. They're always apologetic. The service comes on. It's not in her house. They don't have to come in her house at all. It's something wrong with CenturyLink's lines. So she might have to make two or three calls a day. I don't know about the Internet and how it works but it's connected to her phone service, so all of that goes out, too, but they don't give her a reduction in how much she pays per month. And I don't know how many people this might be happening to, but maybe you could look into that and if you have a card, I'll get it from you. You can slide it. My room number is 1302. Slip it under my door and then I'll call and talk to you and maybe we can do something that will help a lot of people to be similarly situated, because I'm not so suspicious that I think they said, uh-huh, we're going to fix her. I don't think that's what it is. I hope that's not what it is. But if I find out that's what it is, look out. But that's all that I have, Mr. Chairman. Thank you for your indulgence.

LATHROP [02:37:49] Certainly, certainly. I see no other questions for you. Thank you for your--

JOHN IDOUX [02:37:55] All right. Thank you.

LATHROP [02:37:56] --testimony today. Anyone else here to testify in a neutral capacity on LB164? Seeing none, Senator Hunt, before you close, I do have a handful of letters in support: Kamrin Baker, Matthew Kuhse from the Omaha City Prosecutor's Office; Marcia Blum, National Association of Social Workers; Kenna Barnes; Kelly Amber [SIC] and Mayor Jean Stothert from the city of Omaha

HUNT [02:38:28] Thanks. There's a surprise for me.

LATHROP [02:38:32] All right.

HUNT [02:38:35] OK. Thank you, Chairman Lathrop. I have a-- there's a lot to say after all that, but we know that the ubiquity of technology has fundamentally changed the nature of so many of our relationships, so much of our work, so much of our expectations of how we move around in the world. And the Internet is involved in all of that, and with these changes come new challenges, new gaps in legislation, and new opportunities for legislative bodies to-- to help people who are-- who are in need, who are-- who are faced with-- with hardship because of that. We have a problem here. When there are over 10,000 Web sites dedicated to this violation of privacy, we have a problem. When one in

eight adult social media users have been victimized or threatened with unauthorized distribution of their private sexual images, we have a problem, and that data is according to the Cyber Civil Rights Initiative, who have done nationwide research about this. LB164 seeks to address this issue by providing victims with avenues for legal recourse, holding malicious actors accountable, and deterring others from engaging in this harmful practice, to send a message to the broader society that sexual exploitation is not an acceptable thing to do. This legislation is not a silver bullet, but it's a step toward bringing justice to women and victims of nonconsensual pornography across our state. I think that reliance on existing law is insufficient because of the pervasiveness of technology in the United States, this just changing the application of the law. And it's also not bad advice that people should be really careful who they send naked photos to, that they shouldn't be posting them on the Internet, that you don't know where these things are going to go. That's very good advice. But it's also important to note that that's not the only people who this affects. This bill is not about helping children. We already have laws that address child pornography. This law is also not just about addressing people who are in relationships. Think about sex traffickers. We know that one common thing sex traffickers do is take photos of their victims and then if they leave, if they misbehave, if they do anything, they threaten to leak these photos on-line, and then this is something that they can hold over these victims for the rest of their lives. Or think about-- this happened to me, actually, and it just kind of came back to me. Oh, in 2010 or '11, I was in a-- in a gym, and a-- a commercial gym, and a guy who worked at the gym kept following me into the women's locker room. And this was a separate thing that I handled. It was a whole thing that we had to deal with. But what about people taking photos of women in locker rooms or women at the gym or-- it doesn't just have to happen to somebody who's in a relationship, so it's important to point out that that's not-- that's a very common experience people have, but it's not just the intent of this bill. It's broader than that. We also know, as Senator Pansing Brooks said, that so much damage can happen on the Internet with the push of a button. That's been a topic in the news heavily in the past week, of course, just the things that you put on the Internet, you don't know how that's going to come back to hurt you. But there's a lot of things that are put on the Internet that nobody consented to, that nobody even knew their photo was being taken, things like that. I want to tell the committee, and people listening, too, that I don't really have an ego about this bill. It's not about this bill. I know that we're hearing a lot of different types of legislation that affect this broader problem and to us, as a body, that should tell us that this is a real problem, that this is really affecting people. And I think that all of Mr. Eickholt's suggestions were very valid and worth consideration. I'm not going to insist that we shove this bill through in the form that it's in right now because I'm not coming in here with a legal mind or a mind with legal experience or criminal experience. I'm coming in here as someone with experience in being a young woman in 2019. I'm here as someone with experience in facing these kinds of problems, in seeing women I know be affected by this thing. And I think that as-- as someone elected to the Legislature, it's important to bring that experience here and say that we have a problem, and we also have the privilege of fixing it. And with that, I'll take any questions.

LATHROP [02:43:04] Senator DeBoer.

DeBOER [02:43:08] Senator Hunt, thank you so much for being here today and bringing this bill for our discussion. You, I think, are familiar with the fact that I have a bill that would create a civil cause of action for I think the same activity.

HUNT [02:43:24] I think I'm a cosponsor of that bill, or if I'm not, I would be. I think it's a great bill.

DeBOER [02:43:28] Oh, OK. I'll look. So what I wanted to sort of give you the chance to address is the question of whether or not the activity that we're trying to prevent here can be adequately addressed through civil litigation and through a cause of action for civil litigation or--

HUNT [02:43:50] Well, any way that we can address it would be an improvement from what we're doing now. The reason that I favor criminal penalties for this type of thing, other than just civil penalties, is because, a couple of reasons, not everybody who commits this act of disseminating revenge porn has money, so victims are not going to be able to really get recourse all the time. Also, think about the victims. To get civil recourse, you have to sue somebody, you have to go to court, you have to retain a lawyer, you have to navigate that whole process. I can tell you personally, and I can imagine, for example, some of my employees who are young women who have faced this, I don't want to hire a lawyer, I don't have any money, I'm not going to go to court and take time off work and find childcare. Essentially, bringing a civil penalty for something like this, it's only banning revenge porn for the rich, it's only banning this activity for the wealthy, the people who have the time and knowledge and background and money to navigate the-- the civil court process. That's not me. That's not something that I'd ever do. I would just see naked photo of me on-line, maybe it's Photoshopped, whatever, and go, oh, no, unlucky me, that really sucks. Like, that's the reality for women today and we need to have a bill with teeth because I want to call a cop when this happens. I don't want to call a lawyer because I can't afford it.

LATHROP [02:45:19] OK. I don't see any other questions.

CHAMBERS [02:45:23] Mr. President.

LATHROP [02:45:23] Oh, I'm sorry.

CHAMBERS [02:45:24] I meant Mr. Chair. Senator Hunt, do you have a copy of the amendment you gave us?

HUNT [02:45:29] Yes, Senator.

CHAMBERS [02:45:30] OK. Would you turn to page 1? And this is something that I think should be in all criminal statutes, in line 13, "A person violates this section if he or she knowingly uses the mail." Now you can knowingly put a package in the mail but you don't know what's in it, so it should say knowingly and intentionally if you're going to make it a crime. Then not only are you putting this item in the mail, but you know what it is and you intend to mail this particular item for the purpose that was stated. That doesn't mean that I like the bill. But as I look at it, I'd probably find other things which, just in terms of the way a criminal statute ought to be drafted, should at least be done. Then the philosophy behind it could be discussed. And I'm going to let you all discuss that because I don't think I can do it in a way that would be considered rational. But maybe a civil approach would have less of a problem because, first of all, the standard of proof is different, there is no criminal sanction such as being locked up or whatever. And I'm not sure that I would support Senator DeBoer-- Senator DeBoer's bill because I haven't seen it, but I think it would give me less of a problem than making a criminal statute of it. So I don't want you to think I'm chastising you for bringing a bill whose aim is worthwhile and of value. But the approach being taken by the amendment is just one that I have to go on record in opposition to. That's all that I have.

HUNT [02:47:18] I appreciate that. Thank you.

LATHROP [02:47:21] OK. I think that's it. That'll close our hearing on LB164 and bring us to Senator Geist and LB475. And we're going to ask those that are here today-- we have two bills that deal with similar subject matters and their treatment may be a little bit different. So I'm going to ask, folks that are here, how many people are here to testify on Senator Geist's bill in favor? Is that one? Two? Are you also in favor of the Morfeld bill?

_____ **[02:48:01] Yes, sir.**

LATHROP [02:48:01] Corey, are you also in favor of Morfeld's bill?

COREY O'BRIEN [02:48:03] I'm not testifying on it, but I'm not opposed to it either.

LATHROP [02:48:05] OK. Anybody here opposed to one of the bills but not the other? OK. I think what we'll do, if it's OK with you, Senator, is we'll have Morfeld introduce his bill after yours. We'll conduct the hearings at the same time--

GEIST [02:48:21] Sure.

LATHROP [02:48:22] --since they deal more or less with the--

GEIST [02:48:24] OK.

LATHROP [02:48:24] --same issue and maybe a little bit different approach but--

GEIST [02:48:26] OK.

LATHROP [02:48:26] OK. Well, in that case, welcome to the Judiciary Committee.

GEIST [02:48:31] Thank you. Thank you, Chairman Lathrop, and good afternoon, members of the Judiciary Committee. I am Suzanne Geist. For the record, that is S-u-z-a-n-n-e G-e-i-s-t. I represent the 25th District in Lincoln. I am here to introduce LB475 which creates the offense for sexual extortion. As technology and the use of social media has advanced, individuals have easier access to potentially vulnerable victims and a greater opportunity to compel them into sharing their most intimate and personal moments. Many sordid stories of a powerful individual preying upon the vulnerabilities of a weaker individual have been highlighted lately in the media. Harvey Weinstein is in the celebrity world, comes immediately to mind, but there are others that are less colorful. But here are some examples: the landlord of a single mom who demands sexual favors for back rent, then continues to threaten that mom with the video of their encounters; or an adult who has a compromising-- who has compromising photos of a juvenile and threatens to publish those photos unless the teen performs additional sexual acts. I have a daughter and I have three granddaughters and I'm increasingly concerned about the use of technology in this way upon vulnerable people, both adults and children. I'll add, I also have two sons and grandsons and even though this is most often perceived as a crime against women, and it often is, men are not immune to sexual extortion. My bill, LB475, carefully defines sexual extortion. It also creates the following felonies for sexual extortion, and the felonies mostly reflect the current status-- or the current statutes for sexual trafficking and enticement. A Class IC felony is created if the victim was under 19 years of age and the perpetrator was 19 years of age or older at the time of the offense, a class II felony is created if the victim was 19 years of age or older at the time of offense, and a class IIA felony is created if both the victim and the perpetrator were under 19 years of age at the time of offense. It requires a defendant who is 19 years of age or older and the-- and if the victim is found to have been less than 18 years of age at such time, to register under the Sexual Offender Registration Act. Thank you for your time and I'd be happy to answer any questions.

LATHROP [02:51:24] Senator Chambers.

CHAMBERS [02:51:25] Senator Geist, I'm not going to ask you the kind of questions I was asking a-- the lawyers.

GEIST [02:51:32] OK. I appreciate that.

CHAMBERS [02:51:33] Would you turn to page 2 of your bill?

GEIST [02:51:34] I would.

CHAMBERS [02:51:37] Now on a legal point, since we're talking about a crime, I don't think "recklessly" should be there and I don't think "knowingly" should be separated from "intentionally" by a comma, but it should be "knowingly and," just to indicate that there are some issues I'd raise with the lawyer.

GEIST [02:51:54] May I address the "recklessly"?

CHAMBERS [02:51:57] Hmm?

GEIST [02:51:57] May I address the-- the use of the word "recklessly"?

CHAMBERS [02:52:01] Oh, if you want-- if you want to.

GEIST [02:52:02] I-- I would. It was put there purposefully because many times when a perpetrator is caught they'll say, well, I was just kidding, or, well, I didn't mean this to get out of hand. And they use that as a defense or it's been seen to be used as a defense. And so that was put there to cover people who say, well, I was just kidding around, so--

CHAMBERS [02:52:29] That-- that-- recklessly means without concern or without caring, not that you're going to offer an explanation or justification. That is something that can be overcome by looking at the surrounding circumstances. But I didn't raise that question.

GEIST [02:52:45] OK.

CHAMBERS [02:52:45] Here's what I want to ask you. In line 13 it says, "another person, whether recognizable or not." Under this, somebody could say that's me and it wasn't really that person. It could be-- everything could be in shadow, but the movements could suggest sexual or whatever kind of conduct this is aiming at. Why do you say "whether recognizable or not"? Let's say it's not-- this person is not-- not recognizable. How can that person self-identify then want to accuse somebody else of having done what he or she just did, which couldn't have been done without that person doing it?

GEIST [02:53:37] And, Senator, I would suppose-- I-- I-- I hesitate to suppose. May I refer your question to an attorney who will follow me? OK?

CHAMBERS [02:53:46] And don't think I'm, you know, saying you don't know. The lawyer is going to have to answer because we're--

GEIST [02:53:51] Sure.

CHAMBERS [02:53:51] --talking about a crime.

GEIST [02:53:51] Sure.

CHAMBERS [02:53:52] Now what is the meaning of deviant, because I found it twice on page 2, deviant sexual behavior, "sexually deviant." It's in line 15, line 24, and probably, if I'd examine this, I can find other-- I see another one on page 3. What is sexually deviant behavior?

GEIST [02:54:16] I would say it's anything other-- or it's a broader term to depict anything other than what was previously stated as sexual conduct, sexual contact, penetration, or-- it's just a broader term.

CHAMBERS [02:54:33] Well, what specifically, because if it's a crime it has to be specific, what do you mean by sexually deviant conduct?

GEIST [02:54:41] It's defined.

CHAMBERS [02:54:43] Give me an example.

LATHROP [02:54:44] It's defined.

GEIST [02:54:44] I believe I'm hearing it's defined.

CHAMBERS [02:54:50] Well, let me help you--

GEIST [02:54:50] OK.

CHAMBERS [02:54:51] --because, and I'm not saying this, but, see, there are things that people do now that certain religions would say are deviant. For example, anal sex is not considered deviant; oral sex is not considered deviant, so--

GEIST [02:55:06] Correct.

CHAMBERS [02:55:09] So give me an example.

GEIST [02:55:16] OK. It's on line 15 on page 3: Sexually deviant behavior means and includes, but is not limited to, any of the following from which sexual-- sexual gratification is derived: acts with nonhuman objects, dead human bodies, animals, excrement, blood, semen, or urine; any act which is designed to inflict humiliation or suffering; or any act of paraphilia, which I think would eliminate some of the things that you were suggesting.

CHAMBERS [02:55:55] All right. Sexual gratification derived with nonhuman objects--what about a dildo or a vibrator? They're nonhuman. Is that sexually deviant? It says objects.

GEIST [02:56:14] Correct. I suppose not in my-- I have-- I will-- guess I will refer that to my colleague behind me. I-- I think it's beyond the scope of what we would--

CHAMBERS [02:56:34] OK. I'll wait till somebody else comes.

GEIST [02:56:36] OK. OK.

CHAMBERS [02:56:37] This is my first looking at it so--

GEIST [02:56:40] OK.

CHAMBERS [02:56:41] --I'll probably find other questions, but those are the ones that jumped out at me.

GEIST [02:56:44] OK.

LATHROP [02:56:44] I don't see any other questions.

GEIST [02:56:49] OK.

LATHROP [02:56:49] We'll have Senator Morfeld introduce his bill next and then we'll move on. And for those who are going to testify, if you have some point to make, maybe we'll give you a little bit more than three minutes. If you want to say I'm testifying with this-- respect to this particular bill, that'll help keep our record straight. Senator Morfeld.

MORFELD [02:57:10] Good afternoon, Senator Lathrop, members of the Judiciary Committee. For the record, my name is Adam Morfeld, that's A-d-a-m M-o-r-f as in "Frank"-e-l-d, here today to introduce LB630. LB630 changes offenses or changes offenses involving unlawful intrusion and sexual sexually explicit conduct. The purpose of this bill is twofold: to ensure that bad actors are punished when it comes to sexual extortion, otherwise known as revenge porn, and to create more options for prosecutors to have discretion to ensure that consensual sharing of images between two underage minors is appropriately addressed and punished but does not result in a lifetime sentence on the sex offender registry or a felony when prosecutors determine the circumstances do not warrant that. I've worked with child welfare advocates and a school law attorney that will testify here today to draft the portions of this legislation dealing with the minors in possession of explicit photos of themselves. This is an issue that has been brought to me by a county attorney in particular, and then also child welfare advocates and school law attorneys, as something that is concerning because

oftentimes, going to Chairman Lathrop's example earlier of two eighth graders sharing these images with each other, under our current law, that's automatically child pornography, a felony offense and a lifetime sex offender registry. And in some cases that may be appropriate, but in some cases where it's often consensual, through Snapchat or some other mediums or forms of communication, I don't think, and I think most people don't think, that a felony charge and lifetime sex offender registry when it's consensual is the appropriate approach. Several changes were also made to address sexting and prohibiting possession of child pornography that I just discussed. And most importantly, a first violation by a person under age of 19 has been reclassified from a Class IV felony to a Class I misdemeanor when it's consensual and between two minors. A second offense by a person under the age of 19 would be a Class IV felony. A third or subsequent offense by anyone would be a Class IC felony. I've passed out an amendment, or I'm going to right now if I can get a legislative page, at the request of the county attorney's office, which I have agreed to, that reinstates affirmative defense relating to the possession of images provided to a defendant under the age of 19 by a child of 15 age-- 15 years of age or older. The new offense of sexual extortion, or revenge porn as we've discussed at length today, is created and prohibits a person from knowingly, intentionally, or recklessly coercing or enticing a person to engage in certain sexual activity, create electronic media of nudity or sexual activity, or to provide money to prevent the disclosure of sexual activity or dissemination to the electronic media. Sexual extortion would be a Class IV felony if the victim is under the age of 19 and defendant is over the age of 19. It would be a Class I misdemeanor if the victim is under the age of 19 and a Class II misdemeanor if both the defendant and the victim are under the age of 19. A person convicted of sexual extortion would be required to register as a sex offender if the defendant is over the age of 19 and the victim under the age of 19. I know there's been some discussion about that today. I'm willing to work with the committee on that. So the purpose of this bill is to simply create the crime of revenge porn and to provide more discretion for prosecutors to appropriately deal with youth that are both under the age of 19 and sending inappropriate images to each other, often consensually, so that it does not automatically result in a lifetime sex offender status and felony. This is a concern that's been brought to me by many advocates, as I discussed earlier, and even a prosecutor. Again, I urge your favorable consideration of this bill and I'm willing to work with the committee and others to make it better. Thank you.

LATHROP [03:00:59] Senator Chambers.

CHAMBERS [03:01:00] Senator Morfeld, this is just something that I've mentioned before.

MORFELD [03:01:03] Um-hum.

CHAMBERS [03:01:03] I see where on page 4 when you're talking about conduct that can be punished it says knowingly-- oh, it says "knowingly or intentionally." Would you object to that being "knowingly and intentionally"?

MORFELD [03:01:18] I don't think so, but I would want to talk to some folks about that. Yeah.

CHAMBERS [03:01:23] Well, see, conduct, you can know what you're doing.

MORFELD [03:01:26] Um-hum.

CHAMBERS [03:01:27] But you don't intend it to be what the person perceives it as being.

MORFELD [03:01:30] Yeah.

CHAMBERS [03:01:31] And then--

MORFELD [03:01:31] OK.

CHAMBERS [03:01:32] --on page 2, and you don't have to decide right now but I want to give my rationale now--

MORFELD [03:01:37] No, I understand.

CHAMBERS [03:01:38] --line 17--

MORFELD [03:01:39] Page 2, line 17, Senator?

CHAMBERS [03:01:39] Page 2, line 17.

MORFELD [03:01:42] OK.

CHAMBERS [03:01:42] It shall be unlawful for any person to knowingly release, publish, disseminate, distribute, or otherwise make public, in any manner which would enable it to be viewed by another, any photograph, and so forth. You could knowingly release something but you don't intend it to be what it actually is. You can know that-- for example, I could have a video and I could knowingly release it, but I don't intend it for the purpose that people mean because I don't even know what's on it. The act I knowingly do, all you have to do is knowingly release it--

MORFELD [03:02:20] OK.

CHAMBERS [03:02:21] --and a certain result occurs, but you don't have to know that it's-- it contains this kind of information.

MORFELD [03:02:25] I see your point.

CHAMBERS [03:02:27] That's why I'm not going to argue the point.

MORFELD [03:02:27] OK.

CHAMBERS [03:02:28] But there are other issues. I'll let this bill just stand and then deal with one of them instead of trying to go back and forth, but that was something that I thought I'd just bring out because I saw it right away.

MORFELD [03:02:41] OK. No, I appreciate that and I'll talk to you off the mike about remedying some of those. I appreciate those points, Senator.

CHAMBERS [03:02:45] All right.

LATHROP [03:02:49] OK. I see no other questions. Thanks, Senator.

COREY O'BRIEN [03:02:58] Good afternoon again. My name is Corey O'Brien, C-o-r-e-y O-'-B-r-i-e-n, and I'm the criminal bureau chief with the Nebraska Attorney General's Office. I'm here testifying on LB475. It was a bill that we brought to Senator Geist. It was a bill that we discussed I think with Senator Morfeld. We were closing in on the drop day and we couldn't come to a consensus on several issues. And so we thought it best that-- in my opinion, legislation is made when there are divergent opinions and minds can get together, so we brought these bills a little bit separately. One of the reasons why was, I don't know if you remember, Senator Lathrop, but the affirmative defense on child pornography was something you and I worked extensively on in the past and we had some reservations about making radical changes to that. The reason why we brought LB475 to Senator Geist, and in all due respect to my friend, Mr. Eickholt, I wish I didn't have to create new crimes. But the fact of the matter is that we found that there is a gap in Nebraska law. This extortion bill has been passed in varying forms in about 20 different states. We-- when we went to look for models, there were bills in Arkansas, Alabama, California, Texas that we looked at and we tried to shape those into a way that would fit the circumstances that we were trying to accomplish here in Nebraska. Obviously the Harvey Weinstein allegations were something that were foremost in our mind and then we had several cases consecutively come into our office, the first of which was a young lady that shared intimate photos of herself. She was compelled by the suspect to give those-- or, I'm sorry, compelled by him, coerced by him into meeting for the purposes of having sex; otherwise, he threatened to expose those over the Internet, to send them to her parents and to her friends and family. We found that extortion did not fit, theft by extortion did not fit the crime, and so there was a gap. While we be-- while we are alleged of trying to stack charges, you know, sometimes it's important for us to recognize that not all criminal conduct is the same and that there needs to be a distinction made. For instance, when a bank robber goes into a bank and hands the teller

a note, that's a little bit different than the robber that goes in there with a gun and shoots the gun up into the air. And so we need to make those distinctions and we do try to make those distinctions. But again, some of these situations don't fit. Another situation that came was a prominent local official unfortunately was involved in an extramarital affair. The person that she was involved in the affair with said, either you stay with me and continue to have the affair with me, or I'm going to expose it to your constituency, your family, your friends. So again, that's why we did the things that we did and tried to bring this bill. Let me-- the final thing that I'll say, and I know I'm out of time, but the penalties, the reason we chose the penalties as we did, and again, that's something that we're willing to talk about and negotiate because we are cognizant of the fact that we don't want to add to the continuing crises, but the fact of the matter is, is that we equate these similar to some of the things that are going on in the sex trafficking world, on-line enticement, manufacture of child pornography, because in a lot of ways that's what we're really talking about here. And the other reason why extortion by theft doesn't really fit is because if you're a single mom that's getting extorted to have sex with the landlord to take \$50 off the rent, that's a Class II misdemeanor and that really does-- is not befitting of the crime, in our opinion, so that's why we chose the penalties as we did. I'd be certainly happy to answer any questions anybody may have.

LATHROP [03:07:24] Senator Chambers.

CHAMBERS [03:07:26] Mr. O'Brien, would you turn to page 3?

COREY O'BRIEN [03:07:28] Yes, sir.

CHAMBERS [03:07:30] This is a criminal statute, isn't it?

COREY O'BRIEN [03:07:32] It is.

CHAMBERS [03:07:32] OK. Now I want to look at something very specific in line 15--

COREY O'BRIEN [03:07:39] Yes, sir.

CHAMBERS [03:07:41] --and 16. "Not limited to," that means there are things not specified which can constitute a crime. Isn't that true?

COREY O'BRIEN [03:07:53] That would be the connotation, yes.

CHAMBERS [03:07:56] And-- so what did you say?

COREY O'BRIEN [03:07:57] That would be the-- the connotation of "but not limited to."

CHAMBERS [03:08:00] And a crime cannot be unspecified. The only thing that's a crime in Nebraska is that which is labeled a crime. So no matter what the other act is, if it's not specified as a crime, it's not a crime. So I think that "not limited to" makes the-- the statute overbroad.

COREY O'BRIEN [03:08:21] OK.

CHAMBERS [03:08:21] Now when it says in line 18 the acts that are specified designed to inflict humiliation, suppose it doesn't in fact inflict humiliation. All it has to do is be designed by the actor to do that. But if it doesn't, then it's a crime anyway, right?

COREY O'BRIEN [03:08:48] Correct.

CHAMBERS [03:08:52] So if I make it a crime to frighten you and I say "Boo!" and you're not frightened, my intent was to frighten you, so I committed a crime because of my intent, even though the act didn't result in whatever the harm was. OK? Now what is paraphilia?

COREY O'BRIEN [03:09:09] Paraphilia is defined in the DMS-- DSM-4, DSM-5 now, and so they're certain sexual afflictions or fetishes-- fetish--

CHAMBERS [03:09:23] [INAUDIBLE]

COREY O'BRIEN [03:09:23] They're sexual fetishes.

CHAMBERS [03:09:28] Say it again?

COREY O'BRIEN [03:09:28] They're sexual fetishes that are designated in the DSM-5.

CHAMBERS [03:09:33] A sexual fetish-- fetish?

COREY O'BRIEN [03:09:36] Fetish.

CHAMBERS [03:09:36] What is-- what is that? What-- what would-- give me an example of what one would be, or some.

COREY O'BRIEN [03:09:43] Sadomasochism, BDSM, people that tie people up or get pleasure out of pain. That would be sado--

CHAMBERS [03:09:54] Well, that, that's sadism.

COREY O'BRIEN [03:09:56] That's right.

CHAMBERS [03:09:57] Well, why don't you say sadistic?

COREY O'BRIEN [03:09:59] Because we were trying to be as comprehensive as we could by stating paraphilia.

CHAMBERS [03:10:04] Well, playing with women's undergarments--

COREY O'BRIEN [03:10:06] Yes.

CHAMBERS [03:10:07] --is a fetish--

COREY O'BRIEN [03:10:09] Yes.

CHAMBERS [03:10:11] -- [INAUDIBLE] sexual, so that would be a crime, the crime of-- that we're talking about here, correct? If you use a general term such as that, anything embraced in that term would be a crime, collecting women's shoes, if that-- if that turns you on.

COREY O'BRIEN [03:10:36] I don't think that that's necessarily a paraphilia that's defined. Paraphilia are usually aberrant behaviors that are defined in the DSM-4, -5.

CHAMBERS [03:10:46] But when you have to say usually and use another word, "aberrant," which is a matter of opinion, then I don't think that's sufficiently definite for a crime. I'm just giving my views, not anything else. Now it says acts with human-- with dead human bodies, which is designed-- or sex-- two things sexual gratification will be derived, dead human bodies, acts with dead human bodies. Suppose somebody works in a mortuary because bodies turn them on. Then they're committing a crime every time they work on a body, aren't they, by this definition?

COREY O'BRIEN [03:11:34] This is actual--

CHAMBERS [03:11:37] [INAUDIBLE] sexual gratification from working with these dead bodies.

COREY O'BRIEN [03:11:39] This is actually forcing the victim to engage in sexually deviant behavior under the definitions of the offense. It's not the offender engaging in these behaviors but compelling or coercing the victim to engage in these behaviors for the offender's sexual gratification.

CHAMBERS [03:11:59] So what would the offender compel the victim to do with a dead human body?

COREY O'BRIEN [03:12:04] Have sexual intercourse with them.

CHAMBERS [03:12:08] And with excrement, what would they compel the victim to do with that?

COREY O'BRIEN [03:12:13] I wish I didn't know any of this, Senator, but, I mean, there are people out there that will force them to rub it all over their bodies and they get excitement out of it.

CHAMBERS [03:12:23] That's not what it says, is it?

COREY O'BRIEN [03:12:26] Well, it says--

CHAMBERS [03:12:27] Suppose you--

COREY O'BRIEN [03:12:29] --getting sexual gratification out of them doing acts with those things.

CHAMBERS [03:12:36] But remember, you said it's not the actor, it's the victim.

COREY O'BRIEN [03:12:39] That's right.

CHAMBERS [03:12:39] Well, the victim doesn't get sexual gratification from the excrement.

COREY O'BRIEN [03:12:43] No, the actor gets sexual gratification on watching the victim do those things.

CHAMBERS [03:12:49] That's not what this says.

COREY O'BRIEN [03:12:51] That's what the statute says.

CHAMBERS [03:12:52] Sexually deviant behavior means and includes--

COREY O'BRIEN [03:12:56] Right.

CHAMBERS [03:12:58] --but is not limited to any of the following acts from which sexual gratification is derived.

COREY O'BRIEN [03:13:04] But that's just the definition, Senator. if you look at the elements of the crime--

CHAMBERS [03:13:08] OK. So this is the actor-- I meant the-- the perpetrator who derives sexual gratification? Is that right?

COREY O'BRIEN [03:13:17] Yes. It's the--

CHAMBERS [03:13:18] Does the-- then why doesn't-- why can't it be the actor doing whatever is being done with excrement?

COREY O'BRIEN [03:13:28] Because that's not the element of the crime. The elements of the crime say that you're coercing or enticing the victim to engage in sexually deviant behavior. That's what the elements of the crime are and what you're reading is simply the definition of what sexually deviant behavior is. So it's pertaining to compelling the victim to engage in those behaviors. It's not the actor engaging in those behaviors.

CHAMBERS [03:13:55] Do you think the words "not limited to" create sufficient vagueness to prevent this from being a constitutional crime-- criminal statute?

COREY O'BRIEN [03:14:09] Respectfully, I don't. I--

CHAMBERS [03:14:11] I think it would-- I think it would undermine it. I don't think it could pass muster as a criminal statute, but that's my opinion.

COREY O'BRIEN [03:14:17] And I can tell you that we're open to discussing. You know, one of the things that we enjoy most about this process, the committee process, the-- the various stages of hearings, is that you try to craft a statute that fits as many circumstances as that may arise in the future, and you hope that you've covered them. But you also want to make sure that they're not too broad that we capture innocent behaviors. And so this interchange is always important and these discussions are always important to make sure that we don't cross those barriers and those lines. So again, we're always open to refining our language so that we can meet constitutional muster.

CHAMBERS [03:15:00] Final question on this part of it: If a perpetrator took somebody to a mortuary because they knew-- he or she knew that person is afraid of dead bodies, and when this perpetrator saw the fear that this person had of dead bodies, he or she experienced sexual gratification. That would be deviant sexual behavior by this definition, correct, watch somebody be afraid of a dead body?

COREY O'BRIEN [03:15:31] It could be.

CHAMBERS [03:15:34] Well, no, it can't be--

COREY O'BRIEN [03:15:34] It may not be a crime-- it may not be a crime, though, under the scenario you gave, if she went there voluntarily with him.

CHAMBERS [03:15:42] No, the person-- that's why I say the perpetrator brings this person because he knows this person is afraid of dead bodies.

COREY O'BRIEN [03:15:51] Right.

CHAMBERS [03:15:52] So he takes her into a mortuary and shows her these dead bodies--

COREY O'BRIEN [03:15:56] Right.

CHAMBERS [03:15:56] --and she's-- then she's afraid.

COREY O'BRIEN [03:16:01] But what you've described is not a crime under the statute.

CHAMBERS [03:16:06] OK.

COREY O'BRIEN [03:16:06] It's not a crime unless he coerces or entices her in some way.

CHAMBERS [03:16:09] He makes-- he takes her into-- he says, come on, we're going to go in here and look at this body. She says, no, no, I'm afraid of bodies. He says, it's not going to hurt you, come on in here, and she walks in and she starts shaking and screaming and he gets sexual gratification, then he has committed an act of sexual deviance, right? He made her commit an act with a dead body. Her act involved the dead body.

COREY O'BRIEN [03:16:49] Maybe but there's not--

CHAMBERS [03:16:50] It--

COREY O'BRIEN [03:16:50] --there's not-- there's not a prosecutor in the world that's going to charge that.

CHAMBERS [03:16:53] Did you say this-- this is a copy of a law from Alabama?

COREY O'BRIEN [03:16:55] No, there-- we derived this from several sources. Now--

CHAMBERS [03:16:59] Alabama was one of them?

COREY O'BRIEN [03:17:01] Alabama, Arkansas, California, Texas. We looked at Utah. And Senator Schumer from New York has proposed a similar bill to what's drafted here as a federal constitutional law-- or a federal law too.

CHAMBERS [03:17:17] OK, I put enough into the record to show my opposition. I don't have any more questions. Thank you.

COREY O'BRIEN [03:17:21] I appreciate it.

LATHROP [03:17:24] I don't see any other questions for you today, Mr. O'Brien. Thank you for being here.

COREY O'BRIEN [03:17:42] Yes, sir.

LATHROP [03:17:42] Good afternoon.

MOLLY KEANE [03:17:42] Good afternoon. Chairman, members of the committee, my name is Molly Keane and I'm a deputy county attorney in Douglas County. I am here on behalf of the Nebraska County Attorneys Association-- Association to testify in support of LB630. I am a county attorney in Douglas County, as I said, and I lead a team of attorneys who specializes in the prosecution of sex crimes and crimes against children. In looking at LB630, we are supportive of that statute insofar as-- particularly as it relates to rewriting the language of 28-311.08, the unlawful intrusion statute. It doesn't change the law under the unlawful intrusion statute, but it does clarify it greatly. This, up to this point, has been a very confusing statute for law enforcement to determine exactly what behaviors qualify and what class of penalty it would amount to. And the rewriting of this statute takes great steps in clarifying that language and, therefore, we are very supportive of that. With respect to the additional language in LB630, looking at the section-- Section 5 regarding 28-813.01, which is the statute that addresses possession of visual depictions of sexually explicit conduct, or child porn basically, in Nebraska, we are supportive of this statute, this language, as well, although I would say we're not completely in agreement with that change because of the broad spectrum of behavior that this statute actually covers it. There's such a great range of severity of acts that this language encapsulates that sometimes in our opinion these-- a misdemeanor offense is not sufficient. Some examples of that would be in my experience when we are prosecuting individual-- younger individuals for possession of these images, the situations we see are more often, for example, 18-year-olds who have 50 to 100 to 1,000 images of children as young as toddlers or babies being subjected to sex acts, and those crimes we feel do necessitate the level of consequence that a felony provides. However, we do recognize that there are situations that are different than that where an 18-year-old has images of older individuals, maybe has one or two images, and there it is important to give prosecutors the discretion to be able to determine how this law should be applied, and I think this bill does help with those situations. It is important, though, to note that this statute already has an affirmative defense for situations where a perpetrator is 18 or older and the victim is 15 or older, so that is not necessarily something that needs to be additionally addressed with this language. And I see my time is up, so I would welcome any questions.

LATHROP [03:21:07] Senator Chambers.

CHAMBERS [03:21:08] I want to ask you a couple of questions because I went through several of them with Mr. O'Brien. On page 3, lines 15 and 16, "not limited to," that means acts which are not specified in this statute could be the basis of a criminal charge, couldn't it?

MOLLY KEANE [03:21:30] And that's with reference, just for clarity, to LB475, correct?

CHAMBERS [03:21:36] You say what?

BRANDT [03:21:36] Two bills.

CHAMBERS [03:21:37] Oh, LB475, I'm sorry.

MOLLY KEANE [03:21:39] OK.

CHAMBERS [03:21:40] OK.

MOLLY KEANE [03:21:40] Thank you. I don't have a copy of that in front of me, but from the prior discussions I recognize that that is what the language is, does say "including, but not limited to."

CHAMBERS [03:21:49] And here's something on page 2. And I'm not going to ask complicated questions since you don't have the bill. A person commits--

MOLLY KEANE [03:21:59] I can handle it.

CHAMBERS [03:22:00] --the offense of sexual extortion, which is a crime, if he or she recklessly entices another person to do something. How do you recklessly entice? First of all, how do you entice somebody? What is enticement?

MOLLY KEANE [03:22:19] Entice is defined in statute. I believe it's to encourage or to induce.

CHAMBERS [03:22:25] OK, induce, I like that. How do you recklessly induce somebody to do something? Wouldn't you have-- if you are inducing somebody, isn't there intention on your part?

MOLLY KEANE [03:22:41] In most situations, yes. A reckless situation maybe where they-- more of a "knew or should have known" type statute, statutory language, rather than recklessly, might be more appropriate in that kind of situation.

CHAMBERS [03:22:55] But in criminal statutes, "should have known" is not there--"knowingly and intentionally," not "you should have known," because that's not objective--

MOLLY KEANE [03:23:04] Well--

CHAMBERS [03:23:05] --for criminal statute purposes.

MOLLY KEANE [03:23:05] --it is, in some criminal statutes, "knew or should have known."

CHAMBERS [03:23:08] You don't have to do it now, but I want you to show me an example.

MOLLY KEANE [03:23:11] Yes, sir.

CHAMBERS [03:23:12] And it might be there because it wasn't challenged by anybody such as myself.

MOLLY KEANE [03:23:16] Possibly.

CHAMBERS [03:23:17] I'll give you why-- I'll tell you why I say that. There have been-- well, the city of Omaha passed a red light camera law. It was on the-- their-- a part of their panoply of ordinances. I challenged it as unconstitutional. The city attorney said it's not unconstitutional, he'd studied it and-- well, to make a long story short, it was struck down as unconstitutional. There was a grand jury that conducted some investigations of the Franklin Credit Union and produced a report that was scurrilous, criticized a lot of people. Senator DeCamp took the matter to federal court and it was thrown out without a hearing. I did my legal research. I presented a 50-page brief, mentioned to the court that since it was the first time this issue had been brought to the court, I would like permission to go beyond the limited number of pages for this, and I was granted that. Then the Supreme Court look at-- looked at it and they ordered the entire report to be expunged. No lawyers thought that could happen, especially since Senator DeCamp had left, lost. The fact that nobody has challenged some of these laws means nothing other than that a law is presumed to be constitutional until a court strikes it down. So I'm going to ask you for your opinion, because you are a prosecutor and you know the law and the requirements of the law, or are presumed to know it. Give me an example of reckless enticement that has sufficient specificity to qualify as a criminal act.

MOLLY KEANE [03:25:18] I would have to think about it a moment because, like I said, I was not here actually to testify on LB475 but I will.

CHAMBERS [03:25:25] Then you don't have to do it right now [INAUDIBLE] We can talk about that later.

MOLLY KEANE [03:25:27] OK.

CHAMBERS [03:25:28] That's all that I would have.

LATHROP [03:25:31] Sure. I don't see any other questions for you. Thanks for coming here today.

MOLLY KEANE [03:25:53] Thank you.

LATHROP [03:25:54] Good afternoon. And before you start, maybe you can tell us whether you're here on one or both or--

KATHLEEN OWEN [03:25:58] Yes, sir, both.

LATHROP [03:25:59] OK.

KATHLEEN OWEN [03:25:59] OK.

LATHROP [03:26:01] Thank you.

KATHLEEN OWEN [03:26:02] My name is Kathleen Owen, K-a-t-h-l-e-e-n O-w-e-n. Good afternoon, Chairperson Lathrop and members of the committee. I'm an attorney at the law firm Orrick Herrington and Sutcliffe. I am testifying in support of both pending bills today, both of which would update Nebraska's laws to expressly criminalize the growing threat of sexual extortion. And I want to be clear that I'm specifically here speaking regarding the sexual extortion provisions of these bills, testifying on support-- in support on behalf of Orrick and also on behalf of our client, Legal Momentum, our pro bono client with whom we've worked in partnership to raise awareness of the proliferation of sexual extortion on the Internet and seek legislative changes to criminalize the conduct. I want to thank the members of the Judiciary Committee and the bill sponsors for the opportunity to testify and your time and attention to this critical issue. I traveled here this morning from Pittsburgh, Pennsylvania, so we also submitted my written statement yesterday in case I didn't make it. And in fact, I almost didn't. My one flight from Minneapolis to Lincoln was actually canceled initially. So I also brought copies with me if you'd like copies, or you may already have them in the record. Three years ago, Orrick partnered with the Thomson Reuters Foundation and Legal Momentum to study the growing issue of sexual extortion. We released a joint report in 2016, titled *A Call to Action: Ending Digital Extortion-- Ending Sextortion in the Digital Age*, that documented both the scope of this growing on-line problem and the gap in federal and state laws that prevents full prosecution of sexual extortion crimes in many cases. Since the report's

release, we've worked with state attorneys general, policymakers, and advocates across the country to update state laws, raise awareness, and that address sexual extortion. So sexual extortion is not a new problem, but it's one that has proliferated in the Digital Age. Sexual extortion is a form of extortion but generally, instead of demanding money or property, the perpetrator demands sexual images or in-person sexual acts. On-line sexual extortion occurs when a perpetrator obtains compromising images of a victim, usually through deceit, manipulation, or computer hacking, and then uses the threat of distributing the image to extort the production of additional intimate pictures or videos, to extort the person to participate in live, sexually explicit Skype sessions, or even to participate in in-person sexual acts. Sexual extortions traditionally involve situations where perpetrators knew the victims and use their power or influence over them to demand sexual acts or images. Today, perpetrators can stay shielded behind their computer screens and target countless victims, predominantly girls and young women, without ever leaving their homes. And also alarming, "sextortion" has been used by human traffickers as a way to coerce and recruit victims into human trafficking. Until recently, no state even defined sexual extortion, let alone expressly criminalized it. But over the past two years, ten states have taken action to update their laws and their statutes to expressly recognize sexual extortion. And in addition to Nebraska, there are currently bills pending in several states, in addition to Washington, D.C. Both of your pending bills aim to create straightforward new statutes to recognize that it's a crime not just to extort money or property, but also sexual conduct and sexual images. The legislative fix ensures that sexual extortion conduct is a crime so that victims can come forward and that law enforcement has the tools they need to address this and respond. Our position is that we support the criminalization of the conduct, and each of these bills would be a positive step in advancing toward that goal. My full statement is in the written testimony that we submitted, and I'm happy to work with the committee and the sponsors and the Attorney General's Office to answer any questions or provide any support as this bill-- these bills move forward. Thank you very much, and I welcome any questions.

LATHROP [03:30:03] Thank you, Ms. Owen. I don't see any questions, but thank you for your work in this area.

KATHLEEN OWEN [03:30:10] Thank you, sir.

LATHROP [03:30:12] Awful that the Internet is being used this way.

KATHLEEN OWEN [03:30:28] Yes, sir.

LATHROP [03:30:31] Good afternoon.

BOBBY TRUHE [03:30:28] Good afternoon. Chairperson Lathrop, members of the committee, my name is Bobby Truhe, spelled B-o-b-b-y T-r-u-h-e, and I'm a member of the law firm called KSB School Law here in Lincoln. I got a bit of a unique perspective

today because I don't represent individuals charged with crimes and I don't prosecute them, but we work with public schools and related entities on their legal needs. So one of the most common calls that I get in my office are issues that school administrators, guidance counselors are dealing with related to "sextortion," revenge porn, "sexting" in general. Whatever type of all the conduct we've been talking about here for the last two or three hours, I've gotten a call about every type of those instances or things that have occurred. Chairperson, I'm-- I'm familiar with the circumstance you're talking about from Ralston, for example, having heard Dr. Mark and Joni Adler discuss their circumstances with their son Reid. So this is an issue that-- that we get calls on every day. And frankly I'm here because I had reached out to Senator Morfeld and others regarding the confusion I think that exists in some of these laws and the difficulty school administrators have in trying to figure out what is a crime and what isn't. School administrators have affirmative obligations to report crimes both under student discipline laws and child abuse laws, and one of the things that they struggle with is the numerous ways that this conduct can come up. We get calls on consensual "sexting" issues. A boyfriend and girlfriend each send a nude image back and forth on an app like Snapchat. They hear about that, it's required for them to report it as a crime. Similarly, they have-- we've received calls on attempts to extort things of value or extort future pictures, extort sexual conduct from-- from a victim. We refer to that as "sextortion." We've heard several cases of revenge porn, the type of stuff that we've been talking about where sometimes the person posts a picture that they had received five years ago from a significant other for no other reason but to embarrass them or cause them some sort of, you know, emotional pain. And so we get calls on those things, and the reason I'm here in support of LB630 is I think it takes a definite step in the right direction to clarify some of these laws. And so just a couple of sections I wanted to point out. Section 2, which has been discussed a lot, that clarifies Section 28-311.01, that's the unlawful intrusion law that has been talked about here quite a bit, the one that we refer to as part of our voyeurism laws where somebody sneaks a camera into a locker room or takes a snap of somebody in a shower and then sends that to another person to victimize them, whether the person knew it or not, and that sort of conduct we get calls on all the time. Section 3 adds provisions to address "sextortion," revenge porn. And to be candid, I don't have terribly strong thoughts personally about how that should look, but I know it's an issue that school administrators deal with and we get calls on all the time. It's an issue here in the state that is happening and I don't believe our current laws fully or at least clearly address that sort of conduct. Sections 5 and 6, to the statutes that have been talked about, they address Section 28-813.01 and 28-1463.03 in such a way to make clear what the consequences are for individuals that are minors that commit this sort of conduct. So I think moving that conduct to a misdemeanor level, looking at whether it's required to register as a sex offender or not, is a-- is a helpful thing for the committee to do and would really help my clients in clarifying these laws. So that's all I have. I'd be happy to answer any other questions that the committee may have.

LATHROP [03:34:05] I have no questions. This whole--- this whole thing is kind of like-- it's a little troubling. And I have to tell you, when we-- we start talking about adding people to the sex offender registry, I don't think that registry should be used as a form of punishment. But I think its intent is to alert neighbors or people that might live next to somebody whether the guy down the street is inclined that way or might have those proclivities. And the extortion, I suppose if somebody is saying, come over here and have sex with me or I'm releasing the picture, that guy may belong there, but maybe the-- the kid that's, you know, keep going out with me or I'm going to put your picture up, and he's 15, I don't know. These are a lot of-- a lot of thorny issues that go along with this whole subject matter, and we appreciate your testimony today.

BOBBY TRUHE [03:35:00] Thank you.

LATHROP [03:35:00] Anyone else here as a proponent of either LB630 or LB475? Seeing no others, any opponents?

SPIKE EICKHOLT [03:35:16] 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 Nebraska Criminal Defense Attorneys Association. We are opposed to both bills, just so the record is clear. I'll talk first about LB630, Senator Morfeld's bill. Some parts of the bill we actually are either neutral or support, and those are the Sections 1 and Section, 5, 6, and 7 of the bill that sort of lessen the penalties, that make it discretionary to require youth to have to register pursuant to the Sex Offender Registration Act, and some of the other things that Senator Morfeld has already spoke on. I was not aware of the amendment. I didn't really track what he said it did, so I-- I just am speaking to the original draft of the bill that we are in support of those amendments. We are opposed to LB475 and we are opposed to LB630. In LB630, we're opposed specifically to the creation of the new crime in Section 3. On both bills we're opposed to the inclusion or the requirement that anyone convicted of these new crimes have to register pursuant to the Sex Offender Registration Act. And I said this on an earlier bill, but just so the record is clear, as-- as the Chair just said, the Sex Offender Registration Act, if you have it, ought to have people on there that sort of actually tell the public something meaningful about why they're there that perhaps you should watch out for. It shouldn't just be-- having to register should not just be an additional punishment for being found guilty of something that we just don't like, and retaliating against an ex or retaliating against someone who won't pay you money back does not necessarily describe if you're an actual risk to children or even to the community. Doesn't mean you're a good person, necessarily, but you don't want to have the registry cluttered with those people. With respect to the new crime, we are concerned about the penalties in LB475. Class IC felony is the top level that's created under this new law. That's more serious than an actual sexual assault, a forcible sexual assault. It's more serious than manslaughter. It ought to be a proportional penalty. And I understand the crime is severe, but each additional count, each additional act can be charged as a separate crime. We would suggest that IC is too high to go, a Class II felony similarly.

And a Class IIA felony, which is 0-20 for people who are both under the age of 19, we would submit, is too punitive. I think what Senator Morfeld has and what Senator Hunt had in her earlier bill is perhaps a bit more appropriate. On both bills, though, if you look at the creation of the new crime, maybe it's easier if I talk about LB475. On page 2, lines 6 through 10, and this language is very similar in LB630 at a different section, but this new crime is-- is created and the elements are, "A person commits the offense of sexual extortion if he or she knowingly, intentionally, or recklessly coerces or entices another." And if you look at the first way you commit this crime, if you entice or coerce another to engage in sexual conduct, sexual contact, or sexual penetration, in other words, if you sort of induce someone to engage in sexual contact with you, you've committed the crime. There's no additional requirement beyond that. If you look all the way down on line 21, "or," that's got the alternative ways, sub (a), sub (b), (c) and (d) got the alternative-- (b), (c) and (d) provide for the extortion of money, if you will. I don't think that's the intent of the bill, but if you look at it literally, you've already committed that crime. Now I know that solicit or entice or coerce, they are not defined, at least in this bill, and I don't think they're defined in another section. I think that what you're-- Senator Geist and others and Senator Morfeld are trying to get at are those people who are actually sort of forced to engage in these things, not just sort of encouraged or requested to do so, so I think it's too broad for that reason. And for the similar reason that Senator Chambers mentioned earlier, you've got a pretty serious felony crime in LB475. We would submit it shouldn't be with the alternative mens rea of recklessly because I think, arguably, and most of our serious crimes we have intentionally and knowingly as mens rea requirements for those kind of serious felonies. I know I'm out of time, so I won't speak anymore, but we're opposed to the bill for some of the reasons that have already been stated.

LATHROP [03:40:01] Do you believe that the current extortion statute covers the circumstance? So we've talked about the particulars of both bills, but you can see the intent where--

SPIKE EICKHOLT [03:40:12] Right.

LATHROP [03:40:12] --somebody says, I got a picture of you and guess what, you're going to come over here and have sex with me or I'm putting this on Facebook or blasting it out to everybody in our high school class. That's not covered by the current extortion.

SPIKE EICKHOLT [03:40:25] I'd submit that it's probably not, like for the reason I said--

LATHROP [03:40:30] Because it requires something of value or--

SPIKE EICKHOLT [03:40:30] Right.

LATHROP [03:40:31] --money, right, currently?

SPIKE EICKHOLT [03:40:31] That's exactly right. And you might want to broaden that value. It's easy if it's the classic extortion, right? Where a guy is on-line and he does something he shouldn't do and there's an image captured of that and the person on the other side demands money, that's easy to prove and I think current law suffices for that. But those other things of value, those other things of consideration, arguably, you want to amend that, and I mentioned that earlier on an earlier bill. And then arguably that's simpler, frankly, if you just broaden the value. You don't need to get into all this sexual deviancy stuff and all the different examples to do it. If you do something that is trying to extract either sexual favors, something of value, money, something, that's all that needs to be proven. The way and the exact particulars are not necessary.

LATHROP [03:41:22] And you'll help committee counsel with some ideas on--

SPIKE EICKHOLT [03:41:27] Always willing to sit down on anything.

LATHROP [03:41:27] Thank you. I do-- it does-- it's awful that we're talking about this stuff, but it seems to be the-- the logical step for somebody to extort. And to me, when we start talking about stuff on the Internet, it-- whether people leave a crummy comment about politics or anything or say rotten things about somebody else, it's so much easier to do when it's done through the impersonal process of the Internet where you just hit a button and you-- you do it and you say it and it's out there. And now we have people using that and these images that apparently started out innocently enough, perhaps, perhaps not, but they've become the leverage to extract things, whether it's money or sexual favors or more pictures or whatever it is we're talking about.

SPIKE EICKHOLT [03:42:20] Yeah.

LATHROP [03:42:20] Anyway, I don't see any other questions. I appreciate your testimony and your thoughts on the bills. I do agree that we shouldn't be putting people on a registry unless-- so answer this question for me though. Let's say that the extortion is-- goes something like this. I have a picture of you that you sent to me when we were in a relationship. Now it's-- we're not in a relationship and I want you to come over here and have sex with me or I'm putting it on my Facebook account. Are we in a-- in a place where ending up on the registry makes sense?

SPIKE EICKHOLT [03:43:02] I think in that example, you could probably, arguably, convict that person of sexual assault, that the consent that's given--

LATHROP [03:43:09] If you come over there and actually have sex.

SPIKE EICKHOLT [03:43:11] Right, if you carry on-- or even the attempted sexual assault, which is also separately a registerable offense. So I think you could probably capture it,

but I think you're right to think at that. There might be some instances that you may want to have people on there, but just the presumption that everyone goes on there, it's just really going to dilute, for lack of a better term, the purpose.

LATHROP [03:43:29] But to the extent you want to participate in some work on this, maybe we can figure out how to blend this into the extortion statute, and then whether or not the people are already going to end up on the registry for something related to that extortion or whether some people who do this should and others shouldn't.

SPIKE EICKHOLT [03:43:54] I'd rather be involved than not.

LATHROP [03:43:55] Yeah, I would think so. OK. I don't see any other questions, but thanks for being here. Anyone else here in opposition? Anyone in a neutral capacity? Seeing none, I'm going to read some letters that have come in and then we'll allow Senator Geist and Morfeld to close. On LB475 we have two letters of support, one from Matthew Kuhse at the Omaha City Prosecutor's Office, and Kathleen Owen, who I think spoke here just a moment ago; in opposition, Jeanie Mezger. And on LB630 we have two letters of support, again, Kathleen Owen, and Matthew Kuhse from the Omaha City Prosecutor's Office. And with that, Senator Geist, you may close.

GEIST [03:44:53] Thank you, Mr. Chairman, and I'll make this short. I appreciate your attention and I just want to say I'm encouraged that there's consensus on the issue that something needs to be done. Obviously, the solutions are a variety, but we can all agree that there is a big problem and it needs to be addressed. And I just want the committee to know, and other senators to know, that I am committed to working with them, working with the committee, and addressing it in a way that we can all agree upon. And with that, I appreciate your time.

LATHROP [03:45:27] Thank you. I don't see any questions from the committee.

GEIST [03:45:32] OK.

LATHROP [03:45:32] Thank you.

GEIST [03:45:32] Thank you.

LATHROP [03:45:33] That'll close our hearing LB475. Senator Morfeld waives close on LB630. I do appreciate everybody's testimony, and in particular the thoughts on how to try to address a sticky issue.