

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 19, 2020

**LATHROP:** You guys can have a seat. Good afternoon, My name is Steve Lathrop. I am the chair of the Judiciary Committee. If you're here on a Judiciary Committee bill, you're in the right place. And if you're here on an Education bill or something like that, you're in the wrong place. On the table inside the doors, you will find yellow testifier sheets. If you are planning on testifying today, please fill one out and hand it to the page when you come up to testify. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. For future reference if you're not testifying in person and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the last work day before the hearing. Keep in mind that you may submit a letter for the record or testify in person at the hearing, not both, and only those actually testifying in person at the hearing will be listed on the committee statement. We will begin bill testimony with the introducer's opening statement followed by proponents of the bill, then opponents, and finally, by anyone speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We utilize an on- deck chair, which is immediately behind the testifier's table. Please keep the on-deck chair filled with the next person to testify to keep the hearing moving along. We ask that you begin your testimony by giving us your first and last name and spell them both for the record. If you have any handouts, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can make more. If you are submitting testimony on someone's behalf, you may submit it for the record, but you will not be allowed to read it. We will be using a three- minute light system. When you begin your testimony, the light on the table will turn green, the yellow light is your one-minute warning, and when the light turns red, we ask that you wrap up your final thought and stop. 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 or to stay in contact with staff. At this time, I would ask everyone to look at their cell phones and make sure they are in a silent mode. Also, verbal outbursts and applause and things like that are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. You may notice committee members coming and going, this has nothing to do with how they regard the importance of the bill being heard, but senators may have bills to introduce in other committees or have other meetings to attend. I will add this one more comment, we've had some difficulty with the sound in this room, so if

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you are in the room and you have trouble hearing, give us one of these and Laurie will try to make adjustments as, as we iron out the speakers in this room, or we'll ask the speaker to talk into the mike. In any case, I'll have the members of the committee introduce themselves, beginning with Senator DeBoer.

**DeBOER:** Hi, my name is Wendy DeBoer. I represent District 10, which is northwest Omaha and the city of Bennington.

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

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

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

**WAYNE:** Justin Wayne, District 13, Omaha, Nebraska.

**LATHROP:** Assisting the committee today are Laurie Vollertsen, our trusty committee clerk; and Neal Erickson, one of our two legal counsel. Our committee pages today are Ashton Krebs and Lorenzo Catalano, both students at UNL, they've been good pages so far this year. We're going to take up two gubernatorial appointments before we get to the first bill today. The first is Anne Boatright, who is Governor's nominee to the Crime Victims' Reparations Committee, if you want to come forward. Good afternoon.

**ANNE BOATRIGHT:** Good afternoon. Thank you for having me. My name is Anne Boatright, A-n-n-e B-o-a-t-r-i-g-h-t. I'm currently a registered nurse in the state of Nebraska and I serve as the State Forensic Nursing Coordinator at the Nebraska Attorney General's Office. I am seeking an appointment to the Crime Victims' Reparations Board so that I can better serve victims across our state and continue to help promote healing across our state for victims. I would welcome any questions that you have, but want to keep it brief because I know I've testified here before and you have heard me.

**LATHROP:** This is a renewal for you?

**ANNE BOATRIGHT:** It's actually my first, I've never been on the board before.

**LATHROP:** OK. Any questions for this nominee? I don't see any.

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**ANNE BOATRIGHT:** OK.

**LATHROP:** Looks like you get by easy today. But thanks for being here, and we appreciate your service.

**ANNE BOATRIGHT:** Thank you very much.

**LATHROP:** Terrific. Are there any, are there any proponents of this nominee or this nomination? Anybody opposed? Anybody here to speak in a neutral capacity? You did get by easy. All right, that will close our hearing on the nomination of Anne Boatright to the Crime Victims' Reparations Committee and bring us to Mark Langan, who is the Governor's nominee for the Parole Board. Mr. Langan, you may come forward. Good afternoon.

**MARK LANGAN:** Good afternoon. Chairperson Lathrop and members of the Judiciary Committee, my name is Mark Langan, L-a-n-g-a-n. It is an honor to be before you today seeking confirmation to my appointment on September 10, 2019, by Governor Ricketts to the Nebraska Board of Parole. This is actually the third career choice of my professional life, all of which, interestingly enough, have taken me to this chair in front of this very committee. For 26 years I was command officer in the Omaha Police Department, specializing in high-level gang and drug investigations. I was involved in hundreds of arrests, executed a great deal of search warrants, supervised the wiretapping of large-scale drug dealers in the Omaha area. It was a dangerous job, one that required me to constantly be on my A-game. My 26 years as an Omaha police officer also allowed me to learn the culture of the street and how the criminal mind thinks. In 2004, I retired from the Omaha Police Department and began a challenging and rewarding second career as vice president of field operations at the Nebraska Humane Society. When I retired, the joke around the Omaha Police Department was that Langan has gone from busting meth labs to chasing black labs. Based on the many appearances I made in front of this committee and the large number of animal cruelty bills that were passed into law, I feel that my Nebraska Humane Society team has done good things for pets and their owners in the state of Nebraska. Thank you especially to Senator Chambers for being a champion of the animals. In the summer of 2019, I sought a change in my career path and applied to the Governor for this position. I was thrilled to be appointed and hit the ground running on September 10. I was immediately impressed with my fellow board members and felt welcome from day one. Chairperson Rosalyn Cotton established a regimented training program for me, and to say I was a bit overwhelmed at first is an understatement. But now

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five months into my career, I understand how much better-- I understand much better as to whether or not I will support a person for parole. There are three primary areas I take into account when a parole candidate sits in front of us at a hearing. First, how have they behaved during their incarceration? The institutional behavior is a good indicator of their conduct once released. Second, have they completed the mandatory core programming? Whether it's sex offender treatment, drug programs, or classes geared towards anger or domestic violence crimes, the-- the individuals must have completed the required classes before being considered for parole. And lastly, do the potential parolees have a realistic parole plan that will give them the best chance to succeed while on parole? The use of transitional housing such as Bristol Station in Hastings provides a parolee with past drug issues a better chance of not using again, rather than simply paroling right back to the same old crowd that caused them to use and sell drugs in the first place. I am confident that I've been decisive and fair in all of my professional decisions. In my police life, I made daily life or death decisions regarding the safety of citizens and police officers. During my Nebraska Humane Society days, I made decisions that dealt with keeping people safe from animals and sadly, animals safe from people. And now in my current role, I again make decisions related to public safety, as well as what is in the best interests of the incarcerated individual. I realize the pressure this job brings to the table. Public safety is first and foremost in the decisions that I will make. I promise to study the background of each case, known around the Parole Board as working up cases, to be prepared for all hearings, and to make the best decision I can make on each and every case I hear. Lastly, I promise to be fair in all of my decisions, both to the state of Nebraska and to the person who sits incarcerated in front of me. I believe my experience speaks for itself and humbly ask to be confirmed as a member of the Nebraska Board of Parole. Thank you very much. And I can answer any questions you might have.

**LATHROP:** Senator Chambers.

**CHAMBERS:** Mr. Langan, my colleagues know that from time to time on the floor of the Legislature I will quote scripture. I will even make everybody suffer by singing a bar or two of a song. So before I go on with you, there's something I want to recite. It was written by Rudyard Kipling. It's called The Ballad of East and West. And the part that everybody is familiar with, at least part of it: OH, East is East, and West is West, and never the twain shall meet,/ Till Earth

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and Sky stand presently before God's great Judgment Seat;/ But there is neither East nor West, Border, nor Breed, nor Birth,/ When two strong men stand face to face, tho' they come from the ends of the Earth! When I first became aware of this man and had contact with him, he was on the police force and I was filing a complaint against him for certain actions that I perceived differently from the way everybody else did.

**MARK LANGAN:** Several complaints. [LAUGHTER]

**CHAMBERS:** It went from-- it went from filing a complaint to learning about what kind of person he really is, seeing him in action, and taking care of animals who were almost as helpless, and in some cases more so, than abused children. And these are the kind of things that a person cannot act out and not do if he or she is not genuinely interested. So I have no hesitation, no reservation about expressing my confidence in Mr. Langan and saying in front of the whole world like they ask people and I would ask them when I perform weddings, you know, you're saying this to everybody, Mr. Langan, I believe that you're going to do a very good job. And if I ever have any questions, you know that I would present them to you. But at this time, I don't have any except this one I have to ask you. Did you tell the Governor about the relationship and you-- that you and I have developed down through the years?

**MARK LANGAN:** I don't re-- I mean, I had a quick 20-minute meeting with the Governor, and I think your name did come up [LAUGHTER] and I did tell him about our-- we've had a bizarre and [INAUDIBLE] relationship. We have. And you summed it up very, very well. But I do appreciate, again, all you did for us, for the Nebraska Humane Society. I sat in front of this committee many times on animal cruelty type bills that passed based in large part on your support and everything. I still have a huge connection with the Nebraska Humane Society.

**CHAMBERS:** Good.

**MARK LANGAN:** And I do appreciate all you did. And you can call me anytime you want to on any parole issue, and I will get the answer to you right away.

**CHAMBERS:** Thank you. That's all that I have.

**MARK LANGAN:** Thank you very much. I appreciate it.

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**LATHROP:** Senator Morfeld.

**MORFELD:** Thank you for coming today, Mr. Langan.

**MARK LANGAN:** Thank you.

**MORFELD:** Quite the endorsement from Senator Chambers. Just a few questions. So in terms of accommodations for people with disabilities and the Board of Patrol-- Board of Parole, sorry, can you tell me, I know you've been on the job for five months now. Can you tell me a little bit about what those accommodations look like and what the plan is?

**MARK LANGAN:** I'm only aware of one case that we've heard in the five months that I've been there were an individual has not been able to appear in front of us due to a medical condition. And sadly, that person passed within a short amount of time after that. But all others that have any type of disabilities, whether they're wheelchair bound or whatever it might be, have had a full and complete either offender review hearing in front of us or Parole Board hearing in front of us. It has not held them back.

**MORFELD:** OK.

**MARK LANGAN:** The staff at the Correctional Department does a great job in handling that situation.

**MORFELD:** OK. Thank you. My second question is looking at a July 1, 2020, declaration, how does that change your view as-- as a member of the board--

**MARK LANGAN:** Well--

**MORFELD:** --or how you operate?

**MARK LANGAN:** I'm not sure what to expect on July 1. I think a lot of us probably aren't sure what to expect on July 1. But it's not going to change how I do my job. And that is working up cases, studying the background of each individual that comes in front of me. True, if the numbers increase, so be it. We'll handle it. But speaking as a new Parole Board member, I mean, this is evidence-based data that I'm reviewing every day for every case that I look at. And that's not going to change how I do my job at all.

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**MORFELD:** Thank you.

**MARK LANGAN:** Thank you.

**LATHROP:** Mark, I do have a couple of questions for you. And they're really not about your qualifications. I've been here when you testified on an awful lot of the animal cruelty bills, many of them brought by Senator Cornett--

**MARK LANGAN:** Um-hum.

**LATHROP:** --as I recall. But I do-- this committee struggles with overcrowding, what-- what we as policymakers can do to alleviate the overcrowding. And I am familiar with the fact that we have 900 people past their parole eligibility date. You would agree with that much?

**MARK LANGAN:** I'm not sure the exact number, but I don't doubt it.

**LATHROP:** It's right in the 900 range. Do you know how many of those people are not getting paroled because they haven't completed necessary programming?

**MARK LANGAN:** I do not. I will say that on the-- on the Parole Board hearings that we hear, and I'm talking about the actual Parole Board hearings, I'm very impressed with the programming being done. For example, I just received a list from the clinicians just a couple days ago about numerous individuals that we saw-- that we'll be seeing tomorrow that have completed, the residential treatment program, things like that. So I will tell you, if we set somebody for a hearing, it moves them up on the list to get the programming that they need. And the department's doing a great job of getting that programming done before they come before us for a Parole Board hearing. The only time we really have to defer somebody because they haven't done their programming is because of their bad for not successfully completing the programming. Does that make sense?

**LATHROP:** It does. What you're suggesting is that if they haven't completed their programming it's not because it hasn't been offered to them.

**MARK LANGAN:** Correct. Many, many flunk out; many refuse the treatment. And then that's-- we're not going to parole them if they do that.

**LATHROP:** The people who are receiving their programming, how close are they to their parole eligibility date when they complete it? Are we

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getting them through programming, say, a year in advance of their parole eligibility date or typically sometime in the year preceding their parole-- parole eligibility date?

**MARK LANGAN:** Well, I'm aware that we see-- we see individuals that become incarcerated within the first 90 days of their incarceration, I believe that their parole eligibility date is three years or sooner. So we're seeing those people and we set programming requirements at that time when we see what we call an offender review hearing or an initial key review type hearing that we have. We-- we-- we-- we don't set the programming. We tell them what programming has been recommended for them and that they're going to have to complete that program prior to paroling. Now these are individuals that might have a parole eligibility date of three years out. So they have plenty of time to get into it. The closer they get to the parole eligibility date, they move up on the list and they get into the training. And then it's completed normally by the time we see them for the Parole Board hearing.

**LATHROP:** I just wonder when I put a bill in on community corrections and the director came in and said, don't need it, don't want it, and don't have people to fill it, and what isn't clear to me is whether they don't have people to go into community corrections, which you and I can agree would be better outcomes than going straight from--

**MARK LANGAN:** Um-hum.

**LATHROP:** --the pen. And that's because they haven't completed their required programming a year before their parole eligibility date.

**MARK LANGAN:** Well, I've seen--

**LATHROP:** Do you see that--

**MARK LANGAN:** Oh, I'm sorry.

**LATHROP:** --or do you have a comment about that?

**MARK LANGAN:** I'm sorry about that interrupting. I'm certainly not in a position to speak for the director of Corrections. You know, I'm a Parole Board member, and I'm just talking to you from my experience that to me, programming has not been a big hang-up for those people that have been set for Parole Board hearings when we've seen them for the Parole Board hearings.

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**LATHROP:** OK.

**MARK LANGAN:** And I will tell you that I paroled a lot of people that if you would've told me probably five or ten years ago when I was a police officer, I probably would have said I would not have done so. But I believe in this evidence-based data. You probably heard of the STRONG-R or the guideline score--

**LATHROP:** Sure.

**MARK LANGAN:** --or things like that and research in the programming, research in their institutional behavior. I mean, it's evidence-based data that I go through before each hearing. And if the individual meets that data, there's a good chance he or she is going to get paroled.

**LATHROP:** OK. I think that's all the questions I have. Senator Morfeld.

**MORFELD:** I just have one follow-up. I guess going back to the accommodations issue, I guess the concern that I have is that I have heard from people where there are instances where accommodations were not made for particularly deaf and blind folks. Are you aware of those issues? Have they been brought to your attention?

**MARK LANGAN:** I'm not aware of any situation that I've had in the five months where we've had an individual who is deaf or blind.

**MORFELD:** OK.

**MARK LANGAN:** So I cannot answer that question.

**MORFELD:** Can I follow up with you after this?

**MARK LANGAN:** Yes.

**MORFELD:** And chat a little bit more to make sure that--

**MARK LANGAN:** You bet.

**MORFELD:** --the accommodations [INAUDIBLE]

**MARK LANGAN:** Yes.

**MORFELD:** OK.

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**MARK LANGAN:** I'll reach out to your office and give them my contact information--

**MORFELD:** OK. Thank you, Mr. Langan.

**MARK LANGAN:** --and I'll check into that for you.

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

**LATHROP:** I don't see any other questions. I appreciate you coming here. I appreciate you serving and yeah.

**MARK LANGAN:** Thank you very much.

**LATHROP:** Thanks for being here.

**MARK LANGAN:** Thank you.

**LATHROP:** Anyone here to speak in support of this nomination or this confirmation? Anyone here to speak in opposition? Anyone in the neutral capacity? Seeing none, that will close our hearing on Mr. Langan's nomination. Thanks for being here. That'll bring us to our first bill, which is Senator Wayne's LB1133. Senator Wayne.

**WAYNE:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent District 13, which is north Omaha and northeast Douglas County. Many of you who are down here, when I first came down here knew that I started off doing this and practicing criminal law and juvenile law. One of the problems with criminal law and juvenile law is your clients don't get arrested on your time, they get arrested on their own. So I was down here many times leaving here at 9:00 or 10:00, right after we opened and running back to court and then coming back down here. That's just kind of how life was my first year. So I started shifting my practice over to what else, personal injury. I figured if Chairman Lathrop could do it, I'm pretty sure I can try. And then I started to run across interesting issues and one of them is the bill before us today, the medical malpractice cap. And what this bill does, and I'm not asking the bill to move this year, I do think it's gonna take a little bit more time as I delve into it and talk to more people who practice in this area to write a more comprehensive bill, but this initial bill was just to raise the limit to \$10 million. Now why is that kind of important? Well, we're talking a lot about tax incentives and tax credits this year. And I think one of the biggest tax incentives we give away is to the medical industry by

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capping their liability. To put that in perspective, in order for me to rent my office, I have to have a million dollars of commercial insurance. My professional insurance is also a million dollars. But if you practice at all with people in the public, you-- you'll also increase that just by a little bit to maybe \$2 or \$3 million with an umbrella. This is the only industry where I see that it is merely capped. And let me give you an example to explain what brought this bill about. If a doctor wakes up and decides to take four or five shots of alcohol and goes to work and then decides take a couple more shots of alcohol and performs a surgery and does it incorrectly, now imagine if that patient is a child, clearly there's a wrong there and there's probably a medical malpractice suit there. But that same doctor leaves at 3:00, gets in his car drunk and hits somebody, one is capped at \$2.5 million, the other one is not. Now you would think the one way your license is at issue would not be capped, but that's the one that's capped. But as an individual, not only can I go after them in a car accident with their own insurance, but if I want to I can forgo that and go after them personally and go after any other assets they have. That doesn't happen. And the reason why I say this is one of the biggest tax incentives that I've seen or giveaways that we have is if you look particularly at children, and there's one or two things that go wrong, and then there have-- and they have to have one or two surgeries, you're at your cap. A surgery goes \$500,000 to \$750,000 in a heartbeat. You're at your cap. And you know who picks up the bill the rest of the time for that child until they're 25 and 26 and sometimes for the rest of their life? The state. The state pays for all their medical, all their treatment, everything. The actual person who caused the injury is free from that liability at 2.5. But to add insult to injury, that doctor doesn't have to pay the 2.5. The most they have to have is \$500,000. Some of them carry more. But there's a fund that's created through our laws which made this more complicated because I wanted to initially just repeal it, to be quite honest, but we have this fund sitting out there that I have to figure out what to do with because it involves insurance law. And I couldn't figure it out in the first ten days that I was trying to after I ran into this problem, even though I've been working on this since October. But we have got to figure out a way that if there are costs and the jury and the judge and everybody agrees that there are gonna be a projected cost of \$12 million for the rest of that child's life-- if I commit the injury, I should own up to that and I should be the one who has to pay for it or at least gets insurance until I'm maxed out on my insurance. But we have an arbitrary cap of \$2.5 million. And I will tell you if there's ever a wrongful birth or a wrongful death or

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some-- something that happens at birth, you go through your cap, you're stuck. And that child, that individual, that parent is on Medicaid for the rest of their life, and we are taking care of it as a state, talking millions of dollars. I just fundamentally think that's wrong, that if you can-- and I did use an extreme example and I know people will come behind in opposition and say that was an extreme example. But it illustrates the point that the license that I use to achieve becoming a doctor caps me on my exposure, but when I get in my car, I'm no longer capped. That is a bad policy decision for this state. We are taking the burden of multiple, multiple children and people who are on Medicaid through no fault of their own and leaving the medical industry free. Now people will argue this will increase costs, people will argue that it'll drive away recruitment of doctors, well, let me-- surprise, there are a lot of other states who don't have caps. In fact, I believe recently Alabama was considered unconstitutional by the court, and they're still recruiting doctors. We pride ourselves on having one of the best facilities and we're actually going after a \$2.6 billion project. I don't think recruiting talent is gonna be the problem in the medical industry, but I do think there's a fundamentally policy issue-- fundamental policy issue with the fact that you are capped at \$2.5 million when the cost of healthcare has increased over a 1,000 percent in the last 10 years, and that's the last time we adjusted this was about 10 years ago. So all I want is to cover the cost that this child and these parents have to go through instead of having the state pick up the tab. And with that, I'll answer any questions.

**LATHROP:** Senator DeBoer.

**DeBOER:** Would you be willing to change the number or how did you arrive at the-- at no caps? I mean,

**WAYNE:** Because we--

**DeBOER:** --if we just-- because in the past, my understanding is, and you can, you can tell me that we've changed the number in the past. Is that right?

**WAYNE:** Yes, we have.

**DeBOER:** OK, so why would not a solution be to adjust the number accordingly?

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**WAYNE:** I'm, I'm all for it, I just-- the reality of a short session and trying to find this on the agenda and find a priority by Friday-- now if this committee wants to prioritize it, I have no problem with that. But it's just a short session issue, and then how do the numbers work out with the-- with this fund that we got so that was part of the issue. But I'm all in favor of changing the number, but we're still not solving the issue if there's a cap on people under 18. That's the issue, that they're not even getting reasonable expenses, that a jury or a judge conclude that, yeah, doctors came in even with the low costs, it's gonna be \$10 million, we still pick up that tab as a state.

**DeBOER:** So just so I'm clear--

**WAYNE:** Yes, I'm in favor of adjusting the number. I would like to go farther than to get rid of the number one day.

**DeBOER:** But you would be willing to just adjust the number?

**WAYNE:** Yes. Yes.

**DeBOER:** OK.

**WAYNE:** Absolutely.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Wayne for bringing this bill. I'm a little confused, is this per occurrence or is this a lifetime cap?

**WAYNE:** Well, it's per the occurrence. But for the victim, it's a lifetime cap, you've got one time.

**BRANDT:** Sure.

**WAYNE:** For the doctor, it's per occurrence.

**BRANDT:** And then Senator DeBoer mentioned-- or you mentioned under 18, but is that in the bill?

**WAYNE:** No, no, I'm saying that even if we put a cap on, think of a child who was born, there was an issue with the, with the procedure of being born, they're gonna have medical costs that are gonna cap-- go

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over \$10 million. So even underneath my bill, the state will still pick up the tab later on.

**BRANDT:** And then in your--

**WAYNE:** And you got to understand, Senator Brandt, most of the time when you get to these numbers, the parents don't get the money, they set up a trust,--

**BRANDT:** Yep.

**WAYNE:** --and they have to buy down the trust just to get to a Medicaid where they can eventually go on the Medicaid. So it isn't like it's a windfall for any family.

**BRANDT:** Yeah. So in your, in your summary, it says effective-- or date effective December 31, 2020, but then you come back to the fiscal note and in there they're using a January 1, 2020, and, hence, the fiscal note of \$24,000 because it has to be retroactive, which is it?

**WAYNE:** That's a Bill Drafting thing, I, I can go 20-- I can go January 1, I can go whatever.

**BRANDT:** Well, one way you've got a fiscal note and one way you don't have a fiscal note.

**WAYNE:** Well, we'll eliminate the fiscal note if that helps.

**BRANDT:** All right. So then the last, I guess, question is, won't this raise costs?

**WAYNE:** Other states are doing it, and we look at them-- and I had a whole-- and, and Jake, my LA, is upset because we had, we had a whole lot of documentation, we were gonna put a-- but I understand it's a short session and I'm being realistic here. But the reality is, when you look at states across the country, our costs aren't that-- aren't significantly lower and, and in fact, sometimes they're higher where caps aren't in place. So to me, this cost savings is, is not a real argument.

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

**LATHROP:** I don't see any other questions at this time.

**WAYNE:** Thank you.

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**LATHROP:** How many people intend to speak on this bill by show of hands, way up in the air? OK. Let's take proponent testimony first, please. Anyone here to testify in support of the bill? Seeing none, we will take up opposition testimony. Good afternoon.

**DAVID BUNTAIN:** Good afternoon, Senator Lathrop, members of the committee. My name is David Buntain, it's B-u-n-t-a-i-n. I am an attorney for the Nebraska Medical Association. For 28 years, I was the registered lobbyist for the Nebraska Medical Association, but I am retired from that job. What you are being given is a fact sheet that we've prepared just to give a little bit of background. I realize I have a very limited amount of time and it's a somewhat complicated issue. This law came into effect in 1976 at a time when there was a crisis nationally in the medical malpractice insurance field. And the concern was that if we didn't do something at that time, there would be no malpractice insurance and no, no fund for patients to recover from. And the further concern was the cost of that insurance and also what the effect of that was as far as the ability to recruit physicians to Nebraska. And as I say in the introduction, those were the goals. I think we've achieved the goals that we set out to achieve. The medical association was behind the initial sponsorship of this, as well as the nurse anesthetists and the hospital association. And as you can see over the years, we have made adjustments and, and come back and raise the cap from \$500,000, which it was in 1976, we've made four adjustments to that. The medical association and, I believe, the other groups that are interested in this legislation are certainly interested and willing to talk about the cap. We've always recognized that there's a need to, to be a good steward of the law and make sure that we continue to achieve the goals that we're trying to achieve through it. And we'd be happy to work with Senator Wayne and with this committee on that. I do want to clear up one thing, it may, may be a bit confusing from Senator Wayne's testimony, the way the law works now in order to qualify, a provider, whether it's a physician or a nurse anesthetist or a hospital, has to provide proof that they have a basic level of insurance, and that's \$500,000, \$1 million for the individual providers. It's more for the hospitals. If they provide-- if they prove that, then they pay an additional level of insurance, which is a surcharge on that, that premium that they're paying, and that's what's paid into the Excess Liability Fund. So currently we have an Excess Liability Fund of about \$90 million that has been built up over the years through the payment of that surcharge into the fund. And I've included just a little bit of information about the status of that fund. One of our main concerns is that it's important that the

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fund continue to be solvent and provide that second layer of coverage for patients. The last thing I want to do is just mention that there's another issue that should be thought about it as you look at this and that is that unlike a number of states, we do not have any limitations on attorneys' fees in this state, in this area. And I know that discussions always-- this is a recovery for patients, but our understanding is that plaintiff's attorneys who tried med-mal cases typically set their contingent fee anywhere from 33 and a third percent to 50 percent. We're aware of instances where attorneys are taking 40 or 50 percent of the recovery. So it's a, it's a bit misleading to say this is about the patients-- what-- one of the driving forces behind this, I'm not suggesting Senator Wayne, I'm not-- but I think there are people pushing this that it's really a matter of more income for attorneys rather than for patients. So I think that has to be taken into account. And if, if we're gonna raise the cap, maybe there ought to be some criteria for the attorney fees as well. I think the current law provides for-- you can ask court review, but I, I don't believe that that's ever, ever occurred to, to my knowledge.

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

**BRANDT:** Thank you, Senator Lathrop. Your last statement really intrigued me on capping attorney fees. Other states, what do they cap those at?

**DAVID BUNTAIN:** Well, they don't cap them, it's generally-- it's a sliding percentage based on the recovery. It might be 33 percent on the first, you know, \$500,000 or a million, there's no uniformity. But then it would come down if, if it's a recovery over, let's say, \$500,000, then it would be a 25 percent attorney's fee.

**BRANDT:** And then that would be in statute?

**DAVID BUNTAIN:** They are statutory limits on attorneys' fees

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

**LATHROP:** A lot of expenses in trying one of these, too.

**DAVID BUNTAIN:** No question, and, and--

**LATHROP:** A lot like hundreds of thousands of dollars sometimes.

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**DAVID BUNTAIN:** Correct. And typically, the way the fee agreement works, as I understand it, let's say you recover a million dollars total in either a jury verdict or, well, let's say a settlement; typically, the costs are paid out of that and then, then the fee comes out of the remainder, so you'd have-- say you have \$100,000 in costs, you'd have \$100,000 dollars paid out, then that 50 percent contingent fee would take another 450 out of that. So out of a million dollars, the patient would recover 450.

**LATHROP:** Yeah, I, I don't know about the 50 percent attorneys.

**DAVID BUNTAIN:** We-- I, I do not know personally but the lawyers who defend these cases say there are lawyers in Nebraska who are taking a 50 percent contingency.

**LATHROP:** OK. I have a question for you, are the physicians and the hospitals being surcharged at this time,--

**DAVID BUNTAIN:** Yes.

**LATHROP:** --or is the fund at a point where they don't need to be?

**DAVID BUNTAIN:** No, they're-- it's-- there's a surcharge set every year. It's set at-- it's-- right now, the maximum surcharge is 50 percent, and the surcharge for this year is 50 percent.

**LATHROP:** Fifty percent of the premium on the--

**DAVID BUNTAIN:** Of the underlying premium.

**LATHROP:** --underlying--

**DAVID BUNTAIN:** The effect of that is they're obviously different. I mean, a hospital pays more premium than a physician, a-- an OB/GYN pays more of a premium than a family physician.

**LATHROP:** Sure.

**DAVID BUNTAIN:** So it's gonna be-- the amount of the premium is gonna be proportionate to what their underlying premium is.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** So I wanted to ask you first, like I asked Senator Wayne, if you would be interested in even having talks about, you know, we know

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that the price of healthcare has gone up, is the, is the cap needing to be negotiated again? Do we need to change that number?

**DAVID BUNTAIN:** We are always open to having those discussions, and we have in the past. In the past, we've initiated them in some of the instances where it led to an increase and I think we're at a point where we need to look at that again.

**DeBOER:** OK. I guess that's all then.

**DAVID BUNTAIN:** Thank you.

**LATHROP:** I think that's it. Thank you.

**DAVID BUNTAIN:** All right. Thank you.

**LATHROP:** Good to see you again. Good afternoon.

**TODD HLAVATY:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Dr. Todd Hlavaty, that's T-o-d-d H-l-a-v-a-t-y. It's one of those Czech names. I'm actually-- in reference to Senator Chambers, I'm west versus east. I'm from North Platte, Nebraska, and do the oncology service for all western Nebraska. We have two clinics, one in North Platte and one in McCook that I'm the medical director. I'm currently the president of the Nebraska Medical Association testifying in opposition to LB1133. Enclosed, you'll today see a letter of opposition from Dr. Harris Frankel, who is one of our past presidents and the current chief medical officer for Nebraska Medicine. The NMA has been an advocate for the Hospital-Medical Liability Act and Excess Liability Fund since its inception in 1976 when it was created as a response to positions on medical malpractice liability insurers, which are both leaving the state due to negative tort environment. Since that time, the NMA has approached the fund with two goals in mind: the first goal is ensuring that the fund remains solvent for our patients; and two, ensuring medical liability insurance remains available and affordable. We feel that this is necessary to attract physicians to Nebraska. I'm not sure if I agree with they're easy to recruit because I'm in western Nebraska where physicians are hard to come by as well as physicians in the inner cities in Omaha. We believe that LB1133 has the potential to undercut both of those goals. The NMA has serious doubts about the first goal ensuring that the fund remains solvent if LB1133 were to become law. As you previously heard, the administration of the fund is an actuarial calculation based on potential claims. So they every

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year, as you alluded to early, they readjust our percentage of what we pay as malpractice. Therefore, altering the underlying requirements necessitates thoughtful deliberation and the ability to run actuarial scenarios, which we do not believe the changes set forth in LB1133 were conducted in a manner with the focus towards long-term sustainability. A viable fund guarantees there's money available for claims made by the injured party. Losing the fund to insolvency means that injured patients would also lose the guarantee that they will be made whole under a successful medical liability claim. Additionally, increase in the liability caps under the Act will likely result in increased frequency of claims and the associated defense costs of these claims, regardless of merit. That will lead to increased costs. So questions arise what are physicians fees doing during this time? I just came back from Washington, D.C., where we did discuss the MACRA Act fees since 2002 to the current date, 18 years later, have only risen 10 percent total, not per year, 10 percent total, that's point zero point two percent per year. So fees are not increasing for physicians. By significantly increasing professional liability costs to practice in Nebraska, recruitment of healthcare providers into the state will be negatively hindered and, and they are leaving for more favorable states than ours. So the changes would impact current Nebraska physicians and the quality of care they are able to provide their patients as an increase in liability premiums which are often seen as overhead costs, they will decrease the resources available to provide for healthcare facilities. For these reasons, the Nebraska Medical Association respectfully requests the committee not to advance LB1133.

**LATHROP:** OK. I don't see any questions, Doctor, thanks for being here today.

**TODD HLAVATY:** You're welcome.

**LATHROP:** Have a safe trip back to North Platte.

**TODD HLAVATY:** Hopefully, the snow has stopped.

**LATHROP:** Yeah. Good afternoon.

**GERRY LEWIS-JENKINS:** Good afternoon, Senator Lathrop and members of the committee. My name is Gerry Lewis- Jenkins, that's G-e-r-r-y, Lewis, L-e-w-i-s hyphen Jenkins, J-e-n-k-i-n-s. I am the chief operating officer at COPIC Insurance Company. My healthcare career started as a registered nurse. I come before you today to speak first

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and foremost on behalf of patients, families, and caregivers. I and my 26 other clinical colleagues at COPIC have seen the faces of unanticipated outcomes. We come to COPIC every day because of our commitment to the mission to improve medicine in the communities we serve. I am here to speak in strong opposition of LB1133. COPIC provides medical professional liability insurance to physicians and healthcare facilities in Nebraska and in other states. COPIC was born out of a medical malpractice crisis in the late 1970s and early '80s by a group of physicians who could not continue practicing medicine in Colorado due to skyrocketing medical liability insurance premiums. Prior to COPIC's founding, national insurance carriers discontinued offering coverage with others announcing substantial rate increases due to the lack of tort reform. In Colorado, in 1988, since the passage of a tort reform bill limiting damages, COPIC has been able to offer stable professional liability premiums to its insureds. In July 2002, COPIC entered the Nebraska market and is endorsed by the Nebraska Medical Association because of our strong commitment to patient safety. COPIC currently insures physicians, facilities that participate in Nebraska's patient compensation fund. Our ability to carry out our mission depends, in part, on the continued viability of the damages limitations contained within the Nebraska Hospital-Medical Liability Act. This bill threatens the intent of the Act and actually the sustainability of the fund. The Act was designed to improve availability and affordability of liability insurance, to encourage physicians to practice in Nebraska, and to improve the availability and affordability of medical services in Nebraska. The tort environment and cost of professional liability insurance is one of many factors physicians consider when starting a practice or accepting a job. By raising the fund coverage to \$10 million for any occurrence and increasing the underlying limits that providers must purchase by 10 times, we estimate that it would lead to an 80 percent increase in professional liability premiums. That 80 percent increase does not take into account the fund surcharge. This move would eviscerate the intent of the Act. Mr. Chair and members of the committee, it's COPIC's desire to provide insurance coverage to healthcare providers in Nebraska. Maintaining a predictable, stable environment is essential for everyone, especially patients and families who desire to access caregivers. We know that we still have an access problem for an already stressed rural provider community for various reasons. Adding more costs to an already stressed community is not the answer. Let's use our limited resources to improve outcomes,

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not increase costs. Please oppose LB1133. Thank you and I'm happy to answer any questions.

**LATHROP:** I want to make this comment. We have a light system, everybody knows we have a light system, and it, and it-- when you do not observe the light system, you invite me to do something which is rude and that's interrupt you and stop you. I'll ask people if you have comments, pare them down to three minutes so that we can get through,--

**GERRY LEWIS-JENKINS:** My apologies.

**LATHROP:** --we can get through the testimony of everyone else in the room on all five bills that we have to hear today. All right? Any questions for this testifier? Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Miss Lewis-Jenkins, for appearing today. The previous testifier said that we have physicians leaving or will be leaving because of high insurance rates. I have yet to see anything here that compares-- on most of the legislation that we do, they always compare us to the seven surrounding states. How does Nebraska compare currently with the seven surrounding states? And if this goes through, how will it compare with the seven surrounding states?

**GERRY LEWIS-JENKINS:** Well, you're a little bit unique in that your state has a patient compensation fund. Colorado, Iowa, some of the other surrounding states do not. So that physicians actually carry a policy that carries the limits, not included in the patient compensation funds. For the most part, the premiums paid by Nebraska providers is actually lower. Iowa, I can speak to Iowa, South Dakota, North Dakota, Minnesota, Utah, Colorado, their premiums are higher and they're carrying \$1 million, \$3 million, and sometimes \$2 million, \$4 million, which is the average. We don't see limits of \$10 million.

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

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

**GERRY LEWIS-JENKINS:** My apologies.

**LATHROP:** Thank you. Next testifier?

**SARAH CADA:** My name is Sarah Cada. I am an OB practicing in Lincoln. I'm here to talk about LB1133 and how it will affect doctors and

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obstetrical care in Nebraska, particularly rural communities. Caps on damages help stabilize medical liability insurance rate increases, making liability insurance affordable and available for physicians. I came to Lincoln from a private practice in Cedar Rapids, Iowa. Iowa, to this day does not have a malpractice cap for damages. When I left Iowa in 2004, the malpractice insurance costs per provider in my practice was \$75,000. When I came to Nebraska, our cost per provider was \$16,000. Iowa has the lowest number of OBs per capita of any state in the U.S. or Puerto Rico or any of our surrounding territories. My specialty of OB/ GYN is one of the specialties most vulnerable to lawsuits. Everyone hopes for a healthy, happy outcome for both mom and baby. Childbirth is the most common reason for hospitalization in the U.S. and 75 percent of OBs will be sued by the time they're 45 years old. Increasing the cap on noneconomic damages will threaten negative public health consequences, including fewer doctors practicing OB, which will limit OB care afforded to rural women. The cost of insurance places an additional strain on our maternal healthcare system. Experience demonstrates that OB providers, when confronted with substantially higher costs for liability coverage, will just stop delivering babies, reduce the number they do deliver, and further cut back or eliminate care for high-risk patients, the uninsured and the underinsured. Already in the U.S., there's a shortage of OBs. There are 8,000 fewer OBs this year than needed in the whole country. The Association of American Medical Colleges shows that states with higher malpractice insurance have lower numbers of OB providers. Women in underserved rural areas have historically been hard hit by the loss of OB providers. The economic viability of practicing OB and indeed entire rural hospital maternity wards is already presenting an access crisis with liability insurance costs can exacerbate. According to the National Rural Health Association, high malpractice insurance premiums may add healthcare access issues in these communities by forcing providers to eliminate high-risk services such as OB. Patients who need services are forced to travel further for care. High premiums can make it difficult for rural areas to recruit physicians. In Nebraska, the percentage of rural hospitals with OB services in 2004 was 50 percent, and in 2014 it has dropped to 42 percent. In a National Rural Health Association policy brief, studies show a doubling of infant mortality rate where services are unavailable. Additionally, out-of-hospital birth, preterm birth, and deliveries in hospitals without OB units increased. In a study of rural Georgia, preterm birth rates increased the further a pregnant woman had to travel to the hospital. Financial challenges such as low Medicaid reimbursement and

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the high cost of malpractice insurance are significant barriers to keeping financially stressed OB units in rural hospitals.

**LATHROP:** Thank you.

**SARAH CADA:** You're welcome.

**LATHROP:** Let's see if there's any questions before you leave, Doctor. I see none today. Thank you for being here and we appreciate your testimony.

**SARAH CADA:** OK.

**KENT ROGERT:** Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Kent Rogert, K-e-n-t R-o-g-e-r-t, and I represent the Nebraska Association of Nurse Anesthetists. And for reasons previously listed by the testifiers today, we still oppose the bill as well.

**LATHROP:** Thank you. I don't see any questions for you, Mr. Rogert, appreciate it. Good afternoon.

**ANDY HALE:** Good afternoon, Chairman Lathrop, members of the Judiciary Committee. That will be a tough act to follow, but my name is Andy Hale, A-n-d-y H-a-l-e, and I am vice president of the Nebraska Hospital Association. Just kind of want to echo the concerns from the previous testifiers. There is a work force shortage in, in hospitals and in rural, particularly in rural communities when it comes to physician retainment and attraction. We just believe, as, as the previous doctor discussed with OB/GYNs found that nearly 50 percent of them have altered their practices due to the fear of lawsuits, with many saying they're accepting fewer and fewer risk patients. Across the nation, access to healthcare is being negatively impacted as physicians move from states with higher insurance costs or stop providing services that may expose them to a greater risk of litigations. The states could be better once they recruit and retain doctors if they knew what their legal liability was limited to. And so because of the work force issue, the Hospital Association is opposed to this legislation.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Hale, for testifying. So you're about the fourth or fifth one in a row to hammer

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on this rural nail. If you're a rural physician, do you pay a lot higher premiums than a physician in Lincoln or Omaha?

**ANDY HALE:** I don't believe so.

**BRANDT:** So then what is the emphasis on, on the rural connection? I'm a little confused. I would look at this bill as affecting the entire state of Nebraska, not just people in North Platte or, or Ogallala or someplace like that.

**ANDY HALE:** Correct. Yeah. I would agree with you that it impacts the entire state, but I just wanted to highlight and emphasize in our rural communities, we have a particular issue with attracting a work force, especially when it comes to physicians, nurse anesthetists, and nurse practitioners.

**BRANDT:** Have we ever tried to reverse subsidize the rural areas so that the people in the urban areas pay more to allow more physicians to go out to the rural areas or more of these people that are impacted by this?

**ANDY HALE:** There are incentives. There is a bill up in, in HHS Committee that has to do with rural loan repayment programs for physicians in rural parts of the state. But overall subsidies, I'm not aware of.

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

**ANDY HALE:** Um-hum.

**LATHROP:** Senator Brandt makes a point, though, if we could have the urban senators pay a little more on their malpractice than the rural guys, then if this is the barrier to recruiting physicians in rural areas, it would provide an incentive and we would alleviate that problem. Would that work, Mr. Hale?

**ANDY HALE:** Is that a question in there, Senator?

**LATHROP:** Yeah, it's a question. Would that work?

**ANDY HALE:** It could. I just want to highlight the-- just the issue we do have with the rural parts of the state and we do have problems retaining and attracting work force in our urban areas as well, it's just not as emphasized in the rural.

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**LATHROP:** OK. I don't see any of the questions, thanks for being here.

**ANDY HALE:** Thank you.

**LATHROP:** Anyone else here to testify in opposition to LB1133? Seeing no one else, anyone here in a neutral capacity? Seeing no one in a neutral capacity-- I don't see Senator Wayne. He may have had to introduce a bill in another committee. We do have nine letters of opposition, including from the following: Mark Johnston, with the National Association of Mutual Insurance Companies; Stephanie Sutton; Cindy Ellis, with the Nebraska Chapter of the American Academy of Pediatrics; Daniel Gih, Nebraska Regional Council of American Academy of Child and Adolescent Psychiatry; Kris Rohde; Nebraska Association of Nurse Anesthetists; Ron Sedlacek, with the Nebraska Chamber of Commerce; Cory Johnson, the Doctors Company; and Cynthia Paul, Nebraska Psychiatric Society. With that, we will close our hearing on LB1133, and that will bring us to our own, Senator Morfeld, and LB1081. Why don't you wait just a second.

**MORFELD:** I thought they were gonna testify in support of mine.

**LATHROP:** OK. Senator Morfeld, welcome.

**MORFELD:** Chairman 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, representing the "Fighting" 46th Legislative District here today to introduce LB100--1081. LB1081 makes some changes to the Nebraska Postconviction Act. This Act provides a means by which criminal defendant can claim that their conviction was obtained in violation of their constitutional rights. A defendant must show that they received the ineffective assistance of counsel, or that their conviction is otherwise constitutionally deficient. In order for a defendant to bring a claim under the Act, they must be in custody or serving a sentence and must bring their claim within one year when their conviction is final or when they learn or should have learned the alleged violation of their constitutional right. There exists a gap in the ability of defendants to bring a claim under the Act if they suffer consequences of their conviction but are not in custody. That's what this resolves. For instance, if the defendant pleads to a charge and receives a short jail or prison sentence but they do not discover their counsel was ineffective while they're in custody, then they cannot bring a claim under the current law. Even if the defendant can later show that their attorney was ineffective, they are barred by bringing a claim. LB1081 would amend the Act to provide that a

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defendant may bring a claim under the Act once they have actual knowledge of the ineffective performance of their trial counsel. The bill will allow the defendant to bring a claim after they have been released from custody if they did not discover ineffective assistance of counsel until after they had been released from custody. There are testifiers who will be following me who can better speak to the necessity of this bill and the shortfalls in our current statutory scheme. And I'd ask that if you have any questions, you reserve them for them because they can give you the specific examples. I'd like to also add that I did meet with a representative of the Nebraska County Attorney's Association, and we did discuss some modifications to this bill to avoid any unintended consequences. And I am willing to work with them on that.

**LATHROP:** Very good. I don't see any questions.

**MORFELD:** Thank you.

**LATHROP:** Thanks, Senator. Proponents of LB1081? Oh, thank you. I have, I have people trained now, they raise their hand. If you're going to testify, come on up to the front row and we will take proponent testimony. Good afternoon.

**SYDNEY HAYES:** Good afternoon, members of the Judiciary Committee. My name is Sydney Hayes, S-y-d-n-e-y H-a-y-e-s. I am a senior certified law student in the Clinical Law Programs at the University of Nebraska College of Law. I am testifying as a citizen and not on behalf of the university. Both in Nebraska and federal constitutions guarantee the right to effective assistance of counsel. This is important, particularly in protecting the rights of the accused, as well as it's crucial to the operation of our adversarial system. Ordinarily, a defendant who received constitutionally deficient counsel in negotiating and accepting a plea agreement and if they can prove that they were prejudiced by their constitutionally deficient counsel, they would have the ability to ask a court to vacate their guilty plea. If that happens, the state has the opportunity to revisit and refile the charges against them. Unfortunately, Nebraska law currently operates in a way in which some criminal defendants have no meaningful opportunity to vindicate their right to effective assistance of counsel, particularly in cases involving a plea agreement where a defendant serves a relatively short sentence, even where counsel clearly performed at a constitutionally deficient level. As the Nebraska Supreme Court currently interprets the Nebraska Postconviction Act, defendants who serve a sentence of a month, a

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week, or even a single day are required to discover that their counsel was deficient and bring an action before or under the Act before they were released from state custody or lose the ability to vacate their guilty plea altogether. This means that defendants without legal expertise are required to act more competently than their attorney, under unrealistic time restraints, while in state custody, or, or lose recourse for even the most flagrant violations of their right to counsel. This was likely not the effect that the Legislature desired or anticipated in amending the Act in 2011. However, this unfortunate gap offends the principle announced in *Marbury v. Madison*, which states it's a general and indisputable rule that where there is a legal right, there is a legal remedy whenever that right is invaded. The proposed amendments to the Nebraska Postconviction Act by LB1081 help to eliminate this narrow remedial gap in Nebraska law while balancing the finality of criminal convictions. The amendments do not change the one year statute of limitations which promote finality of convictions in the state, nor do they diminish the substantial burden a defendant has in proving ineffective assistance of counsel. Rather, these amendments help ensure that defendants do not practically lose their right when they fail to learn of the prejudice while serving relatively short sentences in state custody. For those reasons, I respectfully request that you advance LB1081, and I'd be happy to answer any questions.

**LATHROP:** It doesn't look like there's any questions, but I'm gonna say in ten years in this committee, you may be the first person that's come here and cited *Marbury v. Madison*. And I don't know that I've heard it since law school, but thanks for being here.

**SYDNEY HAYES:** Thank you.

**LATHROP:** Yeah.

**SAM HAWLEY:** Good afternoon.

**LATHROP:** Good afternoon.

**SAM HAWLEY:** Chairman Lathrop and members of the committee, my name is Sam Hawley, that's S-a-m H-a-w-l-e-y. I am a senior certified law student at the University of Nebraska College of Law and I am enrolled in the Clinical Law Program. I am testifying as a citizen, not on behalf of the university. In the context of ineffective assistance of counsel claims, postconviction statutes are generally understood to serve the dual purposes of: one, providing a remedial, a remedial

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mechanism to vindicate constitutional rights; and two, promoting good lawyering within federal and state judicial structures. Unfortunately, these dual purposes are undermined by the gaps allowed by Nebraska's current postconviction scheme. It is a well-established constitutional principle that a right to counsel necessitates a right to effective assistance of counsel. Bound to this constitutional principle is a policy preference that lawyers practicing within a state are operating effectively and offering true, complete, and accurate legal advice to their clients. When arbitrary gaps appear in enforcement, lawyers first are not held responsible for ineffective assistance of counsel; and second, are allowed to continue legal practices that adversely affect additional parties. By allowing gaps of enforcement in the current version of Nebraska's Postconviction Act, the state is not fully promoting good lawyering in Nebraska. Enacting this proposed legislation provides remedies for those negatively affected by ineffective assistance of counsel and addresses the root issue of ineffective counsel itself. Providing adequate and functional remedies are certainly important in order to vindicate essential constitutional rights. But it is equally necessary to treat the problem at the issue's heart, that is, ineffective assistance of counsel within the state of Nebraska. Closing the gaps in the postconviction remedial scheme instructs lawyers on proper standards of law, deters lawyers from utilizing misguided legal practices, and holds offending lawyers responsible for ineffective assistance of counsel. It must also be noted that the proposed legislation achieves these goals without the risk of opening the floodgates to litigation on ineffective assistance of counsel claims. The proposed legislation operates to close gaps within the statutory text with an effect on a narrow class of persons able to benefit from such change. In other words, the proposed legislation has the effect of applying to a narrow class of persons to preserve a fundamental constitutional right. Additionally, the standard for a successful, ineffective assistance of counsel claim is a difficult standard to meet. In conclusion, the proposed legislation first provides remedial reform to protect constitutional rights; second, promotes good lawyering within the state of Nebraska; and third, applies to a narrow category of persons. For these reasons, we respectfully request that you advance LB1081. Thank you, and I'd be happy to answer any questions.

**LATHROP:** Thank you, Mr. Hawley. Hawley?

**SAM HAWLEY:** Hawley, yeah.

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**LATHROP:** Hawley, OK. I don't see any questions for you today, but thank you for your work on this subject and being here.

**SAM HAWLEY:** Thank you, Senator.

**LATHROP:** Next proponent?

**SPIKE EICKHOLT:** Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB1081. We want to thank, Senator Morfeld, for introducing the bill. It's difficult for me to follow the two prior testifiers because they really offered a very comprehensive and very clear explanation for this bill and what it does. So maybe I'll just generally summarize what the bill provides for. Right now, if a person's found guilty of a crime, sentenced, and they're in custody, there's certain time limits they have if they want to bring a postconviction claim. It's not a direct appeal. It's a-- you sort of file of motion, if you will, before the judge that you had your case beforehand, the trial judge, and you basically argue, my lawyer didn't tell me about X and therefore I am asking to have my conviction set aside, and I want a hearing to talk about this. And there's certain time limits for when a person can do that. It's usually one year from the finality of their conviction or one year when they discover the constitutional defect, if it's created by another law or something like that, and then some-- a couple of other time limits. This would add another time limit that's narrow and that would provide for one year for when a person has actual notice that the consequences that they did not know about when they enter their plea actually happen to them. And these consequences are significant enough that if they had known about it, they would not have pled at the time that they pled. As well, the bill also removes the in-custody requirement to bring that claim. And what this does it captures that small group of people who plead to something, are not advised properly at the time they plead, they get a minimal sentence. And then toward the end of their sentence, when they're done with the sentence, they have some sort of significant thing happen to them because of the conviction. You often see that for people who are not citizens and I'm not talking about people who are here illegally, I'm talking about people here-- who are here on student visas, who are here with green card status, or in the process of becoming a citizen. Many times they'll plead to some sort of relatively minor charge, but the lawyer representing them fails to advise them properly of the immigration consequences. And for those

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people, many times we get very minimal sentences, they get done toward the end of their jail sentence, something like that, and they've got an ICE detainer on them, and now they're getting removed from the country in an immigration proceeding. They can't even get back into court to say, hey, I want to talk about this. This just merely provides an opportunity to be heard. It doesn't mean they're gonna win, the law provides that judges can dismiss a request for postconviction outright without a hearing. Judges regularly do that for people who file beyond the year limits now, and that happens all the time. This is just, as the earlier testifiers testified before, offering a narrow group of people an opportunity to be heard. So we'd urge the committee to advance the bill.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Eickholt. Isn't there a limit on ineffective counsel today? I mean, do we really need this law?

**SPIKE EICKHOLT:** I think you do, because if you look at the Mamer case, M-a-m-e-r, and I think it's the other one, the Rodriguez case, where they were able to establish the their trial counsel was ineffective. The issue before them was whether they could even be heard and even argue that issue. The court didn't, I guess, definitively define that the trial counsel was effective, but maybe they did in Mamer. But even if you are, it's unequivocal that your lawyer didn't say-- and sometimes lawyers will acknowledge after the fact, well, I didn't even realize-- I didn't ask him if he was a citizen. Right? We pled to like a marijuana charge or some relatively serious thing that's gonna get you in a lot of trouble in the immigration courts but maybe not so much trouble in state law. There's nothing that can be done about it under the current scheme, you can't go back and undo what's been done, there's just no vehicle to do it.

**BRANDT:** And then the second point I'd like to bring up is there's a \$93,000 fiscal note because the State Attorney General's Office says that claims will shoot up in the state of Nebraska to the point they will have to hire another attorney. Do you believe that to be true?

**SPIKE EICKHOLT:** Well, I was sort of surprised when I saw that because there's a Sarpy County fiscal note that estimates no cost. And I know as a practical matter, as I said before, postconviction claims are filed initially in the district courts and the county attorneys represent the state in those capacities. Now I suppose if they're

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appealed, sometimes the State Attorney General's Office gets involved, but that did catch my eye because the-- Sarpy County did not estimate a fiscal note to it.

**BRANDT:** OK.

**SPIKE EICKHOLT:** And a lot of these, a lot of these hearings are, are quick, they're easy. And as I said before, the law provides that a judge can dismiss it outright without a hearing or grant a hearing. The hearing can be telephonic. The person's not entitled to have a lawyer at that, they can do it themselves. So they're not, they're not like jury trials, right? They're not like two-week long contested hearings, many times they're very quick and very short.

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

**SPIKE EICKHOLT:** Thank you.

**LATHROP:** I see no other questions. Thanks for being here, Mr. Eickholt. Anyone else here to testify as a proponent? Anyone here in opposition?

**KATIE BENSON:** Good afternoon, my name,--

**LATHROP:** Good afternoon.

**KATIE BENSON:** --my name is Katie Benson, K-a-t-i-e B as in boy e-n-s-o-n. I'm a deputy county attorney out of Douglas County and I'm here on behalf of the Nebraska County Attorneys Association. By way of background as a deputy county attorney, I do handle all postconvictions filed in Douglas County, which just by the numbers are the most in the state. I've been doing that for ten years. And prior to that, I was a law clerk for the district court judges and handled postconvictions there as well. So for 13 years, I've handled an extremely large amount of postconviction cases. And to say the least, that the additions made here by Senator Morfeld, they would create a windfall of filings, and that is based on my training experience. The two major issues I see with the language in this proposal is the first one being the generic statement of consequences. It allows a defendant to file anytime he or she who has a plea-based conviction, which by the way, plea-based convictions are the majority of convictions, obviously, in here, the generic language is whenever they determine a consequence. Well, what is a consequence? A consequence could be that they have now found out that they don't have a right to vote or carry

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a firearm. Maybe it's something as little as they wanted to be housed in a different correctional facility or they thought they would be paroled or they could come back to Omaha. There could be numerous ways to interpret the generic language of a consequence from a plea. And the thing-- there is a catchall for consequences, and that's our U.S. Constitution, Nebraska Constitution that has the consequences that a judge advises defendants of, so it's not like people are pleading and not realizing what the impact would be in what they are allowed to have. That is done by the constitution, and those consequences are relayed to defendants through their attorneys as well as the judge so there is a catchall. Senator Morfeld was nice enough to meet with me and Mr. Eickholt, because I felt that the language was quite generic and I wanted to know what the driving force was behind this additional language. And when we met, Senator Morfeld-- you know, it's about fairness, and I agree, but the bigger thing was what I got out of the meeting was a big issue is somebody in State v. Mamer who has immigration consequences after the release from custody. But they're aware of this, the judge under a separate statutory section gives an immigration advisory. And the U.S. Supreme Court, through United States v. Badea [PHONETIC] has also said your attorney has to [INAUDIBLE] reasonable advice on immigration. So there are ways for defendants to be aware of this. The second major issue is that a defendant can file this outside of being in custody, and the first language of the Postconviction Act says a prisoner in custody. This language defeats that very first requirement in the statute. And as Senator Brandt touched on, I think your question was very appropriate in that this just isn't necessary. We have several catchalls for this. And if you allow defendants to file these outside of custody, the state will not be able to hear these cases, they'll be years down the road. And we'll also have to, you know, come to victims years later and have to advise them of this. Thank you. And this is why I'm asking for you to oppose LB1081.

**LATHROP:** OK. Thank you, Miss Benson. I don't see any questions for you today, but thanks for being here.

**KATIE BENSON:** Thank you, Senator.

**LATHROP:** Good afternoon.

**JAMES D. SMITH:** Good afternoon. Mr. Chairman, members of the committee, I am James D. Smith. I appear on behalf of both the Nebraska Attorney General's Office and the Nebraska County Attorneys Association. I am a senior assistant attorney general for the state of

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Nebraska, having worked in the Attorney General's Office in almost every attorney supervisory or staff position there for 25 years. I am also president of the Nebraska County Attorneys Association. The bill suffers from the following ten general flaws: first, it's unwise public policy. It's the opposite of the policy this committee adopted by unanimous committee amendment nine years ago when the postconviction statute of limitations was enacted. Second, it promotes the theory that there is never an end to criminal litigation. Third, the bill has nothing to do with innocence. The only one who-- only ones who can use this bill are defendants who admitted their guilt, pleaded guilty, and their guilty pleas were previously accepted by the court when the defendants' convictions became final. Fourth, the bill is traumatic. It's unfair to crime victims and their families, such as sexual assault, violent crimes, among all crimes, people who thought their victimization ended long ago when a defendant admitted guilt and pleaded guilty. Fifth, it's unnecessary because first of what is involved in the judicial system's due process for accepting a plea in the first place. Second, there are other available judicial challenges-- procedures to challenge a criminal conviction. There are already seven other such procedures. Sixth, it's expensive by requiring appointment of attorneys, evidentiary hearings, and more appeals per the rest of the Postconviction Act. Seventh, it reduces the reliability of criminal convictions by the specter of future trials years after witnesses have scattered, died, or have faded memories, all of which defendants will use to their advantage to avoid ultimate responsibility for the crimes they previously admitted committing. Eighth, the operative words of the bill are either not defined or are partly defined, which promotes more litigation. Ninth, the bill is subjective in that it leaves solely up to a convicted defendant who admitted his guilt to say if and when the defendant actually discovered consequences from the conviction, whatever those consequences may be. Tenth, and finally, it unwisely tinkers with the language of the model federal habeas act's statute of limitations, which was adopted 25 years ago by Congress, which this committee then basically parroted 9 years ago. The federal act has a substantial history of federal judicial case law construing the act, the model federal act was enacted after the Oklahoma City bombing to put-- to set a time limit for challenging criminal convictions after convictions are final. By contrast, this bill would totally undo that and would promote litigation forever with no time limit.

**LATHROP:** OK. I don't see any questions for you today.

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**JAMES D. SMITH:** Thank you.

**LATHROP:** Thanks for being here. Anyone else here to speak in opposition? Anyone here to speak in the neutral capacity? Seeing none, Senator Morfeld, you may close. Senator Morfeld's gonna waive close. We do have two letters in opposition [SIC], one from a gentleman named Mark Porto, and another from Kevin Ruser, R-u-s-e-r. That will close our hearing on LB1081 and bring us to Senator DeBoer and LB907.

**DeBOER:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10, which includes Bennington and northwest Omaha. Today I'm introducing LB907, a bill which takes a comprehensive look at our adoption statutes in Nebraska. LB907 began as a bill to address second-parent adoption. Under LB907, a child who has a sole legal parent may be adopted by a second person who has a parent-child relationship with the child, regardless of whether the parent-- the second parent is married to their parent, to the, to the child's parent, without the sole legal parent having to give up his or her parental rights. Currently, our adoption statute allows for the adoption of a minor child by any adult persons or persons or by a spouse of an existing parent. But if you have one, one parent already, you can't be adopted by anyone except for the spouse of that parent unless they give up their parental rights. There are a variety of situations in which a second parental relationship to a child has been established but is not legally recognized. For example, say a couple has a child together, and shortly after the child is born, the couple divorces. The father of the child remarries and that woman acts as a stepmother to the child, the child lives their whole life with that stepmother. All three parents have a role in the child's life, then say the child's father passes away, under current law, the stepmother would be unable to obtain parental rights to the child, since she is not married to the surviving parent, the biological mother. Under LB907, the stepmother in this hypothetical would be able to adopt the child with the biological mother's consent. So if you have a biological mother and a stepmother who's raised the child her whole life, under this bill, they could parent the child together after the father dies. Imagine a single mother moves in with a trusted relative who agrees to co-parent with her, the mother may want the relative to adopt the child through second-parent adoption to provide stability for the child in case something happens to the mother. Allowing second-parent adoption provides for stability and permanency in the lives of children. In all of these cases, the person seeking to adopt

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the child already has a parental relationship to the child in everything but legality. Legal adoption assures financial benefits, including health insurance benefits, veterans benefits, and life insurance benefits. Legal adoption also allows a second parental figure to make medical decisions for a child and ensures custody should something happen to the original parent. In the process of drafting this bill, a variety of attorneys who specialize in adoption brought my attention to the fact that Nebraska's adoption statutes are in many cases very confusing and include unnecessary provisions. Because of this, I decided to bring a comprehensive bill that would remove unnecessary provisions and streamline the adoption process. An expert in this area will be testifying after me and will be able to answer any detailed questions you have regarding the changes made in this bill. At this point, I would like to make sure that you have AM2199, which is the white copy amendment to place the original bill. LB907 incorporates new categories of birth fathers as defined by the Supreme Court. In the original drafting of the bill, a few of these changes were missed. So this amendment will incorporate those changes. Finally, I want to acknowledge that there are existing concerns on the unintended consequences of allowing second-parent adoption, and I'm happy to work with anyone to address these concerns as needed. Thank you for your consideration, happy to answer any questions that you might have. Although, I have to admit I am not an expert in adoption law and there are experts in adoption law who will be testifying after me.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator DeBoer, for bringing this bill. So I can wrap my mind around this, a couple has children, they get divorced, the woman-- the, the child is with the, the birth mother and, and she marries another man, then he has the right to legally become the adoptive father over the objection of the existing father?

**DeBOER:** No, no, precisely not. First of all, you should know that in Nebraska, under this bill and under existing law, you can never have three parents.

**BRANDT:** OK.

**DeBOER:** You can only ever have one parent, zero parents, or two parents. You can never have three or more parents. So the, the bill would allow a second parent. So right now, the law is that there-- if

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there is a parent, you can't have an adoption unless that person is married to the parent. So any other person in the world can't adopt if you've got one parent.

**BRANDT:** I think I understand. Thank you.

**DeBOER:** OK.

**LATHROP:** I do not see any other questions. Thanks for introducing LB907. We will take proponent testimony first. Anyone here as a proponent?

**SUSAN SAPP:** Good afternoon, Senator Lathrop and committee members. My name is Susan Sapp, S-u-s-a-n S-a-p-p. I'm an attorney with the Cline Williams law firm. For 30 years, I have practiced in the area of adoption law and I also appear here today as a representative of the Nebraska State Bar Association in support of LB907. I am the chair-elect of the House of Delegates of that organization and also on the legislative committee. LB907 has two main sections to it: one, the second-parent adoption, which Senator DeBoer spoke about at length. And I want to thank, Senator DeBoer, for providing the vehicle to make some comprehensive adjustments to the Nebraska adoption statutes. In addition to the second-parent adoption section, there is cleanup in a number of areas to bring the statutes into compliance and into line with various Nebraska Supreme Court decisions in the area of adoption. It addresses problems with jurisdiction between county court and district court. It eliminates district court jurisdiction, much to the delight of several district court judges who have shared their view of the bill. It has broad support from the county court, broad support from the district court, and broad support, as I understand it, in the adoption community. After the bill was introduced, we vetted it around to the adoption community and a number of enhancements and tweaks were undertaken. But the Supreme Court has, has pecked at the adoption statutes in a way that make them very difficult to implement. There have been a series of decisions over the last 20 years that have made us have to sort of make up procedures in the adoption world to deal with different categories of birth fathers as defined by the Nebraska Supreme Court. That makes it very difficult to practice adoption law with stability, because our ultimate goal is legal stability for these families and these children. So cleaning this up, creating the categories of birth fathers in line with what the Supreme Court is identifying, clearing up jurisdiction, clearing up the role of minors in adoption relinquishment in legislation, the effect of consents and relinquishments, the timing of filings to protect the jurisdiction of

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the court, those are all things that procedurally clean things up. They also enhance the constitutionality and actually create greater rights and timeframes for birth fathers to act in greater clarity so that practitioners don't make a mistake in representing birth fathers to the detriment of those birth fathers. So I have a little bit of time left, I'd be happy to answer any specific questions that you have.

**LATHROP:** OK. It doesn't look like we have any questions for you today, but thanks for coming down,

**SUSAN SAPP:** Thank you, Senator, appreciate it.

**LATHROP:** --we appreciate hearing from you and your work on the bill.

**FRANK SKORUPA:** Good afternoon, Chairman Lathrop and members of the committee, my name is Frank Skorupa. I'm a county judge in Platte County, Nebraska, the Fifth Judicial District, and I'm speaking in favor of the bill and on behalf of the Nebraska County Judges Association in support of the bill. As Ms. Sapp indicated, there are issues and, and Senator DeBoer indicated, there are issues with regard to who can adopt and definition of fathers who have a say in the adoption and everything. And I want to make it clear that the County Judges Association has not taken a position with regard to those matters because we believe that those are policy issues, and so we will not take a position on that. But the bill also as Ms. Sapp indicated is a cleanup bill that really gives the opportunity to clarify procedural aspects of the adoption bill that now apply. One of the things, and it seems very simple is that the bill, throughout the bill strikes when certain documents have to be filed. Oftentimes, the, the bills-- the statutes will refer to certain documents being attached to the petition. The bill strikes basically that type of language and says that certain documents, whatever they may be, are to be filed prior to the hearing. That may seem silly, may seem simple enough, but there is case law that indicates that if certain documents are not filed simultaneously with the petition, then the court doesn't have jurisdiction over the adoption. And so that is one step that goes to clarify that particular problem that the courts have faced. If a certain document is not filed with the petition, there's no remedy that I'm aware of other than starting all over again with the adoption. So that clarifies that. The other one has to do with consent, as Ms. Sapp indicated, consent from a court having jurisdiction over the custody of the child is now basically the language that is used. This LB907 eliminates that consent provision.

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It does provide, however, that the petition must verify that there are no ongoing or current custody issues pending in a different court. And so that eliminates the consent provision of the, of the district court with regard to a situation where a divorced couple and, and a remarriage of the father, the mother is now adopting the child who is a child of divorce, that takes that out. And further, it takes out the determination by the district court of whether or not the consent of a father is necessary to the adoption. It puts it back in the hands of the adoption court, which our Supreme Court has repeatedly said has exclusive jurisdiction with regard to adoptions. So it eliminates that provision also. And finally, one provision that is kind of selfish to myself, it kind of defines what courts have jurisdiction over the adoption. Right now, a separate juvenile court in Douglas County, Lancaster County, or a separate county, Sarpy County would have concurrent jurisdiction over an adoption with a different county court, let's say Seward County. The adoption petition can be heard in the separate juvenile court that has jurisdiction over the children or it can be held in Seward County, where the parents, the adopting parents live, concurrent jurisdiction. The selfishness comes up in the fact that in Platte County, we're not a separate juvenile court, we're a county court sitting as a juvenile court. So if I have shepherded a case through two years or more of children and the parental rights are now terminated, now adopting parents in Seward County are adopting, Seward County has jurisdiction, I don't get to finalize it. That's my, my selfishness, if you will. Thank you for allowing me to testify today.

**LATHROP:** It doesn't sound all that selfish really. Any questions for the Judge? I see none. Thanks for taking--

**FRANK SKORUPA:** Thank you.

**LATHROP:** --time to come down here.

**SPIKE EICKHOLT:** Chair Lathrop and members of the committee, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU Nebraska in support of LB907. This is a bill that we feel is important, and I just wanted-- we just want to be on the record in support of it. We did support Senator DeBoer's LB426 that was introduced last year. And in part the reason we supported that bill and this bill is that we have proudly worked for the rights of LGBTQ people because we do believe in the state's motto of Equality Before the Law. This bill, in part, along with a number of other cleanups, it would address the scenario or the situation that happened in 2002 by

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our Supreme Court in the case of *In re Luke*, in which-- and this is before the *Obergefell* decision, in which a lesbian couple, the mother of a child, the father of the child was a sperm donor, was living with another woman, and the other woman wanted to adopt the child that they had been raising together. The law didn't provide for that because as Senator Brandt asked about earlier, or at least with the answer in response to your question they couldn't marry. And the law still, according to our statute, does not provide for an opportunity for an unmarried partner to adopt a child. And this would resolve that issue and resolve that sort of dilemma that was raised in *In re Luke* along with other things. I mean, ultimately, as some people have said before, this is a children's rights issue, and our Supreme Court has said that the establishment and continuance of the parent-child relationship is the most fundamental right that a child possesses. And this bill is consistent with that. As Senator DeBoer said earlier this provides for the protection that a child has of the rights of inheritance, the rights to receive medical care, the rights to have both parents make decisions with respect to that child's healthcare and other things. So we would encourage the committee to advance the bill. I'll answer any questions if anyone has any.

**LATHROP:** I don't see any questions.

**SPIKE EICKHOLT:** Thank you.

**LATHROP:** Thanks for being here. Anyone else here to testify as a proponent of LB907? Anyone here on opposition? Welcome.

**MARION MINER:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Marion Miner, M-a-r-i-o-n M-i-n-e-r. I'm here on behalf of the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the Gospel of Life through engaging, educating, and empowering public officials, Catholic laity, and the general public. The Conference opposes LB907 in its current form with regard to the first part of the two parts that Senator DeBoer and Miss Sapp spoke of. Like LB426 from a year ago, LB907 would provide for adoption of a minor child by two adults regardless of their relationship to each other. It diminishes the rights of a child to familial stability and permanency in favor of the desires of adults. We urge the committee to consider the harmful consequences to adopted children in some circumstances that would be made possible by the bill. If two adults cannot make a commitment of permanency to each other, it makes little sense for the law to invite them to acquire children for themselves.

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Every child is a gift and a trust to his parents, and every child has the natural right to a permanent relationship with his mother and father. When a relationship with his natural parents is not possible, he has a right to a permanent relationship with adoptive parents who have made a permanent commitment to the child and to each other. Marriage, as a civil institution, has been recognized, privileged, and regulated by the state for centuries precisely because of its "protectivity" of children. Marriage, in binding parents to one another with an expectation of permanency, protects the legitimate rights of the child, which the child cannot assert for himself. LB907 diminishes the rights of adopted children as written by removing the expectation of permanency from the picture. As written, LB907, which provides that a minor child may be adopted by any adult persons or persons jointly regardless of marital status could mean any two people with any kind of relationship to each other or no relationship at all. It would allow for two people living in different households to adopt a child together. It would allow for total strangers to adopt a child together. It would allow for one unmarried person to adopt several different children with several different unmarried adult counterparts. LB907, as written, allows for these scenarios to become real. This is not conducive to the best interests of the child. So because LB907, as written, undermines the very important right of children to stability and security in the family by removing a legally recognized expectation of family permanency that exists for their protection, the Conference opposes it as written again with regard to the first part and urges that you not advance it to General File as it stands at this moment.

**LATHROP:** I don't see any questions. OK.

**MARION MINER:** Thank you.

**LATHROP:** No questions today, Mr. Miner. Anyone else here on opposition to LB907? Anyone here wish to speak in a neutral capacity? Seeing none, Senator DeBoer, you may close. As you approach, we do have some letters: two in support; one from Sarah Hanify, at the National Association of Social Workers, Nebraska Chapter; Juliet Summers, Voices for Children. And one in opposition: Nate Grasz, from Nebraska Family Alliance. And one in neutral capacity: Dannette Smith, with the Nebraska Department of Health and Human Services. Senator DeBoer.

**DeBOER:** Yes, thank you, Senator Lathrop. I just want to mention a couple of things: one, I forgot to mention this in my opening, but there are safety nets in place, the courts still would look at the

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best interest of the child and do a home study in any of these adoptions. So we feel we have addressed the issues of, of that, as well as the fact that I want to sort of point out that this-- the intention of this bill and what I think it does is it enhances the stability of a child, because if something happens to one of their parents and they've established a parent-child relationship with another, and that is outlined is there has to be a parent-child relationship, then those already established relationships can be recognized. So I think that's really important. We haven't looked at our adoption statutes in a really long time and it would really be very useful to people who are working in this area to clean up some of these things and to, to move this bill forward.

**LATHROP:** OK. I don't see any questions. Thank you, Senator DeBoer. I appreciate the close. That will close our hearing on LB907 and bring us to LB1004. You want to run the hearing?

**BRANDT:** Sure. Welcome, Senator Lathrop. We're prepared to open on LB1004.

**LATHROP:** Thank you, Senator Brandt, members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the senator from Legislative District 12, and I'm here today to open up on LB1004. It's a very, very straightforward and a very, very simple bill that I think has the potential to provide some relief in our overcrowded prison system. LB1004 would change the parole eligibility date, which, as you know, is currently one-half of the lower number on an indeterminate sentence. The addition made by this bill would be to say that the-- or to provide that the parole eligibility date would be half of the lower number on an indeterminate sentence or two years prior to the offender's mandatory discharge date, whichever is earlier. What this does is provide an opportunity for those people who are within two years of their parole eligi--pardon me, of their mandatory discharge date, but not having reached one-half of their lower number to be eligible for parole. The-- there's a letter there and I should have that passed out. If you can grab those letters and pass them out to the committee. Do you see them? Yes, perfect. We have a letter from Ros Cotton, with the Parole Board, that talks about the effect of this bill. It has the potential to, to make a thousand other individuals at the Department of Corrections parole eligible. To be perfectly clear, crystal clear, being parole eligible is not the same as getting out on parole. If someone comes in and they are parole eligible after a short period of time as a consequence of LB1007--

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pardon me, LB1004, that person still has to check all the boxes before the Parole Board would find them to be a suitable candidate. But it does have the potential to provide the Parole Board with more candidates to choose from at a time as we approach the overcrowding crisis designation or emergency July 1, 2020. We are getting perilously close to completely full on the men's side at the Department of Corrections. I think this affords us and the Parole Board with an opportunity. I'm gonna make a comment about the fiscal note. The fiscal note is concerning to me, and, and I know this is a pastime in the legislator to gripe about fiscal notes. The fiscal note gives you the perspective of the Parole Board. If they-- in fact, had a thousand more people that were parole eligible and up to perhaps as many as 600 might be paroled, they'll need more parole officers. And that stands to reason, and I'm OK with it. It costs \$3,300 roughly a year to keep somebody on parole. What's not in the bill or not in the fiscal note is the savings. So someone who gets out and they're no longer a \$40,000 liability per year to the state, there should be a corresponding offset from the Department of Corrections, which isn't there. The Department of Corrections, unlike the Parole Board, believes that this will have a negligible impact when the Parole Board thinks as many as 600 people might become parole eligible and be paroled. So again, we have a little bit of a difficulty with the fiscal note from the Department of Corrections, who you'll remember last week dropped a huge fiscal note on one of my bills and then testified that they already do what we asked them to do in the bill.

**BRANDT:** Are there any questions,--

**LATHROP:** With that, I'll take questions.

**BRANDT:** --questions for Senator Lathrop? So if it is 1,000 new candidates at \$40,000, would be a \$4 million savings against \$2.9 million cost, so you have generated a \$1.1 million savings if your math is correct.

**LATHROP:** That's what I think.

**BRANDT:** I think so, too. OK.

**LATHROP:** That's what I think.

**BRANDT:** With, with that, we will go for proponents? Welcome.

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**JOE NIGRO:** Good afternoon. Senator Brandt, members of the, members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o, and I'm the Lancaster County Public Defender. I appear on behalf of my office and the Nebraska Criminal Defense Attorneys Association in support of LB1004. I want to thank Senator Lathrop for introducing this bill. The research is pretty clear that people coming out of prison under supervision are less likely to reoffend. When the parole eligibility date and discharge dates are too close to each other, many inmates will opt to stay in prison and avoid the risk of messing up on parole and then having to serve more time. They will just wait until their discharge date when they no longer have to worry about going back to prison. Having a bigger gap between parole eligibility and discharge gives inmates a greater incentive to gain parole. This problem was caused when the Legislature removed the law that the maximum/ minimum could be no more than one-third of the maximum/maximum. This was done in a sneaky manner in an amendment to a large bill late in the session that no one caught in the early 1990s. When the Legislature tried to fix that problem the next year there were some prosecutors who scared them with the usual arguments about letting scary people out of prison earlier and being tough on crime. What keeps dangerous people in prison is the discharge date, not the parole eligibility date. Someone in prison for an offense such as sexual assault is unlikely to be paroled. Ironically, those who advocate keeping the current system where parole and discharge dates can be the same or very close to each other have made us less safe because they advocate for a system where fewer people get out on parole. If someone testifies against this bill, ask them to explain how we're safer when inmates are released without supervision. Creating incentives to gain parole will also improve behavior in the institutions. This bill will help reduce prison overcrowding and will increase community safety by increasing the number of people who get out on parole instead of just being released, which will reduce-- and this will reduce recidivism. I urge you to advance LB1004. Thank you and I'm happy to take any questions.

**BRANDT:** Questions? I don't see anything from those two. Real quick, how many-- on average, do you have any idea what a sentence would be shortened by doing this?

**JOE NIGRO:** I, I don't. You know, I, I look more at the circumstances where if somebody gets-- for example, let's say they got 18 to 20 years, that becomes 9 to 10, they would only have a year left. And somebody in that situation is likely to say, I'm not gonna go out on parole, because if they mess up and come back, they're gonna lose some

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good time and they may have to do a longer amount of time. So I know you have a bill that's already, I think, on the floor that has a-- guarantees a wider gap, which is a good idea, but this at least provides a little more gap, but I can't tell you how many people. Senator Lathrop may have better numbers on how many people it will impact. But I, I just know for inmates, if that gap is bigger, they're more likely to say, yes, I want to get out on parole and that means they'll behave better in the institution and coming out in supervision makes them less likely to reoffend.

**BRANDT:** So what kind of gap would be the incentive, two years, one year, three years?

**JOE NIGRO:** Well, I think-- ideally, we'd go back to the old one-third. You know, we're-- on a-- for example, on a, on a-- on an offense that carried up to 20 years, it was 6 and two-thirds to 20 was-- so the most you could get on the bottom was 6 and two-thirds. On a Class II, used to be 16 and a third to 50. Those guaranteed some very large gaps. But this at least is an improvement because sometimes, sometimes we do see judges making sentences the same or so close to the same that again, people-- you know, either aren't going to parole or, or they choose not to. So I think this is an improvement. But I-- you know, in my mind, the idea would be to go back to what we used to have when I was practicing in the '80s and the early '90s. I think, I think that system worked better.

**BRANDT:** All right. Thank you, Mr. Nigro.

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

**BRANDT:** Next proponent?

**SPIKE EICKHOLT:** Thank you, Senator Brandt and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU Nebraska in support of LB1004. It's a good bill. We thank, Senator Lathrop, for introducing this bill and for his leadership on this issue. I think the bill's pretty straightforward, it is-- at least the concept is somewhat similar to the bill that we-- that was on the floor that the Legislature was discussing and then trying to discuss maybe the following day. But it's important because what it does provide for-- it not only addresses sort of the oncoming emergency declaration, it also addresses what to do with all the number of people who are in custody, in prison, and it sets a larger pool to make those people parole

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eligible. One of the things that was indicative and problematic with our prison system when CSG came here back in 2014 and 2015 was that we had a very high number of what they called relatively short, flat sentences, where people were going to prison for two or three years and they were simply doing their time and walking right out the door with no supervision. Being on parole-- well, first you have to be eligible for parole and being eligible, of course, doesn't mean you're going to be released. That's one argument against these types of bills that people make. And it's a little bit-- maybe disingenuous is too strong a word, but it's a little bit misleading because just being parole eligible doesn't mean you're gonna walk out the door, we almost have at any one time 900 or so inmates, I think you've heard earlier, who are parole eligible, and the Parole Board has no problem saying no, even with the overcrowding mess that we're in right now. And I'm not saying that that's right or wrong with the decisions they make, but that does not mean that when you get your parole eligibility date, you walk right out the door. And more importantly, being on parole means something. There is a reason why at least some inmates choose not to be on parole. You can get drugs in prison. They drug test you when you're on parole. You've got to work when you're on parole. You've got to have a place to live. You've got to abide by a curfew, and you've got to check in with your parole officer. You've got to live a productive, constructive life. Many respects, particularly what I-- and this is anecdotal when I see like young offenders, guys who just are at that age, they're maybe 20, 21 or so, in that kind of early 20s, but they think they know everything, those guys just want to do the time and get out and they're not going to get caught next time. This would provide for a meaningful reentry program that our system's in need for reform, and that is you have someone who's transitioned, released, supervised for a while. They can be searched by cops when they're on parole. They have limited rights of privacy, if any, when they're on parole. But when they walk out, there's just nothing on them unless we-- most of-- like, 90-some percent of our inmates are going to get out of prison at some point, unless we turn our prisons into old folks home and we keep them there until they're just debilitated physically, they're going to get out. And you want to have a transition where those people are gonna be supervised in transitions so they don't go back. So this is a very good bill and we'd to urge the committee to advance it.

**BRANDT:** All right. Thank you, Mr. Eickholt. Senator DeBoer.

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**DeBOER:** Thank you, Acting Chair Brandt. Help me with the math here, cause my brain is not working so well today, with all the other things, does this just mean they have two years less on their sentence before they come up for parole, or is it half of that time or some other?

**SPIKE EICKHOLT:** It would put a two-year bubble, if you will, between the minimum and maximum number for indeterminate sentences. There are some sentences that are determinant where people aren't paroled for like a drug felony, where they get the one number and then they maybe have postrelease supervision afterwards. But if they're ever gonna be considered for parole, it puts a-- an automatic two-year bubble. So the most you can get on a 0 to 20 under this would be 18 to 20. That would be the maximum sentence that a court could impose or the effect that court could impose. But I know the courts can do 20 to 20, and they do that, but then you get 10 years, you're out.

**DeBOER:** And so then in your example you've just given where it's 18 to 20, does that mean that you're up for parole at year 8 or when are you up for parole then?

**SPIKE EICKHOLT:** The way I think the bill's [INAUDIBLE] would be up after you do the bottom number, you do eight years then you would be up for parole then.

**DeBOER:** After eight?

**SPIKE EICKHOLT:** Eight, that's right.

**DeBOER:** And so--

**SPIKE EICKHOLT:** Yes, because--

**DeBOER:** --under the current system, the soonest you would be up for parole is 10 on a 20 to 20?

**SPIKE EICKHOLT:** If you have 20 to 20, yeah, your parole eligible on the same date that you jam. So you're just, you're done.

**DeBOER:** So then this would build in a two-year window--

**SPIKE EICKHOLT:** Right.

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**DeBOER:** --as an incentive to get people to say, I guess, I'll go for my programming. I guess, I'll take the parole option because two years of my life is better than--

**SPIKE EICKHOLT:** Yeah.

**DeBOER:** --the other options that I have.

**SPIKE EICKHOLT:** That's right. And there's still the flexibility that the judge has-- you know, on a 0 to 20, the judge theoretically now can put somebody-- give them 10 to 20, for instance, or even a 2 to 20, right, and there's, there's a judge in Lancaster County, years ago he retired, that would do those kinds of sentences where he wants somebody to go in just for a little bit and then be supervised for a very long period of time. For whatever reason, it seems to be just condensing again. And I don't know if that's just the makeup of the bench. I've got some anecdotal reasons why, but I don't want to cloud the record on this bill. I think a lot of it, as I said before, and other bills, I guess I will say it, a lot of this is negotiated, a lot of it is worked out in the plea process. In other words, what you're gonna end up with and the judge's goes from there. But this has a mechanism I think that's important for reentry rehabilitation, that's, that's critical.

**DeBOER:** And it would always give at least a two-year incentive to do your programming, change your ways,--

**SPIKE EICKHOLT:** Right.

**DeBOER:** --and be--

**SPIKE EICKHOLT:** And get out of here.

**DeBOER:** --under parole. OK. Thank you.

**SPIKE EICKHOLT:** And if you screw up during that two years, you're gonna go right back.

**DeBOER:** Yeah.

**SPIKE EICKHOLT:** If you jam it and you can screw up, maybe you won't get caught, maybe you'll start all over again in your next sentence and then maybe you'll get it that next time.

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**DeBOER:** OK.

**BRANDT:** Any other questions? Thank you, Mr. Eickholt.

**SPIKE EICKHOLT:** Thank you.

**BRANDT:** Any more proponents? Welcome.

**JEFF LUX:** Good afternoon, Mr. Acting Chairman. My name is Jeff Lux, first name Jeff, J-e-f-f, last name Lux, L-u-x. I'm a Deputy Douglas County Attorney representing the Nebraska County Attorneys Association and the Douglas County Attorney's Office here today in support of LB1004. The bill allows for additional inmates, it's give them an opportunity. And it's an opportunity to be reviewed by the Parole Board for possible parole. In reading the fiscal note, it, it, it adds for up to five additional parole officers for people who might get that opportunity, which is reassuring for us. It allows for those to be supervising and provide additional supervise and oversight over additional inmates who might get parole because of this additional opportunity. The fiscal note also mentions case loads, and that was another concern that we have, is if there's going to be a influx of people getting out on parole, are the parole officers gonna be able to withstand those additional numbers? What kind of case loads are they gonna have? Is it gonna be similar to the standards that say a probation officer would have? The fiscal note says that they're gonna be shooting for high-risk offenders for 30 of those for 1 parole officer. And that's, that's in the ballpark, so that's reassuring as well. For medium offender-- medium-risk offenders, that number is 50 for 1 parole officer. As you mentioned, Senator DeBoer, is it gives that incentive, which is always a good thing. And, you know, we were invited by Senator Lathrop to take another look at the bill, and he was gracious enough to have-- you know, invite us into his office so that we could talk about it and talk about different ideas that we had. And, and I think that we've been working on additional ideas just to in order to reward good behavior, disincentivize bad behavior, and expand options that parole currently has so that they can provide oversight and supervision that makes maybe a prosecutor more assured to-- you know, hey, maybe I can recommend to a judge a sentence that has more of a parole option in it. Same with the, the bench-- I mean, if they understand that parole isn't completely overwhelmed in their supervision, they might be more willing to do those type of sentences as well.

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**BRANDT:** All right. Any questions for Mr. Lux? Seeing none, thank you. Next proponent? Welcome.

**AARON HANSON:** Good afternoon, Mr. Acting Chairman and members of the Judiciary Committee. My name is Aaron Hanson, H-a-n-s-o-n. I'm a police sergeant and I am here representing the men and women of the Omaha Police Officers Association. Just to be brief, as Mr. Lux said, we are dedicated to working with Senator Lathrop to, to work on this bill to find a way that addresses many of the exact scenarios that Mr. Eickholt referenced in his testimony. I can tell you that it is one of the scariest situations when an inmate intentionally decides that he would-- he or she would rather jam out without supervision as opposed to pursuing supervised release. Those are exactly the target population that needs enhanced supervision. And we're hopeful that through some collaboration that we can give additional tools to the Parole Board to do just that. Police officers are dedicated towards the concept of reentry and somebody reclaiming their life. Just today, I spent a few hours with a, with a labor union trying to find ways that they can hire parolees into their highly paid labor union memberships. Two days ago, I helped a parolee get their driver's license back, go through that process. Police officers are professionals that understand that's critical. So we appreciate, Senator Lathrop, bringing this issue up and we look forward to the collaboration to keep making these standards more healthy for getting parolees back into productive, lawful lifestyles.

**BRANDT:** All right. Any questions? Senator DeBoer.

**DeBOER:** First, thank you for being here today and--

**AARON HANSON:** Yes, ma'am.

**DeBOER:** --all of you who are here today. Is two years enough of an incentive? I wanted to ask you because you deal with these guys on a long-- a lot of the time, so does that seem like that's gonna be enough of an incentive to get them to actually do the programming, get them not to be in the situation you've outlined where they just willfully decide to go out by jamming out?

**AARON HANSON:** Two years is close. I talked with a former parole officer just yesterday or two days ago, and he indicated that typically the bare minimum that they need to even get a foothold into behavior modification is nine months. So two years, if, if we did-- if, if a parole officer did get two years of time, that's a, that's a

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great start, but again, depending on the level of, of challenged-- the challenged nature that, that the parole officer may be dealing with. Whereas, one person might be able to self-correct in one year or two years, another individual might need four or five years. So a lot of it's based on the individual.

**DeBOER:** OK. Thanks.

**BRANDT:** OK. Any other questions? Seeing none, thank you, Sergeant Hanson.

**AARON HANSON:** Thank you.

**BRANDT:** Any more proponents? Any opponents? Anybody to testify in the neutral capacity? Senator Lathrop, you're welcome to close.

**LATHROP:** Well, I'm gonna take an opportunity in my close-- we were here last Thursday and I challenged Mr. Lux on whether or not the county attorneys could find something that would be helpful to support, and I had a long conversation with Mr. Lux on Friday. I do appreciate that Mr. Lux, Douglas County Attorney's Office, and in particular, Aaron Hanson, who I've had many conversations with about sentencing reform or the problem we have at the Department of Corrections with capacity and overcrowding. The fact that they are willing to have a dialog about these issues and about possible solutions is something I appreciate and I'm sure the entire committee does. There are probably some things that we may need to add to this before it is sent to the floor, but this is something I expect may be one of our committee priorities. So I appreciate the support and the testimony that we heard today. And I look forward to putting it before the committee for their consideration.

**BRANDT:** Any questions? Seeing none, there are some letters to enter into the record: one in support from Jasmine Harris from RISE; two in opposition, Ron and Lynette Nash; and Wes and Kathy Wilmot; and one in the neutral capacity, Rosalyn Cotton, of the Nebraska Parole Board. And with that, this hearing is closed. And you are welcome to open on LB1062.

**LATHROP:** Thank you, Senator Brandt and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12, here today to open for your consideration on LB1062. This bill is a result of a meeting I had at the Bristol Station in Hastings. I, as many of you know, have been to every one of

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our facilities with the Department of Corrections. I've been to many of the county jails. I've also been to the vocational life skill programs. Bristol Station is a life-- vocational life skill program in Hastings. It is a facility for people who have been released and they can do their postrelease under a supervised circumstance and transition. This is a-- and by the way, this bill isn't written for Bristol Station, but I'm gonna use them-- or my experience with them as an example. They qualified as a facility for prerelease detention for federal prisoners. So in the federal system, they, they don't have that postrelease supervision like we do. They are released to a transitional setting, and from there, they're released. And Bristol Station is one of a few facilities around the state that qualify. It is a very secure facility. It's a-- it would appear to be an old hotel, my best estimate is. The facility is supported by all kinds of people. I think Senator Halloran may be on their community board. There's people from the law enforcement and folks from-- seems like there's somebody from the newspaper on their board as well. And my thought was that-- and some states are already doing this, having some community corrections facilities around the state. This is intended to be a pilot program where the Department of Corrections can enter into a contract with someone who meets the qualifications and place individuals prior to their release in a facility such as what I've described and is outlined in the bill for work detail and ultimately work release. They can get outpatient alcohol treatment if that's part of their needs. I think they have a parole officer that stops by and talks to people who are on parole at the facility as well. It presents, I think, an opportunity for a pilot program to see if we can have some community correction centers around the state. In Omaha, we have one, in Lincoln, we have one. But if you get out further west, Hastings, Grand Island, North Platte, Scottsbluff, Norfolk, South Sioux City, these are places where inmates come into the system, they might do community corrections in Omaha, get a job, but that doesn't help them if they're headed back to South Sioux or Norfolk or Hastings. So that's the idea behind this, it's only for a couple of years to see if it works. And if it works, it might become a model for similar programs in other first-class cities.

**BRANDT:** OK. Any questions for Senator Lathrop? Seeing none, we will go to proponents? Welcome.

**BRAD MEURRENS:** Welcome. Good afternoon, Senator Brandt and members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I am the public policy director at Disability

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Rights Nebraska. We are the designated protection and advocacy organization for persons with disabilities in Nebraska and I am here today in support of LB1062. Preparing inmates for reentry is a key determinant of successful transition from prison to the community. The transition from incarceration to the community is a crucial time period to address overarching needs and supports to released inmates. Reentry into the community is a vulnerable time marked by difficulties adjusting and a 12-fold increased risk of death in the first two weeks after release. Reentry programs and community supervision instead of incarceration leads to better outcomes for public safety and ensures lower recidivism. While reentry plans in general can help minimize the risk of recidivism and improve individual outcomes, reentry will be more successful when there is continuity of care to support prisoners with mental illness as they transition to their home communities. The absence of sufficient medical and mental health services in reentry plans may leave prisoners without needed care and released prisoners with mental illness require immediate and ongoing services to successfully reenter the community as has been noted. Many individuals facing mental health challenges will require intensive support in order to navigate life outside of prison. This support is particularly critical given that mentally ill releasees tend to receive less support from family members relative to the other former prisoners and rarely do they have private insurance to fund medical treatment. For this reason, we would wish to make a friendly suggestion that the committee strongly consider including the provision of mental health treatment and/or services in the pre-discharge reentry programs. For example, see page 1, lines 18 and 19. The needs of this population are distinct, multiple, multifaceted, and must be included in reentry programs. Regardless, Disability Rights Nebraska does recommend that this bill be advanced. I'd be happy to answer any questions if you have any.

**BRANDT:** Are there any questions? I don't see any. Thank you.

**BRAD MEURRENS:** Thank you.

**BRANDT:** Next proponent? Welcome.

**ANGELA LaBOUCHARDIERE:** Thank you. Good afternoon, members of the Judiciary Committee. My name is Angela LaBouchardiere, A-n-g-e-l-a L-a-B-o-u-c-h-a-r-d-i-e-r-e, and I'm here in support of LB1062. I'm the executive director of Western Alternative Corrections and we operate Bristol Station residential reentry center in Hastings, Nebraska. We've been providing residential reentry services in

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Nebraska since 2009. Our reentry model is based on the evidence-based model utilized by the Federal Bureau of Prisons. We operate a 52-bed facility which is staffed 24 hours a day, seven days a week, by trained employees and provides services to males and females. Currently, the Vocational and Life Skills grant through the Nebraska Department of Correctional Services funds 25 of the 52 beds. We hold contracts for transitional housing services with Nebraska Probation Administration, Nebraska Division of Parole Supervision, as well as a contract with United States Probation and Pretrial Services for the provision of shelter. Under the aforementioned grants or contracts, we provide comprehensive reentry services at Bristol Station. While we serve different referring entities, the reentry program components remain the same. Our program at Bristol Station has a very high degree of structure and accountability. All community movements are approved in advance by the assigned case manager. We use an electronic sign in and out procedure when residents enter and exit our facility, accountability calls are mandatory while residents are in the community to verify their location. All resident movement and calls are documented into an electronic case management system, which provides chronological documentation of the whereabouts at all times. Upon return to the facility, residents are given a pat search, property search, and a breathalyzer. Regular drug testing occurs a minimum of once a week for each resident and is increased if warranted. We complete a validated risk and needs assessment for each resident upon entrance and exit, which identifies risk factors related to recidivism. The risk and needs assessment guides the development of the individualized program plan, which includes personal goals, outlines programs, and targeted interventions required. Participants would receive weekly case management as well as receive assistance in obtaining and maintain employment. We offer evidence-based programs such as Moral Reconciliation Therapy, relapse prevention, transition skills, employment readiness, and anger management. Once the resident is gainfully employed, participating in required programming and maintaining positive, pro-social attitude, they can begin taking community transition passes. We've been gathering data on the programming we provide based off the validated risk and needs assessment upon admission and discharge in relation to the reduction of the risk to reoffend. The data we've gathered thus far indicates with successful completion of our program at Bristol Station, the risk to reoffend is decreased. Of the 52 beds at Bristol Station, we generally have about 20 to 27 empty beds outside of the 25 funded-- VLS funded beds. I'm open to discussing opportunities in which the state of Nebraska can utilize our reentry program under LB1062 to fill

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our empty beds. I would invite you all to visit our facility in Hastings and I'm happy to answer any questions you may have.

**BRANDT:** OK. Are there any questions for Miss LaBouchardiere?

**ANGELA LaBOUCHARDIERE:** Good try.

**BRANDT:** What's VLS, 25--

**ANGELA LaBOUCHARDIERE:** Vocational and Life Skills.

**BRANDT:** So currently you operate a federal reentry program or a state reentry program?

**ANGELA LaBOUCHARDIERE:** Currently, we have contracts with the state and with the federal Probation and Pretrial. From 2009 until 2014, we had a contract with the Federal Bureau of Prisons for residential reentry services. Individuals in that program transitioned while they were still in inmate status. Once they completed transitional substance abuse services, they would come to our program, get continued substance abuse, mental health treatment, and then transition to federal supervision. So we use the same model just with a different population right now.

**BRANDT:** So the proposed model here would be very similar to that, they would still make it on an inmate status, what Senator Lathrop is proposing?

**ANGELA LaBOUCHARDIERE:** Yes.

**BRANDT:** So basically you would follow that same model for the state?

**ANGELA LaBOUCHARDIERE:** Correct.

**BRANDT:** OK. Do you anticipate any-- if your company was one to get awarded a contract, realizing there's many companies that would be fighting for this contract, you see any headwinds or not in Nebraska?

**ANGELA LaBOUCHARDIERE:** I would hope not.

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

**ANGELA LaBOUCHARDIERE:** Thank you.

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**BRANDT:** Next proponent? Any more proponents on LB1062? Any opponents? Anyone to testify-- what-- neutral capacity. OK, you're moving faster than I can talk. Neutral, yes, like the car. Welcome.

**DANIELLE CONRAD:** Thank you, Senator. Thank you, Members. My name's Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today on behalf of the ACLU of Nebraska. Number one, I want to thank, Senator Lathrop, for his ongoing leadership on these critical issues related to providing long overdue reforms to our broken criminal justice system. And I'll tell you, when we were doing our, our bill review this session and looking at this, we definitely can understand and appreciate the laudable goals in trying to build up reentry services and support which are severely lacking in, in-- from our perspective and particularly in greater Nebraska. So I understand that that's really the impetus and the intention at the heart of this legislation which, again, I, I definitely appreciate and understand. But I'll tell you, in our initial bill review, there was a section towards the end that kind of opened up and touched upon the Private Prison Act that really made us look at this a little bit more carefully and closely to try and figure out like what exactly is going on there. And so we've had a chance to dialog a little bit about that internally and with some other key stakeholders to understand why it was drafted that way. But I felt it incumbent to come down and to continue the conversation with the committee at this juncture, particularly in light of yesterday's announcement that put private prisons on our radar screen and into our public discourse in a very new and very unexpected way. So it seemed like this would be a good opportunity to revisit the gravity of our mass incarceration problem, the gravity of our prison overcrowding problem, and to talk about and reaffirm our consistent message to this committee in the body writ large that we cannot and should not attempt to build our way out of this problem. We can't afford it from a fiscal or a moral perspective. And perhaps Senator Lathrop has provided us with a gift and a vehicle with his visionary leadership to take up that very section and to put forward perhaps an even stronger policy statement in prohibition to stop this bad idea in its tracks.

**BRANDT:** OK.

**DANIELLE CONRAD:** Thank you.

**BRANDT:** Any questions? Seeing none, thank you, Miss Conrad.

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**DANIELLE CONRAD:** Well, thank you so much.

**BRANDT:** Neutral testimony? Welcome.

**DOUG KOEBERNICK:** Good afternoon, Senator Brandt and members of the Judiciary Committee. My name is Doug Koebornick, spelled K-o-e-b-e-r-n-i-c-k. I am the Legislature's Inspector General of Corrections. I'm here today to testify in a neutral capacity on LB1062. A few weeks ago, I was in here and talked about how the overcrowding issue in the Department of Corrections is, is so significant and that all options need to be looked at in order to address that. This idea is one of those options that, that we should look at and have another-- you know, the whole tool in the toolbox thing. In the past I've talked about how some states, such as the state of Washington have smaller community centers throughout the state that are run by, not necessarily the Department of Corrections, but they're with the Department of Corrections, or they're outside, or they might be run by a private group and everything. And this kind of falls in line with that. And what they do there is have these throughout the state so people can actually transition back into their home community. And this would allow for people in that tri-city area to, to-- if it's located there, to begin that transition back in their home community where their families are, their churches, their jobs, things like that. And it could be a model to do in other locations. So I've never taken a recommend-- made a recommendation on this so I didn't come in favor of it, but I did want to testify in neutral and answer any questions that you may have.

**BRANDT:** OK. Are there any questions? Seeing none, thank you, Mr. Koebornick. Anyone else in the neutral capacity? Senator Lathrop, you're welcome to close.

**LATHROP:** So this is not special legislation designed for Bristol. But when I went out to Hastings, there were about three things that I was very impressed with, which, which brought me to this idea, maybe more than that. To start with, there are some states that are trying to recognize that the idea that if we have people who get to community corrections and have an opportunity to work a work detail, maybe they're getting some substance abuse treatment or some other services they need, they move to work release from some kind of work detail to work release. They're out in the community. This community of Hastings, Nebraska, has embraced these people that are there on the VLS grant, the people that the federal government was sending there. They have embraced this place, they, they like the work and the fact

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that they have workers, the, the community is hiring these people who are transitioning. The other thing that I think it's very important to know is that these people run a very tight ship. At the door, if you want to go down to the Kwik Shop and buy a pack of cigarettes they have you check out, you get down to the Kwik Shop, you call them and tell them I'm at the Kwik Shop, and then you come back and you check in again. They don't say you can leave at 8:00 and we'll see at 5:00, go out and look for a job. These guys are very tightly controlled. Also impressive, because if we're gonna take a risk on a pilot program with a facility that's going to house people who are still incarcerated or haven't completed their term, I think it's important that we have those security measures in place. They have proven themselves with the VLS grant and with the work they did for the federal government. I want to talk about the fiscal note for a second. The fiscal note just assumed that this program would be 100 inmates that would be placed in, in the recipient of this contract into a facility. I can pare that back, we could do 25 just as a pilot program to see if this works with the idea being that it makes more sense for somebody who's in the tri-city area to do community corrections in Hastings than it does to have them do community corrections in Omaha where they get a job, they're making a living, they're doing all that stuff on work release. And then when they're finally released, they got to go back to Hastings or to Grand Island or, or Kearney and start all over again. That's sort of the idea behind this, these folks are really good at what they do, it's tight security. Again, on the fiscal note, the fiscal note suggests that it might be as much as \$85 a day per person. And so they extrapolate that out and throw in an administrative person or something to get the fiscal note up to an alarming number. There's no offset in this fiscal note for the fact that we might be-- we have people that are in county jails that we're paying \$80 or \$90 a day to house, we're spending \$40,000 a year to put somebody in a-- in the corrections system, and there's no offset in these fiscal notes. And I'm just gonna to suggest that it's deliberate and I will work with the Fiscal Office to get an offset for the savings that will be realized when these folks are not in one of our facilities or in one of our county jails. But it's a-- it's an idea that I think's worthy of the committee's consideration.

**BRANDT:** All right. Any questions? Seeing none, we have one letter for the record in support from Terry Werner, of the National Association of Social Workers, Nebraska Chapter. And with that, the hearing is adjourned. Thank you.