

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 7, 2021

FOLEY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the seventy-fourth day of the One Hundred Seventh Legislature, First Session. Our chaplain for today is Senator Lowe. Please rise.

LOWE: Please attain an attitude of prayer. Almighty God, we ask you to give us the strength to live this day without blame, that-- that we would do what is right and in the opening of our hearts to your faith. And we will speak it. I ask you to call us out when our thoughts turn toward wickedness. But we pray for your approval when what we do, what we say, and how we live honors you. May our conversations and words do no harm, neither to a loved one, a friend, nor a stranger. May we keep the vows you have made to you, to ourselves, to the people of Nebraska, and to our country and to our families, to each may we give ourselves without asking for more in return. And may we be faithful and merciful in our dealings with the innocent and the living of our lives this day cause not our feet to stumble. In your name, we pray, Amen.

FOLEY: Thank you, Senator Lowe. I recognize Senator Albrecht for the Pledge of Allegiance.

ALBRECHT: Please join me in the pledge. I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

FOLEY: Thank you, Senators. I call to order the seventy-fourth day of the One Hundred Seventh Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

FOLEY: Thank you, Mr. Clerk. Any corrections for the Journal?

CLERK: I have no corrections.

FOLEY: Thank you, sir. Any messages, reports, or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review reports LB131, LB131A, LB241, LB132, LB132A, all to Select File. Enrollment and Review also reports LB411A, LB485A as correctly engrossed. I have the lobby report as required by state law as well as an acknowledgment of agency reports received and available on the legislative website.

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Mr. President, I have communication from the Speaker regarding the referral of LR128. That's all that I have.

FOLEY: Thank you, Mr. Clerk. Speaker Hilgers.

HILGERS: Thank you, Mr. President, and good morning, colleagues. I want to give you two updates today. One is regarding next week and the second, I want to talk about the rest of the session. So first, briefly, the update for next week. This will be in writing. This is going to be coming around. You can look at this. We've got-- we've had two weeks in a row that have been longer-- with longer evenings, that will stretch into next week. As I mentioned last night, we will be adjourning by noon today. So first, I want to-- I want to make sure everyone heard that. We will be adjourning by noon today, especially going into the short weekend. But next week, prepare again to go later in the evening. I don't like stretching and we haven't done it so far, these 10:00 nights back to back. I like to have some variability because I don't want to wear everyone out. So kind of, you know, anticipate and you should plan on being prepared to be here on any given night that late, but I'll try to give enough forewarning in advance and just to make sure that we have enough time to be able to get that done. But I don't expect that we'll do 10:00, 10:00, 10:00 each night next week. But be prepared Monday-- Monday, Tuesday, Wednesday, late-- later in the evening, and then Thursday, a full day going into a 4-day weekend with a one hour lunch break. We will start at 10:00 on Monday. We-- there are no more consent-- at least General File consent calendar, so we are done with consent. I've had a few people ask me about that, but we will be starting at 10:00. We still have, obviously, Select and Final Reading consent calendar yet to come. In terms of scheduling, the one bill that I will set for a date certain next week is LB474, which is Senator Wishart's bill on medical marijuana. That will be on Wednesday morning. So just be prepared for that. At this point, I think everything has been either announced or maybe except for one or two bills, so as we go into the next couple of weeks, everyone should remain flexible and be prepared as we need to adjust the schedule to be efficient and get our work done. For anything to be coming up on any given day's agenda, I'll do my best to provide an advance notice, but at this point in the session, the work left is the work left and everyone should be prepared to talk on that. In addition to the remaining General File, we will be working on, we will be scheduling Select File tax and spending bills. So the work that we did on General File over the last week and a half will be coming up next week on Select File. So that's the update for next week. Now I want to take a step back and give you an update for the rest of the session. I've had a number of people ask me whether

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there's a date certain for adjourning sine die and the answer to that is no, I have not set a date for adjourning sine die. But I also want to make very clear to the body that if you're expecting that we go full 90 days this session, that-- that is almost certainly not going to happen. And I want to give you a couple of very important reasons why. Number one, we are going to be in a special session this year. Because of the U.S. Census Bureau not getting our-- the data to us, we will have to have a special session. Normally, we would be able to get redistricting done during the 90-day session. We would adjourn sine die after ninety days and we wouldn't have to see each other on the floor until January the next year. But because we have to have a special session, if we go 90 days in this working-- in this work session, we at least have to go 7 days, maybe more, assume 10 or more, we're looking at 100 working days this session. I think there are diminishing returns from that much floor time working together. Secondly, and potentially more importantly, I want to make very clear the success of this session is not just on what we do this year. It's the entire One Hundred Seventh Legislature, which means next April. And for those of you who are not-- who are new to the body, this is not something that's as relevant to you, but for everyone else here, we know last year we were robbed of an interim. We were robbed of the interim because the Coronavirus, the pandemic, because we had the suspended session and many of us either had reelection-- we had reelection campaigns or for the new members, obviously they were running for the first time. This interim, which is the short interim, is the only interim we will have really to be able to prepare and have the space to work together outside of an election context, to work together, work on big ideas and to prepare for next year. And as I told you when I ran for Speaker and I said throughout my-- what I would like to be able to do is have this body, which, by the way, by the end of April next year, the 49 of us will never work together-- together again. This body take very big swings to try to change the trajectory of the state. To be able to do that, we have to have the time to do it. And I'm very protective of the interim this year so that we have the opportunity to do that. So it's not as if-- if we don't adjourn, if we adjourn before day 90, that-- that's not going to be a productive use of our time. So we're going to get our work done this year, but I want to make sure we have time to prepare for next year. And third, although not as important, I think still is very important, I've had a number of senators, maybe not a majority, certainly a plurality, who have talked to me about just the impact of the last 18 months. A lot of us have been running hot for the last 18 months, the Coronavirus, all the elections and everything else. Having some space mentally to take a step back and prepare for next year, I

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think is really, really important. So as we look towards the next couple of weeks, I want to be clear. I-- I am working and if there are still bills on General File, I'm working to make sure that every bill that's a priority bill has its day in court and every bill has the opportunity to come on General File at a minimum. And I think we have enough time to get everything done. But I will tell you also the date for General File, the deadline for General File debate is coming soon. It's coming rapidly. And I need the body to work with me as we go through our debate that we have the debates. If we have to have filibusters and we have to have big policy debates, we're going to use that time. We're not going to rush anything that shouldn't be rushed. I want to be very clear about that. But at the same time, we all together have to use our time efficiently to make sure that we get all of our work done. So my responsibility is to make sure we have the time to do that and protect the overall session, the two sessions of the One Hundred Seventh Legislature, and that's what I intend to do. And I look forward-- I really need the group's cooperation and work over the next-- over the next couple of weeks to make sure that we can get all that work done. So if you have questions about your specific bill, where is it? When is it going to come up? Talk to me. I've had a lot of those conversations certainly in the last few days, but the last couple of weeks. I know there are a few of you still have General File bills. We're working to make sure those get heard. Select File bills, Final Reading, we have a plan to do all of that, but we have a lot of work to do and we don't have a lot of time to do it. And to be successful in April 2022, I'm taking the big picture view. So I know everyone's thinking about their bills and we're sort of taking day in, day out. I really thought it'd be helpful to give you sort of a big picture perspective and kind of give you a sense of where the clock is ticking and where we are. We're deep into the fourth quarter right now, and we need to make best use of our remaining time so that we can be prepared not to have a successful session this year, but be prepared to have a very successful session in 2022. So let me know if you have any questions, otherwise have a great weekend. Really appreciate all the work this week. Thank you, Mr. President.

FOLEY: Thank you, Mr. Speaker. Members, the first item on the agenda this morning is LB496 which was debated last evening. I'm going to recognize Senators Hilkemann, Lathrop and Hunt for one minute each to give us just a quick update and then we'll go right to the speaking queue. Senator Hilkemann, for one minute.

HILKEMANN: Thank you, Mr. President. We're talking about LB496, what I refer to as Katie's law, where we collect DNA on an-- on felony arrest. This is a bill that will save lives. It will exonerate

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innocent people. It's a bill that we've had this discussion. People talked about privacy. I'm going to talk about that this morning. Talked about innocence. And we've got-- Senator Blood gave us some homework. I'll be sharing that. Thank you.

FOLEY: Thank you, Senator Hilkemann. Senator Lathrop.

LATHROP: Thank you, Mr. President, and colleagues, good morning. We were all here till 10 o'clock on this bill. It hasn't been that long ago. This is the bill that we made some changes to in committee. Those changes were made to ensure that we are within-- on sound constitutional ground. In fact, we-- we adopted the procedure laid out in a case decided by the United States Supreme Court. So that's what the-- the Judiciary Committee amendment does. And once again, I would encourage your support of both the Judiciary Committee amendment and the bill. Thank you.

FOLEY: Thank you, Senator Lathrop. Senator Hunt.

HUNT: Thank you, Mr. Lieutenant Governor. Good morning, colleagues. Good morning, Nebraskans. Proponents of LB496 talked for a long time about how this bill will exonerate people or protect the wrongfully convict-- convicted. I don't agree with that and I find that to be a disingenuous representation of what LB496 does. And so in the interest of consistency, even though I do not support the underlying bill, I've introduced a series of amendments, including AM1289, to say that if we are serious about preventing crime and-- and catching criminals and solving cold cases, there are more groups of people who we should be collecting DNA from. If we're going to be collecting DNA from innocent people, let's expand that group of innocent people to include candidates for elective office. So AM1289 says that if you're filing to run for office, you also need to submit your DNA to this database. Thank you, Mr. Lieutenant Governor.

FOLEY: Thank you, Senator Hunt. Members, we will now move to the speaking queue. Senator John Cavanaugh.

J. CAVANAUGH: Good morning. Thank you, Mr. Lieutenant Governor. I didn't know I was going to be up right away. So, well, I guess I-- yesterday said I didn't know where I was at on Senator Hunt's amendment, but after thinking about it, I think she's got a valid point. And so I think I'm going to support AM1289, which is-- if this is so innocuous and it's not a-- not a burden on people to collect the DNA of people who have not been convicted of a crime, then I guess why not us too? So I, last night, talked about situations in which we

collect evidence or conduct searches around the constitutional requirement of going to an impartial judge to demonstrate the reasonableness of that search and the necessity for it. And so we have a few examples of places where we do that in what we call exigent circumstances, which is where it's an emergency, where the evidence could be destroyed, where there is a risk to the officer or to the public. We do pat-down searches, incident to arrest, to make sure there are no weapons. We search people for weapons and contraband evidence that they might possibly dispose of in-between. So those are times in which we exercise or allow for a search without a warrant. We also have circumstances where we collect DNA, but we do it with a warrant. You get a search warrant based upon the probable cause and the particularity of that suspicion. And we say we are interested in this person for this reason and we want to collect their DNA to see if they are the person we are talking about. What this bill does is say we want to collect your DNA without any particular reason, which-- that is the problem. There is no exigency question here. There is no emergency that is presented by this bill. There is no emergency that is attempted to be solved by this bill. And we have a system that works currently for the collection of DNA in a timely manner, either through search warrants, through voluntary offering of DNA, which happens a lot, or through after conviction of a-- of a felony. Any felony conviction gets you in the DNA database at this point in the state of Nebraska. And there have been examples that I believe-- that Senator Hilkemann passed around one yesterday that's actually in the Lincoln paper today about an example of a time where the current system worked to solve a cold case. And that was another-- that is an example of where it works, but it's also an example of where the exigency, the timeliness of this was not at play because they solved a case that is almost 40 years old with evidence that was collected more than a year ago. I-- I think it was close to 10 years ago. But that-- that is the problem here is that we are solving a problem that doesn't exist, weakening the Fourth Amendment, weakening the Constitution, weakening the protections of all individuals, because we want this expediency that is unnecessary. You can obtain a search warrant if you think you need to get someone's DNA. You can ask them to volunteer it or you can wait until they are convicted of a felony and get the DNA. Because if they are not convicted of a felony under this bill, then that DNA would be destroyed and taken out of the database anyway. So we are agreeing that if they are not convicted of this felony, we should not be collecting their DNA. So we are admitting in the structure of this bill that what we're doing is wrong. So we should not do it, we should not create this shortcut that's going to undermine the Constitution. I talked a couple of times last night

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about the often-quoted quote from the U.S. Supreme Court and other places about how we have to be the stewards of the Constitution and we cannot let expediency be the guiding principle. It has to be protections of the Constitution. And so that is exactly--

FOLEY: One minute.

J. CAVANAUGH: One minute? Thank you. So that's exactly what we're doing here, is we have a system that works. We have opportunities to achieve the objectives that Senator Hilkemann is seeking to achieve. We have examples of where that has worked and those, we do not need to further erode the Fourth Amendment. We do not need to further erode individual liberties. We do not need to further erode privacy for that expediency, because all it does is put this DNA in the system for some short period of time that then we'll have to work, as Senator Hunt I think has pointed out several times, people will have to be given the task to get themselves out of this database once we have decided that we should not have taken it in the first place. So we should not take it until we have reached that point where they have been convicted or they have had a search warrant to compel them to get it. Those systems work. That works, that does not further undermine the Constitution, does not further undermine the Fourth Amendment. And so that's why while I'm going to support Senator Hunt's amendment, but I still do not support--

FOLEY: That's time, Senator.

J. CAVANAUGH: Thank you.

FOLEY: Thank you, Senator Cavanaugh. Senator Machaela Cavanaugh.

M. CAVANAUGH: Thank you, Mr. Lieutenant Governor. In the year 2054, crime in the United States, and murder in particular, is at an all-time high. In an effort to contain the violence, the Metropolitan Police Department of Washington, D.C., have founded a new task force called PreCrime, allowing a specially assigned unit to proact-- proactively stop murders before they can even be committed. Their means of doing so is through "PreCogs", short for precognitives, three mentally altered humans who are capable of seeing the future. When the PreCogs sense that a murder is going to be committed, an automated system processes two painted wooden balls: one with the name of the perpetrators engraved into it and one with the name of the victims engraved into it. The shape and grain of each ball is unique, rendering the system fully tamperproof. The color of the ball is indicative of what kind of murder is going to happen: A brown ball

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indicates premeditated murder, which the PreCogs can predict up to four days before it is committed. A red ball indicates a crime of passion, which is due to the lack of premeditation cannot be seen until often no less than an hour before it will be committed. The only three things that the PreCogs can predict are the victim or victims, the perpetrator, the exact date and time of the crime, and the exact sequence of events that lead up to the crime. As they cannot pinpoint the location of the crime, the PreCrime Task Force led by John Anderton, must perform a meticulous process called "scrubbing," where they process the images produced from the PreCogs' visions in order to locate telltale clues and thus narrow down the location. Once they are certain of the location, the team flies off in a special aircraft to thwart the crime. They then secure the culprit by "haloing" them, a device called-- placed around his head that renders them fully incapacitated. Anderton's team catching an early morning Red Ball case. The perpetrator is going to be a male in his 40s named Howard Marks, who is exactly-- who in exactly 24 minutes is going to catch his wife, Sarah, in bed with another man named Donald Dubin. Upon finding them together, Howard will stab them both to death with a pair of scissors. Anderton scrubs through the images while also having to deal with the arrival of Danny Witwer, a Justice Department official who's been sent to audit the PreCrime system before a congressional vote on whether or not to take the system nationwide. One of Anderton's colleagues named Fletcher, explains to Witter-- Witwer the basic workings of the system as Anderton continues analyzing the vision. Anderton soon narrows down the location and joins a number of PreCrime officers going to the location, leaving Witwer back at PreCrime headquarters. With mere seconds to go, Anderton and his colleagues find the residence and stop Howard before the PreCog's vision can come to pass. Howard is identified by iris scan, and is promptly arrested and "haloed" while his wife and her lover are immediately given counseling by a trauma response unit. After the suspect has been apprehended, the murder reappears on the displays back at headquarters. Witwer sees these and questions one of the technicians about this and is informed that sometimes after a crime has been stopped, the PreCogs have these echo images pass through their minds before they are deleted from the system. That evening Anderton reminisces over home movies of his ex-wife Lara and the couple's missing 6-year-old son, who disappeared several years before--

FOLEY: One minute.

M. CAVANAUGH: Thank you. --before, at a public swimming pool. Anderton is also shown to have an addiction to an illegal inhaled

hallucinogenic called Neuroin or new heroin. The next morning, Witwer's official tour at the PreCrime headquarters begins. Throughout the tour, Witwer points out that there are potential questions about the ethics of the PreCogs. Edderton-- Anderton and his colleagues explain that the system is designed in a way to be practically foolproof due to the nature of premeditation and the fact the PreCogs see what the killer will do, not what they intend to do. This is why they don't get false alarms caused by people who cont-- contemplate murdering someone but will never actually go through with it. At Witwer's insistence, Anderton takes him into the chamber in which the PreCogs are kept semiconscious--

FOLEY: That's time, Senator.

M. CAVANAUGH: Thank you.

FOLEY: Thank you, Senator Cavanaugh. Senator Wayne.

WAYNE: Thank you, Mr. President, and colleagues. Last night after the vote, there were a lot of people who didn't understand kind of what was going on and-- and how it happened. So I'm going to kind of step back and spend a little time just educating people on what's called postconviction motions. So in our statutes and we determine after-- after somebody is convicted and they are sentenced, so after somebody in sentence, we in statute have outlined different things that allow people to request to a judge a motion or do a motion for a new trial. And it doesn't mean that it has to be granted, but here's what's currently listed underneath the motion for a new trial. Basically, there has to be some type of irregula-- irreg-- can't even say it-- irregularity in the-- in the proceeding and it's a couple of things. One, the prosecuting attorney or a witness for the state may abuse their discretion by which the defendant was prevented from having a fair trial. So if there's a nonfair trial; misconduct of a juror or a prosecuting attorney or a witness; accident or surprise which ordinary prudence could not have guarded against. So that happens when somebody says something in a-- in a trial that should not have ever happened or should not have been said, or maybe there was somebody who came into the courtroom and did something inappropriately that said-- got up and said, you know, why did you burglarize our house? And the jury might be prejudiced. The verdict was not sustained with sufficient evidence or is contrary to law; newly discovered evidence material for the defendant, which he or she could not reasonably, with due diligence, have discovered or produced at trial. (6) newly exculpatory DNA evidence or similarly type testing evidence obtained underneath the DNA Testing Act, or (7) an error that occurred, error of law that

occurred at trial. The reason why I'm bringing up these from a high-- 30,000-foot view is we already offer many, many things that allow for postconviction release. But what often happens in any law that we have, we have a Supreme Court who may interpret something differently than what was intended for-- for what we actually prescribed. And one of the most regious-- recent ones was State v. Mosher, another case after that that dealt with the political tort subdivision. But what happened around newly discovered evidence? So think about what I'm about to say. Newly discovered evidence material for the defendant, which he or she could not, with reasonable due diligence, have discovered or produced at trial. One would think if you didn't have evidence that you could produce at trial, even after you researched it and found out it may be there, that one should be able to submit a motion for a new trial based on that. But what has happened in case law is they say, well, it might be new evidence and it says, and has to be produced at trial and because you couldn't produce it at trial, it's not new evidence. So it's a policy decision by the Supreme Court that impacts this statute. And we hear all the time that the Supreme Court should not be making policy and in fact, many times the Supreme Court comes back--

FOLEY: One minute.

WAYNE: --and says, if the Legislature wants to fix this and they invite us to do so. And I'll give you an example of where GOB case where a caseworker actually misrepresented to an adopted family this child's background. And in doing so, this child was adopted and later sexually assaulted other children in this family's home. These individuals sued the state and the state concluded they were immune because misrepresentation falls underneath immunity when it comes to the Political Subdivision Act. And it actually happened in Senator Slama's district. And they came to testify on a bill that I introduced to change the policy decision that our Supreme Court made. And it's not policy in a negative. They read the words and they interpreted it one way, which I think was different than what this body would liked to have seen. So, we-- how much time do I have left?

FOLEY: Time has expired, Senator.

WAYNE: Thank you.

FOLEY: Senator Hunt.

HUNT: Thank you, Mr. Lieutenant Governor. Before I speak to this amendment, and I think I'm only going to speak on this one time, I

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wanted to say to you colleagues and to the people of Nebraska, I made a promise earlier this week to introduce a legislative resolution every day because I wanted LR107 to fail and I wanted to make it difficult for it to be passed. I introduced one yesterday that felt kind of timely because of the comments that Senator Vargas was making about the COVID-19 response in our meatpacking plants and the subsequent debate about COVID protections for meatpacking and food processing plant workers. And yesterday introduced LR121, which encourages an active, robust, professional response to the public health crisis caused by the COVID-19 pandemic and urges the President and the Governor and the Attorney General to guard against future pandemics. And it's-- it's a good one that my staff helped me draft. And I won't introduce another one today because I haven't yet had a chance to talk about the COVID-19 resolution. And I want to-- I don't want to get ahead of myself. Every resolution that I introduce, I want to speak on. And so my next one, depending on if I get a chance to talk about this COVID-19 one today, I will introduce my next LR on Monday instead of today or at whatever point that I get a chance to talk about the COVID-19 resolution. So AM1289 is part of a series of amendments that I introduced to take LB496 to its logical conclusion. If Nebraska is going to be maintaining a database of the DNA of innocent people, how do we decide which innocent people that should include? I have another amendment that just says every person should go and submit their DNA with law enforcement for inclusion in the database. Colleagues, if you're serious about exoneration and solving cold cases, if every single person put their DNA in the database, we'd probably solve all of them. But there's a reason that most people would be opposed to that. It's the same, you know, philosophical logic that people use when they say they're against mandated COVID testing or mandated vaccines or mandated anything by the hands of the government. I had many Republicans send me emails over-- overnight and contacting me on social media throughout the last day, saying LB496, Republicans support this? Seems like government overreach to me. I agree completely. And once again, I, Megan Hunt, am in the position of making a conservative argument in our conservative state for LB496 against LB496. This has definitely been a pattern as well of conservatives being willing to give up their principles of small government and fighting against government overreach as long as it doesn't affect the majority, as long as it's something that only affects minorities. Proponents say that things like LB496 will exonerate innocent people. But this is not an exoneration bill, and it has nothing to do with innocence. We already have a DNA innocence law in Nebraska passed by Senator Chambers and Senator Pansing Brooks, and that law allows for the wrongfully accused and wrongfully convicted to

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seek DNA testing to establish their innocence. We already have that law in Nebraska. Maybe the reason that we want to pass things like LB496 is folks don't know we have that law. If I asked for a show of hands in this body of people--

FOLEY: One minute.

HUNT: --who were aware of that DNA innocence law passed by Senator Chambers and Senator Pansing Brooks, I bet it would be a vast minority of people in this body who are aware of that law. And maybe that's the problem with government today. Maybe that's the problem with the process we're engaging with in this body, that we are passing too many laws, that we are putting too many restrictions on Nebraskans, and that we're infringing on the liberty and the rights of too many people. Like all components of the criminal justice system, LB496 will disproportionately affect black people, brown people, people of color, people in poverty. In all parts of the criminal court system, people of color are already adversely affected more than anyone else and for that reason, I continue to stand against LB496. Thank you, Mr. Lieutenant Governor.

FOLEY: Thank you, Senator Hunt. Senator Hilkemann.

HILKEMANN: Thank you, Mr. President. I want to get back to what this bill is about. I want to talk about what has happened in some of the states that it happened. This is more serious than reading from movie plots. I think it's disingenuous to think that every candidate for the office needs to give up his DNA. One of these bills is that if you're a licensed podiatrist, you have to give up your DNA. Well, Senator Hunt, I am now-- no longer a licensed podiatrist. I am retired from that. So those are-- those are truly people who don't deserve to have to give up their DNA. But let's talk about California. In California actually this bill, which is more strict than ours, was placed and it was-- was passed by a vote of the people in 2004, 62 percent supported Proposition 69. What's happened in California since this bill went into place? A man arrested for receiving stolen property was swabbed and as his DNA matched the DNA found at the scene of a 1977 rape and murder of an 80-year-old woman. The 2004 cold case murder of Juanita Johnson was solved when her killer was required to submit DNA when he was arrested for a domestic violence charge. He has since been tried and convicted for Johnson's murder. Don Carter was convicted of the 1989 murder of Sophia McAllister after he was arrested for a narcotics charge. His DNA matched crime scene DNA found at the scene of McAllister's murder. Christopher Rogers was arrested in April of 2009 in Sacramento for assault with a deadly weapon, a charge that was

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ultimately reduced to a misdemeanor. The conviction of this misdemeanor would not have required that his DNA be taken, but his DNA collected at the time of his felony arrest was matched to DNA taken at the scene of a 2004 murder in Sacramento. Rogers was convicted of that murder. Octavio Castillo was arrested in February of 2011 for receiving stolen property. His DNA was taken and he was released pending trial. His DNA matched the crime scene DNA for the violent kidnapping and sodomy of a 28-year-old woman. California is now averaging 10 matches a day to their DNA database. California has seen an increase over 125 percent matches on the DNA database since including arrests for a felony. So we're not just taking people off of the street. We're not taking citizens that are running for office, taking their DNA. We're taking it from people who have-- who are being charged with serious crimes, serious crimes. The list that is very specific, it's outlined in the bill and in the-- and the amendment. Folks, let's keep--

FOLEY: One minute.

HILKEMANN: --this conversation serious. This is not a joke. This is important. We will make Nebraska a safer place with this bill. Thank you, Mr. President.

FOLEY: Thank you, Senator Hilkemann. Senator Blood.

BLOOD: Thank you, Mr. President. I'm having a little trouble hearing people, it's getting so noisy on the floor again. But with that, I stand-- I'm not sure how I stand in reference to Senator Hunt's amendment. I do know that as amended, I'm still not in support of the bill, but I'm still going to keep talking about it and listening to debate. So fellow senators, friends all, for those who are actually listening and not talking, I had four questions that I brought forward yesterday around 6:30. I asked for a response, I think it was around 9:30 last night. And because of all the debate that was going on, Senator Hilkemann obviously had his plate full. He was kind enough overnight to get me answers to my questions and unfortunately, they've created more questions. So one of the questions that I had was, when an arrest-- arrestee refuses to provide DNA, does Nebraska require the arrestee to consent voluntarily without penalty for refusing, or is law enforcement allowed to use reasonable force? If you refuse to give DNA sample, a crime in itself? If so, is it punished by imprisonment or a fine? And the response is-- my understanding is that a court order would be requested and as in any situation when a court order is not followed, the individual is held in contempt of court until they comply. So that response is inaccurate. So when a person is arrested

and taken to jail and maybe Senator Wayne can help me clarify if I'm wrong, and taken to jail, say, like at 2:00 in the morning, there's no court case. There's really no way to get in front of a judge at 2:00 a.m., I don't think, in that window of time at least. And the majority of arrests that I'm finding in the data that I have are late at night, early in the morning and they're often the criminals, not the judges or the people doing the arresting, are under the influence of something. That means they may be agitated and I can't imagine how the process of waiting calmly while waiting for a motion to be filed, getting a hearing date and arguing in front of a judge will work at 2:00 a.m. So, again, I keep saying that the issues that I have with this bill are about how does it work? So I'm hoping to get to all of my answers this morning yet. But so that was the answer for number two and that's one of the things I'm worried about. Question number three was, in Nebraska are DNA profiles automatically submitted and entered into the national database? Some counties are so overwhelmed, they use private labs and they don't qualify to submit DNA data to NDIS. So the response was, questions regarding general processes at the labs would be better directed to someone at the lab, which is where I got my information. If a sample needed to be uploaded to CODIS relevant to LB496, I'm certain law enforcement would use a qualifying lab. The fiscal note may provide for additional staff and equipment to cover the increased load. So, again, I think it's speculative, an assumption that's not based on fact, because we already talked about it last night, both Senator Machaela Cavanaugh and I. We already know that there are private labs that are being used as a result of the many, many backlogs that they have, especially on the untested rape kits. So I'm not really sure how we can keep making assumptions on why we can't just bring forward amendments that answer all of these questions and actually show us how this is going to work. It does not make sense. We already discussed expanding anything that has to do with DNA is going to increase the burden on these already burdened crime labs--

FOLEY: One minute.

BLOOD: --and I find that concerning. If this is pro-law enforcement and pro-protecting the people, then we need to do this in a way that addresses how they can do it, how will this mechanism work, and how will they prove to us that it's not going to be another burden, another unfunded mandate? And the fiscal note is a whole nother question, which I can address later when I talk on the mike a second time. But first I want to go ahead and address the rest of these questions and answers on my next time on the mike. Thank you, Mr. President.

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FOLEY: Thank you, Senator Blood. Senator Wayne.

WAYNE: OK, colleagues-- thank you, Mr. President. We're not going to talk about Earnest Jackson anymore. If people want to yield me time, we want to spend talking about this bill. And we're going to get into the heart of this bill and why there are some-- and there are-- why most conservative states have not passed this law. So I'm going to give you a framework of why this is different. And I hope people are listening to why this is bill, and if you are-- if you are-- if you are a true conservative, please listen. Right now, if you get arrested for a violent crime, under Supreme Court law and under the Fourth Amendment, they can't even go into your house. They can't even search your cell phone without a search warrant. And a search warrant determines probable cause. So what happens is the judge says, there's enough probable cause that a specific crime was committed that is linked to that search. So if there's a murder, they're going to file an affidavit for probable cause for a phone search because they want to make sure that this can track where you were, where you were around the time, get your cell phone information so they can go back and ping towers to cross-translate if you were there. But it is a probable cause for a specific search. This bill will allow you to-- allow the state to get your DNA without that step for no reason, except for you were charged with a crime. So what we're basically saying here is, once you're arrested for one of these crimes and you go to your preliminary hearing on the crime itself, they can now take your DNA. But if they wanted to search your phone, if they wanted to search your mailbox, if they wanted to go into your property and search your house, they still have to go get a warrant, a search warrant. We are saying the basic of who you are, all your information of who you are in your DNA, which is I think one of the most sacred things, is less important than your cell phone. That's mind boggling to me. It's less important than a cop walking into your house and searching your house. We are saying that DNA is less important because what happens under this-- underneath this bill, if it passes, just because you're charged with the crime, whether or not your DNA is relevant to the case, they can now do a swab to check all old cases or even hold it for future cases. They can't do that with anything else. They can't do that with your house and they can't do that with your cell phone without getting a specific warrant. So here's what I will propose, Senator. I will propose I will help you make this bill better if you not just require a preliminary hearing or a probable cause on the crime itself, but a probable cause on why DNA is actually needed for that crime, because that's the standard we use for any other search warrant for a specific crime. We are actually saying the DNA, that if hats can basically

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determine everything who you are and what you're about, what I would consider like the most sacred thing we have inside of our bodies is our DNA that you get a swab. For example, right now, under law, if you are suspected of a DUI, they have to get a court order to get a blood draw if you refuse to take it. They have to get a warrant for a blood draw for a specific crime--

FOLEY: One minute.

WAYNE: --not just a blanket, we're going to take your blood and run it against everything else, it's for that crime. So by voting green on this, you're saying the DNA that you hold is less important than your cell phone, less important than your computer, less important than your blood being drawn, less important than your house, your castle. You're saying your DNA is less important. And that is a very, very scary slippery slope we are going to walk down. That our DNA can be taken without probable cause to a specific crime, just a blanket, we're going to run it and keep running it and keep running it in hopes one day we have a fixing-- fishing expedition to catch something. Thank you, Mr. President.

FOLEY: Thank you, Senator Wayne. Senator McKinney.

McKINNEY: Thank you, Mr. President. I rise again opposed to LB496. And I'm going to read a story why I'm super skeptical of ever giving my DNA to anybody. It's a story about a man that was wrongfully convicted because of DNA. So on the evening, on one evening in-- in November of 2002, Carol Batie was sitting on her living room couch in Houston, flipping through channels on a local TV station when she happened to catch a teaser for upcoming news segment on the local station. She leapt to her feet. She said, I scared the kids, I was screaming so loud, Batie said. I said, thank you, thank you, God. I knew that all these years my prayers had been answered. The subject of the segment was the Houston Police Department crime lab, among the largest public forensic centers in Texas. By one estimate, the lab handled DNA evidence from at least 500 cases a year, mostly rape and murders, but occasionally burglaries and armed robberies. Acting on a tip from a whistleblower, the news station had obtained dozens of DNA profiles processed by the lab and sent them to independent experts for analysis. The results, William Thompson, attorney and criminology professor at the University of California at Irvine, told the news station, were terrifying. It appeared that Houston Police technicians were routinely misinterpreting even the most basic samples of DNA. He said if this incompetence, its gross incompetence and repeated gross incompetence, you have to wonder if the techs could really be that

stupid. Carol Batie watched the entire segment and as-- and as it ended, she emailed the news station saying, my son, my son, my son is-- my son's name is Joshua Sutton. And he had been falsely accused of a crime four years earlier. Batie explained, Joshua-- Josiah, I'm sorry, then 16, and his neighbor Gregory, 19, had been arrested for the rape of a 41-year-old Houston woman who told police that the two young men had abducted her from a parking lot from their apartment complex and taken turns assaulting her as they drove around the city in her Ford Expedition. A few days after reporting the crime, the woman spotted Sutton and Adams walking down a street in southwest Houston. She flagged down a passing patrol car and told officers that she had seen her rapists. Police detained the boys and brought them to a nearby station, questioning them. From the beginning, Sutton and Adams denied their involvement. They have both-- they both had alibis and neither one of them matched the profiles of the victim's original account. She-- she described her assailants as short and skinny. Adams was 5'11", 180 pounds. Sutton was three inches taller, 25 pounds heavier, the captain of the football team. The DNA evidence was harder to refute. Having seen enough prime time TV to believe that DNA tests would vindicate them, Sutton and Adams had agreed while in custody to provide to police for blood samples. The blood had been sent to the Houston crime lab, where the analyst named Christy Kim extracted and amplified DNA from the samples until the distinct genetic markers that swim in every human cell were visible on test strips and as-- as a staggered line of blue dots. Kim then compared the results with the DNA obtained from the victim's body and clothing and from a semen stain found in the back of the Expedition. A vaginal swab contained a complex mixture of genetic material from at least three contributors, including the victim--

FOLEY: One minute.

McKINNEY: --including the victim herself. Kim had to determine whether Sutton or Adams' genetic markers could be found anywhere in the patterns of that. Her report delivered to police and prosecutors didn't implicate Adams, but concluded that Sutton-- Sutton's DNA was consistent with the mixture from the vaginal swab. In 1999, a jury found Sutton guilty of aggravated kidnapping and sexual assault. He was sentenced to 25 years in prison. His mom stated, I knew Josh-- Josiah was innocent and knew in my heart, but what could I do? She wrote to the Governor, to state, to representatives but no one proved to be willing to help. She also wrote to lawyers at the Innocence Project in New York who told her that as a rule they didn't take cases where a definitive DNA match had been established. I'll continue this further, but I'm just going to also state that this was a young black

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man who was wrongfully-- wrongfully convicted because of DNA that was misused.

FOLEY: That's time, Senator. Thank you, Senator McKinney. Senator Blood.

BLOOD: Thank you, Mr. President. I'm sorry someone was talking to me, I wasn't sure you had said my name. So I want to go on and say that I'm not sure about Senator Hunt's amendment, but the amendment and the underlying bill I can't support right now because I'm still not seeing any substantial changes, even though we've had a lot of debate on this and people have brought up a long list of issues. So I'm really concerned about that. So fellow senators, friends all, I want to move to the expungement process. So the answer on my questions in reference to preconviction DNA and how it will be expunged was AM1054, page 6, lines 1 through 6, and page 6, lines 29 through 31 and page 7, lines 1 through 17. Much of this existing statute pertains to expungement of records following a conviction collection. Actually, current law is already deficient, and I'm sure a lawyer in this body could talk on that better than I could. But it's also not as pressing of an issue when folks have not been found guilty. Why should that be a priority for anybody? And as I talked about on the mike yesterday, one of the concerns that I had that I'm seeing in other states is that people are falling through the cracks. That it's supposed to be automatically expunged in some cases, it does not get done. If you are found innocent and you have to ask and pay to have it expunged, you are being punished when you haven't done anything. That's like me driving next to somebody who's speeding and the cop pulls me over and gives me the ticket and the fine. I didn't do anything, but I was in the general proximity. We're basically fining them by asking them to have their records expunged when they didn't do anything except get arrested and were unfairly accused of something that they didn't do or at least weren't convicted of. How is that right? When did things like that become OK? I am getting so many emails right now about LR107 and government overreach and you can't support the Constitution if you're a certain party because you're in my business. But you know what? I haven't had a single one of those people come and talk to me about this bill, a single one of these people call me about this bill, email me about this bill. I don't know. Kind of smells like hypocrisy to me, but that's just my personal opinion and lately, it doesn't seem that that matters to anybody, especially since nobody listens to debate anymore. So I really need to know a clear process that directs how people are supposed to take advantage of the expungement process. I don't think that's a hard ask. And quite frankly, that's why I don't think this bill is ready for prime time. I said yesterday, Senator

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Hilkemann has the best heart of probably almost any man I know. He's a good person who works so hard to make the world better around him, not just through legislation, but with his demeanor. But that doesn't make the bill better. That just makes me more empathetic to him and feel a little guiltier that I had to stand up against the bill. We need a process. And saying current law provides is not an answer, unfortunately. And if it is, I would ask if Senator Hilkemann would yield to a question.

FOLEY: One minute. Senator Hilkemann, would you yield, please?

HILKEMANN: I will.

BLOOD: Senator Hilkemann, how does the current law work so that you have a clear understanding how this expungement process works? Can you walk me through that?

HILKEMANN: Well, yes, as a matter of fact, I can.

BLOOD: For those that are not guilty.

HILKEMANN: The-- according to the FBI national data, a DNA expungement. I'm just going to read it directly from it because-- so that you can-- if your DNA sample was taken for a federal arrest or conviction, you may qualify to have your DNA expunged from the FBI's national database if your federal arrest did not result in a conviction because no charges--

BLOOD: That federal arrests, Senator. What about if it's at a state level?

HILKEMANN: And as I'm reading this, we have the expungement process. I'm-- you're exactly right, Senator. I-- as I looked at, as I was reading that this is for-- I was looking on the website to see how this process happens.

FOLEY: That's time, Senator.

HILKEMANN: I know that there's a process--

FOLEY: That's time.

HILKEMANN: --that's available for removal through the expungement process.

FOLEY: That's time.

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HILKEMANN: I came up with the federal one. I'll get it taken-- I'll get it for you.

FOLEY: Thank you, Senators Blood and Hilkemann. Senator John Cavanaugh.

J. CAVANAUGH: Thank you, Mr. Lieutenant Governor. So Senator McKinney was talking about a wrongful conviction, relied-- that was relied upon DNA evidence to convict that young man. And that is clearly a problem with DNA. As people see it, they see the result and they have a disproportionate level of confidence that that is a certainty. So I kind of wanted to talk about Senator Hilkemann handed out a handout originally. People might not have it anymore, but it's one that has a bunch of little numbers listed on the front page. And the first part goes 16 comma 18 and then semicolon, 15 comma 15. It goes on and there's 20 of those sets of numbers. Those are the DNA markers, the loci that they're using. And this is one person's DNA profile. And what happens is you get a DNA profile like this and this-- the-- the likelihood that your particular sets is how you figure that out and it's how likely you are to be that person. But when they take the-- this DNA sample and they match it against something that they would have in a list, then that's where the problems will come in. Because so as Senator McKinney pointed out, that-- that case was one we had a multiple contributor sample. So you get DNA from an individual. So in this one right here is from one individual and that gives you a clean sample of two data points at each loci. When you get a multiple contributor sample from a crime scene or from a swab-- evidentiary swab like Senator McKinney was talking about in a rape kit, there are-- there are potentially multiple contributors, which means you will have instead of 16, 18 at that first space, you might have 16, 18, 19, 20. And then at each spot, you might have-- you'll have four-- potentially four spots. Sometimes there'll be an overlap, meaning that the-- the individual, the perpetrator and the victim have the same number at the same spot. So when they run these-- this information against a known person, so the person you have in custody, you've gotten a search warrant, you do the buccal swab, you run their DNA, so you have your known sample. You run that against your evidence sample taken from your investigation and they come back with a report that says the likelihood or not that this person is a contributor to that multiple person sample and they will give you a numerical breakdown of that. And sometimes it gets into the, you know, astronomical six billion zeroes after the fact, not six billion people, not one in six billion, but one in six billion zeroes. So, impossible that it is anyone else that you are not related to is the contributor. The problem when you get to-- when you have multiple contributors is, they

can't say which spot on that applies to which person. So when you have instead of 16, 18, you would say, OK, 16, 18, 16, 18, it's got-- this person matches up here. But if you have 16, 18, 19, 20, you could have a person with 16, 20 and 19, 18 be the two contributors and it will look like it is this person. It'll look like they're a match. So you have the potential with a multiple contributor that you increase the likelihood that you have a not-excluded result, which is to say that it's not-- we don't-- we can't say it's this person, but we can't say it's not this person because their loci appears at some of these particular spots. And so you want to say that there is no potentiality to catch up people, innocent people. We can arrest people, we can charge people, we can take their DNA and we can all feel good that when they-- we run them against the system, there is no likelihood because DNA is so ironclad that they are going to be wrongfully implicated in a crime they had nothing to do with. But that is not the case when it comes to this-- this system and how DNA works. But once you get to that point, as Senator McKinney just illustrated,--

FOLEY: One minute.

J. CAVANAUGH: --once you get to the point of saying this person is-- their DNA is not excluded here and it has a mathematical certainty, then the wheels of justice grind until that person is convicted and they could have never set foot in the state you're talking about. But people will say, well, how is that possible? They must be lying. Their DNA is there. And so that is one of the problems we have here. So we cannot pretend that that is not going to happen because it is-- this is purely numbers and math and that is going to cause problems and this is-- we have-- that's-- that problem currently exists, mind you. But we at least don't take the DNA unless we have probable cause for particularity of that search. And that is a bar that is appropriate and should not be exceeded. So we shouldn't hold ourselves to a lower standard when we are taking people's information. That can be such-- have such serious implications going forward. Thank you, Mr. Lieutenant Governor.

FOLEY: Thank you, Senator Cavanaugh. Senator Wayne, you're recognized. It's your third opportunity.

WAYNE: Thank you, Mr. President. Senator Lowe, will you yield to a question?

FOLEY: Senator Lowe, will you yield, please? Senator Lowe, will you yield to a question, please?

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LOWE: Yes, I will.

WAYNE: Senator Lowe, do you think if a person is arrested who owns a bar and maybe a house for a violent crime, police should just be able to go through the bar, search it and search the house without any probable cause?

LOWE: I would have to talk to my attorney about that.

WAYNE: That's a great answer. Senator Hilkemann.

FOLEY: Senator Hilkemann, would you yield, please?

HILKEMANN: Yes.

WAYNE: If one is arrested for one of the crimes you listed, do you think they should automatic-- do you think the state should automatically be able to go through their house and go through their phones or computers?

HILKEMANN: No.

WAYNE: So you put a-- I just want to make sure I understand this. You put a higher burden on searching a cell phone than DNA test.

HILKEMANN: Well, yeah, I do, as a matter of fact.

WAYNE: So you think information in a computer is more important than the information that you are built out of?

HILKEMANN: I think that we're dealing with a whole-- we're dealing with a different situation here, Senator, in the sense that-- that I'm not the only person in that building or office or home or that-- that may be being searched, so I believe--

WAYNE: Let me help you out a little bit here. The Supreme Court, U.S. Supreme Court says you must have a search warrant even if I am arrested for murder to go through my phone. You must have a search warrant. You must have an affidavit and a probable cause finding that my phone is somehow related to the specific crime. Do you think a cell phone and the information on the cell phone is more sacred and should be protected more than your DNA?

HILKEMANN: I do.

WAYNE: Thank you, Mr.-- I mean, thank you, Senator. Colleagues, that's where we just have a fundamental difference of opinion. And so I think

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that's why we can't negotiate going forward, because I particularly want a probable cause hearing, not on the general crime itself, but on the need for DNA, just like we have a probable cause finding for a search warrant on your cell phone. If there was a bill in this body that said if somebody is arrested for a violent crime and bound over, we can walk to your farm and search your entire farm. We can dig up your land and look for whatever we want until the end of time. Our farmers in this body would not let that happen. Those who fought for this country would think that's government overreach. But DNA-- see, the problem is, we think it's just a small swab and so it's not intrusive, like knocking on somebody's door and kicking it in and going into their house. It isn't the how you get there, it's the end product of what you are searching. And if you value your home, your castle--

FOLEY: One minute.

WAYNE: --as needing a search warrant over your DNA, there's just a bridge too far for us to get across. The gap is too wide. Would Senator Friesen yield to a question?

FOLEY: Senator Friesen, would you yield, please?

FRIESEN: Yes, I would.

WAYNE: And this is to be short, we don't have a lot of time, so I apologize. But if somebody was arrested in your family for a crime, violent crime, would you be OK with the government just going through their house, going through their computer, going through your farm, digging up everything without a warrant?

FRIESEN: No.

WAYNE: Thank you, Mr. President.

FOLEY: Thank you, Senator Wayne. Senator Stinner.

STINNER: Thank you, Mr. President. I rise in support of LB496, and I have to commend Senator Hilkemann for staying the course and obviously he's worked with the body He's added two-- two amendments to his bill, so I think he is trying to work with the body on this. And I am in full support of Senator Hilkemann and his efforts. But I wanted to break up the action a little bit and Happy Friday. I am in camouflage today. I'm helping the Red Coats. But I did pass out a couple of things that I thought might be helpful over the weekend to contemplate. First one is, says Nebraska Department of Education. And

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in the first two rows is the actual amounts that were sent out under the CARES Act in this last distribution in December and then an estimated amount of what is going out to the schools. And this may be helpful to kind of reflect as we move forward in our discussions as it relates to Appropriations bills and as it relates to next year when we do get part of the \$975 million that's estimated that the state will get. The second handout is the American Rescue Plan Act of 2021, and Fiscal Office has broken this down into states-- state appropriation. You can see the \$975 million metro cities and counties and what that total is. We also-- or they also listed down some of the prescriptiveness as it relates to states, cities, and counties. But you can peruse through here in each-- each category to see what your schools are going to get, what your counties are going to get, and certainly the state will get an allocation. Now, we're supposed to get-- we were supposed to get some final rules on May 10. I think that's been delayed. I've received that information secondhand. So we may have to wait some more time in order to get the final regs so we know exactly how we're going to use these funds, how we can apply for them, what the request needs to look like, and if it's going through the portal like we did with the CARES Act or not. So we'll have a lot more information as-- as the session progresses. The third thing I wanted to introduce to you is, and I think this is pretty sobering, so you better pay attention and I might have to elevate my voice in order to make you pay attention. I calculated over the last ten years, the last decade, the amount of money that was brought to the floor for spending bills. Last decade, \$227 million was brought to the floor. This session, we're at \$245 million spend. Decade: 227, 245. Hopefully it's purposeful. I have not entered into very many discussions with anybody. When they came to me, is my fiscal note OK? Get it out there. Let's make the body make that determination. We'll try to deal with it as we get the numbers. Now, it looks like we probably are going to be able to fit a lot of it in there, if not all of it, in its present form. But that will-- as we move to Select and Final and make some adjustments, hopefully it all comes together. But that's pretty sobering, really sobering, at least for me it is. And that's a lot of money. And I think the-- I believe based on what I'm looking at, it's all for good purposes. Seems to be unlimited amount of purposes, frankly. So we have to pick and choose.

FOLEY: One minute.

STINNER: We have to prioritize and we have to ponder it. And what I want you to ponder is those numbers. I want you to take a look at what schools are getting. Try to figure that into what we're trying to do as we move forward over the next year or so. And they do have three

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years to spend, what the counties are getting, what the cities are getting, what the state is getting. It all kind of fits together. So with that, I'll yield the rest of my time back to the Chair and thank you, and have a great weekend.

FOLEY: Thank you, Senator Stinner. Senator McKinney.

McKINNEY: Thank you, Mr.-- Mr. President. I'll continue reading this story about a young 16-year-old black man who was wrongfully convicted because of DNA, again, wrongfully convicted because of DNA. His mother was starting to think that her son would never be free. But the news segment, the first of a multipart investigation series on the Houston crime lab, encouraged her. Shortly after emailing the station, she received a call from David Raziq, a veteran television producer in charge of the news station's investigative unit. In the course of their work on the series, Raziq and his team had uncovered a couple of close calls with wrongful convictions. In one case, a man had been falsely accused on the basis of improperly analyzed DNA evidence of raping his stepdaughter. But in those instances, attorneys have managed to discriminate-- demonstrate the problems before their clients were sent to prison. Batie hand-delivered the files from her son's case to Raziq who forwarded them to William Thompson, the U.C. Irvine professor. Thompson had been studying forensic science for decades. He'd been writing about DNA evidence from a critical perspective in the mid-1980s as a doctoral candidate at Stanford University and had staked out what he describes as a lonely position as a forensic DNA skeptic. The technology had been accepted by the public as a silver bullet, Thompson said, and I happened to believe that it wasn't. Together with his wife, also an attorney, Thompson unpacked the two boxes containing the files from Sutton's trial and spread them out across their kitchen table. His wife took the transcripts and Thompson took the DNA test. Almost immediately, he found an obvious error. In creating a DNA profile for the victim, the forensic analyst from the Houston P.D. had typed three separate samples, two from blood and another from saliva. The resulting DNA profiles, which should-- should have been identical, vary substantially. This alone was cause for serious concern. If the tech couldn't be trusted to get consistent DNA profile from a single person, how could she be expected to make sense of complex-- of a complex mixture like the one from a vaginal swab? Much more distressing were Kim's conclusions about the crime scene evidence. Examining photocopies of the strips, Thompson saw that Kim had failed to reckon with the fact that Sutton's DNA didn't match the semen sample from the back seat of the Expedition. If the semen came from one of the attackers as almost certain, based on the victim's account,

then Kim should have been able to subtract those genetic markers along with the victim's own from the vaginal swab mixture. The markers that remained did not match such profile. It was exculpatory evidence, said Thompson, and the jury never heard it. The news station flew a reporter out to Irvine and taped a new interview with Thompson. Sutton's case was taken up by Robert Wicoff, a defense attorney in Houston, who persuaded a Texas judge to have the DNA evidence reprocessed by a private testing facility. As Thompson had predicted, the results confirmed that Sutton was not a match. In the spring of 2003, more than four years after his arrest, Sutton was released from prison. His mother was waiting for him at the gates, her brown eyes with tears. Sutton said going to prison-- going to prison for me was like seeing my death before it happens--

FOLEY: One minute.

McKINNEY: --as he told a reporter. This is why I don't like this bill. I don't trust it. I don't see how anyone in this body could trust this when we're not accounting for human error and the potential for somebody to be wrongfully convicted of a crime they didn't do. We're not thinking about this. There's potential for someone to be wrongfully convicted of a crime and we're OK with it because we just think people should just be swabbed for DNA. This is not the only story. There are more stories of people being wrongfully convicted of DNA. It's not a fool-- a fool-- it's-- it's just not without error and we're not even thinking about it. We're just willing to let it go and I don't understand why. Thank you.

FOLEY: Thank you, Senator McKinney. Senator Blood, you're recognized, your third opportunity.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, again I'm not sure where I stand on the amendment, but I know that without being further amended, I do not support the amendment, and unfortunately, the underlying bill. Fellow senators, friends all, I'm going to tell you a little private thing about me. I have a guilty pleasure. And it is the SVU show-- what's the big-- now I'm so tired after the long day we had-- what? Law and Order, thank you. It's my favorite show and I can't even remember the name. So Law and Order, SVU, in fact, I have watched it, gosh, for well over a decade. I don't even know how long it's been on the air because I love learning about crime and how you solve it and it's always based on like a real-life event that's happened. And I can tell you, my husband stopped watching it with me. We used to watch it together in the winter when you were snowed in and you're looking for something to do because I always

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guess what the ending is before we get to the ending and he hated that. So now he watches it by himself when I'm not around. With that said, I don't think there's anything wrong with underlying intent of this bill. DNA is an awesome and magical science. Who would have thought? Right? And it just tells you how fast things are moving in the day and age that we live in. I mean, 100 years ago, there was the steam engine, right? And then a decade later, there is something else. Here it's like minute by minute by minute when it comes to technology and science and it's amazing. But with that said, I keep finding issues in this bill that aren't being explained. You can like a topic and what it's about and still understand that this bill isn't going to work. And with all due respect when we talk about California, I don't care what those hippies are doing. I live in Nebraska, so. So I'm looking at the fiscal note and I'm looking at page 4 of the fiscal note and, you know, you hear me talk all the time about unfunded mandates and they're talking about the grants, but the grant is not covering a lot of this issue. "LB496 adds language requiring DNA samples from individuals arrested for alleged crimes of violence on or after the operative date" blah, blah, blah. The costs reflected in this fiscal note include the salaries and benefits for one additional staff person, the cost of a computer/workstation," etcetera, etcetera. Crime lab supplies. "The bill does not have a separate provision that carves out a requirement for the collection of fees from the individuals that have been added to this bill (those arrested for alleged crimes of violence). While previous language exists for such costs to be paid by individuals convicted of felony offenses," which we've said over and over and over again. "there is not language that clearly identifies if fees will be required to be collected for the processing of DNA from individuals arrested for alleged crimes of violence. Accordingly, no additional revenue amounts have been reflected in this fiscal note, and it is assumed that the costs will need to be funded by General Funds." Now, Senator Stinner has said he thinks that that's OK. But when I look through these fiscal notes and I think about my freshman year, if we had a fiscal note like this on anything, our bill wouldn't have even made it to the floor. And now granted, things are more plush, I don't know a better word for it, and everybody's been grabbing for money for their bills. But I fear that when it comes down to taking care of our real victims, and the real criminals that commit crimes, when things get tight in our budget again, are we going to have the funds to help these people when we're funding all these feel-good bills? And I don't think anybody's thinking about that. I think everybody just kind of skip off and go on home and go look at all the wonderful new things that we brought

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forward and that we paid for. And then, you know what's going to happen?

FOLEY: One minute.

BLOOD: It's going to be like that last recession where we take funding away from organizations, we take funding away from our municipalities and our counties, and then we say, I don't know why your property taxes are going up. It's not like we took funding away from your local government. It's not like we took funding away from your local programs. So this is just kind of a buyer beware statement, guys. We want to push a bill forward that's not ready for primetime. We want to fund it with a lot of unknowns. I don't think that's good policy. It doesn't make Senator Hilkemann not a good senator, but it makes this a bad bill. Look at this fiscal note and look how they explained it, around it politely. There's going to be issues and current statute does not address any of these issues. And I'm hoping that one day, by the way, this will be an episode of SVU, because I would watch it, wouldn't you?

FOLEY: That's time, Senator.

BLOOD: Thank you, Mr. President.

FOLEY: Thank you, Senator Blood. Senator Pansing Brooks.

PANSING BROOKS: Thank you, Mr. Lieutenant Governor. Good morning, colleagues. Well, I am standing up to talk about some of the things that have been said and some of the things that were said last night. We probably have a different viewing audience. There's been some suggestion that-- that photographs and fingerprints are allowed to be collected, but DNA goes much farther. Arrestees can be strip-searched at a jail, but for a different kind of reason. DNA is not merely a series of numbers. It's a complex molecule that contains all the information necessary to build and maintain an organism and to describe life. Senator, our darling friend, Senator Hilkemann has talked about CODIS and how safe it is. Well, it's as safe as the next hacker. That's how safe CODIS is. And I explained last night that there are numerous entities who would like this information about people. It's an economic advantage to have this information. It's an insurance advantage to have that information. This is not information that is just like, what is your blood type? It is particular to you, it is particular to your health. It is particular to the longevity of your life. And yet Senator Hilkemann would be willing to-- to hand over his DNA before he'd hand over his phone. What the heck is on your

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phones if you're-- not-- if you're-- if you're not willing to hand over your-- your phone, but you're willing to give the substance of your entire basic being in life. Wow! Now, I do want to see your phones. I didn't care before. The-- the article that I read last night that was from Internet health said that your D-- your DNA is something that-- that affects-- they can't be anonymous and it will affect your families. We've heard of cases like that where somebody is picked up because somebody else has put in their DNA. Also, the-- we have cases, as Senator McKinney talked about, of-- of the DNA results not being accurate. Hopefully, they'll become more so, but it's-- it's something that's very concerning to me. It's the most private thing that we all own. If we have-- if we have some disease in our in-- within us, insurance companies can use it to discriminate against us and to not give us coverage. There are so many ways that this can be-- can be used. The other information that we have is that heritage tests are less precise if you don't have European roots. DNA is analyzed in comparison to samples already on file. Because more people of European descent have taken the test so far, the assessments of where your ancestors lived are less detailed outside of Europe. So, again, what does that bring us into? What does-- what question is raised by that? Well, we're talking about overrepresentation of people of color in our prison system and those arrested. And I got a piece of paper last night from Senator Hilkemann talking about the fact--

FOLEY: One minute.

PANSING BROOKS: --that more Caucasians are arrested, but not proportionally, not proportionally to their demographics. We know that there are far more African-Americans and people of color in our prisons than the percentage of numbers that we have in this country. In Lancaster County, 31 percent of inmates in Lancaster County are black, yet only 4.3 percent of the people in Lancaster County are black. So how is that going to work out? How fair is that? Please, this is-- there needs to be much more work on this bill. Thank you, Mr. Lieutenant Governor.

FOLEY: Thank you, Senator Pansing Brooks. Senator Machaela Cavanaugh.

M. CAVANAUGH: Thank you, Mr. Lieutenant Governor. I was hoping that we were going to get to a vote on the amendment, but it seems like we're going to talk for a while so I got back in the queue. I have conflicting feelings about Senator Hunt's amendment because the requirement of it coming at the cost to people seeking office, I think that we have a lot of barriers already for individuals who are seeking office, elected office. But I appreciate the spirit of the amendment,

so I will be voting for it. Senator Hilkemann commented on my reading of the plot of a movie, *The Minority Report*, and it's not a joke. This is *The Minority Report*. And that's why I was reading the plot of that movie to illustrate a point. And I really find it fascinating how individuals in this body feel that it is appropriate to criticize how other individuals in this body choose to engage in the debate. And this happens constantly, constantly. I think that this is a very serious-- I chose to illustrate this through reading the plot of this movie, which if you watch the movie or read the rest of the plot, how very wrong we-- this entire thing would go. I criticized Senator Hilkemann and the Judiciary Committee pretty scathingly last night, and I thought that I would lighten up on them today and-- and talk about some other issues with the bill. So I'm not making a joke out of this. I take this very seriously. I went to NCSL's website to look at what other states are doing, and they have-- they have a chart, and I can send the link out to the body, on all states' DNA collection. But this is just-- we already collect DNA when it's appropriate with due process. What this bill does is take away due process and no one should be comfortable with that. Senator Hunt has another amendment that requires the collection of DNA if you want a conceal carry permit, and I will happily vote for that as well. And I have a feeling that that's like going to be a, just firebomb to this body. Why would we do that? Well, if you carry a concealed weapon, shouldn't we have your DNA on record? Shouldn't we indiscriminately just collect people's DNA? Shouldn't we collect DNA of every single person in this room? We're comfortable with that. There's no probable cause. Why not? I-- I mean, maybe we should solicit the federal government to make 23andMe or Ancestry.com or whatever, make that report to CODIS. Every person who's had their DNA, their heritage thing done, your DNA should now be entered into CODIS. Let's just-- it's the Wild West, no rules apply. Democracy be damned. This-- this is such a disingenuous argument. We have due process, we collect DNA and the examples of people--

FOLEY: One minute.

M. CAVANAUGH: --being found of crimes because of the DNA collection in other states, it's a completely disingenuous argument, completely disingenuous. If you are collecting DNA, which we do in the state of Nebraska with probable cause, then if somebody has committed other crimes and we have their DNA, we're going to find that out, not because this indiscriminate bill was passed. We can already find that out with due process without just throwing out the Constitution. Thank you.

FOLEY: Thank you, Senator Cavanaugh. Senator Lathrop.

LATHROP: Thank you, Mr. President, and colleagues. I feel like I need to get into the queue every once in a while and visit because I-- I'm listening while I'm trying to get something done and I just heard throwing out the Constitution, indiscriminate, violating due process. We're talking about 23andMe and articles that we read about the accuracy of DNA in the context of 23andMe and whether they can tell me what my nationality is. That has nothing to do with this. Let me-- let me share with you that sometime ago during my first tour through this place, Senator Avery passed a bill that required that everyone convicted of a felony be swabbed. That's been-- that's been true. Don't need probable cause. Guy could be convicted of a felony for-- for embezzlement, we're swabbing his cheek and putting it in there. OK? So that's all-- that already exists. All these concerns that have been expressed, they-- they have been the law for a long time. What Senator Hilkemann's bill does is simply say, along with taking your mugshot, along with taking your fingerprints, we're going to swab your cheek. And we're going to put it into the system only after we've determined there's probable cause to believe you committed the felony that you've been charged with. And if you're acquitted or the charges are dismissed, it comes out. I appreciate-- believe me, I appreciate people who are concerned about protecting people's civil liberties. Believe me, I-- I-- I am impressed by the voices, but I do want to say that this is getting a little astray when we say we're trampling on people's rights, we're doing things indiscriminately, we're throwing out the Constitution and violating due process. Not true. Not true. And this isn't a search and seizure in the same sense that someone would go through your house or your phone. If you read the case from the Supreme Court, they put it in its own category and compare it to-- which is why it's constitutional, --taking one's fingerprints. So I just want to, every once in a while step up because Senator Kolterman [SIC] is not trained in the law and help him out and bring the-- bring the discussion back to his bill, not what articles are in publications about whether 23andMe is accurate. They're-- they're not taking this information and trying to determine your ancestry. They're simply looking at several of many, many markers to determine if you're the same person that committed a crime somewhere else. That's it. That's it. It helps catch bad guys. I have to say that I'm a little surprised-- honestly, I'm a little surprised that people that want to see all of the rape kits tested oppose this, because that's all about the DNA. And I don't need anybody jumping up and saying, I can't talk about this. I-- I appreciate this. This isn't about how long people are in prison, whether they get probation, parole, or they're

diverted, which I definitely would join the people who are opposed to this bill in that conversation. This is about catching the bad guys. That's it. That's it. At some point we may, with technology, get to a place where we can take a picture of the eye and the eye-- the eye and the way it is made up--

FOLEY: One minute.

LATHROP: --is also unique. Will we have a problem with that? This is just a means of identifying someone. It is scary because it is DNA, but it really is no different in this context than fingerprints. And that's really not just my opinion, but the opinion of the United States Supreme Court. So once again, I stand in opposition to the Hunt amendment and ask you to support Senator Hilkemann's bill. Thank you.

FOLEY: Thank you, Senator Lathrop. Senator John Cavanaugh, you're recognized, your third opportunity.

J. CAVANAUGH: Third-- thank you, Mr. Lieutenant Governor. Wow, time flies. So, well, I'm just going to-- I revisited a few of the quotes that I've mentioned earlier. But there's the one, Justice Brandeis-- this is the Opinion in *Carpenter v. the United States*, which is the United States Supreme Court in 2018 finding that searches of cell phones is too extensive without a search warrant. And it says, the court has an obligation as subtler and more far-reaching means of invading privacy have become available to government to ensure that the progress of science does not erode the Fourth Amendment. And Senator Lathrop and I have disagreed about this and he mentioned that this is my fantasy that the Supreme Court will come around to my way of thinking in *Maryland v. King*. But I would just point out that *Maryland v. King*, the dissenting opinion was written by noted liberal Scalia. And so, I know he's no longer on the court, but this is not a liberal or conservative philosophy. That was sarcasm. I'm sorry for the transcribers about Justice Scalia. This is not a conservative or liberal idea. This is a philosophy that the dissent in that was comprised of Scalia, Ginsburg, Kagan and Sotomayor, so an alliance of liberal and conservative philosophy. But one of the things that-- I actually gave out my copy of the case, but one of the things that-- that Justice Scalia wrote in the dissent was that this is not so akin to fingerprints and so easy as people would like you to think. I know there's people here who think this is just like fingerprints. This is a minimally invasive search. And that's what the court held in *Maryland v. King*. They said the search itself is minimally invasive. And they-- and the reason I said that they may overturn themselves ultimately is because the science behind it at the time was less

extensive than it is now. And the court has taken a step back as science has progressed to say that the searches are becoming more extensive based off of the expansion in science and so that is why I say that. But that is not the reason that this is wrong. And this is not the reason we shouldn't do it, is because the court might ultimately agree with us. But the reason is that when you say-- currently in the state of Nebraska, we take people's fingerprints when we arrest them. We take a booking photo when we arrest them. We do that for the purposes of when we bring them to court, we know we have that right person. We are comparing them to make sure we have the person we think we have. And the court says that is OK. They say that-- that-- that is OK in Maryland v. King. And they try to say that this is akin to that, that the DNA capture is for purposes of identifying the person you have so you know who you have. But in the state of Nebraska, if you want to use those fingerprints at trial, if you want to do a search on that person, you need to get a subsequent probable cause warrant to use that and to-- to either get a new sample or to use the sample you already have, which is exactly what Senator Wayne is talking about when he talks about we need a probable cause standard specific to this search, to the reason we are capturing this information, not just to that you are probable cause that you should be detained and should stand trial for the offense that you are held on. Those are two different things, and that is an important distinction. We should not be searching people for things we have no reason to search them because that goes in a bad direction. And the reason so many of us are against this is because not so much that-- that we don't like this, which I don't, but because of the place it goes, because the next step will say we-- now we're capturing DNA. You just heard Senator Lathrop say, are we going to start capturing people's retinal scans? I would be against that too. Another-- another invasion of person-- person's personal privacy and liberty. There are reasons--

FOLEY: One minute.

J. CAVANAUGH: --there are potentialities for wrongful misidentifications because of DNA. You heard Senator McKinney talk about that. You've heard me address the problems with multiple loci. But the fundamental problem here in this bill is we have a structure in place that works. We have a system that allows for judicial oversight and review. We have a request of particularity making sure that we are not indiscriminately searching people. That is what searching every single person, regardless of particular reason to search them, is. That is by definition indiscriminate. And so we should not go that way. We should limit ourselves to reasonableness of

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the search, the scope of the search itself, not just as in Maryland v. King, the search itself is-- is minimal, but the scope of the facts they are finding is broad. And that is an important distinction. So we are-- we need to hold ourselves to that standard. We need to make sure that we are only searching people, invading people's privacy when necessary--

FOLEY: Time, Senator.

J. CAVANAUGH: --and for a reason.

FOLEY: That's time.

J. CAVANAUGH: Thank you, Mr. Lieutenant Governor.

FOLEY: Thank you Senator Cavanaugh. Senator Hilkemann.

HILKEMANN: Thank you, Mr. President. We just talked a little bit about where-- where-- get us back on conversation about the CODIS process. I was asked whether I thought this is more-- whether protecting my phone and my home was better than protecting my DNA. Well, folks, there's no way with the CODIS system that anyone could ever identify who I am from that CODIS code. What would be more concerned to me if I were being arrested would be is that my picture would be on the front page possibly of the World-Herald or the Lincoln Journal. That bothers me, but we do that all the time. We take fingerprints and we do it all the time. From this cheek swab, I'm just review this. I talked about it earlier, but I'm going to review it again. We take a cheek swab, we take that saliva, we extract only 20 markers-- 20 of over 3 billion. From these 20 markers, there's no way that they can tell what my race is, what my gender is, or anything else about me. But these 20 loci are given a scientific number or identification only known by the CODIS. The name is not attached to this. If there's ever a match in which my 20-- the 20 that-- loci that matches with other DNA, that's the only time and then the only time, via law enforcement that the identity to that number that was given is released. This is not the type of thing that-- that is going to be taken-- you know, we talk about the 23andMe and I understand that's-- I've never done that. I've never-- I know my ancestry. I'm proud of my heritage. I have both of my maternal grandparents came over from England and my paternal grandparents came over from Germany, so I know that. I've never been curious to go any further than that with it. But that's the choice that some people make. But this is-- this, folks, will help law enforcement solve crimes. It will save lives of-- you know, we keep talking that-- that this is such a-- you-- you have-- we're not just

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taking people off of the street and taking their DNA, that probable cause. You have to be-- you have to be being charged for a fairly serious crime. This is not running a stoplight. This is not being caught for going 25 mile an hour over the speed limit on the Interstate. These are serious crimes.

HILGERS: One minute.

HILKEMANN: I'm going to be passing out-- it was said earlier about the 31 states that-- conservative states were not included. Well, I would disagree with that and I-- we will be passing it out. We have-- there are 31 states, some which take it for absolutely every felony and then some, such as in our case, the most serious felony, certain felonies and we'll be joining those states for that. I thought it's also interesting in doing my research that we have eight states that actually take-- take the DNA from people who are convicted of misdemeanors. That would be more-- by getting-- that's a convicted one. I admit that one. Even our neighboring state of Iowa takes it for convictions of misdemeanors. So, folks, take a look at those states. See if you think that they're not conservative states [INAUDIBLE].

HILGERS: Time, Senator.

HILKEMANN: Thank you.

HILGERS: Thank you, Senator Hilkemann. Senator Day, you're recognized.

DAY: Thank you, Mr. President. I am still trying to figure out where I am at on the underlying bill. I had originally spoken with Senator Hilkemann about this awhile back and lent my support to this bill. As a survivor of sexual assault myself, I felt like anything that would help to get the bad guys off the street, prevent future assaults, and provide survivors with an avenue to pursue justice I would support. However, listening to the debate over the last several hours and yesterday, I am not sure that I would be willing to vote for this anymore. I have a few questions specifically as it relates to the testing of rape kits. Is Senator Wayne or Senator John Cavanaugh available in the Chamber? I'm not sure that I see-- Senator Cavanaugh, would you yield to a question?

HILGERS: Senator John Cavanaugh, will you yield?

J. CAVANAUGH: Yes.

DAY: Thank you. So I'm just trying to understand a little bit better what the system is in terms of DNA testing when it comes to rape kits.

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So I think in Omaha, I believe we have over a thousand untested rape kits. In Lincoln as of December of 2020, 64 out of 107 were sitting and waiting to be tested. According to the fiscal note on this bill, we would be adding an additional approximate 5,000 samples statewide at least. Is that correct?

J. CAVANAUGH: You know, I don't know the actual number of untested in Douglas County, but yes, the 5,000 is definitely what's in the note here. But I wouldn't be able-- I wouldn't dispute the numbers that you cited from Douglas and Lancaster.

DAY: OK. So if we were adding an additional 5,000 samples to the systems in these various counties where there's already rape kits sitting waiting to be tested, would this push those tests back further? Or is-- is there some kind of hierarchy then in what gets tested first or how does that work?

J. CAVANAUGH: Well, yeah, so there's not-- as far as my understanding, it's not a specific hierarchy in my experience, which, of course, is from the other side being the defense attorney. But the prosecutors generally will push for a test to be done when it becomes relevant, meaning when they're preparing for trial, they want to test the rape kit for the DNA against the person that they suspect. So some of them will sit for a long time. And my most recent case that I had was from, I think, a 2015 case-- 2015 sexual assault that was tested in the summer of 2020 or the spring of 2020, I think.

DAY: OK, so-- so essentially, if-- if a-- if a survivor goes to the emergency room and they do a rape kit, that will just sit there until they're preparing for trial. Is that what I'm understanding there?

J. CAVANAUGH: It certainly could, yes.

DAY: OK. And so I guess what I'm just trying to understand is how this would affect the-- the-- the-- the rape kits that are currently sitting, waiting to be tested and if this bill would have the potential of creating an even longer queue of samples to be tested and then pushing off, you know, if we're collecting more samples, it's just adding to the-- to the-- to the long waiting list, essentially. Is that-- would that be a good assumption or--

J. CAVANAUGH: I think that it is fair--

HILGERS: One minute.

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J. CAVANAUGH: --fair to say that by adding more DNA samples to be tested that it will create a bigger backlog. But it also depends on how they decide to order them, meaning that if they decide to put these at the front of the line, it's going to push the rape kits back further. If they put them at the back of the line, these may never even get tested under that scenario.

DAY: OK.

J. CAVANAUGH: So, yeah, we're overtaxing a system that's already overtaxed. And so it could very well potentially push back testing of cases we already have pending.

DAY: OK, thank you, Senator Cavanaugh. I really appreciate that. I'm still kind of working through some of these things in my head. And I know that there's a perspective that DNA is very similar to fingerprints that are collected, and I'm trying to figure out where I sit on that. So I'm still listening to debate today and I appreciate all of the discussion on this. I appreciate Senator Hilkemann's work to protect survivors of sexual assault, but I think I'm going to need a little bit more time on deciding on this. Thank you, Mr. President.

HILGERS: Thank you, Senator Day and Senator Cavanaugh. Senator Hunt, you're recognized.

HUNT: Thank you, Mr. Speaker. Colleagues, I'd like to get a vote on this amendment, and I wasn't going to get in the queue again, but I was just having a conversation off the mike with Senator Wayne, and he's out of time and-- and he has some very interesting points and information, so I would yield the rest of my time to Senator Wayne.

HILGERS: Senator Wayne, 4:40.

WAYNE: Thank you, Mr. Speaker, and Senator Hunt. So, colleagues, we are-- let me explain how this works. This is actually a little worse than I thought it was. So when we link up to the national database, there is federal law, federal law that governs national database and the expungement of national database. And-- and you can ask any attorney in here, federal law trumps state law. And it says as a condition of the states-- as a condition of access to the index, which means when we-- when we make this condition of our state database being a part of it, the state shall promptly expunge from the index of DNA analysis of a person and they list two reasons. The responsible agency receives basically, the conviction has been overturned and they have to have a certified copy to the court order sent to the FBI, or

the person was not convicted of the offense. What they do not allow at the federal level is if you plead down. Let me-- let me repeat that. What they do not allow at the federal level is if you plead to anything else. So all the reasons that were listed in our state statute that we're proposing may remove you from the state database, but it does not remove you from the federal database. That is a fact. And I don't think the State Patrol in their fiscal note, now that I'm saying this on the record, is probably going to add to the cost because they have to send a certified court order to the FBI for the federal database showing that it was dismissed or resulted in an acquittal or that no charge was filed. So let me repeat that. The scenario that we talked about is if you were charged with something and then you pled out of to one of these crimes that is listed, you are still in the national database. Even if you were wrongly accused and you pled to disorderly conduct, you are still a part of the national database. It is up to the discretion of the FBI whether you will be removed no matter-- and that's state-- that is federal law. So how the supremacy clause works is federal law trumps state law. Now, there's an argument about the Tenth Amendment. We could have that great, great conservative debate on the mike one day, but it's clear here as a condition and the law is U.S.-- 42 USC Section 14-132 of the U.S. Code, as a condition of participating in-- as a condition to access to the national database, the only two times we can expunge your record from the federal database is outlined. So what we have in the statute is inconsistent with what's in federal law. And at the end of the day, every attorney in here knows that federal law trumps state law unless it's state specific and this isn't state specific because we are participating in a national database. And part of the condition of participating in the national database is we have to agree to this type of expunging procedures. So while we can disagree of whether this is like searching the phone, whether this is like searching a house--

HILGERS: One minute.

WAYNE: --we are making sure that everybody who participates in this, or gets a DNA swab, will go to the national database. And there's only two ways, if the conviction is overturned, or you are found not guilty or not charged. So if you are pled-- if you plead to anything else, nonviolent misdemeanor, you are still in national database. And even upon then there has to be a certified copy, the burden is on you. And the crazy part is the burden is on you even if you're found not guilty. According to the federal law, if you're found not guilty, you have to send a certified federal-- a certified copy of the court order finding you not guilty to get yourself removed from the database. That

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is putting the burden back on the individual to make sure the federal government doesn't keep your DNA.

HILGERS: Time, Senator.

WAYNE: That's crazy. Thank you, Mr. President.

HILGERS: Thank you, Senator Wayne and Senator Hunt. Seeing no one else in the queue, Senator Hunt, you're recognized to close.

HUNT: Thank you, Mr. Speaker. Colleagues, AM1289 is not an amendment that I philosophically support. What I'm doing with these amendments that I've introduced is I'm taking LB496 to its logical conclusion. I'm following the logic of the supporters of the bill. If we want to exonerate innocent people, is-- as the supporters of LB496 ostensibly want to do; if we want to solve cold cases; if we, you know, want to do all the things that we can do with a state database of DNA and we're going to set the precedent of putting the DNA of innocent people in the database, then I ask, where does-- where does that stop? Which innocent people are we putting in the database? AM1289 says that if you file to run for office, you have to put your DNA in the database. I have other amendments coming up which I equally, you know, don't personally support, but I'm just making the point that the introducer and supporters of this bill are making. If we want to solve cold cases, if we want to exonerate innocent people, then take everybody's DNA. To me, it's all the same. If you pull somebody over wrongly, they look at you wrong, they've got a Christmas tree air freshener hanging on their rearview mirror, they fail to signal, black people in our country have been killed for these things in the last several years, let alone just arrested. People who are innocent, who have their DNA taken and put into this database, yes, there is a way for them to get their DNA out of the database once they are exonerated and found innocent of their arrest, but that's at their expense, of their time, and taking the motions and going through the things that you have to do to get your DNA out of there. I'm looking at the text of the committee amendment, which says that pursuant to the DNA Identification Information Act, a person whose DNA record has been included in the database may request expungement on the grounds that the charge on which the authority for including such person's DNA record was based, has been dismissed. So it says they may request expungement, but the bill doesn't say anything about how you do that. Doesn't say how a person who is just minding their business, who got pulled over, who was arrested, or maybe they were protesting at a rally or something, they get arrested, they get their DNA taken. What form, what phone call, what manner of bureaucracy do they have to go

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through to get that DNA out of the database once they're found innocent? It is such a chore and it is such a level of government overreach that to me, there's no-- there's no fixing it. This takes us down a path where we're just collecting the DNA of innocent people. And maybe there are good things that could come of it; but to me, the bad things that could happen far outweigh the good. We already have a method for people to get their DNA out of the system if they are exonerated, thanks to Senator Pansing Brooks and Senator Chambers. We passed that bill in Nebraska. My amendment says if you file to run for office, you have to have a DNA sample collected by the sheriff before your name may be placed on the ballot. I would like to see what people think of that idea if we're going to stick with and be consistent--

HILGERS: One minute.

HUNT: --about whose DNA we're going to collect and why. And Senator Hllkemann also said there's no way that somebody could identify you from that CODIS code, from that DNA code that was put in the database. Well, then why do we have it? If it didn't work and you couldn't identify people from the DNA that we put in the database, why have it at all? This bill has been introduced many times in the past. It has not come out of committee for these reasons-- for these, you know, privacy issues that it has. Colleagues, I respectfully ask you to not advance LB496. Thank you, Mr. Speaker.

HILGERS: Thank you, Senator Hunt. Question before the body is the adoption of AM1289. All those in favor vote aye; all those opposed vote nay. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Please record, Mr. Clerk.

ASSISTANT CLERK: 23 ayes, 4 nays to place the house under call.

HILGERS: The house is under call. All unexcused senators please return to the floor. All unauthorized personnel please leave the floor. The house is under call. Senator Hunt, would you want to accept call-ins or a roll call? Which order? I'm sorry, which order? Regular order. Thank you. Senator Wishart, please check in. Senator Bostelman, please check in. Senator Linehan, please check in. Senator Pansing Brooks, Groene, Senator Brandt, please return to the floor. The house is under call. All unexcused senators are now present. The question before the body is the adoption of AM1289. A roll call vote in regular order has been requested. Mr. Clerk, please call the roll.

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ASSISTANT CLERK: Senator Aguilar voting no. Senator Albrecht voting no. Senator Arch voting no. Senator Blood not voting. Senator Bostar voting no. Senator Bostelman voting no. Senator Brandt voting no. Senator Brewer voting no. Senator Briese voting no. Senator John Cavanaugh voting yes. Senator Machaela Cavanaugh voting yes. Senator Clements voting no. Senator Day not voting. Senator DeBoer voting no. Senator Dorn voting no. Senator Erdman. Senator Flood voting no. Senator Friesen voting no. Senator Geist voting no. Senator Gragert voting no. Senator Groene voting no. Senator Halloran voting no. Senator Ben Hansen voting no. Senator Matt Hansen voting no. Senator Hilgers voting no. Senator Hilkemann voting no. Senator Hughes voting no. Senator Hunt not voting. Senator Kolterman voting no. Senator Lathrop voting no. Senator Lindstrom voting no. Senator Linehan voting no. Senator Lowe voting no. Senator McCollister voting no. Senator McDonnell voting no. Senator McKinney voting no. Senator Morfeld voting no. Senator Moser voting no. Senator Murman voting no. Senator Pahls not voting. Senator Pansing Brooks voting no. Senator Sanders voting no. Senator Slama voting no. Senator Stinner voting no. Senator Vargas. Senator Walz voting no. Senator Wayne not voting. Senator Williams voting no. Senator Wishart voting no. Vote is 2 ayes, 40 nays, Mr. President.

HILGERS: The amendment is not adopted. I raise the call. Mr. Clerk for items.

ASSISTANT CLERK: Mr. President, amendments to be printed: Senator Brewer to LB285, a pair of amendments. LR129 by Senator Wishart. That will be referred to the Executive Board. Announcement: the Judiciary Committee will hold an Exec Session at 11:20 under the north balcony-- balcony; Judiciary Exec Session, 11:20, north balcony. That's all I have at this time, Mr. President.

HILGERS: Thank you, Mr. Clerk. Mr. Clerk, for an amendment.

ASSISTANT CLERK: Mr. President, next amendment from Senator Hunt, AM11-- excuse me, AM1288.

HILGERS: Senator Hunt, you're recognized to open on AM1288.

HUNT: Thank you, Mr. Speaker. This is another amendment that I don't personally support, but I'm just following the logic of the introducers and proponents of this bill to fight crime and cut down on wrongful convictions and solve cold cases. This amendment, AM1288, is an amendment to collect the DNA of anybody applying for a concealed carry weapons permit. I think that if we want to assume that people

who get arrested, even if they're in the wrong place at the wrong time, even if they did nothing wrong, even if they're innocent, that there's reason to collect their DNA, then maybe there's also reason to collect the DNA of people who are trying to get a weapon. The amendment reads: On page 1, line 5, before "The" insert "(1)"; and after line 20, insert the following subsection: "(2) The Legislature finds that firearms in the hands of known violent criminals pose a safety threat to the public and that each person who intends to carry a concealed weapon should be subject to thorough vetting including a check on whether their DNA sample exists in the State DNA Sample Bank from some prior arrest.". On page 6 after line 9, insert the following new subsection. "(5) A person who is applying for a permit under the Concealed Handgun Permit Act who does not have a DNA sample available for use in the State DNA Sample Bank shall, at his or her own expense, have a DNA sample collected by the sheriff as part of the permit application process." Colleagues, taking the logic of proponents of LB496, if we want to cut down on crime and we want to exonerate innocent people and we want to solve cold cases, then I think having as much DNA as possible connected to crimes is the only thing that's going to help us do that. If there are people who are seeking to obtain a weapon in Nebraska, you know, we have some vetting things in place for them to do that. If these people have done nothing wrong, if they're innocent, if they haven't broken a law and they're completely licensed to carry a firearm, then nothing in AM1288 would prevent them from doing that. Law-abiding citizens who want to exercise their Second Amendment right to own a firearm would still absolutely be able to do that. All it would cost is the submission of their DNA to make sure that there has not been some prior arrest or some prior conviction, some prior unsolved homicide or rape, all of the things that we say we're concerned about with LB496. It's a simple amendment. It's an attempt to be intellectually and morally consistent with the intention of LB496. And with that, I'll yield my time to the Chair. Thank you, Mr. Speaker.

HILGERS: Thank you for your opening, Senator Hunt. Debate is now open on AM1288. Senator Lathrop, you're recognized.

LATHROP: Thank you, and pardon me, colleagues, I was back engaged in something else. I-- Senator Wayne brought up a federal statute and a federal process. I have to tell you, I was not aware of it. I'm trying to look that up and do three things at once. I-- you have my assurance though that if there is some requirement or some process through federal law that we have to comply with, I'm happy to put that amendment together and make this bill in compliance when we take it up on Select File. I don't know if that's applicable. To be perfectly

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honest, I just found out about it moments before Senator Wayne stood up and talked about it. He was nice enough to share with me the-- the concern he had, but I haven't had a chance to research it, but-- but I certainly will before Select File. And if this bill requires an amendment to be in compliance with federal law, I will personally assure you that we will take care of that. Thank you.

HILGERS: Thank you, Senator Lathrop. Senator Hilkemann, you're recognized.

HILKEMANN: Thank you, Mr. Speaker. I passed out a map and the coloring on it did not turn out like we'd like to have had it. These slides look better on the computer than they sometimes do when they print out. So I'd like you-- if you look at the legend at the bottom, it says DNA taken as-- of certain felonies. That's the little lighter blue color or the aqua blue color. And then below it says DNA taken as a result of all felony arrest. And that's the darker blue cur-- color. So it's about 50/50 of which states do it. These-- we would-- if as drafted and as amended here with the committee amendment, we would end up being an aqua-colored state if this were the case. We've had-- I want to make one other thing to let you know that this really is a victim's bill and that both the Rape and Incest National Network and the National Center for Victims of Crime, both organizations officially endorse the arrestee DNA testing. So, just more data. I'm trying to get-- we're-- we'll work with this-- with-- with Senator Wayne. And as Senator Lathrop just mentioned, if there's a problem with that, certainly that's something we can work on between General and Select if we need to. So at that, I'll give my time back to the Chair.

FOLEY: Thank you, Senator Hilkemann. Senator John Cavanaugh.

J. CAVANAUGH: Thank you, Mr. Lieutenant Governor. So I voted for Senator Hunt's last amendment because I heard a lot of people say this is minimally invasive, it's not a big problem. We shouldn't worry about it. Innocent people shouldn't worry about these sorts of things, it's not a big deal. I was one of two people who voted for it. I don't like the idea, but I thought, well, we should have some skin in the game, I guess, if we're going to force other people who didn't do anything or haven't been convicted of a crime to be subject to this, then we should hold ourselves to that same standard. But I guess I try to lead by example as one of my guiding philosophies. But the reason I rose to speak at this point is that Senator Day asked those questions about the order of the testing of rape kits and how this would work. And it made me think about the Maryland v. King case in which the

court talks about reasons why this is important, why this is acceptable. We capture DNA for identity purposes and they say that it's OK to test it against these national databases because it gives you some idea of who these people are, whether they're persons of interest in other crimes, whether they may flee the jurisdiction and be a risk, a bigger risk to society for when we release them on bond. The reason I bring this up is, it kind of answers, at least partially what Senator Day was getting at, which is one of the intentions of this is to identify whether or not people are persons of interest before we release them, which means this would necessarily need to be accomplished almost immediately. We have in our current system, at least in the courts I have practiced in, you get your bond set within maybe the longest is-- is three days. If you get arrested on a Friday night, you come to court on Monday, or I guess a holiday weekend maybe you could get four days, but you come to court that-- that quickly to get a bond set and determination of whether or not you should be released. Under the Supreme Court's analysis in Maryland v. King, they're saying that when you implement this sort of system, it is necessary that you have the results of this test before you make a determination of whether this person should be released, which means that these tests should and would be pushed to the front of the line. Otherwise, it is not serving the intended purpose, because one of the reasons they say that you want to do these tests is, a person being-- if they are a person of interest in another series of, you know, the most egregious cases, it would be a serious-- a series of sexual assaults or something, and they would be aware that they may be matched against that. So once we take their DNA, if we do not test-- test it and find out and then hold them under that theory, they are going to flee the jurisdiction and they are going to be-- they're going to be gone. And so the logic then goes that these tests, all of the tests we're going to be doing will need to be expedited. They will need to be at the front of the line, which is going to not-- not only further exacerbate a backlog problem in cases testing, but is going to push them to the back. And so that-- that I don't-- I guess I don't know how this will be implemented, but the logic would say that that is how you would-- you would implement this. And so I guess that's-- that is my roundabout answer to Senator Day's question after thinking on it for a minute and reading the Supreme Court's interpretation. But that, and that goes to a lot of other problems that we have, that we are-- we are detaining people pretrial. We have in Douglas County at one point I've cited before about 900 people who are pretrial detainees in Douglas County, meaning not convicted, just accused of felonies. In Lancaster, I think that number is about 300--

FOLEY: One minute.

J. CAVANAUGH: --or a number that I just had the other day. Those are people who have not been convicted, they're being detained. And we have-- they are going to be-- those people are going to be further restricted and treated as though they are guilty of something without having been proven that they were guilty by having this DNA taken, waiting on the test before we determine whether or not they can be released from custody, pending their trial, pending the determination of their guilt, pending the determination of this probable cause finding, which means under the standard, we wouldn't even be able to release them on bond until after a probable cause hearing, which happens a month after your detention generally in Douglas County. So think about that. We have all of these things that are going to be pushing people into custody for longer detention without a finding of guilt, without a finding of probable cause for the charges. So this is just a furtherance of the system becoming more stilted in favor of convictions, incarceration. This is a further step down that line. But I--

FOLEY: That's time, Senator.

J. CAVANAUGH: Thank you, Mr. Lieutenant Governor.

FOLEY: Thank you, Senator Cavanaugh. Senator Machaela Cavanaugh.

M. CAVANAUGH: Thank you, Mr. Lieutenant Governor. There's been a fair amount of conversation around sexual assault kits being tested, and I thought I would maybe take an opportunity to give the body and the state of Nebraska a little bit of an update. So last year, Senator Hansen's bill, LB881, was passed into law, which amended my bill, which required cities-- I'm sorry, city of the primary class and city of the metropolitan class to make a report, shall make a report listing the number of untested sexual assault evidence collection kits for such city. The report shall contain aggregated data only and shall not contain any personal identifying information. The report shall be made publicly available on the city's website and shall be electronically submitted to the Attorney General and to the Legislature. And it requires this to be done on December 1, 2020, and annually thereafter. So the body passes, the Governor signed it, it is law. So they're supposed to be doing this, as far as I'm aware and I would happily stand for correction, I do not believe that the city of Omaha has complied at this point. But I do want to share something that I feel is exciting and positive in this area. So in January of this year, the Attorney General's Office launched a new database of,--

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of collecting the information that various, entities, cities, counties, etcetera, on-- on sexual assault kit tests. And so there is an amazing individual who is leading this in the Attorney General's Office. Her name is, Anne-- I want to get her last name correct, my apologies-- Anne Boatright. She's a nurse by-- by education and practice, and she has worked in this area for a very long time, and she came to the Attorney General's Office and started building this database. And I was going to introduce another bill this year around this issue, but I met with her and another representative from the Attorney General's Office at the start of the session and decided to hold off on that to see how things would work with her database and people complying and voluntarily putting information in. So I agreed to check back in with her at the end of this year and we'll see if we need to bring a bill next year, so just be warned that there may be a bill next year. We'll just see. But this is a really amazing project that does so much of what I think Senator Hilkemann is trying to do with this bill. It tracks every step of sexual assault kits from when somebody gets their kit administered, where it is in the testing process, if it hasn't been tested, why it hasn't been tested, which does skew the numbers. Sometimes someone will get a--

FOLEY: One minute.

M. CAVANAUGH: Thank you. --will get a kit done and then they will decide that they don't want to press charges or something like that and so then the kit doesn't get tested necessarily. There's different reasons. So it really gives us-- will ultimately give us a better view of where we stand in this process. On top of all the concerns I've already expressed about this bill, another concern I have is, does this jump the line in testing? Does this jump the line in getting those sexual assault kits tested? And as far as I can tell, nobody has the answer to that. I will get in the queue to talk further about the reasons that we have such a backlog with testing kits, so thank you.

FOLEY: Thank you, Senator Cavanaugh. Senator Matt Hansen.

M. HANSEN: Thank you, Mr. President, and good morning, colleagues. I wanted to rise and kind of continue the same talk and conversation that Senator Machaela Cavanaugh just had. As I mentioned yesterday, you know, my priority bill last year had a number of components to help survivors of sexual assault as well as create, frankly, new crimes to protect children from assault in school. So this is an issue that obviously I care about. And likewise, a number of senators have said, you know, there's a number of senators who have either personal stake, personal connection or, you know, experience in this field who

are skeptical of this. So to kind of just get up on the microphone and say, wave, this is about-- wave your hands and kind of say this is about catching the bad guy. I get that that might be the intent. But if that's our goal, our overall system needs some drastic reforms. Talking-- if you talk to survivors of sexual violence, many of them do not have favorable things to say of the police. As we've just heard on the microphone, there are-- have been thousands of untested kits. We're not even investigating some of the crimes we know happened in an expedient or efficient manner. And so how are collecting more data on more arrestees going to help if we're not even, you know, believing women, believing victims of sexual violence and processing their claims and their cases quickly? We're-- we're speeding up one end of-- one end of the process and have, as we've just heard, have some cities probably in noncompliance with kind of minimum-- minimal standards of treating these cases as seriously as they require. So that's kind of one of my frustrations with some of the narrative and some of the logic here. There have been a number of senators, including Senator Cavanaugh, who have spent considerable time trying to get police departments, get county attorneys to try and actually work on some of these cases in a manner of the expediency and seriousness that they deserve to some hesitation and pushback, including from this body. And then to kind of come in and say this is a victim's bill, this is about catching the bad guy. We don't look behind the curtain. No second guessing, don't question our motives. I think it's fair to say that there's genuinely some hesitation and some skepticism that this will even lead to-- frankly, for me, a part of-- part of my concern is-- with this bill is we're going to be doing all the stuff. We're probably going to be up-charging people with obstruction or resisting for-- for not liking the swabs. I'm not optimistic it's actually going to lead to any more convictions or any more solved crimes, because we've already shown and already know there's such a backlog on sexual assault evidence kits that we're just not processing them. We just don't invest in the capacity in our state labs and our county labs to get through them with any reasonable speed. There are people who have been victimized in the state who frankly just want their cases to go away because, you know, police and prosecutors aren't taking them, you know, aren't responding in the way the survivors would like. And it drags on and on and on and on for purely state-run bureaucratic policy reasons and not necessarily the actual speed of what a court case has seen. Because as we've all seen, you know, when the-- when the police and prosecutors are invested in a case, they can get to a resolution, they get to arrest very quickly. Obviously, the court case might take a while on its own. They can't necessarily control that unilaterally,

but certainly-- certainly when it becomes priority number one, you see the response. And I bring all of this up to share--

FOLEY: One minute.

M. HANSEN: Thank you, Mr. President. I bring all of this up to share that I do believe Senator Hilkemann has the best of intentions. I do believe he's trying to get to the right route. But as you've heard time and time again, you know, people with experience in criminal defense, people in experience with criminal cases are skeptical that this is even going to work the way it's described, let alone whether or not they agree with the way it should work. This is a pretty big step in a pretty big er-- a pretty big area and deserves more scrutiny. And he can't just wave and say, you know, this is a bill to support victims when we as a state have already shown we're failing victims over and over and over again. And that's my hesitation and doubt this is going to be providing anything productive. So with that, I might punch in again, but thank you, Mr. President, and thank you, colleagues.

FOLEY: Thank you, Senator Hansen. Senator Machaela Cavanaugh.

M. CAVANAUGH: Thank you, Mr. Lieutenant Governor. So I wanted to continue to-- to just take this opportunity to share more about what the Attorney General's Office is doing. And I will share this on my social media for people watching at home, the link to this. But if you want to write it down, you can go to AGO.Nebraska.gov/victim-assistance-program. So the Victim Assistance Program website is an amazing resource. If you are a victim of sexual assault and you are looking for a path forward and what to do in all kinds of arenas, whether it's legal action or resources or help, this website is a-- is a very good starting point. And again, this website was put together by a nurse who really has worked in this issue. There is a-- a tab on protection orders on victim compensation, victim information notification. So if you are a victim and you have a sexual assault kit, you can go and get a-- create an account with your kit number and you can track where it is in the testing and processing. This is an amazing resource that the Attorney General's Office has put together for victims of sexual assault. We are doing good things in this state. We are working towards making our state work better and smarter for victims of sexual assault. We don't have to take away due process to do that. We are actually putting in to practice very strong protocols. It's going to take funding. It's going to take resources. And so this is the issue when we talk about the backlog of testing. Backlog of testing, part of it is because there wasn't funding and the

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Appropriations Committee and this body did put more funding towards testing and trying to solve that battle-- backlog. But the other part is human resources can only process so many tests with the number of people you have working. And so the state needs to hire, and it's not an easy thing to do, but the state needs to hire more people that are qualified to do the testing. And with the resources that we have allocated, hopefully that will happen, which is great. Something that many people don't know is that we have the state crime lab and that's where most of the tests go to be-- to be tested-- the kits go to be tested, but then we also have the university. And Douglas County actually send their kits to the university to help alleviate the backlog that the state crime lab has. Because if Douglas County sent theirs to the state crime lab, we would have even more of an issue. So there are a lot of layers happening here that I don't think everyone is aware of, but I just-- I really commend the Attorney General's Office on the work that they are doing. And I appreciate them as a partner with this Legislature on addressing the-- the issue of sexual assault. And I think that this is just an important conversation to have to let victims of sexual assault know that we stand with them. And just because I don't agree with this bill does not mean that I don't stand with victims.

FOLEY: One minute.

M. CAVANAUGH: Thank you. Sexual assault is a deeply, deeply traumatizing thing that impacts the lives of pretty much everyone. Probably every person in this room right now has some connection to sexual assault. And I don't stand in opposition to Senator Hilkemann's bill lightly. This is really important to me on a lot of levels and this bill does not help victims. It just perpetuates discrimination and racial profiling.

FOLEY: That's time, Senator.

M. CAVANAUGH: Thank you.

FOLEY: Thank you, Senator Cavanaugh. Senator Wayne.

WAYNE: Thank you for the-- thank you, Mr. President. Thank you for the long debate, colleagues. I just want to remind everyone that on a couple of things and actually there is a case in South Dakota where they took this DNA and because they got enough DNA, which is proposing here 23 different-- different types, or 23 number of [INAUDIBLE] here or whatever. I'm not an expert in it. They knew that a crime occurred with someone in their family and they began surveying-- or surveilling

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multiple family members because they didn't have the right DNA match, but they had a close enough to know it was in the family. And they began questioning multiple cousins, multiple people, and started taking DNA from a trash can of their house. DNA trash is not-- actually not a-- you don't have a due process right to it. So anything you put out in public, they can start doing it. But this all started because of the South Dakota law that we're talking about here. And they started doing a family search of different families because they had a close enough that we knew it was somebody in the family that committed a crime almost 30 years prior. And after they began pulling enough trash, they ended up finding the person. That is a fishing expedition that violated multiple family members' rights. But I guess we're OK with that because DNA is not that important. What's also interesting, I want to remind people that once you're in the database, what they are outlining for expungement cannot happen from the federal database. The only way you get off the federal database is, is if your conviction is overturned and you send a certified copy and the FBI allows that to happen or if it's a dismissal. So if you plead to anything else that even isn't a part of a violent crime, you're stuck in this database. There's no way to get out of it. Now, we have people who are adamant about not even being on a gun registry, that we don't want the state or the federal government knowing that you own a gun because it is a Second Amendment right. We cherish that right. But we are willing to forgo your basic-- I mean, your most personal item, your DNA, just because you're charged. We don't do that with any other-- any other thing. Imagine if you were charged, the police coming in and raiding your house and removing every knife-- knife, because a knife that's over six inches is a-- you would be a prohibited person if you were charged. And in the process of raiding your house, they look for whatever they want because they have probable cause for a charge and only a charge. People think that's an exaggeration. But I guess I hold my DNA that sacred. I hold it no-- I hold it a lot more than my phone and I hold it a lot more than my house when it comes to a search and seizure. And just because it's not as intrusive as a officer kicking down a door, I'm talking about the information that is held inside. This is not like a fingerprint. Not at all. This is your-- your-- your genetics, who you are. I don't know what's more sacred than that when it comes to privacy and information. So I would ask that, you-- when we get to cloture, I would ask that you are--

FOLEY: One minute.

WAYNE: --present, not voting or vote red on the cloture vote and we can send this bill back for another hearing next year when they

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introduce a new one. And we can go from there and correct the bill moving forward. Thank you, Mr. President.

FOLEY: Mr. Clerk, you have a motion at the desk.

CLERK: I do, Mr. President. Senator Hilkemann would move to invoke cloture pursuant to Rule 7, Section 10.

FOLEY: It's the ruling of the Chair that there has been a full and fair debate afforded to LB496. Senator Hilkemann, for what purpose do you rise?

HILKEMANN: I rise for a call of the house. I'd like to have a roll call vote in reverse order.

FOLEY: Thank you, Senator Hilkemann. There has been a request to place the house under call. The question is, shall the house go under call? Those in favor vote aye; those opposed vote nay. Record, please.

CLERK: 23 ayes, 2 nays to place the house under call.

FOLEY: The house is under call. All senators please return to your desk and check in. The house is under call. All senators please return to the desk and check in. The house is under call. Senator Clements, check in. Senator Walz and Senator Slama, please return to your desk and check in. The house is under call. Senator Slama, please return to the Chamber and check in. All unexcused members are now present. The first vote is whether or not to invoke cloture. A roll call vote in reverse order has been requested. Mr. Clerk.

CLERK: Senator Wishart voting yes. Senator Williams voting yes. Senator Wayne voting no. Senator Walz voting yes. Senator Vargas. Senator Stinner voting yes. Senator Slama voting yes. Senator Sanders voting yes. Senator Pansing Brooks not voting. Senator Pahls voting yes. Senator Murman voting yes. Senator Moser voting yes. Senator Morfeld voting yes. Senator McKinney voting no. Senator McDonnell voting yes. Senator McCollister voting yes. Senator Lowe voting yes. Senator Linehan not voting. Senator Lindstrom voting yes. Senator Lathrop voting yes. Senator Kolterman voting yes. Senator Hunt voting no. Senator Hughes voting yes. Senator Hilkemann voting yes. Senator Hilgers voting yes. Senator Matt Hansen voting no. Senator Ben Hansen voting yes. Senator Halloran voting yes. Senator Groene. Senator Gragert voting yes. Senator Geist voting yes. Senator Friesen not voting. Senator Flood voting no. Senator Erdman voting yes. Senator Dorn voting yes. Senator DeBoer voting yes. Senator Day not voting. Senator Clements voting yes. Senator Machaela Cavanaugh voting no.

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Senator John Cavanaugh voting no. Senator Briese not voting. Senator Brewer voting yes. Senator Brandt voting yes. Senator Bostelman voting yes. Senator Bostar voting no. Senator Blood not voting. Senator Arch voting yes. Senator Albrecht voting yes. Senator Aguilar voting yes. 33 ayes, 8 nays, Mr. President, on the motion to invoke cloture.

FOLEY: Cloture has been invoked. The next vote is whether or not to adopt Senator Hunt's AM1288. Those in favor of the amendment vote aye; those opposed vote nay. Roll call vote has been requested.

CLERK: Senator Aguilar voting no. Senator Albrecht voting no. Senator Arch voting no. Senator Blood not voting. Senator Bostar voting no. Senator Bostelman voting no. Senator Brandt voting no. Senator Brewer voting no. Senator Briese voting no. Senator John Cavanaugh not voting. Senator Machaela Cavanaugh not voting. Senator Clements voting no. Senator Day not voting. Senator DeBoer voting no. Senator Dorn voting no. Senator Erdman voting no. Senator Flood voting no. Senator Friesen voting no. Senator Geist voting no. Senator Gragert voting no. Senator Groene. Senator Halloran voting no. Senator Ben Hansen voting no. Senator Matt Hansen voting no. Senator Hilgers voting no. Senator Hilkemann voting no. Senator Hughes voting no. Senator Hunt not voting. Senator Kolterman voting no. Senator Lathrop voting no. Senator Lindstrom voting no. Senator Linehan voting no. Senator Lowe voting no. Senator McCollister voting no. Senator McDonnell voting no. Senator McKinney voting no. Senator Morfeld voting no. Senator Moser voting no. Senator Murman voting no. Senator Pahls not voting. Senator Pansing Brooks voting no. Senator Sanders voting no. Senator Slama voting no. Senator Stinner voting no. Senator Vargas. Senator Walz voting no. Senator Wayne voting no. Senator Williams voting no. Senator Wishart voting no. 0 ayes, 41 nays, Mr. President.

FOLEY: The amendment is not adopted. The next vote is on the Judiciary Committee amendment, AM1054. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

CLERK: 38 ayes, 3 nays, Mr. President, on adoption of committee amendments.

FOLEY: Committee amendments have been adopted. The final vote is to advance the bill to E&R Initial. Those in favor vote aye; those opposed vote nay. Roll call vote has been requested.

CLERK: Senator Aguilar voting yes. Senator Albrecht voting yes. Senator Arch voting yes. Senator Blood not voting. Senator Bostar voting-- is that a-- I'm sorry, Senator, yes or no? No. Thank you.

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Senator Bostelman voting yes. Senator Brandt voting yes. Senator Brewer voting yes. Senator Briese not voting. Senator John Cavanaugh voting no. Senator Machaela Cavanaugh voting no. Senator Clements voting yes. Senator Day voting no. Senator DeBoer not voting. Senator Dorn voting yes. Senator Erdman voting yes. Senator Flood voting no. Senator Friesen voting no. Senator Geist voting yes. Senator Gragert voting yes. Senator Groene. Senator Halloran voting yes. Senator Ben Hansen not voting. Senator Matt Hansen voting no. Senator Hilgers voting yes. Senator Hilkemann voting yes. Senator Hughes voting yes. Senator Hunt voting no. Senator Kolterman voting yes. Senator Lathrop voting yes. Senator Lindstrom voting yes. Senator Linehan not voting. Senator Lowe voting yes. Senator McCollister voting yes. Senator McDonnell voting yes. Senator McKinney voting no. Senator Morfeld voting yes. Senator Moser voting yes. Senator Murman voting yes. Senator Pahls not voting. Senator Pansing Brooks voting no. Senator Sanders voting yes. Senator Slama voting yes. Senator Stinner voting yes. Senator Vargas. Senator Walz voting yes. Senator Wayne voting no. Senator Williams voting yes. Senator Wishart voting yes. 30 ayes, 11 nays on the advancement of the bill, Mr. President.

FOLEY: LB496 advances. I raise the call. Proceeding now to the A bill. Mr. Clerk.

CLERK: Mr. President. Senator Hilkemann offers LB496A. It's a bill for an act to appropriate funds to implement LB496.

FOLEY: Senator Hilkemann, you're recognized to open on the A bill.

HILKEMANN: Thank you very much. This will be very short. The A bill appropriates General Funds to the State Patrol of \$423,846 in fiscal year '21-22 and \$829,692 in fiscal year '22-23. Since the bill has an operative date of January 1 of 2022-- '22 is half for that year. So the A bill also transfers these same dollar amounts from the State Settlement Cash Fund to the General Fund so that there is no General Fund impact in '21-22 or '22-23. Thank you.

FOLEY: Thank you, Senator Hilkemann. Four senators in the speaking queue. Senator-- excuse me. Items for the record, please.

CLERK: Mr. President, a few items. Senator Hunt would like to print an amendment to LB496 and Senator Wayne, an amendment to LB496-- four-- yeah. Announcement: The Health Committee will have an Executive Session-- Health and Human Services Exec Session Monday at 9:30 in Room 2022. Mr. President, Senator Ben Hansen would move to adjourn the body until Monday morning, May 10, at 10:00 a.m.

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FOLEY: Members, you heard the motion to adjourn till Monday at 10:00 a.m. Those in favor say aye. Those opposed say nay. We are adjourned.