

Transcript Prepared by Clerk of Legislature Transcribers Office  
Judiciary Committee February 03, 2021  
Rough Draft

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**LATHROP:** Good morning, everyone. My name is Steve Lathrop and I'm the Chair--

**GEIST:** We're the ones on time.

**LATHROP:** --I'm the Chair of the Judiciary Committee. We're going to have our morning hearings starting momentarily. I will tell you before I even begin my, my usual introduction into this process that you'll see that not all the senators are here yet. That's because they know I have about eight minutes worth of things I got to read before we even start a hearing. But you'll see them file in here momentarily. And with that, we'll start. Thank you. My name is Steve Lathrop. I represent District 12 in Ralston. That includes Ralston and parts of southwest Omaha. And I'm Chair-- I'm the Chair of the Judiciary Committee. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, is complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you strongly to consider taking advantage of additional methods of sharing your thoughts and opinions. For complete details on the four options available, you may go to the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). We will be following COVID-19 procedures this session for the safety of our committee members, staff, pages, and the public. We ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you enter the hearing room only when necessary for you to attend the bill in progress. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during the testimony to assist the committee and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based on seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear, wear a face mask covering

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while waiting in the hallway or outside the building. The Legislature does not have the availability of an overflow room for hearings because of the HVAC renovations, which attract many testifiers and observers. For hearings with large attendance, we ask and request only testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns, we're providing two options this year for testifying at a committee hearing. First, you may drop off written testimony prior to the hearing. Please note the following four requirements must be met to qualify to be on the committee statement: One, the submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 in this Judiciary Committee hearing room. Number two, individuals must present the written testimony in person and fill out a testifier sheet. Number three, testifiers must submit at least 12 copies. And four, testimony must be a written statement no more than two pages, single-spaced or four pages, double-spaced in length. No additional handouts or letters from others may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official hearing transcript. This testimony, this testimony will be included in the committee statement if all four of these criteria are met. And of course, there is also the option of in-person testimony. Persons attending public hearings will have the opportunity to give verbal testimony. On the table inside the doors, you will find yellow testifier sheets. Fill out a yellow testifier sheet only if you are actually testifying before the committee. And please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There is also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12 noon the last work day before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address, which is posted on the Legislature's website, or if they are delivered to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at the hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally anyone speaking in the neutral capacity. We will finish with a closing statement by the

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introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies-- we got it? If you have copies of your testimony, bring up at least 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you stop your testimony. As a matter of committee policy, I would like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time, I would ask everyone to look at their cell phones and make sure they are on the silent mode. A reminder that verbal outbursts and applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Since we've gone paperless this year, the Judiciary Committee-- in the Judiciary Committee, the senators will instead be using their laptops to pull up documents and follow along with each bill. You may notice the committee members coming and going. That has nothing to do with how they regard the importance of the bill being heard. But senators may have bills to introduce in other committees or have other meetings to attend. I'm going to go off script just to explain to people who may not be down here all the time. Because of the volume of bills that we have and the limited time we have to get all of our hearings done, we are this year, the committee is going to hear proponents for a half hour and opponents for a half hour. So you will see us time testimony of the proponents and the opponents and the neutral testifiers. It's worked out pretty well so far the first two weeks, and that really is out of necessity, just given the volume that we have. So if there's a lot of people, you might want to coordinate that or take that into account. And with that, I'd like to have the members of the committee introduce themselves, starting with Senator DeBoer.

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

**BRANDT:** I'm Tom Brandt. I represent Legislative District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

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**PANSING BROOKS:** Patty Pansing Brooks, Legislative District 28 right here in the heart of Lincoln.

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

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

**McKINNEY:** Terrell McKinney, District 11, north Omaha.

**GEIST:** Suzanne Geist, District 25, the east side of Lincoln and Lancaster County.

**LATHROP:** Assisting the committee today are Laurie Vollertsen, our committee clerk; and Josh Henningsen, one of our two legal counsel. And our pages this morning are Evan Tillman and Mason Ellis, both students at UNL. They're the folks in the, in the vest that you'll be handing your testifier sheet to. And with that, we'll begin our hearings today with Senator Vargas and LB138. Welcome, Senator Vargas.

**VARGAS:** Good morning and thank you very much, Chairman Lathrop. Thank you, members of Judiciary Committee. Before I start and put my name on the record, I did notice that there was a mention, two sheets. Would you prefer that I not hand out sheets and send an electronic copy of a one pager?

**LATHROP:** You can hand them out if you want.

**VARGAS:** Again, thank you very much, Chairman Lathrop, members of the Judiciary Committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I represent District 7 in the communities of downtown and south Omaha in the Nebraska Legislature. For those of you who have previously served on the committee, there is a good number of you, LB138 will be familiar to you. I introduced LB138 and it was in 2019, it was LB369. It was a bill that did get out of this committee, which I think was pretty unanimous. LB138 would require any law enforcement agency-- excuse me, would require any law enforcement agency that enters into agreements with any other public agency to enforce immigration law to notify the governing body of the political subdivision at least 30 days prior to entering in such agreement. The notice would then be placed on the agenda on the next regularly scheduled public meeting of that governing body. And I'll speak a little bit about a situation where this occurred and why I believe it's imperative that we pass

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this bill. And honestly, it's imperative we probably passed this bill last year, but it's still imperative to this day. A few years ago, Dakota County Sheriff applied for a federal program known as 287(g). This program authorizes U.S. Immigration and Customs Enforcement, or ICE, to enter into agreements with state and local law enforcement agencies to allow officers, to allow officers to enforce federal immigration law. Now no one in Dakota County was notified about this action. Local community members found out that Dakota County Sheriff applied for the program as a result of a national article done on the huge increase in 287(g) applications across the country where Nebraska was listed. Now this program fundamentally changes the way law enforcement interacts with the community by eroding trust between police and community members. It would make some of our most vulnerable Nebraskans unwilling to engage with law enforcement to report crimes, aid in investigations, and seek help in dangerous situations. Now aside from that issue, 287(g) agreements have consistently cost communities in other ways. They bring unnecessary risks and high costs. When a local law enforcement agency enters into a 287(g) agreement, it does so at its own cost. Agencies elect to take on costly additional work and reporting, and the federal government does not provide any funding to address liability that may arise from violations of civil rights and immigration laws. Nor does the government, the federal government, provide funding for related enforcement efforts that may arise. Now, for example, in Prince William County, Virginia, spent about \$5 million more than anticipated in the first year of this 287(g) program. Alamance County, North Carolina, which has a population of only 150,000, spent \$4.8 million for just one year of its 287(g) program. These were unexpected costs to the local subdivision, and Harris County, Texas, chose to end their program in February 2017 because it ended up costing an extra \$675,000 per year. Now, conversely, the Department of Homeland Security's Office of the Inspector General has estimated that ICE saves about \$120 to \$250,000 per year for every 287(g) agreement because law enforcement agents then, quote unquote, perform similar functions to ICE officers at a local rather than a federal expense. Now, should local tax dollars be diverted to enforce federal immigration law? I would argue that taxpayers have a right to know how their tax dollars are being spent, what they are being used for, and if they are being spent responsibly. And they should have the opportunity to have that voice in the process in a public way as well. Now, all that said, LB138 does not prohibit anyone, anyone from entering a 287(g)

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agreement or any other partnership with a public agency to enforce immigration law. LB138 merely states that if a local law enforcement agency would like to do so, they must notify the political subdivision and the public must have an opportunity to comment and react. This level of transparency with our local law enforcement is minimal and is the very least that we should expect when facing a potentially harmful policy change. In the hearing for the previous version of this bill, LB369, the Nebraska State Patrol came and testified in opposition for a specific reason that has been addressed in LB138. Their concern was that this requirement could impede NSP's role in human trafficking cases and investigations. That certainly was never my intention. And there is language in LB138 on page 2, lines 22 to 25 that we believe addresses this concern. LB369 also had neutral testimony from NACO that was specific to the audit piece. I said this in my testimony in LB369 last year and want to be consistent and clear here as well, it's my intent that the potential audit that could be triggered by, in this case, a county sheriff's department-- I need to get these recalibrated, county sheriff's department's noncompliance with this law be limited to information about agreements with federal agencies to enforce immigration law. NACO's concern was that the language that was in there may be too broad and allow for an audit of the law enforcement agency for any reason. So I want to clarify again that the potential audits should be narrowly focused just to the specific purpose and not at all cost prohibitive to any government subdivision. The last thing I'll say on this bill is that the entire issue of 287 agreements like the one entered into by Dakota County Sheriff is the result of a change in policy by the previous presidential administration. I confess it is certainly my hope that our new administration would fix this issue on a federal level or remove the need for this legislation. And should that happen, I would really gladly withdraw my bill. In the meantime, I believe it still merits conversation and consideration by our Legislature. In the end, this bill is not about impeding anybody's ability to enter into local agreements. It is about public transparency, accountability, and making sure we are all stewards of taxpayer dollars and make sure the public has a say in that process. I'll end there, and be happy to take any questions at this time. And that one pager you have provides a brief synopsis on this issue and the past aspects. And again, thank you for the past. We've, we've, we've been voting this bill out of committee. It just didn't have priority and didn't have time. But it

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has gotten out of this, this committee. And I appreciate your support in that. Thank you.

**LATHROP:** OK. Thank you, Senator Vargas. Any questions for the introducer? I see none. Are you going to stay to close?

**VARGAS:** I'm going to stay.

**LATHROP:** OK, perfect. We will take proponent testimony on LB138. Good morning, welcome.

**SPIKE EICKHOLT:** Morning, thank you. Chair Lathrop and members of the committee, my name is Spike Eickholt, S-p-i-k-e, last name, E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB138. We want to thank Senator Vargas for introducing this bill. Senator Vargas explained the bill. It's fairly straightforward and it's a good bill. As Senator Vargas explained, it doesn't prohibit any local law enforcement agency from entering into a 287(g) agreement if it should choose so. It simply delineates a process where the local political subdivision governing body has notice of it and the public has an opportunity to be heard. As Senator Vargas explained, there is a cost to entering into these agreements. What is happening with these agreements is essentially local law enforcement agency is tasked with purpose of enforcing immigration law. And at first glance, that would make some sense, right? People ought not be in the state violating the law. But immigration law is a mixture of criminal law. It's a mixture of administrative law and some civil law. And the degree of training that law enforcement has to have to understand it is complex. And as Senator Vargas explained earlier, some of the other jurisdictions around the country that have entered into these agreements have had to bear that cost of training officers. So there's the financial cost, if you will, that impacts just the local government that sort of enters into these agreements. There's a human cost, particularly for people, particularly for communities of immigrants, people of noncitizen background. There's the cost of being subjected to increased racial profiling. There's the fear in the immigrant community that's been through in this state and throughout the country for the last several years. That cost manifests itself in various different ways. And one way it does is that if people are victimized for typical crime. I'm not talking immigration law crime. I'm talking about typical crime. If a domestic violence situation happens, they don't report it because they're worried that a local law enforcement that responds is going to



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start requesting proof of citizenship or confirmation of green card identity and all those other things that go along with when you have the local law enforcement agency tasked with policing noncitizens for whether they are in compliance with immigration law. And we want to thank Senator Vargas for doing this. It provides for a process where the local communities can be heard. And before what happened in Dakota County for a local sheriff, or local police officer, just enters in these agreements without notifying anybody. And we'd urge the committee to advance the bill.

**LATHROP:** OK. Any questions for Mr. Eickholt? I don't see any. Thanks for being here this morning. Next proponent testimony.

**TOM BENZOR:** Hello, my name is Tom Benzor. That's T-o-m B-e-n-z-o-r. I'm the executive director of the Nebraska Catholic Conference. Before I want to start, I just want to say that this room is almost as bad as the Catholic Church where everybody sits in the back of it, so. The Nebraska Catholic Conference advocates for the public policy interests of the Catholic Church by engaging, educating, and empower-- empowering public officials, Catholic laity, and the general public. And I'm here today, to express support for LB138 on behalf of the Conference. The Catholic Church recognizes that the right of a country to regulate its borders and to control immigration. As the United States Conference of Catholic Bishops have noted, we should not be the work of the federal government and its immigration control as a negative or evil. Those who work to enforce our nation's immigration laws often do so out of a sense of loyalty to the common good and compassion for people, for poor people seeking a better life. But such enforcement must be done in light of the common good and should adequately balance the need for justice and mercy. The Nebraska Catholic Conference believes that LB138 provides a reasonable balance to local immigration enforcement agreements by ensuring that a local governing body receive notice from the law enforcement agency regarding the agreement. This would permit for greater discussion within the local community regarding the public safety implications of an enforcement agreement. In particular, the Nebraska Catholic Conference would raise concerns with local enforcement agreements, especially to the extent that they can undermine trust between immigrant communities and law enforcement, and local law enforcement as you've heard from Senator Vargas and from Spike. This could decrease the willingness of undocumented immigrants from reporting crimes or other public safety concerns to local law enforcement. By



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providing a notice in hearing process of sorts for immigrant-- immigration enforcement agreements, the local community will better be able to determine the need and assess the public safety effects that such enforcement agreements can have for the immigrants against whom they are directed. The Nebraska Catholic Conference respectfully urges your support for LB138. Thank you very much.

**LATHROP:** Mr. Benzor, thanks for being here.

**TOM BENZOR:** Yep.

**LATHROP:** I mean that sincerely. I don't see any questions for you today, though. But we're glad to have your input.

**TOM BENZOR:** Appreciate it. Thank you.

**LATHROP:** Next proponent. Anybody else here in favor of the bill? Anyone here to speak in opposition? Good morning.

**JOHN BOLDOC:** Morning, Mr. Chair, members of the committee. My name is John Bolduc, J-o-h-n B-o-l-d-u-c, superintendent of Law Enforcement and Public Safety. I'm here testifying on behalf of the Nebraska State Patrol in opposition to LB138. LB138 places requirements on the Nebraska State Patrol that would unquestionably serve to substantially delay and impede the Nebraska State Patrol from providing any other public agency with immediate assistance in enforcing federal law. Cooperation among federal law enforcement agencies and the Nebraska State Patrol is critical in many areas. The Nebraska State Patrol currently cooperates with federal agencies on issues involving trafficking of narcotics, firearms, distribution of child pornography, and many other such serious criminal matters. Hindering the Nebraska State Patrol's ability to quickly collaborate with federal law enforcement agencies upon a request for assistance is not beneficial to ensuring efficient enforcement of the law, nor is it conducive to keeping Nebraska citizens safe. The Patrol does not, as a matter of course and authority, originate federal immigration enforcement actions. However, Patrol personnel may be called upon to assist those federal agencies with appropriate enforcement authority for such federal laws on an emergent basis. The language of LB138 is imprecise in failing to define what constitutes an agreement under this proposal. If LB138 were to be adopted as currently written, it is unclear whether the Nebraska State Patrol assisting in the

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apprehension of an illegal immigrant upon a verbal request from the Department of Homeland Security would amount to an agreement under the proposed language. Additionally, it fails to account for the possible scenario wherein the Patrol is assisting in permissible enforcement activities that eventually lead to immigration violation prosecutions by federal authorities. For example, Patrol members are occasionally tasked with assisting federal agencies with law enforcement activities that jointly address violations of immigration law and the trafficking of narcotics, firearms, distribution of child pornography, and many other such serious criminal matters as these crimes are often associated. In closing, I want to thank you for carefully considering the information I provided, and I'd be happy to answer any questions.

**LATHROP:** Any questions for the colonel? Senator DeBoer.

**DeBOER:** Hi. Thanks for being here today. I was wondering if this is-- is this a drafting problem or do you think that this bill could be drafted in a way that it would get rid of your concerns?

**JOHN BOLDUC:** Well, thanks for the question, Senator. We, we heard the bill's author testify specifically about the federal program that is causing a lot of concern around the country. If that's really, you know, our concern, and I, and I share a lot of the senator's observations about that. And I think there's a lot of problems with that program. I think we should specifically address that program. Unfortunately, the bill is drafted very broadly and it has unintended consequences.

**DeBOER:** So if it were sort of narrowly tailored in that way, then it would take away your opposition?

**JOHN BOLDUC:** I would certainly look at any revisions that, that would address those concerns.

**DeBOER:** OK, thank you.

**JOHN BOLDUC:** Thank you.

**LATHROP:** I do not see any other questions. I do want to take this time while you're sitting here to thank you for the work of the State Patrol in providing security in the Capitol since we been back.

**JOHN BOLDUC:** Thank you, Mr. Chairperson.

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**LATHROP:** It's recognized by the senators and appreciated.

**JOHN BOLDUC:** Great. We have an outstanding team here, and I--

**LATHROP:** Yeah, you do.

**JOHN BOLDUC:** --appreciate that recognition.

**LATHROP:** Yep. Thank you.

**JOHN BOLDUC:** Thank you.

**LATHROP:** Anyone else here to testify in opposition? Anyone here to testify in a neutral capacity on LB138? Seeing none, Senator Vargas, you may close. We do, as you approach and you may sit, we do have six position letters, three proponents and four-- pardon me, three opponents. With that, Senator Vargas, you may close.

**VARGAS:** Thank you very much, Chairman Lathrop and members of the Judiciary Committee, just want to address a couple of things. First, I want to remind everyone that this is a bill that I referenced 287(g) agreements because they're the agreements in question that came about that could be named for another different type of agreement and it can happen under a different administration. The larger issue is not whether or not an agreement is had. The larger issue about this bill is whether or not the public, when there is a formal agreement to investigate, to detain, to do some level of that oversight and, and actually play a role in federal immigration, an informal agreement that the public has a-- an ability to weigh in on whether or not that's the right thing for the political subdivision. Whether or not-- I want you to imagine your city council has a public meeting to discuss contracts. They might be on consent calendar, they might be discussion items, but there is a public process in engagement so that taxpayers can decide whether or not it's the best thing for them. If they ultimately do, this would not impede the ability to enter into a contract agreement. Reference that the State Patrol made to aiding in, in something, this, this is really narrow to and, and a formal agreement. And so if we needed to put in a formal agreement, then we, we would be more than happy to work on something like that. But again, this is more about transparency, accountability, and the ability for the public to weigh in for their local subdivision, the city council, a county, or us, for example. And if we're able to weigh in, this

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makes sure that the public has a voice. Because at the end of the day, and like I stated earlier, the data shows that this can be a very costly, a very costly amount of money on the back end. And it's taxpayer dollars, which was not the specific purview of that agency. And so that's why this is a more of a transparency bill. Once again, it does not impede any-- the ability to put agreements. It puts a very clear process in place for the public to engage. We're able to address the issue with human trafficking. I'll just mention that one more time. And I believe this is a good transparency bill. It's something that, again, we've, we've been able to push out and support in the past. And I appreciate those testifiers in support. I'll definitely follow up with State Patrol again, like we did last year for more feedback. But I appreciate your time and I will entertain any questions that you may or may not have.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Vargas. So I, I guess, Colonel Bolduc brought up, I think, a, a decent question about what constitutes an agreement. So, you know, you've used ICE as an example in the Dakota County situation, but so maybe it's the FBI, maybe it's tobacco, firearms, drug enforcement agency, and they're going to call up a, a law enforcement agency, whether it's a state agency, a county agency, or a city, city, city police. And we've got this situation going down. Is that an agreement? Would that need to be addressed underneath this bill? Are you talking about, like ICE, it wants to come into Lincoln and have a one-year agreement with the police department?

**VARGAS:** If we have to narrowly-- if we have to add more language to then specify a formal agreement or a written agreement, then I'm, I'm happy to work on that. But what we're talking more is a more formal agreement. And I referenced the 287(g) as an actual form or an engagement in the process where we're saying that we are going to do something for a set period of time and engage in, in, in agreement for some program that exists. There are going to be issues that come up in regards to not just federal immigration work, collaborating with public agencies. And the State Patrol was right in that. That's not meant to impede on this. This is very specific to a formal agreement where we're saying we are going to do said task.

**BRANDT:** OK.

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**VARGAS:** So I'm happy to work on some language to make that and--

**BRANDT:** Thank you.

**VARGAS:** --we're happy to work with them.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for bringing this bill, Senator Vargas. I guess I'm confused about what you were just saying about a [INAUDIBLE] like-- they have an agreement versus a formal agreement, because I, I certainly understand they're working with feds on, on trafficking of narcotics, I presume, people and firearms as Superintendent Bolduc said. I also understand the need for transparency on controversial issues. So I guess I'm not catching the nuance between a formal agreement versus if they just sort of did it according to one person that, that the feds warned the State Patrol about.

**VARGAS:** The best way I can describe this is for those-- many of you have served on other public, public boards or have been in an elected position. The reason why the word agreement, there are contractual agreements at times, there are memorandums of understanding which are still considered formal agreements. And if we have to tighten that language, that's really what we're referring to. Where we're saying we're signing on to something that is we are obligating that we are going to do something in, in the long term. And in relation to what, what State Patrol shared, that is-- that's really not what we're trying to, to curb. There are going to be instances where, where things happen in the moment, but we're really trying to focus on formal agreements. And that's why in this, it is asking that a written copy of such agreement be provided. So if there's something that is actually written up that we've agreed to, I think that's another sort of furthering of the definition of what an agreement is.

**PANSING BROOKS:** So, in effect, almost acting as an arm of the federal government and using taxpayer's dollars to do so.

**VARGAS:** Correct. Yes.

**PANSING BROOKS:** Thank you.

**LATHROP:** Senator McKinney.

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**McKINNEY:** Senator Vargas, I'm just curious, does ICE come in and, and [INAUDIBLE]? Because I'm-- what I'm thinking about is what if ICE comes in on a Monday, tells the State Patrol, hey, we're going to do raids tomorrow. How could we'd have a public hearing on that?

**VARGAS:** Well, that's happened before, not in that specific scenario where there have been investigations. What I was specifically referencing in the 287(g) agreement, which, again, is an agreement, it just has a name, is that we're formally saying that a local subdivision is, is going to do certain work as an extension of federal immigration. There are instances where I could point to you where ICE is coming into areas and is asking for support from local agencies on reactive work that I do see as different. We're talking about formal agreements that have been signed by a-- an agency saying that they're going to do something. So the 287(g) agreement was a formal agreement that was made where one party signed and said they're going to do work as an extension of immigration, which is a little different from what you sort of described.

**McKINNEY:** Thank you.

**LATHROP:** OK. I don't see any other questions for you. Thanks for being here and presenting LB138.

**VARGAS:** Thank you very much, everyone.

**LATHROP:** Good to see you. That will close our hearing on LB138, and bring us to our own Senator Geist who will introduce LB663. Why don't you wait just a second while everybody moves around in their chairs.

**GEIST:** I'll wait till you give me the signal.

**LATHROP:** OK. All right, looks like we're good to go. Welcome.

**GEIST:** All right. Thank you, Chairman Lathrop, and good morning, members of the Judiciary Committee. For the record, my name is Suzanne Geist, S-u-z-a-n-n-e G-e-i-s-t. I represent District 25, which is the east side of Lincoln and Lancaster County. Today, I'm introducing and discussing LB663. Now, stay with me as I explain the details. What we want to do is really simple, but you need some background details to understand why it's taken over two years to arrive at the solution. The concept began with the Lancaster County Board of Commissioners. But as we started developing this concept, we've also worked with the

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Lincoln Police Department, the city of Lincoln's Mayor's Office, the Lancaster County Sheriff's Office, the Nebraska Association of Behavioral and Health Providers, Region V Services, Community Corrections, and there's actually even more. But those are the main stakeholders. This group sought to find a pathway to protect both law enforcement and those who are struggling in a mental health crisis when law enforcement is called. The scenario is becoming more and more common. And we were looking for a way or ways to make sure this interaction provides the best and safest outcome for all parties involved. What we came up with is a straightforward way to identify individuals while protecting and respecting their privacy and also providing law enforcement with a tool to assist in their response to a possible crisis situation. Here's the process. When an individual is found by their local mental health board to require board-ordered treatment and committed to the custody of DHHS, the department shall provide to the Nebraska Commission on Law Enforcement only enough information to properly identify the individual. The commission would then use this information to establish an indicator such as a flag or highlight or a hyperlink within the NCJIS system for that individual. This flag or highlight or whatever they choose would be, would be available-- would only be available for a very limited number of individuals specifically dispatched or some narrowly defined individuals, as I'll explain. However, the bill does not allow the commission-- I'm sorry. However, the bill does allow the commission to have discretion should they need to establish a process that works more efficiently in the future. We also purposefully limited access to this use of NCJIS out of great respect for the privacy of the individuals who battle each day with serious mental and behavioral health needs. I'll emphasize this project will only capture those who have gone before the mental health board and served inpatient treatment. While this may not capture all the individuals going through a mental health crisis. I believe it is an important step in the right direction to give law enforcement a tool that helps the responding officer and the citizen facing the crisis. To add clarity, let me give an example. A call goes out from dispatch to the officers of a domestic dispute. The appropriate officer responds and communicates to dispatch that they are on their way. At this point, either the officer can request or dispatch can offer to query if the individual in question has been flagged. Dispatch can query NCJIS if the name appears with the indicator, which is a flag, a highlight, hyperlink, dispatch responds as such and the officer can decide how



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best to proceed. Following me today will be several of the stakeholders who helped bring this bill into being. They will not only illustrate the concept of LB663, but also how we envision this helping our community and law enforcement. Thank you for your time and attention and I would be happy to take any questions.

**LATHROP:** I do have one question for you. Oh, I'm sorry. I'll, I'll get. Is there a timeline on this? So if they flag me because I, you know, they, they did a EPC 20 years ago. Am I going to have a flag--

**GEIST:** No.

**LATHROP:** --next to my name forever?

**GEIST:** It's not retrospective. For one thing, it's going forward. It also is regularly updated and purged. So if you're removed after a period of time from that treatment and it's completed, your name then is purged from that list. So it, it strives to be current and it's only looking forward.

**LATHROP:** So these would be the people who have been taken into custody under an emergency protective custody order?

**GEIST:** In treatment.

**LATHROP:** Then they send them to treatment--

**GEIST:** Yes.

**LATHROP:** --because they found that, yes, it was right to pick them up. They do have a problem. They get treatment for 30 days.

**GEIST:** Um-hum.

**LATHROP:** And now the psychiatrist treating them says and follow up and be sure to take your meds. When do they get off this list?

**GEIST:** That's a question-- that's a good question and a question that when they're released from that, people behind me can speak to.

**LATHROP:** OK.

**GEIST:** But it is not intended to be forever.

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**LATHROP:** OK. Senator Pansing Brooks.

**BRANDT:** Go ahead.

**LATHROP:** We'll start here and move that way.

**PANSING BROOKS:** Thank you for bringing this today. I'm interested in it because of a bill I'm bringing on 988 response to-- it's a new number that's going to be used like the 911 system. So I guess just going along with what Senator Lathrop said, you don't have a process either for getting, getting your name removed if you need to after a certain point of time.

**GEIST:** Actually, when they are removed, that goes to the clerk of the district court. That information is then given to DHHS and then through that process, names are added and removed.

**PANSING BROOKS:** But is there a process for the individual themselves to request to be removed?

**GEIST:** I do-- I'm not aware of that process. That doesn't mean there's not one, I-- I'm just not aware of how that process works. However, there are people behind me who can highlight that for you.

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

**GEIST:** Um-hum.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Geist, for bringing this bill. And I think I understand what we're trying to accomplish. It's about safety for the individual, safety for the officer.

**GEIST:** Correct.

**BRANDT:** So this is really a supplement to what we're doing now, because if, if I have an individual in my family and I call 911, I would assume most of the callers to 911 would indicate to the dispatcher that this individual is psychotic or this individual has mental health problems already. So those in-- when the, the response

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to that situation should already be flagged by the current 911 system, is that correct?

**GEIST:** That could happen verbally.

**BRANDT:** Yes.

**GEIST:** And in that-- your situation, this would not need to be, to be used.

**BRANDT:** OK.

**GEIST:** The intention of, of this is when, let's say dispatch hears discord in the background, has a hunch there's something going on that dispatch themselves could query to see if the person that is being called about or who was making the call, whoever, however that might transact if their, if their name is flagged. If it's not, the officer moves forward, dispatch moves forward. However, if it is, dispatch can offer this information to the officer once the responding officer is, is connected with. So it could be proactive on the dispatch end. But if it's already-- that information is already given to dispatch, this would not need to take place.

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

**LATHROP:** Senator McKinney.

**McKINNEY:** Is this information public?

**GEIST:** It is not public.

**McKINNEY:** OK.

**GEIST:** That's why we're keeping it very limited.

**McKINNEY:** All right. Thank you.

**GEIST:** Um-hum.

**LATHROP:** OK. I think that covers the questions and obviously you'll be here to close.

**GEIST:** Yes, I will be here to close.

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**LATHROP:** All right, good. Thank you, Senator Geist. We will take proponent testimony. Good morning and welcome.

**DEB SCHORR:** Good morning. Good morning, Senator Lathrop and members of the Judiciary Committee. My name is Deb Schorr, D-e-b S-c-h-o-r-r, and I'm a member of the Lancaster County Board of Commissioners. Senator Geist refers to experts that will be testifying on this issue. I am not one of them, but I am passionate about working to find a solution that respects the privacy of those that may be in the midst of a behavioral health crisis and yet also assists our law enforcement professionals in providing the most appropriate response when on a call. Lancaster County has an active justice council that meets quarterly to discuss issues facing our criminal justice system. This broad group of stakeholders includes elected officials, the county attorney, the city attorney, law enforcement, jail administration, public defender, judges, service providers, probation officials, and others. It is within this setting that the issue of the ability to share protected health data was first discussed. A small working group was then established to work through the details of what is a very complex process and a balancing act between an individual's right to protect their private information and allowing law enforcement to have every tool available to them when responding to a person in crisis. I want to thank Senator Geist and her legislative team for working with us over the past two years and after many revisions bringing this bill forward. Thank you also to the officials within the Department of Health and Human Services and the Nebraska Crime Commission for their assistance in working through the many complex details of how this information could be flagged within this NCJIS system. This partnership will be valuable as we move forward. And Senator Brandt, I do want to note that this is a work in progress and we are looking to that partnership to determine how people would be added to the list and how and when they would be removed.

**BRANDT:** OK.

**DEB SCHORR:** Lancaster County strongly believes having this indicator in place will allow law enforcement and select other persons who work within the criminal justice system access to valuable information to provide the most appropriate and caring response to those in crisis and safely resolve possibly dangerous situations. We encourage you to support LB663, and I'd be happy to answer any questions.

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**LATHROP:** Senator McKinney.

**McKINNEY:** I was curious, does Lancaster County have mental health specialists that are dispatched with law enforcement? I, I think Douglas County has some version of--

**DEB SCHORR:** Yes, we do.

**McKINNEY:** OK.

**DEB SCHORR:** We have a team of mental health professionals that will respond to the request of law enforcement on a call.

**McKINNEY:** OK, thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for coming, Ms. Schorr. Glad to see you and thank you for your work in Lancaster County. I was wondering-- so you heard me ask about some sort of system. I mean, you're saying that you're working on an ability to get them on and off. It seems like we need to get that placed in the bill so that, so that the state doesn't just say, OK, you have to do it. And then you guys all decide and everybody decides differently across the state. I mean, there, there needs to be a uniform decision about how to get people on and off and how they could petition to be able to get off if it-- I mean, once-- one county may say, OK, well, it's going to, it's going to be 20 years, another county may say it's 5. So there needs to be, in my mind, some, some sort of coordination across the state.

**DEB SCHORR:** I would, I would certainly agree with you. And we'd make that commitment to work with the shareholders to have that type of process in place.

**PANSING BROOKS:** Would you be-- would it be OK to make an amendment to the bill to direct that? Rather-- because even though you make a commitment, that doesn't mean that Saunders or Otoe or Cherry County are going to agree with--

**DEB SCHORR:** Understood, this would be across the state.

**PANSING BROOKS:** OK, thank you. That's all I had. Thank you for coming.

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**LATHROP:** I do have one question for you. Do you think this creates a, a responsibility on the part of the Lincoln Police Department, for example, to send out a mental health unit? So there's a call, Steve Lathrop is-- comes up in the queue, he's involved in something. Dispatcher can hear people screaming in the background and they go, he's on, he's on the list. So is there a responsibility on the part of law enforcement to send out a mental health unit?

**DEB SCHORR:** Well, you know, as Senator McKinney said, we already have that process in place. I think it just heightens the awareness, I think, of the responding officer and team that it could be a volatile situation. And I think it adds to our community policing, making sure that our law enforcement officers have all the information available to them when they are out on that call.

**LATHROP:** OK. I don't see any other questions. Thank you, Commissioner.

**DEB SCHORR:** Thank you and thank you for your service.

**LATHROP:** Next proponent. How many people intend to testify on this bill by a show of hands? OK. Good afternoon, or I guess morning still.

**KIM EHERTON:** Good morning. Good morning, Senator Lathrop and members of the Judiciary Committee. My name is Kim Eher-ton, K-i-m E-t-h-e-r-t-o-n. I'm a licensed independent mental health practitioner and the director of Lancaster County Community Corrections. My department works closely with all agencies across the criminal justice intercepts to identify individuals who are eligible for 1 of the 14 programs I administer. Once identified, we move these individuals out of the criminal justice system as soon as reasonably possible and into a program that provides support, structure, access to behavioral health services, supervision, dignity, and respect. Community Corrections' five pretrial diversion programs administered in partnership with the city and county prosecutors' offices are examples of interventions functioning at the early intercept of the criminal justice system. These include general felony and misdemeanor diversion, veterans diversion, mental health diversion, and intensive supervision diversion. In March, we will begin screening for a program we call treatment diversion. Diversion programming, specifically, mental health, veterans, and treatment diversion will be positively impacted by the passage of LB663. For example, law enforcement may encounter an individual in the community while on a call for service

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that dispatch reports has a current or previous mental health board commitment. If there is cause for a citation or arrest, accurate information about this individual's behavioral health history will direct referral to the most appropriate intervention. Without that bit of information, the opportunity to divert early may be missed. In addition to the benefits described above, I would like to say that LB663 is a work in progress. A small adjustment to statute could also permit local criminal justice agencies, courts, and prosecutors to share this small bit of information. This addition would allow my mental health team to have limited information about the current or past behavioral health episodes individuals have experienced. During mental health diversion and veterans diversion staffing meetings, the prosecutor on the-- prosecutors on the team are unable to confirm or deny the individuals on our eligibility list who have had a current or past mental health board commitment. For this reason, we find ourselves spending valuable time and resources working on a case plan, only to find out much later in the process there is a provider in the community with whom they are currently working or have worked with in the past. Reconnecting them to this provider can eliminate wait-lists for support services, case management, and duplication of services. This information up front is vital in assisting individuals in the most efficient manner. The fiscal note attached to LB663 references significant HIPAA issues related to be taken into consideration. While I do not believe HIPAA is a factor in operationalizing this bill, we're happy to further discuss these concerns and ensure legislation does not impede on protected health information. I'm strongly opposed to criminalizing mental illness. I do not believe mentally ill individuals belong in the court system. LB663 is a resource law enforcement will have to begin the referral to diversion programs. In turn, reducing the likelihood the case will move further into the criminal justice system. Adjusting language to allow criminal justice professionals to share this very limited information will expedite connecting these individuals to community resources that provide support and symptom management. Any time we can identify individuals in the criminal justice system who are eligible for programming and stop their progression further into this system, we're improving the likelihood they will maintain their source of income, maintain their housing, limit disruptions in parenting, limit disruptions of other important responsibilities in their life.



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**LATHROP:** Ms. Etherton, yeah, we got to enforce the red light or, or this whole thing gets away from me.

**KIM ETHERTON:** I am sorry.

**LATHROP:** But are there questions for this testifier? Senator McKinney.

**McKINNEY:** Thank you for your testimony. I like the idea of the bill. I'm just curious if somebody has this mental health indicator on their file, officer shows up, what if this individual is under the influence of drugs or something that can't be calmed down? Would they go to the county jail or would they go to the hospital, go to a hospital?

**KIM ETHERTON:** That would be a decision that law enforcement would make, law enforcement would make at that point. The thing about that is if it resulted in a citation and that prosecutor's office knows about the flag that was on that case, then that information could be shared with me if we're, if we're starting to work with that individual. Then I would know to contact a provider that they possibly currently have in place or one that they worked with in the past. And it's just-- it just makes the delivery of services seamless. The coordination service is much easier.

**McKINNEY:** All right. Because, I don't know, just in a perfect world, I would think if someone has a mental health indicator on their file, they wouldn't be shipped to the county jail. They would go to some treatment center or hospital instead of being criminalized for going through these situations. But I understand we don't have the facilities and things like that. But thank you.

**KIM ETHERTON:** You're welcome.

**LATHROP:** I do have a question for you, and, and this is sort of how does this roll out? Where is the flag going to be found and what database?

**KIM ETHERTON:** The conversations we have had is that that flag would be in the NCJIS system. So it'd be in the Nebraska Criminal Justice Information System.

**LATHROP:** OK, now I have another question for you. Let's say that an individual is picked up for shoplifting. They sit in county jail. Now they're coming up for a bond hearing and the prosecutor prints off

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their criminal record because that's important to the court setting an appropriate bond. Will that indication be found in that printout the prosecutor will have?

**KIM ETHERTON:** I don't know about the printout, but I do know that if it is in the NCJIS system, it should show up if they search that system. If they-- I don't, I don't know if it appears on a printout.

**LATHROP:** That gets to this point, which is the one Senator Pansing Brooks brought up, which is if somebody's on there and they can't get off there and now I'm setting a bond, I'm now the judge or I'm the prosecutor or the defense lawyer, and we're setting a bond for somebody and the prosecutor, like, he's in the system, if you know what I mean, Judge. He's got the flag. And now, now this is becoming a consideration for bond setting, whether we're going to let him out of county jail or keep him there, those kind of things. So their ability to be taken off that list, some process for taking them off that list or some process in the bill that takes them off the list once they-- once they're discharged from whatever facility they're sent to after the EPC.

**KIM ETHERTON:** I agree, I mean, I, I do think that it should not be a perpetual appearance. I would say in Lancaster County, at least, if a county or a district court judge saw that flag, they'd probably call my office and they would say, hey, this, this is--

**LATHROP:** Oh, yeah, and, and that gets back to Lancaster County's doing some wonderful things. And the fact that this bill is here is a testament to your concern for mental health and treating these people well and having the right response. But not every county is doing as well as Lancaster.

**KIM ETHERTON:** Well, it is-- it does require resources.

**LATHROP:** Exactly, exactly, and we're glad that Lancaster County has put them into mental health, but it is concerning to me, at least, if, if there's no way to get off that list. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Just one more along those lines of Senator Lathrop, so if, if some-- if somebody is applying for a job, will it show up on that? If somebody does a search and they'll say, oh, my

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gosh, and they've got some mental health issue, well, we're not going to hire them.

**KIM ETHERTON:** No, access to that information is limited to criminal justice personnel.

**PANSING BROOKS:** Criminal justice and HHS.

**KIM ETHERTON:** Right.

**PANSING BROOKS:** So HHS often does have that, doesn't it? I don't know, I, I--

**KIM ETHERTON:** I don't know, there's somebody from HHS back there.

**PANSING BROOKS:** OK, good, well, folks should know that information. Thank you for coming, Ms. Etherton.

**LATHROP:** Thank you. Next proponent. Good morning and welcome.

**SADIE THOMPSON:** Thank you, Senator Lathrop and members of the Judiciary Committee. My name is Sadie Thompson, S-a-d-i-e T-h-o-m-p-s-o-n. I'm testifying on behalf of the Wellbeing Initiative, Inc., a peer run organization focused on advocacy and education for behavioral health consumers in Nebraska, where I serve as the chief implementation officer and the Nebraska Association of Behavioral Health Organizations, where I serve as the vice president of consumer affairs. This is testimony in support of LB663 introduced by Senator Geist. While we appreciate and understand the intent of LB663, we would like to raise the following questions for clarification to protect consumers. Before I jump into this, I just want to say I'm a person with lived experience in the behavioral health system, with behavioral health issues myself and familial issues with behavioral health. And so this is something that's really important to me personally, also important to the organizations that I represent. In subsection (5)(b), we would like to ensure we understand the intent. It is simply better to prepare-- it is-- is it simply better to prepare first responders for possible mental health calls? Or is the intent to escalate first responders' level of intervention based on past mental health board commitments? The levels of responder-- the levels of escalation in law enforcement crisis response quickly escalate when a perceived threat is present. It is concerning this indicator could raise the crisis response escalation level of

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responding law enforcement. As a recipient of behavioral health services, I'm concerned that escalated levels of intervention will lead to higher rates of violence against people needing support, not incarceration. My second concern. Knowing this indicator will notify dispatchers that the caller has been adjudicated mentally ill, please add clarifying language that the-- that information will not be shared with first responders unless the first responder is requesting that information based on the specific-- the specifics of the current call. We want the language of the bill to specify which information will be accessible as an indicator and to whom. There needs to be clarity about what the indicator is and whether that indicator will perpetuate stigma or communicate criminality when it's meant to provide first responders with information to be prepared to support a mental health crisis. It's important that legislation continues to move in the direction of treating behavioral health in a way from criminalizing behavioral health. Three. The language in Section (5)(c) needs to be clearer. Quote, no information is released beyond what is necessary for purposes of this subsection. Again, the intent of this section is not clear. So the purposes of this subsection is not clear. The people being served by first responders need to be protected through clearer language stating what exact pieces of information will be shared through the indicator.

**LATHROP:** Ms. Thompson.

**SADIE THOMPSON:** Yes.

**LATHROP:** We have the rest of your testimony.

**SADIE THOMPSON:** OK.

**LATHROP:** We got to observe the, the light system today.

**SADIE THOMPSON:** Oh, yep.

**LATHROP:** Let's see if there's any questions for you, though. I do not see any questions. We appreciate your testimony and, of course, we have the balance of it right here.

**SADIE THOMPSON:** Thank you.

**LATHROP:** Thank you. Anyone else here as a proponent?

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**STEVE CERVENY:** Morning.

**LATHROP:** Good morning.

**STEVE CERVENY:** My name is Steve Cerveny, S-t-e-v-e C-e-r-v-e-n-y. I'm a captain with the Omaha Police Department, address is 505 South 15th Street, Omaha, Nebraska, 68102. Chairman Lathrop, Senators of the Judiciary Committee, thank you for the opportunity to speak with you today. The Omaha Police Department supports this bill and feels it is beneficial regarding optimal care and service for individuals who may be experiencing a mental health crisis and the officers responding to assist. Officers would be provided information concerning history significant-- history of significant mental illness, including patterns of possible noncompliance with voluntary treatment in the past, officers would be aware of prohibited violations if a firearm was present. And most importantly, valuable resources, such as individuals trained to address mental health related crises could be secured to assist immediately. We do have some concerns for discussion, many of which have been addressed already this morning. Those would include adequate training and funding for dispatchers, the ability to update the indicator list and remove names if appropriate, and provisions for privacy related to sensitive personal information as dispatch communications are accessible by the public. Particularly regarding Senator Pansing Brooks's inquiry, we would like to see specific language in the bill that would make uniform-- make a uniform procedure for someone to be able to have their name removed from the list if appropriate. Thank you.

**LATHROP:** Any questions for Officer Cerveny? I don't see any. But thanks for being here.

**STEVE CERVENY:** Thank you.

**LATHROP:** We appreciate hearing from you. Anyone else here as a proponent? Anyone here to testify in opposition to LB663? Good morning and welcome.

**BRAD MEURRENS:** Good morning, Senator Lathrop, members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I am the public policy director at Disability Rights Nebraska. We are the designated protection and advocacy organization for persons with disabilities in Nebraska. And I'm here

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today in opposition to LB663. LB663 presents some serious concerns. The bill is stigmatizing and discriminatory. It imposes a permanent identifier on people with mental illness histories based on the simplistic and wrongheaded assumption that people with mental illnesses are inherently and permanently dangerous. Just because a person has been committed even once should not automatically label them as deviant as this bill does. Only if we carry the assumption that people with a history of mental illness are permanently in crisis or dangerous, would a yes on the indicator lead one to believe that the person is currently in crisis or that responders need to be warned. The bill provides no qualifier for how long the arm of the Crime Commission will reach back to affix the mental health indicator. There is no language in the bill and we should not make those assumptions without the plain language black and white letters in the bill. There is no contextual understanding of the individual other than they were committed in conjunction with the presupposition of inherent and permanent illness and dangerousness, this indicator automatically applies these assumptions and creates tension for the responders even before they can assess the true nature of the emergency call. We note that there are no indicators suggested for other health or social conditions, such as an incident of alcohol treatment or rehabilitation. Only persons with a history, no matter how brief of mental health commitment, get this indicator serving only to reapply and reinforce all the accompanying stigma and stereotypes that go along with mental illness. The bill is too intrusive and expansive and evaporates without consent any realistic privacy right. Individuals who were recently or in the distant past subject to commitment did not consent for some or all of their private information. Remember, the bill says any other information deemed necessary for identification or even their mental health history to be given out essentially without restriction, the bill says. Why does the Crime Commission essentially need to gather information such as Social Security number, address, and any other information of the subject when the indicator is only designed to give a yes or a no? The number and types of persons who could be granted access is in effect unlimited or other persons designated by the commission. This is not protecting privacy. LB663 perpetuates an outdated [INAUDIBLE] model and dangerous framework about how law enforcement and other first responders should respond to emergencies involving people with mental illness. There are a variety of alternative models and I have attached examples to my testimony. Disability Rights Nebraska recommends this

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bill not be advanced and I would be happy to answer any questions the committee may have.

**LATHROP:** OK. I don't see any other questions, but I, I have one for you. I, I look at the intent of this and if, if the intent is to identify someone so that the officers can, as they're rolling up to the scene of a domestic disturbance, understand that maybe they need to bring in the mental health, the people that can do the de-escalate-- de-escalation. This isn't all bad, right? It may have some problems that members have talked about up here, but the idea of knowing as you're approaching a circumstance that this person may have-- may be in crisis and you may want to. I could see Lancaster County or Lincoln, for example, having a mental health professional go to the scene with the officer so that there's somebody there that can, can deal with it. And that seems to me to be at least the intent of the bill is more compassionate although leaving them on the list or not having a process for getting them off their or what information goes along with just the designation may be problematic. You can respond to that.

**BRAD MEURENS:** Sure. First of all, if you were committed 20 years ago, that does not indicate that you are currently in crisis. Again--

**LATHROP:** I think we can stipulate to that.

**BRAD MEURENS:** Right. And-- but that's the thing is that if your argument-- if the argument is that they-- that responders should be aware ahead of time about some sort of contextual circumstances about the situation, this indicator only indicates you were at some time committed. That doesn't-- should not indicate that's your current situation. In fact, if you're, if you're, if you're released, you're-- again, I would assume, considering that the reason why you're on the commitment is because you're a danger to yourself or others. If you get-- if you're released from that commitment, doesn't that mean that you're no longer dangerous to yourself or others? And again, we should be very concerned about carrying over these old antiquated stereotypes because it, it just says this person was or was not committed. That-- it should not give anyone any indication of what that person's current situation is or if it didn't-- and it does not give any context to what the situation is. What it does serve is it says there's a person with mental illness who had, who had been committed at some point and they're dangerous. And we need to be warned about them because they're



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dangerous, because, because only, we only know they were committed, then we automatically assume working on assumptions that this bill reifies that they're dangerous.

**LATHROP:** OK.

**BRAD MEURENS:** You know what I'm saying? I mean, so I don't think-- and I think Senator-- I'm sorry, to extend your comment, you made the comment earlier about how you might be able to gather some information about the situation hearing screaming in the background, which doesn't really indicate that there's a mental illness situation here. But if the officers think or feel that they need to have some sort of mental health expertise along with them, why wouldn't they make that call? They can make that call without having an indicator that labels you, however long ago it was, that you are now mentally ill and dangerous.

**LATHROP:** OK. Senator Pansing Brooks.

**PANSING BROOKS:** That last comment answered my question, so.

**LATHROP:** OK.

**PANSING BROOKS:** Thank you.

**LATHROP:** Senator McKinney.

**McKINNEY:** What if there were-- and, and I get where you're coming from and I totally understand, what if there were indicator levels? So say somebody's suffering from a episode because they're on, on, on some type of drug or some psychotic? What if there was an indicator-- what if there, what if there were certain levels of indicators?

**BRAD MEURENS:** I don't understand levels of indicators, sir.

**McKINNEY:** So if I'm suffering from a drug, drug episode, that's an indicator. If I, if-- trying to think of another situation.

**BRAD MEURENS:** I think I see, I think I see what you're saying, Senator. But my, my response is you wouldn't know that. Like, there's no way to know what drug you're on if you're on a drug and, and, and indicator ahead of time, ahead of responding. Just like I don't know if this person's drunk. Now I may have-- someone could tell me on an indicator that they had-- that they were in treatment for alcoholism

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30 years ago, but does not indicate that they're currently drunk. Right. And just like you get a ticket for speeding does not mean that you're deviant or that you're speeding right now. Right. So my point is that while the intent, i.e., giving some awareness of a situational, you know, some situational awareness, this bill does not do that because the awareness that this bill intends to give is not given by the policy prescription. The plan that this, that this bill enacts. This bill only says you were, you-- it only labels you as you were-- had a mental health commitment. Therefore, there's something about you that we need to be aware of and you're dangerous.

**McKINNEY:** All right. Thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** So it seems to-- I, I agree that there-- that we don't want to label this per-- thank you for coming today, that we don't want to label the person as dangerous. But it seems to me also it could warrant and have police understand that they should be approaching this with a mental health expert. And I know you're saying, well, they could do that anyway. But I mean, rather than approaching them as a criminal, maybe they're approaching them to say, OK, we've got other issues here. We need supplemental help. We know that we are using the, the corrections facilities as our current mental health facilities. So it's not necessarily better to be approaching them as criminals than approaching them and bringing a healthcare expert and saying, let's, let's deal with this differently to calm the situation, not because they're dangerous, but because they need a different kind of help rather than grabbing them, putting them in cuffs and taking them off. So I, I feel like there's, there's a real difference here and maybe there's a better way to do it. And I do see what you suggested on different tactics. But certainly what we're doing now is not better for people with mental health issues. And I agree about the labeling and I agree about the length of labeling. I don't think it should be a label. I don't know if there's a way to-- I, I don't know, it shouldn't be a label and it shouldn't continue. But there has to be some better way to treat and deal with people who are hurting.

**BRAD MEURENS:** Yeah, I, I agree, Senator. And I think-- but, but the better way is not to give them a label. You were or you weren't committed. Now I, I understand what you're saying about, you know, it,

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it would be good to be able to have tools to get people to where they need to be and not to respond with a heavy-handed law enforcement, you know, approach. I get that. But this bill doesn't do that. This bill just says you were committed. That doesn't, doesn't indicate anything about the current situation. Right. That would not in-- that doesn't indicate we should bring mental health people to the, to the call because maybe it's not a mental health situation, maybe it doesn't, it doesn't call for a mental health adviser. Now you've just sent people to a call where they didn't even need to be. But that's my point is that this indicator automatically forces the responders to, to make guesses and assumptions about the situation and about the people in the situation. That's, that's negative. If we want to really, truly get to a contextual understanding of the situation, the crisis situation that they're responding to labeling people as you were committed, however many years ago, does not give that contextual understanding. It just says there's danger here. We need to warn you about it because this person was committed somewhere along the line.

**PANSING BROOKS:** OK, just, just to add, I have a bill on a legislative task force regarding 988, which is the new number for the suicide hotline, which will be used in conjunction with 911. It's already been federally funded. And we've actually-- HHS has gotten money. So I hope you'll, you'll participate in some of the discussions of that. But I do not believe that the goal is to say you are a danger. I think the goal is to say you are needed to be treated more tenderly. So there's, there's my opinion. I don't know. I, I see what you're saying, but that is certainly not my goal that we would. And I do think something has to be done to stop, to stop what's going on in, in our Corrections system. We closed down all the institutions and the health places in the '80s, and now we're just sending everybody to prison no matter what.

**BRAD MEURRENS:** And I agree, Senator, but there's got to be a better way to give that contextual understanding and provide that linkages to appropriate treatment or appropriate placements, right, beyond labeling someone you were, you were committed. There's got to be a better way than to label people as deviant, for, for however long that span might be, and to reinforce those assumptions about persons with mental illness and recovery.

**PANSING BROOKS:** Thank you.

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**LATHROP:** OK, think that'll do it. Thank you.

**BRAD MEURRENS:** Thank you.

**LATHROP:** Anyone else here to testify in opposition? Good morning.

**SHERI DAWSON:** Good morning, Chairperson Lathrop and members of the Judiciary Committee. My name is Sheri Dawson, S-h-e-r-i D-a-w-s-o-n, and I'm the director of the Division of Behavioral Health within the Department of Health and Human Services. I'm here to testify in opposition to LB663, which proposes to release certain mental health information to the Nebraska Commission on Law Enforcement so that the commission can create a mental health indicator in a criminal justice information system. LB663 requires the department to release to the commission the name, address, birth date, Social Security number, and any other information necessary for proper identification of persons committed for inpatient psychiatric care by a mental health board. This would be for the purposes of properly identifying the subject. The indicator identifies the person as previously ordered to inpatient treatment and committed to the department. The indicator would serve as an alert or early warning to law enforcement or other first responders. DHHS has concerns with the proposal. Mental health involuntary treatment is protected by health information under HIPAA and 42 CFR Part 2. The bill provides that the involuntary treatment information may go to dispatch or others to alert them for public safety purposes. While the bill states procedures should be established which shall guarantee that no information is released beyond what is necessary, the need to know and intended use of protected health information is not clearly and explicitly stated. The bill does not stipulate whether availability of such information is dependent on an individual committing a crime. The bill does not indicate that individuals who have been committed are provided an opportunity to sign a release of information. Currently, the Nebraska State Patrol is furnished with such information on individuals committed to care by a mental health board only as it is necessary for the purpose of determining whether an individual is disqualified from purchasing or possessing a firearm pursuant to state law. The database, disclosure, limitations, liability, prohibitions, and violations are clearly stated. The federal National Instant Criminal Background Check System, or NICS, can only be accessed for very specific purposes for federal regulations. Therefore, law enforcement typically cannot access NICS simply based on a call for service or an

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encounter with an individual. There is a clear statement of intent, purpose, and limitations absent an LB663. Additionally, the source of data requested does not originate from DHHS. Mental health commitment orders are provided by mental health boards to court clerks. The clerks of the various courts enter the information into the Electronic Commitment Reporting Application, or ECRA. The department has access to this information for reporting purposes. The department provides the information to the State Patrol, who provides the information to NICS for the stated purposes of identifying federal disqualifiers prohibiting the purchase of firearms. Finally, some of the data fields cited in the bill are not currently captured or conveyed to the department by the court clerks. In addition, it's problematic to release protected health information. Social Security numbers are also protected by federal privacy laws. In summary, LB663 proposes to provide protected health information to a criminal justice information system for no explicitly stated purpose or intended use, and on individuals who may not have committed a crime.

**LATHROP:** Ms. Dawson.

**SHERI DAWSON:** Oh, sorry.

**LATHROP:** We got, we got the red light system here.

**SHERI DAWSON:** OK.

**LATHROP:** If I don't enforce it, then everybody is going to go on and on and, and we need to do it in order to give other people a chance to be heard. But I appreciate your testimony. Senator Slama.

**SLAMA:** Thank you, Chairman Lathrop. And Director Dawson, thank you for being here today. I, I looked up your cite to 42 CFR Part 2, and I appreciate you specifically citing that one. Do you have a specific cite as to where in HIPAA your concerns with this bill are?

**SHERI DAWSON:** I don't know if I can cite that for you right with the number right now,--

**SLAMA:** Uh-huh, yeah.

**SHERI DAWSON:** --Senator Slama, but under HIPAA, the mental health agency can provide to law enforcement only to help with identifying a

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suspect, fugitive, missing person, or material witness. But I can get you that cite.

**SLAMA:** OK, thank you.

**SHERI DAWSON:** Um-hum.

**LATHROP:** Senator McKinney.

**McKINNEY:** My question-- because what I'm struggling, struggling with is I understand the concerns of the gentleman prior to you and yours, but I also understand the need for more mental health individuals involved in situations where people are going through these crises because I'm aware of so many situations where I knew individuals personally that were suffering from, from mental health episode. And instead of getting the help, I know one that was killed by the police because we didn't send a mental health specialist there. So I'm, I'm struggling with how do we navigate this with protecting their information, but also getting individuals on the scene that could help assist our, our law enforcement officers with de-escalating as well.

**SHERI DAWSON:** Sure, sure. No, and I appreciate that. And actually had had some conversation with Senator Geist and some of the system partners that have testified previously. I, I think the challenge is really is it the, is it the information and knowing an indicator or is it about best practices? For example, they talked about in Lancaster County, the sequential intercept model, and to try and get folks connected to services, crisis response earlier, best practice with law enforcement training. Here in Lancaster County, they have BETA throughout the state and in the nation. They also have crisis intervention training for law enforcement. So I don't know that a bill will necessarily solve the-- or an indicator will necessarily solve part of the opportunity we have. We have the opportunity to increase training. We have the opportunity to do sequential intercept mapping. We have the opportunity to really look at what's working. Senator Pansing Brooks, you talked about the 988. That planning will involve how crisis response teams are working now and what are those opportunities to make sure that there is access to which is right now available throughout the state. Crisis response is available for both adults and youth.

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**McKINNEY:** Does your department currently partner with law enforcement agencies to offer training on, on how to deal with situations to de-escalate mental health crisis?

**SHERI DAWSON:** Our, our department actually does not have a specific law enforcement training part of the budget. However, we do contract with our regional behavioral health authorities and certainly that's an opportunity as we look at our new strategic plan and the 988 planning to look at who should provide that. There's already trainers out there and how do we ensure that people are well-informed when they're responding.

**McKINNEY:** OK. And last question, what if it was limited to maybe three months or less? Because I've, I've known situations-- like, I have a cousin that keeps going back to jail because he deals with mental health and he never gets to help, but he keeps going back to the county jail. What if it's limited to about a month, say, hey, this person is, you know, been in and out of jail for the past month and he's dealing with some mental health issue. What if that one time the officer doesn't know that and my cousin, for instance, is going through an episode and he ends up getting killed because the officer didn't know?

**SHERI DAWSON:** So I think what I'm struggling with, Senator, I, I think we're on the same page in terms of trying to make sure people have access to treatment and really setting up a system so that if a person is what we refer to as a familiar face in the system, that there are people that sit down and try and identify connection to services or something different in the treatment plan. I think the challenge for me is how an indicator of somebody that's been committed and the database that we have now is for many, many years ago and, and the database on commitments is for the purpose only of what we're required to do for the next database.

**McKINNEY:** OK, thank you.

**SHERI DAWSON:** Um-hum.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. And thank you, Director, for appearing today. I think you just stated about crisis response. I view



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this bill as simply that, you're an officer, you're responding to a call and you cannot have enough information. I think it's great that we give treatment down the road. I think it would be great if the state had the money to have a healthcare professional for every police department out there. We can't. We don't. So how do you, how do you support, how do you support our police that are responding to that call and all they want is an indicator that we have a mentally ill individual there or possible mental health situation?

**SHERI DAWSON:** So I think, Senator, how, how I look at that, again, from a training standpoint, we-- you know, I think we agree there's an opportunity to continue to do that. I think the challenge for me is that indicator of treatment that could have been many years ago. I don't know how-- to be honest with you, I don't know how that makes the interaction different in terms of knowing de-escalation. And again, some of the best practices are about how to: the CIT; the mental health first aid; question, persuade, refer. That's, that's what makes a difference when people are interacting, not an indicator.

**BRANDT:** But on the indicator, you could actually put the date of the last episode on that indicator if it was ten years ago, five years ago, five months ago, five weeks ago. And as a responder, that would tell me if it was a fresher incident, it was probably a higher-level incident. That's just an assumption. That's probably the wrong thing to do. But that could happen also, couldn't it?

**SHERI DAWSON:** Repeat the question on the what [INAUDIBLE].

**BRANDT:** That as part of the indicator, you could put a time stamp on that.

**SHERI DAWSON:** My challenge with that is because a person had a inpatient mental health or treatment a year ago or five years ago. To me, it doesn't indicate dangerousness. It doesn't indicate any difference for that person that needs mental health, perhaps. It doesn't, it doesn't help-- or at least I don't understand from a law enforcement standpoint how that makes a difference in how I interact.

**BRANDT:** OK, thank you.

**SHERI DAWSON:** Um-hum.

**LATHROP:** OK. I think that's it. Thank you for your testimony.

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**SHERI DAWSON:** OK, thank you.

**LATHROP:** We appreciate hearing from the department. Anyone else here in opposition? Anyone here to testify in a neutral capacity on LB663? Seen none, Senator Geist, you may close. And as you approach the chair, we do have eight position letters, five of them proponent, two of them opponent, and one of them neutral. We also have received written testimony from Spike Eickholt with the Nebraska Criminal Defense Attorneys Association. Also a separate one from Spike Eickholt with the ACLU of Nebraska, a proponent. And finally a proponent, Terry Wagner with the Lancaster County Sheriff's Office. With that, Senator Geist, you may close.

**GEIST:** OK. Thank you. And hopefully I can make sense of my notes. I did try to address-- I'm going to try to address some of the questions that were raised. And to start off with, I, I want to say that I'm incredibly sympathetic with the individual who was here that was talking about labeling. And that is not the intent of this. It's actually to help and to keep that from perpetuating. But I understand his pushback so I-- that I, I want to say and I want him to know that in working through this over the past couple of years, exactly what he said is why we're trying to be very limited and careful about who has access to this information. So in response, Senator Brooks, too, if someone looks on a job application, for instance, that wouldn't-- it-- this would not be revealed. It's only revealed in, in, in who the Crime Commission sees is of the height of importance. For instance, the dispatch, 911 dispatch. Or conversely if 988 ends up being the dispatch in the future, those individuals, not a broad swath, not even to law enforcement themselves, just to the people necessary, with the-- only the necessary information that identifies that person with the thinking there could be five John R. Smiths. Therefore, we want to make sure we're, we're telling you the right John R. Smith and not miss identifying someone, which is also equally egregious. So in that sense. Also to let you know that people are cleared off of this list, they go before the health board and the health board removes them from the list. So regularly this list would be updated with new and dropping off individuals. So it's not like once you're on this list, you're there for the rest of your life. If you're cleared by the health board, you are cleared from this list. Another concern that we had is that this is also not just assisting those in eastern Nebraska who have resources for mental health, though limited they are, there are the crisis response teams available to western Nebraska. However,

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it's not uncommon for them not to be able to arrive on a scene immediately. So to assist the officer who may be tending to that crisis and giving them upfront information would be incredibly helpful for that officer and the individual. So it's not just for those who are-- who have some resources. This is really helpful for those who have very limited resources. So I wanted to make sure I include that. And I'm also going to agree with Ms. Dawson about additional training is needed. I believe Senator Lathrop is bringing a bill that requires additional mental health training. And I think that is incredibly important for all of our departments. Especially after COVID, I think we're going to see the expanded need for mental health training for law enforcement. Actually, not only law enforcement, but our teachers and many people who are on the front lines of some of the mental health issues we're going to be seeing. So I support that 100 percent. So I'm not presenting this as the tool. It is a tool to help law enforcement and to protect the individuals that this addresses. We're happy to work with the language of the bill to make clear what the process needs to be to add and take away individuals so that there is a process that's clearly stated. In no way, as I said, do we want to stigmatize individuals. We want to assist in helping them to get services sooner. And with that, I think I've-- I have addressed everything and I welcome any questions that you have.

**LATHROP:** OK. Any questions? Senator Pansing Brooks.

**PANSING BROOKS:** Thank you, Senator Geist, for bringing this. Have you worked with Brad Meurrens and the Disability Rights Nebraska group?

**GEIST:** I have not.

**PANSING BROOKS:** OK, might be good to--

**GEIST:** Yes.

**PANSING BROOKS:** --for a check in with them.

**GEIST:** Yes.

**PANSING BROOKS:** Thank you.

**LATHROP:** OK. Thank you--

**GEIST:** Thank you.

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**LATHROP:** --for being here. Thank you for presenting the bill. We will next-- that will close our hearing on LB663. We'll give the room a chance to transfer and move around. People to leave and come. But we will next take up LB151. This probably won't be necessary, but four members of this committee also serve on Exec Board and at noon Exec Board has a meeting on a bill that's being introduced. So if we all get up and leave, it's not personal. We do, we do have a number-- four of us are also on Exec Board and have a noon. So with that, Senator Morfeld, you may open on, on LB151.

**MORFELD:** Senator Lathrop, members of the Judiciary Committee, for the record, my name is Adam Morfeld. That's A-d-a-m M-o-r-f-e-l-d, representing the fighting 46th Legislative District, here today to introduce LB151. A bill to adopt the Prosecutorial Transparency Act. And for the record, if you all have to leave, it's no big deal. I'll be fine. I'll update you. This bill would require prosecutors across the state to collect, maintain, and report specified data regarding criminal cases that are referred to county and city attorneys' offices for prosecution. Specifically, the bill requires that data be collected relating charging decisions, referrals to diversion, bond requests, plea agreements, and sentencing recommendations on criminal cases. All data collected under the bill regarding case dispositions would be reported to the Attorney General annually. The Attorney General is directed to develop a uniform process in standards for reporting. Beginning May 1, 2022, the Attorney General shall post the collected information in a searchable format on their website. I've also been approached by some by considering the Crime Commission as the reporting agency and I'm open to those suggestions as well. This also requires that any internal policies that the prosecutor offices have regarding standard charging decisions or bond requests or in other matters also be made publicly available. The bill further requires a collection of certain data regarding attorneys, including disciplinary history, who are employed in each office with the individual identifying information redacted. These policies shall be publicly available on the websites of prosecutors offices beginning January 1, 2022. Like any other governmental body, the taxpayers of Nebraska should have the ability to know how government agency does its job. We spend a significant amount of money on the criminal justice system, on the prosecution and defense of cases, and on incarcerating people who serve sentences. Nebraska's prisons and jails cost taxpayers literally hundreds of millions of dollars a year to

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operate. The bill recognizes that prosecutors have significant power in the criminal justice system. If we are to have meaningful criminal justice reform, we need to have an accurate understanding of how cases are charged and prosecuted by our prosecutors. This bill follows an interim study introduced by Senator Justin Wayne in 2019, LR146, which was heard before this committee on October 17, 2019. Further this summer, I submitted a summer-- a public records request to the Lancaster County Attorney for some fairly basic information on marijuana charges, plea bargains and convictions to get a better understanding of the scope of that issue. And I received a letter back saying that would cost just over \$30,000 for that office to be able to provide that information. The public should be able to get basic information such as this from their most powerful officials with the most discretion without being wealthy. Further, a number of other jurisdictions are looking at this issue. Florida, Utah, and Connecticut passed prosecutorial transparency laws and are similar to this bill with support from their prosecutors. Similar legislation has been proposed in the last year in Hawaii, Virginia, and other states. Individual prosecutors across the country on their own volition have implemented reforms proposed by this bill to identify just a few prosecutors in Chicago, Jacksonville, Milwaukee, and Tampa in 2018, and Charleston and Philadelphia in 2020. Further, state-based and national- based libertarian and conservative think tanks such as Libertas in Utah and R Street Institute also support these kinds of initiatives. What this bill is proposing is not unprecedented in the state. In 2001, the state passed a law that required all police agencies to have a uniform policy regarding racial profiling and to-- and make this policy public. Every year since 2002, law enforcement agencies have been required to collect and report certain data regarding traffic stops to the Nebraska State Crime Commission. Based on this collected information, we policy makers have been able to make changes to the law to effectuate reforms. For instance, by requiring certain types of implicit bias training for law enforcement. I haven't received too much official communication from the County Attorneys Association, but I do want to address some concerns on the front end and I'll be happy to address them after they testify. That being said, on January 18, the president of the Nebraska County Attorneys Association, Lancaster County Attorney Pat Condon sent an email in opposition to that association at statewide listserv. And they cited two different concerns. In particular, cost, one; two, difficulty in implementing. I want to be sure to adequately address the opposition

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in the association's opposition. First, if cost is a concern, I'm more than happy to create a state grant program to provide funding to effectively implement and upgrade the reporting in case file systems such as Omni, if that is their primary concern. I think in Florida it costs about a million dollars to implement statewide. And if that's the case, we can look at that here in Nebraska. And obviously we're a much smaller state population wise. Second, as noted before-- above, other law enforcement agencies have to collect data pursuant to the law or state or federal grants have-- and have found ways to easily implement those programs. If resources are a concern, again, I am committed and dedicated to getting state resources to the county attorneys and the city attorneys to assist them in being transparent. I also know that some of you have received a letter from the chief deputy of the Lancaster County Attorney's Office, Bruce Prenda, which I don't really know how to characterize it other than a bit unhinged and alarmist. He stated that it was, quote, incoherent, quote, simplistic thinking, quote, ignorant, quote, an insult, quote, unqualified to sponsor such legislation, end quote, unintelligent. I just want to say that these types of letters and hyperbole really do a disservice to having honest and intelligent conversations about making sure that our county attorneys' offices and our prosecutors are transparent and that lawmakers such as us, as us have the right information to be able to make decisions about criminal justice reform in our state. Mr. Condon, and chief deputy, is chief deputy's opposition aside, I'd like to think that prosecutors should actually welcome this as they have in other jurisdictions. Again, we're not reinventing the wheel. One thing-- one would think that they should be able to proudly share and defend their efforts in the prosecution of crime. In my time on this committee, when prosecutors have appeared and opposed a criminal justice reform bill, I have sensed that they believe that we do not understand the underlying issue or why they oppose a certain bill. And oftentimes that's the case. It's because we oftentimes don't have the information necessary to make those, those distinctions, understand the issues facing our criminal justice system, and act on them. This bill would facilitate our understanding of things from their perspective by letting us, the public and anyone else that wants to know, know exactly what their day-to-day work is like. Transparency is critical in government. Transparency in government means confidence in government. And this transparency should apply to the prosecutors' offices as well. I'd encourage this

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committee to support this legislation. I'd be happy to answer any questions that you may have.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Morfeld, for bringing this bill. As a point of clarification to myself. The information you're asking for is new information currently unavailable or you are simply asking the County Attorneys Association to provide you with information because they're in a position to, to give that information.

**MORFELD:** So some of this information would be depending on the office. So it depends is the answer, Senator Brandt. Some of this information is already being collected by county attorneys' offices, but it's not being collected in a uniform way. So it might be in case files and notes, things like that. And so it would be requiring them to track this information in a new uniform way across the state and deliver that information.

**BRANDT:** But does the public have access to that information? If your group wanted this information on marijuana, do you-- is that public information, the Freedom of Information Act [INAUDIBLE]?

**MORFELD:** So I, I sent a, a, a record, a public records requests. Some information was given, but not very much, and the additional information would cost \$30,000. So the answer to your question is some of it, yes. But the significant information in terms of some of the nuances, no.

**BRANDT:** But shouldn't the system then be set up that the requestor have to pay for that information, or should all the taxpayers pay because this group wants this information?

**MORFELD:** Well, I don't know about groups. I'm an individual when I ask for information, but--

**BRANDT:** Right. But, but you understand the context of [INAUDIBLE]?

**MORFELD:** Yeah, I understand that. Yeah, and so I just don't think it's reasonable for a taxpayer to ask for information and get a \$30,000 bill, which is information that should be tracked if it isn't already tracked. And yes, I do believe that in order to make that information

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more available, the state should invest money if needed, which it sounds like it is based on the opposition, to invest in those systems so that the public can get that. And not only the public, but quite frankly, I think maybe even more importantly, the representatives of the public, us.

**BRANDT:** OK, thank you.

**MORFELD:** Thank you.

**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Chairman Lathrop. And Senator Morfeld, thank you for bringing LB151 and allowing us to have this discussion. I, I just had a quick question. I'll have some more questions later on in the hearing, but I just wanted to get your take. LB151 starts off with the line, "Prosecutors are the most powerful actors in the criminal justice system." What, what was the reasoning in including that line and do you have any evidence to back that claim?

**MORFELD:** Well, my evidence is, is that they're the ones that have the most discretion in determining whether or not someone is charged with a crime or not. So that's my, that's my opinion. And I think that that fact alone states that they're the most powerful actors in the criminal justice system.

**SLAMA:** And that's relevant for the rest of LB151, how?

**MORFELD:** It's relevant in the sense that it shows the importance of making this information public.

**SLAMA:** Do we define in any other statutes determining who's the most powerful actor in a certain system?

**MORFELD:** No, but I think we should.

**SLAMA:** OK. And then just a quick question on-- this is page 6, the fourth subsection. I, I understand how the, the information collected and published about attorneys within a county attorney's office could be anonymized when you have enough attorneys to redact that and make it reasonably questionable as to who's who and protect privacy on a basic level. But for smaller counties, how would you ensure that this information would be anonymized?



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**MORFELD:** Yeah, for smaller counties, I actually did have a, a county attorney reach out to me with that concern, and I'd be happy to work with you--

**SLAMA:** OK.

**MORFELD:** --or that individual on that concern. Because I thought that was somewhat of a legitimate concern.

**SLAMA:** Sure, yeah, because when there's two county attorneys. Yeah.

**MORFELD:** Yeah, when there's two or three, you can, you can narrow it down if there's a-- are they only 20 or so year old person in there where your case is going to be. Yeah.

**SLAMA:** Sure, yeah, and also on page 6, that last line, subsection (g), "Number of police officers or detectives who work directly for the prosecutor." Pardon my youthful ignorance on that. But are there cases in which the county attorney will directly employ police officers or detectives on their behalf?

**MORFELD:** I think that there are county attorneys' offices that have investigators. But in terms of police officers or detectives, yeah, we'd like to know if there are some, but there may not be.

**SLAMA:** OK, thank you.

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

**MORFELD:** Thank you.

**LATHROP:** We will next take proponent testimony. Anyone here to testify in support of the bill? Good morning. Welcome.

**DANIELLE CONRAD:** Good morning. It's so strange to say good morning to the Judiciary Committee, it's usually an afternoon situation, but good morning. My name's Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today on behalf of the ACLU of Nebraska. And we want to start by thanking Senator Morfeld for his leadership in bringing this commonsense, thoughtful legislation forward. It's critical to ensuring that Nebraska stakeholders have a clear understanding about what's working and what's not working in our broken criminal justice system. I don't have to tell you, you're

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experts, you hear this all day, every day from your long-time service or new service on the committee, but we have extraordinary challenges in our criminal justice system. You hear about it in Corrections, you hear about it in police practices. And I think Senator Morfeld did a great job of kind of laying out the continuum of the spectrum. We require law enforcement and we have for decades to gather and report this same type of information so that we can identify trends or issues in our collective work to combat racial profiling and racial discrimination within the criminal justice system. You see and have the ability to analyze the same sort of demographic information from county jails, from the state prison system, which is helpful to your work and all of our understanding about how we can best steward our obligations in, in those facilities. What's missing in the continuum is data and information from what happens in the prosecutor's office. So that's why state after state, many with very similar political landscapes to ours have introduced similar legislation and have passed similar legislation that has been embraced by prosecutors as a way to bring their offices into the modern era to identify potential problems in their offices and to ensure that they're being good stewards of both the public trust and the taxpayer dollars. When it comes to concerns about intent language, be happy to work with the committee or Senator Morfeld, if, if that's problematic. When it comes to issues about fiscal notes, of course would be happy to work with all stakeholders in that regard. But I do think it's fair to look again at the models that we've established for our hard working men and women in law enforcement where there haven't triggered these kind of explosive fiscal notes for that kind of data reporting. Look back, you might remember, Senator Pansing Brooks, when you were a cosponsor with Senator Ebke and Senator Garrett, Senator Coash and others when we did data reporting on civil asset forfeiture. No fiscal note. The Auditor's Office handles that. So those are things that we can easily work forward. But I think it's important to remember in looking at some of this very triggered, very breathless opposition to this data reporting and good government measure. You heard from the public about this during Senator Wayne's interim study when we were up at Metro Community College and the county attorneys were there. They were sitting right behind me when I testified. They didn't even bother to weigh in. So it's interesting to see that, that opposition today. I'd be happy to answer any questions.

**LATHROP:** Any questions for Ms. Conrad? I see none.

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**DANIELLE CONRAD:** Oh, I was so looking forward to a robust dialog, but I know you're busy.

**LATHROP:** Oh, OK, wait a minute, if you sit in that chair long enough somebody is bound to.

**PANSING BROOKS:** I have a question.

**LATHROP:** Senator Pansing Brooks.

**DANIELLE CONRAD:** Yes. Hello, Senator.

**PANSING BROOKS:** Good morning, Ms. Conrad-- Senator Conrad.

**DANIELLE CONRAD:** Good morning.

**PANSING BROOKS:** Thank you for being here. Appreciate it. So you said other states have done this. Do, do you know how many or what ones or--

**DANIELLE CONRAD:** Yeah, I can give you an updated list on where it's been introduced. But I think in terms of adoption, we're looking at Utah, we're looking at Florida, and we're looking at Connecticut. And they're very similar pieces of legislation. And I think it's also really important to note, for example, in a state like Utah and Florida that have what they call a Republican trifecta in control of state government, those have passed with wide support. And in Connecticut, even though it's more of a, a blue state, they sought unanimous support in their state legislature for a similar measure. So this is a classic good government bill that's picking up strong support across the political spectrum. And it's time we bring that momentum to Nebraska.

**PANSING BROOKS:** I agree that I think it's that we need to be looking at the demographics. You know, we know that, that there is. I've spoken with county attorneys before and said there's, you know, that they are a cog in the wheel of the overcrowding issue.

**DANIELLE CONRAD:** Right.

**PANSING BROOKS:** And one, one county attorney looked at me incredulously and said, well, we don't have, we don't have anything to do with that. And I said, well, the Legislature has something to do

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with it, judges have something to do with it, and, yes, county attorneys and police have something to do with it. And if, if people are unwilling to be transparent and to-- I, I mean, I don't, I don't think it's anything to be critical of. I think it's just necessary to see what's happening and who's getting charged and who's not and what's, what's happening and where's the-- where is the break in the system that's causing the systemic racism that we're seeing? I'm not saying it's the county attorneys, I don't think it's necessarily the police. It isn't just the Legislature, but it's something. And we need to, we need to figure out what's going on and be transparent. I think everybody should be in favor of transparency and openness on that. So thank you for bringing that. I guess there's another question.

**DANIELLE CONRAD:** Yeah, and, and thank you, Senator Brooks. Just a, a couple of points there. I, I think that we know, for example, through the lived experiences of black and brown and indigenous Nebraskans that have spoken out to this committee last summer and for years and years talking about their lived experiences in the brokenness of the criminal justice system and concerned about equity and fair treatment. But we also have the data, right, that backs that up. The lived experience is enough, but we also have that data that backs it up and we can't put our heads in the sand and turn away from that. We need to lean into those experiences and into that data and say, how can we address this? How can we chart a new path? So we have law enforcement doing it. We have it in Corrections where we don't have it is in the middle. And it is incumbent upon prosecutors because they wield so much power and have such a special place in the criminal justice system and including a very difficult job to be able to take that same hard look at what's happening in their office. Is there a trend that perhaps could be identified where different defendants, different litigants are treated differently and look no further than what UNO presented to this Legislature and the Planning Committee just this fall when it took a hard look at racial equity in the criminal justice system and it elevated the fact that there's big problems when it comes to looking at who gets diversion and who doesn't from a racial justice perspective. So our researchers are looking at what, what is available today and are finding these kinds of problems. That challenges us to complete, to, to finish painting the picture so that we all have a better understanding about what's happening at each juncture of the political system. And I think that prosecutors should

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really embrace this idea because of the special power that they have within the system and the difficulties in doing their job.

**PANSING BROOKS:** Thank you.

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

**DANIELLE CONRAD:** OK. Very good.

**LATHROP:** I'm not-- OK.

**DANIELLE CONRAD:** Thank you so much for your time. We'll be happy to work with stakeholders on this measure. And thanks to Senator Morfeld.

**LATHROP:** OK, thank you. Anyone else here as a proponent here to testify? Anyone here in opposition? Welcome to the Judiciary Committee.

**DON KLEINE:** Good morning, Senator Lathrop and other members of the commission. My name's Don Kleine, D-o-n K-l-e-i-n-e. I'm, I'm here-- take this mask off for right now, if I can get it off. I'm here as the Douglas County Attorney and as a representative of the Nebraska County Attorneys Association in opposition to this bill. It's obvious to, to me that proponents of this bill don't have a whole lot of knowledge about how a prosecutor's office works or have never been inside my office or seen what goes on there. The-- yet, this bill's really an insult to the hard working men and women who have dedicated their lives to public service to bring justice to the citizens in their communities. And I don't think, I don't think Bruce Prenda is unhinged when he talks about how ridiculous this bill is from the standpoint of putting it in place in, in our different county attorneys' offices. The profession of being a prosecutor is probably the most transparent profession that's in existence, every single thing that we do is public, whether it's-- you know, the police book somebody. We make a decision about charging them or not. What charges we file, open court and information's filed, it's, it's on the justice system. We have a bond hearing, OK, public record. If we make a recommendation to the judge, it's transcribed. It's, it's in a public hearing, an open-- and constitutionally, everything that we do in a courtroom is public, a public hearing, public trial on the record. Every single step of the process is public. And there's also you can look on Justice to see whatever happens on every case, every plea agreement we do. I don't

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know if any of you have ever been-- you talk about your expertise, but have you never watched a plea take place. There's a half hour of colloquy that goes on between the judge and the defendant and their attorney about all the constitutional rights of the defendants waiving, what the plea agreement is, what the possible sentence is, all those things. And then there's a sentencing hearing where both sides have an opportunity to be heard. There's appeal process, there's post conviction. All these things are public. It's as transparent as it could possibly be. And, you know, there's, there's a cost factor here. We file 4,500 felonies in Douglas County a year. And to make every single decision we make on that case, we have to keep data on. We've said our fiscal note on this would be probably \$150,000 at a minimum. They talk about Florida implementing this, this type of system. Florida hasn't implemented it because they've, they've spent \$3 million already to try and get software and they haven't been able to implement the system. The-- I don't think people understand-- you use the term mass incarceration in this. If, if you look at the Douglas County Attorney's office, we have a young adult court, which is diversionary. We have a capacity of 30. We're increasing that to 60. We have a mental health diversion program. We have 30 people in that. We have a veterans court, which we have 30 people in. We have a diversion program. We have 50 to 100 people in these. These are all people charged with felonies. We have a drug court, 130 to 150 people. And I see my light's on. But those are-- it's over like 300 people that are charged with felonies that we're diverting. We're ahead of being progressive on ideas to try and keep people out of the system. I saw a big article about Oregon decriminalizing possession charges. We've been doing that for 20 years with our drug court system, 18- to 24-month program. We help people. And I think it'd be great for any of you to come into Douglas County and watch one of our drug court graduations. It's really an emotional experience to see these people who have gone through an addiction process and got the help that they need and are able to fix themselves. I, I-- there's a lot of things I'd like to talk about here, but I see my time's up. I'd be happy to answer any questions.

**LATHROP:** Right. Let's see if we got questions for you,--

**DON KLEINE:** Sure.

**LATHROP:** --Mr. Kleine. Senator McKinney.

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**McKINNEY:** Thank you, Mr. Kleine. And I got a few questions. In 2015, the Guardian wrote an article about you as an example of an inappropriate relationship between a prosecutor and the police. What has been done within your office to fix this issue?

**DON KLEINE:** I don't know what you're talking about. What's the article say? What's my inappropriate relationship with the police? Did they support me or, or did they--

**McKINNEY:** Your interactions and how close you are.

**DON KLEINE:** How close we are? Well, we work with the police every day. The police union has supported me in the past. I don't think that's an inappropriate relationship. I have to deal with police officers every day. I met with the lieutenant from homicide yesterday in my office. I talk to the police chief on occasion because our, our work together dovetails with them doing the investigation for us and us using the evidence that they get to decide what charges we're going to file or not file. And part of one of the most important functions of a prosecutor, having done this for 30-some years and, and been in private practice for another 10 years is, is we are a-- we tell police officers, no, you can't do that. We're one of-- you know, we're a part of the process. We have a role to play. And it's not just a rubber stamp on anything the police do or give us is to tell them, no, you can't do that. No, that's a constitutional violation. No, we can't file that case because the evidence was got-- obtained in a manner that's not lawful. So I, I--

**McKINNEY:** I, I would say, do you understand why members of the public are hesitant and question that close relationship, especially members of my community who are disproportionately represented in our prisons and our jails?

**DON KLEINE:** Well, I think there also should be-- always, always should be questions about how we do our work, the relationships with the police department. Like I said, everything that we do is, is public. So anybody that has a question about a case, why a decision was made, you know, it's out there publicly.

**McKINNEY:** Another question. During the-- over, over the summer after James Scurlock was killed by Jake Gardner, you had mentioned multiple times that you have done great things for people of color. How would

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we know that as the public if you're not tracking it and it's not public?

**DON KLEINE:** Well, I, I don't go out and blow my own horn with regards to what I've done and the people in the community I've helped. I've met with innumerable-- I've handled so many cases involving minorities as victims of crime. And if you look at the crime statistics, I think it's important to recognize the Department of Justice Bureau of Statistics that, that black people are six times more likely to be the victims of violent crime than a white person is. That's, that's data. OK. And so most of the people that I've served in trying to get justice in some of the high profile cases that I've handled have been minorities. And I've met with their families. I've, I've, I've, I've mourned with them. I've done everything I can to get that family justice for what's happened to them on many, many, many cases and also tried to help them do whatever I can. You know, I have people come into my office and I'll sit across from them and they're maybe a witness on a case. And I know they're a witness. And they say, Mr. Kleine, you, you said that you could help me maybe and maybe offer me some-- an opportunity to move to another location, because I'm afraid of what's going to happen to me by retaliation if I testify. And those are very difficult conversations to have because I, I want the person to come forward and tell the truth about what happened. But one of the things that I'll hear is, you know, you can move me out of a jurisdiction, but what about my grandma or my sister or my brother or the rest of my family? Can you move everybody? And, you know, we can't do that. So it's trying to help people who want to do the right thing, who, who want to help get justice, who want their community to be a better place. Our mantra in my office, if you want to know what policy is, is I tell our lawyers you have an opportunity every day to look in the mirror and go to the office and say, what can I do to make Douglas County a better place to live by helping people through our problem-solving courts, helping people with addiction problems, helping people who have been victimized, who most of our victims in cases are lower socioeconomic means, who have been taken advantage of by somebody. And so we try and help them any way we can. That's, that's what we're trying to do.

**McKINNEY:** Also, one in-- the, the statistics show that one in three black men are more likely to end up in prison. So why shouldn't we, as a public, be able to see that information and see how we can assist



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and see how the state and the legislator, legislator can assist in decreasing those numbers because it is an issue?

**DON KLEINE:** Well, I think that's important. I agree with what you're saying.

**McKINNEY:** What's wrong with transparency?

**DON KLEINE:** I think we need to do everything we can to decrease the numbers of people who are in prison and particularly minorities. OK. But because-- you, you already sound like you have the data because you said one in three black men. So that data is out there. It's, it's, it's fairly public as to who is in prison and what race or gender it is. But that data doesn't necessarily show discrimination. It just shows what the numbers are. There could be a lot of reasons of why those individuals are in prison that has to do maybe with not because they're, they're black, but because maybe their race has been oppressed for several hundred years because of slavery, because of discrimi-- discrimination, because of not getting to be able to get jobs, because of families being broken up, because of having a poor education system. All those kinds of things are the factors that may cause those problems to exist. And that's where I think we need to work to stop that from happening.

**McKINNEY:** I admit those factors are part of it. But also we, we recognize that there are individuals currently in prison that have been over sentenced or shouldn't be inside the prisons. Every day, I see on social media across this nation individuals that were sentenced unjustly. And we have similar cases like that here in Nebraska that have been talked about. We had a-- we have the case with Earnest Jackson, but we need to be able to see the information in your offices-- office and other county attorneys' offices to see how to fix this issue from a policy level. And if we don't pass this, we don't get that information and we rely on just you saying you're doing the right thing.

**DON KLEINE:** So, so according to this bill, every single decision that one of my prosecutors make on 4,500 cases, whether it's about a bond recommendation or why a plea agreement or why they made some sort of move in this case has to be documented and inputted by somebody in our office. And then it's going to be the committee that's going to review that, and it's going to be two defense attorneys, two defendants, and

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three other people. That's ridiculous. I mean, this, this bill is not, not the answer for that information. That information that you're asking about is out there. And there's ways to get that information just by mining it from the, the transparent process that already exists.

**McKINNEY:** Do you think if it was transparency-- transparent, this bill would be offered?

**DON KLEINE:** I, I didn't understand. I'm sorry.

**McKINNEY:** Do you think if, if, if the process was already transparent that this bill would be needed? I, I think bills are offered because individuals like Senator Morfeld see a issue and, and are seeking to fix it.

**DON KLEINE:** Well, I-- that may be. I don't, I don't question Senator Morfeld's reasoning for doing what he's doing, but I think it's somewhat political and I, I, I don't agree with the manner that this is set up by, by any stretch. Like I said, every single person in my office and they, they bust their, their rears every day to try and help people, try and make the community a better place to live. And then to, to insult them by kind of saying, well, you guys are, are part of the-- you're a, a big problem here with regard to mass incarceration or racial injustice. It's, it's, it's, it's really kind of offensive to them because I know how hard they work and I know how much they care about the people that they serve.

**McKINNEY:** And last thing, there are many examples of disproportionate rates of sentencing or not, not getting sent-- not getting sentenced or charged. Over the summer, over the summer, you had the situation with Jake Gardner. You decided not to, you know, move forward with the case. But then there was a special prosecutor who had his own founding-- findings. Why was your, your findings vastly different from the special prosecutor's?

**DON KLEINE:** Well, I think I have, I have a better background in trying those kinds of cases. I've tried innumerable homicide cases. In fact, when I-- Senator, when I was in private practice, I, I defended people. I won two murder trials as a defense counsel. Jury trials. Both of them were self-defense cases, quite honestly. So I, I think my background in that and the decision-making process and, and whether

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the, the, the, the evidence was there to, to prove beyond a reasonable doubt what we needed to prove was part of what I did. I think the special prosecutor, rather than making this a grand jury investigation, again, made a decision about what he presented to the grand jury. And that's, that's where I have a difference of opinion about the process and how it was handled. So I know I stand by my decision on the, on the Scurlock case and it was the right decision based on the evidence in that case.

**McKINNEY:** Thank you.

**DON KLEINE:** Sure.

**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Chairman Lathrop. And thank you, County Attorney Kleine, for being here today. I, I just wanted to get your take. I had asked Senator Morfeld a similar question. Does the Douglas County Attorney's Office employ-- directly employ police officers or detectives?

**DON KLEINE:** Well, when you say employ, we work with police officers every day, OK, so whether it's the Omaha Police Department, the FBI, the Douglas County Sheriff's Office, all the smaller agencies, Ralston, Valley. So we work with them. We don't exactly employ them. I have several investigators in my office that are retired police officers. Some are not police officers-- retired police officers. I have a forensic accountant that helps with our fraud cases because, quite frankly, the police don't have that expertise when looking-- getting a, a box of bank records and going through those and figure out where the money went in a fraud case. So I have several investigators that work for me. Some are retired police officers.

**SLAMA:** OK, great. And then could you just describe briefly, like, what kind of burden are we talking about in terms of implementing these reporting requirements? What kind of scope are we looking at? What kind of resources would need to be used to implement this?

**DON KLEINE:** Well, you know, again, just so you would know, some of our-- we were talking about felony cases. We have felonies. We have also all the domestic violence misdemeanors in Douglas County, which I didn't include in that 4,500 total are felonies. So we have-- all of

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our trial lawyers probably have cases running from 80 to 100 cases, some of them are very specialized, maybe don't have quite that many, they handle sexual assaults and sexual assaults on children. So think about it, every one of those cases and all the people that you're going to meet with and, and, and the witnesses you are going to meet with. And then experts, it says in here that we need to, we need to put down every expert that we use or going to use during the year in no matter which case it is. And so in every decision that each one of those persons has on that pending hundred cases, they have to document what they suggested about a bond or what they suggested about a, a plea agreement or, or what they-- why they did what they did or maybe what the victim told them and, and make that public record. I, I think that's problematic sometimes. There are certain reasons that we might do things and we're not going to make it, make it public record. Maybe somebody's cooperating on a case and we're going to give them some sort of a, a break because they cooperated. And we'll make that public if that person is going to testify or maybe the victim on a sexual assault case or a child. There's some mental health issues. And the, the therapist tells us, you know, if we can-- if you can do a plea agreement on this case, we think it's-- can be better than what the problems that would be caused if this victim has to go through and testify. Am I going to, am I'm going to document that and make that part of a record on a case? I, I think that would violate ethical issues that I have, again, and we have NDAA ethical standards. We have bar association standards. We have a code of professional responsibility that we already comply with. And every one of our lawyers is very well-informed about what those guidelines are.

**SLAMA:** Fantastic. And you touched on this briefly, this is my final question. But given the drafting of the bill and the sheer amount of reporting requirements involved in LB151, what are some of the unintended consequence-- consequences you anticipate happening as a result if this bill were to pass?

**DON KLEINE:** Well, just the, just the time itself for the prosecutor to be involved to, to not be able to have a conversation with defense counsel and talk about what they might offer as a plea agreement. But have to write down everything that's said between the two parties every time that they do it is really going to be very consuming, time consuming for the prosecutor. I'm not even talking about then handing it off to somebody else who's got to input it into some sort of a system so that it can all be-- all this data can be shared at some

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point with the two defense attorneys and two defendants who are on the committee, the advisory committee of prosecutorial transparency, which already exists. What I mean by that is the transparency part.

**SLAMA:** Fantastic. Thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for coming today,--

**DON KLEINE:** Sure.

**PANSING BROOKS:** --County Attorney Kleine. I, I don't know, I, I feel like this is starting off just on the wrong foot, because to me, I, I don't think that the county attorney should feel defensive or come-- certainly, the, the letter that-- and I like Mr. Prenda, that he sent was truly disparaging of Senator Morfeld. And so I feel like we started off just on the wrong foot. If people are asking about transparency, that's not a critique of county attorneys and the good work that you do every day and the efforts that you make to make our communities safe, in my opinion. So I think that if we have transparent-- if we ask for transparency and we are also asking for transparency of police and Corrections, I don't understand the, the feeling of like why would you ask us, do you not believe that we are truthful, honest people and that's not where we're, that's not where we're going. That's-- it's not about you guys personally. It's about the whole system. Which you admitted is-- that there is systemic racism. Right?

**DON KLEINE:** I did not admit that there's systemic racism.

**PANSING BROOKS:** Pardon me?

**DON KLEINE:** I've never admitted that there's--

**PANSING BROOKS:** I-- I'm not saying-- but then you, you just admitted that there's been racism from, from days of slavery to--

**DON KLEINE:** Oh, yeah. Well, we all know that, it's, it's happened.

**PANSING BROOKS:** Yes.

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**DON KLEINE:** And, and, and people have suffered and continue to suffer because of that--

**PANSING BROOKS:** Right.

**DON KLEINE:** --history.

**PANSING BROOKS:** Exactly.

**DON KLEINE:** Right.

**PANSING BROOKS:** That's what I'm saying. You've just said that. So is there-- because of that, I think that people are trying to get a feel for, for what's going on in every sector or-- of our just-- justice system. It's not about personally the county attorneys are doing all of this. But if we can't check what's going on in the prisons, in the, in the police departments, then we have no way to look at this and combat it if there is a problem. And if there's no problem, then great.

**DON KLEINE:** Well, the-- but the, the information that you're asking about is, is already out there.

**PANSING BROOKS:** The demographic information?

**DON KLEINE:** Sure, there-- there's demographic information. There's the-- every single case, like I said, we have is, is, is in Justice. There's a transcript of, of every single case. The people who leave Douglas County and go to-- you know, I could call the State Department of Corrections, and say, OK, I want to know everyone that's left Douglas County and been sentenced from Douglas County. And what the time that they got and what race they are or what the age they are, and I think they could, they could run those numbers. So it's, it's-- that, that information is available. And so when you're saying we want prosecutors to, to find all this information for us, well, it's, it's already there if you want to look for it, it--

**PANSING BROOKS:** But how easy is it to access? And, and I know that the U.S. attorneys also provide this information. So why is that OK that U.S. attorneys have to, to prepare this information, but county attorneys should not have to?

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**DON KLEINE:** Well, the U.S. Attorney's Office and, and they're-- my son's Assistant United States Attorney here in, in, in Nebraska. They handle a significantly less number of cases a year. Part of the reason is probably because of all the paperwork they have to do in the Department of Justice. But, but they, but they do. And so we work together with them on, on many cases. And that would probably be another question is, is how's a case end up going to the federal system and how does it go to the state system? And so I, I think those are legitimate questions to ask, but we'd be happy to fill anybody in as to what those are. But I don't think to say on every case, you need to, to mine this, this prosecutor on every single case. I've got 63 lawyers in my office. Each one of them needs to sit down every day on every case and write down everything that they did and what the reasons are for the way that they did it is, is unbelievably time consuming, number one. And then all that data has to be inputted into some sort of a system when that data is already out there in the system itself.

**PANSING BROOKS:** But you do have-- you have a case file management system or something, correct?

**DON KLEINE:** Oh, yeah, we have, we have a, a system that took two years just to put together just for our, our filing system. You know, that, that-- we put that-- you know, we'll-- every morning we'll meet and decide what charges to file and, and who the defendant is and then we are going to input in the system and then it's in that system.

**PANSING BROOKS:** So I guess I don't know, rather than just-- I wondered if, if county attorneys could, could work to determine which things-- I mean, certainly there's some road and some path that you could find some common ground on what's being desired to, to keep the taxpayers knowing what, what their, what their money is going to for sure. I know-- I mean, safe communities, yes. And we're all in favor of that. And, you know, that's clearly important. What I'm, I'm concerned about is we do have over representation of African-American people. They're not worse people. Yes, they've had historic issues. I, I just think, you know, we all lived through the, the very difficult summer months and it was very difficult for prosecutors. It was difficult for police, it was difficult for the Black Lives Matter people. But I think when there's a human cry that there should be some response that could indicate, you know, that, that the-- that the county attorneys are not a major part of the issue. Just be transparent. I don't know.

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**DON KLEINE:** Well, I think, I think that-- and, and I, myself, I can only speak for myself in my office. I, I try and be as transparent as I can with the community. I have to answer to the people every four years.

**PANSING BROOKS:** Right.

**DON KLEINE:** And so I, I want people to trust the system. I want my office to reflect the community that they serve and try to do everything I can in that regard. If you ever, if you ever come to my office, I'd be happy to walk you around and show you how-- who works there and, and how they work. So that's-- it's important. So the fact that we answer to the public every four years also goes into, into play here from our perspective.

**PANSING BROOKS:** OK.

**DON KLEINE:** You know.

**PANSING BROOKS:** So-- but it seems to me that transparency allows us to trust the system more and to, to-- so communication would be key to that. But I also know having lived here and worked in the county attorney's office as a, as a neophyte law student and having followed this a little bit, that Joe Kelly did initiate this in Lancaster County, something-- six years ago and kept track of racial disparity in Lancaster County. So it is possible.

**DON KLEINE:** Oh, like I said, we, we have a, a detention census that comes out every week for who's in the juvenile detention center, OK, and what they're charged with, whether it's a felony or it's a juvenile court and then what race people are. So we, we, we have that number every week. And the detention, you know, juvenile detention. That's just one example.

**PANSING BROOKS:** OK.

**DON KLEINE:** And we share that with the people in the community, and our juvenile, JDAI, or, or whoever else wants to look at it to figure out how do we solve these problems that exist with regard to racial disparity if that's the case. Is it because of discrimination or is it because we have problems in that area, northeast precincts, say, where we have most of the-- our, our crime reports come from? And the police do a lot of interaction with the community there.



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**PANSING BROOKS:** OK, well, just finally, I just want to say again, I, I wish people didn't feel defensive about this. We had to react somewhat to the-- over 200 people that came to speak to us last summer in the midst of COVID for those two day hearings. And with that, they expected immediate, immediate reaction, immediate discussions. And, you know, this is just one of the ways to think about, you know, how to communicate open transparency across the system, across the community, across the state. Again, I don't think it is something that's to be a personal attack against county attorneys and the work that, that the good attorney, county attorneys do every single day. And I appreciate your efforts and your work. And I just wish that there were a way to communicate better so that we could find good common ground together.

**DON KLEINE:** Well, you know, Senator, when you, you say that and then if you look at the bill and, and, and, and the proponent of the bill says and the people we want on this committee are two defense attorneys and two defendants, four out of the people out of the seven. Well, how, how does that, how does that ingratiate yourself with-- and say this is the people who are going to supervise your transparency? OK. And I-- so I think that's a-- it's a-- it's, it's if you're trying to work together, that's a bad way to do it. And I, and I don't disagree with my colleagues who are offended at some of the things that were on this bill in that manner, so.

**PANSING BROOKS:** Well, it's good to communicate about it and let us know what parts really do give you the most angst. So thank you for coming today.

**DON KLEINE:** Sure.

**DeBOER:** OK.

**PANSING BROOKS:** Senator DeBoer, you're going to go then I'm going to go.

**DeBOER:** Yeah.

**PANSING BROOKS:** OK.

**DeBOER:** I think some of our members are going off to the Executive Committee. So are there other questions from the committee?

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**McKINNEY:** I just got two. Do you not, do you not believe that there is systemic racism in our system in Nebraska?

**DON KLEINE:** I think that anytime you have human beings involved, that there could be some people who have beliefs that are racist or don't even understand. You know, one of the most important things to me about race relations is, is to know people who are of color and people of color to know people and the communities mix. And like I said, to make, make offices so that when somebody walks into my office, they see people of color there. And so that it's, it's important. Yeah, and I think there are some, some tendencies from some folks who don't understand where people are coming from or why they might have issues that they have. But I don't think the system itself is, is, is set up to be racist in nature. And I don't think you just take data and say, oh, because there are, there are more black people in, in the juvenile detention center or in prison then the prosecutors are racist because they're prosecuting those cases.

**McKINNEY:** I don't think no one's saying the prosecutors are racist. I, I think what people are pointing out is there's a disproportionate population of individuals from the black and brown communities that are inside our, our, our, our criminal justice system. Something else I would like point out in the article that I mentioned that the, the Guardian put out about you, it pointed out that you used a officer as a prosecution witness and then this officer was involved in a shooting of a black man. And you refused to step away from that case. The officer was then not charged either. Do you see an issue with that--

**DON KLEINE:** No.

**McKINNEY:** --where somebody from my community may have a issue with you being unwilling to step away from that type of case?

**DON KLEINE:** You know, I've, I've charged--

**McKINNEY:** Considering your relationship with the officer prior.

**DON KLEINE:** Well, sure, I've, I've charged several police officers with felonies over the course of my tenure as county attorney. So, no, I don't, I don't see that. I don't, I don't look at it, whether it's-- if it was, it was a lawyer, if it was a police officer, I don't think my relationship is as such. I really believe that if a, if a police

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officer commits a crime, that police officers would want that person prosecuted properly, so. And I can name cases that I've, that I've handled with regard to police officers. So I don't think just because there's a-- might be a police officer that was charged with a crime I need to step away, because I work with police officers on a daily basis. I work with lawyers on a daily basis. I work with a lot of people on a daily basis.

**McKINNEY:** I know what you said, but what, what I'm asking is, do you not see why some individuals in, in our communities would be cautious or kind of leery of you not being willing to step away from a case that involves a officer that you have worked with prior? Do you not see where that, that, that, that would come from?

**DON KLEINE:** Oh, no, sure, I think that's always a concern. It would be a concern to me, too, and I would take a look at that and say, ethically, can I do this case to the best of my ability or is it-- is that going to have an impact on me? Whether, whether it's a-- you know, if I had somebody that's a friend of mine who got in trouble, obviously I would-- you know, I would, I would take a look at it and say, you know what, that's something I need to step away from. But just because they're a police officer and I work with police officers doesn't mean that I'm not going to be able to, to do what I'm supposed to do on that case.

**McKINNEY:** All right. Thank you.

**DON KLEINE:** Sure.

**DeBOER:** Any other questions from the committee? Thank you.

**DON KLEINE:** Thank you.

**DeBOER:** Is there other opposition testimony?

**COREY O'BRIEN:** Is there still [INAUDIBLE]?

**JOSH HENNINGSSEN:** It's not a requirement.

**COREY O'BRIEN:** Huh?

**JOSH HENNINGSSEN:** It's not a requirement.

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**COREY O'BRIEN:** It's not a requirement?

**DeBOER:** No. Welcome to the Judiciary Committee.

**COREY O'BRIEN:** Good afternoon now. My name is Corey O'Brien, C-o-r-e-y O-'-B-r-i-e-n. Madam Vice Chair, members of the committee, I represent the Nebraska Attorney General's Office. We stand in opposition of LB151. I would echo many of the comments made by Mr. Kleine on behalf of the County Attorneys Association. This is a bad government bill. This is inefficient government. As you can see from the fiscal note that our office submitted during the first biennium, our costs conservatively would be in excess of \$400,000 per year or \$800,000 for the entire biennium. And frankly, I think that that's way low. The simple truth of the matter is we can spend that money a lot more wisely. This would cost considerable personnel cost, time cost. And let's not overlook the fact that all of the data points that are being sought in this bill are currently available. Mr.-- Senator Morfeld was not denied that information. It was going to cost money in order to get it. That's just the simple reality of the fact that we do not have the ability financially and resource wise now to supply that information without taking away from Peter to give to Paul. Some other things that I wanted to mention. What was mentioned about collection of information from the Crime Commission for law enforcement doesn't exist here because we're talking about data from 93 different county attorneys. They are elected county attorneys. They are not answerable to the Crime Commission. They're not answerable to the Attorney General's Office. The way the bill is structured is it makes us essentially be their boss, which runs afoul of Nebraska's Constitution. It jeopardizes our relationship with prosecutors as well to try to enforce provisions of the bill. Because, again, if anybody's a servant, the Attorney General's Office is the servant of the 93 county attorneys. The same way with the Crime Commission, law enforcement is answerable to the Crime Commission, 93 elected county attorneys are not. And that's why that-- this is so different. But we would oppose the bill largely for those reasons, many of which Mr. Kleine said. And the fact of the matter is, is that it is incredibly cost prohibitive, time prohibitive. You know, when I was a young county attorney working in Don's office from 8:30 in the morning until 8:30 at night, I'd be doing nothing but my prosecutorial work, didn't have any time whatsoever to collect this data in a format that would be required here. My lawyers just got done prosecuting the Sydney Loofe murder case. They spent nearly 12 weeks working 15 to 18 hour

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days Monday through Sunday. They would have zero opportunity to collect any of this information and present it in this format. Even though all this information is already currently available, nobody's denying the public from having access to this information. Any UNO researcher that wants to come in and get this information can certainly come and do so at any point in time. And we are completely transparent. Nobody's hiding anything. Thank you. And I'd ask-- answer any questions anybody has.

**DeBOER:** Are there any questions? Senator Brandt.

**COREY O'BRIEN:** Yes.

**BRANDT:** Thank you, Attorney General O'Brien. And on behalf of the 32nd District, thank you for your work on that murder case.

**COREY O'BRIEN:** You're welcome, sir.

**BRANDT:** That's it.

**DeBOER:** Other questions from the committee? I do have a question for you myself.

**COREY O'BRIEN:** Yes, ma'am.

**DeBOER:** You've said that, and I noticed, too, that some of the information for sure I know is available and, in fact, maybe is probably more readily available through the judicial branch than even through the prosecutor's office. But some of the information, it does seem to me, would not be available. The-- I'm trying to find it now, but discussions about why the prosecutor decided to do what they did. So if they decided to offer a plea, why they decided? Some of those kinds of questions. Those-- is that sort of thing available? Is that your contention?

**COREY O'BRIEN:** Well, we call that data points, but I'm not even sure that that's a data point. It sounds like a motivation point. You know, and how do you really calculate that? I mean, nine times out of ten, the reason a decision is being made is because somebody stuck a gun in an old lady's face and they need to go to prison. And so how do you calculate that data point? I don't, I don't, I don't even know how you even begin to collect that data as well as analyze it and preserve it and keep it. So some of it, you know, would be practically difficult

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to keep. I mean, you're talking about potentially motives. You know, but again, why would it necessarily be the prosecutors? Why, why wouldn't we ask defense attorneys, you know, why certain decisions were made in the cases, too? Because wouldn't that be as important as well? Why did they accept pleas? Things of that nature.

**DeBOER:** OK. I-- and I wish I had written down the particular ones that I was wondering about, but at least the idea is that you think all of this, of this information is available somewhere to the public, at least through court records?

**COREY O'BRIEN:** Anybody can go down to the courthouse, search through the electronic databases of Justice right now and find most, if not all of this data, particularly the data that would be important for it seems like the review that wants to be done in terms of, you know, overall, why are certain decisions being made? You know, some of the data is very illusory and isn't really data in my opinion, and maybe perhaps some of that is not easily captured. But then again, I don't know how you even document some of that stuff.

**DeBOER:** OK, well, I'll ask the introducer later. Maybe he has some more information about that. So that's very helpful. Thank you very much.

**COREY O'BRIEN:** Thank you.

**DeBOER:** Are there other-- is there other opponent testimony?

**JON CANNON:** Good afternoon, at this point, esteem members of the Judiciary Committee. My name is Jon Cannon, J-o-n C-a-n-n-o-n. I am the executive director-- pardon me, of the Nebraska Association of County Officials, otherwise known as NACO, here to testify in opposition to LB151. First and foremost, I want to thank Senator Morfeld for bringing this bill. I think these conversations are important for us to have. I also think that the goals that he has for a more transparent system is certainly laudable. And we will not criticize transparency. At least I won't. I will not coming from NACO. However, we're here purely because of the issue of cost as you know, and, and I'll be over in Revenue sometime this afternoon saying pretty much the same thing. But from county government's perspective, our costs are supported entirely by the property tax. You may have heard of, of this is an issue in the state of Nebraska from time to time.

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And any system that we have to gather this information and process it in a meaningful way is going to cost money. And so to the extent that Senator Morfeld has, has indicated that there is some way to work on costs, that is encouraging for us. But simply put, you know, we always talk about the three-legged stool in Nebraska as far as how we are going to support all the governmental functions that we have. And in county government, it's really more like a 1.1 legged stool. It's primarily property tax. And we have a bit of, of inheritance tax and, and a little bit of the motor vehicle tax allocation that comes our way, but really it's primarily from the property tax that, that we're looking at this. I have a whole spiel on tax policy that I, I won't really go into and, and make your eyes glaze over because they, they tend to make mine. But what I will say is that I represent all 93 counties in the state of Nebraska and certainly to the extent that the Attorney General's Office and the city-- the, the Douglas County Attorney have been here to talk about what they are able to do and the sorts of case management systems that they have, I am here to tell you that that does not exist in the majority of Nebraska's counties. And in fact, I would suggest that the majority of counties have a limited number of attorneys in the first place. So a lot of the information that we have, as far as, you know, the prosecutor's age, name, race, after a while, it's very, very easy to figure out in, in probably the, the, you know, 50 to 60 Nebraska counties exactly who you're talking about in those instances. The other thing I, I kind of wanted to talk about very briefly is the sorts of policies that would be required to be recorded. And I've been in, in government before, and I can tell you that when it comes time to drafting a policy, it takes forever. When you have attorneys that are drafting a policy and circulating around, it takes even longer. And so to the extent that this is a requirement that we put in-- into the system, it's something that is going to take time. And as we all know, time is money. And it takes me right back to what I was talking about as far as costs. I'm just about out of time. I'll be happy to take any questions that you have. Thank you.

**DeBOER:** Are there questions from the committee? All right, thank you, sir.

**JON CANNON:** Thank you.

**DeBOER:** Is there others wishing to testify in opposition? Is there anyone who would like to testify in a neutral position? As Senator

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Morfeld comes up to close, I will say that, that we have some dropped off written testifier, that's Patrick Condon of the Nebraska County Attorneys Association. Additionally, we received seven letters, four from proponents and three from opponents. Senator Morfeld.

**MORFELD:** OK, thank you. I'm, I'm just going to play some things for the record and for the benefit of the three people left here. Thank you for listening. I think that this is very enlightening. There's a few things that I learned as well. I mean, first off, I think that there's a little bit of a contradiction. On one hand, they're saying all the information is publicly available and why would we duplicate efforts? But yet it's really hard to get this information. And I suppose if your, you know, average Joe citizen, you want to go down to the courthouse for hours upon hours and you don't even have experience using those systems, then quite frankly, it's, it's not publicly available. And if it costs you \$30,000 to get it, I think Mr. O'Brien said, well, it wasn't that he was denied the information he wasn't given the information is just that it cost money to put together. Well, \$30,000 does not make it publicly available. It's not available to the general public to be able to see and look at unless they have means and they're wealthy or they happen to have a foundation or something like that. And so the bottom line is, is who is in the best position to make this information publicly available? And then also getting an understanding of the decision-making process that goes into some of these charging decisions, plea bargains, things like that. That's really valuable information for the public to know and understand what's going on in our criminal justice system. In terms of the-- I didn't know the, the advisory board would be so insulting to people, but I'm open to making the advisory board bigger or the composition a little bit different. I think that the point of the advisory board was to have different perspectives on the advisory board, which is why you would have defense attorneys rather than just the perspective of the independent-- of the individuals running their prosecutor's office. So the point of having defendants and defense attorney on board on the advisory board was really to give a diversity of perspective and viewpoint. And there could be, I think, three other county attorneys that could be appointed to that advisory board to give that viewpoint as well. And so I'm, I'm more than happy to work with folks on what that looks like and, and, you know, other details surrounding legislation. There's a bunch of other stuff that I could



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say but we're going over the lunch hour and I want to be respectful of people's time.

**DeBOER:** Are there questions? I have a question, Senator Morfeld. Some of this information, because I have some data bills this year, some of this information, it appears like, might be within the justice system, is that right?

**MORFELD:** Some of it, yeah, definitely, some of it is.

**DeBOER:** Type of sentence.

**MORFELD:** Yep.

**DeBOER:** That sort of thing.

**MORFELD:** Absolutely.

**DeBOER:** Is there a way that we could bifurcate this? And so because it seems like the judicial branch would be in a better position if they already collected that information possibly to, to present that sort of information.

**MORFELD:** Yeah, some of this information could, could be collected and, and remitted from the justice system. So absolutely. I'd be happy to bifurcate the bill. Some of this information, such as plea bargains, policies within the, the county attorneys' and the city attorneys' offices, things like that, are only going to be available, obviously, in those offices.

**DeBOER:** OK. All right, thank you. And that ends our hearing on LB151, and that ends our morning of hearings.

[BREAK]

**LATHROP:** My apologies. Are you ready to go? OK, my apologies. I also serve on the Exec Board, as do three other members of this committee. We just got done with a hearing in another room, so I apologize for being late. Before we start our hearings this afternoon, I have something that I read so that everybody kind of understands how we proceed here, as well as the public that's watching on NET. Good afternoon and welcome to the Judiciary Committee. My name is Steve

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Lathrop, I represent Legislative District 12, and that includes Ralston and parts of southwest Omaha. I am the Chair of the Judiciary Committee. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This process, like so much of our daily lives, has been complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you to consider taking advantage of the additional methods of sharing your thoughts and opinions. For a complete detail on the four options available, go to the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). We will be following COVID-19 procedures this session for the safety of our committee members, staff, pages and the public. We ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room will be limited. We ask you to enter the hearing room only when necessary to attend the bill hearing in progress. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between bills to allow time for the public to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and transcribers with clearly hearing and understanding the testimony. Pages will satisfy the front-- sanitize the front table and chair. When public hearings reach seating capacity or near capacity the entrance will be monitored by the Sergeant at Arms, who will allow people to enter the hearing room based on seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability of an overflow room for hearings, which may attract testifiers and observers. For hearings with, with large attendance, we request only testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns we are providing two options this year for testifying on a committee bill. First, you may drop off written testimony prior to the hearing. Please note that the four following requirements must be met to qualify to be on the committee statement. First, submission of written testimony will be accepted only the day of the hearing between 8:30 a.m. and 9:30 a.m. in the Judiciary, Judiciary Committee hearing room, that's in this room we're in today. Number two, individuals must present the written

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testimony in person and fill out a testifier sheet. Number three, testifiers must submit at least 12 copies. Number four, testimony must be written, must be a written statement no more than two pages single-spaced or four pages double-spaced in length. No additional handouts or letters from others may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official hearing transcript. This testimony will be included on that committee statement if all four of these criteria are met. And of course, and as always, persons attending public hearings will have an opportunity to give verbal testimony. That's the second way to testify. On the table inside the doors you will find yellow testifier sheets. Fill out a yellow testifier sheet only if you are actually testifying before the committee. If you do that, please print legibly, hand the yellow testifier sheet to the page as you come forward to testify. There is also a white sheet on the table, if you do not wish to testify but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12 noon the last workday before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or delivered to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin, as we always do, with each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents and finally anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have any copies of your testimony, please bring at least 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read someone else's testimony. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning, and when the light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd remind everyone the use of cell phones and other electronic devices is not allowed during public

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hearings, though senators may use them to take notes and stay in contact with staff. At this time, I would ask everyone to look at their cell phones and make sure they are on the silent mode. A reminder that verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Since we've gone paperless this year in the Judiciary Committee, senators will instead be using their laptops to pull up documents and follow along on each bill. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill being heard, but rather senators may have bills to introduce in other committees or other meetings to attend to. With that, we'll have the senators introduce themselves, begin with Senator DeBoer.

**DeBOER:** Good afternoon. My name is Wendy DeBoer. I represent District 10, which is all of Bennington and parts of northwest Omaha.

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

**PANSING BROOKS:** Good afternoon. Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln.

**McKINNEY:** Good afternoon. Terrell McKinney, I represent District 11, which is north Omaha.

**LATHROP:** Assisting the committee today are Laurie Vollertsen, our committee clerk, and Josh Henningsen, one of our two legal counsel. We are also assisted today by pages Ashton Krebs and Samuel Sweeney, both students at UNL. Two last things, if I may. We are combining bills today, LB51 and LB472 will be heard at the same time. LB51 is my bill, I'll introduce it. After I introduce my bill, then Senator DeBoer will introduce her bill, and then we'll begin taking proponents and opponents. LB-- then the second hearing then will be combining Senator McKinney's LB601 with Senator Wayne's LB551. They have to do with a database that both bills ask to be created or want to be created. We will take Senator Pansing Brooks's bill, LB110. And finally, we will combine at Senator Wayne's request LB216 and LB217 as our last hearing. And with that, I will turn it over to our able Vice Chair.

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**PANSING BROOKS:** Thank you, Chairman Lathrop. So we will now open the hearing on LB51, and it will be joined by LB472. Senator Lathrop will now open on LB51. Senator Lathrop, welcome to your committee.

**LATHROP:** Thank you, Madam Vice Chair Pansing Brooks and members of the legislative Judiciary Committee. My name is Steve Lathrop, I represent Legislative District 12. That's L-a-t-h-r-o-p. I'm here today to introduce for your consideration LB51. LB51 seeks to improve the safety of our citizens and increase the ability of our law enforcement agencies to effectively and fairly police our communities. In the wake of the civil unrest responding to police violence against and disproportionate treatment of people of color across the country over the summer, this committee held two days of hearing. At these hearings, 185 people came forward to share their concerns and personal experiences of unfair treatment or unnecessary use of force by law enforcement and what effect that had upon them, their families and their communities. It was quite an education and gave this committee a strong imperative to act. Following this, we held an interim study on the best means to address these concerns and have since worked with law enforcement agencies and civil justice advocates across the state to arrive at a series of measures contained in LB51. A consensus has begun to emerge nationally around a handful of practices aimed at minimizing the use of unnecessary force. This bill would ban chokeholds, create a duty to intervene in instances of excessive force and limit the use of carotid restraints. These are the types of things that people were marching for and that experts tend to agree will help prevent the types of problems with the use of force we've seen in other jurisdictions. When we spoke with law enforcement, we found that generally they are supportive of the use of any practice that safely minimizes the use of force and would reduce racial disparities in policing. What they need in order to do these things well and consistently is more and better education and to be guided by clear policies. This bill achieves those things by increasing education standards while also reducing bureaucratic hurdles that currently make it difficult to achieve certification and continuing education outside of the larger metropolitan area. It would require topics of ongoing education to include de-escalation techniques, addressing mental health and substance abuse issues, anti-bias and implicit bias training, appropriate use of firearms and citizens' constitutional rights. Furthermore, the bill requires all officers acting in the field to be certified, required psyche-- require psychological

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evaluations for certification, requires accreditation of all law enforcement agencies, clarifies the grounds for suspension or revocation of an officer, and makes sure officers cannot receive certification if they previously had their certification revoked in another jurisdiction or have been convicted of a crime that would make them unfit to serve. One way to think of this bill is that it will increase the professionalism of our police force by raising minimum standards, requiring universal certification and accreditation, ensuring there's nothing in their background that should preclude them from serving and providing ample education and continuing education so that officers and enforcement agencies will be able to set clear standards and continuously improve practices across the state. We expect these things of our doctors and nurses and engineers and teachers. It only makes sense that we do the same with the people charged with keeping us safe and making life and death decisions on our streets. And with that, I'd be happy to take questions.

**PANSING BROOKS:** Does anyone have a question for Senator Lathrop? I don't see any, but I presume you'll stay around the close.

**LATHROP:** Yes, I certainly will.

**PANSING BROOKS:** Thank you, Senator Lathrop. And now Senator DeBoer will open on LB472. Welcome, Senator DeBoer.

**DeBOER:** Thank you. Good afternoon, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent the 10th Legislative District, which includes Bennington and northwest Omaha. Today, I'm introducing LB472, which would require law enforcement agencies to create policies regarding an officer's duty to intervene in the use of excessive force by another officer. I have AM73 here, which is being handed out to the committee. But for the purposes of explaining to the rest of the audience as well, this is a white copy amendment that replaces the original bill. My introduction then will refer to the bill as amended by AM73. The white copy amendment of LB472 is substantially similar to Section 21 of LB51, and therefore it is appropriate that the hearings should be taken up together. LB472 as amended will require each law enforcement agency to create a policy outlining when a law enforcement officer must intervene to prevent the use of excessive force by another police officer and also the opposite, when they should not. The policy must also include an outline of disciplinary measures for

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officers failing to intervene as required, a requirement that officers-- officers report incidents to their immediate supervisors and measures preventing retaliation against officers who attempt to intervene as required by the policy. Each law enforcement agency will be able to make their own policy that reflects and is specifically tailored to their agency. They will be required to submit these policies to the Nebraska Crime Commission. Additionally, the Nebraska Crime Commission will develop a model written policy that they will distribute to law enforcement agencies. Agencies may adopt or modify the model policy if they choose to do so, or they may create their own policy. Thank you for considering LB472. I'm happy to answer any questions that you may have.

**PANSING BROOKS:** Thank you, Senator DeBoer. Anybody have a question for Senator DeBoer. No? And you'll stay around the close as well?

**DeBOER:** I suppose.

**PANSING BROOKS:** Thank you, Senator DeBoer. OK, one thing is, is we want to remind testifiers to clearly state if you are testifying on one of the bills or on both of the bills. So that will help us out for the record. So now we will take proponents. Thank you. Welcome.

**BOB LAUSTEN:** Welcome. Thank you, I guess acting Chairman Brooks, members of the Judiciary Committee. My name is Bob Lausten, B-o-b L-a-u-s-t-e-n, I'm a 36-year law enforcement veteran having served with the city of La Vista for the past 30 years, including the last 18 as chief. I'm also representing the United Cities of Sarpy County. I'm testifying on both bills. I served on the Police Standards Advisory Council from 2008 to 2016. I'm testifying in support again of both bills. I do think many items in LB51 could have been enacted by a change in Title 79 of the administrative code. However, after being on PSAC, I learned our profession as a whole can be resistant to change and the system is currently overcumbersome and bureaucratically slow for change. Thank you, Senator Lathrop, for introducing this bill. What I think increases police professionalism and is needed in Nebraska are many things in this bill. Many agencies already practice what's included. However, there are a lot of them that don't. There are many improvements for Nebraska law enforcement in this bill, including not having law enforcement powers until certified, mandatory preemployment psychological evaluations, no reserve certification as in current statute, some sort of accreditation, required training in



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de-escalation for recruits. Our police academy in Sarpy County, made up of La Vista, Bellevue, Papillion police departments and the Sarpy and Douglas County sheriff now teach a 40-hour crisis intervention training to our recruits. Prohibiting chokeholds and less deadly force if author-- authorized, excellent. Requiring a duty to intervene policy, making it easier to address officer misconduct by clarifying the definition of serious misconduct. Increasing PSAC members, which I think is an important part of this to get a better grasp of what's going on, especially on the eastern side of our state. Mandatory agency policy regarding accepting investigating complaints of law enforcement officer misconduct. We need clear policies from departments on how that's done and how they're investigated. Increasing the mandatory training to 40 hours may be one of the only issues in this bill that may cause some concern. In 2012, we went from zero hours advanced officer training per officer required to 20 hours a year. There was pushback from smaller agencies. At the time, PSAC had been working for three years on the bill and we were getting nowhere. The ACLU introduced a bill and boom, then we get 20 hours, just like that. Forty hours may be difficult operationally for smaller agencies in Nebraska and administratively for some of the larger agencies. The identified areas of training in this bill probably need to be worked on, as a street officer in La Vista or Omaha compared to the sheriff or Omaha police chief probably don't need the exact type of training in the exact scenarios. Because we already had the chance to do this ourselves, you know, we thank you for the state, putting this into state law if we have to. That's the only way we're going to get things done, honestly. Again, my colleagues around the state may not agree with all of this, but the bill addresses many of these issues. As to 417-- LB472, we have a policy in place. The main point is going to be how law enforcement agencies train their personnel with that policy. It needs to be explained what a duty to intervene actually is and train in those situations. I've seen several agencies explain this in detail in their policies and have training plans in place. So in fact, we support that. Thank you for your consideration. I'd be happy to answer any questions that you have.

**PANSING BROOKS:** Thank you for coming today to Chief Lausten. Any questions for the chief?

**BOB LAUSTEN:** Thank you.

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



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**JIM MAGUIRE:** Good afternoon, Vice Chair Pansing Brooks, senators of the Judiciary Committee. My name is Jim McGuire, J-i-m M-a-g-u-i-r-e, I'm president of the Nebraska Fraternal Order of Police and we are here to support LB51. We can't thank Senator Lathrop's thoughtful thought process in crafting this legislation. We think that it will dramatically improve policing in Nebraska. Chief Lausten already went through a lot of the stuff that was already in the bill, so it may be a little repetitive, but mainly I just want to point out some of the things that are, that are important to us in the Nebraska Fraternal Order of Police. And we know that there are going to be some issues with some of the smaller agencies involved. And so-- and not to exclude the larger agencies. However, when they, when they went from mandating 20 hours, they had it in there that you could have 10 hours of Internet training and the rest, the other 10 had to be basically in person. What this bill does is since we're, we're bumping it up to 40 hours, it can be all done online. The-- some of these companies that provide training have dramatically improved the, I guess I don't want to call it a movie, but some of the things that you can watch online. They're very, they're sharp, they're good and people will get something out of it. And that's, that's important for us, especially when you start talking about, let's say, de-escalation or legal updates. There are bills that are-- there, there are rulings that come down that what you could do yesterday you can no longer do today. There are state laws that are introduced every year and that, that you all pass. It's important for us to completely understand the intent of what those bills mean. The PSAC expansion would, would also improve because it would right now you have where Omaha and Lincoln basically switch off. You would have a permanent seat at the table of the two biggest agencies in the state of Nebraska overseeing portions of, of training, which I think is improve-- which is an improvement. The other part is, is that you would have a person of the rank of sergeant or below that would also be on that board. And it's not to say that the chiefs and sheriffs do a poor job, it's just a different perspective. That's all it is. It also requires all on-- all departments to have a duty to intervene, but it would give-- it would go through the PSAC committee, similar to what you've done with body cams and eyewitness testimony, allow the experts to come up with a model policy that can be provided to all of the agencies so that they can have a baseline. And this is the best policy that's out there. If you want to do something else, you can, but this is the best one that we think. And I know that I'm going to run out of time, so I'm trying

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to be as quick as I can. The other part, it requires departments to have a policy on investigating internal affairs complaints. As a, as a leader in the Fraternal Order of Police, and we have agencies that touch every, every county in Nebraska, I was amazed when I would call them up and I would say, what's your, what's your policy on-- I'll stop right there.

**PANSING BROOKS:** Could you please-- I'd like you to go ahead and continue your last thought.

**JIM MAGUIRE:** So you would be amazed at some of them that would say, we just, we don't have complaints, so we just kind of deal it in-house. The same with officer-involved shootings. You would ask them, OK, if you are involved in an officer-involved shooting, what would you do? And some of these agencies don't have, have written policies. They said, well, we may have to call the State Patrol. This would require, you know, if you have the certification for all departments, it would have everybody on board on what they're doing, because I know I'm running late here. Some order at 72nd and Dodge only had the protests. You had nine, I'm going to say nine different agencies that were down there that may have nine different policies on use of force. So if everybody has a baseline, well, we know they're not going to go below this. That's, that's a, it's a good thing for everybody to be-- to know a baseline. Thank you.

**PANSING BROOKS:** Thank you. Are there any questions? Senator Brandt.

**BRANDT:** Thank you, Vice Chair Pansing Brooks. And thank you, Mr. Maguire, for testifying today. And that is, is an excellent situation. You've got nine different departments there and now you're looking at a possible law, and the use of force. Does that cross over on jurisdictional agency? So you've got the sheriff's department from Sarpy County there, you have an OPD police officer and one of those is involved in that situation. How would this bill handle that?

**JIM MAGUIRE:** Well, you would know-- for, for somebody that was actually down there, you would know that at a minimum, I know they can't go over this. You can't just start shooting indiscriminately towards people and citizens. One of the main thing was, and this is going back, and I'm not saying that this happens now. However, when Tasers first came out, there was no real true policy on how to use them, so a lot of times the policies would say, well, if they

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basically say no, you can use it. Now, it's been expanded to some, but I'm not 100 percent sure if all agencies have that baseline. You can't use it just on this. And this would have some kind of criteria for all the departments that say you just can't do, you can't do it this way. And it just, it-- when you're down there and you've got, you know, you're in a line, you're in a line with a lot of other officers from a lot of different agencies and you're all just trying to keep the peace and everything else, it's important that everybody knows, well, they're not just going to start, you know, shooting indiscriminately or they're not going to go ahead and start shooting at that person, which might be within their policy, but not within Omaha's policy. So it's, it's important that you have a baseline.

**BRANDT:** But I guess my point is you have two different officers from two different agencies, is there an obligation for the officer from another department to intervene against that other department? I mean, you've got a state patrolman--

**JIM MAGUIRE:** That is--

**BRANDT:** --you got a sheriff's deputy, one is doing something. Can that state patrolman or vice versa?

**JIM MAGUIRE:** That is an excellent question. And I do think that if there was a model policy on how the duty to intervene, then everybody would know. I don't know how the Omaha Police Department, how they would require their officers to intervene if another officer was within their own policy. I would hope, and I can't because I'm not a command officer, I would hope that they would-- that the agencies that come to assist Omaha have some basic understanding of how their policies read so that, you know, they're, they're following within Omaha's policy. But what happens if you go to North Platte? What happens--

**BRANDT:** Right.

**JIM MAGUIRE:** --if you go to Alliance? Some of these other agencies, their policies may be dramatically different.

**BRANDT:** And then I'm going to switch gears a little bit. I'm pleased to hear that the 40 hours of training is online.

**JIM MAGUIRE:** Yeah.

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**BRANDT:** A lot of my small counties may only have one sheriff's deputy on duty in the evening. So is this a situation where that deputy, things are slow, he can start working on this for an hour and a half, then the call comes in. Can he just put it on hold, go take care of his duties and then come back and pick up where he left off?

**JIM MAGUIRE:** Absolutely.

**BRANDT:** OK, thank you.

**PANSING BROOKS:** Any other questions? Senator McKinney.

**McKINNEY:** First, do you think 40 hours of online training is sufficient enough for officers?

**JIM MAGUIRE:** I do think that it's sufficient as long as you are getting that specific training. I think that as long as they are getting what I would describe as legal updates, de-escalation, a mental health refresher mandated every year, because those are the important things not only for the citizens, but for us officers that are out on the street.

**McKINNEY:** I--

**JIM MAGUIRE:** But I do think that it's-- we're doubling it from 20 to 40, and I think Senator Lathrop was, was very careful in crafting that so that it doesn't disrupt the overall operations of other, of other departments.

**McKINNEY:** I ask that question because, for example, I was, you know, I was a part-time law student, then a pandemic happened and we went from in-person to online. And it was for me being, being an online student is tough. Learning some-- sitting in front of a laptop or a computer isn't the most conducive to learning for me. So, so what I'm get-- so what I'm saying is, is this a one-size-fit-all for officers because learning-- everyone learns at a different level. And, and that's what I'm trying to understand.

**JIM MAGUIRE:** I understand your, your question now. It's an option to use the 40 hours online.

**McKINNEY:** OK.

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**JIM MAGUIRE:** If the, if a police chief decides, you know what, we want to do 40 hours and it all has to be in person, they have-- they can do that. It's just an option because we know that it can be burdensome for some for-- what works for Omaha, might not work for everybody else. And we just had Senator Lathrop try to find a compromise in how he could accommodate that. And I think having the option of doing some of these training, training opportunities online would, would benefit everybody.

**McKINNEY:** All right. And my last question, what is, what is the average amount of cultural competency and implicit bias training that officers take per year?

**JIM MAGUIRE:** Two hours.

**McKINNEY:** Two hours?

**JIM MAGUIRE:** Two hours.

**McKINNEY:** Do you think two hours is sufficient enough?

**JIM MAGUIRE:** It was, it was mandated last year, so this is the first full year of going through it for two hours. You can certainly do more hours of it, and there's nothing to say in this bill that they couldn't do more. They have to do a minimum of two hours. The initial when you're, when you're going through the academy, we're now going to require eight hours. And then every, every year after that is just a refresher. But if, if, if a police chief or sheriff thinks that they need to have more training of that, this will not preclude them from doing that.

**McKINNEY:** OK, thank you.

**JIM MAGUIRE:** Certainly.

**PANSING BROOKS:** Thank you, Mr. McKinney. Any other questions? I just have one, thank you. Is it-- I'm sorry, I don't know your title. Are you sergeant or--

**JIM MAGUIRE:** Well, I'm an officer now. I was, yeah.

**PANSING BROOKS:** OK, Officer--

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**JIM MAGUIRE:** No, it's fine.

**PANSING BROOKS:** Officer McGuire, thank you--

**JIM MAGUIRE:** Sure.

**PANSING BROOKS:** --for coming today. I also want to just say thank you because I hope people understand, you know, we had so many hearings last June and we've had a lot, we had over 200 people and we had a lot of people that were asking us to do something. And so I really appreciate your coming with a tone of trying to work things through or not criticizing-- well, we may be criticizing certain police, but certainly not you or the great officers that we have representing people across the state. So, you know, clearly we have a lot of people that were talking to us. And I just appreciate your very calm tone, you're willing to work with everybody to, you know, try to, try to make a difference here and make things as safe as possible for both law enforcement and the people in our community. So thank you very much for your work.

**JIM MAGUIRE:** Appreciate the kind words. Thank you.

**PANSING BROOKS:** Thank you. OK, no further questions? OK, additional proponents.

**BRUCE FERRELL:** Good afternoon, my name is Bruce Ferrell, B-r-u-c-e F-e-r-r-e-l-l. Thank you, Vice Chairman Pansing Brooks and members of the Judiciary Committee, for allowing me to testify today in support of LB51 and now LB472. My-- I am the chief of police for the city of Wahoo, but I'm also the second chair vice-- excuse me, second vice president of the Police Chiefs Association of Nebraska. So I'm speaking on behalf of both organizations. LB51 is a comprehensive bill requiring certification, accreditation, training on excessive force and policies. LB51 provides commonsense changes and modifications to existing statutes and includes and addresses concerns regarding additional training at the entry level, and ongoing education in regards to de-escalation, mental health and crisis situations. It allows flexibility in the way law enforcement executives are able to accomplish this training after certification. PCAN will continue to work with Senator Lathrop's office in discussions of any additional flexibility on training hours, whether the number of training hours or the types of additional training hours with ongoing education. This

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bill also strengthens existing LB791 conditions of employment, adds language that makes it clear the duties of agencies and their policies on citizen complaints, and complaints of officer misconduct. It provides the differences between chokeholds and carotid restraint control, how they are applied and documentation, which is in keeping with ongoing and evolving law enforcement practice. The bill addresses law enforcement accreditation. PCAN will work with Senator Lathrop's office to seek additional information on the structure, content and implementation of this process through the Nebraska Crime Commission. The bill outlines area where model policies such as duty to intervene can be accomplished for proactive response to how our officers conduct themselves in the performance of their duties. PCAN will work to provide positive feedback in regards to policies and practices that are an industry standard through industry-- through organizations such as LARM, NIRMA, IACP and etcetera. LB51 works within the framework of the industry practice with the knowledge that law enforcement executives look to-- continue to look proactively at change and a willingness towards dialogue regarding those matters. LB51 and LB472 have a balance that protects the interests of the public, officers and the governmental entities that they service and serve. PCAN looks forward to this bill moving to the floor of the Legislature and working the areas of training and accreditation to make it even stronger. And I'm open for any questions you have.

**PANSING BROOKS:** Thank you. Thank you, Chief Ferrell. Questions?  
Senator Brandt.

**BRANDT:** Thank you, Vice Chair Brooks. Chief Ferrell, how big is the Wahoo Police Department?

**BRUCE FERRELL:** We have seven officers and one part-time officer.

**BRANDT:** And then the last time you had to hire an officer, how many candidates did you have?

**BRUCE FERRELL:** I think we started out with 12. It was a lateral hire only, so only lateral police officers who are already certified could apply.

**BRANDT:** OK.

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**BRUCE FERRELL:** And then we found the one, the one candidate we were looking for.

**BRANDT:** Have you ever been in a situation where you couldn't find a certified candidate and you had to hire somebody off the street until they could go to the academy?

**BRUCE FERRELL:** I have not. But I do understand the process as I was the background investigator for the city of Bellevue, involved in the hiring practices and hiring conditions for that police department. So we were hiring both certified and noncertified officers, as well as the process it goes through, as well as the cost and time that it takes to hire those officers.

**BRANDT:** Right. And I guess my concern in reading the bill is I believe they remove the reserve officer and some of the language that allowed that to happen. And that's sort of a situation unique to sparse and rural areas out there. And I didn't know if you had any comments about that.

**BRUCE FERRELL:** Yeah, the reserve officer program, I know that the academy has not conducted any training in that area for some time. In, in the eastern part of the state, I'm only aware of a handful of reserve officers that are working in those communities. I think there could be some discussion as to either grandfathering or looking at the current qualifications of those officers and past qualifications to determine if they could stay within the certification process and look at those as well. But that's the extent of my knowledge on that.

**BRANDT:** All right, thank you.

**BRUCE FERRELL:** You bet.

**PANSING BROOKS:** Thank you. Senator Terrell McKinney.

**McKINNEY:** How are you doing? Thank you for your testimony. We have the rare, maybe not rare, but we have multiple bills that are sort of similar today. And I was wondering, are you coming in support of LB551 as well?

**BRUCE FERRELL:** I will not be supporting that one. I will make my testimony at that time.



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**McKINNEY:** OK.

**PANSING BROOKS:** Any other questions? Thank you, Chief Ferrell.

**BRUCE FERRELL:** Thank you.

**PANSING BROOKS:** Additional proponents? Welcome.

**AARON HANSON:** Thank you. Vice chairperson Pansing Brooks and members of the Judiciary Committee, my name is Aaron Hanson, H-a-n-s-o-n, I'm representing the men and women of the Omaha Police Officers Association, 13445 Cryer Avenue, Omaha, Nebraska. Today, we are testifying in support of LB51, and we will be testifying neutral on LB472. I do have to say that as, as LB51 came to our attention, there was, there was a lot of apprehension. There was some suspicion, and a lot of that comes from the, the hypercharged environment that a lot of us are living in right now. We have emotions on, on all sides of the spectrum when it comes to these issues. Once we had an opportunity to delve into the contents of LB51, I have to get Senator Lathrop credit, he, he really did a good job of trying to strike that balance between the interests of the public, professionalism and being fair to Nebraska's peace officers. I'm a 25-year veteran in the Omaha Police Department and, and that means that I can remember a time in the Omaha Police Department where training was not as at a premium as it is today. And in fact, in the early 2000s, on one of my first bargaining teams for the Omaha Police Officers Association, there was a lot of concern among the POA members and leadership that we were not receiving virtually any training. And so therefore we, we took the issue public. We talked to the mayor, talked to the police chief and city council, and we were the first collective bargaining agreement in the state to include the mandatory minimum amount of hours in our collective bargaining agreement. And at the time, that was unheard of virtually across the nation. We were on the forefront of that. And what is-- why do I share that with you? It's because we, we understand that training-- with training comes enhanced professionalism, with training will come a better response in real time, under adrenaline, under pressure and at great risk. With regard to LB472, I want to thank Senator DeBoer. We've had some very thoughtful discussions. There's constant discussions that we're trying to have to make sure that, that the concept-- that her concept of duty to intervene is in line with some of the street realities where maybe those, those lines may not be as clear. In fact, we do have some senior staff groups

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within our police department where they're all seasoned police professionals, experts in use of force, and sometimes they don't even agree on what is excessive force and what isn't based on the fact pattern. So as long as we continue these good discussions and try to strike that balance, I anticipate things will go well with that bill as well. I'd be happy to be happy to answer any questions that you may have.

**PANSING BROOKS:** Thank you, Officer Hanson. Anybody have a question?  
Senator McKinney.

**AARON HANSON:** Yes, sir.

**McKINNEY:** Thank you for your testimony. My question is, what do you think is suff-- a sufficient amount of hours that, you know, officers should take for cultural competency and implicit bias training throughout the year? Is it just the two hours or do you think they need more?

**AARON HANSON:** Well, one thing I can tell you, at least speaking for my experience as an Omaha police professional and the training that I've been through, the Omaha Police Department put an emphasis on, on anti-bias training and cultural competency training well before it was a, it was a mandatory subject that had to be trained via state statute. I remember vividly the police department putting on training on being sensitive to different cultures. Specifically, there was a training session on black culture, there was a training session on Native American culture. I have gone to training on, on how to be sensitive to interacting with juveniles. So I don't know if there is a perfect answer on how many hours of training is the right number of hours. I think it's good that we have a two-hour minimum, but I can tell you that many agencies, speaking for mine, we routinely go over that to two hours.

**McKINNEY:** As you point out that Omaha police have had some sort of training throughout the years, I'm from Omaha, from north Omaha, and there's many instances throughout the years of situations with law enforcement that didn't end up the best between community members and law enforcement. Is there something missing in the training that needs to be added or do you think the training is sufficient?

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**AARON HANSON:** Well, I think you can always strive to have better training. You can always strive to have better community relations. I can tell you as a 25-year veteran, and I was a sergeant on the gang unit, there are unfortunately going to be situations in the day-to-day operations of any police department, especially a large city police department, where people are not going to walk away from the interactions feeling like-- they're not going to feel right about it. It's just-- and sometimes there's a good reason for that, sometimes maybe the officer did something wrong. In my experience, the majority of times where it was just a rough situation, emotionally charged, and no one really likes to see the police or deal with them. I don't, and I am a police officer. I don't like to deal with them off duty or get traffic stopped. So I think that as long as we're moving in a direction where we're trying to focus on better community relations, trying to focus on enhanced training, trying to focus on empathy building, hopefully we'll continue to improve.

**McKINNEY:** Would you be open to the idea to require law enforcement officers and individuals involved with law enforcement to spend more time in the communities that they're patrolling off-- but just being off, off the clock. Because I think that's a huge part of the issue is a lot of times officers don't live in the communities they patrol or function in, but have a heavy hand in some out-- a lot of outcomes in those communities. Do you think it would be a good best practice to require law enforcement officials to spend some more, more volunteer hours in those communities? And I don't just mean with the PALS thing interacting with kids, actually interacting with community members more on an, on an average basis than it is?

**AARON HANSON:** Well, I don't know, I don't know if the right answer is to compel-- I don't think you get a good end product whenever you compel somebody to do something. What I can tell you is this. In my experience, again, as a 25-year vet, especially under the current leadership that we have in the police department, we are pushed and prompted and supported to do exactly what you're saying. Senator McKinney, I can tell you that on my days off, usually one of those two, if not both, there is time in the community that I, that I patrol trying to mentor young men. Specifically my volunteerism is I try to push young men and women into the skilled labor trades. So what you're saying rings familiar in my ears. I can tell you I'm not the only one that does that. Not a lot of, not a lot of these officers ask for, for that attention, nor should they really. It's the right thing to do,

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right? I think it probably happens more than, than people would think. But definitely we can do more to try to push more officers to do that in terms of a culture.

**McKINNEY:** OK, thank you.

**PANSING BROOKS:** Any other questions? No? Thank you for coming today, Mr. Hanson.

**AARON HANSON:** Thank you.

**PANSING BROOKS:** Next proponent. Welcome. How many more people are going to testify on this bill? OK, thank you. Welcome.

**STEVE CERVENY:** Thank you. Vice Chair Pansing Brooks, members of the Judiciary Committee, my name is Steve Cerveny, S-t-e-v-e C-e-r-v-e-n-y, I am a captain with the police department, 505 South 15th Street, Omaha, Nebraska, 68102. Thank you for the opportunity to speak with you today. The Omaha Police Department supports this bill, LB51, and believes it contains meaningful, comprehensive police reform measures that will assist efforts to improve policing, including a state registry of decertified officers, required background investigations of certified officers applying from other states, important de-escalation and implicit bias training, chokehold prohibitions, use of force and duty to intervene policies, increased realistic simulator training, requirements for complaint and misconduct investigations. It mandates psychological evaluations prior to hiring law enforcement officers. It provides for accreditation standards and more. The Omaha Police Department has been proactive in implementing many meaningful police improvement measures. We encourage and appreciate collaborative efforts to review and create policy standards that will ensure the best professional police service to all the citizens of Nebraska. And we feel that LB51, this bill, will help do that. Thank you.

**PANSING BROOKS:** Thank you very much, Captain. Anybody have a question for Captain Cerveny? No? Thank you for coming today.

**STEVE CERVENY:** Thank you.

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

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**SPIKE EICKHOLT:** Thank you, Madam Vice Chair and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU in Nebraska, testifying in support of both LB51 and LB472. It's a little bit, not uncomfortable, but a little bit awkward to follow all these officers, to praise these bills, but I think that-- maybe unusual is a better word. But I think when we do have common ground, we should recognize that. Both of these bills are steps in the right direction. And as Chair Lathrop explained when he introduced his bill and as Senator DeBoer explained, these bills are responsive to some of the things that we heard last summer when this committee had the two listening sessions in Omaha and Lincoln. And also responsive to some of the things that the committee learned during the interim study hearing last fall. In my three minutes, I'm not going to talk about the things that the officers have already talked about earlier, but we do acknowledge that this does improve the training requirements and the certification requirements. And that's good. A couple of things that we feel the bills would go farther in both, both bills could go farther in a couple of respects. First, with respect to LB51, page 37 of the bill, Section 18 provides or requires each law enforcement agency to have the law enforcement officer to have a policy regarding accepting and investigating complaints of law enforcement officer misconduct. That's good. That's a good policy to have. But I think some clarity or some care should be taken to make sure that does not nullify or remove the citizen police advisory boards that exist both in Lincoln and Omaha. We had a hearing last-- yesterday, actually, in the Urban Affairs Committee to talk about the policy in regards to Senator McKinney's bill. And I don't know if it's going to conflict with these local jurisdictions that have these citizen, civilian police advisory boards. I think some care ought to be made or some accommodation for those boards should be made so that we do have at least the opportunity for some entity outside the law enforcement agency to investigate, investigate instances of law enforcement officer misconduct. Second thing on page-- on LB51 is on page 40, Section 20, and that's the statutory prohibition on chokeholds. We would argue that should be narrowed in some respects. On lines 11 through 15 there's an exception for chokeholds are permitted, and those exceptions include when an officer reasonably is that a person would otherwise cause death or bodily injury. I would respectfully suggest that that term "bodily injury", which is referenced in 28-109 be qualified either to "serious bodily injury" or at least to "the

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imminent threat of bodily injury." Bodily injury is very broadly defined, as includes physical pain, illness or any impairment of physical condition. And the case law interpreting that term is even more broad. In other words, you're going to provide an exception and statute that could really be used to permit chokeholds in all types of situations. With respect to LB472, I think the amendment strikes the requirement that there be something in statute preventing-- providing for a duty to intervene. I would respectfully suggest this Legislature does have and speak clearly and allow for a requirement in statute for officers to intervene when another officer uses excessive force, in addition to directing that they have a policy. And with that, I'll take any questions. Sorry I went over.

**PANSING BROOKS:** Thank you, Mr. Eickholt. Does anybody have any questions? Senator Brandt.

**BRANDT:** Thank you, Vice Chair. Thank you, Mr. Eickholt for testifying. Isn't there a duty to intervene for an officer in here on deadly force, on chokehold?

**SPIKE EICKHOLT:** There is, there's a ban on chokehold.

**BRANDT:** Excessive force.

**SPIKE EICKHOLT:** Sorry.

**BRANDT:** Go ahead.

**SPIKE EICKHOLT:** There's a ban on chokehold the way I read it, in LB51. And that's a prohibition on the use of chokehold that's on the section-- on page 40, Section 20.

**BRANDT:** But you just, you just spoke about a duty to intervene. Was that on deadly force or was that on chokehold?

**SPIKE EICKHOLT:** That could be. Well, I don't have the amend-- I was speaking to LB472.

**BRANDT:** Oh, I'm sorry.

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

**BRANDT:** I thought we were on LB51.

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**SPIKE EICKHOLT:** Well, I was just rambling when I was talking so that's my fault.

**BRANDT:** OK.

**SPIKE EICKHOLT:** So LB472, I don't have the amendment, but what I heard, what I thought I heard Senator DeBoer explain is that her amendment replaces the bill. The original bill on page 2, lines 8 through 12 of the introduced version of LB472-- thanks-- had a statutory prohibition or a necessary requirement, I should say, that directed a law enforcement officer to intervene when another officer is using what the first officer reasonably believes is excessive force. And then Senator DeBoer's bill as introduced in the Section 3 would then further direct all the different agencies to develop a policy with respect to the duty to intervene. And that's good to have. But I think that the Legislature can still weigh in on this. And I think the Legislature to be responsive to the things that you heard and to be responsive for the situation that happened in Minneapolis with George Floyd should be able to say in statute clearly, officers have a duty to intervene when they have reason to believe another is using excessive or inappropriate or deadly, or whatever you want to label that, inappropriate force. Now, I understand the deference that you want to maybe give some of these different law enforcement agencies, because what the officer said earlier, it's difficult for senators anticipate all the situations they are going to be in. But I still think you can have something in statute has a clear duty to law enforcement. If anything, a duty to intervene defined generally as their policies provide, followed by perhaps a duty to report instances in which an officer attempted to intervene or thought maybe he or she should have intervened or some similar provision. And I think it should be in statute because that's a clear legislative directive.

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

**PANSING BROOKS:** Thank you. Mr. McKinney.

**McKINNEY:** Spike.

**PANSING BROOKS:** Senator McKinney, sorry.

**McKINNEY:** Thank you for your testimony. I was just curious, do you think there should be more language within this bill or other bills

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that might come, might come up today that will, that would require more cultural competency and implicit bias training by officers? Because I personally don't think two hours is enough.

**SPIKE EICKHOLT:** No, I think it's fair, that's a fair point. I mean, that's really to be responsive to the civil rights movement last summer, that would be something to have, that's more than two hours. I think it was, I can't remember which officer said that, maybe it was-- I can't remember if it was Officer Maguire explained that the two hours is something that was put in the statute last year. Now, it was something that Omaha and maybe even Lincoln could easily accept, but I know that some of the other agencies pushed back on just the two hours. But I think that's certainly a fair expectation to expect more than two hours. And maybe you could even sort of provide for two hours as the minimum, perhaps for smaller agencies. Just do the reality that I think is Chief Fen-- or Ferrell explained earlier is that they don't have the, don't have a staff to sort of patrol the streets and do the required training annually. But for the bigger agencies, perhaps that could be something that could be round up.

**McKINNEY:** OK. Will you be supporting LB551 as well?

**SPIKE EICKHOLT:** Is that Senator Wayne?

**McKINNEY:** Yeah.

**SPIKE EICKHOLT:** Yes.

**McKINNEY:** Why?

**STEVE CERVENY:** Because I think does what-- it's very somewhat LB51 in some respects. And we support many of the concepts in LB551 for the same reasons we support LB51. There may be some things that we like to see go further or different, but it's, it's, it's closer, it's a step in the right direction. It's responsive to what people are asking. And I mean, I can speak on the bill when I'm here.

**McKINNEY:** Thank you.

**PANSING BROOKS:** Thank you, Senator McKinney. Anybody else have a question? No? Thank you for coming today, Mr. Eickholt. Any other proponents? Proponents? OK, are there any opponents? Opponents? Welcome.



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**KEVIN STUKENHOLTZ:** Good afternoon, acting Vice Chairwoman Pansing Brooks, members of the committee. My name is Kevin Stukenholtz, K-e-v-i-n S-t-u-k-e-n-h-o-l-t-z. I serve as the Saunders County Sheriff, and I hear-- I appear before you today on behalf of the Nebraska Sheriffs' Association in opposition to LB51. We appreciate the work Senator Lathrop, the Omaha Police Officers Association and others in drafting this bill. We're all-- always willing to discuss how law enforcement officers and agencies in Nebraska can better serve all Nebraska citizens. We're willing to work with Senator Lathrop and the members of this committee on crafting solutions that will work for all interested parties. Our opposition to LB51 is twofold. Firstly, we deeply concerned about the variety of unfunded mandates on law enforcement agencies found in LB51. Implementing these additional requirements, which include doubling annual training, new accreditation mandates required, preemployment psychological evaluations, and more is an expensive proposition for law enforcement agencies. This will undoubtedly require a significant expansion of every sheriff's budget in the state of Nebraska. Our budgets are funded largely by property tax revenue, meaning that property tax increases are likely to be resolved with LB51. We appreciate that it may be possible for many larger law enforcement agencies in Nebraska, in urban areas to adopt LB51's fiscal requirements. But in many rural areas of Nebraska, law enforcement budgets are limited and LB51's requirement will significantly increase expenses. There is a vast difference between the Douglas County Sheriff's Office budget and the Dundy County Sheriff's Office budget. Our second point of opposition to LB51 is that it applies to one-size-fits-all mindset to law enforcement training and certification throughout the state of Nebraska, without consideration to the unique challenges faced by our rural sheriff's departments and law enforcement agencies. Rural law enforcement agencies face significant challenges in finding, hiring, and retaining qualified officers. The conditional employment of officers provide rural law enforcement agencies with a useful tool for "orientating" new hires in the law enforcement field, weeding out bad hires and ensuring that new employees are a good fit. Many agencies use the conditional employment period as an opportunity for classroom study, departmental policies and procedures. In short, conditional certifications help rural agencies vet new hires before incurring expenses of sending them through the training academy. We recognize the concerns with the practice of conditional certification. Conditionally certified officers don't need to carry weapons and don't

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have to have the authority to perform many of the functions that police certified officers can. Rather than ban conditional certified practices, we ask you consider setting parameters on the authority of conditional certified officers based on committee concerns. Practically speaking, it would be very difficult, if not impossible, for many sheriff's departments to implement the new requirements of LB51 all at once. I see that the red light's on, so I'll close here. We would just like to work with the committee to see if we can find some accommodations here.

**PANSING BROOKS:** Thank you, Sheriff. Questions? Senator Brandt.

**BRANDT:** Thank you, Vice Chair Brooks. Thank you, Sheriff Stukenholtz, for appearing today and maybe some of the questions I asked the chief from Wahoo probably apply more to the sheriff because we have so many-- the further west you go, the smaller these counties get. I mean, we're talking one-, two-, three-, four-man departments and we have a devil of a time finding people to work there. So really, the conditional certification is really the only way some of my sheriffs have been able to get some manpower. And the way they've explained it to me and-- and I guess I'm going to ask your opinion on this is Jefferson County, where I live, Fairbury, we need somebody for that department. They find a young individual, a man or woman willing to work there. But they don't have the Law Enforcement Academy certification yet. And they will hire that individual for a period of time until they can get into the next class. Otherwise, we have such a work force shortage there, that individual will go down the road and go work somewhere else. And so that's part of their rationale for trying to employ that individual until they can get them some training. Do you experience that also?

**KEVIN STUKENHOLTZ:** Absolutely. We just made a recent hire, but we were able to hire that individual. We had her working within our department. We're large enough that we had some administrative duties that they could do. But being able to offer her a job and then waiting till we got her enrolled in the academy probably was what allowed us to put her on our department. She's fully accredited on our department now. But if you interview them and then there's nothing you can have them do for your department until they get the acad-- academy, you'll be paying them to do nothing. Now, we realize that there should be some reasonable accommodations there. They obviously shouldn't have-- be in a car and enforcing the law. But we think there's some

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accommodations that can be made there that would help the agencies and satisfy these requirements.

**BRANDT:** Do you feel that the Law Enforcement Academy could offer maybe a one-week conditional certification class until three months come down the road and they can go through the full certification like what our old reserve officers? I think they had some training, but not a lot of training.

**KEVIN STUKENHOLTZ:** Well, I don't want to speak for the Grand Island academy, but I know that their schedule is pretty well packed and scheduling there is a real challenge for them.

**BRANDT:** Because the challenge we have in the rural areas, we train these individuals and if-- in a year or two, they take off for Lincoln or Omaha. I don't know if you experience that in your department.

**KEVIN STUKENHOLTZ:** We haven't had that happen directly, but I'm well aware of a number of departments that occurs because smaller departments are just challenged with budgets and being able to pay the amount of money that the larger departments pay.

**BRANDT:** So outside the challenge being a small department, do you feel comfortable with the rules in LB51, the training and the rules as put forth?

**KEVIN STUKENHOLTZ:** We would actually like to see if there would be some way that they can stairstep the-- the amount of training and the hours to give departments time to acclimate to that, maybe over a three- to five-year period. You know, no one's against training. And it sounds very good to talk about it in this room. But actually getting the officers in, getting them trained, and paying for that is a challenge, along with the accreditation. My prior law enforcement career was within the State Patrol and we had an accreditation. We had to dedicate one individual and then we eventually had a staff of about five just to maintain our CALEA accreditation. So that would be very expensive for a small department.

**BRANDT:** OK. Thank you, Sheriff.

**KEVIN STUKENHOLTZ:** Thank you.

**PANSING BROOKS:** Yes. Senator Slama.

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**SLAMA:** Thank you, Chair Pansing Brooks, and thank you, Sheriff Stukenholtz, for being here today. Senator Brandt covered a lot of the concerns I've been hearing from my district as well. One of my local sheriffs actually planned to come up here and testify and express a lot of the same concerns you raised. But he's really the only one covering the county right now. So he's down in Pawnee County. I just wanted to check in with you. Senator Brandt laid out very well the shortages of people that we're facing in our local sheriff's departments. You have one-, two-, three-, four-person sheriff's departments and that presents a challenge. But when you have someone head out and suddenly you're short a person and you might only have two people to cover all the shifts so these conditional officers have been very helpful. And I-- it's my understanding that there is a relatively long waiting period to get into the academy in the first place, isn't there?

**KEVIN STUKENHOLTZ:** That's true.

**SLAMA:** What's the timeline in that?

**KEVIN STUKENHOLTZ:** We had about six months' notice, so we-- we were anticipating we were going to make a new hire. We contacted the training academy and got a slot, but it was about six months before we got that person in.

**SLAMA:** About six months and has COVID backed any of that up or is it still about a six-month wait?

**KEVIN STUKENHOLTZ:** I think it's about the same.

**SLAMA:** OK, thank you. I appreciate that. And that is one of my concerns with LB51. I-- I definitely appreciate some of the additional training. I think it's very reasonable. The thing that is giving me some heartburn here is getting rid of that conditional certification. I think, like you said, there is some serious middle ground we can get to there. So thank you.

**KEVIN STUKENHOLTZ:** Thank you.

**PANSING BROOKS:** Thank you. Senator McKinney.

**McKINNEY:** Thank you for your testimony. I'm curious, what is your annual budget for this year?

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**KEVIN STUKENHOLTZ:** About \$1.3 million.

**McKINNEY:** What was it last year?

**KEVIN STUKENHOLTZ:** About the same.

**McKINNEY:** OK. Also, do you think, if required to do a minimum of what's in this bill, do you think your department could absorb that?

**KEVIN STUKENHOLTZ:** I think we probably can. We have a pretty generous board where we can adopt a training budget. We also are fortunate enough that we have a simulator where a lot of the smaller counties in western Nebraska don't have that. So we can get training through the simulator, plus a computer and then we do some regular in-classroom training. You asked a good question earlier about the-- so if you chose to do all of this online, there's some training that I think is probably more beneficial online and there's some training I think that is probably more beneficial if it's classroom. For example, the bias based training that I received was at the Grand Island Training Academy. There were other places that were offering that. I was able to witness both of those. I thought the in-classroom training for that was more beneficial because there was more interaction and I think everybody was able to explain any concerns they had. So I think there's pluses and minuses to that.

**McKINNEY:** Thank you.

**PANSING BROOKS:** Any other questions? I just have a question. Can you explain what the conditional certification is? And you mentioned that they shouldn't be in a car, but should they carry a gun with that?

**KEVIN STUKENHOLTZ:** That's a good question, Senator. And I think that's something that, that should be maybe vetted out here. But so when the-- when the chief or the sheriff makes a hire, they're going to tell that person that they're going to be hired based on a couple of conditions. That could be the polygraph exam, the psychological exam, which is another issue in here, the availability of someone to conduct those. Well, then they can-- that-- that candidate then has a firm offer where they know that this particular department's committed to their hire and so then they can put them to work. So the academy is going to require that they have that offer before they get there. But because there's such a lack of classes at the academy, there may be a

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long time before they actually get that academy. So then what does that person actually do and how are they compensated until they get there?

**PANSING BROOKS:** Thank you, Sheriff. So I'm wondering if we're talking about 40 hours and it can all be online, why, I mean, maybe we need somebody from the academy to discuss why those aren't available. You know, you don't have to teach a brand new class every single time on due process or a class every single time. I mean, I don't know what your classes are all on exactly. And I'm sorry that I don't, but it seems like some of them could be courses that are just under a, a-- an index. And your department may want your hiree to take certain ones of these courses, whether it's on use of force, whether it's on due process, whether it's on, you know, how to approach certain things. Why aren't those available online on a repeated basis? You don't have to reinvent the wheel every time, every six months. They ought to be online available right now.

**KEVIN STUKENHOLTZ:** Well, there are a number of companies that produce training videos that you get online. I think some of the things that this bill have, I am not sure that would be a good process. Use of force probably shouldn't be something you get online. And having some consistency I think there is real important. The same thing with bias based policing. I mean, I'm not sure that they're significantly different, but it'd be nice if the protocol were all the same for all in Nebraska for that. So one size might fit all there so I'll backpedal on that.

**PANSING BROOKS:** OK, thank you, Sheriff. Then I just have one other question. Why, why don't people-- why don't police departments or sheriff's offices hire people-- in the teaching profession, people get their teaching degree to be able to teach and then they come to the schools. Why is it that you just have to pick out of the masses and hope this person is a good one? I don't understand. It seems backwards, the process. Make the people go to school and get their degree, just like other people go to school and get their degree and then hire them.

**KEVIN STUKENHOLTZ:** They used to have a practice where an individual could go to Grand Island and self sponsor through the Grand Island Training Academy. But at that time, Grand Island was overwhelmed with

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the department request that they stopped that practice. And I don't believe they started it up again.

**PANSING BROOKS:** Wow. So they had too many people coming and wanting to use the-- it seems like now when we're having an issue about police being discouraged and we're needing more police officers, that they should start that up again so people can self-identify and say, yeah, I do want to help protect our communities.

**KEVIN STUKENHOLTZ:** That's a good point.

**PANSING BROOKS:** Thank you for coming today, Sheriff Stukenholtz.

**KEVIN STUKENHOLTZ:** Thank you for your time.

**PANSING BROOKS:** Thank you. Any further opponents? Opponents? Welcome.

**DON WESELY:** Thank you, Vice Chair Pansing Brooks and members of the Judiciary Committee. For the record, my name is Don Wesely, W-e-s-e-l-y, first name Don, D-o-n. I'm here representing the Greater Nebraska Cities, which include seven cities in central Nebraska, one of them being Grand Island. I'm having distributed for you letters from the city administrator of Grand Island and the chief of police for Grand Island in opposition to LB51, but really only in opposition to the 40-hour requirement for training and then the subject matter requirements within that training. Grand Island is having trouble, as many communities are, in recruiting and retaining police officers. They've not been at full staff for some time, and it's been a challenge for them to continue to try and get the officers they have and hopefully to gain full staffing. In the meantime, there was a point at which Grand Island had the highest per capita crime rate in the state. So they have challenges, they've got crime they have to deal with and a staffing issue trying to address crime. They are concerned about going from 22 to 40 hours and what that means in terms of taking officers off the street to go to the training. It also means if they want to maintain as many officers as possible, they would have to pay overtime. And so there's an increased cost. So it's concern about public safety, it's concerned about cost. They also are concerned, as you'll see from the letters, that 24 of the 40 hours have eight subjects that are required. And their point is that there may be a mismatch between those mandated subject matters and the training and the job duties of the police officers that you're talking

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about. And they have some examples in there of individuals that do not do certain duties. And yet under this bill, they'd have to have the training for that. So they're suggesting that a little more flexibility on that training in what needs to be done and allow the local police department to focus their training would be appreciated and make more sense. They also point out that for some of their, like their tactical unit, they have much more than 40 hours of training. If they feel that the, their officers need particularly specialized training, they give it to them because they want them to do a good job. So right now, the flexibility that they have is appreciated and they understand the need to address the many issues that you've heard from today. But they would appreciate also the chance to understand that that city in particular is overworked and understaffed right now, and this would make it even more difficult for them. So they ask for your consideration of these concerns. Thank you.

**PANSING BROOKS:** Thank you, Mr. Wesely. Any questions for Mr. Wesely? Yes, Senator McKinney.

**McKINNEY:** Thank you, Mr. Wesely. I was curious, does the city of Grand Island deal with complaints that deal with implicit bias or racial discrimination?

**DON WESELY:** I do not know the answer to that. But Grand Island has become a very diverse community these days, and I can try to find out and get you that information.

**McKINNEY:** And that, that was kind of to my point, that I've been to Grand Island a few times throughout my life, and I recognize that it's a diverse community. And I would think that this type of training, more training than less training is needed.

**DON WESELY:** Well, they support the implicit bias training and the additional two hours. And if you go forward with even more hours, you know, they would certainly consider that and understand the importance of it.

**McKINNEY:** All right, thank you.

**PANSING BROOKS:** Thank you, Mr. McKinney. Anybody else? Yes, Senator Geist.



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**GEIST:** I do, thank you. Thank you, Mr. Wesely, for your testimony. If this training requirement were, as someone else suggested, more phased in over a period of time, especially for those in greater Nebraska, would that be something that Grand Island would be more warm to?

**DON WESELY:** In fact, they suggested if we could have that increase be more about around 30 hours, they would find that something they could deal with.

**GEIST:** OK.

**DON WESELY:** So some kind of phasing or reduction perhaps in the smaller communities would be much appreciated.

**GEIST:** OK, thank you.

**PANSING BROOKS:** Any other questions? So, Mr. Wesely, I was just wondering, so how do those smaller communities, I mean, Senator McKinney mentioned, you know, cultural-- multicultural diversity awareness training. And if you don't have a person there, you obviously couldn't do it yourself in-house. So, I mean, we're asking people to go out and carry a gun and possibly, you know, break into a place to make it safer. But if they don't have an idea of due process, and I keep harping back to due process, if we-- if they haven't been trained in due process, how do they do it legally? How do they protect themselves and enter legally?

**DON WESELY:** Well, I think that their training now in this information to that regard, and so--

**PANSING BROOKS:** Pardon me?

**DON WESELY:** I think their current training would provide him with that background. And truthfully, any of these communities, not just the ones in the Greater Nebraska Cities, but any in the state are going to want to make sure their officers know what they're supposed to be doing and are-- take caution. They don't want any problems and they don't want some of the negative results we've heard nationally so.

**PANSING BROOKS:** So just training within the, within the department is what you're thinking?

**DON WESELY:** I think it will depend on, on what you're talking about.

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**PANSING BROOKS:** Due process is really one of the main things I'm concerned about.

**DON WESELY:** Due process.

**PANSING BROOKS:** Yeah.

**DON WESELY:** I don't know, I don't know specifically about due process training, but I can find that out for you.

**PANSING BROOKS:** OK, thank you very much. Thank you for coming today. Any other questions? No.

**DON WESELY:** Thank you.

**PANSING BROOKS:** Thank you. Any other opponents? Anybody in the neutral. Are you an opponent?

**LYNN REX:** Opponent.

**PANSING BROOKS:** Oh, OK, I thought you stepped back.

**LYNN REX:** I did. Thank you.

**PANSING BROOKS:** Welcome, Ms. Rex.

**LYNN REX:** Thank you. Members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. L-y-n-n R-e-x. And I'm here today in opposition to this bill, but I want to underscore how important we think this bill is in terms of providing an overview of very important policies that should be enacted and looked at across the state of Nebraska. To that end, I've signed in opposition to the other bills you're going to be hearing this afternoon. Not that some of those components should not be included in this bill, but embedded in this bill. And we hope that this would be a vehicle, vehicle bill for whatever the best practices are that this committee wants to advance. That being said, I'd like to underscore the fact that training is extremely important. The League has-- the League Association of Risk Management, it is a public agency. We have over 170 members, 140 of those are municipalities. Most of those have law enforcement components to them and departments. I did ask the Crime Commission how many officers we have based on various cities in this sort of thing. And all I can share with you, and I really appreciated

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Don Arp getting this information to me, there are 4,300 sworn officers in 200 different agencies. That being said, the reason for the handout is, I guess, a starting point. It may be the end game, but it's also a starting point. What you have here, and the last time it was updated was in 2015 because we've had nothing else additional, the series of cuts to our programs, program after program after program. I'd urge you to look at the last sheet. In 2011, LB383 was passed, eliminating state aid. And congratulations that you are not on the Revenue Committee, because if you were, then you would have the opportunity to hear not just the League, but many other organizations, talk about what this is meant in terms of cuts to aid to counties, cities and NRDs, which was totally eliminated again with passage of LB383 in 2011. So and that, by the way, by state aid was simply a replacement, an inadequate replacement for cities. It was \$17.9 million. On day one, it should have been over \$250 million in actual dollars, not just the valuation because of exemptions granted by prior Legislatures. And so you are sitting here in a situation where we are concerned about the funding on this. So the training dollars, I don't think-- there won't be time for me to review everything that others in opposition have presented to you today. But there's a tremendous cost involved in this. There's also a tremendous cost if you don't have people properly trained, and we understand that. But I do think that going from 20 to 40 really is unworkable for many of our agencies and most of them across the state of Nebraska. Certainly Lincoln, Omaha, some of the larger entities, but when you hear a city like Grand Island say they are having concerns, they're the third largest city-- depending upon if you're from Bellevue, then Bellevue is the third largest city. So let me just suggest to you that, again, we think there's some great, great parts of LB51 in terms of just having uniform policies on duty to intervene, use of excessive force, other things of that nature. So that's why we suggest this be a vehicle bill. But we are concerned because although this bill, which we totally appreciate toward the end of it, it talks about funding grants to assist in this, that's excellent. And this is no reflection on you, I'm just telling you, your predecessors cut and cut and cut. And so in terms of the trust factor of how likely is it that that funding would be there, that's a concern. I hope there are some questions.

**PANSING BROOKS:** Thank you, Ms. Rex. Questions?

**BRANDT:** Thank you, Vice Chair.

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**PANSING BROOKS:** Senator Brandt.

**BRANDT:** Thank you, Ms. Rex, for testifying today. And so you made it very clear you're not opposed to the bill. You like the bill, it's just the funding portion. So if the state would come in and fund those 40 hours for everybody, you, you have no objection to the bill?

**LYNN REX:** I do. We-- our position is that we think 40 hours is too much. We think we need to have more flexibility. Underscoring what some others have testified about, Senator, we think that the training is really important. I mean, I don't think you can have too much training. The problem is there is a cost to it. And so you also have to backfill. This was presented to you by police chiefs and others in October when you had your hearing, which is you also have to, when you're having people training, you have to have somebody else--

**BRANDT:** Right.

**LYNN REX:** --that's covering that. And so we think 40 hours is, is too much, probably isn't for Omaha, but it is for others. But we are concerned about the funding of it, we're concerned about the training, increased costs for training. We're concerned about some of the sections into Senator Brooks's comments, Pansing Brooks's comments on, you know, the-- which we understand the concern about having somebody that isn't properly trained going out and having a gun. But again, just to underscore the fact that I personally have had phone calls.

**BRANDT:** So if this was not an unfunded mandate, if the state paid for the 40 hours, not the municipality, not the county, you would be OK with the bill?

**LYNN REX:** There are some other elements of it. I don't know if we have enough time to walk through that, but I'm happy to do that. I will tell you-- let me share this with you. I think starting out and going from 20 to 40 is probably too much in our view. Not for the larger, not, not for Lincoln, not for Omaha. They're doing that plus more, but for the smaller entities, it is. I think there needs to be more flexibility. And as Don Wesely indicated, sometimes in these smaller entities, they're looking at different-- they need to have different people trained in different ways. So we're concerned about that.

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**BRANDT:** So, so if we would include language in the bill that said cities of the second class and villages and counties under 100,000 have a different training standard than municipalities or counties over 100,000, that sort of language would be acceptable?

**LYNN REX:** I think that's something we would absolutely look at for sure.

**BRANDT:** And then real quick, I know a lot of people come up here, on the other bill, on LB472, were you opposed or you were-- where were you at on that?

**LYNN REX:** Well, the basic-- the essence of what that is, I think is embedded in principle in LB51.

**BRANDT:** OK.

**LYNN REX:** And that and that's why I signed opposition as well to the other bills, not because there are not some good ideas in there, but because we think that this is the most comprehensive of all those bills and that some of those policies should be in here. And League Association of Risk Management, just like other organizations, you know, we advocate best practices and best policies on duty to intervene, use of excessive force, that sort of thing. So, again, just to underscore the point, though, even from the funding standpoint, I think that it is really important to be able to give some ability for municipalities. And I would-- I don't speak for counties, but I think if they were, I don't know if the-- I know NSA was here today. I don't know if NACO will be. But I think it's really important to give some flexibility outside the lid in the levy to deal with this. And you have talked to me before about some of these issues, and I can share with you that when the Legislature passed the levy limit in 1996 with passage of the LB1114, every second class city and village in this state was at \$1.05 per \$100 valuation or higher. They were asked to go to 45 cents plus 5 in two years.

**BRANDT:** OK.

**LYNN REX:** Two years.

**BRANDT:** All right.

**LYNN REX:** So it's the funding issue.

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**BRANDT:** Thank you.

**LYNN REX:** It's funding.

**PANSING BROOKS:** OK, any further questions? Senator McKinney.

**McKINNEY:** Thank you for your testimony. When you talk about cost and the cost of training, in my head I started to think about the cost-benefit analysis for, for small cities across our state. And I don't know, I'm just curious, do you think it's more beneficial on the front end to have more training than on the back end have a wrongful death suit that bankrupts one of these small cities because the officer didn't have this training?

**LYNN REX:** That's why-- your point is well-taken. And that's why I said earlier, Senator, that basically when you're dealing with training, you really can't have enough training because there are a lot of different concerns that come out. And frankly, some of our smaller entities, they're not-- they don't have the-- I'm not going to say it's a luxury, but they don't have the ability to have a SWAT team, a this team, a that team. You have two or three officers that have to do it all, and so their training is really important. And I understand your point, I'm just saying there's also the reality of how do you make it-- how is it workable? And I think it's really important that we're in a position to look at that, too. But I understand your point.

**McKINNEY:** Thank you.

**PANSING BROOKS:** Go ahead, Senator Slama.

**SLAMA:** Thank you, Chair Pansing Brooks, and thank you so much for being here today. I think you made a great point right there of it is in these municipalities' best interest to train their officers, regardless of what the statute says. It minimizes liability potential. You don't necessarily have to check all the boxes in a statute to ensure that your officers are well-trained and there could be training outside of those statutory requirements that are different requirements for different communities. As you know, across your broad range of members, there's different challenges in each of our communities that our local departments attempt to best train their officers for. So would you agree that even in spite of whatever the statute says that it is in the municipalities' best interest to

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provide enough training to where they're not potentially making themselves liable for the misconduct of an untrained officer?

**LYNN REX:** No question about it. No question about it. I mean, that's why, you know, when Senator Brandt was asking questions about would we support the 40 hours of training. Wow, if you could make sure that everybody could have-- Imperial could make sure that they have enough officers there to do what they need to do, but also have the backfill and do everything else and paid time and a half--

**SLAMA:** Sure, because that 40 hours is a week of work, right?

**LYNN REX:** You have a lot that goes into this. And, and again, what I was saying when my the light went red is I have personally taken phone calls from mayors and others, not every day, not every week, but at least one or two a year, maybe, wondering do I have any pull with the Grand Island training center so they can get their person in, because they've been waiting to get their person in. And I think and I was informed today earlier by Chief Ferrell that basically with the, with the Papillion-La Vista training academy, that now maybe there will be more openings in Grand Island. But I know the Great Island training center over the years, again, not you, your predecessors cut them, cut them, cut them to the point that they can't provide the kind of training. And we were involved in trying to help put together what was going to be a real advocacy effort with high school kids and others to say, wow, wouldn't it be great to be in law enforcement. Look what you can do, what a great career this would be for you. And then again, there just weren't enough spots in Grand Island to even make that work.

**SLAMA:** Sure. More of a capacity issue.

**LYNN REX:** Yes.

**SLAMA:** Thank you.

**PANSING BROOKS:** Anyone else? I do have a couple of questions, Ms. Rex.

**LYNN REX:** Sure.

**PANSING BROOKS:** Thank you for coming. When I looked at the fiscal note, and I understand the part about the fact that we continue to cut

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everything. You know, we do have a couple of municipalities like Imperial and--

**LYNN REX:** Yes, I read that.

**PANSING BROOKS:** --some others that put in a fiscal note. Why didn't all the municipalities put in a fiscal note?

**LYNN REX:** Because they're not-- there are some that are identified, and I would defer to the Fiscal Office to tell you how they identify them. But some are-- not all municipalities, as I understand it, have that opportunity. They have identified certain municipalities to prepare fiscal notes. That's my understanding. I could be wrong on that, but I know a few years ago that was still the case.

**PANSING BROOKS:** OK, so I'm, as I'm looking at it, I, I mean, I understand that we have to worry about the small communities to pay for it. I don't know why you can't hire somebody and in 40 hours in one week you just have to go through all the courses right away. I mean, if it's a full week of courses, I don't understand why we can't get those classes taken if they're all-- if, if they're mostly online.

**LYNN REX:** OK, there are others behind me that probably know more about that for sure. But let me just share with you that right now the requirement is that, I think, only 10 of the 20 hours.

**PANSING BROOKS:** It is.

**LYNN REX:** Somebody else can correct me behind me.

**PANSING BROOKS:** It is, correct.

**LYNN REX:** But only 10 of the 20 hours can be online. So there is a lot of other online training. And by the way--

**PANSING BROOKS:** That's correct. But now this one is just 40 hours can be online is what my understanding is.

**LYNN REX:** That, that's what I understand too. The question is, and I-- this again, I defer to those that are experts in this field. I am not. But I know that Senator Chambers passed legislation years ago to require vehicular pursuit training. I don't know if that's something you can do online or not or if you have to physically-- my



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understanding is they're actually in a car and they're actually chasing and doing things. But all I can suggest to you is that I think there are some things that you want to make sure that you have an in-person training. But again, there may be other options. The simulator issue is a really important one. I know Senator DeBoer made the comment in October that she had gone through that and how effective that is. And so perhaps there could be more exposure to that. I think there are a number of ways, especially with technology, Senator, to be doing things. And as again, I know you're aware of this, probably more than others on this committee because of other work that your firm does and-- but and that Loel does, but basically the lack of broadband is huge. So it is unrealistic to assume everybody can do certain things when you have a lack of broadband. And again, that's for a different day and that's for two days next week is what I understand.

**PANSING BROOKS:** Yeah. Thank you very much, Ms. Rex.

**LYNN REX:** Thank you. And thanks for all the work that this committee has put it on these very important issues. They're critically important and we appreciate that very much.

**PANSING BROOKS:** Thank you. Any other opponents? Opponents? I don't see anybody standing. So anybody in the neutral? Is there anybody here with neutral testimony? So, Senator Lathrop, would you like to close?

**LATHROP:** Yes, I do. Thank you, Senator Pansing Brooks. And thank you to everybody who testified, I really appreciate the opportunity to, to, first of all, to work with a number of the people that have been up here to talk about and, and frankly, to push them to a place where they were on board with LB51. You know, I was listening to the testimony today and thinking back this summer, we all turned on our TV and watched in horror when a police officer put his neck on George-- his knee on George Floyd's neck. And we watched him take this guy's life. And there were other officers sitting there standing around watching it happen and they didn't intervene and they didn't do anything. And it led to protests not just in Minneapolis, but it led to protests in Omaha and Lincoln and across the country. And it should. It was outrageous conduct. And while the protests went on, the commentators on the news and people were debating is this a bad cop or a bad agency, right? Is it a bad cop or is it a bad agency? And then this committee took two days out in the middle of-- in the middle,

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essentially in the middle of the time the protests were happening and gave the public an opportunity to come before the committee and talk about their experiences. We asked no questions, and it was somewhere between 185 and 200 people--

**PANSING BROOKS:** Two hundred.

**LATHROP:** --over two days listening to every single person that came that wanted to be heard. And we heard a lot of concerns. And still the question is, is it a bad cop or is it a bad agency? What LB51 does is it addresses both. It says if you want to be a law enforcement officer, you need to be certified. To get certified, you have to jump through some hoops. You have to be tested psychologically. Now, we're going to try to figure out who, who doesn't have any business being in law enforcement before they ever get there. Then we make them go through training before and be certified. And we do a background check to make sure that they haven't been fired from another agency. Then they're going to continue to be educated. We're going to require good training and we're going to require continuing education. Then we've got a process to get rid of the bad ones, right? And then we've set up a process for professionalism, so that we respond to that issue about whether it's the agency or the bad cop. We're going to make sure they're accredited. Now, many of the bigger agencies are already accredited and accredited by places that are kind of expensive to maintain. But they give you-- you have to observe certain standards to be accredited. We're not making them get to that, what they refer to as the Cali [PHONETIC] standard, the gold high standard. We're talking about having the Crime Commission set up a standard for law enforcement agencies that would require that they have policies on the very thing we spent two days listening to people talk about: use of force, duty to intervene, chokeholds, and the list goes on. And now, and by the way, this isn't hard to come up with these standards either, because like everything that happens over in the juvenile justice side of things, in law enforcement, there's best practices. These are model policies that agencies can adopt that the Crime Commission can require for accreditation. We're not asking people to clear some hurdle most of these agencies wouldn't be able to clear. And so what we end up today with the opponents talking about money. And by the way, I was here when this Legislature cut the aid to the cities and the counties. I voted against because I knew what was going to happen. Those were policies that were put there to reduce property taxes. And when things got tough here, a bunch of people voted to get

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rid of them and, and now they're in a pickle. Those, those folks, frankly, need to go over the Revenue Committee and have that conversation. We don't control the revenue. But what we do need to do and, you know, I was sitting over there with Senator DeBoer, when we, when we had those two days of hearings, we had people lined up outside of the Scott Center at UNO and we had them lined up outside of NET in Lincoln for the chance to talk to us for a couple of minutes. And now it's six months down the road and the rooms aren't as full as they used to be. But we made a promise and there was, there was a promise in listening to those people that we would do something that's responsive. This bill is responsive to that, and it's not onerous. The police would like maybe perhaps to not do anything different than what they have and the municipalities don't want to spend any money. But you know what? Everybody driving on the streets, everybody who has an encounter with a law enforcement officer deserves to have a professional at the door, respond to their call, meet them, deal with their crisis. I really appreciate those that have worked with me to put this bill together and do it in a way that I think is responsive to the bad actor and making sure that we have taken law enforcement to a higher level of professionalism in Nebraska. With that, I'd be happy to answer any questions.

**PANSING BROOKS:** Anybody have any questions for Senator Lathrop? Thank you, Senator Lathrop.

**LATHROP:** Thank you.

**PANSING BROOKS:** That closes the hearing on LB51. And now, Senator DeBoer, if you'd like to come on your closing on LB472.

**DeBOER:** Thank you, Vice Chair Pansing Brooks. I won't take very long. I do want to say I echo much of what Senator Lathrop said about being moved this summer by the testimony that we heard, by the events that happened and wanting to figure out what we could do to try to make some difference in the process, what pieces we could work on and how we could help to sort of strengthen the legislative side of all of this. And I want to say that this isn't the end just now when we've had a hearing, that will continue to work with stakeholders. I will continue to work with stakeholders with respect to, to my bill and what I imagine probably will get folded into some other bills together when we eventually, this committee does its work. So I will continue

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to work with stakeholders. We're going to keep working on this. And that is all I have to say.

**PANSING BROOKS:** Thank you, Senator Lathrop [SIC]. Any questions for Senator DeBoer? No? And that closes the hearing on-- oh, wait a minute. Before me, I'm sorry, we have, have some, we have some position letters on LB51. We had six. There were three pro, one in opposition and two neutral. On LB472, there were four letters. There were two who were proponents, one that was an opponent and one that was neutral. And then the, the testimony that was dropped off in lieu of in-person testimony, there were two received on each of the bills. On LB51, Joe Kohout, representing Burlington Northern San Francisco [SIC] Railway, was a proponent on LB51. John Cannon from Nebraska Association of County Officials was in the neutral. And on LB472, Angela Amack, representing Everytown for Gun Safety, was a proponent. And on LB472, Terry Wagner from the Nebraska Sheriffs Association was an opponent. So that closes both hearings on LB51 and LB472, whatever it was. LB472? Yeah, LB472. OK, thank you.

**LATHROP:** Thank you, Senator Pansing Brooks. With those bills having been heard and the hearings closed, we'll next go to LB601 and LB551, they will be a combined hearing. We will first take Senator-- the introduction from Senator McKinney on LB601. Welcome.

**McKINNEY:** Thank you. Thank you, Chair Lathrop and members of the Judiciary Committee. LB601 acknowledges the insular culture of police departments, the defense of police officers and resistance to change police collective bargaining agreements and the broad legal protections granted to police officers. This bill would require law enforcement agencies to maintain records regarding officer discipline and create a database base-- create a database of law enforcement misconduct. The intended effect of this bill is to encourage transparency and accountability and community policing. In the wake of continued racial tension and civil protests following the killings of multi-- multiple individuals during police encounters in Nebraska and across the nation, individuals have cried out for a variety of criminal justice reforms. Right here in Nebraska, Zachary Bearheels, a man of native descent who was in need of assistance after being asked to vacate a bus en route to Oklahoma, was killed by an officer employed by the Omaha Police Department. Also, another man was killed by the Omaha Police Department during a traffic stop mere steps away from his mother's home. The devastation of events like these are only

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exacerbated by frustration communities endure due to the lack of answers provided by police entities regarding how the situations were handled. We are not ignorant to the fact that the records of other public servants are available to the public. This would include records of lawyers, doctors, teachers, judges and veterinarians, any position where an oath or a license has been rendered. Police officers are the only profession-- professionals of public office that don't abide by these standards. Communities deserve to know whether or not the police department's leadership is taking measures to hold officers accountable when adverse incidents arise. A great deal of opposition comes from the viewpoint that to have police misconduct and similar information available to the public would violate police privacy and could unfairly tarnish reputations. To this I ask, how comfortable would you be to know that your primary care physician has been found liable for malpractice and doesn't have an obligation to share that information with you? How comfortable would you feel to have your attorney have sanctions for misconduct but continue to operate as usual because of their privacy and their reputation? I will not be made to believe that other professions should be held to a different, different standard than police officers. The responsibility and authority police officers hold should be matched by the same high level of transparency and accountability as other service professions. Similar to the processes we have here at the Legislature, there is often is a deficit in what people think happens here and what actually happens in the Capitol. To this, we respond with more information. We respond with ways to engage, we respond with transparency. We are the individuals who are in positions of expertise. It would be irresponsible of us not to take a role of overexplaining to people here what we do. The same is true for entities and individuals tasked with, tasked to protect and serve. The implementation of the police database will help improve community relations by fostering communication between the community and police agencies. Oversight agencies help reduce public concerns about high-profile incidents. Oversight agencies can help increase the public's understanding of law enforcement policies and procedures. The community deserves a voice that offers them reassurance and the power to advocate for their concerns. I ask that you move this, this bill out of committee or to General, General File. I'll be happy to answer any questions. Thank you.

**LATHROP:** OK, any-- Senator Geist.

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**GEIST:** Thank you. I-- Senator, I understand what you're trying to do here. I do have some questions, and I guess I would say I have some concerns about where is the line. And I say this because I'm trying to think of putting myself in the place of an officer who may have had an incident that was a very-- of a very private nature and, and where is the line where things can be handled in a, in a manner between an officer and his superior and what needs to be given out to the public? Just in a-- because for many of the gentlemen sitting here, this is a, it's a workplace issue in, in some cases. And in others, may be worthy of, of public knowledge. But that's what I'm asking is where is the line in your bill of what needs to be public and what is merely a workplace, maybe reprimand or a write up that could be dealt with in a more private nature because it is a workplace issue?

**McKINNEY:** I think anything that deals with officer to officer content-- conduct I could maybe understand. But I believe any, any situation that involves the public and some type of misconduct has taken place, I believe the public has a right to know what happened and how that situation was handled. And the reason I say that is because sometimes it-- my office honestly gets calls every day from the public about police misconduct since I've been here. And also I get calls from the prisons about misconduct. I, I get them all the time. And the problem that we have is a lack of transparency. Maybe the situation was handled properly, maybe the officer was reprimanded properly. But because there is a lack of transparency, the public is left out of that conversation and they don't know, then they have concerns and they're-- and that builds mistrust over the years.

**GEIST:** I hear you. But then I necessarily think that if this passed, you're going to have a chilling effect on anyone that will want to go into that profession, because any mis-- shortcoming that they may have, whether, and again, I'm not excusing everything, I'm just saying if everything is public then you're going to have a shortage of people who are going to want to put themselves in a situation where they're going to have some kind of interaction on their, in their job. And if that is, is necessarily going to be made public, they're not going to put themselves in that situation.

**McKINNEY:** I think it's fair because I think of it this way, as far as a doctor. If a doctor conducts a surgery wrong, they're held accountable. If a lawyer gives bad advice to misrepresent someone, they're held accountable. I think when you go into the profession of

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law enforcement, you know that, you're aware of the role you're taking because you, you, one, you're protecting and serving the community; and two, you're, you're in a position of life and death. If something, if something wrong happens, you could-- someone's life could be changed forever. So I think there is a higher level of accountability that needs to be said for law enforcement. We can't just have lawyers and doctors being held accountable and having their situations of misconduct be public and then we don't have the same standards for law enforcement.

**GEIST:** I would say for physicians not everything is public.

**McKINNEY:** Not everything.

**GEIST:** Not everything is public. So the comparison is not always the same, because a lot of things happen in a, in a medical situation that aren't advertised to the public.

**McKINNEY:** I understand that there are situations where it probably does need to be public.

**GEIST:** That's what I'm getting at.

**McKINNEY:** But what I'm getting at is when it comes to situations with the public and with community members and there's instances of misconduct or some type of grievance, that should be public. And that's what people want. That's what I hear. That's what I was elected to come, you know, advocate for so that--

**GEIST:** Understood.

**McKINNEY:** --that, that's why I'm here.

**GEIST:** Thank you.

**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Chairman Lathrop. And thank you, Senator McKinney, for bringing this bill. I really do appreciate it. Just building off of some of the points Senator Geist made, like with doctors and lawyers and even teachers, those are people in a position of trust, just like police officers. And like Senator Geist mentioned, when it comes to all of those professions, when there are complaints, when



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there are negative interactions, most of those interactions and complaints are kept private. Only the most egregious are made public. Would you be open to a compromise where we find a middle ground, just like we do with doctors, lawyers, teachers in finding that fine line in the sand of what are the things that will be on this public database and what are the things that we will keep private out of the interests of everyone involved?

**McKINNEY:** Yes, I'm open to that. Like, I understand there may be situations where--

**SLAMA:** Sure.

**McKINNEY:** --the public doesn't need to know. But I, but there's also a situation and I think so. So yeah, I'm open to that.

**SLAMA:** Thank you.

**McKINNEY:** No problem.

**LATHROP:** I see no other questions. Thanks for introducing LB601. We'll next have the introduction of LB551 and welcome Senator Wayne.

**WAYNE:** Thank you, Chairman Lathrop and the Judiciary Committee. We heard in LB51 many testifiers, I believe, Sergeant Hanson said it strikes a balance of professionalism. Captain Bruce Ferrell testified that it's a commonsense improvement and provides balance. What you just heard from Senator McKinney is that we are asking that this bill, and underneath my bill, LB551, we go a step further to address the community needs of transparency. And I just want to take a moment for those who maybe not understand the context of where this transparency comes from. Law enforcement are the front line for justice. If you look at the racial disparity that happens in justice, we don't have to look no farther than our prison population. But I want to give you a historical context of why this transparency is so important. From 1619 to 1865, obviously, there was slavery, 1870 to 1964 was the Jim Crow era. We had sundown counties and sundown cities that were often enforced by law enforcement. We have to look no further than Plessy v. Ferguson. That all started with an arrest. You have to look no further than Brown v. Board of Education, where local law enforcement would not enforce the decision of the Supreme Court. You have to look no further than 1968, Terry vs. Ohio with stop and frisk. And you think



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it might have stopped in 1968, but actually in New York, from 2001 to 2013, stop and frisk was used to discriminate against those minorities walking down the street by law enforcement. Now, what's ironic, with the year 2013, you have to look no further than locally, Omaha World-Herald reports in January 26 of 2020. In 2013, a white police sergeant, part of a crew, trainer, rookie patrol officer before an event called Native Omaha Days, which is a historical black event that happens in Omaha every other year. This officer, who was a sergeant, referred to his billy club as a "n\*\*\*\*\* knocker." He ended up getting 10 days suspension, but eventually a demotion from sergeant to officer. Now, I'm going to give you a personal context of why this is important for those who are in Omaha. My father graduated in 1966 from Omaha Tech High. His experience including July 4, 1966, OPD brutally beat African-Americans on 24th Street, that started a riot. August 1, 1966, an off-duty cop shot a young black 19-year-old kid, that resulted in small riots. March 4, 1968, protesters as George Wallace, the segregationist governor from Alabama, came to the Civic Auditorium. Police brutally beat African-Americans and protesters, and a young youth was killed by an officer. June 24, 1969, Vivian Strong was shot and killed by an officer. I am one generation removed from those experiences. So when you fast forward to 1991, 1993, when Rodney King was on every channel, the only person I could ask that about was my father, who references his experience. One generation removed. Then you compare it to my incident that in sixth grade we have our jeep stolen, they were pulled out around the corner from where Marvin Ammons got shot, because I lived right around the corner, and because we happened to find the jeep faster than the police, we were pulled out with handcuffs. And I'm a six, sixth grader. While they called to make sure we weren't the ones who stole it, and my mom, who is white, answered the phone. After a long conversation, she finally said, why are you calling me? Well, sorry, ma'am, you sound white. The kids we arrested are black. Again, I go home and talk about it to my father, he references the experience he had in '66. I'm only one generation removed. I won't talk about the time that I had a group of fifth and sixth graders in a van where we got pulled over and a gun was drawn. They're two generations removed and they have the same experience. They asked me about it. I'm only one generation removed, I can't give the best answer. What's different from my generation and my father's generation is Sergeant Hanson, who I've talked to, who on days off is in north Omaha. But when a kid has a problem with an officer, I'm not far enough removed to not be biased myself. So there is a demand in

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our community for overtransparency. And even if it's for a short time, we have to overcome the one generation being removed. It's culture. Probably none of you guys here or ladies here have to give the talk to your kid. I have a two-year-old that I know I'm going to have to give the talk to. And if you don't know what the talk is, just ask an African-American from an urban community. It happens in every one of our cultures. It's like a Sunday dinner. It is part of the culture. That is the context in which we're talking about transparency. It's no secret last year, last session, I introduced a bill, LB1222. Since then I wrote iterations of this same bill. That's why it looks the same. But there's two sticking points with my bill versus LB1-- LB51: subpoena power of the Crime Commission, their own agency, and public database. So let's talk about public database. There is no license in the state of Nebraska in which you cannot search a disciplined finding on a public database. Not one. We have a public database for people who are care workers. If there is a finding of something going wrong at a child care facility, their name is on it. So we have a public database for children care workers, but not somebody who can shoot and kill. How does that make sense? That's why there's a need for a public database. Does it have to be every single interaction? No, I'm open to the idea. But there's not one license. And here is the most interesting part about public safety. Fire has a public database. Every firefighter is an EMT. If there is a discipline issue in fire and they raise it to the DHHS, it shows up in a database. But police are absolved? That doesn't make sense. That's why the database is so important. That's why the appeal process is so important. Yesterday in the committee that I Chaired was the first time I heard Chief Schmaderer ever say that in the last eight years, there's been over 40 officers fired. As Senator McKinney and I talked afterwards, I said, you know, how, how far that will go with our community if we just knew that? If we knew that somebody who said a racial word got suspended for 10 days and only demoted, maybe that would change how we hold our elections and our city councils, by saying we have to have a better system, that this can't be tolerated anymore. But I am only one generation removed. So now I move to the next issue of subpoena power. The issue I heard was we can't let the public committee, the public oversight board, have some-- subpoena power. And when I heard the negotiations, well, attorneys, you don't let somebody else of the public subpoena your stuff. I said, you're right, so we'll go with the Crime Commission, which is made up of your, your industry. The Department of Insurance, Senator Brandt, subpoena all your bank

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records today, if you file an insurance claim, and you would have no knowledge of it. The Attorney General, Senator, Senator Slama, can subpoena all, all your phone records without going to court. Every agency has administrative subpoenas except for this one, which oversees our officers, our front line to justice. So why can the Department of Insurance subpoena me for potential insurance fraud without going to court, but for a disciplinary action involving an officer we can't allow that? The Supreme Court can subpoena me, they can subpoena all my bank records. Fact. That is how most financial problems with attorneys happen, is the Supreme Court and the Department of Discipline says, give me your records or we're going to subpoena. But for our front line defense, we're going to say no. It's wrong, it's improper. And so the question for this committee is, do we do just enough for law enforcement and advocacies to feel-- advocates to feel comfortable with a step forward or do we do what the community really asked, for oversight? Out of the 200 people who testified, because I went back and read it because I had a case going on, I couldn't quite be there, training was barely mentioned. But I agree with Senator Lathrop, we got to improve training. People were demanding transparency and oversight, and not to have any part of that in a bill does a disservice to the community that we represent and who are the most affected by the criminal justice system. So we're not asking for a whole lot, we're asking for the same subpoena power that the Department of Insurance, that DHHS, that any agency already has an administrative subpoena. We're asking for a public database that where I send my child for daycare, I can go access, but I can't for a law enforcement officer. I don't think that's too much to ask, and I really don't think that's too much for my community to ask. And with that, I'll answer any questions.

**LATHROP:** I have, I have one for you.

**WAYNE:** Yes, sir.

**LATHROP:** If the commission had authority to issue a subpoena, who would they subpoena and what would they be trying to secure? What's the, what's the purpose of the subpoena power?

**WAYNE:** Bank records, it could be cell phones, it could be video cameras. It could be any-- they could subpoena the department or they could subpoena the individual. That's what administrative subpoenas currently do. There was a case in Lincoln and in Omaha where the

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administrative subpoena was used to locate cell phone towers that were later used in a criminal investigation. I know one case in Omaha and I know one case in Lincoln. That's the only ones I know because they contacted me after this bill. But it happens. So I think they can subpoena the city of Omaha, they could subpoena the officer, and we can even put in provisions because this is what I think should happen to every, every administrative subpoena, that it can't be used in a criminal setting. It's for personnel.

**LATHROP:** And what, what context, is it, is it as they look into disciplining an officer?

**WAYNE:** Yes, as they look into disciplining an officer. I don't want carte blanche of they might have been sleeping on the job, let's go find the cell phone records. I'm talking about serious discipline, although maybe that is serious discipline. I don't know.

**LATHROP:** OK, I don't see any other questions. Are you going to stay to close?

**WAYNE:** I got two bills after this.

**LATHROP:** Oh, yeah, you do. Well, you got a break before those two come up here. All right, thanks, Senator Wayne. We will take, we will take proponent testimony. And as you come up, the, the essential elements of Senator Wayne's bill that make it different than LB51 are primarily the subject of the hearing. But if you're going to, if you're supporting one bill but you're, you know, not supporting the other, if you can just be clear by bill number, that way we can keep a good record. And we'll take proponent testimony first.

**SPIKE EICKHOLT:** Good afternoon, Chair Lathrop--

**LATHROP:** Welcome.

**SPIKE EICKHOLT:** -- thank you-- and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska as a registered lobbyist in support of both LB601 and LB551. I was a little bit distracted when the Chair said something about speaking to the bill, so maybe I didn't hear what you said. So hopefully I get it right. For the reasons that I articulated or at least tried to articulate for our support of LB51, we support those same provisions in LB551. I think in some respects LB551 goes a little

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bit farther, and as it looks like it requires eight hours of continuing education with respect to anti-bias and implicit bias training. Both LB601 and LB551 have what we would consider a very good point, and that is this transparency component. And that is that officer discipline is reported to the Crime Commission and made publicly available. And as Senator McKinney and Senator Wayne explained, law enforcement is a certified profession. It's a profession. You just can't do it, you just can't do it without going through state sort of the state certification process. And like any other profession, discipline, sanction, things that have a nexus to that license that potentially result in the loss of that license or suspensions of it, whatever you want to call it, should be publicly available. While senator-- while senators were introducing their bills, I happened to look up on HHS's website because a lot of those licenses are regulated by Health and Human Services. They've got a searchable database where they report things quarterly. I was just scrolling down, and I'm not going to name any names here, if anyone is watching, the disciplines for the last quarter and that includes for profession such as tattoo artists, EMTs, water operators, doctors, physicians, nurses, all sorts of professions that are important jobs and they are important professions, without trying to minimize that. But law enforcement is different in the sense that law enforcement officers have the power to kill. They have the power to arrest. They have influential power in the court system as far as writing probable cause affidavits, testifying in court and they have significant leverage. And that profession ought to be available for public transparency. A couple of things just real quick with respect to LB551, the same points that I mentioned, on LB551. On page 38, section 18, the complaint process as directed for the different agencies, I think some care should be taken so that doesn't interfere or eclipse the Citizen Police Advisory Boards that now exist. And then again, on page 31, the exception on the ban on chokehold, we would, we would suggest that it be limited to instances in which the officer is reasonably intervening to-- not just for instances in which someone may use, cause bodily injury, but in instances of imminent bodily injury or serious bodily injury or some sort of exceptional threat to the officer or to other people before a chokehold is permitted. And I'll answer any questions if the committee has any.

**LATHROP:** So I got a couple for you. Where should the line be for-- if this is a publicly available database and I'm a law enforcement

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officer, somebody-- I stop somebody for running a red light and then they call the, call somebody and complain that I was rude or that I'm short with them. So that would be at one end of the spectrum. And then you have, you know, a videotaped example of excessive force that leads to some discipline. Where is, where is the line of what should or shouldn't, or needn't be, I should say, reported? And do they have to be found, actually somebody draw a conclusion after an investigation that they actually did it or are we going to report complaints too?

**SPIKE EICKHOLT:** I think that's, that's several questions. But I think your point is--

**LATHROP:** It's kind of two.

**SPIKE EICKHOLT:** I think I understand--

**LATHROP:** Where is the line and do they have to be convicted of this?

**SPIKE EICKHOLT:** I think it would just, for due process and fundamental fairness there ought to be at least some finding, either by the police agency or the Crime Commission or whoever is given the ultimate authority to decide the veracity of the complaint or the situation against the officer. And I think that's consistent with the Health and Human Services process as well. Just because somebody files a complaint with a doctor doesn't mean that doctor's name is on the website. There ought to be at least some process where sometimes the doctor can acknowledge something and the investigation stops or what have you. And I think if you look at the fiscal note on LB601, that's part of the reason, because they referenced a difficulty in determining what report means. If it-- is it just a report after investigation, is it a report that's found to be true, if it's a report, like you say, just somebody mentioning an officer's name in an email to, to a sergeant or something like that? And I think that Senator McKinney, and I don't want to speak for him, but I thought when he was talking or answering Senator Slama's question kind of indicated that he'd be willing to maybe narrow that down. And that seems to be a fair point.

**LATHROP:** So they ought to be, they ought to be found having done whatever they were accused of. But at what level does it, does the offensive behavior rise sufficiently to be included in this registry? I mean, is it excessive force, is it breaking the law?

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**SPIKE EICKHOLT:** I think you could argue-- you want to err, I'd argue on the side of transparency. And if you look at the Health and Human Services website, for an example, some of the discipline sanctions that listed so-and-so as a tattoo artist, it would be-- it would list sort of found, and then it would be alcohol usage or something like that. In other words, you had a description of what it would be. So, for instance, you could have that kind of situation. Officer discipline, officer A found rude to witness or some similar thing like that, or excessive force or falsifying a report or something like that.

**LATHROP:** Let me ask one more question, and that is your-- you are frequently here speaking for the criminal defense attorneys, that you are a criminal defense attorney.

**SPIKE EICKHOLT:** Right.

**LATHROP:** If we had such a registry and it said "Officer So-and-so" was disciplined for whatever, you name it, let's say, excessive force. Would you be able to use that to diminish or to cross-examine the officer or to suggest that the officer isn't credible in their testimony in a criminal proceeding unrelated to that event?

**SPIKE EICKHOLT:** Probably not. I'll tell you that sometimes on our listserv, sometimes those situations are-- right now it's generally secret. Sometimes prosecutors, as a matter of Brady disclosure, may disclose that to us, but often we just don't know. And even if somehow we find out that an officer had a discipline thing or some sort of mark on his or her record, you still have to have a showing that it's relevant whatsoever, right? If the officer is a secondary officer in a possession of a controlled substance case, they find a pipe in my client's pocket at the jail and they're arresting him on child support warrant, I don't see how any judge as a gatekeeper is going to let me get into a five-year-old, you know, excessive force thing.

**LATHROP:** So what if, what if the offense is mismanaging evidence? They didn't get the, didn't get the, the cocaine checked into the property room at the proper time and now we got another case. And the defense lawyer is trying to say the chain of custody--

**SPIKE EICKHOLT:** Well, then, then we probably could--



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**LATHROP:** You know, no one can establish the chain of custody. And by the way, this guy is on the registry for not getting property put into the property room or whatever they, wherever they take their evidence.

**SPIKE EICKHOLT:** Or fabricating something relating to a chain of custody for, if I could misstate your question-- or restate your question.

**LATHROP:** Well, it's not really, I'm not suggesting they, they lied about it, but they just didn't get it checked in according to the process. Maybe it went home on their cruiser and they brought it back and checked it in the next day and were disciplined for not doing it according to protocol. And now you're defending a, a case where chain of custody is an issue. And so now do we, did-- do we turn this registry into a place where we can figure out what our cross examination of a, of a law enforcement officer in criminal proceeding is going to look like?

**SPIKE EICKHOLT:** On that example, that may be relevant. And I would argue that maybe should be. Why shouldn't it be? Shouldn't there be some sort of consequence that flows from that? If an officer is found to have fabricated evidence before or mishandled evidence before or some similar thing that's not according to the standards that we expect from them--

**LATHROP:** Well, he just left it in the back of his cruiser all night long and checked it in in the morning. But that violated policy.

**SPIKE EICKHOLT:** Well, that's maybe kind of an important policy to not violate. I mean, you're talking about a controlled substance.

**LATHROP:** I, I, I don't do this work and I'm just trying to come up with--

**SPIKE EICKHOLT:** No, I understand.

**LATHROP:** --hypotheticals to, to illustrate.

**SPIKE EICKHOLT:** And I don't know if it would be--

**LATHROP:** Is this just going to be pickings for criminal defense lawyers?



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**SPIKE EICKHOLT:** You know, it might be, but I don't know if it's any different than perhaps what happens in the civil side when you're dealing with medical malpractice. I assume these things come up in that context where you could maybe get into a doctor's discipline record, maybe it's not relevant, maybe it's material. And I assume that same process that may be playing out in courts, and I don't do a lot of civil stuff to know that. I just, I can see that perhaps this could come up in the criminal context as well.

**LATHROP:** Me too.

**SPIKE EICKHOLT:** That's not necessarily a bad thing.

**LATHROP:** OK, any other questions for Spike? I see none. Thanks for your testimony. Next proponent. Anyone else dare to speak in favor of either LB601 or LB551? Seeing none, we will move to open testimony. Good afternoon.

**JIM MAGUIRE:** Afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e, I'm president of the Nebraska Fraternal Order of Police, and I'm here to oppose these two bills. Without getting into too much, because we support LB51 and the majority of, of what's in LB551 is LB51, except for the two components. And I, I was listening to Senator Wayne as he was explaining some of the, the, the issues that have gone on throughout the years with police-community relations. And that's exactly why I think that we need to have LB51 pass and make sure that we have clear policies and we have an accreditate-- accreditation done for our departments. I think it would shore up a lot of the problems that we have. When he talks about subpoena power and we talk about, you know, putting it on a registry and everything else, I think you have to be really careful when you talk about subpoena power to the Crime Commission for some of these reports. And you can-- we can talk at length. We talked yesterday about this, about these reports. These are Garrity, Garrity-protected reports that go to the Crime Commission. When I write an IA report, that is completely different than a criminal report. Criminal report, you're trying to arrest somebody. If I'm involved in a shooting and I have to complete a report, I am compelled by my, by my agency, the chief says you have to tell us what happened. And I can't say no. I have to do that report. And that report now would go to the Crime Commission because those reports give me immunity for criminal proceedings. Those would go to the Crime

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Commission to a, to an open hearing where those could be introduced. Every attorney, every labor attorney that I know of will come out and oppose this bill strictly on that. You have-- we have to be very careful when we talk about opening ourselves up to allowing Garrity-protected compelled statements into an open, an open floor. With that, I know that there's, there are others behind me that are going to be talking at length more about this, but I'm, I'm here to answer any questions.

**LATHROP:** You used a term I'm not familiar with. You said Gary [PHONETIC] protected?

**JIM MAGUIRE:** It's Garrity, it's a, it's a, it's, it's a Supreme Court hearing. I think it was Supreme Court. I know it was a court hearing that says that, you know, you basically as an officer, if I'm involved in a shooting or any kind of a-- really in any kind of a disciplinary setting, you'll normally get a piece of paper that says you are compelled to tell us everything that you know. And anything that you write on this cannot be used against you in a criminal setting. So you, you have to tell us, if you don't tell us exactly what happened, you're fired on the spot or you're put under investigation for not, for not answering the questions. But the majority of time you're going to be fired for not answering those questions. Allowing the subpoena power to access to those reports, going to an, going to an open forum where that can be accessible to anybody here, because when PSAC goes through the decertification process, those hearings are open for anybody. That's what we're talking about. Those are the reports that should not be allowed. That's why we oppose the subpoena power, because those are compelled statements. And but it's G-a-r-r-i-t-y, if you wanted to look it up.

**LATHROP:** OK, any other questions? I see none, thank you--

**JIM MAGUIRE:** Thank you.

**LATHROP:** --Officer Maguire.

**AARON HANSON:** I'm so glad I got to take that thing off. I wore my thick one today.

**LATHROP:** Welcome once again.

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**AARON HANSON:** Thank you, Chairman Lathrop and honorable members of the Judiciary Committee. My name is Aaron Hanson. I'm representing the Omaha Police Officers Association, 13445 Cryer Avenue. You know, these are, these are important discussions. And again, as mentioned in earlier testimony, there's a lot of emotion on both sides of the equation. There's a lot of strong feelings. There's a lot of strong opinions on both sides of the equation. So I think it's important that we do our best to understand that, but also focus on, try to focus on the facts as much as we can. The fact of the matter is that, yes, policing is different than a lot of other industries that are, that have certifications. But one thing that's really different, very different is the fact that unlike in law firms or in medical, medical offices, you may have a one-lawyer firm, you may have a 10-lawyer firm, you may have a 100-lawyer firm. Same with medicine. So there may not be a complex internal affairs process or a review process within that office or that profession. So I think you do end up with a catch-all system within the Counsel of Discipline within the Supreme Court. And same with the equivalent in medicine. But what you do have in the police department is to what Officer Maguire said, President Maguire of the FOP, the chief essentially does have subpoena power right now. Chiefs, sheriffs, if they think there's cause to believe that there is an administrative violation, something wrong, they can demand back-- bank records of their deputies, of their officers. If they think there's something wrong. They can't do a fishing expedition, which I think, unfortunately, too many people today would love to do. They can demand cell phones. They can do it under that Garrity protection. They can do it and say, hand this phone over or lose your job. Hand this phone over or be severely disrupted. That's a, that's a distinction between what we're talking about in these other professions that doesn't necessarily always exist in. I just got off the phone with the president of one of the fire associations. The only thing that he reported to me that's reported to the EMS board is criminal arrests, not discipline, not reprimands, not suspensions. So if anyone in this room knows, I mean, a lot of you do, I'm going to drill down as deep as I can to the tattoo industry, medical industry. I've already had some interesting conversations last week with people with experience in the Counsel for Discipline. One thing I already believe to be true is not everything is publicly accessible. Big law firms handle HR issues and personnel issues internally. And at some point when there's egregious violations, they are reported to the Counsel for Discipline and they're dealt with. And sometimes those

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outcomes are public and sometimes they're private. Let's make sure that we don't make policing such an uncomfortable job that we make it even more difficult to attract and retain and recruit the quality people that we have. That's why we stand opposed to these two bills. And I'll take any follow-up questions that any of you have.

**LATHROP:** I do not see any follow-up questions, but thanks for being here today and for--

**PANSING BROOKS:** I have, I have. Yes.

**LATHROP:** Oh, I'm sorry, Senator Pansing Brooks.

**PANSING BROOKS:** I'm sorry, is it Lieutenant? I'm sorry, I don't know everybody's--

**AARON HANSON:** I wish, the automatic pay raise.

**PANSING BROOKS:** OK.

**AARON HANSON:** Sergeant.

**PANSING BROOKS:** OK.

**AARON HANSON:** But if you'd like to field promote me, I'm in.

**PANSING BROOKS:** OK, Lieutenant Hanson. So would you have a problem then, if it were something like public reporting of discipline after an internal investigation that was confirmed and verified?

**AARON HANSON:** Well, here's what we don't want.

**PANSING BROOKS:** Because we do have that in, in-- with lawyers that if there's a--

**AARON HANSON:** Well, here's what I think, and it's a good question. Here's what I think it's important to avoid, and especially in these emotionally charged times, we don't want to create a system where we make a second bite at the apple where people aren't happy. I don't think this officer got disciplined enough, I want the Crime Commission to go back and take a second bite at the apple. I'm going to protest the Crime Commission until they come back and, and say this guy should have got 10 days, not 5 days. The system that happens, big sheriff's

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department, small sheriff's department, large agencies, I'd say, I think you'd be hard pressed to find a decent sized agency in this, in this state that doesn't have an internal affairs investigation where they're investigating these issues when they come in. We may disagree with those outcomes, but that process still remains. In our view, the real value of the Crime Commission and PSAC board is to deal with those most egregious violations or potentially situations where, for whatever reason, the chief administrator has proven themselves untrustworthy. And I'm sure they have a mechanism to deal with that as well.

**PANSING BROOKS:** Thank you, Lieutenant-to-be Hanson.

**AARON HANSON:** Thank you.

**BRUCE FERRELL:** And I apologize, you guys are going to see me a lot today, so.

**LATHROP:** No, you don't have to apologize. We're glad you're here and--

**BRUCE FERRELL:** So it's--

**LATHROP:** --I appreciate all the help you gave me and working through LB51.

**BRUCE FERRELL:** You bet. Again, I'm Bruce Ferrell, B-r-u-c-e F-e-r-r-e-l-l, I'm the police chief for the city of Wahoo, and I'm also here representing the Police Chiefs Association of Nebraska as the second vice president. So we're in opposition to both LB551 and LB601. I'll try to be brief in case you have questions, but primarily LB551 and LB51 are carbon copies of each other, with the exception of the subpoena power and the public database. As far as the Police Chiefs Association is concerned, the concern we have is, is what's already been addressed, is the quarterly transmission of records to the Crime Commission with specific requirements. They're overly broad. There's a lot of open interpretation of what, again, many of you have already asked, where's the fine line? We already have stipulations and understandings under LB791 when it comes to hiring of officers and officer misconduct, where there's protections built into LB51 about internal affairs complaints and compliance with disciplinary actions as well. I think the distinction, though, with this, this, this section in LB551 is again, where's the, where's the fine line? And

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that goes into LB601 where I, I tried to look under the, the National Conference of State Legislatures regarding public databases for officer misconduct. And to date, I can't find-- I found very little standing or pending legislation across the country that is ongoing. Are there some? Yes, but not a lot. While open dialogue is constructive, the amount of information required for this database is concerning. Again, Garrity has been mentioned, which is important, but also any state or federal employment regulations and privacy issues. Questions arise as to what level of discipline would be reportable. Would a minor complaint or would a reprimand or written admonishment be, for coachable instance, be required? Again, where's that fine line? Each, each of the city and county classes have different appeal processes and they're asking you to update appeal process and grievances and all the information that's involved. What under specific labor agreements or state or federal employment laws are exempt and not in compliance with the intent of this bill? I would suggest, and PCAN would also suggest that one possible opening alternative to, to move this issue forward would-- could, could we have a database that basically it's similar to what we see on some of the others, would be if an officer were to be decertified within the state of Nebraska, would that be a good start for this type of thing? So obviously decertification is already concluded under LB791, as well as other components within the PSAC and other components within the Nebraska Crime Commission. I don't think anybody would have a concern if, if we had an officer who had serious criminal, a serious criminal conviction or misconduct issues and were dismissed from their agency, that they would have a problem with that. I know some states do have public databases specifically for that decertification. There's also within the state and, and nationally, there is a mechanism that we can address or look for officers who have been decertified. Not all states participate. But again, I think that could be a possible opening there. So, again, I'm open and welcome to listening to anything, any questions you have. I just will finish by saying this, I understand where Senator McKinney and Senator Wayne come from. I was an officer starting with the Omaha Police Department in 1985. I stood on the corner with Senator Chambers when he had his petition out there for the grand jury bill for police and custody deaths, to make sure that he was not being opposed by any opponents to that type of condition. I've seen the Omaha Police Department grow leaps and bounds in their response to the community from 1985, especially after 1999, when there was a concerted effort by a number of chiefs and the officers and the

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command staff to move community relations forward. And I know that the officers who have left that profession have gone onto other communities, such as the city of Wahoo, we have taken those concepts and those, and those community relations steps to our communities and addressed those outside with our professional organizations as well. And I apologize for going over time.

**LATHROP:** Well, we're going to have to discipline you for that. I got to maintain order and--

**BRUCE FERRELL:** I got on the database.

**LATHROP:** I got one job in this place and that's to stop people when the light turns red. Senator DeBoer.

**DeBOER:** Thank you very much for being here and for your testimony today. I was thinking about some of what Senator McKinney and Senator Wayne said about this issue of transparency. And I think the term that Wayne used was over transparency as a kind of a way to help the relationships between communities and police officers. I'm wondering if they're-- so, so your testimony is not this way. So I heard you say maybe a database, a database of decertified officers, and OK, maybe that's a step, but maybe it's not quite far enough. So is there some-- since you're the Police Chiefs Association, maybe you can speak to, is there a way that the police chiefs could each prepare a report at the end of the year that said this year 12 officers were, you know, completely anonymized reports of how many disciplinary action-- maybe you already do this?

**BRUCE FERRELL:** No, we don't. And I think the concern again is what is, what is allowed under certain privacy laws, federal and state labor laws and labor contracts as they currently exist and in the future. Some of those are pretty, pretty restrictive, especially under federal labor law. I think, again, the starting point about decertification list is not a, is not a bad idea. The one thing I think where we, we as agencies fail, OK, is whether it's in front of this committee or whether it's out in the public is we don't educate what our policies are. Not necessarily what the outcomes are, but why we do what we do. And I think the more that we do that, it would help to let the community know why it is that we have that. Because if you look at the vast majority of complaints and discipline that go on in all the agencies, it's because a violation of policy, it is because of

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rudeness or, or those types of complaints, officer misconduct, criminal conduct are very low. And if they are being disciplined for that misconduct or for criminal, they're more than likely to be decertified. And so that's why I think that where the decertification list would be of a value.

**DeBOER:** And it-- I understand that point, that, that helped clear that up a little bit. But if, if a legal path could be found for an anonymized report, would that be something that you think that police chiefs would be open to?

**BRUCE FERRELL:** I think it's something we can discuss, yes.

**DeBOER:** OK, thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you so much for being here. We know you're a really professional and dedicated officer, and we appreciate it, Chief. I guess the question is, through the years of, you know, through the decades and, and more of systemic racism, I feel like the only way that there can be trust among communities, all communities, is through transparency. And so I think that I'd like to hear your thoughts about how, how to get trans-- trust with people if there's not as much transparency about what's happening within the, within the department.

**BRUCE FERRELL:** I think there is a lot of transparency, especially if you want to talk about this-- and I ain't talking about the city of Omaha. But that's what I have a lot of experience with, is they made a large effort, both at the, at the official level, as well as unofficial, by the officers association, individual officers going out and working out of the community, building trust within the community. And where I think, where I think some of the stumbling block is, again, is, is just not understanding why we do the things we do. It's tough. It's hard, especially when you're trying to balance, again, those labor-- or not labor, those federal and state employment laws about what we can divulge and what we can't and, and Garrity. Those are, those are going to be the big stumbling blocks to a reportable, and what it-- and, and I'll draw back probably in the mid to late 90s and early 2000s, before there was any databases or whatever, there were officers that were doing a good job policing correctly. But



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because individuals who were committing crimes didn't like the way that they were being arrested for those crimes, legitimate crimes, there was a concerted effort to file frivolous and multiple complaints against that officer and those officers to the point where the agency had to transfer them just to, to stop the onslaught of the complaints. And I think that's the other flip side of it, is will this database be used, will it be-- could it be weaponized against officers for the types of complaints that are not even reportable on other, other, like what Officer Hanson said, regarding the firefighters and physicians and lawyers? I think that's a concern is, again, how do we find that balance?

**PANSING BROOKS:** Well, I would agree there's a balance. And, you know, I presume you at least were aware of our two full days of hearings this past summer.

**BRUCE FERRELL:** Yes.

**PANSING BROOKS:** Where over 200 people came between Lincoln and Omaha and told us they had lost trust, that there is a feeling that, that, that they aren't being heard. So whether or not you feel that you are doing everything you can, there is a portion of the community that doesn't feel that. So I just, I mean, it seems like we need to deal with that. And what are your thoughts on that? I know Lincoln Police Department has added a number of things, like the 8 great-- 8, 8-- what is it?

**LATHROP:** 8 Can't Wait.

**PANSING BROOKS:** 8 Can't Wait.

**BRUCE FERRELL:** Well, when you talk about 8 Can't Wait, I mean, some of the components of in that, in that 8 Can't Wait, we've already doing.

**PANSING BROOKS:** Yeah.

**BRUCE FERRELL:** And so--

**PANSING BROOKS:** Communication.

**BRUCE FERRELL:** Well, no, I'm talking about-- so there's a, there's a component that says you must exhaust all measures before you commit deadly force. We do do that unless the suddenness of the behavior

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requires that we can exhaust those alternatives. The-- another component was duty to intervene. Now we're going to codify it either in policy or in statute. But for the large part, officers were intervening. Again, we talk about George Floyd. It was horrific. I got sick watching it. I understand the frustration when people see that. But I also have to balance the fact that the thousands of people that we've come into contact with, the tens of thousands of people that I've come into contact, many of them gang members, criminals, people who have gone to prison and come back, who have had positive contacts with law enforcement, even though they had to go to prison. Who have come and told me, say-- and said, even though I served 10 years in the State Penitentiary, what you did that day and the way you treated me changed my life and you changed my, my, my-- me moving forward to be a more productive lifestyle. I'm not discounting the 200 people you saw, but we have to balance all the positive contacts we have as well.

**PANSING BROOKS:** There's no question there's positive contact. Just dealing with the others too.

**BRUCE FERRELL:** Yeah.

**PANSING BROOKS:** Thank you. Thank you for coming today.

**LATHROP:** OK, I don't see any other questions. But thank you--

**BRUCE FERRELL:** Thank you.

**LATHROP:** --Chief.

**PANSING BROOKS:** How many more, do you know?

**LATHROP:** How many more people are going to testify on this bill? OK. Yeah, you're next.

**BOB LAUSTEN:** Good afternoon, Senator Lathrop--

**LATHROP:** Good afternoon.

**BOB LAUSTEN:** --members of the Judiciary Committee. I'm Bob Lausten, the police chief in La Vista. Senator McKinney, thank you for introducing this bill. I'm a product of the Miller Park YMCA, I grew up out in north Omaha. My dad was an Omaha police officer in the 50s, 60s and 70s and up until 1984, so I'm very well-versed of what's

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happened and what's transpired in north Omaha. And I consider myself a north Omaha kid.

**LATHROP:** Can you spell your last name? Just so we--

**BOB LAUSTEN:** Bob, B-o-b, Lausten, L-a-u-s as in Sam-t-e-n. I'm testifying in opposition to LB551 and LB601 on a couple of aspects. As specific to LB601 and the public database, really trying to find out, I know there was a comment made about there was room for discussion on this. What's the definition of discipline? What would go in there? We have several levels in La Vista, for example: verbal discipline, written counseling, written reprimand, a suspension, a demotion, a termination. In La Vista, we're kind of unique. We're a civil service city, so officers can appeal something to the civil service committee. But if we want to suspend somebody for more than 40 hours, demote or terminate, we have to get city council approval. So that information in our internal affairs investigation goes to the council. They make a decision, they pass a public resolution in support of the discipline, whether it's termination, demotion or over a 40-hour suspension. We don't have very many of those come up. Usually we can get somebody to, to resign in lieu of termination. And when they do that, if there's information in their file that we want to get them decertified, we'll contact the Crime Commission and go about getting them decertified. When they passed LB791, there was a provision there about information that the State Patrol could provide to the Crime Commission that didn't apply to the rest of the agencies in Nebraska. I think that's one area that we need to look at, rather than the subpoena power directly from the, the Crime Commission. We had an officer that had some misdeeds on duty, wanted to start the decertification process. This is in 2018, right before LB791 passed. Contacted the Crime Commission without the officer's compelled statement as well. We wanted to provide an internal affairs file, and they couldn't take it. They couldn't start an investigation because they would have to interview people and they didn't have the power to get that information going forward. So there's something in LB791 that needs to be cleaned up with that. With LB551, it has a training component in there. And Senator Pansing Brooks talked about everything being computer based. In 2012, when they passed the 20-hour mandate, they put 10 hours in there of Internet training. They limited that specifically because of what technology was at that time. We need scenario-based, roleplaying, hands-on type of training. So if we do go to whatever hours, hopefully it increases to, you can't do everything

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online. But a lot of it you can, there are subscription-based, it's training that you can do right now that's available out there. So with that, I'll take any questions.

**LATHROP:** Senator DeBoer.

**DeBOER:** Yeah, so your city council has to approve if you're going to terminate an officer, is that correct?

**BOB LAUSTEN:** Correct. If we make a recommendation for termination, the city council has to pass a resolution to terminate.

**DeBOER:** So this is vaguely related to that. I know in some of these hearings that we've had in the past, there were complaints that particularly in large metro areas like you're in, someone could be terminated from one area of the community and then go get onto a different force. Is that still something that can happen?

**BOB LAUSTEN:** Well, when LB791 was passed, a background investigation has to be done by a, by a hiring agency. And they, the agency that the person worked for, has to release records. So there's checks and balances that's in place in state law because of that, what happened prior to that.

**DeBOER:** So if someone is hired on, let's say, to your force that has been previously terminated from another place, is that information that's available to the public in any way?

**BOB LAUSTEN:** I do not believe so. They're not going to get hired if they've been terminated. If, if they've done something, they own it, we tell the people that. But to take somebody that's been terminated for another agency and you know why, you-- there's too many good candidates out there to take a chance on somebody that's been terminated.

**DeBOER:** So you did say that often instead of termination, what happens is they resign because of the difficulty. But arguably then if they resigned, that same kind of termination clause wouldn't, wouldn't apply. Or is that--

**BOB LAUSTEN:** There's a--

**DeBOER:** --something that you can find when you're hiring?

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**BOB LAUSTEN:** There's a change of status report that agencies fill out that goes out to the training center, that if you're, if you're demoted-- if you're promoted or if you leave, there's a reason why you leave. And right now, there's resignation, termination, termination in lieu of discipline has been added to that. So if we're going to do a background investigation on a candidate, we're going to get a copy of that change of status form to find out as part of that investigation why they left that previous agency.

**DeBOER:** And so now it would say what--

**BOB LAUSTEN:** It would say resignation in lieu of termination.

**DeBOER:** Resig--

**BOB LAUSTEN:** Or resignation under investigation, to that effect.

**DeBOER:** Resignation under investigation. OK, thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you so much for coming today again. So I was wondering if things like demotions, suspensions, reprimands, firings could be in the database.

**BOB LAUSTEN:** There's one thing that I, that I would suggest that we seriously look at. You've heard the word Garrity earlier. You haven't heard Brady and Giglio very much today.

**PANSING BROOKS:** Which, what word?

**BOB LAUSTEN:** Brady, the Brady case and a Giglio case.

**PANSING BROOKS:** OK.

**BOB LAUSTEN:** It deals with untruthfulness of law enforcement officers. And if an off-- law enforcement officer has been disciplined for some type of untruthfulness, the prosecutor is supposed to provide that information to, to the defense. It could prejudice the officer's testimony. I know when the ACLU attorney was, was talking, you know, can they use that information if this were a database of everything that's in here? But the Brady and Giglio is specific and it's, it's in, it's in law. Well, we've had to do, if we have a case where an

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officer has lied about something, a material fact, we're going to terminate, let him go. Because if they can't testify in court, you know, they're really of no use to us to be able to do what they need to do for the citizens.

**PANSING BROOKS:** OK, would there-- thank you for that answer. Would there be something that would be acceptable to be in the database?

**BOB LAUSTEN:** I think if somebody is terminated for cause. Again, you've done-- you own it. If it's work related and it is specific to, you know, your duty as a law enforcement officer, I think some of-- there could be some things in there that probably wouldn't apply. But in most cases, I don't know why not.

**PANSING BROOKS:** So I guess I'm-- you say that you guys do term-- you terminate somebody because they have lied, but that isn't necessarily true across the state. And I presume that's especially not true at places that don't have very many law enforcement.

**BOB LAUSTEN:** That is correct. With civils-- with first class cities and above, you have to have a civil service commission. And our rules are different, as our city council has to approve some things. But the most we could ever suspend somebody would be 20 days. And I know the, the viewpoint of our administrator in our city is if we had to suspend somebody for 20 days, it was egregious enough that we would recommend they be terminated. But not again, not every city, not every agency across the state has the same type of play going on.

**PANSING BROOKS:** So I think to the general citizen, that sounds surprising, that police aren't all held to the same standard just because of finances. In a way, it takes your brain to the next step, which is, well, then there's not equal justice going on across the state. If one police department is held to a different standard than another police, than another police department, that's exactly what the issue is with some of the transparency issues and why we heard so much from the, from the young and the people with Black Lives Matter groups this summer.

**BOB LAUSTEN:** I agree with that. And I agree that if my, my wife gets stopped in western Nebraska, the same professionalism that takes place in Omaha should take place on that traffic stop. That person has the ability to effect arrests. The same type of training and the advanced

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training, the continuing training, you have to do it. I know finances is a problem, you heard the League of Municipalities talk about that. But at what point do you have to make the investment to do what we really need to do? And that's-- there needs to be a baseline. And unfortunately, some of the training is done to the lowest common denominator. That's why we created our own training academy in Sarpy County, because we want an increased thing, and we're paying for it on our own dime from the cities.

**PANSING BROOKS:** I totally agree. And I think that the state should at least initially get all the police departments up to speed and not go down to the lowest common denominator. So I could not agree with you more on that. So thank you for your testimony today.

**BOB LAUSTEN:** Thank you.

**LATHROP:** I do not see any other questions. Thanks for being here today. And--

**BOB LAUSTEN:** Thank you.

**LATHROP:** --for-- any other opponents to either LB601 or LB551? Anybody here in a neutral capacity? Seeing none, Senator McKinney, you may close. We do have on LB601, we have seven position letters. Five in favor or proponents, one opponent. And on LB551, we have four letters. Four proponents, two opponents-- pardon me, and each of those bills have one in the neutral. We also have written testifiers. Angela Amack is a proponent for Everytown for Gun Safety. Terry Wagner, Nebraska Sheriffs Association, is an opponent to LB551. And John Cannon at NACO is neutral on LB551. With that, Senator McKinney, you may close.

**McKINNEY:** Thank you. I guess the first thing I would like to point out, and this is nothing against you, Senator Lathrop, or you, Senator DeBoer, but most of these individuals who just testified in opposition of both Senator Wayne's and my bill testified in favor of yours. And why I'm highlighting this is because two black men that introduced legislation for transparency from communities that are most affected by the criminal justice system, these officers come in and oppose their bills. But they come in and support yours. I find issue with that. The people of my community want transparency. You're in a position of power. You have the power to kill someone, you have the power to arrest someone and change their life forever. There should be

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some transparency there. There was a mention that, you know, you don't want to make the lives of officers more uncomfortable. Getting in my car every day as a black man is uncomfortable, especially when a law enforcement officer gets behind me. I don't know if I'm going to make it home. That is uncomfortable. You don't have to live with that. We do. Decertify-- just having decertifications on a database to me, isn't enough. Having termin-- just terminations on a database to me, just isn't enough. The officer that killed George Floyd, I believe, has 17 infractions on his record. I wish I-- sometimes I think about it a lot that if I was George Floyd and I ended up getting pulled over by that officer, I wonder if he wished he would have known that that officer was involved in a shooting, involved in situations of misconduct against individuals from our community. Because I think about that, because I have a 10-year-old daughter that one day might be pulled over by the police. And I hope she's equipped with information to make the best judgment possible. This isn't-- these aren't bills to make police uncomfortable, it's to balance the, the pendulum. We feel uncomfortable when we interact with police, especially individuals from black and brown communities. It is inherent. Not all interactions are positive. I've had interactions that weren't positive, and I could call a million people on my phone that haven't had positive interactions. Yes, there are officers that do some great things in our communities. I'm not saying that. But there, there are a lot of interactions that go unreported because we don't trust the process. We don't trust that if we go report something it's going to be handled properly. And there's many cases that indicate why we don't trust the process. I hope that these bills can move forward and something can be done to create more transparency in the system, because if we don't, we're just continuing, continuing, continuing to further the mistrust that our communities have with the police. It shouldn't be balanced one way. It should be balanced. Thank you.

**LATHROP:** We'll see if there's any questions before you get away. Any questions for Senator McKinney? Seeing none, thank you, Senator McKinney.

**WAYNE:** Thank you, Chairman Lathrop and the Judiciary Committee. There's a couple of things I want to point out. There's a lot of talk about Garrity. And being an attorney, I was going to come here and make legal arguments, but I have full confidence in Chairman and his legal counsel to look at the Garrity issue. You could argue that



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Garrity doesn't apply because there's not a compelling statement. If you, if you, if you text your fellow police officer and they subpoena it, it's not a compelling statement. It's a statement you made, same as phone records. In fact, they're not even the custodial of phone records, as most practicing attorneys know, that they really can't object to that at all. But the simple answer is, if they're worried about Garrity, you just don't allow anything that's found in the administrative subpoena to apply to criminal proceedings. That's all Gary-- Garrity says. Anything you say compelled can't be applied into a criminal proceeding. I would argue we should do that with all administrative proceedings, but that's not the bill before you today. Then I want to turn to the issue of discipline records. And I think let's read it together on page 40. And I'm just going to highlight why the argument that they're making doesn't quite fit with the actual language.

**LATHROP:** Hang on a minute.

**PANSING BROOKS:** What page?

**WAYNE:** Page 40. And I will say this, I'm all in favor of cleaning it up, but here's how I read it. Lines 23, it says each law enforcement-- I won't go through the first part-- shall maintain a record. But here's what's interesting. The name of the officer, the discipline findings, that means it's after the, the findings of the investigation. The discipline imposed, that's a past tense. That means it already was imposed. And any-- and if there-- whether there was an appeal or grievance. If so, the outcome. All this applies after their investigation and their confidential process. So the idea that during the process we're opened up to the public just isn't there. It's all afterwards. So there is no problem in my perspective from that. And by tying it to the license, we are treating it like anything else. And Senator Geist, I was thinking about what you said to Senator McKinney about physicians and, and everything else, and If we have a registry or a public database of the wrongdoings that deter bad child providers, right? We say we're doing a good job, we're showing transparency. We're allowing parents to pick the better provider. If we have a registry for wrongdoing for physicians, we say we do that to uphold a higher standard, so people can pick and choose which physicians to, to choose. Why should law enforcement be different? If the registry helps deter bad officers and elevates the professionalism and makes it to a higher standard, then we should also say, great, we

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did our job. But here's the fundamental difference. People get to pick and choose which doctors and daycare providers they interact with. The public doesn't get that same option when they interact with police. That's why we need transparency. That's why it's different. And that's why we need to make sure we have a public database, so they know who they're interacting with after the fact. Because most of the time people won't search it before the fact. With that, I'll answer any questions.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Wayne, for bringing this bill. So, and I have received some correspondence from, from some officers and they're in smaller communities and it's going to be different than the bigger communities. But basically, the gist of it is they, they, they're just getting sort of fed up. And if, if they sort of feel that if there is more reporting, they're just going to leave that profession. And so do you have any idea on how many offenses we're talking about in the state on an annual basis?

**WAYNE:** Well, I don't have any offenses, but I do have some guidance that we can use as, as, as an idea of what we could report. So if you turn to page 28, you'll see it talks about felony violations of federal law. And this is line 24 through 30: Misdemeanor crimes of domestic violence. But one of them at the line 29: Serious misconduct. If it results in a suspension, the public should know. To me, there's a clear difference of Senator Brandt coming in to talk to you about how you interacted with Senator Pansing Brooks.

**BRANDT:** But, but let's--

**WAYNE:** I need you to be a little nicer.

**BRANDT:** But take a big department like Omaha. Are we talking 10 offenses a year, 100 offenses or a 1,000 defenses-- or offenses?

**WAYNE:** Yes, sir. I have that number because Chief Schmaderer brought it up yesterday--

**BRANDT:** OK.

**WAYNE:** --the number of offenses. I'll pull the transcript and get it to you. But my point is that they're sending a letter of suspension, I

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don't think it's that hard in this day and age after the appeal process to copy it to the database people at the state commission.

**BRANDT:** But, but is this going to have an unintended consequence of causing people to leave the profession? Because there was an article in the local paper, they are short on officers now. They are having a tough time recruiting. And that's sort of surprising in the rural areas because typically they pick off our rural officers for Lincoln. Lincoln, you know, better benefits, any number of things. I mean, are we going to make this so onerous that the good people will leave and maybe we're only left with, with the less than sterling applicants to be a police officer? I mean, what's your, your opinion?

**WAYNE:** I don't believe so. I believe that if we're going to call them professionals and treat them like professionals, which I believe they are, then we should treat them like every other profession in the state of Nebraska. And if there's discipline imposed on their license, it should be public. We don't hear that same argument about everywhere else there's discipline. The number one reason why we don't have child care providers isn't because their discipline is public. The number one reason we have officers who are struggling to get into the profession is around pay and benefits. That's a city council issue. I don't think it's because discipline got imposed and you went through your appeal process and now it's public.

**BRANDT:** OK, thank you.

**LATHROP:** I do not see any other questions, but thank you for being here.

**WAYNE:** Thank you.

**LATHROP:** And thanks for introducing LB551. That will close our hearings on LB5-- pardon me, LB601 and LB551 and bring us to Senator Pansing Brooks and LB110. Good afternoon, Senator Pansing Brooks.

**PANSING BROOKS:** Good afternoon, Chairman Lathrop and fellow members of the Judiciary Committee, wherever you may be. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB110, which sets within our statutes best practices for use of force in policing and also provides a duty for a

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peace officer to intervene when another peace officer is using excessive force. I first want to say that I was able to meet with Lincoln's acting chief, police Chief Brian Jackson and Captain Jason Stille regarding LB110. And I want to thank them for our very positive dialogue. Law enforcement across our state work very hard to keep our communities safe, often at great risk and peril to themselves. We need to ensure that we have clear and sound state policies in place that keep both officers and the people whom they serve as safe as possible. The safety of the police and the safety of members of the community are not an either or proposition. They're inextricably intertwined. We are, we all remember the events of Minneapolis last May and the video of George Floyd dying while his neck was pinned under the knee of an officer. People rose up in Nebraska and across the nation to demand action. The Judiciary Committee held listening sessions on June 8 and June 9 in Lincoln and Omaha in order to allow people to vent their frustrations and present ideas for legislation. Even during COVID-- during COVID-19, we had well over 200 people come out and testify, testify before our committee. We all heard people plead with the Legislature to take action with all deliberate speed to ensure the next tragedy doesn't happen here in Nebraska. They told us that the persistence of racial disparities throughout our criminal justice system was something that needed to be addressed. One of the things we heard about was the 8 Can't Wait initiative, which included eight concrete ideas that could be implemented quickly. LB110, the bill I bring for you, before you today address as many of the 8 Can't Wait concepts, including a duty to intervene, conflict de-escalation requirements and the use of force continuum. We-- due to COVID-19, we have been asked not to have as many people come to testify. So clearly we did not send out the call for people to come and testify on behalf of this bill. I just mention that so that we can remember back to June when we were asked to act and act immediately. And so I will just say that when we, when we look at the number of testifiers today. It is clear some police departments in our state already are deploying some of these best practices. The Lincoln Police Department and then chief of police Jeff Bliemeister issued a general order 1510 on January 1 of this year, which provided a model for this bill, LB110. The Lincoln Police Department is doing a lot of work that is, that is correct, and I believe some of their policies should be enacted into state law. They state within order 8-- 1510 that employees are expected to use de-escalation strategies. The use of excessive, excessive force is also specifically prohibited. And regarding duty to intervene, the

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order 1015-- 1510 states that quote, When in a position to do so, employees must intervene when they know that another employee or any agency is clearly using illegal or excessive force or control. Employees must promptly report any excessive force or control and the efforts to intervene to a supervisor. Employees are prohibited from retaining-- retaliating against an employee who intercedes in or reports illegal or excessive use of force, unquote. The intent of this bill, LB110, is to ensure that these kinds of best practices and protocols are instituted statewide. In doing so, we can help protect the safety of everyone in our communities. LB110 would limit law enforcement officers from using force in various situations. Generally stated, the degree of force used by officers must be proportional to the situation or circumstance officers are facing. The bill states that a peace off-- officer is justified in using, in using deadly force if the peace officer reasonably and in good faith believes that the peace officer or any other person is in imminent danger of being killed or suffering serious bodily injury or harm, and that a lesser degree of force would be inadequate to prevent the imminent death, threat of death or serious bodily harm. As I said earlier, I met with acting Chief Jackson and Captain Stille with LPD regarding LB110. They expressed some concerns on the language of the bill, and I have asked them to provide specific feedback on the provisions of the bill that they have problems with so we can help clarify the intent. They have agreed to work with me to try to resolve differences. Again, the intent is to put best practices in the policy across the state. I believe sound policy always starts with constructive conversation, a spirit of cooperation and an agreement on shared values. It's clear in my discussions with sincere and purposeful racial justice advocate, advocates and many of the dedicated law enforcement officers of our state that most people want exactly the same thing: safer communities for everyone. I warmly invite all stakeholders to the table to move forward on thoughtful measures to codify existing best practices. However, I want to make two things perfectly clear. First, we need constructive input. We need participation, and not just criticism. Section-- second, action is essential. The more than 200 people who came out this summer braving some of the worst days of the COVID crisis want more than just talk or discussion. They, they were clear on that point. We must have policies in place that enhance confidence in law enforcement. I want to again thank law enforcement for all the work they do to keep our communities safe and for the work of all the good officers and troopers across the state. I also want to thank

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those from the Black Lives Matter groups and other advocates throughout our state for calling attention to the systemic racial injustices and biases that have been admitted today and that are seen throughout our criminal justice system. The Nebraska Legislature must answer that call in this session. I know a few of my colleagues also have important police reform bills that are before this committee, and we've heard a few already. It is my hope that we can work together to move a host of meaningful reforms to the floor this session, and I ask that LB110 be included in that framework. Thank you, and I'll be glad to answer any questions that you may have.

**LATHROP:** Senator Brandt.

**BRANDT:** On page 4, line 16, Senator Pansing Brooks, I just want a clarification. The line starts, "Unlawful force means force, including confinement,". What does "including confinement," do you, do you know what that means?

**PANSING BROOKS:** I'm sorry. I just got there.

**BRANDT:** Page 4, Page 4, line 16.

**PANSING BROOKS:** Line 16, sorry. Means force, including confinement, which is employed without the consent.

**BRANDT:** What is "including confinement." Is there a definition for that? I did not see that at the start of the--

**PANSING BROOKS:** It's, I think that what-- and I think somebody can speak to it behind me, but I think that, that that basically means force or confinement. Confinement is a type of, of force, and when unreasonable should not be implemented.

**BRANDT:** So it, it does not mean confined inside of the back of a police cruiser or confined inside of--

**PANSING BROOKS:** No, it just means-- well, it could be that if it was unlawfully conf-- if it, if it's a false arrest or if it's something where there wasn't reason to or there wasn't need to, so.

**BRANDT:** OK, I just am a little concerned that might be a little vague.

**PANSING BROOKS:** Yeah. Well, I'm happy to work on anything.

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**BRANDT:** OK.

**PANSING BROOKS:** And I think people behind me can explain that better than I.

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

**PANSING BROOKS:** Thank you. Thanks for asking.

**LATHROP:** Oh, I'm sorry, Senator Geist.

**GEIST:** Thank you. I have a question on page 7 and it's, and I've tried to look back here. I could have missed it. So that's why I'm asking. On page 7, line 8 it talks about the use of force. And I'm wondering, I think I know what you're getting at, that you're thinking or are using this in the sense of deadly force. But I'm wondering what your-- what use of force, what how is force defined here?

**PANSING BROOKS:** I think that the officers have a use of force, if they're using force like George Floyd and putting their neck on somebody and they weren't at risk of bodily harm or death themselves.

**GEIST:** But could force also be a hand on someone? Could it, I mean, could you be holding someone back? Could you--

**PANSING BROOKS:** No, but we could define that better if we need to, so.

**GEIST:** Yeah, I think that's needed because it says that you can't use any-- you have to exhaust all alternatives before you use force. And I'm just wondering--

**PANSING BROOKS:** Use of--

**GEIST:** --what type of force.

**PANSING BROOKS:** We had discussion about whether to put in excessive force or how to do that, but we can discuss that further.

**GEIST:** OK, thank you.

**PANSING BROOKS:** Thank you for asking.

**LATHROP:** I think that's all the questions for now.

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**PANSING BROOKS:** Thank you.

**LATHROP:** We will next take proponent testimony. Anybody here to testify in favor of the bill. Good afternoon.

**KAREN BELL-DANCY:** Good afternoon. Thank you, Senator.

**LATHROP:** Welcome to the Judiciary Committee.

**KAREN BELL-DANCY:** Thank you. Thank you, Senator Lathrop, members of the Judiciary Committee. My name is Karen Bell-Dancy, K-a-r-e-n B-e-l-l-D-a-n-c-y, and I serve as the executive director of the YWCA of Lincoln. The YWCA of Lincoln has the mission of the elimination of racism and empowerment of women. The YWCA is a movement working for the empowerment, leadership and rights of women, young women and girls in more than 100 countries. We have over 222 chapters globally. The members and supporters include women from many different faiths, ages, backgrounds, beliefs and cultures. We have been engaged in this movement in Nebraska for over 134 years. I am here in strong support of LB110 and want to express my gratitude to Senator Pansing Brooks for introducing this very important bill. I also want to thank the committee for your time and engagement this summer during the listening sessions of which I was a testifier there. Those sessions were held in response to the protests that occurred across the state and in the country in response to the continued violence and death inflicted on persons of color by law enforcement. African-Americans are so regularly the victims of unjustified, unprovoked, excessive police violence that it would be wishful thinking to suggest that it will end without legislation. It won't. This is one opportunity for the Legislature to be responsive to the demand, the demands for meaningful reform. Doing nothing is not an option. We have all seen the horrific video of the George Floyd killing, and it has been mentioned several times this afternoon. Prior to that tragic day, Officer Chauvin had several complaints of police brutality filed against him and was involved in multiple violent and deadly encounters. Current policies allowed persons like Chauvin to remain on the job and be given additional opportunities to inflict trauma on black bodies. Requiring that the degree of force used by officers be proportional to the situation or circumstance the officer is facing should be a fundamental principle for responsible policing. Part of what makes that video so disturbing is the fact that there were three additional officers who stood by and watched his death. How could we



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allow that to happen and not take meaningful action? This bill would require that law enforcement officers intervene to stop another officer from using excessive force. Two meaningful changes in this bill are appropriate and necessary steps in the right direction. Frankly, it's hard for me to imagine that there would be any opposition to such a fundamental protection to the community that law enforcement takes an oath to protect and serve. With that, I end my comments and I will take any questions the committee may have.

**LATHROP:** OK, thank you for your testimony.

**KAREN BELL-DANCY:** Thank you.

**LATHROP:** Let's see if there's questions. Senator McKinney.

**McKINNEY:** Karen, I have a question for you.

**KAREN BELL-DANCY:** Yes.

**McKINNEY:** Even as the director of, you said the YWCA, right?

**KAREN BELL-DANCY:** Correct.

**McKINNEY:** Do you feel comfortable when law enforcement gets behind you?

**KAREN BELL-DANCY:** No, I do not.

**McKINNEY:** Why is that?

**KAREN BELL-DANCY:** That's because I have been profiled and I have been stopped just for simply driving through a neighborhood, looking for a new house. And just the history of the personal relationship that I've had with law enforcement, not to mention that of members of my family, my daughter. And that's why this is so important to me, because I have two grandchildren, one a grandson that's 11 that is destined for such great things. I don't want him to continue to grow up with that kind of knowledge and having the relationship that he should have with law enforcement and other leaders of the community.

**McKINNEY:** Thank you.

**KAREN BELL-DANCY:** You're welcome. Thanks for the question.

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**McKINNEY:** No problem.

**LATHROP:** I don't see any other questions, but thank you for being here. Thank you for testifying this summer and for your patience this afternoon. You've waited a long time.

**KAREN BELL-DANCY:** Of course. Thank you. It was important to me. Thank you, Senator Lathrop.

**LATHROP:** Absolutely. Absolutely.

**KAREN BELL-DANCY:** Thank you.

**LATHROP:** Good to have your here. Next proponent. Good afternoon.

**SPIKE EICKHOLT:** Good afternoon, Chairmand Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska as a registered lobbyist in support of LB110. We want to thank Senator Pansing Brooks for introducing this bill. This bill relates to a couple of the issues that we talked about earlier on LB51 and LB-- I think it was LB472, Senator DeBoer's bill, but this approaches that in a little different way. And that is it states clearly in statute that there is an affirmative duty for officers to intervene. And that's the first portion of the bill itself. And what that states, that's, I would argue, is responsive to the George Floyd situation. It's a clear, explicit legislative expression directing law enforcement officers across the state that you have a duty to intervene for one of your fellow officers using excessive or inappropriate force. The other component of the bill is it states in statute that the officers are going to have proportional responses to various situations when it comes to the use of force. Now, Senator Pansing Brooks has already indicated earlier that she's been contacted by the Lincoln Police Department. Even though she modeled her bill based on their use of force policy to a certain extent, they still have some concerns about the language. And I think that's fair, that law enforcement should engage on it, because I think it's very important to have, if you heard the 200 or so people last summer and you heard what they said, to be, to give a meaningful response, I would submit you have to have something in statute that has the bottom, a floor or a ceiling or some sort of base minimum standard when it comes to what you expect law enforcement officers to do before they use deadly force. However, it's

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difficult for senators to put something in statute that's going to accommodate the reality of day-to-day situations for law enforcement officers. I recognize that, and I think that's a fair, that's a fair description. But I think finding the balance there should include at least a clear legislative expression in statute. I'll try to answer Senator Brandt's question, even though I didn't immediately know it myself. If you look on page 4, that, that language that you referenced, Senator Brandt, lines 16 through 21, it looks like it's new language that Senator Pansing Brooks first proposed, but it's actually just moved from page 3, lines 4 through 9. Her adviser presumably just moved it down there when Senator Pansing Brooks added some other definitions to that statute. But when I read that, what that means to me, and I haven't researched to see if many cases have, it looks like situations of false arrest in which someone is subjected to unlawful force, including confinement, which is done about their person in which the employment of it would constitute a tort or some sort of negligence standard. So presumably that would mean a situation of a false arrest where an officer without any sort of probable cause detains and puts somebody in a police car with handcuffs. And I still hope that's responsive. That's one thing, that's the only thing-- Senator Pansing Brooks mentioned somebody behind her could answer that, and I thought I'd take a stab since I was going to be following her afterwards. But with that, I'll answer any questions the committee has.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Eickholt. This is a question I asked earlier, and maybe you're the guy to answer this question. Those protests last summer here in Lincoln, you had multiple agencies in the police line. You had National Guard, State Patrol, County Sheriff, Lincoln police side by side, all wearing camouflage, really can't tell them apart. Any individual from one of the agencies, let's say he is using-- he is violating this new law. The individual next to him is not from that agency, is not his chain of command. Does that individual get in trouble for not stopping an individual from another force under this statute?

**SPIKE EICKHOLT:** Under the statute, under the statute, arguably, that solves that dilemma, right? If the statute has a minimum standard of duty to intervene that applies to all law enforcement agencies across the state, so State Patrol, Lincoln Police Department, Lancaster

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County Sheriff, university, all of them have the same expectation. If you see a fellow law enforcement officer using excessive force or inappropriate force that's clearly illegal, or whatever the language says in the statute, then they have that duty regardless of agency. The, the dilemma or the problem that I think you're highlighting would exist if we allow each department to have their own policy, right? Because then the Lincoln Police Department would have a duty to intervene policy which might be different from the Lancaster County Sheriff's and so on and so forth. And the different officers wouldn't necessarily know how to interact with one another. But I, I understand what you're saying, because you have a lot of those interagency things happen, particularly in situations like--

**BRANDT:** So the officer that does not intervene is now criminally liable?

**SPIKE EICKHOLT:** I-- there's no criminal sanction [INAUDIBLE]--

**BRANDT:** OK.

**SPIKE EICKHOLT:** --or for doing that. Nothing I saw. It's just a duty. And maybe it's-- and I don't know if it's actually even in Chapter 28, the new section. Maybe it's to be assigned. Section 1 is the duty to intervene. It doesn't actually have a, it's not in Chapter 20, which is the criminal code. It could be in Chapter 81, which is just the sort of the general code for peace officers requirements and certification and so on.

**BRANDT:** OK, thank you.

**LATHROP:** Senator DeBoer.

**DeBOER:** How do you enforce this statutory duty to intervene, because that's where I got caught up. Like what, I mean, having the duty, what does that, what does that do statutorily?

**SPIKE EICKHOLT:** The people, the people speak, I'm guessing behind me, likely in opposition, might be able to better explain. But I know that many of the peace officers' sort of codes of conduct, expectations of job duties are modeled after what's expected of them under the law. In other words, not everything that they are expected to do is a crime somewhere in the code with a criminal sanction. And there are some expectations, some standards, some duties of law enforcement that they

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have to follow as a condition of their job. I, I would expect that this, if there was a statutory duty to intervene, whatever chapter it ends up in is passed, that's a requirement that law enforcement comply with that statutory directive and it would be a component of their basic job duties.

**DeBOER:** So they would have to, the the individual forces would have to develop, I guess, some sort of information on what the consequence of failing the duty would be?

**SPIKE EICKHOLT:** Right, they'd have to have, obviously it would be a component of training, but that's not unlike other components of training when it comes to teaching officers and new recruits what probable cause means, when you can stop a vehicle permissibly, which states allow for one license plate to be displayed on a car and which don't, in order to stop them legally on the interstate. Those are the things that law enforcement would learn, this would be one of the components.

**DeBOER:** But as I'm thinking through this, this is just because I got stuck on this, too, like, what are the consequences of the stat-- I mean, I don't see how the consequences of a statutory duty are different than the consequences of a, of a policy duty.

**SPIKE EICKHOLT:** Well, one, I think would address the question that Senator Brandt just asked about, right? That everyone would be on the same page, at least on a minimal basis. That's one consequence. Another consequence is even though the departments kind of develop their own policy with respect to duties to intervene, and many of them had some sort of policy before all of this, the civil rights effort happened last summer, it would still be the Legislature providing a minimal standard, just like you do for a minimal number of hours of training and a bar on racial profiling stops. Those are the things that we expect, that your constituents ask of you. And that's what you-- why you would put it in statute.

**DeBOER:** OK, so the statute, first of all, would help with some of these "interagreements." And second, you think it might provide a minimum standard for the what will later get fleshed out in policies?

**SPIKE EICKHOLT:** Yes.

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**DeBOER:** OK. All right, thanks

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you for your testimony. My question is, is a duty to intervene, and that's the only thing I kind of can't compare it to. As a wrestling coach in a high school, we're required to mandatory report. And if we see something and we don't report it, we can get in trouble for it. And that's the only thing I can think of in my head right now to kind of compare it to, I know it's not the same. But just what I'm thinking is basically the duty to intervene is pretty much kind of close to that, that if you see an officer punching somebody in the face, you have a duty to stop them.

**SPIKE EICKHOLT:** Right.

**McKINNEY:** If you see an officer plant some drugs on somebody, you have a duty to intervene and say, hey, that's not right.

**SPIKE EICKHOLT:** Yeah, that's, and that's a good way of looking at it. I never thought of it that way, because normally when people talk about duty to intervene, you sort of think back to the situation in Minneapolis. But Senator Pansing Brooks has already envisioned that because on page 2, lines 8 through 11, the duty to intervene also has a duty to report the situation after the fact. And that is just like any other or many other or some other self-professions, right? You have a sort of affirmative duty to police the profession, so to speak, if you're a member of it.

**McKINNEY:** And it goes back to, I think, the point that has been made earlier today and throughout the day that we have standards in other professions that are just a minimum that we're fighting for, for law enforcement to just hold themselves to. Why is this such an issue?

**SPIKE EICKHOLT:** Right.

**LATHROP:** Any other questions? I see none. Thanks for being here. Any other proponents of the bill? Anyone here to speak in opposition?

**AARON HANSON:** Chairman Lathrop and members of the-- honorable members of the Judiciary Committee, my name is Aaron Hanson, H-a-n-s-o-n. I'm here on behalf of the Omaha Police Officers Association, 13445 Cryer Avenue. We stand opposed to LB110, but we appreciate the discussion

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and, and the topic that Senator Pansing Brooks is bringing up. I think sometimes it can easily fall into a tit for tat or, you know, we're opposed, we're opposed or we're a proponent. It does, in my opinion this is not, this is an opportunity for discussion. And even though we're opposed, I think the discussion is something that our industry doesn't do very well. I think we could take more time to explain force, what it looks like and why it never looks good. And I think that Senator Pansing Brooks and I may disagree on some things, but I would consider her a reasonable person. And that's an important distinction. She is a reasonable person and that is actually a legal standard, a reasonable person standard. A very different standard is the reasonable officer standard. Senator Pansing Brooks or, or anyone in this room who's not an officer is very likely considered a reasonable person based on their perspectives and their experiences and things they've experienced. I'm a reasonable officer, at least I'd like to think I am. And it's that reasonable officer standard that is where our courts, the Supreme Court consistently and ultimately our state legislatures have designed deadly force and use of force statutes, and ultimately those trickle down to the departments on their policies and their training. And the reason why that's important is only a reasonable officer would know how quickly things can evolve or erode. Many of you on this committee have done a ride-along with me, and those of you who haven't, you have an open invitation. If you have, you can do it again. Some of you have done it twice. But I supervised six people in a high-risk, fast-moving unit. And I try to set up briefings constantly where things are going to be safe. Suspect is safe, public is safe, officer is safe. And it never seems to fail, and some of you have seen it happen in real time when you did a ride-along, things go wrong and the unexpected happens quickly. And you have to be able to move quickly. And that's why I understand the perspective of LB110, but I think we need to focus on the reasonable officer standard. What the Supreme Courts have spent so much time deliberating and working out over the decades, and I hope we continue with that standard. I'll take any questions that you have.

**LATHROP:** Senator McKinney.

**McKINNEY:** When you speak of the reasonable officer standard, a reasonable officer would know not to punch somebody in a face, right?

**AARON HANSON:** No, that may be appropriate based on the situation.

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**McKINNEY:** If not provoked.

**AARON HANSON:** If not provoked. So if you're asking me, Senator, if an unprovoked strike to the face would be something that a reasonable officer would find appropriate, I would say no, I wouldn't find that appropriate.

**McKINNEY:** So then a reasonable officer would know to step in when his partner has stepped across the line.

**AARON HANSON:** That's another discussion because you have two officers' perspectives. You have one officer's perspective in real time, and he's or she is making a decision based on things and facts that they believe to be true. The totality of the circumstances in front of them as they perceive it. You may have another officer who is standing behind that officer a block away, within feet. Their perspective may be different. They may see things, they may hear things, they may know things that the other officer doesn't know. My point is sometimes it's clear. If you're, if an officer is engaged in egregious excessive force, reasonable officers will know that. But there is a gradation between what is an egregious, improper force and, and at times what is appropriate force. And it depends on what that officer knew at the time.

**McKINNEY:** Do all officers receive the same type of training?

**AARON HANSON:** So I can't speak for every officer in the state, what I do know is that our certification standards to become a certified law enforcement officer, there is basic use of force training, physical use of force training and also case law training that every officer in the state to be certified does have to complete. Now, in terms of ongoing training, I can't speak to that.

**McKINNEY:** Would I be wrong to say that every reasonable officer has some baseline understanding of what is excessive and not excessive?

**AARON HANSON:** I think that if we were to line up 10 reasonable officers and see them and have them view something which is egregious, uncalled for, excessive use of force, I think that all of those officers would very likely be able to call it out for what it is. But again, keep in mind, three strikes to a combative suspect could be appropriate. The fourth strike might not be based on the behaviors of



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the suspect in real time if they comply. So, again, when it is possible to have ex-- permissible force, acceptable force transition to improper force. But that's literally how quick it can potentially go based on the scenario.

**McKINNEY:** OK, I got kind of one question, but it's kind of a two-parter. How much does the department, I'll say the Omaha Police Department spend on equipment each year?

**AARON HANSON:** Senator, I--

**McKINNEY:** Just an average estimate.

**AARON HANSON:** I would say, if I had to guess, I know the bulk of our budget is manpower, is personnel. I don't have an exact figure on how much we spend on equipment that would entail cars and ammunition and a lot of other different equipment. I don't, I don't have--

**McKINNEY:** Because the second part to my question is how much do you spend on training each year? And I'm just curious to see if there's a disparity between spending more on equipment than training.

**AARON HANSON:** Well, I've never worked in the training academy, but I've known my peers who have, and I do know that that is a very, that's a very serious unit. They are constantly assessing the issues of the day to try to make sure, at least in Omaha, that we are promoting a training curriculum that is not only focusing on the basics, but is also sensitive to the issues of the day. And in my experience, we are continuously doing that, whether it be excited delirium, whether it be Native American culture, whether it be any issue of the day that we believe officers need to know more about.

**McKINNEY:** Do you think the department spends more on equipment or training?

**AARON HANSON:** That's hard to say because a crucial component of training is the manpower. So you've got the pay for the officers while they attend, you have the pay for the officers that are the command staff and the officers that are putting on the training. I'd hate to even guess. I can tell you I think both are a substantial investment.

**McKINNEY:** Thank you.

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**LATHROP:** I do not see any other questions, but thank you--

**AARON HANSON:** Thank you.

**LATHROP:** --once again for being here. Any other opponents?

**BRUCE FERRELL:** Three. Bruce Ferrell, F-e-r-r-e-l-l, representing the city of Wahoo, Nebraska Police Department, and the second vice president for the Police Chiefs Association of Nebraska. We're testifying today in opposition of LB110, not from an overall standpoint, but just for, for the discussion of some points within the bill that we believe that we can have some positive discussion about, similar to what Senator Pansing Brooks is doing with the Lincoln Police Department. Again, Officer Hanson did make some comments about this, but in our, in our view, LB110 will add some additional decision making layers in the law enforcement officers performance of duty in relation to Graham v. Connor, which is the U.S. Supreme Court decision that has already settled the standard use of force by law enforcement. In Graham, the court rationalized the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 hind-- 20/20 vision of hindsight. Part of the, the issue with LB110 is that there's, there's a bit of failure to account for basic human behavior when it comes to relation of time, decision making and the understanding of an incident in a time-compressed, critical incident. There's a large amount of research that has been peer reviewed and published and taught at the graduate and undergraduate level, not just in law enforcement, but in traffic, traffic reaction, as well as athletic performance that says that basic human performance in regards to compressed amounts of time in decision making and the behavior of those realities has to be considered. This is part of the basis for the Connor decision. Our concern is nobody has any dispute about the duty to intervene. I mean, we all believe that officers, if they see egregious conduct, should intervene. And the quest-- in answer to the question that Senator Brandt had is while most of it is administrative, there, there could be some criminal penalties under U.S. Civil Rights Act violations if the, if the force was egregious enough and the officers didn't intervene in that case, if they were brought into a civil rights action. The big-- the two main components of LB110 that we've got some concerns about is page 4, lines 5 through 13, which adds another layer of decision making when we talk about reckless action of the officer, which appears to be above the current

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standard that was previously set under state statute. The second one is line-- page 7, lines 7 through 14, which talks about exhausting reasonable alternatives. Again, officers have already, are already instructed to use whatever alternatives they can use up to, including the use of force and, and the escalation of force as it, as it unfolds. But again, we're forgetting that we're, what seems we're doing here is adding extra layers of control of the officers' behavior with the unpredictability and the suddenness of the suspect's behavior in the moment. So with that, I see my time is up.

**LATHROP:** Senator DeBoer.

**DeBOER:** Thank you again for being with us all afternoon. Were you here this morning too?

**BRUCE FERRELL:** No.

**DeBOER:** OK. One of the things I'm struggling with as I've been working on this area of law as well, is I, I struggle to see what what is materially different about, and this is why I asked the gentleman who was in favor of the bill as well, what materially are we doing by creating a statutory duty to intervene that would interfere with the way that law enforcement-- if, if what you say is a law enforcement officer viewing another law enforcement officer egregiously using excessive force would intervene, then having that duty codified, what does that change?

**BRUCE FERRELL:** Well, I'm not saying that that's an issue, I'm fully supportive of duty to intervene. The only question is, is do we need it to be codified in as a separate state statute or would it be, again, for lack of better, better use, would it be better to be placed into and part of as it is in LB51? I mean, we all agree that duty to intervene is appropriate. Agencies had, a lot of agencies already had duty to intervene, more agencies have included and updated their duty to intervene since the discussions have been occurred, just as we have. So I don't think there's any discussion about duty to intervene. I think it's the, where I think our concern is, is adding layers of additional decision making about the, about the act of the use of force that may delay the officer's response, cause potential injury or death to the officer, the victim or, or the public that, that is additional to what's already part of the Graham v. Connor.

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**DeBOER:** But I guess I fail to understand how having a statutory duty would change any of that.

**BRUCE FERRELL:** Well, I'm not saying it would.

**DeBOER:** Oh.

**BRUCE FERRELL:** I'm just saying, I'm just saying--

**DeBOER:** So--

**BRUCE FERRELL:** So the only, the only thing we talked about would do to intervene was you originally had it as, as a bill. Then it went to your amended, which may fold into LB51. We're just saying we don't, we don't really-- we're not concerned about where it lands.

**DeBOER:** Well, I'm talking about this one, but yes.

**BRUCE FERRELL:** Right, but we don't, we're concerned where it lands. It could be in LB110. I'm not concerned at all. Duty to intervene is, is, is a, is across the board everybody agrees on it.

**DeBOER:** OK, so--

**BRUCE FERRELL:** I think the thing we're discussing is how do we-- are we adding additional layers of decision making and additional layers of, of legislation that's over and above what Graham v. Connor is when it comes to the application of force and the use of deadly force. That's all.

**DeBOER:** OK, so walk me through again then, how this is a new, what did you say, layer of decision making.

**BRUCE FERRELL:** Under-- well, under current state statute, we don't have the reckless, the reckless element that's in page 4, as it's described in LB110. We also--

**DeBOER:** Can you point me to that one again?

**BRUCE FERRELL:** Page 4, lines 5 through 13. That's new.

**DeBOER:** So that just defines--

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**BRUCE FERRELL:** It adds "reckless," a different, a different standard than what was previously under the state statute. And that reckless, addition of reckless may again impact or may be in conflict with *Graham v. Connor*. That's my-- and again, I'm not saying we shouldn't have it. I'm just saying that may be something we need to look at and have some discussion with the AG's Office as to, or the County Attorneys Association, as to whether they believe that's going to be in conflict with an already established Supreme Court decision.

**DeBOER:** So my understanding is that reckless is actually a higher standard. So if you're, if you're looking for reckless behavior, that's actually more egregious than, than others. So it may be that that doesn't change anything. In fact, it might lessen what's already required.

**BRUCE FERRELL:** Well, again, it all, it all, again the *Graham*, the *Graham* standard, basically the reasonableness of the force must be judged from the officer's--

**DeBOER:** Sure.

**BRUCE FERRELL:** --perspective. Now the officers already understand what they need to do, now you're adding one more component. OK, is it reckless or isn't it reckless? Is it reg-- is what we've always done, which is appropriate and under *Graham v. Connor*. But now I'm, now I have to worry about I'm gonna-- and what am I doing is reckless. The delay is what we're talking about. And, and then on the other one, is page 7, is the requirement that we exhaust all reasonable alternatives prior to the use of force. Again, there are many occasions where there is no time to exhaust any alternatives but going directly-- when that person you pull up on the traffic stop get out of the car and they immediately begin firing on you. Are we going to be held to a different standard now under *Graham* versus-- *Graham v. Connor* with this particular? Again, that's, that's a discussion, I guess.

**DeBOER:** Yeah, OK. My reading of that would be absolutely not, because it would not be reasonable. It would not be all, you know, all use-- all reasonable other alternatives because you don't have a reasonable alternative.

**BRUCE FERRELL:** Right. And what I'm saying is, I'm not saying we throw-- that we're throwing this away. I'm just saying let's, let's

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make sure that it's not going to be in conflict with Graham v. Connor. And also, does it need to be a separate codified statute or does it al-- is it already fulfilled under LB51, which most of the portions of LB110 are? Again, I'm just saying it's, it's something for positive discussion--

**DeBOER:** OK.

**BRUCE FERRELL:** --and, and, and feedback with, with Senator Pansing Brooks.

**DeBOER:** So I just, last question, I promise.

**BRUCE FERRELL:** Sure.

**DeBOER:** Is there something inherent about putting it in the statute that you as a, as a positive duty that makes you nervous here, or is it just we don't have it now, we don't want to retrain our officers. We think it's OK.

**BRUCE FERRELL:** I'm a little confused by what you mean by positive.

**DeBOER:** So I guess I still don't-- it, it doesn't matter. I don't understand why having it spelled out as a duty in statute has a material effect on what an officer behaves like in the field compared to having a duty that was written by their, their, their force.

**BRUCE FERRELL:** I think that if statutorily it meets Graham v. Connor and then it will fall in with the department's use of force, which under LB51 we're going to have a minimum baseline standard where off-- where departments can add additional restrictions if they choose. But each agency will have, have a baseline standard for use of force across the state. Again, I just don't want to have officers being held to, to or being-- having to second guess what they're already been taught and what they're already trying to do under Graham v. Connor to where it becomes a more restrictive or they're, they're self-doubting whether they're meeting those standards.

**DeBOER:** OK.

**BRUCE FERRELL:** If that makes sense. And I think the duty to intervene is a totally separate issue from, from this, this portion of what we're talking about.

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**DeBOER:** OK.

**BRUCE FERRELL:** If that makes sense. It may not.

**DeBOER:** I'll ask you later.

**LATHROP:** I got a question for you. So does Wahoo have a policy? Does your, your agency have a policy on use of force and then policy on duty to intervene?

**BRUCE FERRELL:** Yes. So we have both.

**LATHROP:** OK.

**BRUCE FERRELL:** So we have a use of force policy that goes for a variety of different steps within the process. Call it the use of force, use of force continuum or the response to resistance.

**LATHROP:** OK, so you've got a policy.

**BRUCE FERRELL:** And within that policy we talk about duty to intervene and render medical aid. We also have separate individual policies about duty to intervene and render aid. They reference each other.

**LATHROP:** OK. Where did those come from? Are those models that you adopted?

**BRUCE FERRELL:** Yes, they were either--

**LATHROP:** OK.

**BRUCE FERRELL:** --from LARM or in consultation with other agencies. I looked at some of the use of force policies that the Omaha Police Department uses, I looked at Lincoln police.

**LATHROP:** Are they all pretty close to one another?

**BRUCE FERRELL:** Yeah, I mean, there's some variation, but depending on--

**LATHROP:** Here's sort of like what I think it would be helpful, is if the committee had a chance to look at what policies look like--

**BRUCE FERRELL:** Sure.

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**LATHROP:** --at police agencies. So you could forward those two policies, the excessive force and the duty to intervene. And you said there--

**BRUCE FERRELL:** Render medical aid, yeah.

**LATHROP:** --something too different in render aid. If you could send those to the committee, I think we'd have a chance to see when we, when we talk in LB51 about having policies in order to remain accredited, what are you going to have in your policy book? We don't know--

**BRUCE FERRELL:** Sure.

**LATHROP:** --until we have an example of it. And I think the committee would benefit. I know I would.

**BRUCE FERRELL:** Yeah, be happy to.

**LATHROP:** So if you don't mind doing that.

**BRUCE FERRELL:** Be happy to.

**LATHROP:** Any other questions for Chief Ferrell? Senator McKinney.

**McKINNEY:** Thank you, Chief Ferrell, for your, for your testimony. I'm just curious, do you think this issue would have come up and Senator Brooks would have introduced this legislation if officers were already exhausting all alternatives not to use excessive force?

**BRUCE FERRELL:** OK, I'm sorry, can you repeat that again?

**McKINNEY:** Do you think this issue would come up or stop coming up if officers were currently exercising a reasonable, you know, acting as reasonable officers to exercise reasonable-- to not use unreasonable force against, you know, citizens?

**BRUCE FERRELL:** I believe it would, because of our policy and the policy that I operated under in the Omaha Police Department, that if excessive force violations were occurring and have occurred, that the administer-- that the chief of police both, whether they referred it criminally or whether it went through the internal affairs process,



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that those, those, those officers were disciplined and/or charged criminally.

**McKINNEY:** And then earlier you mentioned that, you know, officers may-- that there's a human element to all this. And you mentioned like athletics. I wrestled my whole life, I coach wrestling. And we, we, as a wrestler and as a coach, you understand that the more training you have, the more you practice, the better you are in the field of competition. In this instance in, in the field specifically. So is the training the issue?

**BRUCE FERRELL:** Again, I can only speak for my agency. OK? So I, I know that each of my officers, when they went through the academy, had the required training for use of force and other topics that are required for certification by the Nebraska Law Enforcement Training Center. Once they come home, they have an annual review of policy that includes testing by me, written testing to show that they are compliant and that they also are-- they understand the policy. And if not, then we do remedial training to make sure that they do understand the policy and then we use scenario-based training even over and above the, the virtual training. Simple example, we go and we do our annual qualification shoot. This year we're going to incorporate them. Once that-- once we complete a round or course of fire, then that officer then has to move and render aid or that officer would be put in a position where an officer would have to intervene if they thought there was excessive force. Again, muscle memory in addition to mind memory.

**McKINNEY:** How often are those policy standards and trainings updated?

**BRUCE FERRELL:** So we-- I look at those on a yearly basis. They are provided that training yearly as a refresher. Plus, we also-- I also forward a number of state and federal Supreme Court rulings regarding a variety of topics, including search and seizure, use of force and others that come from LARM, as well as any others that I feel that they would be important for them to, to use as a basis for their knowledge.

**McKINNEY:** All right. Thank you.

**LATHROP:** OK, thank you, Chief. I don't see any other questions for you. Good evening.

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**BOB LAUSTEN:** Good evening, Chairman Lathrop and members of the Judiciary Committee. My name is Bob Lausten, B-o-b L-a-u-s-t-e-n, I'm a 36-year veteran having served the city of La Vista the past 30 years. Today, I'm also representing the United Cities of Sarpy County. I'll make this short. I'm here to testify in opposition to LB110 as currently introduced. We do appreciate best practices and also the duty to intervene and the discussion about duty to intervene. Section 4 of LB110 provides that the use of force by police officers justified to effect an arrest, prevent an escape or prevent an imminent threat of bodily harm or death to the peace officer or another officer if other means would be ineffective. At the same time, LB110 deletes language from current statute that provides that force is justified to effect an arrest if the officer believes that such force is immediately necessary to effect a lawful arrest. LB110 identifies a list of variable alternatives the officer must be prepared to show that he or he-- he or she evaluated prior to the use of force. Finally, the section in LB110 also requires any officer using a level of force to defend his or her life must have a present and reasonable belief that any lesser degree of force would be inadequate to prevent an imminent threat of bodily harm or death to the officer. As Bruce mentioned, the United States Supreme Court said in *Graham v. Connor* the reasonableness of an officer's force in any situation is to be gauged by the perspective of the officer who uses the force, not from the perspective of the bystander. The Supreme Court held that the U.S. Constitution requires this approach. Adding the exhaustive, exhaustive requirements of LB110 would have the practical effect of causing officers to hesitate and second guess themselves as they deal with violent criminals who place them in danger, even when a situation doesn't allow for such careful calculations. Under such circumstances, it would not be possible for police officers to safely address violent suspects to the mindset required to protect them and the public. We have a changing dynamic of who's working in law enforcement. In the 70s and 80s, I started in 1984, we had Vietnam veterans. Now we had Gulf veterans. We have different mindsets, we're dealing with millennials now. We've mentioned how important training is. One thing that you guys haven't gotten into is how is force investigated. We're changing the model for this, but what are we doing to have investigators investigate the use of force to the level that's required? Sarpy County, we're, we're in the early stages of forming a force investigation team to investigate off-- officers that use force that result in serious bodily injury cooperatively, where the

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offending or the acting agency wouldn't have any part of the investigation and the other three agencies would handle. So we want to take an elite team of investigators with extra training, with experience to be able to do this. And I think we're missing the point on some of the investigative parts of this, but we're changing the game as far as what type of force we can actually use. Thank you.

**LATHROP:** I do not see any questions, but thank you for your testimony. Good evening.

**JIM MAGUIRE:** Evening, Senator Lathrop, Chairman Lathrop, senators of the Judiciary Committee. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e, I'm president of the Nebraska Fraternal Order of Police. And we're here and to speak in opposition to LB110. I'm not going to go over all the previous testimony because they, they brought up a lot of the stuff that I was going to bring up. A lot of it has to do with changing the standard from, from the Graham v. Connor to this. Senator McKinney, I appreciated your, your, your question about you're a wrestler and everything else. And that's stuff that as a reasonable officer we have to take into account. If I have to deal with somebody who's proficient in MMA or they're a wrestler, that officer may have to use a different set of force in order to effect that arrest because they are a lot more proficient. If you've got somebody who is, let's say they're six foot four, 315 pounds with 5 pound-- with 5 percent body fat and you've got an officer who is five foot two, 110 pounds, that use of force is going to be wildly different than another officer that may be that same size. So that's why we are, we're concerned when you start talking about exhausted all reasonable alternatives, because sometimes you just-- some people may think, well, why didn't you just drive away? You could have just de-escalated by just driving away. Well, sometimes we can't do that. Sometimes we are called to a situation that we have to handle. And just driving away is not a reasonable alternative. With that, I'll stand for any questions.

**LATHROP:** OK? Is that a hand? I can't really tell.

**DeBOER:** I can't either.

**JIM MAGUIRE:** Can I ask, can I bring up one more thing?

**LATHROP:** OK.

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**JIM MAGUIRE:** Not to say that--

**DeBOER:** Here's my question. What's your one more thing?

**JIM MAGUIRE:** On the duty to intervene, on the duty to intervene, I do want to bring up one point. And it's, it's very, it's, it's very short and could possibly be cleaned up. On the duty to intervene part, it says that the, the, the peace officer, they have to report the incident to the peace officer's immediate supervisor or to the Nebraska Crime Commission. If you don't notify your immediate supervisor, they can't come down with any discipline. So it should be they have to, they have to notify their immediate supervisor, because if they, if you don't notify them, they can't notify the chief. The chief can't start an investigation. If you just go to the Crime Commission, you're wasting a lot of time. They may not, they may not even review it. They said, OK, you didn't intervene. OK, but then you may run into time constraints on union contracts and everything else. You need to notify the immediate supervisors.

**LATHROP:** OK.

**JIM MAGUIRE:** With that, I'm done.

**LATHROP:** Senator McKinney--

**JIM MAGUIRE:** I'm sorry.

**LATHROP:** --now has a question.

**McKINNEY:** Thank you. Thank you for your testimony. Just going back to Graham v. O'Connor [SIC] and the ruling and the 14th Amendment reasonable objective, objective standard. It says the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene. And it's calculus must embody an allowance for the fact that the officers are often forced to split-second decisions about the amount of force necessary in a particular situation.

**JIM MAGUIRE:** Correct.

**McKINNEY:** And I understand that. What my, my question is, as I'm reading that and as I'm like processing it, to me, that means there needs to be more training in these type of situations, in split-second

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situations. Shouldn't there be more of an emphasis on situations that kind of relate to where an officer would make a split-second decision? Because if we're relying an officer's reasonableness in a situation, that puts more responsibility in their hands to do what's right.

**JIM MAGUIRE:** Senator, you are 1,000 percent correct. That's why it's important when the-- training has evolved, and I'm going to date myself. I've been a street cop for over 29 years. Twenty-nine years ago, there wasn't a whole lot of training available. In today's day and age, we now have what's called virtual simulators, and we need to get that because, you know, the split-second decisions and everything else that you go through, you get, you get better at it, on not having to use force, if you're exposed to it in training and saying, I shouldn't have done this. If you're going to make a mistake, make a mistake in the training, don't do it on the street. But the only way you can do it is if you have more training. We have to do it. That's why in LB51 it was proposed that defensive tactics, and that could be all-inclusive. That's where it was proposed for eight hours. Decision-based, scenario-based, that's the only way you're going to understand, oh, this is, I shouldn't have done this. Learn from your mistakes in the training and not on the street. As an officer for that, that's getting a little gray on the side and everything else, the last thing I want to do is do any force because it hurts. But in order to lower the use of force, you have to have clear-cut policies and you have to have really good training department. And you just, you can't-- I recall when we were talking about body cams, and I think it was one of the county attorneys or somebody that says the question isn't should you, should you buy body cams because of liability. The question is, can you afford not to? And when it comes to training, can you afford not to train us on use of force? No, because the first thing they're going to come to you and say what's your training records look like. Have you ever taught anybody any use of force training ever? And if you don't, good luck in court. So that's why it is so, it's vitally important when it comes to training. We're only asking, I know I'm going back to LB51, we're asking for 40 hours. And is it, is so important for us to get exposed to more training. And we're not trying to take people off the street, we're just trying to make us more professional and make sure that we can minimize the risk not only to us, to us, but the citizens that we serve.

**McKINNEY:** If LB51 is passed, how long before each officer on the department takes that training? And I, because I think that's the

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issue is if they're not taking the training or there isn't sufficient enough time for the training to be implemented, we still have the issue here.

**JIM MAGUIRE:** And that would, unfortunately, that would be up to the individual departments. You hope that once it's, once it's in effect starting in 2022, you now have to have all of these, all this training done. But in the meantime, it's up to you. You're, you're stuck with 20 hours with 10 hours of it in, in Internet-based training. Up to 10 hours in Internet-based training. I'm not saying that you can't go above that, but that's just the baseline.

**McKINNEY:** Thank you.

**LATHROP:** Thanks, I appreciate it.

**JIM MAGUIRE:** Thank you.

**LATHROP:** Good evening.

**STEVE CERVENY:** Good evening. Chairman Lathrop, senators of the Judiciary Committee, thank you again for allowing me to speak. My name is Steve Cerveney, S-t-e-v-e C-e-r-v-e-n-y, I am captain with the Omaha Police Department at 505 South 15th Street, Omaha, Nebraska, 68102. The Omaha Police Department respectfully opposes this bill as it is currently written, primarily because the important topics of use of force and duty to intervene are already included in LB51, which we support, and requires every law enforcement agency in Nebraska to implement standards related to these issues in a manner that would create consistent uniform policies throughout the state. We also have concerns surrounding some of the bill's use of force language as it relates to reckless conduct and what a reasonable person would deem appropriate, along with guidelines that would require officers to exhaust all attempts at distancing and warning before making an arrest. Very similar to what has already been discussed. We appreciate your comments, Senator Pansing Brooks, that you're willing to look at some of the language and definitions and possibly provide some amendments to that. Thank you.

**LATHROP:** Thank you, Officer Cerveney.

**STEVE CERVENY:** Thank you.

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**LATHROP:** Anyone else here to testify in opposition? Anyone here in a neutral capacity? Senator Pansing Brooks, do you wish to close? We do have, on LB110 we do have four position letters. Two are proponents, one is opponent and one is neutral. And we did get written testimony this morning dropped off on LB110. In opposition is Terry Wagner with the Nebraska Sheriffs Association. And also in opposition is a private citizen, Mary Hilton, H-i-l-t-o-n. With that, Senator Pansing Brooks to close.

**PANSING BROOKS:** Thank you very much, Chair Lathrop. And thank you, committee members, for sitting here today through this. And I just want to say a couple of things that I've noticed. We've only had three people of color today in this hearing, in this hearing or throughout the day, which I think is, you know, it's not really telling the whole story. So, and two of the people were senators and one was a testifier. So I just want us to remember back to June, that this was something that was very concerning to a lot of people across our state. And I appreciate what the, the officers have said. I guess I feel embarrassed that I didn't specifically call them. I did call the Lincoln Police Department and didn't realize that all of these officers had an issue to such an extent. So they, you know, as we as we heard, the people of color each spoke about not feeling comfortable where an officer is behind them. That's part of the communication issue. That's part of dealing with, you know, what is going on in our community. This bill, as Senator DeBoer pointed out, does not have criminal sanctions. It allows agencies to determine how they're going to discipline. So it's a pretty minimum standard. It does not disagree or conflict with the Graham case. And there's by no means a blanket, you know, also, the Graham case does not give blanket authority to police to use whatever force they want because it's going to be viewed in their reasonable police-- in their position as a reasonable police officer. So, again, since this doesn't specifically ask for criminal sanctions, what it does do is, is align what's happening with policies across the state. I don't know, I don't-- I still never really got why we don't explicitly put the duty to intervene into statute and make the legislative intent clear. The, the, the duty to intervene, they said, was not an issue. But we would be able to use it for cross-agency work when it might be necessary, when we have the State Patrol and the Lincoln Police Department and the University of Nebraska police, that kind of interaction so that there is a consistent knowledge of, of a duty to intervene would be helpful. I'm

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clearly willing to work with all of the testifiers or opponents here today. And, you know, we, we already have a lot of this and they have a lot of it in policy. So I still haven't understood what the problem is with coordinating it and putting it across the state, making sure that there is coordination across the state, across the various departments. So anyway, I appreciate your time today. I hope you'll-- that we can move forward. I will happily work with the people who testified today, and hopefully we can come to some sort of positive decision on how to go forward. Thank you very much.

**LATHROP:** Terrific. Thank you, Senator Pansing Brooks. Any questions? I don't see any.

**PANSING BROOKS:** Thank you.

**LATHROP:** Thank you. That will end our-- or close our hearing on LB110 and bring us to Senator Wayne, who has requested that we have a joint hearing on both LB216 and LB217. Is that true?

**WAYNE:** Yes.

**LATHROP:** Great. You have a--

**WAYNE:** Thank you, Chairman.

**LATHROP:** --an agreeable committee.

**WAYNE:** Thank you. Well, you might even be happier here in a second. Thank you, Chairman Lathrop and the Judiciary Committee. I did ask for a joint hearing and maybe this will eliminate Sergeant Hanson and people coming up if they wanted to sign opposition over there, because I'm kind of opposed to both of these bills too. [LAUGHTER]

**LATHROP:** Make this a short hearing.

**WAYNE:** I'm trying to. My name is Justing Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is northeast Omaha and north-- or north Omaha and northeast Douglas County. The reason why I say that is because I'm usually fundamentally against creating new crimes. And these are more conceptual, and I actually have-- think there might be an easier way of doing this. But the idea behind LB216 is really simple. It's just we want to make sure police, there's an ethical rule for attorneys that we have to follow. And this summer is



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no, no secret I was involved in a pretty significant litigation or potential litigation with James Scurlock. I did not ever comment on the case. And if you look back, I didn't because I called our Supreme Court office of discipline. We have an ethical rule we're not supposed to. I was trying to figure out a way to bring officers, police officers who I believe are officers of the court into that same ethical duty. And maybe the easier way is to tie it into Chapter 81 with the police officer's duty, that they should not-- and it would just be a violation of their duty, not necessarily a criminal offense, because it's not a criminal offense for, for us. So there goes LB216. So, again, there's a white paper over there, you can just sign opposition and it probably won't go anywhere. LB217, there's an issue in our system where there is a misdemeanor if you kind of lie to a cop, but if you typically lie in a significant way, particularly your name, you get charged with a felony. That same thing doesn't apply to officers. So if they were to falsify a report, I was trying to figure out a way to make it equal to those who are citizens. The easier way without adding extra work might just be able to say you certify this report under the duties of perjury or under duties of some type of certification at the bottom of the report. That way you don't have to create a new crime, that my colleagues and defense attorneys don't have to defend a new crime. So with that, I will-- and I didn't do the opening because my staff already, they typed up a great opening on both of these, but they already left. So hopefully they're driving and won't see the hearing and I can get away with this.

**LATHROP:** OK, any questions for Senator Wayne? I just want to say this, there's a young man that's sitting in the back of the room that's been here all afternoon. And I don't know if he wants to testify on either one of these bills or not.

**WAYNE:** That's Senator McKinney's staff.

**LATHROP:** Oh, OK. I didn't realize that. I just wanted to make sure you weren't--

**WAYNE:** No, no. He's making [INAUDIBLE].

**LATHROP:** --sandbagging two bills, and we [INAUDIBLE].

**WAYNE:** No, he's, he's making sure I don't go off script either.

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**LATHROP:** OK. All right, well, it doesn't look like there's going to be-- well, maybe there is. Proponent testimony.

**DeBOER:** Spike.

**SPIKE EICKHOLT:** When you said young man on the record, thought you were talking about me.

**LATHROP:** Not, no.

**SPIKE EICKHOLT:** I'll be very brief. Chairman Lathrop, members of the committee, my name is Spike Eickholt on behalf of the ACLU of Nebraska, S-p-i-k-e E-i-c-k-h-o-l-t, testifying in support of both bills. You may remember Senator Wayne proposed these ideas, I think, at the interim study hearing. And I think these bills both approach it slightly differently. And I know that Senator Wayne is looking at possibly amending one or both of these bills, so I just will speak generally to the concept. And that is when you're talking about matters of pretrial publicity, I think it's probably safe to say, and the people behind me, if they're going to speak and say that as a matter of good police practice, you don't want investigating officers just commenting publicly on pending cases. You want to have them just speak only when it matters and not just put stuff on social media and talk about it. And as Senator Wayne indicated, LB216 is modeled after the ethical rule for attorneys, and it's similar and it does provide a pretty general exceptions that are-- consist of what lawyers have to do when they have a pending criminal case or a pending civil case that gains publicity. As far as the other provision, LB217, officers prepare lots of reports. Sometimes some of those reports now as a matter of practice are sworn to and are under oath. And then therefore, if the officer was to misrepresent something in a material manner, that officer would be subject to possible perjury or some sort of false statement charge. But his bill will go further than that and requires that whenever an officer has any sort of duty to report and they report something that matters in an investigation, that officer attests to the truthfulness of it and therefore also would be something that would be subject to the general perjury or general false statement criminal law violations, if it would ever come to light or be an issue. I'm not going to keep the committee, I'd just urge the committee to consider these concepts.

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**LATHROP:** Any questions for Mr. Eickholt? I see none, thanks for being here. Any other proponents of either bill? We will move to opponent testimony.

**BOB LAUSTEN:** Good evening, Senator Lathrop, members of the Judiciary Committee. I'm Bob Lausten, B-o-b L-a-u-s-t-e-n, representing the La Vista Police Department, 7701 South 96th Street. Specific to LB217, as Senator Wayne mentioned, this might be able to be handled in Title, Title 81. I will say that if an officer makes a false statement, a material false statement on a report, the Garrity Giglio kicks in. So the officer's credibility to testify in court is greatly affected. A criminal offense of official misconduct can be filed. I say this from experience where we did have an officer that made a material mistake-- or not a mistake, but a material offense in an arrest report. He was investigated, he was terminated. County attorney was contacted. Official misconduct charges were contemplated, they weren't ultimately filed, and the officer's information was sent to the state to be decertified. So the material false statements, there's things that are in statute right now that could handle rather than a specific law. But we support the right things that are in the report. False statements have no use in law enforcement.

**LATHROP:** OK. No questions. Next opponent. Good evening.

**AARON HANSON:** Thank you, again. Chairman Lathrop and honorable members of the Judiciary Committee, my name is Aaron Hanson, H-a-n-s-o-n, representing the Omaha Police Officers Association, 13445 Cryer Avenue. Just very briefly, we oppose LB217 and LB216. With regard to LB217, we've got legal mechanisms in place right now. There's obviously perjury laws, it's a pretty serious felony in and of itself. There's false reporting, it's a Class I misdemeanor, that would apply for making a false report. And as Chief Lausten mentioned, official misconduct, that's a Class II misdemeanor. I don't know that-- we already have laws in place to handle this. I don't know if we need to add a, a felony specifically on a police officer. And part of the reason being is this, in my career, I've had a situation about 15 years ago. When I was a canine handler, we had a burglary. The suspect broke into a house, he assaulted a woman and then he was hid in the house, and he was hiding under the bed, the covers. And he wouldn't come out, was supposed to be armed. I [INAUDIBLE] my orders, and at some point I had to send the dog to apprehend him because I couldn't go pull the blanket off him, I didn't have a gun. The dog apprehended

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him, took him to the hospital to get him patched up. And the officer that was there backing me up said-- I said, hey, my sergeant's going to come. He's going to interview your statement, take your statement verbally, then you write it down. I'm sure you heard my commands. I'm sure you saw that he didn't put his hands up. Actually, before I explain that he says, oh, yeah, that was-- I saw his hands up from underneath the blanket and he said, I give up. You did everything right. I mean, that is not what happened. But that's what he remembered. And I told him, you should write exactly what you remember. This is before body cameras. You should write exactly what you remember. You should tell my supervisor exactly what you remember. That was his truth, and I had my truth. I knew what I saw, why I sent my canine. But imagine under this scenario, I can tell you that every time I testify in court, I am-- we're accused of not telling the truth either in the report or in testimony. And I don't know that we need to add a bill to this extent. I think there's current laws that are already in place. With regard to LB216, I need to know the scenario that, that would result in this law. We already have policies in place against commenting on active investigations, with the officer. And I'd have to know more about the situation that precipitated LB216 to see if this is a fix or not. We definitely don't want to stifle speech on people other than the officer involved. I don't know enough about the reason why. So thank you. I'll take any questions you might have.

**LATHROP:** Senator McKinney.

**McKINNEY:** I think maybe the issue that comes up, and I've seen it, is sometimes situations happen and I've seen officers on Facebook comment about cases or the OPOA comment. So I don't, I don't know if it's similar. But I've seen situations where multiple officers comment about cases and things like that. But it's probably not similar to this. But that's what I'm, that's what I'm thinking.

**AARON HANSON:** Well, I can tell you that in my experience, when, when the OPOA or other groups comment about cases, it's typically about information that's public. And I don't remember the situation where our organization at least had any comment about the, the Scurlock case. I don't think we waded into that in one way or another, so I'm not-- again, I'd have to know more about what caused this in the first place.

**McKINNEY:** Thank you.

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**AARON HANSON:** Thank you.

**LATHROP:** OK. Thanks, Sergeant Hanson.

**BRUCE FERRELL:** Thank goodness I get to be brief. Bruce Ferrell.

**LATHROP:** Good, I was, I was just going to observe that I felt like the introducer abandoned these bills.

**BRUCE FERRELL:** Yeah.

**LATHROP:** I'm impressed by the continued opposition but [LAUGHTER] free, you're free to testify.

**BRUCE FERRELL:** Thank you. Bruce Ferrell, F-e-r-r-e-l-l, representing the Omaha Police Department and the Police Chiefs, Police Chiefs Association of Nebraska. Again, opposition of LB26. Again, the biggest concern that the Chiefs Association has is making sure that there isn't an interpretive issue where officers or agencies would be sanctioned or charged based on commenting on, whether its press interviews, press conferences, crime stoppers, especially departments' social media pages or, more importantly, undercover social media pages where investigations are being done, where the, where there may be discussions about cases that are investigatory and intelligence related. We do know that agencies have currently have policies on what officers may say and post in the public domain, including their social media accounts. And again, I think there's-- we can come to some agreement and some policy change, especially I like the idea what Senator Wayne and Chief Lausten said about Title 81 or Title 79 issues within the PSAC. Opposition to LB217. Again, we already have a perjury, accessory to a felony, evidence tampering and obstruction of government operations and false reporting in the statutes. I can think of one case in Omaha when, just after I retired, where all of these charges encompassed a single investigation. All of the officers were either charged or dismissed and were resigned. And so, again, I think-- I don't know that we need additional statutes, and we also have civil rights violations. And I think, again, we can work out some other alternatives, especially in Title 81 and Section-- 79. And I again, I just feel compelled to, to make sure that-- I sincerely want Senator McKinney and Senator Wayne to know that from my perspective, any opposition that I provide or are a proponent for any bill is based solely on the bill itself, not the introducer or the color of their

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skin. And it has nothing to do with that. It wouldn't matter who would have introduced the bill today. So, again, I just want you to realize that I'm sincerely letting you know that is not the case in my, in my position or any of the other positions of the officers who testified here today.

**LATHROP:** OK, thanks for being here.

**BRUCE FERRELL:** Thank you.

**LATHROP:** Anyone else in opposition?

**STEVE CERVENY:** Chairman Lathrop and senators of the Judiciary Committee, thank you again for allowing me to speak. Captain Steve Cerveney, C-e-r-v-e-n-y, of the Omaha Police Department, 505 South 15th Street, Omaha, Nebraska, 68102. Quickly, just to be on the record, we would oppose LB216 and LB217 as, as they're currently written. We would-- we appreciate Senator Wayne's comments and we would just have apprehension of potentially limiting transparency of a department or a chief to conduct a press conference or release the information that might violate that. And again, to echo the statements from before regarding both bills, there are laws and policies in place, even internal affairs, investigative procedures that would address these, these issues. So I thank you.

**LATHROP:** Very good. Thanks for being here today.

**STEVE CERVENY:** Appreciate it. Thank you.

**LATHROP:** That will end the opposition testimony. Senator Wayne has waived closing on both bills. To complete the record, though, we do need to include in the record the fact that we have possession letters. On LB216, we have four letters. Two proponents, one opponent and one in neutral capacity. And on LB217, there were six letters. Four proponents, one opponent and one in the neutral position. With that, we'll close our hearings on LB216 and LB217 and our hearing for the day. Thanks.