

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 19, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

LATHROP: Good morning and welcome to the Judiciary Committee. My name is Steve Lathrop, and I represent Legislative District 12 in Omaha. I also Chair 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, 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 complete details on the four available options, go to the Legislature's website at the 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 hearing 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 when necessary for you to attend the bill hearing 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 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 in clearly hearing and understanding the testimony. The pages will be sanitizing the front table and chair in between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by a Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing, wear a face mask while waiting in the hallway or outside the building. The Legislature does not have the availability of an overflow room for hearings this year for those hearings which may attract many testifiers and observers. For hearings with, with large public attendance, we 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 be on the committee statement. First, the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

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. Individual-- number two, individuals must present the written testimony in person and fill out a testifier sheet. Number three, the testifier 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. As always, persons attending the public hearing will have an 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're actually testifying before the committee, and be sure to print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There's 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 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 the proponents of the bill, then opponents, and finally by 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 names and spell them for the record. If you have any 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 light comes on-- red light comes on, we will ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone the use of cell phones and other electronic devices

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 19, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time, I'd ask everyone to look at their cell phones and make sure it's in the silent mode. And just as a reminder, there are no verbal outbursts or applause permitted in the hearing room. Since we've gone paperless this year, the Judiciary, in the Judiciary Committee, senators will instead be using their laptops to pull up documents and follow along with each bill. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill under consideration, but senators may have bills to introduce in other committees or have other meetings to attend to. And with that, I'd like the members to introduce themselves, beginning with Senator Brandt.

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

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

LATHROP: We are assisted in the committee today with Laurie-- by, by Laurie Vollertsen, our committee clerk; and Josh Henningsen our, one of our two legal counsel. And our pages this morning are Evan Tillman and Mason Ellis, both students at UNL. And with that, we'll take up our first bill, and that is Senator Ben Hansen. Welcome, Senator Hansen.

B. HANSEN: Thank you, Chairman Lathrop. I think it's my first time in front of Judiciary, so appreciate it.

LATHROP: Yeah, it's a great place.

B. HANSEN: Yeah. Expected more of a crowd. All right.

LATHROP: I expected more members.

SLAMA: Quality over quantity.

B. HANSEN: Good morning, Chairman Lathrop and the rest of the Judiciary Committee. My name is Senator Ben Hansen, B-e-n H-a-n-s-e-n, and I represent District 16, which includes Washington, Burt and Cuming Counties. LB301 changes the drug schedules and penalties to

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

adopt the federal drug provisions under the Uniform Controlled Substance Act. It modifies the Nebraska Uniform Controlled Substance Act to the federal controlled substance schedule standard. Also LB301's references to cannabinal and the changes made there too are meant to reconcile Nebraska's Uniform Controlled Substance Act with federal law related to the, related to an FDA approved drugs containing CBD, such as the brand name Epidiolex that was removed under the 2020 federal Farm Bill. Currently we are hindering pharmacists from all over the state by not having an updated law that conforms our drug prescriptions schedules to the federal standards. These are pharmacists that have to, that have to approve-- provide FDA approved medication. And it's time our controlled substances reflect that of the federal government. I was going to keep it short and sweet, so thank you very much. And I'll do my best to answer any questions, but there is testimony after me that might have better expertise on this bill that's 80 pages long and has a lot of drugs that--

LATHROP: We did notice it's 80 pages long and has a lot of long words in it.

B. HANSEN: Yeah, and I appreciate you reading every page of it, too.

LATHROP: Yeah, yeah.

B. HANSEN: I'll take any questions for now.

LATHROP: OK, any questions for Senator Hansen? I don't see any. We'll take proponent testimony.

B. HANSEN: Thank you.

PANSING BROOKS: Any proponents? Welcome.

MARCIA MUETING: Thank you. Good morning, everyone.

PANSING BROOKS: Good morning. Go ahead.

MARCIA MUETING: Members of the Judiciary Committee, my name is Marcia Mueting, it's M-a-r-c-i-a M-u-e-t-i-n-g. I am a pharmacist and a, the CEO of the Nebraska Pharmacists Association and a registered lobbyist as well. Thank you to Senator Hansen for introducing this bill. The

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

Nebraska Pharmacists Association represents pharmacists, interns and technicians in all areas of practice in Nebraska. LB301 was a collaboration between the Nebraska Pharmacists Association and the State Patrol Crime Laboratory to update the Nebraska Uniform Controlled Substances schedules which will inform the state to the federal schedules. I'd like to recognize Celeste Laird for her assistance from the State Patrol Laboratory for and for her time and expertise; as well as Dr. Ally Dering-Anderson at UNMC, she is a law professor at the college of pharmacy, for their assistance in putting together this bill. Updating the state law to reflect federal law is especially important for pharmacy personnel around Nebraska who store and provide FDA approved medications to patients every day. I have provided additional detail in my written testimony as provided to the committee. Please note that the FDA approved medications, as well as substances not approved by the FDA, are included in this update. The NPA would respectfully request that the committee advance LB301 for further consideration by the full Legislature. I would be happy to address any questions that you have.

PANSING BROOKS: Does anybody have any questions for Ms. Mueting? OK, Senator Brandt.

BRANDT: Thank you, Vice Chair Pansing Brooks. Thank you for your testimony. This is simply an update, is it not?

MARCIA MUETING: Um-hum.

BRANDT: I mean, that's all this bill is about is just getting, getting us in sync with the federal standards?

MARCIA MUETING: Exactly. So, yes, these changes have been made over the last couple of years. And this will sync Nebraska schedules with the federal schedules. There's nothing more restrictive, nothing less restrictive than the federal schedules.

BRANDT: Yeah, I paged through it last night. There just were not a lot of changes in the bill so. But thank you for your testimony.

MARCIA MUETING: Of course.

BRANDT: Do you have a question?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

PANSING BROOKS: Yes, Senator Geist.

GEIST: I'm not sure if I should direct this to you or to someone else who might be coming behind you or the senator himself, but I did note on the fiscal note that the Department of Corrections had said that the bill could increase the number of people in prison. Do you have any comment on that?

MARCIA MUETING: Remember, I'm a pharmacist.

GEIST: I know, I understand.

MARCIA MUETING: But I don't know if the concern-- so, as Senator Brandt noted, these substances are already listed in the federal Controlled Substances Act. I don't know if this is a matter of jurisdiction, if they're not listed in the, in the state schedules. And perhaps someone [INAUDIBLE].

GEIST: OK.

MARCIA MUETING: And Senator Hansen maybe in his closing.

GEIST: Show up on a drug test or--

MARCIA MUETING: That's a great question.

GEIST: I don't know, I--

MARCIA MUETING: I don't know the answer too.

GEIST: OK. All right, well, I don't want to-- I'm sorry to put you on the spot.

MARCIA MUETING: No, that's OK. That's OK.

GEIST: I just am not sure who to direct that question to, so thank you.

MARCIA MUETING: Of course.

PANSING BROOKS: OK, any other questions? Just following on Senator Geist's question, clearly, I mean, that is a change. If there's going

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

to be more people that are ending up in prison than there is substantive change so--

MARCIA MUETING: Yeah, I--

PANSING BROOKS: --is it substantive or not? That's what I don't get. I mean, I hope some people are here to follow, because if we're going to add to the people in our prisons, add something that we haven't needed to do before, I don't understand. And you can't speak to the substances that are new that would be bringing some sort of, of charge that would put people in prison?

MARCIA MUETING: It's a great question. The substances that are listed include those that are FDA approved, which I'm happy to address those. Those are easy for pharmacists. And the ones that are not approved, I have no idea in Nebraska how many people have been found in possession of these substances, the, the illegal substances. I have no idea what that impact would be.

PANSING BROOKS: OK, but by listing them, they become a new drug that's listed that can be charged.

MARCIA MUETING: That is correct.

PANSING BROOKS: Is that correct?

MARCIA MUETING: That is correct.

PANSING BROOKS: So--

MARCIA MUETING: But it's already in the federal law, they're already illegal in the federal law.

PANSING BROOKS: OK, but somehow if Department of Corrections is saying it will cause an increase, that's a real concern so.

MARCIA MUETING: Right.

PANSING BROOKS: Thank you for finding that, Senator Geist. OK, any other questions for Ms-- is it Mueting? Because I keep saying--

MARCIA MUETING: Uh-huh.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

PANSING BROOKS: Mueting?

MARCIA MUETING: Mueting, thank you.

PANSING BROOKS: OK, thank you very much, Ms. Mueting.

MARCIA MUETING: Sure.

PANSING BROOKS: Appreciate your testimony.

MARCIA MUETING: Thanks for the opportunity.

PANSING BROOKS: OK, next proponent. How many people are here to testify on this bill? Because we need to get the next, the next senator here. Is anybody else here to testify on this bill? OK, OK, so just one. Thank you. Next proponent. OK, opponents. Welcome.

SPIKE EICKHOLT: Thank you. Good morning, members of the committee, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association, opposed to at least a portion of the bill. And I have to apologize to Senator Ben Hansen, I didn't mention anything to him beforehand. I assumed this was just the sort of annual update bill that the states do when the federal government changes their controlled substances schedule. And most of it is. But I think what, thanks to Senator Pansing Brooks's questioning, but maybe the Department of Corrections and Senator Geist, what the Department of Corrections may have noted was a change that goes beyond maybe what the part, what the controlled substances at the federal level do. And that's on pages 48 and 49 where the definition of amphetamine and methamphetamine is broadened slightly. And that's problematic because that will, in my opinion, result in more significant charging. Right now, if a person possesses a controlled substance as listed here anywhere and they don't have a prescription for it, if it's one of those types of drugs and if it's completely illegal, they're found guilty of a felony, there's more serious felonies if you have a lot of the substance. With methamphetamine, if you have more than 10 grams of methamphetamine or amphetamine, that is a step up, more serious possession of a controlled substance offense. This definition on pages 48-49 would broaden that, broaden that problem-- problematically, because the reality is that many of the drugs that you see on the streets, the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

ones that are illegal, don't have pure methamphetamine. They are cut with other things. They're deliberately cut that way because the dealers want to make a profit. So in other words, if you amend this law as 48 and 49, pages 48 and 49 propose, a person could have a 10 or 15 grams of something that has meth in it and that's going to significantly expose a lot more people to more serious penalty charges, more serious felony charges. That's the problem that was done at the federal level with crack cocaine. People would have a relatively small amount of cocaine, but they had it in something that was baking soda and salt and so on, and it weighed a lot more. And the raw weight of the thing that had drugs in it determined the level of penalty. And that's kind of what is, that is what is proposed here on pages 48 and 49. I don't know the section. I don't think that's really what the proponents were talking about, I think it's perhaps something that was done, perhaps even as an oversight. But I would suggest that if the committee is going to advance this bill to address the sort of the update to the controlled substances schedule, they delete that portion of pages 48 and 49.

PANSING BROOKS: Thank you.

SPIKE EICKHOLT: And guys, I applaud I didn't, I have to admit I didn't see that before in the bill originally and I would have said something to Senator Ben Hansen beforehand, before today.

PANSING BROOKS: Thank you, Mr. Eickholt. Yes, the fiscal notes with those kind of comments don't come out until very shortly before the--

SPIKE EICKHOLT: And if you don't read it at all then it's-- you also miss it.

PANSING BROOKS: That's true. OK, Senator Geist.

GEIST: So and in response to that, if this portion was removed, does that affect the intent of the bill at all?

SPIKE EICKHOLT: I don't think so. As I said before, and I didn't even hear Senator Ben Hansen give his opening. But my, my impression by looking at the bill that this is the annual update that the states have to do, does. The federal government has a uniform sort of controlled substances table where they block and they assign different

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

drugs at different schedules, Schedules 1 through 5, and the states have modeled their criminal codes based upon that. And to keep it consistent, I think every other year, generally, a senator introduces a bill like this that sort of comports our schedules with the federal schedule.

GEIST: OK.

SPIKE EICKHOLT: And I think that's what most of the bill just does. And our association may not be excited about new felonies. But the reality is a lot of these are not necessarily common drugs, a lot of them have prescription requirements. And I think the earlier testifier said it, it is illegal under federal law. For maybe simplicity's sake, so it would make some sense for us to have it one way or the other consistent on the state level as well.

GEIST: Thank you.

PANSING BROOKS: Thank you, Senator Geist. Any other questions? I guess I-- nobody else, I don't-- I'm not sure anybody else is coming. Why-- so it's my understanding that this bill was created with the Pharmacists Association, but also the Nebraska criminal lab. Yeah, the Nebraska State Patrol Crime Lab created this. So why do you think they would have added that part?

SPIKE EICKHOLT: I don't know. It could be because we already have that. When you talk about cocaine and cocaine base and any other substances, that could be why. Just to make it consistent with that. In my opinion, they ought to change that too, but that's not the bill here before you. I don't know if that was done just at someone's suggestion. I know that other senators have brought bills to do just what pages 48 and 49 do as separate bills, and maybe it just got caught in that. I cannot speak to that.

PANSING BROOKS: OK, so what you're saying is that with, with the language as written with that, those additions on 48 and 49, generally we have different levels of classification of felony according to the amount--

SPIKE EICKHOLT: Right.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

PANSING BROOKS: --of the drug that we have. So this says that even with a trace or any kind of mixture of methamphetamine or amphetamine, even though it's filled with salts, optical isomers and salts of its isomers, they're going to get charged with with the very heavy level according to how much is in that?

SPIKE EICKHOLT: That's right.

PANSING BROOKS: In the amount of, of whatever this whole combination of drugs and salts is, is that correct?

SPIKE EICKHOLT: That's right. And the way it works is that if you-- there's a crime called possession with intent to deliver methamphetamine. You can have just a very small amount of it, and if they have the evidence to show that you were intending to give it or sell it to somebody or you actually did give it to somebody, that's a Class II felony, one to 50. If you are possessing a controlled substance with intent to deliver and that controlled substance is at least 10 grams to 28 grams, then that's a ID felony, bumps it up to a mandatory minimum. Right now for the state to show that it's 10 grams, they need to show that you had 10 grams of methamphetamine. Not 10 grams of something that has methamphetamine in it, but 10 grams. And I, that's a dangerous thing to do, because just like you said, you're going to expose a lot of people. Now, those aren't necessarily sympathetic people, right? But at the same time, you want to have some proportionality, in my opinion, to actually punish people for what they actually have and that is prohibited under the law. You know, because the reality is when people are selling stuff to as many people as they can and they're addicts themselves, they're going to mix that with harmless things to try to rip off the people they are selling it to. And they're going to get caught with a lot of stuff. It weighs a lot of stuff, but with relatively little drugs in it. So in my opinion, I don't think that's the intent overall of the bill to do that, but that's a dangerous area there.

PANSING BROOKS: Yeah, it is what it is. I mean, you buy 10 grams of gold, but eight grams are silt and rock, it's not the same thing as 10 grams of gold.

SPIKE EICKHOLT: I agree with you.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

PANSING BROOKS: So, OK, thank you. Any further questions of Mr. Eickholt? Thank you, Mr. Eickholt.

SPIKE EICKHOLT: Thank you.

PANSING BROOKS: Any further opponents? Anybody in the neutral? Senator Ben Hanson, would you like to close?

B. HANSEN: Thank you, Vice Chairwoman Pansing Brooks. I'm gonna try to do my best to answer some of these questions. I had a feeling the fiscal note might come up because I just got that not too long ago. And from my understanding, their concern was that even though most of these are like we're updating it to the federal standards, so they still can be prosecuted federally under federal law. But in case federal action does defer to the state, I mean, that's where we kind of see some more prosecutions, because now we have the state regulation now. And we're talking about like fentanyls, like we're talking about opiates. It's these are some of the drugs that they're, that they're updating, the barbiturates. And so criminals always try to find a way to make different isomers, different molecular compounds of certain drugs. Because if you look at the fentanyl, there's probably like 10 different kinds of fentanyls, and these are the designer fentanyls that people use on the streets. And so they have to keep up with what people are doing on the streets. And that's, so that's from my understanding, that's why some of these drugs are now added on, because these are some of the new ones that the crime lab is finding like people are using illicitly. And so that's why they added them onto hear. And so you could potentially, it's a bit of a stretch, in my opinion, with the fiscal note that we're going to see a lot more prosecutions. But if somebody is using a designer fentanyl drug illegally or a barbiturate on the street that wasn't on here and now it is, yeah, they-- if federal law defers to the state, they could be prosecuted. I mean. And with Spike from-- I appreciate him at least giving me, recognizing that he didn't give me a heads-up about this. So I'm, again, gonna do my best to answer this. From my understanding with that section on page 48 and 49, that does have to do with methamphetamines and so people-- and he is right, there's people who do cut in a certain substance with the methamphetamine to make it less pure. So instead of 10 milligrams, or now we have nine. And so it's still illegal. I mean, they're still cutting it in. And so in my opinion, if we do take this section out, we're making methamphetamine

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

a little bit more legal in the state of Nebraska. So, again, they're just trying to keep up with what people are doing. And from my understanding, this is still along the lines of federal law, like this is what the federal statute is updated and we're just conforming to that as well. So this isn't anything new Nebraska is doing, even though I think we do have a problem with methamphetamine in the state of Nebraska, this is just updating it to match federal law. And so, yes, this is when people decide to cut in a certain substance with a methamphetamine. So I hope I answered some of the questions as best I could.

PANSING BROOKS: Thank you, Senator Hansen. Any questions? Senator Slama.

SLAMA: Thank you, Madam Vice Chairwoman. And thank you, Senator Hansen, for clarifying some of those points. I just wanted to get on the record methamphetamine is an issue across our entire state, especially in our rural areas. And I think what that section of the bill gets to is, and I want to get your thoughts and your response on this is we've seen methamphetamine and the sale of methamphetamine in these areas evolve from mom and pop cooking it and their own home to methamphetamine being brought up from Mexico. That's far more pure, far more potent, to where it is essentially the same level when you do cut it with different materials then if you had just cooked it and cooked it yourself. What are your thoughts on that? Is that the same pattern that you're seeing, the increase in importation of pure methamphetamines from Mexico and trafficking it into the state via that route?

B. HANSEN: I'll do my best to answer that question, considering I'm not in the State Patrol or in the crime lab by any means. But from my understanding, yes, that is what's happening. Like people are, like before when people would make it in their basement and it would be less derivative or less of a compound of methamphetamine. Now they're getting it more pure from somewhere else and then what they like to do is similar to cocaine, like what Spike said, that makes sense, they cut it in to try to expand what they got and make it not-- a little bit less pure so they can kind of distribute it more. And so they get more of a concentrated substance and they can kind of distribute it to more people. From my understanding. I don't know, you know.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

SLAMA: Yeah, no, that's just my understanding of it too. So I appreciate you clarifying on that point.

B. HANSEN: Yeah, and I think that's what this is trying to keep up with a little bit.

PANSING BROOKS: OK, any other questions? Senator Brandt.

BRANDT: Thank you, Vice Chair Pansing Brooks. Thank you, Senator Hansen. It seems to me if we would just remove that section from the bill, Nebraska would keep its current standard of what we've got, where if you have 10 ounces of product, they actually test the amount of methamphetamine in that 10 ounces. And it looks to me by adding this, now if you have 10 ounces of product and nine ounces of salt and one ounce is meth, that's equivalent to what we've got today where you actually need 10 ounces of meth to, to get to these different felonies. My concern is now, sure, the nuances of people that buy and sell, make this stuff, they're going to try and say it's more than what it is and all that, but the actual test should govern, govern this. The science should govern this, should it not?

B. HANSEN: Sure. I mean, and that's-- we can test it, but then it just depends on if you want to-- again, I'm assuming this is keeping up with federal statute as well. And so it depends on if you want to be harsher on methamphetamine or if you want to be less harsh from my understanding. That's what this, this makes it more harsher to be selling methamphetamine as opposed to not. So I have no problem with working with interested parties to see if this is something we can remove or if we'd be willing to. I'm not against that. I mean, because one of the things that I like about this myself is I want to make sure that we kind of maintain the legality of Epidiolex. You know, that's been pretty-- that's the CBD derivative, FDA approved medication that comes from CBD that they use for seizures. And so right now, from my understanding, it is not legal in the state Nebraska, so now they'll be able to prescribe this under this bill. That's the one thing I want to make sure that we keep.

BRANDT: And I, I want to make it clear I absolutely support everything else in the bill.

B. HANSEN: OK.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BRANDT: And I just want science to dictate on the, on the meth, because you're talking some, some stairsteps on felonies here.

B. HANSEN: Sure.

BRANDT: And that has an adverse effect on a lot of things.

B. HANSEN: And I can definitely kind of talk to people and figure stuff out before you guys decide anything in the executive committee, and we can kind of get things worked out.

BRANDT: All right. I appreciate that.

B. HANSEN: Yeah.

BRANDT: Thank you.

PANSING BROOKS: Thank you. Senator DeBoer.

DeBOER: I do just want to clarify that point about whether by putting that section from 48 and 49 in what we're wanting to do is be less harsh on meth, I think we want to punish people less for distributing salt rather than meth, right? Like the amount of meth should be the amount we're punishing for, not the amount of salt that goes with the meth, right? Is that--

B. HANSEN: If that, if that's your intent and if that's what you want, that's what you believe, yeah.

DeBOER: I think, yeah, I think we should punish the meth, right?

B. HANSEN: Yeah.

DeBOER: OK.

B. HANSEN: I want to punish the person distributing it.

DeBOER: Well, yeah, I want to punish the person distributing meth.

B. HANSEN: And if it's ten ounce, if it's ten and they decide to cut it down to nine, I mean that's--

DeBOER: But don't you want to--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

B. HANSEN: I think the intent is still the same for the person distributing it.

DeBOER: Don't you want to punish the person for distributing the meth, not for distributing the salt?

B. HANSEN: If you think, that's what you believe.

DeBOER: Yeah, I mean, I, I don't like the meth. I don't mind the salt.

PANSING BROOKS: OK. Did you have a question, Senator Geist?

GEIST: I did. I did. And just I, I just want to clarify, and maybe this is what you're going to clarify, is that if this is taken out, are we out of conforming to the federal standard which would make us out of compliance, or is that not a big deal?

B. HANSEN: I don't think there's so much of a compliance issue, like we'll be punished if we leave this out.

GEIST: Uh-huh.

B. HANSEN: From my understanding, it's just that we're just keeping up to federal standards--

GEIST: OK.

B. HANSEN: --like we've done, you know, forever so.

GEIST: Right.

B. HANSEN: And so they're finding, they're finding what people are doing in the streets and they're finding out which kind of substances and which kind of polymers and those other kind of stuff that people are doing that kind of change the derivatives of like fentanyl or barbiturates or steroids. And then they--

GEIST: So there's no penalty for--

B. HANSEN: From my understanding, no. But I can make sure before I say 100 percent.

GEIST: OK.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

B. HANSEN: Yeah.

PANSING BROOKS: Thank you, Senator Geist. Thank you, Senator Ben Hansen. Appreciate it.

B. HANSEN: Thank you. I hope I answered the question as best I could so.

PANSING BROOKS: I think you did, yeah.

B. HANSEN: And I'll get back to you, everybody, to make sure we can get this worked out.

PANSING BROOKS: OK.

B. HANSEN: Thank you.

PANSING BROOKS: Thank you very much. And that ends the hearing on LB301. Our next-- hh, and before that, we have zero letters dropped off, in lieu of testimony. We did-- and we also had no letters propo-- either among proponents, opponents or neutral. So no letters on this, on this legislation. Now we will open the hearing on LB278, LB278. And I think we're waiting for Senator Wayne momentarily. Good morning, Senator Wayne.

WAYNE: OK, what bill am I on? I think I got two here.

PANSING BROOKS: LB278, Senator Wayne.

WAYNE: All right. Good morning, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, encompassing north Omaha and northeast Douglas County. Right now, possession of a controlled substance is a Class IV felony, even if the amount is a residue amount. What I mean by residue is it's nonusable. This bill will make a Class III misdemeanor for possession of a residue amount of a controlled substance. The bill defines residue as a drug customarily sold by weight by one gram or less. So there will be some testimony in opposition to that weight. So what we're going to try to do, depending on how long the session goes versus not reintroducing the bill next year, I'm going to work with the county attorneys to figure out what is usable weight and what is not usable. Because

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

that's, that seems to be the hiccup, besides the logistical part of, of weighing and having labs do it. But the issue really comes down to this weight gram. And so we're in talks right now trying to figure out how to, how to do it, how to deal with that. And the fact of the matter is, is most counties around the state don't prosecute residue amounts, but some of them do. And that's the issue. In fact, one of our colleagues sat on a jury trial where there was a residue case. It's not a secret, Anna Wishart, and she was an alternate juror. And it, it was an amount that wasn't usable, and this person got sentenced at that time for a couple of years and was-- has a felony for the rest of their life. So it's a nonusable amount and we're treating it as if it is usable. So the issue is the gram amount and how to deal with that, and I'll let the prosecutors explain why they're opposed to it. But I think it's something that we can work on once we figure out what's usable and not usable. With that, I will answer any questions.

PANSING BROOKS: Thank you, Senator Wayne. Any questions for Senator Wayne? I don't see any. Are you going to stay around--

WAYNE: Yes.

PANSING BROOKS: You have the next one, I guess?

WAYNE: Yep.

PANSING BROOKS: OK, now we will have proponents for LB278. Proponents. Welcome.

JOE NIGRO: Morning. Senator Pansing Brooks, members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o, I'm the Lancaster County Public Defender. I appear on behalf of the Nebraska Criminal Defense Attorneys Association and my office in support of LB278. I want to thank Senator Wayne for introducing this bill. The crime rate has been going down for the last 25 years, but prior to the pandemic, our felony files were going up the previous four years. It was largely driven by an increase in filings of possession of small amounts of controlled substances, especially residue cases. Filings decreased last year due to the pandemic, but I assume that they will go back up when the pandemic ends. Our county attorney is starting a pretrial diversion program for some possession cases, and that's a good thing. But not everyone will be eligible, and that's just Lancaster County.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

Residue is what's left after the substance has been used. By definition, you can't get high from it and there rarely is enough to even weigh. You're talking about residue that's scraped out of a pipe or maybe crumbs in the corner of a baggie. I don't believe that drug use has increased over the last number of years, but it appears that more items of paraphernalia are being sent in for testing. These cases burden the system. The, the crime lab takes three or four months to test items because of all the paraphernalia they have to test. Our office as workload standards. Each month when we reach our limit, we file overload motions. Pre-pandemic, half of our felonies were drug cases and 80 percent of our drug cases were possession cases. Outside attorneys are appointed and we file overload motions and they bill by the hour, costing the county thousands and thousands of dollars. Some of these people sit in jail unable to make bond. Many of these cases are resolved in a plea to a misdemeanor, resulting in a large fine or jail sentence. Some are convicted of felonies and go to jail or prison. Few receive probation. I suspect if residue is reclassified as a misdemeanor, many prosecutors won't even bother to file them. If they do, fewer of these people will go to jail and none will go to prison. It would be something if all of this was reducing drug use and making our communities safer. It's not. This is a good example of the failed war on drugs. We're getting nowhere treating a health problem in the criminal justice system. We're destroying lives by prosecuting and convicting people of felonies. Who does this primarily hurt? It's the poor and people of color. We need to stop prosecuting and incarcerating small-time users. These people need help, not felony convictions. I urge you to advance LB278 and I'm happy to answer any questions.

PANSING BROOKS: Thank you, Mr. Nigro. Any questions for Mr. Nigro? I don't see any. Thank you very much--

JOE NIGRO: You're welcome.

PANSING BROOKS: --for coming. Next proponent. Welcome.

SPIKE EICKHOLT: Thank you. Good morning, 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. We support the bill for perhaps the less technical reasons. And that is this bill is what I would argue as a moderation or a mitigation of penalties, and making a distinction between an actual

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

small user or incidental user of a controlled substance versus someone who actually possesses a significant amount. As I've argued on other bills this year, I think this committee and the body should start looking at ways to maybe, I can't think of any other word, moderate some of the penalties and make them proportional. And I think that the public would support that when it comes to issues like controlled substances. Senator Wayne already mentioned earlier when he introduced the bill, and I want to thank him for introducing the bill, that these cases are charged as felonies, at least in Lancaster County, these residue cases. And they do go to trial and people do go to prison for being found guilty of them. I had the trial that Anna Wishart was, then Anna Wishart, now Senator Anna Wishart was on the jury. So these things happen. My client received the maximum sentence when she was found guilty. And then it was before LB605, the offense date was, so she went to prison for five years. That happens. She had a pipe in her purse, and I argued a defense that I've had to argue on a few other cases and for-- it is not a successful one, clearly, but the crime was possession of a controlled substance, not possession of something that might have a controlled substance in it tested at the lab. And many users, particularly they have these pipes with them in case they run across somebody that's got drugs they could smoke. If they would reflect, and if somebody would tell them you should really not have that pipe because that's just like having meth on you, they wouldn't do it. So I think that there is a recognition that a user with just a paraphernalia device should be treated differently than someone who actually has drugs. So I'd encourage the community to consider this bill. As far as what Senator Wayne mentioned before about maybe trying to amend it in such a way the prosecutors would be OK with it, one simple way might be just to strike everything that's proposed except for page 3, lines 7 through 9, and just to find a residue as the ashes, resin or actual physical remains of a controlled substance that has already been consumed and is not a usable amount. But I'll, I'll let the committee grapple with that. I'll answer any questions if you have any.

PANSING BROOKS: Thank you, Senator-- or Mr. Eickholt. Any questions?
Senator DeBoer.

DeBOER: Well, we're moving quickly, so I'll ask a couple of questions. You say that, that this paraphernalia that has a residue isn't the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

same thing as someone who has the substance, but they had the substance.

SPIKE EICKHOLT: And that's why it's not a successful defense, because that's exactly what the judge instructs the jury, essentially, that they can make that inference.

DeBOER: OK, so, I mean, I guess that's, like I don't, I don't find a particularly persuasive argument either.

SPIKE EICKHOLT: Well, thank you. And the jury didn't in that case either.

DeBOER: OK.

SPIKE EICKHOLT: And I don't mean to make light of it, but--

DeBOER: I mean.

SPIKE EICKHOLT: There ought to be a--

DeBOER: To say I sort of see kind of from an ideological purist standpoint, that if the crime is possession of the thing and you can't prove that they possess the thing, you can just basically guess that they did.

SPIKE EICKHOLT: Right.

DeBOER: I mean, it's just not a-- it is-- anyway. All right, thank you.

SPIKE EICKHOLT: No, but I think you're right. But like, we have it on the upper end of these drug crimes, if you have a lot, it's more serious. There ought to be something maybe at the end, because you can have a residue amount, you can have a pipe that's dirty. And sometimes people get lucky, right? They get a pipe taken from them by the cops, they send it to the lab and they can't detect anything on it. It truly has been all smoked away and they dodge a bullet. Maybe they'll get a \$35 fine for possession of paraphernalia, which is just an infraction. But you can have a fairly significant amount of drugs and be in the same range and treated the same way as somebody with a dirty pipe with

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

a residue amount. And I would suggest that perhaps there probably should be some distinction between those two acts.

DeBOER: But that's, that's more about making a better distinction between quantities of drugs than it is about--

SPIKE EICKHOLT: Yes.

DeBOER: OK, thank you.

PANSING BROOKS: Any other questions? I think, I think my question is I have never understood it really because we're so careful about the line of evidence. And, you know, if you get a piece of evidence, they carefully put it away because they don't want it tampered with. And I mean, there's no evidence that that person smoked that is there?

SPIKE EICKHOLT: No, but there's-- the crime is not use, the crime is possession. So if they find it on them, then that's, that's what's charged. You knowingly and intentionally possessed that item. You know, you might be able to argue you didn't know it was in your purse or I didn't know it was in my pocket. That's not convincing for the most part. You're not going to win that. But the crime is simply possession, just having it. It's like, it's like kryptonite, right? You can't have it. It's on you, you're stuck with it. But you're right, what you said about main-- maintenance of evidence, it is, and Mr. Nigro alluded to it, it is costly. If a cop arrests somebody for a failure to pay a warrant, they get to the jail, they got this pipe on them. That officer has to go get an evidence bag, he's got to tag it, seal it, take it to the evidence locker. Then it's transported to the state lab to be tested. It's a low priority thing at the lab because they're testing other things. But the state lab tests that. They have to make sure that somebody keeps an accurate record of the chain of custody: who has it, when it's given to somebody else and when it's returned back to the police department. Sometimes that can take several months and it's a lot of police and court system time.

PANSING BROOKS: And money.

SPIKE EICKHOLT: And money.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

PANSING BROOKS: For a trace. Thank you, Spike, Mr. Eickholt. OK, next proponent. Or are we on opponents? Sorry. Yep, next proponent. OK, any opponents? Opponents. Welcome.

JEFF LUX: Thank you. Good morning. Vice Chair and members of the Judiciary Committee, my name is Jeff Lux, last name L-u-x. I'm a deputy Douglas County attorney from Douglas County, 100 Hall of Justice, Omaha, Nebraska, here testifying on behalf of the Nebraska County Attorneys Association in opposition to LB278 for a few different reasons that have already been mentioned. With regard to the weight issue, there are several dangerous drugs that would be covered by this, including heroin, fentanyl, carfentanil, and a lot of the fentanyl derivatives that we're seeing a lot of now where the user amount is 0.1 grams or less. And under the current language of this bill, that would make that user amount of heroin, a really addictive substance, residue and a Class III misdemeanor. So depending on the drug and the weight of the user amount, that's really pivotal in terms of, hey, is this really something that can be considered residue or is this really a user amount depending on the type of drug that we're talking about? And, and in the previous bill, you've talked about all the different schedules. There's five different schedules by the DEA that list out all the drugs. And so, I mean, this is a pretty important aspect of it is weight, user amount. And so with heroin, the user amount is 0.1 grams, on the street it's known as a point. And that's why "I need a point," it's because the user amount is 0.1 grams. And even with the fentanyl and the fentanyl derivatives in the carfentanil, we're talking about granule sizes that can, you know, carfentanil, that stuff puts down elephants. I mean, and now they're getting out on the street, being mixed into other drugs, especially with the opioid epidemic. Heroin is being used a lot more, the fentanyls are being used a lot more. So that's a concern for us. Also with regard to the logistics that Senator Wayne mentioned, the state lab is basically backed up 150 days to get a lab to court. That leads to problems. And a lot of that's been caused too by the additional labs that are needed because of the recent changes to marijuana and hemp laws. So if this becomes a misdemeanor, we'd be giving people tickets to show up to court five months later because we can't get the lab before then. And by then, speedy trial is six months. And so we'd be running into a lot of logistical issues in terms of getting it prosecuted as a misdemeanor. And with the weight now being the pivotal

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

determination of whether it's a felony possession or a Class III misdemeanor, we're going to need labs across the entire state for every possession case to make that determination. And with the state lab being behind 150 days, we have preliminary hearings 30 days after the arrest. All of our cases are going to be getting dismissed in county court because we don't have a lab. So there are different logistical issues here with making a determination based off of weight if something is residue or not. It really has a domino effect on several different situations in terms of proving up cases. So those are some of our concerns. I see the my red light is off. I have spoken with Senator Wayne, we touched on some of this last year. It's becoming more prevalent with the greater uses of heroin and fentanyl now.

PANSING BROOKS: Thank you, Mr. Lux. Let me see if there's some questions. Senator Geist.

GEIST: Yes. Thank you for your testimony. I'm curious, what does a trace amount of fentanyl look like?

JEFF LUX: It looks like smaller than-- it can be a grain of salt. I mean, fentanyl is so powerful. That's why when you're talking about the weights of stuff and, you know, like officers now aren't even weighing drugs out on the street anymore because of the dangerousness of the fentanyl. It can be inhaled, it can be microscopic and it can put people down. It's very dangerous.

GEIST: But with this it-- that talks about ash, resin or the physical remains, would, would an officer be able to tell that?

JEFF LUX: Under that third section, we're kind of talking about the, hey, let's, you know, take the paraphernalia, the pipe, the bong and let's scrape that out and get something that can test positive. I assume that that does happen across the state. In Douglas County, we don't do-- I can't say we've never done it, but we don't do it regularly because we have to pay for our labs.

GEIST: OK.

JEFF LUX: We have to have our labs in county court so we can't even use the state lab. In Douglas County, we're paying taxes for three

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

labs and we don't get to use the state lab. So we have to have the sheriff's lab or the lab from the university give us our results. And, and so that's why it becomes even more of an issue than if that weight becomes the determining factor with this residue stuff. If it's a more of a fact-based deal where, hey, we've got to scrape out the pipes and stuff, that is more fact determinative and not so much on the weight, and then that's more of a policy determination in terms of, you know, are you in possession of a controlled substance? I mean, we see things where, you know, hey, when-- if the user runs out of a particular substance, a lot of times they'll get to that pipe. What do they do? They scrape it out and they'll resmoke what's there because there is still some stuff there. And then once that's gone, then you might have that pipe that tests negative at the lab. But those are small amounts.

PANSING BROOKS: Thank you.

GEIST: Thank you.

PANSING BROOKS: Senator Morfeld.

MORFELD: So what if we-- so I see what you're saying with the fentanyl, very trace amount is a, a user amount. So what if we just exclude fentanyl from this?

JEFF LUX: Well, I think that, you know, they're fentanyl, there's heroin, there's derivatives. I mean, I think that the, you know, experts are--

MORFELD: But Mr. Lux, I think what we're trying to get out here, particularly what I'm seeing is, is that it's trace amounts of, for instance, marijuana and things like that are getting charged as felonies. And we know that's happening for a fact, may not be happening in your office, totally appreciate that. But do you believe that trace amounts of marijuana should be charged as felonies?

JEFF LUX: Well, I don't, I mean, the trace amounts of marijuana are infraction in Nebraska. So less than an ounce or less.

MORFELD: Yeah, but they've been charged as a felony in some other jurisdictions so, other than--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JEFF LUX: I don't see how that happens in Nebraska, but I've heard about that in other states. I guess what I would be wondering to do is let's go through the amount of most-- the most used street drugs, figure out from an expert side of it, whether it's the science, the user, law enforcement, what is the user amount for that particular drug. And let's make sure that user amount doesn't fall under the definition of residue.

MORFELD: Yeah, and I should step back, trace amounts of methamphetamine, crack, things like that have been charged as, as felonies. And then things like, it's not trace amounts, but an edible like a gummie or something has been charged as a felony. So I guess there is a distinction there.

JEFF LUX: Yes, your honor. Yes, Senator.

PANSING BROOKS: OK. Senator Brandt.

BRANDT: Thank you, Vice Chair Pansing Brooks. Thank you, Mr. Lux, for your appearing today. What do you think of Mr. Eickholt's idea that we strike the bill except for lines 7, 8 and 9, and that would simply leave this, this sentence, "The ashes, resin, or other actual physical remains of a controlled substance that has already been consumed and is not a usable amount" and then that becomes the bill?

JEFF LUX: I can, I can certainly take that back to my members. It does address some of the different issues in terms of not relying on the weight, not relying on the lab. So it does address some of the more logistical issues. And it's more fact-based, so that could be addressed at a preliminary hearing or something like that in terms of, of, of the facts of the case that, yeah, we just found some drug paraphernalia, there wasn't what appeared to the officer to be any, you know, drugs left. You know, sometimes we do come across cases where everything that was shoved in that pipe to smoke, it isn't all smoked yet, right? So it has been hit a couple of times, but there's still, you know, visible amounts left of whatever the drug was, the crack, the meth. But that's now fact-based and that's things that we can deal with more easily than having to wait on, on the lab, having to wait on, you know, what the scientific weight is and having that be a very determinative factor.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BRANDT: Because that last term, "usable amount", should give you the discretion by drug type.

JEFF LUX: Well, yeah, and that will obviously be something we can all argue about, like we like to do in court.

BRANDT: OK, thank you.

PANSING BROOKS: Any other questions? Yes, Senator McKinney.

McKINNEY: Thank you, Senator Pansing Brooks. My question, does the County Attorneys Association, that's who you represent, right?

JEFF LUX: That's who I'm here for speaking on the bills.

McKINNEY: OK. Do you guys support building the new prison that's proposed by Director Frakes?

JEFF LUX: I'm not sure what our, our view is on, on the new prison situation. I know that they're saying that the State Pen has reached its end of its useful life and that you can spend, what, like \$190 million on redoing that or \$230 on something new. I, I'm not sure what the County Attorneys Association's view is on on that.

McKINNEY: Do you believe that we need to find a way to decrease our prison population?

JEFF LUX: Yes. Yes. I mean, some of the things that we've been doing in Douglas County with, with, you know, once, once we get a case to us, we obviously have to look, do we have the elements of the crime here? If we do, then it, it determines, OK, now charges have to be filed. Are there things that we can do to divert that particular individual? So we have, you know, one of the first felony diversions and we have a felony diversion program. We have several problem-solving courts. We just started a veterans treatment court here a few years ago. We've got drug court for years. We have the only young adult court in the state where we divert people, and we're always looking for ways to figure out, hey, through treatment options, through mentorship, through employment, combination of all those, can we divert cases so that they don't end up in the prison system or even county jail, but are outside in the community and making themselves better?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

McKINNEY: Have you supported any bills this year that would potentially decrease the population?

JEFF LUX: I, I try to. I'm a, I'm a-- I volunteer and work with Senator McDonnell on a lot of these issues, even outside of my own employment with the county attorneys. Because I see in, in my job, you know, obviously with separation of powers, we only have a certain window of what we can do. But I see, you know, the folks where the education system has left them behind, the health system is left them behind, the drug and alcohol treatment has left them behind and the employment system has left them behind. And I try to, I volunteer on a couple of nonprofits that try to reach out to at-risk youth to get them in a position where they can better themselves through those types of programs and employment, employment with the trades. So, you know, try to do stuff with the time that I have and [INAUDIBLE] people to do it as well.

McKINNEY: That's, that's good. I guess my last question is, what bills have you guys in the past or this year supported that would improve the educational outcomes of individuals that end up in front of you guys? What bills have you supported that would decrease the poverty rates of these communities, rural and urban, that will prevent these individuals from going into the criminal justice system? What bills have you supported in the past that-- or this year that would improve the health disparities in those communities as well?

JEFF LUX: Well, Senator, I mean, if you'd like to reach out to be more than happy to speak with you about having, I mean, myself personally or the County Attorneys Association kind of going outside of our lane, you know, testifying in front of other committees. Nothing against Judiciary Committee, but I'd love to testify in front of other committees as well. And have--

McKINNEY: I guess--

JEFF LUX: --on occasion.

McKINNEY: I guess my thing is I've only been here a short time and I'm kind of to the point where frustrated with the police, the county attorneys, the director of the prisons, the FOP, the correctional officers, they all storm Judiciary, but they never go to those other

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

committees and actually support bills that would do meaningful things for the individuals that would end up in the criminal justice system. It can't just be to prevent-- to just lock them up and oppose any bill that would prevent them from going into the system. I think you guys need to take a more proactive approach and fight. If public safety is the issue, then it can't just be coming to the Judiciary Committee.

JEFF LUX: You know what, I, I agree with that. Other, other areas that where we see, where I personally see issues, those are kind of outside of my lane of expertise. But I do have opinions on it. And I think the County Attorneys Association probably does as well. We're not hampered, I guess, from going in I guess outside of our lane to other issue areas with other, other committees. But we, I guess we need to, to look at other some of the other bills, such of which, as you've mentioned. We're not opposed to that. But it is kind of outside of our, so to speak, expertise. But I see the value in that.

McKINNEY: Thank you.

PANSING BROOKS: Any other questions? OK, thank you for coming, Mr. Lux.

JEFF LUX: Thank you very much.

PANSING BROOKS: Any other opponents? Anybody in the neutral? Seeing none, maybe if one of the pages could see if Senator Wayne is out in the hall, if he wants to close. And in the meantime, we have had, we had one piece of testimony, written testimony in lieu of in-person testimony, and that was from Corey O'Brien, who was an opponent on LB278, and he is representing the Nebraska Attorney General's Office. And we had two letters, one proponent, one opponent. And we will pause momentarily to see if Senator Wayne wants to close. Senator Wayne, do you want to close?

WAYNE: Was that me? Magic happens when I get in this room. I do want to continue to work with the parties just so I would ask the committee to hold this bill for a little bit while we work with the parties and see if we can come to an agreement. I think where Mr. Eickhorst [SIC] just talked about regarding the last language, I think it still can be cleared up a little bit and I will work on that. With that, I'll answer any questions.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

PANSING BROOKS: Any questions for Senator Wayne? I don't see any, so that closes the hearing on LB278. And now we will open our hearing on LB552, Senator Wayne again. You are, you are on the dais.

WAYNE: Good morning, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent the Legislative District 13, which is north Omaha and northeast Douglas County. LB552 adjusts the Controlled Substance Act regarding Schedule V drugs. And there is somebody behind me who will talk a little bit more about it. This bill is actually another bill that I'm asking the committee to hold as they await federal approval. Part of the problem is, as we all know, we only have 10 days to introduce a bill. We thought federal approval for this drug was going to be December or October of last year. COVID has pushed the trials back a little bit, so it probably won't be approved until later this year. Instead of going through the bill process in the hill-- hearing process into next year, we just decided this year to introduce it and put it on hold until it's approved. That way we just keep it moving because of our process, not necessarily theirs. So if you have technical questions, there will be somebody behind me who can answer those. But with that, I'll answer any questions.

PANSING BROOKS: Any questions for Senator Wayne? Senator Geist.

GEIST: I actually like this bill because I think this is going about things the right way. And so I appreciate you bringing it, and that's all I have to say. I don't really have a question. Thank you.

PANSING BROOKS: Thank you, Senator Geist. Any further questions? I don't see any. Are you going to stay around for closing?

WAYNE: Waive closing.

PANSING BROOKS: OK, thanks. Senator Wayne will waive closing. We will now take proponents of this bill. Proponents.

JAN DALKE ANDERSON: Good morning, Vice Chair and members of the Judiciary Committee. For the record, my name is Jan Dalke Anderson, J-a-n D-a-l-k-e A-n-d-e-r-s-o-n. I was born and raised in Nebraska, and currently I'm a medical affairs director for Greenwich Biosciences, the world leader for cannabinoid prescription

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

medications. I am here today to respectfully request your support of LB552. My testimony today is on multiple sclerosis, MS spasticity and the nabiximols. When we look at the incidence and prevalence of MS spasticity, it is the most common symptom seen in over 80 percent of MS patients. It manifests as involuntary muscle stiffness or spasms and is associated with functional impairment, such as climbing stairs, walking and sleeping. It also exacerbates other MS symptoms, such as pain and reduces the quality of life. Sadly, the incidence and severity of spasticity increases as MS progresses. Treatment of MS includes both symptom management and disease state management. The symptomatic treatment of MS is equally as important as the disease management, since symptom treatment contributes considerably to the reduction of disabilities. However, under treatment of MS, spasticity is common and standard treatment options often fail in provide ade-- in providing adequate symptomatic control. Physician and patient satisfaction with treatment is low, as it is ineffective and approximately 40 percent of the patients. Greenwich Biosciences is in contact with the FDA to pursue approval for nabiximols for the treatment of MS spasticity in adults. Nabiximols is already approved and commercially available in 28 countries. Nabiximols oral mucosa spray is a complex botanical mixture of characterized extracts containing cannabinoids, as well as noncannabinoid components. Nabiximols is a medication that would be prescribed by a physician and dispensed by a pharmacist upon FDA approval. It is for these reasons Greenwich Biosciences is asking support of this bill to reschedule nabiximols upon FDA approval and DEA scheduling. Thank you. It's been an honor to testify before you today and I'd be happy to take any of your questions.

PANSING BROOKS: Thank you, Ms. Dalke Anderson. Any questions? Senator Geist.

GEIST: Thank you. And thank you for bringing this. I am curious and I know the answer, but I just want the answer on the record. Is there a therapeutic dosage of this that shows the most robust response?

JAN DALKE ANDERSON: Yes. So the dosage, it's a spray, and so there are-- the dosage recommended is about eight to nine sprays in a day. And in clinical trials, that is shown to be a 36 to 77 percent decrease in, reduction in spasticity scores.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

GEIST: So that would be hard to achieve if that, that specific dosage would be harder to achieve if someone was trying to do that on their own, if they were trying to harvest a plant and achieve the same result?

JAN DALKE ANDERSON: Correct. So this drug is well-characterized, it has a dosage, and it would be FDA approved. Versus someone who would just be taking marijuana on their own. They don't know a dosage, they don't know if it's, how pure it is. They don't know if they get the same product each time, if it would be the same--

GEIST: OK.

JAN DALKE ANDERSON: --dose to dose.

GEIST: Thank you.

PANSING BROOKS: Any questions? Senator Brandt.

BRANDT: Thank you, Vice Chair Pansing Brooks. Thank you, Ms. Dalke, for testifying today. I'm a little curious, I have a friend that has MS. Is this for early stages of MS or late stages of MS?

JAN DALKE ANDERSON: So it's based on the symptoms the person is having. So it could appear early, middle or late. It's to treat spasticity. So it depends on how they're progressing with their disease to know when that specific side effect would appear.

BRANDT: And then you heard what Senator Wayne said about putting sort of a hold on the bill for a moment, but when the FDA approves this and it becomes federal law, it will not be legal in Nebraska then until we pass, pass this change?

JAN DALKE ANDERSON: Correct.

BRANDT: And the last question then. The namiximol, nam-- I can't say the word, but it is a derivative of marijuana. Do you just get that from medical marijuana or, or recreational?

JAN DALKE ANDERSON: So Greenwich Biosciences is a subsidiary of GW Pharmaceuticals. GW Pharmaceuticals is based in the U.K. and that is where they grow the cannabis sativa plants under well-controlled

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

environment in a glass house or a greenhouse. And so that is where all the plants are grown, harvested and then made into medicines. It's all a very controlled situation. So it's not, it comes from a plant, but it's not just like somebody growing it.

BRANDT: So your company actually controls the process from cradle to grave?

JAN DALKE ANDERSON: Yes.

BRANDT: OK, thank you.

PANSING BROOKS: Thank you. Any other questions? Thank you for coming today. Appreciate it.

JAN DALKE ANDERSON: Thank you.

PANSING BROOKS: Any other proponents? OK, any opponents? Seeing none, anybody in the neutral? I don't see any. And Senator Wayne closed. Let's see. OK, and we have zero letters that came in for testimony in lieu of testimony, and we have zero letters proponent, opponent or neutral. Thank you, and that closes the hearing on LB552 and it also closes the Judiciary hearing for this morning. Thank you.

LATHROP: Going to get started, and as some of you who are regulars here know, I start by reading about three pages or four pages of stuff, just so everybody knows the process and people watching on TV understand the process as well. And it becomes particularly relevant on days when there's a lot of interest in bills that-- and I suspect there will be quite a bit of interest this afternoon. So with that, good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12 and I am also 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, 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 list on the four ways that are available for you to participate in this process, go to the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

Legislature's website at 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 only enter the hearing room when it is necessary for you to attend the bill hearing 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 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 in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair in 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 upon 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 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'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 that four requirements must be met to qualify to be on a committee statement. First, the submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 here in the Judiciary Committee hearing room. Two, individuals must present the written testimony in person and fill out a testifier sheet. Three, the testifier 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 any 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. As always, persons attending public hearings have the opportunity-- will be given the opportunity to testify verbally. On the table inside the doors, you will find yellow testifier sheets.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

Fill out a yellow testifier sheet only if you're actually testifying before the committee, and be sure to print legibly on that testifier sheet. 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 12:00 noon the last work day 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 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 for the-- 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 the proponents of the bill, then opponents, and finally by 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 copies of your testimony, you may bring up 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'll 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 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 hearings, though you may senator-- see senators taking notes or communicating with their staff using those devices. At this time, we'd ask everyone to make sure their phone is in the silent mode. And as a reminder, there are no verbal outbursts or applause in-- permitted in the hearing room. Since we've gone paperless this year, the Judiciary Committee-- in the Judiciary Committee. The senators, instead, will be using their laptop to pull up documents and follow along with each bill. And you may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill under consideration, but senators may have bills to introduce and other committees or have other meetings to attend to. And with that, I will

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 19, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

have the members of the committee introduce themselves, beginning with Senator Brandt.

BRANDT: Good afternoon. I'm Senator Tom Brandt, Legislative District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

PANSING BROOKS: Good afternoon. Patty Pansing Brooks, Le-- Legislative District 28, and I'm Vice Chair of the Judiciary Committee.

MORFELD: Good afternoon. Adam Morfeld, District 46, northeast Lincoln.

LATHROP: Assisting the committee today are our committee clerk, Laurie Vollertsen, as well as one of our two legal counsel, Josh Henningsen. Pages this afternoon are Ashton Krebs and Kennedy Zuroff, who are both students at UNL. With that, one last-- one last housekeeping matter: Because of the number of bills that we consider this year and the limited amount of time we have for their consideration, we limit proponents to a half-hour. So once the bills introduced, we'll bring up the first proposal. From that point, we'll have 30 minutes of proponent testimony, followed by 30 minutes of opponent testimony, and then those in the neutral capacity. And maybe, before we get going, can I see how many people are here to testify in support of LR2CA, by a show of hands, in support? Can you put your hands up? Let me--

_____ : Two, three, three.

LATHROP: How many are here in opposition? OK, that may be more than 30 minutes' worth, so you might want to coordinate people who are going to come up and testify. But with that, our-- we'll take up our first bill of the day, which was actually a resolution, LR2CA. Senator Wayne, welcome to the Judiciary Committee.

WAYNE: Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. I want to first remind my colleagues, and this is no way of thinking you forgot it, but I'm just saying it because we're in the official record. This is a bill to-- a resolution to take this to the voters of the people. This is not saying whether you endorse recreational marijuana or not. You are saying let the people decide

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

it. With that, right now, about 128 million people in north-- in America and U.S. adults have tried marijuana. Nearly 600,000 people are arrested annually. That's one person, one minute. Every minute a person is being arrested or ticketed for marijuana. And I'm not going to spend a whole lot of time going through the history and how we got here, because it really comes down to some basic facts. Marijuana legalization boosts the economy. There's estimations of approximately \$24 billion in revenue by the year 2025. For every dollar spent in the marijuana industry, between \$2.30 and \$2.40 in economic activity is generated. Colorado alone. If you look at the fiscal note of the next bill that will be later on, you'll see how the fiscal note brought in revenue of the industry. And the reason I introduced the bill after this is because this is the approach I've taken on all constitutional amendments that I've had go before the body and go before the voters, is I present a bill with the constitutional amendment to give an idea of what a framework would look like if the Legislature was to pass it. Now, granted, they could pass the next bill, but that's the reason I did it. I did it for extremely blighted. I did it for there was another bill that I had-- oh-- and extremely blighted was the recent bill that I did it for, where I have a bill and then a constitutional amendment so people can go and reference it from the public. Colorado has seen-- well, Washington has collected over \$200 million in tax revenue. And when Nebraska is continually looking for a new revenue source, this is one way. But I want to be fair here. The argument against this is that it costs society too much, that it's going to cost too many other things, but the facts just don't bear out in that situation. They say the societal cost of alcohol is \$2.2-- \$223 billion; the societal costs of tobacco are supposed to be \$193 billion. What was interesting is that I sit on General Affairs and we offered bills to expand alcohol distribution through drive-thru windows and none of the testifiers behind us were there. But for some reason, if we introduce mes-- marijuana to the industry, all of a sudden it's doom and gloom and the society costs are too high, yet there was no police officers there saying we shouldn't expand alcohol. There was no police-- county attorneys there saying we shouldn't allow somebody to drive through and pick up alcohol. So the society costs are when they deem it to be relevant, not necessarily when it is relevant. The fact of the matter is, legalizing marijuana decreases teen use. Washington School of Medicine found that the rates of marijuana use by young people are fi-- falling despite the fact that

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

United States are legalizing and decriminalizing marijuana. The fact of the matter in Washington, from 2012-- from-- it went from 0.98 [SIC] percent to 7.3 after the legalization of marijuana, so the data doesn't support that somehow kids are going to be more affected. The fact of the matter is, there is a black market that we all know. The fact of the matter is, one person is arrested or ticketed per-- per minute, per day, means that marijuana is out there. This actually, if passed by the voters, would give this body the opportunity to provide safety protections for the consumer. If you look at what happens in Washington, they get to make sure that they are free from mold, free from toxins, and make sure what is actually on the label is actually in the product. Buying marijuana on the black market does not ensure that. In fact, marijuana-- legalization of marijuana has been the greatest threat to the drug cartel in the last five to ten years. Data from the U.S. Border Patrol shows that marijuana seizures have decreased by millions of pounds and are at the lowest levels in over decades, indicating that legal production is decreasing the smuggling from Mexico to the United States. Again, people talk about the society ills of it, but the data just doesn't support it. I won't get into all the things about the-- the disparities in arrests when it comes to marijuana. But what I will tell you is FBI crime-- crime statistics show that in Washington, violent crime decreased over the years of legalization by about 20 percent. What is also found in medical journals is that when recreational marijuana is introduced into those states, the need for opioids and other addicting drugs actually decrease because those who actually may have a knee surgery or a shoulder surgery don't get addicted to the prescription drugs. So, again, the data doesn't bear out about big marijuana and what it will do to our society. The reason I've never dropped this bill is I've always worked with Senator Wishart and Senator Morfeld on their medical side of marijuana. But after the recent Supreme Court decision, I felt like it's time to go to recreational. It's just time to move there for a couple reasons, and one of them is I'm actually a little concerned about the liability medical marijuana places on doctors. I'm actually concerned about regulating it to doctors when most of the time the community I represent is left behind as far as access to the medical facilities. And the fact of the matter is, this should just be legal. So the-- the idea of this constitutional amendment is short, it's sweet, it allows the Legislature to put regulations around it, and more importantly, it gives a chance for the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

voters to decide whether we should legalize marijuana for those who are 21 years and older. The last thing I'll say is the business case for it, not just because of all the money, but it's going to happen sooner or later. The feds are moving in that direction. And either we can allow local business to-- to participate or we can wait for Pepsi and Coca-Cola to come in and buy us out. That's where we're going. I think it's better for Nebraska businesses and Nebraska people to be involved in the process and start the businesses in Nebraska versus from the conglomerates coming in and taking over. And with that, I will answer any questions.

LATHROP: OK, any questions for Senator Wayne? I don't see any at this time.

WAYNE: Thank you.

LATHROP: I assume you're going to stick around to close.

WAYNE: Yes, I'll be in my office next door.

LATHROP: Perfect. Thanks, Senator Wayne.

WAYNE: Thank you.

LATHROP: We will take proponent testimony at this time. Welcome. Good afternoon.

JOE NIGRO: Thank you. Mr. Chairman, members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I'm here on behalf of the Nebraska Criminal Defense Attorneys Association and my office in support of LR2CA. LR2CA is an important step in ending the failed war on drugs by placing legalization of marijuana for a vote of the people to be placed in Nebraska State Constitution. The war on drugs has been no more effective than Prohibition was. Over the last 50 years, the war on drugs has led to an explosion of the number of people incarcerated in this country. A few years ago, John Erlichman, one of Richard Nixon's top aides, described the true motivation behind the Nixon administration's escalation of the war on drugs when he said: We knew we couldn't make it illegal to be against the Vietnam War or black, but by getting the public to associate the hippies with marijuana and blacks with heroin and then criminalizing both heavily, we could disrupt those communities. We could arrest

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did. This has been particularly devastating on people of color. Nowhere is this more important and with-- more apparently with marijuana. Marijuana use runs across racial and socioeconomic lines, but blacks are more than three times as likely as whites to be arrested for marijuana. This is true nationally and in Nebraska, as documented in an ACLU study in 2020. The five counties with the largest racial disparities in marijuana arrests were, number one, Buffalo, where blacks are 8.93 times as likely to be arrested; Adams, 8.51 times; Lancaster, 6.84 times; Sarpy, 6.43; and Lincoln County, 6.21. Those numbers should shock the conscience. Besides the consequences of criminal penalties for possession, con-- conviction can affect eligibility for federal student loans, federal housing, and loss of immigration status. This is an issue of racial justice. I urge the committee to advance LR2CA, and I'm happy to answer any questions.

LATHROP: OK, I don't see any at this time, Mr. Nigro, but thanks for being here.

JOE NIGRO: Thank you.

DONNIE JOHNSON: You can tell me, does Senator Chambers come here?

ASHTON KREBS: I'm sorry?

DONNIE JOHNSON: Senator Chambers, he still work here?

ASHTON KREBS: No.

DONNIE JOHNSON: They fire him?

LATHROP: He was term limited, I'm afraid.

DONNIE JOHNSON: That's OK, young lady. I'm a [INAUDIBLE] person, so it ain't going to matter to me.

LATHROP: OK. With that, welcome.

DONNIE JOHNSON: Welcome, sir and gentlemen, ladies. My name is Donnie R. Johnson, north Omaha Concerned Citizen Foundation and the Johnson

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

Equestrian Foundation. And my address is Omaha, Nebraska. You want the physical address?

LATHROP: We want you to spell it, spell your name for us.

DONNIE JOHNSON: Donnie, D-o-n-n-i-e, Johnson, J-o-h-n-s-o-n, Nebraska [INAUDIBLE] 1972. My mentors was-- let me go back here, wear my glasses-- Senator Lorinsky, Mayor Leahy, Senator Dan Lynch, Senator Dave Karnes, and Congressman Lee Terry, as they sponsored me to study in the United Nation when I was 24 years or 25 years old. But I come to the conclusion, if surrounding states are saying yea for medical marijuana, Nebraska-- Nebraska is saying nay, we need to know why surrounding states are saying yea. In the meantime, Prohibition, that might be something you want to study and compare. And then this problem with Washington, D.C., I don't know if it was the Shay's Rebellion or insurrection, but I think it was because of jobs. We wanted medical marijuana to pass, not because we wanted to smoke it, like President Clinton said he didn't inhale. We wanted to grow-- grow it and sell it and get us some jobs because us senior citizens in north Omaha needs jobs. And at the same time, I come from a farm in Texas in 1963. I started at Saratoga and my [INAUDIBLE] lady, when she told me about them Appalachian horses and that wagon train, Mormon Trail, she said sometime we got to think outside the box. In the meantime, in north Omaha, I think we could tie our law enforcement hands up with something more important, like this pandemic. That would be important. But we need jobs in north Omaha. And as a farmer, my grandma used to take us in the fields. I picked cucumbers, blackberries. And they say, in Nebraska, you could take the boy out the country, but you can't take the country out of him. So some of us old folks said, look, under Senator Chuck Hagel there, allow money and bind the Congress to let some of the baby boomers move back to the rural community. And I told USDA up been Fremont, if you put all of us down here in north Omaha, we'll start applying for those loans, because when we took those cucumbers out of the field to that plant up there, that guy would take all them cucumbers and put them on a big old barrel after he give us our mon-- me and my grandma our money, the two bits-- or was it four bits? Anyway, he would put them in that barrel and say, what you going to do with those, grandma? She said, if he leave them in there long enough, they'll turn into cucumbers. I said, but that's what that's going to be-- not cucumbers, excuse me. It's been a long time. The cucumbers went into the barrel and then

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

they turn into pickles and then they'll start [INAUDIBLE] some of them people, we started the largest population ever heard, baby boomers. In the meantime-- that's just a Navy joke, 'cause in the Navy we have taught to-- if we're going to be a state senator like Senator Dan Lynch and Senator Chambers and other great senators of the state of Nebraska-- some not been so well, even Governor Kay-- my Navy partner. I came down here, told-- what was that Governor name at the same time, the one that was in love with Debra Winger? Bob Kerrey, that fella. I come down here and said, look, Navy guy, would you please get that BMW plant and that Saturn Plant and stop chasing Debra Winger, because we need jobs in north Omaha. [LAUGH] Don't tell him I told you. Us Navy guys, we're kind of have strange behavior. In the meantime-- oh, so the yellow-- I won't take up too much time because I-- I took some time out with the Peace Corps, which I'm working on. I said, look, guys, y'all might not know Nebraska. Oh, sorry.

LATHROP: All right.

DONNIE JOHNSON: I'll finish it next time. But in the meantime, if you don't know Nebraska, don't be going to no cathedral, hitting a woman in the head over her pocketbook, we want you to go to work.

LATHROP: OK, thank you, Mr. Johnson.

DONNIE JOHNSON: Yes, sir. [INAUDIBLE]

LATHROP: Have a great weekend.

DONNIE JOHNSON: Yes, sir.

LATHROP: Welcome.

SETH McBRIDE: Thank you. My name's Seth McBride S-e-t-h M-c-B-r-i-d-e, and I'm just here speaking on my own behalf. Am I clear to begin?

LATHROP: Yeah, yeah, absolutely.

SETH McBRIDE: I wish I had a lot more time to discuss multiple aspects of this topic, but since my time is really limited, I'm going to give a couple-- just touch on a couple arguments and then finish with what I believe to be the main justification to pass this resolution. Half the states in our country have some sort of legal cannabis market.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

There are only five states that have full-- that have not decriminalized in any manner. I'm going to skip this part about the finances because I think we all understand that it's a huge market. There are jobs and tax revenue to be made. The federal Drug Enforcement Agency confirmed in their DEA resolution guide, edition 2017, that no deaths from overdose of marijuana have ever been reported. I'm not aware of any other recreational drugs that have a mortality rate of zero. According to hhs.gov, in 2018, two-thirds of the overdose deaths in the United States involved opioids. Going to skip over some of these, because I know that there's some evidence that shows that states that have legalized marijuana have decreased opioids deaths. The Journal of American Medical Association found that states with medical cannabis laws experienced 25 fewer opioid-related overdose fatalities compared to other states. This was from 1999 through 2010. The discussion surrounding cannabis turns into a discussion about the pros and cons of individual use and speculation about societal impacts, but we really need to focus on the role of government, which is to protect the rights of the citizens, not micromanage every aspect of their lives. If you're going to continue to support prohibition, which is an infringement of individual liberty, you need to provide overwhelming evidence and justification as to why you're doing so. If you refuse to provide Nebraskans a chance to have a say on this issue, you need to provide overwhelming evidence to justify why you're doing so. I believe prohibition will end in the near future nationwide, and we should focus more on regulations that will help protect the users and the community so that we can mitigate risk. We need to focus on the safety of the production, cultivation, processing and distribution. Ultimately, this bill is not about keeping or revoking prohibition. It's about giving Nebraskans a vote. The 2020 ballot measure had broad support, polled around 77 percent, but was removed due to language of the bill. Don't take away Nebraska's right to vote on this issue the next time we go to the polls. I look forward to seeing this-- this argument move forward and-- and listen openly to other views and see where this issue goes for our state.

LATHROP: Very good. Thank you, Mr. McBride. I do not see any questions for you, but we appreciate you coming down today.

SETH McBRIDE: Thank you. I appreciate it.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

LATHROP: Sure. Any other proponents? Anyone else wishing to speak? Seeing none, we'll take opponent testimony now. Good afternoon, welcome.

DONALD W. KLEINE: Good afternoon, Mr. Chair and senators from the Judiciary Committee. My name is Donald W. Kleine, D-o-n-a-l-d W. K-l-e-i-n-e. And I'm the elected Douglas County Attorney in Omaha, and I'm also here as a representative of the Broward County Association, opposing this bill. And this isn't just about a vote to the-- being a vote of the people. This is about an attempt to, as Senator Wyden said, legalize recreational marijuana. And I would call the Judiciary Committee's attention to 2019 Attorney General's Opinion from the state of Nebraska that said that the federal Controlled Substances Act preempts state law with regard to this topic, just as an aside, but I think it's important that when we're talking about recreational marijuana, that there's so much talk right now with the pandemic and things that are happening around the country to-- to look at science-based data or look at the experts, what the experts say. And if you look at what the experts say about marijuana, recreational marijuana, the statement "marijuana is addictive and it's harmful" has been made by the World Health Organization, the National Academy of Sciences, the National Institute of Health, the American Society for Addiction Medicine, the American Medical Association, the American Academy of Pediatrics, and the American Academy of Child/Adolescent Psychiatry. All those experts have come out and said, hey, marijuana is addictive and it's harmful. And we already know that. I-- I-- I before I came here today, I went over to our-- our juvenile division. I was talking to them and they said the majority of cases they have in juvenile court right now are-- there-- there's the marijuana is a big, major part of those cases. They're young people that have problems with the marijuana, with going to school, with-- with taking care of what their probation is. So I was like, OK, what's the cost here that we're willing to pay? OK, so big money or corporations are going to come in and they're going to try and take this over, so we need to do this. Well, I don't-- I don't agree. If you look at Colorado, there's been an increase in-- in people who have died in motor vehicle homicides because of people under the influence of marijuana or drugs. And what's the price that we're willing to pay with our young people, you know, having addiction problems? There's evidence based that-- that young people have developed psychosis from the use of marijuana

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

in-- in their teenage years. And so there's a tremendous cost there, besides the people who are-- who will-- who will be-- die in motor vehicle accidents from somebody that's high, the young people who have-- might have an addiction problem and adults that will have addiction issues; not everybody, I understand that, but some people will. I-- I see I'm out of time, and I'm sorry, but I'd be happy to answer any questions, so.

LATHROP: OK. We have a lot of testifiers too.

DONALD W. KLEINE: That's right.

LATHROP: Senator Geist.

GEIST: Yes, I'll keep this short. But you were you were quoting some statistics and I-- you were also relating some things about the pandemic, and one of the things I'm concerned about, and I wonder if you have the statistics with you, is the higher incidence of suicide. I know we've had issues just from the pandemic and young people and their being away from school and all of that and the higher incidence of suicide that. I'm wondering if introducing marijuana use, do you also see an incidence of higher, increased suicide?

DONALD W. KLEINE: There's-- there's statistics that show that the-- the use of marijuana causes mental health issues, there's no question about it, and problems with-- particularly with juveniles and psychoses, With regard to suicides, it's difficult to tell because, from a causation standpoint, we can't really show. But certainly there's-- we've had toxicology results from autopsies that show that there might be THC in somebody's system, but there's-- we can't really show a cause and effect there.

GEIST: Causation, OK. OK. Thank you.

LATHROP: Senator McKinney.

McKINNEY: Thank you. Thank you for your testimony. What role does the county attorneys in your office have in, you know, doing more to address the wrongs that were done because of the war on drugs? Black individuals in this country are three times more likely to be incarcerated because of marijuana usage. What are you doing as an office to right the wrongs of the past?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

DONALD W. KLEINE: Well, but, you know, if you look at Douglas County, and I can only speak for Douglas County, we-- we have the highest number of cases that we divert in the system. I probably have 350 individuals right now are either on-- we have mental health diversion. We have diversion. We have drug court where we have about 150 people in to help people that have issues with regard to-- to drugs, to help them get rid of their addiction problems rather than sending them to prison. We have Veterans Treatment Court, which also deals with those-- those issues, and we have young adult court. And all those problem-solving courts and diversionary programs help divert people and get them the help that they need if there's a drug addiction problem. You know, we don't deal with the-- the-- the city prosecutor's office deals with the-- the possession-type cases of-- of marijuana, lesser amounts or the infractions, those kind of cases. We only deal with the felonies.

McKINNEY: OK, I guess my next question-- I asked this of somebody else, another county attorney, earlier, that time after time, we see this room filled with police, law enforcement, county attorneys, correctional officers, and y'all oppose all the reforms that are needed to decrease the prison population and to right the wrongs of the history, because this country has overpoliced black communities and there are more black individuals in our prisons than-- than anywhere. And what are y'all doing to go to other committees to advocate for bills that would address poverty, that would decrease the likelihood that somebody would even think about committing a crime? Nobody is born a criminal, but the way that society is set up, you guys are not doing anything proactive to decrease that likelihood. You come in here and oppose bills for reforms, but you're not in Revenue or Appropriations asking for money to put jobs and resources in north Omaha. I don't understand your opposition. You guys always talk about public safety, but a part-- part of public safety is decreasing poverty.

DONALD W. KLEINE: It's really offensive for you to say that we don't do anything proactively to help our community. Every day, that's our job. What we do is try to make our community a better place to live from every aspect, whether it's people with addiction problems, victims that come to us because they're victims of-- of violent crime or they've had property stolen. Usually those victims are from lower socioeconomic areas. They're being preyed on by other people. They're

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

law-abiding citizens who want to be able to walk outside at night without having to have the fear of gunshots being fired or-- or gang action taking place. So we do all these things to try and make our-- our neighborhoods safer. We-- we want to help take care of victims and we proactively try and help people with have-- that have addiction problems and using drugs. And, yeah, there was a problem with regard to the way the federal system overreacted, had the war on drugs, and were-- and-- and that was changed to some extent, and my understanding is because they were penalizing people with powder cocaine less than they were penalizing people that had crack, and that was-- that was a big issue. And I know that there was federal laws passed to take care of that. That was probably the biggest disparity.

McKINNEY: But-- but it's not even just about drugs with the war on drugs, because you-- the police overpolice communities.

DONALD W. KLEINE: The police go to places because they're--

McKINNEY: How-- how--

DONALD W. KLEINE: --because they're called to be there by people who are victims [INAUDIBLE]

McKINNEY: How long have you been in your role?

DONALD W. KLEINE: What? Pardon me?

McKINNEY: How long have you been a county attorney?

DONALD W. KLEINE: I've been the head-- the county attorney since 2007.

McKINNEY: OK, so since 2007, when have you outwardly advocated for legislation and policy to affect the economic landscape of a district like north Omaha or south Omaha? When have you done that?

DONALD W. KLEINE: I don't think I've ever done--

McKINNEY: That's the problem.

DONALD W. KLEINE: --advocated for a bill about economics in-- in north Omaha or any area of Omaha. I didn't feel--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

McKINNEY: That's the problem.

DONALD W. KLEINE: Pardon me?

McKINNEY: That's the problem.

DONALD W. KLEINE: OK.

McKINNEY: Thank you.

DONALD W. KLEINE: Sure. Any other questions?

LATHROP: I do not see any other questions. Thanks for being here this afternoon.

DONALD W. KLEINE: Thank you.

LATHROP: Good afternoon.

GARY ANTHONE: Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Dr. Gary Anthone, G-a-r-y A-n-t-h-o-n-e. I'm the chief medical officer and director of public health for the Division of Public Health within the Department of Health and Human Services. I'm here to testify in opposition to LR2CA. Legalization of a drug by a state circumvents the process set out in federal law for approving drugs for safety and efficacy and leads to an increased risk to the public. The FDA has a robust review process to determine the efficacy and safety of new drugs. The approved drug products containing cannabinoids have been through this process. Permitting marijuana use for any purpose poses an increased risk to the health and safety of Nebraskans by exposing them to a drug that does not meet the strict standards set for-- set by the U.S. FDA. For example, there are concerns about how marijuana containing various levels of cannabinoids or tetrahydrocannabinol, THC, may affect people with a predispose-- predisposition to schizophrenia or other psychoses. More scientific evidence is needed to better understand how THC affects the human body at different ages and stages of development, as has been noted by the National Center for Complementary and Integrative Health. Legalization also poses risk as research into long-term side effects of marijuana show that THC concentration levels have steadily increased over time. Percentage levels of THC have increased from about 4 percent in 1995 to 16

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

percent in 2018, and modern farming practices in bioengineering will likely lead to marijuana products with even higher T-- THC levels in the future. More scientific-based research is needed to better understand the negative effects of marijuana and all the cannabinoids contained within it. Outside of the drugs approved by the FDA, THC is still listed on the Drug Enforcement Administration schedule of controlled substances with no other approved uses. We respectfully request that the committee not advance this legislation and thank you for the opportunity to testify today. I'll be happy to answer any questions.

LATHROP: OK. Senator McKinney.

McKINNEY: Thank you. I'm curious, if a person drinks alcohol, could that trigger mental health issues, depression, schizophrenia?

GARY ANTHONE: I'm sure it can.

McKINNEY: So why is alcohol illegal?

GARY ANTHONE: It's not a Schedule 1 drug and it needs to go through the FDA process. We need to follow the science here. I think County Attorney Kleine had a great point. This pandemic has showed us that we need to follow the data, we need to follow the science, we need to go through the processes that are in federal law.

McKINNEY: How can we-- how can we completely follow the science if we don't legalize it so the science can be conducted?

GARY ANTHONE: If they would-- I-- one of the things the pandemic-- that I've learned through the pandemic is how people were skeptical of the vaccines and how everybody wanted it to go through the FDA process to show that it was safe and effective. And I think that's what we need to do here. We need to follow that process.

McKINNEY: Thank-- I'm done. Thank you.

LATHROP: I don't see any other questions. Thank you, Doctor. Welcome.

JOHN BOLDOC: Good afternoon, Mr. Chair. Members of the Judiciary Committee, my name is Colonel John Bolduc, J-o-h-n B-o-l-d-u-c. I'm the superintendent of the Nebraska State Patrol. On behalf of the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

State Patrol, I'm here today in opposition to LR2CA that would legalize the use of recreational cannabis in any form at the age of 21. As a career law enforcement officer with 35 years of experience, I'm unfortunately all too familiar with the unintended consequences of legalizing or decriminalizing any form of marijuana. I want to focus on the harm Nebraskans will experience as a result of LR2CA that involve law enforcement. Despite state efforts to regulate the marijuana industry, legalizing the sale and use of marijuana has resulted both in an increase in violent crimes and traffic deaths. This occurs because of the diversion of products to the black market and an increase in drugged driving. A 2018 study found three fourths of the legally produced marijuana was diverted to the black market. In Colorado, the state found violent crime increased 20 percent from 2012 to 2017. Additionally, Colorado has seen traffic fatalities that involve drivers who tested positive for marijuana increase by 1356 percent since the legalization in 2013. In 2019, Colorado had 49 cannabis-involved fatalities with drivers who tested positive for THC. As the police chief in California, a medical marijuana state, until 2018, I routinely saw the diversion of marijuana products to the black market. The demand for high-grade marijuana, edibles and vape cartridges is exceptionally high. Because of the demand and potential profit, I fear Nebraska will become a source state rather than just a destination state, ultimately contributing to the dangerous problem the black market poses to public safety. Troopers have removed numerous loads of marijuana and marijuana products traveling through Nebraska that were packaged and labeled as legal products in their state of origin. From 2016 to 2020, the weight of THC products seized increased by 1,243 percent, and 70 percent of all drugs seized in Nebraska came from two states, California and Colorado. In summation, the diversion of legal marijuana to the black market will negatively affect our community and likely result in an increase in drugged driving and motor vehicle fatalities. In addition, we expect the legalization of marijuana for persons 21 and older will increase the testing burden on the Nebraska State Patrol Crime Lab. The crime lab may be asked to determine THC quantitation and ensure it is not hemp when someone under the 20-- age of 21 is in possession of cannabis. In closing, I'd like you to thank-- I'd like to thank you for the opportunity to present testimony. I'd be happy to answer any questions you may have.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

LATHROP: Senator McKinney.

McKINNEY: Thank you. I just got one question, I think. When Prohibition was ended, did our country-- did our state see an increase in violent crime and traffic deaths?

JOHN BOLDUC: I don't know the answer to that, Senator, but I would imagine that-- that traffic deaths or traffic fatalities increased.

McKINNEY: OK. Thank you.

JOHN BOLDUC: Thank you.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Colonel Bolduc, for your testimony today. So today, alcohol, guy's weaving on the road, you can breathalyze him. And I know marijuana-- I read some science last year that they were coming up or have come up with a-- a test similar to that, that you could road test individuals that are impaired.

JOHN BOLDUC: Well, thank you, Senator, for the question. There-- there are some presumptive tests that are in development. Of course, the manufacturers of these products want us to believe that they are-- they're ready for prime time. I would argue that they're not because, unlike alcohol, we have a presumptive limit, 0.08, of blood alcohol content that can be determined through roadside testing. Many states do not have a threshold like that. So there are some tests that could tell us, yes or no, the person has been using marijuana within a certain period of time, but it can't quantify that amount. So the-- the science is not there yet.

BRANDT: So today, if you have a suspected impaired driver with marijuana, do we blood test those individuals or-- or how do you determine, first of all, that they are impaired by that particular drug?

JOHN BOLDUC: So the way it works right now is we have to be able to demonstrate to the court and to the jury that the person's impairment as a result of marijuana or other drugs affected their-- their motor skills. And we do that through a number of tests that we administer

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

that can include blood or urine tests. But again, since there's no minimum threshold in statute as to the amount of THC you can have on board, we can't say that because of-- you have, you know, 0.08 nanograms of THC in your blood that you are legally impaired. We don't have those standards yet. And-- and the science is not-- is not well founded in that, so you see very few states that-- that have implemented limits like that.

BRANDT: So I guess that's my last question. A state like Colorado that's had recreational probably longer than anybody, do they have a threshold?

JOHN BOLDUC: They do. But the-- the way it's worded, and I-- forgive me, I forget the legal term, but it's-- they have a 0.05 nanograms per milliliter of blood. They call that a presum-- a presumptive impairment, but it is not an automatic license revocation and-- and it doesn't mean that you're impaired. So the-- the-- their law is very-- is-- I would say is rather vague and it's difficult to prosecute with that. I would suggest that in the future, technology will evolve to the point where we will be able to have some testing that would make it easier to prosecute people who are impaired by marijuana or other drugs.

BRANDT: All right. Thank you.

JOHN BOLDUC: Thank you.

LATHROP: No other questions. Thank you, Colonel.

JOHN BOLDUC: Thank you, Mr. Chairman.

LATHROP: Appreciate you being here today.

BRUCE FERRELL: Good afternoon. My name is Bruce Ferrell; it's F-e-r-r-e-l-l. I'm police chief for the city of Wahoo and I'm also the second vice president for the Police Chiefs Association of Nebraska. I'm here today in testimony, opposition of LR2CA and I appreciate the Chairman and members of the Judiciary Committee for hearing me today. If we look at the Rocky Mountain HIDTA report that was issued in September of 2020, find a number of statistics that are very overwhelmingly-- that would support our position. One is traffic-- as the colonel mentioned, the number of traffic fatalities, what I will

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

say in addition to that is overall traffic fatalities in Colorado only increased 24 percent versus the marijuana traffic fatalities since 2012-- or 2-- since 2013 at 135 percent. Marijuana ages 12 and older past month's use increased 30 percent over that time period and is 70 percent-- 76 percent higher than the national average. Colorado is currently ranked third in the nation with that. For school ages-- for the school year 2718-- 2017 and '18, possession of marijuana was by far the greatest law enforcement contact in schools, with over 1,500 than-- even more than disorderly conduct and fighting. Probationer test results were significantly increased for all age groups, 14 to 36-plus. Public health statistics show that suicides where toxicology results were positive for marijuana increased from 14 percent in 2013 to 23 percent in 2018, and they were only 7 percent in 2006, prior to legalization of recreational marijuana. Societal impact also shows that marijuana tax revenue was only 0.85 percent of the Colorado fiscal 2019 budget, and of that, only 2-- 9-- 0.9 percent was the sales of medical marijuana. Sixty-seven percent of the cities and counties in Colorado banned the sale of recreational marijuana in their respective communities in Colorado. Regarding black market operations, there was a 42 percent increase of legal mari-- manufacturing of marijuana between 2012 and 2017. Crime-- violent crime in the county of-- city in Denver has increased almost twice between 2009 and 2019, and overall in the state has increased, as well, by about 30 percent. Centennial Institute published a study in November of 2018 which showed for every dollar of tax revenue that Colorado had, 4.5 percent of it went to mitigate-- \$4.50 went to mitigate the effects of that legislation. And I've included a number of that-- of those statistics in-- in there. In addition, Indiana-- University of Indiana showed that 40 to 60 percent of all marijuana that's produced in the state of Colorado is black market. There's a tremendous amount of environmental damage that goes with these indoor marijuana grows where we talk about mold, exposure to children, fertilizer and pesticide impacts, as well as treating-- us in law enforcement having to treat indoor marijuana grows as if they were methamphetamine labs for the off-- safe-- off-- safety of the officers. Finally, in 2019, the U.S. Attorney's Office in Denver announced the largest black market takedown in the state's history. This is just one of the takedowns in which over 240 residential grows were identified, over 250 locations, including 8 businesses. Again, this is a problem we believe-- that PCAN believes that we should not

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

have this move forward off of the committee. And I'll be happy to take any questions.

LATHROP: OK. Senator Slama.

SLAMA: Thank you, Chairman Lathrop, and thank you very much for being here today. Just to your point about those black market operations, are they finding in Colorado that they have purely local ties or are they tied to foreign cartels?

BRUCE FERRELL: Interesting enough, we-- we've seen that a number of the organize-- organized black market grows, including the largest one that was in Teller County recently, were Chinese nat-- crime groups, also Cuban and Mexican cartels. And to Senator Wayne's point, what I will tell you is that since 2015, the DEA Phoenix office, in consultation with the Mexican government, has found that the Mexican cartels have transferred 100-- or, excuse me, over a million hectares of growth of marijuana to now poppies and the sale and distribution of heroin and fentanyl, as well as increased production of methamphetamine. Plus, the cartels have also moved into not only black market grows inside residential areas, but also black market grows in our national forests in Colorado, as well as in California. California, it runs rampant, especially northern California. And I will tell you that it's-- it's-- it's-- the experiment in Colorado is-- has gotten to the-- had gotten to the point where Governor Hickenlooper, when he was still governor, said that he was going to intro-- possibly introduce-- re-- reintroduce legislation to recriminalize marijuana because of the numbers that we were seeing coming out of the state of Colorado since they legalized marijuana.

SLAMA: Thank you.

LATHROP: Senator Geist.

GEIST: And just a quick question: Along the lines, it seems counterintuitive that if something is legal, that you would have a black market. Why?

BRUCE FERRELL: Because in Colorado, minimum state sales tax is 17.9 percent with excise tax and everything. In the county of Denver and the city of Denver, it goes up to 33 percent of total taxes. So it's

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

cheaper to buy black market marijuana on-- on-- on the-- with the same amount of THC quality. We're not just talking about the-- the plant itself. We're also talking about edibles and also inherently dangerous production of what we call BHO labs, or butane hash oil labs, where we had a number of fires and explosions in Colorado, the most recent in January 2021 in Greeley, Colorado. And I know I've spoken with the Omaha Police Department and since 2019-- 2019, they've had 15 BH-- illegal BHO labs in the city of Omaha, and we're not even at legalization. That number will only increase.

GEIST: Thank you.

LATHROP: Senator McKinney.

McKINNEY: Thank you. My question: Would you agree that almost every race uses marijuana or some form of it?

BRUCE FERRELL: I don't think it's a racial issue, Senator.

McKINNEY: No, I'm just saying that--

BRUCE FERRELL: I believe that every does-- race-- every eth-- ethnicity does use marijuana.

McKINNEY: Every-- every ethnicity.

BRUCE FERRELL: The concern-- the concern for us is the fact-- it's not just the criminality of it. It's the-- it's the effort-- excuse me, the environmental as well as the societal impacts when it comes to the health of children, the traffic conditions, environmental impacts. When it comes to the-- I mean, these aren't-- where-- they aren't making them in small houses. We're talking about upper middle class. In fact, in Lincoln, 15 years ago, you had 15 houses that were being run by a Asian criminal street gang out of British Columbia that were growing, had large-scale marijuana grows in the city of Lincoln. They operated for over a year, a year and a half, each one producing over a million dollars' worth of black market marijuana out of each individual house over that market period of time.

McKINNEY: And in response, I would say there-- there are large societal impacts when you and others come in here are scream for public safety but don't do anything to address poverty or right the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

wrongs of the war on drugs. Black individuals are over three times more likely to be arrested because of marijuana. So when you say it's not a racial issue, that's not necessarily true. So I-- I really don't understand your opposition.

BRUCE FERRELL: Well, what I'll say, Senator McKinney, is that when I was with the Omaha Police Department, we in-- routinely, especially since, what, 1999, have interacted in a-- in a way with the community to not only promote-- promote jobs, promote kids getting out of gangs through intervention and prevention. And I-- I will say, I have never sat in a committee hearing and-- and proposed anything in Appropriations or anything like that, but that doesn't mean I haven't sat with people like from the League of Municipalities or other organizations and provided in-- needed-- potentially needed input when it comes to those type of bills. We're just not testifying because I don't have the expertise to be able to testify about economics. But I can testify about-- with expertise about this-- this matter.

McKINNEY: OK. All right, I'm done. All right.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Chief, for testifying today. Real quick, the black market in Colorado, is that what's finding its way to the streets of Nebraska? I mean, I'm sure in Wahoo that you interdict marijuana. Do you have any idea if that's legal or illegal and where it's produced?

BRUCE FERRELL: Our last big seizure actually came from California. It was black market, but most-- I believe most of the interdiction stops that are being done by the State Patrol and other law enforcement are black market. It's labeled differently. It's packaged differently. The Indiana State University study-- excuse me. The University of Indiana study said 40 to 60 percent of all marijuana produced in the state of Colorado is black market, so it's finding its way into our communities, it's sidestepping the-- and it's-- and it's not being-- some of it's being sold in Colorado. But Colorado is a source state for 24 separate states across the United States when it comes to distribution of black market marijuana throughout the-- throughout the country.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BRANDT: And then last question: In-- in Colorado, there's a price per ounce. What is the price per ounce in Nebraska?

BRUCE FERRELL: I don't have that number, but I can-- I can get you what-- what our most current one is. But I will say that it's, at a minimum, 18 percent more expensive to buy from a dispensary, which additionally, the dispensaries in Denver are in mostly, predominantly poor and socioeconomically poor neighborhoods than they are in the-- in the suburbs. That is at least 18 percent, if not 33 percent, higher than black market marijuana based just alone on the-- on the excise and sales taxes.

BRANDT: All right. Thank you.

LATHROP: Very good. Thank you. We will take one more opponent and then we are on to neutral testimony. Good afternoon.

MAGGIE BALLARD: Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Maggie Ballard, M-a-g-g-i-e B-a-l-l-a-r-d, and I am here on behalf of Heartland Family Service in opposition of LR2CA. I'm going to skip over some of the introduction about marijuana and how it's a lot different and what we see at Heartland Family Service. Moving on to the second paragraph of my testimony, many of our clients that come to Heartland for treatment are there because they have or have had a cannabis use disorder. Studies show that one out of nine marijuana users develops a severe marijuana use disorder known as addiction. When you broaden that to being any level of use disorder, mild, moderate or severe, that increases to one in three users. So if you're in favor of legalizing marijuana because you think it's not addictive, then you either believe that you know more than the professionals that wrote and use the DSM-5 or you need to accept that increasing access to the substance will increase addiction. Now I believe that Senator Wayne has no interest in seeing people under the age of 21 use marijuana or promoting that. But unfortunately, we see that youth access will increase. If you talk to a friend of mine that works in an emergency room in Colorado and listen to her talk about the small children that get brought into the ER every week after accidentally ingesting their parents' pot brownies, pot lollipops, or pot tarts-- and those are accidental ingestions, right? That doesn't count the number of youth that believe that if you legalize it, it means that it's safe. And

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

that's what I hear from a lot of students that I present to, is they think that if there's anything wrong with this drug, why are they legalizing it? But I want to hit on a couple of other thoughts that I know those of you that are in favor of this are having. So you believe it's in-- unfair and inconsistent that alcohol and tobacco are legal but weed is not, and seven years ago I thought the same thing. But I implore you to understand that at HFS our clients suffer enough from the substances that are legal. They suffer enough from the substances that are illegal. They do not need society pretending that there's nothing wrong with them getting high. They do not need the Nebraska Legislature or the Nebraska voters to throw another addictive substance in their faces. Two legal substances is enough. I don't know why we would want to add to it. Moving on, I may not be able to convince you to vote differently, but I am imploring you to open your mind up enough to get some new information. So this brings me to the last reason that I know a lot of you want to legalize. You are as sick as I am, or probably sicker, of black, Indigenous and people of color being incarcerated at a disproportionate rate over whites. I want you to consider this. I have \$100. I will give you that \$100 if you can point to a state that does not disproportionately arrest BIPOC for alcohol-related offenses, even though alcohol is legal. If you can point me to a state where legalizing marijuana has reduced the disproportionate minority contact, significantly reduced the prison population, prevented police from enforcing the law with prejudice, or prevented the criminal justice system from con-- continuing to disproportionately arrest and incarcerate by pot, then I will give you that \$100. If you cannot, however, then I ask you to ask me to work toward a more decriminalization, not commercialization. We have a long way to go, but, yeah, I ask you to vote in opposition.

LATHROP: OK.

MAGGIE BALLARD: Happy to answer any questions.

LATHROP: Any questions for Ms. Ballard? Senator McKinney.

McKINNEY: I-- I guess my comment is being black in America is tough.

MAGGIE BALLARD: Yeah.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

McKINNEY: And if we could lift-- lift one thing off of our back, that-- that is great. So--

MAGGIE BALLARD: Sure.

McKINNEY: --just saying that I-- was-- thought a little offensive. Also, what's wrong with allowing the voters to decide what they want?

MAGGIE BALLARD: And I think that's a really good question. The way I look at it, I have a background working in the child welfare system and we see that children are given guardian ad litem [SIC] so in that case, and I had a small child explain to me what a GAL is as well as anyone could. They said the GAL is there to make sure that even if you want to eat chocolate, you don't just eat chocolate, so they're there to look out for our best interest. And I believe that as a republic, even though the-- even though the Nebraska people have the ability to find out how marijuana would affect this state, I do not believe that they get the most reliable sources. And that's why I believe that as legislators, you have the responsibility to do as much research and make some of those decisions for us. May I answer one of the other questions you asked someone else--

McKINNEY: Sure.

MAGGIE BALLARD: --about violence, just about Prohibition, during the Prohibition era? It was, I think, can be argued about the resources that were put into enforcing alcohol prohibition, but there were actually a lot of really positive public health outcomes for that, including a decrease in violence, decrease in domestic violence. So when alcohol was prohibited, there were actually a lot of really good consequences from that.

McKINNEY: OK. Thank you for your testimony. We will now take neutral testimony, if any. Neutral testimony?

BILL HAWKINS: Yes, sir.

LATHROP: All right.

BILL HAWKINS: Senator Lathrop, members of the Judiciary Committee, my name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s. I am here in testimony of neutral because even though I appreciate Senator Wayne and bringing

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

this issue up, because of the recent Supreme Court decision on the medical petition and the multiple subjects, I'm afraid the way the resolution is worded with the word "sales" in it, that the Supreme Court has stated specifically that they consider that a property right, and so I'm afraid it will get thrown out. So I'm encouraging the committee to work with Senator Wayne to get a proper resolution to put before the people. And addressing some of the opposition and the proponents, the proponents produced a very solid case. The opposition produced their statistics created. I've lived through drugged driving. Two days before Senator Garrett's LB643 went to the floor for debate, his medical bill, I was taken for drugged driving at 10:00 on a Monday morning, one mile from my farm out in the country, run down by a county sheriff. I had to go through the field sobriety test, which now I've learned I do not have to go through. So I've been through drug driving. That case was dropped and amended to careless driving. So I understand the drugged driving. The deaths are marijuana related, not marijuana caused all the time, so I suggest that you really do your research. The officer testified that we had 15 grow operations run by, I think it was, a Vietnamese group. That was 15 years ago. Cannabis has been around. I have 50 years of cannabis culture experience. The issue that I would like to bring up, the lady who just testified, the first question as to this isn't about legalizing marijuana in this state and legalizing the use of marijuana, it's putting it to the vote of the people. This lady just stated that she does not think the citizens of Nebraska are smart enough to make that decision. The issue before this Judiciary Committee is whether the citizens of Nebraska are smart enough to make a rational decision and vote on that. Not one of this opposition here, these police officers and everything who are contributing to our war on drugs, even though I believe in keeping a safe, controlled society, not one of them mentioned vote of the people. So I suggest that you work with Senator Wayne and help to get a very good resolution to put it to the vote of the people. We deserve that. Thank you. And I will certainly take any questions.

LATHROP: I don't see any questions.

BILL HAWKINS: Thank you very much.

LATHROP: Any other neutral testimony? Seeing none, Senator Wayne, you may close. We do have, it looks like, 39 position letters. Two of

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

those are proponent; 37 are opponent, and the following written testimony: Karen-- Karen Bowling with Nebraska Family Alliance is an opponent; Mary Hilton, on her own behalf, is an opponent; Matt Schaffer, with the Nebraska-- representing the Nebraska Medical Association, is an opponent; and Lorelle Mueting, M-u-e-t-i-n-g, with Heartland Family Services, is also an opponent. Senator Wayne, you may close.

WAYNE: Thank you. Thank you, Chairman-- Chairman Lathrop. This was interesting listening next-door because I could actually understand opposition to what was being said to the next bill. What's ironic is government officials coming in here saying that we don't want you to vote on something. We're not asking-- this bill doesn't say we're going to legalize it today. This is the option for the Nebraskans to vote on it. And just to give you a little bit of perspective, I did print out-- I looked in there on the CDC website for-- for cannabis-related deaths and I couldn't find any; in fact, what I passed out, on page 2, last one says, "Cannabis (Marijuana) 0." But opioid has a lot, actually over 20,000-something a year, but-- but we're OK with that because it went through the FDA process, whatever that means. But what's interesting is that's not what this bill is about. This resolution is about voting on an issue. Why that's interesting is because before Prohibition started of alcohol in the 1800s, Nebraska was mainly a dry state; particularly, counties in western Nebraska were against it. And after Prohibition became-- or before Prohibition, western Nebraska still didn't like the idea of alcohol. After Prohibition was pass-- removed from the Federal Constitution, it was still in our State Constitution. As many of you know, I'm a history nut. I always come here and talk about this stuff. It was still in our constitution and it was in our constitution until 1934 when the Panhandle farmers opened up distilleries and wanted to have a different income source. I didn't hear any talk about FDA approval, when you go back and read the transcripts. It was about the economics of it. And as a conservative, they believed the person can manage themselves, least that's what I always hear on the floor when it comes to certain-- certain things: Pull yourself up by your own bootstraps, and as a conservative, you got to take care of yourself. Personal responsibility is what I hear all the time on the floor. But when it comes to this, government has to oversee to make sure nothing happens. That's contradictory. If we're worried about the teens,

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

saying they can't do it, they can't do it, then why are we so against Patty's bill, Senator Pansing Brooks's bill, to make sure juveniles start in juvenile court. If they can't do it, if they can't make the decisions, they're too easily influenced, on one hand, then I don't know the argument against 16- to 18-year-olds starting in adult court and not juvenile court. You can't continue to come in front of hearings and be inconsistent, maybe years ago when transcripts took a while to be done, but these are live streamed and recorded and people are starting to see the inconsistencies of our local officials. But in 1934, it was this body who put it on the ballot for the voters to decide, and it passed 60/40, to remove the prohibition against alcohol. We're asking for the right to vote on something, to give a chance to figure it out. And if we're saying our voters aren't educated enough, if our police are saying that in front of this body, that is a problem. If our counties' attorneys are saying you're not smart enough to figure it out, that's a problem. This body and this committee needs to send a strong message that we believe the second house, because I always hear that on the floor: the second house. But in this instance, we don't want the second house to vote because just maybe the people of Nebraska know what's best for them and just maybe they want to vote on this issue. Thank you, Mr. Chairman.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank-- thank you for bringing this, Senator Wayne. I-- I don't know where I fully am on recreational marijuana, so I will let you know that part. But I do think it should be put before the people because I shouldn't be deciding. I think it's really important to let the people decide on this issue. And the continual drone of, oh, well, we have-- we have pe-- we-- we have COVID testing, you know, we're believing the science on that. Well, look how quickly that happened. And then the argument that, oh, we've got to go back and let the FDA look at this, we have been fighting this battle and fighting this battle. FDA doesn't want to deal with it. They don't want to reschedule it. They just want to leave it alone. So it should be up to the states. I-- I don't know where I would vote, how I would vote on it, but I agree with you. If we cannot leave it to the voters, then what are you all scared of? Clearly, you're scared that it will pass, and that the-- if so, then that's what the voters are saying that they want. So anyway, I appreciate you bringing it. I-- this FDA argument

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 19, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

drives me crazy because we've known about marijuana even back in the days of Cleopatra, and it's probably the most known drug of any drug that has existed in our history. So anyway, thank you for bringing this bill-- on to the voters. Oh, I have one more--

WAYNE: Ch-- Chair-- Chairman, may I respond to that? Just briefly, I swear.

LATHROP: Yeah, yeah.

PANSING BROOKS: And I have one more thing too. Go ahead.

WAYNE: Senator Pansing Brooks, that's the point of the inconsistency. We want to bel-- we want to wait for data, but when it comes to juveniles in this hearing room, the data shows that they're not fully developed till 25--

PANSING BROOKS: Right.

WAYNE: --but we don't care. We want to throw them in the jail at 18.

PANSING BROOKS: Right.

WAYNE: So at some point, I think law enforcement and I think the AG and-- and executive branch have to be consistent: Does data matter or does data not matter?

PANSING BROOKS: Exactly, and that's the points-- the points are being made by Senator McKinney perfectly. And we had, you know, hearings this morning on trace elements. And, no, these== these kids have to be charged on trace residue and, I mean, it's just continuous. It's just-- when you're a hammer, everything is a nail. Now I did want to ask a question about the-- I did also have a question, as Mr. Hawkins did, about the-- the-- the single subject issue. And maybe that's something that you can discuss with Senator Morfeld or others. It did concern me that both adding in that the Legislature is going to create restrictions and the fact that-- I don't know, but maybe you've [INAUDIBLE] somebody.

WAYNE: Yeah, we-- to answer that, Senator Pansing Brooks, we-- we went round and round on this. We-- first original draft was like three pages based off of South Dakota, then that lawsuit was filed, so as

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

our ten-day bill introduction goes, we wanted to get something done, but we figured this committee with counsel can figure out the-- the best way to go forward.

PANSING BROOKS: Thank you.

LATHROP: OK. Senator Geist.

GEIST: OK, I can't let the conversation go without some push back, so I know you expected this.

WAYNE: And I appreciate less talking beforehand.

GEIST: One of the issues is we are a democrat republic. We are elected to represent the people who voted for us and that is our responsibility, and we're fulfilling our responsibility sitting here and doing this today. So to say that we're not allowing people to vote is not quite the case because they voted for us to be here to represent them, and that is our form of government. So that said, what this also leads to is our responsibility in and of ourselves to do our own research. And you're referencing juveniles and what this does to juveniles, what the potential that continued regular use of marijuana for juveniles, have you grown up with someone in your family that did this, that was addicted to this? Because I have and it's tragic. So to sit here and say that we're not doing that or we're not allowing people's voices to be heard, we are. We're doing our responsibility and I take this very seriously. And, yes, I want an FDA approval because I feel like if I make this decision, I have to be OK with the juveniles who use it, who get addicted, who trip over into schizophrenia, for pregnant women who may be taking something that they don't know will hurt their unborn child. That's the responsibility we're taking if we approve this. You may have your say.

WAYNE: Thank you. We'll start with growing up with people. Absolutely. I've also grew up with people who were addicted to alcohol, and I believe you're also supporting bills to allow drive-thru windows, which I agree with, so we're expanding the use of alcohol.

GEIST: [INAUDIBLE]

WAYNE: And if you're not, then I apologize. But it was in the committee and I-- my-- my bills are getting confused. But none of the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

people-- my point to that was none of the people here testifying against this bill were testifying against any of those bills. I struggle with the idea is we believe conservatively in personal responsibility when we choose to. I struggle with the idea of-- and, yes, when I think about the impact of drugs, I think about the impact of Senator McKinney's community and my community more so than anybody else, but I also think we do have a duty to allow people to vote on issues. We praise the second house. We praise the idea of taking things to the will of the voters. And for dec-- my four years, there were gambling bills introduced on the committee that Senator Brandt and I sit on and it never came out because we didn't want to, but the voters clearly approved that. There is a mechanism. There could be a petition, absolutely, but we also have the ability to do it here, and I'm asking this body to do it here to give them a chance to vote on the issue.

LATHROP: Any other questions for Senator Wayne? I see none. Thank you, Senator Wayne. That'll close our hearing on LR2CA. You are not getting out of that seat, are you?

WAYNE: I was going to let-- I was going to let Senator-- I was going to let Senator McKinney go first.

LATHROP: No, I'm just giving you a bad time. The next hearing is going to be a joint hearing because of the similarity in topics and subject matter, LB546 and LB481. Senator McKinney, you will open first on LB481. Senator McKinney, you are good to open on LB481, and welcome.

McKINNEY: Thank you, Senator Lathrop and members of the Judiciary Commi-- Committee. Today, we acknowledge that the criminalization of marijuana has been a key driver of mass incarce-- mass criminalization and has greatly and disproportionately impacted minority communities. The Marijuana Conviction Clean Slate Act intends to decriminalize cases concerning marijuana. Additionally, it intends to change provisions relating to penalties for possession of synthetic cannabinoid and drug paraphernalia. This bill intends to clean the records of individuals who have acquired possessory convictions, including both simple possession and possession with intent. My office has received a broad spectrum of concerns about this bill, including health concerns, the potential for rising consumption, regulation and implementation of a record expungement for past convictions. While

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

this bill addresses these concerns, we understand that there is more than one way to go about legislation and I'm willing to engage in dialogue to find viable solutions to make it as practical as possible. What we do know, and what I will expound upon here, is that: (1) Black Americans are 3.1 times more likely to be punished for marijuana possession than whites. (2) Studies have concluded that marijuana policy reform is not linked to increased rates of marijuana use among teens and young adults. (3) The continued criminalization of marijuana has been to the economic detriment of the state of Nebraska. Each of these issues I will explore in turn. First, black Americans are-- on average are 3.1 more times more likely to be punished for marijuana possession than whites. According to a study conducted by the ACLU, that rate is 6.2 times more likely in specific counties such as Lincoln and 20-- 26 times more likely in Seward County. When discussing regulation of marijuana, we must acknowledge that it carries remnants of the war on drugs targeted at black and brown people and was arguably never meant to increase public safety in the first place. With this acknowledgment comes the duty to address discriminatory policing practices, as well as the structural racial basis at every step of our criminal legal system. Equity is a vital component of this bill as it seeks to repair past harm, avoid future harm, and help address the years of stigma that criminalizing marijuana has brought about. Next, studies have-- studies have conducted that marijuana policy reform is not linked to increased rates of marijuana use among teens and young adults. In 2012, Colorado and the state of Washington became the first states to-- and Washington became the first states to legalize marijuana for use. Both states have conducted large-scale surveys involving thousands of high school students in the years since the decision to legalize. The results have consistently shown an overall reduction in marijuana use among teens. Research published in the Journal of Substance Abuse also suggests that legalization has not increased use among teens who were already using marijuana before the legalization. Moreover, as of January 2021, the available data shows that regulating marijuana for adults does not impact marijuana use among youth. These studies were conducted for the legalization of marijuana. This bill merely intends to further decriminalize marijuana in the state of Nebraska, as well as offer a way for individuals who have been victims of past criminalization to have an avenue for recovery. What I find helpful in helping us consider this legislation is that data generated from other

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

states signal that Nebraska would not be poised to incur adverse impacts, effects from such implementation. Finally, the continued criminalization of marijuana has been-- has been to the economic detriment to the state of Nebraska. Over the past several-- several weeks, we have had numerous discussions in the Legislature about how to decrease the prison population and whether or not our state needs to build a new jail. One way-- one way we can help is address these concerns by enacting this legislation. The resources used here can be allocated everywhere. I ask that this bill will be moved out of committee, onto General-- General File, and I'm open to any questions.

LATHROP: OK, any questions for Senator McKinney at this point? I don't see any. We'll have Senator Wayne introduce his bill and then take proponent testimony.

McKINNEY: Thank you.

LATHROP: How many people are here to speak as a proponent of either of these bills, by a show of hands? OK, how many people are here in opposition? All right, I'm just going to say something. There was some people that wanted to oppose the last bill and didn't get a chance. We had a lot of law enforcement presence, which is great, but let's try to give some of the folks that didn't have a chance on the last bill an opportunity when the op-- opponents come up. With that, Senator Wayne, welcome back.

WAYNE: Thank you. And just-- my name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. Marijuana prohibition dated-- is dated and misguided, and the war on drugs was an utter failure. Don Kleine just touched a few minutes ago on some things. Without a question, it ruined lives and particularly in hard-hit urban communities. Marijuana prohibition was a misguided law, and it was passed in 1937 primarily because it was too easy to grow and it was loss of the alcohol prohibition economics and they wanted to generate money. What's interesting is Nebraska still has a marijuana tax, even though it's illegal. It is also a racial agenda. Back then, it was popular to prejudice, for the government to be against Irish, German, and Italian cultures for their alcohol usage; however, it's completely-- it was completely acceptable to find another scapegoat. I believe marijuana prohibition would more negatively impact African

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

Americans and Latinos, and it was sold as such to the Legislatures back then in 1937. There's also a stigmatism behind cannabis, and that's part of what the law was about, creating the stigmatism, and there was an entire campaign behind it in the early 1930s. But what's interesting is, in 1700s and 1800s, it wasn't a stigmatism for George Washington and John Adams to grow and use cannabis. It was widely accepted in colonial America and actually, it spread throughout during the Civil War. Bringing us back to LB546, this sets up the framework for the commercial sale of marijuana for persons over the age of 21. It also sets up licensing, application, regulatory scheme for store owners, cultivators, transporters, product lines and retail manufacturing. This bill also provides an equity component to ensure diversity and to decrease the barriers to entry. I have said multiple times to other senators who have worked on this issue that I would not support any bill that did not have a social equity component, and I stand by that; in fact, I would fight and filibuster any bill dealing with marijuana or medical marijuana that does not have a social equity/justice component to it. LB546 will create the Nebraska Marijuana Enforcement Commission, which will create the structure of application, licensing and regulatory structures for the industry. The commission shall have three commissioners, and I'm kind of going through this because this is a long bill and we had all-day committee hearings, so not everybody kind of knows what's in the bill and may be reading it along with me. All commissioners will be appointed by the Tax Commissioner. The commission shall have appointed chair who will then serve as the executive director-- or who will appoint the executive director. The commission is expected to have three to five employees. The commissioners are appointed to a four-year term. The commissioners are barred from working in the marijuana industry for six months from their last day of appointment on the commission. The commission shall also have adopted rules of the industries and regulations by September 1 of 2022. Licensure for participating in the market will require application, including name and address of the Nebraska resident seeking application, the location and the desire to operate and who owns it, how involved the applicant will be in the day-to-day operation, or the running of business, plans and specifications for building involved in the production and distribution, and two sets of fingerprints. Just want to mention fingerprints, Senator Brandt. I did learn from the hemp application that there's many areas that are-- and counties in western Nebraska who don't do fingerprinting, so that may

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

be an issue, but I'm willing to work on how we get the fingerprints done out there. The application fees that are due: A store owner is \$7,000; cultivator is \$6,500; manufacturer, \$6,500; testing facility is \$2,500, and the transporter is \$40-- \$55-- \$5,400. LB4-- LB546 also includes a social equity portion. It is my intention that when, if not-- and not if, marijuana is legal in Nebraska, whether it's approved by the voters or this body, this has to be part of what we're doing. In order to achieve this, 20 percent of all applications approved must qualify for social equity-- as social equity applicants. A person qualifies for meeting at least one of the criteria: a 51 percent ownership by an individual who has lived five-- five of the last ten years in a disproportionately impacted area, at least 51 percent ownership of an individual who has been arrested, convicted, or adjudicated for an offense or is eligible for relief under the Marijuana Conviction Clean Slate Act, and we'll speak about-- which I'll speak about that a little bit, but I think there's been a couple other bills that touched on that issue, so I won't go too in depth on it. And if the applicant has ten employees, they have-- 51 percent of them have to live in a disproportionally impact area or seek relief under the Nebra-- Clean Slate Act, which is included in this bill. The commission shall weigh 50 percent of their fees for social eq-- equity applicants. So the last important part of this bill is obviously the Marijuana Conviction Clean Slate Act. This is important for a bunch of reasons. It continues with the equity trends built in other parts of this bill. Equity just isn't about making sure people can participate in the industry, but it's also about clearing records to make sure that outside the industry they won't be held back. Individuals who are eligible for the Clean Slate Act under this bill, the offense must-- was committed on or before 1-1-2010, and as of June 1, 2020, an individual has completed their sentence for related offenses and resolved all court-ordered fines and financial obligations. A qualifying person may petition the court for a Clean Slate Act so it doesn't happen automatically. The court may charge up to \$40 fee and cover the court costs associated with clearing the person's record. So I'm going to talk a little bit about the fiscal note because I think it's important. There are some very promising things in the fiscal year when you see the revenue that's brought in. To start, it should be noted, the Department of Corrections indicated that there will be a decrease in the population. I haven't seen that in the four years here, so I wanted to point that out and give them a "rah-rah" for--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

for-- for saying that. Between 2017 and 2020, nearly 300 admissions into Corrections were due to marijuana charges. Seeing how this could instate-- impact state prisons that are already 145 percent over the capacity-- or 145 percent of design capacity, this should be an equitable way to make sure we relieve some of that burden. The licensing fee structure and imposed sales and excise tax are modeled after the Colorado version. Tax revenue in Colorado last year was \$387 million. Now Colorado has a larger population, so the fiscal not only predicts about \$22 million. At first, this would result in \$5 million more into the General Fund immediately. The fiscal note also predicts big growth, that the industry could reach \$127 million in revenue in-- in the markets in this state. They say that the impact on the General Fund would likely be around \$25 million per annum with over \$400,000 going to the highway funds. This is money that we all desperately need. Now to the majoring glare, or the flaw on the issue, is the request of the State Patrol. This is what goes back to kind of death by fiscal note. And for those who are on the committee, it took us a long time working with the State Patrol to remove the fiscal note from the hemp bill, if you'll recall. According to their note, marijuana legalization is going to require \$4 million for a brand-new building. In order to process filings for the Clean Slate portion of the bill, they need 18 new employees. In order to account for the apparent slew of new crimes that will be-- occur under the legalization of marijuana, the State Patrol is looking for 21 new staff for law enforcement functions. So we legalize something and there's more crime, they need more people-- interesting. The State Patrol is requesting \$9.8 million for a new building a nearly-- nearly 40 new staff. The Patrol is expecting an uptick in crime. They used Oregon saying that they experienced an increase in crime with a bunch of marijuana that was being sold on the black market. I just don't see that happening here. Maybe I'm wrong, but there's a lot of other reasons people are actually moving to Washington and Oregon that they see an uptick and maybe they're just a natural growth of population increase. I could keep going all day on the fiscal note, but the \$9.8 million to deal with legalization of marijuana was just really interesting to me. Again, the appropriation-- the appropriation to the Illinois State Patrol for a similar bill was less than a million dollars when they legalized it across their state, and they have six times the population of Nebraska. So either that fiscal note is out of whack or Illinois's was completely wrong, but anyway, since the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

legalization, they haven't seen a significant increase in their budget for the State Patrol of Illinois. At the end of the day, and I know this bill is a heavy lift. I know there's going to be a lot of people who are going to testify against this bill. I know there are going to be people on this committee who are unsure about recreational marijuana. And to be perfectly honest, I keep going back and forth versus recreational versus medical, and I have been for the last four years. But we are some-- we are one of the last states in the country to decriminalize marijuana in some form. I know we always like to wait and see what other states do, but we don't have to wait and see what happens in this one. One of our more conservative states recently voted to legalize recreational marijuana in South Dakota. People are moving in that direction. As a representative body, we should be conscious of the people we represent. Twenty-five million dollars is not the save-all, be-all, but it is important to note that this is a positive bill as far as impact to our fiscal note. We can debate and go on and on about the stats, but there are conflicting stats on everything and every bill that comes before us. Again, this is a heavy lift. My goal: at least to have the Marijuana Clean Slate come out of the committee. But the overall purpose of this particular bill was to give a foreshadow of if the voters pass LR2CA. This is what a framework of what a bill would look like. Thank you.

LATHROP: OK, Senator Geist.

GEIST: Yes, I do have a quick question. I did notice that you don't have a set back limit when it comes to how close these dispensaries can be to a school. Would you be willing to put something like that in there so they wouldn't be located across the street from a school?

WAYNE: Absolutely. And part of what I was trying to do was still give local control. If-- if-- if Kearney didn't want 20 dispensaries and maybe only wanted 1, I was trying to leave some areas blank in that area for them to figure out what's best for their community. What typically happens across where states have done this is they break out the number of licenses based off of population. And so where they go within those cities are usually up to local control. And so that's why I left it, but we can definitely put in for sure--

GEIST: OK.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

WAYNE: --barrier around schools.

GEIST: Thank you.

LATHROP: OK. Because we're doing a joint hearing, I'll do 40 minutes for proponents and 40 minutes for-- for proponents and opponents, give it a little more time. And as I said before, there are some people that are not in law enforcement, I-- I'm assuming, that did not have an opportunity to-- to speak on the last resolution. Hopefully, we'll have an opportunity to let them come forward and participate as opponents here. Welcome.

JOE NIGRO: Thank you. Mr. Chairman, members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of the Nebraska Criminal Defense Attorneys Association and my office in support of both LB481 and LB546. LB481 would remove criminal penalties for marijuana. LB546 would remove criminal penalties and tax sales of marijuana, providing millions of dollars in property tax relief. The failed war on drugs has created a greater burden on the criminal justice system than any other factor over the last 50 years, especially harming people of color. Blacks are three times as likely as whites to be arrested for marijuana in Nebraska, with some counties showing even higher rates of disparity, all of this for a substance that has the same dependency rate as caffeine: 9 percent. By comparison, the dependency rate for alcohol is 15.4 percent; for cocaine, 16.7 percent; heroin, 23.1 percent; and tobacco, 31.9 percent. In Lancaster County, a number of the violent crimes we see involve people robbing marijuana dealers. These incidents sometimes go wrong and people get hurt. This is similar to the crimes that occurred during Prohibition connected to people involved in illegal sales of liquor. Those crimes don't happen now. That's because people don't buy alcohol from some sketchy person in an alley. They go to the grocery store or the liquor store. Regulating ma-- marijuana sales would have the same effect. People would buy marijuana regulated dispensaries. Legalization has actually decreased use by teens nationally in those states where marijuana is now legal. In Colorado, the only age group where use of marijuana increased was people over 65. Governor Hickenlooper was an advocate of legalization when I heard him speak in the last couple of years, and it seems to me that the black market still exists in states like Colorado and other states where-- because it's illegal in other states, whereas alcohol

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

is legal across the country, and I think that that has gotten rid of the black market in alcohol sales. Opponents say THC content has increased, as if that makes marijuana more dangerous. It only means someone uses less to get high. Humans naturally produce anandamide, a chemical that reduces pain and causes short-term memory loss. The body has cannabinoid receptors which receive anandamide, but there are no cannabinoid receptors in the brainstem. You cannot overdose from it. If people were overdosing, it would be a huge story. Advocating legalization does not mean advocating use. It means ending the insanity of spending incredible amounts of money prosecuting people for using a substance that's now legal in several states and Canada. It means raising millions of dollars in tax revenue, which can go to property tax relief instead of ruining lives and punishing people of color. I believe legalization will ultimately lead to reduction in violent crime. The question to ask opponents is, did Prohibition work? Alcohol kills thousands. Alcohol can make people violent. But Prohibition made millions of otherwise law-abiding citizens criminals. It enriched organized crime, making "mafia" a term everyone knows. Eventually, people decided it was smarter to legalize it, regulate it, and tax it. We should do the same thing with marijuana. This is an issue of racial justice, and I urge you to merge these bills and advance them. Thank you.

LATHROP: OK.

JOE NIGRO: I'm happy to answer any questions.

LATHROP: Questions for Mr. Nigro? I see none. Thanks for being here, Joe.

JOE NIGRO: You're welcome.

LATHROP: Next proponent. Anyone else? Oh, I'm sorry.

SPIKE EICKHOLT: I missed my chance the first time. Thank you. 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 both of these bills. I'm not going to repeat some of the testimony you've heard before on the earlier proposal and the proponent testimony you've heard today. I just want to say a couple of things.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

LATHROP: Could you speak up just a little bit--

SPIKE EICKHOLT: Sure.

LATHROP: --Spike?

SPIKE EICKHOLT: You've heard a lot of the opponent testimony about the harms of marijuana and the harms of drugs. I would acknowledge that some of those may be legitimate, but criminalization is not working. Marijuana is illegal. All the horror stories you're seeing about what marijuana does to people is happening when we have prohibited marijuana and criminalized it. I would submit, and I've represented people, I've had people in my own family that have had substance abuse problems, I see daily-- I saw earlier this morning when I went to court what substance use does to people. Criminalization adds another layer that confounds the problem and it's not working. This is a medical issue, it's a societal issue, and there are other ways to deal with it besides just criminalizing it. And that's why we propose decriminalizing it. One of the costs, and you've heard it mentioned a couple of times and I've actually handed out a couple of pages from the ACLU study, one of the costs is the clear disparate treatment against people of color. And that's rampant really through all the criminal system, but it is most apparent and acute in marijuana. And I've given you two-- two pages of the report. One is sort of the breakdown of all the states. They have their arrest records for marijuana usage and breaks it down compared to black and white people. We're actually not as bad as we could be in that category. And then the other handout I have is entitled "Nebraska." It has ACLU in the right-hand corner, sort of has a summary how the state ranks, even county by county. And what you see clearly is that black people are three times more likely than white people to be arrested for marijuana possession in this state, so it does hurt and it does hurt people of color to criminalize it. One other thing I just submit is that there was nearly a ballot question-- there was nearly an initiative question on the ballot last general election. Even during a pandemic, the proponents, with a grassroots efforts, got 10 percent of the population, not percent-- 10 percent of the voting population but 10 percent of the people who live in the state, to ask that that be on the ballot, and they did it at a time when you couldn't pay paid circulators to do it because the companies weren't doing it during the pandemic. You couldn't-- you didn't have farmers' markets. You didn't

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

have football games. You didn't have those large events where you can get all kinds of signatures that day. It was genuinely grassroots social media and they got signatures and it nearly got on the ballot. One vote from the Supreme Court, it would have been on the ballot. Every ballot question that's been-- I think it was five or six this last general election. Every ballot question about marijuana nationwide was approved by the voters. I say that because even if you're not a proponent of marijuana, don't like it, don't like what it does, the voters are going to do it for you. And then what you have may be far worse and you're going to lose control of it. You're not going to be able to tax it. You're not going to be able to regulate it. You're going to be stuck with whatever the voters put on the ballot and likely approve. So I'd just ask the committee to consider that point.

LATHROP: All right. Any questions for Mr. Eickholt? I see none. Thank you. Anyone else here as a proponent? I'm-- I want to make a statement that-- yeah, you can come on up. I was just going to say we can't use neutral testimony as rebuttal, so if you're-- if you're a supporter--

BILL HAWKINS: Yeah, a proponent.

LATHROP: Yeah.

BILL HAWKINS: OK.

LATHROP: All right, welcome.

BILL HAWKINS: Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s. I am here in support of this-- both of these bills. As I've stated before, I have 50 years of cannabis cultural real-life experience. When I was a teenager in high school, cannabis was there. It was all over. We've stated that it was here 15 years ago in grow houses. All that money went out of the country. That man fled the country and left. Cannabis use is here. I feel the fiscal note, which I got ahold of, the revenue, I think, is a little short. By my calculations, and I have spoke around the country on this and I'm very experienced in this issue, is that Nebraska is going through-- with 10 percent of the population consuming cannabis every day, it's here. We are going through approximately 20,000 pounds of cannabis every month. At a

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

retail price of \$5,000 a pound, wholesale price of \$2,500 a pound, we have-- on the streets of Nebraska, an ounce of marijuana-- "cannabis," I prefer-- is \$200 an ounce. So that's why you see nobody here testifying as a proponent, because they're very comfortable and they don't want to deal with the regulations and the taxes. They're-- it's here. It's not going away. Right now, there are states on the East Coast, five or six states, that are looking at legislation through their legislature with the approval of their governors. They are not rushing into that. As Senator DeBoer and I had a discussion, this isn't the reason to do this, that other states are doing it. But these other states are actually researching the issue, listening to all the opposition, and still making that decision to tax and regulate this commodity. This commodity is a multibillion dollar industry right now. In looking at Cresco Labs in Chicago, that is a multistate operator. When the federal government regulates cannabis, decriminalizes it, it'll allow interstate commerce. They will be looking at situating in a centrally located place for interstate commerce. Nebraska could be an epicenter. It would stimulate our economy. These other legislative bodies are as intelligent as you. They are researching the issue and they are making intelligent decisions to tax and regulate cannabis. I suggest that you look at this and really look at it clearly because it will be on the ballot either way, whether that resolution passes or the citizens will have a petition, so there is your option. I want to thank you and I will gladly take any questions.

LATHROP: Any questions for Mr. Hawkins? I don't see any. Thanks for being here today. Appreciate hearing from--

BILL HAWKINS: OK, I thank you for taking your time on this historic issue in Nebraska. Thank you.

LATHROP: Certainly. Any other proponents? Anyone else in favor of the bills, either one of them? Seeing none, we will move to opponent testimony. Good afternoon.

JOHN HERDMAN: Good afternoon. Senators, my name is Dr. John Herdman. J-o-h-n H-e-r-d-m-a-n. I am CEO of Parallels Counseling here in Lincoln and CEO Herdman Health. I have over 47 years of experience in the behavioral health field. I began my career as the-- as an Air Force drug and alcohol abuse control officer and ended my military service as a reservist at Headquarters, Air Force, the Pentagon, where

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

I served as chief consultant for drug and alcohol issues. My opposition is based upon the science and my clinical experience. I support the National Association of Alcohol and Drug Abuse Counselors' statement. Although state and local governments are increasingly legalizing recreational and medicinal cannabis use, NAADAC, the Association for Addiction Professionals, does not currently support the use of cannabis as medicine or for recreational purposes. It is imperative at this crucial time, as the laws and cultural norms pertaining to cannabis are shifting dramatically, that cannabis be subjected to the same research, consideration, and study as any other potential medicine pursuant to the standards of the U.S. Food and Drug Administration. We strongly encourage increased efforts to perform research that will allow evidence-based and scientifically supported policy changes pertaining to medicinal use of cannabis. Until the body of accepted research allows the scientific community to reach an evidence-based consensus on the effects of cannabis on the human brain and body, NAADAC is unable to support legislative or voter ballot initiatives to legalize mar-- cannabis for medical or recreational use. One hurdle cannabis researchers are facing is the lengthy-- is the legality, or lack thereof, of conducting the research. Even scientists who wish to conduct research on cannabis in states where it is legal may risk their DEA licenses or federal funding by performing that research. Accordingly, it is NAADAC's position that the federal government must issue new guidance to provide legal protections for scientists studying cannabis and provide increased funding for this research to take place. Many do not perceive the potential harmful effects of marijuana, even though it is the most commonly used psychotropic drug in the United States. Using marijuana carries real risks for health and quality of life. The perception of how harmful marijuana use can be is declining, and more young people today do not consider marijuana use a risky behavior. NAADAC recognizes that early studies have shown that cannabis can have therapeutic uses and supports the continued research of potential medicinal use of cannabis. Let me add a few more comments. Today's marijuana has more than three times the concentration of THC than 25 years ago, and people can do-- do become addicted to marijuana. About one in ten people who use marijuana may become addicted and one in six when use begins before age 18. Marijuana affects brain development in use by adolescents. And so I see my time's up on that, and so I would like to accept any questions and I thank you for this.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

LATHROP: OK, thank you, Doctor. Any questions for the testifier? I do not see any at this time, but thank you for your information and for being here today. Next opponent. Good afternoon.

SHERI DAWSON: Good afternoon, Senator Lathrop and members of the Judiciary Committee. I'm going to kind of combine here. Here to testify-- let me tell my name first: Sheri Dawson, S-h-e-r-i D-a-w-s-o-n, and I'm the director of the Division of Behavioral Health at the Department of Health and Human Services, here to testify in opposition to both LB481 and LB546. Decriminalization of marijuana may contribute to increased use of cannabis and harm Nebraskans, particularly women and children. According to the National Survey on Drug Use and Health, September '20, the number of individuals reporting marijuana use in the past 30 days has steadily increased in each of the past four years for all age groups, 12 to 17, 18 to 25, and 26 and older. Results also indicated that marijuana use disorder has experienced a significant increase for youth ages 12 to 17 years old. The Division of Behavioral Health administers federal grants, including treatment to reduce the prevalence of alcohol and marijuana use. The use of marijuana as a primary drug of choice in treatment admissions continue to rise and is second only to alcohol, irrespective of purchasing controls. The department is concerned that LB546 and LB481 do purport to protect minors while permitting and promoting the use of cannabis. For example, it would allow marijuana sales in automatic dispensing machines and permit the consumption of edible marijuana. Pregnant women and their fetuses are also at risk of developing serious problems from cannabis use. And in addition, the department is concerned it would amend the Nebraska Uniform Controlled Substances Act so that it is no longer harmonious with federal law. And the safety and effectiveness of the drug would not be assured, as the legislation is not in alignment with the FDA approval process, which is put in place to protect consumers. Respectfully request the committee not advance these legis-- these bills and thank you for the opportunity. Happy to answer questions.

LATHROP: All right. Well, let's see if there are any questions. I don't see any at this time, but thanks for being here and sharing your thoughts.

SHERI DAWSON: Thank you.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

GARY ANTHONE: Hello again, Chairperson Lathrop and members of the Judiciary Committee. My name is Gary-- Dr. Gary Anthone, G-a-r-y A-n-t-h-o-n-e. I'm the Chief Medical Officer and director of the Division of Public Health, Department of Health and Human Services. I'm here to oppose both bills. Again, LB546 and LB481 would increase the health and safety risk for Nebraska residents by legalizing marijuana. Concerns about how marijuana affects people are typically addressed through the process set out by the U.S. Food and Drug Administration for the approval of investigational new drugs. The current approved drug products containing cannabinoids have successfully completed this process. Legalizing marijuana in any form, in contrast, would circumvent the process and lead to an increased risk to the public. In addition, the department is concerned that the bill's provisions regarding the Clean Slate relief would impact professional and occupational licensure duties performed by the DHHS licensure unit because information related to marijuana convictions would no longer be available for consideration in making licensing decisions. This poses a risk to the safety of vulnerable adults and children who receive care from these licensed-- licensed individuals and entities. We respectfully request the committee not advance these bills to legislation. Thank you for the opportunity to testify today. I'd be happy to answer any questions.

LATHROP: OK. Any questions for Dr. Anthone? I don't see any. Thanks for being here. Next opponent. Good afternoon.

THOMAS WILLIAMS: Good afternoon, Senator Lathrop and the Judiciary Committee. I'm Thomas Williams, M.D., T-h-o-m-a-s W-i-l-l-i-a-m-s, a pathologist physician, now retired. I served as chair of pathology and medical director of the laboratory for Methodist Hospital for 40-- or 20-plus years, until 8-20-16. As a specialist in chemistry, I also directed the chemistry sections of Methodist and Children's Hospital laboratories. I then served as Chief Medical Officer and director of Division of Public Health, Nebraska DHHS, from 2016 through 2018. I'm representing myself. I speak in opposition to LB481 as currently written. My testimony in particular addresses those provisions of the bill which recognize and perhaps unintentionally promote the use of various chemical analogues of THC and not the bill's proposed criminal aspects. Synthetic cannabinoids, repeatedly referred to in this bill, and there are many evolving variants, exist solely for two nefarious reasons-- reasons: (1) to avoid illegality; and (2) to avoid positive

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

drug tests. Because their chemical names are not formally enshrined in statutes as fast as they can be not only synthesized, they can theoretically fly through legal loopholes; in fact, they will not all likely be covered by this bill. Section 6 defines synthetic marijuana by those chemical names existing in subsection (c) (24), Section 28-405, "as such section existed prior to the effective date of this act." Thus, further emerging new and novel synthetic chemical formulations apparently may not be covered by this bill. But most importantly, synthetic cannabinoids are dangerous. They are not just another marijuana variant. Their clinical effects are more diverse and they can kill. An article in Trends in Pharmacologic Sciences, 2017, reported more than 20 deaths between 2011 and 2014. In 2018, Illinois Department of Health reported 38 cases of severe bleeding and 1 death determined secondary to synthetic marijuana. Furthermore, a patient who presents to a hospital emergency department with a clinical syndrome caused by a synthetic cannabinoid will generally have a negative THC urine test. Thus, medically speaking, not discouraging future use of synthetic cannabinoids may compromise the emergency medical care of workers who are experiencing potentially more severe adverse reactions than those caused by marijuana. A recent Virginia bill, HB972, May 2020, has marijuana decriminalization and clean slate provisions. A current North Dakota bill, HB 1201, in committee, has decriminalization provisions. Neither of these bills include synthetic cannabinoids. Respectfully, I would submit this bill should not either. I'd be happy to take any questions on this particular topic, or would you like me to proceed to the next bill?

LATHROP: No, you-- you're-- you're limited to three minutes for--

THOMAS WILLIAMS: Oh, I'm done?

LATHROP: --to-- to talk about both, but I--

THOMAS WILLIAMS: Oh.

LATHROP: We appreciate the fact that you offered something very specific about one of the bills and--

THOMAS WILLIAMS: All right.

LATHROP: --that's important for our consideration. Senator Geist.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

GEIST: Yes, I do have a quick question.

THOMAS WILLIAMS: OK.

GEIST: When it-- in regard to THC levels, what are we looking at in the synthetic market? What-- what does-- is that compared to the THC level of whatever is typical in-- in marijuana?

THOMAS WILLIAMS: The synthetic market isn't really THC. Synthetic markets are moieties that in some ways are molecularly similar to THC. Some of them are not. That's very complicated areas of chemistry. Some are indoles, some are other molecules that aren't like chemically that related to THC, and they're generated by laboratories trying to nefariously, as I said, either not have positive THC urine tests or not be le-- not be illegal. They're not illegal because the legality of drugs of this nature are usually defined in a list that you can see in considerable detail in this bill and also in federal legislations, and synthesizers in chemistry laboratories could crank out new molecular formulas faster than they can appear in statutes and, therefore, there-- there's one term that's used, called "synthetic legal intoxicating drug," and in terms of synthetic marijuana and these drugs, there's probably 100 either in the pipeline or already out there and they just keep coming.

GEIST: OK, so if-- if a patient comes in who's having an adverse event, comes into the emergency room, they are undetectable for THC, then how does the medical provider know how to treat this individual?

THOMAS WILLIAMS: They need to suspect on a clinical basis that it might be involved. They may have clinical history from the individual that they took something. But the-- I-- I think in the event that it's important for us to consider as a state that if we move toward legalizing THC in some fashion, I really, as a laboratory professional, believe one of the key points of anything that should be involved in that statute is it's important that the drug be detectable in urine--

GEIST: OK.

THOMAS WILLIAMS: --for the very reason that if somebody does come into an emergency department having a crisis. You know, urine drug testing

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

is complicated. Just because you have THC in your urine, doesn't mean you're intoxicated at that moment.

GEIST: Right.

THOMAS WILLIAMS: That's another complicated issue, but at least it's there and it probably provides a clue.

GEIST: OK, thank you.

LATHROP: OK. Senator DeBoer.

DeBOER: Thank you. So with these synthetic cannabinoids, what form do they normally come in? Are they-- I mean, they're not a leafy product then.

THOMAS WILLIAMS: They-- some of them are marketed as food products, K2 and Spice. Some of these issues can probably be better addressed by some of the gentlemen behind me who do law enforcement, but as initially marketed, they are marketed as, quote unquote, not for human consumption, so the FDA doesn't regulate them. But in truth, people who've bought them or sold them know that that's actually not the deal and they really are-- they really are intended to be a psychoactive medication.

DeBOER: And they have a similar, I suppose, high to THC?

THOMAS WILLIAMS: Yeah, they-- they produce psychoactive effects that vary. And again, I am not a clinical expert in this area, but I can provide information, if you like. The-- the-- the syndrome that they produce can be more varied and the overdose syndromes can be more varied. Psychosis is more commonly seen, for example. And so some of these things-- agitation apparently is more commonly seen. So some of these things are things that emergency room physicians and caregivers know about and they attempt to be attuned for. You know, I honestly don't know how prevalent those compounds are in Nebraska. I'm pretty sure law enforcement knows. Some of those synthetics started appearing in the United States in-- probably around 2010 or so, so for the bill that is involved in the Clean Slate Act that goes back to 1994, a lot of that time was before these appeared.

DeBOER: And--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

THOMAS WILLIAMS: So I think eliminating them wouldn't substantively affect that aspect of the legislation.

DeBOER: So are these synthetic cannabinoids-- are there other synthetic drugs that are not-- because I've heard about synthetic drugs. I've heard that term.

THOMAS WILLIAMS: Um-hum.

DeBOER: Are-- is-- are the synthetic cannabinoids all the synthetics or there's a-- there's a number of others, right?

THOMAS WILLIAMS: There are others. There are others. And again, I'm left-- less versed on those, but I think incense is one that's used. They're sort of catecholamine-like substances that can produce stimulation and things somewhat-- somewhat similar to, but they're chemically different than synthetic cannabinoids.

DeBOER: Thank you.

THOMAS WILLIAMS: You're welcome.

LATHROP: OK, I don't see any other questions. Thanks for sharing your expertise.

THOMAS WILLIAMS: You're welcome.

LATHROP: Next opponent.

DONALD W. KLEINE: Good afternoon again. Donald W. Kleine, D-o-n-a-l-d W. K-l-e-i-n-e, Douglas County Attorney, and here on behalf of the Nebraska County Attorneys Association. And I'll be very brief. I'm here to oppose LB546 and LB481. You've already heard my testimony. It's about the same as my previous testimony about marijuana being addictive and harmful and different organizations, medical organizations, scientific organizations have-- have told us so. The testimony you've already heard today, I think, is very telling from experts in the field, Dr. Anthone and different physicians, department, family services, about the significant impact they've seen from people using marijuana. And to make it illegal, from a recreational standpoint, I-- I-- I'm somewhat biased, I suppose. I've-- I've seen some of the damage that's been caused by going to

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

homicide scenes. There was a-- where 50 shell casings are sitting outside and somebody breaks into somebody's house and the individual is laying there on the couch dead and his-- his marijuana stash was taken, or an individual who was paranoid from his marijuana use and had marijuana in the house and hears a knock on the front door and shoots through the front door and kills his nephew because he thinks it's somebody that's coming in to rip him off on his marijuana. The other thing you should talk to you, if you really want to have some answers about juveniles and-- and the effect, is you should talk to school administrators and school counselors, high school administrators, and they can tell you the impact it has on kids not going to school, young people getting in trouble, and-- and simply the impact it has on the mental health of-- of students. So there-- there's-- there's plenty out there. I-- I-- it's interesting. I hear the data kind of go back and forth each way. The data I've seen is along the lines of Chief Ferrell's with regard to Colorado and the increase in use even after it's been legalized with young people. So I think you have to look at where the legitimate sources are with regard to data-- there's a lot of data out there-- and-- and make sure it's legitimate data. But I-- I-- there's other people that want to testify and I don't want to take any more time up, but I'll be happy to answer any questions if anybody has any.

LATHROP: OK. Any questions for Mr. Kleine? I don't see any.

DONALD W. KLEINE: All right. Thank you.

LATHROP: Thanks for coming down today. Next opponent. Good afternoon.

COREY O'BRIEN: Good afternoon, Mr. Chairman. Mr. Chairman and Senators of Judiciary Committee, my name is Corey O'Brien; that's C-o-r-e-y O-'-B-r-i-e-n, and I'm an assistant attorney general and Nebraska Attorney General's Office. Today I appear on behalf of Attorney General Doug Peterson, and the Nebraska Attorney General's Office in opposition to LB481 and LB546. While the Attorney General's Office has considerable concerns about both these bills, perhaps the most troubling is that in LB481, it seeks to undo nearly ten years of progress that this committee and the Unicameral has made combating the dangerous and occasionally deadly substances commonly referred to as K2, as was talked about by Senator DeBoer with one of the previous testifiers. As currently written, LB481 seeks to legalize the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

possession, and most concerning, the possession with intent to distribute K2. As this committee has heard on numerous occasions over the past decade, K2 often produces effects on the human body that are far more dangerous and potentially deadly than marijuana and naturally occurring THC. As you'll recall, in 2015, over 20 individuals here in Lincoln experienced life-threatening overdoses because of K2 over just a ten-day period, and over the past ten years, numerous K2 users in Nebraska have lost their lives as a result of K2. While being nearly impossible in three minutes to spell out all the other concerns that we have with these bills because of their approximately 225 pages in length, I would simply state that our Attorney General Opinion issued to Senator La Grone in August of 2019, with respect to legislation sought to permit medical marijuana, would equally apply to both LB481 and LB546. In particular, in that Opinion, we concluded that state law changes like those proposed in both of these bills are in direct conflict with our-- are in direct conflict with and are preempted by the federal Controlled Substances Act and, as such, would violate the supremacy clause of the United States Constitution. A couple of points that I would like to make about the bills that are particularly troubling is the inclusion of edible products, use of marijuana and THC in baked goods, as well as ointments or topicals. And let's be honest about it. It's not that much different than the Joe Camel days of cigarettes. These things are intended for and marketed to kids and to get them into this industry, something that is deeply troubling. There's been a lot of talk over the-- the day about statistics. We have a test lab that is to our southwest, Colorado. They put out every year the impact that legalization has had on them. If you go to rockymountainhidta.com [SIC], you can read their report from September of 2020. It talks about data related to increased suicide rates amongst children. It talks about the increased usage rates amongst children, talks about the increased hospitalizations amongst children. It talks about the fact that Colorado has raised \$300,000-- \$300 million in taxes in-- in 2020, which represents 1 percent-- or less than 1 percent of their total overall budget. So we'd ask you to educate yourself as I-- as we have done. I'd ask-- answer any questions you may have on the subject.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman. Lathrop. Thank you, AG O'Brien. So the referendum we almost had in the last election, I guess I really

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

believe, had that been on the ballot, it would have passed, and I think most people in the state probably believe that. I serve on General Affairs, which takes care of the gambling, and I know you've been involved with that. So in that committee, we've come up with a set of rules to enact the new gambling laws. So today, so far, we've had the State Patrol, or will have, and the AG and two or three departments from DHHS, and you're all opposed to this. But there's a real possibility in one or two years that this will be on the ballot and that the electorate will pass this. Do you have a plan in place? Because if-- if that was the situation today, we would probably be discussing a bill like LB546 as the new rules for implementation of marijuana, so I guess, is there a plan in place in the event that the electorate passes this?

COREY O'BRIEN: In terms of crafting--

BRANDT: In crafting legislation.

COREY O'BRIEN: --rules and regulations?

BRANDT: Yes.

COREY O'BRIEN: As far as I know, the rules and regulations would fall on other agencies and not the Attorney General's Office, somewhere like DHHS, so I don't know that we are necessarily involved in that other than I think by statute we have to review whatever regulations they come up with.

BRANDT: Because if it falls on the Legislature, I would assume this committee would probably be the committee that's going to be tasked with doing that, and this is probably what it's going to look like. I mean, I'm just making that point today that everybody can come testify against this, but based on the fact that they got enough signatures last time and where, but for one Supreme Court vote, it would have been voted on. So anyway, that's all I have. So thank you for your testimony today.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you, Vice Chair-- or, no, you are Chair. [LAUGHTER] And thank you, Mr. O'Brien.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

LATHROP: It's been a long week.

PANSING BROOKS: I-- I guess I'm just interested in your take on the fact that-- I-- I agree with Senator Brandt. If this gets on the ballot, it's going to happen. And, you know, I think that what's happened across the nation is people have realized that people of color, all sorts of people are being arrested for trace of something that most people have tried in the United States. Most people know what marijuana does to somebody. Most people understand, albeit our-- we had a president that didn't inhale, but we-- I-- I think-- I just wish that law enforcement and county attorneys and AGs would come forward and work with us to figure out a better way to handle this, because it's coming. Again, by just coming to all these hearings and saying, no, no, no, we can't do this, this will be terrible, it's on everything. It's from tracing-- it's a trace of-- of-- of-- of drugs left in some paraphernalia. Every single thing, it's a "no" instead of "here's what we can do." And I blame-- because I am-- I haven't decided what I am-- where I am on this. I still have not decided that I'm in favor of recreational marijuana, but it's because of this constant barrage of no other way to deal with it except to arrest people, to put people-- young people into prison, to not recognize that maybe it's like an addiction, like alcohol, and that we need to treat and deal with people, not just put them into prison and throw away the key. So if you'd like to-- I know that's a diatribe. If you'd like to comment on it, that's fine, but--

COREY O'BRIEN: I'm sorry, I didn't know-- know if that's a question, but I didn't--

PANSING BROOKS: Pardon me?

COREY O'BRIEN: I don't know. Is that a question or--

PANSING BROOKS: No, it's-- well, yeah, do you think that-- that-- that law enforcement and-- and attorneys general and-- and county attorneys haven't been semi-responsible for this move in our nation to make all this legal? I think it's because we're over-arresting young people with these traces and-- and residues and ash that we're now at the point where the country is saying, forget it, we'll just make it legal. We --we don't want property taxes to go to putting people away

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

for traces and for residue and for a pipe of marijuana. So I don't know. I just-- I'm--

COREY O'BRIEN: Senator, the only thing I can tell you is in 22 years as a prosecutor, I have not once ever filed the residue case and--

PANSING BROOKS: Well--

LATHROP: Can you speak up?

COREY O'BRIEN: I have never once filed a residue case.

PANSING BROOKS: Well--

COREY O'BRIEN: And I don't know of any office that does, to be honest with you.

PANSING BROOKS: Well, you-- you missed our hearing this morning where the-- where we had people coming forward and county attorneys demanding that they need to be able to do that, so I don't know--

COREY O'BRIEN: OK. I-- well, I didn't-- I didn't have the opportunity to watch this morning, but I can just tell you from my own experience.

PANSING BROOKS: OK. Wow. Thank you.

LATHROP: Senator Slama.

SLAMA: Thank you, Chairman Lathrop, and thank you, Mr. O'Brien--

COREY O'BRIEN: Yes, ma'am.

SLAMA: --for being here today. I was hoping you could take just a moment to explain some of the constitutional concerns with this type of legislation. I know at the forefront of everybody's minds right now is the South Dakota effort has just been chall-- successfully challenged in Hitchcock County in South Dakota. Does that relate to some of the same concerns we have in Nebraska?

COREY O'BRIEN: I'm going to wish that I was smart enough to answer your question, but I-- I honestly can't say that I'm familiar with what they did in South Dakota. I can tell you that back in 2019, people in our civil division that are more versed in some of the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

interstate commerce kind of issues did the Opinion for Senator La Grone, and it is available on the Attorney General's website. And it kind of explains the analysis that went through, and ultimately what they decided was that there was a untenable conflict with the federal Controlled Substances Act because marijuana is still illegal there. And so how can we say that we're not going to follow federal law and that Congress preempted that area where it comes to marijuana management, so-- as opposed to the states regulating it to the degree that they are. So that was what they ultimately concluded. I hope-- I hope that answered some of your questions.

SLAMA: Yes, it does. Thank you.

LATHROP: Mr. O'Brien, I do want to make this observation.

COREY O'BRIEN: Yes, sir.

LATHROP: So Senator Wishart put a bill in, I think it was last year, perhaps two--

COREY O'BRIEN: Two years.

LATHROP: --two years ago, for medical marijuana. That bill was broad when presented to the committee. It was far narrower by the time it became a committee amendment and came out on the floor and was defeated. It struck me when we had that debate that we as policymakers would have a lot more control over that topic, what medical marijuana would look like in Nebraska, than a constitutional amendment that simply says in one sentence medical marijuana is legal. And-- and at that point, we have very little ability to regulate it because the people have placed it in the constitution. So I think some of the-- some of the concern maybe that you're hearing, and I don't-- maybe it-- maybe it's frustration. It's we're a little more nimble. We can do more by way of regulation here. But as soon as it gets in the constitution, then we can't do anything that offends whatever the Constitution says, and we lose an awful lot of control. And I don't know what the answer is. I don't know what we do with these two bills. They are-- they cover a lot of ground related to this topic, but I'll just observe that if we-- if it is going to end up legal, having it in the constitution is-- is not the place we want it, because that-- that

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

really ties our hands in terms of doing anything about it once it gets there. That part you'd have to agree with.

COREY O'BRIEN: I don't really know how to answer that, to be honest with you, I mean, it's just--

LATHROP: OK. well, maybe that's just a--

COREY O'BRIEN: Sure.

LATHROP: I'm taking a moment to observe something and-- because this could be the same thing if-- if Senator Wayne's constitutional amendment were to get on the ballot and pass, or not and we see a petition drive and-- and pretty soon-- they aren't-- they aren't petitioning, and we saw this, they're not petitioning to put it in statute. They're putting things like this in the Constitution, which makes it the-- the-- the controlling law, the-- of the state. And it really-- it will really limit our ability to do anything about it if we-- if that's how it finds its way into Nebraska law. Anyway, thanks for being here. Any other opponents?

LORELLE MUETING: All right.

LATHROP: Good afternoon.

LORELLE MUETING: Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Lorelle Mueting, L-o-r-e-l-l-e, last name M-u-e-t-i-n-g, and I'm here on behalf of Heartland Family Service in opposition of LB4-- LB546. Commercialization of marijuana is a public health and safety issue; thus, policy surrounding it should be based on science and research, not popular or public opinion. Commercialized marijuana in Nebraska is a bad idea. There's no need to legislate diversity into the bill, defining a disproportionately impacted area or providing an equity component, as addiction knows no boundaries. All you have to do is look to the alcohol, tobacco. vape industry to see that they position their businesses in communities of color and low socioeconomic areas to disproportionately affect individuals in these communities and areas, and the marijuana industry follows suit. This is a for-profit business model based on addiction, and addiction as an equal opportunity disease. It doesn't care about who you are, where you live, what color

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

your skin is, or how much money you make. High-risk choices lead to addiction, and the availability, access, and normalization of substances in our environment lead to high-risk choices. Wherever these businesses plop down is where you will find high rates of addiction, crime, lower academic achievement, increased poverty, increased youth acceptance and youth of-- use of substances, and the list goes on and on. When most people think about legalizing marijuana, they think about this relatively benign plant that's natural and organic and contains very little THC. That's not the substance that LB4-- LB546 strives to legalize. Make no mistake about it, LB546 would legalize THC in all of its forms: plant, pot brownies, pot cookies, pot gummy bears, THC oils, concentrated THC in the form of shatter and wax and in all its potency. This is not the same substance as it was in the '60s, '70s, '90s, or even the 2000s. Potency is skyrocketing and so are addiction rates. The normalization of marijuana and THC use in our community has created a culture shift in that less and less you see-- you see any harms of using THC. If one perceives no harm from using a substance, the use of that substance goes up. In addition, when commercialization happens, access to a substance increases. When access increases, that substance is easier to get; people use it more, including youth. All of these things are a recipe for disaster. Nebraska youth de-- youth deserve better than this. They deserve to live in a state that prioritizes their mental health, safety, and future over commercialized marijuana and the hopes of economic prosperity because the cost of commercialized marijuana far outweighs any economic benefits the state might see. If you want economic vitality and thriving communities in Nebraska, if you want empowered youth who stay in and grow Nebraska, then I urge you to vote for LB546.

LATHROP: Thank you. Any questions for this testifier? I see none. Thanks for being here. Any other opponents?

JOHN BOLDUC: It's me again.

LATHROP: Good afternoon.

JOHN BOLDUC: Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is John Bolduc, J-o-h-n B-o-l-d-u-c, superintendent of the Nebraska State Patrol. I'm here today to testify in opposition to both LB546 and LB481. I'm not going to cover the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

ground that I covered previously, but two additional areas that are of concern. LB546 would severely hamper the State Patrol's ability to enforce state and federal firearms laws. Section 59 expressly prohibits the State Patrol from denying or enforcing the Concealed Handgun Permit Act or any state or federal firearms laws, regulations regarding the growing, sale, or use of marijuana, edibles, or related products. It also prohibits the State Patrol and other law enforcement from even sharing information with federal agencies seeking to enforce federal firearms laws for actions allowed by this bill. Additionally, the State Patrol's Crime Lab will be impacted by LB546. The fiscal note disregarded all of the Patrol's lab cost estimates because the bill permits other accredited laboratories to use-- to be used to test marijuana products. However, the State Patrol Crime Lab is currently one of only two accredited labs in Nebraska that meet the accreditation requirement in Section 144 of this bill. This means the agency will be expected to perform THC quantification on products under LB546 that will require funding for equipment, space and staffing. Since the passage of the Nebraska Hemp Farming Act, the State Patrol Crime Lab has been responsible for testing hemp products to determine if they're-- if they exceed the legally allowed limit. As a result, marijuana testing times have increased fourfold. We can expect additional increases in testing times with the passage of LB546. And with respect to Senator Wayne's skepticism with regard to the fiscal note, I completely respect and understand that this is not a Christmas tree that we're loading up. Those are real numbers. Our crime lab is maxed out. We can't process any additional work without expanding the facility. The note isn't for a new building. It's just for expanding the building that we do have. And this bill and others similar to it will force us to add onto the facility and add staff to accomplish the tasks that are set out in this legislation.

LATHROP: OK.

JOHN BOLDUC: Thank you for your time. I'd be happy to answer any questions there might be.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Superintendent Bolduc. This is the second time you've referenced hemp.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JOHN BOLDUC: Yes.

BRANDT: And so two years ago we passed that, but I think there was a fiscal note on-- in dealing with the lab. Subsequently, Doane College built-- spent a quarter of a million dollars to construct a hemp lab that I can tell you the producers in southeast Nebraska desperately wanted to use just because of location. Department of Ag refused to use that facility. They wanted to use your facility, and there are other labs out of state that they have to send it to, too. That is easily solved, to move that hemp out of your lab, that I can see in the state of Nebraska and have it tested somewhere else, if that creates some capacity for you.

JOHN BOLDUC: Thank you, Senator Brandt. That's an excellent point. However, the-- the only time that we're testing hemp is when there's a-- when we need to prove that it's not hemp, that it is actually marijuana.

BRANDT: OK.

JOHN BOLDUC: So the-- the hemp that is being tested on behalf of the producers is actually being tested by the Department of Ag labs and other accredited labs throughout the country. So we're not testing the agricultural products. We're testing products in-- for criminal prosecution. Someone may say, hey, look, I've been ticketed for this marijuana. They claim it's hemp. We have to test it to-- to validate--

BRANDT: So--

JOHN BOLDUC: --whether it is or is not, so--

BRANDT: So really it isn't hemp. You're testing marijuana.

JOHN BOLDUC: Exactly.

BRANDT: You shouldn't-- you shouldn't refer to it as hemp.

JOHN BOLDUC: Well, sometimes, it is, I mean, so that cuts-- we're trying to differentiate between the two products, if--

BRANDT: Sure.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JOHN BOLDUC: --that makes sense.

BRANDT: Yeah. Thank you.

LATHROP: If-- if we make legal-- if we make marijuana legal, why do you need to test it?

JOHN BOLDUC: Well, according to--

LATHROP: I mean, if--

JOHN BOLDUC: Senator, great question. So the bill says that it would be legal for those 21 and older, so anyone under 21 who is in possession of suspected marijuana, we would have to test that--

LATHROP: OK.

JOHN BOLDUC: --in order to have-- issue them a citation, you know, go through the process.

LATHROP: OK, that's a fair answer. Any other questions for the colonel? I see none.

JOHN BOLDUC: Thank you.

LATHROP: We can take one more testifier, one more opponent, if there are any. Welcome back.

BRUCE FERRELL: Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Bruce Ferrell, F-e-r-r-e-l-l. I'm the police chief of the city of Omaha and the second vice president for the Police Chiefs Association of Nebraska. I'm here to testify--

LATHROP: And I think you gave yourself a promotion. You're the police chief in Wahoo.

BRUCE FERRELL: I'm sorry. What did I say?

LATHROP: OK--

DeBOER: Omaha?

LATHROP: Maybe not a promotion.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BRUCE FERRELL: Yeah, it's-- we always can aspire. Correct. So--

LATHROP: Yeah. You need to know the--

BRUCE FERRELL: I just need a field promotion.

LATHROP: --the Chair is listening.

BRUCE FERRELL: So I'll talk to the-- I'll talk to Chief Schmaderer about that, Senator.

LATHROP: All right.

BRUCE FERRELL: So attempt to testify in opposition to LB546 and LB481. I'm not going to spend a lot of time other than what I've already presented to the committee, and be-- and be willing to provide any of the documentation in my earlier testimony regarding the legislative amendment of all the studies that were there that also address some of the issues that are with LB546 and LB481. What I will say is, in regards to the synthetic, I agree with the-- the doctor who talked about the synthetic or K2, Spice. All you have to do is look at the number of emergency room visits, both in the public as well as in the Nebraska Department of Corrections, both in Omaha and Lincoln, for the overdoses of K2. And my own personal experience and experience of law enforcement dealing with people who are overdosed on K2, many times who exhibit the same kinds of behaviors as somebody who's overdosed on PCP, a lot of aggression, a lot of strength and other-- and you can't-- it's complicated because they're also using other drugs as well. Another issue that we have is the one thing we're never going to be-- get around until the federal law changes is that-- is no matter what we do with marijuana, you still can't put money into U.S. banks. There's where a lot of our violent crime is being driven, especially in Colorado, is the home invasions, the assaults, the robberies, the kidnappings, all of that because they're trying to get the money out of those illegal black market grows and the legitimate grows. There's a reason why ex-Special Forces soldiers are being hired in Colorado for the legal dispensaries to guard warehouses full of cash, because they cannot put it in banks. There's some of the unintended consequences when it comes to whether it's legalized or black market marijuana. Again, I also go back to the \$1 of revenue versus the \$4.50 of anticipated societal costs within the state of Colorado. Colorado

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

is our experiment. Colorado is our-- where we can draw a lot of the inferences of what could-- what has gone wrong. And when you talk about their issues, we're talking about \$120 million worth of criminal costs, \$470 million in healthcare costs unassociated, over and above that dollar of revenue that is-- is brought in by-- by the state of Colorado. And to address Senator Pansing Brooks's question earlier, I've written a lot of tickets for people who've possessed marijuana, less than an ounce or residue. It's a money find. It's been decriminalized for years. I've had people who have been charged with marijuana less than an ounce. It's a fine or it gets pled down or it's diversion. We've been doing that for years. There is nobody in the Nebraska State Department of Corrections or in the United States Federal Penitentiary who's ever gone to-- into prison for residue or less than an ounce. These are people that are possessing and distributing pounds and pounds of marijuana, has nothing to do with-- with-- with recreational or medi-- medical marijuana. And-- and I-- in my closing I'll just say that those folks have already had their diversion, had their probation, unsatis-- or satisfactory. They've had plenty of chances. That's why they're in the State Penitentiary, not because they've had residue.

LATHROP: OK. Senator Morfeld.

MORFELD: Thank you for coming today. And I'll just say a few different things. One, I haven't said anything the entire time during this hearing and I've probably been the person most involved with legalization of marijuana. Stepping back for a second, do you ever foresee yourself, either personally or your association, supporting legalization of medical marijuana and any form?

BRUCE FERRELL: That-- that is something that we-- we may address and testify in, in Senator Wishart's bill.

MORFELD: You may be in support?

BRUCE FERRELL: No, we-- we will testify. I'm not sure what-- I haven't-- we haven't discussed the position of PCAN at this point.

MORFELD: OK, well, you personally, do you--

BRUCE FERRELL: OK, well--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

MORFELD: --would you ever see yourself te-- testifying in support of a medical marijuana bill?

BRUCE FERRELL: I probably would not, only because of this fact. When I look at Colorado, when you look at the medical marijuana licenses since marijuana has become legal medically in Colorado, only 2.9 percent of the people that are utilizing medical marijuana are for seizures. Cancer is around 4 percent, and there's some of the other ones that we hear where it would benefit, where we-- and again, this is single-topic percentages, because they add up to more than 100 percent: 93 percent of the people who use medical marijuana in the state of Colorado, again, you've got to real-- realize it's-- it's not just a single use, but it could be for multiple uses, 93 percent is for pain. They're utilizing it the same-- they're using medical marijuana as a way-- just like our opiates people are using opiates as a way to divert opiates and feed that addiction.

MORFELD: OK, I-- I guess this is the-- I kind of figured that would be your answer, that you would not be in support of even medical. And this is kind of where we're at and where I'm at is I'm not asking a lot of questions because the work's not going to get done here. It's going to get on the ballot. It's going to get on the ballot eventually. We're going to pass it. It's going to become a constitutional right. And I think a lot of people in this room, whether you're for or against it, are going to look back and go, man, I really wish I would have worked with Senator Wishart; that was very reasonable, narrowly tailored types of legislation that would address what 80 percent of Nebraskans support, which is being able to reasonably use marijuana for medical purposes, legitimate medical purposes, with the assistance of a doctor or medical professional. Instead, what we are forced here now to do is to go to the ballot to provide broad constitutional rights, which I think a lot of people would agree is maybe not the most ideal, but because of opposition from law enforcement officials, either in the court system or otherwise, that's what we're now forced to do. So the problem is, is that we've gone too far to the extreme by opposition, opposition, and no reasonable rules and regulations or legalization. You say you don't know of anybody in prison for small amounts of marijuana. Well, we have a county attorney right here in this county that's been charging people with felonies for things like marijuana gummies up until recently.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BRUCE FERRELL: I'm talking about-- I'm talking about the--

MORFELD: The trace amounts, but still, even-- even then, one marijuana gummy, felony charge. And so the point that I'm trying to make-- and this is the reason why I didn't ask a lot of questions, because I get fired up about it, because I've been working on this for years now. The point that I'm trying to make is opposition, opposition, opposition to whether it's very broad bills like this or very narrowly tailored bills where senators have been working in good faith to try to find common ground, is going to lead to consequences and laws that I think that most people would want to try to avoid and would think that there are better solutions to. And so everybody can come and keep testifying in opposition to these things. But it's going to be on the ballot in 2022. If it's not on the ballot in 2022, it'll be in 2024, and it's going to be broad constitutional rights, and there's going to be consequences for that because people are fed up with it.

BRUCE FERRELL: And I understand your concern, Senator Morfeld. Like I said, I-- you asked me about my personal opinion. Again, professionally. I'll have to look at the-- the-- the studies. I'll have to look at the-- the-- what our-- what our membership is-- is-- is advocating for based on what they're-- I mean, I'm-- I'm ad-- if I'm advocating for the city of Wahoo, it's because the majority of the people in the city of Wahoo don't want marijuana in any form. I'm just saying.

MORFELD: Do you-- do you have a study of that? Do you have a-- do you have-- do you have an actual scientific survey stating that?

BRUCE FERRELL: No, I talk to people every day at my-- in my-- in my work, both--

MORFELD: OK, you talk to people.

BRUCE FERRELL: --both people who advocate for marijuana and who don't advocate, and the vast majority in the city of Wahoo-- granted, it's an older community--

MORFELD: OK, well, when it's on the ballot, we'll look at the
[INAUDIBLE]

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BRUCE FERRELL: And I-- and I understand. And we-- again, I think a lot of it boils down to is just like with any of the other bills that come in, we come into committee, is this is the first chance that we've had-- we have opportunities to talk about it. And on many of the bills we're asked, are there places we can work, are there places that we can come to accommodation on? And that's where-- that's where we're at, at this point, I think, on all of our bills, is--

MORFELD: I just-- Chief, with all due respect, I've never seen you or-- I've never seen you or anybody in law enforcement that I know of has actually come to the table and accommodated anything with marijuana legalization, whether it be the most narrow bill or the most broad bill. I've just--

BRUCE FERRELL: I-- this is the first time I've ever had to testify about marijuana.

MORFELD: Yeah, well, I've been on this committee for seven years.

BRUCE FERRELL: But I have-- but I have-- I have come in and I've made some constructive-- some constructive suggestions, both in front of the committee and to individual senators on other bills, most notably the last time we testified here about the-- the commissions on, I mean, misconduct, you know, things like that.

MORFELD: OK, yeah, I--

BRUCE FERRELL: So there-- but--

MORFELD: -- I-- I appreciate that, but I'm talking about marijuana.

BRUCE FERRELL: Sure.

MORFELD: I appreciate that you're being constructive on--

BRUCE FERRELL: It's my-- my first time.

MORFELD: Yeah.

BRUCE FERRELL: So again, we'll-- we'll-- we strive to-- we strive to-- to work with each other and agree where we can and respectfully disagree when we can't.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

MORFELD: I appreciate that, Chief.

BRUCE FERRELL: Thank you.

MORFELD: And when we get this on the ballot, we'll talk about the results in Wahoo. We'll sit down and have a-- have a beer.

BRUCE FERRELL: Well, I will say that during-- the issue that-- what I hear from the law enforcement in Colorado is the-- the-- the constitutional amendment is-- is an issue, so.

MORFELD: OK. Thank you. Thank you, Chief.

LATHROP: I expected it is. OK. Oh, Senator Pansing Brooks.

PANSING BROOKS: Thank you. Since-- I had to-- just since you mentioned me, you know, I know that there aren't ma-- there are a lot that you don't write major crimes for, but even a minor infraction, like isn't it less than an ounce? You're still writing a ticket for a minor infraction. That's a misdemeanor, correct?

BRUCE FERRELL: No, that infraction is a dollar amount. It's not a misdemeanor.

PANSING BROOKS: Well, but it's still technically a crime, right?

BRUCE FERRELL: It's-- it's an infraction, I guess.

PANSING BROOKS: Does it show up on-- on people's records?

BRUCE FERRELL: It can, yes.

PANSING BROOKS: Yeah. So-- so the collateral-- the collateral consequences are when somebody is trying to rent or get a job or--

BRUCE FERRELL: Trying to be in law enforcement, yeah.

PANSING BROOKS: Pardon me?

BRUCE FERRELL: Trying to be in law enforcement.

PANSING BROOKS: Yeah, and trying to get student loans and all of that kind of stuff, so--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BRUCE FERRELL: I-- I think the-- I think the federal government went-- did away with that on federal loans.

PANSING BROOKS: OK, well, that's the point. The point is that, you know, I think that the country is sick and tired of this anvil that's come down on marijuana when most people do not feel it's anything like meth or heroin or the substances that we're the most afraid of. And I presume most of us have gone to Colorado and I don't notice a difference. I've gone skiing, I've gone to Denver. I've gone all sorts of places. I don't see a major difference. It's not like everybody's wandering around in a-- in a psychedelic "toper"-- to-- stupor. So I-- I just don't understand, you know, these-- these stories about, oh, my gosh, the sky-- you know, the sky's going to fall if we do this. And as-- as Senator Morfeld has said and I said, you know, if-- if we just put it in the Constitution, then we-- we aren't going to be able to regulate it as well, we aren't going to be able to tax it as well. It's going to be a huge issue to get to that point. So, again, I haven't decided where I am, but this constant attempt to come and say no is not helping our people. It is not helping the people that you're all worried about, the-- the kids. Something needs to be done and otherwise it's on the ballot, free rein. It's going to be recreational marijuana, just like the casino issue came up. And the same types of groups came and said it's going to be terrible for our-- for our communities, and there's-- I-- I don't know. I mean, if-- if law enforcement and county attorneys and AG continues to come and just say no, then the people will change the law.

BRUCE FERRELL: And that's very poignant why we have to have this conversation.

PANSING BROOKS: It is. Thank you for coming being here today.

BRUCE FERRELL: You bet.

PANSING BROOKS: I appreciate it, Chief.

LATHROP: Thanks, Chief.

BRUCE FERRELL: You bet. Thank you.

LATHROP: We will now move to neutral testimony.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

MARVIN HAVLAT: Senator Lathrop, members of the Judiciary Committee, my name is Marvin Havlat, H-a-v-l-a-t, 1828 Sunrise Road, Milford, Nebraska. I usually tie-- testify neutral because I-- I just wanted to throw ideas out. And this is going to sound disjointed because it is. I've been indicted twice, once by Seward County about 35 years ago and then once by the federal government about 30 years ago. I spent five years in Yankton, South Dakota, with 75 other farmers. I went to Broomfield, Colorado. I'm a behavioral scientist. I talked to 150 people in line, never one answer. I'm not a criminal. I want to pay my taxes. Slama, Senator Slama, I can show you pictures, piles of checks under one party rule. I spent two-and-a-half years in the cancer centers here. I am in behavioral science. I study human emotion. You have to see those people get wound up about cancer. You have any idea how many more farmers are dying from agriculture-induced cancer than from marijuana? There-- it's just plague here. You-- I can take you to the VA because I go there a lot. Dr. Heinbrick [PHONETIC], Dr. Polmizo [PHONETIC], they know this is a plague, ag cancer, ag chemical cancer. I went to El Reno, Oklahoma, when I was in the federal system. They played what I call the telephone game. What they did is the guard would leave the cell and leave the phone there. The phone would ring. Some inmate who happened to pick it up, boom, the door would open up. They dragged him into a cell and they beat the hell out of him. They killed one guy in '95 that way. Four years ago, they did a prostate biopsy on me. I had seven urologists tell me I have prostate cancer. My prostate grand looks-- gland looks like a pincushion and they were all wrong, even the University of Nebraska Medical Center. And I think it's because I went to Colorado. I smoked THC. The Israelis did studies. They smoked THC, no prostate cancer, the Australians and even the Germans. Every one of you men sitting here is going to get prostate cancer, every one of you, if you live long enough. The State Patrol, they indicted me. I have never dealt marijuana in my life. I walked into a tavern one night and the employees and everybody in there got indicted and [INAUDIBLE] of the undercover officer. And Utah's come down to Zion Park three weeks earlier. You had no right to buy this land anyway. What do you mean? Well, you're not a Mormon. It took them three weeks. My initial charges were false or inconsistent statements. I sat there in a jail cell three weeks, went up to South Salt Lake, spent ten months in a 700-percent capacity prison, living on Velveeta cheese and Kool-Aid and total darkness. You went to the courtroom. Oh, I've got to stop.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

LATHROP: Yeah.

MARVIN HAVLAT: I'm sorry.

LATHROP: Yeah, let's-- I don't see any questions, but thanks for your testimony.

MARVIN HAVLAT: OK.

LATHROP: We appreciate you taking the time to come down.

MARVIN HAVLAT: So anyway, I want to finally say, I think they got the wrong people on trial downtown. Daddy's dead. Thank you.

LATHROP: OK. Any other neutral testimony? Seeing none, Senator McKinney, you are welcome to close. Let me just offer a couple things for the record, if you don't mind. We have position letters on LB456. We have 46 position letters. Three are proponents, 43 are opponents, and on LB481 we have 5 letters, 1 proponent, 4 opponents. And the following written testimony was provided to the committee this morning: Kristen Hassebrook with the Nebraska Chamber of Commerce on LB546, they are neutral; Marty-- pardon me, Mary Hilton, on her own behalf, is an opponent of LB546; and Maggie Ballard is an opponent on behalf of Heartland Family Services, with respect to LB481. Senator, you may close.

McKINNEY: Thank you. I just wanted to mention I provided the committee with AM274, which is an amendment. The amendment basically lowers the fines for possession. It would go from \$300 to \$25 for a first offense with community service. Second offense, it would go to \$50 with community service; third, it would go to \$100 with community service.. I just wanted to mention that for the record.

LATHROP: OK.

McKINNEY: Sitting here and listening to the opponent testimony, the biggest thing that stuck out to me is there are individuals from certain systems that are refusing to address systematic racism and it affects-- and the effects that it's had on communities like mine and Senator Wayne's, and that's the issue. Majority of the opponents are white; majority of the people affected by marijuana and in this state and in this country are black. That's the issue. Talk about protecting

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

children, I believe we can protect children if we regulated the uses of marijuana. Right now, we're not protecting children. We're just-- it's just open. It's a crime. We're criminalizing it, which is forcing parents to lose assistance, which is forcing fathers to be in prison. It's-- it's-- it's so many things. You talk about protecting children and public safety, but you're opposing everything that could potentially protect children further. If it-- there were comments about addiction. Let's treat addiction and not criminalize it. We-- we talk about substance abuse, but currently individual that uses marijuana, who they say are addicted, is being criminalized for having an addiction instead of getting help and treatment. That's the issue. The state would definitely lose more control if it's passed on the ballot, which was mentioned by you, Senator Lathrop, and other members of the committee, but these individuals behind me don't care about that. I'm sure some of these people during the protests last year said Black Lives Matter, but how can Black Lives Matter when-- when you're continuing to try to hold up systems that oppress black individuals daily? You come here and oppose bills daily. You do nothing to assist black communities and brown communities in this state, but try to further criminalize our youth and our adults. You do nothing to try to decrease the prison population. You oppose reforms. You don't are. You don't want to see reforms. It-- it just makes no sense. Our-- the Douglas County Attorney did more to protect a white supremacist than a young black boy. This is-- this is just sad that we have all these individuals who claim they are, you know, protecting public safety and care about public safety but are advocating for things that I-- in my opinion, is not going to further protect the citizens of my community. And I'm open to any questions.

LATHROP: OK. Any questions for Senator McKinney? I do not see any. Thanks for being here and presenting LB481. Senator Wayne, you may close next.

WAYNE: Thank you, Chairman Lathrop, and glad to participate on marijuana day part one. I won't be here on part two, so sorry, my bills will all be done. I'm not-- I was going to harp on the fiscal note and go around, but at the end of the day, that isn't the point of my bill. I said the point of my bill, the first part, was truly about foreshadowing a bill that could pass-- if-- if the ballot passed. That's all that was about. As far as the Clean Slate, I think it is something this committee should do. My bill doesn't have the K2 part

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

in it or K2 is not a part of-- it's-- to my-- my opinion, is not marijuana, so taking it out is fine. I do want to let people know that I did put an amendment on my felon voting bill for Government, because I am going to do an amendment and I'm going to fight hard to not allow agencies to testify against bills this year. They can testify in the neutral moving forward. So I'm put-- putting that out there for the agencies who are watching. I am dropping the amendment on Tuesday, so it will be in public. But we need to-- we need to do something about agencies doing that. But other than that, I don't have a lot of questions. We can go round and round on the-- on the issues of-- of what everybody testified about. But we got to do something about the Clean Slate. We've got to do something about giving people the opportunity to participate in this market in a way that is not being held back from policy that we all know had huge impacts on certain communities and disproportionately affected certain communities. And with that, I'll answer any questions.

LATHROP: OK. Any questions for Senator Wayne? I don't see any. Senator, thanks for being here and introducing LB546.

WAYNE: Thank you.

LATHROP: That will close our hearings, our joint hearing on LB481 and LB546 and close our hearings for the day. Thanks, everyone.