

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 24, 2021  
Rough Draft

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**LATHROP:** Good morning and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12. That includes Ralston and parts of southwest Omaha. 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 complete details on the four options available go to the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). We will be following COVID-19 procedures this session for the safety of our committee members, staff, pages, and the public. We ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room 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 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 and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability of, of an overflow room for hearings this year for those hearings which may attract testifiers and observers. For hearings with a 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. The first option is you may drop off written testimony prior to the hearing. Please note that the following four requirements must be met to

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qualify to be on the committee statement. One, 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. Two, individuals must present their written testimony in person and fill out a testifier sheet. Three, the testifier must submit at least 12 copies. 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. And the-- as always, persons attending a public hearing 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, please 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 the 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 a hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or delivered to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at the hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally 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, 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 you will not be allowed to read it. We will be using the three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning and when the light turns red, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone the use of cell phones and other

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electronic devices is not allowed during public hearings, though senators may use them to take notes and stay in contact with staff. At this time, I'd ask everyone to look at their cell phones and make sure they are in the silent mode. Also, verbal outbursts and applause are not permitted in the hearing room. Since we have gone paperless this year in the Judiciary Committee, senators will instead be using their laptops to pull up documents and follow along with each bill. You-- finally, you may notice some 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 other bills to introduce in other committees or other meetings to attend to. And with that, we will have the committee members introduce themselves, beginning with Senator Brandt.

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

**DeBOER:** Hi, I'm Wendy DeBoer. I represent District 10, which is Bennington and west Omaha.

**MORFELD:** Hello, my name's Adam Morfeld, District 46, northeast Lincoln.

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

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

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

**LATHROP:** Our Vice Chair, Senator Pansing Brooks, is currently in quarantine at home due to a COVID exposure. She is, however, watching on NET, and if she has any questions, she'll be asking them through me today. Assisting the committee are Laurie Vollertsen, our committee clerk, and Josh Henningsen, one of our two legal counsel. And our pages this morning are Evan Tillman and Mason Ellis, both students at you UNL. And with that, we'll begin our hearings. Senator Hilkemann, LB186. Welcome to the Judiciary Committee, Senator Hilkemann. Good morning.

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**HILKEMANN:** Good morning, Chairman Lathrop and members of the committee. I am Robert Hilkemann, that's R-o-b-e-r-t H-i-l-k-e-m-a-n-n. I represent Legislative District 4, which is west Omaha. LB186 is a bill that came to me-- to be following a call to my office from a constituent and a concerned mother. This bill will change the age for the offense of criminal child enticement from under 14 years of age to 16 years of age and younger. Last summer, the daughter of my constituent pulled into the parking lot of a fast food restaurant near their home. The girls in the car were quickly approached by a group of older men who began inviting them to come with them. As the girls did their best to ignore the men, they became more persistent and harassing, doing what they could to coax the girls into their vehicle. The girls quickly left and upon arriving home and telling their mother what happened, a call to the Omaha Police was made. An officer met the family and after listening to the details of the encounter, told the family that due to the age of the girls, 16 and 15, there was nothing that could be done. If the girls had been 13 years and 360 days old, these individuals would have been breaking the law. This wasn't an isolated incident. These individuals are witnessed watching for and approaching girls who were driving on many occasions. You have to wonder if that was because they knew there were no repercussions for their actions. As I looked into the issue, I wondered about the reasoning for the age being under 14 years of age. From what I learned, it was arbitrary at best and dovetails with the third-degree sexual assault of a child. Perhaps those of you on this committee who are much more familiar with these subject matters know more. It was also pointed out to me that the age for online criminal enticement that this Legislature passed in 2004 is 16 years of age and younger. So if you look at 28-3111 [SIC], one which we passed out, it says: No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure any child under the age of 14 to enter into any vehicle, whether or not the person knows the age of the child. That's what we've handed out to you. Note that 28-320, which has to do with the online enticement says: No person shall knowingly solicit, coax, entice, or lure a child 16 years of age or younger or a peace officer who is believed by such person to be a child 16 years of age or younger, by means of an electronic communication device. Ultimately, I wanted to introduce this bill for two reasons. One, if we have a threshold for online enticements that protects children aged 16 and

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younger, the threshold for doing the same, a person should be the same. Secondly, I think that protecting our young people from predatory behavior at the ages of 14, 15 and 16 are just as important as those younger. I wish that my constituent had been able to be here today to share her story. I believe that she has been in contact with you through written correspondence, or if not, she's going to be contacting you, too. Let's work together to strengthen this law, give law enforcement another tool to help protect our innocent young people and bring a little more peace of mind to Nebraska parents and grandparents. With that, I'd be-- try to answer any questions you may have.

**LATHROP:** OK. Any questions for Senator Hilkemann? I don't see any at this time. Are you going to stay to close?

**HILKEMANN:** I'll be here.

**LATHROP:** OK, very good. We will begin with proponent testimony. If you're here in support of the bill, you may come forward. Anybody here as a proponent? Seeing none, anyone here in opposition? Good morning and welcome.

**SPIKE EICKHOLT:** Thank you. Good morning, members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to the bill. This existing law has always been or has been a concern for our membership and this bill sort of highlights the issue with it. I think what Senator Hilkemann read explains how this law can be violated. If you look on page 2 of the bill, lines 3 through 7, it criminalizes the following conduct: No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure any child under the age of 14 to enter into any vehicle, whether or not the person knows the age of the child. That is when the crime is committed. There's no intent to do harm. There's no additional accompanying intent do anything. The crime is committed at that moment in time and it's a felony offense. And it's registrable under the Sex Offender Registration Act for 25 years. That's existing law, that's not something that Senator Hilkemann is responsible for, but I think raising the age to 16 is going to exacerbate that issue. There's no, as I said before, there's no intent requirement. There are a number of

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other crimes that criminalize sort of compelling a child or depriving a child from parental care or from home, kidnapping, attempted kidnapping, false imprisonment in first and second degree. There's a felony crime called deprivation of custody that impacts children under age of 18. I understand what Senator Hilkemann is trying to address. I'm not trying to defend anything that happened to his constituent or his constituent's daughter. One thing that I'd just like to emphasize to the committee, the things that you hear today, the reasons that you might have in mind for passing a bill like this or voting for a bill like this are not going to be reflected in the text of a statute when the thing becomes law. What you have then is just what I read to you, a nonintentional felony offense that's registrable in the Sex Offender Registration Act. I think there is a distinction when you look at 28-320, as Senator Hilkemann referenced that statute earlier, regarding the online enticement, because even though the same language is used, the solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure, if you look at those statutes, that requires those mens rea or those acts with the intent to engage in sexual communication with that child or with the intent to commit a sexual assault or with the intent to do something more than simply solicit, coax, entice, or lure or attempting to do so. So for those reasons, we urge the committee to not advance the bill.

**LATHROP:** Senator DeBoer.

**DeBOER:** Is this a, a crime that gets prosecuted very often, the current?

**SPIKE EICKHOLT:** Fortunately, no. I suppose I have to acknowledge that there's been some restraint, if you will, from the prosecutors and law enforcement. You do see it accompanying other charges that they can some of the other crimes I mentioned before, the attempted kidnapping, deprivation of custody or false imprisonment. So for that reason, additionally, you have an additional felony charge that you can add on for those kind of circumstances.

**DeBOER:** OK, thank you.

**LATHROP:** Any other questions? Oh, I'm sorry, Senator Brandt.

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**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Eickholt, for testifying. So today is the crime to attempt or, or the crime happens when they get into the car?

**SPIKE EICKHOLT:** It's both. If you look at-- it's actually without even getting in the car. If you look on page 2, line-- lines 4 through 5, a crime is committed when the person attempts to solicit, coax, entice, or lure, which is something less than actually soliciting or coaxing or asking or luring. It's an attempt. And that's when the crime's committed.

**BRANDT:** And then would you change existing law if you could work with Senator Hilkemann or modify what he's got in a way to make it better?

**SPIKE EICKHOLT:** I'd always be willing to do that. Yes. I mean, if he had me, right, had me. He may not want me involved in this necessarily.

**BRANDT:** But I guess what I'm asking is, what would the defense attorneys like to see as a change in this legislation?

**SPIKE EICKHOLT:** Well, I think one thing we'd like is to have some sort of intent, some sort of deliberate malice act. You could have somebody who's recognized as a child or think they recognize a child who's a classmate of their child ask if they need a ride home. There's some affirmative defenses and so on, but that mistake doesn't matter because it explicitly says whether or not the person knows the age of the child. Now whether that's prosecuted or cited, doesn't seem to be happening that much. But the, the law should be clear. The law should be certain and not subject to ambiguity. So that'd be one thing and there's other, other reasons. I mean, we-- we'd never really ask a senator or never have asked a senator to propose modifying this. We understand the dynamic. I mean, this is a-- you're talking about getting kids in cars, right? That's just something that I'm not comfortable really, really even arguing against this. But I just want to point out the fact that this is what the statute looks like when you read a-- this two-paged crime. And in our opinion, it's general, and it's, it's-- it could need some reform-- it could use some reforming.

**BRANDT:** OK, thank you.

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**LATHROP:** All right, any other questions? I see none. Thanks for being here today. Anyone else here to testify in opposition to LB186? Anyone here to testify in a neutral capacity? Seeing none, Senator Hilkemann, you may close. We do have four position letters, four proponents, no opponents. And we do have written testimony from Corey O'Brien in the Attorney General's Office, who is a proponent. With that, Senator Hilkemann.

**HILKEMANN:** I have to say thank you for your [INAUDIBLE] to close. I have to say where I was sitting, I wasn't able to hear real well, but anyway. It seems to me from just what I picked up as said-- what Mr. Eickholt is talking about is a bigger problem outside the element of what this bill-- scope of this bill. We need to protect our people, our young people, and that's what this bill is about. And so I hope you'll give it just consideration. If you've got some additional questions about the bill, let me know. We'll try to get those questions answered for you. And with that, I'll quit my close and be available for any questions you may have.

**LATHROP:** OK. I do not see any, any questions for you.

**HILKEMANN:** Thank you so much. Appreciate it.

**LATHROP:** Thanks for being here and thanks for introducing LB186 for our consideration. That will close our hearing on LB186 and bring us to LB315 and Senator John Cavanaugh. Thank you for being here, Senator. Welcome. You may open on LB315.

**J. CAVANAUGH:** Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent Legislative District 9 in midtown Omaha. I'm here today to introduce LB315, which would harmonize the sentences for domestic violence assault with sentence for assault, and clarify what prior offenses can be used for enhancement on these assaults. I was asked to bring LB315 on behalf of the Nebraska County Attorneys Association. I acknowledge it's a little odd to have a former public defender introducing a bill on behalf of the county attorneys. We each play a role in seeking justice and we've often disagreed on exactly what that looks like. But we-- what we can agree on is it does not make any sense for domestic assault to carry a lesser penalty than assault under the same factual circumstances. In



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fact, you'll actually hear proponent testimony from Douglas County Attorney Jen Meckna. I think today is going to testify. And I personally experienced the discrepancy in a case that Miss Meckna and I were on opposite sides of. And so when I had this conversation about this bill, I was aware that there was this existing discrepancy. So the bill matches the, the, the sentences for domestic assaults with the sentences for regular assault. Additionally, the bill matches a previous conviction language for domestic assaults and strangulations with previous conviction language found in other criminal statutes. Again, domestic assaults and strangulation are not anomalies in our criminal statute. This, this time the difference was that these crimes did not include previous convictions from other states when taking into account those previous convictions. I'd like to thank the members of the committee for your time and I'd ask you to advance LB315 and I'd be happy to take any questions.

**LATHROP:** OK. Thank you, Senator Cavanaugh. Any questions for the introducer? I see none. We will take proponent testimony. You're going to stick around?

**J. CAVANAUGH:** I will stick around.

**LATHROP:** OK, good. Thank you, Senator. How many people intend to testify on this bill? What do we got? Three. OK. We ask that so we can alert Senator McDonnell, who has the next bill.

**GEORGE WELCH:** Good morning, Chairperson Lathrop and members of the Judiciary Committee. My name is George Welch, G-e-o-r-g-e. I'm an assistant attorney general with the Nebraska Attorney General's Office. I'm assigned to the criminal bureau and prosecute crimes of domestic violence and sexual assault throughout the state of Nebraska. I come here today as a representative for the Attorney General's Office in support of LB315. Crimes of domestic violence tear at the fabric of our society. Not only do survivors bear the physical and emotional scars for a lifetime, the reports provided from the CDC indicate children who are exposed to these acts between their parents or caregivers are more likely to perpetrate or experience similar assaults in their lifetime. In 2004, the Legislature enacted the domestic assault and strangulation statutes to address the unique threats these crimes pose on society. At the time, penalties for first-offense domestic assault were in line with their counterparts in

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the assault statute. Through subsequent legislation, the penalties for assault have increased while their domestic assault counterparts have held steady. This is true even though the domestic assault statute requires proof of an additional element that the assault was perpetrated on an intimate partner. LB315 will bring the penalties for first-offense domestic assault in line with those of the assault statutes. It provides an enhanced penalty for repeat offenses of second- and third-degree domestic assault. LB315 also allows for out-of-state convictions to be used for penalty enhancement purposes in domestic violence and strangulation cases. As our laws are currently constructed, only a previous conviction pursuant to Nebraska's domestic assault or strangulation statutes can be used to enhance the current or triggering offense. This means that a previous conviction for a domestic violence crime committed in Council Bluffs, Iowa, cannot be used to enhance a current offense five miles away in Douglas County. But a previous conviction from 450 miles away in Scottsbluff, Nebraska, can enhance the current Douglas County offense. This bill is not creating new crimes, but strengthening existing legislation. The language for out-of-state enhancements is modeled after those found in the sexual assault of child statutes, but is also seen in varying forms in stalking and DUI penalties and elsewhere in statutes. As with the sexual assault of a child statute, LB315 allows for a previous conviction for a greater domestic assault offense, such as a first degree to enhance a lesser or current third-degree offense. By increasing penalties and allowing for out-of-state convictions to be used to enhance a current offense, law enforcement, prosecutors, and the courts will be able to better hold offenders accountable for their actions and provide safety and security for those victims in our society most in need. I thank Senator Cavanaugh for bringing this bill forward and the County Attorneys Association for their hard work on this matter. Thank you for your time today and I'm-- welcome any questions you may have.

**LATHROP:** OK. Any questions? I do have a question for you. You said that you're with the Attorney General's Office and you prosecute these all over the state. Don't we have prosecutors in every county?

**GEORGE WELCH:** Yes.

**LATHROP:** So tell us at what circumstances you end up prosecuting one of these cases in--

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**GEORGE WELCH:** Across--

**LATHROP:** --the bottom court level.

**GEORGE WELCH:** Yes, so there's typically two for my-- for myself and other prosecutors in our office, there's two typical situations where we will get involved. First of all, is, is a conflict of interest. A lot of the large majority of county attorneys across the state of Nebraska are not full-time attorneys. They have other law practices. They might have clients or friends, relatives or whatever that might be, the-- either the victim or the defendant, anything like that. Law enforcement or other members of the local government might be involved in, in the action. There might be a variety of other reasons why they might have a conflict. The other situation that-- other typical situation we get involved in is if the county attorney just needs our assistance on the matter. It might be a situation where they haven't prosecuted a serious, you know, first-degree type assault over the, over the, you know, in their career or they might be new to the position. Anything along those lines that you see that typically in murder cases or maybe child porn cases, stuff like that, where it takes a specific, you know, knowledge of, of, of specific events or something like that to, to bring that they might need help with.

**LATHROP:** OK. So I got another question for you. Thanks for that answer. When you charge these, do you typically charge somebody engaged in a domestic assault with both assault and domestic assault?

**GEORGE WELCH:** No, I-- no.

**LATHROP:** You pick one or the other.

**GEORGE WELCH:** Yes.

**LATHROP:** And right now, domestic assault has a lower level of penalty than straight-up assault.

**GEORGE WELCH:** Yes. Can I, can I expand on that for a little bit further?

**LATHROP:** Briefly.

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**GEORGE WELCH:** OK. Yes, so yes, for first-degree and second-degree assault-- or for first-degree offense or second-degree offense, it would be typical to charge the standard assault language for a third-degree offense. You, you-- prosecutors may look to charge that domestic violence, third-degree domestic assault statute because that allows for that enhancement later to be used. If, if they're convicted under that, they can use that later to-- use that conviction later to enhance their next one to make that next one the felony.

**LATHROP:** So this would allow you to both impose or, or at least have the defendant face a similar penalty to a straight-up third-degree assault and be able to use it for enhancement.

**GEORGE WELCH:** Yes, if they commit a subsequent offense later. Yes.

**LATHROP:** OK, I think I get it. Senator DeBoer.

**DeBOER:** So this bill allows you to use convictions in other jurisdictions outside of the state to-- for the enhancement purposes. Is that right?

**GEORGE WELCH:** For the enhancement purposes alone. Yes.

**DeBOER:** Is that also the case for a straight-up assault or would this be unique to domestic violence assault to have that enhancement be able to use previous convictions in other states?

**GEORGE WELCH:** I think-- are you asking if the, the, the general assault statutes have an enhancement provision as well?

**DeBOER:** Yes.

**GEORGE WELCH:** They do not.

**DeBOER:** OK.

**GEORGE WELCH:** So, so if they're charged in Nebraska under this, under this proposed statute LB315 with domestic assault only and they have a previous domestic assault conviction that has essentially the same elements,--

**DeBOER:** But's in a different state.

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**GEORGE WELCH:** --but's in a different state, they could use-- that could be used to enhance a current triggering Nebraska offense.

**DeBOER:** And that's why then in that you, you said to Senator Lathrop a minute ago, that's why you might charge the domestic violence in certain circumstances so that later you could use it as a, as a-- to trigger a--

**GEORGE WELCH:** Yes.

**DeBOER:** OK. Yeah, trigger the enhancement. Yeah.

**GEORGE WELCH:** And that's not to say that, that domestic assault penalty-- or domestic assault statute's not used at all right now. There are lots of times when that may be an appropriate charge to bring initially, but that's just one thing to consider.

**DeBOER:** OK, thank you.

**LATHROP:** One second. So we have a question from Senator Pansing Brooks.

**GEORGE WELCH:** Yes.

**LATHROP:** Does this bill increase the number of crimes subject to mandatory minimums?

**GEORGE WELCH:** There's no mandatory minimum brought in this bill.

**LATHROP:** OK.

**GEORGE WELCH:** The, the, the maximum penalty under the first-offense-- or first-degree domestic assault is a Class II felony.

**LATHROP:** Is what?

**GEORGE WELCH:** Is a Class II felony.

**LATHROP:** OK. Any other questions? Seeing none, thank you for being here, Mr. Welch.

**GEORGE WELCH:** Thank you.

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**LATHROP:** Any other proponents? Good morning.

**JENNIFER MECKNA:** Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Jennifer Meckna, J-e-n-n-i-f-e-r, Meckna, M as in Mary -e-c-k-n as in Nancy -a. I am a Deputy Douglas County Attorney, 100 Hall of Justice, Omaha, Nebraska, 68183. I am here testifying in support of the bill presented by Senator Cavanaugh, LB315. And currently I am the domestic violence unit supervisor at the Douglas County Attorney's Office. The-- there are misdemeanor attorneys as well as felony attorneys. We handle or charge over 2,000 cases a year. The percentage of those cases which are a misdemeanor felony are different. There are more misdemeanors than there are felonies. However, I am in support of this bill and appreciative of the fact that Senator Cavanaugh brought this. As he mentioned, I have worked with him for years in my capacity as Douglas County Attorney and his capacity when he was previously a public defender. We've always gotten along well, very-- I respect him very much and I appreciate the fact that he brought this as this is something that is very straightforward. It will provide an equalization for the penalties. As it stands now, and as Mr. Welch just told you, the penalties for DV assaults are not the same as non-DV assaults. And so this, this simply clarifies and creates consistency across the board as far as what the penalties are. From my standpoint and how that practically affects me, number one, with respect to charging decisions, whether something is filed under a DV statute versus a regular non-DV statute and changing and making this consistent across the board simply allows me to keep the appropriate domestic violence factual cases under the DV statute, which ultimately also allows for a more accurate reflection of statistics.

**LATHROP:** OK. Let me ask you a couple of simple questions, if I can, just for my benefit and the benefit of the committee. What are the elements of a third-degree domestic assault?

**JENNIFER MECKNA:** So that is when you are-- you unintentionally and only cause bodily injury to an intimate partner. That's under subsection (a), under subsection (b) as threatening in a menacing manner.

**LATHROP:** OK. So this doesn't require serious bodily injury, but for example, if somebody in an intimate relationship slapped somebody or,

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you know, doesn't break their jaw or anything like that, but just some physical injury.

**JENNIFER MECKNA:** DV assault, third degree, correct.

**LATHROP:** So the more injury we cause, the worse it gets for you.

**JENNIFER MECKNA:** That's correct.

**LATHROP:** What's the current penalty or the difference in the penalties between a third-degree assault and a third-degree domestic assault? What are we--

**JENNIFER MECKNA:** The--

**LATHROP:** --what are we working with here?

**JENNIFER MECKNA:** --the misdemeanors are the same. The felonies are what's different. So a DV assault third degree and assault third degree are Class I misdemeanors. Then when you go up you have a DV assault second degree and regular assault second degree.

**LATHROP:** What are we trying to get on an equal footing in this bill? Domestic assault, what degree?

**JENNIFER MECKNA:** The domestic assault second degree as well as domestic assault first degree, which is part of what Mr. Welch talked about. Domestic assault first degree is the one you referenced that has serious bodily injury.

**LATHROP:** OK. What's the current penalty for that versus a DV? So a straight-up first-degree assault causing serious bodily injury, potentially.

**JENNIFER MECKNA:** It's only a IIA versus a II.

**LATHROP:** Pardon me?

**JENNIFER MECKNA:** It's only a IIA versus a II.

**LATHROP:** OK. We have a little cheat sheet here with it. So a II is 1 to 50.

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**JENNIFER MECKNA:** Correct.

**LATHROP:** And a IIA is none to 20.

**JENNIFER MECKNA:** Correct.

**LATHROP:** And we'd be putting them on par with one another.

**JENNIFER MECKNA:** Correct.

**LATHROP:** OK, I got it.

**JENNIFER MECKNA:** So they'd be the same across the board.

**LATHROP:** See if Senator Pansing Brooks has any questions. Anybody else have any questions?

**DeBOER:** I'll ask a question.

**LATHROP:** Senator DeBoer.

**DeBOER:** So would there be any difference-- I mean, it seems like it would be slightly easier to prove the assault on the domestic assault anyway, because you at least don't have to prove the intimate relationship. Right? So, I mean, that's usually pretty obvious, but technically, it's one less element.

**JENNIFER MECKNA:** Yes and no.

**DeBOER:** OK.

**JENNIFER MECKNA:** Yes, it's one less element, but it isn't necessarily the one that's the most difficult to prove.

**DeBOER:** Sure.

**JENNIFER MECKNA:** The, the only rationale for me to ever differentiate between how I charge is isn't necessarily because of that component, it's because the difference in the penalty. So this allows-- doesn't allow more convictions for the prosecution, it allows to do it under the appropriate one. I'm not sure if I answered your question.



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**DeBOER:** No, no, no, I get that. I get that part. I'm just saying, other than the sort of symbolic, we want to charge this properly so people feel like they're getting the correct thing and the enhancement statute. Is there really any reason to that we need to make them the same?

**JENNIFER MECKNA:** Yes, I, I, I believe that it should be the same just for clarification purposes, because I think that domestic assault penalty should be the same as regular assault. There shouldn't be any different-- any differentiation between what someone will face in a DV situation versus someone in a non-DV situation.

**DeBOER:** But practically, if you're charging them as though they are assaults and you can do that, the only reason would be the enhancement. Is that right?

**JENNIFER MECKNA:** I'm not sure I follow here.

**DeBOER:** So if you can still charge a domestic violence assault as a assault, other than an enhancement that comes only under domestic violence, is there any reason as a prosecutor that, that it matters to you which one you're charging?

**JENNIFER MECKNA:** Well, penalty wise, yes. And so I, I would prefer to charge them those.

**DeBOER:** Yes, let me rephrase. Sorry. If the penalties are the same, is it going to matter which one you charge? I mean, isn't it the same crime, just--

**JENNIFER MECKNA:** So I would then be able to accurately charge the, the cases which are factually DV under the appropriate statute, which ancillary to that helps with statistics in understanding what cases are actually and percentagewise are, are DV so ancillary to that.

**DeBOER:** OK, so there's maybe some statistical reasoning, but would there be any reason not to just make them all the same crime? Just say we're just going to get rid of the sexual assault or the, the domestic violence and just make it all assault?

**JENNIFER MECKNA:** Well, the one difference, however, is that the DV assault third degree first offense. When we are able to get a

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conviction for DVA 3 first offense, then we can subsequently enhance that.

**DeBOER:** Right, it's just the enhancement.

**JENNIFER MECKNA:** [INAUDIBLE]

**DeBOER:** OK. All right, that's what I wanted to know.

**LATHROP:** I don't see any other questions. Thanks for being here this morning.

**JENNIFER MECKNA:** Thank you.

**LATHROP:** Appreciate hearing from you. Any other proponent testimony? Seeing none, anyone here in opposition?

**SPIKE EICKHOLT:** Thank you. Good morning again. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of both the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in opposition to the bill. ACLU is opposing the bill simply because of the increase in penalties. It does increase the penalties for felony offenses. The defense attorneys also oppose it for that reason, but ours is a little more in detail since we practice in the area. The penalties were consistent for domestic assault and regular assault. They were increased in 2009 with LB63, which is an omnibus bill that Senator Friend that Senator Ashford passed through, and they did it in response to increasing penalties that addressed gang violence. It was done-- we-- the association was opposed to it. We clearly lost that argument, but that created the discrepancy. There's another way to make these consistent, right? You can revert back. But let's just be blunt, that's not politically an option. And what's happening here is what I call sort of the trend, if you will. It's the crimes always go up, the penalties always get increased. And what you have is, is the scenario what Senator DeBoer may be addressing somewhat, this kind of fracturing or splintering of the criminal code where you have all these different crimes: assault, domestic assault, terroristic threats, strangulation, suffocation, all these different offenses that are all felonies. The next bill, of course, will be to match those penalties with assault. The prosecutors have not given an instance or an example, even as an anecdote, how

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they're unable to prove and get a felony conviction. As they acknowledge, if this-- if the injury is severe enough and they want someone to be exposed to a Class II felony, 1 to 50 years imprisonment, they can charge it as a regular assault. They don't have the enhancement on conviction. And that's one thing that they don't have. But they can still seek to punish somebody significantly if the injury is severe without having an additional element of proving that the victim was an intimate partner of the defendant. Is this going to have an impact on prison population? If you look at the fiscal note that was prepared by Lisa Stanton, I think it's the third page of your handout, they estimate from 2016 to 2020, there was 564 unique individuals with domestic assault convictions. Most of those are probably for felonies because I think back in 2016, they restricted misdemeanors going to prison. It's likely to, to conclude or infer and they kind of intimate in the fiscal note that that's going to increase time and increase people going to prison for domestic assault. Maybe that's worth the cost. That's a policy matter. And I just want to echo what Senator Flood said earlier this year. Increasing felonies, adding new crimes has a cost. It does matter. If you do it, they're going to charge it and it's going to, it's going to have an impact on your prison population. And one other thing I'll just say real quick, as far as the-- and we don't have a problem with this necessarily, this is meant to be constructive. If you look on page 2, lines 20 to 21, the enhanced ability for out-of-state conviction, essentially the same elements. There's some other references to out-of-state convictions and they don't use that phrase as much as they use-- what's the phrase, substantially, substantially equivalent to instead of essentially the same elements, substantially equivalent to. You see it in the DUI statutes. You see it in the, for instance, in the Sex Offender Registration Act, substantially equivalent to a registrable offense from another state. I would just submit that if we're going for consistency, maybe we should use that phraseology instead of this essentially the same elements. Maybe it doesn't mean anything different, but a court might look at it differently somehow. Sorry, I'm over time.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** So is there really any practical difference until you get to the enhancement, right? Why do not-- why is it-- why are these two separate crimes? Why shouldn't they just be if, if what we're

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practically doing now is treating them until a certain point as the same crime?

**SPIKE EICKHOLT:** If I was a prosecutor, I think I would like to have the domestic assault statute, because one of the elements is I have to prove that the defendant caused injury to their intimate partner and then I can get into maybe other material and other issues that may be more relevant. Right? The nature of their relationship, the defendant's propensity maybe to control or manipulate that victim. Those things really aren't necessarily relevant in a regular assault because the issue is whether the defendant caused injury or significant injury to another person. And unless the defendant raises self-defense or something like that, getting into the intricate details of the relationship is not really relevant. It maybe gives the fact finder maybe a more complete picture of what happened between those people. And that's maybe one reason to have it.

**DeBOER:** OK, thank you.

**LATHROP:** I see no other questions for you. Thanks for being here this morning. Any other opponents to LB315? Anyone here to speak in the neutral? Seeing none, Senator Cavanaugh you may close. We do have one letter, a position letter that is a proponent letter, and we also have written testimony offered by Michelle Weber on behalf of the Nebraska Coalition to End Sexual and Domestic Violence. That is a letter in support of LB315. You may close.

**J. CAVANAUGH:** Thank you, Chairman Lathrop. Thank you, members of the Judiciary Committee. And I appreciate everyone who came and testified here today. Obviously, Mr. Eickholt and I share a lot of similar positions and, and I appreciate him coming in and making constructive recommendations about his concerns about the bill. And I'm certainly willing to continue that conversation. And I know this committee is well aware of my desire to change the criminal code in ways that are decreasing incarcerations. I think we had a good conversation here about philosophy, about how we go about this. But fundamentally, what this bill is trying to address is not the philosophy of how we approach, whether, whether there's a reason to have separate and distinct charges for domestic violence. I think that Mr. Eickholt made a good point about why that exists. And I do think that there is legitimate reasons. There are other noncourtroom, I guess, or criminal

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justice related reasons, effects of a domestic violence conviction. And so that's among the other reasons. But I just wanted to kind of clarify a few things that we talked about. Senator Pansing Brooks asked about whether there was any mandatory minimums. I would just point out under the assault in the first degree, this bill enhances that penalty to be in line with the, the nondomestic assault in first degree and increasing the penalty from a IIA to a II. Under the current statute, there is an enhanced ability portion of that, which was a IIA to a II on a second offense. We are striking that language because enhancement from a II would be a ID, which would have a mandatory minimum. We had that conversation when we talked about drafting this bill and that we didn't-- we, we shied away from creating that enhancement to a mandatory minimum on a subsequent first assault in the first degree with domestic violence, assault in first degree. I would just point out, I, I, I brought this bill, as I stated, because I personally had been involved in cases where the penalty was different. Obviously, in those instances, it was to my benefit to, to have the domestic violence charge as opposed to the regular violence charge. But in my role here, I see that is an anachronism in our law, a mistake. And realistically to Senator DeBoer's question, there is an additional element because crime of domestic violence is that intimate relationship is part of what happened there and does, in fact, make the assault more damaging than an assault between two nonintimate partners. And that is one of the reasons we have a separate statute for that. It's one of the reasons that it is-- I, I found it to be inappropriate that the penalty is actually less when I think the harm could be worse. And that's why I brought this bill. And if you have any other questions, I think I addressed the things that I wanted to.

**LATHROP:** OK. I do not see any questions, but thanks for being here and for introducing LB315. That will close our hearing on LB315 and bring us to LB206 and Senator McDonnell. Good morning and welcome to the Judiciary Committee.

**McDONNELL:** Good morning. Good morning, Senator Lathrop and members of the committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. I come before you today to present LB206, which seeks to update and modernize Nebraska's arson statutes. I have introduced this legislation on behalf of Attorney General Peterson's office in an effort to help facilitate and

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implement these changes. In a broad sense, LB206 includes updating definitional terms used in Nebraska's existing arson statutes, as well as additional provisions that will make Nebraska arson statutes applicable in a greater number of intentionally set incendiary fire scenarios. The legislation also includes a penalty adjustment that was overlooked in previous sentencing reforms and allows for a sentencing enhancement under certain circumstances. And I apologize. I've got my testimony I was going to hand out for you guys. More specifically, LB206 eliminates the term and definition for "building" in Section 28-501 and replaces it with the term "structure" in order to broaden the instances where Nebraska's arson statutes are applicable. This, this broader definition is necessitated by the fact that human lives are being risked by fires set in locations that do not fit within the current existing definition of "building." This change is also made in Sections 28-520, first degree criminal trespassing, and 28-524, graffiti, as both sections are just as reliant on these terms. And LB206 adds "burns" and "causes to be burned" to the list of acts prohibited in various sections in order to harmonize each with the prohibited acts listed in Section 28-504. The bill also adds "maintains a fire" to the list of acts prohibited by all of Nebraska's existing arson statutes in order to hold persons criminally accountable for escalating a fire even though they did not set the fire. LB206 adds a definition for "human skeletal remains" and makes burning, setting fire to, or maintaining a fire to any structure punishable as arson in the first degree if the perpetrator did so knowing that a person might be inside and regardless of whether they believe that person was alive or dead at the time. The bill also makes burning, setting fire to, or maintaining a fire to any structure, person, human skeletal remains, or item of personal property punishable as arson in the first degree if the perpetrator did so in order to conceal the commission of a crime. Last, LB206 adds a definition for "public safety official" also the applicable sentence on all arson offenses to be enhanced one penalty classification higher if the offense committed causes a public safety official to sustain serious bodily injury. It is reasonably foreseeable that a firefighter or first responder could be injured in the line of duty when someone deliberately makes the choice to set something ablaze or blow something up. The bill also makes arson in the second degree, a Class I-- excuse me, a Class IIA felony as opposed to a Class III felony due to an oversight when LB605 was passed in 2015. During my time as a

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firefighter, I witnessed terrible accidents and horrible crimes as a result of fire. LB206 further addresses intentional acts of arson by eliminating gaps and gray areas that currently exist within our laws. Assistant Attorney General Mike Guinan will be testifying on behalf of the Attorney General's Office to provide insight regarding the need for this legislation. And Terry Zwiebel, Fire Marshall with the Norfolk Fire Division, is also here to add perspective based on his years of arson experience. I'm here to answer your questions and I will also be here for closing.

**LATHROP:** Senator DeBoer.

**DeBOER:** So maintaining a fire, does that require an action? Can you-- if, if I just stand by and watch something burn but don't put it out, is that maintaining a fire?

**McDONNELL:** I, I believe it's actually cause of action, but I'll let the people behind me answer that question more appropriately.

**DeBOER:** OK, sorry.

**LATHROP:** I don't see any other questions. You will be here to close--

**McDONNELL:** I will be here to close.

**LATHROP:** --since you have the next bill.

**McDONNELL:** Yep.

**LATHROP:** All right. We'll take proponent testimony.

**McDONNELL:** Thank you.

**LATHROP:** Welcome.

**TERRY ZWIEBEL:** Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Terry Zwiebel, T-e-r-r-y Z-w-i-e-b-e-l. I'm the president of the Nebraska Chapter of the International Association of Arson Investigators. I appear before you today on behalf of the fire investigators that are members of our chapter and the chapters of the International Association in support of LB206. The Nebraska Chapter of the International Association of

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Arson Investigators support this bill for the following reasons. This bill will make the needed changes to how the crime of arson is prosecuted in regards to using a fire to conceal another crime. I believe another witness will be able to speak to several criminal cases that have been prosecuted in this state and not been able to get the higher crime upheld. These case facts are what has influenced our association to speak in support of this bill. Defining and adding the description of "human skeletal remains" to the statute gives the ability to charge the first-degree arson when the situation arises. Additionally, this bill will return second-degree arson from felony-- a third, third- degree felony to a IIA felony. You add a definition of a "public safety official" as a person in the official capacity at a fire scene, including firefighters, both career and volunteer, law enforcement personnel, EMS providers, and fire investigators, thus allowing for person or persons who start a fire on a public official-- public safety official is injured to increase this charge one step. This bill will help to protect public safety officials who are charged with a very dangerous job that is made even more dangerous when a person who is trying to destroy evidence in their crime-- of their crime by fire usually by a very aggressive means that makes the job we do even more dangerous. With that, on behalf of the Nebraska Chapter of the International Association of Arson Investigators, I would like to ask this committee to advance LB206 to General File and would like to thank Senator McDonnell for introducing LB206. I would like to thank the Judiciary Committee for your time in this matter. I'd be happy to answer any, answer any questions I'm capable of answering for you at this time.

**LATHROP:** Senator DeBoer.

**TERRY ZWIEBEL:** Yes, ma'am.

**DeBOER:** I'm going to ask you the same question I asked Senator McDonnell. What, what constitutes maintaining a fire or what would constitute maintaining a fire in terms of is there a fact pattern that you guys investigate that would sort of fit in that category, generally?

**TERRY ZWIEBEL:** If they would allow it to continue to burn with reporting it or attempting to extinguish the fire would be my answer to that question. I don't know if the legal-- that's the legal term



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for it, but if you don't try and get somebody out there to help put that fire out, then to me you're maintaining that fire and allowing it to burn.

**DeBOER:** Is that something that you have seen happen a lot? You, you find evidence of that a lot?

**TERRY ZWIEBEL:** Personally, no, but there have been incidents in the state where an abandoned building has been allowed to burn with possible personal property in it. I'm aware a few cases in that case where that would, would happen.

**DeBOER:** OK, thank you.

**LATHROP:** I have a question from Senator Pansing Brooks, who's in quarantine. Why the change of verbiage from "starting a fire" to "burns" or "causes to be burned?" What has happened and how does the suggested language help cover more illegal acts?

**TERRY ZWIEBEL:** Well, every fire has a start, obviously, but it, it clarifies the language that they are making it burn where there have been places where they have attempted to, but it didn't actually burn. So that would help to clarify that section.

**LATHROP:** Page 2, line 28 to 31. Let's see what this-- page 2, line 28. Yeah, OK, let me ask another question. Tell me, why are we changing from "building" to "structure?" What-- what's a structure that wouldn't otherwise be-- fall into the category of building?

**TERRY ZWIEBEL:** A building would, in the original definition, if I remember correctly, is a habitable building where a structure is anything that has four walls, a roof which could include a-- like a barn or something of that nature.

**LATHROP:** So you don't think previously or currently that a barn would be covered by the term "building?"

**TERRY ZWIEBEL:** Could or could not, depends on the-- how it's-- its state of repair, disrepair, however you want to put that.

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**LATHROP:** OK. So would a-- would we now consider a-- is a shed in the backyard that I put my mower in and my rake and my snow blower, is that a building right now?

**TERRY ZWIEBEL:** It is, yes, it would be a building right now under this current statute.

**LATHROP:** OK. All right. Any other questions? I don't see any other questions. I have to check my phone to make sure Senator Pansing Brooks doesn't have any, which is fine. So that's the reason for the delay.

**TERRY ZWIEBEL:** Thank you very much for your time.

**LATHROP:** Thank you for being here today. Appreciate it. Any other proponent testimony? Welcome.

**MIKE GUINAN:** Good morning. Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Mike Guinan, M-i-k-e, Guinan, G-u-i-n-a-n, and I'm a criminal prosecutor with the Nebraska Attorney General's Office. I appear before you today on behalf of eternal-- Attorney General Doug Peterson and the Nebraska Attorney General's Office, along with the Nebraska County Attorneys Association in support of LB206. On behalf of the Attorney General's Office, we propose LB206 in large part as a result of our experience in a murder trial two years ago in Cuming County. A very basic version of those events where two men went to the victim's country home late one evening, there was an altercation, knives were produced and used during the altercation. One of the two men stabbed the victim in the back and the neck 15 times, killing him. The next afternoon, that same man went to the victim's house and burned it down. In addition to murder, we did charge first-degree arson as our deceased victim was still present inside the house at the time of fire. At the end of the state's case, defense requested the court dismiss the arson count as there was no, quote unquote, person present in the house at the time the fire was started. Despite our arguments to the contrary and finding no assistance in Nebraska statutes, Nebraska case law nor clear guidance in case law from outside the state, the court granted defense request and instead allowed the state to proceed forward on a second-degree arson. Ultimately, that man was convicted of second-degree arson in addition to a, a murder charge. The

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second-degree arson took the charge from a Class II felony, which would have been first-degree arson down to a Class III felony as it reads now, which is zero to four years. This was the genesis of LB206, which proposes several changes to the present arson statutes, primarily 28-501 to 505. Senator McDonnell covered most of these. I'd just like to highlight a few of them. First and foremost among these changes, we propose that second-degree arson be amended to a Class IIA felony, which is zero to 20 years. This was-- would be a correction from back in LB605 back in 2015 to raise that penalty, along with the other ones that were raised from a Class III to a IIA. This one was apparently overlooked. We also, as Senator McDonnell mentioned, we have changes to include increased penalties faced by the arsonist if a public safety official is injured during the course of fighting that fire. From a prosecution standpoint, we propose a statutory section with the belief that is fitting that the applicable penalties the arsonist faces should increase when the fire he or she intentionally sets not only destroys property, but maims a public safety official. With that, on behalf of the Nebraska Attorney General's Office and the Nebraska County Attorneys Association, I would like to-- I would ask this committee to advance LB206 to General File. In so doing, would like to also thank Senator McDonnell for introducing the bill and happy to answer any questions at this time.

**LATHROP:** Senator DeBoer.

**DeBOER:** I have a couple of just very technical questions for you about maybe it's language, maybe we need to clean up the language. Under the definition of "structure" on page 2, line 12 through 15, it includes: a tent, a portable building, a vehicle, a vessel, a watercraft, or aircraft. Vessel to me, I mean, I don't know if we have a definition of vessel somewhere, but a vessel I think might be overbroad for what we're trying to get at here because a vessel-- I mean, technically I could call this a vessel. So--

**MIKE GUINAN:** OK.

**DeBOER:** --that, that probably is something that we need to work out. Is there some reason why you included a vessel in there?

**MIKE GUINAN:** Senator, I think, if I recall correctly, it's been a while since we did this, but I think we've borrowed from a statute out

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of Florida and maybe the vessel piece, the watercraft would probably cover, the vessel piece might have been something that might have been more specific to an ocean state.

**DeBOER:** Yeah, we might need to, to look at that definition and just make sure all of those things are really what we, we want. On page 3, lines 14 through 18, if they intentionally set fire to an item of personal property in order to conceal the commission of a criminal offense. If I put a piece of paper into my fireplace in order to conceal some money laundering or something, am I now also able to be convicted of arson? I mean, that's the problem is it seems like a piece of personal property could be pretty expansive. And if I light fire to a piece of personal property, just about anything could do that. And any time that I would be hiding a crime by doing it, that would mean I was then able to be convicted of arson.

**MIKE GUINAN:** Right. So, yes. So the, the way that the statute is written is to contemplate in this particular case, under your scenario, to contemplate destroying evidence of a crime, and in that case, if you burn a piece of paper, yes, true, you could be charged that way. That's also up to prosecutorial discretion. So that's, that's a possibility.

**DeBOER:** We probably need to clean up that language. The last thing I have to ask is the cause to-- let me get the language right, the keep it burning. What is the--

**MIKE GUINAN:** Yeah.

**DeBOER:** --maintain a fire, there we go, maintain a fire. Does this create a duty now in random passers by? I walk by a building. I see it's on fire. I think probably somebody is putting it out, but I don't do anything. Have I now maintained the fire?

**MIKE GUINAN:** No, you have not. There is no duty under the criminal laws to stop or to mitigate a crime. What this gets at is if you remember the prison riots, the issue with the statute right now and the issue that we were having at that time is the, the language talks now about setting or initiating a fire. What was going on with the prison riots were they initiated these fires, it was difficult to determine who was doing what. It was obviously a very difficult case

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or cases. But some of those fires were initiated, then people will come along with accelerants and spray like baby oil and those kind of things onto it, which would, you know, increase the fire, expand the fire or continue the fire. And that would be the proactive step that needs to be taken in order to be convicted of that crime.

**DeBOER:** So it can't just be passively standing by and not accelerating the fire.

**MIKE GUINAN:** Correct.

**DeBOER:** So we might also have to, have to have a definition of maintain the fire in here as well just to make sure that we get-- we don't over broadly get at all of those things.

**MIKE GUINAN:** Sure, that makes sense.

**DeBOER:** OK, thank you.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you.

**MIKE GUINAN:** Yes.

**McKINNEY:** Thank you for your testimony. I have a couple of questions. I was curious, don't public safety officials such as police, security guards, and firefighters assume the risk of duty? And I'm just curious, why should there be punishment implemented if they get injured in a case of arson?

**MIKE GUINAN:** Yeah, it's a good question. So if you-- I guess the, the logic behind it, if you think about it. So in, in a normal fire, the first thing that happens is people leave and run. And, of course, our public safety officials, their job is to then proceed into that, to that danger. The idea here is to if, if the fire is not an accident or a natural cause and so on, if it is an incendiary, an arson type fire, we believe that the, the arsonist ought to be held at a higher level or be, be able to be punished at a greater level because the public service official was-- received serious bodily injury. So not just bodily injury. So not spraining my ankle while I was out on the scene.

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But this is somebody who has essentially maimed that they ought to face increased penalties.

**McKINNEY:** OK, but why is there a difference?

**MIKE GUINAN:** A difference versus?

**McKINNEY:** Regular arson.

**MIKE GUINAN:** OK, well, this would be a regular arson, so an arson-type scenario.

**McKINNEY:** I'm talking about versus natural fire is what I mean.

**MIKE GUINAN:** Oh, a natural fire.

**McKINNEY:** Yeah.

**MIKE GUINAN:** Right. So understandably, when-- this is a dangerous line of work, understandably, and firefighters face a myriad of, of dangers in that line of work, you know, heat exhaustion and so on, I mean, and on to the point where it can be a serious bodily injuries, maiming. Why the difference? Because of that. Because that arson would not have-- or that fire would not have been set but for the arsonist action. So if, if that is the root of this and somebody has started this fire, we feel that they should face an increased penalty if somebody that's responding to that scene has a basically a life-altering type injury.

**McKINNEY:** OK. Another question. The wording attempts to modernize arson provisions. What other states are following this trend?

**MIKE GUINAN:** The attempts to modernize?

**McKINNEY:** Yes.

**MIKE GUINAN:** So we borrowed from, if I remember correctly, borrowed some language from Kansas and Iowa, Florida. The, the statutes that we looked at are-- I have a printout, but we, we, we basically went through and, and pulled-- at the time, we had a lot of [INAUDIBLE], pulled all the state statutes from all 50 states. So there's a-- that's-- we, we kind of sifted through that to find language that

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might help modernize ours. I don't have a specific, I don't know which specific states were modernizing or modernized in a recent time period.

**McKINNEY:** OK. One last question.

**MIKE GUINAN:** Sure.

**McKINNEY:** What if-- OK, you have a teenager, 17 years old, accidentally start a fire, is that considered arson or is that considered an accident? And how would that be treated under of this bill?

**MIKE GUINAN:** Right, so the arson statutes require intentionally setting a fire, so an accident, depending on what the facts are, an accident would be-- may not be chargeable. And so--

**McKINNEY:** When you say may not, what does that mean?

**MIKE GUINAN:** Well, I guess it would depend on it.

**McKINNEY:** Sometimes, you know, we have 17 year olds that accidentally shoot somebody and still get charged as adults.

**MIKE GUINAN:** Um-hum.

**McKINNEY:** So I'm just curious if that, under this bill, could that potentially happen?

**MIKE GUINAN:** It depends how you use the word accident. If an intentional act that starts a fire causes a fire, certainly could be charged. If, if it is like in out in the world, we say accident and it truly is that they, I don't know, tripped over something and knocked a candle over, that would be an accident. That wouldn't be an intentionally set fire.

**McKINNEY:** So what if they're being, you know, as teenagers are kind of careless and a little reckless and, you know, I think everybody in here probably played with fire before.

**MIKE GUINAN:** Right.

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**McKINNEY:** They're playing with fire and something bad happens. Firefighter goes in and gets injured. Is there a potential for that individual to be charged as an adult?

**MIKE GUINAN:** Yes, under the new amendments and under the statutes as they are right now. Yes.

**McKINNEY:** OK, thank you.

**LATHROP:** I don't see any other questions. Thanks for being here today, Mr. Guinan.

**MIKE GUINAN:** Thank you.

**LATHROP:** Anyone else here as a proponent? Seeing none, anyone here as an opponent of LB206?

**SPIKE EICKHOLT:** 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 ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association opposed to LB206. As I said before on an earlier bill, the ACLU opposes this bill because it does increase really across the board a whole series of felony offenses, including if Senator Pansing Brooks is watching. It does add to the list of mandatory minimums on page 3, lines 19 through 21 and increases that penalty to a ID felony, which is a mandatory minimum. As far as the defense attorneys, we have some additional concerns with respect to the bill. And some of the committee members have asked about that. If you look at the definition of "structure" that replaces the definition of "building" that's in the current arson statutes, that's problematic. If you look at page 2, lines 12 through 15: Structure means any building, any enclosed area, any real property. And I don't know what appurtenances mean actually, to be quite-- to be honest, to which the building or enclosed area is attached. So that would include a field. The intent requirement to start the fire needs to be met. And you can easily imagine a scenario where somebody is intentionally burning brush. That fire gets out of control, it catches in the field, it even maybe hits a building. While the volunteer fire department is responding, there's an accident. And when somebody suffers a serious bodily injury because of that accident, that's a ID felony. That's-- these are dangerous situations, I don't mean to minimize that, but the level of penalty ought to have



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some sort of rational connection to the egregiousness of an offender's conduct. And particularly when you talk about start a fire, maintain a fire, those sort of ongoing violations that you can make with respect to a fire, that's kind of problematic. I think what Senator DeBoer mentioned on page 3, lines 14 through 18, is a, is a legitimate concern. If you intentionally set fire to an item of personal property in order to conceal a commission of a criminal offense, that's a very good example right there, burning a stolen checkbook that you've been charged with or suspected of committing forgery. When you asked that question, Senator DeBoer, I was reminded that there's other crimes that, of course, this-- these acts involve, and that example that you gave, there would be a, a number of crimes of tampering with evidence, which was increase the penalties for that last year or the year before by Senator Wayne, which would be another separate [INAUDIBLE] felony. So for the reasons that-- I tried to stay here in, in the time I had, this does increase penalties. And it is problematic for us for a variety of reasons, as well as the definitional changes with respect to the crimes of arson. And we urge the committee not to advance the bill.

**LATHROP:** OK. Any questions for Mr. Eickholt? I seen none, thanks for being here today. Any other opposition testimony? Anyone here to speak in the neutral capacity? Seeing none, Senator McDonnell, you may close. We do have two position letters, both proponents, and we also have a letter of support. Rather, written testimony this morning as a proponent from Jerry Stilmock, who is with the Nebraska State Volunteer Association and the Nebraska Fire Chief Association. Senator McDonnell, you may close.

**McDONNELL:** Thank you. If there's ways to improve this bill then, then please reach out to me. But let's talk about public safety officer a little bit, the definition, and, and Senator McKinney's questions. So you have a, a firefighter and the idea they, they took an oath to protect life and property. And part of the idea of firefighting, it will always be a dangerous job. But then as fire management, part of your job, and, and I believe as the, the labor movement, is to take a dangerous job and, and try to make that safer. So you look at a public safety officer and you define that you put in there as firefighter and you look at the ways you can, you can take and make a dangerous job safer with training, technology, with personnel. And, and also with the idea of taking arson and taking it seriously and recognizing it is

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a crime that can take life. So you, you have a firefighter that if, if we make that change on, on page 5 and we say, OK, it's going to be a, a Class II, go from a Class II misdemeanor to a Class I misdemeanor based on if it's \$500 or less. But if a firefighter gets injured severely, seriously injured, then at that point we are doing our job, I believe, as, as lawmakers working with, with fire management to try to make that dangerous job and, and make it, make it safer, because we are looking at that person possibly committing their next crime. And if we can, we can stop that, deter that and put that person on a different path, then it is going to possibly save a citizen or firefighter's life in the, in the future. So that, that part of, of the bill and working with our subject matter experts and the Attorney General's Office and, and the, the fire investigators and, and knowing what they're going through and their stories, you know, our, our, our job, I believe, is, is to try to improve things. And, and on this law, again, with your input, let's, let's make those, those improvements and let's try to make sure that we're standing up for those firefighters out there that are doing their job, took their oath, and it is a dangerous job, but also let's try to make that dangerous job safer.

**LATHROP:** OK. I appreciate your close. I don't see any follow-up questions. So that will close our hearing on LB206 and bring us to--

**McDONNELL:** My next.

**LATHROP:** --your LB661.

**McDONNELL:** [INAUDIBLE].

**LATHROP:** Yes, you may open on that, Senator.

**McDONNELL:** Thank you. Thank you, Chairperson Lathrop and members of Judiciary Committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. I am here today introducing LB661. The intent of LB661 is to increase the penalty for assault on a public transportation officer. You will note this bill appears to make a numerous-- numerous changes in statute. This was done at the Bill Drafters' request to clean up this section of the law because the Legislature has added certain professions to this section of the law over, over the years. These

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professions include healthcare professionals, first responders, probation officers, police officers, correctional officers, and firefighters. This bill was brought to me by the men and women who, who drive the busses for Metro Area Transit in Omaha. There have been numerous instances of horrible assaults on these drivers while in the scope of his or her employment. In these examples, there is no provocation. These men and women are simply doing their jobs. With President Biden's recent executive order to direct mask usage on modes of transportation, these bus drivers will have even more responsibility to enforce safety for themselves and the public by wearing masks. While this policy is, is embraced by these bus drivers and is consistent with the guidelines in place by the Centers of Disease Control and Prevention and recommendations by the Surgeon General, the National Institute of Health, this is only an example of how these drivers are exposed to potential confrontations. There will be those impacted by this legislation testifying today, those who have been assaulted during their course of employment. As this committee deliberates over this legislation, I'd like you to consider how vulnerable these men and women are. They are driving busses, focused on doing their jobs, and are really in a vulnerable and defensive position. I'll be here to answer any of your questions and also for closing. But also something that you don't realize is going on in your own backyard when people bring you issues and, and concerns and, and ideas, is there-- on, on an average, and we're just talking about the, the Omaha area weekly, there is a bus driver either assaulted or there was an attempt to assault a bus driver. And when you hear these individual stories that are, are going to be testifying today following me, you know there is a definite problem. And we're definitely looking for a solution to make their, their jobs safer. And so let them go ahead and, and testify. I'm here to answer any of your questions and I will be here to, to close.

**LATHROP:** Very good. I don't see any questions at this point. Thanks for your introduction. We will take proponent testimony on LB661.

**MICHAEL CHIPMAN:** Hello, my name is Michael Chipman, M-i-c-h-a-e-l C-h-i-p-m-a-n. I am the president of FOP 88. We represent the people in the Youth Rehabilitation and Treatment Center on the security workers that work down there. This bill would-- incorporates making it a felony to assault them. And that's currently not law from what we've been told. So we believe that they deserve this coverage because there

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is constant assaults. I noticed in the last three weeks we've had four or five assaults. And so they need these protections that would be offered by this bill. And so we happily support this bill and we appreciate Senator McDonnell bringing this forward.

**LATHROP:** OK. I got a question for you, Mr. Chipman. Do you think this-- if we enhance the penalties, it'll stop the assaults at the YRTC?

**MICHAEL CHIPMAN:** I'm hoping it'll lower the assaults. That would [INAUDIBLE] assault, stop all of them.

**LATHROP:** Do you think they care what the penalty is?

**MICHAEL CHIPMAN:** I think some may because if they're getting close to getting out or whatever, not all, obviously.

**LATHROP:** They're going to be penalized for the assault in the first place, it's just whether enhancing it and making it a more serious penalty and subjecting them to greater punishment will reduce the number of assaults.

**MICHAEL CHIPMAN:** So currently on the assault piece, a lot of them are not getting charged unless it's a very serious assault, like a first degree or something of that nature. I know the four or five assaults that I'm talking about, none of them have been charged. And so--

**LATHROP:** So I'm going to use this opportunity to have this conversation with you. I appreciate that there are people serving in the YRTCs, particularly in Kearney, who are being assaulted. We certainly had a bad one about two years ago--

**MICHAEL CHIPMAN:** Right.

**LATHROP:** --when somebody took a pipe from a, from a bed and beat an officer. I don't know what we accomplish by increasing the penalty if the county attorney in-- what it is, Buffalo County,--

**MICHAEL CHIPMAN:** Correct.

**LATHROP:** --isn't charging these people. So what do we-- I mean, it might make, it might make the FOP employees feel better. But if

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they're not getting charged, I don't know what, what we're accomplishing.

**MICHAEL CHIPMAN:** I think for, you know, a third-degree assault, it, it-- they should have the same protections as far as what a police officer has when they're assaulted. I do agree with you that it's a two-part series and I'm hoping that we start working on that issue with Buffalo County Attorney's Office and maybe needs to be some form of legislation that would help improve that.

**LATHROP:** OK.

**MICHAEL CHIPMAN:** I do agree.

**LATHROP:** I don't see any other questions. Thank you for being here.

**MICHAEL CHIPMAN:** Yeah.

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

**McKINNEY:** Oh, OK, thank you. My question, do you-- in concern with the YRTC's, do you believe the youth in the YRTC's are receiving adequate treatment and rehabilitation currently?

**MICHAEL CHIPMAN:** I, I don't deal a lot with as far as programming. I'm sure there's always availability to have more programming of, of that nature. I mean, I certainly haven't done a lot of research into that, but I'm-- we're always all for more programming to improve and be more effective.

**McKINNEY:** I ask this because I'm concerned that raising a penalty for this and we're not as a state providing adequate treatment and rehabilitation for these individuals, we're going to criminalize them for the state not doing its part in providing adequate treatment to address the concern, the reasons why they're in there the first place.

**MICHAEL CHIPMAN:** Right. So I'm-- I-- like I said, I agree with more programming, but I believe that there needs to be a, you know, a charge for a-- a significant charge for when you assault one of our staff. Like, you know, we've had a, a lady who was pushed off a table recently. I mean, so I mean, there's some serious assaults that our members are being put through. And, you know, they need some legal

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protections. I do agree, this, this alone is not the perfect solution. There needs to be other pieces. And I, I hope over the next year that we work on these other pieces, which may include to be more programs, or something of that nature, it'd be something I'd need look into and be happy to work with anyone on.

**McKINNEY:** Why wouldn't you just try to recover under regular assault?

**MICHAEL CHIPMAN:** So right, right now, it's, it's like a regular assault. So like if you came over and pushed, pushed me, it'd just be regular third-degree misdemeanor assault. Felony assault is like, so if I go and push a police officer, I get felony third-degree assault on a peace officer, which deters me. I mean, I, I wouldn't assault anyone anyway, but it would help that as a deterrent to someone from assaulting them in my belief.

**McKINNEY:** OK, hypothetically, you have a kid in a YRTC who is dealing with severe mental health issues. The state is not doing its part in treating this individual's mental health issues, that, that youth pushes one of your staff off the table, is it the youth's fault or is it the state's fault?

**MICHAEL CHIPMAN:** If it's the youth's-- if the youth is the one who pushed the kid off the table, I, I still believe it's that individual, unless they've been proved-- proven be, you know, deemed unfit and to make competent decisions, which, you know, forgive me, I don't know how that works compared to how it is with adults.

**McKINNEY:** I just think that, you know, we can't fail kids and criminalize them because we decided to fail them as a state. I think this is a slippery slope that we're potentially trying to venture down. And that's just my concern. Thank you.

**MICHAEL CHIPMAN:** Yeah.

**LATHROP:** Are we-- do we include the-- I thought we passed something a while back about assaulting a YRTC officer.

**MICHAEL CHIPMAN:** No, to, to my knowledge, YRTC was not included in that. Now for Corrections and all that, we are in that, but not for YRTC. That's what I've been told. That's-- and that's what the administration tells us as well.

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**LATHROP:** OK. All right. I don't have any other questions. Thank you, Mr. Chipman. Any other proponents of LB661?

**JOE BONCORDO:** Good morning, Senators.

**LATHROP:** Good morning.

**JOE BONCORDO:** Since this bill, we got the time and date for this bill today, I've been assaulted since then.

**LATHROP:** Can you, can you start with your name and spell your name for us.

**JOE BONCORDO:** Oh, excuse me, sir. My name is Joe Boncordo, J-o-e, Boncordo, B-o-n-c-o-r-d-o. I was assaulted last Friday. Now we have this new mask mandate. I asked a gentleman to put on his mask. We have a very flimsy piece of Plexiglas like this here, but much more flimsier. He started punching on it, told me to get out of the chair, that he was going to beat me down. I have no right to tell him what to do. Now I pick this man up every day, so I had to pick him up Monday and he didn't have a mask again. So I chose not to engage him. So I didn't do my job, which eventually is going to cause some kind of discipline for me. But I'm not-- I've been assaulted so many times that I'm not going to put myself in harm's way again. I've been here for 30 years driving a bus and I've been assaulted with a knife, been spit on, hit, threatened, but nothing more. As recent as about three months ago, I was attacked with a woman with a Taser about the size of a flashlight, all in the line of me doing my job. She didn't understand where the bus stop was at. So she come up on me and I didn't, didn't see her coming and she pulled a Taser out and she was reaching over this plastic like this. I didn't have time to get out of my seatbelt. I didn't have time to put on the park break. I had other passengers on the bus. So I'm trying to hold the bus from rolling while she's reaching over trying to get me with the Taser. Fortunately, she didn't get me. But once she got off the bus, she says, when you come around again I'm going to kill you or my boys will be here to kill you. So what I want you to understand is our job is kind of unique. We're not allowed not to go back to where we got assaulted. We pick a run. We are at the same corner every day at the same time. They know where we're at. I have to go back to where I was assaulted every day. So once you get a few blocks away, you start

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getting real nervous and you're looking around. You know, this is a very stressful job. We're getting assaulted about once a week now. Years ago, it wasn't quite so bad. But I think we can all agree on this, the world is getting pretty violent and it's not getting any better. And we have zero protection. We're not allowed to carry nothing with us. We can't carry mace. We can't carry nothing. Absolutely nothing. All we're taught is try to diffuse the situation. Well, that's kind of hard to do when someone is punching on you or coming at you with a Taser. The very difficult part of it is we're trapped, we're sitting in the seat, we got a partition behind us, we got a window right here next to us, it's only got about six inches to open and the windshield. The only way to get out of my seat is to go through the perpetrator who is standing towering over me while we're getting hit. We need some kind of protection. This is my third attempt down here to get some kind of relief. Because our guys are getting hurt really bad and quite often, and I'll answer any of your questions.

**LATHROP:** OK. Senator Slama.

**SLAMA:** Thank you, Mr. Chairman. And, Joe, on behalf of myself and this committee, thank you very much for being here today. And thank you for your work.

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

**SLAMA:** Could you describe for me the procedure when one of these attacks happen and the aftermath? How do you report it? What, what are the outcomes after you report it?

**JOE BONCORDO:** To my knowledge, only one person I believe has ever been arrested. We have to report it, which a lot of us don't even report it because we've even been threatened if you report this, we'll be back. So outside of going to the hospital or something, a lot of these things are not reported. They're reported to me because I'm the president of the union. But people are afraid, but they're afraid to report it. They're afraid to go to work. But, you know, they've got to have a job. We have cameras on the bus. We get the video of the person, they also have audio and everything works quite well with that. But when it comes time to prosecuting these people and getting them off the streets or get-- keeping them off our bus or at least



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letting them know that they're going to go to jail if they assault us. I'm not trying to fill up your prisons or your jails. I want this as a deterrent. We'll put it right on the fare box as soon as they walk in the door. We have an audio system that runs through the bus that makes announcements. We have a website. We just need a deterrent.

**SLAMA:** Thank you.

**JOE BONCORDO:** Welcome.

**LATHROP:** Senator DeBoer.

**DeBOER:** You said you've been down here three times, this is-- or maybe this is your third.

**JOE BONCORDO:** This is my third attempt, this is my third attempt at this. Yes.

**DeBOER:** Was it, was it always for this bill or were there other bills that a different scheme, a different idea?

**JOE BONCORDO:** Always about trying to make it a felony if you assault a bus operator.

**DeBOER:** OK.

**JOE BONCORDO:** But then the bill has been altered a few times in between and to add other people like Mr. McDonnell explained.

**DeBOER:** Is there-- is it even-- I can't exactly picture the situation that you're in when you're, when you're driving in terms of the, the Plexiglas. Is there a way to make that safer for you?

**JOE BONCORDO:** No, no, no there's not. It, it, it would be like if you could just imagine yourself strapped in that seat right there--

**DeBOER:** Sure.

**JOE BONCORDO:** --and I decided I wanted to beat you up and you, and you can't get out of that [INAUDIBLE].

**DeBOER:** If there was a more permanent door, would that help?

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**JOE BONCORDO:** But there's-- no there can't be a permanent door, no.

**DeBOER:** OK.

**JOE BONCORDO:** No, it's, it's a-- the only reason we even got the Plexiglas was because of COVID. Same reason you guys got the Plexiglas. That's it. And it's much flimsier than this. I mean, you can just pull on [INAUDIBLE].

**DeBOER:** OK.

**JOE BONCORDO:** It happens a lot.

**DeBOER:** OK. All right, thank you.

**LATHROP:** So I got a question for you. We do have assault statutes, so when somebody is assaulting you or one of your members, currently, it's against the law. If I heard you right, you've only seen one person prosecuted for this?

**JOE BONCORDO:** That I can, that I can recall, I think. I think one of these gentlemen with me will testify to that. But, yeah, that-- that's it.

**LATHROP:** So you have cameras on the bus. Is it, is it the, the police, is it the prosecutors? How come these people aren't being prosecuted? Because it sounds to me like you got a law enforcement issue and I don't know that it gets any better if we make the penalty worse.

**JOE BONCORDO:** Well, a, a lot of times--

**LATHROP:** Do you follow me?

**JOE BONCORDO:** --they'll just-- they'll hit us and run off the bus, you know, and so we got their picture. But unless somebody is going to pursue it, it's nothing.

**LATHROP:** So who isn't pursuing it? Because if, if I punch you right through the Plexiglas today, it's an assault.

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**JOE BONCORDO:** That's, that's correct. But if we don't have somebody's ID to where they can actually get an address or something, they're not going to go look for this person off of a picture.

**LATHROP:** I, I don't want to belabor the point, but let's say we double the penalty and now it's the death penalty for, for assaulting a, a bus driver. If no one's going to do anything about it, law enforcement, how does it change by jacking up the penalty?

**JOE BONCORDO:** I, I truly believe that if we posted on it, it's a felony if you assault a bus operator, use it as a deterrent, it will cut down on the assaults.

**LATHROP:** OK.

**JOE BONCORDO:** I mean, it's, it's rampant, it's rampant. And it's--

**LATHROP:** I, I know, I've met with [INAUDIBLE].

**JOE BONCORDO:** Yeah, I-- in fact, I had you down to--

**LATHROP:** I've met with you before.

**JOE BONCORDO:** Yeah.

**LATHROP:** I think before I was term limited about this issue.

**JOE BONCORDO:** That's correct. I had you come down to Metro. We talked about the same subject 12 years ago. It's getting worse and there's nothing out there for us. We have no, no protection. We can't get out of where we're sitting. We got to do our job.

**LATHROP:** OK.

**JOE BONCORDO:** We need some help.

**LATHROP:** All right. I don't see any other questions. Thanks for coming down.

**JOE BONCORDO:** All right, thank you.

**LATHROP:** We appreciate what you do.

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**RUSSELL GOFORTH:** Morning, Senator.

**LATHROP:** Good morning. Welcome.

**RUSSELL GOFORTH:** I am Russell Goforth, R-u-s-s-e-l-l, Goforth, G-o-f-o-r-t-h. Been a metro area city bus driver for 24 years and I heard about assaults happening, never experienced mine until March 9 of 2018, when two individuals aboard my bus and one of them has bus fare and one of them does not. I proceed to drive two more blocks and the one that did not have bus fare, I heard something hit the floor and I looked back and I seen a hatchet drop out of this individual's coat. It hit the floor. Well, I didn't see it but I heard it hit the floor and I looked back and it was a hatchet. First thing I do is unbuckle my seat belt, 6:30 in the morning and I bail for that door. In doing so, he's got that hatchet in his hand and he tells his buddy, watch what I do to this "mother f'er." And he puts the hatchet up in a swinging motion as I exit that bus. I ran to the back of the bus, there's people going to work downtown. And if I wouldn't be able to get through those people, he would have got me with that hatchet by throwing it, I'm sure. But there's just-- I mean, every time I think about that, it just really, really, really, really, really gets to you. Because if that would have been an unexperienced driver that's just been released on their own and just worried about keeping that bus on time, they would have never looked back and seen that hatchet hit that floor, all for \$1.25. I would have lost my life because I guarantee every-- each and every one of you, he would have used that hatchet. I can assure you of that. The-- prior-- four years prior to this individual, he was caught two blocks away with this hatchet in his coat. He was caught on 19th and Dodge walking with this hatchet in his coat. Come to find out, they called me and said that his hearing was such and such date and, and the gal went on to tell me that he was involved in a murder four years prior, four years prior. This guy was involved in a murder. That's what we're hauling up and down these streets on a daily basis. Felons, drug dealers, they don't-- I mean, they do anything out of their-- back to this individual, he was involved in a murder where they killed a guy up on Park Avenue, brutally murdered this guy. He turned-- this individual that had the hatchet, turned state evidence on these guys. And he was out two years later and walking the streets two years later because he turned state evidence on these gentlemen, on these thugs that he-- that they brutally murdered this guy up on Park Avenue. I didn't know who I was

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dealing with back here. I mean, we need your guys' help to make this a felony. Rather, it's-- like Joe said, put it on the fare box, announce it through the system. Twenty-four years, I hear of these guys getting hit, throwing a glass juice bottle in their face and busting their glasses, busting their eyes, throwing hot coffee on them as they get off. Hey, I wanted off back there. Well, sir, that's a construction zone and we cannot drop you off there. Ma'am, we got to take you-- it's, it's, it's on a daily basis. We cannot let you off in a construction zone. And they just for no reason, just throw the glass bottle and hit you in the head.

**LATHROP:** Yeah, let's see if, if there's any questions, Mr. Goforth, from any of the committee members. Senator McKinney.

**McKINNEY:** Thank you. Currently-- I'm just curious. If I was to get on a bus and I was to punch you in the face, wouldn't that be assault?

**RUSSELL GOFORTH:** That's an assault.

**McKINNEY:** OK.

**RUSSELL GOFORTH:** But we need to have, we need to have it a felony so they know that, hey, this is a felony. If you assault this bus driver, it's a felony. Now it's just-- we-- I don't know if there's any-- anything that.

**McKINNEY:** I say that because if I intend to punch you in the face and harm you, that is potentially a felony in most cases. Wouldn't it be better for the whatever-- are you in Omaha or Lincoln?

**RUSSELL GOFORTH:** Omaha.

**McKINNEY:** Would it be better to have something posted that if you, if you assault a bus driver, these are the consequences then just creating a whole new law?

**RUSSELL GOFORTH:** Well, if they know it's a felony, they're going to probably, I'm sure they're going to think twice before they assault you. Hey, I can't have another felony. Three, I'm gone. It's just that word felony that probably is going to deter these people from doing so.

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**McKINNEY:** What I'm saying is, it's already potentially a felony. Wouldn't it be better just to have some type of posting on the bus that says if you assault the driver, these are the penalties and potential penalties? I think that would be a deterrent.

**RUSSELL GOFORTH:** I agree with that. I agree.

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

**RUSSELL GOFORTH:** You're welcome. Thank you.

**LATHROP:** Mr.-- can I ask one question?

**RUSSELL GOFORTH:** Sure.

**LATHROP:** So this person that had the hatchet, was he prosecuted?

**RUSSELL GOFORTH:** Yes.

**LATHROP:** OK.

**RUSSELL GOFORTH:** He only did two years in prison and he's back out on the street today.

**LATHROP:** But he got two years for pulling the hatchet out on your bus?

**RUSSELL GOFORTH:** He got two years. Yes.

**LATHROP:** OK. All right. I don't see any of other questions. Thank you for being here.

**RUSSELL GOFORTH:** Thank you.

**LATHROP:** Good morning.

**TUAHE CHANG:** Good morning, Senator Lathrop, Judiciary Committee. My name is Tuahe Chang, that's T-u-a-h-e, last name Chang, C-h-a-n-g. I've been a bus driver with Metro Transit in Omaha, Nebraska, for the past five years. In my first year of service in the line of duty, I was assaulted. And this is my story. I stopped to pick up an individual waiting for a bus. And the individual-- the customer, he, he boards the bus, but he pats himself down and I patiently wait. And after a few minutes of him trying to find his fare, I, I let him know

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that, sir, in order for you to ride the bus, the, the fare is \$1.25. And I said, if you don't have it, please find your fare and on my next go around, I'll come back and pick you up and take you to your destination. And I thought he was going to exit the bus. My door was open and as he turned his back to me, he hocked a nasty spitball, and he spit directly at my face. And right after that he lunged towards me with his fists and hit me right in the face. I was strapped in my seat. I had to fight and, and push this guy off me. I only stand five feet tall. This gentleman, he stood over, towered over me, at about six foot five. He was a big gentleman, you know. The scuffle ensued for a couple of minutes. It felt like an eternity. I feared for my life. I didn't know what was going to happen. I had a few passengers in the back. But at one point I remember looking back, all of them, they all had their cell phones open, recording. No one came to my aid. I was basically helpless. Once I was able to reach for the radio, I radioed for help and dispatch, our dispatch center, they, they called 911. We wait about 15 minutes for the police to show up to my aid. The man stayed on the bus with me and I was scared. I don't know if after the first couple, you know, there was a, there was a potential second scuffle that could happen. And so I had to sit there and wait. I didn't know what would happen. Once the police came, they arrested him. I did my part. I showed up to court when they-- when he was arraigned. When I went to court before court started, the city prosecutor came and they cut a plea bargain with the gentleman and he walks-- he walked free that day. So he didn't serve any time other than the one night or two he served in jail when they booked him. But because of that, he-- the city prosecutor, cut a plea deal with him and he walked free. Unlike-- just kind of like what my colleagues say, we're, we're threatened verbally every day. But assaults happen quite often. And unlike most jobs, we have to go back to that very same spot the next day. You know, we don't know if, if that individual is waiting for us. You know, a lot of us are scared. We're driving with our eyes focused on the road. But we also have an eye looking in the rear view because we don't know if we're going to get blindsided by a passenger who has a grudge against a driver. So in, in support of this, I would love that everybody would, would support this bill and, and make it a felony, because unlike-- just like what my colleagues said, you know, it'd, it'd be a great deterrent to use because word would get out that if you assault a bus driver, you know, it'd be a felon and you're going to jail versus being a slap on the wrist.

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**LATHROP:** OK. Senator Brandt. Question over here.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Chang, for your testimony. Can you clarify, are you guys union?

**TUAHE CHANG:** Yes, we are union.

**BRANDT:** And, and so which union is it?

**TUAHE CHANG:** I'm sorry, what was that?

**BRANDT:** Which union?

**TUAHE CHANG:** We're-- I'm, I'm, I'm with the Transport Workers Union Local 223.

**BRANDT:** OK. So has-- and, and, you know, I'm a rural senator, so pardon some of my questions. Wouldn't it go a long way if the city of Omaha or the union would do PSAs about this problem? First of all, just to make the public aware of what's going on. You guys control the biggest billboard in town because each side of each bus, I would assume. Do you billboard your busses in Omaha?

**TUAHE CHANG:** We, we do. We do. Yes, there is, there is billboards and advertisements.

**BRANDT:** But I mean, just, just getting the word out that an assault is a felony. You know, regardless of whether this bill goes forward, we've got assaults, we've got felonies. You know, you can't do this. Has that ever been attempted?

**TUAHE CHANG:** Yes. I mean, we've had signs that, that threats made against drivers would be taken seriously and they'd be prosecuted. But unlike-- just like signs, in general, if you, if you have signs posted on the doors for something that masks are required in a, in a place of business, I've-- you know, not everybody is just going to read and follow directly a sign. But we need this to be law so that, you know, prosecutors will use it and will prosecute those who assault us.

**BRANDT:** Are the, are the people that do not want to wear a mask, are they a, a real problem?



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**TUAHE CHANG:** For the most part, yes, because a lot of people in general, I think it's more of a authoritarian. They don't like to be told what to do. You know, you tell somebody to do something, they're going to, they're going to reply back, well, you're not my mom, you don't own me. I, you know, it's my free will. I can do what I want.

**BRANDT:** OK. Thank you.

**TUAHE CHANG:** Thank you.

**LATHROP:** I don't see any other questions. Thanks for coming down. We're really--

**TUAHE CHANG:** Thank you for giving me this opportunity.

**LATHROP:** --sorry that kind of stuff's happening to you.

**TUAHE CHANG:** Thank you.

**LATHROP:** Yeah. Next proponent. Good morning.

**LARRY DIXSON:** Good morning, ladies and gentlemen. My name is Larry Dixson, spelled L-a-r-r-y D-i-x-s-o-n, and I am the senior most driver down at Metro Area Transit. Been driving there for 44 years. Back in the '70s when I started, we had no really good working radios and stuff. We didn't have any of these things. And we were assaulted. Excuse me, I'll just try to read what I have here. I started after I got out of the service, honorably discharged, 44 years. I've been assaulted more times than any driver down there. I mean, it's almost like clockwork. It's almost every day, or pretty much every week. I'm always being threatened one way or another, different variations of threats and stuff. We had a situation back in the '80s that a driver had a disgruntled passenger and had him get off. And as he proceeded forward, a off-duty officer, she had seen the incident and boarded his bus and asked him to continue forward to 30th and Lake where the light was. So at that time, we had no cell phones and stuff and she was going to get off and use the telephone to call for a cruiser to make the report. And she told him to stay there and wait. While she was over there trying to get a phone call and stuff, he had seen in his mirror, this person running up the street to catch up to him. Eventually, he did catch up to him and go in front of him and pull out of a, a shoe box, a gun and shoots him once through the windshield to

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his heart and he died. Of course, he got prosecuted and went to jail and stuff but this is just the extreme example of the threats we have out there. One of my situations, I called the police to get a passenger that's disgruntled off the bus and stuff. And as the police are there and escort him off the bus, he quickly and happily laughs about it and goes, I'll be here when you get back. And we know he will. We cannot-- we drive around and I guess it's by law, the public has a right to public transportation, so we cannot deny them the right, even though you may have had an incident with them and you recognize them. And as they get on, they tell you, see, told you I was going to be back. Are you're worried about it? I mean, I just want to come to work and feel safe. This is my livelihood. This takes care of my wife who had heart surgery, my, my bills, take care of my family, and stuff like that. One incident, a driver gets on with an open cup of coffee and I told him you can't bring an open container on. He says, I don't have anything. I said, well, right there in your hand. So he got a really p\*\*\*\*\* off look in his face, drops it right away and just starts punching. We've got nothing there. I just put my head down, just beating the hell out of me and stuff and when he stops, of course, I called the company and the, and the police come, but nothing happened. I mean, there has not in my time, and to what I just heard him, the instance, the person has been prosecuted, it's like it's a freebie. We have passengers that get on and say, see, mother--, that you drivers are worthless. We can do what we want you. And that's the general feeling that my fellow drivers feel with-- we just-- I don't know about the assault laws or whatever. I just know it's not the-- something's not happening. We need to have something, opposed to maybe officer on the bus watching this stuff. But-- and I'm, of course, been there 44 years, I'm getting close to when I'm just going retire, this can maybe the other drivers to try to help them more than me. But something has to be done. This, this has to stop. I mean, we had a driver that let a passenger off going one direction and guy got ticked off and goes across the street to catch him coming the other way. Well, it was the driver before him and he said, no, I didn't throw you off and stuff. So he's screaming and yelling at him so he grabs the telephone to call for help. He takes the telephone out of his hand and beat him senseless. He had to go to hospital for two weeks. His whole face was all swelled up and busted up. I mean, and nothing happened to him. He was gone. I, I don't know what you can-- I hope that something can be done to help our situation. But over the years I've been there,

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I haven't seen it happen. I just-- you just, because you have to go to work, you got to take care of your family, the health insurance to take care of your family and all that, it's all part of this package. I don't know what to say. I just hope something happens.

**LATHROP:** OK. Well, we appreciate you coming down here today. Yeah, I, I appreciate the concern that you brought to the committee, too. Thanks for being here. Any other proponent?

**AARON HANSON:** Chairman Lathrop and members of the Judiciary Committee, my name is Aaron Hanson, A-a-r-o-n H-a-n-s-o-n. I'm a police sergeant with the city of Omaha and here representing the men and women of the Omaha Police Officers Association in support of this bill. I had some time to, to speak with my brothers in the, in the public transportation industry before this hearing. A lot of these stories sound familiar. Our members, it's not uncommon for us to have to interact with victims on public transportation, whether it be the bus drivers or individuals in the bus. For police professionals, it's frustrating because they're a moving, they're a moving target. You need to try to find them, number one, and we don't have that communication radio channel, number two. And so it is hard to respond quickly sometimes. But it's also frustrating when you do know that when these professionals are assaulted, you're probably looking at them one misdemeanor at most. And with the current automatic good time laws, it's probably going to be at most six months, even if they do get a year. We appreciate this bill. We're glad Senator McDonnell brought this bill. And I think another thing that's interesting is look at the correlation, their members, our members. As you track cuts or lack of investment in mental healthcare and proper facilities, you see an upward trend line. The bus drivers are being assaulted, conversations I had with them. It's not uncommon for it to be mental health-- people with mental health conditions. We've had the same situation with our members and we've had terrible outcomes that have happened across the country that makes the profession look bad. So I think this is yet another indicator of why we need to look even closer at mental health, but also value the safety of these, of these professional drivers. I'll take any questions you may have.

**LATHROP:** Senator Slama.

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**SLAMA:** Thank you, Mr. Chairman. And thank you, Sergeant Hanson, for being here today. I, I appreciate you mentioning the quick turnaround time that these assaults and those who choose to assault bus drivers have in and out of our Corrections system. Do we have a high prevalence of folks getting out of jail, getting out of prison and then re-offending by assaulting the bus drivers again? Is that something you see often?

**AARON HANSON:** I don't have data on that. I think the best witnesses probably would be the, the bus drivers themselves. I know that, that with, with the core groups that I am aware of, recidivism is, is a day-to-day challenge for us. I know that the typical state recidivism rates right now in Nebraska, at least for the Penitentiary, are a little over 30 percent. So it's not uncommon to see repeat violations.

**SLAMA:** Thank you.

**LATHROP:** Senator Geist.

**GEIST:** I'm, I'm struck as I listen to the stories that we as a society will protect an airline attendant and they're not in charge of an airplane. But we're not as highly protecting a driver of a bus which could potentially have a bus full of people. So I, I empathize with your position and, and I think I agree that this, this needs to be-- I, I guess I don't really have a question, I'm just thinking out loud that it may be the difference between a private business and a public business. But as the public, I would think we would want to protect our public drivers who are transporting the public. So thank you for being here today. I appreciate your testimony.

**LATHROP:** Senator DeBoer.

**DeBOER:** So some of the testimony that we've heard today is that the bus drivers were getting assaulted or threatened or something and nothing was being done about it. So it seems to me-- I mean, I frankly think this is an intolerable situation and something needs to be done about it. But when I'm trying to think through how to do something about it, is, is there a problem where you're not able to find the people who are assaulting these, these folks?

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**AARON HANSON:** Well, some of the situations I've dealt with, you got to remember that when these bus drivers, and I don't know their policies in and out, but regardless of what happens, I think they still have an obligation to stay on the route.

**DeBOER:** Yeah.

**AARON HANSON:** And so if, if I'm a bus driver, I think it's, it's reasonable, I want that assaulter off my bus as soon as possible. And it's, I would assume, outside of their purview and probably ability based on the size of that bus to follow that suspect around particular neighborhoods, down alleys with the bus in order to point out to the police, hey, that's the guy that did that to me. So it doesn't surprise me that it's not uncommon for the aggressors to be able to evade detection before the police can get there, because all they have to do is get off the bus. And I'm sure everyone would want them off the bus.

**DeBOER:** So with respect to mental health, as you mentioned, that sometimes this is mental health, it seems to me in those situations it's going to be difficult to use a deterrent effect to stop some of this, right? This is probably a bigger problem where we have to deal with the mental health issues or there has to be some protection for the bus drivers rather than just to use a, a deterrent effect on some of these, these more extreme mental health situations. Are you finding that folks who have mental health problems are recidivating currently in whatever crimes they're committing? You said that you, you deal with a high recidivism rate in the populations you work with.

**AARON HANSON:** So I would say it's not uncommon in my experience to see people with mental health conditions being engaging in repetitive offenses. But I do have a perspective on the first part of your comment, and that is sometimes, especially when you look at, it's become much more difficult to be able to place someone with a mental health condition for any significant amount of time for them to get treatment because of a variety of issues. Regional centers closed, the private facilities are reducing their capacity. There's too many people, there's no room. Sometimes because of the lack of those facilities, it's kind of similar to the juvenile issues we've talked about, the best backstop is the criminal justice system. Because at least you know, you might get them in a situation where they will get

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medication, they will get mental healthcare and, and, and they have to get it as opposed to them walking out of an emergency room after an EPC for one day. So I, I see value to, to making sure that we have additional tools to include the criminal justice system, especially when so many other areas in the mental healthcare system are not coming through.

**DeBOER:** I probably have to think real carefully before I'm using the criminal justice system in place of a robust mental health system, but I, I want to find a, a fix to this problem that we have. I don't know if we have it in this bill, I don't know. So are there other, other fixes that we could do that would help make the job of catching folks who commit these assaults easier for you all to catch them? Is there something else in that way that we could do that would help?

**AARON HANSON:** Well, it's, it's interesting that you mention that. I think it's fair to say not all of these offenders are mental health situation. Some are just bad people. And so the nice thing is, and the conversations I had with, with my brothers earlier in, in, in out in the hall was that they have many cameras on the busses. And if, if these offenses are now a more serious offense, that means they're probably going to be assigned to a more specialized follow-up unit such as the felony assault unit in the Omaha Police Department then follows up on all felony assaults. Misdemeanor assaults, sad to say, they just don't get that level of, of attention that the felony assaults do. So given the fact that the, the bus systems already have good cameras, and if the offense is commensurate to the seriousness of the crime, I do think it will help identify and, and capture these individuals and prosecute them, give them help if they need it. And hopefully when they come out, they won't do it again, or at least they'll be supervised.

**DeBOER:** OK.

**LATHROP:** Senator Geist.

**GEIST:** Would you agree with the fact that or with the idea that penalties are a sense of what we value? In the sense of if it's a lower penalty, we think that what you've done is of lesser value or importance than something that is a felony I, II, III, whatever.

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**AARON HANSON:** I do believe that, and I think you look-- need look no further than the individual who had been arrested recently, I think on his 24th public lewdness case, which is at most a Class I misdemeanor where he's exposing himself in public because that's not a more serious crime. And again, he's looking at most six months with automatic good time. It disincentivizes him actually having a reason not to engage in the behavior. And I, I wouldn't be surprised to find if it's the same disincentivized situation with the assaults on the bus drivers.

**GEIST:** Which kind of leads me to the point, if this was given a, a felony penalty, for one thing, it would show value from society to the driver and, and whether they prosecute, whether you turn that individual in for a crime, maybe it would be escalated up the, up the flagpole, whatever, so that they're actually pursued more likely if it's a felony. Still, it speaks of the public and certainly the Legislature's value of what the driver would mean to us, that this is an important enough of a crime to us. And I know that there's a, a sense of people don't want to add additional penalties or additional crimes or make that a bigger crime because of the prison population and all of that. However, I think we need to weigh, are the lives of the gentlemen who are driving the bus valuable enough to us to make this more serious, because it's obviously not stopping. Do you find that if crimes are, are reevaluated that way, they tend to be committed less in your experience?

**AARON HANSON:** I think that when people know, and there's some people that it's not going to matter just because they're mentally unstable, but I do believe when people know that there is an appropriate penalty, that there is a certain cross section of people that that will potentially impact their, their decision-making.

**GEIST:** OK. Thank you.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Hanson, for your testimony today. And this first one is sort of a bus driver question. When I'm climbing up the steps to pay my fare, is there a big sign that says smile you're on camera or smile we just took your picture?

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\_\_\_\_\_ : No, no, the camera's [INAUDIBLE].

**BRANDT:** I mean, is it, is it--

**LATHROP:** Oh, hang on a minute, hang on a minute, we got to have him answer the questions.

**BRANDT:** Yeah.

**LATHROP:** Otherwise, the transcribers will never be able to get this down.

**BRANDT:** And, and the reason I say that is a, a lot-- and we're talking about mentally unstable people here, because normal people don't mind getting their picture taken if they're going to the ATM or either there's a sign or something there. It's the people that are trying to get away with something. So, I mean, to me, that's sort of the first element. So I guess are you aware of, of just overtly saying, hey, we got everybody here on camera just in case you missed it the first time?

**AARON HANSON:** Yeah, it's funny you ask that. Recently, I did take the bus trying to gain some empathy with some of the other men that I work with. And when I took the bus, it was very clear that there was cameras. I, I can't remember the signage, but it was very clear that there was, there was interior cameras in the bus.

**BRANDT:** And then the second question is, we've concentrated on the drivers, as well we should, but if we're assaulting drivers, they probably have passengers getting assaulted back there also. Is a solution to make, and I can see some heads nodding back here, but is a solution maybe to make a-- an assault on a bus a higher crime or, or make it worse to assault somebody on a public transit bus as opposed to off the bus so maybe they think twice about doing it on the bus?

**AARON HANSON:** I don't know. I think that's an interesting discussion point, and I, I think it'd be worth going back to the subject matter experts and flushing out those scenarios. I, I, I don't feel like I, I have enough perspective on that particular issue.

**BRANDT:** And, and we can talk about this afterwards, but thank you.



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**LATHROP:** OK. I see no-- oh, Senator McKinney.

**McKINNEY:** Thank you. I'm just-- I listened to their testimony and, in my opinion, it felt-- I felt like they should be more mad at Metro Area Transit or the police because it seemed like a ball was being dropped somewhere in regards to prosecution for individuals that were assaulting them. And I just don't-- like Senator DeBoer, I struggle with this because even if we raise it, how would the individual know that punching a bus driver is a felony assault if, if we just operate under the same standards that are currently in place? What-- honestly, what do you think is where is the gap in enforcement at?

**AARON HANSON:** Well, I, I think that with, with any time in policing, police cannot be everywhere all of the time. And it's-- we just know that. There are-- that's why we have detectives that do follow up. That's why we have cameras on the busses. We don't have enough police officers to have an officer on every bus or on every corner. Everybody tries to do the best they can. It's not my experience that our members take assaults on bus drivers lightly. I think, as I mentioned before, sometimes logistically it's very challenging to both find the bus in real time, but also find the offender, especially when they get off the bus and disappear into the neighborhood, so.

**McKINNEY:** I understand that. But I know countless individuals that may have or may have not committed a crime and got caught on camera or some audio was caught and later on down the line, they were prosecuted. So why, why isn't that happening now? So no matter if he runs off the bus, he's caught on camera. The audio is there.

**AARON HANSON:** When I listened to the testimony of the, the professional drivers, it was my-- what I heard and, and I, maybe I didn't hear all of it, but was that there are, there are individuals who are arrested. And it's the issue that the ultimate penalty that occurs is not as, is not as serious as, as people would like it to be the outcome. And again, I think that factors in again, Douglas County Corrections is full, and that factors into judges' decisions and prosecutors' decisions at that county court level. That's ultimately where they would have to be housed at if sentenced.

**McKINNEY:** And I get that. But isn't it the nature of the assault? So if I get on the bus and I punch a bus driver repeatedly in the face,

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that's a more serious assault than something else like pushing a bus driver.

**AARON HANSON:** Not necessarily.

**McKINNEY:** You get what I'm saying?

**AARON HANSON:** Not necessarily. The-- to become a felony assault, absent this statute, to become a felony assault, especially when you're not using a weapon. Someone has to, when you're using your hands, your fists, your body, someone has to actually inflict such serious damage on you that you are permanently injured. So just punching you or breaking your nose is not in and of itself. It's got to be of such serious injury, which no one wants to see for any of these bus drivers to make it become a felony. Absent that, it is a simple misdemeanor assault.

**McKINNEY:** So breaking somebody's nose isn't considered serious. I, I don't know. I just think that we're walking down a slippery slope again. I, I understand their, their issues and I hope no bus driver gets assaulted, but I just feel like there's already law in place that should be holding people accountable and they're not being held accountable. And I don't know if this law fixes that, but I appreciate your testimony. Thank you.

**LATHROP:** I don't see any other questions. Thanks for being here, Sergeant. Any-- I guess we're probably through the proponents, so we'll take opponent testimony now.

**SPIKE EICKHOLT:** Good morning, my name is Spike--

**LATHROP:** Welcome back.

**SPIKE EICKHOLT:** --thanks, Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in opposition to the bill. We are opposed to the bill because it does increase penalties. I understand or at least that maybe I understand that what is being described to you by the people who testified before is really intolerable. It should not happen. But what you're hearing is I would submit you're not hearing why making these felonies-- felony assaults would fix that. Some of the crimes that were described are already felonies.

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Anything-- any assault committed with a weapon and a weapon is anything other than a hand or part of your body that can cause injury. So it can be hot coffee, it can be a glass, it can be a hatchet. That's a felony assault. Zero to 20 years imprisonment. Use of a weapon to commit, that is another zero to 20 mandatorily consecutive. If those things aren't charged properly now, how is making this a felony going to encourage that? First-degree assault is serious bodily injury. And it is-- it can be a broken nose. That's a felony. What you did hear in an instance where there was a misdemeanor charge filed and then resolved without any consultation of the victim, without any cooperation, your bill's not going to fix that. That's not going to undo that. And I think it is conspicuous that the prosecutors aren't here on this bill. They were here earlier. They'll be here this afternoon. And I-- it's probably not fair for me to comment on this, maybe I shouldn't have. But in other words, if it's something that the police are not able to investigate because of detection problems or the prosecutors don't have it as a priority to prosecute, then how is making this a felony going to fix that? It's not. You are following the footsteps of the earlier groups that have appealed to the Legislature, and that's why the-- when Senator McDonnell gave the bill introduction, most of this bill actually is a reclassification, recodification to making the designation crime of the victim a public safety official, because over the years the Legislature has responded to groups that have described their frustration with what happens to them on the job. It was law enforcement officers. It was the healthcare providers. It's the probation officers. It's the parole officers. And now we have this group. Everything is a felony. Not every solution is a carceral solution. There's nothing stopping the Legislature like it is in current law on page 10, lines 6 through 10, to direct all public transports to have a sign describing the existing penalties right now and that they may be prosecuted. They can do that and if the cities don't like that as an unfunded mandate, too bad, but that's something the Legislature can do short of making the new felonies. You know, the Legislature has accommodated putting police in schools to watch the kids. The Legislature can do something similar to put in police to assist and provide meaningful protection to the public transport short of making new felonies, because it is going to capture people who are mentally ill. It is going to capture people who are first-time offenders. And you've heard what a felony conviction

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does to people on earlier bills this year. I'll answer any questions if anyone has any.

**LATHROP:** OK. Any questions for Mr. Eickholt? Senator DeBoer.

**DeBOER:** So what's the solution?

**SPIKE EICKHOLT:** Well, if they're not prosecuting the crimes now, I don't know how making it a felony is going to encourage that. I understand what Sergeant Hanson said, that maybe that will assign the police division to look more seriously at those things. You have a video, so presumably the proof would be relatively easy to do. I think what they would probably prefer is to be protected and not have to actually go through a court system and whether that can be by having a law enforcement presence on the bus, that would probably be the most obvious solution. Could be-- and if law enforcement as a deterrent if the system deters, then that is an immediate deterrent that really anybody could understand.

**DeBOER:** OK, thanks.

**LATHROP:** I see no other questions. Thanks for being here today. Are there any other opponents? Anyone here in a neutral capacity? Seeing none, Senator McDonnell, before you close, we do have two position letters, both is proponents and then a letter-- written testimony in support from David Slattery with the Nebraska Hospital Association.

**McDONNELL:** Thank you, Chairperson Lathrop. These men and women are being assaulted because of their occupation. They are being assaulted because of their occupation. They go to work, they want to do their jobs, they have responsibility of passengers. That's a great responsibility, transporting someone from point A to point B safely. They have a routine, they have a route. Same place, same time every day. No other reason they're being assaulted except for their occupation. Then you have the passengers, I'm certain 99 percent of the passengers have never assaulted one of their, their drivers. They have a personal relationship with them. That's their only form of transportation. I've heard a story of a, of a woman that when she was a, a young girl would travel, would travel with her grandmother, that was their only source of transportation was the, the bus. Got to know the bus driver. They witnessed that bus driver assaulted. Yeah, we

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want, we want to punish those people a little higher at a different level. Based on these individuals, these men and women are being assaulted because of their occupation. So, yes, do we want it to be a felony? Yes, we do. Is it a perfect scenario that's going to solve and stop all of the assaults? No, it's not. You're still going to have people out there with mental health issues. You're going to still have people out there that are just terrible people. They're going to assault them. But the idea of for them to know that we feel what you do is important, what we want to make sure that we do in the future is deter anyone, of course, with signage and other ideas to make sure that people know, hey, before you assault one of these bus drivers, think again because your level of punishment is going to be higher. Your level of punishment is going to be higher because you're assaulting them because of their occupation. We need help now, they need help now. Joe testified that this has been-- he's been down here seven, eight, nine years, three different bills. If we all really want to help, this is a way to help, not the perfect scenario. There's ways to add to this, great. We're, we're open for ideas. But these individuals, as I mentioned in my opening on an average, in at least the Omaha area, one a week, one person a week, that's a, that's a driver of a man or woman because of their occupation is, is being assaulted. That has to be taken more serious. That has to be punished at a higher level and hopefully deterred from happening in the future. I'm here to answer your questions.

**LATHROP:** I do not see any questions, but thanks for your close and for bringing LB661 to us. I want to thank the people that came down here--

**McDONNELL:** Thank you.

**LATHROP:** --to testify today. We do take this very seriously. It's alarming that you are being assaulted. That will close our hearing on LB661 and our hearings for this morning. We'll be back at 1:30.

**LATHROP:** Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12 in Omaha and I 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

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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 options available, go to the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). We will be following COVID-19 procedures this session for the safety of our committee members, staff, pages, and the public. We ask those attending our 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 room only when necessary for you to attend the bill hearing under consideration. The bill will be taken-- the bills will be taken up in the order posted outside the hearing room. This list will be updated after each hearing to identify which bill is currently being heard by the committee. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and transcribers with clearly hearing and understanding the testimony. 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 and wear a face covering while in-- waiting in the hallway or outside the building. The Legislature does not have the availability this year of an overflow room for those hearings which may attract many observers and testifiers. 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 the committee statement. One, submission of written testimony will only be accepted the day of the hearing between 8:30 a.m. and 9:30 a.m. here in the Judiciary Committee hearing room. Second, individuals must present the written testimony in person and fill out a testifier sheet. Three, testifiers must submit at least 12 copies and four, testimony must be a written statement no more than two pages, single spaced or four pages, double spaced in length. No additional handouts or letters from others may be included. This written testimony will be handed out to

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each member of the committee during the hearing and will be scanned into the official hearing transcript if all four of these requirements are met. As always, persons attending a 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 are actually testifying before the committee and please make sure that if you fill the yellow sheet out, you fill it out legibly. Hand the yellow testifier sheet to the page as you come forward. There's also a white sheet on that same 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 p.m., noon, the last workday before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address, which is posted on the Legislature's website, or if they are delivered to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally 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, please 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 you will not be allowed to read it. We will be using the 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 like to remind everyone the use of cell phones and other electronic devices is not permitted during public hearings, though you may see senators use them to take notes or stay in contact with staff. At this time, we'd ask everyone to look at their cell phone and make sure it's in the silent mode. Just a reminder, verbal outbursts of applause are not permitted in the hearing room. Since we have gone paperless this year, the Judiciary Committee members will instead be using their laptops to pull up

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documents and follow along with each bill. Finally, 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 other hearings to attend to. And with that, we'll have committee members introduce themselves, beginning with Senator Brandt.

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

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

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

**LATHROP:** Senator Pansing Brooks, our Vice Chair, is currently quarantining at home-- doing-- due-- as a result of a COVID exposure. She will be participating by watching this on NET and then sending me questions if she has any for any of the witnesses or testifiers. Assisting the committee today are Laurie Vollertsen, our committee clerk, and Josh Henningsen, our-- one of our two legal counsel, and our pages today are Ashton Krebs and Kennedy Zuroff, both students at UNL. And with that, we'll take up our first bill of the afternoon, which is LB111. Oh, there you are. I saw Friesen sitting over there and I didn't see you, so--

**ALBRECHT:** The agenda did say Friesen, so I didn't--

**LATHROP:** Oh, does it? Oh, no. You're up first.

**ALBRECHT:** OK.

**LATHROP:** Senator Albrecht, welcome to the Judiciary Committee.

**ALBRECHT:** Thank you. Good afternoon, Chairman Lathrop, members of the Judiciary Committee. For the record, my name is Joni Albrecht, J-o-n-i, Albrecht, A-l-b-r-e-c-h-t, and I represent the Legislative District 17 in northeast Nebraska, which includes Wayne, Thurston, and Dakota Counties. I'm pleased to be here today to introduce LB111. As an initial matter, I'd like to offer you section by section-- I just passed it out. I think we might have sent it to you, but just in case



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you have any questions, that explains various parts of the bill. Beginning back in late May of 2020 and stretching throughout the past summer, I was disturbed by peaceful protests that turned into violent riots, by vandalism and property damage, and by injuries sustained by men and women serving to protect our communities. I was not alone in my concerns of course. I've talked about these events with other senators, constituents, business owners, and law enforcement, judges and county attorneys throughout the state. I started discussions towards this bill in my own district in northeast Nebraska. There I met and visited with not only local law enforcement, but also, also with members of law enforcement that were called in to help protect the good people of Lincoln on May 30, 2020. I cannot state strongly enough the respect and admiration I hold for those who serve us in this capacity. These outstanding men and women put those-- each of their lives on the line every day to keep you and I, our families, friends, and our communities safe. I felt heartsick hearing the stories about liquid gasoline and fireworks being thrown at our first responders, blinding laser lights directed in their eyes, and shots being fired at them and into public buildings that they were called to protect. They deserve better than this. Also disturbing are the reports that people from other states have incited violence and riots in Nebraska and outside groups have offered to post bail for those put in jail for their actions against our cities and the police. This is simply not acceptable and we must make this type of behavior as unattractive as possible to people from other states that might want to come to Nebraska and encourage crime. This bill sets out, in part, to do just that. Under this bill, LB111, rioting is defined. It's inciting, recruiting for, or participating in a riot is punishable by offense. Interrupting services, meetings, blocking public roads, or destroying government property are likewise addressed. Graffiti of government buildings is discouraged through higher penalties than other graffiti crimes and most importantly, assault on our first responders, whether fists or with harmful liquids, with laser pointers rightfully triggers stiffer penalties for offenders. If we expect our first responders to protect our persons and property, we must give them the tools to keep themselves safer as well. We must provide law enforcement and county attorneys the tools that hopefully discourage and deter, but certainly appropriately punish outside or other violent interests from causing harm. I've also received a request from various organizations asking me to add other first responders, for example,

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county correction officers, to the list of those who are protected by this bill. I think it would be beneficial for the members of the Judiciary Committee to consider any additional groups they feel might benefit from the bill. As lawmakers, it's our role to provide tools to keep our community safe. That means our children, our adults, our teachers, our business owners, and, yes, our law enforcement and other first responders. Thank you for listening and I respectfully ask you to advance the bill out of committee and onto the floor of the Legislature.

**LATHROP:** OK, any questions for Senator Albrecht? Senator McKinney.

**McKINNEY:** Thank you. Thank you for your testimony, Senator Albrecht. Over the summer, I had the opportunity to experience what was going on in our communities firsthand. And I'm not going to say everyone that attended a protest or a rally had the best intentions, but I also was able to witness those individuals being agitated by law enforcement. I was tear-gassed as well. So I think when we think about legislation like this, I think we've got to take into account both sides. Not everybody's perfect on either side, but things like this sort of begin to infringe on, you know, freedom of speech and the right to protest and things like that. Do you, do you think there's a better compromise?

**ALBRECHT:** A better compromise during-- I mean, I'm all in on a peaceful protest, but whether somebody should agitate a group or not, knowingly and willingly hurting someone else or destroying other people's property, we do need to have something. We have nothing in state statutes that I can find that help this. So again, I think we also are working on bills, if I'm not mistaken, that are trying to train law enforcement in situations like this. I mean, if this is going to be the new norm, we have to have something on both sides, that we're taking care of, of our first responders, our law enforcement, our firefighters. You know, that even-- you know, going as far as, you know, in hospitals. I mean, if, if people get accosted there or what-- I'm just saying, when you insinuate that you're going to-- to peacefully protest is one thing, but, but I don't, I don't see that we have-- that we have to have something on both ends. Yes, I would agree with you there, but, but if you had a building like they did in Lincoln that was burnt down and \$10 million worth of damage, I don't know that a police officer pushed somebody to do that. They--

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that was a choice somebody made. Now if you're talking about, you know, when riots get out of hand, there still has to be something or we're not going to have any law enforcement either.

**McKINNEY:** Yeah. My response to that is that, no, I don't think it will be the new normal, but what has been the normal for this country since its inception is black men and women being killed at the hands of police and that's what sparked these protests. I, I just feel like there is more of an effort to just protect law enforcement than there is to make sure that another black man or woman isn't killed by police and that's the problem. I, I don't think this is needed if we ensure that black men and women and other individuals of color are not being brutalized and murdered by law enforcement. Thank you.

**ALBRECHT:** And, and I appreciate that comment, I absolutely do. Thank you.

**LATHROP:** So I have a question about your intent with this bill, Senator Albrecht, and it may be-- whether we talk about the insurrection in Washington, D.C., or the protests that we saw this summer, your bill is in response to that and it refers to, in I think Sections 12 and 13, to rioting or participating in a riot.

**ALBRECHT:** Um-hum.

**LATHROP:** So you have 1,000 people protesting. It can be, it can be protesting whatever they're protesting.

**ALBRECHT:** Right.

**LATHROP:** Six of them started throwing stuff through the front windows of a building or six of them go into the Capitol, break into the Capitol, but there's 94 of them that aren't doing anything but standing around. Who are we going to capture in your definition of participating in a riot because--

**ALBRECHT:** The six.

**LATHROP:** --it started out--

**ALBRECHT:** The six. You're going to have everybody around you, but if a law enforcement officer is the one that says, you know-- I mean, they

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saw you do it or the other officer saw somebody throw something at the other officer. Those are the ones you're taking in. I'm not taking in 900 people. I'm taking the six that, that supposedly the law enforcement saw commit the act.

**LATHROP:** So your aim is, your aim is simply to go after the people who are engaging in conduct--

**ALBRECHT:** Yes.

**LATHROP:** --unlawful conduct?

**ALBRECHT:** Yes.

**LATHROP:** So are your penalties-- do they mirror-- let's say we, we have a, we have a, a, a protest and somebody throws a rock through a windshield or through the front window of a, a retail store. Let's say six people do it so that we fall into your definition. Aren't those people already committing an offense that's punishable for, for engaging in that conduct?

**ALBRECHT:** Yes, but again--

**LATHROP:** What are we getting out of the riot piece, I guess?

**ALBRECHT:** I, I think is-- more importantly is, is to think that people could come into our cities, do what they did right here in Lincoln around the Capitol, and they get taken in and the mayors ask for them to be released. You have to have some kind of action, you know, to be followed up with when you get taken in for breaking a window or hurting someone. You don't just go in and say OK, they, they were rioting and we brought them all in, but, hey, just let them go away. I don't think that's appropriate because it's like your kids at home. If they're going to do something wrong, you better, you better know what kind of punishment they're going to have to, to, to-- you know, take, take your electronics away from you or do whatever you want to do, but there's got to be some kind of punishment, not just it's OK to do that. And, and I'm not-- this wasn't something that I made up. I took it out of Tennessee. They-- it passed in both of their houses immediately when these riots were starting. Has nothing to-- I mean, whether, whether things happened in Washington or not, I'm looking at the state of Nebraska and what we can be doing for this to help our

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law enforcement and our courts know what they need to do. And you're, you're attorney, I'm not, so--

**LATHROP:** No, no, no and I'm not trying to trap you in anything. I'm just trying to understand if we're, we're not going to pick up the people that didn't throw the rock--

**ALBRECHT:** No.

**LATHROP:** --through the windshield or through this store window, we're going to pick up the person that threw the rock through the window, don't we already have offenses for that person?

**ALBRECHT:** And, and maybe--

**LATHROP:** Destruction of property and so forth?

**ALBRECHT:** And maybe we do. I don't know. That's for you all to decide if it's--

**LATHROP:** OK.

**ALBRECHT:** --not needed.

**LATHROP:** OK, that's all the questions I had after your introduction, but I'm sure we'll have a good bit of testimony.

**ALBRECHT:** I certainly hope so.

**LATHROP:** We'll look forward to that. I assume you'll be here to close?

**ALBRECHT:** Yes, sir.

**LATHROP:** OK, perfect. Thank you, Senator Albrecht. We will now take proponents of LB111. How many people are here to testify on this bill? If you could hold your hands up while I count? Three-- OK, perfect. Thank you. Good afternoon.

**BRAD JOHNSON:** Good afternoon. Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Brad Johnson, spelled B-r-a-d J-o-h-n-s-o-n. I'm the director of the Lancaster County Department of Corrections. I'm here to testify on behalf of our county board and my department in favor of LB111. In particular, I support Senator

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Albrecht's willingness to include staff from my county correctional departments-- I'm sorry, of county correctional departments within the definition of public safety officer for purposes of this statute. Currently, these statutes exclude members of my department. For example, inmates who assault my staff must be charged with assault by a confined person. Although both of the offenses are Class IIIA felonies, I believe the charge or conviction of an assault on a peace officer is more descriptive and appropriate in these cases. Assaultive behavior of any kind within a correctional facility is dangerous and unacceptable. An assault against a staff member is of the most concern regarding institutional good order. When an inmate is willing to use violence against a staff member, the safety and security of the entire facility is at risk. This is why the distinction between assault on a peace officer and assault by a confined person is particularly important during the classification and housing process. As we review prior criminal and assaultive behavior, it would be ben-- beneficial to understand what type of assault is being reflected in the criminal history. It is also important to me and my staff that we be recognized as members of the peace officer profession. We are all community servants who work in challenging environments and sid-- situations. I believe the tendency to leave county correctional staff out of these statutes and bills isn't done intent-- intentionally. However, our service is essential to the criminal justice system and I feel the inclusion of my staff and others across the state would help to solidify that recognition. Thank you for your time and I can answer any questions.

**LATHROP:** OK. Any questions? Senator Geist.

**GEIST:** Yes, thank you, Mr. Johnson. Thank you for being here. So I just want to clarify that your agreement with this bill is in its definition of peace officer or correctional officer. It-- is that correct?

**BRAD JOHNSON:** It includes correct-- county correctional officers into the, the definition of peace officer and yes, that's-- my board hasn't taken a position necessarily on the rest of the bill and-- not that I'm aware of, but--

**GEIST:** OK.

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**BRAD JOHNSON:** --I wanted to come and express agreement with--

**GEIST:** With that definition?

**BRAD JOHNSON:** Yes.

**GEIST:** Could I ask you about that--

**BRAD JOHNSON:** Sure.

**GEIST:** --and, and assaults that take place at the county correctional center? And could you give us an idea of how frequently that happens?

**BRAD JOHNSON:** We don't-- I mean, you know, 2020 was a-- kind of an odd year. Those-- I think those increased fairly significantly this last year. As a rule, at least in my facility, inmate-on-staff assaults aren't terribly common. I-- maybe two a month.

**GEIST:** OK and one, one last question.

**BRAD JOHNSON:** Sure.

**GEIST:** Degree of disparity, I know of course it varies, but typically-- do you have a typical degree and then the outliers or either one or the other?

**BRAD JOHNSON:** I mean typically they're, you know, getting punched. We recently had somebody who was getting choked. You know, we try and-- we had one, you know, a while back where they were trying to gouge an officer's eye out, but as a rule, you know, it's usually bumps and bruises or injured joints.

**GEIST:** OK, thank you.

**BRAD JOHNSON:** Sure.

**GEIST:** Thanks for your testimony.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. I'm reading the statement of intent of this bill, which says, "the purpose of LB111 is to define and enact criminal violations relating to rioting, aggressive rioting, inciting riots,

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looting, assault on first responders; to prescribe penalties including, but not limited to, minimum sentencing, fines, and restitution." What I'm having trouble with is where the correctional officers fit into this intent of this.

**BRAD JOHNSON:** I think there's portions of the bill where it talks about officers being assaulted even during riots in a facility or I think there's other sections with the vandalism on personal property and so forth. I'd simply-- I'm-- to be perfectly honest-- homed in on the definition of peace officer where it lists state correctional officers and law enforcement folks and we were absent from that list.

**McKINNEY:** What's the current penalty for assaulting an officer in a facility?

**BRAD JOHNSON:** Actually the, the penalty would-- are the same at this point. Assault by a confined person is a felony IIIA offense and under this bill, assault on a peace officer would be a felony III offense.

**McKINNEY:** So what's the purpose of this bill if it's already in, in place?

**BRAD JOHNSON:** The purpose-- well, my primary interest is to have-- to be able to charge individuals who assault my staff with assault of a peace officer.

**McKINNEY:** But they already can be charged with the same offense, right?

**BRAD JOHNSON:** They're assault-- they're charged with assault by a confined person, yes.

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

**BRAD JOHNSON:** Sure.

**LATHROP:** OK. Mr. Johnson, I don't see anymore. Can I ask you a question?

**BRAD JOHNSON:** Yes.



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**LATHROP:** You testified a couple of years ago on how long people sit at the Department of Corrections in Lancaster County waiting to have a mental health evaluation for those who are waiting to get mental health treatment for competency.

**BRAD JOHNSON:** True.

**LATHROP:** You were in front of this committee with that and I think you testified that the average wait was 100 days and we-- Senator Hansen passed a bill on restoring competency. Has that number gone down?

**BRAD JOHNSON:** It has gone down. It's closer-- we've cut it in half. I'd say we're around the 50-day mark, so it has trended down over the years because of various efforts that have been taken.

**LATHROP:** That's certainly an improvement.

**BRAD JOHNSON:** Yes, it is.

**LATHROP:** Still concerning that people would be confined, incompetent-- mentally, mentally incompetent, to, to sit through a trial and be sitting 50 days in your Department of Corrections.

**BRAD JOHNSON:** It's, it's still frustrating and, you know, I burned my saddle, for lack of a better word, but I think we, we continue to work on trying to make--

**LATHROP:** No, I could tell you care deeply about the topic and I appreciate your, your efforts in that regard and for sharing the up-- giving me an update--

**BRAD JOHNSON:** Sure.

**LATHROP:** --so I appreciate that. Thank you and thanks for being here today.

**BRAD JOHNSON:** Thank you.

**LATHROP:** We will take the next proponent. Good afternoon, sir.

**ROBIN CALCARA:** Good afternoon.

**LATHROP:** You may proceed.

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**ROBIN CALCARA:** My name is Robin Calcara. I'm presently a Lincoln Police and Fire chaplain. I'm also--

**LATHROP:** Mr. Cal--

**ROBIN CALCARA:** --a full-time volunteer chaplain.

**LATHROP:** --can you--

**ROBIN CALCARA:** I'm sorry.

**LATHROP:** --spell your name for us?

**ROBIN CALCARA:** OK. I'm sorry. C-a-l-c-a-r-a.

**LATHROP:** You can go ahead.

**ROBIN CALCARA:** OK. I am also a full-time volunteer chaplain at Nebraska Department of Corrections, currently working with Nebraska State Penitentiary. What this means is that I have the privilege of rubbing elbows with a lot of public servants through my service, everywhere from police, fire, sheriffs, and the correctional officers in the Department of Corrections, a lot of selfless people indeed. We live in a world of insanity. If 2020 taught us anything, it taught us that our world has turned upside down. I remember last year hearing things like defund the police headlines, a misuse of power, and I had to ask myself, are 99 percent of the peace-- police the problem? These are men and women who have chosen a career to protect and serve our great citizens of Nebraska. It is thought that across the gamut of public service that we are short of qualified, willing people by about 20 percent on a national scale. Early retirement was issued in various cities amongst police in record numbers in 2020. The uptake here is measuring risk, pay, longevity and good professionals choose a different path. It's just not worth it, yet we are needing close to 20 percent more in order to keep our people safe. As I read this bill, I was astounded at the small amount of protection that is in place regarding our public servants. I read the entire bill and as I read it, I was continually asking myself you mean that's not a law already? It's not illegal to throw body fluids in the face of our police or is it OK to trash and paint vulgar slang on our public servants' houses with only a slap on the wrist as punishment? Is that-- really? This bill is all about prosocial behavior. Never in my lifetime have we

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needed to spell our-- what the golden rule is than-- more than today. And lastly, maybe even more significantly, my friend Andy Taylor [PHONETIC] showed me this at a young age, that when you wear a badge, even though you are just one man, that you represent all the people in your town or city. What this means is they represent the citizens or our cities and state and the power they wield is the wishes of our people. It's important for them to know that we have their back and that antisocial behavior and hateful demonstrating are not OK and that we stand with them for their well-being. Thank you for considering this.

**LATHROP:** Very good. Thank you, Mr. Calcara. I do not see any questions for you today, but thanks for coming down.

**ROBIN CALCARA:** Thank you.

**LATHROP:** Good afternoon.

**AMBER PARKER:** Good afternoon. Loving the weather outside, little change from last week. My name is Amber Parker, A-m-b-e-r, last name Parker, P-a-r-k-e-r. I first want to start out reading just the statement of, of intent from Senator Albrecht's office. It says, "The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby: the purpose of LB111 is to define and enact criminal violations related to rioting, aggressive rioting, inciting riots, looting, assault on first responders; to prescribe penalties including, but not limited to, minimum sentencing, fines, and restitution." I want to say that as a protester, I am a proponent to LB111. I wanted-- I'll now read Amendment I from the Constitution of the United States of America and come back to Senator Albrecht's bill. Senator Lathrop, as you know as a, an attorney, the governing law of the land and every senator here representing us should know that too, so this is always good for us to have on hand. Amendment I of the Constitution of the United States of America: "congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." Looting, burning buildings, throwing rocks through buildings, assaults on our first responders is not peaceably to assemble, nor peacefully in protest. So we know it's important that we all support protests. I

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myself have actually protest against a judge with a group of people. I saw an abuse of power within a courtroom. I saw the judge deny a motion for a child to continue to be in a dangerous situation when the parents were pleading and-- anyhow, in saying that, I knew that as a concerned citizen, I could not sit back and watch this abuse of power. So I joined together with others and we created a protest. I just want to say there is a need in this state for LB111. We need to set a precedent and be an example to the rest of the United States of America that those who are going to burn buildings, do harm to our first responders, and disres-- not, not disrespect. Freedom of speech is different than throwing bottles of beer and throwing Molotov cocktails at people. And I just have to say that sometimes the way things are shown is that there are certain people that are victims that actually were perpetrators and I'm not saying that all across the board. There were many peaceful protesters, but there were a few that were not and they destroyed people's livelihoods and even brought bloodshed to some streets in the United States of America.

**LATHROP:** OK.

**AMBER PARKER:** Thank you.

**LATHROP:** Well, thanks for being here today. We appreciate you coming down.

**AMBER PARKER:** Thank you.

**LATHROP:** Next proponent. Good afternoon.

**MARK BONKIEWICZ:** Good afternoon, senators. My name is Mark Bonkiewicz, M-a-r-k B-o-n-k-i-e-w-i-c-z. I live at 11129 Z Street in Omaha, Nebraska, District 12. I'm here today in support of LB111, the "First Responder Protection Act." Here are my reasons for supporting this legislative bill: (a) during the summer of 2020, Americans witnessed unlawful mobs destroying private and public property, assaulting first responders and killing first responders and innocent citizens, (b) unfortunately, Omaha and Lincoln businesses suffered extensive damage and had the tragic loss of life during the summer of 2020, (c) when you watch the video clips of the 2020 riots in major U.S. cities, the verbal assaults heaped upon police and other law enforcement officials were intense and shamefully delivered, (d) in other video clips, the

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mobs demonstrating childish behavior prevented ambulances from being able to deliver wounded patients to hospitals for their needed treatment. LB111 is an example of powerful legislation that will benefit all Nebraska citizens because it is well written and contains clearly defined and logical phrases such as: Section 3, damage to property of government actors; Section 4, penalties for graffiti on government buildings; Section 5 clarifies the definition of first responders; Section 8 adds a mandatory fine for a third-degree assault crime; Section 16, obstructing a public way; Section 19 restates the penalty for multiple convictions under the habitual criminal act. I urge you to vote LB111 out of committee for floor debate, where it receives the scrutiny of questions and answers that rigorous floor debate can provide. Please waste no time passing LB111 into law to maximize the safety of first responders and the security of all citizens. Thank you.

**LATHROP:** Very good. Thanks for your testimony. I do not see any questions at this time.

**MARK BONKIEWICZ:** OK, thank you.

**LATHROP:** Any other proponents here to speak on-- in support of LB111? Seeing none, we will take opposition testimony next. Good afternoon.

**SPIKE EICKHOLT:** Thank you. Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska and the Criminal Defense Attorneys Association in opposition to the bill. The bill has got several components, but I think that it could best be described as an anti-protest bill. The express purpose from the introducer and the proponents is-- in this bill is in retaliation to some things that they witnessed happen in Nebraska and other parts of the country in response to the George Floyd homicide and as part of the Black Lives Movement protest. It's got various components of the bill that are problematic. One, it increases penalties in a variety of different ways. You heard, I think, Brad Johnson testify earlier. The part that he liked about the bill is it classifies correctional officers as police officers for purposes of various felonies. I just want to remind the committee Mr. Johnson acknowledged that there's a number of felonies already that can be charged against people who are in jail and commit crimes. There's a crime called assault by a confined

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person, which is similar to the concept that Senator Brandt mentioned with a bus, where if you're in the jail and you assault anybody, another inmate, a staff person, a guard, an attorney during a visit, you are committing a felony assault by a confined-- there's a second-degree assault-- felony assault where if you are confined and you strike another person and you're confined to jail or prison, that's a zero to 20, so that's already covered. It does increase penalties for graffiti and I draw just-- there's so many components of the bill, but I want to draw one, one part to your attention. On page 5, lines 29 to 31, it makes it a Class I misdemeanor if somebody applies graffiti to a, to a property belonging to a school. That could very easily capture children just at school getting caught up in a Class I misdemeanor. I don't think that's the intent of her bill, but as I said earlier today, the things that we talk about here are not going to be reflected in the statute books. This is going to be-- if passed-- on the books and that will be a significant charge to charge somebody with just putting their name on something, a school book or, or a sidewalk or something like that. But the real heart of the bill I think that's problematic is the anti-riot provisions on pages 10-- on pages 14 and 15. As Senator Lathrop intimated in his questioning, there's already existing felonies and already existing crimes to hold those people who damage property, who cause injury to people during a protest or even not during a protest. There's ample crimes for it and you have not heard from anybody in support of this bill that can demonstrate that they caught somebody that was involved in the May 30 thing and had to let them go because there's nothing they could charge them with. There has been some difficulty in identifying the people involved, but that's not something the bill can address. But if you look at the definition of riot, it means any disturbance-- and if you look down, maybe on pages-- on page 14, line 23, and that riot results in serious bodily injury to one or more persons or property damage of at least \$5,000, it's a felony. In other words, if you are there, present at a riot, somebody else causes it, someone else has caused the injury or damage, you're still subject to the penalty for merely being present. And it can happen to innocent people who are there, not even actually part of the riot. I remember when we had the Ernest Jackson bill, that one anti-mask woman testified that she got interested in Ernest Jackson because she saw some people at a, at a BLM riot and she found out about it-- or a BLM protest, I should say. But imagine that things during that sort of exchange of ideas had

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turned sour. She would be subject to prosecution under this bill as written. I'd urge the committee not to adopt the bill.

**LATHROP:** OK, any questions for Mr. Eickholt? Senator Geist.

**GEIST:** Yeah, so I'm curious if there are penalties here that don't exist in other places in statute or are you saying they all do?

**SPIKE EICKHOLT:** I'd say they already do.

**GEIST:** All of them?

**SPIKE EICKHOLT:** I'd have to go back to look corresponding-- you can't write-- you can't deface someone else's property, that I know. I'm enough of a lawyer to know that you can't break someone else's car window or house window and say there's nothing you can do. Identifying-- this bill identifies the types of property involved that belongs to the government, belongs to a school, belongs to a government official or something like that and makes an increased penalty. So that's one thing the bill does do differently.

**GEIST:** So it spells out where maybe existing law does not list--

**SPIKE EICKHOLT:** Right.

**GEIST:** --a specific location.

**SPIKE EICKHOLT:** Right. It starts down that trend that Senator McDonnell's bill kind of picks up on earlier, when we start identifying victims and classifying them based on profession. This identifies victims of graffiti and criminal mischief and classifies them according to their profession or who owns or what entity owns the property.

**GEIST:** OK, but, but you would still say that the majority of this is already covered in existing law--

**SPIKE EICKHOLT:** Yes.

**GEIST:** --is that correct?

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**SPIKE EICKHOLT:** I mean, they have the update-- Chris Dunker did something for the Journal Star about updating the cases that they picked up regarding the incident that happened on May 30 with police and they identified a number of cases that they have prosecuted, that they've been able to identify people. That guy that was at the Kwik Shop, for instance, got a series of felony charges. I think they were able to identify some people that were involved in nefarious activities there at the city county building. I understand that it's frustrating for people to watch TV and see these things happening, but throwing a bunch of felonies on the books are not necessarily going to aid in the prosecution of wrongdoers who do those things.

**GEIST:** Thank you.

**LATHROP:** Senator DeBoer.

**DeBOER:** I have a specific question about page 15, Section 15, line 10: "a person shall not, with the intent to prevent or disrupt a lawful meeting, procession, or gathering, substantially obstruct or interfere with the meeting, procession, or gathering by physical or verbal utterance." Is that going to have constitutional problems with free speech because if I'm yelling during a meeting or something, there might be something there. Is that one-- that one strikes me is that one might have to constitutional-- could you answer whether you think that might be constitution--

**SPIKE EICKHOLT:** I think it certainly does because first, you are talking about a lawful meeting or gathering. You're talking about, in all probability-- kind of like what we had happen this morning with somebody from the audience volunteer an answer. I don't think that was necessarily done with the intent to prevent or disrupt, but it does-- it was an intentional act. There was something that happened at a Lincoln City Council meeting earlier this week where a number of people wanted to be heard and they were sort of ruled out of order and I think that putting this in statute would give cover to government officials to do that against people. I think it is problematic from a First Amendment standpoint.

**DeBOER:** OK, thank you.



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**LATHROP:** So I want to, I want to ask a-- some questions and talk about an accessory. So generally for the benefit of the committee, talk about a person who agrees to drive somebody to the liquor store and the passenger goes inside to rob the liquor store and shoots somebody. Who's getting charged with what in that circumstance?

**SPIKE EICKHOLT:** In that situation, if the person who's shot dies, the person who drove can be prosecuted under the felony murder doctrine and get punished just as if they were the shooter.

**LATHROP:** OK, so the, the-- one of the things I'm struggling with when we talk about a riot, if we just say-- and, and this isn't definitely in response to protests. So let's say that there are-- and I'm just going to use a number-- 100, 100 people walking through 72nd and Dodge Street and three of them have the same color of sweatshirt on. They came down together. They're there to join the protest. One of the people wearing the same-colored sweatshirt-- they're together-- one of them picks up a rock and throws it through a window. Are all three of them going to be found guilty of a riot because they came there together, but the two didn't know the one was going to pick up a rock?

**SPIKE EICKHOLT:** Under the--

**LATHROP:** In other words, the-- there's this idea that somehow if, if there are more than three or six people together and somebody does something, now those people are all not protesters anymore. They're all considered rioters.

**SPIKE EICKHOLT:** I mean--

**LATHROP:** Is that, is that making the right to assemble and the right of free speech an element of a crime in this case?

**SPIKE EICKHOLT:** Yes. You already have the existing aiding and abetting ability to prosecute somebody who assists or aids or helps someone either before or after the commission of a crime. And you can prosecute them if they drive the getaway car or if it's, like, a riot or something like that or criminal mischief. If the person hands someone else a piece of concrete and that person throws it through the window, that's aiding and abetting the commission of that crime and it could be prosecuted as if you were the principal offender. This bill

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would propose or sort of presume that your mere presence at something where one-- someone or other people do something that is criminal, that you're somehow presumed to have been taking part in it. In that part that I read before, if the riot activity or whatever you want to describe, describe it as results in bodily injury to somebody or damage, you're guilty of the crime. I think it's just-- I think a suspect constitutional-- you have a right to protest and that can't be thwarted by someone who just shows up and throws a rock. It can't be-- government can't prohibit that First Amendment activity based on someone else's criminal act.

**LATHROP:** Is it as soon as you make it three or more people or six or more people at something and something bad happens, you've made this a symbol-- the assembly, which is lawful unless everybody has the same intent-- you've made the fact that there's an assembly, even with just one bad actor, an element of the crime.

**SPIKE EICKHOLT:** That's right and since it's a felony, law enforcement can act preemptively on that. In other words, if they have reason to believe a felony is about ready to happen, they can react, they can arrest, they can detain, they can disperse, and they can thwart First Amendment activity.

**LATHROP:** This is a little bit, in some ways, like the bill we heard this morning for the bus drivers. The challenge is when there is a protest and there are not 100 people, but 5,000 people and somebody throws a rock through the front of the, the, the business and a window is shattered or a person goes in and steals retail stuff out of a, out of a business. It's hard to catch that person in the middle of that chaos, but that's not-- the solution isn't to say if that happens in a riot, then all of you are part of a, a crime.

**SPIKE EICKHOLT:** Right, that's right and I referenced that follow-up story that Dunker did for the Journal Star. I mean, that's what Lincoln law enforcement have been doing for hours, is going through video, trying to identify people, and really the bill doesn't address that. That's just a practical difficulty, unfortunately, in those situations.

**LATHROP:** Going further or taking it one step further, when we had people on January 6 break into the United States Capitol, not all

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those people broke a window or had the same intent. Some people went in and rifled through offices, broke windows, broke doors, did whatever they did-- there was clearly a lot of property damage-- but not everybody who went through that front door was there to break anything.

**SPIKE EICKHOLT:** Right.

**LATHROP:** Right? This bill would allow every single one of them to be prosecuted.

**SPIKE EICKHOLT:** That's right because as written, that damage that happened in the Capitol building was probably over \$5,000. Who knows what Pelosi's podium was worth, right? So that's something that was damaged and just being there as part of the riot and that riot results in that damage or loss of life, in that situation, they can be prosecuted.

**LATHROP:** And that really gets back to this point, which is people participate in these things with different intent. There may be somebody who is there to create problems and throw rocks and use spray paint to write on the side of a building or a monument. There's an awful lot of people there that just want to wave a flag and talk about how they believe the president still ought to be the president.

**SPIKE EICKHOLT:** That's right and by, by having this bill, you're allowing those provocateurs, whatever you call them, those people who are on the other side of the equation, just to show up and start getting the crowd going and then just slip off and then everyone that's remaining there is on the hook.

**LATHROP:** OK. Well, there's certainly some hazards in trying to lump everybody that shows up at one of these things where damage is done or somebody gets hurt, lumping them all together and that's the challenge. They-- every single one of them could be prosecuted. Everybody that broke the law could be prosecuted for something, but it's really a challenge. I know with the, with the, the activities, the insurrection or whatever you want to call it, at the United States Capitol, they're looking at social media and identifying as many people doing discreet acts of damage or injury, right?

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**SPIKE EICKHOLT:** Right.

**LATHROP:** OK. Did you have a question, Senator Geist?

**GEIST:** I, I, I don't. I think you answered. I, I-- my-- well, I'll go ahead. I, I'm just kind of trying to walk the line between what's-- when does criminal activity begin and when does peaceful protest end? And that's kind of what we're talking about and so if you're given a lawful order to disperse and they don't and then criminal activity occurs, are, are we talking then that everyone involved is, is then liable?

**SPIKE EICKHOLT:** Under current law or--

**GEIST:** Yes, currently and then put up next to this?

**SPIKE EICKHOLT:** If it truly is a lawful order that's given to people and they refuse to comply with it, then there is a separate-- it's a city misdemeanor. There's also a state law, obstructing a peace officer or refusal to comply, that can be prosecuted now. The courts are not-- curfews are always sort of suspect, but assume you have a valid curfew or a valid time, place, manner restriction on a protest. That can be enforced under current law and, of course, anything that's clearly criminal-- and I'm not talking about protesting and just not wanting, wanting to go home on time, but clearly criminal-- damaging someone else's property, hurting people, those sorts of things, that is-- you can prosecute that now under existing law.

**GEIST:** OK, still struggling with--

**LATHROP:** To follow up on that, that question, though, if, if the law enforcement-- let's have a 1,000-person protest and they're in the Old Market or down here by the courthouse. If law enforcement gets a lawful order to disperse, every one of those people could be prosecuted for violating a lawful order--

**SPIKE EICKHOLT:** Yes.

**LATHROP:** --from a police officer, right?

**SPIKE EICKHOLT:** Yes.

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**LATHROP:** If one of those people happens to take a rock and throw it at a law enforcement officer and cause them to be blind in, in one eye, now everybody who didn't disperse is now guilty of a first-degree assault--

**SPIKE EICKHOLT:** That's right.

**LATHROP:** --right?

**SPIKE EICKHOLT:** That's right.

**LATHROP:** And that's the challenge with trying to say OK, it's a riot, so now, now we're going to throw the net over everybody like they were the driver on the car that went to the liquor store.

**SPIKE EICKHOLT:** That's right.

**GEIST:** OK, you, you articulated better what I was trying to say.

**LATHROP:** No, I think it's-- I understand what Senator Albrecht's trying to do, but, but there are-- it's very difficult when you make-- my own-- my, my judgment-- very difficult when you make the assembly part of an element of the crime because you have a right to assemble, just as Ms. Parker read from the Constitution. You have a right to assemble and we're looking for an easier way to do the law enforcement piece, which is the challenge in Washington, D.C. It's the challenge in Lincoln. It's the challenge in Omaha. Who are the rock-throwers? All of them could be punished. It's just hard to find them-- or the rabble-rousers or whatever they're-- whatever they are, but-- any other questions from the committee? I see none. Thanks for being here, Mr. Eickholt. We appreciate your thoughts and insights. Anyone else here to testify in opposition to LB111? Seeing none, Senator Albrecht-- I thought I saw her leave.

\_\_\_\_\_ : --doing a bill with another-- in another committee.

**LATHROP:** She's going to waive close? OK, before we close the hearing, though, let the record reflect that on LB111, we have position letters from 22 people, 20 are proponents, two are opponents, and we have two-- written testimony from two sources. Joe Kohout, on behalf of the United Cities of Sarpy County, is a proponent and Jerry Stilmock is also a proponent for the Nebraska State Volunteer [Firefighter's]

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Association and the Nebraska Fire Chiefs Association. And with that, we'll close our hearing on LB111 and that brings us to LB104, Senator Friesen.

**FRIESEN:** Chairman Lathrop--

**LATHROP:** Good afternoon.

**FRIESEN:** --members of the Judiciary Committee, this is my first trip here and I was just about into my food coma. Now I have to wake up.

**LATHROP:** This is exciting stuff for us.

**FRIESEN:** It, it is. My name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n, represent District 34 and appear to you today to introduce LB104. LB104 seeks to add language to the criminal mischief statute to provide that if one or more victims suffer financial loss as a result of one offense, those losses can be combined in order to determine the criminal offense and the resulting charges. There are other criminal statutes in Nebraska that use this aggregate language, including statutes relating to theft offenses, forgery, unauthorized use of a financial transaction device. Including the aggregation of pecuniary loss and criminal mischief offenses would bring law in line with these existing statutes. I've heard from prosecutors, one of which will be here today, that there are many instances where the property of multiple citizens is damaged as part of one continued act or course of conduct, but these instances cannot be charged in one single charge, which is what this bill would allow them to do. By adding the aggregation of pecuniary losses to the-- in the criminal mischief statute, prosecutors and courts would be able to work more efficiently with-- offenders will be held accountable for damage to numerous victims that occurs as part of one offense and will be better-- will provide better access to the justice, justice system for these victims. I asked the committee to move this bill forward and I'm happy to take any questions from the committee at this time. And again, there will be someone following me who will be able to answer the questions-- probably more qualified than me.

**LATHROP:** OK.

**FRIESEN:** Thank you, Mr. Chairman.

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**LATHROP:** Let me see if there are any questions. Anybody need to interrogate Senator Friesen? Senator DeBoer.

**DeBOER:** Senator Friesen, thank you for introducing this bill. My question is-- and maybe this is something for someone else, maybe this is something for someone else, but when you say one scheme or course of conduct, is, is there any sort of definition of what scheme or course of conduct is? For example, could I have one scheme that occurred over a period of many days?

**FRIESEN:** I can't answer that, but from my understanding, it would be over a period of some hours, not, not multiple days or weeks. This is in the course of one act.

**DeBOER:** OK. Well, maybe I'll ask someone who comes up behind you and/or maybe we could make a definitional--

**FRIESEN:** That would be good.

**DeBOER:** OK, thank you.

**LATHROP:** All right. I don't see any other questions for you, Senator Friesen. Are you going to stay to close?

**FRIESEN:** I'll stay.

**LATHROP:** OK, perfect. We will take proponents of LB104. If you're here in support, you may come forward. How many people are here to-- just so that we can alert Senator Cavanaugh, how many people are going to testify on this bill? Looks like two. Good afternoon.

**SARAH CARSTENSEN:** Good afternoon. Chairman, members of the Judiciary Committee, my name is Sarah Carstensen. I'm a deputy county attorney in Hall County and have been so for over 16 years.

**LATHROP:** Can you speak up just a little bit?

**SARAH CARSTENSEN:** Absolutely.

**LATHROP:** OK.

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**SARAH CARSTENSEN:** It's not very often I have that, usually it's slow down.

**LATHROP:** Well, we may have you slow down too, but--

**SARAH CARSTENSEN:** Sure. My name is Sarah Carstensen, S-a-r-a-h, Carstensen is C-a-r-s-t-e-n-s-e-n, and I'm a deputy county attorney for Hall County in Grand Island and I'm here to testify in support of LB104 on behalf of the Nebraska County Attorneys Association. I'm also a resident of Hamilton County in Senator Friesen's district and have been for over 15 years. I appreciate him bringing this bill forward on our behalf. The handout that I gave you, if you are interested, is-- contains a number of these statutes that include references to aggregation, just by way of example, that way you can all kind of see how this fits into one scheme. And that's why I think that this bill should be moved forward, that it is part of a grander scheme when we talk about theft offenses and such, there's this opportunity to aggregate. When it comes to criminal mischief, there isn't. So if you were to take several items from different people, you could aggregate those into one theft offense, but if you were to smash several people's phones, you'd have to charge them separately, so it's just a little bit of a difference and a little bit of a nuance, but it fits into a broader kind-- the broader scheme that we're already using with respect to other offenses. For prosecutors, resources, including our time, are very valuable, our staff time and our own time. We don't like to go forward with prosecutions where we have anywhere between 30 and 100 or more counts. I can give you an example of last year, we had some juveniles that damaged over 80 vehicles. We had 80-plus victims and what they had done was just gone through smashing windows as they went down the road and you think about the victims that are involved in these types of crimes. I don't know which one of you took for granted or if any of you took for granted that when you got into your vehicle this morning, that you were able to get here without having to first stop, contact a police officer, have that interruption, have to have your car taken somewhere to get fixed, couldn't get your kids to school, couldn't get to work on time, those kinds of things. But if you also think about the nature of the victims that we're often seeing with these types of crimes, they're the kind of folks that don't have the opportunity to put their car in an enclosed garage or something like that, where some of us have those opportunities. So when these folks do get hit in our community, they are hit in a way that is more



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damaging, more destructive to them. So that's part of why we're bringing this forward too is those victims. The court is also a consideration for us as well in the sense that it is time consuming for them to have to read through multiple, multiple charges. And so if we can condense that down, we can allow each victim to have that opportunity to have their crime considered if we as prosecutors elect not to prosecute every single offense that we could. And we often don't because there's kind of a max benefit for the number of charges you charge in any particular case. We'd leave some of those victims out and that leaves those victims sometimes feeling like justice isn't working for them, that they didn't get to have access to our system and that their crime was not considered as one that was important enough, either by the county attorney that was filing those charges or the court who didn't hear those charges. From my standpoint as being a prosecutor for over 16 years, this statute will allow prosecutors to more efficiently do their work, allow the courts to process cases more efficiently, hold offenders accountable for large-scale damages that occur when a series of crimes involving numerous victims are committed as a part of one scheme, and provide better access to justice-- to the justice system for victims of crime. It also then promotes the legitimacy of the entire system within our community as a whole. I would ask for your support passing through this bill.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** So I've already previewed my question for you. It seems like-- I looked briefly while you were talking, but obviously wasn't able to read in depth-- that there is some case law on scheme or course of conduct. Is that correct?

**SARAH CARSTENSEN:** There is some case law. I don't have-- I, I heard your question and I don't have a great answer for you in this moment. Would it be helpful if I could communicate with you after the hearing and I can send that to any-- anyone--

**DeBOER:** Yeah, if you can send us a little bit about what scheme or course of conduct-- because of course there's a big difference between in one night, driving down a road, smashing all the windows and smash a window one day, three weeks later, smash a window.

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**SARAH CARSTENSEN:** Yeah and that's-- I would say in my experience, it's kind of awkward that this ended up right after the prior bill because this was-- I can assure you that nothing out of this bill was born out of those instances. This has been a problem in Grand Island. I've prosecuted a number of these cases. We continue to prosecute these cases where we have either kids smashing windows or I can give you another example where an individual, an adult, broke into a facility that is a storage facility and went around smashing, damaging, and getting into campers' RVs, boats, and such. But all of those were independent people. We couldn't aggregate that together. So those are the types of instances that we were looking at when reflecting on this and we've been kicking this around-- this idea around for quite some time, knowing that there's a-- this scheme where there's aggregation in these other similar types of crimes in our system, but not for this one specific set.

**DeBOER:** Yeah, if you could send me something on that, that would be great.

**SARAH CARSTENSEN:** I will do that.

**DeBOER:** Thanks.

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

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Ms. Carstensen, for testifying today and I'm not an attorney. So the aggregation of they go down the street, ten cars are vandalized, ten different owners, each car has \$500 damage, so now we've got \$5,000 in damages, is that what you're trying to achieve here?

**SARAH CARSTENSEN:** Right, so instead of having ten different counts for each of those individuals, we could aggregate that into one count and have one count that would include the value for all of that and then we would list all those victims within that one count as victims.

**BRANDT:** And then you could also elevate that to a felony instead of a misdemeanor?

**SARAH CARSTENSEN:** Potentially, yes, but in the same vein, if we chose to move forward with 80 or 100 counts of smaller misdemeanors, you're going to end up with the same kind of potential outcome or same kind

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of potential time frame, perhaps, if you have so many of those involved.

**BRANDT:** I would-- and then that would give your office leverage when it came to charging?

**SARAH CARSTENSEN:** I suppose it could. It's not the not the reason behind it. It's more or less in keeping it consistent with the other Nebraska laws that we have in giving us that opportunity when there is such a large number of damage occurring all through one court.

**BRANDT:** So, so your basic reason is more efficiency through the whole system?

**SARAH CARSTENSEN:** Efficiency and including victims in this. We've had situations where victims weren't necessarily included in the charges because it just isn't-- it doesn't-- there's a maximum net benefit you can get probably, in my experience. Whether you're convicted of ten charges or 20 charges or something, typically courts don't do much more different in the outcome.

**BRANDT:** So if, if-- using my ten-car example, \$500 each--

**SARAH CARSTENSEN:** Sure.

**BRANDT:** --it has to be \$5,000 for a felony and only nine of the victims come forward and I choose not to. Can you aggregate mine in even though I refuse to come forward?

**SARAH CARSTENSEN:** So there's multiple layers to that. We, we could I suppose, if we had information that we-- that I felt like, as a prosecutor, that I could use to obtain and sustain a conviction. If I felt like I can do that, had enough evidence, even if the victim-- the individual victim didn't come forward, if I felt like I had that type of evidence in front of me, I'm sure I could probably go forward with that, knowing I would have that type of evidence. But that's where I think some of that prosecutorial discretion comes in and at least in my area where I've prosecuted, you know, 16-plus years, that type of discretion goes into all of these cases and there's multiple layers of reflection. It's not just the law enforcement officers who refer charges to us and as county attorneys, we just automatically-- whatever they said. That's not how it works and it's especially not

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how it works where I prosecute. We look at each one of those and determine is this something that I feel like-- just because they were referred for prosecution or they were arrested, can I truly, on the evidence I have and the evidence that will be admissible, maintain-- main-- get a conviction in the first place and have that conviction stick beyond any kind of appeals? So I feel like there's multiple layers of discretion and, and those layers of review that go into that.

**BRANDT:** OK. Thank you. You've helped me understand the, the topic.

**LATHROP:** I don't see any other-- well, let me see what Senator Pansing Brooks asks. If you consolidate these-- let's go back to the smashing the windshield. If you get enough broken windshields and you get to \$5,000, we've taken whatever number of windshields that is that-- each of which would have been a misdemeanor and now we're dealing with a felony, right?

**SARAH CARSTENSEN:** Technically, yes, but--

**LATHROP:** That's really the point of it, isn't it? So that you have the option to turn several misdemeanors into a felony because somebody is on some kind of a break-the-window spree?

**SARAH CARSTENSEN:** I wouldn't say it's ever to truly turn it into a felony. That's not how I look at it and that's not, not how I look at the proposed legislation. From our perspective, it's a matter of being able to prove that all in one, kind of fell swoop where there is this course of conduct. It's not like they were-- just kind of how Senator DeBoer was talking earlier. It's not separate events. It wasn't like it has-- something happened on this Monday and then next Tuesday, something happens and then a random Thursday some, some time beyond. We're talking about one whole event and the way that this particular criminal mischief law is structured. It's different than, like, our theft and other ones that are structured similar to aggravate-- aggregate it. It is to allow us to bring that all in together and it would have to-- we'd still have to have that proof to put it together. It wouldn't be a matter of just the charge alone and we would still have to go into court and get a conviction. And, and even then, we take into consideration what is that person's history? What does-- what goes into that? There is a number of things-- number of layers of

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protection along the way for each one of these steps. Just because a felony is charged, even in that instance, doesn't mean that they're going to be put in prison. And a number of these, especially in Hall County, are juveniles, so whether they get convicted of the most minor misdemeanor, disturbing the peace, or the most serious felony that you can put in front of them, the outcome is rehabilitation.

**LATHROP:** Well, you could get that with one misdemeanor, with one windshield.

**SARAH CARSTENSEN:** Could, we could, but that's-- part of the reason they're bringing this forward is our victims are not seeing that side from if we bring forward one count and 79 other people are standing there saying what about my car? What about the fact that I didn't get a-- didn't get to get my kids to school that day? What about the fact that I had to give up going to work that afternoon the next day to pick up my car from the car dealership or repair shop or whatever? And then when it comes to restitution, if we're talking about kids, would-- how many of these folks do you really think are going to get restitution out of that? Is it satisfying to come in front of your legal system and feel left out? What do you do when you come in front of your legal system and your county prosecutor says we're not going to go forward on yours because we have this other one that we like better?

**LATHROP:** Well, we do have a statute that lets victims of minors' vandalism collect from the parents.

**SARAH CARSTENSEN:** But they'd have to go back into court and take that additional time, so it's just not satisfying. It doesn't feel like you're getting what you want out of your justice system when you could, at the very first blush, have a prosecutor bring in-- say-- and the examples I'm giving you are very real. Last year was 80. We've had several of these where we've had multiple, multiple counts. Ten-- it may be ten, but there are instances where it's much higher than that and those are those instances where we end up having to pick and choose how we're going to move that forward from an efficiency standpoint.

**LATHROP:** OK. I appreciate you being here.

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**SARAH CARSTENSEN:** Thank you.

**LATHROP:** Yeah, thanks for being here. I don't see any other questions.

**SARAH CARSTENSEN:** Does anybody else want me to pass out information on--

**DeBOER:** Send it to the committee and they'll disperse it, so--

**LATHROP:** Yeah, I, I am interested, though, I will tell you, because I think Senator DeBoer's got a point. If, if-- let's say that I'm a juvenile, we live alongside the highway, and I-- dad got me a pellet gun for Christmas, you know? Now I'm going to shoot one car a day, one car a day. I'm going to knock a window out of one car a day and you finally figure out who it is and it's been a month and I've hit 30 different cars and that's my scheme. I'm-- every-- 4:00 p.m. every afternoon, I get home from school and I shoot a car window out. That, that could fall into this scheme and I think there has to be some limitation in time so that if you're on a spree, that's one thing, but it's another if you just have a pattern of conduct where you're doing some kind of damage to something.

**SARAH CARSTENSEN:** I think there are some boundaries that have been in places as the theft statutes have been tested and that's where I think that's going to come in-- that guidance will come in from those theft statutes and aggregation to help guide us in this direction as well.

**LATHROP:** OK, well, these defendants probably need to know what it is too--

**SARAH CARSTENSEN:** Absolutely.

**LATHROP:** --right? OK, good. Thank you for being here.

**SARAH CARSTENSEN:** The language is exactly the same as in the theft statute that's been there for years.

**LATHROP:** OK. Any other proponents of LB104? Seeing none, we will take opponent testimony.

**SPIKE EICKHOLT:** Good afternoon, 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

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ACLU of Nebraska and the Criminal Defense Attorneys Association in opposition to the bill. We oppose the bill for at least the stated and implied reasons why the County Attorneys Association representative testified in support of the bill. The only thing this bill does is it allows the prosecutor, the state, to aggregate false amounts among different victims to increase their charging power. When asked by Senator Brandt, the earlier testifier explained that's not necessarily her intent to charge people as felonies, that's the only thing the bill does. It accomplishes that stacking of dollar amounts to make it a felony. Felony charges matter. They matter-- felony convictions certainly matter because it matters for voting rights, it matters for other rights when-- for loss of certain privileges and licenses you can get from the state. It matters in the juvenile context, you know, from earlier bills that we've heard earlier this year. So charging a juvenile with a felony or felonies matters and this bill does have some problems with that in that regard. I know that we do allow for aggregation in the theft and forgery statutes and the language admittedly is the same. I would argue it's a little bit different here because in the theft cases, the courts have sort of interpreted what same scheme means. It's situations where I get someone's-- I get a checkbook of someone else and I'm writing checks one after the other to different stores or I get someone's credit card and I use that card at different opportunities. It's one singular course. Sometimes it's a single day, sometimes multiple days. That's not necessarily the same with criminal mischief, vandalism-type crimes. You might have sprees where kids go out-- and usually, as according to the earlier testifier, young juveniles, juveniles who testify-- who go out and commit these kind of crimes and smash up windows and smash up mailboxes and do that kind of thing. But allowing the aggregation for those is a little different because you don't have that same deliberate scheme that you have with the fraud-type crimes and the theft-type crimes. This is juvenile, it's random, sometimes it's reckless, and it's not always intentional and deliberate and I think it is particularly problematic. And it, it's based on everything seems to have to be a felony. Everything seems to have to get more and more punitive and that's what the other side seemingly always asks for. And it's based on what I would argue, especially in the juvenile setting, it's just a false assumption. Kids aren't going out there and getting nine windows and saying hey, well, we're done. We're almost to a felony level. Let's go home. It doesn't work that way. They do dumb

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things that aren't thought out and getting them exposed to felony-level prosecution is just really problematic. I urge the committee not to advance the bill.

**LATHROP:** Well, let's start with Senator DeBoer and then we'll do Senator Brandt.

**DeBOER:** So now I'm going to push back on you since I pushed back on the prosecutor.

**SPIKE EICKHOLT:** That's fine.

**DeBOER:** Just because-- OK, if I go down the street and I hit nine cars in a row and I break all the windows out, ten cars, \$5,000, whatever-- happened to all be owned by the same person.

**SPIKE EICKHOLT:** Like a dealership or something?

**DeBOER:** Sure or I just have a lot of cars parked on the street, right? That would be felony because it would be one victim, right?

**SPIKE EICKHOLT:** Yeah, if it's the same identifiable victim and they own all the property, yeah and that's \$5,000--

**DeBOER:** So now nine people-- I have nine cars and the tenth car belongs to Brandt. I do exactly the same thing. Now it's not a felony, right?

**SPIKE EICKHOLT:** That's right.

**DeBOER:** So I mean, there is a little bit of a question of just because they happen to be owned by different people-- if the act, the, the unlawful action of breaking those windows, is the same action just because by circumstance, I happen to be unlucky enough to get the same people owning them. I mean, that's-- do you see the problem?

**SPIKE EICKHOLT:** I do see the problem. Now the stated reason from the earlier testifier was it was just too inconvenient for them to prosecute that as separate misdemeanors and too much work for the judge to read the charges. I don't think that should necessarily be our justification for allowing aggregation for convenience of prosecuting people with felonies.



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**DeBOER:** Sure.

**SPIKE EICKHOLT:** That's not directly responsive to what you said.

**DeBOER:** No, that's not responsive to what I said. I mean, if the, if the scheme-- if what we're trying to do is rehabilitate, deter, or punish a scheme of behavior, it shouldn't matter if there are two owners or one owner that is the victim of the same behavior, right?

**SPIKE EICKHOLT:** Right, but at the same time, I don't think level of defense is necessarily dispositive of whether somebody can be rehabilitated and whether a victim can be made involved.

**DeBOER:** Sure, sure. OK, thanks.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Eickholt. I guess she addressed exactly-- I was going to come back on the other side and say shouldn't it matter that we've got ten that obviously look like one crime with ten different owners? And I think we got a little sidetracked today because we're, we're saying it's 16-year-olds and 17-year-olds. What if it was a bunch of 60-year-old guys drunk in the street? I mean, everybody would be out to hang them, wouldn't they?

**SPIKE EICKHOLT:** I don't know. I mean, I think there's-- people are always kind of frustrated with kids, right? I think that there's kind of [INAUDIBLE]. But you're right. I mean, if somebody is an adult and does these things, people are just as angry. And certainly from the victim perspective, it doesn't really matter whether it's a child that did it or not. It is inconvenient. But the bill doesn't address the victim compensation fund. It doesn't address the restitution statutes or anything else that's already available. That's not going to be impacted one way or the other by passing a bill.

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

**LATHROP:** So we've been doing this with theft. I got a question I probably should have asked the prosecutor, but let's say that there are-- somebody writes-- is-- what's the-- what do you have-- how much do you have to--

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**SPIKE EICKHOLT:** For a felony?

**LATHROP:** --steal from somebody to make a felony out of it?

**SPIKE EICKHOLT:** \$1,500.

**LATHROP:** \$1,500?

**SPIKE EICKHOLT:** Yeah.

**LATHROP:** So let's say I write three checks and they come up to \$1,400. Are they charging three misdemeanors or are they just charging them with one?

**SPIKE EICKHOLT:** Sometimes charged with two felonies and a misdemeanor. If it's, if it's \$1,500 or more-- I see what you're saying -- so say it's like the last--

**LATHROP:** If it's \$1,500 and they don't get to \$1,500--

**SPIKE EICKHOLT:** They're charging as a felony. They charge that as a felony. If they can aggregate the amounts--

**LATHROP:** If they aggregate it and get it over \$1,500. My question is what if there's three of them, but they don't get to \$1,500? They're still charging-- we're still doing the three misdemeanors, right?

**SPIKE EICKHOLT:** Right, that's right. The way it works, typically with felony cases, you charge-- it's, it's technical stuff, but they will prefer to always lead on the felony charge first because it starts in county court. When it's bound over to district court, you can add misdemeanors after the fact, so that regularly happens. If they can get to a felony, at least in Lancaster County, they start with a felony. You just got leverage. If you want to get them to pay restitution back under the threat of adding other charges or the promise to reduce this charge, you got to start high. As I said before in other contexts, 90-some percent of your cases-- plus are resolved by pleas. This puts more power on their negotiating side. And that might make some sense, I suppose, if you look at it from the victim's perspective, but I'd argue that they have enough leverage now because they can get-- Class I misdemeanors is zero to a year. That's a pretty significant hammer.

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**LATHROP:** Yeah and it's an interesting bill because there's pretty good arguments on both sides of this.

**SPIKE EICKHOLT:** It's--

**LATHROP:** Certainly I see it from the victim's perspective, which is, you know, you run down the street and you slam ten windshields and you get over \$5,000 or however many it takes.

**SPIKE EICKHOLT:** Right.

**LATHROP:** If you go into a car dealership, it's a felony. If you hit people one at a time out, out on the street where everybody parks on the street or in an apartment parking lot-- anyway, that's the kind of stuff we get over here in Judiciary Committee. We always have a good discussion and you're part of it almost all the time. Thanks for being here. Anyone else here to testify in opposition to LB104? Anyone here in a neutral capacity on LB104? Seeing none, Senator Friesen, you may close. As you get comfortable in the seat, let me-- let the record reflect that we have a position letter that is in support and we have no written testimony. Welcome back.

**FRIESEN:** Thank you, Chairman Lathrop. So listening to the discussion-- that was great. I kind of enjoyed being here. I, I come at it more-- when they talked to me about this bill, I looked at it more from a victim standpoint than whoever did it. I didn't care what age they were. It goes back to that personal responsibility. You did something. And let's make the picture a little bigger. Let's say they did 100 cars in one night. This gives that prosecutor some options. They don't have to do it. I, for one-- if I was one of those victims, I'm saying why didn't you prosecute my case? So should a prosecutor bring 50 separate cases to the court? I don't think that makes a lot of sense either and so suddenly, you're charged with 50 misdemeanor counts of whatever. Does that add up? Does the punishment fit the crime? And so I guess I looked at it strictly from the victim's standpoint and, and you can see that somebody-- and a whole block of cars, all these cars got damaged and they charge to prosecute this case over here and that's it. And you're saying what about me? You're just ignoring me. And so I guess that's where I feel that at times, if the cases are big enough, numbers are high enough, this should be an option. And again, I think there is too many times we are not looking from the victim's

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side and we're always saying that the perpetrator of these incidents-- ah, they were young, they were stupid, just out doing crazy stuff, but there are real consequences in life as you get older. Next crime is going to be that much worse. And so that's why I looked at it. I'm glad to answer any questions you may have.

**LATHROP:** Let's make sure Senator Pansing Brooks doesn't have one for you.

**FRIESEN:** You don't have to look.

**LATHROP:** I do. I do, believe me. Yeah, I don't see any. No, thanks for being here and thanks for introducing LB104. It's been a good, a good discussion.

**FRIESEN:** Thank you.

**LATHROP:** We appreciate it. That will close our hearing on LB104 and bring us to LB319 and Senator John Cavanaugh, change penalties for theft offenses. Senator Cavanaugh, welcome back.

**J. CAVANAUGH:** Thank you, Chairman Lathrop, and thank you, Judiciary Committee. It feels like it's been a long time. Good afternoon. Once again, my name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District of midtown Omaha and I'm here introducing LB319, which is to add a 15-year look-back period for enhancement of theft offenses. Basically-- well, this would apply to all theft defenses, but I like to use the example of shoplifting. So first-offense shoplifting is a Class II misdemeanor, carries six months. A second offense can be a Class I and then a third offense would be a Class IV felony. Those enhanced-- those are enhanceable regardless of whether that first shoplifting happened in 1990, second in 2005, and the third in 2020 or if all offenses happened in 2020. In practice, most repeat shoplifters go-- don't go long stretches without being rearrested. This bill will recognize the reality that if someone goes a long period without a law violation, that they are not as serious a threat to society as someone who commits multiple crimes in quick succession. There is precedent in Nebraska law. We currently have a 15-year look-back period for DUI offenses, which means a person is convicted-- if a person is convicted with a third DUI-- three DUIs decades apart, that would have each one treated as a first offense,

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while a person who is shoplifting for food at a grocery store once every decade and a half would be charged with a felony. LB319 represents a modest step in reforming this sentencing. I want to thank you-- the members of Judiciary Committee and I respectfully ask you to advance LB319 and I'd be happy to take any questions. Trying to be--

**LATHROP:** Questions for Senator Cavanaugh? I see none. Thanks for being here--

**J. CAVANAUGH:** Thank you.

**LATHROP:** --and your introduction. Anyone here to testify in support of LB319? I'll just say, while you're getting comfortable, that we-- I did-- we did make a little-- have a little fun with waiting on Senator Pansing Brooks and she actually did send something, but it took a while for it to go through the Internet. We should have talked to Senator Friesen about broadband while he was here.

**SPIKE EICKHOLT:** I'm sure she'll understand.

**LATHROP:** Well, let's hope so.

**SPIKE EICKHOLT:** Thank you, members of the committee.

**LATHROP:** Yes, welcome.

**SPIKE EICKHOLT:** My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB319. We want to thank Senator John Cavanaugh for introducing the bill. He explained what the bill does. It's pretty straightforward. This is what I would call a modest reform to our enhanceability crime statute. This is a smaller version of our three-strikes law when it comes to theft. If it's a third offense-- shoplifter offense, that could be charged as a felony, regardless of the dollar amount of the value for either of the prior offenses or the instant case and this limits the look-back period, so to speak, for prior convictions. I don't know how many cases it will really impact because like Senator John Cavanaugh said, many times when people are committing these subsequent or serial thefts, it's part of a drug addiction. They're sort of in it for a bad part of their life and they're usually pretty short in time, but you do have some instances where somebody has a real old-- I'm thinking of a case

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where a guy dished out on a cab driver-- a cab ride years ago, was charged with theft of services, was convicted and then got a subsequent shoplift that they enhanced with an older conviction. We already have the limit for prior convictions to-- for DUI offenses and it would make some sense to have this as well. We would urge the committee to advance the bill.

**LATHROP:** OK, any questions for-- Senator DeBoer.

**DeBOER:** Sorry, one quick question. You said that we have this lookout-- look-back scheme in DUI. Is there any other place in the law where we have this sort of thing?

**SPIKE EICKHOLT:** We don't have any limit for habitual criminal prior convictions so they can go back forever. We don't have it for-- we have enhanceable crimes in other contexts, protection order violations-- you heard domestic assault earlier. A lot of those haven't been on the books for even 15 years. A lot of those were passed ten years ago, 12-- well, maybe close to 15, but not many of them.

**DeBOER:** OK.

**SPIKE EICKHOLT:** This seems to be a recent trend, so to speak.

**DeBOER:** OK.

**LATHROP:** I don't see any other questions. Thanks for being here.

**SPIKE EICKHOLT:** Thank you.

**LATHROP:** Any other proponents of LB319? Anyone here to speak in opposition? None, anybody here to speak in a neutral capacity? Seeing none, Senator Cavanaugh, you may close.

**J. CAVANAUGH:** Unless there's any questions--

**LATHROP:** Anybody-- doesn't look like any. Senator Cavanaugh waives close. We did not have any position letters and we had no written testimony. We will close the hearing on LB319 and that brings us to Senator Machaela Cavanaugh. How many people are here to testify on LB187? Two? OK, you can call Senator Hunt too.

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**M. CAVANAUGH:** Sorry, I'm in the middle of another hearing. Good afternoon, Chairman Lathrop and members of the committee. I am Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h. I should have asked, is it OK for me to start?

**LATHROP:** I can't hear you.

**M. CAVANAUGH:** Is it OK for me to start?

**LATHROP:** Yes, yes, absolutely.

**M. CAVANAUGH:** Sorry. OK, I represent District 6, west-central Omaha, in the Nebraska Legislature. I'm here today to introduce LB187. I introduced LB187 to add language to the definition of sexual penetration. This change is needed to better address criminal sexual offenses that involve object manipulation. The current definition of sexual penetration as it relates to criminal sexual offenses does include object manipulation, but it is limited to object manipulation when it is done by the actor. Unfortunately, there are also instances where the actor, the perpetrator, is directing the sexual assault victim to manipulate an object either on or into themselves or the perpetrator-- or to the perpetrator. Our statutes do not adequately address this horrible situation, so as you can see, the language we are adding to the statutes would specifically include instances where the object manipulation is done by the victim at the request or direction of the actor. I was asked to bring this legislation based on cases that county attorneys have been involved with and there will be an attorney following me who would be able to tell you about how their experience in this area of law led to this proposed change. The defense attorneys are bringing a proposed amendment and I believe Mr. Eickholt will be bringing that and speaking to it and I support the amendment and I'm not sure if I'll be here to close, but I will take any questions if you have them.

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

**M. CAVANAUGH:** Great.

**LATHROP:** You will not be here-- you're waiving close?

**M. CAVANAUGH:** I will come back if I can.

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**LATHROP:** OK, well, it won't be long.

**M. CAVANAUGH:** OK.

**LATHROP:** OK, proponents of the bill may come forward. Good afternoon.

**TONIA SOUKUP:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. I would first ask if you can hear me? I know I can be soft spoken, so I'm trying to project--

**LATHROP:** You're doing fine.

**TONIA SOUKUP:** Thank you. My name is Tonia Soukup, T-o-n-i-a S-o-u-k-u-p. I'm the deputy county attorney in both Butler and Colfax Counties and I'm here to testify today in support of LB187 on behalf of the Nebraska County Attorneys Association. As Senator Cavanaugh stated in her introduction, as it relates to the definition of sexual penetration and utilizing objects, the current law only prohibits a person from using an object to penetrate the victim, but it does not prohibit a perpetrator from directing or forcing a victim into utilizing the object in any other sexual manner. The-- it may seem difficult to imagine that this scenario would exist, unfortunately, but it does, as our office in Butler County discovered when the Butler County attorney was assigned as a special prosecutor for a case out of another county in our district. In that case, an adult male had prepositioned his minor stepdaughter to utilize a sex toy or in this case, a fake penis that he referred to in his instruction to her as a strap on. He requested that she utilize that object on him. Had she done so, that contact would have resulted in that child engaging in an act of sexual penetration that would have consisted of her inserting that object into the anal opening of the adult at the request of direction of the adult. And had that contact occurred, the current definition of sexual penetration would have precluded our office from charging that adult with a criminal sexual offense simply because of the definition of the term in the statute of sexual penetration. It is our opinion that this omission from the legal definition amounts to a loophole in the law and we believe that it should be closed. I believe that there's little doubt that the act of directing or forcing another person, whether that be a child or an unwilling adult, to engage in this kind of sexual activity does constitute sexual penetration and would be equally traumatic to that victim, regardless of whether the



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object was used on them or if the perpetrator directed how that should be used. In any case, the perpetrator is using an object to make the victim engage in an act of sexual penetration. This bill would allow such a case to be analyzed on a consent analysis as opposed to precluding that consent analysis based on definitional limitations and would recognize that victims are often unable or unwilling or legally unable to consent to such activity and it is our position this, this activity should be included in the definition of sexual penetration. I thank you for your consideration of LB187 and I am happy to answer any questions you may have.

**LATHROP:** I got a question for you.

**TONIA SOUKUP:** Yes.

**LATHROP:** Does this only apply if there's some kind of penetration?

**TONIA SOUKUP:** This is a-- specific to the definition of sexual penetration, yes. There is second and third-degree sexual assault that encompasses sexual contact. That does not include penetration and that definition of sexual contact does already encompass a perpetrator causing the victim to contact the perpetrator [INAUDIBLE]--

**LATHROP:** That was going to be my next question. If this doesn't become law and that person that you've described that you were involved in this prosecution, if that person would have been successful in having this child use this object to penetrate this perpetrator, you still would have had things to charge him with, right?

**TONIA SOUKUP:** Maybe. It would have been pretty fact specific. We would have had to prove and have the child be able to tell us that he caused her to touch his, his genitals in some other way. Additionally, I believe there was a, a charge of child abuse and things of that nature considered, but, but there would have been nothing to specifically address a-- the act of sexual penetration.

**LATHROP:** OK, OK. I see Mr. Eickholt on the edge of his chair, so I'm sure we're going to--

**TONIA SOUKUP:** I'm sure, I'm sure he is.

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**LATHROP:** I'm sure we're going to get the point, counterpoint here in just a moment.

**TONIA SOUKUP:** Yes, certainly.

**LATHROP:** Any questions for this testifier? I see none. Thanks for coming down today, appreciate it.

**TONIA SOUKUP:** Thank you for your time.

**LATHROP:** Yeah, thanks for being there. Any other proponents? Seeing none, we will take opponent testimony. Oh, now he's shaking his head. No-- how about neutral testimony? OK. Welcome back.

**SPIKE EICKHOLT:** Thank you. Good afternoon. 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 Attorney Association in a neutral capacity. Following up on what Senator Machaela Cavanaugh explained in her introduction, that we did approach her and the County Attorneys Association with a concern that our association had and I'm having-- or at least you're being given a copy of an amendment that I did share with them and Senator Cavanaugh that we would ask the committee to incorporate into the bill and I think that Senator Machaela Cavanaugh said that she's in support of it. And what it would do-- on page 3, line 3 after the word "slight," correct with the word is, it would insert the phrase "performed in the actor's presence." The concern that we have with the bill as written is that this, this changes the general definition of sexual penetration that applies throughout different types of sexual assault, including statutory rape. I didn't immediately realize it until members on the committee who do a lot more of these kind of cases-- that's a common thing to do for kids that are admittedly in an inappropriate relationship, but to-- on FaceTime or social media somehow to sort of get involved in these sexting-type behaviors where the children, the young people generally, are touching themselves at the direction or suggestion of the others. I don't think that was the intent of the bill. We don't want to let people be charged with sexual assault, whether or not even actually in the physical presence of one another, and that's why we ask the committee to incorporate that language so there would be the requirement that the actor and the victim be in the same physical presence with one another during the penetration. And I'll answer any questions anyone has.

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**LATHROP:** We got to allow a bit of time for questions to come in. Otherwise with this amendment, you're OK? Criminal defense attorneys all right with this change?

**SPIKE EICKHOLT:** Oh, there were some on the committee that didn't really like it, but I think what you said before, it is consistent with the sexual contact definition in that it can be sort of both ways, so to speak, that makes a law violation to have sexual contact with one another. And I think consistent-- as amended, it would be consistent with that spirit where you can have penetration either at the direction or subjected to by the act or the defendant. That would make some sense, as long as it has the physical presence requirement. That was the biggest concern we had.

**LATHROP:** OK. All right, well you and the county attorneys agree. Any questions for Mr. Eickholt? I don't see any. Any other neutral testimony? Seeing none, Senator Cavanaugh is not here to close, so we'll take that as a waiver. Before we close out the hearing though, on LB186, there are two position letters, both proponent, and we have written testimony from two sources. One is Corey O'Brien with the Attorney General's Office, who is a proponent. Robert Sanford, also a proponent, with the Nebraska Coalition to End Sexual and Domestic Violence. With that, we will close our hearing on LB187 and that brings us to Senator Hunt and LB229. Senator, welcome.

**HUNT:** Thank you, Chairman Lathrop and members of the committee. It's nice to see you all, get out of our committees and see some other faces. My name is Senator Megan Hunt, M-e-g-a-n H-u-n-t. I represent District 8 in midtown Omaha, Nebraska. Today I was scheduled to-- or I am scheduled to introduce LB229, a bill to add gender identity to our hate crimes statute, which would provide for enhanced penalties for crimes motivated by someone's gender identity or perceived gender identity. This is the second time I've introduced this bill and I introduced it this year with a little bit of hesitation and I'm going to follow through with that hesitation because I am committed to reducing the number of system-involved and incarcerated people in Nebraska and I'm committed to interrupting the cycles of violence that are perpetuated by our prison system and I don't think that LB229 is compatible with that goal. So for that reason, I think I might actually try to withdraw the bill and I would ask the committee not to take any action on it. And I just want to say a few things for the

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record and for anybody watching about why it is that I would like to not pursue this legislation. A lot of advocates for a long time have argued that in order to seek justice for LGBTQ-plus people, we have to move away from seeking carceral solutions. We have to move away from seeking solutions that involve state-sponsored violence to the justice system and I agree with that. Persistent and systemic cycles of anti-LGBTQ-plus violence aren't going to be stopped by incarcerating more people for more periods of time. My goals of true social justice depend on building compassionate, fair, and understanding relationships with our different communities and to do that, I think that we have to challenge the established framework, the business as usual, in which we understand and respond to violence, especially as a state, including homophobic and transphobic violence. For that reason, I realize it's wrong to empower the state to commit more state-sanctioned violence. We have to think beyond the criminal legal system for workable solutions and I promise to do my best to ally with advocates and organizations that are already doing this work so that we can use my platform as a state senator to further these goals. I also know that many LGBTQ-plus people don't seek law enforcement assistance when they experience homophobic or transphobic violence. Sometimes it's because they're afraid of disclosure of their sexual orientation or gender identity. Sometimes they have a disincentive to report because of language barriers or because of their immigration status or participation in illegal economic activity such as sex work or simply the perception that police forces, which have historically persecuted queer communities, may not care, may not believe the victim, and may even respond with violence of their own. I brought this bill originally and for the second time this year because our hate crime statutes already include enhanced penalties for race, color, religion, ancestry, national origin, gender, and sexual orientation and so it stands to reason-- like, the gut check is there, that well, we should include gender identity there too so that it's completely encompassing of all LGBTQ identities. But perhaps this existing statute, while well-intentioned, is also misguided. I don't want to support any pursuit of justice that diverts resources away from programs and initiatives that address the root causes of poverty and inequality. So for that reason, I will no longer pursue this legislation. Thank you.

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**LATHROP:** OK. Well, thank you for that explanation too, Senator Hunt. We still have to go ahead with our hearing, however.

**HUNT:** Understood.

**LATHROP:** Yeah, but that's OK. Are you going to waive a close?

**HUNT:** I will waive closing. Thank you.

**LATHROP:** OK. Thanks, Senator Hunt. Are there proponents of LB229 that wish to be heard? Can you pull that chair out of the way? Thank you.

**VINCENT LITWINOWICZ:** Thank you, members of the committee.

**LATHROP:** Good afternoon.

**VINCENT LITWINOWICZ:** In, in concord with what Senator Hunt said, I'm fully willing to, you know, go along with what the community, LGBTQ community and the senator wish to do. However--

**LATHROP:** Could we have you state your name, though?

**VINCENT LITWINOWICZ:** Oh, yeah.

**LATHROP:** You're going to have to state your name and spell it for the record so we know--

**VINCENT LITWINOWICZ:** That's correct.

**LATHROP:** --for the transcript.

**VINCENT LITWINOWICZ:** My name is Vincent Litwinowicz, V-i-n-c-e-n-t L-i-t-w-i-n-o-w-i-c-z, and so this is about a 4:15 speech and--

**LATHROP:** How about we give you a little more time today?

**VINCENT LITWINOWICZ:** OK.

**LATHROP:** Go ahead.

**VINCENT LITWINOWICZ:** Thank you and it's kind of a prelude to Friday and-- OK, so using my gradual, lifelong, final, and complete acceptance and very recent public revelation of my own gender identity

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issues that I have experience for as long as I can remember, I would like to express my full support for LB229, which has changed in accordance with what the senator said. This bill is necessary as a segue to why LB229 is necessary. It feels good to release the tender-hearted and loving soul that I can only describe as largely feminine and it is not a fetish. This feminine feeling had been embedded deeply inside me and I would like to at last express myself outwardly in some ways accordingly. I only want to be the person I am naturally going to be. For example, as you can see and as I settle into the person that is me, I would like to at least sometimes wear clothing that would reflect my feminine nature because it feels good as an inward and outward expression of who I am. In other words, I actually in this way get to feel, reinforce, and show the world and myself who I am in some still borderline, but culturally acceptable ways and I'm not sure exactly of all-- well, it didn't really get printed in entirety. If you don't mind, I can pull out my phone or I can stop.

**LATHROP:** Well, I think we get the point. If you have any other comments or remember--

**VINCENT LITWINOWICZ:** No, we're good.

**LATHROP:** --we'd certainly be happy to listen.

**VINCENT LITWINOWICZ:** Yeah, we're good. OK, so that's fine. I, I didn't realize the senator had withdrawn it and so I kind of agree with her on, on that as well. But as far as I'm not the kind of person necessarily who can hold my tongue if I'm confronted with someone, even if I, if I verbally reduce them to rubble, which is possible, you know, there, there may be a price to pay for me. I would try to handle myself like an adult. You know, at times, it might be a problem. So with that, I will, I will just say thanks for listening.

**LATHROP:** Well, thanks for coming down here today. I think it takes a good deal of courage to come here and testify as you have today--

**VINCENT LITWINOWICZ:** Thank you.

**LATHROP:** --and we appreciate hearing from you.

**VINCENT LITWINOWICZ:** Thank you, members of the committee.

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**LATHROP:** Any-- I don't see any questions for you today, Vincent, but thanks for being here and for your participation in the process.

**VINCENT LITWINOWICZ:** Yeah, it's funny, I actually wrote it out and part of it got deleted, so we're good.

**LATHROP:** OK.

**VINCENT LITWINOWICZ:** Thanks a lot.

**LATHROP:** Thank you. Anyone else here to testify in support of LB229? Seeing none, anyone here to testify as an opponent? Anyone in the neutral capacity? Seeing none, that will close the testimony. We have ten possession letters, seven of those position letters are proponents, three are opponent, and we also have written testimony received this morning from Nate Grasz with the Nebraska Family Alliance. He is opposed to LB229, as is Marion Miner and the Nation-- Nebraska Catholic Conference. That will close-- that completes the record and closes our hearing on LB229 and brings us to our last bill of the day and that would be LB360 and our own Senator Pansing Brooks, who has her legislative assistant standing in today, given that she's in quarantine. Welcome, Chris.

**CHRIS TRIEBSCH:** Thank you, Chair Lathrop and members of the Judiciary Committee. For the record, I am Chris Triebisch, C-h-r-i-s T-r-i-e-b-s-c-h. I am here today to introduce LB360 on behalf of Senator Pansing Brooks, who is in quarantine and watching this hearing via NET. LB360 creates a "yes means yes" standard so that victims of sexual assault are better protected under the law. The "yes means yes" standard is also often known as affirmative consent. The senator previously brought this bill in light of the Me Too and Time's Up movements. Since the original bill, we were fortunate to work with the county attorneys who drafted this version of the bill. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity, according to Chandler Delamater with the Albany Law Review. Consent can be given by words or actions as long as those words or actions create clear permission to engage in sexual activity. Silence or lack of resistance in and of itself does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. This is exactly what this is-- what

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this bill is working to address. This bill is more than a definitional change. This bill is about empowering survivors of sexual assault who seek justice from their attacker. It does not change the intimacy of consensual sexual activity. Instead, it reframes the way our legal system will approach situations in which individuals did not give voluntary, conscious, and mutual consent in sexual encounters. Under this bill, consent is present when it is knowingly and voluntarily given either verbally or through overt actions. When there is no indication through words or conduct that someone is willing to engage in an intimate encounter with another, consent has either not been given or has been withdrawn. It is important to remember that consent can be withdrawn at any time if either participant feels unsafe, threatened, or violated. Regardless of previous or current relationships, consent must be present before engaging in sexual activity. In 2017, Montana enacted a, a law similar to the one before you today, as their statutes at the time did not account for victims who were unable to consent due to freezing during an attack. Missoula Deputy County Attorney Suzy Boylan has pointed out that offenders were able to take advantage of victims who neither said yes or no before Montana implemented their affirmative consent law. For those who may not think that this is a relevant problem, I want to take a minute to stress the importance of action on this, on this issue. Delamater from the Albany Law Review has stated it is-- "it is still the case in many jurisdictions today that a mere lack of consent is insufficient to establish rape." In fact, a constituent reached out to our office on this piece of legislation to express her support. She explained that as juror in a sexual assault case, her jury had trouble convicting the alleged attacker in the case due to the fact that the victim never said no, though she also never said yes. Consent is not passive. The current "no means no" standard presumes that when there is not a no, then there-- then that means there must be a yes. It implies that an individual, often a woman, is constantly consenting to have sex unless she is able to say no. We want to stress that this bill does not put the burden of proof on the person who has been accused. Bobbie Villareal, executive director of a Dallas Rape Crisis Center, has explained that, quote, rape is the only crime in which we turn the lens onto the survivor, the victim, and not onto the perpetrator. When someone gets shot, we don't even ask them why, why didn't you get away from that bullet, unquote. Right now, the burden of sexual assault falls squarely onto the shoulders of the victims of this terrible



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crime. This bill can lead survivors to come forward with the knowledge that they will be protected under better standards for consent and will not have their cases dismissed because they were so brutalized, unconscious, or threatened that they could not say no. Finally, for those of you that may be struggling with this different way of approaching consent, I want to refer to a video the senator's cousin once sent her. Consent is as simple as tea. If you offer someone a cup of tea and they say yes, that would be wonderful. Then you could give them a cup of tea. If someone did not want a cup of tea, you would not force them to drink it. Sometimes people even change their mind when they say they want a cup of tea. And while it could be annoying, you should not force them to drink the tea. Also, there is no, there is no way someone who is unconscious could answer whether or not they want a cup of tea, so there is no point in even making them tea. Unconscious people do not want tea even if they said they did earlier. Just because you made someone tea last week, that does not mean they would want it next time. If you can understand when someone wants tea, then we should be able to do the same with sex. Senator Pansing Brooks asks you to advance LB360 to General File.

**LATHROP:** OK. Thanks for being here, Chris. We appreciate your-- that introduction. We don't really have questions for you or can so we'll go on to proponent testimony. Anybody here to testify as a proponent? Good afternoon. Welcome.

**CHRISTON MacTAGGART:** Good afternoon, Chairperson Lathrop, members of the committee. My name is Christon MacTaggart from-- I'm from the Women's Fund of Omaha. Spelling, C-h-r-i-s-t-o-n, last name, M-a-c-T-a-g-g-a-r-t. Women's Fund is here to testify in support of LB360, clarifying the definition of without consent for instances of sexual assault to reflect more trauma-informed understandings of victim response to violence. Consent to engage in sexual contact and penetration should not be based upon the absence of no. Common responses to violence and trauma include fight, flight, or freeze responses. However, recognition of a freeze response is largely absent in our current statute and definitions of consent. So in many cases, survivors of sexual assault want to say no or resist, but could not because they froze. It's a response that's called tonic immobility and in this biological trauma response, victims experience involuntary paralysis. It's the same trauma response common in other scenarios such as soldiers during war or animals who play dead when faced with a

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predator threat. They're conscious, they know what's happening, but they physically cannot speak or move their body. It includes cases where there are no other verbal threats or physical violence beyond the rape and it often occurs early and before the initiation and physical violence, when a victim perceives what's coming, but before they have the ability to offer verbal or physical defense. Much of the current research on neurobiology around trauma and tonic immobility has been done or has been derived from sexual assault. And the research is consistent in that between 50 to 70 percent of sexual assault victims experienced tonic immobility during a sexual assault. Victim service providers and national best practices already acknowledge the research. They've long provided that sexual acts are assault unless there's affirm-- affirmative and enthusiastic physical or verbal consent. Survivors of sexual assault experience shame or self-blame for violence they've endured and statutes that require them to identify that they verbally or physically said no or resisted validates that stigma. We believe that the current definition or the-- excuse me, the definition of assault in this bill is more in line with the science and we respectfully urge the committee's support of LB360 and advancement to General File. I'm happy to answer any questions if you have any.

**LATHROP:** OK. Any questions for Ms. MacTaggart? I don't see any, but thanks for being here. We appreciate hearing from the Women's Fund. Next proponent. Good afternoon.

**BRODEY WEBER:** Good afternoon.

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

**BRODEY WEBER:** Thank you for having me, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Brodey Weber, that's spelled B-r-o-d-e-y W-e-b-e-r, and today I'm speaking in favor of LB360. As I've mentioned over the past few years, this bill has been personal to me and I've been working closely with Senator Patty Pansing Brooks and her very talented staff to pass an affirmative consent standard like Montana's since 2017. There's a reason why I am so passionate about this bill. I attended the University of Nebraska-Lincoln from fall of 2016 to the spring of 2020 and earned a degree in communications studies. I was fortunate enough to have a strong support system in college and in the spring of 2017, I had a

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dear friend who was sexually assaulted by an acquaintance while attending a social event off campus. The next morning, I woke up around 5:00 a.m. to a phone call. This was not a normal call. My friend, for the first time since I had known her, sounded utterly broken. I knew that something was wrong. Later that day, she had to undergo multiple tests and interrogations that I would not wish upon my very worst enemy. When I asked her why she was so hesitant to go to the authorities in order to seek justice, she replied because she did not technically ever say no while the assault was occurring. I asked her if she had said yes and she had not. She was unable to say anything due to the state of shock. Not only was her voice unheard, but she was failed by our justice system. I find this loophole in our justice system both deeply disturbing and unacceptable. I'm not just here, though, for my friend. I'm here for every single survivor whose silence is coerced by the violence of an assault and then a system that fails to fight for them. It is not too much for us to expect that individuals who are engaging in intimate activities reach a clear and voluntary agreement to do so. It is a change, given our history with the "no means no" standard, but this is actually quite simple. For example, when you vote on a bill, abstaining is not the same as a yes. In order to actually pass a bill, you have to clearly say yes. According to Chandler Delameter of the Albany Law Review, the current sexual assault standard places the burden on victims to specifically note their unwillingness to engage in sexual activity. He later goes on to point out, as Chris mentioned, that in many jurisdictions, the lack of consent is insufficient to establish rape. What's good about affirmative consent is it means both partners must express their wishes in a way that other partners can grasp. Senators, I want to leave you with this last thought. Every day that you walk these halls, you have the incredible opportunity to make history. I'm jealous of you. Today, you get a choice. You get to choose if you are on the right side of history and fight for survivors and their justice or to maintain a system that leaves far too many voiceless and I have confidence in all of you to make the right choice out there. Thank you for your time and I welcome any and all questions about this subject.

**LATHROP:** I do not see any questions at this time, Mr. Weber, but thanks for being here.

**BRODEY WEBER:** All right. Yes, thank you so much. Have a great rest of your day.

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**LATHROP:** You do the same. Any other proponents? Sorry.

**MEG MIKOLAJCZYK:** No, that's fine.

**LATHROP:** I got a late text or a text came in from Senator Pansing Brooks. There's a delay here and it's, it's not that important, but anyway--

**MEG MIKOLAJCZYK:** I'm OK.

**LATHROP:** --that's not your problem.

**MEG MIKOLAJCZYK:** That's fine.

**LATHROP:** Welcome.

**MEG MIKOLAJCZYK:** Thank you.

**LATHROP:** You may proceed.

**MEG MIKOLAJCZYK:** Good afternoon. Chairperson Lathrop, members of the Judiciary Committee. My name is Meg Mikolajczyk, M-e-g M-i-k-o-l-a-j-c-z-y-k. I'm the deputy director and legal counsel of Planned Parenthood here in Nebraska and I'm freely giving my informed, enthusiastic, and specific support of LB360. Thank you, Senator Pansing-- thank you, Senator Pansing Brooks, wherever you are right now, for continuing your advocacy on this issue and for introducing this bill. Planned Parenthood's vision is one where communities recognize sexual and reproductive rights as basic human rights and where every person has the opportunity to lead a healthy, meaningful life and this vision only becomes reality if people have full bodily autonomy, the right to make decisions about what is and is not right for that person and their body at all times. Planned Parenthood supports LB360 because this bill returns bodily autonomy and respect to all people. It is best practice in sexual reproductive education and healthcare. The bill ensures that all, all persons involved in sexual activities are willing participants throughout the entire experience. No one should be presumed to be constantly consenting to sexual activity, so a culture shift towards expecting to hear yes before moving forward and knowing that your partner won't make further advances until it is spoken is crucial. It's not enough to obtain consent at the beginning of the sexual experience. Both people reserve

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the right to terminate the activity at any time and this ensures that all participants are able to set boundaries and that those boundaries are respected. Seeking permission instead of assuming it is exceptionally important in the many different ways power imbalances present themselves in potential sexual relationships in our country. When there is a power imbalance between two people, one person may fear saying no or actively resisting. It may negatively impact their entire career, their education, their job, their family, and so on, so requiring the initiator to, to receive affirmative approval restructures that power dynamic and allows people to actively set their boundaries. Shifting from no means no to yes means yes as a framework may have some challenges at first. It's hard for us to all sort of shift from what we've learned growing up. The public will need a reeducation in sexual relationships. In fact, one in five college students currently think that as long as someone has not-- or as long as someone has not said no, that they've consented. But just because this bill requires new thinking, that's not a reason to not embrace this idea and in fact, I would actually say that's evidence that we do need to do this shift because that's not OK. Affirmative consent leads to healthier, more fulfilled relationships and it also makes for a more sex-positive community. It may lead to more open discussion about potential risks like STDs and pregnancy and it also challenges stereotypes like the idea that rape is a women's issue. Imagine a world where instead of grilling a sexual assault survivor on the witness stand about what she's wearing, how hard she resisted, or whether or not she audibly said no, these questions were posed to both people. Did you ask? Did they say yes? Thank you.

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

**MEG MIKOLAJCZYK:** Thank you.

**LATHROP:** Thank you. I should-- before the next person comes up. You're fine, thanks. I should say that Brodey Weber, because-- you, you, you were in Senator Pansing Brooks' office at one time, right?

**BRODEY WEBER:** Yes.

**LATHROP:** OK and you worked on this issue for a long time. Senator Pansing Brooks, I know, is completely frustrated that she can't be

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here to express her appreciation for your work on this issue, so on her behalf, thanks for--

**BRODEY WEBER:** Thank you.

**LATHROP:** --thanks for being here today and all the work you put into this issue. Now we will take the next proponent. Good afternoon.

**ABIGAIL COREN:** Hello. My name is Abigail Coren, spelled A-b-i-g-a-i-l C-o-r-e-n. I passed out a fuller testimony, but I'm, I'm just going to do--

**LATHROP:** That's fine.

**ABIGAIL COREN:** --a little bit more consistent-- or smaller. I am here today to testify about my daughter's experience to show why LB360 is needed. A little more than two years ago, my daughter was viciously raped in our basement while the rest of the family was home and asleep. She was lonely and chatting with a young man in high school who had heard salacious rumors about her. This older boy was a football player and a wrestler at his high school weighing 220 pounds. My daughter was 13 years old, depressed, and weighed 100 pounds. My daughter did initially invite her rapist over to our house with the intention of having sex with him, but she did not find him attractive and did not enjoy how he was treating her and told him to stop. After he left, my daughter texted him to say that he raped her. He responded that she was a liar and a slut. I called the police. We had a report taken. The officer took samples of her rapist's DNA from the carpet and couch. He took her phone. We then went to Bryan West to have the SANE kit taken. Her entire body was examined and photographed. Her clothing was taken away. When I asked the officer taking the report about Nebraska law and whether consent can be withdrawn after initially being given, we were told that no means no and the law, and the law supports that stance. Everyone told us they were sorry that she went through such an awful experience and that they believed what she said happened to her. However, the way that our experience panned out proved this is not true. We were advised to go to the Child Advocacy Center to have an interview recorded by the police about what happened to my daughter. When I asked the advocate if I needed to hire a lawyer, I was told it would probably be unnecessary for me to do so since the interests of the state aligns with our interests. So we

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waited for the police to do their job and for our day in court. That they never came. Five months after my daughter was raped, the child advocate on our case informed me that the investigating officer would not be recommending charges against my daughter's rapist. I contacted the officer who made this decision and asked why he wasn't going to arrest this young man. I was told that since his parents hired a lawyer, there was no way to get a confession that he committed rape. I asked why the SANE kit and my daughter's recorded testimony didn't serve as enough evidence and was told that the SANE kit only proves that she had sex. And without being able to interview the young man, he was unable to prove that it happened as she said, since there were no witnesses. I asked if this is the same when a person is assaulted and develops a black eye. Does the perpetrator need to confess to the attack if no one witnesses it? The answer I was told was that the physical evidence of the black eye is enough evidence to arrest the aggressor, but in the case of rape, it is a "he said, she said" situation. And if he refuses to say anything, there is not enough evidence to convict, convict. I'm sorry, there's a red light.

**LATHROP:** Let's see if there's any questions for you. We do have your testimony. We can read through that as well. Any questions for this testifier? I don't see any at this time. Thanks for coming down and sharing--

**ABIGAIL COREN:** OK.

**LATHROP:** --your family's experience. It's not just your daughter, it's your whole family, isn't it?

**ABIGAIL COREN:** Yeah, thank you.

**LATHROP:** Yeah, thanks. Anyone else here as a proponent of LB360 who wishes to be heard? Anyone here as an opponent?

**SPIKE EICKHOLT:** Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing in opposition to LB360 on behalf of the Nebraska Criminal Defense Attorneys Association. Anything I say is not meant to somehow endorse anything or prove anything that's been done to anybody that's improper, particularly the people who are here today in this same room with me. This bill has been introduced before in different versions and we've

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opposed it before. This is a little-- less objectionable to us, but after some discussion, our association decided to oppose it. I understand what the proponents are saying, that they want to move to a "yes means yes" standard, but I'm not sure, when you look at the actual written proposed language, it does that. If anything, it adds some uncertainty to the existing law, which I would concede is pretty well settled against a "no means no" presumption. I've had several sexual assault cases where our defendant people have been found guilty and not guilty. I've never, ever argued she didn't say no as a defense. That's not a valid defense. Consent and lack thereof can be proven by all kinds of evidence, circumstantial and direct. The specific concerns that we have about LB360 is the language that is on pages 3, 4, and 5 that references that same phrase, whether sexual penetration was done without consent may be inferred on all the surrounding circumstances, etcetera. That phrase is kind of odd because it almost reads like the standard jury instruction for inferring intent or mens rea. And it's something that the court would give in all kinds of criminal cases, maybe even civil cases, when a jury is asked to make a finding regarding her mental state. But the concern that we specifically has [SIC], it only references without consent. In other words, it, it seemingly restricts evidence that might relate to consent in all the surrounding circumstances and I think to make it balance, it should say consent or without consent on those three portions that I tried to reference. Many of these cases do come to us "he said, she said" type thing. There's-- nothing in the bill is going to necessarily resolve that. In other words, even if she said no, he's going to claim that she said yes and that's ultimately up to the fact finder to decide. And I don't mean to say that coarsely or to endorse that, I'm just describing a reality of this type of human conduct. Many times, particularly with young people who just meet, things aren't spoken verbally. These things are incidental. Alcohol is often involved and I, I still think that having an arm's length, contractual-type agreement put in statute is really going to capture and accurately provide for that kind of interaction among people. So I'll answer any questions if anyone has any.

**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Mr. Chairman, and thank you, Mr. Eickholt, for being here today. I, I, I wanted to get your thoughts. I-- in past legislation that Senator Pansing Brooks has brought towards this end,



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I, I would have agreed to you with the objection that you can't have some sort of contractual obligation for consent. It's just not realistic, but where are you seeing that in LB360? Because I'm not.

**SPIKE EICKHOLT:** That's probably fair. I don't-- that's actually not in the bill, but I was responding to the proponent testimony.

**SLAMA:** OK, well--

**SPIKE EICKHOLT:** I was just--

**SLAMA:** --I think it's important that we stick-- I, I understand that the proponent testimony has taken it in a direction that's not necessarily in the meat of the bill and I think it's important, especially since Senator Pansing Brooks isn't here, that we stick with what the core of the bill is on paper, not necessarily what the overarching intention might be with the legislation, so--

**SPIKE EICKHOLT:** That's a valid point.

**LATHROP:** So on page 3, on page 3, line 21, it says, "the victim need only resist, either verbally or physically, whether actively or passively." I'm not sure, I'm not sure how you establish resistance passably.

**SPIKE EICKHOLT:** And that's, that's another area that we are concerned about. I was going to mention that, but thanks for pointing it out. That's, that's true and, you know, so many times you just have two people there in an intimate moment. Things aren't discussed in these situations oftentimes and maybe they should be, but that's a greater societal thing beyond maybe the criminal code or certainly this bill.

**LATHROP:** OK. Any other questions, thoughts, comments? I see none. We certainly understand the issue here, which is so often these cases come down to just two people who are alone and the idea that you can-- the person that commits the, the sexual assault always says I had consent, right? I mean, that's the defense every time and the person who is the victim says I did not consent. In fact, I said no and get out of my apartment, whatever it is, and it just, it just comes down to a belief thing. Who does the fact finder believe? It's a really tough, tough, tough spot to be in for a prosecutor and a tough spot to be in for a victim.

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**SPIKE EICKHOLT:** Yes, sir.

**LATHROP:** I don't think that changes with the bill, however, unless somebody is recording the whole thing, in which case you got evidence of it, but it's still going to be a I didn't say yes versus I said no. I don't know. I-- these are really, really tough cases for prosecutors, I'm confident, and that's why a lot of them never get filed, right? Victims don't want to go through it.

**SPIKE EICKHOLT:** I can't speak for them, but I think that's what some-- I can't speak for the prosecutors. That wouldn't be fair for me to do that.

**LATHROP:** Well, I, I certainly understand what-- the goal of this bill and I appreciate it too. Anyone-- any other questions for Spike? Seeing none, anyone else here to speak in opposition? Anyone here to speak in a neutral capacity? Seeing none, there is no close when the senator is unavailable under these circumstances, but the record, before we close the hearing, will reflect that we have seven position letters, six are proponent and one is in opposition. We do have two submissions this morning by way of written testimony. The first from Michelle Weber representing the Nebraska County Attorneys Association and the other Elena Salisbury, also a proponent, speaking on her own behalf. And with that, we will close our hearing on LB360 and that will end our hearings for the day. Thank you and we'll see you all back here tomorrow at 9:30 a.m.