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LATHROP: If you don't mind-- if you don't mind, we'll, we'll get started. Good morning and welcome to the Judiciary Committee. My name is Steve Lathrop and I represent Legislative District 12 in Omaha. I also chair this committee. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, is complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you to consider taking advantage of 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. We will be following COVID-19 procedures this session for the safety of our committee members, staff, pages and the public. We ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you enter the hearing room when necessary for you to attend the bill hearing in progress. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between bills to allow time for the public to move in and out of the hearing room. We request that you wear face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant at Arms, who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability of an overflow room this year because of the HVAC, so 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 the following four requirements must be met to be on the committee statement. First, submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 here in the Judiciary Committee hearing

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room. Number two, individuals must present their written testimony in person and fill out a testifier sheet. Three, testifiers must submit at least 12 copies of their testimony. And four, testimony must be a written statement no more than two pages, single-spaced or four pages double-spaced in length. No additional handouts or letters from others may be included. This written testimony will be handed out to each member of the committee during hearing, during the hearing and will be scanned into the official transcript provided you meet those four requirements. And as always, persons attending public hearings have an opportunity to give verbal testimony. On the table inside the doors, you'll 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 a bill. This sheet will be included as an exhibit in the official hearing record. If you're not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12 noon the last workday before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or delivered to the Chair's 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. Proponents will have 30 minutes to present their testimony and opponents will have 30 minutes. And finally, we will hear from anyone in the neutral capacity. We will finish with the closing statement by the introducer, if they wish to give one. We will ask you to 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 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. When the red light comes on, we ask that you wrap up your final thought and stop. A couple more things, as a matter of committee policy, we'd like to remind everyone use of cell phones and other electronic devices is not permitted in the hearing room. Please check

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your cell phone and make sure it's in the silent mode. Also, no outbursts or applause in the hearing room. We have gone paperless in the Judiciary Committee, so you'll notice senators using their laptops to pull up documents and follow along with each of the bills. They're not horsing around and looking at Facebook, but actually reading bills and comments from the public relative to each bill. Finally, you may notice committee members coming and going. That has nothing to do with how they regard the import, importance of the bill under consideration. But senators may have bills to introduce in other committees or have other meetings to attend to. And with that, we will have the committee members introduce themselves, beginning with Senator DeBoer.

DeBOER: Good morning, everyone. My name is Senator Wendy DeBoer, I represent District 10, which is Bennington and parts of northwest Omaha.

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

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

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

LATHROP: Assisting the committee today are Laurie Vollertsen, our hardworking committee clerk; as well as Neal Erickson, who I guess also works hard, one of our two legal counsel. I'm not sure he works as hard as Laurie does, but we're really, really indebted to Laurie and my staff for all the work and the time they put in to put all these hearings together and, and organize everything as they have done this session. Our pages this morning are Evan Tillman and Mason Ellis, both students that UNL. And with that, we will begin our hearings today with LB49. Senator Matt Hansen, welcome to the committee.

M. HANSEN: Thank you. Thank you and good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26, which is in northeast Lincoln. I'm here today to introduce LB49, which would reduce the punishment for use of tobacco or nicotine product by someone under the age of 21 from a Class V misdemeanor to an infraction. As you know, in

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the last few sessions we've raised the age of the purchase and use of tobacco and nicotine products from 18 up to 21, a policy which I supported. What I did not fully appreciate at the time, though, was this means underage use of tobacco was a misdemeanor. Of course, this means a number of individuals could then be charged with a misdemeanor for products it would have been legal for them to possess just a few months prior. Further, those of you who were familiar with the criminal statutes will know that for first offense possession of marijuana less than an ounce, the punishment is an infraction, not a misdemeanor. To me, it is bad policy to charge a higher class of crime for use of a tobacco product than for possession of marijuana, which is one reason I introduced this bill. In our statutes, infractions are criminal sanctions less than a misdemeanor, which is important in circumstances such as background checks where individuals might have to disclose a misdemeanor, but not an infraction. But this is one area where our statutes could be more consistent. With that, I will close and be happy to take any questions from the committee.

LATHROP: OK. I don't see any-- pardon me. Senator Slama.

SLAMA: Sorry, hold on. I just wanted to drive this point home. So a 19-year-old gets caught with a pack of cigarettes, he gets charged with a misdemeanor, can be charged with a misdemeanor. But if he's got a baggie of marijuana, that's just an infraction?

M. HANSEN: As long as it's less than an ounce.

SLAMA: As long as it's less than an ounce.

M. HANSEN: Yes.

SLAMA: Wow. Thank you for bringing this bill.

M. HANSEN: You're welcome.

LATHROP: Look what you started. OK, Senator Hansen, thanks.

M. HANSEN: Thank you.

LATHROP: Are you going to stay to close?

M. HANSEN: Plan to, yes.

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LATHROP: OK, perfect. We will begin with proponent testimony. So if you're in favor of the bill, you may come forward.

SPIKE EICKHOLT: Thank you. Good morning, members of the committee, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB49. We want to thank Senator Matt Hansen for bringing the bill. The bill is straightforward. It does reclassify the sanction for someone under the age of 21 being caught with cigarettes or nicotine devices from a Class V misdemeanor to an infraction. The penalty for a Class V misdemeanor is zero to \$100 fine, and the penalty for a first offense infraction is a zero to \$100 fine. So the immediate difference is not all that significant, but as Senator Matt Hansen explained, it is a misdemeanor conviction if you're found guilty for this. And some employment job applications will ask about misdemeanor convictions. Sometimes if somebody is charged with another misdemeanor or a different misdemeanor, they may be eligible for a diversion type of program if they have no misdemeanor convictions prior to that. So what happens a lot of times is if a child or a kid is caught with something like this, they'll just plead to it, get a fine, but then they've got that check on their background. And then if they get in a little more serious trouble, they can't have that later serious case dismissed. For the reasons that Senator Slama asked, this would bring some consistency in the law and we would encourage the committee to advance the bill.

LATHROP: OK, Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Eickholt, for appearing. I'm not, I'm not an attorney. So if you're charged today with a misdemeanor, Class V misdemeanor, do I have to actually go to the courthouse? Do I have to appear?

SPIKE EICKHOLT: Generally, you can, if, if the officer will cite you and allow for what they call a plea by waiver, you can just like you do a traffic ticket, waive your appearance. But generally in a misdemeanor, you have to appear in court.

BRANDT: What about an infraction?

SPIKE EICKHOLT: An infraction. If it's a traffic infraction, generally, you can just plea by waiver, where you don't actually have

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to go to court. If it's an infraction for marijuana, generally, the officer will set a court date on the citation and the prosecutors will request that you appear in court.

BRANDT: So this really should save some court time along the line?

SPIKE EICKHOLT: I think so.

BRANDT: OK.

SPIKE EICKHOLT: Ironically, you can demand a jury trial on a misdemeanor charge, which we don't always do. But if I have somebody charged with a Class IV or a Class V misdemeanor and they've got a more serious misdemeanor, I'll file a written demand for jury on everything. And you could technically do that on a minor misdemeanor.

BRANDT: So as a--

SPIKE EICKHOLT: No one does, but you cannot do it on an infraction.

BRANDT: So as a working defense attorney, somebody has got a bad smoking habit and they get caught and, and I do think short-term here, you know, there's going to be a bunch of people that were 19 that are 20 now, but eventually this would work itself out because the law is 21. So what happens to an individual that accumulates six or seven misdemeanors? Is that, does that cause any harm down the road?

SPIKE EICKHOLT: Well, it does, because you see a lot of people pick up minor charges like that. They get an MIP, they plead to it. They get caught with tobacco, they plead to it. They get a marijuana charge and they plead to it. And the immediate consequence is not that significant. For most of those minor things, they're just going to get fines. But you hear from some of those people when they appear on these set-aside type bills and these record sealing bills, because they have these things that they get on their record and then they grow out of it or they want to move on and they've got accumulation of convictions on their record they just want to resolve. An infraction is a type of, is somewhere between maybe a misdemeanor and a parking ticket. It's a type of quasi-criminal thing, but it's lesser, it's a lesser mark on your record. And I would argue that it makes some sense to have that lesser strike against someone, because as, if you look for particularly jobs in the health care industry or licensing jobs,

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they'll have these prohibitions on criminal records or more than one
or two misdemeanor convictions or really of any kind.

BRANDT: All right. Thank you.

LATHROP: I see no other questions. Thanks for being here, Mr.
Eickholt. Other proponent testimony? Seeing none, we will take
opponents to LB49, if any, if there be. Anyone here to testify in
opposition?

***JULIE ERICKSON:** Members of the Judiciary Committee: The American
Cancer Society Cancer Action Network (ACS CAN), the nonprofit,
nonpartisan, advocacy affiliate of the American Cancer Society,
appreciates the opportunity to provide written testimony on LB49. My
name is Julie Erickson and I am testifying on their behalf as a
registered lobbyist. ACS CAN advocates for public policies that reduce
death and suffering from cancer including policies targeted at
improving the health of our state by reducing tobacco use. At this
critical moment with people focused on protecting their respiratory
health, we must do everything in our power to keep our communities
healthy and safe. Although LB49 aims to reduce the penalty by
individuals under the age of twenty-one, youth purchase, use, or
possession (PUP) laws are not an effective approach to reducing youth
tobacco use and inappropriately shift the blame for underage tobacco
use from the tobacco industry and retailers, to young people. Studies
have shown that PUP laws do not curb teen use of these deadly
products. This is a concern as it could lead to targeting of the youth
as well as profiling in rural and minority neighborhoods where tobacco
retailers tend to be more densely populated. This can also serve as a
distraction for stopping retailers who are illegally selling tobacco
to those under 21 in the first place. It is better to focus the
efforts of enforcement on retailer compliance checks. Tobacco
companies have a history of supporting PUP laws as alternatives to
other laws that would produce greater declines in youth smoking. Many
youths are addicted due to marketing tactics by the industry, making
it difficult for them to quit, and research shows that penalizing
youth could deter them from seeking support for cessation services.
What has been proven effective is a dedicated enforcement entity
conducting active enforcement, including graduated fines for retailers
when in violation with potential for license suspension and
revocation, licensing of all retailers, one or two unannounced random
compliance checks at each retailer per year with more checks for

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retailers found out of compliance, and signage. Increased countermarketing that can protect kids from tobacco industry appeals is a critical aspect of state comprehensive state tobacco control programs. This type of media effort is needed to counteract the \$62.8 million per year that tobacco companies are spending to market cigarettes and smokeless tobacco alone in Nebraska not including their other deadly and addictive products. Funding is needed to negate the influence Big Tobacco's marketing has on youth. We could significantly decrease these costs with the continued investment into Tobacco Free Nebraska. Thank you for the opportunity to comment on LB49. We ask that this opponent testimony be included in the official record for the hearing for LB49. Thank you.

LATHROP: Anyone here to testify in a neutral capacity? I know, I didn't ask. Senator Hansen, you may close. We do have for the record, we do have two position letters, both of them proponent. No, no, none of the position letters are in opposition. And we do have written testimony from Spike Eickholt with the ACLU, and also Julie Erickson, the American Cancer Society Action Network, has offered written testimony in opposition. Senator Hansen.

M. HANSEN: Thank you, Chairman Lathrop. And thank you, members of the committee. To talk about the letter in opposition, it's my understanding that the Cancer Society is against criminalizing underage possession because I think it shifts the blame from the-- to basically children. And so I think they're opposed to kind of the existing statute, changing the existing statute in the sense that they would like it just to be a straight out repeal. So that's how I understand their testimony. It's not nec-- it's not necessarily my change in particular, it's the overall sentencing structure. With that, as we've talked about, you know, a lot of people get this ticket, it, you know, looks and kind of feels like a parking ticket. You know, you pay a hundred dollars and it's gone. And then, you know, four or five years down the road, all of a sudden you dinged in the background check and says that you have a misdemeanor. And it's something that you might not have fully appreciated, you might not have fully had the context for, for why it's going to be problematic down the line. So shifting it to infraction, the penalty, the penalty, is still the same in terms of the actual monetary fine. So it's still a, you know, a disincentive, a penalty for doing it, but it's hopefully less long-term consequences for what I think we all can

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recognize is a pretty minor thing. With that, I'll close. Happy to
take any questions.

LATHROP: Any questions for Senator Hansen? I don't see any.

M. HANSEN: Thank you.

LATHROP: It's unfortunate that letter was in opposition and not
neutral, given, given their concern and the prospect of this moving to
consent calendar, anyway.

M. HANSEN: We'll work on it.

LATHROP: That's the way it works. OK, thanks, Senator Hansen.

M. HANSEN: Thank you.

LATHROP: Our next-- that will close our hearing on LB49 and bring us
to LB58. I should have done this on the last bill. Senator Pahls, you
may come forward to introduce LB58. How many people are here to
testify on this bill? It's like two, so you can alert Senator Wayne.
Senator Pahls, welcome to the Judiciary Committee.

PAHLS: Thank you. Believe it or not, it's a long walk from Revenue to
here; and my legs have a hard time taking it because of my past
experience with polio.

LATHROP: Well, we're happy to have you here.

PAHLS: Thank you. Good morning, Chairman Lathrop and members of the
Judiciary Committee. My name is Rich Pahls, R-i-c-h P-a-h-l-s. LB58 is
intended to simplify the process of notifying the property owner in
the case of a lien or a special assessment imposed by any city or
village. Currently, a city or village must send affected property
owners a full publication of notices through the mail. This cannot--
sometimes it's going to be-- amount to 20 or more pages. In case of
small liens, the cost of postage often outweighs the value of the
proposed assessment. LB58 would provide for an alternative process,
which would forgo sending a full publication notice. Instead, the
property owners would receive a notice containing the amount owed, the
date due, and the date the Board of Equalization meets in case of an
appeal. And I have two proponents following me. And the interesting
thing is I, in my past life, I've worked with both of them, one from

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the city of Omaha and one that I sat on the chair of government. So,
you know, the world does follow you so you be careful whatever you do
in life. I will answer any questions that you have.

LATHROP: Any questions for Senator Pahls? I don't see any. Are you
going to stay to close?

PAHLS: I'll stay for just a little bit--

LATHROP: OK.

PAHLS: --because I do have a couple of friends here.

LATHROP: OK, good. Good, good.

PAHLS: Here in the audience.

LATHROP: Well, maybe behind this desk, too, by the way. Well, we'll
begin with proponent testimony.

ELIZABETH BUTLER: Members.

LATHROP: Good morning and welcome.

ELIZABETH BUTLER: Good morning. My name is Elizabeth Butler,
E-l-i-z-a-b-e-t-h, Butler, B-u-t-l-e-r. I am the city clerk for the
city of Omaha and I'm here in support of LB58. Just to add to Senator
Pahls's remarks, our Board of Equalization met this past Tuesday and I
submitted the publication that was included with that mailing. We
assessed over 1,500 properties, which resulted in an 18-page
publication document requiring us to use bigger envelopes and pay
higher postage. This bill would allow us to place that publication on
our website. Any help to modernize and improve this process would be
greatly appreciated. Happy to answer any questions.

LATHROP: Senator Brandt.

BRANDT: Thank you, Ms. Butler, for testifying today. Does this bill
affect the publication of things in the newspapers?

ELIZABETH BUTLER: It will not.

BRANDT: OK. Thank you.

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LATHROP: That was going to be my question too. So normally, if you do a special assessment, somebody doesn't pay it. This would be if you came and shoveled my walks because I didn't do it in time or you replaced my sidewalk, something like that.

ELIZABETH BUTLER: Correct.

LATHROP: Something that you're going to tax my property individually for, am I right?

ELIZABETH BUTLER: Yeah.

LATHROP: And the process is what? You send a bill and then they have a chance to pay it.

ELIZABETH BUTLER: Correct.

LATHROP: And then if they don't pay it, then we go through this process of filing a lien.

ELIZABETH BUTLER: Yes.

LATHROP: That lien process will still require that you publish something in the Daily Record.

ELIZABETH BUTLER: Correct.

LATHROP: But now you'll just send a notice that it's-- that it's happened and that it's been published and you don't have to send them a whole bunch of other stuff. Is that it?

ELIZABETH BUTLER: That would be wonderful, yes.

LATHROP: OK, anybody going to have a problem with this?

ELIZABETH BUTLER: I hope not. I don't think so.

LATHROP: OK. OK. Well, looks like a good government bill to me. We haven't heard from everybody. Thanks for your testimony. I don't see any other questions. Next proponent. Welcome.

CHRISTY ABRAHAM: Senator Lathrop and members of the Judiciary Committee, my name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m. I'm here representing the League of Nebraska Municipalities and we

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would just like to echo the sentiment that we also think this is a good government bill and possibly even a consent calendar bill. We realize that the city of Omaha is the one who instigated it and it will certainly help them a great deal. I did want to let you know that we've had some members contact us and say they would also like to be able to use this alternative process. That's probably one of my members calling right now, saying how much they love the bill. So I just--

LATHROP: We got to get Senator Morfeld in here a little earlier to listen [INAUDIBLE].

CHRISTY ABRAHAM: I just want to support Senator Morfeld. I'm sure people are supporting this bill. So anyway, it does have statewide implication and our members are very supportive. And we just wanted to let this committee know that. So thank you, Senator Lathrop.

LATHROP: OK. Can I ask just a quick question? If-- if I have a special assessment against my property, are we depriving me of some notice or of some opportunity?

CHRISTY ABRAHAM: That's not my understanding under the bill, Senator Lathrop. The publication in the newspaper still occurs. What happens is this publication is when you don't have the known addresses of everyone that you're putting the special assessment on. So you publish in the newspaper to let everybody know, hey, the special assessment is coming. What this bill says is then after that, you have two ways to further notify. If you do have an address of someone, you can either send what Omaha sent out, this giant packet, or what this bill allows is a smaller notice with a letter saying, hey, here's how much you owe; here's when the Board of Equalization is meeting, just all the necessary information that they would need if they wanted to come in and protest their special assessment. But it's going to be a smaller packet. It's going to be just a sheet or two instead of the big publication.

LATHROP: OK. OK. I think I get it.

CHRISTY ABRAHAM: OK.

LATHROP: All right. I don't see any questions.

CHRISTY ABRAHAM: Thank you so much, Senator Lathrop.

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LATHROP: Thanks for being here, Ms. Abraham. Anyone else here to testify as a proponent? Anyone here in opposition to LB58? Anyone in the neutral capacity? Seeing none, Senator Pahls, you may close on LB58. We have no position letters and no written testimony. Senator Pahls is waiving close. Good to have you here, Senator Pahls. Thanks for introducing LB58. That will close our hearing on LB58 and bring us to LB331 and Senator Wayne. Welcome, Senator Wayne. We appreciate that the room is not standing room only at this point.

WAYNE: I try to limit testimony for you guys.

LATHROP: You may open on LB331.

WAYNE: Thank you. Oh, here it is. I might have left my opening. Good after-- good after-- good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. I am here today to introduce LB331, which attempts to prevent privatization of law enforcement activities around criminal control. My objective here is to make sure that any time somebody is facing a criminal charge, a officer is the one issuing the ticket and that we are making sure the officer, through LB51 and other bills have proper training. It's really hand-in-hand because these individuals don't have the same training that we are now saying officers should have. My intention is to not remove Nebraska Humane Society from Omaha or Douglas County, but we are strictly limiting it to removing the criminal part of the role of animal control. This is a simple bill. It's one page. I do have two things to hand out. I do think they play a huge role in ensuring the well-being of animals throughout the state, particularly in Nebraska and in Omaha. And I do think they're equipped to handle shelters and find lost dogs and help dogs and save not just dogs, but plenty of animals. But I do think it's important that we have trained law enforcement professionals when it turns out things are criminal. The fact of the matter is, if somebody is abusing an animal, the cops should be there. If someone is starving animals, the cops should be there. It's a crime. These are criminal activities. By the same token, somebody who is an animal abuser can easily, and in fact, most data shows, are violent criminals or some type of-- are involved in some type of criminal activity. The expectation, and I think the community's expectation, when Humane Society shows up as a nonprofit, that they are not law enforcement, which is causing some of my concern. On the other hand, my office also

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got plenty of reports, and we got communications on both sides, as many of you have, that sometimes animal, animal advocates can be overzealous. One of those things happened last year in my community in which somebody is here to testify, where they removed animals from a property and charges were filed and later dismissed and the animals were returned. The question I would ask this committee, and I think it's important to ask everybody, is what is the due process when somebody takes property? Because that's what these people are. These, these animals are property of those individuals. And if it's a state action, what's the due process that requires that? Because usually state can't come in and cross somebody's property line and just take an animal without proper due process. The fiscal notes has no, no cost to the state. The city of Omaha estimates it'll cost \$2 million. I question that. But the two things I handed out, and the other reason why this is important is, one, Lincoln does it in-house, so I know it can be done. There was actually a recent article where a, all over the news where a dog was kicked. That person later got cited primarily because the community had somebody to call the city council, the sheriff that, that is elected by the people put pressure on them to file a charge. That doesn't necessarily happen in Omaha or anyplace where this is privatized. So I wanted to make sure you knew that it is, can be done. But what was more interesting, and I bought a book from Mark Langdon [SIC], and I was actually on the committee when we approved him for the board, and it's called more-- More Busting Bad Guys: True Crime Stories of Cocaine, Cockfighting, and Cold-Blooded Killers. On page 116 and 117, he says, Shortly after I began my second career as a top cop-- he was a, he was a former law enforcement with OPD and he went there and still saw himself as law enforcement. And the rest of the quotes that are on here talks about drug dealing, dog fighting, how their interchanged and how they're interconnected. And, and part of his book, he talks about doing an investigation along the side of OPD for months, going through people's trash, going through things as not a cop. That causes great concern for me from a public safety standpoint. So the question I have, and this is kind of a little bit out there, and I'm sure one of the opponents will give it a reason, but if we saw a dog strapped to the top of a car and they were going down the interstate, would we allow the Humane Society to stop that car and issue that ticket? But why do we allow a private nonprofit to walk on somebody's property and do the same thing? Why does it matter if that is traveling in a car we would allow a Humane Society officer-- I call them officer, because they see themselves as

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the cop, who is not trained in any of that, who is not trained in the same law enforcement and all the things that we're trying to provide to pull over a car to save that dog, but we are allowing them to go on the property? Now what you'll hear is, from the opponents is, oftentimes when they are concerned about their safety, they call the cops and the cops go with them. So why aren't the cops there in the first place? Oftentimes in Omaha, Nebraska, and throughout this book, you hear about how there are informants, they write warrants for search warrants on the premise. When they go on and talk to somebody about their dog being outside, they are actually relaying information back to OPD. They are acting as an agent of the state. And if we're not going to pass this bill, we need to make sure that they have due process, we need to make sure they identify themselves as law enforcement officers and see the dynamic change when they go to somebody's house. And what I am hoping never happens, that somebody gets hurt in this process when they try to remove a dog or try to do something to an animal and they're not properly trained to handle that situation. I am not saying that they should not pick up lost dogs. I am not saying that they shouldn't do the licensing and everything else that they do. I'm saying when it comes to criminal investigations, whether it's city code, state code, whatever, that should be law enforcement doing it for public safety reasons, but also for the property owner's due process rights. And with that answer, I'll answer any questions.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Wayne, for bringing this bill. I need some clarification. Today my neighbor's dog is, is attacking other dogs. I call 911 in Omaha, I assume that's who dispatches the Humane Society?

WAYNE: Sometimes, yes. Sometimes-- most of the time, yes. My understanding, there will be some people you might be able to ask different questions.

BRANDT: Same scenario then, the Humane Society shows up and today they can write a ticket?

WAYNE: They can issue tickets.

BRANDT: Do they issue tickets?

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WAYNE: Yes.

BRANDT: So under your scenario, we would remove that and give that, that authority to the police, probably where it should be. But the first guy on site is the Humane Society guy, and then he witnesses the illegal action. Is that sufficient then when the police show up an hour later to write the ticket?

WAYNE: Our-- yes, they could. But underneath my situation, a city employee or somebody, a division within Omaha police or a Douglas County sheriff would show up and they see the crime, they can issue a ticket. And what I would prefer to happen is that at that point they call the Humane Society to come get the dog. My concern is the initial contact with that individual. Does that individual think they are a officer of the state, color of the law of the state, or do they think they are a nonprofit there to help the animal? And right now they are acting on state authority and they don't disclose that anywhere that I've seen.

BRANDT: OK, thank you.

LATHROP: I do have a question and I, I now better understand that for that introduction, your concern. But where's the line at? So you probably had dog bite cases, the same as I have. Somebody comes in, you know, had some dog that's running at large tear into their calf and the Humane Society comes up and does an investigation, right? There's also a process for taking the dog in and quarantining the dog. And there's also a process for having the dog put down. I think you got to go to court to do that. So do we, do you want just to have law enforcement if they're going on, on the property to issue a citation, for that to be law enforcement? Or how about those other investigations that you and I are familiar with?

WAYNE: Right, so I would, I would consider those other parts of investigations like we do a lab. Oftentimes we'll send things out in court cases, even though the officers may have done an initial DNA swab, they'll send it out. So to me, I look at that demarcation point of they pick up the dog as like us contracting to a lab or something like that. So I think the demarcation point is the initial contact. After the criminal citation, they would be treated to come get the dog, test the dog for rabies, which they typically do. That, that still wouldn't change. I don't consider that part of the criminal

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enforcement, I consider that part of-- and maybe we got to clarify the
word, the words. But that would be the demarcation point.

LATHROP: Yeah, I'm just, I'm just thinking through. I get the idea
that they shouldn't go onto somebody's property, especially if they
are then developing intel for OPD. Like--

WAYNE: Right.

LATHROP: --you need to go on there because I'm not sure the kids are
being taken care of. And now let me do an affidavit that I, about what
I saw when I was grabbing the dog, right?

WAYNE: Right and so--

LATHROP: That's your concern?

WAYNE: Yeah. And so actually, Mark in his book talked about in the
last, the page 217 to 218, talked about they found paperwork at one of
the dogfightings from southern states of Louisiana and Tennessee. And
they started working with OPD after this intel to put together a whole
bunch of search warrants and arrest people, arrest people. My concern
is the people who are there at that house don't know-- it's almost
like they're undercover, but they're not. They're actually contracted
with the state. They need to disclose that before they walk in there
from a safety standpoint, in my opinion.

LATHROP: OK. Well, we'll look forward to hearing the testimony. Are
you going to stay to close?

WAYNE: Yeah, I'll just be next door watching.

LATHROP: OK.

WAYNE: Thank you.

LATHROP: Perfect. We will begin with proponent testimony at this time.
How many people are going to testify on this bill? Keep your hands up
just for a second. Two, three, four, five, five. OK, thank you. We ask
so that we can alert Senator Walz about how long to expect before
we'll open on her bill.

JOY BARTLING: Morning, Senator Lathrop--

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LATHROP: OK, welcome.

JOY BARTLING: --Judiciary Committee. My name is Joy Bartling, J-o-y B-a-r-t-l-i-n-g, and I'm going to do my best to not be emotional because this impacted me and my organization immensely last year. In 2006, I started my organization called Scatter Joy Acres. And we rescue animals, all kinds of animals, and then we use them to do therapy with seniors, veterans, at-risk youth and disadvantaged individuals. In 2009 is when my harassment started with NHS. I wasn't even in Douglas County, I was in Washington County, where they were coming and telling me what I could and what I couldn't do. In 2013, I moved to a property in Douglas County and they continued to come and tell me I can't have these animals, while their city code section 681 and 682-- they didn't know their code. I have the same license as Henry Doorly Zoo. So I am exempt in their own exemption in 682. So if you're going to be in the policing form, you better know your city code. Last year, two officers came in with a search warrant and took nine of my animals. Not dogs, not cats, a porcupine, Patagonian cavies and a coatimundi, which I am all required to have. They didn't have the proper procedures to catch them. There were animals that they were throwing nets on that had bloody noses, and it was very detrimental to myself, to the animals and to my staff that were there. Some of these were babies, which we found out later, that still needed to be on bottles for three or four months after they had been returned. They took them off the bottle. So if you're going to go in and seize animals, you better know how to take care of them or put them into organizations that know how to care for them. And there were some that stepped up and said, hey, we can help until you get this figured out. Mark Langdon [SIC] was one of those who looked at that piece of paper, I can tell you 10 times I showed them my license from the USDA. And he, and their comment was, you're different. How am I different? Your city code says I'm exempt. The search warrant that they came that day wasn't executed properly and they wrote me a ticket, a misdemeanor ticket for nine counts of harboring a nondomestic animal. They slandered me, there was people that work within the organization that said they had wanted posters in their office with my name on it. What have I done but only help our community? They can still do what they do, but they need to use the police to be able to write those tickets. Thank you. Any questions?

LATHROP: Any questions for Miss Bartling? Senator Morfeld.

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MORFELD: Thank you for coming in today. So when you say two officers,
this is two Humane Society?

JOY BARTLING: Two Humane Society officers, correct.

MORFELD: Officers, OK. And I know just enough to be dangerous about
the, the laws surrounding harboring certain types of animals and all
that. So can you give me a little bit of background why they were
concerned about those nine animals?

JOY BARTLING: They couldn't give me a reason. They just said I can't
have them.

MORFELD: OK. And then those nine counts, those are, those are
misdemeanors?

JOY BARTLING: They were misdemeanors.

MORFELD: What kind of misdemeanors are they?

JOY BARTLING: Harboring a nondomestic animal.

MORFELD: OK, thank you.

JOY BARTLING: Um-hum.

LATHROP: OK.

JOY BARTLING: Thank you.

LATHROP: Was, was former Officer Langdon part of the group that--

JOY BARTLING: He was not. He had been-- that was Steve-- oh. Steve had
just been appointed like in earlier in the spring because Mark had
been appointed to the parole board.

LATHROP: Parole board, right.

JOY BARTLING: Yep.

LATHROP: OK.

JOY BARTLING: So he was not part of this, this process. But he has
been for years, I've sat in his office, we've had conversations and he

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kept telling me, no, I can't have them. I'm like, I have the same
license. Your city code says I'm exempt. Well, no, you're different.
How am I different?

LATHROP: OK.

JOY BARTLING: They could never give me an answer how I was different.

LATHROP: OK, I appreciate your testimony. Thanks for coming down--

JOY BARTLING: Thank you.

LATHROP: --today and telling us your account. Any other proponents of
LB331? You may come forward.

DEAN MATHISEN: Senators.

LATHROP: Good morning.

DEAN MATHISEN: Thank you for allowing me the opportunity to testify.

LATHROP: Sure.

DEAN MATHISEN: My name is Dean, D-e-a-n, Mathisen, M-a-t-h-i-s-e-n.
I've submitted written testimony, but I didn't know your 12:00
deadline yesterday, and I submitted it about 6:30 last night. So this
may be a repeat, but you're being handed my written testimony.

LATHROP: OK.

DEAN MATHISEN: I didn't think I'd be emotional either. I'm one of the
volunteers that's out at the ranch, and I was there the day the Humane
Society came to execute their search warrant. They wrote the warrant,
they issued it. But when they came, they had to bring the Omaha Police
Department. There are other times when they've come to the ranch,
they've always brought other people with them. They don't stand on
their own two feet. Prior to what Joy was just talking about, they
came because she had a raccoon. They showed up at the ranch and they
brought a Nebraska game warden with them. Joy, besides having a Class
C exhibitor license from the United States Department of Agriculture,
also holds a Nebraska wildlife permit, and that wildlife permit allows
her to have a raccoon by state statutes. She has a state license. They
came, they, the Humane Society came with the game warden and said, you

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can't have the raccoon. They, the Humane Society, then said, game warden, write her a ticket. He refused to write her a ticket. A certified law enforcement officer refused to write a misdemeanor ticket for the raccoon, and that's his jurisdiction. That's his specialty. When the officer, the game warden didn't write the ticket, the animal control officer said, may I see her driver's license? And Officer Brown [PHONETIC] took that license, handed it to animal control Officer Benito [PHONETIC] and said, write her a ticket. And she was issued a misdemeanor and convicted for that misdemeanor when she had a state license and a federal license that allowed her to have that animal. And I want to close, they're always there with backup. They're always leaning on somebody else. They're not trained professionals, and I speak about that. But search, search warrant not being executed properly, I used to be a deputy sheriff. On the back of a search warrant you write what items are seized and you leave a copy of the warrant. They did not properly execute the warrant. They didn't fill out the back. They left her a copy, but they didn't do proper process. I guess the last thing I'd say, they're allowed to write criminal and just probably violations of tickets. Where do those funds go to? Do those funds go to the city or do the funds go to their own agency? So in essence, I write you a ticket, I'm making my paycheck. I would ask that question be answered. Thank you for--

LATHROP: Hang on a second.

DEAN MATHISEN: Yes.

LATHROP: Let's see if anybody has a question for you.

DEAN MATHISEN: I'm sorry.

LATHROP: Let me ask one. You're a former deputy sheriff and you were there the, the day this all went down?

DEAN MATHISEN: I was there the day, yes, when the animal control officer Brown and Bonito beat two animals with their catch sticks until the animals had blood flowing down their face.

LATHROP: OK. Was law enforcement accompanying the Humane Society?

DEAN MATHISEN: Two Omaha police officers were there.

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LATHROP: So does this bill solve the problem? If they show up with police, isn't that really what we're after under this bill?

DEAN MATHISEN: I would say yes, because if they have a violation, they're showing up with a game warden. The game warden can write a ticket. They showed up with OPD. OPD could have wrote a ticket.

LATHROP: Right.

DEAN MATHISEN: And in the case of the raccoon, the warden, the game warden said it wasn't justified. And they, the city wrote it-- or the animal wrote it anyway.

LATHROP: So in this particular circumstance, didn't they do what you want them to do, which is bring certified law enforcement officers?

DEAN MATHISEN: But it wasn't the law enforcement officers that wrote the ticket, it was the animal control officer that wrote the ticket.

LATHROP: OK, let me ask one more question, if you know the answer to this. So this, this bill appears to arise out of a particular circumstance, right? Are there other occasions that you're aware of where the Humane Society has done things that you think this bill would fix?

DEAN MATHISEN: None that I can personally attest to.

LATHROP: OK.

DEAN MATHISEN: I know Joy has spoken to many people and had numerous people come to her and shared their personal experiences. So anything I have is secondhand. But yes.

LATHROP: It's hearsay on hearsay.

DEAN MATHISEN: Hearsay. Yes, sir.

LATHROP: Yeah. No, that's all right, we accept hearsay here.

DEAN MATHISEN: [INAUDIBLE] but none that I can personally attest to.

LATHROP: That answers my question. We appreciate you being here today and sharing your account.

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DEAN MATHISEN: I ask that this be afforded the full Unicameral for
passage. Thank you.

LATHROP: OK, yep, thank you. Any other proponent testimony? Seeing no
additional proponents, we will listen to and take up opponent
testimony. If you're opposed, you may come forward. Good morning.

NANCY HINTZ: Good morning, how are you?

LATHROP: I'm doing OK.

NANCY HINTZ: My name is Nancy Hintz, N-a-n-c-y H-i-n-t-z, and I am the
president and CEO of the Nebraska Humane Society, also known as NHS.
For the past 100 years, NHS has been providing animal control services
for the Omaha metro area that includes Ralston, Waterloo and Offutt,
and also for the cities in Sarpy County. NHS receives over 100,000
calls annually regarding domestic and nondomestic animals. Over the
past five years, NHS animal control officers have been dispatched on
over 169,000 calls conducted 31,000 criminal investigations, excuse
me, and issued 4,287 citations to address law violations ranging from
minor offenses to unspeakable animal cruelty. LB331 will prohibit NHS
and other private entities from continuing to perform contracted
criminal enforcement in connection with, among other things, the
protection of animals in Nebraska. The bill will place a burden on
already overwhelmed 911 centers and understaffed law enforcement
departments. They would now become responsible for handling
animal-related calls, conducting investigations, obtaining warrants
and impound orders, issuing citations, and not to mention testifying
in court matters and also managing potentially dangerous dog
declarations. Animal-related calls will become a low priority compared
to those for humans, simply due to our current law enforcement
capacity. Furthermore, law enforcement is not equipped and trained to
handle animal matters, and nor do they wish to take on this enormous
responsibility. On a larger scale, LB331 will inevitably place undue
financial burdens on the cities that currently utilize private
entities for animal law enforcement. LB331 will force those cities to
find ways to subsidize costs of absorbed duties, which could lead to
budget cuts for other contracted animal control services that are
outside of the scope of this bill. And some of those include stray
wildlife and deceased animal pickup, our free ride home program,
animal lost and found, rabies testing and tracking, dangerous animal
capture and containment, emergency response and animal rescue. Public

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and animal safety will surely be compromised. Of note, the cities that NHS contracts with have not expressed a dissatisfaction in our performance. And in fact, we are the leading trained expert in our state and one of several humane societies across the country that successfully provide animal control services and criminal enforcement. We also do have a significant law enforcement footprint within our own animal control department, as they have been led by retired law enforcement individuals. Finally, LB331 will reverse exceptional efforts made over the past 100 years for animal protection and advocacy in the state of Nebraska. Thank you for listening, and I'm available to answer any questions.

LATHROP: OK. Senator Slama.

SLAMA: Thank you, Chairman Lathrop, and thank you very much for being here today. Just a quick question for you, are you aware of any other groups, private entities that are contracted out by city, villages or counties to conduct law enforcement actions?

NANCY HINTZ: Yes. So the animal shelter in Grand Island, if you're speaking in Nebraska.

SLAMA: Yes.

NANCY HINTZ: Yes. Grand Island provides animal control for their city. And Fremont also does, although I believe that they're changing partnerships with that.

SLAMA: Um-hum.

NANCY HINTZ: And then Omaha and then Sarpy County.

SLAMA: So it's just when it comes to animal control, like there's not other areas where cities or counties are subrogating that duty to private entities?

NANCY HINTZ: I'm sorry, I might not understand the question.

SLAMA: There's not other cities or counties saying this private entity can enforce traffic tickets?

NANCY HINTZ: Correct.

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SLAMA: OK.

NANCY HINTZ: Correct. It's just for animal control and animal-related
crime.

SLAMA: OK, so given that that is enforcement of a law, do you think
it's appropriate for cities or counties to contract with private
entities for other things beyond animal, animal control?

NANCY HINTZ: I can't answer that question because I don't know the
specifics of what, what service would be provided for that.

SLAMA: Sure, it's just a little bit hard for me to wrap my head around
that this is the one exception we make in contracting out law
enforcement duties to a private entity. But thank you.

NANCY HINTZ: OK.

LATHROP: Senator Brandt.

NANCY HINTZ: Thank you, Chairman Lathrop. Thank you, Ms. Hintz, for
testifying today. You stated that the financial burdens would increase
on the cities that currently have these private contractors. I mean,
how is that possible? Do you provide your services for free to the
city of Omaha?

NANCY HINTZ: No, we don't. We have a contract with the city of Omaha.

BRANDT: So if, if for some reason that contract was terminated and
they could go to another-- so you don't have any hard numbers on what
the cost difference would be if, if your organization did not do that?

NANCY HINTZ: I don't have specific numbers for you, but what I can
tell you is that the cost would increase if, for if, excuse me, if
police officers are performing those duties as they're paid at a
higher rate.

BRANDT: Are you familiar with how, and I'm asking this because I do
not know, the city of Lincoln, I think, does their own animal
enforcement, is that correct?

NANCY HINTZ: Yes.

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BRANDT: Are those, are those police officers, are they the equal of a police officer, do you know, in the city of Lincoln? And if you don't, that's fine.

NANCY HINTZ: I don't know the answer to that.

BRANDT: And I guess the last point I'd like to make is Senator Lathrop and myself and Senator Slama also served on the Ag Committee, so we have another animal enforcement agency called the Brand Committee in the state of Nebraska. And they have three full-time investigators that went through the Law Enforcement Academy in Grand Island. And they are sworn officers. Do you see a difference between how they function and how you function? I mean, do you see the value of having somebody that took a 12-week course in law enforcement?

NANCY HINTZ: Absolutely. Absolutely. And we do, too. So if you, if I, if I may, I can tell you what our training program and protocol is as well. And in addition to that, if we do have serious cases, as the one that was talked about earlier, is we do have and partner with Omaha Police Department or the Douglas County Sheriff's Department or whoever that we need, especially when you're implementing a search warrant. So those kind of situations, we are working hand-in-hand with the police.

BRANDT: All right. Thank you.

LATHROP: Senator McKinney.

McKINNEY: Thank you. Does the Humane Society provide information to the Omaha Police Department ever and for criminal cases or anything? When going onto someone's property, is it ever possible for the Humane Society to provide other information outside of animal enforcement to OPD?

NANCY HINTZ: The-- in our partnership with the Omaha Police Department, so if we're executing a search warrant or going out with us to a home, and they would have the information in regard to the reason why we're going out to the home and nature for our presence to be there.

McKINNEY: So was it ever the case that one of your officers, are they called off-- they go onto someone's property and they check on the well-being of an animal, do they ever look inside of someone's

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residence to look for other information to provide to Omaha Police
Department?

NANCY HINTZ: Not to my knowledge. If they're going through a home to
look, it would be done in a search with Omaha Police Department
present.

McKINNEY: So they'll never venture onto a property by themselves?

NANCY HINTZ: They, they will, they will too, if they need to go to a
home to, to, let's say, pull a dangerous animal from a situation, then
they can enter the home for that purpose. So if they're going in to
remove an animal, they're going to go in to remove an animal. If
they're going into a home for an investigation, then they're going to
be doing the investigation with the police department, if that makes
sense.

McKINNEY: Have you ever coordinated with Omaha Police Department to go
onto a property?

NANCY HINTZ: I'm sorry, I didn't hear the question.

McKINNEY: Have you ever, has the Humane Society ever coordinated with
OPD to go onto a property to, under the guise of looking for animal
activity and for something else actually?

NANCY HINTZ: Yes.

McKINNEY: So do you believe you're an extension of law enforcement?

NANCY HINTZ: We do in the sense that we are contracted with the cities
to uphold the city ordinances that we've been doing for 100 years. So
we are providing the enforcement piece of those codes.

McKINNEY: Could you see where an issue would arise where you're out,
you're acting outside of the guise of just animal enforcement and
you're actually acting as possibly an informant for the Omaha Police
Department?

NANCY HINTZ: No, I don't see it that way.

McKINNEY: When you issue a fine, where does that go?

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NANCY HINTZ: Just like any other fines, it goes back into the cities
or the courts.

McKINNEY: OK. Are your officers required to have any cultural
competency or diversity training?

NANCY HINTZ: Yes.

McKINNEY: OK. How much of your senior leadership is African-American
or people of color?

NANCY HINTZ: In that department?

McKINNEY: No, in the Humane Society.

NANCY HINTZ: When you mean leadership, what positions are you talking
about?

McKINNEY: Senior leadership.

NANCY HINTZ: Senior leadership.

McKINNEY: Yes.

NANCY HINTZ: And you're specific to African-American?

McKINNEY: How-- do you have a diverse group of senior leadership?

NANCY HINTZ: No, we do not.

McKINNEY: OK, thank you.

LATHROP: Senator Slama.

SLAMA: Thank you, Mr. Chairman. Just a couple of follow-up questions.
There was an issue that was raised last fall that I think caught
everybody in the state, and especially this committee's attention on
the front of LB331, when the Humane Society seized animals from
Scatter Joy Acres in Omaha. Did the Humane Society seize those
animals?

NANCY HINTZ: Yes.

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SLAMA: And what was the ultimate outcome of this case after the Humane Society seized those animals?

NANCY HINTZ: So the animals were returned.

SLAMA: Um-hum.

NANCY HINTZ: To Scatter Joy Acres.

SLAMA: And no charges were filed in that case, right?

NANCY HINTZ: No.

SLAMA: OK, so we had the animals seized, no charges filed or the charges dropped and then they were returned?

NANCY HINTZ: Correct.

SLAMA: And do you believe the Humane Society was acting appropriately at that time?

NANCY HINTZ: I do.

SLAMA: Even though no charges ended up being filed?

NANCY HINTZ: I do. And I can explain, if you'd like me to.

SLAMA: No, I think that's pretty sufficient. Thank you.

LATHROP: I do have some questions for you. So if you are, if you are executing a search warrant, let's say that a neighbor is called and said, I think the guy over there is beating his dog and/or engaged in cockfighting or something that is, that we've made a felony, and we made, we made a lot of things felony when, when Senator Cornett was here. If there is a suspicion of a felony being committed that relates to animals, do you bring in the Omaha police at that point?

NANCY HINTZ: Yes.

LATHROP: Do you do anything that is in any way a law enforcement function that, that involves a felony without bringing in law enforcement?

NANCY HINTZ: No, we do not.

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LATHROP: Do you execute search warrants without law enforcement?

NANCY HINTZ: No, we do not.

LATHROP: Can you write a ticket or take anybody-- let me back up. Can
you take anybody into custody?

NANCY HINTZ: No.

LATHROP: What is the authority of the Humane Society to write a
citation? At what level do you, of criminal activity do you need to
bring in law enforcement?

NANCY HINTZ: So we can write citations for minor misdemeanors. So
let's say for a barking dog, loose dog, and anything higher than that,
information on a case would go to the Omaha City Attorney's Office or
the Douglas County Prosecutor's Office, and then it's up to them to
determine whether to pursue charges.

LATHROP: If there is a dog running through my neighborhood from yard
to yard, there's no fences, they're just running the place and I call
the Humane Society, do you have authority to just go on anybody's
property and grab the dog that's running from yard to yard and house
to house?

NANCY HINTZ: We can. We can, if it's outside. You know, if, if, if an
animal happened to run into somebody's home, obviously we would knock
on the door and ask permission to enter to collect the animal.

LATHROP: What if it's denied?

NANCY HINTZ: Then I think we'd have to walk away.

LATHROP: OK, I'm just trying to find out what long-- so the people
that are doing this, do you have a squad, just certain, certain
individuals that work at the Humane Society that do this work?

NANCY HINTZ: We do. So we have 19 animal control officers and then we
also have an animal investigator as well.

LATHROP: OK, are these the 20 people that are-- have authority to
write a citation?

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NANCY HINTZ: Yes.

LATHROP: What training do they have to do that?

NANCY HINTZ: So we provide training for them to do all of those duties. And I can give you a list of training programs--

LATHROP: Just generally big picture so that-- I'm sure it's extensive--

NANCY HINTZ: Right, right.

LATHROP: And I don't need all the hours.

NANCY HINTZ: OK.

LATHROP: Just generally, what kind of training do these folks--

NANCY HINTZ: So they do.

LATHROP: --that can write a ticket have?

NANCY HINTZ: So their training program lasts about 10 weeks long and it is all about understanding the city codes, all of the ordinances that they need to enforce, what they are capable of writing tickets for, what they can't in terms of any cases that are higher level of a city citation moving up to the Douglas County Attorney's Office or City Prosecutor's Office if it's higher than a misdemeanor.

LATHROP: Where's the 10 weeks of training take place?

NANCY HINTZ: So it takes place currently in-house due to COVID. In the past, we've sent animal control officers out to Colorado for training, and then also through the National Association of Animal Control Officers as well.

LATHROP: Do these people wear a uniform?

NANCY HINTZ: They do.

LATHROP: Do they carry a badge?

NANCY HINTZ: They do.

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LATHROP: Do they have a gun?

NANCY HINTZ: No.

LATHROP: No firearm.

NANCY HINTZ: No firearm.

LATHROP: I think that's all the questions I had. Anybody else have any questions? I don't see any. Thank you for being here--

NANCY HINTZ: OK, thank you.

LATHROP: --and answering the questions and providing testimony.

NANCY HINTZ: Thank you.

LATHROP: We will take the next opponent to LB331.

STEVE CERVENY: Good morning.

LATHROP: Good morning. Welcome.

STEVE CERVENY: Thank you, Chairman Lathrop. Senators of the Judiciary Committee, my name is Steve Cerveny, S-t-e-v-e C-e-r-v-e-n-y, I'm a captain with the Omaha Police Department and I oversee the criminal investigations section. I'd like to thank you for the opportunity to speak with you today and thank you for the valuable service that you provide. The Omaha Police Department opposes LB331. Shifting the workload of the Nebraska Humane Society to law enforcement agencies with limited resources would cause thousands of animal concern calls to be delayed and potentially create an inhumane environment for the dogs, cats and other animals who need the services that the Nebraska Humane Society provides. The Humane Society responds to approximately 35,000 calls a year within Omaha, which included more than 4,600 investigations and over 800 citations during 2020. And after listening to the president of the Nebraska Humane Society, those numbers may be low. These calls involve the animal abandonment, bites, pets left in cars, neglect and animal hoarding. In 2019, the Omaha Police Department responded to 265,461 911 calls, adding more than 35,000 calls related to animals' well-being would be increasing the volume by over 13 percent. As a result, some 911 callers would wait longer for police, and some animal complaint calls that need immediate attention

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would be unnecessarily placed on hold. Under this bill, police would have to take on all the animal control officers' responsibilities, including issuing citations for animal neglect, conducting further time consuming investigations, completing search warrants and arrest warrants, take care of animal impound orders, and handling potentially dangerous dog declarations, which include an appeals process and administrative hearing that would consume too much of a police officer's time and take them away from fulfilling their normal duties. Not to mention the fact that if a potentially dangerous dog declaration is upheld, then a police officer would need to monitor each offender for 24 months and ensure they are abiding by the law. The professionally trained staff of the Nebraska Humane Society currently completes all these tasks, and the Omaha Police Department does not have the facilities, vehicles, equipment, investigative resources, staffing and even some of the training that is required to successfully take on these important additional duties related to the care of animals. And the Omaha Police Department would not be the only agency affected. The Humane Society takes care of animal emergencies in other municipalities to the south and southwest of Omaha. And in addition, current state law requires the enforcement of humane animal laws three miles beyond city limits, which for the Omaha area would mean that multiple county and smaller town law enforcement agencies to the north and west of Omaha would have to take on these additional responsibilities as well. The Omaha Police Department has a long history of working successfully with the professional women and men of the Nebraska Humane Society. While through their steadfast dedication to the welfare of animals, they perform valuable services to ensure the well-being of cats, dogs and numerous other helpless animals. And I'll end with that.

LATHROP: OK, well, we appreciate your testimony. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Captain, for appearing today. 911 calls, you have a very specific number. These 35,000 calls that they get for animals, none of those go through 911?

STEVE CERVENY: Some do.

BRANDT: Do you know what percentage go through 911?

STEVE CERVENY: I don't. I can look into that and get that number to you.

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BRANDT: Sure.

STEVE CERVENY: As we stated earlier, we do respond and assist often.

BRANDT: Because I would think a high percentage probably would, that
the neighbor's dog is attacking another animal.

STEVE CERVENY: Right.

BRANDT: And I'm not sure where you get a dog attacking a person, is
that an animal call or an officer call?

STEVE CERVENY: So we would respond to that. There would be a
high-priority call. But there are a number of calls that, that the
Humane Society takes care of. It was stated earlier, lower, lower
priority calls. And then they also handle the investigations of the
follow up, which alleviates a lot of workload from, from our
investigators.

BRANDT: So you feel that their investigators are trained to do that--

STEVE CERVENY: Yes.

BRANDT: --to do a police investigation?

STEVE CERVENY: Related to, related to animals? Yes.

BRANDT: And I guess the last question, I understand the jurisdictional
three-mile limit because you're a metropolitan city, so villages have
like a one-mile limit.

STEVE CERVENY: Right.

BRANDT: Is that really necessary in this case? If we were to remove
that by statute and say inside the city limits, would you have a
problem with that?

STEVE CERVENY: You know, whatever you decide to pass, we will follow.

BRANDT: Because do you-- when you go outside the city limits of Omaha
to that three-mile zone, that would be the sheriff's office--

STEVE CERVENY: Yep.

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BRANDT: --would have jurisdiction. You guys don't even have
jurisdiction out there.

STEVE CERVENY: Absolutely right. Right, absolutely. So that's why it
would affect other agencies and other, other counties and towns.

BRANDT: OK, thank you for your testimony.

STEVE CERVENY: Thank you.

LATHROP: Senator Geist.

GEIST: Yes. Thank you for your testimony, Captain. And I'm curious, as
far as your training goes and the training of your officers, is there
a training that overlaps with what, the training of a enforcement
officer for the Humane Society does?

STEVE CERVENY: Not specific to animals.

GEIST: OK.

STEVE CERVENY: Certainly we take part in some types of training that
they take part in, listening to the earlier testimony in terms of, you
know, high-risk situations, emergency situations, and also in terms of
Senator McKinney inquired diversity and cultural awareness and things
like that.

GEIST: But your, your officers aren't trained in animal situations
specifically?

STEVE CERVENY: Not like Nebraska Humane Society officers are, no.

GEIST: OK. OK, thank you.

LATHROP: Senator McKinney.

McKINNEY: Thank you. Has, has the Humane Society been used as a part
of narcotics investigations in the past?

STEVE CERVENY: I, I don't-- I can't speak to that. Not to my
knowledge. I'm not saying it hasn't, but not to my knowledge.
Certainly if, if a representative of the Nebraska Humane Society
encounters concerns regarding any type of illegal activity, we would
hope that they will report to us, as in any situation.

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McKINNEY: OK. Do you think Humane Society officers should be certified law enforcement?

STEVE CERVENY: For the services they provide, I don't believe it is necessary. Certainly if they were to take on higher levels of, of, of crime or crime violations, criminal violations concerning animals, yes. But for the level that they handle on their own, I don't believe it is necessary.

McKINNEY: Is it common for a Humane Society officer to accompany OPD during a drug raid or a raid period, which would kind of be a high, which would kind of be-- which would kind of mean that they probably should be probably certified law enforcement?

STEVE CERVENY: Well, they would, and they have before, if we have knowledge that there are animals present during a search warrant, during the service of a search warrant. However, they're not really a part of that operation until that, that operation is, is completed and safe. Once, once the scene or location is made safe, then they, they would be allowed to come in and take care of the animals.

McKINNEY: All right. Thank you.

STEVE CERVENY: Thank you.

LATHROP: I don't see any other questions for you. Thanks for being here, Captain.

STEVE CERVENY: Thank you.

LATHROP: Appreciate hearing from you on this topic. Next opponent.

KEN CLARY: Good morning--

LATHROP: Morning.

KEN CLARY: --Chairman Lathrop, members of the Judiciary Committee. My name is Ken Clary, K-e-n C-l-a-r-y, I'm testifying today on behalf of both the city of Bellevue, where I have the privilege to be-- serve as the police chief, and the United Cities of Sarpy County, which includes the cities of Bellevue, Gretna, La Vista, Papillion, Springfield in opposition of LB331, a bill, a bill to prohibit contractual criminal enforcement of certain offenses related to

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animals. I appreciate the opportunity to appear before the committee this morning. LB331 would seek to prohibit rules, regulations and ordinances adopted by the city, village or county which would currently provide a contractual criminal enforcement by a private entity. The city of Bellevue and other members of the United Cities of Sarpy County currently contract with Nebraska Humane Society to provide those criminal enforcement animal complaints and violations. In the city of Bellevue, a five-year average call for service animal-related calls is 2,500 per year. This equates to about seven calls per day. In order to respond to those calls, we would need to have a specialized officer available 24/7, 365 to provide those services. In order to do that, we would have to have six officers in a rotation to allow for days off, holiday, sick leave, etcetera. An average officer with full-time benefits equates to approximately \$100,000 a year, totaling \$600,000 cost to the city for that 24/7 position. In order to deal with these animals, we would also have to acquire specialized vehicle to transport the animals, estimated cost of about \$80,000. Also a facility to temporarily house the animals, which we-- I can't provide an estimate at this time. We haven't had an opportunity to look into those costs, but they would be significant, as well as paying an organization to take possession of the animals once we had them. Prior to the current contract many years ago with the Humane Society, the city paid in animal rescue \$35 per animal. Depending on the number of animals we would have to take into custody, that could be, you know, 500 to 1000 animals, that could be a cost to taxpayers of \$17,500 to \$35,000 annually. All totaled, conservatively I estimate the cost to the, our department alone to exceed \$700,000 annually. As the city of Bellevue, we currently pay a fraction of that cost to the Nebraska Humane Society to cover those 2,500 calls for service. As mentioned previously, Sarpy County contracts with the Nebraska Humane Society and the city of Bellevue pays Sarpy County for our share, that we currently pay \$13,452 a month for those services. That equates to about \$161,435 a year. As you can see, conservatively, our costs would increase by 300 to 400 percent if we were made to take on these services ourself. Cost is based on a per-person cost within the city. Please recall that the city of Bellevue is the third largest city in the state of Nebraska. I'm providing to the committee by handout the number of calls for service that are handled by the Nebraska Humane Society. While I'm only familiar with the costs that would be borne by the city of Bellevue for this implementation, I would encourage you to look at the handout for the other costs.

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LATHROP: [INAUDIBLE].

KEN CLARY: Because of the afore-- aforementioned reason, we oppose
LB331 and respectfully request that you indefinitely postpone this
measure.

LATHROP: OK, any questions for this testifier? I don't see any at this
time. Thank you for being here today.

KEN CLARY: You bet.

***CHRISTY ABRAHAM:** Senator Lathrop and Members of the Judiciary
Committee, my name is Christy Abraham and I represent the League of
Nebraska Municipalities. The League respectfully opposes LB331. In
addition to Omaha and cities in the metro area, there are
municipalities across the state that contract with their local humane
society to administer and enforce their animal ordinances. Contractual
relationships between municipalities and humane societies to enforce
animal ordinances have been beneficial in many ways. For example, the
humane society's animal control officers are experts on the humane
treatment of animals and enforcement of ordinances relating to
animals. Humane societies have the capability to control and shelter
animals leaving the municipal law enforcement officers available to
perform other needed duties in the municipality. The city of Grand
Island has been contracting with the Central Nebraska Humane Society
for over 50 years and the arrangement has served that community well.
The League respectfully asks this committee to not advance LB331 to
General File. Thank you for your time and consideration on this
matter.

LATHROP: Any other opponent testimony? Anyone here in the neutral
capacity? Seeing none, Senator Wayne, you make close. While he's
coming to close, the record will reflect that we have seven position
letters, all seven are in opposition. We also have written testimony
offered by Christy Abraham from the League of Municipalities. That,
that written testimony is also in opposition to LB331.

WAYNE: Thank you, Chairman Lathrop and the Judiciary Committee. This
was actually a very fascinating hearing, as I watched it in my office
next door. And I also had a couple of phone calls from, I'll say, "Big
Ag", which was weird. They didn't pay attention in Judiciary, because
why, why would they on the bills? But I guess this is an ongoing issue

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out in ag land, and so they asked me if I would bring it back that they want to support. But on the urge of Senator Lathrop, I'd rather just have them send letters of support throughout the summer so we don't have a new bill next year. I do think this is an issue from a safety standpoint. I do think it-- while the city of Omaha may be opposed to it, again, the city of Lincoln seems to be able to do it, and I think it can be done. But I do think from a safety standpoint, we have to really consider, as we stress officers and officer trainings in this committee and how to make that relationship better, I think going in underneath the badge of the Nebraska Humane Society as a officer, which they deem themselves to be officers, is a problem. And again, I would point to the last paragraph of Marc Langdon's [SIC] book that I handed out the sheets on. In there, he says, during this execution of a warrant: We didn't catch dog fighting, we caught drugs and guns. They are a part of law enforcement. I just want them to be considered law enforcement for everybody's safety and everybody's reasons that I think are pretty simple. We don't let them pull over cars. We wouldn't let them pull over a car if I had a dog strapped to it for obvious safety reasons. We shouldn't let them walk on somebody's property for the same safety reasons. Thank you.

LATHROP: Very interesting hearing and an interesting topic where the, where the line is. I do think we've had bills in this committee in my previous experience where people can go and write tickets to somebody who's parked in a handicapped stall. There might be some other things that we do where we let people do things that.

WAYNE: I thought of that was repealed back--

LATHROP: [INAUDIBLE] law enforcement.

WAYNE: Yeah, I thought that was repealed back because of some issues. It might not have been. I know there was an issue on that. I just think we should look at that issue.

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

WAYNE: Thank you.

LATHROP: Thanks for bringing LB331 and the discussion this morning. That will close our hearing on LB331 and bring us to LB540 and Senator

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Walz. We'll have you wait just a couple of seconds while the room
changes over. Senator Walz, you may open on LB540, welcome.

WALZ: Thank you, Chairman Lathrop and members of the Judiciary
Committee. For the record, my name is Lynne Walz, L-y-n-n-e W-a-l-z,
and I proudly represent Legislative District 15. I'm here today to
introduce LB540, a bill to change terminology and harmonize language
relating to disabilities. Throughout statute, a variety of terms are
used to describe people with disabilities. Many of these terms, while
accurate, are out-of-date or not as inclusive as needed. Some of these
terms include: blind, visually handicapped, deaf or hard of hearing,
handicapped or physically disabled. While some of these are more
specific, like blind or hard of hearing, there are numerous situations
where the phrase "a person with a disability" would suffice. There are
a variety of disability definitions in statute. Instead of using all
of the definitions, we feel it would be more consistent and clearer to
use the federal definition. For your information, the federal
definition is as follows: A disability means a physical or mental
impairment that substantially limits one or more major life activities
of such an individual, a record of such impairment or being regarded
as having such an impairment. To reference the federal definition is
more efficient, for if the standard were to change, we wouldn't need
to reword all the statutes. We were also looking to ensure that the
statutes are consistent with contemporary uses and norms of the
disability language. In addition, I would like to point out that
Section 20-134 does not include disability when prohibiting the
segregation of any person in a place of public accommodation. This is
about modernizing our language to be congruent with the practices of
the Nebraska Equal Opportunity Commission. They are, they already
address discrimination in places of public accommodation based on
disability, but it is only in practice and not specifically set in
law. It is an oversight that we are attempting to address to ensure
the state's commitment to the civil rights of people with disabilities
is unquestionable. Through this bill, we are not only harmonizing the
language of the statute, but bringing us into the 21st century and
providing further protections for citizens of our state. Thank you,
and I'd be happy to try and answer any questions.

LATHROP: OK. Senator Pansing Brooks.

PANSING BROOKS: Welcome, Senator Walz. Glad you're here.

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WALZ: Thank you, Senator Pansing Brooks.

PANSING BROOKS: I'm just wondering, OK, you read a part that you've taken out, and that's because the federal 42 USC 12182 [SIC] covers it.

WALZ: Yes.

PANSING BROOKS: 12102. So the, so you just took it out in case it changes federally again at some point?

WALZ: Right. So we don't have to go back and re-- redo the stat--

PANSING BROOKS: OK, perfect. And then you also mentioned something about discrimination and public accommodation. I couldn't find that. And what was it that you were referring to?

WALZ: It says, this is about modernizing our language to be congruent with the practices of the Nebraska Equal Opportunity Commission. They already address discrimination in places of public accommodation based on disability, but only in practice and not specifically set in law.

PANSING BROOKS: OK, so did you take out something or did you--

WALZ: There to-- I think I believe that we're changing it.

PANSING BROOKS: OK, maybe I see Ms. Munn there, so she can speak to it. Thank you very much, that's all I have. Thanks for bringing this bill.

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

WALZ: Thank you.

LATHROP: Are you going to stay to close?

WALZ: I'll stay, but I probably will waive.

LATHROP: OK, well, we'll ask you when we were down with the hearing. We will take proponent testimony at this time. Good morning and welcome.

BRAD MEURRENS: Good morning, Senator Lathrop, members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens,

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M-e-u-r-r-e-n-s, and I'm the public policy director at Disability Rights Nebraska. Disability Rights Nebraska is the protection and advocacy organization designated for persons with disabilities in Nebraska, and I'm here today in strong support of LB540. First, it replaces outdated language about disability, the word handicapped, which as the testimony of Ms Harrison and Mr. Neffer explained in, in your handout, this language is pejorative. Disability Rights Nebraska would prefer the word disability as a replacement. Even the federal Education for All Handicapped Children Act was renamed the Individuals with Disabilities Act in 1990. Second, we read some of the existing civil rights statutory language as too limiting. For example, in Section 20-126 and 20-127, the current language about full participation in social and economic life and the use of accommodations is limited only to three categories of people with disabilities: those who are blind, deaf or who have a physical disability. Same with 20-131.01. People with psychiatric disabilities or with invisible disabilities are categorically excluded. Replacing the term with disability is prudent, given that the federal definition of disability squarely and affirmatively includes people with disabling mental conditions and invisible disabilities. We would also point to Nebraska Statute 20-131, the use of disability rather than identifying specific categories of disability. Finally, we support this bill because it rectifies a glaring oversight of the current civil rights statutes. State Statute 20-132 omits people with disabilities from the list of protected classes from public accommodation discrimination. State Statute 20-134 seems to permit discrimination against people with disabilities, as it does not hold accountable anyone who discriminates against them in public accommodations. Same thing for the housing statutes in 20-317. State Statutes 20-131 and 20-131.01 guarantee discrimination protection for people with disabilities in state or political employment and fair housing, but not accommodation. The civil rights of people with disabilities are just as important as any other community, and they deserve to be identifiable and enforceable. Nebraskans with disabilities should be described in the law with language that reflects their inherent dignity. LB540 is a very important bill as it codifies the expectation and provides the ground to enforce the civil rights of Nebraskans with disabilities. If these rights are not codified, can they be enforced? The civil rights of Nebraskans with disabilities should not be guaranteed through a handshake or a gentleperson's agreement. That is unacceptable. We believe this bill

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should be advanced. I'd be happy to take any questions that you have
at the time.

LATHROP: OK, any questions for Mr. Meurrens? I don't see any. Thanks
for being here.

BRAD MEURRENS: Sure.

LATHROP: Next proponent. Welcome.

MARNA MUNN: Thank you. Good morning, Chairperson Lathrop and members
of the Judiciary Committee. My name is Marna Munn, M-a-r-n-a M-u-n-n,
I'm an attorney and the executive director of the Nebraska Equal
Opportunity Commission, or NEOC, and I'm here today to testify in
support of LB540. Language matters. I have a degree in communications
studies and a law degree, but you don't need either to know that words
matter. The difference between the word handicap versus disability or
person with a disability is as great, to paraphrase Mark Twain, as the
difference between lightning and the lightning bug. When these laws
were originally passed, lawmakers use the terms of the day. But as
we've advanced as a society, we have numerous examples where we've
revised language to reflect that advancement, and we should do so
here. In our work at the NEOC, and despite the terms used in these
statutes, currently we use the term disability and person with a
disability more in compliance with the American Disabilities Act,
whose principles we've adopted on state level. And I think it's time
we adopt that language now that we've hit the 30th anniversary of the
ADA, it's probably time. This bill changes nothing with regard to our
applications of the law in that way, but it changes everything with
regard to the dignity of those who it applies to and who we serve. It
signals respect and understanding. And we are acutely aware that to
the community to which these words apply, there is an enormous
difference in framing their identity. And it is time, 30 years after
the ADA was passed, to harmonize the language in our laws to reflect
that. I am going to address the issue with the public accommodations
statute. Originally, housing and public accommodation before 1992 were
sort of intertwined as one big nebulous law. There was an effort by
our Legislature in 1992 to separate those two and make them more
distinct, which has been helpful in many ways. At that time, though,
they added disability. The ADA had just passed a prior a couple of
years before that, and they added it to the law. With regard to public
accommodation, they added it to 20-139, which the word handicap is

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currently there, so this bill would replace that with disability. But what they did not do is add it as a specific protected class under 20-132, which is the provision that the agency looks to. So they're-- as I understand it, I wasn't there at the time, but this created some confusion about the Equal Opportunity Commission, Nebraska Equal Opportunity Commission's authority to, to pursue disability as a protected basis under public accommodation. My reading of it is that we could probably go ahead under the language of 20-139. The agency, however, had not done so because of the confusion that was generated and the lack of harmony between the provisions. This bill would fix that.

LATHROP: OK, any questions? I do have one for you. So oftentimes when you come to testify, you share that there is federal laws against discrimination and there are state laws with discrimination.

MARNA MUNN: Correct.

LATHROP: And the importance of having them harmonized so that the state law reflects the federal law. Otherwise, the only enforcement available is under federal law--

MARNA MUNN: Right.

LATHROP: --and not state law. By making this amendment, are we broadening the authority beyond what is available under federal law?

MARNA MUNN: No, we're harmonizing between the two. We--

LATHROP: OK.

MARNA MUNN: --we, we, in practice, we are largely there through our work share agreements, and there's a sufficient language in our laws to basically get us to the federal definition. This just makes it very clear that the two are working in harmony, which creates that substantial equivalency between the federal and the state laws.

LATHROP: So I just want to-- I ask that question, because if we go to the floor and somebody asks us or Senator Walz, we're not broadening the authority. If, if someone had a problem, they could pursue it under state law if it's broad enough. But otherwise they'd be able to do all this under federal law.

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MARNA MUNN: That's correct. All of the laws that we, we enforce have a counterpart in the federal law. So that an individual living in Nebraska has a right to pursue their federal that-- their rights under the federal law. But the state has adopted a version of those federal laws and so there's also rights to Nebraskans specifically, if they prefer the state court. If we don't harmonize, then state court, they're precluded, right? They would be better off going to the federal level. But that, then that's not local and. I mean, it creates its own issues.

LATHROP: And--

MARNA MUNN: But that's always available to them.

LATHROP: And the NEOC can investigate it as a violation of state law--

MARNA MUNN: Correct.

LATHROP: --instead of always looking--

MARNA MUNN: Right.

LATHROP: --to the federal law.

MARNA MUNN: Currently because they're substantially similar, we do both. We do it for both the federal and state law. What could happen if they diverge is you could have two different cases. You could have a federal case, because there's some different nuance, and a state case. And so you're going to that same respondent twice asking them what happened and managing two different investigations. And that didn't seem particularly efficient, and so they created this work share dual-filing agreement because they're similar enough. One agency can efficiently handle the investigation under both of the laws. And then when that's done, the individual still has rights to go into federal court if they should choose or state court. If we get out, if we're not substantially similar, then, then one or the other avenue might be closed to them.

LATHROP: OK. Good government, harmonizing the statutes with federal law.

MARNA MUNN: Believe it or not, it seems more efficient. That's not always what happens in government, but--

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LATHROP: OK, good. Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for being here, Ms. Munn. You always add good information to all of this. I guess I just, I'm interested. First off, I am guilty of not knowing that we have switched to disability, and I'm very sorry and I'm glad you know about that. So do you know if there's an effort to now call the, the stickers in the hangers in by the DMV, disability stickers or disability hangers rather than, and calling the spots disability spots rather than [INAUDIBLE]--

MARNA MUNN: I don't know. It doesn't strictly fall under our law, it would be more of a DMV question. I guess I'd be surprised if there hadn't been some effort. And Mr. Meurrens maybe, maybe is more aware of that, with that community in general.

PANSING BROOKS: Yeah, I thought I probably should have asked him, but also maybe by changing this law, it will make it more clear that we need to be doing this.

MARNA MUNN: Yes, I don't think-- I think that that could be right. It wouldn't, it wouldn't be happening in a vacuum. It may be a reason or a way for those who would be interested in that to further their cause. It just wouldn't be in our mission to.

PANSING BROOKS: And replacing hearing impaired, that-- those are all sort of, that's sort of new information to me, I'm embarrassed to say, so--

MARNA MUNN: Well.

PANSING BROOKS: --I will work on that.

MARNA MUNN: Well, some might suggest that, you know, the real touchstone is that to give dignity and respect, you try to refer to people in the way in which they'd like to be referred.

PANSING BROOKS: Yeah.

MARNA MUNN: And we try to do that. Of course, for practical purposes, we have to have some broader categories. There are people within each of the communities that have some preferences that are different from each other, right? We don't pretend everyone within a particular,

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within the persons with disability community don't all have the same
approach. But we do need some general language that's at least better
than what I think we currently have.

PANSING BROOKS: OK.

MARNA MUNN: And then after that, when we're dealing with each
individual, we try to, we try to refer to a person as they-- on an
individual level, as they would prefer to be.

PANSING BROOKS: I like that, that we ask people and try to communicate
about preferences. And but we can all agree that intellectual
disability is the best so, as to what we used to say, the terrible
thing we used to say.

LATHROP: Yes.

PANSING BROOKS: OK.

MARNA MUNN: Yes, we've been educated this last year, the difference
between cognitive and intellectual or-- or there are differences even
within that community. And there are some great people in the state
who can speak, who speak to us about that so.

PANSING BROOKS: Thank you for being here.

LATHROP: OK. I don't see any other questions. Thank you once again.

MARNA MUNN: Thank you.

LATHROP: Anyone else here as a proponent?

***ASHLEA KERR:** This testimony is in support of LB540, provided by
Ashlea Kerr, representing The Arc of Nebraska. Thank you to Senator
Walz for introducing LB540 which will change the antiquated and
exclusive language in current Nebraska statutes. The language in
current Nebraska statutes is antiquated in including the term
"handicap." LB540 will address this issue by replacing "handicap" with
"disability." The term "handicap" focuses on a person's deficits
rather than the person themselves. The disability community has fought
hard for people-first language to be used in legislation and all areas
of life, and the movement has been successful on many fronts (for
example, ADA language). It is time Nebraska's statute reflects this

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change in language to be more appropriate and considerate of the disability community. The language in current Nebraska statutes is exclusive and LB540 will address this issue by using more inclusive and consistent language throughout the document. For example, on page 4, lines 3-4, LB540 strikes through what is noted to be the policy of the state to encourage and enable "blind, visually handicapped, deaf or hard of hearing, or physically disabled" persons to participate fully in the social and economic life of the state and to engage in remunerative employment. What is this language missing? "Blind, visually handicapped, deaf or hard of hearing, or physically disabled." It is missing a large population of the disability community, those who are intellectually or mentally disabled. This is so important because it is in regards to people's civil rights. Under current statute, the Nebraska Equal Opportunity Commission (NEOC) is not held by law accountable to protect people with intellectual or mental disabilities from employment discrimination. This is a basic civil right, to be protected against employment discrimination. The language informing the NEOC needs to be inclusive and consistent to protect all people with disabilities from discrimination, not just those who are physically disabled. Again, thank you to Senator Walz for introducing LB540 to change the antiquated and exclusive language in current Nebraska statutes, which will protect the civil rights of many Nebraskans with disabilities. The Arc of Nebraska urges the committee to support LB540 and send it to the general file.

***JERRY NEFF:** Good morning, Senator Lathrop and members of the Judiciary Committee. My name is Jerry Neff, and I am in support of LB540. When I was three, I was diagnosed on the Autism spectrum. Autism spectrum disorder (ASD) is a broad term that describes a group of neurodevelopmental disorders. Essentially, my brain is wired differently from other people. My ability to communicate and the way my body processes sights and sounds are different. I may not look differently from anyone else, but my mannerisms and way of doing things are affected by my disability, even in the most subtle way. At 19 years old, I am facing a brand-new series of challenges. The biggest of these right now is that society doesn't see my disability. Currently, they tend to judge simply on appearance, not understanding that I sometimes do things differently out of necessity and not because I choose to be difficult. Sometimes I need more time for my brain to soak in the scenario and sort out the instructions. Often, I require a sensory calm environment in order to complete a task. The

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wiring in my brain makes it a lot harder than it needs to be. I am capable of putting my all into a task and getting it done efficiently, but I am disabled and that should be considered. The first point I want to make regarding my support for this bill is why I desire to replace the word "handicap" and the currently listed conditions with "disability". The current disability laws state "A blind, visually handicapped, deaf or hard of hearing, or physically disabled person has the same right as any other person." My disability does not fall into any of these criteria, and as a result the law doesn't apply to me and I do not have the same rights as any other person. Not to mention, according to the Cambridge dictionary, "handicap" means "not able to use part of your body or your mind because it has been damaged or does not work normally." While the differences are subtle, the word choice means a gigantic difference for me. I do not see myself as "damaged or defective of mind". My second point revolves around the concept of equality. The Nebraska laws were created to grant equal access to all citizens. I am here today to specifically urge you to make sure it applies to those with invisible disabilities like me. Currently, they state "It is the policy of this state to encourage and enable blind, visually handicapped, deaf or hard of hearing, or physically disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment." These laws should be updated to provide civil rights protections to persons whose disabilities do not fit these few discrete categories, like mine. My third point is about employment. Jobs are plentiful for teens willing to work for a minimum wage. Unfortunately, as a 16-year-old with an invisible disability, it was hard to find someone willing to give me a chance. For someone with these hidden disabilities, the first interview would be a massive struggle. Finally, Vocational Rehabilitation got me a position at a grocery store bagging groceries, but the environment was too chaotic and not ideal for me. After a year of service, I was unsuccessful advocating for a position better suited to my skills. Employment is critical for all people with all disabilities. But even within the disability community, I feel excluded from the opportunities to achieve my full potential. This is because the law currently only covers certain visible disabilities, none of which I have. As long as it continues not to branch out, the rights they promote will always be excluding me. In conclusion, the changes in this bill involve various laws designed around employment, housing, and accommodations. These are areas where people with disabilities often face discrimination and

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difficulties. These supports are vital for us to live life to the fullest and it is important that our leaders make sure that those supports are available to everyone who needs them. By updating the language in these laws, the state of Nebraska makes it clear that they are protecting the rights of all of their citizens, including those with invisible disabilities. LB540 should be advanced. If you have any further questions or want more information, I can be reached at 2jpnneff@gmail.com.

***JESSICA HARRIS:** Good morning, Senator Lathrop and members of the committee. My name is Jessica Harris and I am a person living with multiple disabilities, though you might not know it if you saw me on the street. Due to pre-existing health issues, I'm at high risk for becoming seriously ill from COVID-19, so I could not be here before you to testify in person. However, I support LB540 and wish to provide testimony regarding LB540 for the record. This bill, LB540, is very important to me. I, myself, am a person living with a disability, so this bill has a significant impact on me. This bill does three things that I see as making an essential difference for people such as myself. First, it changes the wording from "handicap" to "disabled" in the civil rights provisions. It also eliminates excluding terms referring to a person's disability, such as blind, deaf, or physically disabled. It also adds "disabled" as a protected class in terms of accessing community services. While these may seem like minor or unimportant changes to many people, to me these changes are huge. They catch the civil rights provision of the Nebraska Constitution up with modern times, and work to make sure no one is excluded or offended, based only on wording, that was not intended to exclude or offend Nebraskans with disabilities. The first issue, changing the word "handicap" to "disabled" is important because the word "handicap" is an outdated and offensive term to a person living with a disability. It's offensive because the word handicap actually comes from the saying "cap in hand", which was what disabled veterans did to survive during the times of King Henry VII, so basically the word handicap is referring to beggars, or people of no value to society. The word handicap in today's English is also used to rate one thing over another, so calling a person like myself handicap you are saying that they are less than another person or that I am less than another person. I'm sure you can see why that language is offensive to someone like myself. The next thing this bill addresses are the excluding terms referring to a person's disability such as blind, deaf, or

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physically disabled. The problem with this language is by using the words blind, deaf, or physically disabled you just excluded a large portion of Nebraskans with disabilities from these protections, as many Nebraskans with disabilities have disabilities that are not listed there, many of which are not visible to the average person's eye, or invisible disabilities. The word invisible disability refers to any disability that you can not obviously detect by glancing at a person. This would include my own disabilities as you would not believe the number of times I've been told by people that "you don't look disabled" if they are using proper language, but more often than not they will just say "you aren't handicapped" or use other offensive language to question why I think I'm disabled. This is another problem with this language, what if a person is physically disabled but doesn't appear so by glancing at them? Because you used specific excluding language, people may feel they have the right to make sure said person with an undetectable physical disability proves they are disabled in order to fall under the protections offered by the civil rights provisions. This is not only embarrassing to the person with the disability, but it's derogatory as well. The final important change that LB540 will make in the civil rights provisions is to add "disabled" as a protected class in all of the sections of the civil rights provision. While you might not notice it to skim the document, section 12, 20-132 which says "All persons within the state should be entitled to a full and equal enjoyment of any public accommodation without discrimination or segregation on the grounds or race, color, sex, religion, national origin, or ancestry", leaving out people with a disability. This bill would add in the word disability, which adds in a whole group of Nebraskans who had been previously overlooked, and are at high risk to be discriminated against due to their disabilities. The appeared to just be a one-time error, until I read on down to section 13, 20-134, where it also leaves out the word disabled, and thus a whole group of Nebraskans such as myself, when stating that "any person who directly or indirectly refuses, withholds, or denies any person accommodations, advantages, facilities, services, or privileges or who segregates any person in a place of public accommodation on the basis of race, creed, color, sex, religion, national origin, or ancestry should be guilty of discriminatory practice and shall be subject to the penalties of sections 20-132 to 20-143". While I hope this was an honest mistake to leave out Nebraskans with disabilities, clearly there are multiple places in the civil rights provisions that leave out people with a

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disability as a protected class. Since people with disabilities are protected and included in the wording of the United States civil rights, it's essential these individuals also be correctly referenced in the necessary sections of Nebraska's civil rights provisions, especially those referring to discriminatory actions, as frequently people with disabilities such as myself are discriminated against, often by accident, as individuals without disabilities may be unaware of the needs or accommodations necessary for those with disabilities just to live their lives. I hope that this has provided you with some insight to why a seemingly minor bill to you could be such a big deal to a person with a disability such as myself. People with disabilities don't go out of their way to ask for extra accommodations that are not necessary to them to function in society, but they should be granted the same civil rights as all other protected classes of Nebraskans, as sometimes special accommodations are necessary so they can "live the good life", that each and every Nebraskan is entitled to live, without discrimination or segregation, just because they are different. LB540 should be advanced. I can be reached at jessica.harris3@waldenu.edu if you have any questions or would like further information.

***SPIKE EICKHOLT:** Members of the Committee: My name is Spike Eickholt and I am a Registered Lobbyist for the ACLU of Nebraska and we are in support of LB540. LB540 would make changes to terminology relating to statutes describing or impacting individuals with disabilities. While many of these changes are minor, they are important updates to our statutes in that the amendments reflect more accurate terminology and descriptions. More significantly, the changes in terms use more contemporary, and respectful, language relating to describing individuals with disabilities as well as using legal operative terminology. Language in statute should be legally accurate and should reflect respect and dignity of the people that the statutory provisions impact. LB540 advances these principles. We encourage the Committee to advance this bill and pledge our assistance in supporting this effort.

LATHROP: Anyone here in opposition? Anyone here in a neutral capacity? Seeing none, we have one letter, one position letter, which is in the neutral. And we also have the following, Spike Eickholt, this would be written testimony provided this morning. Spike Eickholt, proponent from the ACLU of Nebraska; Jessica Harris, on her own behalf, is a proponent; Jerry Neff, N-e-f-f, is a proponent on his own behalf; as is Ashlea Kerr, K-e-r-r, is a proponent with the Arc of Nebraska. With

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that, we will-- is Senator Walz still here? I can't see through the reflection. Senator Walz, you may close. She waives close, that will close our hearing on LB540. Senator, thanks for being here today. And that will bring us to our final bill of the morning, LB95, and Senator DeBoer. Welcome, Senator DeBoer.

DeBOER: Thank you. Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10, which includes Bennington and northwest Omaha. I'm here to introduce LB95, legislation to provide garnishees or employees-- employers up to 20 days to respond to wage garnishment interrogatories. Currently under Nebraska law, when an employer is served a garnishment interrogatory for an employee, the employer has a 10-day window to furnish answers to those interrogatories. If the interrogatories are not received by the court and file stamped within ten days of service, the employer can become liable for the underlying judgment. The interrogatory must be sent to the location where the debtor is employed, not to the employer headquarters, which handles or outsources payroll. The 10-day deadline is an anomaly when viewed in context with our neighboring states, and compliance has proven incredibly difficult. South Dakota, Iowa, Kansas, Missouri and Wyoming allow garnishees 30 days to respond to interrogatories. Importantly, this bill has been amended to address several concerns last year. That's reflected in the green copy that you have this year. First, the original proposal from last year took the response time from the current 10 days to 30, which has been scaled back to 20 in this bill. Secondly, the bill has been simplified to avoid unnecessarily touching other sections of statute and clarifying that the 20-day time line applies only when wages are involved. As reflected in the fiscal note, neither the Supreme Court, the Department of Banking nor the Department of Administrative Services have indicated that this bill will require additional resources or noticeably impact case proceedings. LB95 is a simple bill that will provide greater flexibility to businesses and will allow businesses to receive and respond to a summons on a reasonable time line. Thank you for your consideration of this bill. I'm happy to answer any questions.

LATHROP: OK, any questions for Senator DeBoer? I don't see any. Thank you, Senator. We appreciate the introduction. We will take proponent testimony at this time. Good morning and welcome.

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ANSLEY FELLERS: Good morning. Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Ansley Fellers, A-n-s-l-e-y F-e-l-l-e-r-s, I'm the executive director of the Nebraska Grocery Industry Association, and I'm here today in support of LB95, Senator DeBoer's bill to extend from 10 to 20 the number of days garnishees have to respond to wage garnishment interrogatories. Thank you to Senator DeBoer for carrying this bill. As the senator stated, employers in Nebraska are provided a 10-day window to answer wage garnishment interrogatories. If the interrogatories are not received by the court and file stamped within 10 days, the employer can be held liable for the judgment as well as attorney fees. The 10-day deadline is also inconsistent with policies in our neighboring states. I've handed to the committee testimony from one of my members, Casey's General Stores, which operates 145 convenience stores in the state of Nebraska, employing approximately 2,500 people and paying millions in state and local taxes. Casey's would have to be here, but the company is still operating under travel restrictions. As you will see in that letter, one instance where the 10-day turnaround is especially problematic is when interrogatories are by law served on a retail location where the debtor is employed, but the documents have to make their way to and be processed by company headquarters. Company HR then has to gather information, respond, and get them to the court. In some circumstances, the debtor named in the interrogatories is not even employed by that point. For another example, imagine a court clerk receives responses to interrogatories on day nine of ten. If for whatever reason the response is not uploaded to the docket until day 11, an attorney representing a collection agency could recognize this deadline has passed and initiate default proceedings. In either of these instances, the employer would likely have to hire legal counsel to resist default proceedings and persuade the court that the responses were filed timely or convince the court they were acting in good faith and should not be held liable for the judgment. One of the questions raised in the committee last year was whether this issue would be resolved that the state move to electronic notice. My sense is yes, it could help. But upon request, the administrative office of the courts indicated a move to electronic notice is not on their radar. I also wanted to clarify an issue raised last year related to freezing bank accounts. This bill was rewritten and is intended to be very limited in scope. If a judgment against a debtor includes a bank garnishment or if a debtor has not taken steps to pay the judgment, the creditor can request a court order directing the bank to freeze

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funds in an account. In many simple wage garnishment proceedings,
however, bank accounts are not frozen. For this reason, I ask you
advance LB95, and I'm happy to answer any questions.

LATHROP: Any questions from Ms. Fellers? I don't see any. Thanks for
being here.

ANSLEY FELLERS: Thank you.

LATHROP: Next proponent testimony. Anyone else here in support of
LB95. Seeing none, we'll take opponent testimony next.

TESSA STEVENS: Good morning.

LATHROP: Good morning.

TESSA STEVENS: Chairman Lathrop, members of the Judiciary Committee,
my name is Tessa Stevens, T-e-s-s-a St-e-v-e-n-s. I'm an attorney in
Grand Island, Nebraska, I work in compliance and collections, and I'm
here today on behalf of the Nebraska Collectors Association in
opposition of LB95. As we heard from the introducers LB95 is seeking
to extend the time in which an employer has to respond when they
receive a garnishment for one of its employees. Currently, the
employer has ten days, and LB95 would give the employer another ten
days, doubling the current time frame. While on its surface it may
appear harmless, I'm going to discuss today how such a change is more
problematic than it seems. The garnishment process as a whole is a
very complicated, involved, time-sensitive statutory scheme, so
changes in the time frame to one area will adversely impact other
steps in the process. Currently, a consumer has only three days to
request a hearing on a garnishment. After hearings are requested, the
court only has 10 days to set that hearing. And the purpose behind the
quick turnaround is to avoid harming the consumer by garnishing funds
that were, are otherwise exempt from garnishment. If LB95 changes the
time frame in which the garnishee has to answer, the hearing set by
the court might actually occur before the answers are filed, thus
throwing off the whole process. For wage garnishments, if they're
filed correctly, the employer begins to withhold funds during the pay
period in which the garnishment is received, and that can be continued
with a continuing lien for each consecutive pay period. So if an
employee is paid weekly, the funds may be able-- or may start being
withheld right away, and it could be a couple pay periods before the

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garnish-- the interrogatories are filed with the court by that employer. So this acts as a disservice to the employee because without those answers on file, the courts cannot entertain the objection hearing requested by that employee. Wages could be garnished that are not allowed to be, and it extends the process. The NCAA met with Ms. Fellers and Casey's prior to the hearing today, and I want to talk about a couple of things that she mentioned and that we discussed. Service on the garnishee, especially like a big corporation like Casey's must be served in the same way that you serve a lawsuit. So it does need to be reserved to a registered agent. Service on a local Casey's gas station is not proper service and should be fought in a garnishment proceeding. You know, our organization routinely helps, garnishees answers those interrogatories. A call from Casey's saying, you know, that they need more time to answer it or something like that is often given. I, I want to wrap up here, I know I'm short on time. I think the real problem saw-- stems from Casey's use of a third-party payroll processor called ADP. We as collectors routinely work with ADP. Their processes are delayed and it takes a vast amount of time to get those responses. Even if this statute was amended, giving them 20 days, in most cases, ADP would still not file those answers in a timely manner. We really believe that the garnishment process works as is, that the creditors rarely, if ever, file garnishment liability hearings against the garnishee. We are looking to collect from the employee and, and do not desire to bring those actions against garnishees. We just simply want them to file the answers in a timely manner.

LATHROP: OK, any questions? Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. And thank you, Ms. Stevens, for your testimony today. Just so that I can understand this, if this action isn't executed in 14 days today, the employer is on the hook for the garnishment instead of the employee. Is that correct?

TESSA STEVENS: Well, no. Kind of. I'll explain a little bit more. So they have 10 days to answer the garnishment interrogatories.

BRANDT: The company does.

TESSA STEVENS: The company does. If they do not do that in 10 days, the creditor can choose to file a motion called the garnishee liability motion, serve the garnishee with that, have a hearing in

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front of the court and then the court could award a judgment against a garnishee. When we asked Casey's about that on our call, they said of the 38,000 employees that they have, they've only dealt with maybe 10 or 15 garnishee liability hearings in the last few years, and none of them resulted in a judgment against the employer. Again, so like my company, if we file a garnishee liability action and the employer calls me and says, I'll fax you over the interrogatories, we say great and we withdraw the action. Because we're wanting to pursue the employee, not the company. It's just it's, it's really used more as a way to get their attention.

BRANDT: But if it doesn't get their attention, then the company is liable, correct?

TESSA STEVENS: If it doesn't get their attention, I would hope that they would show up to court and present why they should not be liable. That employee no longer works here, we didn't receive it, it-- that employee was the one who was served and hid it. You know, we've heard that. And then it would be up to the judge, but they could have a judgment entered for the amount of the judgment that the employee has.

BRANDT: So you're a specialist in this area of law, I take it?

TESSA STEVENS: Yes.

BRANDT: OK. Outside of Casey's, how pervasive is this problem?

TESSA STEVENS: Rarely at all. Anyone that uses ADP, we run into the problem. Again, my company does not file garnishee liability hearings against employers that use ADP. We work directly with ADP, call them, talk to them about it, get what we need. It's delayed, and it takes extra work on our part, but we do do that.

BRANDT: All right. Thank you.

TESSA STEVENS: You're welcome.

LATHROP: I do have a question. So in your experience, does ADP have enough time to answer these things? The process would be you issue a garnishment, it is served upon the registered agent, which is typically some outfit in Lincoln, right?

TESSA STEVENS: Yes.

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LATHROP: CT-- whatever they call themselves. And they then forward it
to corporate.

TESSA STEVENS: Yes.

LATHROP: Corporate then has to involve ADP. ADP who does payroll for a
lot of companies, would you agree with that?

TESSA STEVENS: I do. They're nationwide.

LATHROP: Yeah. They then have to come up with answers and get them to
you. And from your testimony, I take it's hard when ADP is the payroll
processor to get all that done in 10 days.

TESSA STEVENS: It is. And I think there are other solutions to that
problem. Obviously in today's world, there's fax, email, I can take a
picture on my phone. So I guess serving the registered agent and
getting it to ADP should happen relatively quickly. But more than
that, like my organization, many creditors that I'm aware of, I serve
the required party under statute and then I send a courtesy copy to
wherever they want it to go. So while I'm serving Casey's
headquarters, I can also fax a copy of those interrogatories to ADP so
that they have them. And we do that routinely. So it should not be as
"problemsome" to answer within 10 days.

LATHROP: OK, how often do you run into a problem with an employer who
uses ADP for their payroll getting you answers within 10 days?

TESSA STEVENS: I would say ADP never gives us answers in 10 days, and
we just call them and request those answers when we haven't received
them after the 10-day period.

LATHROP: OK, so I guess I'm hearing you say it's not a problem, and
but ADP, who does payroll for a lot, they may even do ours, I'm not
sure. Ours being my own law firm.

TESSA STEVENS: Sure.

LATHROP: They do an awful lot of payroll, and if they can't make it in
10 days, aren't we talking about a significant player in the employer
relationship?

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TESSA STEVENS: I think the problem, though, is not the 10-day period. It's they're concerned that they could be liable for it. But that's not happening. You know, so they don't answer within the 10 days, that alone, there's a lot of steps that have to happen before they're liable for a judgment and those steps aren't, aren't happening. So I guess our point is maybe ADP struggles with it, but there are a lot of employers that don't. And it throws off other, you know, steps in the process as well as just delays the whole garnishment itself. Why do we need to do that for, for ADP, who could maybe one, you know, fix it internally with more employees, but also that they're not facing these garnishment liability actions that, you know, is the outcome of their delay.

LATHROP: I get it, I get it. I'm hearing you say it is a problem for these people, but it's not really a problem because we never try to get the money out of them. But they're telling you they can't get it done in 10 days and you're saying, yeah, I understand that. But don't worry, we're not going to go neg you for the, for the judgment. So really, you don't have a problem when, in fact, one of the biggest payroll companies in the country is challenged to get it done within 10 days?

TESSA STEVENS: Well, and I would say the vast majority of our garnishments issued don't necessarily deal with ADP. We're not issuing nationwide. You know, I understand that they're processing a lot, but we would hate for 90 percent of our unaffected garnishments to change because a nationwide company isn't doing their jobs under the statute.

LATHROP: If we were to accept this bill and change the law, is there something else that needs to be changed? You mentioned that, that it throws the timing off. Is there some other--

TESSA STEVENS: There are other statutes that set time frames, LB-- or sorry, Nebraska--

LATHROP: Are they found in the bill?

TESSA STEVENS: No.

LATHROP: In original language?

TESSA STEVENS: No, the garnishments statutes have all several statutes. So I think 25-1011 addresses how long the consumer has to

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request a hearing and how long the court has to set that hearing. So
that would be one that, you know, would need to be looked at.

LATHROP: OK, that's all the questions I have. Any other questions from
anyone? I don't see any. Thanks for your testimony this morning.

TESSA STEVENS: Thank you.

LATHROP: Any other opponents? Seeing none, anyone in the neutral
capacity here today? Seeing no neutral testimony, Senator DeBoer, you
may close. We do have one position letter. Pardon me. I cannot see
through this glass.

DeBOER: Waive.

LATHROP: OK, we do have one position letter that is a proponent
position letter and no written testimony. With that, we will close our
hearing on LB95 and our hearings for this morning. We'll be back at
1:30. Thanks.

LATHROP: [RECORDER MALFUNCTION] go live. Good afternoon. For those of
you that haven't been through this before, I begin our morning and
afternoon session by reading a little bit of the ground rules. Which
many of you are familiar with, but not everyone, so I'll go through it
again, and certainly not the people that might be watching on TV. Good
afternoon and welcome to the Judiciary Committee. My name is Steve
Lathrop. I represent Legislative District chair-- I represent
Legislative District 12 and I'm also the Chair of 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.
We would encourage you to strongly 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. We will be following COVID-19 procedures
this session for the safety of our committee members, staff, pages,
and the public. And we ask those attending our hearings to abide by
the following procedures. Due to social distancing requirements,
seating in the hearing room is limited. We ask that you enter the
hearing room when it is necessary for you to attend the bill hearing

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in progress. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that you wear 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. And the pages will be sanitizing the front table and chair in between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter the hearing room are asked to observe social distancing and wear a face covering while waiting. The Legislature doesn't have availability this year for an overflow room, which doesn't look like it'll be a problem this afternoon. Due to COVID, we are providing two options this year for testifying at committee hearings. First, you may drop off written testimony prior to the hearing. Please note that the following four requirements must be met to be-- to qualify to be on the committee statement: (1) the submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 here in the Judiciary Committee hearing room; (2) individuals must present their written testimony in person and fill out a testifier sheet; (3) the testifier must submit at least 12 copies; and (4) testimony must be a written statement, no more than 2 pages single-spaced or 4 pages double-spaced in length. No additional handouts or letters 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 found on the committee statement provided all four criteria are met. As always, in-person testimony at public hearings is available. Persons attending public hearings will have an opportunity to give verbal testimony. On the table inside the doors, you'll find yellow testifiers sheets. Fill out a yellow testifier sheet only if you're actually testifying before the committee. And please print legibly. Hand the yellow testifier sheet to the page as you come forward. There is also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12 noon the last workday

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Judiciary Committee March 4, 2021

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before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or delivered to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill for 30 minutes or up to 30 minutes, then opponents for up to 30 minutes. 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 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 a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. When the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, we'd like to remind everyone the use of cell phones and electronic devices is not allowed in the public, in the public hearings, though, you may see senators using them to stay in contact with staff. At this time, I'd ask everyone to look at their phones to make sure they're in the silent mode. As a reminder, no verbal outbursts or applause are permitted in the hearing room. Since we've gone paperless this year, the Judiciary-- in the Judiciary Committee, the senators will instead be using their laptops to pull up documents and follow along with each bill. That's just-- I always say that just so that you think-- you don't think that people are horsing around or not paying attention. That's how they're reading the bills and so forth and comments from the public. 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 meetings to attend to. And with that, we'll have the committee members introduce themselves, beginning with Senator Brandt.

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

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

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LATHROP: Assisting the committee today are Laurie Vollertsen, our committee clerk; and Josh Henningsen, one of our two legal counsel. And our pages this afternoon are Ashton Krebs and Samuel Sweeney, both students at UNL. And with that, we will take up our first bill, LB157, and Senator Wayne.

WAYNE: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. To me, this is a very simple bill, has to deal with conflicts of interest or the appearance of. I don't believe there necessarily is a conflict of interest, but the appearance of one is concerning. I think, first, we have to understand that first and most oftentimes, prosecutors are viewed by the public as part of law enforcement or law enforcement as extension of prosecutors. They're on the same side. As laid out in what's handed out to you today, The Guardian investigation that was done years ago, the political reality is most county attorneys, particularly in Nebraska, are elected. One of their main sources of campaign contributions come from oftentimes police unions. That should raise some red flags. At least it does from the [INAUDIBLE] looking into the, the judicial system. One of the primary purposes of-- for a special prosecutor is to ensure that justice is served when the government prosecutor is in a, in a-- doesn't have the ability or is potentially conflict of interest. As I stated, campaign finance conflicts or the perception, thereof, are inappropriate for the local prosecutor to presume, presume these type of cases. Understand, what I am attempting to do is change the law back to what it used to be. We actually changed the law, and according to The Guardian a few years ago, to allow for local prosecutors to prosecute these cases. But with the overwhelming concern that happened over the last two years, I think any perception to make sure there is transparency and faith in the judicial system is a must thing that we should do. According to the Police Integrity Research Group, approximately 1,000 people are killed by police every year. Some, maybe even-- some of them are justified. And we're not saying they're not. But-- and since 2005 nationwide, 98 local police and law enforcement officers have been arrested in fatal shootings. Only 35 of those have been convicted. Highlighting The Guardian piece that I handed out, they look closely at prosecutors around the country and 95 percent of them are elected. So, again, this bill is around a conflict of interest bill. They found in 2015 that our very own in Douglas

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County, and I want to be clear, I'm not attacking Don Kleine, but the article speaks of it so I'm speaking around the article, cleared more officers in on-duty killing than any other prosecutor in the country. Again, I am not saying that Don Kleine did something wrong. What I am saying that the perception and the removal from that individual prosecutor instead installing a prosecution-- a special prosecutor allows the community to have more faith in the system. What we are finding is that in the, in the article, it talks about Don Kleine topping the list, that when they looked across the country, special prosecutors only ruled out or only found justifiable homicide in 12 percent. Whereas, most of the prosecutors who do not have this conflict are about 80 percent. That's a significant gap. Now, again, we are not saying that they're all the same, but at the end of the day, there's a conflict of interest from my perception. Mandating the appointment of special prosecutor when someone dies other natural causes in police custody is, I think, a good thing we should do. The prosecution must have five years of experience of criminal or felony litigation. They are afforded three special prosecutors with experience in homicide investigations, and they must be from outside the jurisdiction where the death occurred. Again, we are trying to level the transparency and put faith in the system when it comes to in, in custody deaths. The fiscal note in this case has little or no impact. But what you'll hear from counties that it will drive up some cost. And the question I really have for this is the cost of a special prosecutor versus the belief in the judicial system. How do you weigh that? I think what we've seen over the last two years when you talk about the community engagement across the state that we've seen, the idea of transparency and the idea of making sure we have faith in the criminal justice system carries more weight than any cost that may occur. And with that, I'll answer any questions.

LATHROP: Any questions for Senator Wayne? I do have one for you. So if we, if we make this-- if we pass this, can the Sarpy County Attorney call Don Kleine and Don Kleine call the Sarpy County Attorney and [INAUDIBLE]?

WAYNE: Theoretically, yeah. Theoretically, yes.

LATHROP: Is that-- do you think that still-- do we need somebody outside of the county attorney's office anywhere?

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WAYNE: Well, I guess I got to think about if OPD has jurisdiction in Sarpy County then I think that wouldn't be considered outside of the jurisdiction. I don't-- I can't remember if OPD goes into Sarpy County. We got some weird lines. I don't think so.

LATHROP: I'm not sure either.

WAYNE: I don't think so.

LATHROP: In very east Omaha.

WAYNE: Yeah, I don't think so. But I, I-- I'm--

LATHROP: But you're OK having a county attorney from one county come in to Omaha, for example, and vice versa.

WAYNE: Yes. Correct.

LATHROP: OK. And you think that'll still promote--

WAYNE: I think it'll--

LATHROP: --they're still county attorneys.

WAYNE: It, it is. But I think it promotes transparency, at least in some respect.

LATHROP: OK, very good. Any other questions for Senator Wayne?

WAYNE: I have a hearing in Revenue so I'll waive closing.

LATHROP: OK, thank you, have a good weekend. We will next take proponent testimony. OK, how many people intend to testify on this bill? One. So can you alert Senator Hilke? Welcome,--

SPIKE EICKHOLT: Thank you.

LATHROP: --Mr. Eickholt.

SPIKE EICKHOLT: Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB157. We support this bill for the reasons that Senator Wayne said when he introduced the bill. This bill would revert the law

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back to what it was for-- actually, a number of decades until 2010, when the Legislature struck the part that is-- well, actually, sort of added when the Legislature sort of went back to, to-- in 2010, the Legislature struck a provision that provided for a special prosecutor to be appointed or to investigate in-custody deaths and prosecute grand juries that were assembled in response to those in-custody deaths. Just to clarify, this bill does not cover and this law change as proposed does not apply to in-custody deaths in which a physician certifies that the death was due to natural causes. So we're not talking about when people pass away when they're elderly in prison or in jails or something like that, which are technically triggering the grand jury investigation process. This would apply to situations in which someone dies while they were being apprehended by law enforcement or in the custody of law enforcement. And at the time the Legislature repealed this law or changed it in 2010, the argument was from the prosecutors and the counties primarily because of fiscal costs. The NACO supported it because to appoint a special prosecutor, whether it's another attorney from a different county or a private attorney in a criminal practice, it costs the county some money to do that. And it was primarily promoted as a cost-saving method and an argument that the local county attorneys can see to it that they are independent from law enforcement, that they can prosecute cases and they do prosecute cases against law enforcement and they can handle these as well. But I think that what we've seen in the last few years and really the last year or so is a renewed interest and a renewed public discussion regarding police oversight and transparency. And this bill is consistent with that. Even if a special prosecutor would ultimately find that law enforcement was justified, or at least not at fault regarding a death, at least having that independent neutral person entity and neutral independent investigator separate from the law enforcement agency in the narrow area of focus that would at least hopefully assure the public that the grand jury investigation is meaningful, it is legitimate, and then any conclusions or nonconclusions that come from it are not based on any kind of protection or ability to protect their own. Even though law enforcement agencies and local prosecutors are technically separate, if you spend any time in a prosecutor's office, you'll see officers walking in and out of there like they work there. And the public sees that. And that's one of the things that I think this bill would do, at least would assure the public that any investigation following an in-custody death is going to be done in a neutral, professional

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manner. So for those reasons, we would encourage the committee to
adopt-- advance this bill.

LATHROP: OK. Any questions for Mr. Eickholt? I don't see any. Thanks
for being here today. Any other proponent testimony on LB157? Anyone
here to speak in opposition? Good afternoon and welcome.

BRUCE FERRELL: Thank you. Thank you, Chairman Lathrop and members of
the Judiciary Committee for allowing testimony today in opposition of
LB157. My name is Bruce Ferrell, I'm the chief of police for the city
of Wahoo. I'm also the second vice president for the Police Chiefs
Association of Nebraska. PCAN currently believes that Nebraska Revised
Statute 29-1401 should remain, as it currently reads. The Nebraska
State Legislature in the past has made changes to 1401 in 2002 and
then changed the law back in 2010. When a special prosecutor has been
determined by the sitting county attorney to be warranted, county
attorneys have made the correct call and appointed them. The vast
majority of in-custody deaths in the state come from the deaths of
persons in a correctional setting, whether they're natural and/or
suspicious deaths. Each of those under state law require a grand jury.
In Johnson County, where the Tecumseh State Penitentiary is located,
from 2016 to 2020, there have been 16 grand jury investigations. In
2021, there are currently ten scheduled so far for that one county. By
requiring an appointed special prosecutor with five years of criminal
litigation, including felony litigation, places an enormous financial
burden on that county, especially counties like Johnson County, which
are already saddled with other financial burdens regarding that grand
jury proceedings. I personally have been an investigator on a number
of grand jury proceedings in several jurisdictions where there have
been in-custody deaths. I've also had the most utmost confidence in
those county attorneys who presided over those grand juries. I've also
been involved in a grand jury where a special prosecutor was appointed
and the case went spinning out of control. The attorney appointed in
that matter was very experienced, over 35 years of experience, but he
had no grand jury experience and caused the indictment to be dismissed
by an error by the special prosecutor. PCAN has faith that our current
county attorneys have the experience, competence, and independence to
determine when a special prosecutor should be requested from the
district court. PCAN would ask that the committee not move this
legislation forward to the floor. And I thank you for your
consideration and I would welcome to any questions you may have.

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LATHROP: OK. Senator McKinney.

McKINNEY: Thank you. Do you recognize the concerns of community members about the relationship that county attorneys currently have with law enforcement?

BRUCE FERRELL: I do recognize that and I do recognize that up until this summer, especially in the city of Omaha and other locations in the state, that those relationships had vastly improved and it continues to improving. While there-- while we have had that issue since George Floyd and other instances since the last summer, I've seen that confidence begin to grow back in the communities that we serve based on the outreach that law enforcement has done to try and repair any of those damages. The concern I have, especially with the, the appearance of transparency with the county attorneys and, and any contributions by the law enforcement organizations is no different than an argument that if a Nebraska state senator receives a contribution from the Police Officers Association of Omaha and then is not independent enough to vote their own conscience when it comes to any law enforcement bill, pro or against.

McKINNEY: Second question, not even a question, more so a comment that I know you say that prior to the summer, relationships and things have improved. But in my community, I would beg to say different. These, these issues to me and for members of my community aren't new, they're not fresh. And when you actually get on the ground in communities like north Omaha, you would see that there are a lot of community members that question the relationships that county attorneys have with the police. I know you're in Wahoo, so I'm not sure how many times you ever ventured into north Omaha and actually engaged with the community outside of individuals that are in, quote unquote, leadership positions. And that's why this is needed, because of a lack of transparency and a lack of accountability. Not to say the county attorney is doing anything wrong, but the perception because of the relationship is the issue.

BRUCE FERRELL: And I appreciate that, that comment on your part. Senator, what I will tell you is I retired after 23 years with the Omaha Police Department. The majority of the time I spent in my duties with that agency, were working in north Omaha and in south Omaha. The last ten years working in the gang unit so I had daily contact with the community in north Omaha and in south Omaha. I had daily contact

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with people in leadership and, and, and began the-- in starting in 1999, we began our-- really a concerted effort at outreach within those communities, starting with the Project Safe Neighborhoods program and then extending into what is now considered the Empowerment Network. I've met Willie Barney. I know a number of the leadership within that that. I, I worked for, for then chief Tom Warren. I still communicate with, with Chief Warren as, as head of the Urban League. So I'm very acutely aware and have had extensive daily contact within that community and understand and have seen the improvement from when I first came on in 1985 to today. And, and ever since-- and, again, I'll just say this, ever since Chief Schmaderer has been the Chief, that outreach has been magnified. And so I believe that there are people who do have concerns about that. But I think there's also a great many people who also trust local law enforcement, work with law-- local law enforcement and believe that we're doing the job that's needed to, to protect the community and protect the rights of the, of the citizens in those communities.

McKINNEY: The people not in the boardrooms and in suit and ties do not trust the relationship that the county attorney and the police have and they definitely don't trust the gang unit because of their tactics that they have used over the years. Thank you for your testimony, though.

BRUCE FERRELL: Again, and I'll just say-- finish with this, Senators. I'm not talking just about boardroom people. I'm talking about standing on people's porches, talking with people in the neighborhood, talking to gang members, being told ten years later that the, the efforts that we made in their lives to try and get them to get away from gangs impacted them in a positive way. I've talked with prisoners countless times in the Department of Corrections and in, in the Omaha-- excuse me, the Douglas County Corrections. But I have talked to day-- day-to-day people in your, in your community and in south Omaha. It's not just boardroom people. They're, they're regular folks in those neighborhoods who appreciate what we do as well as people who don't. But we always make an effort to try and treat people as they would like to be treated.

McKINNEY: All right. Thank you.

LATHROP: I don't see any other questions. Thanks, Chief.

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BRUCE FERRELL: You bet.

***JON CANNON:** Good afternoon, members of the Judiciary Committee. My name is Jon Cannon. I am the Executive Director of the Nebraska Association of County Officials. I appear today in opposition to LB157. LB157 would require the appointment of a special prosecutor when a grand jury is called because a person has died while being apprehended or while in the custody of law enforcement. Existing law designates the county attorney or a member of his or her staff to be the special prosecutor. We recognize that the appointment of a special prosecutor is appropriate in some instances, such as when the grand jury investigation relates to the official act of a county official (Neb. Rev. Stat. § 39-1408), but it is not necessary in all cases. In counties with a state correctional facility, the cost of hiring a special prosecutor could be significant. In addition, the lack of attorneys in rural areas may make it difficult to find a special prosecutor with five years of experience in criminal litigation, including felony litigation, who is willing to take on the commitment of a grand jury. Thank you for your willingness to consider our comments on LB157. If you have questions, please feel free to contact me.

***MICHELLE WEBER:** Chairman Lathrop and Members of the Judiciary Committee: My name is Michelle Weber and I am testifying on behalf of the Nebraska County Attorneys Association in Opposition to LB157. LB157 amends Neb. Rev. Stat. §29-1401 to require a special prosecutor, rather than the duly elected county attorney, to conduct all grand juries involving a death that was not due to natural causes. Presently, the duly elected county attorney is responsible for these grand jury legal proceedings. If this bill were enacted, the county would be paying for a minimally experienced special prosecutor to handle important grand jury proceedings involving suicides and intentional and unintentional deaths in-custody or involving an officer. The NECAA is opposed to LB157 for the following reasons: • The bill is unnecessary. It implies some distrust of county attorneys handling grand juries, as if there has been questionable handling of grand jury cases. The opposite is true. In Nebraska's two largest jurisdictions, the elected County Attorneys have a combined 75 years (43 years and 32 years) of prosecution experience, to include grand jury practice. Far more than the 5 years required by the bill. In addition, many current prosecutors have presented cases to federal and state grand juries. It's what we train and are paid to do. Nebraska's

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prosecutors have demonstrated their independence, competence, and professional ability to practice law before a grand jury. The rules of professional responsibility require a high degree of competence in the County Attorney to handle this specialized and important area of the practice of law. LB157 is a proposed solution to a problem that simply does not exist. o Moreover, the Legislature has tried this before. In 2002, the Legislature changed § 29-1401 to require special prosecutors in the same grand jury cases (LB935). But in 2010, recognizing its mistake, the Legislature switched it back to county attorneys (LB842). The requirement for special prosecutors in this area is proven inefficient and ineffective. • Applying the proposed procedure of LB157 will result in less transparency, less immediate investigative oversight and less accountability for law enforcement and state investigative action in grand jury cases. Currently, the County Attorney provides immediate professional and competent oversight for independent investigations requiring a grand jury at the earliest opportunity for a case, 24/7. Under the proposed LB157, government actors will have no immediate oversight or professional guidance after an event awaiting the appointment of a qualified special prosecutor. • The bill would needlessly cost taxpayers more money. The county would be paying an hourly rate for a special prosecutor for every grand jury case that was not due to natural cases. Currently, each county elects a qualified County Attorney to faithfully perform the sworn duties and responsibilities of a County Attorney, to include grand jury practice. • The NECAA suggests that if the Legislature is concerned about assuring competent, qualified, and experienced prosecutors in counties where grand juries are frequently assembled, then the Legislature should consider amending Neb. Rev. Stat. §23-1201.02 to reflect a requirement that a qualification for office in counties of class 7 be that the elected county attorney have at least 10 years of active practice "experience in criminal litigation", including felony jury trials, homicide and grand jury cases. This would be a strong, bold, systemic change and approach, and assure compliance with the rules of professional responsibility that competent, qualified, and experienced lawyers are in place to handle these important cases of public interest.

LATHROP: Anyone else here as an opponent? Anyone here in the neutral capacity? Seeing none, Senator Wayne is in the Revenue Committee and is not available to close. He's waived closing. But before we close the record on LB157, we have five position letters. All five were in

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opposition. We also have the following written testimony received this morning: Michelle Weber on behalf of the County Attorneys Association is opposed; as is Jon Cannon with NACO. Likewise, an opponent. That will close our hearing on LB157 and bring us to Senator Hilkemann and LB496. Before Senator Hilkemann begins, how many people are here to testify on the next bill? Spike, are you opponent?

SPIKE EICKHOLT: Yes.

LATHROP: OK, very well, thank you, Senator Hilkemann, welcome back.

HILKEMANN: Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. I'm Robert Hilkemann, R-o-b-e-r-t H-i-l-k-e-m-a-n-n, and I represent District 4 in west Omaha. LB496 is a bill known across the country as Katie's Law. I became aware of Katie's Law in twenty thousand-- or 2015 while attending an NCSL meeting. It was the first time that I had heard of obtaining DNA on felony arrest. I heard the testimony of James Tillman, a man who had spent 18 years in prison falsely accused, who was exonerated with DNA evidence. I learned about the powerful tool that arrestee DNA could provide for our local law enforcement agencies to help solve unsolved crimes, help in solving current cases, and how it has prevented crime from occurring. And most importantly, it exonerates arrestees who are found innocent by DNA evidence. If there were a way to guarantee we convict the guilty and exonerate the innocent without fail, we would all be for it, would we not? Realistically, I know that can't happen. But I do believe this bill moves us closer in that direction. I believe that LB496 is the bill that will help Nebraska be smart on crime. When I first heard about it, I thought it was a good idea. After studying it and visiting with various law enforcement groups and talking with many of my colleagues over the years, I have become passionate about this, this Katie's Law. I first introduced this bill in 2016. I believe that Senator Pansing Brooks and, Senator Morfeld, I think you were on the committee at that time. I carefully reviewed the objections that were raised in 2016 and I believe that this version of the bill that we're presenting today is a better bill. The bill accomplishes the following. It adds that individuals arrested for crimes of violence provide a DNA sample under the DNA Identification Information Act. Secondly, it defines crimes of violence and enumerates those specific crimes currently in statute. It specifies that the DNA sample will be collected by a law enforcement official at the receiving criminal detention facility during the booking process.

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Specifics-- it specifies that such DNA samples shall be collected by a buccal cell collection kit, which is the swab of the inner cheek of the mouth. The bill provides for expungement upon request if the person was not charged with a crime of violence for which the person was arrested within one year after the arrest, all criminal charges filed as the result of an arrest for a crime of violence were dismissed without prejudice, and any statute of limitations has run. The person was acquitted of all criminal charges filed as a result of the arrest for a criminal of a crime of violence. This requires the Nebraska State Patrol on/or before February 1 of 2022 to adopt and promulgate rules and regulations regarding acceptable documentation, a person may submit a request for expungement. This requires the Nebraska State Patrol to purge all DNA records and identifiable information in the database pertaining to the person and destroy all DNA samples from the person upon receipt of the documentation established in the adopted and promulgated rules and regulations. How this would work in practical matters is when an individual is arrested for one of the crimes of violence listed in this bill. So if they had their photograph taken, fingerprints taken, a swab of the inner cheek of the mouth will be collected for DNA at the same time. The DNA is then processed in a CODIS certified laboratory. In Nebraska, that is our State Patrol Crime Lab. Officials then send the results of that DNA test into the federal DNA database called CODIS. The CODIS will then search 20 markers of the DNA for matches. The CODIS will only notify law enforcement if there is a match with another specimen in the CODIS pool. Then and only then is the identity of the person given to law enforcement. CODIS does not match for race or other characteristics. Only the sex of the person can be determined from these markers. If the arrestee is found not guilty of the charges, they can have their information removed from the system. U.S. Supreme Court in Maryland v. King in June of 2013 ruled that the buccal swab is on par with taking arrestees' fingerprints and does not violate one's Fourth Amendment constitutional rights. Here to testify as a proponent today is Miss Jayann Sepich. Jayann is the mother of Katie, for whom this law is named. She has made this her life mission to get Katie's Law in every state in the Union. Jayann has been working on this issue for many years. She has been successful in seeing this law enacted in 31 states, including our neighbors of Kansas, Colorado, South Dakota, and Missouri. I know she is looking forward to sharing her story with you, and will be happy to answer any of your questions. This is her second visit to the Nebraska Legislature to testify on

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this matter. I am so grateful for her willingness to travel all the way from New Mexico to appear before you today. Because she truly is the expert in the room, I want to ensure that she has adequate time and testify and answer the questions that you have. I want to acknowledge that there will be some opposition testimony here today as there was in 2016. My hope is that we can work together on any way that we can strengthen and improve this bill to advance it to General File this year. I think there are many options to address the fiscal note, which is included, such as outsourcing the testing. There are federal grants that will help pay for the DNA processing. My best assessment is that the fiscal note is estimated at about \$157 per test. We know that the national average, average is \$35. So I don't know exactly, as you well know, about fiscal notes in this department. So I think we need to take a look at that as well. Jayann, Jayann will probably be able to address some of those information as well. We had several testifier proponents from the Attorney General's Office for the county attorneys that in, in the last 24 hours, I think they've sent you testimony and so they will not be testifying here in person today. So we have the opportunity for you to spend more time with the person who has been passionate about this for her whole, her whole life. When I think of the families out there waiting for answers, for the victims deserving of justice, for the innocent people who deserve to be free and for any life we can save in the future, I only can become more passionate about this issue. I thank you for consideration and I would be happy to answer whatever questions I can at this time.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Hilkemann, for bringing this bill. So to be clear on how the system works today, the state of Nebraska maintains this CODIS network on individuals that are convicted of a crime in Nebraska. And what this bill would do would be to add the DNA information of people that are arrested at that time and that, that database is, is maintained off network from other databases. Would that be correct?

HILKEMANN: They are arrested for-- their, their DNA is for the crimes that are listed in this, the more serious crimes, not just being arrested for running a stop light.

BRANDT: Yeah, I saw the list. Yeah, I saw the list.

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HILKEMANN: So it's, it's for the serious crimes. And yes, it's
maintained by CODIS, which is the federal DNA.

BRANDT: But that system is set up intentionally off-line, in a sense.
I mean, it would be on a computer like nobody else would have access
to it.

HILKEMANN: That's correct.

BRANDT: I think you said was one, one individual. And it sounds like
the State Patrol-- it seems a little strange. Usually when we get a
fiscal note that's high, it's because they're against it. But you're
saying the State Patrol really does support this?

HILKEMANN: Two years ago, the Omaha Police Department, I can't say--
I'm not going to speak for the State Patrol. They have not-- they're
not here today.

BRANDT: OK. All right. Thank you.

LATHROP: Senator McKinney.

McKINNEY: Thank you. Looking at this bill, one thing that gives me
pause is individuals that are under criminal investigation. How does
that-- how would that work? So say a crime happens and there's
multiple potential suspects. Does all those individuals present a DNA
sample if this bill was passed?

HILKEMANN: I'm sorry, Senator.

McKINNEY: Sorry, sorry. My, my question is individuals that are under
criminal investigation, and I'm just curious to know that-- so if a
crime happened and there's multiple suspects, would all of those
individuals be subject to giving a DNA sample if this was passed?

HILKEMANN: Well, I think-- no, it's only on arrest that if they were--
just because an investigation, unless a person has been-- got arrested
for the crime, they would not-- just being the suspect unless they're
arrested or, or be arrested for--

McKINNEY: So you, so you have to be arrested?

HILKEMANN: It's on arrest.

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McKINNEY: All right. Thank you.

HILKEMANN: OK.

LATHROP: I don't see any other questions. I do want to-- so we've observed the three-minute rule. I know you have somebody that came from a long ways away. We'll have her testify for three minutes. I'm confident there will be an opportunity with questions to testify or to speak further. But we have to observe the three-minute rule.

HILKEMANN: OK.

LATHROP: OK?

HILKEMANN: You bet.

LATHROP: Very good. Thank you, Senator. We will take proponent testimony at this time. Good afternoon and welcome.

JAYANN SEPICH: Thank you. Good afternoon, Mr. Chairman, members of the committee, thank you so much for allowing me to testify today. My name is Jayann Sepich, J-a-y-a-n-n. S-e-p-i-c-h. You've been provided a handout and I see it hasn't gotten to all of you yet. I want you to look at these numbers on the front of this handout. So what are these numbers? Super lottery numbers? Offshore bank account numbers? No. But these numbers offer more hope, more promise than even winning a million dollars, millions of dollars in a lottery, because these numbers can stop serial rapists and murderers before they can offend again. I know intimately the pain that can result from violent crime. My daughter Katie was a 22-year-old graduate student when a man she had never met very brutally kidnapped her, raped her, sodomized her, beat her, killed her, and set her on fire. It's numbers like these that finally identified her killer and put him in prison where he could never hurt another young woman. This numerical profile is the only personal identification that goes into CODIS. Just those numbers. These numbers identify only 20 locations on the genome out of over three billion. And they were specifically chosen by genetic scientists because they are noncoding. They offer no genetic information whatsoever. Even a PhD in genetics could not tell anything about a person from these numbers. And what's more, there are no names in CODIS, no Social Security numbers in CODIS. There's a specimen ID number that's only matched back to the person's name after there's a

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match to crime scene information. Those numbers that are on your, your
handout are actually-- that's actually my DNA profile. I had it run.
That's my profile. And I'm so confident there's no information that I
print it on the back of my business card and hand it out to perfect
strangers every day. More than 25 million Americans have spit into a
little tube and sent it into companies like Ancestry.com and 23andMe.
And when they do this, they're providing those companies with their
whole genome, all three billion markers. And what's more, they're
giving those companies ownership of that DNA. Contrast that to CODIS,
which only takes a little sliver of the DNA with no genetic
information. The CODIS system is working. It's working incredibly.
Thirty-one states already have this. As Senator Hilkemann said, a lot
of your neighbors. I would like to tell you, my home state of Nebraska
has almost the exact same population as-- my home state of New Mexico
has almost the exact same population as Nebraska. And New Mexico, as
aided in a total of 5,433 criminal investigations. Nebraska's total is
894. And I believe the main difference is the arrestee DNA system.
Also in New Mexico when crime scene evidence is found and uploaded
into CODIS, they get a match to a name 50 percent of the time on the
first run. That's the power of those 40 numbers. I'm not afraid of
having my DNA in CODIS. I am afraid of the pain and the suffering that
it causes victims, how it shatters families. So much can be done with
just these numbers. I want to thank you so much for your time, and I
hope you will ask me any and all questions that you might have.

LATHROP: Senator Geist has a question for you.

GEIST: Yes. Thank you for your testimony and thank you for coming all
this way. My question is, since this is only a small number of all the
numbers that it could code, is there a danger of misidentification?

JAYANN SEPICH: If all 20 markers match, and they don't always because
sometimes crime scene evidence doesn't have all 20 markers. They have
to have at least nine to go into the, into the database.

GEIST: OK.

JAYANN SEPICH: If all 20 match, and a lot of times there is 20. In my
daughter's case, she fought so hard for her life that she had that DNA
under her fingernails and blood, blood will give you all 20 markers.
So there was a 20-marker match. If all 20 marker-- markers match, the

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odds are one in a quintillion that it's not that person. And a
quintillion is a number 1--

GEIST: Or that it is that person?

JAYANN SEPICH: Yeah, that is that person.

GEIST: OK.

JAYANN SEPICH: That it's not another person.

GEIST: OK.

JAYANN SEPICH: So, I'm sorry. And that's a number 1 followed by 18
zeros.

GEIST: OK.

JAYANN SEPICH: And then they, they have probabilities for the number
of some markers that do match. And when they testify in court, when
the DNA lab testifies in court, they will tell how many markers
matched and what the probabilities are. So that's-- they don't, they
don't say this is this person. They say it is the probability based on
these numbers of markers matching is this amount.

GEIST: OK, thank you.

LATHROP: Senator McKinney.

McKINNEY: Thank you. How would this work for individuals that are
looking to be exonerated? Would they have to petition to put their DNA
into the system? How would it work or how has it worked in New Mexico?

JAYANN SEPICH: Well, we have had, that I know of, we've had three
people in New Mexico that were exonerated directly as a result of
arrestee testing, DNA testing. And I know several others around the
country. No, they don't petition. What happens is the crime scene
evidence remains in CODIS forever. The crime scene evidence cannot be
expunged, the evidence from the crimes. So there's evidence from
crimes that happened 25 years ago easily in CODIS. CODIS has been live
for 23 years. They went live October 13, 1998. But that crime scene
evidence always stays in there. So what happens is someone is arrested
for a crime. They swab their cheek, they put it into CODIS, and it

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matches a crime where there's somebody sitting in prison. And they say, oh, it looks like we have the wrong person. And this has happened a number of times. James Tillman that Senator Hilkemann spoke about was in prison for 18 and a half years, wrongly convicted of rape, and he was convicted on erroneous eyewitness identification. And he started petitioning very early to have the DNA run. And it took a long time to have it done. Well, we found out that if arrestee DNA had been the law in his home state, the person that actually did it was arrested six years after he was in prison. Now, six years is too long to be in prison, wrongfully convicted. But he would have been out 12 and a half years sooner because of arrestee DNA, because they arrested the person who was not convicted for the crime. And-- but they do run it through. And if that had been the case, he would have been out of prison 12 years, 12 and a half years sooner. So that's how it works.

McKINNEY: Thank you.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. And thank you for your testimony today. So could you enlighten me how many other states have a state CODIS system and about-- and Senator Hilkemann touched on the cost, on, on what the cost runs? And to me, the cost is sort of a one-way street. We measure the cost. There's a cost going into this thing. But in a sense, there's also a cost savings--

JAYANN SEPICH: Right.

BRANDT: --if people are apprehended.

JAYANN SEPICH: Every state has a state CODIS system. CODIS stands for Combined DNA Index System. And the reason it's called that is that there-- every state has what they call SDIS, the State DNA Index System. And then there's the National DNA Index System, which is called NDIS. And some states have Local DNA Index Systems called LDIS. And they all talk to each other. They all talk to each other. That's why it's called CODIS. But every state has a system. It's been set up. They've all been set up since 1998. That's when it went live. The cost, the national average for a DNA swab of the cheek of an offender is \$35. Some places it's a little more, some places it's a little less. But the amazing thing is, when I started working on this issue in the fall of 2005, the national average cost was \$85. So it's come

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down substantially. And as Senator Brandt said, what's really amazing is there have been several studies done, one was done by the University of Virginia, by Dr. Jennifer Doleac, an independent academic study, and she made many conclusions about arrestee DNA. All very favorable, but one was that for every CODIS profile in CODIS, that cost a national average of \$35 dollars, ultimately \$27,000 dollars is saved. And if any of you would like to email me, I'll give you my card. I can email you that study, because that's just one of the findings. There's a lot of other really good findings as well. The city of Denver did a study under the auspices of the Department of Justice, and their study found that for every dollar they spent on DNA, \$90 was saved. And remarkably, it's about the same, the same amount, \$30, \$27,000.

BRANDT: To follow up on what Senator McKinney, a different form of guess what he was referring to. So just because somebody is arrested, they aren't convicted?

JAYANN SEPICH: No.

BRANDT: And, and when I looked at the bill, it appears that there is a way to get your information out of CODIS.

JAYANN SEPICH: Absolutely.

BRANDT: There's a way to-- what they-- I think-- Senator Hilkemann can address this maybe. But is it expungement?

JAYANN SEPICH: Yes.

BRANDT: And so do you have any idea how many people try to expunge the records off of CODIS?

JAYANN SEPICH: Well, first of all, it's a federal law that if a DNA from an arrest is placed into CODIS, that there must be an avenue for expungement. And also the Office of the Inspector General of the United States, inspects every lab annually and does random inspections. Some labs get, you know, randomly inspected more than once a year to make absolutely certain that everyone that's eligible for expungement has been fully and completely expunged. I think that's really important because a lot of people think, well, once something gets into the system, you can't ever get it out. This is a very closed system. It's administered by the FBI and no one can get access. I

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can't get on in search and see who's in there. It's a very closed system and they are very, very particular about it. Lots of rules and regulations about what gets in and what gets out and how it happens. But it is absolutely a certainty that if someone is eligible for expungement, that they will be expunged.

BRANDT: And then one last quick question, I guess, is you were testing people 24 hours a day, seven days a week. Does this update hourly, weekly, monthly? How often do they update a, a system?

JAYANN SEPICH: When I-- when Katie was murdered, it was once a week. Now it's daily. And they are working on systems called rapid DNA that will actually be run through CODIS 90 minutes from when the swab is taken. And the reason I know that this fiscal note is a little high is they are working on that. It's about to go live. It's considered very expensive and it costs about \$100 a sample for that almost instant-- 90-minute result.

BRANDT: OK. Thank you.

LATHROP: OK. I don't see any other questions, but we appreciate you being here. I know you've traveled a long distance and you feel passionate about the issue and we appreciate hearing from you.

JAYANN SEPICH: If you'll allow me, I'd like to make one other point, make one other example.

LATHROP: You may. Go ahead.

JAYANN SEPICH: The reason it's so important to take it upon arrest and not wait till conviction is that we have many, many, many examples of heinous serial rapists and murderers that have been arrested for a felony. Either the charges were dropped for whatever reason or they were pled down to a misdemeanor and we did not get their DNA. One example is a man named Chester Dewayne Turner in California. He raped and murdered 12 women. And he was in and out of police custody 21 times during that time. And he was arrested, but he was never convicted of a charge that allowed him to have his DNA taken. And when they swabbed him and it matched to these 12 women that had been raped and murdered and two of them were pregnant. So that's 14 people. They said, oh, my goodness, look at this. And what was really, really horrible was there was a man named David Allen Jones that had been in

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prison for nine years for two of those murders. And he was wrong-- he was in prison wrongfully. And that one cheek swab, if it had been taken when he was arrested the first time, would have saved 11 women's lives. And David Allen Jones would never gone to prison for that.

LATHROP: You know, when you, when you tell that I can't help but think that David Allen Jones, whoever this guy is, was sitting in prison and the law enforcement had DNA that didn't match his.

JAYANN SEPICH: That's possible. I don't know.

LATHROP: Right? I mean, that's the only way he could-- that's the only way this works to exonerate somebody is if they're sitting in prison, there's DNA on the victim or at the crime scene that doesn't match the guy that got prosecuted.

JAYANN SEPICH: Well, I can tell you another situation that happened in New Mexico. A little girl was raped and murdered, 11 years old in her own bed and a neighbor, a neighbor boy, they thought he was involved. They didn't think he did it because the DNA didn't match. But they were convinced he was involved because he knew so much about her bedroom and they arrested him and they put him into jail. And he had several motions because he was of limited intelligence and they were trying to say he wasn't able to stand trial, but he was in jail all this time. And then a man was arrested for burglary in New Mexico. And under Katie's Law, his cheek was swabbed and they, they got the match. The interesting thing was he was here illegally. His name is Israel Diaz. The innocent man was Robert Gonzalez. He was here illegally and they were getting ready to deport him when they got the match. And if they hadn't had that arrestee DNA in New Mexico, where Robert Allen Jones [SIC] may or may not have been convicted, but he was already in jail for almost two years and Israel Diaz would have been free to continue to rape and murder little girls.

LATHROP: Right.

JAYANN SEPICH: So that's the power of this. That's why it's so important.

LATHROP: I can certainly see the potential for getting people exonerated. We have dealt with that in Nebraska. And I was around when

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Senator Avery got a bill for the convicted. So this would be taking it
another step.

JAYANN SEPICH: Well, thank you so much.

LATHROP: No, it's our pleasure to have you here today. We appreciate
your testimony and thanks for coming in.

JAYANN SEPICH: And I would ask one other thing. If you have any other
questions that come up with later testimony, if I could be allowed, if
you could ask me, I would really appreciate it.

LATHROP: OK.

JAYANN SEPICH: Thank you so much.

LATHROP: Thank you. Are there any other proponents of LB496?

BRUCE FERRELL: Senator, I promised you a short one. This is the short
one.

LATHROP: OK, good.

BRUCE FERRELL: Thank you, again, Chairman Lathrop and the members of
the Judiciary Committee for allowing me to testify today. Again, my
name is Bruce Ferrell, I'm the chief of police for the city of Wahoo
and also the second vice president for Police Chiefs Association of
Nebraska. PCAN believes that LB496 will give law enforcement an
additional tool to assist in cold case and violent crime
investigations. This initial buccal swab under those identified by
violent crimes will be invaluable. There, there are safeguards built
into the bill to keep DNA samples safeguarded throughout the process,
including later destruction. CODIS entries will expand, which will
result in more opportunities to locate suspects as well as exclude.
And that, I think, it's the-- one of the more important things is to
exclude innocent parties from the investigation. As a result, victims
of violent crimes will have more opportunities for prosecution of the
offender and the closure for them and their families in, in their
process of healing. We'd ask the committee to forward this legislation
to the floor, and I'm happy to take any questions.

LATHROP: Senator Brandt.

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BRANDT: Thank you, Chairman Lathrop. Thank you, Chief. You have sort of a mid-sized police department, in my opinion, because I'm from a rural area. Do you, do you use CODIS a lot in testing and-- I mean, does the, the science that we see and know happens and you worked in Omaha all those years. Does that happen down on the level in our smaller departments?

BRUCE FERRELL: It certainly can, especially when you have older cases that where collection of evidence would have been before DNA or before DNA became more fine-tuned to collect-- or to be able to determine with a better specificity of those crimes. So if we had had-- we have an on-- we have a cold case from 1969 that we-- that there is some biological evidence that could, that could be entered into CODIS and that, that has-- excuse me, that has been tested. And then if there was a match in CODIS, it would go back all the way to this homicide in 1969.

BRANDT: So in a lot of your cold cases, you've already entered the information that you have available in your, in your evidence?

BRUCE FERRELL: We have that information available. And then also-- I mean, we have, we have enough-- we don't have as many crimes, but we do have crimes where we collect evidence, whether they're domestic violence assaults. I remember we've had one where a significant domestic violence assault where we were able to submit DNA to the State Crime Lab, which took about a year for that to come back. If it was in CODIS, it would have been handled much quicker. And nothing against the State Patrol, but it's processed sooner and, and it's, it's done more quickly on the CODIS level. And we've, we've got a case right now that if we didn't know who the suspect would be we could enter that into CODIS and we would get a match if there was.

BRANDT: But really for CODIS to work, it's a two-way street. I mean, the previous testifier talked about collecting from people that are arrested, but the police agencies have to submit whatever evidence, DNA evidence, whether that's blood or something else--

BRUCE FERRELL: Right.

BRANDT: --into the, into the system in order to generate matches.

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BRUCE FERRELL: Correct. And that's, and that's more of a-- that's done more regularly now. But like I said, I, I, I don't know the circumstances that a previous testimony was talking about. But my guess is that it would have been prior to either the more specified DNA or now we can do mixtures and we can separate multiple suspects out from and, and especially on trace DNA that we weren't even able to do two, three, four, five years ago. So, yeah, you're right we-- once law enforcement enters that into the system, it gives us a much better opportunity to solve those crimes.

BRANDT: OK, thank you, Chief.

LATHROP: I don't see any other questions.

GEIST: Oh, I have one.

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

GEIST: I was just looking for your testimony again so-- oh, there it is. You indicated that you would only take-- I think this is yours, a swab from people who commit identified violent crime. And my question is, if you only take it from people who have committed those crimes, what about the people who are doing a lower-level crime who may have committed a more violent crime, and if you miss swabbing them-- are you following what I'm asking?

BRUCE FERRELL: Sure.

GEIST: OK.

BRUCE FERRELL: There is that, there is that risk.

GEIST: Uh-huh.

BRUCE FERRELL: But if-- but there's a greater likelihood of the violent crime offender matching in the database--

GEIST: Than the one--

BRUCE FERRELL: --for another violent crime, even if it's graduated over time, then someone who is a shoplifter, who is all they do is shoplift.

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GEIST: Right. Right. OK, I'm just thinking--

BRUCE FERRELL: We're just, we're just missing a lot more--

JAYANN SEPICH: [INAUDIBLE]

LATHROP: Afraid, we can't.

BRUCE FERRELL: --with our violent, with our-- with a violent crime offense with, with just the arrestees. Again, let's just look at domestic violence. We have a number of cases that get dismissed because the victim is either intimidated into not testifying or is in the domestic violence cycle where she decides not to testify against her significant other. And so we miss those as they come down the line, and especially if they had other victims in the past.

GEIST: I guess my concern would be if you only do like a I or a II felony, whatever those classifications are, and if this individual is caught doing something less important or less terrible, and yet was a terrible crime "committer"-- I don't know what other words to use, but that there would be a risk of missing because of that.

BRUCE FERRELL: Sure.

GEIST: And that's my,--

BRUCE FERRELL: And I guess--

GEIST: --I guess, concern.

BRUCE FERRELL: --I guess, if this bill were to pass, we kind of have the best of both worlds in the sense that we would capture the, the 20 markers that they're talking about in the DNA for the violent or crime arrestees. We would hopefully catch on the back end the 20 alleles for people who were less violent, that were actually convicted and sent to the State Penitentiary system.

GEIST: OK.

BRUCE FERRELL: Yet, it's better-- and it's better than not having it at all.

GEIST: Better than not. Yeah, OK, thank you.

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LATHROP: You're kind of playing the odds, aren't you?

BRUCE FERRELL: Yes, Senator.

LATHROP: Instead of spending money on the shoplifter, we're just going to spend money to swab the people that are involved in a more consequential felony.

BRUCE FERRELL: And, and, again, I think the odds are that the tendency is most of our nonviolent offenders stay nonviolent. It doesn't always hold true. But if you have somebody who's a shoplifter, they really aren't involved too much in going out and committing homicides.

LATHROP: OK. I do not see any other questions, but thanks for being here once again. Any other proponents?

***COREY O'BRIEN:** Senator Lathrop and members of the Judiciary Committee, my name is Corey O'Brien, Senior Prosecutor in the Nebraska Attorney General's Office. The Attorney General's Office supports LB496 because, if passed, a considerable number of currently unsolved homicides, sexual assaults, robberies and other violent crimes will be solved as a result of the bill's proposed expansion of Nebraska's Combined DNA Identification Database (hereinafter "CODIS). Under existing Nebraska law, all persons convicted of a felony, and certain misdemeanor offenses (such as 3rd Degree Sexual Assault), must submit a DNA sample which is then uploaded into a state and nationwide CODIS database. In addition to DNA profiles obtained from offenders, both the state and national databases also include DNA samples extracted from evidence collected in unsolved crimes (such as evidence retrieved from a forensic medical exam from a sexual assault victim who does not know the identity of her/his attacker) as well as DNA profiles of missing persons and unidentified human remains. While this database is an invaluable tool utilized by law enforcement agencies across the country to identify suspects or link crimes that have occurred in multiple geographic areas, it is important to note that law enforcement access to these databases is extremely limited and regulated by the strictest of standards. In Nebraska, only the CODIS Director, who is a scientist and not a law enforcement officer, can access these databases, upload offender or evidentiary profiles and conduct searches to ascertain if there are any matches. The State of Nebraska has been utilizing and contributing to the CODIS database since February 2000. Since then, the NSP Crime Lab has uploaded 50,200

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offender DNA samples, 3040 evidentiary profiles and 22 profiles from missing persons or unidentified remains. These profiles have helped identify 886 suspects for unsolved crimes and linked 129 crimes that were not previously known to have been linked. Nationally, CODIS databases have identified 401,523 suspects in unsolved crimes and linked 61,807 crimes. In addition to CODIS' contribution to developing investigative leads, it has led to the exoneration of hundreds, if not thousands, of persons nationwide who were wrongfully accused of varying crimes. As drafted, LB496 would require the collection of DNA samples from not only those offenders who must currently contribute a sample but also from those persons who are arrested for certain dangerous and violent felonies. Presently, 29 states along with Puerto Rico and the federal government, have similar collection requirements for arrestees accused of violent crimes. Adding such arrestee data into state and national CODIS databases has substantially increased the ability of law enforcement in those jurisdictions to both identify and exonerate suspects and link crimes with one another. It is reasonable to extrapolate that similar successes would occur in Nebraska by including arrestee profiles for the violent offenses enumerated in LB496. While some have argued that expanding DNA collection to arrestee's is unconstitutional, it should be noted that in 2003 the United States Supreme Court decided in *Maryland v. King*, 569 U.S. 435, that taking a DNA sample from an arrestee was no more invasive than obtaining fingerprints and that using the COOLS system to identify suspects and link crimes with one another serves the same legitimate and important purpose already being served by state and local fingerprint databases. Under existing Nebraska law, ALL persons arrested, regardless of how violent or serious their offense, are eligible to have their fingerprints collected and uploaded to state and local databases. Those databases, unlike CODIS, are accessible by all law enforcement agencies and such access is largely unregulated and unfettered. Additionally, unlike the safeguards that are included in LB496, there are few, if any safeguards to remove records from the fingerprint database when an arrestee is not charged, exonerated or acquitted. In conclusion, LB496 should be advanced to general file so that law enforcement in Nebraska, like those serving in a majority of the country, will be able to more quickly and accurately apprehend perpetrators of violent crimes and preventing unnecessary additional victimization.

LATHROP: Any opponent testimony?

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SPIKE EICKHOLT: 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 ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in opposition to the bill. I just want to say a couple of things so the record is clear. We already collect DNA in Nebraska for every person who's convicted of any felony. Violent, nonviolent, any felony conviction, DNA is collected as part of sentencing and is sent to the State Patrol and is uploaded in the CODIS national databank. We have a process in Nebraska where a person can be-- who is not convicted of a crime, can have their DNA taken from them. It requires a prosecutor to file a motion and show to the judge that there's probable cause to believe that person is a suspect in a crime. And that's at Section 29-3301. We already have it. And this should not be, I would respectfully submit, marketed as an exoneration bill. We have an exoneration act, it's at 29-4111 and on that provides for people who are in custody, who are seeking to contest the legality of their detention and conviction to request DNA testing. And that was something this Legislature has done as Senator Lathrop mentioned earlier. What this bill would provide for would be the automatic collection of DNA samples for people who are arrested for some designated offenses. Senator Hilkemann is right, this is a narrower version from what he brought a few years ago, because I think at the time it was all felonies. But this is a list of designated felonies. The U.S. Supreme Court did approve of a law similar to this in Maryland v. King, but that was a little different. In Maryland v. King-- and it's important-- I think it's an important distinction for that 5-4 decision in the state of Maryland after someone was arrested for one of these designated offenses, the DNA sample was collected at the time of arrest. A profile was identified, but it was not uploaded into any database, state or federal, until a judge found probable cause to believe that that person had committed that crime of violence for which they were arrested upon. We don't have that process in Nebraska. In other words, this would allow for the collection of someone's DNA at the time of arrest and they are convicted of some insignificant misdemeanor charge later. Or-- and this is why I would submit that the expungement provisions in this bill are really illusionary, even if the charges are all dismissed, but the statute of limitations does not run for one of these or other crimes. As you know, as I've testified against this before, we have a whole series of felony offenses, including sexual assaults and other crimes where there is no statutory-- statute of limitations. And similarly, the bill would provide that someone is not entitled to an

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expungement if any conviction whatsoever results following the arrest and all charges are not all dismissed. So I'd argue that's not sufficient. Other states have this. Other states have, but the courts will order that they are expunged rather than leaving it for someone to make the request somehow or it's done automatically. And here, presumably, someone had to make some sort of request to the State Patrol. I don't know if it's a court action. It doesn't delineate whether the state is entitled to the prosecutor's office or entitled to have notice or the law enforcement agencies are entitled to have notice of this. So I would argue that for a variety of policy reasons, this bill should not adapt. I mean, ultimately what this comes down to is balancing individual freedom versus government intrusion. And we would argue this bill goes too far.

LATHROP: So let me ask-- oh, go ahead, Senator Brandt.

BRANDT: Well, real quickly, you said that-- Mr. Eickholt, thank you for your testimony, but you, you stated that if it was a misdemeanor, they would get swabbed. And in the bill it's very specific crimes of violence. And we take a whole page here to list-- these are not misdemeanors listed here. Am I missing something?

SPIKE EICKHOLT: You are right. These are a series of felonies that are listed, but that's when the sample is collected and that's when it's uploaded to the CODIS database. A person can request on page 7 of the bill that, and presumably this is the State Patrol, that they may request the expungement for the reason that they were not charged with a crime of violence.

BRANDT: Right.

SPIKE EICKHOLT: Right. So--

BRANDT: Yeah.

SPIKE EICKHOLT: --they were arrested for it but not charged. The collection is done at the time of arrest.

BRANDT: At the time of arrest for a violent crime.

SPIKE EICKHOLT: Right.

BRANDT: Yeah, not a misdemeanor.

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SPIKE EICKHOLT: Right.

BRANDT: OK, I just wanted to clarify that.

SPIKE EICKHOLT: The bill further provides on page 7, lines 18 and 19, that all criminal charges need to have been dismissed with prejudice. So if somebody has, say, a meth pipe or a marijuana pipe in their pocket that are arrested as a suspect for a first degree assault or a sexual assault or a burglary or some similar crime that's a designated category offense. But they are not all charged as a result. They get a marijuana ticket. They just plead to it. They're prohibited from requesting expungement. That's why I would submit that it's not as robust as perhaps other states' expungement provisions are.

BRANDT: But could Senator Hilkemann amend that to address that specific issue? I mean, that's a very specific issue.

SPIKE EICKHOLT: He could. Obviously, he could. But again, I would just remind everybody, we have DNA collection on conviction, every felony. And admittedly, we testified against that. We lost that battle. But you already have thousands of people, DNA annually getting collected. The reason the fiscal note is so significant is that the State Patrol, not me, not my clients, estimate 5,000 submissions a year based on the designated listing, which are 20 or maybe so offenses for arrest.

BRANDT: But is your, is your argument, it's an invasion of privacy? Is that the argument of the ACLU?

SPIKE EICKHOLT: Yes. I mean, ultimately, this is a-- even though it may be restricted access, it is a government database. And I understand that cases can be solved. But that logic extends beyond this felony arrest. That extends for every arrest. That extends for getting a driver's license. That extends to the horizon. If you want to read the Maryland v. King, read Justice Scalia's really strong dissent, where he talked about how this is different than a photograph. Something when I walk around in public, I don't disguise how I look. I put that out there, but I don't give my DNA profile to people. It does matter. It has personal, significant value that is beyond just fingerprints or a photograph.

BRANDT: All right. Thank you.

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LATHROP: So let me see if I understand, the U.S. Supreme Court took up
the Maryland statute that was similar, but not exactly the same.

SPIKE EICKHOLT: Right.

LATHROP: What was the challenge to the Maryland statute? What was the
basis for the challenge?

SPIKE EICKHOLT: It was a Fourth Amendment. It was a seizure of
evidence without probable cause or without a warrant.

LATHROP: So is this bill distinguishable from the Maryland statute,
which was affirmed--

SPIKE EICKHOLT: Yes.

LATHROP: --or sustained in what respect? And-- well, let me ask this
first,--

SPIKE EICKHOLT: Sure.

LATHROP: --do you think this is constitutionally suspect, this
particular bill?

SPIKE EICKHOLT: I would think so. I know other states similar or very
similar to Maryland and with the pro-- provisions which I think is
critical and some other states aren't. But I don't know if they've
been challenged or I haven't researched that. But this, I'd argue, is
distinguishable from the Maryland law. The Maryland law provides that
when someone is arrested for a listing of violent offenses, which
admittedly are similar to those designated here. Once taken, a DNA
sample may not be processed or placed into the database until the
individual arraigned. And is at that point that a judicial officer,
which is some sort of magistrate, ensures that there is probable cause
to detain the arrestee on the qualifying serious offense.

LATHROP: OK, so let me, let me stop you there. In our process, we
generally would arrest somebody and then they have a preliminary
hearing to determine if there's probable cause to hold them and have
them tried in the district court.

SPIKE EICKHOLT: That's right.

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LATHROP: That hearing, for those of you that aren't familiar with the process, generally happens in county court. It can be waived, frequently is, but otherwise there will be a-- sort of a mini-trial with hearsay and all kinds of evidence.

SPIKE EICKHOLT: Right.

LATHROP: Enough to have an independent county court judge make a determination that there is probable cause to believe the person committed the crime. And then it is moved up or over in Douglas County--

SPIKE EICKHOLT: That's right.

LATHROP: --to the district court for a trial. This would, this would comport with the holding in Maryland or the statute would be no different than Maryland if we provided that the sample can be taken but not placed into the database until after the person has been-- had their preliminary hearing.

SPIKE EICKHOLT: Or some sort of--

LATHROP: We really don't use grand juries here, but--

SPIKE EICKHOLT: Right.

LATHROP: --a preliminary hearing, a determination is made that there's probable cause to believe they committed the felony. And then we would be on all fours with the Maryland statute if we waited until after that determination was made to put it into the database.

SPIKE EICKHOLT: That would make it similar to the Maryland statutory process that was upheld by the Supreme Court.

LATHROP: OK, I'm just asking the constitutional.

SPIKE EICKHOLT: That's right.

LATHROP: You're asking-- you're, you're making two arguments.

SPIKE EICKHOLT: Right.

LATHROP: One is there's a constitutional problem with it. And the second is, is it good policy--

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SPIKE EICKHOLT: Right.

LATHROP: --to just start swabbing everybody's cheek, even though they
may not be convicted of the felony they were initially charged with.

SPIKE EICKHOLT: That's right.

LATHROP: OK, I think I get it. Senator Slama.

SLAMA: Thank you, Mr. Chairman. And thank you, Mr. Eickholt, for being
here today. So what in your mind is the distinction? I, I get the
differentiation between a mug shot and a DNA sample on a cheek swab.
We, we fingerprint those that are arrested and booked in the state of
Nebraska for just about anything. It doesn't have to be just for a
serious felony. That's not something you publicly display. I don't
walk around with my hands up showing the world my fingerprints.
Sometimes we strip search those who we arrest. How is any of that
different or beyond a simple cheek swab that has 20 nonidentifying
markers in it?

SPIKE EICKHOLT: The strip search is easy because that's not done in
public. That's not shared with anybody. The more difficult thing is,
and you're right, perhaps it is that it's just a matter of degree
between. I think the photograph is easy, until recently when we
weren't wearing masks. Right? So when I go around in public, I make
myself recognizable to others. I hold myself about who I am. I say who
I am. That's different. Fingerprints, a little bit different. But
maybe that's just been with us so long, we've just gotten used to it.
But I think that the swab, at least the way I understand it, and I
think you had somebody that knows about it more, you give the sample,
the swab sample, it's analyzed by a DNA lab tech. They've got a way
that they can look at the, I think, the nuclear DNA and identify
certain markers or repeating alleles that are on there. And they have
different ways to do that, either 16 or 20 or 13 or whatever it might
be. Everyone's got a numerical code and that's what's uploaded in
there. So what the earlier testifier said is right. My name's not
associated with that. But that is a profile that's out there compiled
by a government agency kept by that government agency, updated
regularly and compared to other profiles that have been collected in
various parts around the country. I mean, at some point we do live at
least hopefully in a free society where the rights start with the
people and not with the government giving us permission about what we

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can have and what we can share. And I think that's just the
fundamental philosophical difference than just a photograph.

SLAMA: Sure, but we, we have databases of fingerprints as well,
though, right?

SPIKE EICKHOLT: That's true. We have a massive amount of government
databases for fingerprints, for photographs, for that matter. And as--

SLAMA: Sure.

SPIKE EICKHOLT: --as you probably know, we got that digital way of
sort of the, the algorithms of different software programs can
recognize those. But this is adding to that existing problem. At least
what I would submit as a problem, that the existing phenomena where
government just assembles all of this data about people always.

SLAMA: Do you consider rape kits to be an unnecessary collection of
data?

SPIKE EICKHOLT: No, I don't think that's-- the government obviously
has an interest in pursuing crime and pursuing people who commit
crimes and holding those people accountable. I understand that. I'm
not arguing that. This is not a pro get away with it argument, at
least I'm not trying to make it so. But I think ultimately people are
entitled to be private, personal. For instance, people can give DNA
samples. I've represented probably three dozen people in my time that
have been suspected of a crime. They've been arrested on something
else and they've agreed to give a DNA sample. Sometimes it didn't work
out very well, but most times they do that. Right? They give that
sample and you can do that. That's the personal choice that you have.
Being arrested and people are falsely arrested for crimes. You heard
about some of the people who not only falsely arrested for some of
these earlier rapes and so on, but imprisoned for years, this would
provide that they can be-- have their, their DNA information
collected, kept, and stored.

SLAMA: Sure. And I, I think the, the proponents of the bill made a
great point as to how that could help those who may have been
wrongfully convicted. I, I think we just disagree on a basic level
with the gray area of what's acceptable and what's not. So that's OK.
Thank you.

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LATHROP: OK, that's-- I think that's it. I-- well, let me ask this question. Does the fact that you have to do something to get yourself off of this? So I'm charged with a felony, they take a swab, and now I got to jump through a hoop, file whatever motion or whatever process is involved. Does that change any of this?

SPIKE EICKHOLT: Yeah, I think it does, because if you look at the current expungement now, it just provides for the person requesting to the State Patrol that their conviction has been reversed and the case is dismissed. When you start adding the other ways to get the expungement, I think it's more than just asking the State Patrol for it. In other words, if Douglas County attorney is sitting on a possible charge with this guy, and they don't want to let them know that. They may want to know that the guy has request it and they may aren't-- they are not entitled to be notified under this provision. And it's not really-- there's not an opportunity, as far as I can tell, to have a hearing to make your pitch. It's just presumably something that you just request to the State Patrol.

LATHROP: So a letter to the State Patrol, I wasn't convicted of that felony, take me out.

SPIKE EICKHOLT: Yeah, and that may seem easy, but I don't know if that really is something that this committee and that body want to have happen. Why would you want to let that happen? You want to let-- maybe let the law enforcement agency that collected this DNA sample know, maybe the prosecuting entity somehow know, and maybe if it's going to be a fight about it as to whether all charges were, in fact, dismissed or whether the statute of limitations had expired or whatever the other grounds might be, it would probably make more sense to have it as a component of the criminal case, which the Maryland statute had and some of the other state laws have.

LATHROP: OK.

SPIKE EICKHOLT: That if, in other words, if the judge had a-- and I just [INAUDIBLE] these out, if the judge had a probable cause hearing, a preliminary hearing, found no probable cause, they could further order the DNA sample and collect it at the time of arrest, it'll be expunged or something similar.

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LATHROP: OK. I don't see any other questions, but thanks for being here. Any other opponents to LB496? Anyone here in the neutral capacity? I see none. Senator Hilkemann, you may close on LB496. We have two letters, position letters. Both letters are proponents or from proponents. We also have written testimony from Corey O'Brien with the Nebraska Attorney General's Office, which testimony is a proponent.

HILKEMANN: Thank you for listening to this very important topic. In answer to the question whether this has been challenged constitutionally, I believe it has been and I believe it's been upheld every time it's been challenged. And I will ask-- I didn't get a chance to ask Jayann, but I believe that that's correct on that. And then the expungement, if you go to the seventh page of the bill, it's very clear how the expungement occurs in this, in this bill. And then, Senator Slama, on your question, thank you for that. You know, I understand that in Lancaster County, if you're arrested for a felony, your picture appears in the paper. And I think I would rather have 20 of my GNA--DNA markers that no one else can see rather than having my picture in the paper. But at either rate. I'm going to end with a personal story, December 23, 1998, David Allen Stevens was brutally murdered, burned beyond recognition in his car in La Jolla in California. David Allen Stevens was my second cousin. His murder went for a long time before it was finally solved. It was actually solved from Unsolved Mysteries, a, a episode that they ran of it about eight to ten years later. I saw what it did to my cousin not knowing what happened to their nine-- their 20- year-old son. If we can do anything to help with stopping those crimes and preventing other people from going through the, through the, the pain and the suffering, I know that I, I-- I've shared that it, it took my cousin's life sooner because he was so obsessed with trying to find out who murdered my beautiful son. This is-- this gives law enforcement one more avenue to try to, to help stop, prevent, and determine who is the perpetrator of the crime. I ask you to advance LB496 and I would answer any additional questions you may have.

LATHROP: OK. Any questions for Senator Hilkemann? I don't see any. Thanks for bringing this very interesting bill to the committee and--

HILKEMANN: Senator, I-- and, and I'm going to say one more thing. And this is in relationship to the, the Maryland. But this whole thing is about whether we do this after the arraignment or, or not. I like the

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bill the way we have it. But if we have to discuss things like that,
I'm willing to work with it. This is that important to me. And I think
it's important for the people of the state of Nebraska.

LATHROP: OK. I will say this, that just as from a lawyer point of
view, you get an order-- you get an opinion from the United States
Supreme Court, that's the last word on something. Then lawyers try to
say, well, is it distinguishable from the case that they decided in
Maryland? The closer your bill is to the statute in Maryland, the more
authoritative the opinion is and the less it can be distinguished or
the, the less the likelihood is that it can be distinguished from the
holding in the Supreme Court. That's the only reason we ask those
questions.

HILKEMANN: And, and in my visiting with Jayann about this earlier
today, you know, every-- this is in 31 states already. And, you know,
there's probably not any one of those bills exactly the same. And we
can work together to get-- we can, we can accomplish what we want to
accomplish, whether it looks exactly like what are the other states.

LATHROP: OK.

HILKEMANN: But I want us to move forward on this.

LATHROP: OK.

HILKEMANN: Thank you.

LATHROP: We appreciate it, Senator Hilkemann.

HILKEMANN: You bet. Thank you.

LATHROP: Have a great weekend.

HILKEMANN: Thank you.

LATHROP: That will close our-- pardon me, did I-- I guess I already
did that. Yes. That will close our hearing on LB496 and take us to the
LB458. And that is Senator McCollister. Welcome, Senator McCollister.

McCOLLISTER: The Judiciary Committee, my home away from home.

LATHROP: Feels like it to us. Welcome.

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McCOLLISTER: Thank you. Good afternoon, Chairman Lathrop and members of the committee. I am John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. LB458 is a bill that would add a provision allowing the Nebraska State Patrol to develop an alternative process to appearing in person as part of offender's registration under the Sex Offender Registration Act. Under the bill when natural disasters, public health considerations, or other factors make appearing in person impossible or unsafe, the Nebraska State Patrol would be allowed to develop an alternative to appearing in person. This alternative may include electronic or telephonic notification or appearing at a different location. This is important to write into statute because it gives the State Patrol flexibility to perform the duties relating to sex offender registry in a more expeditious and convenient way during situations like the-- with the pandemic or large scale flooding as seen in 2019. This is dependent solely on the State Patrol determining if such a situation exists. The other specific change in LB458 makes-- is to allow offenders on the state registry for 15 years the opportunity to request a State Patrol grant a reduction in their registration period after 7 years rather than the current 10-year period. The people in this registry are guilty of such crimes as indecent exposure, public indecency, and similar low-level, nonviolent crimes. It is my intent with this provision to provide those who are on the sex registry for low-level, nonviolent offenses an opportunity to clear their name at an earlier date. I have also included for the committee's consideration AM437 to LB458. This amendment is an effort to incorporate set-asides into the sex registry, sex registry. Currently, 25- year registrants are not allowed to request a reduction in their registration, period. If the committee were to adopt this amendment into LB458, registrants in the 25-year-tier offenders would be allowed to request a reduction in their registration period after 12 years only if they have received a set-aside. The amendment would allow 15-year registrants who have received a set-aside to request for a reduction in their registration period after 7 years. It is my view that this amendment could go further to allow registrants for immediate removal after a set-aside. With that, I'd like to thank the committee and I'm prepared to take any questions.

LATHROP: Let me, let me ask, Senator McCollister, what, what somebody have to do to, to-- what's the process? What, what do I have to establish? If I'm on the registry and I want to get off the registry,

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do I appeal to the State Patrol? Is, is there a process in place? And
do I have to establish something other than the absence of another
offense?

McCOLLISTER: There's three classes, or three tiers of, of that in the
sex registry. And the amount of time is based on the severity of the
crime, obviously. And as far as I know, the State Patrol has complete
discretion on whether or not to reduce a-- remove a person from the,
from the registry. What I'm suggesting is that if somebody were to
receive a set-aside, maybe we could provide a process by, by which
that, that person could, could be removed from the registry.

LATHROP: And by set-aside, you mean they have their conviction set
aside by-- through whatever process is already in place?

McCOLLISTER: By, by the sentencing judge or that court.

LATHROP: OK.

McCOLLISTER: And I'm-- that might be a process that we can incorporate
that. But I'm-- I haven't done the necessary homework to know if that
isn't something that we could do legally.

LATHROP: OK. OK. Any other questions for Senator McCollister before we
take testimony? Senator Pansing Brooks.

PANSING BROOKS: Thank you. I'm-- welcome Mr.-- Senator McCollister.
I'm just-- I'm sorry, you may have said it, but I couldn't hear
exactly. What-- can you give an example of why the State Patrol
couldn't appear-- making-- it says, make appearing in person
difficult, impossible, or unsafe as determined by the sex
registration. I don't understand that.

McCOLLISTER: Well, I think the current statute requires a person to
actually go in and see the State Patrol at their facility. And all,
all the bill would do is permit the State Patrol to provide some
alternative method for communication. Often when I've talked to people
on the sex registry, they've said, well, a lot of times I'll, I'll try
to make an appearance and, and they can't meet with me. And I'm
suggesting that maybe an email or, or a phone conference or a Zoom
call might be preferable to then going into the State Patrol and
running the chance of being affected with COVID. Did I answer your
question?

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PANSING BROOKS: Yeah, I just think, I think something needs to be--
doesn't read because it, it says, "make appearing in person
difficult." So I thought that was referring to the difficulty of the
State Patrol to appear. But what you mean is it's difficult of the--
for the offender to appear. So--

McCOLLISTER: Yes, Senator.

PANSING BROOKS: --I don't think that's very, very-- I mean, I just--
maybe-- I'm just-- the way I'm reading it, it--there's no other-- I
don't know.

McCOLLISTER: It, it seems like a reasonable request. Do you-- don't
you think?

PANSING BROOKS: It needs to relate to the offender not the State
Patrol. So that's why--

McCOLLISTER: OK.

PANSING BROOKS: --[INAUDIBLE]. I mean, why in the world the State
Patrol couldn't appear, so.

McCOLLISTER: If, if, if we-- if the bill is confusing, we could
perhaps straighten that out.

PANSING BROOKS: OK, that's fine. Thank you.

LATHROP: Senator Slama.

SLAMA: Thank you, Mr. Chairman. And thank you, Senator McCollister,
for being here today. Just out of my own curiosity, I know there's
three different levels of offenses. What is the frequency of checking
in with the State Patrol? If you're on the registry, how often do you
have to check in?

McCOLLISTER: I, I believe it's monthly.

SLAMA: Monthly?

McCOLLISTER: Yeah.

SLAMA: All right, there's someone with their hand up behind you. I
think they, they-- they'll get to it.

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LATHROP: Yeah, you'll get a chance to testify.

McCOLLISTER: Yeah.

SLAMA: OK, thank you.

LATHROP: All right. Thank you,--

McCOLLISTER: Thank you.

LATHROP: --Senator McCollister.

McCOLLISTER: It's been a pleasure.

LATHROP: We get a lot of audience participation here in Judiciary
Committee and we got to, we got to keep it to whoever's in that seat
so we keep a good record. With that introduction, we will now take
proponent testimony for up to 30 minutes. Good afternoon.

KENNETH ACKERMAN: Good afternoon, Senator Lathrop.

LATHROP: Can you move a little forward so we--

KENNETH ACKERMAN: Sure.

LATHROP: --can get you into the mike and hear you, please.

KENNETH ACKERMAN: Good afternoon, Senator Lathrop and committee
members. My name is Kenneth Ackerman, K-e-n-n-e-t-h A-c-k-e-r-m-a-n.
And to answer Senator Slama's question immediately, people on the 15
and 25 report annually and people on the lifetime report quarterly.

SLAMA: OK.

KENNETH ACKERMAN: But we also report anytime we--

SLAMA: Thank you.

KENNETH ACKERMAN: --go out of the state for more than three business
days. Anytime we travel even within the state for more than three
business days. Anytime we buy a new car. And then again, when the car
is registered, we have now a registration, our license tag. We have to
go in and report that and continuous process of reporting.

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SLAMA: Thank you.

KENNETH ACKERMAN: I'm in favor of Senator McCollister's bill for improving some aspects for the-- of the registry. To offer the opportunity to get off the registry earlier when qualified for those who commit misdemeanors and are on the 15-year tier, which is great for the small percentage of registrants on the 15-year tier. I'm happy to hear that he's also proposing something for the 25-year tier. Personally, if I had committed my crime here in Nebraska, I'd be on the 25-year tier. But I committed it in California, where everybody is on a lifetime tier and Nebraska has adopted the situation that you have to be whatever state you've been convicted in, the same in Nebraska. So I wouldn't have that opportunity. But it's just as important to have a method for the registry for others to be able to get off. With a goal of being able to be removed from the registry for good behavior and a demonstration of no longer being an impairment to society would encourage other registrants to become better citizens. This is especially true after years of good conduct and growing older and wiser. As offenders get older, many become disabled and sometimes hospitalized more than three business days. They cannot physically go in person to register. They are therefore in violation of the law unless the Nebraska State Patrol is required, not requested, but required to make changes in reporting. It would be better to have those not necessary to report in person changes for everyone always, not just in time of flooding or severe weather. The reporting in Douglas County here is by-- or my district is by telephone in one of two locations. Telephone calls could be just as easily made from home or from the hospital when needed. Another important change needed is the statement at the beginning of the law and the website that, quote, Nebraska state statute 29-4002 declares "that sex offenders present a high risk to commit repeat offenses." Interestingly enough, clear back in 2013, the Nebraska Legislature ordered and paid for a study about the Nebraska registry and determined that the real offensive rate was near 5 percent, which is clearly the lowest rate of re-offense. Removing this wording from the website and the law would clearly help educate more acceptance for support on any registry reform.

LATHROP: OK.

KENNETH ACKERMAN: If anyone has any other questions, I'd be glad to--

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LATHROP: Any questions for Mr. Ackerman? I don't see any. Thanks for
being here today.

KENNETH ACKERMAN: Thank you. Thank you.

LATHROP: Next proponent. Good afternoon and welcome.

DEREK LOGUE: Yes, my name is Derek Logue. First name spelled
D-e-r-e-k, last name spelled, L-o-g-u-e, and I applaud this very small
effort to reform the registry. And it's obvious that this bill has
been mostly a response to the Coronavirus. I can-- I've had to
register five or six times since this thing started. And while the
police report-- police officers across the country, the police
stations across the country had, had at the time removed some of their
services, they still required us to go in and register in person. And
of course, I live in Saline County, just down the street from, from
the big meatpacking plant that had the major outbreak within days of
me having to go to the register in person. So I'm not too happy about
that. But beyond the, beyond the Coronavirus, there's plenty of other
things that people on the registry have to concern themselves with.
And I wanted to share one of those things with you. If you look on the
sheet that I gave you, you see a couple of things that were directed
towards me specifically. This was sent to me by a vigilante group, the
same one that was involved in the murder of a registered person in
Omaha. And these people published my address, made death threats on my
life, called me on the phone, and also sent text messages. Which I
still have one of them on my phone, by the way. Now this-- you know, I
support this bill wholeheartedly. Yes, there's some-- plenty of
situations in which we feel unsafe, but I do not think it goes far
enough. And I think that we need to start thinking about a way to go
beyond this. You know, you know, I can wear this mask. I can keep
socially distant. But that's not going to stop a vigilante from
shooting me. You know, a bullet is going to go right through this
little thing. So, you know, I question whether we need to even have
the registry online to begin with. I mean, we just had this discussion
about the DNA database and how this is kept private and how people
cannot regularly access it. Well, this information is so sensitive and
people, anybody can just look my name up on the Internet and they can
do it on a Google search. It's the first thing that pops up if you
type my name in, before my website, before any of the work that I've
done over the years, before any of the testimony that I've ever given,
before any of the media appearances, before anything. The number one

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thing is my registration flier. And people are-- it's the first thing they look up and the first thing they share with my physical address on it. And, you know, personally, I feel like the registration could be completely and utterly abolished. This government blacklist does nothing but destroy lives. I've been on it for 18 years and I've not had a job in 15 of them. And so, you know, I think at the least it should not be set out there for the public to see. And I've given a few suggestions on this thing. I can't cover it in two minutes. But, you know, if we can have a database that's only for law enforcement, for the DNA thing, why can't we do the same for this? Why can't somebody-- if somebody-- if you want to make it public, why not make it to where they have to come in and show a law enforcement agent an ID and check in to access this information? Because honestly, I see no, I see no evidence that people have been using it for what the intended purpose was to be used. People who have done studies on this have already shown that the people who use the sex offense registry look at it more for curiosity or salacious reasons than they do out of public fear. It's not a, it's not a useful tool for protecting the public. It's nothing more than a hit list.

LATHROP: OK. I appreciate how strongly you feel about this. We're also appreciative that you came in today. Any other-- any questions for this testifier? I see none. Thanks for coming in.

TIMOTHY C. MELCHER: Good afternoon, Senators. Senator Pansing Brooks, I love that you're wearing green for March St. Patrick's Day, by the way. My name is Timothy C. Melcher. I'm here to testify in support of LB458. I'm the father--

LATHROP: Can you spell your name for us?

TIMOTHY C. MELCHER: Oh, T-i-m-o-t-h-y, C. as in Clifford, M as in Mary e-l-c-h-e-r. I'm the father of a 9-year-old girl who was conceived on a third-degree sexual assault. In short, the court found that I'm not a threat and has deemed me a fit and proper person to help parent my daughter. However, as a registrant on the sex offense registry, I face many difficulties finding a suitable place for us to live. I moved to Omaha for work in 2018 and since then have been forced to find a new place to live on an average of twice a year. It's extremely difficult to find a place to live in Omaha. Many HOAs and apartment complexes have policies that prevent those on the registry from even visiting those places, let alone living there. In May, I'll probably be evicted

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from where I'm living now. I've also been sued, stalked, harassed, "paparazzied," and assaulted. When I was sued under the provisions of LB289, 60 Minutes Australia began stalking me and my family by using the address I had registered on the sex offender registry to find us. While harassment has come from multiple different parties, 60 Minutes Australia ambushed me on the first day of court. I told them multiple times that I had nothing to say and to leave me alone. But they wouldn't. I was physically restrained from getting to and into my car. And after I got away, I called the police to file a report. However, I doubt that justice will be served on anybody from living on a different continent. My job has also been jeopardized. When Lisa Ling did her story on CNN, my manager told me that she would remove me from the situation if anyone raised any concerns. I'm terrified that testifying today is going to warrant a visit to my manager's office, although I've made another superior aware of the situation. However, the thing that terrifies me the most is that someone on the registry was shot and killed in Omaha. What if someone sees me with my daughter and thinks that she is a child I'm about to molest? Are they going to shoot me in front of her? Are they going to intervene and try to take her away? I ask that you please, please, please advance this bill to the floor and get it passed into law so that I don't have to face these kinds of issues for another eight years. And while, I have some time, I was here earlier to testify on another bill and I'll again bring up my friend Sabrina Charron, who is a friend of mine that has a 21-year-old son who was born out of a sex crime in Minnesota. And as Mr. Ackerman was explaining earlier, the laws are not clear on how to translate sex offense laws from state to state. So since she was convicted in Minnesota, she moved here and was put on a 20-- well, a 25-year tier, essentially. But in 2006 or 2009, I think it was, they refigured the sex offender registry and put her on the registry for another 20 years when she had 2 months left to register and she's been homeless. I met her while she was living in a tent in her, in her sister's backyard with her son and has to be escorted every time she goes to visit him at school, bring him lunch, anything like that. And that's-- there's issues like this that compound all the time. And something else that I was surprised somebody else brought up is that if registrants do not show up in person within three days to register any change, they face a felony charge. It's a very serious thing to just not be able to give information that's made public that can be used to attack you.

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LATHROP: OK. I don't see any questions for you today, but thanks for being here. Next proponent. Good afternoon.

DANIEL KONECKY: Good afternoon. My name is Daniel Konecky, D-a-n-i-e-l K-o-n-e-c-k-y. I'm here as a proponent for LB458. I, I do support it. I do, I do support its passage. I know with the Coronavirus, it's become a little bit more important. I think it kind of varies from county to county. I know in my home county, I think they're good about just letting you call in and just talking to them over the phone. But it's a smaller county. But up in Dodge County, I think they're still having people come in and, and, you know, do it face-to-face. Masks, wearing, wearing masks, of course. But I mean, yeah, I just-- I wanted to echo some of the proponents, some of the positive sentiment that some of the gentlemen behind me have spoken of. I've, I've experienced a lot of the same things as the first two people, various levels of harassment, assault. Since I've been last here, I've, I've been assaulted twice, violently, scary. There have been times when I tried to appoint-- report various levels of harassment to law enforcement. And a lot of times they just laugh like I'm joking. So, yeah, I mean, it's, it's a real issue. There's a lot of issues with this. And I think that this bill would take a step in the right direction, fixing some of the inefficiencies with our registry right now. I mean, a lot of, a lot of the people I talk to don't even look at it. I mean, they just Google and there's all sorts of other searches. It's-- a lot of people I talk to, a lot of my friends think it's becoming a little bit more inefficient, too big and useless. A lot of people know somebody that's on it that they don't think maybe should be on it at this point. I mean, it's, it's a good tool. A lot of people on there maybe should be, but there's a lot of people on there that shouldn't be. And I mean, especially after a certain amount of time. And I just-- I mean, this bill, with the way it's written and the amendments, it, it really gives an efficient tool to, you know, to, to put this in a right direction and, and even make the public a little bit safer. So, I mean, that's pretty much about all that I wanted to say and highlighting that to you. I mean, I know somebody that was released from the registry in 2007 after serving a year of probation. They were off the registry, off probation for two or three years. And the law changed and they went on to the lifetime tier. The felony was set aside. I just think there's got to be a path to early release for maybe some of the more and most deserving registrants. Would never want to sacrifice public safety. I've heard some horror stories from,

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from some of the other bills that definitely would not want to have happen to anybody. But at the same time, there's a small percentage of people in Nebraska that are, you know, unjustly suffering. I mean, yeah, it's not an official sentence, but it's a sentence of some kind on some level. And it's a sentence to poverty, to danger. It's a sentence to social outcast, not making new friends. And if you have a family already with children, you really got to fight to hold on to keep it together, because I mean, in a lot of ways it, it can dissolve your family and, and just a lot of bad things that can happen from it if we don't do something to try to fix it, at least.

LATHROP: OK.

DANIEL KONECKY: So that's all I have.

LATHROP: Very good. Any questions for this testifier? I don't see any. Thanks for coming down today.

DANIEL KONECKY: Thank you.

LATHROP: Any other proponents of LB458?

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 Nebraska Criminal Defense Attorneys Association in support of the bill. I think it's a very good bill or we think it's a good bill for a couple of-- for really the two principal reasons that it does-- or two principal changes that it does make to the law. As Senator McCollister explained before, if a person is convicted of a misdemeanor crime that requires them to register, they have to register for 15 years. Under current law, after they do 10 years of registry, they can request to be removed from the registry itself. And what he-- his proposal will do, it would change it to after he does 7 years-- after a person does 7 years in the registry, they can request to be removed for the balance of the 15 years. And to answer Senator Lathrop's question what they need to show to, to the State Patrol is that they've not been convicted of a felony since they got the duty to register, that they have not been convicted of any subsequent sex offense, that they have successfully completed whatever sentence they have, whether it's probation, parole or incarceration, and that they successfully completed an appropriate sex offender treatment program. Once they can show that to the State Patrol, they can be-- have their term

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shortened, so to speak. So it does require something to be shown and that it's only for the misdemeanor registrants. And I would submit that a lot of these crimes are felonies. There's just a very few that require you to register a misdemeanor. So we're talking about a small number of people. And it's a, it's a modest proposal. And I want to encourage the committee to consider it. The other part in response to what Senator Pansing Brooks said. The law now, it has some pretty strict requirements for people to register in person at the local sheriff's office within three working days of any change of work, change of address, change of phone number. If you're homeless, you have to check in in person every 30 days. And that requires you to be the sheriff's office. And I remember last summer during-- when I went to court during COVID, they had-- hardly had anybody there at the sheriff's office. But what they did do is they sort of put an iPad out there behind two or three Plexiglass for the sex offenders to check in. So I think in these-- in situations where you don't want to have people checking in in person at the sheriff's office, whether it's a pandemic or whether it's some other kind of emergency or some situation, there should be some flexibility in the law. And I think what Senator McCollister proposes does make sense, and I encourage the committee to consider that.

LATHROP: OK. I don't see any questions. Thanks for being here today. Any other proponents? Good afternoon.

JOHN UECKER: Good afternoon. My name is John Uecker, J-o-h-n U-e-c-k-e-r, and I'm here as a proponent of LB458, and I think I provide a little bit of a unique perspective because I myself am not on the registry, but someone that I care about is. So I'd like to address the social and emotional damages that I see from people that are on the registry that are already rehabilitated. So the person that I'm referencing has completed all the requirements, jumped through all of the hoops, kept up-to-date on all their registrations and has been for the last seven or eight years. And then being able to be released early would be massive to address these social and emotional issues. I know several people have already mentioned the housing and the financial issues of finding a job and retaining housing. But the social and emotional issues that come along with this harassment and this being labeled as an other, because I've personally seen people throw out the word rapist, you're a rapist. But for those people that were convicted of a nonviolent third-degree sexual assault, these labels can be severely damaging when they hear it over and over and

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over a label for something that they aren't. And after a while, it wears them down and they-- you get to this warped sense of self-image to where they believe that they're the monster that everyone is telling them they are. And that doesn't allow for any sort of rehabilitation. But with this bill of just cutting it to seven years where they can get off the registry would help immensely remove this label from the public eye, because we've seen with a bunch of these testimonies that people are getting physically assaulted. I've witnessed this, that they're getting physically assaulted and harassed by these groups that feel like they're doing the right thing when all they're doing is discriminating someone based on a mistake that they made in their past. That's all I really have to say. But I just wanted to bring the perspective of the emotional and the social damage of being constantly being afraid whenever you're in public. I just think that that's a very important, like, direction to see this from.

LATHROP: OK, well, we appreciate the perspective. Thanks for being here today. Any other proponents? Seeing none, we will next take opponent testimony. If you're here in opposition, you may come forward. I see none. Anyone here in a neutral capacity?

GREGORY C. LAUBY: Good afternoon,--

LATHROP: Good afternoon.

GREGORY C. LAUBY: --Senator Lathrop, members of the committee. My name is Gregory C. Lauby, G-r-e-g-o-r-y, C. as in Christian, L-a-u-b-y. I am neutral on LB458 because it may be a slight improvement. Although to paraphrase Abraham Lincoln, it seems as thin as homeopathic soup made from the shadow of a pigeon that starved to death compared to the damage that the Sex Offender Registration Act is doing to those individuals who are on it. But it may be a slight improvement. I do have some questions that I hope Senator McCollister or someone else can answer. One is, if this bill was passed, will it assist those or be applicable to those who were sentenced after January 1, 2010, when the court began to set the duration of the time on the registry or will it only affect those sentenced after the effective date of the bill itself and the authorized period has run? I, I-- the question is whether or not whether the court order can be changed by the legislative act or authorized through the State Patrol's action? Another question that I have is about the State Patrol's authorization to determine the conditions that make in-person reporting difficult,

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impossible or unsafe. And then seems to go on to say that it is solely at the discretion of the State Patrol to develop an alternative method of reporting without any kind of standard being set for making that determination of whether or not to allow an alternative method. That seems to be a statutory authorization for the State Patrol to be arbitrary, even capricious. And so that is a concern that, that I have. And finally, Senator Patty Pansing Brooks asked what conditions have to be satisfied before eligibility is determined by the State Patrol now. One of them is that have you ever been convicted of any new sex offense during your registration period? I was unable to define or find a definition of what a new sex offense might be. And the other that concerns me is have you successfully completed an appropriate sex offender treatment program? And what I found was that the State Patrol is requiring a documentation specifying the name, contact information of the treatment provider, as well as the dates of treatment be required to be submitted with the application, together with a HIPAA privacy authorization form allowing the State Patrol to have access to all of the records of the mental health provider. And I'm assuming for each date that there was a vision-- visit or they wouldn't be asking for each specific date rather than just the conclusion of that provider. I didn't realize this would come up, so I only have one copy--

LATHROP: That's all right.

GREGORY C. LAUBY: --of the application form. May I submit that?

LATHROP: Yeah, if you want to send it around by email or something, you can do that.

GREGORY C. LAUBY: I can do that as well, Senator.

LATHROP: Yeah,--

GREGORY C. LAUBY: All right.

LATHROP: --to the committee members, if you care to. I don't see any questions for you today, but thanks for being here.

GREGORY C. LAUBY: Thank you very much for your attention.

LATHROP: Anyone else here to speak in the neutral capacity? Welcome.

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JEANIE MEZGER: Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Jeanie Mezger, J-e-a-n-i-e M-e-z-g-e-r. I'm testifying in a neutral capacity because I honestly don't know whether to support this bill or not. I know people who might benefit from passing the bill if questions are answered about who it affects and whether it's retroactive. So I hate to oppose their chance of getting off the registry sooner. However, if this bill passes, how many more years will pass before someone in the Legislature tackles this topic again? Next year, when we come back asking for more, will we find senators who think, well, didn't we reform the registry last year? How many more times will we hear, it's a heavy lift as an excuse to ignore the pleas of registrants and their families. The registry restricts the freedom of over 6,000 Nebraskans and puts them in increased danger of harassment, vandalism, assault, and murder. And for no payoff that I can see. If the registry makes some people feel safer but has no discernible real effect on safety, is that sufficient reason to continue making it difficult for registrants to find jobs and housing. The registry restricts the freedom of over 6,000 Nebraskans and puts them at risk of arrest for crimes that are crimes only because they are on the registry and, again, for no pay-off that I can see. Families are at risk when a family member can be arrested and convicted for forgetting to report to the sheriff that none of his or her registration information has changed. It is shocking that senators who have heard our stories, who tell us they know the registry is a big problem, still believe it's acceptable to create second-class citizens by putting and keeping people on the registry. I will add, excuse me, that the amendment proposed by Senator McCollister to allow the 25-year people to petition to be released early makes this bill a bit more attractive, but why add the additional barrier of having to get a set-aside? Why not just let them ask to be off at a certain point? Why not find out if they have made progress and are-- are no longer a risk? Again, I don't know for sure. I-- I hope that it helps. If it passes, I hope that it helps people get off the registry. So thank you very much. I'd be happy to answer any questions,

LATHROP: OK. I do not see any questions. Thanks for being here. Any additional neutral testimony?

JOHN MEZGER: Good to see you again.

LATHROP: Good afternoon.

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JOHN MEZGER: Senator Lathrop and members of the committee, my name is John Mezger, J-o-h-n M-e-z-g-e-r. I am a sex offender. And I believe that this bill is a good bill, but it does not reach far enough. Many of the issues that are faced by sex offenders are not covered by this bill. I am in favor of it and hope that you consider it, but I also strongly suggest that this bill be tabled. I would suggest perhaps a committee be formed of senators and people who have knowledge of the registry, and I'm going to recommend somebody that's at the bottom of your sheet. This person is nationally known as an advocate for sex offenders; he is director of the board of Nebraskans Unafraid and has served on committees of justice reform here in the state of Nebraska, as well as restorative justice, and I hope you would consider my idea of tabling it until we have a committee that studies more of the issues. But if that's not possible, then I'm very much in favor of the bill as it stands right now--

LATHROP: OK.

JOHN MEZGER: --and hoping that in the future things change.

LATHROP: All right. I don't see any questions for you, Mr. Mezger.

JOHN MEZGER: Thank you.

LATHROP: But thanks for being here today. Anyone else here to testify in a neutral capacity? Seeing none, Senator McCollister, you may close. Senator McCollister waives closing. There are-- there is no written testimony offered this morning. There are six position letters. All position letters are proponents. No opposition position letters. And with that, we will close our hearing on LB458 and that'll bring us to LB204 and our own Senator Slama. Good afternoon.

SLAMA: Good afternoon. Chairman Lathrop, members of the Judiciary Committee, my name is Julie Slama, J-u-l-i-e S-l-a-m-a, and I represent District 1 in southeast Nebraska. I am here today to introduce LB204 on behalf of the Attorney General's Office. This bill would add the crimes of sex trafficking and sex trafficking of a minor to the Sex Offenders Registration Act. Human trafficking is the fastest-growing criminal industry globally, especially during the times of COVID, where many of the victims are out of sight of the public. It was made a federal crime in 2000 and Nebraska made it illegal in 2006. In the years that have followed, lawmakers, including

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our own Senator Pansing Brooks, have worked to give law enforcement all the tools they need to crack down on this horrendous crime. LB204 addresses this issue by requiring convicted sex traffickers to register as sex offenders. Sex trafficking is a sex crime, plain and simple, and we should be treating it as such. Adding the crime of sex trafficking to the sex offender registry is primarily a matter of transparency. People can, of course, look up any conviction online, since they are public record. However, this information is not easily accessible to the public based on our current statutes. As the crime of sex trafficking expands, it is all the more important that information on these sex criminals is attainable and accessible to the public. The page-- I also forgot to hand out my white-copy amendment-- is handing out my white-copy amendment to the bill, which addresses the one concern that I've heard on this bill, and I'll discuss now what this amendment changes. The most prominent change is that the amended version of the LB204 removes the provision that would adopt the international Megan's Law. After introducing this bill, I decided I wanted the sole focus of this bill to be on sex trafficking, rather than the Sex Offender Registration Act as a whole, so keep it narrowly tailored. There's also a clarifying amendment that is intended to ensure that there is never a future issue in adding someone to the con-- convicted of sex trafficking to the registry and to alleviate any potential ambiguity with the judge's sentencing order. This specific change is found on page 5, lines 23 to 25 on the original bill, and the new language is found on page 4, lines 29 through 31, and on page 5, lines 1 through 3 of the amendment. A representative from the Attorney General's Office is testifying after me and can get more into the technical details and the need for the bill. I strongly urge the committee to consider advancing LB204 to General File. Thank you, and I'm happy to answer any questions you may have.

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

SLAMA: All right.

LATHROP: But we'll look forward to hearing from the testifiers. Thank you, Senator Slama.

SLAMA: Thank you.

LATHROP: We will take proponent testimony at this time.

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GLEN PARKS: Good afternoon--

LATHROP: Good afternoon.

GLEN PARKS: --Chairman and the members of the committee. My name is Glen Parks; that's G-l-e-n P-a-r-k-s. For over four years now, I've been the coordinator of the Nebraska Human Trafficking Task Force, which is coordinated out of the Attorney General's Office, and I'm here this afternoon on behalf of both the Attorney General's Office and the task force to support LB204. As was just explained, and as amended-- you have that in front of you-- the bill aims to add sex trafficking and sex trafficking of a minor to the list of predicate offenses for the Sex Offender Registration Act. I don't believe it was anybody's intention to leave these crimes off the list. I believe it's just never been done. The sex offender registry list originated, I believe, in the '90s, and sex trafficking was first a crime in Nebraska in 2006. I do want to give a little perspective. As the coordinator of the statewide Human Trafficking Task Force, I have frequently witnessed the incredulity on people's faces when they realize that sex trafficking and even sex trafficking of a minor are not predicate offenses for sex offender registration. I know a couple instances where even prosecutors have filed mislabeled documents in court over this misunderstanding. And I'm aware of one time even a judge, reasonably but incorrectly, ordered SORA duties upon a person convicted of sex trafficking, only later realizing the law doesn't permit this. LB204 would permit it. It would align the law with these commonly held intuitions. I just want to reiterate a few things that Senator Slama said for clarification so you understand the wording of the bill. This is prospective, so this wouldn't apply to anyone except those who commit sex trafficking after January 1 next year, and it also makes very clear-- the language makes clear to exclude people who are convicted only of labor trafficking. This language is necessary because labor trafficking and sex trafficking are the same-- listed under the same statute. So in summary, the Attorney General and his office and the Nebraska Human Trafficking Task Force do support this bill as an appropriate extension to the scope of the Sex Offender Registration Act. I thank you for considering this bill and I'm happy to take any questions.

LATHROP: Senator Pansing Brooks.

GLEN PARKS: Yes.

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PANSING BROOKS: Thank you-- thank you so much for coming, Mr. Parks. I-- I'm interested in the part about the nolo contendere-- or nolo contendere, and that basically is a plea admitting the facts, right? But it's my understanding there are cases where like a parent will take on that plea for a child so that the child doesn't have to have the punishment. Have you run into cases like that? And I'm looking up cases online right now where that's so. So I'm just interested because it's really not a guilty admission.

GLEN PARKS: Correct, it's a-- there's no contest, so they're-- you're pleading to something, you're not admitting guilt, but you're accepting the consequences.

PANSING BROOKS: Yeah.

GLEN PARKS: I don't understand the part about taking it on behalf of your child.

PANSING BROOKS: Well, one of the-- one of the cases I'm reading about says that there's a case where like it's not unheard of for a parent to stand in the place of the child and admit no contest and then take the repercussions for the child.

GLEN PARKS: Well, for any plea in the-- so they would plea to it and then there would be a hearing in which the person would be convicted. And at that hearing, we as prosecutors have to establish the factual basis for it, so it's not just an agreement in addition to actual facts that-- that we state are true. So there would be no-- I'm not-- I'm really not clear on that. I don't--

PANSING BROOKS: OK.

GLEN PARKS: There could be no agreement with the prosecutor that some child should-- you know, is guilty of this and their parent comes in and pleads guilty to it.

PANSING BROOKS: Well, there's just some facts that they're saying here.

GLEN PARKS: Is this a Nebraska case or not-- or are you just worried it might happen here?

PANSING BROOKS: Yeah.

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GLEN PARKS: OK.

PANSING BROOKS: And then I guess the other--

GLEN PARKS: I can't imagine that happening here.

PANSING BROOKS: Pardon me?

GLEN PARKS: I can't imagine that happening here, if I've understood your scenario correctly.

PANSING BROOKS: Yeah. Then the other thing I'm wondering about, in Nebraska, because I don't practice in this area, is it-- does-- does a no-contest plea stop a civil suit?

GLEN PARKS: No.

PANSING BROOKS: OK, because this whole thing from-- on nolocontendere.org says that that stops-- that that kind of plea will stop a civil suit, anybody from suing the defendant for any civil damages.

GLEN PARKS: That is not--

PANSING BROOKS: I don't believe that's true either.

GLEN PARKS: No.

PANSING BROOKS: OK, and it does list Nebraska, so I think--

GLEN PARKS: The standard of proof, of course, for-- for a crime is beyond a reasonable doubt. And for civil, it's something less than that. The famous case of O.J. Simpson, I think, was-- is a case in point where the-- he was found not guilty of something but civilly was found responsible for it, I believe. I think it's a different system.

PANSING BROOKS: OK, I'll maybe talk to you later about that--

GLEN PARKS: OK, please, yeah.

PANSING BROOKS: --because I-- I would hate to take away the civil ability.

GLEN PARKS: Yeah, I may misunderstand. We-- let's talk later--

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PANSING BROOKS: OK.

GLEN PARKS: --because I may misunderstand what you're saying.

PANSING BROOKS: That sounds fine. Thank you.

LATHROP: It simply can't be used as an admission in a civil case, so
if I plead guilty--

GLEN PARKS: Right, OK.

LATHROP: --a plea of guilty can be used in a civil case as an
admission against the person you're suing, but a no-contest plea can't
be.

GLEN PARKS: I think that's right.

PANSING BROOKS: OK, thank you.

LATHROP: Happens all the time with traffic.

PANSING BROOKS: OK, thank you.

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

GLEN PARKS: OK, thank you.

LATHROP: Did you have a question, Senator Geist?

GEIST: No, I did not.

LATHROP: Oh, OK. Any other proponents of LB204?

***NATE GRASZ:** Chairman Lathrop and Members of the Judiciary Committee,
my name is Nate Grasz, and I am the Policy Director for Nebraska
Family Alliance. Nebraska Family Alliance supports efforts to prevent
human trafficking, increase awareness, provide rescue and restoration
to victims, and punish those who attempt to sell and purchase human
beings as commodities. Human trafficking is modern day slavery in
which people profit from exploiting others through force, fraud,
coercion, or deception, and is a direct affront to the dignity of a
human person created in the image and likeness of God. Tragically,
Nebraska is not isolated from the scourge of human trafficking. A 2015

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report from the Governor's Task Force on Human Trafficking found that at least 47 Nebraska schoolgirls are known to be trafficked each year, and a 2017 study found that 900 individuals are advertised for sex online each month in Nebraska. LB204 makes needed updates to Nebraska's Sex Offender Registration Act by requiring those who have been found guilty of sex trafficking crimes, including sex trafficking of a minor, to be registered as a sex offender and follow the necessary and appropriate requirements of registered sex offenders. By passing this bill and updating the Sex Offender Registration Act, the state can recognize the severity of trafficking crimes and ensure that our laws reflect Nebraska's commitment to protecting women, children, and all citizens. We appreciate Senator Slama introducing this bill and strongly encourage the committee to advance LB204 to General File. Thank you for your time and consideration.

LATHROP: No other proponents? Any opponents?

KENNETH ACKERMAN: Good afternoon again, Senator Lathrop and committee members. My name is Kenneth Ackerman, K-e-n-n-e-t-h A-c-k-e-r-m-a-n. We're working hard to end the registry because it's not even-- ever been shown to be any study to protect children or make society safer. As Glen Parks just testified, it's a commonly held institution-- or intuition. I'm not sure what he meant by that, but unfortunately it's not commonly proved by any study that that would really help protect people. Although sex trafficking is terrible and against all decency and deserves prison time, adding those convicted to the registry would not stop this crime or its exploitation from taking place. And again, comment to Senator Pansing Brooks, many times people plead guilty when they're not guilty because they're threatened with so many higher punishments, and many times someone would plead a nolo contendere but would still be put on the sex registry, and I've heard many stories in that. Then, in addition, the part requiring Nebraska to adopt the current federal Megan's Law requirements, which Nebraska sheriffs already do, is both unnecessary and adds nothing to the existing law. I know this because two years ago I reported at all of our itinerary, as required by the existing law, when my wife and I traveled to Israel. In the future, if federal law changes to allow different measures for those needing to go to another country because of death in the family or to help another country in a national disaster, Nebraska would only need to change their law too. Nebraska gains nothing by complying with already-existing federal law, and

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respectfully, this bill would only take needed time away from other
bills.

LATHROP: OK. I don't see any questions today. Thanks, Mr. Ackerman.

KENNETH ACKERMAN: Thank you.

LATHROP: Other opposition testimony?

DEREK LOGUE: So I'm Derek Logue, D-e-r-e-k L-o-g-u-e, offering my
opposition primarily on the principle of how we go about adding people
to the registry. I think, if people don't even know how the registry
actually works and we've had this thing for over 25 years now, how are
we expected to continue to expand it, especially when it's being
expanded by use of the various myths? I mean, already I've heard
people say, well, you know, sex trafficking is the fastest growing
crime and whatnot. You know, we hear a lot of this stuff. I've been
seeing a lot of this sex trafficking stuff for the last decade or so.
It's become the new moral panic, and it was the same moral panic that
created this registry in the first place. And part of the problem I've
seen over the years-- and I wish that I was able to gather enough of
this stuff to-- to show as evidence. I'll just have to try to give it
to you later. But a lot of the-- a lot of these statistics are being
big-- are being thrown together, claiming that there's all this kind
of sex trafficking, when run-of-the-mill prostitution offenses are
being added into it. Labor trafficking offenses, it is-- it was noted
earlier, that are usually put into these numbers as well, they've done
entrapment operations where they go online and-- and entrap
individuals in trying to get them to meet with minors, will include
that, and then times they've even included sex offense compliance
checks when they go around and-- and see if people are registering
where they should be registering and providing information. And they
throw these numbers in together and have these big operations,
Operation Falcon, Operation Talon or whatnot, and say, oh, we
collect-- we've rounded up all these dangerous sex traffickers or sex
offenders and stuff, and then you break down, find out that very few
of them were actually actual bona fide sex trafficking cases. The vast
majority of them, like Operation Talon that came out a few weeks ago,
I think-- I can't remember if it was Georgia, Florida, or somewhere
down there. They said, well, we arrested over 41 people for sex
trafficking, but 28 of the-- I think it was like 28 of the cases
weren't even sex trafficking. It was registered persons who were not--

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who did not register a social media address. And so these numbers are being inflated, these numbers are being overblown, and I'm seeing some of that even here that people are saying things are happening way more than it's really happening. I don't think we should be expanding the registry. I think we should be contracting it and looking into get rid of it altogether.

LATHROP: OK, appreciate your testimony. I don't see any questions at this time. Any other opponents of LB204?

GREGORY LAUBY: Good afternoon, Senator Lathrop, members of the committee. I am Gregory C. Lauby, L-a-- G-r-e-g-o-r-y, "C.," as in Christian, L-a-u-b-y, and I'm here in opposition to LB204. I'm disadvantaged in that I have not seen the amendment that Senator Slama provided just a few moments ago, so if my comments are no longer relevant, I apologize, but I would like to make them on the record in any event. On May 14, 2020, Mattieo Condoluci's body is found in his living room in Omaha, killed by a gunshot. October 8, 2020, Steven Lee Weaver dies outside of McCook, Nebraska. His injuries are reportedly from a vehicle collision and a gunshot. December 2, 2020, a four-man group calling themselves the Texas Predator Poachers drives from Houston, Texas, to Sidney, Nebraska, where they threaten a man living in his mother's apartment, harass other tenants and the landlord, and there is no report of the Texans being arrested. All three of these instances began with the discovery of the victim's name, crime, age, and address on the State Patrol Sex Offender Registry website. December 31, 2020, New Year's Eve, Mark Hadley, age 53, is found in his Gage County jail cell unresponsive. He's transported to the community hospital where he is declared dead. He was charged with first-degree sexual assault of a child. Conviction would have resulted in his placement on the public website of the registry. Foul play is not suspected. September 27, 2019, 28 individuals describe the hardship the public registry imposes on registrants and their family members to the members of this committee. They include loss of employment, residential denial, shaming, bullying of public schoolchildren, destroyed families. The list of collateral damage was lengthy, and I thank you for hearing it and remembering it. I don't know how much worse things have to get before someone starts to offer some substantive relief to people who are being punished still by their presence on the registry. I would think that people dying and families being destroyed is sufficient cause to turn back from this wrong road that started at the urging of the federal government and

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Congress, based on our own experience here in this state. And so I
thank you for your attention if there are no questions.

LATHROP: I don't see any.

GREGORY LAUBY: Thank you.

LATHROP: Thanks, Mr. Lauby. Any other opponents wishing to be heard?
Seeing none, we will take neutral testimony. Anyone here in a neutral
capacity? Welcome back.

JEANIE MEZGER: Hello. Thank you. My name is Jeanie Mezger, J-e-a-n-i-e
M-e-z-g-e-r. I'm testifying in a neutral capacity because I want to
provide some questions that ought to be answered while considering
LB204 and some that should be considered whenever changes to the
registry are suggested. So, number 1, why should we add more people to
the registry? Number 2, is the community safer because photos, names
and addresses of those convicted of sex offenses are made public?
Number 3, has the incidence of sex crimes decreased because of the
registry? What does the data show? Number 4, is the safety of
Nebraskans improved if the registry makes it harder for registrants to
find jobs and housing? Number 5, when people on the registry are
harassed, attacked or murdered because of their registry status, who's
responsible for making that possible? What could be done to prevent
those crimes? Number 6, if the registry is thought to protect victims
of sex crimes, how does it protect registrants who are victims of sex
crimes? Number 7, what good comes of notifying a foreign country that
a specific Nebraskan will be arriving to visit, and what good comes of
stating or implying that the person is dangerous? Is evidence of
impending danger required before sending that notification? Number 8,
why would Nebraska want to restrict the liberty of citizens who need
to travel outside the country for business or who want to travel for
leisure? Number 9, why would Nebraska want to see its own citizens
detained by foreign security agencies? Number 10, when you talk about
the community or our constituents, do you include registrants in those
categories or do you consider them a separate group to oppose? Number
11, how many registrants are in your legislative district and how many
have you met? Number 12, have you talked to families of registrants
about the effect of regis-- of the registry on them? Number 13, how
does the registry account for people changing over time and becoming
less likely to commit a crime? Number 14, are people on the registry
represented in the same proportions as the overall Nebraska

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population, and if not, does that worry you? Number 15, what about the representation of people in the LGBT community? Number 16, how many prison sentences for registry violations add to the decades-old prison overcrowding in Nebraska? Seventeen, how many people at the regional centers under the Sex Offender Commitment Act are there indefinitely because overcrowded prisons make it impossible for them to complete the iHELP treatment program while in prison? And number 18, what reasons are there to keep the registry at all? So when you think about this bill or any other bill that affects registrants and their families, please consider these questions, along with the many, many existing studies on the effects of the registry. Thank you. And of course, I'd be happy to answer questions about my questions, so.

LATHROP: Can I ask you a question?

JEANIE MEZGER: Of course.

LATHROP: I know that you're-- you are an advocate in this area, and this all came about through the Adam Walsh Act, didn't it? So the federal government said if you-- if you pass these kind of sex offender registries, we'll give you Adam Walsh Act money.

JEANIE MEZGER: Right, the Byrne--

LATHROP: That's essentially how we got it--

JEANIE MEZGER: --fund, right?

LATHROP: --right?

JEANIE MEZGER: Yeah.

LATHROP: Are there any states that have turned away from it completely and no longer have--

JEANIE MEZGER: A registry?

LATHROP: --sex offender registration?

JEANIE MEZGER: Not that I know of. I'm pretty sure that-- no, I don't think so.

LATHROP: OK.

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JEANIE MEZGER: There are some that-- well, I-- that's all-- I'll just
leave it at that.

LATHROP: OK, OK. I just wondered if-- if anybody has stopped doing it,
what their experience is in relation to-- relative to the states that
continue to do it.

JEANIE MEZGER: Right.

LATHROP: But if no one has done that, then you wouldn't have any way
of knowing.

JEANIE MEZGER: We could do that.

LATHROP: I can't take audience participation. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you for your testimony.
Maybe a better question is, have any states turned away from a public
registration, where the public would have to go through like local
law-- law enforcement to see the registration?

JEANIE MEZGER: I'm not an expert in-- on any other states, but I know
that Washington and Oregon treat their-- they have different
qualifications for what goes online. I would bet that the answer is
behind me, but I don't-- I don't know how to answer that one.

BRANDT: OK. Thank you.

JEANIE MEZGER: Yeah.

LATHROP: OK.

PANSING BROOKS: I got [INAUDIBLE]

LATHROP: Oh, I'm sorry--

PANSING BROOKS: No, that's OK.

LATHROP: --Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming. I think those
questions are-- are good questions for us to think about. I appreciate
that, and I do appreciate the courage of the people that have come to
testify. It's a very discriminated against group who's gone through

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a-- you know, met the-- the punishment that the state has meted out,
and we need to hear their voices as well. Thank you.

JEANIE MEZGER: Thank you. And if I could just add that when you talk
about the punishment that the state metes out, yes, they've already
served their probation sentence or their-- their prison sentence by
the time they get to the registry. But what happens then is the
registry allows the state to continue a punishment on these people,
but the-- the state can stand back and say, who, us, we didn't do
anything, because the-- the community is allowed to punish these
people by saying, we're not going to hire you, we're not going to rent
to you, we're not going to let our kids play with your kids. So that's
where the punishment comes in, in the registry, so.

PANSING BROOKS: I just-- thank you. I-- it says, I've been looking up,
that all 50 states do have a sex registry that are open to the public
via websites, but information on some offenders is visible to law
enforcement only, like the specific act or whatever happened.

LATHROP: OK. Very well.

JEANIE MEZGER: OK, thank you.

LATHROP: Thank you. Anyone else here to testify in a neutral capacity?

TIMOTHY MELCHER: You said neutral?

LATHROP: Yes, neutral.

TIMOTHY MELCHER: I apologize. I wasn't planning on testifying on this,
so I'm not sure if I can.

LATHROP: That's OK.

TIMOTHY MELCHER: OK.

LATHROP: Yeah, if you want to testify in a neutral capacity, you may,
but you still have to give us your name and spell it for us.

TIMOTHY MELCHER: Sure. My name, again, is Timothy C. Melcher
T-i-m-o-t-h-y "C," as in "Clifford," M-e-l-c-h-e-r. And to address, I
think it was, your question, I don't believe any states have done away
with the sex offense registry, but California has taken measures to

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address the issues that they're having. And California is a pretty liberal state, so they're going to be one of the first states in the Union that takes, you know, steps to controversial topics like this. But I wanted to testify on this one because I heard the term "minor" when testimonies first started. And Nebraska is one of two states in the Union that are unique in the fact that age of majority in Nebraska is 19 years of age. So when you talk about minors in Nebraska, Nebraskans are thinking anyone under 19. Now, since the sex offender registry is basically, like you said, with Walsh-- Adam Walsh Act, an incentive from the federal government, the federal government guidelines of 18 years of age for the age of majority carries into the sex offense registry. And I know that because with my case, my victim was 18 years old, I was 20, and it was showing up on my sex offense registry site that my victim was a minor. And like I was saying, I was concerned about the man that got shot in Omaha, and so I didn't want it to look like that I had committed a "pedophilnalia" crime like that, so I asked to have that fixed. So that might be some issues that the state of Nebraska will see if you decide to put sex trafficking crimes onto the sex offense registry. And also applying my knowledge from sexual assault, I think it's 28-319 and 28-320, again, the age of majority comes into question, but I believe the state considers anyone under the age of 12 to be a child. And with sex assault crimes, if the victim is 16 and there's about a three-year age difference, I think the state handles that differently. So for definitions of minor, just keep some of those things in mind.

LATHROP: OK, well, we appreciate that testimony. Thanks for being here again, Mr. Melcher. Anyone else here to speak in a-- or testify in a neutral capacity? Seeing none, Senator Slama, you may approach and close. We have nine position letters. Seven of those are proponents, two of them are opponents, and we have written testimony from Nate Grasz, who is a proponent, with Nebraska Family Alliance.

SLAMA: All right, thank you, Mr. Chairman. And I-- I just wanted to briefly address some of the points that were raised in this discussion, which I think was a very good and productive one, LB204 is simply about consistency in our sex offender registry statutes. As our representative from the Attorney General's Office stated, it seems like the exclusion of sex trafficking and sex trafficking of a minor from those offenses that qualify for sex offender registry, that was an inadvertent exclusion at the time. Obviously, these sex trafficking statutes are relatively new. We're still working out the kinks and

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this is one of them. The white-copy amendment eliminated the mention of international Megan's Law, so the codification of that is removed, so that addresses at least a couple of the concerns that were raised in testimony. And just briefly, I'd like to address the assertion that somehow human trafficking statistics are inflated. Unfortunately, with the advent of technology, humans can be bought and sold on your phone or your laptop. The advent of the Dark Web has caused the popularity of human trafficking, sex trafficking, labor trafficking to soar because it's far more accessible than it was in the pre-Internet era. In addition, we're finding more and more that prostitutes, those who are labeled as prostitutes, if I'm remembering the statistic correctly, around 80 percent, but it is the overwhelming majority were originally trafficking victims if they are not still being trafficked, if-- and being misportrayed as prostitutes. So it is important, the words we choose to describe human trafficking, sex trafficking, and the nuances that go along with it, because this truly is an issue that we're facing here and now and across this state, not just in Omaha and Lincoln along the I-80 corridor, but in rural parts of the state, my district, southwest Nebraska, northwest Nebraska. It truly is something that goes on across the state, and I'm grateful for the efforts we've been able to make to crack down on this. So thank you very much, and I'll answer any follow-up questions the committee may have.

LATHROP: I have a question for you.

SLAMA: Yes, sir.

LATHROP: Do you know how many times we've convicted somebody of sex trafficking in the last year?

SLAMA: In the last year-- I-- I would have to defer to the Attorney General's Office on that. I-- I do believe since we've implemented this-- these statutes, it's been at least above a handful of times, but they can follow up with you after this hearing.

LATHROP: OK. Senator Pansing Brooks.

PANSING BROOKS: Thank you. I have been following that a little bit about how many times people-- and part of the issue is the feds often come in and-- and take over the--

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SLAMA: Yes.

PANSING BROOKS: --the case because of the interstate nature of some of it. But I do know that just recently there was a big case that was in the paper. So it just-- it just depends on the nature of whether or not it's going across state lines or what's happening. And that's why we had to bring the laws to make sure that when it was just happening within the state, that they could arrest people and charge them. So the other thing that-- just to add to what you said, when I was working on this originally, I called and was talking to Don Kleine, the county attorney up in Omaha, and asked him, and it was probably four years ago, what percent of the people that you arrest for prostitution are actually trafficked? And he said he believed 96 percent, so, because they don't have control of their ID or of their home or their money, and that those are indicators, so anyway--

SLAMA: Sure. And-- and just to add on to your point too, not just in urban areas, but in rural areas the trend I've seen with my county attorneys is they'll get these victims strung out on meth and they'll use that addiction to have that power over them, and they may be initially assessed as prostitutes and drug addicts when in reality they're being manipulated by a trafficker, so.

PANSING BROOKS: It's-- it's a different kind of crime than really some of what we're talking about here. I mean, it's a-- it's-- it's truly a crime of-- of control and--

SLAMA: it is. It really is horrific and I think there are a wide spectrum of sex crimes. And when we talk about sex trafficking, that has to be at the top of the list of indignities against a human being, so.

PANSING BROOKS: Thank you.

SLAMA: Thank you for your work on it.

PANSING BROOKS: Thank you.

LATHROP: OK, I don't see anything else.

SLAMA: Thank you.

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LATHROP: That'll close our hearing on LB204 and bring us to the last bill of the day, which is LB636 and Senator John Cavanaugh. And, Senator Cavanaugh, we might just take a moment so the room can clear out. OK, just about-- all right, Senator Cavanaugh, welcome to the Judiciary Committee, which is now about to hear our last bill of the week.

PANSING BROOKS: Woo-hoo!

J. CAVANAUGH: Well, that just tells me I have as much time as I like.

LATHROP: I'm sorry? [LAUGH] Welcome. You may--

J. CAVANAUGH: Thank you, Chairman Lathrop.

LATHROP: You may begin.

J. CAVANAUGH: Thank you. 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 the 9th Legislative District in midtown Omaha. I'm here today to introduce LB636, which would eliminate cash bail and appearance bonds. I want to clarify that this does not mean releasing everyone who is currently held pretrial on their own recognizance. Currently, our system allows judges to release someone on their own recognizance, or ROR, often called a signature bond, meaning the only thing guaranteeing the defendant's appearance in court is their promise to do so. The judge can also require a defendant to post a cash bond, i.e., the judge could set a bond in the amount of \$1,000 with 10 percent due, meaning the defendant or their family would have to post \$100 to be released pending trial. The judge sets the cash bond-- can set that cash bond in any amount. When the defendant comes to court and the cash-- the case is resolved, that person gets back \$100 minus 10 percent processing fees, so about \$90 back on that bond. In addition to an ROR or a cash bond, a judge can require other conditions of release. Some-- some examples include the 24/7 program, which is a daily drug and alcohol screening; 24/7 program is used in drug and alcohol cases to ensure the defendant abstains from the use while out on bond. What this bill does is twofold. It would eliminate the cash bail and replace it with other tools the judge could use to ensure safety of the community and any alleged victims, preservation of evidence, and ensure the appearance in court while not holding the defendant unnecessarily in jail, causing them to lose their job, their

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house, or progress in school or a treatment program. I brought this bill because it's an important conversation to have, particularly in the wake of last summer's protests. This committee heard hours of testimony from Nebraskans who believe that our criminal justice system is broken. Many of those same people took the streets to protest police brutality and were met with mass arrests, many held in county jail, forced to pay bonds for minor offenses on arrests the city later had to acknowledge were not justified. The highest levels in city government took an interest in an organizer whose-- in organized payment of those bonds, as recently was disclosed by the ACLU. I appear-- have appeared before this committee on a number of times this year on criminal justice bills, and I've drawn on my experience in the Douglas County Public Defender's Office to inform my perspective. And I can tell you that the cash bail system, as it currently exists, penalizes poor people. Defendants who cannot afford bond may take a guilty plea to avoid more jail time, even if they have a valid defense. The system right now bears no relationship to the likely-- likelihood of appearance or the danger to society. It's only a measure of access to capital. I'm a believer in reforming the system where we can, and I recognize the difficult fight we often have in this body to even get modest reforms passed. So I know that in light-- in this light LB636 is an ambitious proposal, but I think it represents a statement of purpose: People should not face jail time solely because of their inability to pay. Under this bill, a judge could set conditions of release that actually bear a relationship to the reasons bail exists. On a recent day in Douglas County, the jail there had one-- 1,176 humans being held there; 988 of those people were held pretrial, meaning almost 1,000 members of our community were in jail and they had not yet been convicted of a crime. They were still innocent until proven guilty, I'm sure it didn't feel that way to them as they are currently being deprived of their liberty. This isn't unusual. The vast majority of people in Douglas County Jail are not serving a sentence. They're awaiting trial. And as an aside, jury trials have not been an easy thing to get in the last year. You'll see there's a fiscal note that estimates a one-- \$1.9 million to \$2 million impact to the General Fund from the loss of cash bonds. This money comes from that 10 percent off the top of each bond posted. I want to stress that relying on the denial of a person's liberty as a revenue source for the state is not a policy I agree with. I'm willing to continue this conversation going forward. I want to thank the committee for your time and your hard work and attentiveness through

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this session. And I-- as I said, I've had quite a few bills before the
Judiciary Committee and I appreciate the back-and-forth we've had on
all these bills. I would appreciate your support on LB636 and I'd be
glad to take any questions at this time.

LATHROP: OK, Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Cavanaugh, for
bringing this bill. First question, on the fiscal note, they're
estimating a \$2 million reduction in revenue, which would obviously be
the bond that's paid. Who gets that money today? Does that go to the
county or the state or the judicial system?

J. CAVANAUGH: I think that goes to the judicial system. I actually
printed that out. I-- I wasn't quite certain on that either, and I
looked it up. And I think it's referenced in-- in 29-901, but it goes
to, I think, a judicial cash-- cash fund.

BRANDT: Second question, in the-- in the-- on those 900 individuals,
and-- and I remember this from two years ago, I believe, this bill was
brought by somebody else. So we've got somebody that's in for some
petty offense, public something, and maybe you can fill in the blank
on that, and they're in jail for 14 days, and do you know what the
cost is to incarcerate somebody? Like in Douglas County Jail, is it
\$100 a day or \$70 a day?

J. CAVANAUGH: I actually couldn't get ahold of the Douglas County
number. I know the Lancaster number is \$110 a day.

BRANDT: OK, so let's say \$100 a day and they're in there for 14 days,
and so it cost somebody, whether it's the-- the city, county, or
state, \$1,400, and then they go to court and they have a fine of \$100.

J. CAVANAUGH: That-- yes.

BRANDT: And so do you have any cost-benefit ratio on-- we should be
able to figure some of those numbers out, should we not?

J. CAVANAUGH: We could. And it-- and that's-- I appreciate-- thank
you, Senator Brandt, for that question. I appreciate it and I
appreciate that perspective. And, yes, we are, and there's a couple of
other layers to what you're talking about. So the example I often
think about is the number of people in Douglas County Corrections who

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come through on trespassing at, say, the Siena Francis House or the homeless shelter. They get arrested. They go to county jail. They can't post bond. They end up, you know, sitting, you know, for a week or so on that. But the other example, kind of what you said, was you could go-- somebody maybe could ultimately get out. They could get-- get arrested on a Friday, get held until they go to court on Monday, get released, and then get sentenced to a fine and then go ask to sit out that fine, and then, again, we'd be paying for that. So there's a lot of that kind of cost that we bear as a society for that incarceration. But ultimately, to answer your question, it's going to depend. So the purpose of this bill is not to say there's 988 folks being held pretrial in Douglas County and that they're all going to be released. Right? It's to create a structured system under which they would be assessed for their risk and then the-- the conditions of release would be proportional to their offense, their risk, the risk that they pose to society, the risk they pose to the individuals and all those other aspects, and there would be a wide range of those available resources. So not everyone would be released, and so it's kind of going to-- it's going to depend on like a how implemented. But I think in the fiscal note, you can see that Lancaster County presented how much money we would save on a change of 100 people or 200 people, which is substantial. I-- I'd have to pull it out here. And actually, we have-- Mr. Nigro is, I think, going to testify as well. But if you look at the savings, they estimated savings of \$1.3 million, I think. Let's see, two years ago, Lancaster County estimated savings of \$662,000 if the jail population was reduced by 100 inmates.

BRANDT: OK.

J. CAVANAUGH: And so-- so that's a change of 100. And again, one problem we have is we don't have good data. We can't tell you exactly which ones. I can tell you based off of the Douglas County information, of the 988, about 800-and-some of those were in on felonies and about 100-and-some were in on misdemeanors, but, again, those are all pretrial detainees in Douglas County.

BRANDT: And that-- that sort of segues into my last question, and you may not know this. If we have 1,000 people in jail, what percent of those people are-- are eligible for bond that don't exercise that right, which probably is the people that can't afford it.

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J. CAVANAUGH: Right. So the question is-- everybody is eligible for bond, with few exceptions.

BRANDT: OK.

J. CAVANAUGH: So there are-- under our Constitution, everybody is entitled to have-- to-- to have a cash bond set, essentially, with the exception of people held on homicides and then certain sexual offenses. And so anybody else would have some amount set, and whether that is from that \$100 or-- well, \$1,000 dollars, 10 percent, up to a million dollars, which means you'd have to post \$100,000. And that is most of the people who are-- are in Douglas County Corrections pretrial are sitting there on an unpostable amount of cash. And whether that is-- and that-- and the likelihood of their ability to post is going to be proportionate to their-- their-- basically, their access to capital, right? And so that's-- and that effectively means, and the reason I'm bringing this bill, is for those folks, if your-- if your bond is \$100 and you can't post it, it's-- you are exactly the same position as if you are unable to-- if the-- the court determines that you can't safely be supervised in the community. And so we have made dollars a stand-in for safety because it's easier to say, this is how-- what risk I think you present and this is the value I place on that. This system just says we're no longer going to consider dollars as that-- that stand-in. We are going to actually consider measures that we can take for that community correction, and so it's just a more thoughtful approach, I would say.

BRANDT: All right, thank you.

PANSING BROOKS: Senator--

LATHROP: Senator McKinney.

McKINNEY: Thank you. Senator Cavanaugh, I'm sure today we're going to have some individuals come up and say that if we end cash bail, we're just going to let violent people out on the street. But like you said, there would be a risk assessment. I'm curious, do you-- do you trust the judgment of the judicial system to-- to correctly assess these individuals prior to allowing them back in?

J. CAVANAUGH: Do-- are you-- so you're asking if I trust judges to use their judgment?

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McKINNEY: Right.

J. CAVANAUGH: Thank you for the question, Senator McKinney. I'm-- I'm not going to answer that as candidly as probably some people would like. But-- but I think that if we create a system that has-- is as robust as this, which includes an objective assessment that will be performed, and then the judges have a wide variety of skills. One, you're take-- or a wide variety of tools. One, you're taking the discretion of to incarcerate or not incarcerate more or less off the table, because it's-- it makes it harder for them to determine to hold somebody, because right now a judge can say, in my judgment, this person is a risk valued at \$5,000, and that makes it easier for them to say, well, I'm allowing him to get out, I'm not saying he-- he can't get out, I'm just saying he'd have to post \$5,000 to do it. And that, it's-- that's basically an easy way out for them, right? So this makes it a little bit harder and they have to put-- puts some-- a little bit more effort into their explanation if they're going to hold somebody. And again, that person then-- the one thing they're going to address is that person would then get to come back again and say, well, here's a different, you know, other aspect, other way I could be super-- supervised in the community that would be more restrictive and therefore less necessary for me to be held. So you can have a little bit more back-and-forth that's not just, well, now I've got \$500 dollars, can you lower it to \$500, as opposed to the conversation-- you know, that-- that's where the conversation goes in bail situations a lot is the judge will say, I want you to post \$1,000, a defendant will say, I can post \$500, and the judge will say, OK, \$750, which is effectively no different than \$1,000. So I think that when we go to this style of system, we are going to have to do some educating, and I know that's part of-- that actually is part of the-- the fiscal note from the Supreme Court. But I think that it'll be a learning curve for sure.

McKINNEY: All right. I looked online to see what other states or cities were doing this, and I saw that in D.C., 94 percent of the defendants on pretrial release, 91 percent of them returned, so it's not like these individuals aren't going back to court. My question is, in your experience, is it easier for an individual to fight a case in jail or outside?

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J. CAVANAUGH: Oh, it's certainly easier to fight a case outside and--
and it's-- it's easier-- I guess I don't like that characterization.
It is easier to assert your rights when you are out of jail--

McKINNEY: Right.

J. CAVANAUGH: --than it is when you're in jail--

McKINNEY: And it--

J. CAVANAUGH: --because-- well--

McKINNEY: Oh, sorry. But is it also-- because I know a lot of times
individuals sit in the county jail and they sit there for a long time
and the county attorneys or somebody keep coming to them to get them
to take a plea deal, and after sitting in the county for a long period
of time, some people just give up the fight and say, whatever, I'm
going to cop out to this plea just to get out of here. Do you think
that with this in place, people would avoid doing that as much?

J. CAVANAUGH: I-- yes, I think one of the intentions here is it
removes what I would consider an artificial reason why people would
accept a plea deal. And, yeah, the-- the problem you identified is
where sometimes-- a lot of people will plead for time served and
rather than fight it at that point, and they will sit for 60 days, 90
days, 6 months, depending on the offense, and then plead for time
served, get out, and the-- and the penalty at that point is having a
conviction on your record because you get to go back to your life.
This, if we did this, obviously, not all of those people are going to
be sitting outside during that time because they would still have to
pass the, you know--

McKINNEY: Right.

J. CAVANAUGH: --the-- the assessment and be found to be supervisable
on the release, but the-- it would decrease the number of people who
are sitting there who otherwise are only sitting there because they
can't come up with \$1,000, and so it would rebalance that in that--
that way.

McKINNEY: Thank you.

J. CAVANAUGH: Does that answer that question?

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PANSING BROOKS: I have a question.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for bringing this bill, Senator Cavanaugh. I had the pages pass out something to you and it's-- it's-- it's test-- written testimony in lieu of being here and present, and so I don't think they're going to be here, I don't know, unless I don't know somebody here. But anyway, I just wondered if you-- if you could speak to a few of those bullet points that are there. I could read them, but I-- they're saying that failing to account-- advise the court on criminal history and defendant's local ties and failure-to-appear record may violate ethics and court rules and deprive the court of opportunity to preside over fair judicial administration of law. Do you have a comment on that?

J. CAVANAUGH: Failing to advise-- to fully advise the court of criminal history and defendant's local ties and failure-to-appear record may violate ethics and court rules. I don't know how that violates ethics. And the court rules really are-- I guess my interpretation of court rules would be their interpretation of our statute. And so if we created it, if we change the statute in such a way that said that they couldn't consider certain things in bond, that's our instruction to the court that that should be integrated into their rules, so I don't really see that as an issue. I mean, I take issue with the--

PANSING BROOKS: OK.

J. CAVANAUGH: --necessity of that information being relevant to a bond, but--

PANSING BROOKS: OK, so then the next one is that they're saying that the number of individuals who will fail to appear will far exceed tens of thousands who are currently on warrant. Do you want to speak to that?

J. CAVANAUGH: I would be-- I'd like to see that number of the tens of thousands who are currently on warrant and what that means.

PANSING BROOKS: Tens of thousands.

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J. CAVANAUGH: Right, and-- and whether that's in one county, if that's the state, if that's a national number, and whether that in-- those are failure-to-appear warrants, I would take a lot of issues with that. But as Senator McKinney kind of pointed to, in a place that has a good experience with this, which is the District of Columbia, they have a-- a small failure-to-appear rate. So I-- I think that that's-- I-- I would have to see the numbers that they're referencing to make, I guess, an actual comment on that.

PANSING BROOKS: OK, and then they talk about catch-and-release policies in other states have had disastrous results that those on recognizant conditional release or no cash bond have no incentive to appear and needlessly place the public comment in harm. Do you have a comment on that?

J. CAVANAUGH: Yeah, so--

PANSING BROOKS: And violent crime rates have rocketed, they're saying.

J. CAVANAUGH: That-- and I appreciate the county attorneys bringing up that point. The difference here is, and I-- I don't know which states they're talking about. Again, this is-- they didn't cite any of their work on this, I guess, so I couldn't tell you, couldn't specifically rebut where they're getting their information. But the difference is we're making an assessment about whether or not this person, individual that you are releasing is actually a risk, and then we are putting specific constraints tailored to that person to ensure that they are going to refrain from criminal conduct, that they're going to show up, that they're not going to present-- present a risk. If the only constraint on somebody's liberty is cash, if you have cash, you can get out and do whatever you want. And there's countless examples of that under our current system where the judge set a bond that they thought was high enough to keep this person in custody, because they did that on purpose to set it at a level that they didn't think they could get out, and that person made-- made that bond and then went and did something atrocious. What this system would do is say, well, we don't care how much money that person can post, we think they present this type of risk, and we're going to mitigate that risk in these specific ways. So it really would address those specific concerns, so I don't know what jurisdictions they're talking about or what action those jurisdictions have taken.

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PANSING BROOKS: OK, and then that talks about no cash bond would result in persons being held for trial without opportunity for release on bail by sufficient surety and it would violate the Nebraska Constitution.

J. CAVANAUGH: So-- and there's actually somebody who maybe can speak more eloquently to that, who's going to testify after me, and so maybe I'd just defer to that.

PANSING BROOKS: OK. And then finally, individual civilian pretrial release employees to supervise violent felony offenders or habitual absconders raises innumerable concerns, including civil liability.

J. CAVANAUGH: I guess I don't know what to say to that, involving civilian pretrial release employees to supervise felony-- I-- we already have civilian programs that supervise people, and if there are people who are violent, again, they may not-- they may have a very high level of release or they may not be released. If they're habitual absconders, I don't know. Their definition of habitual absconder is probably going to be different than my definition of habitual absconder. But if it is somebody who really is going to flee the jurisdiction, they probably would have a pretty high level of supervision as well. There are, you know, opportunities in this for ankle monitor and there are opportunities for daily check-ins. There's opportunities for all kinds of levels of supervision here that would address those specific concerns.

PANSING BROOKS: I-- my little tiny bit of experience with this was that our daughter Avary got to work with the ACLU and go in. You know, people were unable to pay their rent. Their families were losing their homes because they-- they couldn't get out and go to their jobs. I mean, it-- it is not-- it's so shocking when you learn-- one of the first things you learn in law school is, you know, that debtor's prisons are illegal, and when somebody can't pay their bond, that's basically debtor's prison. So anyway, thank you for bringing this bill.

J. CAVANAUGH: Thank you.

LATHROP: I got a few questions for you.

J. CAVANAUGH: OK.

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LATHROP: And-- and-- and I mean that literally. Does Douglas County use any kind of a risk instrument or any objective measure for the risk that someone will not show up for their trial to determine or to assist in setting what is their bond?

J. CAVANAUGH: They do use a pretrial release score, and it's a number that they use. And in my experience in that particular courtroom doing that, they don't always have it done for a number of reasons, timing issues, and there's no conversation around it. It's-- they do an assessment that's pretty minimal and then they shout out a number, you know, pretrial score is five, and then the judge, you know, assigns a bond, more or less based off of what the county attorney is asking for, is kind of how-- how it goes, and that's on the felonies. As far as I can-- as far as I know, there's not a pretrial score on misdemeanors.

LATHROP: So I know that the studies reflect that if you don't have an objective measure, that people of color are going under the very same circumstances as a white person, end up with a higher bond if you're not using an objective measure or an objective risk assessment.

J. CAVANAUGH: Right. And I would, I guess, add on to that. Even if you have an objective risk assessment and you're not forced to actually use it and have it reflected in your bond, then it doesn't do you any good either.

LATHROP: So I-- I had a conversation, and I know we're-- we're-- we got the introducer here and we're spending a lot of time with you, but--

J. CAVANAUGH: That's OK.

LATHROP: --you do have experience in this. I had a meeting probably two years ago with Mike Myers, who is now the head of Douglas County Corrections. At the time, Foxall-- at one time, Foxall was the head of the corrections and Myers was in charge of trying to implement an objective measure or a risk assessment and get the-- the county-- the judges in Douglas County to recognize it as a valid instrument and use it for setting bonds. Were you around during that time period?

J. CAVANAUGH: The-- that transition probably happened within the time I spent a lot less time in court, I would say, in the last--

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LATHROP: I'm sorry, I'm having trouble hearing you.

J. CAVANAUGH: In the last year-- that's-- that's been more in the last year where they were working on that, I think, the last year and a half, and I haven't-- hadn't been there as much in that time frame. I do-- I-- I'm familiar with what you're talking about, but I-- trying to think if I-- I don't think I've been in that courtroom in that time frame.

LATHROP: So when they do these risk assessments, it's not just about how much money should it be set at, but is there something besides money that will keep a guy with this score coming back to-- to-- to court? And that may be a phone call every day. It might be an email reminder. It might be an ankle monitor. It-- there are a lot of different ways to ensure somebody will show up besides setting a cash bail.

J. CAVANAUGH: Yes. And we currently do have ability to do a lot of those things that you're talking about, is kind of what you're getting at. The problem that I have seen, and that I think a lot of other people have seen, is we have used a "yes, and" approach where we introduce 24/7, which is a fantastic program, and started putting people on it, and then they started adding it as a condition on top of a cash bond, as opposed to releasing people on-- on-- just on a 24/7 check-in. And so we have some of these tools that we're talking about, but a lot of people are still not being able to gain access to them and the benefit because they are still not able to post the cash bond that is being required in addition to that, that level of supervision, supervised release.

LATHROP: Do you see cash bonds having a disproportionate effect on communities of color?

J. CAVANAUGH: Yes, certainly. It's hard to differentiate how the cash bonds are having a disproportionate effect and the criminal justice system as a whole is having a disproportionate effect. The-- the criminal justice-- where I practice in Douglas County is wildly disproportionate based-- the number of people of each race is not representative of their-- and I don't have the numbers in front of me, but it is anecdotally, I can tell you, disproportionately black and brown people who are coming through the criminal justice system in Douglas County, and they are then also disproportionately being

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incarcerated. I don't know if I could tell you whether or not the--
the bonds were reflective-- were-- were proportionately
disproportionate, I guess.

LATHROP: OK. I think that's all we have for you at this time, but
we'll look forward to the proponents' and the opponents' testimony.

J. CAVANAUGH: Thank you.

LATHROP: With that, we'll take the first proponent. Good afternoon.

GEORGE DUNGAN: Good afternoon, Chairman Lathrop and other members of
the committee. My name is George Dungan; it's G-e-o-r-g-e D-u-n-g-a-n.
I'm a felony attorney at the Lancaster County Public Defender's
Office. I'm also here today on behalf of the Nebraska Criminal Defense
Attorneys Association. I'm here today to testify in favor of this
bill, as a proponent, I'm not really here to be speaking about the why
this is important. There's a number of other people who will be here
to testify about the why. I'm here today to talk a little bit more
about the how. I was one of a few people that actually worked on the
drafting of the language in the current iteration of this bill, and so
I wanted to make sure that I could be here to answer any questions or
talk about a couple of things: first of all, the flowchart, the
process and procedure for how this works, for those who might be
unfamiliar with the system as it currently stands and what this would
modify; and then also to speak to the-- the constitutionality, as I
believe Senator Pansing Brooks brought up from that, that testimony.
I'm happy to speak about that. When I inevitably run out of time, I'm
happy to answer questions regarding that as well. The way this bill is
currently set-- I'm sorry, this proposed bill, the way it's currently
set up, an individual would be arrested. They would then be taken
before a judge. What's written in here is a presumption for a personal
recognizance bond, as Senator Cavanaugh was just talking about, so
there's a presumption that that individual shall be released on their
own recognizance. Taking into consideration various factors that are
outlined and specifically put into the proposed legislation, the court
has to make a determination as to whether or not they think that
release on a personal recognizance bond is sufficient. If they find,
based on those things that they're considering, that it's not
sufficient, the court then, next step, is they shall-- they have to
consider what essentially we're calling a conditional release. That
would be very much akin to the conditional release that people of this

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committee might be familiar with in juvenile court. That is a determination right then and there, based on circumstances, again, that I'll get to in a second, that are outlined in the legislation, about whether or not there are certain conditions that can be imposed that would help assure either community safety or that individual's return to court. Those conditions that can be imposed at the time would be a monitor, no alcohol provisions, not leaving the state, things such as that. If the court makes the determination, based on those factors, that neither personal recognizance nor conditional release are sufficient, the bill then requires the court shall, first of all, make written findings and specific findings as to why they don't believe the individual can be released on either of those, and then shall also appoint counsel, if they don't already have that, and also shall order a screening. That's the screening that Senator Cavanaugh was speaking about, a screening that then determines, based on a risk and needs assessment, whether or not that individual can or should be released back into the community. That result from that is then sent to the counsel that was either appointed or that that individual was able to hire. And upon receipt of that screening, that individual can then-- the defendant can then request a bond review, based on that screening, to determine whether or not there is a set of conditions that can be suggested to the court to create a further conditional release with community corrections supervision. I see that I'm out of time here. I certainly don't want to go over my time, but I'm happy to answer questions about that process, procedure, or the constitutionality.

LATHROP: Senator Geist.

GEIST: I-- on the process, I'm curious, when-- when this individual would be diverted down the-- the pathway of the screening that you were just speaking of, what is the time frame that you're talking about there?

GEORGE DUNGAN: I think-- there's not a set time frame specifically laid out in the bill, and the reason for that, I think, is-- is twofold. This bill made great efforts to not use a one-size-fits-all for all of the counties and all the communities. Nebraska has a wide array of needs. You look at Douglas County versus Lancaster County, where I practice, versus western Nebraska, every county is going to have different needs. So each county is permitted by this to have their district courts and their county board designate a screening

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tool and a screening service that is used to determine whether or not those individuals then could be screened and subsequently released. Depending on-- depending on the people that are available for that, the staff that are on hand, that could take place overnight; it could maybe take place in a week. Again, I think it is problematic when you're dealing with such a wide state to mandate that it happen in a certain amount of time. Certainly, I don't want people to be sitting there for too long.

GEIST: Right.

GEORGE DUNGAN: But you want to make sure that there's-- there's flexibility there. So upon that screening happening then, the idea is that we expedite it at all due speed to make sure that they can actually get that screening tool done, into the hands of defense counsel or the defendant, if they're representing themselves, so that way that individual can look at the result, talk to whatever that supervising entity might be, and determine whether or not there's a plan that they can put in place.

GEIST: And then the screening tool, I'm curious-- you said that that would be up to the county to determine this tool. I'm curious if you go from county to county and you're treated differently, is that OK?

GEORGE DUNGAN: Certainly-- I mean, there are certain requirements that are put in this about the kind of tool that would have to be used.

GEIST: OK.

GEORGE DUNGAN: So the tool that would be used has to be validated, and there's a number of factors in the proposed language that require it be validated as to not discriminate based on race, based on gender, sexual orientation, sexual identity, class, those kind of factors, and it enumerates those.

GEIST: Um-hum, OK.

GEORGE DUNGAN: So the idea is that whatever tool is being used, even if the particular county has a slightly different tool-- and I do think over time it would probably become similar. I know states tend to use one tool across the board, generally, but the-- the idea is that whatever tool is being used is validated--

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GEIST: OK.

GEORGE DUNGAN: --and that it would be validated in a way that would
not result in disparate impact, depending on if you're in Cherry
County versus Douglas County.

GEIST: OK.

GEORGE DUNGAN: The hope is that would still result in a similar
release.

GEIST: And that was my-- my thought, so thank you.

PANSING BROOKS: We have another one.

LATHROP: Oh, I'm sorry. Senator Morfeld.

MORFELD: Thank you, Senator Lathrop. Thank you for coming today, Mr.
Dungan. Can you talk a little bit about the-- and I don't know which
constitutional argument you're going to talk about, but the
constitutional argument that I'm interested in-- or not argument, the
constitutional issue that I'm interested in is the one that's in the
County Attorneys Association letter in opposition. And I'll state it
very briefly. The Nebraska Constitution, Article I, Section 9, states
that all persons shall be available by sufficient sureties, except for
certain offenses where the proof is evident or the presumption great;
excessive bail shall not be required. Can you talk about how this
doesn't run afoul of that?

GEORGE DUNGAN: Certainly. And-- and that's an issue that's been
raised, I think, before in-- in talking about this. There's-- there's
been comments or concerns that if we get rid of money bond as an-- as
an entity, that that doesn't satisfy the requirements of that anymore.
I believe this bill is constitutional for a couple of reasons. One,
specifically as part of the proposed language here, if you look at
page 40, lines 12 through 14, it actually outlines a specific
definition of bail. In our current statutes, there's not really a
definition for bail or bond. Bail gets kind of thrown about as a legal
colloquialism. But nationwide, there's a lot of conversation about the
fact that bail doesn't necessarily just mean a monetary value that's
posted. Bail is the process and the procedure through which an
individual can be released or is provided a set of circumstances that
they can be released through. So we specifically define in here bail

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means the process by which a person is released from custody, either on his or her own recognizance or under conditions of release imposed by the court. So what I believe the constitution does, or what it does with that language, it's saying that there's three, I believe, specific instances that an individual cannot be bailed, and that's treason, sex offenses that are involving force, and then murder. So what that does is it creates a very small subset of offenses wherein the court can say there is no bail, period, that's it, it's done, these are not bailable, you shall remain in here into perpetuity until the case is done. For all other offenses it says that the individuals must be bailable. Bailable means that the option for bail exists. Under our current system, as it-- as it is there, and I believe Senator Cavanaugh spoke very eloquently about this, just because somebody is bailable doesn't mean that, as it currently stands, they get to get out whenever they want. As it currently stands, somebody is getting arraigned, when I'm working arraignments in county court, and they say, judge, I can't post that bond. And the judge asks, OK, well, how much money do you have to post? And the individual says, I have \$100, and the judge says, OK, that'll be \$5,000, 10 percent. In that circumstance, they're not bailable; they can't get out. And so I think that under this proposed legislation, with the definition of bail being a set of conditions, what we're doing is presenting a-- a list of conditions that trigger the bail. If, at the end of this flowchart that I've kind of discussed, a person gets that assessment and it says, here's the kind of things that would need to be in place in order for you to be released, and they go in for a bond review and they propose that to the court and the judge says, no, based on all the factors I've considered, I don't think you can be released, the individual is still permitted to come before the court for a further bond review and propose an additional plan. They could say, OK, Judge, well, we know the last plan didn't work, but this time I've gotten signed up for treatment, I've already been accepted into treatment, how about now? So that individual is bailable. It just doesn't mean they're permitted to be bailed right there whenever they want. And so I do believe, with the definition of bail as it's laid out in LB636, as well as the way the system currently works, those individuals would be bailable.

MORFELD: OK. And then-- OK, I think I'm done with questions. I might ask off the mike later. Thank you.

LATHROP: Senator Pansing Brooks.

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PANSING BROOKS: Yes, thank you. Just quickly, you were going to talk about the testimony that-- I'm just trying to remember what-- I had asked something to Senator Cavanaugh. Do you remember the question from [INAUDIBLE]

GEORGE DUNGAN: I think it was actually very similar to what Mr. Morfeld had just brought up, which are-- Senator Morfeld, sorry--

PANSING BROOKS: OK

GEORGE DUNGAN: --was the-- the constitutionality. I think that's what you had asked Senator Cavanaugh that he deferred for, for the testifier.

PANSING BROOKS: OK. You talk--

GEORGE DUNGAN: I'm happy to go into more detail about that.

PANSING BROOKS: No, you talked about the safe-- the public safety claim too.

GEORGE DUNGAN: I'm sorry, could you say that again?

PANSING BROOKS: The public-- the public safety claim.

GEORGE DUNGAN: Certainly, yeah. I think that-- and Senator Cavanaugh spoke to this and I don't have numbers in front of me, but as it currently stands, part of the problem here, I think, that we're seeing in our current system is that the court is instructed to take into consideration certain factors such as public safety and failing to appear and whether or not an individual is going to return to court. In the current system, if a judge wants to keep an individual in custody, they can simply say, I considered those factors and, no, we're not going to let you out. What this proposed language attempts to do, in an effort to sort of tailor that a little bit more, is to give them specific "shall consider" language and "shall not consider" language, and that's where the specific and written findings come into play in an effort to make it more transparent, for a-- for a defendant to know exactly why the court is denying that rather than simply reading the language of the statute. And so I think that addresses some of that public safety concern. For example, there are certain things that must be considered, such as ongoing needs for medical care, enrollment in educational programs, and involvement of community

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supports, and then there's certain things that must not be considered, such as allegations of failure to appear for court that occurred more than two years ago and that did not result in a conviction, or a history of criminal charges that are different in nature to the pending charges, what's before the court. So I think what this does is it tries to certainly take into consideration public safety, and I think that this does a better job of considering public safety than what we currently have. As of right now, as Senator Cavanaugh said, an individual who has the money can get out with no determination of public safety. If, however, something such as a validated risk assessment tool is utilized, that gives an actual number or-- or scale that a court can look at to determine whether or not public safety is actually at risk by that individual reentering the community. And I think that's a more data-driven approach, and I think that results in individuals who are not safety risks being resulted-- or being released.

PANSING BROOKS: OK, and just one other thing. So it's my understanding that across the country that-- I'm sorry, I'll take this off-- that courts are finding that debtor's prison system unconstitutional. So if that is happening across the country, wouldn't it seem like a bill like this could help, you know, mitigate litigation risks and, you know, just also save property tax dollars for individuals? Hello--

GEORGE DUNGAN: Abs-- absolutely.

PANSING BROOKS: Hello, property tax--

BRANDT: I hear you.

PANSING BROOKS: --people.

GEORGE DUNGAN: No, I-- I-- I absolutely agree with that. I think that-- and I believe Mr. Nigro is going to testify later about some of that-- there have been-- there have been suits that have been brought against counties and jurisdictions regarding their bail bond system, saying that it is, in fact, unconstitutional. And so it does, I think, create a mitigation of litigation risk by addressing it now. Certainly, I think, as to those cost savings, it's incredibly important to keep in mind. And I don't have the numbers for this, but there have been studies that show individuals who are out of custody at the time that they are sentenced are less likely to be sentenced to

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time in custody. So if we here in Nebraska have a concern that there are, for example, prisons being filled up at too high a rate or that we're getting overcrowding in prisons, one of many ways that we can address that is by ensuring that individuals have services in place while they're out of custody, pending the resolution of a criminal case. That tends to make it more likely that a court will consider something like probation in an effort to continue to allow them to work through those services, which on the back end, I think, does result in cost savings for the state as well.

PANSING BROOKS: Thank you.

LATHROP: OK, thank you.

GEORGE DUNGAN: Thank you.

LATHROP: Next proponent. How many people are here to testify as a proponent? OK, well, we just burned a good deal of the half-hour, so I'm just making that point to the committee. Welcome.

JOE NIGRO: Thank you. Mr. Chairman, members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of the Nebraska Criminal Defense Attorneys Association and my office in support of LB636. I want to thank Senator Cavanaugh for introducing this bill. When someone first appears in court on a criminal charge, the court sets a bond. If the person can post that bond, they are released while the case is pending. If they cannot post the bond, they will remain in custody. The purpose of bond dates back to Anglo-Saxon England and was to assure someone's appearance in court. That was the only purpose of bond in Nebraska until Senator Chambers left the Legislature for the first time, and then safety of the community was added as a factor. People charged with crimes are presumed innocent, but if they cannot make bond, they sit in jail for however long it takes to resolve their case. Many of us don't have to worry about losing our jobs if we miss a day of work, but many of the people we represent will lose their job if they miss a shift, then they lose their housing and their children can be placed in foster care. Time in jail can be devastating, and this is for people who are presumed innocent. LB636 would eliminate the money bond system and replace it with a system of risk assessment screening and pretrial supervision for those who need it. Across the nation, people have realized that detaining people based upon how much money they

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have is immoral. There has been successful litigation challenging the money bond system in New Orleans, Houston, and California, among other places. The research is clear that people in custody are more likely to be convicted, often because they will plead to get their case over with, and they are sentenced more harshly. Lancaster County is 4 percent black, but 30 percent of the people in our jail are black. This is an issue of racial justice. Several states are reforming their bond systems. The District of Columbia stopped using money bond years ago. Over 90 percent of the people there are released from jail and 90 percent return to court without committing other offenses. They have a good system of pretrial supervision. New Jersey drastically reduced the use of money bond six years ago, the number of people in jail awaiting trial was significantly reduced, and the percentage of people returning to court changed little and there was little change in the number of those who had been released committing other offenses. New Jersey and other states use the Public Safety Assessment, an easily administered tool to determine if someone should be released. Illinois just ended the use of money bond in the last few weeks, major reform. Opponents may try to scare you with stories of someone out on bond committing a crime. That just makes the case for a system of assessment and supervision to determine who should be released and how much supervision they need. The current system does not work. Prosecutors ask for high bond to show they think it's a serious case and judges frequently go along with those recommendations. The amount set is not to let the person out, but to keep them in jail. Having money does not mean you are more likely to come back to court or less of a risk to the community. It just means you have money. This system of jailing the poor is immoral and racist, and I urge the committee to advance LB636. And I'm happy to address any questions about some of how this works in other states, on what's happened in Illinois here quite recently, and the-- the points in the county attorneys' letter if anybody has questions.

LATHROP: OK, well, I don't see any questions.

MORFELD: I'll-- I'll ask one brief one--

PANSING BROOKS: I have one too.

LATHROP: OK.

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MORFELD: --because I want to make sure all the other testifiers are
able to talk.

LATHROP: OK.

JOE NIGRO: Sure.

LATHROP: Senator Morfeld.

MORFELD: Thank you-- thank you, Senator-- Senator Lathrop. When they
said the number of the individuals who will fail to appear for court
under this proposal will far exceed the tens of thousands that are
currently on warrant and [INAUDIBLE] that part of the letter?

JOE NIGRO: Well, that's just-- that's just completely wrong because
it-- District of Columbia started cutting back on money bond in the
1960s. I mean, their system works. Over 90 percent of the people come
back to court and they don't get in trouble. New Jersey is same thing.
Brooklyn and the Bronx have bail funds where they post bonds for
people and people come back at like a 96, 98 percent rate, so this
idea that we're going to get rid of money bond and everybody's going
to fail to appear is nonsense.

MORFELD: OK, thank you very much, Mr. Nigro.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Just quickly, Senator-- or Mr. Nigro. Thank you for
being here. What about the argument that it's going to cost so much
money to warehouse poor people?

JOE NIGRO: Well, the places that have reformed the system have
incarcerated fewer people.

PANSING BROOKS: To-- to the county, sorry.

JOE NIGRO: Well, it costs Lancaster County \$110 a day to house
somebody. The cost for community corrections to supervise people is
far, far less. So if we had the same kinds of reductions in our jail
population as District of Columbia or New Jersey, we're going to
release hundreds of people. And, you know, a felony case takes months
and months, so, you know, you're-- you're talking about saving
hundreds of thousands, if not millions, of dollars. And-- and you're

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going to get better-- I mean, people-- people under pretrial release supervision can get into treatment and programming that actually improves community safety. I know Senator Brandt had a question about people being in jail on a minor offense, and I have a personal example of somebody that came up to me at the home-- Project Connect, a homeless event at the Pinnacle Arena, and wanted to tell a story about how he'd been arrested for trespassing. He was new in town and he went to jail and he thought it wasn't posted where he was, and so he wanted to contest the charge. The bond was a \$1,000 percentage bond. He didn't realize he could ask for bond review and he didn't realize he could ask for an attorney. He sat in jail for 36 days and then, when he got to court, he just decided to plead. He got \$50-- a \$50 fine, 36 days at about \$100 a day for somebody who might have had a good defense, if he's able to get out, that he can come back and challenge it. But that's an example, I think, of how wrong the system is now.

LATHROP: OK,

PANSING BROOKS: Thank you.

LATHROP: Thanks.

JOE NIGRO: All right. You're welcome.

LATHROP: Good afternoon.

CARINA McCORMICK: Hi, thank you for having me. My name is Carina McCormick, Ph.D., C-a-r-i-n-a M-c-C-o-r-m-i-c-k. This is my first time testifying in person during this session due to COVID, but I thought that this was really important. And I also noticed how ambitious this bill is, so I really wanted to come put my thoughts behind it and also advocate for continued effort towards this. I'm going to make some other points shortly, but I'd like to start with a story of something that happened to me a couple years ago and how it relates to bail bond, and this is actually how I came to know a lot of what I do know about it. I live just down the street. It's across from the soup kitchen. And one of the customers at the soup kitchen put me in a situation where I was very unsafe, very reasonable concern for my safety, and of course I had the police come arrest him and I did want him put away. They knew he didn't have any money, and so they were saying, oh, don't worry, he won't get out because he won't have the money for bail. But that didn't really make me feel better, because if

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he was going to be in jail, I wanted him to be in jail for what he did or I wanted him to be sentenced for what he did. And if he was going to be held, I wanted it to be because the judge recognized he was making me unsafe. I-- it wasn't very satisfying to me that the fact-- the reason he was in jail and the reason he was being held is just because he didn't have \$100, because he was homeless, and if he had somehow had some brother, some best friend who happened to give him \$100, I would have been made unsafe. And this current law works so much better because the reason he's in jail would have been related to the causes that are laid out in this-- in this new proposal, not the fact of whether or not he happened to have \$100. And by the time he finally did get the hearing, of course, he was found guilty. There was evidence of what he did. But he-- there was barely any of his sentence left, and so that as a victim of a crime, that was actually really anticlimactic for me because I felt like actually the entire time he'd been in prison was not because of what he did to me, but because he didn't have \$100. And I actually ended up feeling almost like I didn't have justice as the fact that so much of his sentence was only the amount of time before his trial, not after any time that he was found guilty. And while I know I don't have that much time left, actually, but I think it was Senator Lathrop had asked a question to Senator Cavanaugh, who said, did you see it-- do you see having a cash bond-- cash bond as having a disproportionate effect on people of color, and that is not anything like an opinion. That's very clear-cut that it does. And you had asked about if the amounts applied are disproportionate. But I would say that even if the amounts applied are equivalent, are the exact same dollar amount, that that doesn't have the same effect on different people. A hundred dollars doesn't mean anything to me. There's nothing in my life that depends on whether or not I have \$100. But for these people, \$100 is whether or not they can feed their family or pay rent or any of this. And because of that, I think it needs to be eliminated because we do fully need equality before the law.

LATHROP: OK. Thanks for coming down. Yeah, we're glad to hear from you.

JASMINE HARRIS: Good afternoon, Judiciary Committee. Chairperson Lathrop, it's been a minute. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s. I am the director of public policy and advocacy for RISE. We are here in support today of LB636 and ask that the committee moves it to General File. While we do serve seven of the ten Nebraska

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correctional facilities with our program, we understand that the alleviation of overcrowding needs to happen on the front end of our criminal justice system. We're looking at it from a proactive standpoint. Nebraska has a higher rate than countries of how many people we incarcerate, countries like U.K., Canada and Italy. And I'll bypass a lot of the numbers, but what we don't take into consideration is the transient population that is in and out of our county corrections, where they see that over crowdedness. The state's pretrial system needs an overhaul, just like the prison system does. One particular component is this cash bail, and it plays a role in the overcrowdedness. And we continue to hear over and over again how like Douglas County is the most overcrowded county jail, they're the number-one provider of mental health services, and we have to start addressing it from that standpoint. The average bond across the United States for a felony is \$10,000, so that means, here in Nebraska, people would have to come up with \$1,000 to get out. That is not realistic for a majority of people, especially when we are having high rates of poverty. People don't have "indiscretionable" income sitting aside where they can, you know, post the \$500 that we hear are a lot of people that are sitting in Douglas County Corrections. I do have the privilege of serving on a pretrial task force right now, and a lot of the things that we're looking at are the PSA assessment and a pilot program and things like that and how we can get that across the state. It is trying to do away with the bias, which in a lot of the risk assessments that we know have that racial bias in there, so trying to come up with a tool that has been validated, that is going to help achieve that issue. As part of my work with RISE, I conducted an assessment on the pretrial system last year. We had a little-- about 27 people who responded, but-- and I'll email that. I did not want to print out 15 pages of stuff for everybody, kill more trees. But the results that I really wanted to talk about was that majority of people who answered it did not understand how the pretrial system or the statutes in our state works when it comes to detention. Majority stated that law enforcement does not divert people who have offenses that are stemming from social and behavioral needs, they do not issue citations in lieu of arrest, and a resounding 78 percent of respondents disagreed with the statement that no one is detained due to the inability to pay. What we see is that in these places like D.C. and other states, they have put things in place that include the risk assessment, that include programs that are court reminders for calling and texting people, and they have shown that people have showed up to

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their court appearances and those other pretrial services, so connecting them to substance use and mental health services, so, again, letting them out on that, though they're showing this by other ways of things that they've implemented. And again, I'm-- one of the other things is it only takes three days before someone is going to lose their job, their rights to their children, or the housing that they're serving in the correctional county's jails on cash bail bonds. And what we have to do, ACLU-- ACLU of Nebraska had a report, and I think Spike can speak to it, average here in Nebraska is 48 days that people spend in jail. So with that, I am open for any questions and thank you.

LATHROP: I don't see any questions. I want to, as always, thank you for the work you do with RISE and what you do for the guys that are incarcerated. It's really impressive. I hope to get members of the committee in to see and to take some tours, but also to see your program in action inside.

JASMINE HARRIS: Thank you.

PANSING BROOKS: [INAUDIBLE] have one--

LATHROP: Yeah.

PANSING BROOKS: I have one.

LATHROP: Thank you. Senator Pansing Brooks.

PANSING BROOKS: Sorry, did-- what was the statistic? Four days is the average?

JASMINE HARRIS: Three days--

PANSING BROOKS: Three days until they--

JASMINE HARRIS: --or 48--

PANSING BROOKS: lose, but how--

JASMINE HARRIS: --48 days average here in Nebraska that people are spending.

PANSING BROOKS: Forty-eight, wow. OK, thank you.

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JASMINE HARRIS: Yes.

LATHROP: OK. Thank you.

JASMINE HARRIS: Thank you.

LATHROP: We'll take one last proponent and then go to opponent
testimony.

SPIKE EICKHOLT: Good evening, 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 in support of-- of LB636. You've heard all of reasons why this bill is an important bill and what it does, so I'm not going to repeat that, but I'll try to maybe pick up some points that maybe other didn't highlight or maybe that I didn't actually hear them say. The current system is demonstrably discriminatory against people of color. It just is. I would submit, without even confirming, that since we've had the money bond system in the state, it's always been disproportionate against people of color. When we did our study, the ACLU did its report in 2016, we looked at the four largest counties in the state: Hall, Sarpy, Lancaster, and Douglas County. And at that time, the majority of those people were in pretrial detention and at that time almost six in ten were people of color. That's a majority, a simple majority, and it's certainly overrepresentation of the people of color in the state of Nebraska. Part of it is because there are more people of color who are poor. The money system now, the bond system, hurts people that are poor. It slows down people who've got money and it doesn't really have anything to do with public safety, I would submit. The opponents argue, and I think the county attorneys argue, this assumption that people have that if you make someone post money, that's going to make them more safe if they get out, and-- and I don't think that's a sound assumption and-- and I'll just leave it at that. A couple of things: As far as a presumption of release for minor offenses, that's workable. You know, we've been arguing this issue-- some of us have been arguing this issue in front of this committee for a few years, and one of the arguments that we had that we made explicitly, sometimes implicitly, was for these minor offenses, don't arrest, cite, and release. And the opponents' position was, can't do that, how is that going to work, they're not going to come to court. Last summer, that's what the major cities did. They moved to a cite and release and that's-- you saw a drop in both Lancaster and Douglas County's population, so it can work. I don't

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know what the county attorneys are claiming with the thousands of warrants now pending, if they are counting fail-to-pay warrants. I know that they have deliberately, with the cooperation of the judges in Lancaster County, not pursued warrants because of COVID, and I don't think that has anything to do with what this bill proposes or what the bond does. And if it somehow is a problem, well, that's an indictment of the money bond system. Right? If people aren't coming to court under the current system. I don't see how this bill has any sort of-- has to answer for that. I just want to also remind, we're talking about people who are charged. They are presumed innocent. And for the reasons that Senator Cavanaugh said before, people, they may not be completely factually innocent, but they often have legal defenses they waive and they concede simply because they cannot afford to be released, and it has demonstrably better outcomes if you're out on bond. I've got people who I represent, private hire. They got money. They can get a drug and alcohol evaluation. They can keep their job. They can do those things that when they finally are found guilty of something, the judge is assured that they're going to be able to walk out that courtroom door and do something right. And if they're locked up in shackles after serving 60 days, that doesn't have the same assurance. I'll answer any questions if anyone has any.

LATHROP: Any questions for Mr. Eickholt? I don't see any. Thanks for being here. We will now take opponent testimony. Welcome back. I thought we were just going to see you once today.

BRUCE FERRELL: Well, I'll try to make this painless as possible.

LATHROP: No, that's OK.

BRUCE FERRELL: So--

LATHROP: We're glad to have you here.

BRUCE FERRELL: Thank you. Chairman Lathrop and members of the Judiciary Committee. My name is Bruce Ferrell, it's F-e-r-r-e-l-l, chief of police for the city of Wahoo and the second vice president for the chiefs association. PCAN believes that the current bail system within the Nebra-- state of Nebraska is working. Bond reform has already been reacted [SIC] last year with LB881. Courts are being responsible in identifying persons, which is important, who are flight risks, have no ties to the jurisdiction, have committed a crime of

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violence, or are repeat offenders where cash bail or no bail may-- may be required. The court are-- currently also sets standardized, normal-- nominal 10 percent bail amounts for all misdemeanors in the state and those-- for those initially arrested in bond reviews many times, reduced person recognizance amounts within just a few days. In Saunders County, most misdemeanors and almost all nonviolent felonies have PR bonds currently that are modified after initial arrest or at the time that they were jailed and the initial appearance affidavit is submitted by the officers, which may also include drug court, drug rehabilitation, and other types of modified release without cash bail. Law enforcement has also been using common sense in writing citations in lieu of booking for misdemeanors and nonviolent fel-- felonies. Even with those factors, we see tens of thousands of people that are currently under warrant for failure to appear in this state: currently, the last time I looked, between 20 and 25,000 misdemeanor and felony warrants for arrest just in the county of Douglas County. Again, are those some that are mon-- the fines that were not paid? Yes, they are. But that's still a significant amount of failure-to-appears within that-- that set amount of money. In New York State, bail reform was passed in 2019. NYPD provided statistical information and in the first two months of 2020, crime was up 22.5 percent. In that same period, 482 persons previously arrested and released on bond with no cash bail went on to commit 846 new crimes. In the Loyola University study which looked at felony bail reform under GO 18.18A [SIC] in the state of Illi-- Cook County, Illinois, found that 77 percent of defendants were released prior to the-- the bond reform; 81 percent after it was instituted in Cook County. The stu-- study also-- so they did have an increase in people released. The study also found that 17 percent failed to appear prior to that bond reform and the number grew to 20 percent after bond reform. Additionally, in-depth look at the Loyola study found that their method-- issues with the methodology as well. In an article in the February 2021 Jour-- City Journal, they found that 9,200 individuals that were arrested, at least under the new bail reform, reoffended with 1,573 new crimes, of which 294 violent. The University of Utah in February of 2020 reevaluated the Loyola study. After looking at the statistical anomalies from the LU study, researchers, including a U.S. District Court judge, found that persons charged with new-- new crimes rose 45 percent and persons on pretrial release increased 33 percent in violent crimes. And even-- even with those numbers, the state of Illinois chose to go further on bail reform. Again, we find that

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particularly the gun crimes in-- in Chicago have increased over the
last decade. And we find not only is it a concern, but for-- for the
release of bail under those conditions with-- we have in Nebraska, but
also ones-- we have to also remember the victims of those crimes when
it comes to bail reform, as well, so--

LATHROP: OK.

BRUCE FERRELL: --with that, I'll take any questions.

LATHROP: Senator McKinney.

McKINNEY: Thank you. If the current system is working, why is it so
that five in ten individuals held in county jails awaiting pretrial
are people of color?

BRUCE FERRELL: The only thing I can tell you, Senator McKinney, is
that the Douglas County has a risk assessment tool that they use at
both bond setting and for bond reviews. They also look at those four
identifiers that I looked at, risk-- the risk assessments being for
reoffending, warrant history, not being part of the jurisdiction, and
looking at protection of the victim in the crime.

McKINNEY: You still kind of didn't-- why is it-- why is that
disproportion so high?

BRUCE FERRELL: I-- I can't tell you why. The tools are there. Now, if
the judges aren't using those tools correctly, then that's something
that we need to address with the judges, but the tools are there with
the risk assessment and with the four disqualify-- or the four
qualifiers that would either cause for a cash bail or for no bail. And
we do see that we have-- and I've seen anecdotally a number in-- both
in Saunders County and in Douglas County where we're seeing more and
more PR bonds and more people being released than there were before.

McKINNEY: Do you think it's fair for someone to sit in a county jail
for 60-- for 48 days or 60 days because they can't pay a \$500 fine? Do
you think that's fair?

BRUCE FERRELL: A \$500 fine or a \$500 bond?

McKINNEY: Bond, yeah.

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BRUCE FERRELL: What's that?

McKINNEY: Bond.

BRUCE FERRELL: Again, the bond is set either by the-- as a misdemeanor by the-- by the-- by the State Supreme Court, so it's that way, or if it's set at a dollar amount, say-- let's just say for a felony, they take into account the risk factors I've already addressed, plus the risk assessment.

McKINNEY: I get what you're trying to say. What I'm saying is somebody is sitting in the county jail and they need \$500 to be released. Because they don't have this \$500, they lose their house, probably hurt their family, lose their job, but it's because this whole \$500. Do you think that's fair in the current system? Do you think that's fair for somebody to lose a job, a home and family in 48 days because they cannot afford to pay the \$500 to be released? Do you think that's fair, yes or no?

BRUCE FERRELL: I don't know that I can say if it's fair or not. What I can say is the bond is set based on those factors, the risk assessment and if there's any of those disqualifiers. I--f if somebody has a warrant history that they-- where they are not showing up for court, the safety of the victim is at risk based on-- and what the judge is determined, is that a fair bond? That's-- that's what the judge determined,

McKINNEY: But there's not always a victim in those situations. I know you're referring to a victim situation, but there's-- there's victimless-- there-- there's crimes where there is no victim and people are still sitting in the county jail and--

BRUCE FERRELL: Here, well, let's just pick driving during suspension. It's a set bond by the state court. I believe it's \$2,500 dollars. They need \$250 to get out. They go before the court. Many times the court will release them on their own recognizance unless they are disqualified based on-- they may set-- may even set a higher bond based on those disqualifiers or the risk assessment.

McKINNEY: Thank you.

LATHROP: Senator Pansing Brooks.

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PANSING BROOKS: Thank you. Thank you for being here, Chief Ferrell. From my limited interaction with you, I know you to be a compassionate, good guy. And, you know, I just can't believe you think it's appropriate that people that are poor would lose their home, their jobs, everything because of \$500, and if it were on the opposite end for somebody who's really wealthy, we'd be up at like \$5 million or something like that. So it-- I just-- and then everybody in the whole state would be rising up, saying this isn't fair, we shouldn't be doing this, we can't hold our upstanding citizens then. But because they're people of color and poor people, they're-- they're disposable people in most people's minds.

BRUCE FERRELL: Well, I don't believe that at all, Senator.

PANSING BROOKS: I know you don't.

BRUCE FERRELL: What I think is, is that we-- the system that we have takes into account a number of factors. Now, if there's a risk assessment tool that-- that will-- that can be studied to see if that's more effective in a pilot, then certainly we've been-- would be in favor looking at that because, again, we want it to be fair, but is-- we have to also be fair to our victims and the majority of the people, again, from my own personal experience, that-- that are held on a higher cash bonds, usually meet those four disqualifiers. The other issue is we also look, you know, anecdotally. We're seeing in some of our-- let's just take with our juvenile justice reforms. In Douglas County, we're seeing a number of kids who are not eligible any longer to be detained in the juvenile detention center who are on monitors, who are on-- who have trackers, who are still going out and committing violent crimes like robbery, carjacking, felony assaults, drive-by shootings, even while they're out on bond, on a type of bond where-- where there's no consequences for-- and they keep getting released from that jail. So we have to find that happy medium and I just don't know that-- that without having a pilot program, like it may be for Douglas County or Lancaster County, to help point us the right way, if doing away with cash bond is going to be that-- that panacea that's going to change everything.

PANSING BROOKS: Do you think it helps to have-- I mean, is it a panacea to take away somebody's livelihood and their-- and their-- I mean, that's not a good solution, to take away somebody's home, destroy their family for \$500--

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BRUCE FERRELL: Well--

PANSING BROOKS: --and then charge the county for all that.

BRUCE FERRELL: Sure. And I-- you know, I heard-- I heard one time a
count-- county-- county-- the County Supervisor Boyle talk at-- on a
radio interview one time talking about how he had had-- he had seen a
person who was sentenced to a year in the jail because of simple
shoplifting. That-- that never happens. It does not. Now, if they had
four or five or six prior shoplifting convictions, I could see that. I
don't believe that there is a concentrated effort, whether it's people
of low income or-- or people of color in the judicial-- with our
judges to intentionally incarcerate them based on race or-- or-- or
income intentionally. I think that when they look at the tools they've
been given, which is the risk assessments, which took a long time for
Douglas County to come up with, plus those four-- other four
disqualifiers or those-- I shouldn't say disqualifiers-- the four
areas where they may increase or cause for a cash bail. Then those
folks have-- have the opportunity to continue to ask for bond review,
and many times they do get bond review and they are allowed to be
released.

PANSING BROOKS: To-- to me it's clear, if we have this assessment,
we're adding to the systemic racism that's obviously happening, here
we go, at-- right at the beginning of entry into the criminal justice
system, something's wrong and it isn't a good system, so--

BRUCE FERRELL: And I-- and the-- and the only thing I'd-- I'd-- I'd
say with that, too, is how-- how are we to know that-- without having
a-- maybe a-- an interim pilot program, that the risk assessment tool
is being applied-- applicated here in this bill won't also be
systemically racist?

PANSING BROOKS: Thank you for coming, Chief.

BRUCE FERRELL: I don't know that.

PANSING BROOKS: Thank you.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Chief, for sticking it
out today. So Wahoo, Nebraska, what percent of your time is spent

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chasing down bail jumpers, people that aren't showing up to court
today? I mean, is that 10 percent of your police force time, 5
percent, 15?

BRUCE FERRELL: Usually what we're doing is we-- we will actively go
out and look for people or we'll get calls for people that are on
warrant. I can tell you that our-- at our last investigators meeting
in the county, I think I saw 3 pages, probably 30 to 40 persons per
page, that were warrants with-- that are warrants with-- from Saunders
County. Again, they may not live here, but that-- so we're talking
about 120 to 150 people that were out on warrant.

BRANDT: And that would be from-- from the county court or district
court?

BRUCE FERRELL: That would be county and district court.

BRANDT: And what percent of those are still around, do you--

BRUCE FERRELL: That are still--

BRANDT: In town, in county.

BRUCE FERRELL: Half-- at least half would still probably be in county,
if not more, and it's just a matter of finding them, catching them at
home, at work, driving a car.

BRANDT: OK. So if we go to overnight, we go to the new system, do you
think those numbers would change for Saunders County?

BRUCE FERRELL: I don't know. I can-- I-- I can-- I can look at the
numbers that-- that the Loyola University used for Cook County.

BRANDT: Yeah.

BRUCE FERRELL: And they saw a, what did I say, 4 percent or 3 percent
increase--

BRANDT: Sure.

BRUCE FERRELL: --in warrants for failure to appear.

BRANDT: Right.

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BRUCE FERRELL: And-- and again, Cook County is pretty large so--

BRANDT: Right.

BRUCE FERRELL: --3 percent is a pretty good number.

BRANDT: Yeah. Cook County and Saunders County are probably two
different things.

BRUCE FERRELL: Sure. But I'm just saying, if-- I don't know what those
numbers would look like.

BRANDT: Right.

BRUCE FERRELL: I don't know what they would look like in Douglas
County.

BRANDT: And really the judicial-- judicial end of this needs to come
here to represent-- answer some of these questions, because you're
sort of a victim of-- this is-- you've got to chase these people down.
You're not the one that sent them out.

BRUCE FERRELL: Not only that we're chasing them down, but we're also
the ones that are making sure that we're trying to use good judgment
in citing versus incarceration and also making-- occasionally making
recommendations to the county attorney for people to get out for drug
court, job placement, other types of alternative-- of alternative
release. I make-- I make those recommendations on a fairly regular
basis within the county court, through the county attorneys.

BRANDT: OK, thank you.

LATHROP: I got a few questions for you.

BRUCE FERRELL: Sure.

LATHROP: How long do you keep a warrant active? So if I-- if I get a
traffic ticket and I don't show up, a warrant is issued, you don't go
look for me. You wait for me to get picked up again. Right?

BRUCE FERRELL: Well, we-- we'll go look. It's whether we find you or
not. But usually, I would say, a good majority of the time it's
somebody gets stopped on a traffic stop or somebody recognizes

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somebody and calls into Crime Stoppers or we see them on the street
walking by. So that's normally how they're-- they're being done.

LATHROP: Yeah, and--

BRUCE FERRELL: But usually it's--

LATHROP: --so how long do you keep those active?

BRUCE FERRELL: Well, I think it's-- I think it's--

LATHROP: So if skip out today--

BRUCE FERRELL: --set statutorily as-- as far as how long. I think we
have a-- six months or a year on a misdemeanor and maybe three or five
on a felony today.

LATHROP: You will keep them active that long? So when you say there's
tens of thousands, my question is, is that tens of thousands over ten
years that just pile up and they're sitting there unprocessed or you
haven't tracked the guy-- tracked the guy down that didn't show up?

BRUCE FERRELL: In-- when-- when I worked for OPD, I know that they
cleared as many warrants as they could. And I believe that after the
statute of limitations, that some of those warrants are taken out of
the system for those misdemeanors and those lower-level felonies
that--

LATHROP: You don't know how--

BRUCE FERRELL: --disappear after three years.

LATHROP: OK, so when you say tens of thousands, what does that come
from? Is that the sum of years' and years' worth of warrants that
remain outstanding?

BRUCE FERRELL: Well, I mean, you'd have-- like if you had a homicide
warrant, that's going to be a totally--

LATHROP: A whole different thing.

BRUCE FERRELL: A whole different thing, but if it's a-- if it's a--

LATHROP: You're going looking for those guys.

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BRUCE FERRELL: Right, if it's a-- well, if it's a-- let's say it's a--
a shoplifting-- felony shoplifting. If the statute of limitations is a
year or three years, once that's over with, then that person-- that--
that warrant could be disposed of. And I've seen them dispose of those
warrants because the statute of limitations runs out, but they're--
they're-- it's just a constant turning over, I mean, whether it's--

LATHROP: OK, but-- but the--

BRUCE FERRELL: --warrants--

LATHROP: You're the second person to say tens of thousands. I think we
saw Bruce Prenda do that in a letter, so--

BRUCE FERRELL: And I can only say that I-- I know that there's at
least 20 to 25000 arrest warrants for either felony arrest warrants
for fail-- misdemeanor arrest warrants where we've sought the warrant,
where people have failed to appear, and also where people owe-- owe
fines.

LATHROP: OK, so--

BRUCE FERRELL: And the county might be able to give you that
breakdown.

LATHROP: OK. You repeated something that I have heard, not in this
hearing but in other hearings, which is we have juveniles who are
released and they are out committing serious felonies. Do you have any
data on the number of juveniles released in Douglas County in, say,
the last two or three years that have committed a serious felony while
released?

BRUCE FERRELL: I'm sure we could get that number for you. I'd have to
call either the county attorney's office or the juvenile county
attorney's office to get those numbers.

LATHROP: I'd be interested in that. Senator Geist has a bill to-- I
think it's LB537 that deals with this subject. And when that-- when
that bill was heard, we heard this, you know, we got kids that are
running around with ankle monitors on and shooting people. We made
some changes in the law that were-- I think Senator Pansing Brooks was
involved in that-- that were supposed to be best practices. I wasn't

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around for it, but-- but those things were done. And Senator Geist's
bill-- I'm not trying to turn this into your hearing.

GEIST: No, that's all right. I'm interested too.

LATHROP: But Senator Geist's bill would in many ways roll a lot of
that back. And I think some of the testimony we heard was, well,
there's these kids running around that have been released and they're
shooting people. I don't know if that's two people did it and now--
now people want to change the law or whether it is happening at a-- an
alarming rate or are they isolated occurrences?

BRUCE FERRELL: I-- I-- I'll try to find that out for you. I do
remember--

LATHROP: I'd really like to know, because--

BRUCE FERRELL: I do know that there was a number of news reports and
articles over the last year and a half where police chases, robberies,
carjackings, drive-by shootings in-- in Omaha, specifically, where
those persons, when they-- the Omaha World-Herald or the news
organizations looked into their criminal history, found that they were
on pretrial release from-- and were not detained at the juvenile-- at
the--

LATHROP: Right. And so if you-- if there's two of them that are really
bad and-- and one of these young people shoots somebody--

BRUCE FERRELL: Right.

LATHROP: --then it's a big, big news story and it looks like a big
problem. But if it's 10,000 kids that get released and one kid does
it, then--

BRUCE FERRELL: I do know of one-- in one instance there were five
people involved in the-- in that series of crimes. And all five, I
believe, or four of the five, were out-- were not incar-- were not
detained at the juvenile detention center on--

LATHROP: If you have information on that, and--

BRUCE FERRELL: Yeah, fine.

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LATHROP: --and this is why I ask. After Senator Geist introduced her bill, I spoke with Probation. My understanding is they're doing some validation to see if the risk assessment instrument and the process that was employed beginning a few years ago actually works or isn't working, or do we have a lot of young people that are not being detained that ought to be--

BRUCE FERRELL: Sure.

LATHROP: --because we have a rash of-- rash of them engaged in serious criminal activity. Right now it's-- it-- it feels a little anecdotal--

BRUCE FERRELL: Right.

LATHROP: --like we're getting a story, there's a thing in the paper, this kid did this. I'm not excusing any one of these people. Whenever we're talking about releasing people, whether it's from prison at the end of their sentence, putting them on parole, we're always trying to manage risk in the criminal justice system. And I'm trying to get a fix on whether we got a problem that is broad and quantifiable, or do we have some kids that have done awful things while they've been released, but they are isolated occurrences.

BRUCE FERRELL: Sure. And-- and I think the other thing that complicates things has been the COVID, because even though they have been given opportunities for what-- whatever those release conditions are, probation is not doing drug testing, probation isn't-- or the trackers aren't out going and doing in-home visits, probation isn't taking visits in their home. So, again, it complicates that and gives people more opportunity--

LATHROP: Well, that-- OK, we're not turning this in--

BRUCE FERRELL: Yeah.

LATHROP: I guess I am turning this into a LB537--

BRUCE FERRELL: Right.

LATHROP: --subsequent hearing only because it's-- only because it's important that we are using-- like if we changed all the-- the system, we change the system and roll back whatever best practices were-- that were adopted during my term-limited period, because COVID has kept the

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probation officers from going out to homes and doing the follow-up
that this model sort of presupposes, that would be good information to
know as well.

BRUCE FERRELL: Sure. Yeah, and like I said, I--

LATHROP: I appreciate your-- your candor with respect to your answer.

BRUCE FERRELL: And I-- and I-- I just want you to understand, too,
that we in law enforcement don't want to have people locked up just
for the fun of it. I mean, normally, if we make a recommendation to a
county attorney that somebody should be detained, it's usually for a
pretty darn good reason. It's not because it's-- it's based on those
risk factors that we already talked about, because we want people to
be able to have jobs. We want them to be productive. We want them to
take care of their families. So, again--

LATHROP: I appreciate that--

PANSING BROOKS: I have a question.

LATHROP: --you're the chief of police in Wahoo and not in Omaha and--
but you-- you sound like you still have a good deal of familiarity
with what's going on in Omaha. And if you have information on--

BRUCE FERRELL: Yeah, I--

LATHROP: --that that would help us understand, is this a COVID issue--

BRUCE FERRELL: Sure.

LATHROP: --is probation unable to do the things that this model
presupposes. All that's going to be helpful in assessing what do we do
with these juveniles, what do we do with LB537--

BRUCE FERRELL: Sure.

LATHROP: --moving forward. Senator Pansing Brooks.

PANSING BROOKS: Just for the record, I want to remind that the Sup--
the Chief Justice came and said that these juvenile-- that the new
best practices that have been implemented are working, that-- that the
numbers are going down. They're very pleased about what's going on.

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The other thing I wanted to mention is that in Lancaster County, the county attorneys there have had amnesty/forgiveness events, amnesty and-- and forgiveness events on warrants. So now to all of a sudden be talking about warrants as one of the main problems, I-- I just-- I really find it disappointing, so--

BRUCE FERRELL: Well, and I think Douglas County has done some of the same. They've-- they've done amnesty as well. They've done a number of-- of-- they've had some other restorative justice projects going on, and so do a number of other communities. In Saunders County, we've got a very-- a very progressive drug court. We-- we had very few people locked up for drug offenses in-- in Saunders County. I think we're all moving in the right direction. It's just making sure that the tool or the-- the-- or the-- the release factors that we're doing are going to be the ones that are going to be the right fit to keep the right people in jail that-- that are the most dangerous to society versus penalizing people, again, like you said, just because they don't have \$100 to get out of jail.

PANSING BROOKS: And I just wanted to say one more thing. There's a quote by a man named Ibram Kendi, the author of How to Be an Antiracist, and in that book he said that you determine whether a system is racist by its outcome, not by the intent with which it was designed. So to say that the bond system isn't racist when third-- six out of ten are-- in county jails are African American or people of color, it doesn't matter what the intent was.

BRUCE FERRELL: Well, and-- and I think--

PANSING BROOKS: The system is racist

BRUCE FERRELL: And I-- and I-- I agree to that and I also think that we're-- we also have to look at what other factors, like poverty, lack of business opportunities. All of those things play into all of that.

PANSING BROOKS: Yes, white, wealthy people do not spend their time in jail waiting for their-- their trial.

BRUCE FERRELL: And again, that's a poverty issue.

PANSING BROOKS: Thank you.

LATHROP: Chief, thanks for being here once again.

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BRUCE FERRELL: Thanks.

LATHROP: If you have any information you want to share, just shoot me
an email or something.

BRUCE FERRELL: Sure, absolutely.

LATHROP: Yeah, thank you. Jim?

JIM MAGUIRE: Neutral.

LATHROP: Oh, neutral. All right.

***BRUCE PRENDA:** Chairman Lathrop and Members of the Judiciary
Committee: My name is Bruce Prenda. I am the Chief Deputy Lancaster
County Attorney and Co-Chair of the Legislative Committee for the
Nebraska County Attorneys Association. I am testifying on behalf of
the Nebraska County Attorneys Association in opposition to LB636. The
Nebraska Constitution, Article I, Section 9 states that "All persons
shall be bailable by sufficient sureties, except for [certain
offenses], where the proof is evident or the presumption great.
Excessive bail shall not be required ... " The following are our
identified concerns with LB636. • Failing to account for and fully
advise the court on criminal history and defendant's local ties and
failure to appear record may violate ethics and court rules. It would
also deprive the court of the opportunity to preside over the fair
judicial administration of the law. • The number of individuals who
will fail to appear for court under this proposal will far exceed the
tens of thousands who are currently on warrant, and needlessly
increase the number of situations in which law enforcement must
repeatedly locate, contact, and arrest individuals. Remember, every
re-arrest greatly increases the risk to officer safety. • "Catch and
release" policies in other states have had disastrous results. Those
out on recognizance, conditional release or a "no-cash bond" system
have little incentive to appear or refrain from criminal conduct and
needlessly place the public at risk of harm. In fact, violent crime
rates in jurisdictions that have adopted this approach have
skyrocketed. • A "no-cash bond" system is proven inadequate when
applied to violent crime and on-going risks to the safety of persons
in the community. • A "no-cash bond" system would necessarily result
in persons being held for trial without an opportunity for release on
bail by sufficient surety and this would violate the Nebraska

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Constitution. • Involving civilian pre-trial release employees to supervise violent felony offenders or habitual absconders raises innumerable concerns, including civil liability. In 2020, county attorneys worked with senators to enact bond reform (LB881). Local jail numbers have decreased as a result. We believe the incremental changes made by LB881 balanced public safety and reform and should be given greater opportunity to succeed before making more drastic and consequential changes to the bail system.

LATHROP: Any other opponents? Seeing none, we'll take neutral testimony.

JIM MAGUIRE: Chairman Lathrop, members of the Judiciary Committee, good afternoon. It's been a long day. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police, going to be testifying in a neutral capacity. I wasn't sure if I wanted to testify in-- in opposition or neutral. I-- I thought it would be better if it was just neutral. Just so everybody's clear, I've been a street cop in-- in Omaha, Douglas County, for over 29 years, so, my goodness, I don't know how many people I've had to run into where they've had warrants. I've worked at the courthouse and the vast majority of the warrants, if you go down to the traffic court, you're probably going to have about 10 or 15 warrants every day for people just not showing up. So do we think that everybody needs to be in jail? Absolutely not. We just need them to show up to court more than anything else. But this-- the way that the bill is currently written is interesting at best. We-- we think that it needs broader discussion, the way it's currently read, and-- and just kind of work on some things. I-- I will say this. Even when I was working for Douglas County and the Omaha police, it's pretty much told that if you pull somebody over an it's an arrestable offense, it needs to be-- just write a citation, write a citation at all costs. But if you get to the point where you can't write the citation, you have to take them to jail. And it's-- it's not the policy just to drive around and arrest people left and right. A lot of times what happens is that they'll have a warrant on file and you'll have something that you could have written them a citation for, but you can't. If you're going to-- you're going to arrest them for the warrant, you're just going to tack on the other charges so that it can all get done right then and there. So, you know, the last thing we want to do is just see people in-- in jail on minor offenses. We don't want to do it. But you're-- you're just kind of stuck having to do it because they have-- you may

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pull somebody over who may have 10 or 15 warrants and it-- it's going to stack up. But the-- I-- the only thing that we're-- you know, we talk about people that are in there for-- for pretrial. I'd just be curious to see how many are in there on like a domestic violence case, because those bonds are going to be a lot higher and it's going to be harder for them to get out. But it's also meant to protect the victim so that they don't immediately get out, go back to the home and-- and have more violence within that-- that home. So there's-- there is-- and I understand that it's in the bill that it says with the risk assessment and everything else. But it's very complicated and I would just-- our position obviously is neutral and it just-- it's-- it should be up for broader discussion in between the two sessions, so thank you very much. I'd be happy to answer any questions if there are any.

LATHROP: Just one clarification.

JIM MAGUIRE: Sure.

LATHROP: Are you here for the FOP or the OPOA or what-- what's your capacity today?

JIM MAGUIRE: I'm-- I'm going to say the FOP. The OPOA is-- is FOP now, but I'm going to say, because it-- it affects everybody throughout the state when you talk about these no cash bails.

LATHROP: OK.

JIM MAGUIRE: I'll be there.

LATHROP: OK. Any questions for Jim? I don't see any. Thanks for being here.

JIM MAGUIRE: You bet.

LATHROP: Thanks for waiting as long as you had to.

JIM MAGUIRE: Of course. Thank you.

***JON CANNON:** Good afternoon members of the Judiciary Committee. My name is Jon Cannon. I am the Executive Director of the Nebraska Association of County Officials. I appear today in a neutral capacity on LB636. When you consider the merits of LB636, we ask you to balance

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the best interests of the individuals who have committed offenses and the potential ability for those needs to be met by provisions in LB636 to enable county boards to approve pretrial service programs to identify any potential services, supports, or conditions that could be ordered to allow for the release of the defendant. We appreciate your consideration of our thoughts prior to taking action on LB636. If you have any questions, please feel free to discuss them with me.

LATHROP: I don't see any other testifiers in the room. So with that, we will have Senator Cavanaugh close on LB636. We do have ten position letters. Five of them are proponents, four of them are in opposition, one of them's neutral. And we have written testimony from two as follows: Bruce Prenda with the Nebraska County Attorneys Association, as-- is opposed, a letter that we've had some conversation about; Jon Cannon with NACO submitted testimony in the neutral capacity. Senator Cavanaugh, you may close.

J. CAVANAUGH: Thank you, Chairman Lathrop. And thank you to the Judiciary Committee. This has been a very good discussion and I appreciate everyone who came and testified actually on-- on all sides. I particularly appreciate the testimony from Ms. McCormick and Ms. Harris, who came and-- and gave us some perspective. And I also appreciated Chief-- and I'm sorry, is it Ferrell? I-- I didn't quite-- did he leave?

CARINA McCORMICK: Yeah.

J. CAVANAUGH: Oh, he left. Well, I-- I didn't quite catch what his last name was, but chief-- chief-- and he made a couple of points that I thought were-- really kind of spoke to the necessity for this. The-- and I think Senator Pansing Brooks hit on this, that there's no concerted effort to do this, to be-- to have a discriminatory effect, and-- and we have made these reforms before that have created another structure for discretion in the hands of the judges, and it hasn't really made a difference in the outcomes. And if the outcomes are still the same, we're not doing enough. And so this is-- really is-- the taking cash off the table is not, and I can't stress this enough, is not a situation that's going to release everyone. It's creating a situation where money is not the reason people are not released. There are other reasons and other things. And he also hit on, and so did Ms. McCormick, about the fact that the-- the ability to pay does not respect the victim, that the-- part of the reason for how we detain

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people has to do with about how the concerns of the victim, the concerns and-- and the respect for them, and this allows for a more respectful approach to that. I did especially want to thank Mr. Maguire for being here and for being in the neutral capacity. And-- and I've spoken to him and I've spoken to a couple of other of his colleagues and I've spoken to a few other people about people's concerns about this and things that we can work on to make it workable. But the-- I-- the takeaway I have from a lot of the conversation here is that there is a real necessity for a change in a system that is not working. And the answer to Senator McKinney's question? It's not a fair system. It's-- if-- if it were fair, if it were just, it would be easier to say that, but it's not. The outcomes are disproportionate and they-- they disproportionately affect black and brown people, but they are-- it also disproportionately affects poor people. And that-- the justice system, the one thing I wrote down here to remind myself, when we are putting people's liberty at question, we have-- it's a serious responsibility that needs to be taken seriously, and we have become lazy when it comes to making that determination. We are falling back on a crutch to make that determination and that-- that is resulting in some bad outcomes. And we have a responsibility to make changes that are going to maybe be difficult, maybe make the system a little bit harder and make the-- a little bit more effort, but it will make it more just. And to-- Mr. Maguire and I have spent a good amount of time in the same rooms, being the Douglas County Criminal/Traffic Court. And to answer that question, the 25,000 or whatever that number is exactly, just to put a little context to it, as he pointed out, some people have 15 warrants. That-- that could be one person with a bunch of warrants. Those warrants could also be failure-to-pay warrants for a number of nonjailable offenses. I-- you can look up. Douglas County Sheriff's Department has online--- you can see every warrant. Go look. I did a quick search and the-- literally the second person that I found on there, second from the top, was a 104-year-old man who has an outstanding failure-to-pay warrant for a no registration from 2013. That's the second one from the top. So out of those 25,000, how many of them are like that? How many of them are one person with a bunch of warrants? How many of them are failure to pays? And-- and as for the failure-to-appear warrants that get issued in-- in places like Douglas County Courthouse, I can tell you the number of times like that someone got a failure-to-appear warrant when they had 9:00 a.m. court and they showed up at 9:05 and the judge was already done and they'd

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issued the warrants, or they showed up at 1:30-- 1:40 and they had already finished 1:30 court, and then that person had to come back the next day to cancel that warrant. So not every one of these times, when you see a failure-to-appear on somebody's record, you see a fail-- you see a warrant, that is not necessarily a reflection of that person's unwillingness to show. It may have to do with a punctuality problem. But I don't think that that's what we're trying to address here. And so I think that I've addressed everything I wanted to address. I really do appreciate everybody's time at the end of a long week and a long session. And if you have any more questions, I'm happy to take them.

LATHROP: I don't see any. All right, Senator Cavanaugh, thanks for an interesting discussion on bail--

J. CAVANAUGH: [INAUDIBLE]

LATHROP: --and introducing LB636. That will close our hearing on LB636 and close our hearing for the day. Everybody have a great four-day weekend.