

**LATHROP:** Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12 in Omaha and I also chair the Judiciary Committee. Committee hearings are an important part of the legislative process and provide an important opportunity for legislators to receive input from Nebraskans. If you plan to testify today, you'll find yellow testifier sheets on the table inside the doors. Fill out a yellow testifier sheet only if you're actually going to testify before the committee and print legibly for Laurie's benefit. Hand the yellow testifier sheet to the page when you come forward to testify. If you're not going to testify in person on a bill but would like to submit a position letter for the official record, all committees have a deadline of 12 p.m. Central Time, the last workday before the hearing. Please note that there is a change this year. Position letters to be included in the official record must be submitted by way of the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). This will be the only method for submission of letters to the record other than to testify in person. Letters and comments submitted by way of email or hand-delivered will no longer be included as part of the hearing record, although they are a viable option for communicating your views with an individual senator. Keep in mind that you may submit a letter for the record on the website or testify at the hearing in person, not both. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally by anyone speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, bring up at least ten 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 and when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, though you may see senators use them to take notes or stay in touch with staff. I would ask that everyone look at their cell phones and make sure they're in the silent mode. A reminder verbal outbursts or applause are not permitted in the hearing room. Since we've gone paperless, Judiciary Committee members may be using their laptops to pull up documents and follow along on each bill. You may

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notice committee members coming and going. That has nothing to do with how they regard the importance, importance of the matter under consideration, but members may have bills to introduce in other committees. I'd like to have the members introduce themselves, beginning with Senator DeBoer.

**DeBOER:** Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10, which is in northwest Omaha.

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

**MORFELD:** Hello. Adam Morfeld, District 46, north-central and northeast Lincoln.

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

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

**GEIST:** Good afternoon. Suzanne Geist, District 25, which is the southeast corner of Lincoln and Lancaster County.

**LATHROP:** Assisting the committee today is our committee clerk, Laurie Vollertsen. We will also be assisted today by Josh Henningsen and Neal Erickson. This is Josh. Neal will be along after-- for some of the bills today. Our committee pages are Bobby Busk and Logan Brtek and we would like to thank both of them for their help. And with that, we'll begin our hearing with LB1155 and Senator John Cavanaugh. Good afternoon.

**J. CAVANAUGH:** Good afternoon. Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Senator 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 to introduce LB1155, which would start a three-year pilot program for pretrial release assessment in at least two Nebraska counties. Last year, I introduced LB636 in this committee, which proposed the elimination of cash bail. Over the interim, I worked with stakeholders on discussing a number of solutions to the issues surrounding pretrial detention. One idea that emerged as a consensus was developing and, and implementing an objective pretrial assessment tool. This tool would be used to give judges, prosecutors, and the jail more information when setting bonds. This would not change any of the currently available options by which I mean, it would not prevent a judge from setting a cash bail. LB1155

would ask for \$500,000 a year for three years for at least two counties, one large county and one smaller county, to implement a pilot program for pretrial services. As introduced, the bill directs the court-- State Court Administrator to develop and implement a pilot program, but the language had an unintended effect of basically forcing the courts to reinvent the wheel. Many of our large counties have existing pretrial services that could easily be expanded to meet the requirements of LB1155. Additionally, you'll see in the letters of support that Adams County also has a program that could be expanded under this bill. After speaking with State Court Administrator's Office, we agreed that the Crime Commission would be a more appropriate entity to administer the funding of these programs, which would be developed by the counties. I would-- I have an amendment to distribute to that effect. This is an idea that is supported by defense attorneys, prosecutors, corrections officials. You'll find the committee record letters from Sarpy County Corrections, Adams County Attorney, Western Alternative Corrections, the Douglas County Public Defender's Office, and I have letters from Mike Myers, the director of corrections in Douglas County, and Matt Kuhse, who is the city attorney for the city of Omaha, in support of this bill. Increasing access to pretrial services is an important way to reduce the number of people detained in our county jails. Setting up a pilot program is-- in both large and smaller counties will provide a model for other counties to follow across the state. If this program is successful, I would envision the Legislature, Legislature in the future to fund this program for more counties across the state. LB1155 will provide an important resource for counties with pretrial services and help our criminal justice system in a meaningful way. I ask for favorable consideration. I'd be happy to take any questions and I can circulate these pages for these letters.

**LATHROP:** OK, any questions for Senator Cavanaugh? Any questions? You look like you want to ask a question, but you haven't raised your hand.

**GEIST:** I know. I-- thank you for reading that. I'm not even sure were I-- I'm just not clear on how this changes what's being done currently.

**J. CAVANAUGH:** That's a great question.

**GEIST:** Oh, good.

**J. CAVANAUGH:** So it ultimately is not seeking to change anything. So this is kind of an idea that came out of meetings with-- so I brought that bill last year to eliminate cash bail and a lot of people didn't like that idea. And so I met with some people to talk about other ideas that can help maybe find a way to facilitate more people being released, just kind of identifying those who we think can be released and releasing them. So what this bill does-- and I met with Douglas County and talked about-- they have a program and Mr. Kuhse's letter will lay out a little bit more of that information-- but they're working on a program that would meet the requirements of this to expand their pretrial release, use a new objective metric, and then it would give people basically like a score, which we, we talked about in the cash bail system. And then the score would make recommendations as to what level of release would be necessary. So it could be things like requiring that a person check in on a monthly, weekly, daily basis with a supervising officer. So that would be an additional type of service or custody that is required of someone when they're released more than-- so, currently, there is a-- in Douglas County, you can call, call phone number and you put it your Social Security number and that's the daily check in. There's a few other things, 24/7 program, which I'm sure you guys are familiar with in this committee, but it would, it would put more individuals-- this money would be used to basically hire some more people to do that supervision practice in, say, Douglas County in this example. But what it does not do is does not change-- a judge could set-- still set a \$500 bond and require electronic monitoring or they can set whatever cash bond they want to. So it doesn't change the judge's ability to do that. It just is going to give the jail, the county corrections, and the judge and the prosecutors more resources that they would be able to use to, one, determine what level of out-of-custody, out-of-custody supervision would be appropriate for this person and help fund some of those resources.

**GEIST:** OK. So you would-- there would-- it would give you more officers so the caseloads would go down?

**J. CAVANAUGH:** Well, they're not--

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

**J. CAVANAUGH:** --really doing this yet.

**GEIST:** OK.

**J. CAVANAUGH:** --at least in Douglas County. There's actually if-- the letter that was submitted by Adams County is doing a similar program where they are getting people out into-- I can't remember the name of the facility, but they're getting them into community-based corrections and they're getting them treatment and getting them in-- but they're being supervised through the state, through the county for that. And this would, they would contend, the Adams County County Attorney and the individual from the Western-- let's see, it's Western Alternative Corrections Inc., which operates this facility in Hastings. They think they could get more people into this program with this resource, which people get mental health and drug and alcohol treatment in that facility, which of course, one, saves the jail money in terms of having people being held there, but also gets you better results. When people go and get these pretrial services, they're more likely to have a better outcome on the back end. So this is kind of that same sort of, you know, divert-- diversion, probation, parole type of supervision, but doing it before pretrial and this would be another opportunity for people to get those services ahead of--

**GEIST:** And is this optional? Did I--

**J. CAVANAUGH:** Right, so this-- the-- this bill would create \$500,000 a year to be administered with the amendment by-- through the Crime Commission that say Douglas County could apply to the Crime Commission for a sum amount of money--

**GEIST:** OK.

**J. CAVANAUGH:** --less than \$500,000.

**GEIST:** But you did say two counties.

**J. CAVANAUGH:** So the-- yeah, so it would be that minimum of two counties, one of above 100,000, which would, in my guess, my-- would be Lancaster, Sarpy, Douglas; one below 100,000, which Adams County would of course be qualified for in that or other counties that would be interested. So the idea would be to get some information about a major metropolitan area. This would work there and some in a less densely populated area as well.

**J. CAVANAUGH:** OK. All right. Thank you. That helps.

**LATHROP:** OK, let's see. No other questions. Thank you, Senator Cavanaugh. We will take proponent testimony at this time.

**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 as their registered lobbyist in support of the bill. Senator John Cavanaugh explained it so I don't really need to repeat that, but I just want to give some history and remind some of the members of the committee that this is sort of a continuation of some of the efforts of this committee and the Legislature has made on bond-- with respect to pretrial bond reform. If you look on pages-- really mostly page 5 of the bill, that's current statute. That was largely implemented in LB259 from 2018, when Senator Adam Morfeld and also Senator Matt Hansen introduced a bill to provide courts with options, if you will, for releasing people on pretrial status either at a low bond or a personal recognizance bond, but have different conditions to the bonds so they would supervised in the committee-- or in the community, excuse me. And last year or year before, LB881, there were some other changes made to that. And the committee may recall we were over there in the Warner Chamber at the time that somebody from Lancaster County, Kim Etherton, came and testified and talked about Lancaster County's pretrial release program and how they did that. Someone would be arrested for a charge, they'd be appointed an attorney, the attorney would request that they be screened for eligibility for the pretrial release program, and go and meet with him. And one of the issues, if you will, that was identified during that hearing is it does-- there's some resources in Lancaster County. There are some resources in Douglas County to try to divert people from pretrial status in the jails, but there really isn't anything in the other parts of the state or any sort of options statewide. And I think this bill speaks to that because it provides for a pilot program either done by the Supreme Court or the Crime Commission to fund and subsidize and support some of these efforts. The issue of cash bond reform can be sort of controversial, but one thing that I would just emphasize is that if you have a money bond-- and even, even if it's a high money bond-- you post it, you're out. Generally speaking, you don't have any kind of conditions. You just pay the money and the only other condition you usually have is come to court when the judge tells you to come to court. If the judge attaches certain conditions, then you are subject to supervision in the community. One of the things that this bill does is it sort of isolates domestic cases and it requires that if you do a pretrial risk assessment, it has to be mandatorily done for cases involving domestic abuse situations. So if somebody is going to be screened for release in a domestic case, they have to be evaluated by a professional before they even consider being released. The

alternative is now if you get somebody arrested for a domestic case, they've got money, they can get out. And that's one of the things the bill should speak to is to be a little more responsive to that issue with respect to public safety. So we would encourage the committee to advance the bill.

**LATHROP:** OK. Any questions? I see none. Thanks for being here. Next proponent. Good afternoon. Welcome.

**JASMINE HARRIS:** Good afternoon. Thank you, Chairperson Lathrop. Good afternoon, Judiciary Committee members. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s. I'm the director of public policy and advocacy with RISE. We are the largest nonprofit organization in Nebraska focused solely on rehabilitative programming in prison and reentry support. Coming to you again in support of a lot of the bills that have been brought up this session, as we are really trying to wrap our mind around how do we alleviate the problems that we have in our correctional facilities? We continue to ask for alternatives and this bill right here could be one of those solutions. At RISE, we believe that alleviation can happen on the front end and also on the back end. Pretrial services programs can offer assistance to individuals with things like substance use and mental health referrals, education enrollment, career placement, housing options, transportation, and more. These are the same types of services that people need help with as they're coming home after incarceration on the reentry side so these kinds of services are not exclusive to one group or-- over the other; pretrial versus reentry. They're essential necessities in life, and providing assistance on the front end can have a great impact. Many people facing court do not end up incarcerated in prisons. Some are released on bail or their own recognizance while awaiting the next steps in the process. Some sentences after that are fines and fees. A few days sitting in jail could be the time served and/or probation. So if these individuals have access to pretrial program services, it helps them get a start on addressing some of those issues in their life that aren't managed instead of being detained in the county jail. So these participants are able to stay employed, be with their family and get access to various resources and services that they need. In 2007, there was an assessment conducted on North Carolina's pretrial systems across their state and what they found, that a majority of their programs had a successful completion rate of 50 percent or greater. So there were no new arrests or violations to the program's stipulations is what they call success. Program termination was uncommon and termination due to committing new offenses was uncommon and failing alcohol and drug

tests were the least-common reason for program termination. The study also compared the cost of pretrial services and the cost of detaining individuals, where they found it was \$6.04 a day for a participant in the pretrial in comparison to \$57.30 to have a person in jail, which overall saved their counties about \$1.05 million per county. So over the past two and a half years, RISE has had the privilege of serving with a reentry coordinated initiative and on their pretrial task force. And one of the salient things that comes up is that there are counties who are interested across the state in doing pretrial services, but they don't have access to the funding to implement those services. So we're here to show support for this bill for those reasons; to increase the funding, to increase assistance for people on the front end of the system, and help alleviate that. And with that, we ask that you all support and move this on to the next-- General File. Thank you.

**LATHROP:** OK.

**JASMINE HARRIS:** And I've also included a printout from Prison Policy Initiative that talks about how this does not increase harm in the public for people being released pretrial.

**LATHROP:** OK. I see no questions. Thanks for being here, though.

**JASMINE HARRIS:** Thank you.

**LATHROP:** Next proponent. Anyone else here to speak in favor of LB1155? Anyone here in opposition? Anyone here in a neutral capacity? Good afternoon.

**COREY STEEL:** Good afternoon. It's glad to see the committee twice in the near 24-hour period.

**LATHROP:** Believe me, we may not be as happy as you or I might not be.

**COREY STEEL:** I'll be, I'll be out after--

**LATHROP:** I carried two of your bills yesterday for people who don't know why we're all giggling.

**COREY STEEL:** Chairman Lathrop, members of the Judiciary Committee, my name is Corey Steel, C-o-r-e-y S-t-e-e-l. I'm the State Court Administrator for the Nebraska Supreme Court, the judicial branch. I'm here in a neutral capacity and I want to thank Senator Cavanaugh for meeting with our office and meeting with us. When this bill came out,



when it specified the State Court Administrator shall create two pretrial diversion programs, the funding should come to the Supreme Court budget, we had a question about that because we know there are very robust, positive pretrial services that are ran by the counties and that was our concern and why we went to Senator Cavanaugh to specifically state we didn't want to come in competition with the great programs that Douglas, Lancaster, Sarpy, and Adams County are doing. And to us, it looked like we were to create that and I think that's why you see an amendment. In our discussions, Senator Cavanaugh asked, could we grant that money out through the judicial branch? And we said, well, the agency that kind of does that with the state is the Crime Commission and I think that's why he's come up with a idea of this should be under the Crime Commission as they already have the function of granting out monies to counties for juvenile services and other, other things. We support the concept of pretrial diversion. We feel it is important in our system. And again, I can't express enough. The pretrial services that are going on are very robust and we're supportive of what they do. And we did, we did not want to come in competition with them, but I felt I wanted to come at least and speak to that and answer any questions the committee may have and we thank Senator Cavanaugh for working with us on this bill, so. Happy to answer any questions.

**LATHROP:** I don't see any questions. It's an easy day.

**COREY STEEL:** Perfect, thank you.

**LATHROP:** Thank you. Appreciate your being here. Anyone else to testify in a neutral capacity? Seeing none, Senator Cavanaugh, you may close. We do have three position letters, all proponents for LB1155.

**J. CAVANAUGH:** Thank you, Chairman Lathrop. Thank you, Judiciary Committee. So I just wanted to kind of hit on a couple of points that everybody addressed in their testimony. As Mr. Eickholt said, that-- this does have a specific part about the intimate partner in domestic cases and that it, that it was on purpose and that it would actually be-- and I appreciate Mr. Eickholt for bringing it up, but when somebody-- under the current system, someone could post whatever the cash amount is that we require and that doesn't make an assessment of the risk that that person poses to society. What this would allow for is, one, that they get assessed to determine the risk with a little bit more data driven, scientific based-- it's a specifically validated risk assessment tool. And then it would allow the court to have other resources available on top of the cash to ensure that that person is,

you know, if they do bond-- if they do post the cash amount, that they can have that additional requirement. That comes to mind an incident that I think happened in Senator Brandt's district that maybe would not have-- you know, we obviously can't say what would have happened, but if we'd had this tool and allowed for electronic monitoring or something like that with exclusion zones, you know, some terrible things could have been avoided. And so that's one of the reasons for this-- that addition on top of that; more resources to allow for more safety when people are out in the community, not necessarily to change what-- to increase the number to be released, although I do think it will. And I would just point out, if you have the opportunity to read the letters, the one from Adams County that-- for the county attorney who says that they would like to get more people into the program, they just don't have the funds. And then from the, the program administrator for the boat-- I think [INAUDIBLE] house, something like that, but they-- Bristol Station, I'm sorry. They have saved Adams County seven-- \$15,700 by having people out of custody and in this program at this facility. So they're saving money and then they talk about how they're getting better outcomes through that. So this is the type of thing we need to be doing in the future; get better outcomes, saving money, safer community. Those are the type of criminal justice reforms we're looking at that I hope that we pursue. As Senator Lathrop just read, there was no opposition to this. I know that law enforcement had some questions. They actually-- I know they spoke with Mr. Kuhse today and they ended up deciding not to-- I don't-- didn't send a letter, didn't testify against it either. So this is something that I think is a good start that will help all interested parties on pretrial release issues.

**LATHROP:** Very good. Is someone going to keep track, like are they going to keep statistics on how well this works?

**J. CAVANAUGH:** You know.

**LATHROP:** We're spending the money on kind of a pilot. Is there going to be--

**J. CAVANAUGH:** Yeah, that--

**LATHROP:** --some measure of whether it's working?

**J. CAVANAUGH:** I think that that is probably-- we should explicitly include that in statute. I don't think we include that--

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**LATHROP:** I think that would make sense. I think it would also be helpful if we knew the race of the person and their score, right, because that, that can sometimes become an issue. If we have a score and a score in 87 and I get out and somebody with a different complexion scores in 87 and they get a big bond, then, then we might learn something from that.

**J. CAVANAUGH:** Yeah, I'm certainly interested in finding the answers to those questions as well.

**LATHROP:** OK. Any questions for Mr.-- or Senator Cavanaugh? Seeing none, you-- we will close our hearing on LB1155 and go straight into LB1244. That's also a John Cavanaugh bill and Senator Cavanaugh, you may open.

**J. CAVANAUGH:** Thank you, Chairman Lathrop. Thank you, 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 LB1244, which would clarify the date for which the one-year limitation for filing for a motion for postconviction relief shall run. I'm not going to take up much of your time-- the committee's time. This bill is identical to LB316, which the committee advanced unanimously last year and was amended into LB496. LB316 was indefinitely postponed prior to the sine die last year so I introduced LB1244 as a precaution in the event the provision does not pass. As a refresher, this bill clarifies that the one-year limitation for filing a motion for postconviction relief shall run from the date which the US Supreme Court denies a rate of certiorari or affirms a conviction appealed from the Nebraska Supreme Court, provided that within 30 days of petitioning the Supreme Court, the petitioner files notice with the District Court of Conviction stating that the prisoner has filed such petition. As I said, I don't want to give too much of your time and I'd be happy to answer any questions.

**LATHROP:** Just one, tell me again what happened to this? I know we've seen it. We've actually passed it, haven't we?

**J. CAVANAUGH:** You have passed it out 8-0. It got amended into-- I think it was LB496, which is on Final Reading currently, but is not-- I think its outcome is uncertain and so I introduced this bill as a precaution.

**LATHROP:** We're not taking it up or is it going to come up on Final Reading? Do you know what's going to happen to it?

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**J. CAVANAUGH:** To LB496? I don't-- I honestly don't know what's going to happen.

**LATHROP:** So you're, you're smiling and I don't get it.

**J. CAVANAUGH:** Yeah.

**LATHROP:** So what's, what's LB496?

**J. CAVANAUGH:** That's the DNA bill.

**LATHROP:** Oh, oh, oh, oh, oh. OK, now I get it. All right.

**SLAMA:** We got it, we got it.

**LATHROP:** You guys got that under control. All right, we'll see how that works out.

**J. CAVANAUGH:** So I asked--

**LATHROP:** I get what you're saying.

**SLAMA:** There's no control of that.

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

**J. CAVANAUGH:** I will stick around, but I have a feeling that I may just waive closing--

**LATHROP:** OK.

**J. CAVANAUGH:** --but I'll stay in case there's any questions.

**LATHROP:** Are there any proponents of LB1244? Seeing no proponents, are there any opponents? Anyone here in the neutral capacity? Well, we'll see if Senator Cavanaugh wants to close after all of that. He waives closing. OK, that will close our hearing on LB1244. We did not receive any position letters. This was a bill that was the subject of an 8-0 vote that came out of committee. It just got amended into a bill that's been far more controversial than LB1244. And with that, we'll close our hearing on LB1244 and bring us to LB1246 and Senator Pansing Brooks. Good afternoon and welcome.

**PANSING BROOKS:** Good afternoon. Thank you. Thank you, Chair Lathrop and members of the Judiciary Committee. For the record, I am Patty

Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I appear to you-- before you today to introduce LB1246, which is intended to enhance safety for victims of sex trafficking and sexual assault in the period immediately after a crime is reported. LB1246 will help both minors and adults who are victims of sex trafficking and sexual assault by maintaining the confidentiality of their identity and by withholding identifying information from the public record until criminal charges are filed. This bill also ensures that this information may be shared between criminal justice agencies, attorneys, and victim advocacy agencies as necessary to carry out their duties prior to filing charges. We will have an amendment coming to make sure that the Title IV agencies also can get the information they need to support their victims. When identifying information of victims in these cases available to the public, it can leave them vulnerable to intimidation, threats, or harm. There have been instances in Nebraska where victims of trafficking have been physically harmed or received death threats from their traffickers after reporting to law enforcement. Due to the fact that these investigations, especially trafficking investigations, are often intense and time consuming, it is un-- it is not uncommon for an incident report to be made before an arrest can take place. This means that the victim's name is public before their trafficker is even taken into custody. Many victims know their information will not be confidential and so they do not feel as though reporting or participating in an investigation is a viable or safe option. In a report from the Department of Justice, the most frequent reason provided by victims as, as to why they did not report sexual violence crimes was the fear of, of retaliation. This bill will help us to provide personal safety for victims considering making a report. Identifying information in public record can also lead to unwanted contact from the media. It is not uncommon for trafficking and sexual assault victims to have media reaching out to them or showing up at their doorstep less than 24 hours after making a report. Sexual assault and trafficking are traumatic experiences, which can be difficult to recount and process, especially immediately after the event. For this reason, law enforcement typically waits for several days to do full interviews in order to conduct a more trauma-informed investigation. When the media questions victims immediately following an incident, the situation, situation becomes even more traumatic. Best practices nationally work to protect the victim from additional trauma. Multiple contacts from the media negatively impacts the well-being of the victim and compromises the integrity of the law enforcement investigation and any resulting prosecution. The

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testifiers behind me include survivors, law enforcement, and others. They will shed further light on why this limitation of prior-- of information prior to the filing of charges is so crucial. We want to create an environment where victims feel safe to come forward, not only to protect themselves, but to prevent future crimes. Thank you. I want to give my thanks to the Omaha Women's Fund for helping on this bill and also Senators Slama and Geist for cosponsoring this important bill. And I thank you for considering the bill and I'm happy to answer any questions and I ask that you move LB901 [SIC] to General File. And with that, I'm happy to answer any questions you have or refer them to the experts behind me. Any questions?

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Pansing Brooks for bringing this. It's, it's a technical question, I guess. So we're going to ensure confidentiality. If they violate that, is there a remedy in the bill?

**PANSING BROOKS:** There is not.

**BRANDT:** OK.

**PANSING BROOKS:** It's just--

**BRANDT:** That's, that's--

**PANSING BROOKS:** --hoping people--

**BRANDT:** --that's the effect of the statute--

**PANSING BROOKS:** Yeah.

**BRANDT:** --is we've trying to keep it confidential.

**PANSING BROOKS:** Yes.

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

**PANSING BROOKS:** Thank you.

**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Mr. Chairman. Not a question, just a brief thank you very much for your work fighting human trafficking in the state. It's been a privilege to work on this issue with you.

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**PANSING BROOKS:** It's been a privilege to work with you too, Senator Slama.

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

**PANSING BROOKS:** OK.

**LATHROP:** Thank you, Senator Pansing Brooks. We will take proponent testimony. Good afternoon.

**MOLLY NOCITA:** Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Molly Nocita, M-o-l-l-y N-o-c-i-t-a. I'm a mother, I'm a Nebraskan, I work in the business community, and I'm a survivor-leader advocating for those who have experienced sex trafficking. I'm not here today to tell you about the fraud, force, and coercion associated with sex trafficking and I don't think you need to hear personal experiences of sexual assault to know that this type of violence is not OK. We must get to a point where I do not need to continue to tell my story. In fact, telling my story is the least likely thing to prevent it from happening to somebody else. It takes a lot for me to be up here today talking to you, but I'm doing so because I strongly believe that LB1249-- LB1246, excuse me, will help other survivors moving forward. By keeping a victim's personal information from public record, you are giving that person time. You're giving them time to safety plan for themselves and their family, time to figure out where to move, time to figure out how to live, and time to continue to ensure that they're safe in their workplace. Most importantly, you're giving them time to start the healing process. In abusive situations, the most dangerous time for a victim is when a person attempts to leave. If a perpetrator sees the victim's name on a public report, what's to protect them from further abuse? Keeping that identifying information private longer helps give the victims time. By supporting LB1246, you will be aligning with trauma-informed best practices that give survivors choice. No one should have to be subjected to having the media at their door asking to detail all of the trauma they just experienced. Even if I don't consent to telling my story, having them show up at my door is extremely triggering. There are crimes we prosecute all the time like murder without a victim. Why do we need my testimony? Why do-- why must victims of sex trafficking and sexual assault have to continually put our trauma on display? Let us all continue to do what we can to support this bill and then move to a place where we can focus on prevention of these crimes in the first place. I ask that you support

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LB1246 today and allow survivors to have the time they need to heal, seek justice, and move forward.

**LATHROP:** Very good. I don't see any questions, but thanks for being here.

**MOLLY NOCITA:** Um-hum. Thank you.

**LATHROP:** Welcome.

**ANGIE LAURITSEN:** Thank you. Good afternoon, Chairman Lathrop and committee members. Thank you for the opportunity to speak in favor of LB1246. My name is Angie Lauritsen, A-n-g-i-e L-a-u-r-i-t-s-e-n. I serve on the board of directors for Survivors Rising. It's hard to describe how terrifying it is to escape and report your abuser, but as a survivor of childhood sexual and physical abuse at the hands of my father, I'd like to share my experience. Once you make the decision to report your abuser, your main concern is finding your way to safety. In my case, I was 14 years old. When we decided to leave and report my father, we had an hour to come up with our safety plan and it wasn't a great one. The plan was to pack up what we needed and make it to my grandparents' house. We made the plan on a Sunday morning after I told my mom about the abuse. We then had to make it through the rest of that day with my father there as if nothing was happening. Once my dad went to work that evening, we planned to leave prior to him getting home early Monday morning, but he got off of work early so we had to wait until he fell asleep and we then snuck out of the house in the middle of the night. My mom dropped us off with a friend close to our school and she then went to work. We were absolutely terrified. When would, when would he notice we were gone? When would he come after us? Are we safe? We were told to act like nothing was wrong at school and that did not go well. My brother self-reported to a teacher and they confirmed the story with me. The school went into lockdown while they waited for my mother to come and pick us up. We were forced to leave because we made it unsafe for our classmates. That night, we received a call from my father that we were dreading. We did not go back to school on Tuesday. Instead, I was self-reporting to a sheriff deputy at my grandparents' kitchen table. The deputy informed my grandparents that he would do the investigation and would let us know if charges would be filed. He warned my grandfather that now is the most dangerous time for our family and to call immediately if my father came anywhere near us then he left. My grandfather loaded up with shotguns, placed one by the front door and then placed one across his lap and sat in a chair overlooking the driveway to his farmhouse. I



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tell you this because the terror of leaving your abuser and reporting it to law enforcement is real. We didn't know how my father would react to us leaving or potentially facing charges. Finally, on Wednesday, two days after he snuck out in the middle of the night, charges were filed and he was arrested. Those two days were the scariest of my life. If we want victims of sexual assault and sex trafficking to come forward and report their crimes, the least we can do is provide them the safety of the confidentially-- confidentiality of their name to do so. Victims of these crimes have already had so much taken from them. We must not also continue to take away their privacy and sense of control over their situation. We need for the perpetrators of these crimes to find justice and that only happens if the charges remain and the victims are not threatened or coerced to drop them. Not everyone has a grandpa with a shotgun to protect them. This bill takes a big step to ensure that victims in Nebraska have the support they need during one of the most traumatic times of their lives. I urge you to support LB1246.

**LATHROP:** Thank you. Thank you for your testimony. I do not see any questions, but thanks for being here.

**ANGIE LAURITSEN:** Thank you.

**LATHROP:** Good afternoon.

**TRACY SCHERER:** Good afternoon. Hello, my name is Captain Tracy Scherer, T-r-a-c-y S-c-h-e-r-e-r. I am here in support of LB1246 on behalf of the Omaha Police Department. The Legislature has done so much for victims of sexual assault and sex trafficking over the past years, from allowing anonymous sexual assault reporting to updating of sexual assault victims' rights during interviews. This bill goes another step further to providing those victims support during such a difficult time. I think it's important to clarify that anonymous sexual assault reporting is not the same as confidential-- the confidentiality this bill would provide. An anonymous sexual assault report is nothing more than evidence that will sit on a shelf until the victim decides to make a crime report, launch, launching the investigation. This bill would allow the victim to participate in the investigation and remain confidential through the process, according to an October 2021 report by the U.S. Department of Justice, in 2020, only 40 percent of violent crime was reported to police and sexual assault was reported only 23 percent of the time. I can only speculate why these trends exist based on what victims tell our officers, the advocates, and hospital staff during the interviews. Specifically,

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juveniles at risk for sex trafficking, many are afraid of their victim-- that they're victims-- of their victimization becoming available to the public or their attacker. There are also examples of victims who have reported only to be contacted by local media, mortified by the intrusion into their privacy. This creates problems with an investigation in a couple of ways. It may alter the victim's ability to participate in the investigation and it alerts the suspect to the fact that an investigation is being conducted. Additionally, this type of intrusion isn't limited to adults. Parents of child victims have been contacted because these reports are all considered public information. Any person can report-- can request a copy of any police report. Releasing the report is left to agency discretion and interpretation of the public information law. Passing this bill would provide victims with knowledge that their information is confidential until charges are filed and that all agencies across Nebraska are held to the same standard. Thank you for letting me testify. Do you have any questions?

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Captain, for your testimony today. Can you clarify that parents of child victims have been contacted-- I mean, if a child is assaulted, the parents names are in the file and then the press can go find them, is that what you're saying?

**TRACY SCHERER:** Yes. Specifically on OPD police reports, you have the victim listed and if the victim is a juvenile, you list the parent or guardian information on that report and it's all right on the incident report, which is public information.

**BRANDT:** Well, that doesn't do much to protect anybody, does it?

**TRACY SCHERER:** Well, I believe that purposes of-- for purposes of this bill, you'd have to keep both of that confidential, confidential.

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

**TRACY SCHERER:** Um-hum.

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

**TRACY SCHERER:** Thank you.

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**LATHROP:** We appreciate hearing from you.

**GLEN PARKS:** Afternoon.

**LATHROP:** Good afternoon. Welcome.

**GLEN PARKS:** Members of the committee, my name is Glen Parks. That's G-l-e-n P-a-r-k-s. I'm here in support of LB1246 on behalf of the Attorney General's Office and in my capacity as the coordinator of the statewide Human Trafficking Task Force. I've been in that position since late 2016 and so I work a lot with, to quote the bill, the criminal justice agencies and attorneys involved in the investigation or prosecution of an alleged sex trafficking allegation. And so this is-- this bill would affect my people, the people I work with across the state and our partners, and it is a new obligation. It's a new standard that people could fall, fall shy of, but I do think that is definitely a price-- a small price that's definitely worth paying for this, this bill. I want to talk about specifically from my perspective in investing-- finding, uncovering, investigating, and prosecuting these cases. Others have spoken about the effects it has on the victims themselves, but I believe in certain circumstances, this would make more likely someone coming forward. I think this-- in fact, this body, the Unicameral, in a finding back in 2004 in a bill regarding the confidentiality between these types of victims and their counselor, their-- the advocates, there was a finding of the Legislature that said that fear and stigma of being a victim of this kind of crime and fear of retaliatory violence is what, in that case, kept them from seeking benefits and talking to people that they're entitled to. And in this case, it would be-- prevent them from coming forward and beginning a conversation with law enforcement to uncover this. And so I do want to say on behalf of the task force and the AG's Office that we're in support of this and we think that this will increase-- it will hopefully mitigate that fear and be able to keep their, their names out of the press for a while, while we can-- again, they can begin a discussion with us and we can uncover more of this.

**LATHROP:** OK.

**GLEN PARKS:** That's all I have.

**LATHROP:** Any questions? Can I ask you, do you prosecute all of the sex trafficking crimes across the state or just the ones where it's in a small town and the prosecutor is not comfortable?

**GLEN PARKS:** Certainly in those cases, yeah. It's, it's, it is not by any means all of them, in fact, not most of them. There are times that the AG's Office will come in and be the lead prosecutor in cases that are very big or in smaller counties where-- sex trafficking really is quite a new law. We don't have a lot of case law on it and so there's, there's-- sometimes we can help. I am in contact with every prosecutor or county prosecutor across the state who is prosecuting this kind of crime so I'm, I'm available to discuss if there's--

**LATHROP:** OK.

**GLEN PARKS:** --some unique aspects, but--

**LATHROP:** OK.

**GLEN PARKS:** --we don't prosecute them all.

**LATHROP:** All right. I just wanted to understand--

**GLEN PARKS:** Yeah.

**LATHROP:** --put some context into your testimony. I appreciate your testimony and being here today and I don't see any questions. Next proponent. Good afternoon and welcome.

**JO GILES:** Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Jo Giles. That's J-o G-i-l-e-s. I'm the executive director for the Women's Fund of Omaha. In the interest of time, I've passed out to you the testimony of my colleague Nick Zadina, who is the Freedom from Violence Project Coordinator with the Women's Fund. I would like to add on my behalf and from my perspective that LB1246 would alleviate the embarrassment by limiting contact of unwanted outside parties such as the media and provide anonymity at one of the most vulnerable times for victims immediately following a report. I moved to Nebraska 18 years ago to become a working journalist at a Omaha television station as a reporter and anchor and I remain connected to the journalism world through my role as a founding board member for Nebraska Journalism Trust. It is a new nonprofit in our state that operates the state's first independent nonprofit news outlet called Flatwater Free Press. So I can tell you that journalists gather daily at law enforcement offices to look through incident reports looking for familiar names, looking for patterns, looking for story tips. And while it is best practice not to publish or report the names of minors, there can be inconsistency with adults so LB1246 would provide confidentiality for victims while not

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jeopardizing journalistic efforts. It is our responsibility to create an environment where reporting is a safe choice for a victim to make and LB1246 works towards that goal. The Women's Fund respectfully urges you to make Nebraska a more survivor-friendly state and a safer state for all Nebraskans through your support of LB1246. Please vote it out of committee to General File. We'd like to thank Senator Pansing Brooks for introducing the bill and Senator Slama and Senator Geist for cosponsoring. Thank you.

**LATHROP:** OK.

**JO GILES:** Any questions?

**LATHROP:** I don't see questions. Ms. Giles, thanks for being here.

**JO GILES:** Thank you.

**LATHROP:** We appreciate it. Any other proponent testimony for LB1246? Anyone here in opposition?

**NATURE VILLEGAS:** I'm sorry. I'm [INAUDIBLE]. Did you say proponent?

**LATHROP:** Proponent.

**NATURE VILLEGAS:** Sorry, I'm--

**LATHROP:** You're fine. Do you want to talk on this bill?

**NATURE VILLEGAS:** [INAUDIBLE]. Now is not the season for that.

**LATHROP:** Now it's more challenging.

**NATURE VILLEGAS:** Yeah.

**LATHROP:** Good afternoon.

**NATURE VILLEGAS:** Good afternoon. My name is Nature Villegas, first name, N-a-t-u-r-e, last name, V-i-l-l-e-g-a-s, and I am for this bill. As a survivor myself and someone who advocates in the community, it's an obvious concern and there's always that fear. There's also fear of ramifications, not even just from the abusers, whether it be a one-time thing or a family situation, there's also fear of ramification from the state they're in. I recently learned at our UNL event-- when the sexual assaults and things were going on, we had an event there and a speaker came and really enlightened me. She was a survivor of sex trafficking, but she's on the registry and facing a

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lot of reprimandation for the things that she survived through her trafficking experience. And she advocates for that and really opened a world to my eyes that I didn't even know existed and this is right here in our very own state. So I am for the bill. My, my biggest thing was I couldn't find anything that, that covered that confidentiality to prevent ramifications. So say, if I'm being trafficked and I'm taking my trafficker's car to get gas and the brakes and do these things that I have to do or I'll be reprimanded, then later, when the trafficker is reprimanded for his behavior and goes through trial, I could end up being an accomplice. So I didn't see anything in there that would protect in that way as well. And so [INAUDIBLE] does cover sex trafficking. That was my only, I guess, question if I missed something or how that could help in that way if that-- this bill even covers that because it's a bigger problem than I think what we're all even aware of. And so hopefully that would also assist someone not only going through abuse, sexual abuse or having been assaulted, but also there's multiple women that are very much in fear of their lives that if this were in place in that manner, they would also be more apt to speak out. And that's my light, so--

**LATHROP:** I just I want to make sure that I understand what you're telling us because it sounds like you think there may be a gap. And we're doing a lot. We are doing a great deal on sex trafficking.

**NATURE VILLEGAS:** Oh, yeah.

**LATHROP:** I think there's a couple of bills every year and you're talking about if you are a person being sex trafficked and you're not claiming that you've been assaulted necessarily, but you were under the pressure of someone who was trafficking you--

**NATURE VILLEGAS:** Right.

**LATHROP:** --and you are identified as someone that was an accomplice--

**NATURE VILLEGAS:** Well--

**LATHROP:** --or someone who was sex trafficked?

**NATURE VILLEGAS:** What happens in those situations is, let's say the fear keeps me from ever reporting the trafficker, right? But then the trafficker ends up getting caught up in whatever he's doing and now I'm going to be labeled an accomplice or maybe I did come up and say, sir, ma'am, this is happening and you step in to save the day. But then court proceedings go along and they're like, oh, she's an

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accomplice. These men and women being trafficked end up being accomplices in these cases so it's like-- like I, I didn't see anything that--

**LATHROP:** I'm trying to think back on the very first bill that Senator McGill put in years and years ago when this-- when that work on this topic started that I didn't think we prosecuted people who were being trafficked, but we will-- I'm sure Senator Pansing Brooks will--

**NATURE VILLEGAS:** Yeah.

**LATHROP:** --see if this bill covers an area that hasn't-- your topic covers something that hasn't been touched.

**NATURE VILLEGAS:** And that's just for knowledge itself, even too--

**LATHROP:** OK.

**NATURE VILLEGAS:** --not to-- she does-- Pansing Brooks has done amazing work. I think, like you said, every year we push it even further and that's wonderful. So I'm definitely for all that. I just couldn't find anything in that and my research didn't show it, so--

**LATHROP:** OK.

**NATURE VILLEGAS:** --after hearing her story, I was like, hey, so this perked my--

**LATHROP:** Yeah, I'm not sure people that are involved in it with the trafficker end up prosecuted and I thought that was something that McGill took care of the first time--

**NATURE VILLEGAS:** Yeah.

**LATHROP:** --the very first bill. But we'll, we'll make sure that Senator Pansing Brooks checks that box, How does that sound?

**NATURE VILLEGAS:** Awesome. She's a rock star, I believe.

**LATHROP:** Yeah, she's very much on top of this, probably can answer the question--

**NATURE VILLEGAS:** Right.

**LATHROP:** --and might just answer it when she closes on the bill.

**NATURE VILLEGAS:** All right.

**LATHROP:** But thanks for being here.

**NATURE VILLEGAS:** Thank you so much.

**LATHROP:** Anyone else here as a proponent? Anyone here in opposition? How about in the neutral capacity? Seeing none, Senator Pansing Brooks, you may close.

**PANSING BROOKS:** Well, thank you all for your good questions. And just to speak briefly, we brought a bill just a couple of years ago to cover ancillary crimes that were committed while being forced by the trafficker and that was something that we brought and was supported by the Unicameral, so.

**LATHROP:** And that passed?

**PANSING BROOKS:** That's our-- that's--

**LATHROP:** That's--

**PANSING BROOKS:** --already passed, yes.

**LATHROP:** --that's the law. OK.

**PANSING BROOKS:** So-- now that doesn't mean that somebody might not be arrested, but if they can show that the crimes were committed while they were under the influence of a trafficker, then those crimes will not be charged against the--

**LATHROP:** That's what I thought.

**PANSING BROOKS:** --the victim.

**LATHROP:** OK.

**PANSING BROOKS:** You are correct, but it wasn't as long ago as you were saying.

**LATHROP:** Well, I think McGill's bill may have been the--

**PANSING BROOKS:** It--

**LATHROP:** We used to prosecute them for prostitution and I think her bill may have been--



**PANSING BROOKS:** No, she, she-- yeah, but really, that was, that was my original bill when I first got here is that we actually recognize that trafficking victims are victims and not, not the actual criminals. So that-- it's been a long history, which I probably could have given you but then it would have taken longer. And you'll all be glad that I--

**LATHROP:** We're good.

**PANSING BROOKS:** --so. I figured. So anyway, I want to thank the brave testifiers who came here today, as well as the Omaha Police Department, the AG's Office, and of course, the Women's Fund. It's clear that-- you've heard testimony that people are afraid to report due to repercussions from, from the perpetrator. So this bill is about community safety. It's about victim protection and victim safety. And, you know, when I first got this, I was a little bit worried when I heard about it because, you know, we worry about the right to confront, but just as a reminder-- the constitutional right to confront, but just as a reminder, the names will become public upon the filing of a charge. So it's just that short duration where the prosecutors are determining what they're going to do. And so that we make sure that the, you know, we had-- we had a time in before all of our bills were passed that the victims were not willing to come forward. And we've done a lot to make sure that they wipe out their crimes, that they aren't charged, the-- there's been a lot of work. And so I feel like this is good because it provides anonymity at one of the most vulnerable times on a victim's journey. And, you know, I did have some concern because I'm sure media is not thrilled about not having immediate access, but-- and as, as one of the testifiers said, you know, the journalists gather to look at the incident reports. But we have to weigh out the benefit of knowledge and information to the public versus the ability of people to be-- victims to be protected and able to feel comfortable to report their crimes. So with that, I hope that you will-- we will bring just a tweak of an amendment and to make sure that the colleges are included in their Title IV process. And then other than that, we'd like to get this forward to come to the floor and possibly be a consent file bill, so.

**LATHROP:** OK, we do have position letters.

**PANSING BROOKS:** OK.

**LATHROP:** Fourteen proponents and one opponent.

**PANSING BROOKS:** OK. Let me guess the opponent.

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**LATHROP:** It's not the media.

**PANSING BROOKS:** Oh, it's not. OK.

**LATHROP:** No. I'll leave it at that because I've not-- I've made a practice of not listing the proponent and opponent

**PANSING BROOKS:** OK.

**LATHROP:** --position letters.

**PANSING BROOKS:** All right.

**LATHROP:** But you'll be able to see that when you sit down.

**PANSING BROOKS:** Thank you.

**LATHROP:** Sure.

**PANSING BROOKS:** Good.

**LATHROP:** That will close our hearing on LB1246 and bring us to LB1247.

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

**LATHROP:** Yeah. Before you start, I want to see how many people are going to testify, but let's let people move around if you don't mind. In order for us to alert Senator McCollister, who has the next bill, how many people intend to testify on Senator Pansing Brooks' bill for or against? Can you put your hand up so I can see? Let's see. Three people, four. OK. So somebody can alert Senator McCollister. Senator Pansing Brooks, you may open on LB1247.

**PANSING BROOKS:** Thank you, Chair Lathrop and members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I appear before you today to introduce LB1247, which provides for recognition of tribal mental health and dangerous sex offender commitment orders and for transportation and-- of commitment of persons civilly committed under the tribal law. LB1247 is also intended to alleviate pressure on the tribal healthcare system when needed and provide easier cooperation between tribal and nontribal medical facilities. Earlier this year at the Winnebago Tribe-- the Winnebago Tribe of Nebraska held their annual legislative luncheon, an event, I've look forward to, as I'm sure many of my colleagues have as

well every year. During the luncheon, Winnebago Tribal Council Chair Victoria Kitcheyan brought an important and long-standing issue to my attention, tribal mental health orders. Whether they are emergency protective orders, protected-- I'm sorry, emergency protective custody orders or tribal court mental health commitment orders are not recognized right now by the state of Nebraska. This results in patients in crisis on our reservations not receiving the care that they need because healthcare facilities do not honor tribal orders, nor will state law enforcement assist with transportation to facilities even when a psychiatric facility agrees to accept a patient. I agreed to introduce this bill to bring this issue to your attention and propose a solution. It's sort of complicated and it's not that there are bad actors, it's just misunderstandings or different interpretations of law. So currently, the Nebraska Mental Health Commitment Act, Nebraska Revised Statute Section 71-901 to 71-963, provides for the treatment of persons who are mentally ill and dangerous. While Nebraska public policy encourages voluntary treatment, the act provides for involuntary custody and treatment only after mental health board proceedings. Many Nebraska tribes, including the Winnebago tribe, enacted and enforced similar laws for persons under tribal jurisdiction. However, there are no psychiatric treatment facilities on reservations, resulting in individuals in crisis being unable to get the care they need on the reservation. Nebraska law does not currently honor tribal emergency protective custody, EPC orders, emergency detention orders, mental health commitment orders, or mental health hold orders for such persons under tribal jurisdiction. This is a critical problem because of the urgency involved in EPC orders. Tribes have systems in place just as the state and we should honor them to help people in mental health crisis. In order to solve this problem, we must recognize these tribal mental health orders through legislative action by amending the Nebraska Mental Health Commitment Act. LB1297 seeks to address the issue of recognition of those tribal mental health orders by psychiatric treatment facilities within the state as well as the transportation of individuals subject of tribal orders to treatment facilities by state law enforcement officers. Under LB1247, tribal hold orders, tribal commitment orders, and tribal emergency protective custody orders would be recognized by the state of Nebraska to the same extent as to-- as those initiated by a county. This would allow for a commitment to and acceptance for treatment at a state treatment facility. LB1247 does several things to address this issue. Importantly, it would revise the Mental Health Commitment Act to include persons residing within Indian country and that is a federally defined term, "Indian country," concerning who mental health

involuntary commitment or emergency custody proceedings have been initiated under tribal law. It would also allow for tribes to make arrangements with treatment facilities for persons residing within Indian country for whom emergency protective custody proceedings have been initiated under tribal law. It would, it would provide for the documentation from the law enforcement officer alleging the officer's belief that the person in custody is mentally ill and dangerous or a dangerous sex offender under tribal law to be sent to appropriate tribal prosecutor or officer of the tribal court, just as is done, as is done with respect to a county attorney. LB1247 would allow for persons taken into protective custody under tribal law to be transported to treatment facilities by state law enforcement in the same manner as done for counties. Under Section 71-929, the law now allows for transportation expenses to be paid out of the county treasury by the county board. LB1247 provides for a tribe to reimburse, reimburse law enforcement at the comparable rate. The testifiers will shed light on the ongoing issue for our Nebraska tribes. Tribes are sovereign nations who have their own tribal courts and law enforcement systems. Their community members are tribal members as well as Nebraskans due to their dual citizenship so that's something to remember. In addition, tribal orders in Nebraska are being treated differently across the state. The Ponca are allowed to use the state system and while they do not have a tribal system, it is my understanding that the Santee Sioux, who do have a tribal reservation, are allowed to use the state system. This presents a concerning constitutional issue about unequal treatment of similarly situated people in my mind. This is a problem that can be addressed and corrected for this-- by this body for the benefit of all. I'm happy to bring any amendment that can help remove some, some of the concerns that DHHS will be discussing here, hereafter and as long as we can all agree to treat Nebraskans equally and provide much-needed healthcare to all of our citizens. I ask you to move LB1247 to General File. With that, I'm happy to answer any questions you may have or refer them to the experts behind me. Clearly, this is a complicated issue, but it's an important one. Thank you.

**LATHROP:** Just a question, if you know the answer, when you say emergency protective custody as described in tribal law, does tribal law describe emergency protective custody the same way we do, which is mentally ill and likely to cause harm to themselves or another person?

**PANSING BROOKS:** Yes, causing harm to self or others. That's my understanding. I think somebody else will talk about that, but yes,

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and that's-- and once that order is created by a tribal court, it should align with our state law.

**LATHROP:** OK, very good. I don't see any other questions.

**GEIST:** I, I--

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

**GEIST:** Just real briefly. The, the discussion-- I'm assuming DHHS is going to come behind you and talk about how they determine who pays once someone cannot pay or is that going--

**PANSING BROOKS:** Yes, and that's what, that's what I mentioned, that it, it--

**GEIST:** OK.

**PANSING BROOKS:** --goes to the counties for-- if it were a county matter, but it will go to the tribal-- the tribes.

**GEIST:** But then in-- on page 20, it talks about that if it can't be paid within 30 days, then the cost would be apportioned between the tribe and the state.

**PANSING BROOKS:** OK.

**GEIST:** And I was just curious-- I don't necessarily have a concern about that, except to the degree that it's not determined on the fiscal note. How-- like--

**PANSING BROOKS:** Yeah. Well that--

**GEIST:** --ballpark--

**PANSING BROOKS:** --may be a question for Ms. Dawson and--

**GEIST:** OK.

**PANSING BROOKS:** --we're working on an amendment--

**GEIST:** OK.

**PANSING BROOKS:** --so.

**GEIST:** That-- I, I wondered if that was something that--

**PANSING BROOKS:** Yeah.

**GEIST:** --would be coming behind you.

**PANSING BROOKS:** Thank you.

**GEIST:** OK.

**PANSING BROOKS:** Thank you.

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

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

**LATHROP:** Thank you. We will take proponent testimony first. If you're in favor of the bill, you may come forward. Good afternoon.

**DANELLE SMITH:** Good afternoon. My name is Danelle Smith, D-a-n-e-l-l-e S-m-i-t-h, and again, good afternoon, Chairman Lathrop and members of the Judiciary Committee. Thank you for holding today's hearing on LB1247 and thank you to Senator Pansing Brooks and Senator Brewer for introducing this bill and for their continued commitment to Nebraska tribes. I am a member of the Winnebago Tribe of Nebraska. I'm also an attorney and I have served previously for 15 years as general counsel for the Winnebago tribe. I'm here today in my current capacity as CEO of the Winnebago Comprehensive Healthcare System and again, I'm here to testify in support of LB1247. The Winnebago tribe's health system is comprised of the Winnebago Public Health Department and the Twelve Clans Unity Hospital. The hospital is a 13-bed acute care hospital with a 24-7 emergency department and serves primarily the Winnebago and Omaha tribes in Thurston County, as well as other Native Americans in the surrounding area. In the last year alone, a total of 829 individual patients sought care for behavioral health reasons in our hospital's emergency department for a total of 1,797 separate visits. This represents 21 percent of all of the emergency department visits during this timeframe. Eighty-two of these patients were considered to be suicidal. However, as a small facility with limited resources, we do not have the ability to provide the necessary treatment for these patients and we must transfer them to other facilities. To get patients in crisis the care they need, time is obviously of the essence. If a facility does not, if a facility does not recognize tribal law and tribal authority, we lose that critical time seeking a facility that will. Even when a facility is willing to take a tribal patient, we are limited in our ability to provide safe transportation. As a result, patients in crisis often remain in our emergency

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department for many hours while our staff attempt to find an appropriate facility and arrange transportation, putting the patient and others at risk. I offer two examples of recent situations we have faced, but note these that-- note that these incidents are not unique. One example is that patient X with violent tendencies and a history of cutting themselves had a suicidal episode. An ambulance was called to the home by a relative. X had cuts on their arm and law enforcement was present. EMS brought X to the hospital, where violent behavior continued. X was placed in emergency protective custody under tribal authority and staff attempted placement with multiple medical centers. None were willing to accept the tribal EPC order. Finally, several hours later, staff found a willing facility. However, we lacked state transportation to get X to the facility. EMS could not transport due to the violence-- violent behavior. Plus, the amount of equipment in the squad made it unsafe. X could not be sedated for transportation because the facility could not accept a sedated patient. The Bureau of Indian Affairs Law Enforcement, which serves as the law enforcement agency on the Winnebago Reservation, could not provide transportation because they are only authorized to transport an individual under arrest in-- to a correctional facility. We continued to search for safe transportation while X's crisis escalated. He continued to grow frustrated from the hours upon hours of waiting and continued their acts of aggression. After 15 hours in our emergency Department, X was arrested and taken to a corrections instead of to help where he needed it. Example two--

**LATHROP:** Ms. Smith, we got the three-minute light, so I'm going to have to have you stop. But let's see if there's questions. I know I--

**DANELLE SMITH:** Sure.

**LATHROP:** --I may have a couple. Anybody else have one? Let me ask a question. Do you know what's behind the unwillingness of hospitals to accept your EPCs?

**DANELLE SMITH:** Because the tribal EPC orders from our tribal courts are not recognized under state law.

**LATHROP:** OK. So is that-- is there a reason that that's the case? Are we dealing with a--

**DANELLE SMITH:** Separate jurisdiction.

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**LATHROP:** Does your EPC, the tribal EPC mirror Nebraska's? Like, are they worried that, that Nebraska has one criteria for an emergency protective custody person and yours is perhaps more broad or not as, not as similarly defined?

**DANELLE SMITH:** Each of the tribes has their own judicial and law enforcement systems in their jurisdictions. The processes are similar in each of the jurisdictions. However, the State Mental Health Commitment Act does not recognize the tribal processes. It specifically states that EPCs have to go through a county attorney and committal orders have to go through the Mental Health Commitment Board and the tribes are not part of those processes.

**LATHROP:** OK. I think that helps us understand what the issue is.

**DANELLE SMITH:** Um-hum.

**LATHROP:** I appreciate your examples. I apologize for having to enforce the light system.

**DANELLE SMITH:** Sure.

**LATHROP:** We will probably learn a great deal when we hear the opposition from HHS to see-- to really drill down on where the problem is.

\_\_\_\_\_: Not opposition.

**LATHROP:** Pardon me.

\_\_\_\_\_: It's not opposition.

**LATHROP:** Oh, I'm sorry, the testimony. I misunderstood and it might have been a conversation we had earlier. It-- well, well, thank you.

**DANELLE SMITH:** Thank you.

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

**DANELLE SMITH:** Appreciate your time. Thank you.

**LATHROP:** No, I appreciate you being here. Any other proponent testimony? Good afternoon and welcome.

**GWEN VARGAS PORTER:** Good afternoon. Gwen Vargas Porter, G-w-e-n V-a-r-g-a-s P-o-r-t-e-r. Good afternoon, Senator Lathrop. Greetings,



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Senator Pansing Brooks and members of the Judiciary Committee. My name is Gwen Vargas Porter. I serve the Omaha People as the elected tribal council secretary. With the support of the Omaha tribal, tribal governing body, Omaha Tribal Judiciary, and the local tribal behavior health department. I'm providing testimony on LB1247. On February 18, 2020, the Omaha tribe passed Resolution 20-27, declaring a state of emergency on suicide, addressing the influx of suicide cluster epidemic. Between the Omaha tribe and the Winnebago tribe, our relatives continue to suffer from this epidemic. Relatives from both reservations were significantly impacted by the other, which means we are in this together. Mental illness does not differentiate by race, class, economy, or community. Having limited resources such as mental health providers, clinical staff, or law enforcement, we came together to try to alleviate the suffering. Our partnerships were constrained when it came to individuals needing an emergency protective custody to protect them from themselves and/or others. The Omaha and Winnebago tribes, private agencies, and the State of Nebraska DHHS began meeting to address the epidemic by establishing partnerships. These partnerships were developed but, but were limited by not helping the relatives that needed the EPC. The furthest that we would get was to a hospital emergency room. We have reached out to our local county attorney office to assist us since the tribal court orders were not being recognized. We were unsuccessful due to mental health involuntary commitment or emergency protective custody as being a civil matter. A mentally ill person having a psychotic episode requires immediate psychiatric treatment. It is a life that is in danger. Suicide is a gift that keeps on giving. Communities and families are grief stricken, depression, anxiety, and intergenerational trauma. My personal experiences with mental health and suicide, my family was born and raised on the Omaha Indian Land Reservation for generations since the inception of Ni'bla'ska, large flat Water, now known as Nebraska. My mother is one of 14 children. I, I am the oldest of nine. My personal experience with the health disparities has begun, begun before I was born, before anyone here today was born. For this hearing, I'll focus on death by suicide that results from mental illness. It is with two nephews that died by suicide. In 2019, my first nephew was severely depressed whom overdosed on his psychiatric medications, receiving no emergency psychiatric treatment. Three, three months later, my aunt, his maternal grandmother, died of cancer. Two months following his mother, my sister died of cancer. Two months following that, my sister's death-- of my sister's death, her son, my second nephew, died by hanging. This nephew left six children behind ages two years old to 14

years old, multiple brothers, sisters, aunts, uncles, nephews and nieces. Only in the past two and half years have we had nine relatives, also known as community members, tribal members, Nebraska citizens die by suicide, the age range of 16 to 57 years old. The Omaha Tribe of Nebraska supports-- strongly supports the LB1247 proposal. The Mental Health Commitment Act closes the gap for Nebraska Native Americans needing mental health treatment. This revised statute may save a life of a person residing in Indian country needing a mental health involuntary commitment or emergency protective custody. The amendment would help Native Americans receive the needed healthcare, needed healthcare. As Nebraskans, we are stronger together and healthier together. Eh'withonWong'then. All my relations. Thank you.

**LATHROP:** Thank you. Any questions for this testifier? I don't see any. Thanks for being here. I'm glad you found the right room. I'm sorry we had a conversation earlier, right, in the hallway? Was-- that wasn't you?

**GWEN VARGAS PORTER:** No.

**LATHROP:** OK.

**GWEN VARGAS PORTER:** Different one you're thinking of.

**LATHROP:** All right, good.

**GWEN VARGAS PORTER:** All right, thank you.

**LATHROP:** Thanks for being here. Good afternoon. Welcome.

**JUDI gaiashkibos:** Thank you, Chairman Lathrop and members of the Judiciary Committee. I am Judi gaiashkibos. That's J-u-d-i g-a-i-a-s-h-k-i-b-o-s and I am the executive director of the Nebraska Commission on Indian Affairs and I am here to testify in support of LB1247 and I would like to thank Senator Brewer and Senator Patty Pansing Brooks for introducing this bill. On behalf of the Commission on Indian Affairs, my role and honor to serve all of our Nebraska sovereign citizens is to remove barriers to consistent care and access to the state's services and this bill would help us by amending and changing the law for the Mental Health Commitment Act. And I would like to read a quote here that I think really captures the essence of what is happening here and hasn't happened in our state of Nebraska. Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of

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destiny. Whatever affects one directly affects all indirectly. Martin Luther King, Jr. So I think as a citizen of the Ponca Tribe of Nebraska and as a citizen of the state of Nebraska, we as Indian people, the First People, dual citizens, should have access to the same rights and protections. And this bill would correct what hasn't been in the past and will help us move forward and on behalf of our agency, we intend to seek this bill to be our priority bill for the State Tribal Committee and we're happy to work with DHHS on any of their concerns. And in the past years, with our high increase of mental health challenges and suicide clusters on the Omaha Reservation and Winnebago, our agency has worked hand-in-hand with DHHS. And I'd like to close with saying that our Governor has introduced a resolution to name the Justice Center in honor of Chief Standing Bear, Center for Justice. So I think this is an example of walking that talk and truly honoring Nebraska and making it a place that really has justice for all and that honors our First People. So I hope that you will move this bill out of committee to the floor and that we can be a state that's proud and that we do have justice for all.

**LATHROP:** OK.

**JUDI gaiashkibos:** Wi'Bthu Ho.

**LATHROP:** Very good. Thanks for being here. We appreciate hearing from you--

**JUDI gaiashkibos:** Um-hum.

**LATHROP:** --as always. Any other proponent testimony? Is there any opposition to LB1247? Anyone here in the neutral capacity? Good afternoon.

**SHERI DAWSON:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Sheri Dawson, S-h-e-r-i D-a-w-s-o-n, and I serve as the Director of the Division of Behavioral Health at the Department of Health and Human Services and I am here to testify in the neutral capacity on LB1247. LB1247 is largely silent with respect to processes and procedures designed to serve patients in the least restrictive setting. Under state mental health commitment laws, individuals are not committed to inpatient treatment unless absolutely necessary and once committed to inpatient treatment, there are mechanisms and procedures that require providers to review and monitor individuals as they move through the continuum of care. If necessary, providers and the patient appear before the mental health board. In

all instances, they first consider support services for the citizens and the communities. Additionally, there are specific statutes setting forth how the department initiates a discharge of a patient from a facility and the rights of all the interested parties in subsequent hearings before the mental health board. There are no similar processes set forth in LB1247 allowing commitments from tribal courts to the department without mechanisms to facilitate the appropriate and timely discharge from inpatient treatment, which could result in the patients not actually being served in the most appropriate level of care. But involuntary processes are complex and have legal and practical constraints. It's critical that tribal members receive the same opportunities for treatment in the least restrictive setting possible. We've actually been working with the Winnebago tribe over the past few months to develop solutions to their challenges and the department is committed to continue working with the tribes to address barriers to emergency and involuntary treatment. I respectfully request the committee consider these thoughts as you decide to move the bill forward and I thank you for the opportunity to testify. I'm happy to answer any questions.

**LATHROP:** So tell me where you're at in this process. I understand what, what it means when somebody comes in the E.R., either brought by a family member, an ambulance, or a police car, and they're threatening suicide or they're-- because they're mentally ill or threatening to hurt somebody or assault them or shoot them or however they may get there. And what I hear them saying is they're not equipped to deal with that person and they want to be able to make a transport to a facility and now they're finding facilities won't take them because they don't recognize the authority for them to send somebody to a nontribal medical facility.

**SHERI DAWSON:** I can't tell you specifically why those providers don't accept them, but I would believe it is because of the tribal order. I think the opportunity and the work that we've done with the tribes-- and both testifiers have talked about the challenges because you have to be transported for the EPC, then you, then you have, under law, specific rights and evaluations. And under the tribal law, they do have mental health commitment acts. They are different for each tribe and there is the challenge and the complexity, I think, of really trying to look to align those. And so the work that we have been doing is trying to find some solutions. For example--

**LATHROP:** Oh, no, go ahead. I don't mean to interrupt you.

**SHERI DAWSON:** OK. For example, somebody might have been-- Senator, when she did her introduction, talked about it has worked in Ponca and Santee. Over time, there have been interlocal agreements that were put forward either with the county or through the state to tribal cooperative agreement. There also was double-deputizing the tribal law enforcement with Nebraska law enforcement, which allowed for some of that transfer to-- you know, the EPC transportation. But again, over time, as people leave and processes change, I, I appreciate the barriers that they're experiencing.

**LATHROP:** OK. And this question isn't intended to be argumentative--

**SHERI DAWSON:** Um-hum.

**LATHROP:** --though it's-- it may sound like it. EPC suggests that someone is cut-- rolled into, by one means or another, into the emergency room--

**SHERI DAWSON:** Not as--

**LATHROP:** --Twelve Clans or the hospital on the, on the reservation, either by law enforcement-- and law enforcement typically would fill out a form that says, I believe this person is mentally ill and they are a threat to themselves or another person, right?

**SHERI DAWSON:** Yes.

**LATHROP:** What does, what does a tribal order have to do with what's happening there? Because that's-- that person isn't ordered by any court in that circumstance. There is an emergency and they need to be taken to the appropriate facility under the EPC statutes, right? And what I'm hearing them say, or if I understand the concern, is that they have an EPC that shows up at their hospital, someone who is mentally ill and a threat to themselves or another person, and they can't get a hospital to take them. So do you-- that's not an order. There is law enforcement or somebody that's filled it out that's authorized to. So why is it they can't get somebody to accept the transfer to an appropriate facility? And I, and I'm familiar with the statute and appropriate facilities, a facility designed or with the services intended to help someone in that circumstance.

**SHERI DAWSON:** I would say a couple of things, Senator. I-- it does happen when the agreements are in place and the training, the double-deputizing. I cannot speak to a particular provider and their reason for not accepting that. You asked earlier in testimony if the

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EPCs were similar in the tribal to Nebraska law and there is some variation and so-- and the, the certificate isn't exactly the same. And so I think the opportunity we have to try and align the statutes as much as we can, honoring the sovereignty, is that the processes will work if we have the right solutions in place. And that means can we align? Other states have been successful by bringing all the tribes to the table and doing mapping. Each tribe has their own mental health act and so it really is going to take all of the tribes and cross-walking.

**LATHROP:** Is it a problem at the back end? Once you accept a member of the tribe in a nontribal psychiatric hospital or appropriate facility, as that term is defined, that you don't know how to process them once they're there or is it-- because this feels like a front-end problem and it sounds like you're describing it as a back-end problem once they show up at-- and I'll make up a hospital-- Immanuel Medical Center, that we don't know how to process them after they've been admitted to, this case in my hypothetical, Immanuel.

**SHERI DAWSON:** Yeah. And again, I will say that there are providers that do accept that order because we do have-- and I can give you some examples just here recently. So it is, I think, the variation again on, on the definition, on the forms and processes that are in place that do vary across the tribes. And it is also then not every EPC is necessarily going to need a mental health board commitment so they can receive those services, be assessed, and discharged. Again within the tribal mental health board acts, they also provide for, I think it's called a court hold for individuals. But again, timeframes and some of the processes vary--

**LATHROP:** OK.

**SHERI DAWSON:** --from Nebraska law.

**LATHROP:** I appreciate that you came in in a neutral capacity. Does this bill address the problem or does it-- are there still pieces that need to be worked out in your judgment?

**SHERI DAWSON:** Yes. I think there's, there's opportunity to make sure that the mental health board and the dangerous sex offender commitment acts, that we are aligned as much as we can be, that we have those interlocal agreements that provide that opportunity to be served--

**LATHROP:** OK.

**SHERI DAWSON:** --here.

**LATHROP:** And you're talking about entering into interlocal agreements so that's making me think that this is going to be a long process before you're going to be on board with this bill or is that something that can be accomplished in the short term?

**SHERI DAWSON:** I don't know the timeframe, Senator, certainly want to work through it as quickly as possible. Senator Pansing Brooks is also very familiar with LB988. That's happening. Those conversations also have to happen like mobile crisis and how Indian people will be served. It's going to take some time to do that alignment, but it's already in process and we're committed to do that.

**LATHROP:** OK. I-- Senator Geist.

**GEIST:** Yeah, I did have that question there at the end where it talks about if relatives or family, within 30 days of receipt of care, can't-- if it can't be paid, then the costs would be apportioned between the tribe and the state. But that's not reflected on a fiscal note, so I'm curious about-- I mean, that would not hold up my--

**SHERI DAWSON:** Yeah.

**GEIST:** --position. I'm just curious about that.

**SHERI DAWSON:** Um-hum, part of it was just to be able to estimate what-- how many people, you know, would be impacted because some are being served, some are not.

**GEIST:** OK.

**SHERI DAWSON:** But we also contract with all of the tribes for mental health and substance use services.

**GEIST:** Currently.

**SHERI DAWSON:** Currently.

**GEIST:** OK.

**SHERI DAWSON:** And so there's some opportunity, as I was talking with Ms. Smith from the Winnebago, that some of the funding pieces aren't as much as a challenge as some of the other processes.

**GEIST:** OK.

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**SHERI DAWSON:** Yeah.

**GEIST:** I wasn't aware of that, that we're already doing a lot of that contracting.

**SHERI DAWSON:** Form for mental health and substance use services--

**GEIST:** OK.

**SHERI DAWSON:** --for all of the tribes.

**GEIST:** OK.

**SHERI DAWSON:** And keep in mind, all the tribes also are, with the Medicaid expansion, also Medicaid--

**GEIST:** OK.

**SHERI DAWSON:** --enrolled, so.

**GEIST:** Well, that does seem to make this kind of question easier.

**SHERI DAWSON:** Um-hum.

**GEIST:** OK, thank you.

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

**SHERI DAWSON:** Thanks.

**LATHROP:** --answering my questions. Anyone else here in a neutral capacity? Anyone else here to testify on the bill? Seeing none, Senator Pansing Brooks, you may close. We do have two position letters, both proponents of your bill.

**PANSING BROOKS:** Thank you. Thank you very much for listening and as you can tell, it's a complicated issue. I do want to thank Ms. Dawson for coming. A couple of things that, that didn't get into the record. I hope that you read the testimony of Ms. Danelle Smith-- sorry, I'm going to take that off-- Ms. Danelle Smith. And she talked about an ex-- there was an extremely risky transport and that the person had been attempting self-harm and that it was determined that they, they-- that EMS would not be able to provide the transportation. Hang on, it was-- sorry. OK, it was example, it was example one that I'm talking about and the person had been in the, in the emergency department for 15 hours because they hadn't been able to go to another mental



healthcare site and that, that-- finally, that person was arrested and just taken to Corrections instead of receiving the help they need. So if we wonder why our prisons are getting overcrowded, here's one issue right there is that we've got a gap. And again, as you can see, it's not anybody's fault, necessarily. It's just a-- different interpretations of law, different laws going right now and different laws being engaged. And so again, the second example was that, that a person had been placed into a bare room that had done a self-inflicted gunshot. And they were-- and it was cleared of things that could be used for self-harm. And finally, a facility three and a half hours away agreed to accept that person, but only if the EPC was dropped and that person agreed to go voluntarily. So there's what part of the issue is because when a tribal, when a tribal officer initiates an EPC, then they're under tribal authority. So if an EPC is granted on a person under the tribe, then they want to move the person to a facility, they have to drop the tribal EPC to take the person to the mental health facility. So that put everybody at risk because that person was then-- then had to go voluntarily and it would be a voluntary--

**LATHROP:** They're not going to do that either.

**PANSING BROOKS:** No, they don't want to. This person actually did, but it put everybody at great risk and it was, it was highly concerning. It put the people transporting-- he went without any kind of restraints or any, any kind of implements. And, you know, he could have demanded to get out immediately and gone on to self-harm or do whatever because he wasn't on any order. So again, it's-- there needs to be some jurisdictional changes here. So yes, we know that it's worked on interlocal agreements. The problem with the double-deputizing is that it doesn't solve it because you can't-- because it's been determined that, that the tribes cannot transfer these patients anywhere except to jail due to a requirement from the Department of Facilitators Office from the Bureau of Indian Affairs. So it is a very complicated issue.

**LATHROP:** They can't take-- so if somebody shows up at Twelve Clans and they are threatening to kill themselves or their spouse or somebody else and they're hearing voices, they, they are clearly mentally ill, law enforcement from the reservation--

**PANSING BROOKS:** Tribe.

**LATHROP:** --has- they're prohibited from taking them to a suitable facility?

**PANSING BROOKS:** This has just been released by the Bureau of Indian Affairs, yes. So they can only, they only can transfer to, to a jail. So again, this--

**LATHROP:** OK. I'd say you got your work cut out for you, Senator Pansing Brooks.

**PANSING BROOKS:** Isn't it? Wow. It's a, it is-- you know, does-- but that's, of course, because the state law is not accepting or recognizing the tribal law in this instance. So I just want to say this is the end of my trafficking bill, the end of my First People bills, and it's been an honor to be able to do this work for eight years and I want to thank the people that came and testified today.

**LATHROP:** This your last-- is this your last bill in front of the committee?

**PANSING BROOKS:** I think it might be even, so all my love to all of you. You're all awesome.

**PANSING BROOKS:** OK. Well, I don't see any other questions. Senator, thanks for bringing the bill. If I didn't mention this before, we do have two position letters, both in support. We appreciate everybody's testimony. It does appear to be not a simple problem or a problem with a simple solution so we encourage everybody to work with one another to try to bring a solution to the problem this bill presents. And with that, we'll close our hearing on LB1247 and welcome Senator McCollister. You're not Senator McCollister and I don't know what you're doing in that seat.

**WILLIAM HERTZLER:** That is correct.

**LATHROP:** Why don't you hang on just a second and we'll let some people move around. OK. Somebody standing in for Senator McCollister, welcome.

**WILLIAM HERTZLER:** Yes. Despite your staff's best efforts to move our bill lower, Senator McCollister is still in the Government Committee, so.

**LATHROP:** OK.

**WILLIAM HERTZLER:** I am William Hertzler, W-i-l-l-i-a-m H-e-r-t-z-l-e-r, and I'm here on behalf of John McCollister representing the 20th Legislative District in Omaha. In the interest of no time, I'm just going to read this as though I was Senator McCollister because I've not changed to the wording, so--

**LATHROP:** OK.

**WILLIAM HERTZLER:** --every time I say I, I am referencing Senator McCollister.

**LATHROP:** All right.

**WILLIAM HERTZLER:** In 2018, I was, with the help of my colleagues, able to pass LB776. This bill tasked the Jail Standards Board with ensuring that local jails do not charge unreasonable fees for providing phone services to inmates. The bill was a step in the right direction, but there's more work to be done. A resident of Omaha reached out to me recently and detailed that she had been charged a \$14 transaction fee for a 15-minute call with an inmate. Phone calls are significantly more expensive for those in facilities in cities and counties as opposed to state correctional facilities and I believe the disparity needs to be addressed legislatively. It cannot be disputed that facilitating communication between those incarcerated and their loved ones has positive effects. And in 2020-- 2012, rather, both the Republican and Democratic parties stated that it was their official platform that family-friendly policies that reduce recidivism have their support. Global Tel Link, the largest prison phone company in the United States, touts on their website that studies consistently show that communication with friends and family helps to reduce recidivism rates. However, GTL neglected to mention that their exorbitant pricing policies serve as a barrier to many inmates for contact with the outside world. Lowering inmate phone call costs is something that has been a trend in many of the states of late and the graphic that I painted out details some of the things that states have done to lower inmate phone call costs, as well as what it'll be LB1031 proposes and along with the amendment that I sent out yesterday. This bill lowers the cost of inmate phone services by codifying the maximum amount a jail can charge for a phone call per minute based on its size and places ancillary-- excuse me, places caps on ancillary fees. Synchronizing fees for those in jails across the state ensures that where someone is incarcerated does not drastically affect what they must pay to communicate with their families. And we, as legislators, can take a significant leap forward in our criminal justice system and

help to ease the financial burden that the families of those incarcerated face. Before we close, I would like to add that our office communicated with NACO and after feedback from them, we drafted an amendment for the committee's consideration. Again, I distributed that yesterday. The amendment does away with the original three-tiered system for permanent cost caps and replaces it with the FCC interstate per-minute rates, 14 cents per minute for jails with over 1,000 inmates, 21 cents per minute for jails with under 1,000 inmates, and the ancillary key-- the ancillary fee caps-- that's a tough one-- remain as originally written. While we feel that this amendment dilutes the purpose of the bill, it was worked on in good faith with NACO and we felt that collaborating with them resulted in a workable compromise.

**LATHROP:** OK. Any question-- well, I guess you don't take questions.

**WILLIAM HERTZLER:** I learned that last time.

**LATHROP:** We will-- yeah, we appreciate you being here in Senator McCollister stead and we will take proponent testimony at this time. Thanks for being here. Good afternoon. Welcome back.

**JASMINE HARRIS:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. The name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s. I'm the director of public policy and advocacy with RISE. Our mission is to break generational cycles of incarceration. Communication between an incarcerated person and their loved ones has been noted as having positive impacts on better health, improving relationships, and decreasing recidivism. Prison Policy Initiative conducted a literature review of empirical studies and what these studies revealed is that over 80 percent of the respondents used phone calls as a method to communicate with loved ones. One of these studies was from 2014, where RTI International and University of Delaware examined the impact of communication with loved ones on recidivism rates. What they found was that the individuals in the study that had contact with a family member by phone were less likely to return to prison within the five years after being released. In order for individuals and their families to make these phone calls and keep these connections, they first have to deal with how much it is going to cost and if they have the means to pay for it. Advocates across the country have been working for years to ensure that private companies and correctional facilities do not charge high rates and unnecessary fees for these calls. Nebraska's Department of Corrections has set a precedent in the state by keeping permanent costs low and not

accepting kickbacks from phone companies. Because of this, phone call costs have been lower and allow more families to stay in touch. County jails should follow suit. As he mentioned, I think I was that person that reached out. In 2021, I was charged \$1.80 plus tax for up to 15 minutes of talk time. Sounds reasonable because that would make it 12 cents a minute, but there was an additional \$13.19 transaction fee added to the call as well, essentially making this call \$15 for \$1 a minute. I've since heard that this transaction fee has been lowered, making calls more affordable, but there are counties that have not adapted to lower costs for their phone calls or dropping those extra fees. LB1031 would ensure that the price per minute and fees within contracts are kept, making sure people can stay in contact with their families. I spoke with a few individuals about their experiences with communicating with a loved one in a county jail and here is what was said. You have a loved one who is isolated, wanting to communicate with someone that will be supportive of them to encourage them while confined. Them being able to communicate with the outside world gives them a sense of belonging to that world. When you have a person with limited funds, it takes away from their strict budget. I could only afford \$20 per week to go not only towards phone calls, but snacks as well. I give what I have because I want them to know they are loved and here for moral support. So again, our mission is to break generational cycles of incarceration and keeping the lines of communication affordable for families helps in achieving that goal. And for these reasons, RISE supports LB1031 and asks that you all advance it to General File.

**LATHROP:** Very good. I don't see any questions, thanks for being here, Ms. Harris. Next proponent. Good afternoon and welcome.

**FRAN KAYE:** Thank you, Senator Lathrop and members of the Judiciary Committee. My name is still Fran Kaye, F-r-a-n K-a-y-e, and I'm here to support LB1031. As you know, one of the most important resources for people who are incarcerated is family and community support and phones are generally the most convenient way to get that. Thank you to Senator McCollister for proposing this bill to limit the charges that may be required for people in county and city jails to call home. A 15-minute call, which is basically what you get, at the proposed highest rate of 21 cents per minute, would cost \$3.15. Then you add on a charge of \$2 to set up or add money to an account and possibly a connection charge for a call. Depending on the connection charge, the family could get between four to almost six calls for a \$20 payment. Of course, it is cheaper to put out more money, only one transaction, but folks who are incarcerated are likely to find it hard to come up

with \$100 for phone calls. Most prepaid cell phones cannot accept collect calls so prepaid services are the way the majority of people in jail, innocent or guilty, have to make their calls. At Lancaster County Jail, I can go and put \$25 on someone's Access Corrections account for him or her to call me. If I have to buy time online or by phone, I have to have some kind of debit or credit card, which not every family has, adding another expense to the transaction. Some counties like Custer County make things easy. Others like Otoe County, do not. Otoe County, when last I dealt with it, had a connection charge, which you had to pay even if the call did not in fact connect, which happened fairly regularly. I'd say about one out of five calls, I'd get charged \$2.69 for connection, but I couldn't even talk to anybody. Great. With all the fees, a 15-minute phone call from Otoe to Lancaster County came out to nearly \$10. I list these experiences to show that even with the limits of LB1031, regular phone calls from jails get expensive quickly. Without those limits, however, regular phone calls are almost out of reach for many families trying desperately to keep in touch with a loved one who has gotten in trouble. The person incarcerated suffers, but the family often suffers even more. What do you tell a small child who asks, why can't I talk to daddy? Phone contact should never become a revenue source for cash-strapped city and county jails. They are lifelines for Nebraska families. If we think locking people up is such a good idea, we the public should pay the costs, not push them off to mothers and wives and children. Thank you.

**LATHROP:** Thank you, Ms. Kaye. I do not see any questions today. Thanks for being here. Good afternoon.

**SPIKE EICKHOLT:** Sorry, took a while to get off here. Good afternoon. 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 and the Nebraska Criminal Defense Attorneys as their registered lobbyist testifying in support of LB1031. We want to thank Senator McCollister for doing that. This picks up where his bill left off in 2018. I'm having distributed a report that the ACLU wrote in 2017 where we actually did a number of public records requests with different local county jails and looked in-depth at what the different county jails across the state charged for costs from the jails. There were two issues that we wanted to address and that Senator McCollister and-- though the senators did do-- they did address in LB776 that was passed in 2018. The issue of the costs of the jail calls, not just the minute, minute rate, but the ancillary fees and also the persistent problem that attorney calls that lawyers-- that people were making to their attorneys were

regularly being monitored and recorded by different companies that provide the service to the jails. So what Senator McCollister in LB776 was direct that the Crime Commission, which has a jail standards board that sort of monitors the minimal compliance standards of the jails across the state, have them also direct that if the jails are going to contract with these private companies, that they made sure that these contracts have some limitation on the excessive or-- not allow excessive fees or inappropriate transaction fees with some accommodation still allowed and also cap the limits for the minute rate, if you will, and also require that whatever contract they have, that the provider have a provision that has free calls to attorneys-- not charged for those calls-- and also if they are not monitored or recorded, absent with a warrant. That's gotten better as far as attorney calls. I can tell from my members. For a while, it was a regular thing on our LISTSERV. You have somebody who's locked up in jail with serious charge. Law enforcement, through these companies, regularly record every call they make. So they're calling their family members, they're calling friends, they're making admissions. The state plans to use that against you in trial so you get that in discovery. And what would happen with some regularity, included in your discovery when you get the CDs where all the calls are calls that your client was making to you. And so it's a Sixth Amendment problem. I causes a lot of litigation, unnecessarily so. And that's been addressed to a certain extent, but the problem with the costs is still out there. Now, it's gotten better, I think, for the fee-- rate itself, for the calls per minute. If you look at the fiscal note from Lancaster County, they don't have a problem with that because even the rates that are set in the statute, they're below. But the ancillary fees, the cap that this bill provides is helpful because, as you heard the earlier testimony and you the look at the report, there's charges that were common for-- to put money on an account, they would charge you a transaction fee. To look at the bill, there would be a transaction fee. There was is practice with many of the companies to provide like a bonus if, if a, if a county or a jail contracted with a provider, they would provide a payment bonus and invariably that would be borne on those people who had to pay the cost when the jail calls. So this bill takes that further, the gains are made in 2018, and we encourage the community to advance it.

**LATHROP:** OK. I appreciate your testimony, we appreciate it. Thanks for being here. Any other proponent testimony on LB1031? Anyone here in opposition? Anyone here in the neutral? Good afternoon.

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**ELAINE MENZEL:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials. We are here today in a neutral capacity on LB1031. As testified by the inducer, we've been in communication with Senator McCollister and his office and as I understand it, an amendment has been shared with the committee. I've not seen that committee [SIC], but based on what was testified, it sounds like it's what we had agreed to. And so with that, I'll--

**LATHROP:** You're OK with the bill.

**ELAINE MENZEL:** We, we are OK with the bill at this point. It doesn't get us entirely to the FCC regulations as written. However, this is the part that we were working with in terms of the transaction per minute fee, so.

**LATHROP:** OK. Very good. Well, we're glad you came and told us you have a deal.

**ELAINE MENZEL:** It's nice to do.

**LATHROP:** That always makes it easier for us.

**ELAINE MENZEL:** Yes, nice to do.

**LATHROP:** Well, thank you for your testimony. I don't see any questions today. Anyone else here to testify in a neutral capacity? Seeing none, that will close our hearing other than for me to comment or put into the record that we have position letters. For the record, four possession letters are for proponents and no opponent or neutral position letters. With that, we'll close our hearing on LB1031 and our hearings for the day and for the week. Have a great weekend.