

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2024

**WAYNE:** My two bills are just shell bills, so. Good afternoon, and welcome to the Judiciary Committee. My name is Justin Wayne. I represent Legislative District 13, which is north Omaha and northeast Douglas County. I serve as the Chair of Judiciary. We'll start off by doing self-introductions, starting with my right, Senator Bosn.

**BOSN:** Carolyn Bosn, District 25, which is southeast Lincoln, Lancaster County, out to Bennet.

**IBACH:** Teresa Ibach, I represent District 44, which is eight counties in southwest Nebraska.

**JOSH HENNINGSSEN:** Josh Henningsen, committee legal counsel.

**ANGENITA PIERRE-LOUIS:** Angenita Pierre-Louis, committee clerk.

**HOLDCROFT:** Rick Holdcroft, District 36, west and south Sarpy County.

**DeKAY:** Barry DeKay, District 40: Holt, Knox, Cedar, Antelope, northern part of Pierce and northern part of Dixon County.

**WAYNE:** Also assisting us are our committee pages, Isabel Gold-- Kold [SIC] from Omaha, who's a political science and pre-law major at UNL; and Ethan Dunn from Omaha, who is a political science major at UNL. Senator Bosn, I-- it's weird that I say I'm starting with my right and then I mentioned this. Do I-- do you want me not to-- like, you can do your whole thing yourself or--

**BOSN:** Whatever you want to do.

**IBACH:** It's a duplication.

**WAYNE:** Yeah. I'm trying to be efficient here.

**BOSN:** Technically, Josh is to your right. So I'm all the way to the right.

**WAYNE:** We got [INAUDIBLE].

**IBACH:** Far right.

**WAYNE:** OK. OK. So we'll go--

**BOSN:** I don't know that I want to be known as the far right.

**WAYNE:** --we'll-- starting with our far right. OK.

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**DeKAY:** Believe it or not, I'm far left.

**BOSN:** I don't know that I want to be the far right either, so I just want to be transparent.

**WAYNE:** Well, we got to get this down.

**BOSN:** [INAUDIBLE] just say: to my right, Senator Bosn.

**WAYNE:** But then I'm introducing you by saying Senator Bo-- so it's kind of not a self--

**IBACH:** You can't get too much publicity, so.

**BOSN:** Yes. That's right.

**WAYNE:** OK. [INAUDIBLE] solve that problem today. Good. We got something done today. This afternoon, we will be hearing five bills, but we will be taking them up in the order listed outside the room. On the table on the side of the room, you will find a blue testifier sheet. If you are planning to testify today, please fill out the blue testifier sheet and hand it to the pages when you come up. This will help us keep accurate records of the hearing. If you do not wish to testify but you would like your position known, please fill out a gold sheet over by the same column. Also, also, I will note that the Legislature policy is that all letters for the record must be reviewed by the committee-- must be received by the committee by 8 a.m. on the morning of the hearing. Any handouts submitted by testifiers will also include-- be included as part of the record. We ask that you have ten copies. If you don't have ten copies, please give them to the page ahead of time so we can make sure we have copies for your testimony. Testimony for each bill will begin with the introducer's opening statement, followed by the opening statement-- supporters of the bills, then those in opposition, followed by those speaking in the neutral capacity. The introducer of the bill will be given the opportunity to make a closing statement if they wish to do so. We ask that you begin your testimony by stating and spelling your first and last name so we can have them for the record. We will be using the 3-minute light system today. When you begin your testimony, the light will be green light. At one minute, it'll turn yellow. At the red light, I will cut you off and ask you for your final thoughts. I would like to remind everyone, including senators, to please turn off your cell phones or put them on vibrate. And with that, we will begin today's hearing with LB870. Welcome, Senator Cavanaugh, to your Judiciary Committee.

**M. CAVANAUGH:** Thank you, Chairman Wayne and members of the Judiciary Committee. To my left, Senator Bosn. And to my right, Senator DeKay. And I believe it was said in this very room earlier this week that I'm so far left I've gone right. So maybe that's what Senator DeKay has done. And, and thank you for being here to hear this piece of legislation Isabel has graciously passed out. This is the Sexual Assault Victims' Bill of Rights from the Women's Fund-- or, no. I'm sorry-- from sexualassaulthelp.org. And-- so that's kind of what went out after we had a Sexual Assault Bill of Rights Act happen. And then additionally, you have an amendment to my bill. I filed it this morning. I'm sorry I didn't get it filed sooner. So the-- this amendment is something that I worked on with multiple entities. I'd like to thank Josh Shasserre, of the Attorney General's Office for helping review this bill, as well as Anne Boatright for her work on the Sexual Assault Kit Tracking Program and on the payment program for healthcare providers doing the exams, as well as working with stakeholders on this sensitive issue, the Nebraska Coalition to End Sexual and Domestic Violence, the Omaha Women's Fund, and the Joyful Heart Foundation for their input and collaboration. There may be additional changes coming after the hearing. I did hear from the Nebraska Sheriffs Association this morning that they had some ideas on how to improve the implementation, so-- we just haven't had the time to sit down and talk about that. So there may be an additional edit coming from the-- from those conversations. So with that, LB870 makes small changes to the current statute relating to the rights of victims of sexual assault. The goal is to give more information to the victims of sexual assault. It increases their rights in two ways: asks the, the law enforcement notify a victim 60 days before the intended destruction of a sexual assault kit, and gives the victim rights-- the right to request that it not only be destroyed, but that it-- not be destroyed, but that it be kept for an additional 20 years. It will provide the victims updates when the case is respo-- reopened or closed and has some other changes in status. The amendment, AM2179, has important changes to the bill. One is that the notification before destruction of the kit would not apply to kits collected anonymously. Second, in order not to place a victim in further danger, the case update would be at the victim's request. This distinction is necessary in order to keep a notification from going to an address where the perpetrator or alleged perpetrator might still be residing and in some way put the victim at risk. Third, the amendment adds language stating that all law enforcement agencies that store sexual assault forensic evidence shall have written policies to detail retention periods and for carrying out notifications. My goal is to-- in this is to give the victims more information while doing it in a way that does not put

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them at further harm or risk. And with that, I will answer any questions you may have.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**M. CAVANAUGH:** Fantastic. I do not intend to stay for closing because I have to go to HHS. So if there are any questions that arise, I am happy to follow up with you individually. Thank you so much.

**WAYNE:** Thank you. First proponent. Proponent.

**ERIN FEICHTINGER:** Transcript of this hearing is going to be hilarious from the beginning.

**WAYNE:** Yes. Of course.

**BOSN:** Always.

**ERIN FEICHTINGER:** As I'm sure was the point. Chairman Wayne, members of the Judiciary Committee. Once again, my name is Erin Feichtinger, E-r-i-n F-e-i-c-h-t-i-n-g-e-r. And I'm the policy director for the Women's Fund of Omaha. The explainer in your hands is actually from our organization. We put that together. So if you need additional information about the underlying Sexual Assault Victims' Bill of Rights that we passed in 2020, you'll find all that information there. We are committed to supporting survivors of gender-based violence in our local communities. And as such, we offer our support for LB870 with the amendment and recognizes efforts to provide anyone who experiences sexual assault in our state with certain rights related to their sexual assault kits. A survivor-led bill of rights plays a vital role in shaping conversations around sexual assault, reducing stigma and fostering a culture of empathy and understanding, which is why we worked to pass that initial Sexual Assault Victims' Bill of Rights in 2020. In Nebraska, an estimated 81.5% of women experience some form of intimate partner or sexual violence in their lifetime. And we also know that women aged 18 to 24 who are college students are three times more likely than women in general to experience sexual violence, and-- this is important-- the three primary barriers college students identified as barriers to making a report of sexual assault are feelings of shame, embarrassment, and guilt; fear of not being believed; and confidentiality concerns. LB870 with the amendment would clarify the rights of survivors to control their sexual assault kits and to be made aware of the status of evidence collected from their assault and updated if there is any change in that status. Clarifying

this right allows survivors to-- allows survivors power to take control of their own healing journey. In just one year, 1,592 cases of sexual assault occurred in our state; and that number is probably low, considering sexual assault cases are historically underreported. When survivors feel safe and supported throughout their interaction with medical and legal processes, they are more likely to report their assaults, and Nebraska is more likely to hold perpetrators accountable while achieving safety for our communities. LB870 also contributes to broader efforts to address sexual violence and promote survivor healing. All survivors have rights, including the right to get answers and information and the right to a barrier-free path to healing. We ask you to help provide that clarity and safety for survivors of sexual violence in our state and vote in support of LB870. And I am happy to answer any questions you may have to the best of my abilities. I like to add that caveat at the end.

**WAYNE:** Any questions from the committee? Senator DeKay.

**DeKAY:** Just to clarify-- Chairman Wayne. Thank you. How long are those kits-- how long are they preserved? Are they--

**ERIN FEICHTINGER:** There is-- as far as I understand, there is not currently a minimum standard.

**DeKAY:** OK.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here. Next proponent. Welcome.

**MELANIE KIRK:** Good afternoon, Senator Wayne, Chairman Wayne and members of the committee. My name is Melanie Kirk. I'm-- M-e-l-a-n-i-e K-i-r-k. I'm the legal director of the Nebraska Coalition to End Sexual and Domestic Violence. The coalition is testifying in support of LB870 on behalf of the coalition and its network of sexual and domestic violence programs throughout the state. The coalition's network of 20 programs serve all 93 counties across Nebraska and are the primary service providers for domestical-- domestic and sexual violence survivors. The coalition believes strongly that all victims of crime have the right to know the status of evidence related to their assault, including the right to be notified of the descr-- destruction of forensic sexual assault evidence. It's important to provide the opportunity for survivors to be informed; while at the same time, it's also important to remember that at the time of the sexual assault, the victim who underwent a forensic exam, the victim underwent a horribly traumatic ordeal. And thus, engaging a sexual

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assault victim after that does risk retraumatizing them, and we need to make sure that they have control over that process and that they are the ones that get to control whether or not they find out more and if they would like further notification. It's important to know that it is the right of survivors to determine whom they share that trauma with and information about their past. When we're talking about 20 years after an assault, while it's the hope of all here that the survivors would be in a safe and healthy environment, that's not always the case. And unfortunately, in some cases, notification attempts at that point could alert a perpetrator to the existence of forensic evidence, thus compromising victim safety if we aren't careful about the way that this is implemented. For these reasons, it's imperative that any attempts at notification be carefully considered and follow policy created to maximize the risks of survivor to self-determination, with careful consideration and efforts to minimize risks of further harm or trauma. Additionally, it's important to remember that adult victims of sexual assault have a statutory right to have their kit submitted anonymously, and thus acknowledging that there would be no way for law enforcement to know whom to notify regarding destruction of a kit in those cases, as no name would ever be submitted to law enforcement. Our office, together with the Women's Fund and other stakeholders, have been grateful to Senator Cavanaugh for her willingness to listen and to respond to our concerns. The amendment that has been drafted as AM2179 addresses the concerns we initially had, and we're here today to voice our support for this bill along with the amendment, AM2179. And I'd take any questions that you have.

**WAYNE:** Any questions from the committee? Senator Bosn.

**BOSN:** Thank you. Ms. Kirk, can you tell me-- so right now, if I'm reading the language correctly, you would have the opportunity-- it says, "upon the victim's request" is one of the changes.

**MELANIE KIRK:** Yes.

**BOSN:** Would the victim make that request at the time that he or she submits the kit or submits to the examination or-- when would that-- because a lot of times, those circumstances of requesting would change over the course of 20 years.

**MELANIE KIRK:** So my understanding is that they're given a number--

**BOSN:** OK.

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**MELANIE KIRK:** --at that time. And so they could request it then, but then they could also call in later as they're working through their trauma and request that it be maintained.

**BOSN:** So it would be your-- if I'm understanding you correctly, they would be provided with information that this is going to be kept for 20 years. We will notify you unless you tell us not to, and you can tell us to notify you but change your mind and here's how you would do that.

**MELANIE KIRK:** Yes.

**BOSN:** OK. Thank you.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here.

**MELANIE KIRK:** Thank you.

**WAYNE:** Next proponent. Welcome.

**DON WESELY:** Mr. Chairman, members of the Judiciary Committee. For the record, my name is Don Wesely, D-o-n W-e-s-e-l-y, representing the Nebraska Nurses Association. And what's being distributed is a letter from Julia Keown, who is a member of the NNA. The o-- the other interesting thing about Julia is she's one of five forensic nurse examiners in Nebraska who carry dual certification for performing both adult and pediatric sexual assault exams in our state. So she's an expert. I wish she was here instead of me, and I bet you do, too. But I'm going to read just two paragraphs of this letter, and I, I found it very interesting. So Julia writes: There have been a multitude of DNA technology advances in the last decade, such as forensic genetic genealogy, familial DNA investigation, phenotyping and ancestral analysis that are assisting law enforcement in clearing decades-old sexual assault cases. Just last year, scientists proved that we have the technology to extract DNA from a human relative that was 2 million years old. Given this, it's-- certainly makes sense that sexual assault kits preserved under forensic conditions and stored for 40 years would produce effective and usable results. Sexual assault is a crime perpetrated by an assailant in search of power and control over another human being. By ensuring that survivors are kept apprised of the status of their cases and are given the power to choose to have their evidence kept twice as long under prior iterations of this law, we are further empowering survivors in Nebraska. This bill sends a message to survivors in Nebraska that, number one, we believe in them;

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number two, we take their cases seriously; number three, we want to assist in their healing journeys. For these re-- reasons, the Nebraska Nurses Association supports LB870. We ask the committee to advance the bill.

**DeBOER:** Thank you. Are there any questions from the committee? Senator DeKay.

**DeKAY:** Thank you. I don't quite-- on the timeline, on the 20 years plus the extra 20 years, is there a statute of limitation that ever comes into play on these or not?

**DON WESELY:** I'm trying to remember. I think we-- on sexual assault, I think we made changes on that so that-- but it, it's an excellent question. And we've ex-- we've changed those over the years and made them farther into the future, so. That's a good question. I don't know the answer.

**DeKAY:** Thank you.

**DON WESELY:** Mm-hmm.

**DeBOER:** Any other questions from the committee? I don't see any. Thank you so much for being here.

**DON WESELY:** Thank you.

**DeBOER:** We'll have our next proponent. Anyone else would like to testify in favor of this bill? Are there any opponents of this bill? Anyone like to testify against this bill? Is there any neutral testifying for this bill? OK. Senator Cavanaugh has waived closing, but I will tell you that there are 11 letters of support, 1 in opposition, and 1 neutral. And that will end our hearing on LB870 and bring us to LB1159 and our own Senator Ibach. Welcome to your Judiciary Committee, Senator Ibach.

**IBACH:** Thank you so much, Vice Chair DeBoer. Good afternoon, Chairman Wayne, Vice Chair DeBoer, and fellow members of the Judiciary Committee. As you know, I'm Teresa Ibach, I-b-a-c-h. And I am here presenting LB1159 for your consideration. LB1159 is a continuation of the work this committee and the Legislature undertook last year in making sure victims of crimes are notified in a timely manner when the person who perpetrated a crime against them applies for a pardon or commutation or if a pardon or commutation has been granted. Unfortunately, at the beginning of this legislative session, it came to my attention that a victim of a violent crime was not notified when



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the person who committed the crime against them applied for a pardon because the crime was not explicitly listed in the statute. My staff, with the assistance from the Governor's PO-- PRO team, combed through Chapter 81 to identify additional violent crimes that were inadvertently left out last year and which should be included. The expanded list of crimes in which a victim shall be notified, should LB1159 be enacted, include manslaughter, motor vehicle homicide, first-degree false imprisonment, assault by strangulation or suffocation, domestic assault in the first or second degree, child enticement by means of electronic communication device, sexual abuse by a school employee, sexual abuse of a protected individual, terroristic threats, and sex trafficking, sex trafficking of a minor, labor trafficking, or labor trafficking, trafficking of a minor. I hope you will support LB1159 and work with me to enact this into statute. This appears to provide additional victims the ability to know when the person who committed a violent crime against them is asking for or has received a pardon or commutation. With that, I thank you for your time. And I'm happy to answer any questions.

**DeBOER:** Are there any questions from the committee? I don't see any. Let's have our first proponent testifier.

**WAYNE:** Any pro-- sorry.

**MELANIE KIRK:** Sorry. [INAUDIBLE].

**DeBOER:** Welcome.

**MELANIE KIRK:** Thank you. Here we go again. My name is Melanie Kirk, M-e-l-a-n-i-e K-i-r-k. And I'm the legal director for the Nebraska Coalition to End Sexual and Domestic Violence. Good afternoon, Chairman Wayne and members of the Judiciary Committee. I'm testifying in support of LB1159 on behalf of the coalition and its network of 20 programs across the state that serve all 93 counties and are the primary service providers for domestic and sexual violence survivors. The coalition believes that all right-- all victims of crimes have the right to have systems information related to their victimization as well as the opportunity to provide input on related parole, pardons, or communication-- commutation proceedings. This information and subsequent decisions often factor into these victims' ability to keep themselves and their families safe. This is especially true as pardons on criminal cases restore an individual's ability to purchase firearms if they were previously prohibited by their criminal convictions. For domestic violence victims, this information, information is crucial, as women are five times more likely to be killed by an intimate

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partner who's abused them when that person has a firearm. In Nebraska, approximately 70% to 75% of DV-related homicides occur by firearm, and the majority of the killers had them legally. For these reasons, we believe the practice is a safety issue for victims and support the changes that LB1159 make towards notification of victims on pardons and sentence commutations.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**MELANIE KIRK:** Thank you.

**WAYNE:** Next proponent. Proponent? Seeing none. Any opponents? Opponents? Anybody testifying in the neutral capacity? Seeing none, would you like to close? Senator Ibach waives closing. There are 3 letters: 2 in support and 1 in neutral. And that'll close the hearing on LB1159. All right. I'll do mine.

**DeBOER:** OK. We are going to rearrange the order just a little bit, and we are going to proceed now to LB995 with Senator Wayne.

**WAYNE:** Good afternoon.

**DeBOER:** Welcome to your own committee, Senator Wayne.

**WAYNE:** My name is Justin Wayne, Senator Wayne. I represent Legislative District 13, which is north Omaha-- J-u-s-t-i-n W-a-y-n-e-- which is north Omaha and northeast Douglas County. This bill is a real simple bill. It's a shell bill. There is currently a court case pending under advisement with the Supreme Court that deals with deferred judgments. And so depending on how that court rules, we wanted to make sure we have a opportunity to fix anything if the court deems to be fixed in this matter, so.

**DeBOER:** Are there any questions for Senator Wayne? Senator Holdcroft.

**HOLDCROFT:** Pretend I'm not a lawyer and talk about what is a deferred judgment.

**WAYNE:** So deferred judgment is what we deemed-- 2018 I think is when it was, 2019-- we call it the poor's man pro-- diversion program. So Douglas County, Sarpy County, Lancaster County, we offer a lot of diversion programs. In Douglas County, Sarpy County, we have-- well, Douglas County in particular, we have drug court. Sarpy County has drug court. So we have a lot of other problem, problem-solving courts. And what has happened out in western Nebraska-- or, rural Nebraska is

we don't have a lot of the same resources. So they don't have those programs. So what we tried to come up with-- and we're one of-- before 2018 or '19, we were one of 4-- 5 states who didn't allow deferred judgments. So we came up with this concept. We negotiated with multiple-- AG, everybody, to figure out a deferred judgment for certain crimes. So once you are convicted, plead guilty, but you don't have these options of diversion and other things, this is a way for you to, in layman's term, go on probation for a period of time, and then that matter could be reduced or set aside. There is a challenge right now in the Supreme Court. And so it's just-- if the court comes back and says this is unconstitutional for X, Y, and Z, then this gives us the ability to address those issues if the court reads. The argument was heard last month. It's still under the court's advisement, so this is just a shell bill to-- see if we have to make any changes.

**HOLDCROFT:** Thank you.

**WAYNE:** Yup.

**DeBOER:** OK. Are there any other questions from the committee? I don't see any.

**WAYNE:** I think I have one person testifying, maybe two.

**DeBOER:** First proponent testifier. Welcome, Mr. Eickholt.

**SPIKE EICKHOLT:** Sorry. I was at another hearing and I heard they changed the order. Hi. My name is Spike Eickholt, S-p-i-k-e; last name is E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorney Association in support of LB995. And we want to thank Senator Wayne for introducing the bill. As Chair Wayne explained, this is a placeholder bill, essentially, depending on what the Supreme Court does with respect to the deferred judgment statute. Just to add to what Mr.-- or what Senator Wayne said. In 2019, the Legislature created the deferred judgment probation. And what that is now codified as a chapter-- or, Section 29-2292. And what it allows for: it simulates-- or, it mimics the drug court programs. It allows a person to either plead or be found guilty of a certain offense, and that person can then request to be placed on a special type of probation or deferred judgment probation. The judge can order a standard type of probation or tell the defendant to do a certain series of things, can set the term of probation, say, for a year or 18 months. And at the end of that term, if the defendant is successful, they can ask the judge to dismiss the case-- [INAUDIBLE] withdraw their plea and

dismiss the case, and then they don't have anything on their record. The advantage of that is-- it works similar to the drug court program. But the advantage of this is it provides another opportunity, if you will, for a person to avoid incarceration, to avoid a record. It does give the judge some more flexibility and the courts more flexibility to fashion an appropriate sentence for somebody. There are some offenses that are excluded. There's a case on appeal now in which a defendant was denied deferred judgment probation. They appealed it up, arguing that the judge was incorrect by not granting it. The Attorney General then assigned on appeal that not only should the judge not have granted it, but the whole statute is unconstitutional because it's an impermissible delegation of-- or, it's an impermissible infringement on the executive branch, on the le-- on the prosecutor, because you have somebody who is found guilty, and then ultimately, the judge can then dismiss that case after a person has been found to have committed all the elements of a crime. And that is a prerogative, according to the Attorney General, of the prosecutor alone. And they argued that the statute was unconstitutional. What this bill does, it says that once a person is found guilty, if they want to request deferred judgment probation, they have to do so within 10 days. And it is somewhat substantive because that was an issue on appeal. Because in that case that's under advisement now, the defendant did not immediately request deferred judgment probation at the time he pled, but did so a few days before sentencing. And so one of the issues that came up in oral argument, probably because the Supreme Court was looking for a way to perhaps not rule on the constitutional issue, is whether the defendant had waived that right and just waived his opportunity to even ask for deferred judgment probation. And therefore, he should not have gotten it anyway. So the court doesn't have to rule on the constitutional issue itself. So the bill does speak to that-- something that's actually on appeal. That may not be the constitutional issue, but--

**DeBOER:** Tha-- thank you, Mr. Eickholt.

**SPIKE EICKHOLT:** I'll answer any questions if anyone has any.

**DeBOER:** Any questions from the committee? Senator Holdcroft.

**HOLDCROFT:** Thank you, Vice Chair. How long is a typical deferred judgment?

**SPIKE EICKHOLT:** The law's only been about 4 years. They vary, and they're not used as much-- the judges in Lancaster and Douglas County don't impose a lot of these terms. I know they do in Sarpy County

some. There was one in Sarpy County that I remember that was 12 months. That was actually a law enforcement officer who was arrested and charged with, like, a disturbing the peace because some young kids were knocking on his door. He was found guilty of that and maybe and a misdemeanor assault. It really depends on the level and severity of the crime. As then-Senator Lathrop explained when the bill was being debated on the floor, the hope is to give those courts around the state that don't have a robust drug court program the opportunity to do something similar. So it would depend on the defendant's level of need. If it was someone who's really in need of some meaningful treatment, it can be longer than a year. The scope of the term of deferred judgment probation is the same, just like regular probation. And that's, that's up to 2 years for a misdemeanor or up to 5 years for a felony.

**HOLDCROFT:** So they're, like, on probation. And do they have to report to a pro-- probation officer and--

**SPIKE EICKHOLT:** Yes. All the standard conditions apply. They have to drug test. They have to report. They may have a curfew. They've got to work. They've got to pay probation fees. The only thing that's different with this is at the end of the term, they get to go back in front of the judge and ask to have the case dismissed.

**HOLDCROFT:** Thank you.

**DeBOER:** Thank you, Senator Holdcroft. Any other questions from the committee? I don't see any. Thank you, Mr. Eickholt.

**SPIKE EICKHOLT:** Thank you.

**DeBOER:** Next proponent. Anyone else like to testify in favor of this bill? Anyone like to testify in opposition? Opponents? Welcome.

**JORDAN OSBORNE:** Good afternoon, Chairman Wayne, Vice Chair DeBoer, and members of the Judiciary Committee. My name is Jordan Osborne, J-o-r-d-a-n O-s-b-o-r-n-e. I am an assistant Attorney General in the Criminal Appellate Section of the Nebraska Attorney General's Office, appearing today in opposition to LB995. And for just a background, it's been mentioned, this case that's on appeal, I represented the state in that case. I am aware, and Senator Wayne mentioned, that this is just sort of a placeholder bill. But I think it is helpful to understand how this statute and the proposed legislation operates. So pending before the Nebraska Supreme Court, the State v. Gnewuch, is the question of whether the statute is unconstitutional for violating

Nebraska's separation of powers clause. Since the Supreme Court is expected to issue a ruling, we would oppose any change before that is issued. In our view, the broader issue with deferred judgments is a constitutional one. The charging function in criminal prosecution is an executive branch function. 29-2292 permits the judiciary to exercise the power to dismiss valid criminal charges that have already been proven beyond a reasonable doubt without the consent and even over the objection of the prosecutor. This proposed change does not address that fundamental issue. It only addresses the timing of when a defendant must request deferred judgment. And on that issue, it does not remedy the statute's timing problem. Rather, it amplifies it. What a defer-- what a defendant is requesting in a deferred judgment is not only a deferral of the sentence, but also a deferral of the filing of the court's written order finding the defendant guilty. We understand the intention of LB995 to limit the time when a deferred judgment can be requested, and it would prevent a defendant from requesting deferred judgment on the eve of sentencing, which is what happened in the Gnewuch case. We appreciate that intention. However, we maintain that it's based on an incorrect premise in that it is permissible to seek a deferred judgment after an entry of conviction, whether that be after 10 days or 10 minutes. We maintain that is not permissible. Our position is that allowing a defendant the ability to request deferred judgment at any time after the entry of a judgment of conviction wrongly permits the untenable result of allowing defendants to unilaterally alter the terms of a plea agreement after a plea has been entered and as a conviction by the court. And more fundamentally, the statute undermines the charging authority of the prosecutor in a manner that violates our constitution. So we would respectfully request that you wait for the Supreme Court decision, not advance LB995 to General File. And I can answer any questions the committee may have.

**DeBOER:** Are there any questions from the committee? Senator Holdcroft.

**HOLDCROFT:** Thank you, Vice Chair DeBoer. I'm sorry I didn't catch which organization you were representing.

**JORDAN OSBORNE:** Nebraska Attorney General's Office, criminal appellate section.

**HOLDCROFT:** Thank you.

**DeBOER:** Thank you, Senator Holdcroft. Any other questions? Senator Bosn.

**BOSN:** Thank you. Would this-- is it your position that some of the concerns would be alleviated by having this be an agreement between the prosecutor and the defendant--

**JORDAN OSBORNE:** Yes.

**BOSN:** --before the court?

**JORDAN OSBORNE:** Yes. So just to explain the Attorney General's position: we do not oppose the concept of deferred judgments. This is an issue of drafting, of how the underlying statute is drafted, and then our opposition to the proposed legislation. That's a drafting concern as well. The constitutional issue is an issue of separation of powers because the underlying statute does not involve prosecutorial consent to participate with the deferred judgment that ultimately is going to result in the dismissal of charges if they successfully complete that supervision.

**BOSN:** Can you tell me what in the statute-- in addition to that potential solution you find troublesome?

**JORDAN OSBORNE:** Well, there are several issues in the statute that are problematic. Timing is something that was mentioned earlier. There's nothing expressed in the statute that indicates the timing. There's nothing that actually says, for misdemeanors, it's, it's up to 2 years; for felonies, it's up to 5 years for the amount of supervision. That was in the original version of the underlying legislation, but that was taken out, and it is not in the statute. So that's-- I, I mean, conceivably, somebody could put-- be put on deferred judgment indefinitely, potentially. There's no limitation. And then in terms of the other-- the listed limitation is very narrow. There's only 4 limitations. Three of them are largely misdemeanors. One is a mandatory minimum, which only applies in IA, I-- IC, and ID felonies and first-degree sexual assault of a child. So theoretically, somebody could be convicted of second-degree murder, participate in some supervision for a couple of years, and have that conviction dismissed. No conviction whatsoever following a murder incident over the objection of a prosecutor.

**BOSN:** Thank you.

**DeBOER:** Thank you, Senator Bosn. Any other questions from the committee? I don't see any. Thank you for being here.

**JORDAN OSBORNE:** Thank you.

**DeBOER:** Next opponent testifier. Anyone else who would like to testify in opposition of this bill? Next, we'll go to neutral testimony. Anyone want to testify in the neutral position? Seeing none, while Senator Wayne comes up, I will note that there was 1 letter in opposition to this bill. Senator Wayne for your closing.

**WAYNE:** Thank you. I do find it ironic that the current Attorney General, who voted for this bill in 2019, thought it was just fine in 2019. Second, it does-- our bill does address the time, but the, the-- again, the purpose of this is a shell bill to see what happens with the Supreme Court if anything does happen. And let me just be clear: the prosecutor doesn't have ultimate control after a finding of guilt. You can stand up as an attorney and ask for a mistrial. You can stand up for attorney and ask for a dismissal. Because even though the jury might have found it to be guilty-- Judge, we don't think they met their burden, and the judge can dismiss it. What the bill actually does is allows for the opportunity for the prosecutor to object, those arguments be heard, and ultimately, the judge decides. So we like judges' discretion sometimes and we like judges' discretion when it doesn't work in our favor. And I don't think it's a separation of powers issue. Judges do this all the time. I think the separation of powers is a different argument. But whether once the-- a sentence is produced, can they go back and change something? I think that's a different argument that was not raised. But it is what it is. Again, I'm not planning on moving this bill until that, that decision comes out. And if the decision comes out and says it's unconstitutional and there's no way around it, then the bill's dead. If the decision comes out and says it's fine, then everything the Attorney General just said was wrong, and they got to enforce the law the way the constitution says. If it comes out and says, there are some concerns that need to be addressed for these reasons, that's why this bill is here, to address those concerns. It's really that simple.

**DeBOER:** Any questions for Senator Wayne? I don't see any.

**WAYNE:** Thank you.

**DeBOER:** That ends the hearing on LB995. We'll now go back to LB977. No? We will now go to LB1236, which is also a Senator Wayne bill.

**WAYNE:** [INAUDIBLE]-- Senator Justin Wayne, J-u-s-t-i-n W-a-y-n-e. I represent District 13, which is north Omaha and northeast Douglas County. This is a very simple bill. It's a shell bill. LB50 is also in the court system. And so, not sure where that is at. So the easiest way is to introduce a bill that deals with LB50 that's



noncontroversial, which is the committee and change the date. That's all it is right now. We're seeing how the courts move. There are some committee-- subcommittees who are working on some things that may be able to produce some legislation this year still. And so we introduced a shell bill.

**DeBOER:** Are there any questions for Senator Wayne? We'll take our first proponent testifier. Anyone here to testify in favor of this bill?

**JASON WITMER:** Hi. I'm Jason Witmer, J-a-s-o-n W-i-t-m-e-r. I am a policy fellow for-- at the ACLU. And I'm coming to support the bill-- the ACLU supports LB1236. The United States has the highest incarceration wate-- rate in the world. In 2019, approximately 2.1 million people were in our adult correctional jails and prisons around the United States. Many thousands of people, disproportionately people of color, are cycled in and out of the state jails and prisons every day. Extreme sentencing laws and practices are keeping people in prisons for far longer than ever before. This is-- the result is that more people are spending more of their lives in the prisons in this point in U.S. history ever. And how did we get there? Decades of tough-on-crime policies that had left this country with a criminal legal system riddled with mandatory minimum sentences, three-strike-style enhancements, and restrictions on the release that keep people in prison for decades, if not for the rest of their life. The Sentencing Reform Task Force is taking a small but meaningful step in addressing these realities in Nebraska. As I'm sure this committee knows, the Nebraska Criminal Justice Reinvestment Working Group's report, released in 2022, recommended various sentencing variations-- alternatives, such as-- alternative-- expanding alternative courts, doing away with or at least discouraging these mandatory sentencing minimum practices, maximum practices. The goal was to reduce overcrowding in our understaffed prisons via smart justice methods with the interests of all Nebraska. The recent creation of the Nebraska Sentencing Reform Task Force also aims to identify and recommend changes to the laws and practice that impact our criminal legal system. In doing so, they must submit another-- oh, sorry. In doing so, they must submit another report in November of this year, I believe, and-- with a termination-- a termination date of that committee in December. And what this is asking, as Senator Wayne has said, is for that date to extend to December of next year, 2025. The ACLU supports this adjustment of that time with the interest of what this work will produce. My only recommendation-- ACLU's only recomm-- recommendation for this is to also add that, in November of 2025, that there would be another report so that we can see what the

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recommendations were, how they were implemented, what the implementations may have done, and also, of course, if there's any other work that they have done or has impacted this, so. With that, I'm willing to answer any questions that I'm able to or follow up with you. However, I would say we do have Spike here, and he is a font of information.

**DeBOER:** Are there any questions for this testifier? I don't see any. Thank you so much for being here.

**JASON WITMER:** Thank you.

**DeBOER:** Next proponent testifier.

**SPIKE EICKHOLT:** Good afternoon, Chair Wayne and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association. Tom Riley, who is actually on the Sentencing Reform Task Force, was going to be here, but he had to be in court. So he asked me just to testify on the record. I have to admit that I didn't realize it was a shell bill. I thought it was actually just extending the task force for a year, which we do support. Because we strongly encourage this committee, the Legislature, to really meaningfully and, in a continual process, kind of look and appreciate your criminal code, the sentences that are imposed, the sentences that could be imposed, and that sort of thing. I know that Se-- that Mr. Riley serves on a subcommittee with Senator Bosn. I know he enjoys that. Hopefully, Senator Bosn does as well. And I know they've talked about some ideas that the committee may have heard before. I guess it would probably be inappropriate for me to talk about it because I don't know if they're necessarily going to be adopted by the task force. But there is a lot of utility, in my opinion, to have the people who are involved in the criminal justice system meet together in a formal-- or at least somewhat formal setting and just kind of talk about levels of punishment for different crimes, the current crimes that we have on the books, whether new crimes are even necessary-- and if so, which ones actually are. And-- because it does have an impact, not just in the criminal justice system, but the overall state budget, things that you make and the decisions that you're forced to make because of the budget, limitations that you have because of the commitments that you have financially to the new prison that you're making, staffing the current prisons, and staffing the new prison. All these things are interrelated, and we encourage this committee to at least keep some sort of a mechanism to look at that in a meaningful and comprehensive

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and forward-looking way. That would make for good policy. I'll answer any questions if anyone has any.

**DeBOER:** Are there any questions from the committee? I don't see any. Thanks, Mr. Eickholt.

**SPIKE EICKHOLT:** Thanks.

**DeBOER:** Any other proponent testifiers? Is there anyone here to testify in opposition to the bill? Is there anyone here to testify in the neutral capacity? I don't see any. I will announce that there are no letters for the record. That will end our hearing on LB1236 and bring us to LB977 and our own Senator Blood.

**BOSN:** Did you give him a chance to close? He didn't get a chance to close--

**DeBOER:** I didn't give him a chance to close. He waived closing.

**BOSN:** I thought maybe he'd let Senator Blood do it for you.

**WAYNE:** That's probably more effective.

**DeBOER:** He looks like he was pretty well-settled in. I, I figured--

**BLOOD:** Senator Wayne--

**DeBOER:** --he was closing.

**BLOOD:** --waives closing.

**BOSN:** There you go.

**DeBOER:** Senator Wayne retroactively waives closing.

**DeKAY:** How come he didn't have to spell his name?

**BLOOD:** So it's on record.

**DeBOER:** For the record.

**BLOOD:** Yes.

**DeBOER:** He did.

**BLOOD:** Yes.

**BOSN:** This is how efficient we are.

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**BLOOD:** It's true.

**BOSN:** Finish each other's sentences.

**WAYNE:** Welcome to your Judiciary Committee.

**BLOOD:** Thank you, Chair--

**WAYNE:** I will let you close. Don't worry.

**BLOOD:** Thank you, Chairperson Wayne and members of Judiciary Committee. My name is Carol Blood, spelled C-a-r-o-l B-l-o-o-d. And I represent Nebraska Legislative District 3, which comprises western Bellevue and eastern Papillion, Nebraska. Today, I bring forth LB977, to prohibit discrimination based upon military or veteran status. Colleagues, the state of Nebraska is one of the most veteran friendly states in the nation. This is something that shouldn't surprise anyone here. But what might be surprising is that we as a state don't consider military members to be a protected class. The Department of Defense believes it's important to ensure military members and their families are allowed to live lives of decency while still in service. The amendment added to this bill, which you should have in front of you, ensures that family members and other beneficiaries are included as well. Now, there are many possible issues that can occur due to a military member in their family not being considered as a protected class, such as denying employment to a job applicant because they are a military spouse, refusing to provide accommodations for service members and veterans with post-traumatic stress disorder, and military family members who may have sought mental health services, charging service members or their families higher security deposits for rental properties as a condition of getting a lease, requiring that service members or their families waive federal housing protections from the Servicemembers Civil Relief Act as a condition of getting a, a lease, and refusing to rent to members of the reserve and guard component out of concern that the tenant will be deployed. States can add military family status as a class protected in state employment, education, housing, public utilities, and civil rights laws, and take actions to supplement the employment protections under the Uniformed Services Employment and Reemployment Rights Act. This fits into the broader mission to support military families, and is a high priority for the Defense Department to help ensure resiliency and retention for active duty service members. Now, some of you remember that this is my second time introducing this type of legislation, but I believe it's even more important now than ever that we get this legislation passed and help protect our military families. I appreciate your time

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today, and I'm happy to answer any questions you may have. I would like to add that the things that I talked about are actual incidents that have happened to our military members and their families. They're not just examples of what-ifs. They're things that have actually happened. So that's why this legislation has come forward.

**WAYNE:** Any questions from the committee? Seeing none, thank you. Any pro-- first, we'll start with proponents. Proponents. Seeing none, opponents. Oh, proponent. We got one. Welcome.

**JOSEPHINE LITWINOWICZ:** Welcome, Chairman Wayne, members of the committee. My name is Josephine Litwinowicz, J-o-s-e-p-h-i-n-e L-i-t-w-i-n-o-w-i-c-z. Legal name: Vincent. And so I just wanted to say I'm very much in favor of this bill. My grandfather, you know, escaped Tsarist Russia to become a citizen after World War I. And my dad was a veteran, and my brother. So let me just-- let me tell you how much I, I, I, I, I am a proponent of this bill. I, I can relate directly from the discrimination based upon who I am. I mean, I, I get all kinds of gestural violence. I mean, it's intense. It's thick. It's everywhere. And-- where was I? Because if you-- I have a memory issue. And if you could refresh me [INAUDIBLE] pops in my head again.

**WAYNE:** You're talking about your grandpa?

**JOSEPHINE LITWINOWICZ:** Huh?

**WAYNE:** You're talking about your grandpa, I believe.

**JOSEPHINE LITWINOWICZ:** Yeah. Oh, OK. Yes. And I just wanted to say how much is because I've been discriminated against. And-- I mean, it's on par with anything. When, when the former Speaker of the Legislature, Mike Hilgers, current Attorney General-- I'm, I'm saying this as a fact. So, you know, he can jump in whenever he wants. He discriminated against me based upon disability, because that's a protected class. But he targeted me. And I'm saying he targeted me because of who I am, and I can prove that. So I just wanted to-- I just-- you know-- I got a good example. And-- so I, I guess I'm going to-- it, it's such a good comparison. It really is, if you think about it, and if you think about what we put up with. Because it's amazing. And in-- just walking in this building. He got, he got all kinds of faces until you get where you go. Anyway, have a good one.

**WAYNE:** Thank you. Any questions from the committee?

**JOSEPHINE LITWINOWICZ:** I bet not.

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**WAYNE:** Thank you for being here again.

**JOSEPHINE LITWINOWICZ:** All right. Thanks a lot.

**WAYNE:** Next proponent. Seeing none, moving to opponents. Any opponents? Anybody testifying in the neutral capacity? Welcome.

**PAULA GARDNER:** Thank you. Good afternoon, Chairperson Wayne, members of the Judiciary Committee. My name is Paula Gardner, P-a-u-l-a G-a-r-d-n-e-r. And I'm the executive director of the Nebraska Equal Opportunity Commission. I'm here to testify in a neutral capacity on LB977. As you know, LB977 would add the protected bases of military or veterans status to three of the laws we enforce: the Nebraska Fair Employment Practice Act, the Nebraska Fair Housing Act, and the Public Accommodations Law. I want to assure the committee that our agency is capable of processing cases under the language this bill proposes. While this bill does expand the possible universe of claims we take, the nature of the work is not qualitatively different from the other investigations conducted by the agency. I have no hard data to provide regarding how many claims we are likely to field. However, I can tell you that, anecdotally, we do have some inquiries about claims on the basis of military or veterans status each year. Some of those individuals identify other bases on which we can currently file-- for example, disability. In those situations, there is a basis identified under the current state and federal civil rights laws, and therefore we're able to investigate them and receive reimbursement for those investigations through our work-share agreements with the EEOC and HUD. For those instances where the only basis for filing would be military or veterans status filed under employment, housing, or public accommodation laws, we believe that the NEOC at this time can absorb any additional work generated by this bill into our existing workload. And as a result, we submitted a statement of no fiscal impact. So if you have any questions, I'd be happy to try to answer them or you can contact me later if you think of anything after this.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. Next neutral testifier. Seeing none, Senator Blood, would you like to close? Welcome back.

**BLOOD:** Thank you, Chair. I would just like to point out that I don't believe we have any opposition.

**WAYNE:** Correct.

**BLOOD:** And we do have good support, both from agencies and individuals. I always remind everybody-- not everybody is old enough to remember that-- but some of us can remember when Vietnam veterans came back and the level of discrimination that happened to many of them. It should never have happened. As we've seen throughout history in many, in many degrees-- but right now, we're talking about military. And I think that we often forget that these people move every 2 to 3 years. And they have to change their housing. They have to change where they go to church. They have to change schools, their doctors, their friends, their neighbors. It's really tough to be part of a military family, but yet they do it. They keep us safe. And they persevere. And they make our communities so much richer with what they bring to our communities. And so I really hope that you seriously consider this bill because it is, again, a priority for the Department of Defense Military Families Office. And it's another small thing that we can do to move Nebraska forward to be number one in the United States when it comes to military and military families.

**WAYNE:** Any other-- any questions? Seeing none, thank you for being here.

**BLOOD:** Thank you, Chair.

**WAYNE:** There are 6 letters: 5 in support and 1,700 in opposition-- no-- zero in opposition and 1 neutral.

**BLOOD:** Thank you.

**WAYNE:** And that'll close the hearing on LB977 and today's hearings.