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Judiciary Committee January 23, 2025  
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**BOSN:** Welcome to the Judiciary Committee. Oh, I'm sorry. Were you ready? OK. Welcome to the Judiciary Committee. I am Senator Carolyn Bosn from District 25, which is Lincoln, Lancaster County, including Bennet. I serve as the chair of this committee. The committee will tentatively take up bills in the order posted. We have a couple that may need to be moved around. This is a public hearing and it is your opportunity to be part of the legislative process and express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill it out completely. When it is your turn to come forward to testify, give the testifier sheet to the page or the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also yellow sign-in sheets on the back table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, anyone wishing to speak in the neutral capacity. We will finish with the closing statement by the introducer if they wish to give one. We will be using a 3-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the light comes on-- when the-- excuse me-- when the yellow light comes on, you will have 1 minute remaining and the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard, it is just part of the process as senators may have bills to introduce in other committees. A few final items for today's hearing. If you have handouts or copies, please bring 12 copies-- of your testimony, please bring 12 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room and may be cause for you to be asked to leave. Finally, committee procedures for all committees state that written position statements on a bill to be included in the record must be submitted by 8 a.m. on the day of the hearing. The only acceptable method of submission is via the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). Written position letters will be included in the official record, but only those

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testifying in person before the committee will be included on the committee statement. Also, you may submit a position comment for the record or testify in person, but not both. I will now have the committee members with us today introduce themselves starting on my left.

**HALLSTROM:** Thank you, Madam Chairman. Bob Hallstrom, representing Legislative District 1, including the counties of Otoe, Johnson, Richardson, Nemaha, and Pawnee.

**STORM:** Good afternoon, everybody. Senator Jared Storm, District 23, which is all of Saunders, most of Butler, and all of Colfax County.

**STORER:** Tanya Storer, District, 43, 11 counties up in north central Nebraska.

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

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

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

**ROUNTREE:** Victor Rountree, District 3, parts of Bellevue, Papillion, and middle part of Sarpy County.

**BOSN:** Also assisting the committee today to my left is our, is our legal counsel Tim Young. And to my far right is our committee clerk Laurie Vollertsen. Our pages for the committee today are Ellie Locke. Is that right?

**DEMET GEDIK:** She's not here.

**BOSN:** What's your-- and your name?

**DEMET GEDIK:** Demet Gedik.

**BOSN:** Demet Gedik. Alberto Donis, Donis, Donis, is it? OK. Ayden Topping. We will begin today with a combined hearing on LB5 and LB195, which are very similar bills. Both Senator Meyer and myself will open on our bills, followed by proponent, opponent, and neutral testimony. If you plan to testify, you will need to fill out a green testifier sheet for the bill you are testifying on or both bills and state when you-- that when you come forward. If you are testifying on both bills,

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you do need a testifier sheet for each. This will help us keep the official record. With that, we will begin the hearing and I will turn the committee over to Vice Chair Senator DeBoer.

**DeBOER:** Thank you, Senator Bosn. So we will now begin the joint hearing on LB5 and LB195. Senator Bosn, we'll begin with your opening.

**BOSN:** Thank you, Vice Chair DeBoer, and good afternoon to the members of the Judiciary Committee. For the record, my name is Carolyn Bosn, C-a-r-o-l-y-n B-o-s-n. I represent District 25. LB5 allows for an opioid antagonist approved by the federal-- excuse me, the Food and Drug Administration for usage in Nebraska as a treatment for an opioid overdose. Senator Meyer also introduced LB195, and it essentially does the same thing that my bill does. Our plan at this point is that once we've both worked on these bills, we would proceed with his bill because they accomplish the same thing. So for those reasons, we've collaborated together and asked for the joint hearing. I thank you for your time and would be happy to answer any questions now or after the conclusion of both of our bills.

**DeBOER:** Are there any questions for Senator Bosn? I don't see any. Thank you. Now we'll ask Senator Meyer to come up and introduce his LB195. Welcome, Senator Meyer.

**MEYER:** Thank you, Vice Chair DeBoer. My first presentation in front of the committee, so I still have my training wheels on, so please bear with me. I appreciate the opportunity to address the committee. Good afternoon to all the members of the Judiciary Committee. I am Senator Glen Meyer, District 17, G-l-e-n M-e-y-e-r, and I represent Legislative District 17 in northeast Nebraska. And I'm here today to introduce LB195. According to the National Center for Health Statistics, approximately 82,000 Americans died of an opioid overdose in 2022. LB195 will improve access to opioid overdose, overdose reversal medications by updating the statutory language to include the broader term "opioid overdose reversal medication." This change in the statutory language will allow Nebraskans wider, less expensive, and more efficient access to the lifesaving drugs that can reverse the effects of an opioid overdose. As it currently stands, Nebraska state statutes only allow for administration of the brand name medication Naloxone in our state's standing order. Since the enactment of the original legislation, the market has expanded. Generic opioid, opioid overdose reversal medications have now become federally approved and

are widely available. As a result, it is time to expand the scope of the standing order by including other medications to be administered which mirror Naloxone. For example, Narcan is the first generic Naloxone hydrochloride nasal spray and was approved by the FDA on April 19 of 2019. By including generic prescriptions of Naloxone in our state standing order, more lives will be saved. Following my testimony today, Drs. Janousek and Donovan, from the Department of Health and Human Services, to further expand on the technical aspects of this bill, how the language of my bill will fit better with the state statutes and the standing order. The Boy Scout motto is: be prepared. That is why I carry Naloxone in my truck at any-- for, for the opportunity to save a life and to reverse the overdose effects of, of an opioid. By advancing this bill to the floor, the members of the Judiciary Committee will be taking an important step toward saving lives in Nebraska. I am happy to answer any questions regarding the need of this legislation.

**DeBOER:** Thank you, Senator Meyer. Are there any questions for Senator Meyer? I don't see any at this time. Thank you so much. Are you going to be here for your closing?

**MEYER:** I am.

**DeBOER:** Thank you.

**MEYER:** Thank you.

**DeBOER:** We will now take our first proponent testifier. If you are here to testify in favor of either LB5 or LB195 or both, now is your chance.

**THOMAS JANOUSEK:** Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. My name is Dr. Thomas Janousek, T-h-o-m-a-s J-a-n-o-u-s-e-k, and I'm the acting director of the Division of Behavioral Health in the Department of Health and Human Services. I'm here today to testify in support of LB195 and LB5. Nebraska Revised Statute 28-470 of the Uniform Controlled Substances Act outlines protections from administrative action or criminal prosecution for health care professionals, family members, emergency responders and bystanders who would need to administer Naloxone to reverse an opioid overdose. LB195 modifies language in the Uniform Controlled Substances Act to change the term to Nalox-- change the term "Naloxone" to a more

generalized term of "opioid overdose reversal medication." Naloxone is currently the most widely known and utilized opioid overdose reversal medication, but it is not the only option available now, nor will it necessarily remain the gold standard in the future. The development of new medications and delivery mechanisms, such as Nalmefene or other emerging reversal medications, could provide lifesaving benefits in situations where Naloxone may not be the most effective or accessible option. The proposed language allows the statute to accommodate these innovations without requiring further legislative amendments. Additionally, the term "opioid overdose reversal medication" is broader, ensuring that all effective FDA-approved medications can be utilized in combating the opioid crisis. This is particularly important for underserved and rural communities where limited access to medical resources-- excuse me-- medical resources can mean the difference between life and death. By allowing a wider array of reversal medications, the law empowers communities to implement the most appropriate solutions for their unique needs. Moreover, this language aligns with the principles of public health evidence-based practices. It removes barriers to accessing lifesaving medications and sends a strong message to health care providers, emergency responders, and the public that the law is adaptable and responsive to the changing land-- landscape of opioid overdose intervention. We respectfully request that the committee advance one of these bills to the General File, preferably with the broader opioid overdose reversal medication language. Thank you for your time and I'd be happy to answer any questions.

**DeBOER:** Thank you very much. Are there questions for this testifier? We'll begin with Senator Holdcroft.

**HOLDCROFT:** Thank you, Vice Chair DeBoer. And thank you, Dr. Janousek, for testifying today. I just wanted to know, are there any adverse effects from these opioid antagonists if the individual is not having an overdose?

**THOMAS JANOUSEK:** We don't typically see adverse effects, but I'm going to allow Dr. Donovick to comment after me in regards to some of the more clinical aspects of the medications.

**HOLDCROFT:** OK. Thank you.

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**THOMAS JANOUSEK:** Yep.

**DeBOER:** Thank you, Senator Holdcroft. Senator Storer or Storm.

**STORER:** Too close.

**STORM:** Thank you. Thank you, Senator DeBoer. Yeah, is-- so is this a generic form of, like Narcan is, like, the name brand form of this?

**THOMAS JANOUSEK:** Yes, I believe so. So it's-- what it is, is Narcan is the more-- I'm sorry, I think-- I believe Naloxone is the more generic term. But Narcan is, I believe, the name brand. But it is like an over-the-counter alternative.

**STORM:** Exact same ingredients?

**THOMAS JANOUSEK:** I can't comment on the clinic-- the chemical nature of them, but they are very similar.

**STORM:** Then what about cost? Is the, is the cost less for the state?

**THOMAS JANOUSEK:** Yeah, I believe they're both very similar. A lot of our Narcan and Naloxone that we offer through the state is covered through our federal funds with our state opioid response grant. So we do cover a majority of all the costs with federal grant dollars.

**STORM:** OK. Thank you.

**DeBOER:** Thank you, Senator Storm. Senator Hallstrom.

**HALLSTROM:** Yes. Thank you, Dr. Janousek. Just a technical question. My reading of the bill seems to indicate that it is only prescribed by a health care professional. Are there over-the-counter products that can be used to provide benefits and lifesaving measures?

**THOMAS JANOUSEK:** Yes, there are. And I'll have, like I said, Dr. Donovan talk about some of the over-the-counter alternatives and the clinical elements.

**HALLSTROM:** Would it be your opinion that those over-the-counter alternatives should be covered under this so that we wouldn't necessarily require a prescription from a health care professional?

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**THOMAS JANOUSEK:** Yes, that would be correct. This-- the language will broaden it open to other alternatives besides just simply Naloxone.

**THOMAS JANOUSEK:** Well, I understand the language that's added, but there's also a restrictive aspect of prescribed by a health care professional. And we need to presumably change that as well if we were going to have over-the-counter medications?

**THOMAS JANOUSEK:** I believe that's related to the standing order that DHHS renders. I know this-- the, the law that's written in here for that to be modified through LB195 or LB5 is strictly about the protections for individuals administering the drug.

**HALLSTROM:** OK. Thank you.

**THOMAS JANOUSEK:** Yep.

**DeBOER:** Thank you, Senator Hallstrom. Other questions for this testifier? Thank you so much for being here.

**THOMAS JANOUSEK:** Thank you.

**DeBOER:** We'll have our next proponent for LB5 or LB195 or both. Welcome.

**ROGER DONOVICK:** Good afternoon, Chairwoman Bosn, the member-- and the members of the Judiciary Committee. My name is Dr. Roger Donovan, R-o-g-e-r D-o-n-o-v-i-c-k. I am the executive medical officer of the Department of Human Health-- Health and Human Services, and I'm here to testify in support of LB195 and LB5. Thank you for the opportunity to provide testimony in support of this critical legislation. The proposed bill will expand civil and criminal immunity to individuals and organizations who administer or distribute opioid overdose reversal medications in good faith. This bill will significantly reduce barriers to lifesaving interventions and help combat the opioid overdose epidemic in the state of Nebraska. The opioid crisis is a public health emergency and is one of the most pressing public health issues in the United States. According to the Centers for Disease Control and Prevention, more than 80,000 people died from opioid overdose in 2023 with synthetic opioids like fentanyl driving most of these deaths. Opioid overdose deaths are a growing concern in Nebraska. In 2022, 260-- 206 people died of drug overdose and 112 of these deaths were opioid related. Immediate administration of opioid

overdose reversal medication that rapidly reverses opioid overdoses can prevent many of these fatalities. Opioid overdose reversal medications are safe and effective medications. These medications work by binding to opioid receptors in the brain and reversing the life-threatening effects of opioid toxicity. They are included in the World Health Organization's List of Essential Medicines and recommended by the CDC and Substance Abuse Mental Health Services Administration as a key tool to prevent overdose deaths. Furthermore, opioid overdose reversal medications have no abuse potential and are harmless if administered to somebody who is not experiencing an opioid overdose. Therefore, there is no risk in making opioid overdose reversal medications more widely accessible encourage-- and encouraging its use in emergencies. The opioid crisis requires bold, evidence-based solutions. Clinical research on medications that reverse the effects of opioids continues to expand. The term "opioid overdose reversal medication" is a broad term that allows for coverage of future opioid reversal agents that are not in the opioid antagonist therapeutic class. If the term "opioid antagonist" is used, it limits any bill to the coverage of drugs only within that class and would require a new bill to expand coverage to any future therapeutic classes that are designed to reverse the effects of opioids. Naloxone and Nalmefene are both generics and their inclusion in any bill language does not limit coverage to only those drugs, nor does it prohibit coverage to generic or brand drugs. We respectfully request the committee advance these bills to General File to help us reduce opioid-related deaths across our communities. Thank you for your time and consideration and I would be happy to answer any questions on these bills.

**DeBOER:** Thank you very much, sir. Are there questions for this testifier? Senator Storer.

**STORER:** Yes. Just for clarification. So is there any, is there any preference to the language opioid antagonist versus opioid overdose reversal medication?

**ROGER DONOVICK:** Yeah. So the preference would be of the more comprehensive term, which would be the opioid overdose reversal medication.

**STORER:** OK. Thank you.



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**DeBOER:** Any other questions? I have one for you. So I just wanted to clarify and highlight because I think you said that there are no adverse effects to someone who's been given an opioid, opioid overdose reversal medication that are not currently experiencing opio-- opioid overdose.

**ROGER DONOVICK:** Overdose. Yes.

**DeBOER:** Yes.

**ROGER DONOVICK:** Yes. So there's some mild side effects that would-- may happen with one, two doses, things like dizziness, headache, maybe some stomach upset, GI upset, things like that. But in terms of, you know, longer term, more serious effects, no.

**DeBOER:** OK. Are these drugs-- the opioid overdose reversal drugs, are those ones known to have allergy implications, anaphylaxis, that sort of thing? Could those ever be something that happens?

**ROGER DONOVICK:** You know, like any, any medication on very rare occasions, you know, there could be some sort of allergic reaction.

**DeBOER:** OK.

**ROGER DONOVICK:** Yes.

**DeBOER:** All right. Thank you. That seems to have spawned another question. Senator Hall--

**HALLSTROM:** Yeah, just by way of clarification.

**DeBOER:** Senator Hallstrom.

**HALLSTROM:** Thank you. Dr. Janousek, I think, mentioned in response to my question that maybe an executive order or something of that nature. I just want to make sure the committee is clear. Are we currently authorized to administer both prescribed and over-the-counter medications for this type of situation?

**ROGER DONOVICK:** Yeah, so there's a state standing order that we have that where people can go into pharmacies and get the medication. Naloxone specifically.

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**HALLSTROM:** And so if this statute and, and that order-- that standing order is broad enough to be expansive as we're providing under this statute?

**ROGER DONOVICK:** Yeah, and-- so I think that, that the standing order allows for Naloxone. Right now, the language in the standing order is Naloxone. This has to do with, you know, the, the other protections around, you know, bystanders administering it.

**HALLSTROM:** But if this law then with regard to the immunity only applies to prescribed and we can administer over the counter, an argument would be made, I guess, that we ought to make sure that both prescribed opioid overdose types of issues and over-the-counter medications should both be covered.

**ROGER DONOVICK:** Yeah. I mean, I-- so I think that some of this is really planning for a future with drug development, things like that. There may be other agents that are brought in-- into play in, in terms of intervening in terms-- opio-- opioid-- in opioid overdose situations. And, you know, right now, the one that's most widely used and really the only one that's used regularly is Naloxone. But in the future, that could change. There is an FDA approval on something called "Nalmefene." But because of the nature of that drug, you know, particularly the half [INAUDIBLE], it's not really-- there, there hasn't-- there's not a place for it at this point in terms of, you know, regular use by bystanders.

**HALLSTROM:** So-- and would you agree then that it's important to have as broad a category--

**ROGER DONOVICK:** Yes.

**HALLSTROM:** --as possible for the patient, quote unquote, and also the immunity applied broadly as well for the person administering it?

**ROGER DONOVICK:** Yes.

**HALLSTROM:** OK. Thank you very much.

**ROGER DONOVICK:** Yes. Yes. Because in the, because in the future, there may be more, you know, other agents that we, we, we want to look at and be able to use.

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**HALLSTROM:** Thank you, Doctor.

**DeBOER:** Thank you, Senator Hallstrom. So I have another question for you that that just brought up. So if there are over-the-counter medications which are developed in the future, those, I suspect, would be somewhat widely available to bystanders that might be around. And if what we do is in this legislation, whatever it ends up looking like, eliminating liability for those bystanders to be giving that out. Do you have confidence that that will-- that new medication that gets developed over time will also similarly be nonharmful to folks not experiencing opioid over-- overdose?

**ROGER DONOVICK:** So in order to get to that point, you know, it would have to go through the whole FDA approval process first. And then in order to get to go, you know, go through-- it would have to go through other processes to be done over the counter. And, you know, even at this point, like with, with Naloxone, there, there's a standing order. But other than that, you would need a prescription for it. So that there would have to be things that were FDA approved and then, you know, prescribed by a physician, you know, physician, a provider. Yeah.

**DeBOER:** OK. Thank you. Senator McKinney has a question.

**McKINNEY:** Thank you, Vice Chair DeBoer. On the topic of expanding this past health care professionals, I think Senator Hallstrom is on to something because in Douglas County, the Douglas County Health Department has placed vending machines with health care products across the county, and they have Narcan in those. So I think you're, you're onto something there to make sure we're all encompassing of everybody just for that reason, so.

**ROGER DONOVICK:** Yeah.

**McKINNEY:** Yep. So thank you.

**DeBOER:** All right. Thank you, Senator McKinney. Other questions? Thank you very much for being here.

**ROGER DONOVICK:** Thank you.

**DeBOER:** I'll take our next proponent for LB5, LB195, or both. Any other proponents? We'll next switch to opponents. Is there anyone who

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would like to testify in opposition to either LB5 or LB195? I'll now look for neutral testimony. Is there anyone who would like to testify in the neutral position on LB5 or LB195? I don't see any so we'll have Senator Bosn come up to close on LB5 and then we'll proceed to Senator Meyer on LB195. But while Senator Bosn is getting situated, I will note for the record that there were seven letters in support of LB5, zero opponents, and no neutral. In LB195, there were four proponents, no opponents, and zero neutral. Senator Bosn.

**BOSN:** Thank you, Vice Chair DeBoer. So in listening to the testimony today, I think everybody kind of understands this comes down to the use of the word "antagonist" versus "opioid reversal medication." I have no strong preference, but based on the testimony that was given, I think it does make sense to use something broader, more encompassing that can carry us forward. The language was brought to me by a company that had passed legislation similarly in other states, and so that's where the language came from. Part of the reason for continuing this hearing rather than withdrawing it was we had already filed the bill, had it set for hearing, and had a number of letters of support. So I would ask everybody in supporting LB195, which I plan to do, to also consider the letters the individuals took time to submit on behalf of LB5. With that, I will answer any questions.

**DeBOER:** Are there any questions for Senator Bosn? I don't see any. Senator Meyer, will you please come up and give your closing on LB195.

**MEYER:** Thank you, Vice Chair DeBoer. I would waive closing. I think Senator, Senator Bosn covered it adequately, and I want to thank the committee for their time this afternoon. So thank you very much.

**DeBOER:** OK. Are there any questions? Thank you for being here. That end-- oh, I didn't see that. Senator Hallstrom.

**HALLSTROM:** Thank you. Senator, just wanted to make sure, are you open to discussing a potential amendment to make sure that the immunities that are already in existing law will apply to the broadened categories that we have under, under this bill?

**MEYER:** Certainly.

**HALLSTROM:** OK.

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**MEYER:** Absolutely.

**HALLSTROM:** Thank you.

**DeBOER:** Thank you, Senator Hallstrom. Any other questions? Now, I don't see any more. Thank you, Senator Meyer, for being here and for your first bill. You did a great job. So--

**MEYER:** I appreciate your time. Thank you very much.

**DeBOER:** Absolutely. That ends the hearing on LB5 and LB195. So we will now get ready for our next hearing on LB184 and Senator DeKay.

**BOSN:** Senator DeKay, you may begin.

**DeKAY:** Thank you. Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. For the record, my name is Senator Barry DeKay, B-a-r-r-y D-e-K-a-y. I represent District 40 in northeast Nebraska and I am here today to introduce LB184. I am introducing LB184 in order to try to put more guardrails in place on the sale of nitrous oxide in this state. This bill would do three things. First, LB184 would prohibit the sale or distribution of a product containing nitrous oxide at a tobacco speciality store. Second, the bill would prohibit a person holding a tobacco license from selling or furnishing a product containing nitrous oxide via online sale. I will add that I do have an amendment, AM21, which limits this provision to only to apply to licensed tobacco specialty stores in order to not inadvertently ban the online sale of whipped cream dispensers and other similar products at tobacco stores. Third, this bill would prohibit a person from selling or distributing an object that is specifically designed for inhaling nitrous oxide for recreational purposes, or that the person's nose will be used to inhale nitrous oxide for recreational purposes, like the canisters in combination with balloons or regulators that allow persons to inhale straight from the container. I also did consult with the Attorney General's Office with this bill regarding language related to deceptive trade practices and consumer protection. How did this become a problem? Nitrous oxide gained popularity for three reasons: Users can purchase nitrous oxide from legal merchants. Nitrous oxide canisters have general approval by the Food and Drug Administration and are, therefore, mistakenly associated with being safe to consume. And number three, many nitrous oxide users have used nitrous oxide at the dentist office. However, a general application of

nitrous oxide is mixed with oxygen, unlike the nitrous oxide found in stand-alone canisters. These reasons cause individual consumers of nitrous oxide to trivialize the harmful effects that the drug may have on them. Restricting the sale of these products to some extent would raise awareness about the harmful, harmful effects caused by whippets. So why the tobacco specialty stores? Why the smoke and vape shops? Nationally, there is a growing trend of nitrous oxide propellant products being sold in vape stores and smoke shops across the country, including in Nebraska. I had some conversations with Senator Hughes during the interim and I was informed that she and the Department of Revenue found several liter-sized flavored nitrous oxide gas canisters when she observed a couple of NDOR vape shop inspections in and around Lincoln last year. She has a fair-- she has been fairly vocal about her own feelings. The increasing use of nitrous oxide as an inhalant is detrimental to public health and its use is being pushed toward developing minors. For example, one product that emerged last year was Galaxy Gas, which was marketed as a flavored whipped cream propellant. I have handed out a picture of what this is. This picture was taken last weekend at a vape store in Nebraska, and those canisters are on sale for \$69.99. The manufacturers of these canisters say that this product is intended exclusively for culinary use for flavored whipped cream. But these colorful and bright packages, large canister sizes, and food flavoring demonstrates a deliberate effort to encourage misuse of their product. I have yet to find a flavored whipped cream propellant on-- at a Walmart or a Hy-Vee. But I can tell you this stuff is in vape and smoke shops here in Nebraska as well as nationally through both in-store and online. Now, other states have looked at this issue and taken initial steps to regulate the sale of nitrous oxide and related products like crackers, which is what you use to open some of these canisters. Last year, Michigan passed two bills which ban the sale of any device specifically designed for inhaling nitrous oxide from canisters for recreational purposes. Louisiana also passed a bill to outlaw public retail sale of nitrous oxide and related products. Other states, like New York, are also ahead of us in terms of regulating nitrous oxide. Unfortunately, our laws on nitrous oxide and other inhalants simply have not kept up with the times. I think our laws should reflect a modern national trend where nitrous oxide has a predatory marketing toward minors. Among people aged 12 to 25, in the year 2023, roughly 1.3 million people in the United States used inhalants in the past year according to federal data from DHHS. Not only can inhaling too much nitrate-- nitrous oxide

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in one setting could kill you, but the misuse of nitrous oxide over time leads to permanent nerve and brain damage since it deactivates vitamin B12, which is needed to keep our nervous system healthy. Obviously we don't want this to happen to anyone, especially to minors who are still growing and developing. What this bill would do to stop the sale of nitrous oxide at a known point of sale in this state. I have the respect of vape and smoke shops that do things the right way and do not sell nitrous oxide. This bill is aimed at going after the shops who are, in my mind, overstepping what their tobacco license allows. LB43 [SIC], does not cover everything to do with nitrous oxide like covering all the online sales. But it represents a start where we as a state can consider putting in more protections in place for this substance and other inhalants. I will add that I have also passed out a second amendment, AM37, which is an update to AM21, which thanks to an oversight caught by Senator Hallstrom, would ensure online sales are also included as prohibited under Section 5 as it pertains to the sale of an object that is specifically designed for inhaling nitrous oxide for recreational purposes. With that, I am happy to try to answer any questions that you may have. Thank you.

**BOSN:** Are there any questions from the committee? Senator Hallstrom.

**HALLSTROM:** Thank you, Senator DeKay. I just wanted to make sure that the, the issue that I brought to your attention, your design and intent, is to make sure that both sections of this law place restrictions on delivery online?

**DeKAY:** Yes, that's a very good question. But, yes, the answer is, is that we cover every aspect that we can to cover.

**HALLSTROM:** And, and can you describe generally what the difference between the coverage in Section 4 of the bill, which talks about objects containing nitrous oxide in any form, and in Section 5, which is an object that is specifically designed for inhaling nitrous oxide?

**DeKAY:** I will have to refer back to get more information on that for you going forward.

**HALLSTROM:** And, and, and the reason I ask is with regard to Section 5, in your testimony you indicated that there's some type of disclaimer with regard to whipped cream.

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**DeKAY:** Right.

**HALLSTROM:** And we have a violation under Section 5 is seemingly only going to apply if it's expressly and specifically designed for inhaling nitrous oxide for recreational purposes. Would seem-- could, could a disclaimer on the package eliminate our ability to enforce this as to Section 5?

**DeKAY:** I don't think so. The intent is to regulate the nitrous oxide sales in the state so if there are whipped cream products out there to not go after those products that are on the shelves of our grocery stores and stuff, but to eliminate the sale of these canisters on however they are constructed in a, in a vape shop.

**HALLSTROM:** And, and I agree with the design and intent of the bill. I-- I'm just afraid that somebody puts a disclaimer that it's used for some other purpose and we may not be able to enforce violations. Thank you.

**DeKAY:** Thank you.

**BOSN:** Any other questions? Senator Storer, did you have a question?

**STORER:** I think it got answered. Thank you.

**BOSN:** Thank you, Senator DeKay. Now, we'll take our first proponents. Good afternoon.

**SARAH LINDEN:** Hello. Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. My name is Sarah Linden, S-a-r-a-h L-i-n-d-e-n, and I am the owner of Generation V with 16 vape stores in Nebraska. Our mission is to make lives better, which is why we refuse to sell nitrous oxide products at our stores. I simply can't justify selling nitrous to be used outside its intended purpose by people who weren't intended to use it in ways it was never intended to be used. Believe it or not, I'm not in this business to get people high. Nitrous oxide, often referred to as laughing gas, is most often administered by a dentist in a very low dose during dental procedures to induce a sense of calm and euphoria so the patient can remain comfortable. In such a low dose, it doesn't make the patient high or put them to sleep. Galaxy Gas, on the other hand, is a new spin on the same drug, also known as whippets, is being marketed in colorful cylinders as whipped cream chargers with flavors including mango



smoothie and vanilla cupcake. These pressurized nitrous oxide products are intended to be sold for culinary use as Senator DeKay was speaking about. But Galaxy Gas is just one of the brands. On social media, the name has become a catchall term for all products featured in hundreds of videos showing young people inhaling gas to get high with potentially dangerous consequences. Either users breathe in as much nitrous as they can, completely filling their lungs to create an overwhelming lightheadedness and feeling of euphoria. The high is short lived. It only lasts about 5 minutes. This leads users to continually, repeatedly sniff large quantities over and over in a short period of time to continue the buzz. The packs of whippets, the little, like, one-shot things come in packs of 50 to 100 so that people can continually use them. Because nitrous oxide cuts off oxygen to the brain, it can lead to dangerous long-term problems such as brain damage, liver damage, hearing loss, kidney damage, breathing issues, nerve damage. I mean, the list goes on and on and on and on and on. Nitrous oxide use has gained popularity online over the past years. Video game streamers, influencers, and musicians featuring nitrous in their content making it cool. Videos show people using nitrous. There's a whole, like, thing coming out with, like, rappers coming out saying, please don't use this. This isn't good for you because they believe that the videos are targeting minorities. And so there's celebrities coming out against it at this point. I need to wrap up, so I'll just say simply that I commend Senator DeKay for bringing this piece of legislation. I respectfully ask the committee to support LB184. I really don't see a need for these products to be on the market, and I think that anyone that is selling them shouldn't be. Thank you.

**BOSN:** Does any--

**SARAH LINDEN:** Oh, I do have an answer, like, there's products that are, like, complementary products to nitrous. Like gas masks and things like that that are sold in these stores or crackers like Senator DeKay was talking about. So I'm not sure how you'll delineate between like the little canisters that are actually used for whipped cream and like all of these other products. But I-- I'm-- don't know how the bill was intended to be written, but I think that might answer your question.

**HALLSTROM:** Thank you.

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**BOSN:** Are there any questions from the committee? If not, I have a few. Thank you for your testimony. I just want to back up. So Senator DeKay said that these are intended for culinary use only, and you confirmed that that's your understanding as well.

**SARAH LINDEN:** So they're-- they were originally made for culinary use. And if you buy a can of whipped cream, even at the grocery store, that has nitrous oxide in it. If you could block the whipped cream from coming out, tip it over and put it in your mouth, you could suck in, breathe in the nitrous oxide that's in there. So it is used for culinary purposes and it's definitely packaged and marketed like it's for culinary purposes, but it's not used for culinary purposes. And I think that what Senator DeKay was really smart about is, like, let's allow-- bakeries can still buy this. Dentists can still buy this. There's no need for it to be sold in a tobacco retail store.

**BOSN:** Right. And I guess that's my question. Are you aware of any other culinary products that tobacco stores are selling routinely?

**SARAH LINDEN:** No.

**BOSN:** OK. Any other questions?

**SARAH LINDEN:** Yes.

**STORER:** I have a very simple question. Showing my ignorance on this product at this point. So it's otherwise known as laughing gas, as you mentioned. Right?

**SARAH LINDEN:** Um-hum.

**STORER:** So how are the products being-- is there any difference, I guess, in the products that are sold in tobacco or vape stores in terms of how they come out of the bottle? I mean, is it the same concept as a can of whipped cream? I mean, there's not-- when you said you could take whipped cream and get the same effect if you could somehow keep the whipped cream from going in your mouth. So how are these--

**SARAH LINDEN:** So these are designed-- so, like, you can make the whipped cream and you can stick this little capsule into the whipped cream container. And I don't sell them so I don't actually have any. So I don't-- I'm not an expert. But then it-- like, the gas allows the

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whipped cream to come out fluffy from the container. But you can buy just the little whippets that go into the container.

**STORER:** OK.

**SARAH LINDEN:** But they, they also-- these stores sell products that you can put the little whippet into to just dispense the gas--

**STORER:** OK.

**SARAH LINDEN:** --or you can just puncture the little-- the capsule-- it's like a little silver capsule looking thing. You can, you can puncture the top of it, my understanding, and use it that way, too.

**STORER:** OK.

**SARAH LINDEN:** The, the reason why these containers have gotten so much bigger, like, from just the small, like, single-use whippets that are probably, like, 3 inches long up to, like-- I think I've heard of, like, 3-liter tanks now is because people are having parties. So, like, someone will go buy one and then they'll fill balloons. Kind of like a helium tank.

**STORER:** Yeah.

**SARAH LINDEN:** They'll fill balloons and then, like, pass them around at parties and stuff. And I have personally used it when I was 15 years old. I have used one. That was 30 years ago. And I was walking with the balloon because I was at a party and I, like, sucked down way too much and I literally fell on my face--

**STORER:** Oh, my gosh.

**SARAH LINDEN:** --and then, like, woke up and I must have, like, passed out because the balloons that they sell are, like, you know, 2-foot wide or whatever. Well, where I bought mine, whatever, from a party, but-- and it's, like, way too much for one person to, like, breathe in without passing out. And at a dentist's office, it used very, very, very low dose. And that's not how it's being used. That's how it's intended to be used and that's not how it's being used.

**STORER:** Thank you.

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**SARAH LINDEN:** Yes.

**BOSN:** Senator McKinney.

**SARAH LINDEN:** Senator McKinney.

**McKINNEY:** Thank you. And thank you. I'm seeing this as, as tobacco specialty stores. But, for example, in my district, we have an oversaturation of liquor stores. What's stopping liquor stores from supplying these things?

**SARAH LINDEN:** Honestly, that's a very good point, because if they can't be bought at tobacco stores, liquor-- it's a booming market right now because of all of the views and, and videos on social media. Like, it would be a good business for liquor stores to get into because it is being used at parties similar to, like, a keg. So maybe that's something that should be added.

**McKINNEY:** Yeah.

**SARAH LINDEN:** But then also there's, like, hemp stores that don't have a license that you won't be able to restrict them from selling it.

**McKINNEY:** Yeah. And I agree. I guess it just gets back to, like, if we don't totally ban them, like, there's always going to be a workaround somebody is going to find to sell them.

**SARAH LINDEN:** Yeah, I was looking and I was glad that Senator DeKay added something about online because I was looking, just exploring on my own and saw a bunch of it on Amazon and it's, like, all of this stuff.

**McKINNEY:** As odd as it might sound or this is a horrible way to reference this, but you could essentially say I'll open up a candy shop and I'll sell, and I can sell the whippets because it's for-- I'm trying to bake something or I'm trying to do something so you can sell them inside of a candy shop. And I know that's odd and it's horrible. But with-- without an outright ban, I don't know. Like, people will get creative is what I'm trying to get to.

**SARAH LINDEN:** Yeah. And I'm not a baker, so I don't know if it's actually ever been used for baking because I would think that maybe another way-- because I kind of doubt that it's used for baking, to be

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honest, that another way could be, like, you have to be a registered dentist to, to get access to it and then eliminate it for baking. But I do think that this bill as drafted is a good first step and maybe add the liquor stores and then see if it still is problematic. Then maybe next year you have to amend it or something. But I don't really understand how you can get around it and still allow it for baking for true bakers.

**McKINNEY:** All right. Thank you.

**SARAH LINDEN:** Um-hum.

**BOSN:** Senator Rountree.

**ROUNTREE:** Thank you, Chair. We talked a little bit about health impacts and so forth. What kind of numbers are we seeing out there? You mentioned your situation where you took a tumble. What kind of health impacts are we seeing out there from this repeated use of the vaping? I mean, this type of inhalations?

**SARAH LINDEN:** To be honest, I don't know. I'm not an expert. I just know my own experience that, like, it was kind of shocking to me when I passed out and then woke up from it. But I don't-- I've only heard of one death and it was someone in the UK when I was researching and trying to find different things. I do think it-- it, it kills a lot of brain cells is what I'm told.

**ROUNTREE:** Thank you.

**SARAH LINDEN:** Um-hum.

**BOSN:** Senator Hallstrom.

**HALLSTROM:** Just that I appreciated your, your testimony. I have not committed it to memory. If there's a chance that you can provide that to the pages so they can make copies for us?

**SARAH LINDEN:** Sure. I can, I can just give this to them.

**HALLSTROM:** Thank you.

**SARAH LINDEN:** Yep, no problem.

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**BOSN:** Thank you. All right. Thank you for your testimony. Next proponent.

**SARAH LINDEN:** Thank you.

**BOSN:** Any other proponents? Opponents? Any opponents wishing to testify on LB184? Those wishing to testify in a neutral capacity? Bless you. And Senator DeKay, would you like to close?

**DeKAY:** Thank you, again, for this hearing this afternoon. To a point that Senator McKinney brought forward. We are working to try to do what we can to control the sale of this substance in the marketplace. But part of the intent of this bill is to educate people that don't realize the harmful effects of using the stuff that's in them the way that's not beneficial to them through a medical procedure. So to educate them to what the long-term effects of this could be and what the short-term effects of this misuse of a large quantity at the time use. So that's part of the intent of this bill is to help people stay healthy, especially minors going forward. So with that, I respect your time today. I thank you for hearing this and thank you for your questions and hope for a favorable ruling coming out of committee. Thank you.

**BOSN:** Thank you. Are there any questions from the committee? Senator McKinney.

**McKINNEY:** Thank you. And thank you, Senator DeKay. Would you be open to adding liquor stores?

**DeKAY:** I would be. Yes. We-- I was writing that as you were-- when I got called up here. Yes. I would be willing to work with anybody to make this favorable going forward, to make sure that this is a controlled gas that-- so that going forward people have a harder time getting it.

**McKINNEY:** Or I would even say gas stations because we have gas stations that operate, like, as a hybrid of all of this: gas station, tobacco, and liquor.

**DeKAY:** We-- I would be willing to see what businesses that we can, including into this bill, to make it-- I don't want to get it too broad, but I'd like to be-- to start to put guardrails in place to restrict the sale of it. And, and part of it is if we need to go

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forward, we can. At this point in time, if we can get it passed and move forward and we can add to this in coming years, I would be willing to work with on those grounds too.

**McKINNEY:** All right. Thank you.

**DeKAY:** Thank you.

**BOSN:** Thank you. Any other questions? Thank you for your time.

**DeKAY:** Thank you.

**BOSN:** We had no opponent or proponent online comments submitted for this bill. That ends our hearing on LB184.

**DeBOER:** I know they're-- they just got out of Exec.

**BOSN:** OK. So Senator Ballard is stuck in Revenue and Senator Dungan is stuck in HHS.

**HOLDCROFT:** [INAUDIBLE] on me.

**BOSN:** Yeah, I know Senator Dungan has a hearing at 3:30, so. Hold on.

**DeBOER:** Oh, he's in the HHS.

**BOSN:** Senator Holdcroft, can we go to, can we go to yours first?

**HOLDCROFT:** Sure.

**BOSN:** OK. I apologize. We're-- in the interest of time, but still accommodating senators who are in other hearings, we will move on to LB124, which is Senator Holdcroft's change penalties for motor vehicle homicide of an unborn child. Can I just get a quick raise of hands, how many individuals are here to testify in any capacity on this bill? Two, three, four, five. Got it. Thank you, guys. I appreciate it. We'll begin on LB124. Thank you, Senator Holdcroft.

**HOLDCROFT:** Good afternoon, Chairman Bosn-- Chairwoman Bosn and members of the Judiciary Committee. My name is Senator Rick Holdcroft, spelled R-i-c-k H-o-l-d-c-r-o-f-t, and I represent Legislative District 36, which includes west and south Sarpy County. LB124 is intended to harmonize the penalty for motor, motor vehicle homicide of an unborn child while driving under the influence with penalty for motor vehicle

homicide of any other person while driving under the influence. Under existing law, the penalty for motor vehicle homicide of an unborn child while driving under the influence is a Class IIIA felony, which carries a maximum sentence of 3 years in prison. The current penalty for motor vehicle homicide of any other person while driving under the influence is up to 20 years in prison as a Class IIA felony. Additionally, both laws currently provide for an enhanced penalty if the defendant has previously been convicted of a DUI. As it exists now, there is a great discrep-- discrepancy in potential penalties across two similar laws that both apply to fatal crimes committed while operating a motor vehicle while intoxicated. LB124 would address this inconsistency. The penalties for other fatal crimes have matching penalties regardless of whether the victim is an unborn baby or any other person. These crimes include first degree murder of an unborn child, second degree murder of an unborn child, manslaughter of an unborn child, and motor vehicle homicide not while driving under the influence. All of these instances, Nebraska law recognizes the dignity of the life of the preborn baby by conferring the same penalty classification as that for cases for any other victim. Unfortunately, a motor vehicle homicide of an unborn child while driving under the influence is a crime that has occurred with some frequency in Nebraska. And given the loss of human life in the course of that crime, the current penalty limiting incarceration to no more than 3 years is simply inadequate. It is unfair to the victim and the victim's family. The bill would offer greater latitude for judges in determining the most appropriate sentence without imposing such restrictive sentencing limitations. Last year, I introduced an identical bill as LB974. The Judiciary Committee advanced the bill 6-1 in mid-March which, unfortunately, did not allow enough time for the bill to be considered by the full Legislature. I appreciate the committee's timely consideration of LB124. Thank you.

**BOSN:** Thank you, Senator Holdcroft. Are there any questions from the committee? You're off the hook.

**HOLDCROFT:** I'll be here for close.

**BOSN:** Thank you. First proponent. Good afternoon, Mr. Lindstrom [SIC].

**RYAN LINDBERG:** Good afternoon. My name is Ryan Lindberg, R-y-a-n L-i-n-d-b-e-r-g. I'm a deputy Douglas County attorney. Worked there for about 15 years. And I'm also here on behalf of the Nebraska County



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Attorneys Association asking your support of LB124. As you heard from Senator Holdcroft, an identical bill was previously sent through out of this committee under LB974. One of my job duties and responsibilities at the County Attorney's Office is to handle the bulk of the motor vehicle homicides, manslaughters, fatal traffic incidents involving drugs and alcohol. There's myself and a couple other prosecutors that do that. Unfortunately, every couple of years we do have a case where there is a pregnant mother that gets killed. It's one of those laws you don't see it a lot. You know, I, I would say it's-- the last one we had was 2022 that was the motivation for the statutory change. And you look in the statute, just for whatever reason, only classifies it as a IIIA felony. As you heard from Senator Holdcroft, the penalties are the same across every other crime: murder, first degree murder, second degree, and manslaughter. For whatever reason, the penalty for a motor vehicle homicide of an unborn child is only a IIIA, so 0 to 3 years. The purpose of the bill would be to match it up with motor vehicle homicide of a person, which is a IIA, 0 to 20 years. There was a, a particularly tragic case in, in 2022 that was the motivation for this, because one of the things we do is we tell people, hey, here's the penalties that someone's facing and they often will ask, why is it that way? And this is when they ask why? And you look at it and you see there's not a good explanation so that motivated us to, to find some support, draft this bill and submit it. Generally, it just harmonizes those two penalties. A defendant would still be eligible for anything up from probation to a sentence of incarceration. But I do think it's important and a, and a worthwhile change. And for me, I guess I didn't want to keep saying, hey, that's just the way the law is. This is an approach to say we can fix the law, harmonize those two penalties. And this is not a, a high volume crime. The last case we had in Douglas County was 2022. There was a, a case out in Hall County within the last couple of years, as well, are the two most recent ones that I'm aware of. But I would ask that the committee send this out of Judiciary again this session and be happy to take any questions.

**BOSN:** Thank you. Are there any questions from the committee? Senator McKinney.

**McKINNEY:** Thank you. Thank. Just for clarification, are you saying it should be moved up to a IIA if the mother dies?

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**RYAN LINDBERG:** So the, the specific change would be to the unborn child, the charge for the unborn child. So if a pregnant-- the mother is pregnant, her charge would be a IIA, 0 to 20. If she's 9 months pregnant, the baby's death is only a 0 to 3. So it's to harmonize those two penalties. They'd both be IIAs. So, like, manslaughter of an unborn child, same elements essentially is a IIA. For whatever reason, motor vehicle homicide if you're drunk of an unborn child is only a IIIA, a 0 to 3.

**McKINNEY:** OK. Well, OK. Well, in your example, you used the example of somebody passing away. But, OK. All right.

**RYAN LINDBERG:** And I apologize if that wasn't clear. But, yeah, it's, it's the charge for the unborn child is what this is talking about changing and harmonizing it with the same charge for a person.

**McKINNEY:** OK.

**RYAN LINDBERG:** So, like, right now, if you were to commit murder of a mother and child, let's say it's second degree murder, they would both be a, a IB felony for the unborn child and the, the mother. Or if it was just the child that died, you know, you might have-- you could have a scenario where the mother survives and the child dies. So if it was out of a drunk driving incident, the charge for that unborn child would only be a IIIA felony, a 0 to 3. If we're lucky that the mother survived, then that would be the only charge. But my experience, unfortunately, it's, it's been the mother and the child usually that have passed.

**McKINNEY:** All right. Thank you.

**RYAN LINDBERG:** It is, it is confusing. I understand.

**McKINNEY:** All right. Thank you.

**BOSN:** Any other questions? Senator Storm.

**STORM:** Thank you, Chairwoman Bosn. So if, if there is a, a vehicle homicide and the mother dies, pregnant mother dies and the unborn baby, it's up to 40 years. Is that what we're saying?

**RYAN LINDBERG:** So right now, yeah, that--

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**STORM:** 0 to 20 for both?

**RYAN LINDBERG:** And just-- I want to make sure we're using the right-- I'm using the right words too. It would have to be if the death was approximately caused by someone being under the influence of alcohol. Right?

**STORM:** [INAUDIBLE]

**RYAN LINDBERG:** So if you're a drunk driver and you've, you've caused a motor vehicle collision, it's your fault. And let's say you've killed the mother and the child. Right now, the charge for the mother would be a IIA, a 0 to 20. The charge for the unborn child, if the mother is pregnant would be a 0 to 3. So if the law is changed, they would both be IIAs.

**STORM:** Right.

**RYAN LINDBERG:** So you'd be looking at 0 to 40.

**STORM:** OK. [INAUDIBLE]

**BOSN:** Perhaps just for clarification.

**RYAN LINDBERG:** Yeah.

**BOSN:** The current law, if it's a-- if a, if a-- it-- if a mother is struck with someone's fists and punched really hard in the stomach and the baby passes away, it's 0 to 20 because you've committed the murder. Am I wrong?

**RYAN LINDBERG:** No. I mean-- so if it-- it'd be whatever the crime was determined, so if it was determined to be an intentional killing it'd be a IB felony for the baby if it's second degree murder.

**BOSN:** OK, so-- but if the person is-- the, the pregnant woman is struck with a vehicle, it's 0 to 3.

**RYAN LINDBERG:** Right, if a drunk driver struck and, and killed the mother. Yeah, with the vehicle, then that would be for the unborn child a 0 to 3, the mother a, a 0 to 20. So this just harmonizes so they would both be a, a IIA felony. And it is an outlier if you look

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at all of the statutes from sort of top to bottom, for whatever reason, it's not the same.

**BOSN:** Thank you. Any questions in light of that question? Thank you for your testimony.

**RYAN LINDBERG:** Thank you.

**BOSN:** Sorry I called you the wrong name.

**RYAN LINDBERG:** That's OK.

**BOSN:** Next testifier. Good afternoon.

**DARLA BENGTSON:** Hi. Good afternoon, members of the Judicial [SIC] Committee. My name is Darla Bengtson, D-a-r-l-a B-e-n-g-t-s-o-n, and I'm here today to give personal testimony in support of LB124. This bill seeks to change the sentencing for DUI cases resulting in the homicide of an unborn child from the current range of 1 to 3 years to 1 to 20 allowing judges the discretion to impose a sentence that fits the severity of each individual case. This issue is deeply personal to me. As Ryan indicated on March 31, 2022, my daughter Sara Zimmerman, her unborn son, Brooks [PHONETIC], and her best friend for the past 24 years of their life, Amanda Schook, were tragically killed by a drunk driver. This individual deliberately chose to reject a safe ride. He got behind the wheel of a heavy duty pickup truck and drove 102.3 mph, intentionally running a red light and ending three innocent lives. Brooks was just a couple weeks away from being born. He wasn't just a fetus. He was a little baby boy. His skull was fractured, and he, along with Sara and friend Amanda, were burned beyond recognition. The crime was senseless, preventable, and devastating. Yet, under the current law, the sentence parameters for the homicide of an unborn child in DUI cases is only 1 to 3 years. Consider this: 2 years, 6 days ago today, the driver was sentenced in our case, technically, he would have already served the time for killing Brooks. I can't help but wonder what the judge would have done if he had the ability to impose a sentence between 1 and 20 years. Would justice have felt more attainable? Would the punishment better reflect the gravity of taking Brooks's life? LB124 addresses this gap in our justice system. It provides judges the discretion to consider the unique circumstances of each case, ensuring that the punishment aligns with the crime. To me, it's a matter of common sense and fairness. Passing LB124 would then

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have sentencing in all homicide cases resulting in the death of an unborn child equal under Nebraska law. Today, I am asking you to support this bill, not just for me, because there is nothing that will change the past, but for other families who may face similar tragedies.

**BOSN:** Thank you for your testimony. Are there any questions from the committee? Senator Hallstrom.

**HALLSTROM:** I just want to thank you for your testimony and your strength in coming up here today and so, so sorry for your loss.

**DARLA BENGTON:** Thank you. Appreciate it. Thank you.

**BOSN:** Thank you for being here. Next proponent for LB124. Good afternoon.

**CHRIS WAGNER:** Good afternoon. My name is Chris Wagner. I'm the executive director of Project Extra Mile. We're a network of community partnerships working in Nebraska to prevent and reduce alcohol-related harms. We're here in support of LB124 and I want to thank Senator Holdcroft for bringing the bill. Obviously, you probably don't need to hear from me. You've heard enough. But I just wanted to kind of give a, a, a broader overview of the, of the problem in our state. So Nebraskans report driving under the influence of alcohol at nearly double the national average, making us the second worst state in the country with 955 episodes of impaired driving per 1,000 population. By current population estimates, that means there are approximately 1.9 million episodes. And that's going from point A to point B of impaired driving in our state almost 1 to 1 in terms of how many citizens we have. So it's a serious problem and it demands our attention and every effort to enact policies like LB124 that while it is not the silver bullet, obviously it's a complex problem, but certainly part of the solution. With that, I just ask that you advance LB124 to the, to the full floor. Appreciate your time.

**BOSN:** Thank you. Are there any questions from the committee? Seeing none, thank you for being here.

**CHRIS WAGNER:** Thanks.

**BOSN:** Next proponent. Good afternoon.

**ELIZABETH NUNNALLY:** Good afternoon, Chairwoman Bosn and members of the committee. My name is Elizabeth Nunnally, E-l-i-z-a-b-e-t-h N-u-n-n-a-l-l-y, and I'm here testifying in support of LB124 on behalf of Nebraska Family Alliance and the thousands of families we represent desire to see innocent women and children protected in Nebraska. LB124 increases the penalty for motor vehicle homicide of an unborn child while driving under the influence by harmonizing it to match the penalty for moto-- motor vehicle homicide while driving under the influence. We believe it is right to, to harmonize these provisions. When an unborn child dies in vehicular homicide, an innocent human life has been taken. LB124 affirms the importance and interest of the state in protecting both women and their children. This is an important update to state statute that demonstrates the severity of this crime and the value of the life of an unborn child that deserves to be protected. We would like to thank Senator Holdcroft for introducing this bill and respectfully encourage the committee to advance LB124. Thank you for your time and consideration.

**BOSN:** Thank you. Any questions from the committee? Seeing none, thank you. Next proponent. No opponents left or proponents left. Thank you for being here.

**BUD SYNHORST:** Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. My name is Bud Synhorst, B-u-d S-y-n-h-o-r-s-t. I'm appearing here today as the registered lobbyist for Nebraska Right to Life in self-- in support of LB124. We'd like to thank Senator Holdcroft for bringing forward this bill which acknowledges the significance and importance of every life lost during a motor, a motor vehicle homicide when someone is under the influence, including the unborn child. Losing an unborn child in an accident like this can be devastating for the family. These increased penalties is a way to provide them with some sense of the law, recognizing that their loss and for the offenders to be held responsible. While we were never able to replace the loss of an unborn child in these situations, we can give these families a little bit of comfort to hold offenders accountable for their actions. Again, we appreciate Senator Holdcroft bringing forward this bill. I would also encourage Senator Holdcroft, as yesterday was a busy day of bill introduction, that there's also-- Senator Kauth has offered some changes to this law in LB530 and just to make sure that we harmonize those together when that bill comes forward. So I don't know if you've seen that yet, Senator, but just

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wanted to give you a heads up on that. So thank you very much for your time today.

**BOSN:** Thank you. Any questions from the committee? Thank you--

**BUD SYNHORST:** Thank you.

**BOSN:** --for being here. Any opponents? Those wishing to testify in opposition to this bill.

**SPIKE EICKHOLT:** Good afternoon, Chair Bosn 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 as their registered lobbyist in, in opposition to LB124. I did visit with Senator Holdcroft last week and explained that I would be-- that we would be testifying in opposition to the bill, as I did last year, and I told him last year as well. I mean, this is not easy. The reason our association is opposed to this is because simply it does increase penalties. I acknowledge that there is a discrepancy in the current law. I don't know why it exists. I couldn't tell you. I'm guessing it was just simply an oversight. And this, this Legislature has been solidly pro-life for 4 decades. So I don't think it was ever a deliberate choice when they revised the criminal code. But there is a distinction. If consistency is the goal, it can be done by adjusting the penalties the other way. The reason we have a concern with increasing criminal penalties is that you represent sometimes people who are innocent, who have a defense to a charge. That becomes very secondary, even lesser when you are simply looking at a life sentence and all you do at that point is you don't litigate. You don't pursue the truth. You just try to negotiate whatever kind of best deal so that your client doesn't get buried in a life sentence or something close to that. I know that doesn't speak to what happened to what you heard before. I understand that's a different case. But when you put something in statute, all the sentiments that we're talking about today, the emotions and the thoughts that you might have going through your head, that does not get reflected in the statute. Courts don't look at that. They simply look at the crime, the elements, and the penalty. And it applies to every subsequent case going on if you change the law. Anecdotally, my opinion is crimes go up so easily in this case-- in this state, penalties are increased so simply, and it's just almost impossible to moderate them in the future. And if you do, it seems like somebody brings a bill the following year just to undo

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what was done. So we respectfully urge the committee to-- you know, one thing that, that could be done, and I made this point earlier to Senator John Cavanaugh, who did a bill, if you look at our, our way that we classify our felonies, they're just top heavy. We go from 0 to 2, 0 to 3, 0 to 4. We jump to 0 to 20, then it's 1 to 50, 3 to 50, 5 to 50. And then we're up in life. There's nothing between a 0 to 3 or a 0 to 4, and 0 to 20, and there ought to be, in my opinion. The example of Senator Bosn gave earlier about the comparison between a deliberately and intentional assault. Again, I'm not trying to be flippant, it's different than driving under the influence. It simply is for a level of culpability. Maybe not in this case, the example we heard before, but it is in some cases. So that's our concern that we have and I'll answer any questions if anyone has any.

**BOSN:** Any questions for this testifier? Seeing none, next opponent. Any individuals wishing to testify in the neutral capacity? Senator Holdcroft, you may close. While he's coming up here, I will tell you that we had three letters submitted online for proponents, one letter submitted for opponents, and no letters submitted in the neutral capacity. Senator Holdcroft.

**HOLDCROFT:** Thank you, Chairwoman Bosn and the members of the Judiciary Committee. Just be clear, we're just looking to harmonize the law currently, whether it is first degree murder, second degree murder, manslaughter. In every case, the, the penalty is the same whether it is a born or unborn person. The only differences are in these two statutes. One has to do with driving under the influence, and the other one has to do with multiple times driving under the influence. And all we're looking to do is to, to make, make it the same penalty for born and unborn. We did-- I did get this out of committee last year 6-1. Unfortunately, it came out late in the session and I had it on the floor and I was this close, this close to getting it amended to a bill when the Speaker came down and said no more amendments. So hopefully getting it out a little bit earlier, we can work it and get it across the line. And I appreciate your time and I'd be happy to answer any questions.

**BOSN:** Any questions for Senator Holdcroft? Seeing none, thank you for being here.

**HOLDCROFT:** Thank you.



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**BOSN:** Next, we will hear from Senator Dungan on-- that closes our hearing-- sorry-- on LB124. Next, we will hear from Senator Dungan on LB93. How many?

**DUNGAN:** Not many. Not entirely sure. Don't always know. Strange being in this room for Judiciary.

**DeBOER:** It is.

**BOSN:** Welcome.

**DeBOER:** Yeah.

**DUNGAN:** Good afternoon, Chair Bosn and members of the Judiciary Committee. I'm Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent Legislative District 26, which is northeast Lincoln. I'm here today to introduce LB93. Colleagues, in Nebraska, pretrial discovery is governed mainly by statute. LB93 makes two changes to this discovery statute. The first provision of LB93 I want to talk about here, currently, the defense is able to ask a court to order-- for an order that they're entitled to inspect, investigate, and copy or receive copies of anticipated evidence or information material to a criminal case from opposing parties, witnesses, or other sources. For instance, if the police have an item of evidence such as a weapon or drugs or some other item, a defendant or their counsel may be allowed to view it before trial. Depends on the nature of the evidence. Depending on that nature of the evidence, the inspection can be as simple as a defense attorney going to an evidence room to view bundles of marijuana seized by police or it can be asking a court to release evidence from police evidence custody so that a defense expert can perform DNA testing on it themselves. LB93 would amend Section 29-1913 to provide that if the prosecutor has evidence which consists of an electronic communication device, computer or digital information or scientific tests of analysis of such device, the court may order the prosecuting attorney to make available to the defendant such evidence necessary to a defense expert, to the expert to conduct similar tests or analyzes. Sometimes in a case, the digital evidence or information contained in a phone or a computer can be absolutely critical for establishing guilt or innocence. Allowing the defense to have an expert that then could examine such a device may be necessary to rebut the state's evidence and to establish innocence or mitigating facts necessary for defense. Right now, as it currently exists some judges

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do this already. I want to be very clear. Some judges will order that phones be made available by witnesses or victims, or if they're in possession of the state, to be available to defense counsel to run their own tests on them. Some judges in this state, however, do not believe the current statutes authorize this. I've handed out to you just a couple of different orders. You don't have to go through all of those right now. But what those are is they're examples of orders that judges have given in cases to allow this kind of access. The reason I highlight that is this is not a novel thing that we're doing here. This is a thing that defense attorneys have already been requesting in various states throughout the-- or sorry, various cases throughout the state. But what we're trying to do is just ensure in statute that judges know this is something that is available for them to do, because it's our understanding some don't believe they have the statutory authority to do this. LB93 provides a clear process to allow defense counsel to access an electronic communication device when a judge is convinced it is appropriate. In addition to that, the other portion here that I want to talk about specifically is that we've been in contact with the county attorneys who I think are here today to testify. You'll hear from them about this issue. They're going to express some concerns, which they've expressed to me about a couple of different things with regards to this. But the main is they're worried that this would allow sort of unfettered access to a phone by defense counsel, potentially letting them get into things that aren't relevant or conversations that have nothing to do with the case or otherwise access information that they didn't have access to the police based on the parameters of their search warrant. What I've said to them is, I want to be very clear, I'm more than open to an amendment to address their concerns, and we've been working with them on language to address those concerns. We just got some language to them today. This is a very short set bill, which I appreciate. So we've not had time to clarify all of that language, but we are very, very open to modifying some of the language in this bill to protect some of those boundaries or to put guardrails in place to make sure judges know they can also order various parameters or safeguards on what evidence will be discoverable and put protective orders in place. It's my belief that judges already can do that. I think judges, and you'll see again in those orders that I handed out, they do clarify the parameters of which defense counsel can get into these phones. But we want to make very clear in statute that if a judge says, yes, you can have access to that electronic device, but you have to limit it to X, Y and Z,

that they're allowed to do so. So we are in the process of addressing any of those concerns. We just didn't have time to finalize the language before today, but we're going to keep working on it. The second provision of LB93, which I think is a little bit less significant, but I want-- do touch on, is really a clarification of the current law. Currently, courts routinely order that each party disclose or turn over evidence that they intend to offer at trial to the other party. For instance, if a party has an expert who may give an opinion or testimony. LB93 amends Section 29-1918 to provide that if a party discovers additional evidence or material before or during a trial, that the party then promptly disclose its existence to the other party. LB93 requires also that if a party's expert changes their opinion, then the new opinion be disclosed to the opposing party. In my conversations with the county attorney I've had this, this talked to, I think this is current practice. And in every case that I've had, you have an ongoing, ongoing obligation to disclose evidence. This just clarifies that any additional evidence you get has to be turned over. And if an expert changes their-- provides a new written opinion that that would have to be disclosed as well. I want to highlight as well, this is reciprocal. This applies to defense counsel as well as county attorneys. So this is not saying one side has more burdens than the other. It's just sort of codifying this ongoing need to disclose evidence when it's discovered. So those are the two major components. After we are going to hear some testimony, I think, from some individual practitioners, at least one who's going to be able to provide you, I think, better examples of why this is necessary. I know that's often a question is why do we have to do this? And I think you're also going to hear from Mr. Eickholt again about some bigger picture stuff, or at least members of his association to talk a little bit more about the necessity for this. When you hear from the county attorneys, I think they'll highlight some of the issues that I've already talked about. But I once again want to say we've already met, we're discussing this, and I'm very hopeful we'll be able to reach some agreement about some amendment language to make this satisfactory to everybody. With that, I'm happy to answer any questions you might have.

**BOSN:** Senator DeBoer.

**DeBOER:** Thank you. Thank you, Senator Dungan. So if I'm pairing this down to the smallest possible thing, what you would like is for the same privileges which are available to the plaintiff's attorney or,

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sorry, civil law [INAUDIBLE], the prosecution to be available to the defense in terms of being able to ask for access to one of these phones or, or whatever electronic device. Is that right?

**DUNGAN:** Yeah. So to put it really simply, I guess, yeah. Zoom out 70,000-foot view. With our discovery statutes, we currently already allow this for DNA. Right? So DNA evidence is a good example where if you're, if you're the prosecutor and you have DNA evidence and you run a test on it, and that test comes back and says X, Y and Z. The current statute allows defense counsel to go to a judge. So the judge still acts as the, the gatekeeper here, and they can request that they then have the, the DNA turned over to them, or at least a portion of it done, so they can go run their own test just to make sure it was done correctly, to see if they have anything that they disagree on. To sort of just follow up with that. Judges can order that. This sort of expands that availability of that kind of, hey, let me do my own test to electronic evidence as well. I don't want to get too in the weeds, but we have something called a "Cellebrite report", right, where if a cell phone is in evidence, oftentimes law enforcement will plug it in essentially and run this software on it where they can pull off a Cellebrite report. And that's going to contain in it your text messages, your pictures, your metadata, like all of this information, way more than you think is being stored on that phone. And if it's within the parameters of the search warrant, they can pull that off. And if they intend to use that at trial, it can be turned over to defense counsel or it has to be turned over to defense counsel in discovery. This would allow, if ordered by a judge, the opportunity for defense counsel to also potentially take that phone, run their own Cellebrite report and gather information off of that pursuant to the order of a court and within the parameter that that court orders. So it's allowing the access to the actual electronic devices or to the raw data in those electronic devices for defense counsel to be able to run their own tests and ensure whatever they may be wanting to check.

**DeBOER:** So right now, the prosecutor has access to either the test or the phone to take the-- to make the-- to look at the data?

**DUNGAN:** In most cases. Like, if it's in evidence and they have a search warrant, they'd be able to go in there within the parameters of that warrant and, yeah, pull information off within the, the confines of what they're allowed to look at.

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**DeBOER:** And right now, you're saying the defense attorneys are not afforded that same access?

**DUNGAN:** Correct. They would be turned-- the information that the county attorney gathers can be-- it has to be turned over to them in discovery. But they would not have the ability unless ordered by a court to actually run the test themselves.

**DeBOER:** Got it. Thank you.

**DUNGAN:** So it's sort of the process with which they're doing it to see if there's anything else they'd like to check.

**DeBOER:** Thanks.

**BOSN:** Any other questions? Senator Storer.

**STORER:** I'm going to take this in a whole different direction just for when we-- when I read your definition of computer and digital information and electronic communication device. So, really, this isn't just limited to cell phones.

**DUNGAN:** Correct.

**STORER:** So in-- I, I am in the cattle industry and in our industry some people use what's called an eID, electronic identification data, microchip. By your definition, that would also be included?

**DUNGAN:** I'm not going to lie to you, I haven't contemplated the inclusion of that in this. But certainly I didn't just make up this definition,--

**STORER:** Right.

**DUNGAN:** --I think this comes from other statutes and so--

**STORER:** Well, it's pretty, pretty broad in terms of the-- what is defined as computer.

**DUNGAN:** And those coming after me might be able to speak more to that. I'm, again, fairly certain this is not a novel definition. I think this is pulled from other statutes because we already address electronic devices in a number of criminal statutes, whether that's enticement of a child by electronic device or something like that. So

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this definition is already out there. I don't know if there's any case law about eID falling into that definition, but I'm happy to search and try to find that out.

**STORER:** All right. Thank you.

**DUNGAN:** Yeah.

**BOSN:** Any other questions? Senator Hallstrom.

**HALLSTROM:** Senator Dungan, it's been years since I've done much criminal work, but just-- I'm assuming there's different types of evidence, different levels of expert testimony that are involved. And I'm, I'm actually looking at a provision of the bill that you didn't touch on, I don't believe, which is on pages 2 and 3 of the new language with regard to information regarding expert witnesses. Would you be open to narrowing the scope of that if, if what I perceive as a possible problem is if you have scientific versus nonscientific evidence that you may have different needs and levels for that information? For example, if you have a, a routine DUI or speeding case or a drug case and you have the officer that's going to be providing testimony based on their experience and training. That-- is that going to be a hardship for the prosecutor to be providing that type of information or that degree of information for, for those nonscientific evidentiary issues?

**DUNGAN:** Right. So you're actually touching on an issue that I've also spoken to the county attorneys about with regards to law enforcement and those kind of experts you're speaking about. The short answer is, yes, we're open to changing some language in there. To clarify, this is intended essentially, I think, to codify what, again, is currently common practice. Generally speaking, if you have a jury trial or if you having a trial of any sort and there's an expert witness, in my anecdotal experience, I've had their opinions turned over to me. I've had their CB provided to me so I can do my own background analysis. So that happens in a lot of these cases. This is not in any way, shape, or form intended to create extra work for law enforcement or anybody else that would be getting up and saying, oh, no, now I have to create a new report so it's handed over to the, the defense counsel. The intention behind this, I think, is to make sure that written opinions are provided to defense counsel ahead of time. So not necessarily just their opinion, but a written opinion would be turned over. And then,

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again, if that written opinion is updated, then that ongoing disclosure requirement would obligate that, that disclosure to the other party. So, again, it would be reciprocal. But the idea is that the written opinions would be turned over, not trying to create additional work for law enforcement to make new reports that don't currently exist.

**HALLSTROM:** Thank you.

**BOSN:** Any other questions of this witness? I just have a few.

**DUNGAN:** Of this witness?

**BOSN:** Sorry.

**DUNGAN:** Ooh, now I'm nervous.

**BOSN:** You're not sworn in, you're a testifier. It's not your first day. It is mine. OK. So thank you for clarifying the DNA allowing example, because while it's a good example, it is slightly different because there you're doing supplemental testing versus originating testing. And the example I think you and I talked about was, well, if you have two individuals who are arrested and the prosecutor says I only need to test-- to run a Cellebrite on the defendant's cell phone. And you're saying, well, no, no, no, there's-- there might be evidence on the co-defendant's cell phone. This-- that's what you're intending, is that correct?

**DUNGAN:** That's a potential situation.

**BOSN:** Or an example.

**DUNGAN:** Yeah. And I'm, I'm not as privy to all of the specific examples that led to some of the concern about this. My hope is somebody testifying after me can provide you some concrete examples. But that's exactly it, is there are certain things, maybe, as you and I talked about ahead of time, that without context may not seem exculpatory, for example.

**BOSN:** Right.

**DUNGAN:** And so without that specific context that the defendant has, maybe the county attorney doesn't see the need to look into a certain

aspect of something or run a Cellebrite report. But with that additional information, it could be helpful. So a couple of different scenarios where I could see this coming into play.

**BOSN:** So how do you envision as a defense attorney requesting permission to do this? Is there a standard by which you have to say, we have reason to believe, based on information from our client, that there is value in running this? Because-- and I don't know if you've had the opportunity to review the comments online, but they kind of go to both the question that I'm asking and also the question that Senator Hallstrom asked, which is the costs to run these Cellebrite searches are several thousand dollars per cell phone search. And when there are cases involved that are at county expense, those are factors that need to be taken into consideration. So what do you envision being the threshold for running such a search?

**DUNGAN:** Well, I think that, again, you can look at these orders that have already been issued in certain cases. And, and clearly these hearings are already happening. I don't know off the top of my head exactly what that standard would be, but I imagine this would be a pretrial motion, obviously, that would be filed and have a hearing set before a judge. There would be some evidence or maybe not evidence adduced, but arguments made, possibly evidence introduced, and the judge would make that determination to order the access to the actual electronic evidence. Cost, I understand, is a concern when we're talking about appointed attorneys and things like that. I would point to the fiscal note, which I think indicates a negligible cost, at least anticipated on that. There's no fiscal note that I saw associated with it. And then it's not maybe the most satisfactory answer, but I don't think we can cap access to relevant information when cost is the concern. I think that due process, due process obligates us to be able to allow people to have this access. Now, I understand that when costs can be so astronomical, it can become a problem, but I don't think that that can be the reason not to allow access to something. I don't anticipate this happening in most cases. I understand that it could happen in a number of cases, but certainly I've been a practicing criminal defense attorney for almost 10 years, and I have never once in my own experiences wanted to do this. So certainly I think the instances where it comes up are going to be important. We're not doing this for no reason. There's going to be good examples of why this matters, but I don't think it's going to be



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happening on such a regular basis that the county is going to bear the burden of access to these expert witnesses or the Cellebrite reports.

**BOSN:** But I-- and I think you've answered my question, which is if it's relevant, then a defendant has the right to it. But my point is, is there a relevant standard here rather than we want to run it to see if there's anything relevant versus we have a reason to believe there's relevant. And it sounds like you agree that there has to be some good faith basis, that there's relevant information--

**DUNGAN:** Yes.

**BOSN:** --before just running it.

**DUNGAN:** Yes. I don't think that the-- the intention of this is, is not at all to be a fishing expedition. The idea would be there'd have to be some notion as to why this matters. And I think that's what the hearing before the judge would, would be about.

**BOSN:** Thank you. And then my last question. When I look at Section 3 of your bill versus what you struck versus what we're changing, I'll be very honest, I don't understand the difference. And so if-- and I, I did listen to your testimony, but I still don't understand if the prosecutor has and the defense attorney a reciprocal duty to provide new, relevant evidence on an ongoing basis, I think the orders even say and additional evidence as may be received, what are we doing differently with this language than what's already in place?

**DUNGAN:** If I'm going to be honest with you, I think it accomplishes the same goal. I think the Bill Drafters have used active language instead of passive voice. I think it's, it's accomplishing the same goal, but I think it's written in a more directive sort of sense, but I don't believe it imposes any additional obligations. I think the current ongoing disclosure still applies, and I think this is just clarifying that.

**BOSN:** So what-- was it your intention to change this section or did they change this when the bill was drafted?

**DUNGAN:** I would have to go back and look at the notes.

**BOSN:** OK.

**DUNGAN:** But it was not intended to present any new obligation. I think part of this, again, goes back to taken as a whole, ensuring that that ongoing disclosure also pertains to looping back to the first part that was referenced, the expert testimony. Right? It's sort of a comp-- it's, it's clarifying, hey, if you have additional written opinions from your expert and you have an ongoing obligation to disclose evidence prior to trial, once you get that updated opinion, thou shalt share it with me or vice versa. So I think that it's just that ongoing disclosure being clarified and that's possibly where that language got kind of changed and brought together.

**BOSN:** Thank you. Any other questions in light of that? Senator Storer.

**STORER:** I always-- I'm going to come at these with very unique perspective sometimes because I'm not an attorney for the record. So when we talk about the fiscal note and, and the fiscal note is really just going to identify any cost to the state, right, the fiscal notes that were provided? So there was some written comments provided from NACO in terms of what could be anticipated for a cost-- an additional cost to counties for court appointed attorneys. Now they're estimating, and this would, this would just be from their opinion, NACO's opinion, but maybe \$750,000 annually, that would be additional cost put onto counties. Do you think that's a fair--

**DUNGAN:** Far be it for me to tell NACO they're wrong, but I, I, I do think that's high. So just stepping back, generally speaking, I know when we look at these fiscal notes, there's that cost to the state and then oftentimes you'll see sort of, like, a supplementary fiscal note on there that can be provided by counties or sometimes you'll see it from the Department of Revenue-- we saw it from the Attorney General in this case, right, where they anticipated negligible cost to the Attorney General. I understand that oftentimes that these bills or ideas like this, you don't know how much it's going to be used. And so the default, I think, oftentimes has to be let's guess based on the maximum potential usage or on-- but I, I really do mean it when I say I, I don't think this is going to happen in that many cases. And so the cost gets a little bit complicated because when you're talking about attorneys who are appointed by the county, so the public defender becomes the-- let's say a criminal defendant goes before the court, they can't afford a lawyer. They get the public defender. The public defender, for whatever reason, has a conflict, whether it's in the case or they've taken too many cases that month, they overload

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out. That person then goes to the appointed list generally where it's a bunch of private attorneys who agree to take the case from the county. I currently am on that appointed list and I had a hearing at 3:30 actually over in District Court so I'll probably be leaving here shortly. But then if they-- when they finish up the case, they bill the county. So let's say I'm defense counsel, I want access to the phone to run my own Cellebrite report. I hire an expert to do that. Judge orders it. Cellebrite report gets run, it costs X amount of dollars. I then build a county at the end of that case for that and then reimburse for that cost. Generally speaking, that's how it works here at least. I cannot imagine in the vast majority of cases you're going to be either asking for this to be handed over, nor would you be then running these kind of tests on a regular basis. So I guess that's my-- I, I push back on the \$750,000 because that is a very high number, I think, based on the amount of cases this would actually happen in, so. I'd have to talk with NACO and see how they reached their numbers. I didn't get a chance to review that letter ahead of time, but I will go back and look at that.

**STORER:** OK. But it's fair to say the, the fiscal note that we have is just the cost-- estimated cost to the state,--

**DUNGAN:** Correct.

**STORER:** --does not take into account increased cost to counties.

**DUNGAN:** That's the one I-- yeah, what I saw from the fiscal note is state and Attorney General, I believe.

**STORER:** And it would undeniably have some increase in costs to counties.

**DUNGAN:** If utilized.

**STORER:** Right. Thank you.

**BOSN:** Senator Hallstrom.

**HALLSTROM:** So far be it from you to say that NACO is wrong, but you do believe that that's unnecessarily high. And then more seriously, does that, does that question or that issue relate to Senator Bosn or

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Chairman Bosn's question about the cost? That's the county cost that, that we would be referring to that potentially would be out there?

**DUNGAN:** Correct. I think that, yeah, the other counties are, are likely to be the ones more interested in what this cost is, I think. But, yeah, I, I do respectfully disagree with that analysis from NACO. I don't think it would ultimately be that high.

**HALLSTROM:** Thank you.

**BOSN:** Senator DeBoer.

**DeBOER:** The last one and then you've got to go. But-- so the cost that we're talking about, though, is a cost to fully defend the defendants within a-- what's already a reciprocal understanding of how evidence should be shared amongst the parties. Ostensibly, it would be a cost we should already be doing and that judges have already been charging to the counties because they're already doing this, even though it's not the statute. Is that right?

**DUNGAN:** Correct. Generally speaking, my understanding, at least from Lancaster County, is they budget for what they anticipate their cost to be to the appointed lawyers. So it's not like, you know, they just are taking this money out of funds they weren't anticipating. Now, granted, if this ends up getting used a bunch, they can talk about how they're going to budget that. But, yes, these are costs that are assessed because defense attorneys need them. They have to bill for them. When I bill or when an attorney bills the county for these kind of things, they submit a motion and a request and they're reviewed generally by the county attorney. So there's a lot of checks and balances on this. We're not just willy-nilly charging the county for things that are unnecessary.

**DeBOER:** And the judge will be looking over this and saying, yes, you need to do this, no, you don't need to do this.

**DUNGAN:** Yeah, the judge is the gatekeeper to this entire process. It starts with judge may order this. And so a motion has to be filed. There would be a hearing. So that's all pursuant to a judge saying this is necessary.

**DeBOER:** And these costs, then whatever the cost ends up being, not \$750,000 probably, but whatever the cost is, those are arguably the

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costs of just the cost of doing our justice system with a now sort of a mutual rule with respect to these kinds of discovery.

**DUNGAN:** I would agree.

**DeBOER:** OK.

**BOSN:** No more questions for this testifier.

**DUNGAN:** Thank you. I will waive my closing.

**BOSN:** OK.

**DUNGAN:** Thank you.

**BOSN:** First proponent. Good afternoon.

**MALLORY HUGHES:** Good afternoon, Chair-- excuse me, Chairwoman Bosn and members of the Judiciary Committee. My name is Mallory Hughes. I've been a criminal defense attorney for 15 years. I'm past president of Nebraska Criminal Defense Attorneys Association. My criminal defense practice is everywhere from Omaha, Nebraska, out to Scottsbluff, and all the counties in between. I do do this on a regular basis. I'll give you an example of why this is so important. We're not just talking about delving in and fishing in people's phones. I had a client charged with terroristic threats. A young woman provided a screenshot. What is that? That's, like, a printed off thing with the terroristic threat on it. Guess what? At the end of the day, it wasn't my client. She went in, manually changed the name, made it look like it was him. She sent it herself. She created a false account. If I'm-- I don't know if you're familiar with Snapchat, but you can go in-- if, if Senator Bosn-- let's say, let's say I had my friend send me a threat, I can go change that to your name. I can print it off and I can say Senator Bosn threatened me. And you're facing 2 years felony conviction. The only reason that we were able to get the case dismissed in that situation is because that young woman was subsequently charged with multiple counts of falsifying information against other men. And there was this pattern of behavior established. I was not allowed to get her device. The only way that a digital forensic expert can validate or authenticate a screenshot is to get into the device where it originated from. So that is where this comes into play. It's not just give me the phone so I can see if there's something in there that might be helpful. I don't know what the cost

is. OK, when I hire my experts, it can be a thousand bucks. It could be \$5,000, which my client bears, by the way, unless I'm court appointed. But I don't think there's a cap on due process, and I don't think we want to be, like, crunching numbers when we're talking about sending innocent people to prison based on some screenshot. So this is about a level playing field and the prosecutor doesn't have to use the evidence. I mean, so if we don't get the phone, fine, you don't get to use that screenshot. So that's what this is. Either give us access or you don't get to use the evidence, but you can't have it both ways. You can't say, I'm going to pick and choose a few things out of here. I'm not going to let you see the device that it originated from where there might be 50 deleted text messages and it's entirely out of context. That's not fair. That's not due process. So we just want a level playing field and we want all the evidence. And I think this serves the state and the defense. I mean, let's get all the evidence and see what the case is really about or not. But you don't get to pick and choose. And I think that's what this calls for. So this is a modernization on DNA independent testing, gunshot residue independent testing. But it's just different because we're talking about cloud-based things. So that's, that's what we're after.

**BOSN:** Any questions? Senator Rountree.

**ROUNTREE:** Thank you, Chairwoman Bosn. Yes, in your extended practice, do you see often a failure to share all the information that really necessitates this practice?

**MALLORY HUGHES:** I wouldn't say it's a failure to share. I think-- I mean, honestly, this is going to originate with law enforcement. So if somebody brings some accusation that involves some evidence that originates from some type of electronic device, law enforcement is going to need to collect it. Because if they're only getting bits and pieces, then that's where it's going to become problematic. So it's not so much prosecutors sitting on something that they're not turning over, it's just these bits and pieces come in and we have no way to validate or authenticate. And so is something going to go to a jury where we have no way to say for sure, yes, that's authentic or, no, it's not? So that's kind of what we're running into.

**ROUNTREE:** OK. Thank you.

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**MALLORY HUGHES:** Um-hum.

**BOSN:** Senator Storm.

**STORM:** Thank you, Chairwoman. Yeah, so you said that you practice law all the way from Scottsbluff to Omaha--

**MALLORY HUGHES:** Yes.

**STORM:** --as an attorney. So how often do you use this method of-- have had to use this. Senator Dungan said he's never used it in all the years he's practiced. So how often have you had, had to do this?

**MALLORY HUGHES:** I would say probably a dozen times I have asked for an independent inspection of a device, and I've gotten it some and I've not gotten it sometimes. And it's the same way as if you were independently inspecting DNA, chain of custody is taken care of. We say-- the judge says, OK, set a date and time. So our digital forensic expert coordinates with whoever from law enforcement is handling it. They go in-- one time I did it out in Bellevue and I went in with my expert and law enforcement made the device available and he went in and he did his own independent extraction. So, yeah, I would say a dozen or so times.

**STORM:** OK. Thank you.

**BOSN:** I'm curious. Mostly because I just cannot believe that someone was able to offer a screenshot of the threatening text message with zero foundation, someone's nodding their head in the back, but that is-- I, I'm certainly not saying you're being dishonest-- that's shocking.

**MALLORY HUGHES:** It is shocking.

**BOSN:** For a court allowed that to come in.

**MALLORY HUGHES:** Well, we didn't have a trial. This was a pretrial motion hearing. But the judge did not allow an independent inspection of her phone. So we went through a pretrial hearing in terms of why this should not be admissible. Because we weren't able to inspect the phone, it's not authentic and why it shouldn't go to the jury.

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**BOSN:** OK. So it didn't come in because this was all taking place prior to?

**MALLORY HUGHES:** Yes.

**BOSN:** You said pretrial hearing. OK.

**MALLORY HUGHES:** Yes. Yes. And it was not-- yeah. And it wasn't ruled on because in the interim, then we found out about all this other stuff and the--

**BOSN:** [INAUDIBLE]

**MALLORY HUGHES:** --prosecutor dismissed. But your question sparked something else in that case, I was going to say about the screenshot, but, but, yes, in that case, it didn't go to trial, so, yeah.

**BOSN:** OK. Thank you. Sorry.

**MALLORY HUGHES:** That's OK.

**BOSN:** Any other questions for this witness? Thank you for being here.

**MALLORY HUGHES:** Thank you.

**BOSN:** Next opponent. Oh, I'm sorry, I said opponent. I meant proponent. Next person wishing to testify on behalf of this bill.

**PAUL LEMBRICK:** Yes. Good afternoon, Chairwoman Bosn, and good afternoon, members of the Judiciary Committee. My name is Paul Lembrick, P-a-u-l L-e-m-b-r-i-c-k, and I am an attorney at Berry Law Firm here in Lincoln. And I also practice just in the area of criminal defense statewide in all of Nebraska's counties. Similar to Ms. Hughes, who was just up here a moment ago, I'll give you a, a real-life example that, that highlights the necessity for the amendment here in LB93. I had a young man accused of third degree sexual assault in Platte County. The order is one of the pieces of documents that you have there in front of you. A large part of the prosecution in that case was a screenshot or, I should I say, a picture of the accuser's cell phone. She brought it to the police station for an interview with law enforcement. She put her phone on the table, said these are the text messages that, that occurred between myself and the defendant. Law enforcement took pictures of



those and then the case proceeded. Well, one of the initial reporting officers the night of the incident had taken a picture of another witness's cell phone that also had some text messages from screenshots she took of my client's phone. It gets complicated. In any event, what we learned was the text messages that the accuser gave law enforcement when she showed up to the police station, there were certain messages from her specifically that were no longer there that we saw in the pictures that the initial investigating officer took when he arrived on the scene. That led us to just getting to the point of saying we better explore this further. Except law enforcement there did not take her phone. No extraction was done. Nobody ever looked at it. We tried to resolve that with just the County Attorney's Office. We didn't get anywhere so we filed a motion and went before the court. And we argued that, well, one, there's a relevance issue. But, two, the state intends to use the screenshot that the accuser initially gave police in, in terms of prosecuting my client. The judge thought about this issue for a while and then she ultimately rendered an order saying, OK, the defendant has at least provided enough information here to show there's some sort of disconnect. We need to look at this further. But she put strict limitations on that in terms of the scope of what that search could be, that the accuser then had to provide her cell phone to the police station. They did the extraction that they probably should have done in the first place. And then they sent that extraction on a hard drive to my own independent expert who was then able to review it. And then we revealed, yes, she had deleted certain messages for her own reasons. More than anything, this is about establishing consistency. Ms. Hughes gave you an example of a case where the judge didn't allow it. I was lucky in my case, and the judge did allow it, but we had to litigate it. It didn't just happen organically on its own, and the judge wasn't sure if she had the ability to do that, certainly because she's concerned of that individual's privacy when you start getting into somebody's cell phone. I think probably more than anything, though, this is about transparency. Both a prosecutor and a defense attorney want the truth and we want to make sure that we have the full context. We have the full set of facts before us. And when we're looking at things, it's, it's not piecemeal. And certainly law enforcement isn't going to want to waste their time pursuing an investigation if they know someone has presented them with tampered or altered information. So with that, I will answer any questions that you have.

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

**PAUL LEMBRICK:** Thank you for your time. I appreciate it.

**BOSN:** Thank you for being here. Any other proponents? Any individuals wishing to testify in the opponent-- opposition testimony? Mr. Zieg, good afternoon.

**DAN ZIEG:** Good afternoon, Senator Bosn, members of the Judiciary. My name is Dan Zieg, D-a-n Z-i-e-g. I'm testifying on behalf of the Nebraska County Attorneys Association in opposition to LB93. We did have the opportunity to meet with Senator Dungan yesterday about our concerns, and we're hopeful that language can be amended to address those. The first area of concern we have in this bill is the requirement to disclose a complete statement of any opinions an expert witness may offer, which will then require the creation of a written report from every expert. It's easy to think of an expert like a doctor or a surgeon or an engineer, but under the rules of evidence an expert is actually much lower. It's any person who has a specialized knowledge that maybe will help the factfinder decide a case. There's a lot of people who testify as experts that don't work for law enforcement. An emergency room doctor who treats a gunshot victim, a sexual assault nurse, that don't work for us. So it's hard to get them to write a report when, again, they are kind of being brought in not voluntarily. We agree with Senator Dungan, though, that if a written report exists, is that should be turned over. And through our conversation, we learned it was not his intention to create additional work on behalf of law enforcement, just that if it exists, it should be turned over. The second area of concern we have deals with access to cell phones. Normally when a cell phone is seized, all data from that phone is extracted. However, that raw data can't be opened by a computer unless it has special software and the software they investigate can create a report then, as you heard the Celebrite report. And that report, the investigator can set parameters. It could be dates, it could be certain items, whatever is allowed through the search warrant or through the consent from the person who owns the phone. That's how the report is, is [INAUDIBLE]. Our concern is that in LB93 as written now, is it would allow the defendant to access parts of the raw data that the owner never consented to or is not allowed by the search warrant. This could-- this would occur without any showing that there's any-- even irrelevant evidence found or notice to the owner of it. Our position on this is really more about

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protecting victims and witnesses from being needlessly harassed by having their whole cell phone contents made available. Additionally, as written right now, would require law enforcement to hold the cell phone indefinitely. Other language in this section says if that device is-- the evidence is lost then we can't use our test either. So we wanted to allow it so someone who gives their phone over who's maybe helping with a missing child doesn't lose their phone indefinitely until that case is resolved. Not every investigation results in criminal enforcement or, you know, if anything at all. So that's more our concern. Lastly, there's been some talk about the fiscal note. My role at the county right now, Lancaster County, I, I kind of see a lot of things that go on. We have had several judges authorize court-appointed counsel to spend up to \$5,000 on cases to run through this. So that was a, a concern. I think NACO did speak with me about that, and I kind of provided them some information about what I was seeing. We certainly respect the right to defense discovery, but that has to be tempered against the, the rights of other individuals and the practical realities. With that, though, I'm happy to answer any questions.

**BOSN:** Thank you. Senator DeBoer.

**DeBOER:** Thank you, Senator Bosn. So if-- I think I'm hearing your testimony correctly, so tell me if I'm wrong. Most of your concerns, if not all of them, are curable if the correct language is there in place in this?

**DAN ZIEG:** Yes, we, we certainly felt so and so we appreciate the opportunity that Senator Dungan would bring those and he was very receptive and he acknowledged, yeah, that wasn't my intention. And so we appreciate that. And right before I came up here, I was handed some language and some proposed amendment language. I just haven't had a chance to digest that. And words matter so I want to make sure it's, it's right.

**DeBOER:** So assuming that you all can agree on some language and that sort of thing, your opposition to this bill may very well go away?

**DAN ZIEG:** Yeah, you know, absolutely. We were hoping we'd have a little bit ahead of time. We could come in more neutral. That just

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wasn't possible. And not knowing what was going to happen, we felt we just needed to be here and testify about what was written now.

**DeBOER:** All right. Thank you.

**BOSN:** Any other questions? Senator Rountree.

**ROUNTREE:** Thank you, Chairwoman Bosn. You mentioned the data from the phone break and protect the individual's right to their privacy still. So once a case is adjudicated, what happens to that data? I know it may not impact this particular bill, but, you know, we do have that data. So what happened? What is the disposition of that that still ensures the individual's rights are protected, privacy rights?

**DAN ZIEG:** Yes. So there's-- so that's a long answer to your question.

**ROUNTREE:** OK.

**DAN ZIEG:** There's a right to, to an appeal. So one thing we're going to make sure is that the right to appeal has ran. The other thing that's out there is there may be a post-conviction right as well. So they may say, OK, my original appeal's been, been affirmed, but I think that my trial attorney was ineffective for not doing something. So there's always kind of a balance of how long we keep the property versus when we get it out. The other thing is these are huge amounts of data that we're trying to hang on to as well. So we don't want to hang on anything longer than we have to. But at the same time if the defendant comes back and says wait a minute, my, my attorney is ineffective, he should have done this, we need to have that available. The raw data can be stored in a way that no one can open it. I mean, shouldn't say no one, Cellebrite could probably open it, but until it goes to that special software, it just is going to pop up an error on your computer saying I don't know what this means. That's probably easier to store than the reports that have to actually make it into, like, an image and videos and, and all that stuff. So we hang on to it long enough to make sure that they have a chance to exercise all their rights, but we don't want to do it indefinitely.

**ROUNTREE:** OK. Thanks so much.

**DAN ZIEG:** Yep.

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**ROUNTREE:** I appreciate it.

**BOSN:** Thank you. Any other questions? Seeing none, thank you for being here.

**DAN ZIEG:** Thank you.

**BOSN:** Next opponent. Any individuals wishing to testify in the neutral capacity? And Senator Dungan is in-- perfecting his other job so he's waives his close. Senator Ballard, we're going to take a quick 5-minute recess, break, adjournment, whatever. You can get really ready.

[BREAK]

**BOSN:** Next up is LB-- sorry, I keep forgetting to give you a heads up. Are you ready? OK. We'll go ahead and get started. Next up is LB26 with Senator Ballard. Senator Ballard.

**BALLARD:** Thank you, Chair Bosn and members of the Judiciary Committee. I'm very excited to be your next witness within this committee. My name is Senator Beau Ballard. For the record, that is B-e-a-u B-a-l-l-a-r-d, and I represent District 21 in northwest Lincoln and northern Lancaster County. Currently, Nebraska has increased penalties for assault on health care workers-- providers, which is limited in the definition to physicians and other health care practitioners licensed, certified, or registered to perform health services. But I believe these protections should extend to all hospital staff regardless of job title. LB26 expands the definition of health care professionals to include any hospital employees or health care clinics on duty at the hospital or clinic. But we know violence in hospitals isn't limited to just doctors and nurses. Many other staff, such as security officers, janitors, technicians, front desk readers, are assaulted while doing their jobs. Every member of the workforce in the hospital is a critical part of the care that patients received. From these frontline positions are equally vulnerable to violence while caring for patients interacting with visitors. LB26 recognizes the importance, safety, and well-being of all health care staff and says they should be equally protected. One request I would like-- if I could have a page real quick-- we do have an amendment. Make sure I got to-- right. I just-- oh, go ahead. Yes. We do have an amendment to, to LB26 where clinics are not captured under the current

definition of health care clinics in statutes. Rather, they're defined as health care practitioner facilities. We'd like the committee to include this health care practitioner facilities as defined in 71-414. I'd be happy to answer any questions, but there are some experts behind me that would be able to testify as well.

**BOSN:** Any questions for this testifier? Senator McKinney.

**McKINNEY:** Thank you, Chair. Thank you, Senator, Senator Ballard. I guess my question or my concern is somebody is going through a mental health crisis and they may touch or let's say assault a health care worker, a staff, or somebody, but they're going through a health care crisis, mental health, some type of crisis, and they end up charged with these penalties because of that. How would you respond to that?

**BALLARD:** Yeah, that's actually-- when this was introduced back in 2011 by Senator Lathrop, that was actually a question by Senator Council on that. And I think you're absolutely right. It's something that prosecution has to take into consideration when addressing these concerns. And so making sure that we are providing the adequate resources for mental health in these cases. So I, I agree with you. It is a concern of mine and something that we're willing to tighten up if you'd like.

**McKINNEY:** Yeah, because my concern is that prosecution would have to take that into consideration. I think we should take that into consideration because I don't want people-- I'm not saying, like, anybody should be assaulted, but if somebody is legitimately going through a mental health crisis, they shouldn't be charged with felonies.

**BALLARD:** Correct. Yes, absolutely.

**McKINNEY:** Yep. Thank you.

**BALLARD:** Yes.

**BOSN:** Any other questions? Senator Hallstrom.

**HALLSTROM:** Senator Ballard, we visited-- I think Senator Clouse has introduced LB322, which would extend the protections under this law to

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pharmacists in a community pharmacy setting outside of the health clinic and the hospital. Would you be open to such--

**BALLARD:** Absolutely.

**HALLSTROM:** --amendment if the committee looks friendly upon it?

**BALLARD:** Absolutely.

**HALLSTROM:** Thank you.

**BOSN:** Anything else? Any other questions? Thank you. Will you stay for your close?

**BALLARD:** Sure.

**BOSN:** All right. Thank you, Senator Ballard. First proponent. Thank you for being here. Sorry to make you wait so long.

**ANTHONY ASHBY:** Oh, no worries. I, I learned a lot. A lot more than I, I thought I would. It's very-- I, I have a lot of respect for what you do. I appreciate all the time that you--

**BOSN:** Thank you very much.

**ANTHONY ASHBY:** --commit to this, so. All right. My name is Anthony Ashby, A-n-t-h-o-n-y A-s-h-b-y. Thank you, Chairperson, members of the Judiciary Committee. I'm representing CHI Health Immanuel, it's a 365-bed hospital in Omaha as well as I am the leader of the Nebraska Hospital Association's Workplace Violence Task Force. I'd like to thank Senator Ballard for introducing LB26, which adds critical protection for health care workers for the growing threat of workplace violence. In my role at the hospital, I've seen firsthand the impact that workplace violence has had on our health care staff. Health care has become one of the most dangerous fields to work in, with 75% of all workplace assaults happening in health care environments. Workplace violence comes at an enormous cost in terms of physical injury, mental health, and psychological trauma. In the last 3.5 years, over 1,900 incidents of workplace violence have occurred in CHI Health Nebraska hospitals. And the rate of violence has increased 36% over the past year alone. Violence against our staff has resulted in \$1.5 million in workers compensation claims between 2020 and 2024, resulting in 759 days in which employees could not work and an

additional 1,127 days of restricted light duty. This is why LB26 is so important. It expands the definition of health care providers who are protected under existing statutes to include not only licensed physicians and health care practitioners, but also any other employee of a hospital or health clinic. Assault of any health care worker would be classified as a felony, as nearly 1 in 5 workplace violence incidents have occurred against staff who are not licensed, certified, or registered, such as security personnel, environmental services, and patient registration staff. I'd like to share a few examples of some stories from staff who were assaulted in our hospitals who are not covered under current statute. One example, a patient sitter, who is someone who provides 1 on 1 care of a patient, was stabbed in the finger after a patient wrongfully accused them of stealing their wedding ring. They sustained soft tissue damage and that nearly for a year the-- it took a year for the staff's finger to heal so that they could wear their wedding ring again. In another example, the security officer was attempting to de-escalate a patient who lunged at them, knocking them both to the floor. The patient began clawing and grabbing at the security officer's face, leaving cuts and ripping out chunks of facial hair. If-- the officer sustained bites of the arm as well. As the egregious examples illustrate, all health care staff are subject to serious bodily harm. It should not be regarded as just part of the job as many health care workers currently understand it to be. Currently, assault of a security officer, resident, or other nonclinical staff member is a misdemeanor which undermines staff morale when some health care workers are more protected than others. The NHA Workplace Violence Task Force came together in response to escalating violence in Nebraska hospitals. We have researched best practices and implemented proactive strategies for reducing workplace violence. This bill is supported by the rural and urban hospitals represented on the task force. In closing, I urge the committee to support LB26 and take the necessary steps to ensure that all health care workers are protected from workplace violence. Health care workers are on the front line of patient care and they deserve to feel safe in their workplaces. By passing this bill, we can help ensure the safety and well-being of our health care workers is prioritized, ultimately benefiting the state of Nebraska as a whole. Thank you again to Senator Ballard and the committee for introducing this important bill and to the committee for your attention to this critical issue.



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**BOSN:** Thank you. Are there any questions? Thank you. Senator McKinney.

**McKINNEY:** Thank you, Chair Bosn. And thank you for your testimony.

**ANTHONY ASHBY:** Um-hum.

**McKINNEY:** Although these, these situations that you described in your testimony are crazy and bad, the first thing that pops to my mind is what was the mental state of these individuals? What type of trauma were they going through? Why were they in the hospital?

**ANTHONY ASHBY:** Absolutely.

**McKINNEY:** Those type of things. And, like, you're advocating for increased penalties, but what I'm thinking of, what, what was the state of these people in?

**ANTHONY ASHBY:** Yeah.

**McKINNEY:** I'm not saying the situation should, should have happened, but it's quite possible the person who stabbed that person might have been experiencing a mental health--

**ANTHONY ASHBY:** Yep, psychotic. Yep.

**McKINNEY:** --episode.

**ANTHONY ASHBY:** Absolutely.

**McKINNEY:** The person that the security card-- security guard couldn't de-escalate is going through some type of trauma. I'm, I'm-- and we're essentially advocating to just charge them with, like, felonies.

**ANTHONY ASHBY:** So I, I share your same sentiment. So our hospital is, is almost 50% behavioral health. And I'm, I'm very committed to supporting, supporting behavioral health. And I can definitely understand your concern. One thing I will say, even as the statute is currently written, it doesn't differentiate between mental health crisis and non. One thing I can say from personal example, I have never seen somebody with a mental health diagnosis actually pursued. Even in the current statute right now, that is something that's always considered before we even file charges. So I personally have not seen a charge. So these examples specifically are not people with a, a mental health diagnosis that we have in the hospital, so.

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Surprisingly, not even one-half of the incidents that happened in the hospital from a violence standpoint or from some-- are from somebody with a mental health diagnosis, actually.

**McKINNEY:** I'm just using that as an example.

**ANTHONY ASHBY:** Very-- yeah, very--

**McKINNEY:** And I never say never, especially in this world in the climate we live in. I'm, I'm never going to say never because it, it is possible. But I just think it's, it's, it's-- there is a lot of questions that need to be answered and I just think expanding this is going to cause a lot of problems in my opinion. I'm not saying that people should be assaulted--

**ANTHONY ASHBY:** Yep.

**McKINNEY:** --but from my experience of just going to the hospital, especially to ERs, a lot of people go through a lot of things.

**ANTHONY ASHBY:** Yeah.

**McKINNEY:** We got to take that into account.

**ANTHONY ASHBY:** Absolutely. Absolutely. [INAUDIBLE]. No, go ahead.

**McKINNEY:** And just increase in penalties on people going through these things-- like, going through these things is just-- I don't know. I, I just find more questions in my head like-- because we had a bill my first or second year I was here about bus drivers being assaulted.

**ANTHONY ASHBY:** Um-hum. Heard about that.

**McKINNEY:** And my question during those hearings were, OK, what's the current law, what's the enforcement currently? And it wasn't-- the current law wasn't even being enforced.

**ANTHONY ASHBY:** Yeah.

**McKINNEY:** But also most people that rode the bus didn't even know what the law was.

**ANTHONY ASHBY:** Right.

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**McKINNEY:** So I'm curious, where-- are we going to increase penalties on people that don't even know what the law is? And I know ignorance of the law is not an excuse.

**ANTHONY ASHBY:** Yeah, yeah, yeah.

**McKINNEY:** But a lot of times people say let's increase these penalties to prevent these things from happening. But if these people already are not aware of the current law, are we-- is, is this even going to prevent these situations from happening?

**ANTHONY ASHBY:** Yeah. No, under-- understood. So one of the things there is-- actually, you know, there's a lot of statutes. There's actually signage all throughout our hospital that has the current statute listed very visible. It's in our patient handouts when you get admitted. And we've also taken an extra step further. So the task force has created additional signage in terms of it being a, a no-tolerance environment for violence. And this is a healing environment. We're here to, you know, support and care for you and violence will not be tolerated. So there's additional signage in addition to the legislative statute that's posted and also handed out as well. It's something that's been happening across the country and why individual states have been taking this forward, because it's more dangerous to be a health care worker than it is to be a police officer at this point. So I do share your sentiments, but I will counter, especially with the growing challenges with workforce and trying to get more people into health care. We are seeing a lot of people leave health care due to violence and then we're seeing a lot of people hear about the violence and not even consider entering health care. And to your point, if, you know, if you're entering the hospital and you're having a baby and there's violence going around and it's more or less tolerated to a certain degree, that does deter-- that it does deter people from pursuing, pursuing health care. But I, I definitely share your sentiment. But again, I would, I would say and I don't know if this can be written or how it would be written, but that is always to take into consideration. So we've never charged by-- with a mental health diagnosis as the statute currently exists.

**McKINNEY:** I don't think I've ever seen violence being tolerated at a hospital ever or ever had that feeling or ever had it even verbalized by anybody. But my last thing, and I was just thinking about this, I remember one time I went to the dentist and they put me under for

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something and I woke up and, for whatever reason, the dentist did something and I did push him.

**ANTHONY ASHBY:** Yeah.

**McKINNEY:** I pushed him hard.

**ANTHONY ASHBY:** Yeah.

**McKINNEY:** That's considered battery or whatever.

**ANTHONY ASHBY:** Yeah, yeah.

**McKINNEY:** Would I be charged with a felony if-- let's, let's say somebody goes under at the hospital, they come up and they, they really essentially don't know where they're at.

**ANTHONY ASHBY:** Right.

**McKINNEY:** Like, somebody, somebody that goes through a car accident, wakes up, like, where am I at? And they start knocking things over,--

**ANTHONY ASHBY:** Out of anesthesia. Yep.

**McKINNEY:** --push, push the nurses. Now, they're charged with three felonies?

**ANTHONY ASHBY:** No, no. So that's something that's kind of, like, under the influence. So anybody that's coming out of anesthesia, that's being extubated, all those kinds of things are taken into consideration. So, like I said, largely when we're evaluating as the hospital, this is not something that we're throwing the book at people for. I mean, we-- a lot of people under the current statute, you know, don't get this based on those situations.

**McKINNEY:** But where-- is that described in this stuff?

**ANTHONY ASHBY:** No. So that-- I mean, that is an opportunity for, I guess, potentially further clarification of that to make sure that that doesn't happen in other because we do take that very cautiously. And I know a lot of facilities do, but it's not written out in order to take those considerations or exclusions.

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**McKINNEY:** All right.

**ANTHONY ASHBY:** It's a valid point, it's a valid point. I do share your, your sentiment for sure.

**McKINNEY:** Yeah. Thank you.

**ANTHONY ASHBY:** Um-hum.

**BOSN:** Next question? Senator Storer.

**STORER:** Yes. Thank you very much for coming today and, and providing your testimony. I guess I'm just really kind of following up a little bit along the lines of Senator McKinney's questions, because I-- as I understand it, the real goal here is to make the, the hospital settings safer for health care workers. Would that--

**ANTHONY ASHBY:** Yeah. I would, I would say in addition to that there's a, there's a parity that comes along with this where essentially what's happening now is that the staff that get paid most in the hospital get a higher level of protection than the staff get, get paid least in the hospital and often are more susceptible to some of these instances. Like, the example with the security officer, they're usually intervening on behalf of a, a physician or a nurse, and they're one of the lowest paid people in the hospital. So it is difficult to retain them, also recruit them. And it just-- it's just not fair from a parity standpoint that there would be that disparity between those workers.

**STORER:** So are they getting a higher level of protection because of, because of the charges that-- the higher level of charges that can be brought against that individual or is it because of their title or their position at the hospital? If I understand--

**ANTHONY ASHBY:** So in the current statute, you have to be, like, a licensed worker. So if you're not a licensed clinical practitioner, you're not covered in terms of the statute where it's a felony to assault you. So anybody that's not certified in that, in that current--

**STORER:** So you're saying they're getting a higher level of protection simply because of the higher--

**ANTHONY ASHBY:** Because of that. Yeah. Because of their, their status as a, a certified clinical practitioner.

**STORER:** So, ultimately, is this-- has, has there been evidence then that this has reduced the amount of violence in hospitals?

**ANTHONY ASHBY:** No, I can't speak to that specifically. One of the things that's most challenging about workplace violence is grossly underreported. So we have 1,900 incidents across the state over the past 3.5 years. And that's all self-reported. And we-- I, I run the hospital every day. And sometimes it's so commonplace. I mean, people like-- I, I literally don't have time. I would be filling out three and four reports a day just on this alone that it, it gets underreported. So, I mean, estimates have, have shared that, you know, only a third actually get reported. So it's, it's a very, it's a very extensive problem. But I think one of the things, again, for morale [INAUDIBLE] is helping recruit nursing. A lot of our staff feel like they're not-- like they're lesser than because of the way the statute is written.

**STORER:** So will this change actually create a safer environment? Will it, will it result in--

**ANTHONY ASHBY:** The, the intention that it, it should be more of a deterrent, hopefully. Because it is very prevalent and shared in, in signage and handouts and things that it is a felony to assault a health care worker with all those definitions. But one of the goals is hopefully with that expansion of that definition that people do understand that everybody that's in this building is-- counts as that and is protected by that.

**STORER:** One last question.

**ANTHONY ASHBY:** Yeah.

**STORER:** Sorry. So over the course of the last, let's say, 10 years, I don't know how long this has been in the statute the, the charges for-- maybe somebody else can tell me that-- for health care workers. Since that time, has there been any evidence that it has been effective in reducing violence in the hospital?

**ANTHONY ASHBY:** No, I, I can't speak to that. But that's, that's something we can look into. Yeah, I'm not sure how long it's been

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around or any of those trends. One of the things that's kind of hard to compare from a trend standpoint is because the-- it's become-- it seems to be a lot more prevalent the past few years. So there, there is a-- self-reporting has gone up. So sometimes it's challenging to see, like, are we hearing more of just what's been the whole time and we didn't know or is it, is it actually going up? So it, it does get kind of challenging from that standpoint to, to see what's actually, you know, making a difference, is it deterring people, things like that.

**STORER:** Right. Yeah. Any, any information that you, you could provide would be appreciated. And where I'm really going with this is finding the best solution to achieve the objective of making it a safer environment.

**ANTHONY ASHBY:** Yeah. So, again, I know the earliest testimony is, you know, this is not a silver bullet. It's part of the entire package. This is definitely not something that the task force for NHA is leaning their hat on. There's a lot of de-escalation training. There's, you know, contract security officers and different things like that that we're working to add support, contract law enforcement officers that, that people are putting in place. So there's a, a pretty robust package of education awareness, training, and things like that in addition to, to the bill, which is just one part of some of the work that the--

**STORER:** Thank you.

**ANTHONY ASHBY:** --task force is doing. Yeah.

**BOSN:** Senator Storm.

**STORM:** Thank you, Chairwoman Bosn. Mr. Ashby, so my daughter works at Immanuel.

**ANTHONY ASHBY:** OK.

**STORM:** She's an ICU nurse.

**ANTHONY ASHBY:** Yeah.

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**STORM:** Her-- my son-in-law is an emergency room nurse. So I hear about this frequently from them about violence in hospitals is real. So anything we can do to, to help them out, I'm all for, so.

**ANTHONY ASHBY:** I appreciate that, yeah, thanks for sharing.

**STORM:** Immanuel is a good hospital.

**ANTHONY ASHBY:** Thank you, sir.

**BOSN:** Any other questions? Senator Hallstrom.

**HALLSTROM:** Just wanted to clarify for the record, when Senator McKinney was asking some questions, he, he mentioned increased penalties. And is it correct that under the current law, only licensed health care professionals are covered and there are existing penalties for assaults and we're simply expanding the universe to--

**ANTHONY ASHBY:** Yes.

**HALLSTROM:** --cover additional employees who are in the health care setting?

**ANTHONY ASHBY:** Right. So it's not increasing the current penalty, it's just expanding who that current penalty covers, the definition of a health care worker. Yeah.

**HALLSTROM:** Thank you.

**BOSN:** Any other questions? Senator McKinney.

**McKINNEY:** Thank you. But to be clear that putting those people into the category increases the penalty that they could be charged with so it is increasing the penalty.

**ANTHONY ASHBY:** Yeah, it increases the potential--

**McKINNEY:** Yeah, it increases the penalty.

**ANTHONY ASHBY:** --for more-- there's more people that could be charged potentially, yeah.



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**McKINNEY:** Because today the penalty for them versus-- because if we weren't increasing the penalty, there would be no need for this bill. So it's increasing the penalty. Thank you.

**ANTHONY ASHBY:** Yeah.

**BOSN:** Any other questions? Comments?

**ROUNTREE:** Yes, ma'am.

**BOSN:** Senator Rountree.

**ROUNTREE:** Thank you, Chairwoman Bosn. Mr. Ashby, the last part I want to ask, it, it was twofold, but I'll just stay with onefold now. We've talked about a lot of things today, but in the health care setting, I'm the father of a special needs son, 36 years. And looking at that developmentally disabled population as they're receiving health care. And I know you say you have maybe considerations for that, but that's a, a sector that I want to really protect. Some of those just have behavioral issues and things of that nature. So that's going to be some incidental contact. I, I'm a recipient of it in that care area, but I want to make sure that those are protected as we look at all of these as well, definitely protect our health care providers. We need those. But also some of those. I couldn't see my son being charged. He's, he's a gentle 36. He's larger than I am. He's my bodyguard. But if you attack him the wrong way, it could be a situation even though I've never seen him do that. But that could be and I would certainly not like to see him arrested or anything of that nature. So that portion of the population I have a concern about as we look at this.

**ANTHONY ASHBY:** Yeah, and I, I totally, I totally support that. And, like I said, I haven't seen it happen, but there's nothing, I guess, written, you know, that, that actually prevents that from happening. So that's, that's a valid, valid concern I support, though.

**BOSN:** Any other questions? Thank you for your testimony.

**ANTHONY ASHBY:** Thank you.

**BOSN:** Next proponent. Thank you for being here.

**TAMMY WINTERBOER:** Thank you very much, Chairperson Bosn and members of the Judiciary Committee. My name is Tammy Winterboer, T-a-m-m-y

W-i-n-t-e-r-b-o-e-r. I'm a vice president at Nebraska Medicine and I have accountabilities for both patient and colleague safety. I'm testifying on behalf of Nebraska Medicine in support of LB26. A violent event occurred against one of our colleagues nearly every single day in 2024. Approximately 30% of those events were against an individual not covered by the existing statute. Also, nearly one-third of these events were repeated acts. We want to start by acknowledging there is a difference between violence by an individual with cognitive capacity and violence as a result of mental illness or dementia. The intent today is to focus on incidents of violence that are intentional, often recurring acts. We support LB26 because we believe all health care workers are deserving of protection from these intentional acts. We also, though, want to take this opportunity to ask the committee to consider three additional recommendations as part of a broader response. First, we would like the committee to support the allowance of the health care system to intervene on behalf of employees. Most of our staff who are victims of violence choose not to file formal complaints. They do this because, first and foremost, they have empathy for the patient. Also, they don't want to miss work, go to court just to relive the event over and over again. Most importantly, though, they're afraid of retaliation from the patient or from the perpetrator who may be a family member or visitor. By allowing the health system to intervene on their behalf, we can ensure meaningful enforcement of these crimes. Second, we would like to propose an interim study in the inpatient setting specifically to better understand the systemic response to violent events. The ask would be to evaluate current versus best practices, as well as opportunities for community support and collaboration to ensure the safety of our health care workers when a patient with a violent history must remain under inpatient care. Third, we would like to propose an interim study to evaluate barriers to and propose alternatives to post-acute placement for those patients. When a patient with a violent history is medically ready for discharge, there's rarely a facility that will accept them. We've had inpatients in our care for over a year because their history of assault has prevented them from being accepted into a more appropriate lower level of care. We're so grateful to Senator Ballard for bringing this issue before the Legislature. Our health system has undertaken numerous initiatives to try to ensure the physical and psychological safety of our workforce. But we need help. Evidence shows that when health care providers feel safe, both patient experience and patient outcomes

dramatically improve. If we want to take better care of our patients, we need to take better care of our staff. Numerous regulatory and governmental bodies hold us as a health system accountable for preventing harm in patients. I would ask that our systems of government provide the same protection to those individuals who dedicate their lives providing that care. Thank you for the opportunity to address the committee.

**BOSN:** Thank you. Any questions for this testifier? Senator McKinney.

**McKINNEY:** Thank you, Chair Bosn. And thank you for your testimony. Although you acknowledge that there is a difference between violence being perpetuated by someone with a cognitive capacity and violence from somebody with a mental health illness or dementia, this bill doesn't make that distinction. It says any other employee of a hospital or clinic. There's no distinction being made. There's no exceptions being made in this. So you're saying approximately 50% of violent events identified were perpetuated by individuals with clinically diagnosed mental health conditions, including dementia, delirium, or other behavioral health disorders. Under the current way this is written, those-- that 50% will be charged with felonies.

**TAMMY WINTERBOER:** So at Nebraska Medicine, we file complaints in less than 5% of the current assaults that occur. As a response to every violent event that occurs at Nebraska Medicine, a behavioral emergency response team responds and threat assessments are conducted. That behavioral emergency response team includes both psych and behavioral health providers who assess the current clinical diagnosis, as well as any potential diagnoses that are-- potentially need to be assessed and any clinical acts that need to occur in order to care for that patient first. First and foremost, our job is to care for patients, and that's what these people want to do. And that's why charges are not being pressed in situations where people are intentionally and willfully harming our staff because they have empathy, because they are fearful. And I will also add that this isn't just about patients. We oftentimes have visitors and family members who are aggressive and abusive towards our staff. And in those cases, it's really important that we can treat all of our staff in the same way. We have patient attendants who are sitting in rooms who are being abused and they can't leave. It's not like when you are in a public place and someone assaults you and you can walk away. When they leave those situations, they put other patients at risk. So the ability for us to continue to care for

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everyone depends on the ability for us to treat all health care workers the same and provide the same level of protection.

**McKINNEY:** But everybody isn't Nebraska Medicine. So although you may only file 5%, CHI might not. Somebody else might not. So that's the thing. And, and that's something I think about. And just also how the public responds to your staff. I'm just being honest, I haven't heard the greatest response, especially when people are going through traumatic situations with their families, especially somebody ends up shot or something and they end up at Nebraska Medicine. Your staff doesn't have the best cultural competency. They, they don't respond to families well during those traumatic events. And I've heard it millions of times. When they go to the hospital, they're, like, the staff doesn't, doesn't care. There's no empathy, nothing at all. I'm not saying it's right that they-- anybody should be assaulted or anything, but there's-- it's a two-way street.

**TAMMY WINTERBOER:** Yeah.

**McKINNEY:** But I'm just saying, everybody's not you all. So if you're only filing 5%, somebody might file this 100% of the time on these individuals going through these problems. So that's what I'm concerned about.

**TAMMY WINTERBOER:** Yeah, I would respond by saying, first, I am sorry for the experiences that you've, that you've heard. Second, I would say we would have no objections to including language that delineates between those. Third, I would say that there are clearly differences between individuals who maliciously conduct themselves. If you've been in a hospital, what you'll notice is the reason that I joined or when I became a professional, one of the things that I used to see is graphics where physicians or care providers would wear stethoscopes around their necks. If you've been in an inpatient setting, what you'll know is that they don't. And the reason that they don't is because they can be used to strangle them. They can be used to pull them down so that they can fondle them, kiss them, because there's nothing that they can do. So while I agree that consideration for mental health is very important, and I think that it is important for us to think about that as we consider the bill. For me, the expansion of the same rights to all health care workers is the important piece of this bill. The patient attendant who has to be in the room, who has a phone thrown at them or a unopened soda can thrown at them because

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the patient doesn't like the way their face looks. These are the people that we want to make sure understand that they can't treat our health care workers like that. There is no intent on any health care professional's perspective to punish somebody with a mental health or a disability.

**BOSN:** Any other questions?

**STORM:** Yeah.

**BOSN:** Senator Storm.

**STORM:** Thank you, Chair. So let me get this straight. So in the hospital, is there law enforcement in the hospital or not?

**TAMMY WINTERBOER:** I can't, I can't speak to all hospitals. I can only speak to the way that it works at Nebraska Medicine. Nebraska Medicine has security. And we also are overseen by the University of Nebraska Omaha police as well.

**STORM:** OK. So if someone is assaulted, do you call law enforcement in then to take the report?

**TAMMY WINTERBOER:** We do. They take the report and then the patient stays in the inpatient setting to often repeat the violent event.

**STORM:** But law enforcement and the prosecutor is going to decide whether or not that person was mentally-- and what kind of penalty they're going to get. The hospital doesn't decide if that person was, was not in their right mind and when I'm saying when this happened. So you're just saying this, this took place.

**TAMMY WINTERBOER:** So of the 350 events that occurred at Nebraska Medicine last year, I believe that we only called security in for about 25% of them. As far as whether or not our security team differentiates from our law enforcement when charges are filed, I can't speak to that. I do know that in all of our cases, we have less than 5% where a formal complaint was filed in any way, shape, or form over the last year.

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**STORM:** OK. Is it protocol that if someone does get assaulted in the hospital, they have to-- they're supposed to tell administration they were assaulted?

**TAMMY WINTERBOER:** I would love for the answer to be yes. I think the definition of assault and what our health care workers are willing to suffer through and consider part of the job is disappointing, which means that as a result, we are highly underreporting our assault events. So, so essentially, no, they are not required to report.

**STORM:** So what percentage, and this is probably just take a guess but, are patients or family members coming in? Do you have any idea on that?

**TAMMY WINTERBOER:** That's a good question. I would have to, I would have to look. I, I wouldn't want to guess on that.

**STORM:** OK.

**TAMMY WINTERBOER:** It's not a small percentage. I-- you know, I think it is a significant percentage that are nonpatients as well.

**STORM:** That's what I'm saying.

**TAMMY WINTERBOER:** Yes. But I don't have those exact numbers. I'm happy to try to find them at our institution's level.

**STORM:** OK. Thank you.

**BOSN:** Any other questions? Thank you for being here.

**TAMMY WINTERBOER:** Thank you.

**BOSN:** Next proponent. Thanks for being here.

**JENNIFER HIRSCHFELD:** Good afternoon, Chairman Bosn and members of the Judiciary Committee. My name is Jennifer Hirschfeld, J-e-n-n-i-f-e-r H-i-r-s-c-h-f-e-l-d, and I'm a registered nurse, and I'm here to testify in support of LB26. I am the ER director at York General Hospital in York, Nebraska, and I'm also here to represent the Nebraska Hospital Association. First, we would like to thank Senator Ballard for introducing this important workplace violence legislation. Working in the emergency room, room setting can be very rewarding in many ways, but also can be very challenging. Over the years, we have

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seen a change in patients, patients' family members and visitors. They can be very verbally and physically abusive to staff, no matter if it's the ER clerk, nurse, doctor, housekeeper, dietary aide, or any other staff member they may come in contact with. Staff have been verbally accosted, slapped, kicked, grabbed, spit on, bitten, just to name a few examples. And this is just a few of the things that are actually reported. There are many incidents not reported that are viewed as being just kind of part of the job. With an increase in substance abuse and mental health patients like we've talked about seen in the emergency room, this potential for violence is even more amplified. All hospital employees are vulnerable to violence from patients and from visitors. The most severe case of violence at York General Hospital happened in 2016 when a patient was dismissed from the emergency room. He then came back, gained entrance into our hospital wielding a knife. He was chasing and threatening staff. Law enforcement was summoned and the person was shot by law enforcement and subsequently died. Several steps after that, of course, were taken to ensure safety of all York General employees, including implemented-- implementing armed and paid security. In my 18 years working in the emergency room at York General, I can validate an increase in violence from patients and the need for law enforcement intervention. We have had pepper spray and tasers deployed in our emergency room. The violence, though, is just not limited in the emergency room. We have seen increased need for security, law enforcement, or hospital administrative presence in many areas of the hospital, such as the med surg area, OB, specialty clinic, radiology, just to name a few. As you can see from just a few of my personal experiences and things I have shared, workplace violence has increased and is not going away. All employees deserve protection and respect in the field they serve. Thank you for your time and I encourage you to advance LB26. I'm happy to answer any questions.

**BOSN:** Thank you. Any questions from the committee? You got off easy.

**JENNIFER HIRSCHFELD:** Yay. Thank you.

**BOSN:** Next proponent. Any opponents wishing to testify?

**SPIKE EICKHOLT:** Good afternoon, Chair Bosn and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to the bill. I did visit with Senator

Ballard last week and told him that we would be opposing. A couple of things. First, we have to look at the scope of the bill. I respectfully suggest you look at the actual text of the bill because the anecdotes, the stories, and things that you hear are not going to be replicated on the statute books. This applies to every employee of a hospital or clinic, whether they have anything to do with patients or not. It applies to the administrator who's working from home engaged in their official duties and get in a fight with a neighbor. That's a felony assault. The housekeepers, the people who work in-- parking attendants, people who work in the gift shop. That's all felonies. People don't interact. It's against the law to assault anybody. If it's a-- it's a misdemeanor assault to intentionally, knowingly, or recklessly caused bodily injury. And as the chair knows, bodily injury can be physical pain, it can be incidental, it can be done recklessly. This would make every assault of every employee of a hospital or clinic, I haven't seen the amendment so I don't exactly know what that's adding, a felony. The presumption and the argument is this is deterrent. It's already a felony now for an assault of anybody using a weapon. So a taser, a knife, that's a felony. The, the incident from 2016, that was a felony then. It didn't deter that person from going back to the hospital. I think Senator McKinney's right. I think this increase is corresponding with the increase in mental health crises. They already have signs on the walls, on the door, as you heard the witnesses talk about in the handbook, in the patients admission information, it says if you assault a health care professional, it's a felony. If you're intoxicated and you're the patient, you're delusional, you're in a mental crisis, you don't know who's licensed or not. You've been told it's a felony. Here's somebody who works with the hospital, it's not having a deterrent effect. A witness talked earlier about 30% of the incidents aren't protected under the law. That means it's not a felony assault necessarily. That means 70% of the incidents are felony-level crimes. The presumption and the argument that increasing this penalty is going to deter, I don't think makes sense. You know, it's against the law to drive drunk. What's the penalty? What's the penalty for driving drunk aggravated? Is that a misdemeanor or a felony? You don't know. And, respectfully, you write the laws. I mention that because I think the argument for this is just flawed. There is a distinction now between licensed mental health or licensed health care providers, and officers, and those people who are entitled status. But if you look at those, there is a certain logic. Those people have to get involved



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with people who are difficult. Law enforcement sometimes has to arrest somebody because they're going to jail regardless. And if you assault them, it's different. It's not the same for other employees. And I'm not being dismissive of them because it is-- they are entitled to protection of the law, but it's just not the same sort of level that we afford for law enforcement officers who are trained in de-escalation, who are trained to deal with mental health crises. And it's not the same for every employee of a hospital or clinic. So we urge you not to advance the bill. I'll answer any questions if you have any.

**BOSN:** Questions from the committee? I have a few. So the example that-- you were here for the other witnesses or testifiers-- and the example that she gave of someone who's assigned to sit with a patient.

**SPIKE EICKHOLT:** Right.

**BOSN:** You would agree they're required to be there.

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

**BOSN:** OK. So while I agree with your example of individuals who are working remotely or telehealth nurses that are in another state now being technically, arguably under the umbrella here, if we were able to come to some sort of an agreement that the assault took place at the health care facility while this person was acting under the scope of their responsibilities, you know, I'm not there visiting my own mother. And now because I get assaulted, I'm not even under-- you know, I'm not working that day, I'm just there visiting my mother. But there is a shortage of health care workers-- and I think there, there-- the testifiers have shown that there's a correlation here between people leaving that field as a result of feeling unsafe. And so, yes, we write the laws and we're responding to those concerns. Can-- is there a work-around here that you can hate but live with?

**SPIKE EICKHOLT:** Well, you asked-- you've, you've proposed a few things. First, can we somehow narrow this to apply to those people who are working with patients and sort of have to and not people who are remoting in and working from home? First, the law already has to have this protection. You need to be engaged in an official performance of duties. That's already current law. So if you're an officer engaged in your official duties and you-- you're assaulted by somebody, that's

always a felony. Same thing for a health care professional, licensed health care professional. You're engaged in official duties. So if you're working from home, you're engaged in your official duties. That's the reason I pointed out that. If you want to have an additional element of they have to be interacting with a patient, first, I don't think that's what the proponents were asking. They were asking for everyone, patients, visitors, everybody. You assault anybody at the hospital or, or remotely related to it as a felony. So I don't know if it would-- well, I don't know if it will work for us because I still think it's sort of arbitrary, but I don't know if it would even work for them. First, no one here has said they have any proof whatsoever that this is deterring anything in other jurisdictions. We've had the law on the books for at least 12 years, I think, and the numbers are going up. And as I pointed out in my testimony before, people are told, you're not told when you get in a cop car assaulting an officer is a felony offense, but you're told when you go to the hospital. I've seen the signs. And I don't know for those people who are likely to get tangled up or just be rude or whatever with staff can, can distinguish who's licensed and who's not. So I, I would, I would not even concede, frankly, that there's a deterrent effect to be gained by increasing this penalty. And I don't think anyone's convinced this committee that that exists. So that's one response I have to it. It would make it better. At least you'd have some sort of nexus, if you will, for someone who sort of got to interact with somebody. They have a duty. If somebody has got an arrest warrant, the cops are going to take them to jail whether the person wants to go or not. And the cops might have to do something kind of unpleasant to get them there. And so the law sort of says, well, if the cops are going to have to wrestle with this guy, we got to give some protection to the officer in that situation. Officers got the authority to kill. They got the authority to restrain. We ought to give them some sort of protection. That's not the same, in my opinion, for everyone who works in health care. But, admittedly so, the Legislature made a distinction a number of years ago to provide for a licensed mental health care to have that distinction, probably because they do have to-- if somebody has being taken to hospital for, for confinement, they've got to treat them. You know, they just can't-- even if they're drunk and screaming and angry or wounded or whatever or want to walk out of the place, there's still an obligation of that

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professional to interact with a patient. That makes some sense. But I don't think that extends to everyone who works at the hospital.

**BOSN:** But if I'm understanding you, while you don't think it extends to everyone, and I've conceded, I agree. It sounds like you're open to at least some expansion of that to individuals who are required to work with them.

**SPIKE EICKHOLT:** Well, it would make more sense in our opinion, yes.

**BOSN:** Because the difference I think I see is, is that, like, law enforcement example, they're required by law to interact with those individuals. And so we're putting-- we're forcing them to have that. The same is also true at a hospital. They can't deny someone who comes in seeking treatment. They can't just say, you know, last week you were here and you almost threw a pop can, so you're out. You can't do that. You, you can go to a jewelry store and they can say you almost threw something, you're not welcome here ever again. But hospitals don't have that opportunity. So I, I think that's where I see them more like law enforcement than perhaps some other--

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

**BOSN:** --private businesses.

**SPIKE EICKHOLT:** I don't know that hospitals always have to accept everybody. I think they have some autonomy to refuse care.

**BOSN:** OK.

**SPIKE EICKHOLT:** Well, there's a case I know pending in Douglas County where that's an issue for someone who later died in Douglas County jail after they refused care. But so I don't know that, on that, so I don't know if it's the same thing. But I understand what you're saying.

**BOSN:** Any other questions? Senator Hallstrom.

**HALLSTROM:** Yeah. Mr. Eickholt, just for my benefit, if you would, please, and I want to look at it more carefully also. I'm looking at 28-930, which has to do with the assault and second degree penalty--

**SPIKE EICKHOLT:** Right.

**HALLSTROM:** --and it talks about bodily injury with a dangerous instrument, etcetera, etcetera, or this and that, and then it says and the offenses committed, etcetera, etcetera, while the health care professional is on duty at a hospital or a health clinic.

**SPIKE EICKHOLT:** Right.

**HALLSTROM:** And it would occur to me that your example, at first blush reading, that your example of someone working from home remotely and their neighbor comes over and does something to them would not be covered under that because it says on duty at a hospital or a health clinic.

**SPIKE EICKHOLT:** You might be right on that one.

**HALLSTROM:** Thank you. I want to look at it some more, too. Please.

**SPIKE EICKHOLT:** I was looking at 931, which is the assault on a third-- assault in the third degree penalty. And it does have that sort of [INAUDIBLE] with hospital or a clinic, at a hospital or a health clinic.

**HALLSTROM:** Let's talk, let's talk about that more.

**SPIKE EICKHOLT:** So my example, so my example for remotely doesn't apply, but obviously it would still apply for someone who's in a housekeeping part time, someone who's sort of their, you know, on an incidental basis has nothing to do with-- somebody's painting, actually, at the hospital, that's their official duty is they're hired to paint, for temporary employees probably at the hospital.

**HALLSTROM:** OK. Thank you.

**BOSN:** Any other questions? Thank you. Next opponent.

**SCOUT RICHTERS:** Good afternoon.

**BOSN:** Good afternoon and thank you for being here.

**SCOUT RICHTERS:** Thank you. Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s. I'm testifying here on behalf of the ACLU of Nebraska in opposition to LB26. I want to state from the outset that the ACLU appreciates the hardworking Nebraskans who serve as emergency care responders, health care providers, and those who work in a variety of jobs to keep

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hospitals and clinics running smoothly. Our opposition is in no way meant to downplay the contributions of Nebraskans to the health care systems in our state or to downplay the situations that we've heard about discussed today. Our opposition to LB26 is to the lawmaking practice of continually creating new crimes and broadening existing crimes. Several years back, the ACLU of Nebraska released a report called the State House to Prison Pipeline, which focused on how legislative action with respect to adding crimes and harshening penalties correlated with the overcrowding, overcrowding crisis we continue to grapple with within the Department of Corrections. One suggestion we made within the State House to Prison Pipeline report, and that I would just reiterate here, is that the Legislature simply stopped creating new crimes or at least be very skeptical when considering new crimes. So LB26 expands the crime of assault on an emergency care provider or a health care professional for conduct that, as Mr. Eickholt said, is already a crime under Nebraska law. And for those reasons, the ACLU of Nebraska opposes LB26.

**BOSN:** Thank you. Any questions from the committee? You got off easy.

**SCOUT RICHTERS:** Yeah. Thank you.

**BOSN:** Thank you for being here. Next opponent. Anyone wishing to testify in the neutral capacity? Senator Ballard, to close.

**BALLARD:** Thank you, Chair Bosn and members of the committee. I'll be brief because I know you have more work to do this evening or it's late afternoon. I, I, I usually don't come before the Judiciary Committee. I, I believe this is my first time before this committee. But I, I took this bill on for two reasons. One, because I have the immense privilege of serving on the Health and Human Services Committee, and we hear about workforce shortages within the health care industry almost every day. And this is-- I mean, is-- I appreciate Mr. Eickholt and his, his giving me a heads up about his opposition and he's right. Is this a silver bullet? No, it's not going to be a silver bullet to reduce workforce shortages in the state, but I, I think it could help. So any way we can work in tandem with, with things we are doing over in the HHS committee and also the Judiciary Committee, I think is a benefit for Nebraska. And second, I, I, I hear these stories every day. I have a, a wife that is a health care practitioner. And so she's covered under this, but she sees dozens and dozens of patients and she says she works with technicians that she,

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again, could probably file, file complaints almost every day. And so she's working through this as well. So that's another reason I took this on because I think it's an important step in the right direction to help, help health care workers in the state. So with that, I'll take any questions. But, again, I know you guys have a long night.

**BOSN:** Any questions? Senator McKinney.

**McKINNEY:** Thank you. Do you see the reason why this might need to be more clearly defined or more context might be needed to be provided?

**BALLARD:** Absolutely. I'd be happy to work with this committee, with the, with the ACLU, with Mr. Eickholt to try to narrowly define this.

**McKINNEY:** All right. And, lastly-- I probably should have asked the, the individuals that work in health care, but you are on the HHS committee so I'll ask you. Is violence or assaults the only reason for the health care shortage in the state? What are some other reasons?

**BALLARD:** No, it's, it's not the only-- the reason for health care shortages. There's burnout that we hear about a lot. There is-- pay reimbursement is also an issue that we hear a good portion of. So it's-- I think these things work in tandem, but it's-- I, I-- what else I'll hear about, they, they, they-- some health care workers do have some concern about their safety within, within the health care industry. And so trying to, trying to correct that.

**McKINNEY:** I guess-- OK, on the safety, when you think about safety, is safety just based in fear of a patient or somebody from the community assaulting them or is safety based on other things as well?

**BALLARD:** Can, can you clarify the question?

**McKINNEY:** Like-- OK, like, I know people when we were going through the pandemic and some people didn't feel safe about working at hospitals or they didn't want to take the vaccine or those type of things or just is it solely based in fear of getting assaulted or when you think about, is safety just-- is, is it, is it all encompassing?

**BALLARD:** It's all encompassing. Of course. Yes.

**McKINNEY:** All right. Thank you.

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**BALLARD:** Yes, of course.

**BOSN:** Any other questions? Thank you for being here.

**BALLARD:** Thank you, Chair.

**BOSN:** Oh, before we conclude the hearing, there were nine proponent comments submitted, no opponent, and no neutral comments submitted. And that will conclude our hearing for LB26.

**BALLARD:** Thank you.

**BOSN:** Last, but certainly not least, is Senator Holdcroft.

**HOLDCROFT:** No.

**McKINNEY:** Oh, we're done.

**BOSN:** Hallstrom. I'm sorry.

**HOLDCROFT:** I already did mine.

**DeBOER:** Hallstrom.

**BOSN:** Sorry. So it is last and least. No, I'm kidding.

**HALLSTROM:** Chairwoman Bosn, members of the Judiciary Committee, my name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m. I'm the senator for Legislative District 1, consisting of the counties of Otoe, Johnson, Nemaha, Pawnee, and Richardson County in southeast Nebraska. LB80, which is before you today, consolidates and streamlines existing statutes pertaining to domestic abuse, sexual assault, and harassment protection orders by consolidating them under a single act, the Protection Orders Act. The bill is based on LB1098, introduced last session by Senator DeKay, which was before the Judiciary Committee. At that time, no one testified in opposition to the bill, which had nearly identical provisions. The deputy administrator for court services divisions testified in a neutral capacity requesting additions to the bill, some of which have been added to and are contained within LB80. In going through the bill, the bill enables a protection order issued under this act to be issued for an initial period of at least 1 year and no more than 2 years in the court's discretion based upon the evidence presented. It provides that an existing harassment order can be renewed. I have received some

pushback from-- on that provision, and some of the witnesses that will oppose today have been gracious enough to come to me in advance and let me know about that. However, the advocates for the bill, importantly the survivors who are seeking these protection orders and the organizations who serve them, have continued to urge the extension from 1 year to 2 years in the court's discretion. Longer durations of protection orders provide greater protection. The limited initial duration of protection orders, increases strains on survivors and court systems alike. An annual renewal process requires survivors to continually revisit experiences of trauma. One study found that a 70% reduction in physical abuse and a 60% reduction in psychological abuse to be directly associated with the extended duration of protection orders and the limitations to the respondent and protection orders do not create extraordinary burdens for them. As of 2022, 34 states have longer protection order durations than available in Nebraska, ranging from 2 years to permanent lifetime protection orders. The longer duration provides greater stability and safety to survivors and reduces the workload for our judicial system. Next, the bill requires certified copies of the protection order to be provided free of charge to the petitioner, local law enforcement agency, and sheriff's office for service to the respondent, with copies to be provided electronically as well. This bill allows a court to treat a petition for domestic abuse, harassment, or sexual assault protection order as a petition for another of such types of protection order if it appears from the facts and evidence that such other type of protection order is more appropriate. The bill also allows for enhancement of second or subsequent harassment protection order violations, which is currently the case for sexual assault and domestic violation orders. For a violation of a harassment protection order, a violation of this section is a Class II misdemeanor for a first offense and a Class I misdemeanor for any second or subsequent offense. The bill adds violations of Section 28-311.08, which relate to unlawful intrusion of offenses such as revenge porn to the definition of sexual assault for purposes of the Protection Orders Act. Finally, the bill includes changes requested by the court services division last year. The bill allows court staff to assist in filling out protection order requests in accordance with court policy and not in the fashion of providing legal advice, but merely answering process and completeness questions. It adds further clarity regarding ex parte renewals and allows the petitioner to request their content-- contact information on the petition to be kept confidential and for court staff to maintain the



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contact information so that it is only available for the court to use. I've also distributed to the committee AM33 to LB80, which simply conforms the relief under existing statute that can be granted for each type of protection order to make them consistent. And basically the one item that was not consistent throughout is an order to stay away from any place specified by the court. With that, I'd be happy to address any questions that the committee might have.

**BOSN:** Thank you. Any questions from the committee? You got off easy.

**HALLSTROM:** Thank you.

**BOSN:** 4:35. First proponent. Good afternoon.

**MELANIE KIRK:** Good afternoon, almost evening. Good afternoon, Chairperson Bosn and members of the Judiciary Committee. My name is Melanie Kirk. I'm the legal director at the Nebraska Coalition to end Sexual and Domestic Violence. The Nebraska Coalition is testifying in support of LB80 on behalf of the Coalition and its network of sexual and domestic violence programs. Our programs-- our 20 programs cover all 93 counties in Nebraska and are the primary service providers for sexual assault and domestic violence survivors. Before I joined this job 2 years ago, I practiced for 10 years in private practice in family law and juvenile law, and I became very familiar with working with survivors. I've represented survivors who are trying to escape unimaginably harm situations-- harmful situations, and I would-- situations that would keep you up at night worrying whether or not I had done enough to help protect them. LB80 aims to streamline and consolidate the protection order statutes under-- in Nebraska under a single act. This consolidation is long overdue. It would greatly benefit survivors by simplifying this process. Many survivors face these processes pro se without the guidance of an attorney. One of the key provisions of LB80 is allowing for judges to determine whether the initial term of protection order should be a single year or up to 2 years before it would need to be renewed. Many other states offer greater judicial discretion in determining the length of protection order and Nebraska is one of only 17 that don't give the judges an option of more than a year right out of the gate. 21 states allow for protection orders longer than 3 years immediately, and permanent protection orders are written into statute in several states. I created a map for you. It's attached to the back of this-- worksheets that we handed out that explains-- shows you the different lengths of

protection orders depending on the state. Requiring survivors to renew a protection order annually forces them to relive their trauma and interact with the court system, which in and of itself can be traumatic. Experiencing domestic assault or sexual violence is deeply traumatic, and the aftermath requires a period of recovery and rebuilding. Domestic violence is pervasive and most often involves financial control, emotional abuse, sexual assault, and isolation from friends, family, and support, in addition to physical abuse. Survivors of abuse may be unable to fully establish independence, safety, and healing in just a year. Longer protection order allows survivors to access resources and make progress from when they asked for the protection order. There's a concern that protection orders are sometimes misused in custody disputes, and that may be valid, but it shouldn't overshadow the critical purpose of these orders, which is safety. The legal system must prioritize the safety of victims and provide the option for judges to determine specific cases warrant a longer protection order. Protection orders aren't permanent. They can be reviewed by a judge. A petitioner can request that a, a protection order be modified if circumstances change, such as the petitioner and the respondent reconciling. Nothing in this bill changes that. It also clarifies that a protection order could be renewed ex parte based on the affidavit of the petitioner. There has been confusion in various courts on whether or not a renewal can be issued ex parte, and that can lead to a lapse in the protection order for the courts before it can be set for hearing, because a, a renewal can be requested up to the day that the protection order would expire. So this would clarify that for the courts to make sure that we don't have a break when survivors are vulnerable.

**BOSN:** Thank you. I know you didn't get quite through and,--

**MELANIE KIRK:** That's OK.

**BOSN:** --certainly, we can read this. Let's see if there's any questions and then we'll go from there. Any questions of this testifier? OK. So the example that you were just talking about, my recollection serves me you can't apply to renew until-- let's say my protection order expires January 31. When am I first eligible to apply to renew it?

**MELANIE KIRK:** 45 days before then.

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**BOSN:** OK. And if that protection order-- so that'd be December 16, around. I go in on December 16, I file the application to renew it for another year and the respondent requests a hearing. They have the right to do that?

**MELANIE KIRK:** Yes.

**BOSN:** It would be-- it wouldn't be unheard of that that wouldn't [INAUDIBLE] to the next 45 days.

**MELANIE KIRK:** It'd be possible. And I'll be honest with you, I think that most survivors aren't right there 45 days beforehand.

**BOSN:** Sure. But there are also-- and, and I don't disagree-- but there are also cases where if I file on December 16, the court says my first available hearing isn't until February 10.

**MELANIE KIRK:** That's absolutely something that could possibly happen.

**BOSN:** And the protection order is not in effect from January 31 at 11:59 until we have that hearing in the court.

**MELANIE KIRK:** Unless there's an extension that's ordered ex parte.

**BOSN:** But there's no requirement for it.

**MELANIE KIRK:** Right.

**BOSN:** It's not automatically continued pending the hearing.

**MELANIE KIRK:** That's correct.

**BOSN:** And so, in your experience, is there a heightened risk of safety or concern for safety for those petitioners between asking for a continued, a continued protection order and the time of that hearing should there be any lapse where they're no-- they're not covered?

**MELANIE KIRK:** Oh, absolutely. It'd be much more dangerous if there's no protections there. And that's if you consider that sometimes there's parallel criminal cases that go along and you think about the timeline for one of those cases, there might be a criminal no contact order, but that case is probably going to be over by the time 1 year. So the only thing that is protecting them then is the civil protection order and if that lapses, you've got somebody who's upset and angry

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that this is being asked that the-- survivors asking that this be renewed. It's a very dangerous situation for them.

**BOSN:** And you're satisfied that that is addressed in the amended--

**MELANIE KIRK:** I think it makes it very, it makes it very clear to the judges that it is acceptable to issue an ex parte for a continuation of the protection order, which is as I think the confusion, as we've heard from some advocates and some attorneys that say judges won't grant this because it's not provided for specifically in statute for the extension of a protection order to be issued ex parte. So some judges are doing it already and some judges don't feel that they have the statutory authority. So we want to make that very clear that that is allowed. And that's the exact reason why.

**BOSN:** And then the last thing that's in here, the court clerks-- so you and I spoke earlier, so I'm going for more knowledge than these guys may have. If you can explain the situation that you told me about earlier.

**MELANIE KIRK:** Sure. So we're not expecting that clerks should be giving legal advice because they shouldn't. What is happening, though, and I know that this is happening because I'm hearing from advocates who have survivors that come in and they try to fill out these forms on their own pro se. And when they do that, and it's, it's a situation where it's extremely emotional and they're turning them in, if they didn't fill it out completely, the court clerks might reject it. And the survivor thinks that their protection order has been denied. And so what we're asking is that clerks be able to tell survivors or tell the person who's applying, you need to make sure you fill out all of this information in order for us to accept this filing. Or we need you to make sure that you put the address here or we need you to put the full name here. And I've, I've heard and looked at cases where they didn't put the last name on there, and it wasn't something that they did intentionally. It was just a moment of panic when they were filling this out looking for safety. And it was denied, they thought that they weren't entitled to a protection order. And it was egregious. That was a case of rape. So this is not something that we're trying to put additional, you know, responsibility on the clerks just to make sure that simple things don't get overlooked, like letting them know you need to make sure you fill all of this out or you also need to fill out this form as part of this, just to guide

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them a little bit in order that they can get this in and ask for the help that they need.

**BOSN:** Any other questions? Thank you for being here.

**MELANIE KIRK:** Thank you.

**BOSN:** Next proponent.

**CHRISTOPHER JOHNSON:** Good afternoon, everyone. I'm new at testifying and it's late in the day, so I might try to keep this as brief as possible. Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. My name is Christopher Johnson, C-h-r-i-s-t-o-p-h-e-r J-o-h-n-s-o-n. I'm appearing today on behalf of the Nebraska County Attorneys Association in support of LB80, the Protection Orders Act. Just by way of introduction, I'm currently the Chief Deputy County Attorney in York. I'm also the former county attorney in York, and I'm currently the Polk County Attorney. So I represent multiple districts just west of here, one of which is significantly more rural than the other, but both of which have their own nuances here. Our association supports LB80 because it simplifies and it harmonizes the statutes. Currently, we have three different types of protection orders in the state. We have harassment, we have domestic abuse, and we have sexual assault protection orders. And each one of those fills its own particular area. However, the standards are different and the actions that might qualify for a harassment protection order don't qualify for a sexual assault protection order, so on and so forth. Not only are these-- when someone applies for a protection order, they'll go to the clerk of the district court in whatever county. They're handed, typically, a packet of information and in that packet is a wonderful little judicially created flowchart which starts with if this is this, then go to the next step, then go to the next step, and ends with please apply for this protection order. In each protection order is also a request that says please, if I filled out the wrong form, please consider this for one of the other protection orders. Unfortunately, there's currently no statutory authority to do that, and we're asking these individuals who are in some of the lowest points of their life in a panic, who are being harassed, have been assaulted, have been raped, have had their children be exposed to horrible things, we're asking them to make rational decisions based on a chart that is just-- it, it's not good. The present system would allow-- or excuse me, the LB80 would allow for the court clerks to be

able to present the proper forms to make sure that the completeness is there, would allow for them just to make sure that it doesn't get denied based on a technicality. Further, it allows for the enhancement of penalties for a harassment protection order. Presently, domestic abuse and sexual assault protection orders can be enhanced. They start as Class I misdemeanors. They jump up to Class IV felonies upon a second or subsequent-- a harassment protection order can be violated 20 times or 50 times and still remains at the exact same level. So something that a friend might do to you is not classified the same as if a partner might do it to you or a stranger doing something to you may not have-- qualify for things that a partner may do to you. It also allows for judicial discretion in extending those protection orders beyond that 1 year. Obviously, somebody calling you names repeatedly over text message may qualify for a harassment protection order that might stay at a year. Somebody showing up at your door three times in the same week with a knife is a little bit different. And I see my time is up.

**BOSN:** You can finish your thought. Yes.

**CHRISTOPHER JOHNSON:** And is a little bit different and so it would allow for judicial discretion when there is that more severe action. I'm going to skip the remainder there. Thank you for your consideration of LB80 and for protecting some of the most vulnerable individuals at their most vulnerable times. With that, I'll take questions.

**BOSN:** Thank you for your testimony. Senator McKinney.

**McKINNEY:** Thank you. And thank you. Just, I think, one quick question. What happens when the person who wants the protection order gets a protection order and is the party violating the protection order?

**CHRISTOPHER JOHNSON:** So the way that I'm understanding your question is I'm going to use a husband and wife.

**McKINNEY:** Yep.

**CHRISTOPHER JOHNSON:** So wife gets a protection order against husband and then wife calls husband 500 times in the same night.

**McKINNEY:** Right.

**CHRISTOPHER JOHNSON:** Currently, nothing. In theory, somebody could file a, a criminal case against that person, the, the wife in that scenario for aiding and abetting a violation of a protection order. But then you're prosecuting somebody who's typically a victim. It's definitely not best practice there. If there is a bill that would solve that issue, that would really clear up a lot of my desk work.

**McKINNEY:** Because I've heard of situations where the person who has a protection order against them isn't necessarily trying to violate the protection order, but the other individual, however it happened, is the person actually violating the protection order?

**CHRISTOPHER JOHNSON:** Absolutely. And then--

**McKINNEY:** And end up in, in some type of situation and the police end up and--

**CHRISTOPHER JOHNSON:** And that is a scenario that I've seen more frequently than you would imagine. If you've got a protection order against me-- let's reverse that-- I've got one against you and I call you 500 times and you answer once you're in violation of the law and I'm not. And that doesn't make a whole heck of a lot of sense, but that's the way that it currently sits. This does not address that.

**McKINNEY:** No, I know that. I was just asking that question.

**CHRISTOPHER JOHNSON:** Sure.

**McKINNEY:** Yep. Thank you.

**BOSN:** Any other questions? Thank you for being here.

**CHRISTOPHER JOHNSON:** Thank you for your time.

**BOSN:** Next proponent. Sit down, Spike. Are there any individuals wishing to testify against this bill? Now you can.

**SPIKE EICKHOLT:** Thank you. Good afternoon, Chair Bosn and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to the bill. I did this visit with Senator Hallstrom a couple of times about this and told him that we would be opposing. We're only opposed to one portion of the bill, and that's the

extension of-- or the ability for a court to extend an order from 1 to 2 years in duration. Protection orders are civil in nature, which means one person sues another person and asks the judge to do something against the other person. It's not the state involved. So I'll just use the, the, the pronouns because usually is, usually is she's getting a protective order against him. She gets a protection order against him, the order tells him don't do certain things, don't call her, don't text her, don't go to her home, don't write her, nothing, and don't disturb her peace, nothing like that. If he violates that, it's charged criminally. They don't go back to court for any kind of [INAUDIBLE], there's a crime that's been committed. The concern that we have is that we see a significant number of cases, what I would characterize as consensual protection order violations. And you see a lot of this, unfortunately, in the domestic setting when you have a lot of manipulation in the relationship, the cycle of, of abuse and all those things. She gets a protection order, she's changed her mind. She wants him coming back home. And either they get caught together or she then changes her mind again and wants him out, and he's prosecuted for violating the protection order. A violation of a protection order in and of itself is not a violent offense, is simply violating the order. So if you call her, that's a violation. If you text her, that's a second count. Consent is not a defense. We've litigated this, consent is not a defense. And for the unsophisticated person, she got the order. She wants me coming back home. I won't get in trouble if I go there. And it usually takes, unfortunately, multiple accounts for some people to get those. I sent Mr. Hall-- I sent an email out on our listserv asking for examples of consensual violations. I sent Mr. Hallstrom probably like-- Senator Hallstrom probably about maybe a half dozen. And they involved an allega-- an incident months ago in Omaha. Two people living homeless in a car contacted by the police. She's got a protection order against him. He's arrested. Another case, I think, in York County or maybe Seward County, somewhere nearby, a traffic stop, a couple's in the car. The officer runs-- sort of checks for warrants, realizes they got a protection order. These things happen often. I suspect the chair has even seen some of these cases. And sometimes the only thing that gets that defendant in that situation who should know better but he's just not, it's just the protection order expires. As a practical matter, the protection orders-- or an advocate-- a victim can request that an order be modified or dismissed. But many times the courts simply deny it. I've given you an example of-- or I've given you the standard form



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by testimony of the form that you can fill out when you want to renew a protection order. I understand the concern that the advocates of this bill have. They don't want to have a victim reexperience a trauma, but they simply fill out a form and send it in. It's not a trial. It's not a jury trial. They often don't even have to appear in front of the judge whatsoever. They simply have to request the form that's prepared and filled out for them. There's no cost. There's no filing fee. And it's all prepared for them to make as easy as possible. I'll answer any questions if anyone has any.

**BOSN:** Any questions? Senator DeBoer.

**DeBOER:** Thank you. So what part of this new structuring of the bill is the problem and what are not? Right? So--

**SPIKE EICKHOLT:** Just Section 10 that allows a court to order an order from 1 to 2 years. Our concern is that judges are going to do 2 years.

**DeBOER:** So you're not concerned about the three becoming one, the clerks helping--

**SPIKE EICKHOLT:** No.

**DeBOER:** None of those are concerns.

**SPIKE EICKHOLT:** Not at all. It probably makes sense to do that. Because, for whatever reason, we started with a harassment protection order back in the '70s, then we had the domestic violence order, that actually I was a clerk. I was a committee counsel when we did that in, in the late '90s, and then we had a sexual assault protection order. I can't remember, maybe you brought that bill actually. So it was brought relatively recently. Now we have all three sort of floating out there and it would probably makes sense to have a standard form, our association is not commenting one way or the other, but just my opinion, it probably makes sense.

**DeBOER:** So your sole concern about this bill is the 2 year--

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

**DeBOER:** OK.

**SPIKE EICKHOLT:** And there was a proposal, you remember, a number of years ago to have 5 years and sort of the settle-- not necessarily a compromise, but the alternatives-- response was to allow for automatic renewal. The case law used to say that if you wanted a protection order renewed, you had to allege different facts. Something new had to happen in the year time for you to renew the order of the case it was decided at, but the Legislature changed the law that says if you want it renewed, you can have it renewed.

**DeBOER:** OK. Thank you.

**BOSN:** Thank you. Any other questions? I just have a couple. So yesterday we had bills and you were here.

**SPIKE EICKHOLT:** Right.

**BOSN:** And I don't remember exactly which bill it was, but there was one that also granted the court authority to order things for extended periods of time. And you said the court wouldn't do it.

**SPIKE EICKHOLT:** That was probation.

**BOSN:** Extending probation.

**SPIKE EICKHOLT:** Right.

**BOSN:** And you-- your-- if I'm recalling your comments yesterday, there was concern. Is the court always going to give the max of probation so that they can do this or accomplish this goal? And you said, no, the courts-- I don't think the courts are always going to do that. It's 3 months longer in residential treatment so they'll only expand it 3 months longer. And now you're saying that the court will always defer to the 2-- your concern is the courts would always defer to the 2 years. Can you square that for me?

**SPIKE EICKHOLT:** And this is my opinion, and it's kind of based on anecdotes and some observations I've had. I think that some judges are concerned if a case is marginal, if a request for a protection order is marginal. But the applicant, the petitioner, is alleging some pretty serious facts. I think that weighs on a judge. And this is my opinion so I-- they don't tell me this, necessarily, don't tell me this-- that weighs on a judge if they're going to grant it rather than not, because they don't want to deny it and have something horrible

happen. If given the 2-year option, they're not going to go for a year and 3 months because as soon as the 3 months is done, they're going to do whatever they can do under the law. That's a concern that we have. And that'd be one thing if the request to vacate was heard, because many times the advocates that help get the protection order, I don't think they always file and help the, the victim get-- a survivor a modification to allow, say, for contact and negotiate the divorce or something like that or for facilitating visitation with the kids. So I think that-- that's just our concern. If it goes to 2 years, the judge is going to do 2 years. If it goes to 5, they are always going to do 5 because they are always going to be safe that way. If you're a judge, looking from their perspective, my opinion again-- if any of them are watching, they're probably cringing-- but it is that you're always going to be OK to do it that way. Your picture is not going to be in the paper that way. Your picture is going to be in the paper if you're denied.

**BOSN:** OK. And I-- thank you. I, I understand that. I guess there are a number of states in this chart that we were provided which admittedly you don't have the privilege of seeing right yet. But I'm happy to share with you. And some of these go-- I mean, I'll be honest, permanent seems a little intense, but 5 to 10 years, do you think those states are always going to 10 years every time?

**SPIKE EICKHOLT:** When I supported and opposed bills, I sometimes refer to other states and it never seems to matter. So I kind of gave that argument up. But when Senator Morfeld did the up to 5 years, I did look at some of those, and some of those lifetime sort of are follow a criminal conviction for certain crimes. And as a consequence, kind of like a driver's license revocation thing, the judge will enter a lifetime protection order in addition. I can't remember which state, but that's one. I don't know, frankly, how those other states supports those. I think some still may just have civil contempt as sort of a, a way of forcing where you purge-- if somebody is in jail for a while, they can purge contempt, you know, that kind of thing, like you do for child support. I don't know that it's always charged criminally, maybe they are and maybe they're always enhanced to a felony. I'm not sure. I'm not sure if those other states that the case law or the statutes allow for sort of a consent nonknowing defense because, you know, we-- you and I probably had cases against each other where--

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**BOSN:** We did.

**SPIKE EICKHOLT:** --there would be, there would be-- she'd get the order and, for whatever reason, maybe he would initiate contact, but she would-- they would just get back together. And there would-- then you and I would be there fighting over it for some reason. And you'd be merciful sometimes. And sometimes your policy was to, to be sort of charitable and a plea agreement. But it was not something I'd go to court and win on. The order says don't contact her. That's the end of the tape. As a matter of fact, you were pretty successful. You-- in, in a motion to eliminate, prevent me even from adducing evidence. She had contacted him in the days prior to that because it's just not relevant to the charge. Anyway. So I don't know how to compare that to other states, maybe they have something like that where it's-- where we're a little bit more in line with the other ones.

**BOSN:** Fair enough. Thank you. Any other questions? Thank you. Any other opponents?

**TIM HRUZA:** Afternoon, Chair Bosn, members of the Judiciary Committee. My name is Tim Hruza. Last name is spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association. Let me first preface my comments with a couple of things. I do want to start by thanking Senator Hallstrom for his patience with me over the last week, also with the proponents of the legislation. As some of you know and are familiar with, the Bar Association has a process for taking positions that takes a little time. We've had an initial meeting to discuss this legislation and plenty of concerns have arisen which have resulted in our position presently in opposition. But I don't have a final position until next week, which we are working through. I will say that in the last week or so since we had our initial meeting, we've had good discussions with Senator Hallstrom, with proponents of the legislation trying to narrow down the issues and questions. But suffice it to say that I'm appearing today in opposition to express to you that I think that any time we start talking about the protection orders area and start making tweaks to that law, I start to hear from lawyers from tons of different camps, lawyers and judges alike, expressing concerns. And I've been trying to figure out exactly how best to summarize this for you in terms of the conversations I've had with attorneys who deal with these types of cases from all different perspective, whether it's from the criminal defense side or the prosecution side, or whether it's from the family law or the juvenile

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law side. These types of cases impact various areas of the law in very different ways. And so I think-- over the last week, we've spent a lot of time getting our head wrapped around how this bill affects the general structure of the protection order system. And I've told Senator Hallstrom this, and I, and I think 100% we are in support of the streamlining pieces that are in this bill in terms of taking these three different types of orders, which are undoubtedly confusing and difficult for lawyers and judges and anybody who deals with them to navigate and to make sure that they're pieced together in the correct way. We've done work with this committee over the last-- since I've been representing the Bar Association to make adjustments and changes. And you heard from Mr. Eickholt earlier some of those changes dealing with the length, the period, and the, the renewals process that the Bar had previously opposed. We came to a consensus and passed a, passed a law probably 4 or 5 years ago now that is, is affecting the system and making those changes. So, I guess, I'll in my comments by saying that we stand in a position of opposed today. You may or may not-- may well get a letter from me clarifying our position or moving our position once our House of Delegates has been through its final process. We are working with Senator Hallstrom with proponents to narrow out the issues. I do think the final crux of what we're talking about here in terms of the concerns probably comes down to this 2-year piece, which we'll continue to, to work with them over the next week or so and then getting-- again, getting continued feedback from the different practice areas that have an interest in this in how these cases affect the broader system structure. So with that, I'm happy to answer any questions that you might have.

**BOSN:** Senator DeBoer.

**DeBOER:** Thanks. Mr. Hruza, I think that may be the most confusing testimony--

**TIM HRUZA:** I know.

**DeBOER:** --I've ever heard in my life. So I think what you're saying is you think they might be opposed. At this point, the, the, the signs say opposed. Is that right?

**TIM HRUZA:** Well, at this point, we have-- I have a vote that's been taken by our legislation committee to oppose this bill.

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**DeBOER:** OK. Good.

**TIM HRUZA:** A quite strong, solid vote.

**DeBOER:** OK.

**TIM HRUZA:** Yes.

**DeBOER:** And they will finalize that at what time?

**TIM HRUZA:** That recommendation will be reviewed by the House of Delegates on Friday of next week.

**DeBOER:** OK.

**TIM HRUZA:** We could avoid a lot of this if the hearing had been 2 weeks from now, but that's just not how I'm able to handle this.

**DeBOER:** OK. So Friday of next week, we'll know what your opinion is. So you're basically testifying that you will testify more on Friday of next week?

**TIM HRUZA:** I, I am testifying here today, and, and this is where undoubtedly confusing. Like I said, I've probably gone through four different versions of how I present to you the conversations I've had over the last week with various sections of the Bar. There is no question that every time that we make a change to the protection order statutes, it has a ripple effect that impacts some of the victims that you've heard about today, the prosecutor side, the criminal defense side, the family law area section of the Bar in terms of-- I mean, when a protection order is issued in a divorce case or where there's a parenting time order that's been issued by a district court and a protection order is filed in a separate county and assigned to a county judge for review over there and ex parte order is issued, that affects who has the ability to see the kids. So it's, it's one of those things where any time we make a change, it causes consternation among attorneys about what the ramifications of that are going to end up playing out to be. And right now, I have-- I, I think I can tell you with, with certainty that I have more people raising questions and concerns than I have abilities to answer, whether we think that there are several things that are great about this bill. I think it's the 2-year thing that seems to be the real kicker right now.

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**DeBOER:** That's what I was going to say. OK. So--

**TIM HRUZA:** Everything else, I think, we worked through.

**DeBOER:** --to narrow it down.

**TIM HRUZA:** Everything else, I think, we've worked through and gotten the answers to people. Some of the things that were brought up related to the ex parte renewal piece. The-- I think I've gotten answers from people and to, to the lawyers on the committee that I need to. It's this-- I think it's probably going to come down to that.

**DeBOER:** OK. Thank you.

**BOSN:** Any other questions? Thank you for being here.

**TIM HRUZA:** Thank you.

**BOSN:** Next opponent. Anyone in the neutral capacity? Senator Hallstrom, to close.

**HALLSTROM:** Thank you, Chairman Bosn. And for closing purposes, first thing I want to do is clarify the record. Mr. Eickholt reminded me. I did note earlier that no one did testify against the bill last year, Senator DeKay's legislation, and that was a true and accurate statement, except Mr. Eickholt reminded me that the reason he didn't testify was that there was an amendment proposed to change the 2-year period to 1 year. So that would have warranted him not appearing at the, at the hearing. With regard to the Bar Association, they're now on record in opposed. When we get to the floor of the Legislature on this bill, it's going to show that the State Bar Association is opposed. I had a similar situation years ago, represented a client, and then Senator Landis, the chairman of the Banking Committee, when I came in early and said, gosh, we haven't gotten our groups together. And, and we're here today in a neutral capacity, but we're probably going to have some concerns. He compared the organization to a slow-moving pachyderm and, and ridiculed me publicly for not being able to have a position. And that would have been the preferred methodology. But in all seriousness, we will work with the defense attorneys and will work with the Bar Association. I will note right now my position, unlike Senator DeKay, at this point, is that the compelling arguments in my mind and the right policy decision is to go from 1 year to 2 years in the court's discretion. It surprises me that

either the criminal defense bar or the Bar Association attorneys would have concerns with the ability of judges to make the right decisions. And I think with regard to the other issue is let's keep the-- let's keep our eye on the ball here. Mr. Eickholt talked about a judge making a decision to deny or he's going to air on the, on the side of conservatism, that has nothing to do with the period of time. This is not about denying it. It's about if the evidence warrants the entry of a protection order, it's going to be 1 year at a minimum, and it could be up to 2 years in the judge's discretion based on the evidence. The other issue to keep the eye on, on the ball and, Senator McKinney, I'd be happy to work with you on that issue. I think the county attorney that came up here indicated that it's probably not right and there ought to be a resolution to the issue when it's the victim that is causing the violation of the order. But that's not the issue that's at issue here. So we can work on that separately. Be happy to, to look with the county attorneys, the criminal defense attorneys on that one. But that issue, it should not intervene or interject itself into, into our discussions here when we get together for an exec session. So I'd be happy to address any questions that you may have on, on the bill.

**BOSN:** Any questions? Seeing none, I will note for the record there were four proponent comments submitted, no opponent, and no neutral comments.

**HALLSTROM:** Thank you.

**BOSN:** That concludes our hearing on LB80 and our hearing today.