

Judiciary Committee February 23, 2018

EBKE: [00:00:08] Good afternoon. We're waiting for Senator Wayne to appear but I think he's on his way. So we're going to go ahead and get the preliminaries done. Good afternoon. Welcome to our Judiciary Committee. This is our next-to-the-last hearing day, so-- for this session. My name is Laura Ebke. I'm from Crete, represent Legislative District 32. I chair the Judiciary Committee. I'd like to start off by having my colleagues introduce themselves. Let's start over here this time.

BAKER: [00:00:36] Roy Baker, District 30, got a little bit of the southern part of Lincoln and southern Lancaster County and all of Gage County.

KRIST: [00:00:43] Bob Krist, District 10, Omaha, Bennington, and unincorporated parts of Douglas County.

HALLORAN: [00:00:48] Steve Halloran, District 33, Adams County and the part of Hall County which makes it look like Idaho.

EBKE: [00:00:58] And I don't know but I think Senator Morfeld, Senator Chambers, Senator Pansing Brooks, and Senator Hansen will probably be joining us shortly. Assisting our committee today are Elice Hubbert, who is our pinch hitter. Our regular clerk is out with a family medical emergency the last three days. So thank you to Elice for helping us out this week. We have Dick Clark who is one of our two legal counsels. We have our two committee pages, Rebecca Daugherty from Doane University in Lincoln and Sam Baird from the University of Nebraska-Lincoln. On the table over there by that pillar you will find some yellow testifier sheets. If you are planning on testifying today, please fill one out and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There's also a white sheet over there on the table if you do not wish to testify but would like to record your position on a bill. Also, for future reference, if you are-- I guess there's not much to refer to in the future. But just in case, if you're planning on testifying on Tuesday or Monday for any of the committees that are meeting, if you're not testifying in person on a bill and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the day before the hearing. We'll begin bill testimony with the introducer's opening statement. Following the opening, we will hear from proponents of the bill, then opponents, followed by those speaking in a neutral capacity. We will finish with a closing statement by the introducer if he or she wishes to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you are going to testify, I ask that we keep the on-deck chairs filled. We've got two chairs up at the front that have-- that have some yellow signs on them. We also have some other chairs in the front. It helps us if-- the bill that we're on if you have those filled so that we know who needs to come up yet and so that we can transition from speaker to speaker in a timely fashion. We'll be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. And to that end, at three minutes and 30 seconds you will hear an audible beep, so we take three minutes very seriously just because we have-- how many of you are planning on testifying today on anything? OK. So we have a lot of bills today. We have four bills to hear and we want to keep things moving as well as possible. As a matter of committee policy, please, no talking on your cell phones while we're in public hearings. I'd ask that you take a look at your cell phones now, and I will do the same, make sure that they are on silent mode. And if you need to take a phone call, please, just step outside the door. One more thing, you may notice people coming and going. And that doesn't necessarily have anything to do with the importance of the bills being heard but, rather, senators, some of our senators are still having-- presenting their own bills in other committees. Likewise, there's limited hours available in the day for meetings so some of them may have meetings that are still carrying over. So with that in mind, we will begin today with LB977, Senator Wayne.

WAYNE: [00:04:37] Thank you, Chairwoman Ebke. Thank you for the long introduction. It allowed me to catch my breath. I thought I was in a different hearing. I looked at my phone and my LA, Jake, said: Judiciary now! And so just a note, from DHHS to here it's about a 4.3 second jog if you sprint real hard and you're 27 pounds lighter. [LAUGHTER] My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent District 13 which is north Omaha and northeast Douglas County. This is a simple bill, and I think during the process of the LB605 process we didn't take into account some practical factors and the only way you can take those into account is to see how it happens. And what we had happen with Class IV felonies is that there is a presumption of no jail time in Class IV felonies, so the judge has to specifically rule that probation is not appropriate to sentence them to jail. The practical effect of that is you'll have somebody who sits maybe in jail for 60 days, maybe longer depending on how fast you can move through the process a motion to suppress and different things, and the judge will give them time served. So let's think about it when you do a false-- you know, you have a warrant. You don't want to tell the judge-- you know, a cop who you are. They charge you with falsifying information or you have a-- you write a check, didn't realize it was bounced, but you just say, hey, I'll just plead to a Class IV felony. You've already done 30 days in jail, 60 days in jail. Judge said, we're just going to give you time served because you already did your time. Well, underneath LB605, when we passed it, there's an automatic postsupervised release that will last nine months. So what you literally have a judge saying is we deem you not suitable for probation, therefore, we have to give you jail time, and we give you time served, but in the same order they have to deem them eligible for postsupervised release, which is essentially probation. So you have a contradictory order in the same order saying you're not eligible for probation because we think it won't help you, we want to give you time served, but, by the way, we're going to put you on probation. Makes no sense. In some cases it does. In some cases where you have a young individual who is still trying to find their way, they did 30 days in jail, and judge might say we're going to give you time served but we're going to put you on postsupervised release for another year because I think you learned your lesson in jail but we just want to make sure. And so we need to have faith in our judges to be able to make those decisions, particularly on Class IVs. I didn't do any other classes because it's the Class IV felony where I find myself, as a practicing attorney, pleading somebody and then they're still on postsupervised release. It just doesn't make sense. And the-- and the-- and the reality is you have attorneys, and I've done this twice, where we actually plead to a higher felony. They get charged with a Class IV and will plead to a Class I or II, or maybe II or III, because they've already sat in for eight months. And so if they get a year sentence, they're done. There is no postsupervised release. And the judge, the prosecutor, and everybody knows that's what's best for this individual. They either want to move out of state, they're not from here--for example, in drug cases they're not from here--so to make them stay here or to go through the process of transferring them to another state for probation is very, very difficult and a long process. So let's take the-- the person who has marijuana who's traveling through here gets popped for a Class IV. By the time you go through the process, that person has already done what is equivalent to a year. We plead them out. Now we're going to keep them on postsupervised release for another year. He's from New York. He needs to go back home. So in that case we pled him to a Class III. He took the stronger felony but he was done after his year and went back to New York. There's no more expense to the state. It's weird that you as an attorney plead somebody up, but that's to avoid that postsupervised release, particularly people who are out of state. So those things are happening. It's a very burdensome process as far as the VOPs, or the violations that have to be, because there's new statute that you have to have a hearing within a certain amount of time on these things. So I don't know if the county attorneys are here, but all the county attorneys I talked to, particularly on Class IVs, asked the judge for discretion. We need to have discretion for the judge, particularly on the Class IVs. So with that, I'll answer any questions.

EBKE: [00:09:44] Thank you, Senator Wayne. Any questions for Senator Wayne? So you would argue that this almost, LB605, was a-- we've gotten some unintended consequences out of that.

WAYNE: [00:09:54] It was and there's just-- there's no way for us to have known, even when I look back through the history of LB605, to know the practical effect of that because at the time you think there are some serious enough crimes and there are times, a lot of times where you need that postsupervised release. There are a lot of times that everybody would agree it's probably best for that individual. But in some cases, it just doesn't make sense. They've already done a year in jail. It's a Class IV felony. Let them be released and let them move forward, particularly for people who are out of town and that Class IV felony is oftentimes a drug case. And so now we're-- we're expending resources and making it very difficult for that person to stay here when, quite honestly, our state might be better off if they went back to California or New York, so let's not hold that process up.

EBKE: [00:10:49] Senator Krist.

KRIST: [00:10:49] Thank you, Senator Wayne, for bringing it. On-- so if we could just look at the black-and-white words in terms of your explanation, on page 3, line 2 through 5, this capsulizes what you're talking about in terms of giving the judge the ultimate discretion when there's prison time or when their imprisonment is imposed.

WAYNE: [00:11:14] Correct.

KRIST: [00:11:14] OK. Perfect.

WAYNE: [00:11:15] And again, I just have to say for the record, if we take somebody who says we're going to put them-- they've already done a year in county jail and we say we're going to give them time served, the judge in that order, like when I get that order that day, says you are not suitable for probation because, a Class IV felony, the presumption is probation, therefore, you're sentenced to jail, we will give you X number of days' time served, by the way, we're putting you back on probation after that, even though I just found you not suitable for probation, to put you in jail, it just doesn't make sense.

KRIST: [00:11:52] Okay. Thank you.

EBKE: [00:11:53] Other questions? Don't see any.

WAYNE: [00:11:57] I will not be here for closing. As I told you, I was already in the wrong committee introducing a bill, so I'm going back to that committee to introduce my other bill.

EBKE: [00:12:08] OK. Thank you.

WAYNE: [00:12:09] Thank you.

EBKE: [00:12:09] Proponents? Any proponents for LB977?

SPIKE EICKHOLT: [00:12:16] I'm going to try to do this.

EBKE: [00:12:16] You're going to try to sit down?

SPIKE EICKHOLT: [00:12:22] Good afternoon, Madam Chair and members of the committee. My name is Spike Eickholt. First name is S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB977. We want to thank Senator Wayne for introducing the bill. When the body adopted LB605, one of the provisions of LB605 was to eliminate the tendency in Nebraska that existed before that with these-- what's called

flat sentences, or where judges would sentence people for a relatively short period of time to either jail or prison and then, when these people would be released from jail or prison, they'd be released directly into the community with no transition from when they were released from custody and-- and then be done with their sentence. And that's where the CSG group, the Council of State Governments group, came up with the idea of postrelease supervision for these lower level felonies where if somebody is incarcerated, when they are released from incarceration, they are transitioned and supervised by a probation officer for a period of time before they're done with their sentence. As Senator Wayne indicated, that in theory made a lot of sense, but--and I'm also a practicing defense attorney--what we see is some practical problems with the mandatory requirement of postrelease supervision. In other words, if a judge imposes a sentence of either jail [INAUDIBLE] or imprisonment, even if it's just 30 days' jail or a week in jail, the judge has to have, at least for Class IV felonies, impose a term of probation following that of at least 9 months up to 12 months. And for many people that simply just does not work and becomes, if anything, more punitive to them and somewhat arbitrary. One of the problems, as Senator Wayne alluded to, is the problem that-- that we have with our money bond system. You have people on relatively low felonies sitting in jail for 6, 8, sometimes 12 months before their cases are resolved. And rather than simply just letting those people out of jail and getting on with their life, the law now requires that they are immediately put on probation for more uncertainty, more restriction by the state, more supervision by the state. There are fees associated with postrelease supervision and it's really in practice become more burdensome than perhaps to rehabilitate them. You also have-- and particularly in Class IV felonies, the judges are to presume that people should be placed on probation. If the court makes the decision that person is not placed on probation, the judge usually gives that person a sentence of incarceration, and then oddly the judge is then required to place them on probation at the end of it under a Class IV scheme. So we do support allowing the judge to have some discretion. There are some instances, like Senator Wayne indicated, where you have people who have no ties to Nebraska but happened to get caught, particularly on the I-80 drug-type cases who get caught, charged in Nebraska, and then oddly we are now supervising these out-of-state people, oftentimes jailing them for violations of postrelease supervision. And a practical reality is that many times people would just like to serve their time and move on with their life without being on probation, and this would allow some discretion and some loosening of that mandatory requirement and we support the bill.

EBKE: [00:15:31] Thank you, Mr. Eickholt. Questions? OK. Thanks. Are there other proponents for LB977? I see none. Are there any opponents on LB977? Is there any neutral testimony on LB977? I see none. We have one letter, a proponent letter from Todd Wiltgen, who is the chair of the Lancaster County Board of Commissioners. That then closes our hearing on LB977 and we will move to LB693 when Senator Blood arrives. We're going to just stand pat here for a minute. We're going to call and see if she's on her way.

[00:20:42] [BREAK]

EBKE: [00:20:42] Good? You need some water?

BLOOD: [00:20:42] We'll find out. That's a long opening.

EBKE: [00:20:42] Yeah. Need some water or anything?

BLOOD: [00:20:42] That would be awesome.

EBKE: [00:20:42] We'll get you some.

BLOOD: [00:20:46] Good afternoon, Madam Chairman and members of the Judiciary Committee. My name is Senator Carol Blood, spelled C-a-r-o-l B, as in "boy," l-o-o-d, as in "dog," and I

represent District 3 which is comprised of western Bellevue and southeast Papillion. I want to thank you--thank you--for the opportunity to speak with you about LB693. LB693 at its core is about making Nebraskans safer during a period of time when technology is advancing faster than most people can catch up. The bill is about making sure that our schools, our prisons, our critical infrastructure, our homes, and our privacy are all kept safe during a period of time when people could trespass and spy on us without ever setting a physical foot on our property. Unmanned drone use is exploding in this country. For the most part, this explosion is-- of use is a good thing. Used properly and legally, they make our lives much easier. Drones are being used to carry out tasks that, without the technology, we might find a bit more difficult, expensive, and time consuming if we had to do that by foot. Drones even give us a better reading on what the weather is going to do minute by minute by sending them into storm super cells and giving us readings quicker and more in depth than what we saw using older weather technology. It is by now well established that local law enforcement organizations are the most likely to address violations of the law involving drones even though in the U.S. the use of all aircraft in the aerospace system, including unmanned aircraft, is subject to the federal regulations and guidelines established by the Federal Aviation Administration. These rules apply equally everywhere in the country. Drones, however, present a particular challenge for an enforcement perspective because the technology has proliferated quickly and informally, making it difficult for the federal government to engage in the same level of oversight of drone operations that it applies to commercial and general manned aviation, which is strictly formalized and closely monitored. Unlike manned-- unlike a manned aircraft, which is expensive to obtain and maintain and requires a pilot's license to operate, drones could be inexpensive and easy to fly. Furthermore, unlike most manned aircraft which are required to operate from aviation facilities and are monitored by air traffic controllers, drones can be operated anywhere under the radar. Now I want to make it really clear that LB693 was written in a way that does not hamper the good things that drones can do for us. That includes people who fly UAVs for no other reason than as a fun-- than as a fun pastime. What LB693 does is bring Nebraska in line with the 41 other states that currently have some kind of drone legislation on the books. Again, I want to quote, 41 other states have drone legislation on the books. I'm sure that over the course of the day you're going to hear from people who will say that this legislation isn't needed because the FAA is the be-all and end-all when it comes to regulating drones. While this might be technically true, the FAA has also recognized that different states have different situations that call for particular regulations when it comes to where and when people can fly drones. This is most definitely the case when it comes to public safety, as many of us has learned-- many of us learned at last summer's NCSL conference in Boston. We understand the legal framework that serves as a basis for FAA legal enforcement action against UAS operators or unauthorized and/or unsafe UAS operations, and have read the long list of lawsuits where laws were overturned because of political subdivisions exercising what is a clear overreach, such as totally disallowing flight over their communities. Again, 41 states have already had some form of drone legislation on the books. Many have crafted legislation as a direct result of drone owners doing dangerous things like the individual in Virginia who flew his drone over a bull-run event in the state that was similar to Pamplona's running of the bull. Not surprisingly, these animals were not pleased to have a flying machine buzzing them and things got even more dangerous and more serious in a hurry. Other states have seen people crash drones in the state parks and state vehicles. They've seen drones get used to smuggle drugs or other contraband into prison yards. The use of drones to smuggle goods into correctional facilities is becoming increasingly common around the world. Even cheap consumer drone models are capable of carrying a small payload over a prison wall and operators can be hard to catch. The FAA does not expressly forbid the use of drones over correctional institutions. Louisiana and Wisconsin both expressly forbid the use of drones over any correctional facility. And they've seen people use drones to hover at just the right height to see into someone's home when that person had a reasonable expectation that they were safe and secure in their home and in a place where they wouldn't normally expect someone to be looking in. It should be noted that Lincoln Police said that last year they received 19 calls dealing with drones. One involved property damage

and 12 were disturbance calls. Drones have also recently been causing duress to our beloved peregrine falcons who call the Nebraska Capitol their home and are federally-- federally protected. And it is thought to have caused many issues by area experts. You may have seen the report on KETV, and I'm providing the transcripts along with a fact sheet, so you could peruse it later. You'll note that-- that the drone that crashed into the Capitol this-- reported on in this report, in this transcript, was picked up on the 14th floor of our historical building. I believe there were at least 30 other reports of unauthorized drones in the Capitol without permission. And I'd also like to point out that we are within five miles of the Lincoln Airport and that is considered a no-fly zone. While LB693 is far reaching when it comes to whom will benefit, the main intent of my bill is to make sure that people are not using drones to spy on or harass people in the same fashion that a human might do without the technology. And that's it in a nutshell. This bill would make sure that if someone is using one of those devices to intentionally harass someone, they're going to be held responsible. Some may tell you that our existing laws already address this and other issues in the bill. We worked very closely with our Bill Drafter and other-- others who feel the balance of this last draft is a good balance. That doesn't mean the bill only addresses individuals. We also make sure that people who want to fly their drones over critical infrastructure--schools, prisons, and the like--have the permission of the people who own and/or operate these facilities or the pilot of a drone is already licensed and privileged to do so as part of his or her job. To be clear on this point, if you have a reason or a right to be there, you can be there, hence the description of "licensed or privileged to do so" in every category. If you are a student or a teacher at a school using a drone for a project or a roofing contractor who's been asked to take a look at the roof with your drone, you are privileged to be at that location. If you have been hired to fly over the railroad tracks or utility poles, the additional right of way is also permitted just as if you were walking and taking photos. Again, if you have a right to be there because you have either been hired to do so by those who have permission or an employee or owner of the company or property who provides those services, such as OPPD, Union Pacific and so on, you can be there. You'll find that term coming up in LB693 quite a bit, "licensed or privileged to do so." I made sure to put that in my bill in almost every section because I wanted to make sure that at the end of the day the state wouldn't be get-- getting in the way of normal operations of someone who worked for a railroad who was inspecting a length of track or the right of way, or utility companies checking on the utility poles-- poles after a storm, or an NRD checking on a dam. That is part of their job responsibilities. And should it be an employee or a contractor, they are licensed or privileged to do so, they have nothing to worry about. This bill is about when someone decides to take a sinister turn. We want to make sure that ne'er-do-wells aren't using the drones to take pictures of someone who is in a state of undress in their house and has no idea that a camera is hovering outside their window and has a reasonable expectation of privacy. You've heard me say on other bills that new technology has a two-year window. Well, drones are more like four to six months. They're getting smaller, smarter and, in many ways, autonomous. That's an important consideration. We apply the same standards when it comes to first responders and their use of drones. We put quite a bit of language into LB693 that makes sure that first responders know that as long as they are using drones in a way that was indeed needed in order for them to carry out rescue operations, they don't need to worry about someone claiming they are or were trespassing. I think this fits in with my overall goal of the bill which is that people can continue to use drones largely as they have been as long as they're giving some thought to how they're using them. Having said that, we want to make sure that the first responders are held to a standard where they aren't monitoring citizens or investigating crimes using drones without a warrant. We want to make sure that they are able to do their jobs, that-- that they are able to use new technologies when they become available and still make sure that the public is safe, secure, and has the privacy they expect. Many of you received letters from the Nebraska Police Officers' Association and the list of bills that they support and you may have noted that they are in support of this bill. We worked closely with law enforcement from across Nebraska to craft these sections. You may have someone state today that they are aware of a particular cop who has stated on social media that he does not support this bill. Well, I'm here to say that his supervisors more than likely

helped with this bill or information was shared with his superiors. And having researched and worked on this piece of legislation for many, many, many, months, I believe we have heard from just about every possible demographic of stakeholder starting in June of last summer. I encouraged people to come to me and tell me their problems, concerns with this bill. I wanted to be able to work them out. I believe I have done so with this bill. Unfortunately, the first draft was leaked out from one of our regular stakeholder meetings which stirred up community because many did not understand it was a work in progress. What you hold in your hands is draft number eight. The key to remember when it comes to this bill is that this is most likely a complaint-driven law. I remember it-- I compare it to a no-- noise ordinance in a municipality. These types of reactions are complaint driven. When law enforcement arrives, they warn you to please stop the behavior. Frequently it results in one or two trips. Law enforcement is rarely anxious to cite anyone. They just want the behavior to stop. I feel we will see the same enforcement when it comes to this drone bill based on my conversations with Nebraska law enforcement. There are no drone police. There have been ridiculous reports that this bill will get Dennis, the neighborhood kid, arrested because he was flying his drone and accidentally made a U-turn over Mr. Wilson's yard. First of all, Dennis was not hovering over the neighbor's yard nor being menacing. Second of all, it is doubtful that Mr. Wilson woke up from his nap in his hammock to even notice to contact law enforcement. Were he to call law enforcement-- were he to call, law enforcement would have handled as-- it as any other nuisance complaint. Another odd concern was one where the pilot told me that he may have permission to be in a particular area but might accidentally make a U-turn over a schoolyard and he would be violating the law. There's a big difference between making a U-turn over a yard and hovering over an area where children are playing--again, complaint driven. If a person believes they are being trespassed upon or harassed or spied upon using a drone, they will now have a recourse. At the same time, if a member or student of the university is flying their drone over property they need to cross for an assignment-- that they need to cross for an assignment or a study and no one has a problem with that, there shouldn't be any kind of conflict. One of the many verbal concerns we've heard is that people have asked us, well, if someone does see a drone outside their house and they call the police, won't the drone operator-- operator simply have the thing zip away? While they might do that, someone who is physically trespassing can do the exact same thing. That means that not only would this law become-- be complaint driven but it's designed to be more of a chilling effect for people who might be thinking about harassing someone or spying on someone using a drone. This isn't a bill that is going to start filling up our jail cells. It's not a bill that will create a backlog in courtrooms. It's not a bill that's going to cost the state a great deal of money or force already-- or force already overworked police officers to become even more overworked. What LB693 does is make sure that everyone in the state of Nebraska is on the same page when it comes to what someone can and can't do when they're flying a drone and put some teeth into some possible enforcement. Regardless of what laws are cherry-picked and thrown at this committee today-- today, we know from our training in Boston that the FAA feels states need to help--I've got to slow down--states need to help enforce and that they understand we want to protect the public by creating public safety laws. Unlike many of the other states, I didn't write this bill as a knee-jerk reaction to any one specific event. I looked at public safety issues and addressed those specifically. There will be people here who are going to tell you that we are killing the industry in Nebraska. Look through this bill. Again, if they have permission to be where they are to be, there is no issue. We did not eliminate where they can fly. We looked at that 400 feet set by the FAA and utilized that window to create a layer of safety. Over the course of the last year, I have worked hard and talked to stakeholders from all over the state, all over the country, and across more industries than I can count, in order to try and put a bill together that was workable and fair to everyone. Despite those efforts, I have still run across people who seem less interested in making sure that the situation is fair and, instead, just want to have the status quo and the bill to go away. And I can respect that. I've had people tell me that if I don't allow drones to do things like fly inside buildings owned by other people without permission, that I'm opening the state up to a lawsuit. And I don't know about you, but I personally can't walk into somebody's building without their permission and then spend the

night in there. So why would we allow a drone to be there? That was one of the most puzzling things I've had said to me this week. I don't believe this kind of fear tactic is particularly helpful, nor all that realistic. Having said that, I do understand that some of the opposition to this bill is coming from a place where they honestly just want to make sure that the bill is as good as it can be. I also understand that this bill has a rather tough climb towards getting out of the committee, especially with it so late in the hearing schedule and session as it's been scheduled. Should this bill indeed get stuck in committee, which I'm pretty sure it will, I want everyone here to know that this isn't something I did on a whim. I'm going to keep working on this. I hope that some of the more reasonable people that have come here today to oppose the bill will be working with me in order to make something that can indeed set the standard in Nebraska. Again, 41 other states do have this type of legislation and our bill was crafted after I had read each and every one of those items of legislation, and all the lawsuits I could find that were done against other states that had municipal legislation that created no-fly zones. I thank Andy Conroy in Bill Drafting for his patience and hard work and research as we wrote draft after draft. With that, I will thank you for your time and be happy to answer your questions. I will also add that I now have to leave to go do a bill in another committee, but I'm going to leave my staff person here to take notes. And I encourage the people that are here to oppose the bill to leave their information with my staff person, Oliver, because we will contact those that are being reasonable and invite them to be involved in the stakeholder meetings. I do know that this is a very comprehensive piece of legislation. I didn't want to just pick one topic and then come back every time we had a problem with a drone. The bottom line is the FAA is moving very, very, very, very slow and things are not getting well defined and things are not getting addressed properly, which is why we had that training in Boston this summer. I did this bill in what I felt was a responsible manner. And I'm sorry I've ruffled so many feathers that I am now leaving you with a room full of people to testify.

EBKE: [00:36:44] Thank you, Senator Blood. Any questions for Senator-- Senator Krist.

KRIST: [00:36:49] What would you estimate the percentage of this 20-- the 27 pages are a regurgitation of the current FAA regulations?

BLOOD: [00:36:56] A regurgitation?

KRIST: [00:36:59] A reiteration, a repeat, same stuff that's in the federal law.

BLOOD: [00:37:02] I think all of it is, with better definition, really. So for instance, the critical infrastructure, the FAA did a poor job of really homing in on what critical infrastructure were-- was and that was an area that we had a lot of participation on with-- from the Nebraskans.

KRIST: [00:37:16] OK. So I know you're not going to be here for the rest of the hearing. I just want to make it clear that I think that I have a-- more than just an appreciation for this subject matter. I have experience in it. And a lot of it looks like it's straight out of the-- the CFRs with some embellishment. And I appreciate the hard work you went through, so we'll let everybody say their piece. Thank you [INAUDIBLE]

BLOOD: [00:37:40] And I can tell you, Senator, that the first thing we did after reading what the FAA had was we went state by state and printed out their bills and took out what we thought was applicable or good and put them in our bill. So pretty much everybody that's written this legislation, with a few exceptions and-- and they definitely got sued, they do fall under the guidance of the FAA and they make it more state specific. So--

KRIST: [00:38:04] Good.

BLOOD: [00:38:04] -- I did what we were told in training and I-- I stay with public safety.

KRIST: [00:38:08] All right. Thank you, Senator.

BLOOD: [00:38:09] Thank you for your time.

EBKE: [00:38:10] Senator Baker.

BAKER: [00:38:11] Thank you. Senator Blood, your-- your bill talks a lot about the regulation of drones and that-- and you've said that. I'm wondering about model airplanes. They've been around for a long, long time and there's hobby clubs that are really into this. Is your intent to wrap model airplanes flown by remote control into the same regulations?

BLOOD: [00:38:39] Well, they are unmanned aircraft under state statute, aren't they?

BAKER: [00:38:42] So you're saying they would--

BLOOD: [00:38:43] [INAUDIBLE] question.

BAKER: [00:38:43] -- could be a pretty big crimp on model airplane clubs.

BLOOD: [00:38:49] I don't think so because the vast majority of model airplane clubs are in areas such as they go to Haworth Park in Bellevue. They have permission to be there. Notice how throughout the language I said if you have permission to be there, the right to be there, you can be there. Model airplane clubs always go in-- in public areas where they have permission to be, they shouldn't have any issue.

BAKER: [00:39:11] Thank you.

EBKE: [00:39:12] Senator Pansing Brooks.

PANSING BROOKS: [00:39:12] Thank you for working on this and bringing such a "giantly" comprehensive bill--

BLOOD: [00:39:21] Sorry.

PANSING BROOKS: [00:39:21] -- on this. Well, I mean, if we're going to attack something like this, it's one way to do it, so rather than--

BLOOD: [00:39:25] That-- that was my theory at the time. I'm not sure it was a good theory but--

PANSING BROOKS: [00:39:27] -- rather than piecemeal. And I did read one of the previous iterations and one part that had concerned me was that it seemed like it had made it illegal for companies like Amazon or FedEx to be able to deliver. So that has changed. I see that now. So I think that's really good. So obviously you have really worked on this from different states because that was one of my main concerns and I don't see that anymore in here.

BLOOD: [00:39:54] Oh, yeah. I'm excited for when Amazon has a drone dropping something off at my house. I think it's awesome.

PANSING BROOKS: [00:39:58] So the other thing is, was there any discussion about requirements of search and seizure, or things like that, that-- you kept that out by saying it doesn't

prohibit the flying of unmanned aircraft by law enforcement, fire department, emergency. Obviously they do have those requirements but I just--

BLOOD: [00:40:18] We did actually discuss it.

PANSING BROOKS: [00:40:22] I thought referring it to another statute that requires that, I mean, we all know about the Big Brother-type stories where you worry about what can or can't be done but--

BLOOD: [00:40:33] We were actually asked by one or two law enforcement entities that were in one of those stakeholder meetings to phrase it so you could also go into a residence, if you're law enforcement, without a warrant, and I would not do that. I was really cautious not to do anything that I thought was government overreach. If you had-- they had to physically go-- unless somebody-- unless they hear that somebody is-- you know. You're a lawyer. Unless they think that there's an immediate danger, they can't go into a house without a warrant. We don't want them to take their drone in a house without a warrant.

PANSING BROOKS: [00:41:00] But who wanted to be able to do that?

BLOOD: [00:41:03] I won't throw that person under the bus.

PANSING BROOKS: [00:41:03] No. You're talking about a law enforcement agency or--

BLOOD: [00:41:06] Yeah. And-- and a lot of this was that we were thinking out loud. We took-- we took a lot of notes and we explained to them why we wouldn't do it, and they were very fine with it.

PANSING BROOKS: [00:41:16] Good. I would really hope that that would be true.

BLOOD: [00:41:17] No. I-- I want to be really cautious to tell you that law enforcement was awesome to work with--

PANSING BROOKS: [00:41:22] Good.

BLOOD: [00:41:23] -- and that I support the fact that they took time out of their days and spent hours here at the Capitol with us, so I want to be really cautious what I say about that.

PANSING BROOKS: [00:41:32] Clearly a lot of people spent a lot of time, so thank you.

BLOOD: [00:41:34] A lot of people.

EBKE: [00:41:37] Other questions? OK.

BLOOD: [00:41:40] Thank you very much. I'm sorry you had to wait for me.

EBKE: [00:41:42] It's OK. OK. We need proponent-- proponents of LB693, those in favor of LB693. Come on up.

DUANE GANGWISH: [00:42:07] Good afternoon, Chairman Ebke and members of the Judiciary Committee. My name is Duane Gangwish. It's D-u-a-n-e G-a-n-g-w-i-s-h. I'm here today to testify on behalf of Nebraska Cattlemen in support of LB693. I'm also testifying on behalf of Nebraska Farm Bureau and We Support Agriculture. Our groups support the provision of the bill specifically

related to the use of unmanned aircraft to intentionally distress or harm livestock. Emerging technologies hold the potential to revolutionize many issues affecting Nebraska's livestock industry, such as monitoring herd health and mitigating labor shortages. Unfortunately, these promising tools may also supply significant risk to animals under our care when used in a malicious, nefarious, or reckless intent. Animal welfare affects virtually all aspects of the beef production cycle from cow/calf operation to the consumer's plate. Sound animal husbandry practices based on decades of practical experience and research are known to beneficially impact the well-being of cattle, individual animal health, and herd productivity. Livestock harassment can detrimentally affect both the individual animal and overall herd. Like humans, increased stress can compromise an animal's immune system and with significant effects on their health and productivity. To put it simply, these animals are our livelihood and we take great care to ensure their overall well-being. We understand that Senator Blood has prepared an amendment to limit harassment of the livestock specifically to unmanned aircraft and we support this amendment as, unfortunately, our producers have experienced incidences where drones were intentionally flown over operations with the intent to harass livestock. Our groups support holding these actors criminally accountable and hope this legislation serves as a sound deterrent. With that, I thank you for your time and I'll be happy to answer any questions you might have.

EBKE: [00:44:30] Thank you. Questions? I don't see any. Thanks.

DUANE GANGWISH: [00:44:34] Thank you.

PANSING BROOKS: [00:44:34] Thank you.

EBKE: [00:44:36] Other proponents of the bill? OK.

JERRY STILMOCK: [00:44:50] Madam Chair, members of the committee, my name is Jerry Stilmock, J-e-r-r-y S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters Association, the Nebraska Fire Chiefs Association, in support of LB693, really just comments of a couple of items. As Senator Blood goes back and perhaps redoes-- re-- rehashes a couple of these issues, and I've shared these with her, but on Section-- in Section 12, begins on page 12, it talks about cordoning and-- cordoning off areas by a peace-- peace officers-- officers, law enforcement, and at times, particularly in rural settings, those cordoned areas are going to be established by members of emergency medical personnel or fire departments. And right now the legislation is restricted that a drone cannot penetrate or go past a cordoned area by law enforcement. We'd simply ask to include in those situations that require a cordoned area for protection of the public and for those responding to the call, that-- that it also be allowed to be established by emergency responders. Secondly, an intriguing item on Section 15, at least intriguing to me, Section 15 speaks of-- it happens to be on page 15 as well, 15, beginning at line 27, to it being unlawful to operate an unmanned aircraft by attaching a firearm, a knife, or a deadly weapon. Senator Blood hit it very well. Drones are used oftentimes for very positive means and uses and one of those is in wild-- wildland firefighting where drones are used and actually attached to them are what might be looked upon as a deadly weapon. But they are about the shape of a ping-pong ball filled with chemicals so that when a drone has these chemically filled ping-pong ball-like devices, when they-- when they hit the surface, that chemical reaction causes them to ignite within 30 seconds to 60 seconds and it's used for back burns. It's also used for prescribed burn methods so that it takes the-- it takes the volunteer, it takes the human person out of the danger zone and allows the drone to go in and use those. So to the extent Section 15 could refer to these, these chemically filled devices that ignite upon contact, could be a deadly weapon, just ask for your consideration as the committee considers this legislation. Senators, that's-- that's what I have this afternoon. Thank you.

EBKE: [00:47:33] Thank you, Mr. Stilmock. Any questions? OK.

JERRY STILMOCK: [00:47:33] Thank you, Senators.

EBKE: [00:47:36] Thank you. Other proponents? I don't see anybody moving so we'll move to opponents.

NATHAN TRAIL: [00:47:50] Thank you so much for having me here today. My name is Nathan Trail, spelled N-a-t-h-a-n T-r-a-i-l. I'm the manager of technology policy at the Consumer Technology Association. CTA is a trade association representing the \$351 billion U.S. consumer technology industry which supports 15 million U.S. jobs. We have over 2,200 members, 80 percent of which are small businesses and startups. The rest are some of the world's best-known brands. And I respectfully urge the committee to reject LB693. Although well intentioned, the adoption of such laws as this are preempted and would inhibit the growth of the drone industry in Nebraska. The explosive growth of the drone industry has prompted legislators in many states and localities to propose legislation regulating the industry or otherwise trying to address potential concerns related to drones. But before considering new legislation, lawmakers should evaluate whether the proposed regulations are preempted by federal law, if drone-specific legislation is warranted, and whether the legislation would stifle the growing industry in the state. This bill should not be adopted because it is preempted, it is unnecessary due to federal activity, and it would deter the growth of the drone industry in Nebraska. LB693 would establish a patchwork of no-fly zones above the airspace in Nebraska. Since various operational and altitude restrictions concerning hobbyists and commercial usage, which according to the supremacy clause of the United States Constitution, may only be established by the federal government and also is currently being addressed by the FAA, we agree that certain operational restrictions are necessary, especially near critical infrastructure and private property, but to promulgate state laws would not only-- would create a confusing patchwork of laws and regulations across the country and it would be a serious safety concern. You can imagine the hazards if traditional aviation was regulated like this, state to state, and what-- what chaos that would be, and the same is true for unmanned aviation. The FAA has also issued numerous letters cautioning against the adoption of no-fly zones exactly like this. Even-- even if this bill was not preempted, it should not be adopted because of the substantial work being done at the federal level to safely integrate drone operations. If the Legislature desires to prohibit certain conduct, it should do so in a tech-neutral manner. To arbitrarily treat identical harms differently based on the instrument used to commit the crime would create a patchwork of regulation where similar offenses could lead to different penalties. And there are also current privacy and trespassing laws in Nebraska which address these issues. This bill would also severely stifle the growth of the drone industry in Nebraska and halt the innovative ways that drones are making jobs safe and cost efficient. As the production of drones increases job creation and additional revenue, Nebraska is projected to be nearly \$150 million by 2025. And I just want to touch on a few things that Senator Blood brought up. I've been working in drone legislation on the state level for about four years now. I'm aware of the 41 states that she referenced and not all of those bills are bad. Some of those bills are good and we support certain regulations and we've supported some of this legislation. But what this bill does is it takes-- it's referring-- it's a sign of all the bad aspects of those bills combined into one bill. And in the four years that I've been tracking state legislation, and I'm speaking on behalf of our members in the industry, this is by far the worst written bill that we've ever seen--that's widely accepted amongst our members--and it would completely cripple the drone industry in Nebraska. So I respectfully urge you to reject LB693. Thank you.

EBKE: [00:51:17] Senator Krist.

KRIST: [00:51:18] That's a pretty damning statement, but I guess it was warranted. In the research and in my background I am aware of the FAA modernization, the format, as well as I think the FAA Extension, Safety, and Security Act, and those two were I think 2012 to '16 time frame. Seems to

me like Congress and the FAA has been moving pretty rapidly comparative to other things that they have done and not done in this particular issue. Your industry is tracking what the FAA, as-- as am I, and what the-- what Congress is trying to do. Are you satisfied on a national level that we're taking the appropriate-- is your-- is your organization satisfied on a national level that we're taking action--

NATHAN TRAIL: [00:52:14] The--

KRIST: [00:52:17] -- within the FAA and within Congress?

NATHAN TRAIL: [00:52:18] Yes, and CTA is a part of a lot of the rulemaking processes and we are pleased with the process. It is a process, but it's important that it's done the correct way, that it's not rushed. And there is substantial progress being made to make sure that drones are regulated in a safe manner. And like I said, this would directly conflict with the initiatives that have been done. I actually have-- I have a handout that I can pass around of all the work that has already been done at the federal level and the work that's soon forthcoming. So I'm happy to distribute that for everyone to take a look at. I'll also leave my information so if anyone has any questions about the work that's being done, I'm happy to fill them in on that as well.

KRIST: [00:52:58] We would appreciate that, please.

EBKE: [00:53:00] Yeah, please do.

NATHAN TRAIL: [00:53:00] Absolutely, sure.

KRIST: [00:53:03] Thank you. Thanks.

EBKE: [00:53:03] Thank you, Mr. Trail. Any-- Senator Pansing Brooks.

PANSING BROOKS: [00:53:05] Yeah. Thank you for coming. So have you met with Senator Blood's office?

NATHAN TRAIL: [00:53:08] Yesterday I did.

PANSING BROOKS: [00:53:11] Okay.

NATHAN TRAIL: [00:53:11] And, you know, she spoke in her testimony about getting industry input and I can tell you, as a trade association that represents some of the biggest companies that use drones down to the smallest companies and startups to, you know, first responders who use drones, no one was contacted about this. There was no industry input on this bill. She said she spoke with someone at the FAA in Boston which I think was at some sort of CSG meeting. But we work closely with the FAA and I can tell you that this is completely inconsistent with what the FAA has done. And more so, they've issued several letters to localities and states against legislation just like this, so I know that this is not consistent in any way with what they've done and is very detrimental to industry who uses drones.

PANSING BROOKS: [00:53:58] So what specifically is the problem?

NATHAN TRAIL: [00:54:00] It establishes no-fly zones. It-- it essentially cripples every type of drone operation that you can imagine that a hobbyist or commercial operator would use.

PANSING BROOKS: [00:54:13] And I understand your argument that the federal government is

trying to regulate it at this point but the states also have rights under the Tenth Amendment if they're not specifically taken--

NATHAN TRAIL: [00:54:24] No, states absolutely do, and the FAA recently established a UAS pilot program which specifically incorporates state, local, and tribal governments to work with the FAA to establish rules and regulations for how states can regulate drones within their jurisdiction. So this has already been-- and I think that Nebraska has already applied to be a part of this program, so this-- this process is already underway. This would directly, and speaking to the pilot program, this would directly conflict with that initiative.

PANSING BROOKS: [00:54:58] Thank you.

NATHAN TRAIL: [00:55:02] Thank you.

EBKE: [00:55:02] Other questions? OK. Thanks for being here today.

NATHAN TRAIL: [00:55:02] Thank you so much for having me.

EBKE: [00:55:05] Next opponent.

JENNIFER THIBODEAU: [00:55:18] Good afternoon to the members of the committee. My name is Jennifer Thibodeau, J-e-n-n-i-f-e-r T-h-i-b-o-d-e-a-u. I know there is a Senator Thibodeau but we pronounce it a little differently. It's spelled the same though. So I am the public policy coordinator at DJI Technology. We're the largest civilian consumer drone manufacturer in the world with about 75 percent of the products coming from our company. So our tech is safe and good and widely used currently in the state of Nebraska and it's something that we would like to continue to flourish in the state. Senate bill LB693 would completely decimate the current industry as it exists in Nebraska and the ability, as Nathan mentioned, for that \$150 million and 200 jobs in the next ten years to grow. We have tech that's smart and easy to use. I'll talk really briefly just about what's in our drones. We have tech that when it comes out of the box is already geofenced along with FAA regulations. So that means it can't-- this drone that I would take out can't fly over an army installation, it can't fly within five miles of an airport. I live in Washington, D.C. I can't take it off from my backyard. If I was flying south from Virginia, it would stop and hover in the air ten miles around the city. So we're doing things tech-wise. We have a return-to-home button. If the battery is getting low, the drone is not going to fall right from the sky. It's going to come back to the operator and land. We have altitude height limits that are in line with FAA federal guidelines. Just like the rest of the airspace around the country is federally regulated, the FAA has prescribed time, manner, and place restrictions to drones. This bill contradicts those time, manner, and place restrictions in multiple ways which makes it more confusing and less safe for people to operate in the state of Nebraska. Also, when I've spoken to some of the committee members and others while I've been in Nebraska, people in Nebraska travel across state lines sometimes to work or for hobbyist purposes. Nebraska has one set of regulations and Colorado has another set of regulations, and then we have Iowa and Idaho, Wyoming, all with other regulations. That's going to be even less confusing and it's going to be less likely that people pursue that commercially to be able to do that as a viable business option. Drones are already used by companies in Nebraska such as Hawkins Manufacturing, Midwest UAV Imaging, and the University of Nebraska. I think we all can agree that agricultural uses are phenomenal for this technology, as well as search and rescue, construction, and site inspection. This bill would make it difficult for all of those to continue by creating a patchwork regulation of no-fly zones in the state that directly contradicts with federal regulations. I second what Nathan said. We met with Senator Blood yesterday. We're happy to work and pass reasonable regulation. It's from the industry perspective. As I mentioned, my company has 75 percent of the market and we were not contacted about this bill. We would like to work with the state to make

reasonable regulations that work for the people of Nebraska and hopefully we can do that together in the future. Thank you, and I'll take any questions you may have.

EBKE: [00:58:18] Senator Krist.

KRIST: [00:58:19] Thanks for coming. Just a quick question. Seems like in your testimony you talk about the "geobarrier" restrictions and not flying in and stopping and all that. If we pass this bill, how would that be in conflict with what we're-- what you're currently doing or what the industry is currently doing?

JENNIFER THIBODEAU: [00:58:35] Right. Correct. So the industry, currently we have the ability to put in real-time no-fly zones, or "TFRs," so for something like a wildfire, when the wildfires were happening in California, we were able to put into our drones no-fly zone immediately. When we have the federal regulations of which it says you can't fly over an army installation and there's critical infrastructure work being done by 22-- Section 2209 from the FY '16 FAA Act, that's currently working. Anyone in Nebraska can apply for a space to be deemed as critical infrastructure and can have that no-fly zone. We don't need to do that independently of an extra bill that's being worked federally, and that's safest when it is worked federally.

KRIST: [00:59:16] So just for the nonaviators in the room, you talked about a TFR, and that's a temporary flight-restricted area, and those are updated. When we file a flight plan, we see that-- I see that a TFR is in place, and some of those are moving based upon when the President is moving and when he's not moving.

JENNIFER THIBODEAU: [00:59:34] Yes.

KRIST: [00:59:36] Does the geo-- do your barriers then keep up with that?

JENNIFER THIBODEAU: [00:59:38] Yes, they do. So we update those in real time. For example, we just had the Super Bowl and we had a 30-mile radius around the Super Bowl stadium. So we get those requests and we understand that and that's something that works best when we're consulting with the federal government because that's sort of one channel. So when states are submitting critical infrastructure requests via 2209, we do understand that's been going slower than people would have liked, but there is a process in place. If you have a factory or facility that you deem critical infrastructure, you can submit that to the FAA and have that be deemed critical.

KRIST: [01:00:13] So let's bring it home. Over Nebraska's stadium during the spring game, there is no TFR. but on every home game the TFR is 3,000 feet restricted around the area. And that would automatically be there. So anybody who is using it in Nebraska, do it in the spring game when the banners are flown. There will be one for me. But don't do it in the home games because you'll get in trouble, right? Thank you.

JENNIFER THIBODEAU: [01:00:39] You're welcome. Any other questions?

EBKE: [01:00:44] Questions? OK. [INAUDIBLE] Senator Pansing Brooks.

PANSING BROOKS: [01:00:44] So I'm sorry. I still have-- I understand that you're doing it right and you've got the "geosensibility" to be able to do it correctly. So isn't the bill attempting to deal with those who don't deal with it correctly?

JENNIFER THIBODEAU: [01:00:59] Right. And I believe that Senator Blood was coming from the right place when she was writing this piece of legislation. But as I mentioned, what we want is a

uniform regulation throughout the country, the same way we have for manned aircraft. So by prescribing difficult-- or different critical infrastructure and also different altitude height limits, so we have a 400-foot-above-structure height limit prescribed by the FAA and a time, manner, and place restriction, and this bill circumnavigates that to place it at 300, that's confusing for operators. We need that sort of uniform consistency. We support bills that reiterate the federal regulations and that work to do things such as making sure weaponized drones are not coming into the skies and livestock is not being harassed--we think those are reasonable regulations--that hunting is not being committed with drones. We agree with that. However, this bill makes it so that federal law is actually being discarded. And this bill is preempted, as Nathan mentioned, in many ways.

PANSING BROOKS: [01:01:56] But with technology you could, every time a drone goes into a certain state, it could automatically reset itself according to the laws created by that state, correct?

JENNIFER THIBODEAU: [01:02:06] Yes, you could technically do that, technologywise, but that re-asks the question. The federal government regulates the airspace of the United States and the states absolutely have a right to regulate in necessary reasons for their constituents the way that they need to. But airspace is federally regulated. So the way that this bill is written right now could be brought to court and would be struck down, as has happened in Massachusetts with *Singer v. Newton*, and I'm happy to provide other cases to the committee.

PANSING BROOKS: [01:02:41] Thank you.

EBKE: [01:02:43] Other questions?

JENNIFER THIBODEAU: [01:02:43] Thank you.

EBKE: [01:02:43] Thank you. Next opponent.

DONALD SUCHA: [01:02:59] Good afternoon. My name is Don Sucha, from Clarkson, Nebraska. It's Don S-u-c-h-a, and I'm coming at it from a different position. I'm here representing myself and my 15-year-old grandson and my remote-control hobbyist friends. My grandson and I for my-- fly remote-controlled aircraft and "quadcopters." I've been flying remote-controlled aircraft for 30 years. My grandson started at three years old and now designs and builds remote-control airplanes himself. He gets great satisfaction of building something complicated and seeing it fly successfully. LB693 would ruin the remote-control flying hobby in Nebraska because there will be almost no place left to fly. Regardless of the good intentions of the people writing the bill, it is full of unintended consequences. The bill was-- I'm talking about remote-control airplanes, not drones. The bill was written without the basic understanding or regard for how it would affect the remote-controlled flying hobby in Nebraska. The Academy of Modern Aeronautics, "AMA," is the national remote-control hobbyist association with 195,000 members and 2,500 clubs nationwide. They were not contacted for their input and I cannot find any Nebraska remote-control airplane hobbyist that was contacted either, and I know quite a few of them since I belong to several clubs. And it doesn't really matter if 100 people worked on the bill if none of them knew anything about remote-control airplane flight. If someone is going to propose a law, they should know and take into account how it affects the people it covers. The bill's sponsor said, quote, the vast majority of people who fly drones will never be touched by this bill. That is incorrect. Proponents also stated that a kid's drone falling into a neighbor's yard would be treated the same as a baseball falling into the yard. That is incorrect also. It is not a second-degree criminal offense for a kid's baseball to land in the neighbor's yard, but it is for a drone or a toy airplane. She said that the law will handle this easily. No one can predict how individual situations will be handled by neighbors or law enforcement if this bill were to pass. Shouldn't it be the goal of the Legislature-- it shouldn't be the goal of the Legislature to create as many lawbreakers and criminals out of thin air as possible. There is also the issue of

jurisdiction over national airspace. Federal statutes currently in effect void much of what LB790--LB693 attempts to do. The federal government through the FAA has the authority to regulate the national airspace. If you see it, the first attachment that I-- I sent is with this yellowed out. NASA specifically states that the federal government is the only person that can regulate the national airspace. Once an aircraft leaves the ground, according to the FAA, it is in the national airspace, and the FAA makes the rules how high it can fly and where it can fly. And federal law preempts state law. In the *Singer v. Newton*, Massachusetts, the city attempted to regulate the airspace. The federal court ruled that the city of Newton did not have the authority. The authority rests solely with the federal government.

EBKE: [01:06:56] Mr. Sucha--

DONALD SUCHA: [01:06:56] There is no need for-- for LB692 since the FAA has already issued regulations covering remote-control aircraft. The second thing in my attachment is FAA notice AC 91-57A, which is a--

EBKE: [01:07:13] Sir--

DONALD SUCHA: [01:07:14] -- synopsis of the--

EBKE: [01:07:15] Sir--

DONALD SUCHA: [01:07:15] -- 4910-13.

EBKE: [01:07:16] -- we have a red light.

DONALD SUCHA: [01:07:18] Oh, I didn't see that.

EBKE: [01:07:19] That's okay. We--

DONALD SUCHA: [01:07:21] I didn't get to my part where it affects me.

EBKE: [01:07:24] You want to get the last sentence-- the last little bit?

DONALD SUCHA: [01:07:27] Yes.

EBKE: [01:07:27] The last paragraph?

DONALD SUCHA: [01:07:29] Well, there's two--

EBKE: [01:07:29] Well, we've got--

DONALD SUCHA: [01:07:29] -- there's two that are important.

EBKE: [01:07:30] Okay, we've got-- we've got-- we've got-- we've got your written testimony. This is good stuff, lots of good information. If I can-- I'll ask you to read the last two paragraphs into the record.

DONALD SUCHA: [01:07:42] Can I read about my air-- my private fields,--

EBKE: [01:07:47] Well,--

DONALD SUCHA: [01:07:47] -- why it won't be useful anymore?

EBKE: [01:07:49] Well, you can do that, but I think that the-- I think that your last two paragraphs are very powerful, so go ahead and--

DONALD SUCHA: [01:07:53] Okay. The bill is clearly unnecessary since there are already plenty of federal and state laws covering everything in this bill. One more law making something illegal that is already illegal ten times over is not going to stop a criminal with the intent of doing harm. The only people that would be stopped are kids with toys and R/C hobbyists from having fun. If spying and privacy are a big reason for this bill, why aren't cell phones or cameras, telephoto lens, binoculars, telescopes made illegal? Cell phones are everywhere. There are thousands of cell phones at schools in Nebraska every day. No one is proposing to ban them from schools. A drone buzzing around like a swarm of bumblebees is not going to sneak up on anyone to spy on them. This bill is a one-size-fits-all solution to an imaginary problem. It is a perfect example of news media-driven paranoia, and this is obviously a poor reason to propose a law that benefits no one. In conclusion, LB693 fails the federal preemption test, harms R/C hobbyists across Nebraska, and accomplishes nothing. LB693 needs to be scrapped. Thank you.

EBKE: [01:09:15] OK. Thank you. Thank you for all of the information you've got here. Any questions? Thanks for being here today.

DONALD SUCHA: [01:09:23] Thank you.

EBKE: [01:09:23] Next opponent.

DAVE POOLE: [01:09:34] Madam Chair, good afternoon. Members of the committee, my name is Dave Poole. That's D-a-v-e P-o-o-l-e. I'm here representing the unmanned division of Oracle Aviation. We are in the drone world a drone service provider and also a training program provider for commercial drone pilot candidates. I had a prepared statement to cover much of what's already been covered very well I think regarding the federal mandate and existing privacy laws and all of that. So for the sake of expediency, I won't rediscuss what's already been discussed. One additional item that I would like to mention is that several universities and colleges here in the state of Nebraska are building drone training programs currently--Creighton University, Bellevue University, University of Nebraska at Omaha, I believe UNL here as well--in an effort to really make Nebraska a leader nationally in the commercial drone operation space. And I do worry that this bill would be a hindrance to that educational endeavor. Beyond that, I am here also to invite Senator Blood and any other members of the committee. If you would ever for the sake of gaining operational knowledge want to come fly a commercial mission with myself or one of the other operators here, or if there's any way that we can work to collaborate on-- on the future versions of this bill, I am happy to participate. As has been stated before, safety is first and foremost what we're here to accomplish, making sure that the public is safe when we fly our missions. And with that, I thank you for your time. And if anybody has any questions, I'm ready.

EBKE: [01:11:15] Thank you, Mr. Poole. Questions?

DAVE POOLE: [01:11:17] Thank you very much.

EBKE: [01:11:18] Thanks. Next opponent.

JUSTIN KYSER: [01:11:20] Good afternoon. My name is Justin Kyser, J-u-s-t-i-n K-y-s-e-r. I am a co-founder and director of flight operations for Digital Sky. We are the largest commercial drone service provider here in the state of Nebraska. And as was stated before, since we are the largest

company, we were not contacted by anyone in reference to drafting this bill, which I find kind of strange since so many people were supposedly contacted. Digital Sky has been providing services to companies here in Nebraska, including the state, since 2014. Many opponents of this bill will point out where it falls short and they already have. They'll speak of how it preempts the federal government, they'll speak of how its efforts and those of its sponsor are misguided, they'll speak of how it doesn't really accomplish anything to increase public safety, all of which are true. I'm a firm believer that we can't bring opposition to the table and expect anything to be done with it if we don't also bring some suggestions on what can be done to make the bill better or help achieve the goals of its sponsor. So I've put together some recommendations on what can be done by the state of Nebraska to address perceived problems with the drone community. Recommendation number one: Do nothing. By doing nothing you allow the federal government to do its job rather than put the state at risk of being sued by the drone community over preemption of federal aviation regulations pertaining to drone flight. Doing nothing also costs the state nothing. And since there have been very few documented or proven occurrences of actual misuse of drones in Nebraska, this might be the best way to go. Recommendation number two: Work with state and local entities to designate certain areas, such as parks, as drone-friendly areas where people can fly their drones. Doing this shows the public that there are places within reasonable driving distance that they can go to exercise their hobbies and get in the sky without needing to be over their neighbor's property. There are a few private locations that require membership if you want to fly, but why go there when you can simply fly over your neighborhood? Additionally, these private locations often discourage the use of drones because the R/C hobby and drone hobby, while they share similarities, are very different. Recommendation number three: Inform law enforcement what is and isn't legal with a drone and provide them with training on how to track down rogue drone operators and get required information for the FAA to deal with them. The FAA has already said that they are extremely willing to prosecute illegal drone operators but oftentimes they lack the critical information they need to move forward with a case. If the information is legally and accurately collected by law enforcement, it's much better than someone attempting to turn in someone else for doing something that they personally feel is illegal or wrong. Recommendation number four: Go fly a drone for yourself. See how fun it is. See what you can do and see what you can and can't see from the tiny, little, first-person view camera on your drone. Listen to how loud it is when it's close enough for you to actually make out physical features of an individual and then ask yourself if it would really make that great of a spy tool. In fact, Digital Sky and so many others in the drone community would welcome you to come hang out with us for a little while, experience what it is we do, so you can better understand what it is-- what is and isn't possible before you attempt to legislate something that you don't fully understand. You're welcome at our office at any time. Recommendation number five: If you're going to place restrictions on items like this or item-- items like drones under the pretense that they can be used to spy on people and invade privacy, place similar restrictions on telephoto lenses for cameras, binoculars, and other items that are actually useful for spying. I watch a lot of action movies and FBI films and it seems that these types of objects--telephoto lenses, binoculars--are the best tools for spying on someone as they don't make any noise, you can be a lot further away from someone and actually see what they're doing, and you can essentially go undetected.

EBKE: [01:15:20] OK.

JUSTIN KYSER: [01:15:20] It's my hope that these-- it's my--

EBKE: [01:15:22] Go ahead. Go ahead, finish.

JUSTIN KYSER: [01:15:23] Sorry.

EBKE: [01:15:25] That's okay.

JUSTIN KYSER: [01:15:25] It's my hope that you'll take these recommendations and use them to make better determination on if this bill is actually something that will increase public safety or if it's just a knee-jerk reaction to an issue that has presented itself on one or two occasions. Thank you.

EBKE: [01:15:38] Thank you, Mr. Kyser. Any questions?

PANSING BROOKS: [01:15:40] I have a question.

JUSTIN KYSER: [01:15:40] Yep.

EBKE: [01:15:41] OK. Senator Pansing Brooks.

PANSING BROOKS: [01:15:45] Thank you. Well, as policymakers, I mean, our job is to create policy. And, yes, we may not understand every single thing but when there is an industry where-- I mean I-- I was down in the Haymarket and all of a sudden I looked outside and it was nighttime and there was a drone staring in at us, whatever. And I-- I mean we finally went up and saw that somebody was down on the corner. And I know that that's not what you want to do, but it's not appropriate, so to say what-- how long should we wait for the-- we're waiting on medical marijuana and we've been waiting a long time on that. So how long should we wait? And do you think there's any hope that anything is going to be done at any point soon? You know, it's easy to say, you don't know anything about it so don't try to regulate us. That's-- that falls on deaf and sort of insulted ears. So I just-- I mean I'm-- I do care about the industry. I care that-- that we do it appropriately. But to come and say you-- by all of you, you know nothing, let us handle it, that's what's going to happen. The federal government will handle it. I don't trust that the federal government is going to handle it. There are numerous things that they haven't handled and it seems presumptuous. And I appreciate that you've got this business. We want [INAUDIBLE]. It's great. But my job-- your job is to support your business. My job is to decide what is best for our citizens. And having somebody with a drone up looking at us and you're saying-- you're going to say, well, that's trespassing or that's-- I mean we can maybe go after them for something else. But again, we need thoughtful discourse on this. There are issues. I haven't found somebody staring at me through a telescope. If I did, I would go after them. You're correct. But I have actually seen somebody staring at our little cocktail party with a drone, and I happened to go down, look down on the corner, and there was their lighted monitor viewing us. So I'd like you to speak to that. It's very difficult to hear "You know nothing, do nothing." That's-- that's not-- that's not a good response. I would love a copy of your suggestions because I do think they were thoughtful. And it's very helpful to understand it better through those suggestions, so thank you for that.

JUSTIN KYSER: [01:18:13] If I could ask you, summarize what your question is for me exactly.

PANSING BROOKS: [01:18:17] I really-- my question is-- I mean to say don't do anything because the federal government is going to handle it is not enough for me to decide. So what I hope is maybe you'll go and work with Senator Blood or somebody to work on this issue and--

JUSTIN KYSER: [01:18:33] We would have gladly worked with Senator Blood on this issue but we were not contacted.

PANSING BROOKS: [01:18:35] OK, well, but there's still time to work with her. There's next year. There's all this summer.

JUSTIN KYSER: [01:18:39] That's great.

PANSING BROOKS: [01:18:40] So we would appreciate if you could do some of that.

JUSTIN KYSER: [01:18:43] OK.

PANSING BROOKS: [01:18:44] But something needs to be done from what is happening right now.

JUSTIN KYSER: [01:18:46] Did you ask the individual that was operating the drone if they had permission from the FAA to be there?

PANSING BROOKS: [01:18:52] No. I didn't want to go downstairs and leave my gathering. But I've never had anybody up there staring at me through the window that I knew of. If I did, I would do something about that too. But it's something that is concerning.

JUSTIN KYSER: [01:19:03] Then did you know that they were actually staring at you?

PANSING BROOKS: [01:19:06] It was up high and--

KRIST: [01:19:06] We don't ask questions from that chair back to there,--

PANSING BROOKS: [01:19:10] Yeah.

KRIST: [01:19:10] -- so just-- thank you.

EBKE: [01:19:14] OK. Thank you. OK. Other opponents?

EAN MIKALE: [01:19:29] All right. Hello, Senators. My name is Ean Mikale. You spell that E-a-n M-i-k-a-l-e. My remote pilot certificate, issued by the FAA, is 3925766. I also believe I have a unique perspective as one who holds a juris doctorate degree from the University of Nebraska, class of 2011. I also sit on the National Small Business Association's leadership and technology councils as well. I'm not going to reiterate and beat to death some of the points that-- that were made. I'll try to differentiate from my own personal experience. But also I see a couple of other legal arguments that-- that haven't personally been addressed. So I've actually-- our organization is-- is Infinite 8. We conduct drone research and technology. There have been different times that we've tried to go out and to fly and to train in parks specifically in Omaha. And we've contacted the city. The city has told us that the parks are off limits for drones. And so my-- my kids, when they're going to go and fly drones, where, you know, outside of-- we live downtown so we don't really have anywhere downtown that we'd be able to fly specifically outside of parks. Where would they be able to fly? The city of Lincoln has regulations. Of course, we're considering regulations here, which I consider to be overly burdensome. Diving into the preemption question, the preemption question with *Singer v. the City of Newton*, the one thing that primarily hasn't been discussed is the fact that the main issue there was the-- the ban on the use of drones below an altitude of 400 feet. OK. And so the difference here, of course, there is an all-out ban on the use of drones. But what I'll do is-- I actually tried to download it, wasn't able to because of the Internet connection here, but I will send each and every one of you--I've written down your names--I will send your offices a picture of drone footage, a picture that is a virtual reality three-dimensional photo that was taken at 300 feet, and I think you'll see that you can't really see anything at that level. I know my light is on. The presidential administration said that for every regulation that is proposed, that you erase two. China has a 75 percent grasp on the market which, you know, definitely puts the United States behind as well. And so we would hope that the protections that are there that currently exist as far as privacy protections-- I'm sure at UNL my-- my old professor Duncan [PHONETIC] would say that there are protections that already lie, such as in your example. You could have called the police in order to--

to address that, that particular person. So-- so thank you.

EBKE: [01:22:39] Thank you. So-- so hypothetically if some-- in Senator Pansing Brooks's case, you'd have to call the police anyhow, right?

EAN MIKALE: [01:22:49] Yes, that's correct.

EBKE: [01:22:50] And so you could have the same protection. It's just a matter of whether or not it's an individual that's spying on you or a drone run by an individual.

EAN MIKALE: [01:22:59] Absolutely. I think, you know, obviously, the-- the regulations that are-- are proposed, the legislation, and as you see, there's-- nothing has-- not much has been changed, just a word. Unmanned aerial vehicles has been added primarily. And so I think that the current protections that-- that lie within the regulations as far as privacy, etcetera, I think that those would-- would cover anyone in this particular situation. And so-- and so I think that there would be a necessary-- you know, you wouldn't have to-- to write anything new in order to-- to protect you in that situation.

EBKE: [01:23:37] Questions? OK. Thanks for being here.

EAN MIKALE: [01:23:38] All right, thank you.

EBKE: [01:23:39] Other opponents? How many more are planning on testifying on this bill? OK. Keep them up. Yep. Keep going.

RYAN SHOEMAKER: [01:23:55] Quite a few.

EBKE: [01:23:55] That's fine. Yeah. That's fine.

RYAN SHOEMAKER: [01:23:55] Thank you. Hello, Senators, Madam Chairperson. This is my first time doing this. Please excuse any nerves, stuttering, shaking.

EBKE: [01:24:04] You're good.

RYAN SHOEMAKER: [01:24:04] My name is Ryan Shoemaker. That's R-y-a-n S-h-o-e-m-a-k-e-r. I'm a local business owner and R/C hobbyist and I would like to speak about this issue. The city of Newton, Massachusetts, as has been brought up by several of the people before me, like many states and local governments, thought it could regulate drone flights in the airspace over its city limits. It passed a law in December 2016 that sought to ban unmanned aircraft flights below 400 feet, to ban flights over private and public property without the landowner's permission, and to require local registration of drones. A federal judge in Massachusetts ruled that the city of Newton was wrong, it does not have that authority because it is preempted by the federal government. A lawsuit asserted that the city's ordinance was preempted by federal law because it attempts to regulate an almost exclusively federal area of law. The federal district judge reviewing the case, William G. Young, agreed. In his decision--excuse me--George Young state-- or Judge Young states: Congress has given the FAA responsibility of regulating the use of airspace for aircraft navigation and to protect individuals and property on the ground and has specifically directed the FAA to integrate drones into the national airspace. The drone industry cannot reach its full potential if operators are forced to comply with differing requirements from town to town and state to state. As this instance shows, the FAA rules are not complete and they are looking for states to address the safety issues. It is generally agreed that the states are behind on addressing technology issues. The FAA understands that citizens should-- should be able to go to local law enforcement for

compliance and not just to have recourse to the FAA. That is different than saying the FAA does not have rules. However, these new regulations simply are not needed and this bill should be seen for what it is: an extraneous law that is already covered by current laws. As it stands, the drug drops, interference with emergency response teams, and invasion of privacy, etcetera, these are already felonies under the current laws and this bill is a Class-- I believe Class III misdemeanor and would not apply to them but to a whole other population of entrepreneurs and hobbyists like-- such as myself. I ask you, what Class III misdemeanors have you discovered that could not be handled under the current laws? I understand Senator Blood coordinated with over 100 people on this issue, but myself and many other local hobbyists have discovered that none of the national, state, or local flying organizations who would be profoundly affected by this legislation were contacted. If this bill does not make it this year, do they plan on coordinating with the people directly affected before resubmitting it? To sum up, the FAA is not asking for this law. Senator Blood is. If she had any concern for the hobbyists and entrepreneurs, she would have included them in the drafting of this bill, but she did not. I appreciate you hearing me out and thank you for your time.

EBKE: [01:27:03] Thank you, Mr. Shoemaker. Any questions? Senator Hansen.

HANSEN: [01:27:07] Thank you. Thank you, Chair Ebke. And thank you for coming up. You're-- you're the third person so far that I think has mentioned that Singer v. Newton case--

RYAN SHOEMAKER: [01:27:15] Um-hum.

HANSEN: [01:27:15] -- just while I was here. I looked it up and that was a-- just a district court Opinion in Massachusetts?

RYAN SHOEMAKER: [01:27:20] Um-hum.

HANSEN: [01:27:20] Is that--

RYAN SHOEMAKER: [01:27:21] Yes, I believe so.

HANSEN: [01:27:22] Okay, so it's-- that's-- that's the level of litigation? We're not just there in terms of precedent?

RYAN SHOEMAKER: [01:27:26] Yes, I believe so.

HANSEN: [01:27:28] All right. Thank you.

RYAN SHOEMAKER: [01:27:28] Yep.

EBKE: [01:27:32] Other questions? OK. Thank you for being--

RYAN SHOEMAKER: [01:27:32] Could someone point Senator Blood's assistant to me? I would like to leave my contact [INAUDIBLE]

EBKE: [01:27:37] He's right back there.

RYAN SHOEMAKER: [01:27:37] Right there? Thank you very much for your time.

EBKE: [01:27:39] You bet. Thanks. Next opponent.

DONNA ROLLER: [01:27:46] Welcome, committee members. Oh, sure. Sorry. My name is

Donna Roller and it's D-o-n-n-a R-o-l-l-e-r. First of all, it concerns me when Senator Blood said that it was the draft, the eighth draft. So I hope the one I read on the nebraskalegislature.gov is the one that I read and that-- because that's the one I'm referring to. And I also want to say that I have a little bit different history and a little bit different take on this. So if I'm interpreting this bill wrong, please give me some leeway there, but I'm going to testify what I felt reading this bill. I appreciate Senator Blood's work on this bill. However, I am opposed to this bill. There are some portions of this bill as it protects the public from stalkers, predators, schools, harassment on farm animals, emergency responders, public utilities, to name a few. No one can argue these points and I don't even want a drone over my property. The bill as I read it describes a mis-- mixed, tangled, complex bag of domestic situation that clouds the intentions and the outcome of this bill. One glaring possibility that sticks out for me is this bill does not prevent abuse by law enforcement with no consequences for that abuse. It is an overreach of surveillance of private citizens in an ever-increasing police state. This bill would criminalize people's right to assemble and protest at a time when corporations and companies are trying to seize land and property in a rigged, corrupt system. In addition, this bill dangerously extends protection of drone enforcement to private mercenary groups. And everyone wants to diminish that possibility, but this bill condones private corporations and law enforcement to unite against the people in situations that invite abuse of civil rights and public resources. We need to look no further than the events that occurred in North Dakota of law enforcement and militarized police uniting with private corporations to protect them and not the private citizens. I'm alluding to the dangerous Standing Rock atrocity where everyone's rights were being violated on contested land, on unseated land, and with treaty violations and disputed water and land rights and corrupt permit process and private financial payoffs. In this particular clay-- case, drones were used by citizens to document illegal activity of this private corporation before the necessary permits were in place. This bill condones state overreach against the people's right to protest and protect our assets from corporations who do not have the right to do what they are doing. We are also having a situation with massive pipeline leaks that are occurring, like the 2,000-- 200,000-gallon spill in South Dakota, and people need to be able to run-- able to use drones to investigate the truth. These sites are protected by police not only for safety but to hide the environmental endangerments to the-- from the public. We are now living in a political environment that seeks to criminalize our constitutional rights at a time corporation companies are trying to seize our stuff. And I ask that this committee table this bill for further review and allow public meeting or to talk to Senator Blood more to address the many red flags and unintended consequences of this bill as I read it. So--

EBKE: [01:31:11] OK.

DONNA ROLLER: [01:31:11] -- you have any questions?

EBKE: [01:31:13] Thank you. Any questions? Thank you.

DONNA ROLLER: [01:31:16] I know that's an entirely different take but it's what I experienced and witnessed.

EBKE: [01:31:21] It's OK. That's-- OK. Well, thank you. Thank you for being here.

DONNA ROLLER: [01:31:22] Thanks.

EBKE: [01:31:24] Other opponents? Not going to launch that, right?

RUSSELL BARGER: [01:31:30] I'm not.

EBKE: [01:31:30] OK.

RUSSELL BARGER: [01:31:32] My name is Russell Barger. I'm here representing Barger Drone. I'm one of the shareholders. It's just a small entrepreneurial company. We are focused primarily--

EBKE: [01:31:41] Could you spell your name, please?

RUSSELL BARGER: [01:31:41] I'm sorry?

EBKE: [01:31:43] Could you spell your name, please?

RUSSELL BARGER: [01:31:44] Yes. B-a-r-g-e-r. There's actually some written testimony I think I turned into your office last night.

EBKE: [01:31:51] OK. Thank you.

RUSSELL BARGER: [01:31:51] So we focus primarily on livestock agriculture. So my family started ranching out in western Nebraska almost 100 years ago and this is one of those areas that I think a drone would be helpful. We weren't quite sure if we should be testifying as neutral or as opponent. We spoke with our friends over at the Nebraska Cattlemen and brought us some of the issues that are mentioned specifically in that letter about harassment of livestock. And so you'll be able to see that in my written testimony. I'm not going to go through all of that again. I don't think that that's necessary. I thought it might be useful for you to actually see what the parade of "horribles" are that are being brought on. This is a DJI drone. This is probably three or four years old. When you go out and chase cattle with it, it's generally loud enough that they're going to run off. So it'll go two to three miles. It'll fly about 30-40 mile an hour. It works great for checking water. It works great for checking for calves. It's calving season right now. I guess I'd just bring up two things. I think that there are legitimate interests that you certainly should have the ability and the desire to regulate. I just want you to keep in mind that you don't need to overregulate a fledgling industry. The kinds of things that we can do with one of these, at least in the livestock industry, are pretty significant. I mean we can-- in the future I think we'll be able to send along checking miles and miles of fence. I think we'll be able to go and possibly measure biomass of different parts of pasture so we can send our cows to a different paddock and we can more efficiently grow whoever's out there grazing. I-- I think in the future this may be a way for some of those younger ranchers, younger folks out in the rural districts to have a new job, to have sort of a service-type dealership. We're just starting with that. So keep that in mind as you decide whether you want to regulate this or not. One thing that I don't think has been mentioned, that 300-foot basement for flying, as I think has been mentioned before, at 300 feet you could probably tell the difference between a cow and a calf maybe. But being able to look in someone's window, being able to see if something's going-- you know, if someone's out there doing something that they should be privately doing on their land, you're not going to see much from 300 feet. Frankly, you probably get on Google Maps or a lot of the different satellite types of services and see the same thing for free now. So the other thing that I would ask you to look into and ask Senator Blood: Is this a solution looking for a problem? I can tell you that having something like this to go chase a few errant cattle in that are out on the neighbor's land, rather than driving a four-wheeler through his corn, or your pickup, is probably desired by the neighbor and desired by you. So-- but it's also criminal under this statute. I believe the Cattlemen have probably already worked with Senator Blood and there may be an amendment coming for that. But I would ask that you make sure that that amendment is attached if this thing has any chance of getting out of committee. And I would also ask that you lower that basement for flying because frankly, from 300 feet, if I'm trying to fly two pastures over to check water, the wind at 300 feet is way different than the wind at 80 and this thing's going to run out of juice.

EBKE: [01:35:27] OK.

RUSSELL BARGER: [01:35:27] So that's pretty much what I have to say at this point. You can look at my written testimony for more specifics on the sections.

EBKE: [01:35:33] OK. Thank you, Mr. Barger. Any questions? I see none.

RUSSELL BARGER: [01:35:38] All right.

EBKE: [01:35:38] Thanks. Thanks for being here.

RUSSELL BARGER: [01:35:42] Thank you.

EBKE: [01:35:42] OK. Next opponent. Do we have another opponent?

JUDY KING: [01:35:53] My name is Judy King, J-u-d-y K-i-n-g, and I'm kind of opposed to parts of this bill. And I should speak with Senator Blood's staff about this. But I'm a Keystone Pipeline fighter and I'm against foreign companies using eminent domain to take the land away from Nebraska citizens to benefit-- to benefit a foreign country. And I've peacefully protested for this issue for several years. I'm also a retired woman who would have been at Standing Rock in any way that I could help if-- I just felt like I would be in the way up there as an older lady in the cold and everything. But fortunately there were people up there that had drones and cameras and they were able to-- made it possible for us to see what was going on. And it was live, being covered. And it's-- it wasn't being covered by the national news at all. So this was the only live tran-- you know, that we would-- we had to watch what was going on to our friends up there. And they were-- my peaceful friends were being plummeted [SIC] with rubber bullets and water cannons in the freezing weather. With the use of the, you know, with the use of the drone live camera feed, we were able to see that and see the-- the atrocities that were going on up there. There's also been spills by the pipeline companies that they restricted anybody to look at. And I used to work for the Nebraska pipeline department and I understand the secrecy of keeping pipe-- pipelines secret. but I also don't like the idea of corporations trying to keep the public not aware of what's going or how big the spill is or anything like that. So I really appreciate the fact that we have drones to-- to check these out. I strongly support public safety but we must equally guard against the overuse or, slash, abuse of forces that we relay-- rely on to protect us. That's all I have.

EBKE: [01:38:05] Thank you, Ms. King. Any questions? I see none. Thank you. Next opponent. If there are other opponents or anybody in the neutral capacity, make your way up, I guess. Think-- yeah, you're sitting. [INAUDIBLE] standing yet, so-- OK. Go ahead.

SUSAN WATSON: [01:38:22] Hi. My name is Susan Watson. It's S-u-s-a-n W-a-t-s-o-n. And I'm here to speak in opposition to LB693. Ironically, I want to start out pointing out and sharing some of the good points that are being addressed by this bill such as, you know, peeping by electronic device, harassment by sex offenders or those who have protection orders against them, trespassing by unmanned aircraft at schools and prisons, and to prevent harassment of livestock. I think those are all great points that should be addressed. I was kind of surprised that peeping in a window hadn't been addressed yet in Nebraska because I've heard of it in several other states. But I think it's definitely good to address that. Aside from these exceptions to my opposition, the remainder of the bill kind of sounded to me like an Orwellian novel. This bill takes away many civil rights. It keeps those rights for a fairly long list of [INAUDIBLE] individuals, political subdivisions, including law enforcement. You say law enforcement must get a waiver or a warrant to use these drones, but it actually says that if the officer decides that it's an emergency--they can decide whatever they want is an emergency--they are able to use drones for up to 48 hours without getting a warrant, at what time-- at which time they either have to stop or get the warrant signed. I thought the definition of

aircraft was kind of interesting. It means any contrivance now known, hereafter invented, used, or designed for navigation or flight in the air and includes unmanned aircraft as defined in this section. Now I don't know. Is aircraft, you know, toy drones, military drones, the type of drone that he had here? It doesn't really say; it doesn't specify. And one of my biggest questions was I don't see how you can make a law on something that hasn't been invented yet. This-- this law is supposed to affect anything that is going to be invented or used in the future. The unmanned aircraft used by citizens have actually been used-- useful and provided proof of illegal activities by others, by corporations, businesses, and, yes, even law enforcement. The bill itself is just such a hodgepodge of rules, exceptions to rules, issues not related to drones and its definitions, that it has turned into a terrible mess. The bill speaks of "person," which they define, but then they go on to use the word "actor" and "citizen" interchangeably with "person," which they don't define. I think the 300-foot clearance is-- who's going to measure that? You know, who's going to tell you if you're 300 or 250 or 350? I don't see how that could even be decided. So I hope each of you are thoroughly-- you thoroughly read the bill and see how it is a mismatch [SIC] of some commonsense ideas, some I thought would have surely been in place already, and a lot of taking rights from citizens. But it gives exceptions to many, including law enforcement, and we do not need our rights being curtailed yet making "Big Brother" more powerful than they are currently. And just one last note I wanted to say. On page 17, in section (4)(b) and (c), it talks about, "The nature or degree of force used is not forbidden by section 28-1408 or 28-1409," and, "If deadly force is used, its use is otherwise justifiable under sections 28-1406 to 28-1416." What does that have to do with drones?

EBKE: [01:42:16] That-- that's existing law.

SUSAN WATSON: [01:42:18] Oh. Well, it still doesn't make sense to combine it with a drone bill.

EBKE: [01:42:22] Right. It's the chapter of statute. OK. Any questions? Thank you, Ms. Watson, appreciate your time. Are there any other opponents? Going to stand or sit?

SPIKE EICKHOLT: [01:42:48] I'm going to try sitting again.

EBKE: [01:42:48] OK.

SPIKE EICKHOLT: [01:42:48] Good afternoon, Madam Chair, members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association, opposed to at least a portion of the bill. I think the committee likely knows what my testimony is going to be or our objection to the bill is, and that is the broadening of exist-- of several existing criminal offenses and the creation of at least one, probably two, new criminal offenses on a number of different bills this year. Our organization is opposed to doing just that. It's our position that there are multiple crimes that do exist on the statute books that rebranding and reclassifying and adding new crimes only leads to the problem that we already have with the stacking of charges in the criminal system, overincarceration, and so on, and the related problems with that. I'm having passed out some existing statutes. If you look at pages 12 and 13 of the bill, starting on page 12, lines 20 through page 13, lines-- about to line 5, that's the creation of a new crime of interference with a police cordon. And the statutes I handed out or had distributed deal with obstruction of government operations, obstruction of a peace officer, obstruction of a firefighter. There's a whole series of different crimes that already exist that provide and protect for the integrity of a police or government investigation. And this would just be one other offense that would provide for that. But what I think is to the Legislature's-- earlier Legislature's credit is that the current statutes, the current laws don't require or don't describe any sort of means that you interfere with a police or a fire investigation. In other words, if you somehow impede or obstruct it in some way, you're committing a crime. It doesn't require a means, for instance, by doing so with a vehicle or doing so on foot. And it's our position that having a

particular crime that just labels the type of way of committing that crime with a drone is somewhat arbitrary. And the problem is, is that since you already have the existing trespass statutes, you already have the existing-- existing intrusion statutes, if you make a new crime, arguably, the courts are going to assume the Legislature meant to do just that: make a new crime. So if somebody does something like this, they're going to be charged under existing law and then also this new law, and that's the heart of our objection. All the other parts of the bill we don't take a position on. But I would like to say, even though Senator Blood is not here, we were invited back in June, at least maybe back in August, to express our concerns. And the earlier drafts were I think-- these-- this present draft is somewhat more moderate. To her credit, she keeps the penalties as a misdemeanor many times, for the most part. Many times when there's new crimes, senators tend to start with increasing it to felony level and these are misdemeanor-level offenses, which does matter. But I just wanted to say on the record that Senator Blood did include us with some of the discussions. She did hear our criticism. She did tailor some of the provisions of this bill in response to our suggestions and I do appreciate that, on behalf of our organization, to be included in the discussion, notwithstanding the fact that we're still opposed to the bill.

EBKE: [01:46:05] Thank you, Mr. Eickholt. Any questions? I see none. Thanks for being here. Are there any other opponents? OK. How about neutral testimony on LB693?

TAD FRAIZER: [01:46:28] Good afternoon, Senator Ebke, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r, representing the American Insurance Association, a national trade association of property and casualty firms. Large portions of the bill don't deal with the insurance industry as such, so that's why we're here in a neutral capacity, although I know Senator Halloran is not too fond of neutral testimony as such. We did want to point out a couple areas where if you're moving forward with the bill we do want to preserve or perhaps enhance a couple protections for commercial operation. Drones are being used more and more in insurance for like disaster situations or high-- high--excuse me--high-angle or roofing situations where it's dangerous for an adjuster or an inspector to go up. You may remember the, just as an example of a situation--I'm not sure drones as such were used--but the gas explosion and fire in Omaha that basically shelled out the M's Pub building. You know, there would be teetering-- teetering walls in there. That would be a situation where one might find it useful to send in a drone to inspect the situation without putting people at risk. There was a very tragic gas explosion here in Lincoln that leveled a house and destroyed some other houses and there was ammunition cooking off and a resulting fire, again, a situation where you might want to send in a drone rather than a person for a while. But we do, we do note that Section 8 of the bill has an exception for commercial operations over real property generally. Section 9 on page 10 of the bill has an exception for commercial operations in connection with critical infrastructure. We could see situations where there might be damage to either a piece of critical infrastructure or something close to a piece of infrastructure where you might need to send in a drone to look at something. There is a 200-foot limit that might be a bit problematic and we wanted to call that to your attention. A similar situation in Section 10 of the bill on schools, there might be a situation where you needed to work around schools but there still appears to be a 200-foot limit. And the-- the police cordon situation, in Section 10, in a disaster situation where you might cordon off large areas, that's often a situation where you need a lot of insurance help. You might be using drones in that area. It might be a little-- it might be difficult to determine exactly who set up the cordon as far as getting permission to cross into that area. You know, which-- which police agency is involved? Is it local police? Is it the sheriff? Is it the State Patrol? That's not always evident at a perimeter so you'd-- you'd want to have at least some flexibility as far as that. And I'd be happy to try to answer any questions you might have.

EBKE: [01:49:56] Thank you, Mr. Fraizer. Any questions? I see none. Thanks.

TAD FRAIZER: [01:49:59] Thank you.

EBKE: [01:49:59] Is there any other neutral testimony? OK. Senator Blood has waived. We have some letters for the record. We have proponents: Jill Becker of Black Hills Energy; Kristen Hassebrook, of-- the executive director of We Support Agriculture; and Todd Schmaderer, the chief of police of Omaha Police Department. Opponents, we have: William Russell Barger, director of Barger Drone, McCook, Nebraska; Walt Radcliffe for the Motion Pic--these are opponents--the Motion Picture Association of America, Media of Nebraska, Inc.; the ACLU of Nebraska; Internet Coalition; Carl Szabo, of-- the vice president of NetChoice; Kirwan McHarry of direct-- director of communications of the Mota Group; and in neutral position, Matt Waite. That concludes our hearing on LB693. We're going to take about a six- or seven-minute break while we round up Senator Howard and let everybody stretch a little.

[01:59:08] [BREAK]

EBKE: [01:59:08] Can I get everybody to sit down, please, so we can get moving. It is a Friday afternoon. OK. We will resume our hearing schedule with LB892. Senator Howard.

HOWARD: [01:59:24] OK.

EBKE: [01:59:26] Welcome back to the Judiciary Committee.

HOWARD: [01:59:28] I missed it.

EBKE: [01:59:30] I'm sure. It has, what, only been like, what, two days?

HOWARD: [01:59:33] Less than-- less than 24 hours.

MORFELD: [01:59:35] Yesterday.

EBKE: [01:59:36] OK, was it yesterday?

HOWARD: [01:59:36] It was yesterday.

EBKE: [01:59:36] It all blurs together.

HOWARD: [01:59:38] OK. Sam, we won't have very many handouts, I promise. That this just the amendment and we're ready for it. OK. Good afternoon, Senator Ebke and members of the Judiciary Committee. My name is Senator Sara Howard and I represent District 9--that's H-o-w-a-r-d, sorry, Elice, I almost forgot--that encompasses midtown Omaha. Today I'm here to talk to you about a very sad subject that involves cruelty to animals. Because I only bring happy subjects, usually, I apologize. This bill, LB892, would make a person guilty of a Class I misdemeanor to leave an animal tethered or restrained in some way outside without shelter during inclement weather. This subject most recently came to my attention during the recent hurricanes, more specifically hurricanes Harvey and Irma. Many people who were forced to flee would leave their pets tied to telephone poles and trees when evacuated. These animals were left without food, water, or any type of care and had to fend for themselves, which was made more difficult because they couldn't seek shelter. While we don't deal with hurricanes in Nebraska, we do have tornadoes, thunderstorms, extreme temperatures of heat and cold. We also had some "thundersleet" this week so I think we-- we don't have the marker-- market cornered on crazy weather. And when humans are entrusted with the care of animals, that includes ensuring for their well-being. During Hurricane Irma in south Florida, the Palm Beach County Animal Care and Control agency received roughly 40 dogs in the days before Irma made landfall in Florida. Some were tied up. Others were in pens or in enclosed

yards, unable to escape. A staffer who actually formerly worked for the Legislature, who now lives in Arizona, was doing rescue work in Texas when she found a young dog who had been abandoned. This dog had been running through the streets for days with no food or water and was very hungry and dehydrated. Lucky for him, he ran into someone who didn't know she was in the market for a new best friend, and now Harvey is happily living in Arizona with his new owner Nicole. Not all of these animals are so lucky to be rescued. This law is important in our state, especially when we have high and low temp-- extreme temperatures. In the recent extreme cold, exposing a domestic animal may result in frostbite and animals may lose ears, toes, and even freeze to death. Many animals, because they are domesticated, even if genetically predisposed to extreme temperatures, are not able to handle them. And in hot weather, if animals are restrained and left without water or shade, they can quickly overheat. And most important, if an animal is tied up, they aren't even able to try and fend for themselves. Due to concerns from one of my colleagues, Senator Kuehn, I have drafted an amendment that would narrow the scope of this bill to only include domestic animals. This would prevent any issues with a county fair-type situation. And so the amendment, and I'll just read it because it's very short, the-- it clarifies that the definition means an animal kept as a household pet for the purpose of companionship, including, but not limited to, a dog, cat, bird, rabbit, rodent, and reptile. And we did have some discussions with Drafters about what types of animals could be tethered. We kind of dove into the rabbit hole of-- this was the-- the best definition we could get to. By passing this bill we will be creating consequences for mistreating animals by leaving them at the mercy of the elements. And I would ask for your support for LB892 and I'm happy to try to answer any questions you may have.

EBKE: [02:03:06] Thank you. Any questions for Senator Howard? Don't see any.

HOWARD: [02:03:12] You cannot tether a goldfish.

EBKE: [02:03:14] Huh?

HOWARD: [02:03:14] You cannot tether a goldfish.

EBKE: [02:03:17] Oh, I was just trying to figure out. So a pet snake you can't tether--

HOWARD: [02:03:20] Yes, yes.

EBKE: [02:03:21] -- because that's a reptile, right?

HOWARD: [02:03:23] But ferrets you can. I mean it was-- it was a very-- it was a fascinating discussion.

EBKE: [02:03:28] OK. But it's-- aren't they rodents? No, they're weasels.

MORFELD: [02:03:29] Whoa!

HOWARD: [02:03:29] [INAUDIBLE] Wait, what are they? I--

EBKE: [02:03:35] OK.

HOWARD: [02:03:36] Thank you.

EBKE: [02:03:36] OK.

HOWARD: [02:03:36] Happy Friday.

KRIST: [02:03:36] This is not a conversation to come in the middle of.

EBKE: [02:03:45] OK. First proponent. Anybody for this bill? Yes, please, come on up. How many are planning on testifying on this bill in any capacity? One, two--not a big crowd.

DOTTIE GLENN DAVIS: [02:04:17] Good afternoon, Senator Ebke and members of the committee. My name is Dottie Glenn Davis, D-o-t-t-i-e G-l-e-n-n D-a-v-i-s. I'm here to ask you to give your support for LB892. The restraining in any way of an animal in severe weather has been prohibited in nearly half of the states of our country, as well as in countless cities and villages. Regardless of the breed or coat of an animal, there are no dogs who can withstand relentlessly--being relentlessly chained outside in weather extremes. We are all animals and share, to differing degrees, susceptibility to weather, yet there is a misconception about the impact of severe heat on cold-- or cold on animals. Some people wrongly presume that an animal's coat can somehow protect them from severe weather. Of course this is not unilaterally true. To varying degrees all mammals who do not have access to appropriate shelter or cannot move themselves to a protected area most certainly do die of heat stroke or dehydration in high temperatures and they freeze to death if not sheltered from severe cold. In wet conditions, the combination of a wet coat and a cold temperature reduces the blood flow and can allow a chained animal's tissues to freeze, causing severe injury. The frostbite that occurs is most likely to happen in the body parts farthest from the heart, in the tissues, and a lot of the exposed surfaces. The paws, ears, and tails are the most affected and often lost, and the process is certainly excruciating for the animal and can be permanently disabling. Ultimately creatures will die if not removed from their miserable situation. In my town, for several years, there are dogs who have been chained in a small fenced yard of a family adjacent to the well-traveled road into town. One cannot go to town and back without passing this pen where the miserable dogs are clearly visible as they jump, howl, bark, and strain against their chains day and night, for 365 days a year, rain or shine, even in the most miserable Sandhills blizzards. I can't count the times that I've heard people in town lamenting or even cursing the misery of these dogs. We've spoken to the vets. We've spoken to several sheriffs that they've come and went over the years. The answer is always the same: There's nothing we can do about it, it's their dogs. Sadly, those dogs were born in the wrong place at the wrong time and in the hands of the wrong family. How great it would be if LB892 is signed into law and the sheriff can cite the owners and prohibit their irresponsible cruelty. Bear in mind that LB892 will not affect responsible dog and cat owners or any kind of pet owners at all. They would never be subjecting to-- their animals to the life of suffering and would welcome a law that would improve the treatment of suffering animals in our community. Please support this forward-thinking and humane legislation.

EBKE: [02:06:54] Thank you, Ms. Davis. Senator Krist.

KRIST: [02:06:54] Thanks for coming. I sometimes take notice that, living in Omaha with the Humane Society, that we seem to be more aggressive about in my district, in my town, in Douglas County, more aggressive in protecting animals that you mentioned in-- in that situation. I'm not sure what the difference is in terms of ordinances or city ordinances or what it would be. But I agree with you. This would give, without going to a town council or city council, whatever, this would give them the authority. And I appreciate you coming and testifying.

DOTTIE GLENN DAVIS: [02:07:36] And I think-- I-- the people that-- in our town really, really do feel a lot of distress over this situation, as you do when you drive down the street and see a chained dog. It's-- there's nothing you can do. So I appreciate that you're interested in it.

KRIST: [02:07:48] Thank you.

DOTTIE GLENN DAVIS: [02:07:52] Any questions? OK.

EBKE: [02:07:53] Questions? Thanks for being here.

DOTTIE GLENN DAVIS: [02:07:53] Thank you.

EBKE: [02:07:54] Next proponent. I see no one moving. Do we have any opponents?

KRISTEN HASSEBROOK: [02:08:14] Good afternoon, members of the Judiciary Committee. My name is Kristen Hassebrook and I'm the executive director for We Support Agriculture. I did submit a letter, but--just in case Friday got away from me--but I-- I did make it here today. We Support Agriculture is a livestock-based organization and although--

EBKE: [02:08:30] Can you spell your name, please?

KRISTEN HASSEBROOK: [02:08:30] Oh. K-r-i-s-t-e-n H-a-s-s-e-b-r-o-o-k. I know this bill is directly applicable to domestic pets. However, oftentimes when we look at statutes related to treatment of animals, issues for livestock and pets can become intertwined and confusing and things that-- and terminology that we use that might seem very appropriate for pets is actually extremely inappropriate for livestock because restraining animals, leaving them unattended on a large ranch or in a feedlot during severe weather events, is actually the only option available. And so one of the reasons that we just wanted to get up and express our concern over the bill is just putting this type of language in place when we're an agriculture state and the practices that are appropriate for livestock animals. Second, we also believe that existing animal cruelty statutes would allow for the prosecution of individuals who would, you know, harm their animals in the way that's being described. Nebraska Statutes clearly say that recklessly abandoning, cruelly neglecting, cruel mistreatment of animals subjects individuals to Class I misdemeanors, so we don't really see a need to create a new crime for something that we already have a path to prosecute. I would also just say there's some concern over whether it would actually be easy to enforce. There could be many instances where severe weather comes up out of the blue and someone could be forced to choose between their family's safety and an animal's safety when a tornado siren goes off, and so how do we-- if we-- if we're are not going to-- if it's not our intent to pursue and prosecute someone for that type of instance then, you know, again, what does-- what's the necessity for a new crime that's difficult to enforce, potentially already-- we already have an avenue, and creates kind of confusing and unintentional language for the agriculture industry? With that, I'd be happy to answer any questions.

EBKE: [02:10:29] Thank you, Ms. Hassebrook. May I ask, where are you from?

KRISTEN HASSEBROOK: [02:10:29] I am-- I live in Raymond, Nebraska.

EBKE: [02:10:32] OK.

KRISTEN HASSEBROOK: [02:10:32] I'm originally from the northeast part of the state. I grew up on a beef feedlot.

EBKE: [02:10:36] Sure. Well, I-- I represent a rural district and I-- I have heard from a number of citizens from around the district about issues related to animal cruelty or endangerment over time and my answer is always call your local sheriff. I don't know if you've got any insight into that or not. I find that a lot of times sheriffs are kind of stretched thin in the rural communities and so they may not want to address that. Kind of goes back to Senator Krist's comment about the Humane Society in Lincoln, Omaha, and places where you've actually got some sort of an animal shelter,

welfare kind of officer, and the difficulty where the sheriffs are concerned. So you want to address that?

KRISTEN HASSEBROOK: [02:11:22] I can say that in the event that you're in a rural community and you believe that someone is cruelly neglecting, abandoning, mistreating an animal, your first-- the proper procedure is to go through the local sheriff's office. However, they have the authority to investigate under the existing animal abuse statutes. So if they're running thin, I can't speak to that. But they have the authority under existing statute to pursue animal abuse, treatment, concerns for both pet animals and livestock animals.

EBKE: [02:11:57] OK. Senator Krist.

KRIST: [02:11:58] So I'm-- I'm-- I'm not contesting what you're saying. I'd appreciate it if-- if you and legal counsel might talk and tell-- and point to us in our Exec Session what those ordinances and/or laws might be that would protect the animal, because I've heard from-- even from my district in Douglas County that if you get outside the city of Omaha, the Humane Society doesn't always respond to there. So they call the Douglas County Sheriff and they don't have the same kind of capability. So I-- I would appreciate that exchange, please.

KRISTEN HASSEBROOK: [02:12:34] It's Nebraska Statute 28-1009 and Nebraska Statute 54-901. That's both the domestic animal, pet animals, and the livestock animals.

KRIST: [02:12:45] Perfect. Thank you very much.

KRISTEN HASSEBROOK: [02:12:46] Um-hum.

EBKE: [02:12:47] Any other questions? OK. Thanks. Are there any other opponents? Don't see anybody moving. Anybody in a neutral capacity? Senator Howard.

HOWARD: [02:13:02] [INAUDIBLE]

EBKE: [02:13:02] We do have some letters. I'll read those in real quick. We have a letter of support from Stephanie Scheffler and Kristen Hassebrook, who just mentioned us, and a letter in opposition as well.

HOWARD: [02:13:17] I'll be very brief in closing. I was really excited to see Dottie Davis today because I actually have my cat Waffles because of her. After my cat August passed away, she said, one of our neighbors, that a cat's been dumped on her farm, she's been declawed, we don't think she'll make it through the winter, would you like to meet her. I don't know if you guys know anything about animals, but you don't meet them and then just like decide you're not going to take them home. So that is why I'm crazy about Dottie Davis and I'm honored that she came to support my bill. I will say that if current statutes were meeting the aims of this legislation, we wouldn't need this and we wouldn't be having this conversation about what happened in other states in regards to tethering animals to poles when a hurricane was coming. I'm happy to look at them more closely but my interpretation of the opposition of this bill was that they just oppose additional animal neglect statutes and they don't want any-- any sort of potential moves that could go towards livestock, which is not my intention and it's-- I certainly wouldn't want that interpretation there for the committee. So with that, I'm happy to try to answer any final questions you may have.

EBKE: [02:14:34] Questions? I see none.

HOWARD: [02:14:34] OK.

EBKE: [02:14:34] OK.

HOWARD: [02:14:34] All right.

EBKE: [02:14:34] Well, that closes the hearing on LB892. We will move on to the second half of the Howard half, LB897.

HOWARD: [02:14:46] All right, Sam, you're up. And most of you should have the amendment but I just wanted to make sure. So don't look at the green copy because the amendment is a-- a full white copy. So good afternoon, Senator Ebke and members of the Judiciary Committee. My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I'm bringing before you LB897, a bill regarding reporting of incidences of sexual assault. Before I begin with my description of LB897, I want to note that my testimony is to the white copy that I delivered to your offices earlier this week, tried to get to each of you today on the floor, and I'm also handing out today. I am nothing if not thorough. Allowing survivors of sexual assault to make their own choices following an assault is a core value of the sexual violence advocacy community. Restoring power, control, and choice can be a critical component of the healing process as sexual violence takes away a victim's power, control, and choice. By ignoring adult victims' choices, mandatory reporting requirements for medical providers can mean that individuals who don't-- can mean that individuals don't report or get a rape kit done. Mandatory reporting could also mean that a perpetrator knows that a victim has gone to the authorities, which could be a risk to a survivor because most often perpetrators are a part of their community and it can create a severe safety risk for survivors. Many women have said that retaliation assault is more violent than the original assault and most sexual assaults are committed by somebody the survivor knows. The popular argument for mandatory reporting is that it will help law enforcement find predators and keep more people from being victimized. While on the surface this seems like a logical argument and the right way to respond to sexual assaults, research shows that it's actually the opposite. They jeopardize victim safety and create a chilling effect that prevents victims from coming forward at all, even for needed medical care. Mandatory reporting requirements not only violate a victim's right to privacy but also put a medical professional in the difficult decision-- position of deciding what to report. Any requirements should respect victims' choices and ensure that they feel comfortable seeking help and support during a critical time. This bill came to me from a hospital who noted that under current law they were forced to report any patient who came in to their care who showed evidence of being a victim of sexual assault. We are only one of two states where our statutes are interpreted as a provider has to-- is mandated to report a sexual assault without consulting the victim. The first draft of this bill, I went out on a limb. It simply excluded the reporting requirement for sexual assault. Yes. This is why we don't go rogue. My office was contacted by the Attorney General's Office, who has been doing extensive work on-- on a new program to help sexual assault victims and address the backlog of rape kits throughout the state. In meeting with them and working with their new state forensic nursing coordinator, who I-- who you'll hear from after me, we crafted language that would not only protect a victim from mandatory reporting requirements but would allow them to report anonymously and take control of their care. We also met with the Hospital Association and other provider groups and received their input on how to make the-- this the best process and how to be as pro-victim as possible. So we-- LB897, as amended by AM2086, clarifies the reporting requirement for healthcare providers regarding sexual assault and directs the Attorney General to create a protocol for anonymous reporting. This will allow evidence to be collected through a rape kit and sent to the state crime lab even if the victim declines to report the assault to-- to law enforcement. While some larger hospitals do have a sexual assault nurse examiner, or a SANE nurse, coordinators who coordinate this care, many smaller hospitals may not. And enacting a statewide protocol through the Attorney General's Office will ensure that they have the tools that they need to protect victims. There is an exception where law enforcement must be called if a

victim present-- presents with bodily injury or if they're not conscious. In that instance, the attacker could at that point be a public danger and should be immediately apprehended when possible. Under LB897 a victim would need to give written consent before law enforcement was contacted. But if it didn't-- if a victim didn't want to report at the time, the medical provider could still collect the rape kit and utilize the anonymous protocol. A victim always has the option to report an assault at a later time. And doing a rape kit at the hospital allows important evidence to be preserved. Many times a victim may feel more comfortable reporting after they leave. Talking to friends and family members might comfort a victim and give them support and the type of support that they need to feel comfortable and safe contacting law enforcement. Also in this bill is the requirement that the provider must refer a patient to a sexual assault advocate, who many hospitals have available 24 hours a day in case a patient needs services. We have used the definition of advocate from the Survivors' Bill of Rights that this body passed in 2004. That advocate will talk to the patient, offer them information on where they can receive support. But it's up to the victim whether or not they choose to contact these organizations after that visit and accept additional services. LB897 ensures that the victim throughout the entire process has the power to decide what is going on and how their course of treatment and care will continue. Following me will be testimony from individuals who work directly in this field who will hopefully be able to answer some of your more detailed questions and give information why this process is so critical. I really want to thank you for your time and attention to this important issue. I'm happy to try to answer any questions you may have.

EBKE: [02:21:07] Thank you, Senator Howard. Senator Pansing Brooks.

PANSING BROOKS: [02:21:07] Thank you for bringing this, Senator Howard. I'm really appreciative of it. For far too long we have almost blamed victims and so certainly with the trafficking work, that is an indication of where we've granted immunity and recognized that people are actually victims and not the-- the perpetrators of the crime. And so I really appreciate you bringing this. Do you know with this new-- have you had any discussions with the AG about what kind-- are-- are other states creating this kind of-- of form that--

HOWARD: [02:21:48] The anonymous reporting protocol?

PANSING BROOKS: [02:21:50] Yes.

HOWARD: [02:21:51] Yes. Other states do have it. And the gal behind me from the Attorney General's-- General's Office I think will be able to give you a broader idea of what they're thinking of.

PANSING BROOKS: [02:21:59] OK. Perfect. And also I'm interested in if they've indicated that they think there will be a fiscal note because of that.

HOWARD: [02:22:06] Oh.

PANSING BROOKS: [02:22:07] And maybe she can speak to it, too, but I would be interested. Hopefully not.

HOWARD: [02:22:11] Hopefully not.

PANSING BROOKS: [02:22:12] Thank you, Senator Howard, for bringing this.

HOWARD: [02:22:23] Thank you, Senator Pansing Brooks.

EBKE: [02:22:23] Other questions? I see none.

HOWARD: [02:22:23] OK.

EBKE: [02:22:23] First proponent.

ANNE BOATRIGHT: [02:22:34] Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. My name is Anne Boatright, A-n-n-e B-o-a-t-r-i-g-h-t. I am a sexual assault nurse examiner, or SANE nurse, and currently serve as the state forensic nursing coordinator with the Nebraska Office of the Attorney General. In my work as the state forensic nursing coordinator I strive to develop best-practice standards for victims of sexual assault, domestic violence, and sex trafficking across our state. I also manage the sexual assault payment program to ensure survivors do not have to pay for their forensic examinations as a sexual assault has occurred. I have worked as a registered nurse for 12 years and a SANE nurse since 2009. Since then I have served countless victims of the aforementioned crimes. I come here today in support of LB897 and am grateful to Senator Howard for the introduction of this bill. While caring for victims of sexual violence, I have seen firsthand the impact this crime can have. We know that sexual violence is the number-one most underreported crime. According to the U.S. Bureau of Justice Statistics, it is only estimated that 15.8 to 35 percent of all sexual assaults are reported to law enforcement agencies. I believe this to be attributed to a number of factors and LB897 provides a potential answer to one of these factors. First, victims are often overwhelmed by the concept of having to choose to immediately report to law enforcement in order to receive medical care. When victims are forced to fit within the system, they are less likely to participate in the system long term. These barriers can be reduced when victims are empowered and given options of whether to report now or later. Secondly, this bill creates an avenue to stop the clock for evidence collection. Victims are able to come in and receive medical care and sexual assault evidence collection and then determine the course of action. I believe that this bill will actually increase our repeats-- our rates of reported sexual assault with the creation of this anonymous reporting protocol. The purpose of such protocol statewide is to allow victims to take the process one step of a time, thus creating an environment in which a victim feels comfortable to participate. LB897 is a needed logical progression for victims of sexual violence in our state. I would like to leave you with this. I've sat with victims of sexual assault who have walked out the doors of the hospital when they find we must report to law enforcement. These people have not received any medical care, any treatment for sexually transmitted diseases, any evidence collection, and these are the only ones that we know about. There are plenty more who are out there suffering in silence alone because at one of the worst times in their lives they are unsure if they can bear speaking to law enforcement at that given moment out of fear and embarrassment. We have an opportunity to better the landscape for victims through LB897 and the Attorney General's Office is eager to work with Senator Howard, this committee, and the body as a whole to make that opportunity a reality. As a result, we hope that you will advance LB897 to General File. Thank you, and I would welcome any of your questions.

EBKE: [02:25:40] Senator Krist.

KRIST: [02:25:41] Thanks. Thanks for coming in. On page 1 starting with line-- do you have a copy of the bill?

ANNE BOATRIGHT: [02:25:45] I don't.

KRIST: [02:25:45] OK.

ANNE BOATRIGHT: [02:25:46] Sorry.

KRIST: [02:25:48] Can we--

MORFELD: [02:25:49] I've got one right here.

KRIST: [02:25:49] Yeah, but a white-copy amendment? You're going to get it from all over now.

MORFELD: [02:25:52] Yeah, you got-- you've got three copies now.

KRIST: [02:25:58] You've got five copies.

ANNE BOATRIGHT: [02:25:58] They're coming out of the ceiling. OK.

KRIST: [02:25:58] I think it's-- I think it's important because the question--

ANNE BOATRIGHT: [02:26:00] Yeah.

KRIST: [02:26:00] My question I believe is important because it will be someone like you or a nurse like you or a provider like you who is going to have to make this decision.

ANNE BOATRIGHT: [02:26:09] Correct.

KRIST: [02:26:10] So page 1 starting with 20-- line 27, it says, "Provide the victim with information detailing the reporting," and then you're going to ask the victim to do one of two things, right--

ANNE BOATRIGHT: [02:26:25] Correct.

KRIST: [02:26:25] -- to provide written consent or to sign a written acknowledgment regardless-- and here's where the real question comes from. I get that part. But regardless of the victim's decision under super-- under subdivision (2)(b) of the section, if the victim is suffering from a serious bodily injury, where is that line? What is defined as a serious bodily injury to the point where a victim would say, I told you I didn't want to talk about this, and you would then intervene and say, no, it's serious? Has that-- philosophically, has that been worked out to the point where providers of care are going to be comfortable if they have to go to that step?

ANNE BOATRIGHT: [02:27:09] So I believe so. One part of the protocol that we intend to create, at the Attorney General's Office we will work with medical providers so that they feel comfortable in understanding the difference between serious bodily injury related to that sexual assault and what all that encompasses basically. So I feel that we have avenues to-- to create an environment where a healthcare provider is going to feel comfortable and know the difference between serious bodily injury. I think ultimately, too, we're going to encourage healthcare providers to have real open and honest conversations with their patients about what this looks like. And I think this actually clears up the law from where it was previously as well.

KRIST: [02:27:52] Well, I know you're-- you're more than capable of doing it. My only concern is that the healthcare provider now has a new liability to worry about and what that line in the sand might be. And I don't want to put you and that profession in that position, so hopefully it's clear, because you know what happens with good Samaritan and all the other kinds of things. We-- we-- our intentions are always the best, but then we find ourself litigating more than anything else. So hopefully that's clear and I trust it will be.

ANNE BOATRIGHT: [02:28:21] Yeah. We fully intend on it being very clear in the protocol and that will be what we would work for, so.

KRIST: [02:28:27] Perfect. Thanks.

ANNE BOATRIGHT: [02:28:28] Yep.

EBKE: [02:28:30] Any other questions? Senator Pansing Brooks.

PANSING BROOKS: [02:28:35] Thank you for coming, Ms. Boatright. So did you-- have you seen some of the language for that report that--sorry, I lost the phrase of what it's called--that I asked Senator Howard about? What is it called?

HOWARD: [02:28:51] The protocol.

PANSING BROOKS: [02:28:52] The pro-- OK. Sorry. Have you seen language from other states?

ANNE BOATRIGHT: [02:28:54] Yes. I'm sorry. Catch-- catch up to where you were talking about. Yes. So we know that anonymous reporting is something that is a national best practice and actually VAWA, the Violence Against Women Act, has quite a bit of standard protocols that are available to providers, law enforcement, and advocates that are considered national best practice as a result. And we will be incorporating all of that information into the protocols that we would create along with, you know, a team of experts across the state to assist in that.

PANSING BROOKS: [02:29:29] And do you feel that's going to cost money from the AG's Office then that we're going to have to worry about?

ANNE BOATRIGHT: [02:29:34] I don't intend and I don't think our office intends for there to be any fiscal note associated with it.

PANSING BROOKS: [02:29:41] OK. Good. Thank you. So also, following along on Senator Krist's questions, (c), line 18, talks about serious bodily injury and then line 24 in (d) just talks about bodily injury.

ANNE BOATRIGHT: [02:29:56] Right.

PANSING BROOKS: [02:29:56] So we've got different standards. The serious bodily injury deals with actual or attempted sexual assault and the bodily injury is a lot broader on something other than the actual or attempted assault. So a punch to the eye? I mean I'm trying to figure out. So-- so basically I think these two lines allow the healthcare providers to trump the-- the females in a way or-- they aren't all females, sorry, but the--

ANNE BOATRIGHT: [02:30:31] The victim?

PANSING BROOKS: [02:30:31] -- sexual assault victim.

ANNE BOATRIGHT: [02:30:31] Um-hum.

PANSING BROOKS: [02:30:35] So can you talk about that, because I-- I don't think you actually mean to allow them-- I-- I presume there's-- you're allowing a way out rather than attempting to take away the power that you're helping to create for the victim to be able to walk away and come back and say, OK, I have the wherewithal now--

ANNE BOATRIGHT: [02:30:58] Right.

PANSING BROOKS: [02:30:58] -- to allow this to go forward.

ANNE BOATRIGHT: [02:31:00] So the reason that that was written the way it is, for the bodily injury, you know, the intention is we know that sometimes violent perpetrators may graze someone with a bullet, per se, or they may cause a laceration related to a knife, and that would not be captured within a serious bodily injury outside of that sexual assault. We went with serious bodily injury related to a sexual assault because we know that there can be simple tiers relating to a sexual assault that-- that we would not want to be necessarily, you know, trumping a victim's voice in that. But we're, you know, looking to capture very violent perpetrators that could be a threat to the public safety as a whole.

PANSING BROOKS: [02:31:46] OK. So I'm just interested that you didn't put serious bodily injury on the other one as well.

ANNE BOATRIGHT: [02:31:55] And I think that that was related to the fact that a-- even a simple stab wound that is not deep would not be captured within serious bodily injury.

PANSING BROOKS: [02:32:11] But like even like bruising on the arm could be seen as bodily injury.

ANNE BOATRIGHT: [02:32:16] Correct.

PANSING BROOKS: [02:32:17] And so then all of a sudden the-- the healthcare provider gets to trump the-- the woman or the victim. Have you-- did you discuss using serious bodily injury as a standard for both, both types of wounds or injury or [INAUDIBLE]

ANNE BOATRIGHT: [02:32:39] We had brief discussions about it and I don't-- this was kind of where we landed on this, but I think we would welcome further discussion related to this.

PANSING BROOKS: [02:32:51] Discussion? OK. I just was interested. Thank you so much.

ANNE BOATRIGHT: [02:32:54] Yeah.

EBKE: [02:32:54] Senator Krist.

KRIST: [02:32:56] As a quick follow-up, I-- I sometimes get tied up on words, and they're important, right? Words have meaning. But sometimes we write these pieces of legislation and we assume that everyone knows the other section of law to go to, to find a definition for what serious bodily injury actually means. Sometimes it's helpful to have those definitions close to the script or in the body of the statute as you're writing it. And so that goes back-- see, I'm looking at it-- we're looking at it from different sides but it's the same question.

ANNE BOATRIGHT: [02:33:24] Yeah.

KRIST: [02:33:24] How do we protect the healthcare provider from making a good decision, whether it's seriously-- serious bodily injury as it's defined by Nebraska Statute 28-109, I think is what you wrote down here, or is it bodily injury as defined by another statute? And together with those two things, I think we're-- we're concerned about the words having meaning in two different ways, one protecting the healthcare provider, one protecting the woman's right, or person's right, that-- that person that's been sexually assaulted, from having a say-so in what they want to do. I think you've got it. It's-- OK.

ANNE BOATRIGHT: [02:34:03] And hopefully parts of this will be captured in the protocol as well to really give providers clear guidelines and help protect victims ultimately.

PANSING BROOKS: [02:34:12] Would it be possible to send us out a sample of what the protocol looks like? Or maybe Senator Howard could do it, or you or somebody--

ANNE BOATRIGHT: [02:34:19] Yeah. I'd be happy to pull--

PANSING BROOKS: [02:34:21] -- if there are some nationally that we sort of all like.

ANNE BOATRIGHT: [02:34:22] Yep. Yep.

PANSING BROOKS: [02:34:22] Thank you so much for being here--

ANNE BOATRIGHT: [02:34:27] No problem.

PANSING BROOKS: [02:34:27] -- today, Ms. Boatright.

ANNE BOATRIGHT: [02:34:27] Thank you.

EBKE: [02:34:30] Other questions? OK. Thanks. Next proponent.

JENNIFER TRAN: [02:34:40] It's my son's birthday. Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. Name is Jennifer Tran, spelled J-e-n-n-i-f-e-r, Tran, T-r-a-n. I am a master's prepared forensic nurse certified sexual assault examiner, and I've been working as a SANE at Methodist in Omaha for the past nine years. Thank you for allowing me to speak in support of Senator Howard's LB897. I've had the privilege of working with over 300 survivors of sexual assault. While that may sound like an impressive number, statistically we know that an average of 33 patients per year is quite small. I firmly believe that that number could be much higher if victims of sexual assault knew that they could seek medical care without having to report to law enforcement. Many times this is not because they have something to hide. Instead, after going through such a traumatic event, they are still processing how this is going to change their lives. The impact could change their social circles, families can be torn apart, and threats may-- that they receive may be too hard to bear. The importance of a medical forensic examination and evaluation cannot be stressed enough. We prophylactically treat for sexually transmitted diseases, prevent pregnancy, and offer medications to prevent HIV. The repercussions of not receiving medical evaluation could be an untreated STD that affects someone's fertility, an unwanted pregnancy, transmission of HIV, and poor mental health outcomes. It is well documented that depression, anxiety, and suicidal thoughts are prevalent in sexual assault survivors. How we react to these victims will impact their immediate and long-term recovery. Any patient that comes into a hospital to seek care is believed. We listen to their chief complaints. We evaluate and treat their immediate medical needs. Because of our experience and training, forensic nurse examiners are the ideal providers to collect evidence should the patient request. When a patient leaves our hospital we have not healed them. Survivors often have months, years, even lifelong consequences. Allowing patients to seek medical care without having to tell their story and become vulnerable again because they have no control over where that story will go once it falls into someone's ears-- in our society it is no secret that victims are oftentimes not believed and/or blamed. Most victims I have met are already questioning what they could have done differently to prevent what just happened to them. Therefore, as a community it is our obligation to remove the hurdles that may prevent a sexual assault survivor to the essential medical care they deserve. This may look like Sara, who wanted to have her story heard and evidence collected; or this may be John, who wants the same but at this

point he's not sure how he wants to proceed in the justice process; just as important for Jane, who wants to make sure she is medically OK and find resources for healing. As I mentioned, this goes beyond the hospital doors. Advocates have been our patients' cheerleader and supporters when they leave. With 24-hour crisis hot lines, counseling, legal services, among other programs, their value cannot be overlooked. The inclusion of their service in this bill is essential. In conclusion, I ask that you also support this bill. Our patients are violated and vulnerable when we see them. Let's give these survivors choices as we may not know what is best for them. Thank you.

EBKE: [02:37:45] Thank you, Ms. Tran. Questions? OK. Thanks.

JENNIFER TRAN: [02:37:45] Thank you.

EBKE: [02:37:52] Other proponents? Can I get a show of hands how many are planning on testifying on this bill? Okay, great. Thanks.

TRACY MARCOTTE: [02:38:08] Good afternoon, Madam Chair and members of the committee. My name is Tracy Marcotte, T-r-a-c-y M-a-r-c-o-t-t-e. I'm the director of labor and delivery at CHI Health, Creighton University Medical Center, Bergen Mercy. CHI Health is a regional health network consisting of 14 hospitals, 2 standalone behavioral healthcare facilities, a freestanding emergency department, and more than 150 employed physicians, practice locations, and more than 12,000 employees in Nebraska and southwest Iowa serving communities from Corning, Iowa, to Kearney, Nebraska. My testimony and support of LB897 today is on behalf of CHI Health and the Nebraska Hospital Association. I want to thank Senator Howard for the bill's introduction which started with a conversation she had with one of our sexual assault nurse examiners when touring CHI Health-University Campus, located at 24th and Cuming in Omaha, Nebraska. By way of background, CHI Health has one of the largest sexual assault nurse examiner--SANE--programs in the state and I have years of experience working with victims of sexual assault, domestic violence, and sex trafficking in that capacity. Nurses in the SANE program are specifically trained in crisis intervention and provide injury detection and treatment, healthcare pertaining to sexual assaults, forensic medical evidence collection, domestic violence crisis intervention, testimony in judicial proceedings, and community resource connection. An important part of the SANE program is collaboration with the community advocates, law enforcement, crime laboratories, the judicial system, and members of the health system and members of the community to provide a trauma-focused approach to care. This ensures the patient receives the necessary treatment and resources needed for recovery without revictimization and retraumatization. Under current state law, medical providers are required to report incidents to law enforcement that appear to have been caused by a wound or an injury of violence in connection with a criminal offense, including the names and address of the victims. And while that interface with law enforcement is important, I can tell you that sometimes discourages sexual assault victims from seeking appropriate care and victims sometimes avoid acknowledging the cause of their injuries to medical-- medical providers and law enforcement due to the public nature of the crime reporting. The reasons are many but oftentimes include fear, stigma, and intimidation associated with sexual assault and sometimes the threat of additional violence to themselves or those they love. This is why we support LB897 and the Attorney General's suggested amendments to AM2086. The legislation still requires healthcare providers to report an incident to law enforcement when it reasonably appears that the incident resulted from an actual or attempted sexual assault. But it gives the victims who are 18 years or older the option of keeping their names and addresses anonymous if they desire. In making this relatively small change to the state law, we believe more victims of sexual assault will seek the care they need and for-- and feel more empowered to provide healthcare providers and law enforcement the information we need to pursue incidents suspected-- of suspected violence together in our communities. As a former SANE nurse, knowing at the end of the day that we've made a difference in someone else's life is rewarding. Being able to serve someone who has been or is currently going

through this type of devastating trauma allows us to provide a moment of comfort, safety, and empathy in order for them to begin the crucial first steps of the healing process. And we also get the benefit of knowing the service-- services provided may help to reduce violence in the community. For these reasons we urge your advancement of LB897 and AM2086 to the full Legislature. Thank you for your time and your service and I'd be pleased to try to answer any questions you may have.

EBKE: [02:42:20] Thank you, Ms. Marcotte. Senator Pansing Brooks.

PANSING BROOKS: [02:42:21] Thank you for coming, Ms.-- is it Marcotte?

TRACY MARCOTTE: [02:42:22] Marcotte, um-hum.

PANSING BROOKS: [02:42:22] Thank you. Thank you for coming and for what you do every day and for this really good idea. So I-- you were here when I asked Ms. Boatright about the difference of the bodily injury versus the serious bodily injury.

TRACY MARCOTTE: [02:42:40] Um-hum.

PANSING BROOKS: [02:42:40] So were you involved at all in the discussions? I'm just interested in your perspective on the bodily injury part because it is a much lower standard to me for healthcare workers. So why is it or is it not necessary, because we have the high standard of serious bodily injury on the actual or attempted sexual assault and then all of a sudden on a bodily injury we have the lower standard of just a bodily injury. So literally grabbing somebody and having bruises from the fingers could be a bodily injury.

TRACY MARCOTTE: [02:43:13] Yes, it could. Serious bodily injury is anything that's life-threatening and if somebody is in a life-threatening situation, then I guess that makes it crystal clear. But other injuries that aren't life threatening can be very devastating, too, so--

PANSING BROOKS: [02:43:30] So I guess what I'm trying to ask is, did you request and are you requesting that something so low as-- because if somebody goes in and thinks, oh, well, it's not going to be reported unless you want it to, and then all of a sudden you guys see a bruise from somebody holding somebody and all of a sudden you're like, well, we can report it, so why this lower standard on-- if we're going to protect the victim so that they can have time to take a breath and go back and maybe after talking to family members get the courage to come forward and say, yes, I do want-- I want to file charges, I want to get the police involved, why such a low standard on bodily injury which could just wipe out-- in my opinion, it could wipe out everything that's trying to be done in this, in this bill.

TRACY MARCOTTE: [02:44:25] I guess I would defer that to the Attorney General's Office and I'm sure that the--

PANSING BROOKS: [02:44:29] OK. But-- but do you-- I'm-- OK. So I'm interested from your perspective.

TRACY MARCOTTE: [02:44:33] OK.

PANSING BROOKS: [02:44:33] What you're trying to do is allow a person to get time to take a breath. Isn't that correct?

TRACY MARCOTTE: [02:44:40] Correct, um-hum.

PANSING BROOKS: [02:44:40] And you don't want the evidence lost.

TRACY MARCOTTE: [02:44:42] Correct.

PANSING BROOKS: [02:44:43] So why-- do you feel that there are instances where, oh, my gosh, if we don't have bodily injury rather than serious bodily injury as-- as a standard for the crime or as an element of the crime-- or not crime but just the ability for the person to go take a breath. Do you feel that's necessary? Would you want-- if you saw a bruise on an arm, do you feel that that person then gives up everything that is under this bill?

TRACY MARCOTTE: [02:45:19] I would say that a lot of victims of sexual assault have some type of injury like a bruise or a scratch or abrasion, something like that. So it does kind of umbrella.

PANSING BROOKS: [02:45:33] So-- so would that injury be enough to make you think to yourself, oh, we-- we need to report this? Just that injury alone?

TRACY MARCOTTE: [02:45:47] In my own personal--

PANSING BROOKS: [02:45:49] Yeah.

TRACY MARCOTTE: [02:45:49] -- I would-- I would not count a bruise or something like that as making me a mandatory reporter.

PANSING BROOKS: [02:45:59] Yes. OK. But-- but-- but I can understand. And I don't know if you want to speak to the serious bodily injury because of the actual or attempted sexual assault. So to me that standard is like, OK, if it's truly serious, other than abrasion, as-- did you say that? Or somebody said that. I think it was the previous testifier. Anyway, so I can see why if there's something truly serious where there's-- where the person has been cut seriously in the assault, that it might be necessary then for the healthcare professional to say, my standards say that I have to report this, it's so serious, that-- that's what-- that's what we're weighing here is, is if it's so serious, that sexual assault or the attempted assault, if those wounds are so serious to the body, then all of a sudden the-- the providers or the healthcare person's duty to do no harm, duty to report all of a sudden trumps that person who probably is there, if they're bleeding and-- and something hideous is going on, that would be pretty obvious that they were going to do that anyway. So again, I'm concerned about the fact that it says just bodily harm on something that wouldn't necessarily be reportable but all of a sudden you're-- you've got somebody going in thinking that they're going to be protected and have a moment to get-- take a breath and get some support at home and all of a sudden it's just-- it's just bodily harm so you're going to be able to report. And that person is going in under the understanding that you can't report until they okay it. You're the one that was part of why this was created. Can you speak to that?

TRACY MARCOTTE: [02:48:03] I would hope that the protocol would--

PANSING BROOKS: [02:48:05] Oh, I thought she-- I thought you went there and-- and learned that-- that you learned it there. No? OK. Well, that's all right. We'll ask Senator--

TRACY MARCOTTE: [02:48:14] OK.

PANSING BROOKS: [02:48:14] -- Howard about this. Sorry. I thought maybe you could respond to that.

TRACY MARCOTTE: [02:48:17] It's all right.

PANSING BROOKS: [02:48:17] Thank you so much.

TRACY MARCOTTE: [02:48:18] All right. Thank you. Thank you.

EBKE: [02:48:21] Are there any other proponents?

DON WESELY: [02:48:27] Madam Chairman, members of the Judiciary Committee, my name is Don Wesely, D-o-n W-e-s-e-l-y. I'm here representing the Nebraska Nurses Association in support of the bill. Chairman Ebke, members of the Judiciary Committee, the Nebraska Nurses Association is in support of LB897, a bill to change medical providers' duties to report injury or violence resulting from actual or attempted sexual assault. This bill is victim friendly and will now create an anonymous reporting option which is in line with national sexual assault nurse examiner best practice. The purpose of anonymous reporting is to allow victims of sexual assault to take the process of reporting to law enforcement one step at a time. By providing victims with the opportunity to gather information, solidify their support system, and establish rapport with first responders, healthcare providers can create an environment that encourages reporting, even for those victims who initially feel unable, unwilling, or unsure about doing so. This victim-centered approach identifies that sex assault victims are the central participant in the forensic exam process. Victims deserve timely, compassionate, respectful, and appropriate care. Clearly healthcare professionals must provide the information that is legally mandated. This legislation will help to assure that the standards for safe, quality patient care are not compromised. We encourage you to advance LB897 to General File.

EBKE: [02:49:56] Thank you, Mr. Wesely. Senator Pansing Brooks.

PANSING BROOKS: [02:49:56] Thank you. So part of the reason-- thank you for coming and speaking on behalf of this. I'm very supportive of this. Part of the reason I was asking those questions is that there is a-- a point where it says that Senator Howard-- she wanted to thank Senator Howard for the bill introduction, which started with conversations that they had at CHI Health. So that's why I'm asking those questions. What I'm trying to do is there's been some discussion about attaching this to my human trafficking bill because it totally relates, and so I want to understand those two standards of bodily injury and serious bodily injury. And so I thought Ms. Marcotte could speak to that because of the fact that-- that these conversations started at CHI Health. I never thought that she wrote the bill. I was just only hoping that she might speak to the fact of what is going on between bodily injury and serious bodily injury. So thank you for coming. I appreciate your support. If you have anything to answer in far as-- regarding the questions I have asked, obviously, my friend Senator Hansen said I'm asking legal questions to medical professionals, which I don't intend. What I was trying to do was clarify for the record so that we could understand what this variation is and how to go forward with it. So I don't know if you have something to add.

DON WESELY: [02:51:23] Well, it's actually important to ask those questions because the nurses who I represent here are the folks that are going to be actually taking these victims and trying to make that determination and being clear about that is important. There's a lot of respect for Anne Boatright with the Attorney General's Office from the nurses and they expect that they would work closely with her on those protocols. But, yeah, you-- when you're in the situation you have those individuals come in, you want to know what you're-- what the right decision is.

PANSING BROOKS: [02:51:49] And to further clarify, I have legal staff handing me the-- the statute definitions. I know that they're different. I'm clear that they're different. I want to know why we're creating a lower standard for bodily injury versus sexual assault or attempted sexual assault. If we don't have that clear in the record, we do not understand in passing this bill forward what is

going to happen. So I get that they're different. That's why I'm asking those questions. So again, sorry if-- if I'm asking the wrong people. I thought maybe you could speak to what you have seen personally and why bodily injury might be a lower standard for protecting the victim than attempted sexual assault. So thank you.

DON WESELY: [02:52:38] Those are good questions.

PANSING BROOKS: [02:52:38] Thank you for your help.

DON WESELY: [02:52:39] Thank you. Thank you.

EBKE: [02:52:39] Any other questions?

DON WESELY: [02:52:39] Thanks.

EBKE: [02:52:39] Thanks.

KIM ROBAK: [02:52:39] Senator Ebke and members of the committee, my name is Kim Robak, K-i-m R-o-b-a-k. I'm here today on behalf of the Nebraska Medical Association in support of LB897. I want to first thank Senator Howard for this bill and for involving as many people as she has involved in this bill. I was sitting through the prior hearing in which a number of people indicated that they hadn't been included. I think Senator Howard has included everyone, and so I appreciate that. She has kept us informed as this bill has progressed and we are very much appreciative of her hard work in this regard. We appreciate the fact that there is now an opportunity for women to report anonymously a sexual assault or a rape and in particular that the rape evidence will be kept for a number of years because people do and may change their minds and decide that they would like to have a law enforcement action brought. I would like to speak to the issue that you have raised, Senator Pansing Brooks--and, Senator Krist, you raised the same question--with regard to bodily injury and serious bodily injury. That question was raised within the Nebraska Medical Association and at the end we thought that it was confusing as well. I'm not certain why the distinction. But from another perspective, the distinction may cause difficulty because you now have to report something in one incident that you don't in another. And the definition of a-- of a bodily injury versus a serious bodily injury could cause a medical provider to be charged with a misdemeanor for not actually reporting something that someone thinks is not reportable. So I do think it's confusing. I know that-- I understand the reason why it was selected the way it is. But I do think that further discussions should take place and that we should clarify that. And the NMA is willing to work with the Attorney General and Senator Howard to try and clarify that.

EBKE: [02:54:43] Senator Pansing Brooks.

PANSING BROOKS: [02:54:43] Well, thank you for responding to that, Ms. Robak. So do we have a problem moving it to serious bodily injury on just--

KIM ROBAK: [02:54:53] On both of them?

PANSING BROOKS: [02:54:55] Yes.

KIM ROBAK: [02:54:55] From the Medical Association's perspective, we would not have a problem. I think that what I hear from the Attorney General's Office is that they want to be overly inclusive in that instance. The problem is, as you indicated, it could be a scratch and the scratch may be something that now I don't think that would include a scratch but as defined it could. And now you-- from the NMA's perspective, you would place the medical provider at risk for not

turning someone in. And I don't think that's the intent.

PANSING BROOKS: [02:55:26] No.

KIM ROBAK: [02:55:26] So I think that-- that the intention is good but the outcome may be an inappropriate outcome.

PANSING BROOKS: [02:55:33] As a representative of the American-- of the Nebraska Medical Association, I would warn to always report with that differential.

KIM ROBAK: [02:55:40] Well, that-- that's the fear, exactly, and it's confusing because I don't think that you want the difference there because what is something that might be a crime in-- in addition to a rape, for example, could be sexual-- human trafficking, so if someone's in that situation, then you would have to report.

PANSING BROOKS: [02:56:03] Well, theoretically, if there was a serious wound from the rape--

KIM ROBAK: [02:56:07] Then you would report.

PANSING BROOKS: [02:56:08] -- you-- you would report but--

KIM ROBAK: [02:56:11] If it's a rape and a sex trafficking victim without a serious wound, you would report.

PANSING BROOKS: [02:56:19] Yeah. Yeah. OK. Thank you for your help.

KIM ROBAK: [02:56:23] You're welcome.

EBKE: [02:56:23] Other questions? OK. Thanks.

KIM ROBAK: [02:56:26] Thank you.

EBKE: [02:56:26] Are there any other proponents? OK. Do we have any opponents? Do we have any neutral testimony? OK. Senator Howard. We have some proponent letters: one from the Nebraska Hospital Association, one from Michelle Zych-- Zych from-- the executive director of the Women's Fund of Omaha. No opponent letters. Senator Howard.

HOWARD: [02:57:03] No opponent letters. Thank you, colleagues, for paying attention to this very important issue. So the-- so we did have a discussion about bodily injury versus serious bodily injury. It was perhaps not intentional but what we were trying to clarify, and I did just pass out the statute so that you have it for reference because serious is very serious and bodily injury is very simple. And so essentially a medical provider, when there is an injury-- so you see in Section 1 of the bill, when there's an injury that we think is a part of a criminal offense, they already are mandated to report. And that's just injury and that's the original legislation. That's what they already have to do. When there's a sexual assault, we-- we wanted them to know that it had to be a serious bodily injury but then regardless if they say the sexual assault, please don't report, but they have another type of injury that meets the standard from the original statute, then--that is in combination with a criminal offense, that would not be the sexual assault because that is the original statute which is 28-902. Then they would still have to report that injury related to a separate criminal offense. Does that make sense? I'm not allowed to ask you questions. Or at least that was the--

MORFELD: [02:58:31] Not on Fridays.

HOWARD: [02:58:31] Not on Fridays. Or at least that was the reasoning behind it. So in this instance, if we run it out and we say, OK, there's a serious bodily injury and you can report the sexual assault, in this instance we would be saying there would have to be another serious bodily injury and then they would-- in connection with a criminal offense and then they could report that injury. So it would be a true bypass of 28-902 which is the healthcare provider's mandatory reporting for an injury in relation to a criminal offense. I'm happy to work on this language.

KRIST: [02:59:07] Because it's Friday [INAUDIBLE] May I?

EBKE: [02:59:10] Senator Krist, yes, go.

KRIST: [02:59:10] Thank you, Chair. Because it's Friday and it's past the beginning of happy hour, I think we've defined the problem. And you know from my perspective and from Senator Pansing Brooks's perspective and from others that there is a question. I want to make sure medical providers are not put in a bad position. And Senator Pansing Brooks brought up that the person who is violated doesn't get put in a position that they don't want to be put in. So please bring us back language that defines those issues, if you will. Anything else you want to say?

HOWARD: [02:59:44] I-- I-- I would hope that my reputation stands as a good person who will follow up and bring good language [INAUDIBLE] to you.

KRIST: [02:59:53] Between you and Anne, I'm sure it'll get done.

EBKE: [02:59:54] I do have one question.

HOWARD: [02:59:54] Oh, yes. Yes.

EBKE: [02:59:54] OK. So-- so my question would be with respect to the rape kit collected anonymously.

HOWARD: [03:00:04] The chain of custody.

EBKE: [03:00:04] Right, the chain of custody. What is the obligation? Is it purely preservation? Is law enforcement going to be able to start a test before-- before any charges have been or any report has actually been made? I mean I-- I-- it's just one of those things that I'm kind of concerned with.

HOWARD: [03:00:22] Yes. OK. So, yes, I'm-- I'm excited that you asked that question.

EBKE: [03:00:28] Uh-oh.

HOWARD: [03:00:28] I do not have my notes.

EBKE: [03:00:28] Sorry.

HOWARD: [03:00:29] I do not have my notes because I had my-- I took notes on another version of the amendment and I promise you we-- we had several versions of the amendment to the point where one-- at one point Timoree said just burn all of the previous copies. And so we did not include the word "testing" when we-- when-- in that-- in the section of statute that says that they have to hang on to the rape kit for 20 years. We did not include testing. And I asked the Attorney General about that specifically. They are working on what we call the backlog of rape kits. And Senator Morfeld may actually be able to speak to this more eloquently than I can because he's been

working with the Attorney General on this. They received a grant from the Department of Justice and are currently working through all of the-- well, they're not working through the rape kits now because they had to hire a tech and train the tech and the training takes a year. But at that point they will start to work through those.

EBKE: [03:01:25] My concern is-- is more of a criminal justice, civil liberties kind of standpoint and not wanting the police, the law enforcement to be able to process a rape kit without-- without actually having somebody who's made a charge and made a claim. OK. So I don't want to-- I don't want a bunch of DNA samples out there just randomly being tested.

HOWARD: [03:01:56] Floating.

KRIST: [03:01:56] Yeah.

HOWARD: [03:01:56] That's actually-- that's a new issue. That is an innovative issue--

EBKE: [03:02:01] Well, there we go.

HOWARD: [03:02:04] -- that-- that I don't quite know the answer to.

PANSING BROOKS: [03:02:05] I was just going to ask that too.

EBKE: [03:02:06] I mean I-- I mean it-- I think it's-- I think it's a concern--

HOWARD: [03:02:09] It's valid.

EBKE: [03:02:10] -- it's a concern from a, you know, kind of a-- a civil liberties kind of standpoint. What amendment is that? Third? Fifth? I don't know. [INAUDIBLE] I don't have [INAUDIBLE] Sorry.

HOWARD: [03:02:21] One of them. It's Friday. Fabulous. No, that is actually a really interesting, intriguing question, so I will reach out to our friends at the ACLU and kind of see what other states have considered in terms of how they handle that DNA material and what the expectations are in terms of if there's no-- been no charge, how long they're expected to maintain that material.

EBKE: [03:02:43] OK. Thank you. Any other questions? I don't see any. That concludes the hearing on LB897. Thank you, Senator Howard.

HOWARD: [03:02:50] Thank you.