

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 22, 2019

**LATHROP:** [RECORDER MALFUNCTION] explain the absence of some of my colleagues. We just finished an Exec Session in a different room on the other side of the Capitol, so I think some people will be coming in momentarily. But in the interest of starting on time, and because we have a number of bills up today, including, or in addition to that, a gubernatorial appointment, I think we'll get underway. Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I am the state senator from District 12 which includes Omaha, parts of Omaha and Ralston. I chair the Judiciary Committee. On the table-- so these are sort of the ground rules, and we may have some folks here that haven't testified before, and so I'll go through them, as I do before we begin our hearings. On the table inside the doors when you came in, you will find yellow testifier sheets. If you are planning on testifying today, please fill out one and hand it to the page when you come in to testify. This helps keep an accurate record of the hearing. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. Also, for future reference, if you are not going to testify in person on a bill but 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 to receive those letters and make them part of the record. We'll begin testimony with the introducer's opening statement. Following the opening, we will hear from proponents of the bill, then opponents, and finally, anyone wishing to speak in a neutral capacity. We'll finish a closing-- with a closing statement by the introducer if the introducer wishes to give a closing statement. We ask that you begin your testimony by giving us your first and last name and spell them for the record. We utilize an on-deck chair. In fact, we use-- utilize an on-deck row and that's this front row here to the left of the testifier's desk. Please keep the on deck-chair and the on-deck row filled with the next person to testify to keep the hearing moving along. If you have any handouts, bring the handouts, bring them up, and have 12 copies and give them to the page, this young lady sitting here. If you don't have enough copies, the page will make more. We utilize a light system. This is going to be particularly important tonight since we have a number of bills and a number of people wishing to testify. This is the light that-- the lights that I'm referring to. When you begin your testimony, the light on the table will turn green. You will have two minutes on a green light. It will then turn yellow and that's your one-minute warning. You'll have a total of three minutes to testify. When the light turns red, we ask that you wrap up your final thoughts and stop. And this is where I go off script and

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offer this, that if you brought prepared testimony that you are going to read from today and it's longer than you can speak in three minutes, you can pare that down while you're waiting for other people to testify. It really is important that we stick to the three minutes so that we can get through all the bills and people who want to testify on the last bill aren't here until 9:00 tonight. As a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not permitted during public hearings. You may see senators use them to take notes or stay in contact with staff. That is permitted. At this time, I would ask everyone to look at their cell phones and make sure they are in the silent mode. Also, any verbal outbursts or applause and things like that are not permitted in the hearing room. Such behavior may be cause to ask you to be excused from the hearing room. You may notice committee members coming and going during the course of the hearings today. That has nothing to do with the importance or how they regard the bill being heard, but senators may have bills to introduce in other committees or have other meetings to attend. One last thing, since we're holding the hearings in the Warner Chamber while our regular hearing room is being renovated, please remember that water bottles, soda cans, and cups are not permitted on the desks, and that's to avoid any damage or water marks. A couple more comments. We have a lot of people-- we have-- we have as a committee tried to group bills according to subject matter, so you can see in some cases a common theme and there's certainly a common theme to the hearings or the bills that we've put together today. I would encourage you, as you are listening to the testimony, if somebody has already said what you came here to say, then you can abbreviate your remarks or even perhaps not testify. What we're-- what we're trying to do is avoid duplication, if we can, in the comments that we receive. I would like to introduce or have my fellow colleagues introduce themselves and we'll start to my right with Senator Wayne.

**WAYNE:** Senator Justin Wayne, District 13, which is north Omaha and northeast Douglas County.

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

**MORFELD:** Adam Morfeld, District 46, northeast Lincoln.

**CHAMBERS:** Ernie Chambers, District 11, Omaha.

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**BRANDT:** Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

**DeBOER:** Wendy DeBoer, District 10, Bennington and the surrounding areas in northwest Omaha.

**LATHROP:** Assisting the committee today are Laurie Vollertsen, our committee clerk, Neal Erickson and Josh Henningsen, our-- are our legal counsel. And the committee pages are Alyssa Lund and Dana Mallett, both students at UNO. They're great help too. With that, our first matter today will be the confirmation hearing for Robert Twiss with the Board of Parole. And, Mr. Twiss, you're welcome to take the chair. Assume you have some opening remarks, so let's start with those.

**BOB TWISS:** Thank you, Senator Lathrop. I guess I'm plenty close to the mic. Is it OK?

**LATHROP:** Yes.

**BOB TWISS:** OK. Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Bob Twiss. That's B-o-b, T-w-i-s as in "Sam," "s" as in "Sam." I am here today seeking confirmation of my appointment by Governor Ricketts to the Board of Parole. I'm honored to be appointed, and I'm also honored that my family could also attend, my wife Janice, son Stephen, and daughter Heather Nelson. Senators, my appointment was announced to you November 26 of last year with a letter from the Governor's Office, and I started with the Board of Parole yet that week, on Friday, November 30. If confirmed, my term would run to September 9 of 2024. It's basically a six-year appointment overlapping any one Governor's term. Senators, I'd like to tell you a bit about myself. I have a broad and deep business background. I have a Bachelor of Science in Marketing from UNL. I was accepted to law school. However, I never got there. I'll probably-- probably go to my grave with that one. After graduation, I went with the big corporations, including Dow Chemical, Target Stores in both headquarters in Twin Cities and St. Louis, came back to Nebraska with Caterpillar dealer, Lincoln Equipment Company, where I was marketing manager, also with Nebraska Department of Economic Development recruiting business to Nebraska. And we, meaning the local folks, Omaha Chamber, were successful in a couple of those endeavors. Also, I was with-- recruited then to another Caterpillar dealer in Omaha at that time, Missouri Valley Machinery. Now there's one Caterpillar dealer left in the state. Also with-- represented

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National Federation of Independent Business, the U.S. Chamber of Commerce, and for the last 23 years have had my own commercial sign business. I provide diversity to the Board of Parole. I think that's something of interest, and each and every one of our board members provides something, and something different and very valuable. It requires-- constitution requires basically a female, a minority, and an individual with corrections background. So the diversity I think was well appreciated. That's what we need at this time. And it's very, very thrilling, I would say, to work with my fellow board members. And incidentally, I'm going to add that they have received compliments from several of the inmates, our clients, that have been before us as well. So something they've done over the years has sunken in and that is good. I've had a commitment to public service for many, many years, and I believe that started with my freshman year in high school back in northeast Nebraska with my weekly newspaper. So open meetings, public records, those types of things have been in my brain for a good, long time, and I believe very strongly in good government for our citizens of the entire state. Community involvement has included Omaha Optimist Club where I was president, Gretna Optimist Club, as well, where I typically for several years handled respect for law, and we did that typically, as you may guess, around May Day, also Gideons International. I'm a Rotarian as well with Paul Harris Fellowship, Gretna Boy Scout leader, also Mid-America Boy Scout Council, legislative committees of both Sarpy and Gretna Chambers, UNL Parents Association, along with my wife. The Omaha Business Breakfast Club started in 1933. I've been a member of that for almost 25 years, Heartland Blueprint graduate, Gretna Youth Athletic Association, and the Midlands Athletic League as well. But getting to more important material here, I just got the tally today. As I indicated, I started November 30 as an active participant at all levels and had almost 470 clients before me. That was just January and February. This is a full-time job. We work every day. Most days we are in the institutions, where I should have been this morning, as well, in Omaha, ten institutions in Nebraska. McCook is video conferenced back here to Lincoln, as well as the jails. I've also served on Nebraska Workforce Development statewide several years back, and I'm proud of my service on the Judicial Nominating Commission for Judicial-- Judicial District 2, Sarpy, Cass, and Otoe County, and I think we've been the busiest there's ever been over that six-year period that I've served, and that includes eight to ten hearings plus six, plus judges. Some of our judges proudly went to the Court of Appeals and also one on the Supreme Court today, and that requires a lot of assessment and judgment and I think that will serve me well on the Board of Parole.

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So I'm educated, qualified, some people say astute, with a broad, diversified business background. It is, as I indicated, a full-time position, ten institutions, includes parole hearings, parole reviews, parole revocations, and what we've added recently are interviews. We see everyone basically each year, almost everyone in the institutions. I've been an active participant, as I said earlier, since day one. And I also recognize the Legislature and others have made some policy changes in the last few years. Those are very important. The Legislature has provided more resources. We want to parole, but we also want to parole with responsibility. Risk assessment is much better today. Also, better practices and programming help along the way, and the effective, also, post-release supervision. We're in favor of giving second chances, but with safety in mind. The public trust is lost if we let the wrong people out. A mistake in our case can become a front-page headline. The Board of Parole is also independent. It's also-- you know, there's three branches of government and we are independent, just like the three branches of government. And each of the five board members, we are also independent of each other. We have a chair that administers situations as well. What changed is we have the parole officers for basically the last two and a half years under our Parole purview. And it's become a-- it's also a challenge but it's also-- helps a great deal in communications. The Nebraska Constitution is very clear that the number-one situation, as I talked about, is separation of powers and independence of all three branches of government once confirmed. We can be removed with cause by the Board of Pardons. That's the Governor, the Attorney General, and Secretary of State. Number one to me is public safety. We evaluate very carefully and some would say perhaps help with overcrowding. We can as long as we have good programs and are able to move people along, and those people are also willing to accept the challenges and the programming and other things that are available to them. I invite any of you to come visit and come to our public hearings. They are public, especially the last half of the month, and those are official public hearings with notice to the inmates, to the victims, to law enforcement, and others. Please come and visit and observe what we do. I'm going to stop here. I'm honored and I ask for your positive vote and now ask any questions that any of you might have.

**LATHROP:** Senator Chambers, you're recognized.

**CHAMBERS:** Mr. Twiss--

**BOB TWISS:** Yes, Senator Chambers.

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**CHAMBERS:** --and you may have said this already, how many hearings have you sat in on since you've been serving on the board, just roughly?

**BOB TWISS:** Roughly, 470, approaching probably over 500 if I include December as well. A lot of the December was training and-- and orientation and that type of--

**CHAMBERS:** Have you ever, during all of those hearings, ever agreed to parole any person the first time he or she reached eligibility for parole?

**BOB TWISS:** Yes. Yes, Senator.

**CHAMBERS:** What percentage, if you have any ballpark figure?

**BOB TWISS:** I'm-- I'm not sure. I-- I would--

**CHAMBERS:** Here's what I'm getting at.

**BOB TWISS:** I--

**CHAMBERS:** You don't have a predisposition to not parole somebody the first time they appear.

**BOB TWISS:** Absolutely not, and-- and I'm glad you asked that question, as well, because of this. My background is different and it's very valuable, obviously, to the board as well. But I don't have any predisposition because of my background. I don't come from the corrections or law enforcement. Our-- as you know, right now, our chair, Ms. Cotton, comes from corrections background. Mr. Patlan comes from law enforcement out of Omaha, retired Omaha Police. And Mr. Gissler comes out of corrections very recently here in Omaha. And Ms. Bittinger comes out of corrections, out of York, Nebraska, and also out of Lincoln. So I'm-- I'm very free and I'm glad I'm not fully trained because I have no predisposition at ever-- at all, and I feel very comfortable asking the questions that are appropriate.

**CHAMBERS:** Could you understand, whether you agree with it or not, why, because of the backgrounds of the people the Governor has chosen to appoint, there is an indication of a lack of diversity in terms of point of view, either law enforcement or corrections, where a punishment is what they primarily are familiar with? Are you-- would it surprise you that the public has the perception that the board was

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appointed because they would be deemed to be very hard on people who come before them for parole?

**BOB TWISS:** I can understand almost any of the public's perception as my involvement over several years has taught me a great deal of how to respect people and how to listen very carefully to them.

**CHAMBERS:** My final question. From that response, I get the impression, and maybe I'm jumping to a conclusion, during the time that you have served on the board, some of your attitudes may have changed with reference to people who have been convicted of and sentenced for crimes.

**BOB TWISS:** They have. I'm not exactly sure how to answer. I'm-- I'm going to give you a couple examples. I've been very, very surprised, Senator, the number and the percent of sexual abuse inmates that we see. I've also been very encouraged with programming in where some have actually taken advantage of their hours in the institution and availed themselves of learning things and accepting things and progressing forward.

**CHAMBERS:** That's all that I have. Thank you.

**BOB TWISS:** Thank you.

**LATHROP:** Senator Morfeld.

**MORFELD:** Thank you for coming today. What kind of accommodations does the Board of Parole make to people with disabilities?

**BOB TWISS:** Actually, we probably don't make any-- well, any accommodations. Yes, there-- we've had some cases where inmates, clients have appeared in wheelchairs. I know we also have a situation, as well, as this individual did not appear before us yet but came from a foreign country, different country and has kidney-- he gets kidney dialysis, was paroled before and maybe intentionally did something to get the parole revoked so he could come back and continue in that vein. I'm not sure I'm addressing your question--

**MORFELD:** Well, thank you.

**BOB TWISS:** --but I'm trying.

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**MORFELD:** Your decision-making process for parole, if they have a disability, cognitive, physical, it can be--

**BOB TWISS:** Cognitive, I'm glad you mentioned that, and this is not an accommodation but this is an example of some of the folks that are before us. A young man had had heart surgery, as a two-year-old had a second heart surgery, also went to school and has a high school diploma but is tested out basically at a third grade level. Plus, when asked about employment, he said, my mother wouldn't let me go to work. What-- what do you mean? And he said, I can sign something, I-- I can sign it. He's talking about an employment application and yet he comes out of one of our largest school system with a diploma.

**MORFELD:** Okay, good. Thank you.

**BOB TWISS:** Does that help?

**MORFELD:** That does help. Thank you.

**LATHROP:** I have a few questions for you. Of the 470 hearings, some of those hearings are going to be hearings that are held in advance of someone's parole eligibility date, right?

**BOB TWISS:** Yes, that is--

**LATHROP:** What is-- is there a name for those kind of hearings?

**BOB TWISS:** Yes. They're-- they're called reviews.

**LATHROP:** OK. So you, you will have folks that come in for a review and basically what that is, it's an opportunity for the Parole Board to say, if you hope to get out, you need to do A, B, C, and D.

**BOB TWISS:** That's correct. That's correct. It--

**LATHROP:** And when you give them that list of things to do, are they-- do we have the programming for them to complete that list of things that you want to see done before you will parole them?

**BOB TWISS:** I'm going to say, Senator Lathrop, for the most part, the answer is yes. But it's not the Parole Board that has the programming.

**LATHROP:** I understand that. I'm-- I--

**BOB TWISS:** Right, and we don't control that either.



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**LATHROP:** I fully understand that. This is a--

**BOB TWISS:** Right, thank you.

**LATHROP:** But this is a side question as long as you're sitting here and you have the experience. I'm curious about, for example, when sex offenders come in for their review hearing and they hope to get out in two years hence when their parole eligibility date comes up, and you indicate that they need to complete their sex offender programming, is that available to them so that they can complete that programming, for example?

**BOB TWISS:** To the best of my knowledge, the answer is yes. And there are different levels of sexual offense programming as well. I'm going to give you an example, even though you didn't ask for it. We had an individual before us, completed the highest level of sexual abuse programming available. This happened just recently. Most of my colleagues will ask the question, first of all, that says, what-- what did you learn from that programming? And they like to tell us what they think sometimes we want to hear. This individual said that, it got to me, and I asked several different questions. And this was his response, finally, and I'm going to try to save it-- say it in a little bit the same way he said it. I-- I tried-- I really tried to resist her, I really tried to resist her, but she kept coming on to me. We're talking about a seven-year-old girl.

**LATHROP:** OK, so it doesn't take with everybody, yeah.

**BOB TWISS:** It does not take with everybody.

**LATHROP:** But the-- but my question--

**BOB TWISS:** And-- and not everybody accepts what's available either.

**LATHROP:** I get that. My question was the availability of the programming and whether the inmates that come before you have completed their programming by the parole eligibility date. When you have a parole hearing and you are considering whether to parole them, whether it's-- on their first parole eligibility date, do they have sufficient programming for you to consider them for parole?

**BOB TWISS:** I'm going to say, for the most part, yes, to the best of my knowledge. Now here's what does happen, too, is that there--

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**LATHROP:** You know what, I don't want you to do the long division--

**BOB TWISS:** OK.

**LATHROP:** --because I got six-- five more hearings.

**BOB TWISS:** Yeah, I know.

**LATHROP:** If you don't mind, I just--

**BOB TWISS:** No, that's fine.

**LATHROP:** --am trying to get a sense of the programming because it's an important part of parole that these people come to you having completed their programming. And this committee, or at least this Chair--

**BOB TWISS:** Right.

**LATHROP:** --has some concern about whether the programming is available so that these people are in a position to be paroled. Certainly the fact that they have or haven't completed their programming as set out in some plan that's done after an assessment would be important to you as a parole board member, is that true?

**BOB TWISS:** That's absolutely true. That--

**LATHROP:** OK. Now tell me, what percentage of the folks that come before you for their first hearing after their parole eligibility date have completed all of the programming that's been recommended?

**BOB TWISS:** It's a stab in the dark, but I would say greater than 50 percent on the first one that have completed it and that's--

**LATHROP:** OK.

**BOB TWISS:** Sometimes there's regression. And also, Senator, I think you realize that that's primarily a function of Corrections.

**LATHROP:** I absolutely understand it.

**BOB TWISS:** Right.

**LATHROP:** I absolutely understand that. So somewhere in the range of 50 percent of them have completed the programming before they come to you

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on their first parole eligibility date. Is that what I understand your testimony to be?

**BOB TWISS:** To the best of my knowledge and I--

**LATHROP:** OK.

**BOB TWISS:** --I really don't have good figures or percentages on that.

**LATHROP:** I won't hold you to an exact, but-- but 50 percent gives us a pretty good idea of how-- how much of the programming has been completed and how much-- how many people come before you that haven't completed their programming. Of the people who have completed their programming by their first parole eligibility date, what's the likelihood that you would agree to parole them?

**BOB TWISS:** If they've completed their program and-- and they--

**LATHROP:** They've completed their programming.

**BOB TWISS:** Likelihood is very, very good.

**LATHROP:** OK. What's the likelihood of the 50 percent that haven't completed their programming that they would get paroled on their parole eligibility date if they have not completed the programming that's been recommended?

**BOB TWISS:** That drops significantly because most often it's probably violations of-- behavior violations or they just absolutely refuse to take the programming.

**LATHROP:** OK. I'm just asking about how many-- what percentage of those people are going to get paroled if they haven't completed their programming. There may be a variety of reasons for that, which may be my next question, I don't know, but the-- of the 50 percent that don't have their programming complete, their opportunity to get paroled falls off significantly. Would you agree with that?

**BOB TWISS:** It-- it does and I can't give you a percentage.

**LATHROP:** OK.

**BOB TWISS:** I-- I really don't know. I do--

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**LATHROP:** And some of those people may have elected not to get programming, but some of them want to get the programming and can't. Would you agree with that?

**BOB TWISS:** There are some cases like that, I believe, because programming, the same programming is not offered in every institution. So we-- we also try to move them along and recommend that they do be moved to the proper institution where they can get programming.

**LATHROP:** So of the-- of the 50 percent that haven't completed their programming and whose opportunity for parole falls off significantly, how many of them is it about availability, because they're in the wrong institution, because--

**BOB TWISS:** Right.

**LATHROP:** --they're waiting in line for the sex offender program, because they're waiting in line for addiction treatment?

**BOB TWISS:** I'd love to be able to answer your question, but really I-- I don't have a--

**LATHROP:** OK.

**BOB TWISS:** -- a good percentage.

**LATHROP:** I-- I appreciate you-- the Parole Board does not control programming, but it is a significant part of the decision-making process and as long as I got you here and you've spent a couple months there, I wanted to visit with you about it.

**BOB TWISS:** Right.

**LATHROP:** If they haven't completed their programming, do you try to send them out into the community, parole them and send them into the community to complete their programming, or do they more likely stay and parole is denied?

**BOB TWISS:** We do send them out into the community. I don't know where, more than likely because that's sort of a percentage situation, but we don't hold back if-- if we feel that-- and-- and often we would prefer they're out in the community so they can ease into their freedom, basically, and-- and particularly in respect to employment. But that's probably the best I can answer your question at this time--

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**LATHROP:** OK.

**BOB TWISS:** --with-- with my limited time.

**LATHROP:** That's fine. And-- and I'm just going to share this. You-- you are in a-- in a branch that we have-- or in an office that we have made independent for a good reason, right?

**BOB TWISS:** Absolutely.

**LATHROP:** And our past history included efforts to pressure the Parole Board to put people out, and so there is the-- by necessity a balance that must be struck by Parole Board members. They must recognize that there is risk with anybody who is allowed to be released from the Department of Corrections, but that's part of the responsibility of that position.

**BOB TWISS:** That's correct.

**LATHROP:** OK. Does that prompt any other questions? I see none. OK. Thank you, Mr. Twiss.

**BOB TWISS:** Done for the day?

**LATHROP:** That's-- that's it.

**BOB TWISS:** Thank you very much, Senator.

**LATHROP:** Are there any-- anybody here to testify in support of the appointment of Mr. Twiss? That's pretty normal, by the way. [LAUGHTER] I-- I don't want you to interpret that. Anyone here in opposition? Anyone in a neutral capacity of any sort? Seeing none, that will close our hearing on--

**BOB TWISS:** If I might, Senator, there was going to be a letter come in. Perhaps it did not come. This was a volunteer. He simply volunteered. It's a gentleman I served on Judicial Nominating Commission with.

**LATHROP:** Harvey Varenhorst [SIC]--

**BOB TWISS:** That is correct.

**LATHROP:** --Varenhost did send a letter in support. OK. Thank you and that will close our hearing on the confirmation of Mr. Twiss. The

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first bill up today is going to be LB43 and Senator Bolz. Good afternoon, Senator Bolz.

**BOLZ:** Good afternoon. I am in fact Senator Bolz. That's K-a-t-e B-o-l-z. And I'm here today to present the Sexual Assault Survivors' Bill of Rights Act. This is a bill that honors survivors of sexual assault for their courage by providing a single document that makes them aware of their rights and resources that are available to support them. I introduced a similar bill last year and have worked with stakeholders throughout the interim to develop thoughtful language that enumerates the rights of victims without creating undue obligation to medical and law enforcement personnel. The language in LB43 is not intended to create new rights for survivors. Rather, it is to articulate those rights that they already have. I have introduced LB43 because I feel that it's important, in our current social climate and renewed attention that the Me Too movement has brought, to support survivors in multiple ways. Sexual assault, of course, is forced, manipulated, or coerced sexual contact. It includes rape, sexual-- child sexual abuse, same-sex assault, acquaintance rape, harassment, and marital rape. The perpetrator uses sex to inflict physical and emotional violence and humiliation on the victim or exert power and control over the victim. Every day, hundreds of Americans are affected by sexual violence. In fact, every 98 seconds an American is sexually assaulted and every eight minutes that victim is a child. Sexual assault of course is traumatizing. After an assault, it is hard for victims for know-- to know how to react. They may be physically hurt, emotionally overwhelmed, and unsure about what to do next. They may consider working with the criminal justice system but be uncertain of where to begin. Learning more about what resources are available and steps to take following sexual violence can help calm victims in a difficult time and may increase and encourage reporting. LB43 offers consistent guidelines for providing the support and information that should be offered to every victim of sexual assault. LB43 requires that survivors be notified of their existing rights. Those rights include the right to be treated with fairness, dignity, and respect, the right to consult with sexual assault counselor or victim's advocate, the right to be informed, the right to be heard and to participate in the criminal justice process, the right to prompt analysis of any DNA evidence, the right to timely disposition of the case, the right to notice about the status of the case, and the right to apply for compensation. It may seem like common sense, but often survivors are under duress and overwhelmed by the experience and the-- and the reporting process. Subsequently, it is the responsibility of

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those who are charged with helping survivors to provide them with the information about their rights. Multiple other states have introduced and passed similar legislation and it is working effectively in multiple other places. I do have an amendment to the bill as introduced that makes two technical changes. The first is that it references existing statute regarding a survivor's right to law enforcement documentation. It seemed to be cleaner and smarter to simply reference existing statute regarding those rights. And the second piece that the amendment addresses is that it strikes the right to having their public identity withheld, mostly because the intention of this bill is to enumerate existing rights to survivors and we found that as we dug into that issue specifically, there were some gray areas and it made more sense to address that particular right separately. I do want to share with the committee that unfortunately I have a-- a work obligation that I simply can't move this afternoon, so I likely won't be able to stick around to close. So if I can have just a little bit more time here, I want to address two issues that have been brought to my attention that you may hear this afternoon because I won't be able to address them after you've heard other testifiers. My office has heard from representatives of law enforcement and the judicial system regarding the act's inclusion of the right of a survivor to consult with and have present an advocate of the survivor's choosing during an interview with or deposition by a police officer, prosecutor, or defense attorney. As I understand this concern, there are two parts, the concern that the obligation to wait for the advocate to be contacted and attend said proceedings would slow down the process, and the presumed obligation to inform the survivor of these rights throughout the process was considered potentially burdensome. So in response to those two pieces, I would refer the committee to page 4, line 16, of the bill in Section 7 where it begins, "unless no advocate or representative can appear in a reasonably timely manner." So the-- the intention of the-- the legislation is that it can be moved forward in a practical manner to the greatest degree possible. I would also refer the committee to Section 12, page 7, where the bill defines circumstances under which the bill of rights information is to be presented to the victim. On line 9 it states that this information is to be provide-- provided upon initial interaction with a survivor. So I point that out to just clarify that the bill of rights is to be provided upon initial interaction and-- and that's where the responsibility lies. So simply put, if a survivor chooses to have an advocate that participates in the previously identified proceedings, they must be able to respond in a timely manner and verbal notification of this right is only required

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at the initial interaction. I also wanted to-- I have one brief clarification that in Section 8 there is a section enumerating the survivor's right to prompt analysis of the sexual assault forensic evidence. I would like to clarify that as indicated by the fiscal note, it's not the intent of LB43 to impose time lines or requirements for forensic evidence of analysis, rather, to articulate that timeliness is an important variable in getting the information about sexual assault cases. So thank you for your patience in letting me run through that information. I'd be happy to answer any further questions or provide any additional clarification.

**LATHROP:** I don't see any questions. But thank you, Senator Bolz--

**BOLZ:** Thank you.

**LATHROP:** --for introducing LB43. We will take the first proponent to testify. Good afternoon.

**ROBERT SANFORD:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d, and I am here on behalf of the Nebraska Coalition to End Sexual and Domestic Violence. The coalition's mission is in part to support victims of domestic and sexual violence, dating violence and stalking, and ensure that the services needed to overcome these acts of violence are readily available. To that end, the Nebraska Coalition is here to support LB43. Threaded throughout LB43 is the right to advocacy support, a key component that helps victims overcome the crime committed against them and to become survivors. Victim advocates are often present with a sexual assault survivor during forensic medical exams and should be allowed to be present with the victim throughout the investigation and prosecution as well. Advocates help victims understand what is going on throughout the forensic exams and court proceedings, often providing the support a victim needs to simply tell what happened throughout the advocate's-- through the advocate's presence. According to RAINN, the Rape, Abuse and Incest National Network, victims of sexual assault indicated that they did not report the assault for a variety of reasons that included a fear of retaliation, that police wouldn't help, that it was a personal matter or not important enough to report. This bill helps in small part to alleviate some of these fears of reporting. Advocates provide victims of sexual assault with information about the investigation and legal process, but they also provide them with the emotional support needed to tell a law enforcement officer, prosecutors, and others involved in the process what happened to them. When training



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mediators, attorneys, and law students, I often ask those in attendance to close their eyes and think about the best sexual experience they ever had, and then I ask them to open their eyes and share that experience with the person sitting next to them. Panic and terror fill their face and all I asked was to share the best experience. Conversely, in situations of sexual assault, we are necessarily asking people to talk about the worst experience and yet we are not providing them an opportunity for the emotional support needed to do so that an advocate may provide. When a victim is unable to tell what happened, the person who committed the act walks free. The Nebraska Coalition thanks Senator Bolz for bringing this important piece of legislation this year. We encourage you to advance LB43 to the floor.

**LATHROP:** Very good. Thank you, Mr. Sanford. I do not see any questions.

**ROBERT SANFORD:** Thank you.

**LATHROP:** Thank you. Good afternoon.

**AMANDA NOVOTNY:** Good afternoon. Good afternoon. Members of the Judiciary Committee. My name is Amanda Novotny, A-m-a-n-d-a N-o-v-o-t-n-y, and I am the advocacy manager at the Women's Center for Advancement in Omaha, the WCA. The WCA is the go-to place for anyone in the Omaha area who is a survivor of sexual assault, domestic violence, stalking or human trafficking. The WCA serves around 150 people every day. I'm here to ask you to vote in favor of LB43, the Sexual Assault Survivors' Bill of Rights. The Sexual Assault Survivors' Bill of Rights assures survivors the right to an advocate. Advocates are first responders for victims of sexual assault. Advocates are nonjudgmental, knowledgeable professionals who assist the victim with knowing their rights and options so that the victim can make the best choice for them. Advocates provide ongoing support to the survivor and help them navigate the complex process of seeking medical attention and a forensic exam, reporting to law enforcement, working with prosecutors, as well as coping and healing from trauma following the assault. A right afforded in the Sexual Assault Survivors' Bill of Rights is the right to consult with and have an advocate present during a medical, evidentiary, or physical examination. When survivors of sexual assault feel safe and supported throughout the process, they are more likely to report a sexual assault and work with the legal system in hopes of holding the perpetrator accountable. As such, the courts are more likely to be

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able to hold perpetrators accountable and that leads to safer communities across Nebraska. As an advocate, I've seen working with an advocate make the difference between a survivor getting a forensic exam or not reporting to law enforcement, working with a prosecutor, or giving their victim impact statement or not doing those. As a survivor of sexual assault, I know that my experience would have been entirely different had I known that organizations devoted to working with survivors of sexual assault existed or if I had had a victim advocate that could have explained to me my options and my rights. I was not aware of these services. I didn't report out of fear. I didn't understand the legal process involved and it took me 12 years to finally find a place of healing and peace. Every survivor story is different and every survivor's journey is different. But studies show that when advocates are present in the legal and medical proceedings following a sexual assault, victims fare better in both the short and long term, experiencing less psychological distress, physical health struggles, sexual risk-taking behaviors, self-blame, guilt, and depression. I urge you all to vote for LB43, the Sexual Assault Survivors' Bill of Rights. Thank you for your time.

**LATHROP:** Thank you. We appreciate your testimony today. Good afternoon.

**MIRIAM JOELSON:** Good afternoon. My name is Miriam Jolson. That's M-i-r-i-a-m J-o-e-l-s-o-n. Mr. Chairman, members of the committee. Thank you for inviting me to speak in support of LB43. To me, the Survivors' Bill of Rights signifies the beginning of a new era. In 2007 and 2008, when I was a freshman in college, I was raped by two men I trusted and admired. The first man who raped me was my boyfriend. I bled for weeks. The second man who raped me was his friend. He pinned me down on his bed and I tried to push him away until my wrists collapsed under his weight. I remember thinking, so this is how it's going to be. For a long time, it was. For a decade, I lived in my rapists' worlds. I watched them win prestigious scholarships and land coveted jobs while the memories of the sound of my voice begging them to stop haunted me at night. I was diagnosed with PTSD my freshman year and I still take medication every day. I will never get back the years I spent in their darkness. I will never be able to tell the young woman I was that it wasn't my fault, that I have rights, that this is my world too. But being here today makes up for that time. When I finally reported my rapists after almost a decade, I was assigned an advocate who joined me in my interviews with law enforcement. When the detectives called me to tell me that the

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prosecutor would not be filing charges, I cried silently into the phone. I could barely speak when my advocate said, the detectives are going to hang up now, you're going to stay by your phone, I'm going to call you back, you're going to pick up. My whole body was convulsing with grief, but I followed her instructions. You're going to cry today, she said, and maybe you'll cry tomorrow, and then you're going to go on and live a long, happy life, you'll use what you learned here today to help others or you'll do something entirely different, but you'll find joy, you'll find life. Among the critical civil rights awarded to rape survivors by LB43 is the right to an advocate. I live by the words of mine every single day. I remember her promise to me when I am tempted to give up. I reported my rapes in Massachusetts, but justice shouldn't depend on geography. There are an estimated 628,000 rape survivors in Nebraska. I wish I could call each of them like my advocate called me and tell them of their rights and the joy that awaits them if they just keep living. If you grant them these civil rights, I won't have to. Thank you.

**LATHROP:** Thank you. Thank you for your testimony and being here today.

**MIRIAM JOELSON:** Thank you.

**KRISTEN TOMJACK:** Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Kristen, K-r-i-s-t-e-n Tomjack, T-o-m-j-a-c-k, and I am a senior at the University of Nebraska at Kearney. I am pursuing my bachelor's degree in social work. I am currently completing my field practicum with the National Association of Social Workers, who I am here on behalf of to speak in support of LB43. Passed around is a letter from Marcia Blum, who also serves on our advocacy committee, as well as my testimony. During my time at UNK, I was able to work in both the Women's Center and the Counseling Center, and I'm here to speak on how beneficial a Sexual Assault Survivors' Bill of Rights would be. Sexual assault does not discriminate and can happen to anyone regardless of gender, age, or ethnicity. In its simplest terms, LB43 reflects a commitment to protecting a survivor of sexual assault. It lays out their rights to have an advocate present and gives them choices and options on how they want to proceed. This would give survivors a small sense of control in their lives, which is something that they lost. Having a document that details resources, options, and instructions for requesting information is invaluable in the hands of one who needs it and can minimize the stress and hardship while providing advocacy and support. This bill also states that survivors have the right to be

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reasonably protected from the defendant and persons acting on behalf of the defendant, as well as the right to be free from intimidation, harassment, and abuse. This protection could be beneficial in combating the large amount of sexual assaults that go unreported. As someone studying social-- social work, I believe that the Sexual Assault Survivors' Bill of Rights takes a step in the right direction in believing survivors, supporting them, and promoting humane and safe treatment for survivors of sexual assault.

**LATHROP:** Thank you. Thanks for your testimony.

**MAGGIE BALLARD:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Maggie Ballard, M-a-g-g-i-e, last name B-a-l-l-a-r-d. I am testifying in favor of LB43 today on behalf of Heartland Family Service. Heartland provides services to over 50,000 Nebraskans and Iowans every year, most of whom have experienced at least one traumatic experience in their lifetime. And as experts in behavioral health are discovering, trauma and adverse childhood experiences, or ACEs, are strong predictors to having negative health outcomes later in life. As anyone can guess, sexual assault can be one of those traumatic events and LB43, for all the reasons that people before me has-- have said today, would add a huge set of tools to the toolboxes of survivors. So our agency as a whole supports this bill and I am the one testifying in favor of it today because of my personal experiences. When I was 17, the night of my junior prom, my former boyfriend raped me. The confusion, shame, emotional scars, and anger took much longer to heal than the physical damage that he inflicted. It took over 36 hours before I even realized exactly what had taken place. Sadly, my parents knew that reporting what had happened to me would have been putting me through hell all over again. They were strong supporters of me and got me some medical attention, but this was 14.5 years ago. Even then, we did not have systems in place yet that would have helped me advocate for my needs and my protection, which, while I regret it, is one of the reasons that I never reported the crime to the police. There have been several people in my life over the years that I have confided my story in, but I was long overdue for seeking some assistance that could help me cope with what had happened to me. Kind of like what Senator Bolz was talking about with the Me Too movement and all of the, you know, the changing climate that we have today, really gave me the strength to come forward and talk to a therapist. And thanks to those therapy sessions, and EMDR, a really great form therapy, it's why I am able to talk to you with just a shaken voice and not, you know, completely in tears

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right now. So over 14 years later, I finally utilized resources to get some healing. One of the reasons I finally felt ready to do so, kind of already talked about that, sorry. So obviously that was about 14.5 years too long and that's just for me, not to mention all the people that came before me. LB43 would give the services to survivors that I wish I had had at my disposal 14.5 years ago. Passing LB43 will bring Nebraska on deck with what our country is finally just starting to do a better job at, which is supporting the survivors of sexual assault. We still have a long ways to go, but LB43 is a darn good place to start. Thank you, and I'll be happy to answer any questions.

**LATHROP:** I don't see any questions, but thanks for sharing your account.

**MAGGIE BALLARD:** Thank you.

**LATHROP:** Good afternoon.

**GARRETT CONTE:** Afternoon. Members of the committee, it's my pleasure and my honor to sit here in front of you guys. My name is Garrett Conte. I'm a student of the classics or classical languages at UNL, and I am here representing UNL Young Democrats but--

**LATHROP:** Can you spell your last name for us--

**GARRETT CONTE:** Yeah.

**LATHROP:** --or your name.

**GARRETT CONTE:** Yeah, G-a-r-r-e-t-t C-o-n-t-e.

**LATHROP:** OK.

**GARRETT CONTE:** And about the Democrats, don't-- don't-- don't hold it against me, anybody. You know, I think I'm going to reiterate a lot of the points that-- that we've heard today already, but I'd like to address everybody first with a question and that is, is all-- do all of us here believe in the principles of a democracy, those founding principles which our forefathers and the ancient Athenians established before them, those being equality under the law, which is written right above your heads, and the freedom of speech? And I am here today to use my right to one to defend everybody else's right to the other. This principle I'm defending, the equality under the law, means that not-- means not only that we are all afforded the same rights but also that we are all equally to be held accountable under the law. And this

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is why we're here today, so that if anyone has suffered this atrocious act, they will be informed of their rights under the law and guaranteed support by the law, and I think it's established how important that is, and also that anyone who commits this heinous crime might face justice for it. And for-- according to the UNL Police Department, there were 116 reported cases of rape and 107 cases of unconsensual sexual touching on campus in 2017. And of course, we estimate at least that 90 percent, 90 percent of sexual assault victims on college campuses do not report their assault. And of course we've, again, already established this with the numerous other speakers who have spoken before me. And this is just on-- on campus alone. Personally, I know women who have suffered this-- this crime, one of which was a close friend of mine who had to climb out of a fraternity house window and hide in a bush because she knew that if she went home to her dorm room that night, that he would come knocking endlessly, wait, like just chasing after her, she wouldn't be able to sleep unless she just hid, and the other who transferred schools rather than face the idea that she might be on the same campus or even in the same classroom as her rapist. And it would only be wise to take every necessary step to encourage survivors to come forward so our state can ensure that more justice is done. And to-- and to do this, we are not asking for any radical reforms to the law or any ludicrous increases to the budget or anything like-- anything absurd. All this bill seems to be intending to do is to inform people of their rights and to support them. It's not going to stop rape, unfortunately, and it's probably not going to compel every single survivor to come forward. But it does seem to be a necessary step to encouraging both of those things to occur.

**LATHROP:** Very good.

**GARRETT CONTE:** So lastly, if we are not even willing to put this matter up for further-- for further deliberation, to inform victims of their rights, then what does that say about our democracy? I urge you to support LB43.

**LATHROP:** OK.

**GARRETT CONTE:** Thank you. If you have any questions--

**LATHROP:** Thank you for your testimony--

**GARRETT CONTE:** Yes.

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**LATHROP:** --from hearing from your organization. Next proponent. Good afternoon.

**MADELYNN CARBAUGH:** Good afternoon. My name is Madelynn Carbaugh. That's M-a-d-e-l-y-n-n , and then Carbaugh is C-a-r-b-a-u-g-h. Thank you for giving me the opportunity to speak today. I'm speaking in support of the Sexual Assault Survivors' Bill of Rights. I believe that this bill should pass because I know many, myself included, who have suffered from sexual assault. As a freshman in high school, I didn't know how to feel safe after something like this had happened to me. If I had known all my rights, maybe I wouldn't have taken so long to finally feel at least a shred of safety and value in my life. I wish I could go back in time so that I could have tried to make the changes then that are happening now, if I had known that it wasn't okay for my teachers at school to invalidate what happened to me by trying to get a personal interview with me, more specifically, my assistant principal kept requesting that I come to his office for a one-on-one interview about the assault until the child victim sexual assault investigators personally called and told him to stop. When it happened, I went home trying to pretend what happened to me didn't and that I was OK, but really I wasn't. Flashbacks and unwanted nightmares of what happened to me washed over me like a disgusting, terrifying virus. No matter how many different things I did to heal, it just wouldn't go away. I just wanted to get rid of the disgusting, horrible, isolating feeling I got from thinking about it. School and my own home are places where I'm supposed to feel safe, but it didn't matter where I went, whom I talked to, I didn't feel safe. So I told my mom where it happened. I just broke down crying, pouring out all the fear, reliving what happened to me as I told her and reported it to police. I knew that reporting it would help. What I didn't know was that despite reporting the assault, I was still going to be stalked at my school and my home, only making my anxiety harder to live with, worsening my PTSD. I also didn't know that half my sophomore year would be littered with the trash that is him, my felony case against him, and all the emotional drainage that would soon come with this case because of all the continuances. I wish I had known that me having a learning disability doesn't make it okay for a defense lawyer to try to use that against me, saying that maybe I simply misunderstood what happened to me. I cannot misunderstand the fact that I was fighting to get him off me, that I screamed no and stop. That cannot be more of a clear message of a nonconsensual situation. Had I known more about my rights and what services were available to help survivors, maybe I could have had a normal high school career and

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say that these were the best years of my life. I want to thank you all for allowing me to speak today, listening to my story, and support of the Sexual Assault Survivors' Bill of Rights.

**LATHROP:** Thank you. That obviously wasn't easy for you and-- and for the others that have testified, and we appreciate your being here today.

**MADELYNN CARBAUGH:** It's the only way.

**LATHROP:** Yeah. Thank you.

**SARA RIFFEL:** Dear Chairperson Lathrop the members of the committee, my name is Sara Riffel, S-a-r-a R-i-f-f-e-l, and thank you for the opportunity to testify in support of LB43. LB43 is important to me because I am a sexual assault survivor that was forgotten. I believe, had the bill of rights been in place at the time when I was assaulted, my path to healing and justice would have been much different. While I cannot change what happened to me, I can share my testimony in hopes that other survivors in Nebraska have a different outcome. I was raped by someone I did not know while visiting another state. I traveled home to Omaha unsure of what to do. I'm an educated human services professional, but I did not know how to get help. I did not want to tell anyone what happened or report to law enforcement. Physically, I was beaten up. Emotionally, I was ashamed, embarrassed, and scared. I waited several hours before I worked up enough courage to go to the emergency room where I was denied a sexual assault forensic exam. I do not remember exactly why I was denied, but I remember feeling like I did something wrong and was not taken seriously. I went to another emergency room and this time I was given a forensic exam. I don't know why it was important or what would happen after it was over. I wasn't told about my options and at no time was I given an opportunity to consult with an advocate. Crying and alone, I did what was asked of me to complete the exam. But because several hours had passed and I had showered and changed clothes, I was told the results of the exam would not lead to evidence. When it was finished, I was sent home with nothing but a prescription and an appointment for further STD testing. The three months following the assault were especially difficult because of the silence. I was let down in the medical response to my assault and I did not have confidence that other assistance, such as counseling or contacting law enforcement, would do anything to help. I did not talk about the experience and became depressed and overwhelmed. During the assault, I lost all control over my body. During the evidence collection process, I had no control over what



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happened next. Now I felt like I was losing control of my mind. After several weeks, I attempted suicide. While this was a time of darkness, I was finally connected to support that helped me work through the trauma. I was never informed of the results of the sexual assault kit analysis and whether there was evidence or a match, but I found acceptance and closure within myself. I'm happy to be who I am today, a strong and resilient person and more compassionate professional advocating for young people in Nebraska. I've not spoken publicly about what I went through and my experience but when I learned about LB43 and the Sexual Assault Survivors' Bill of Rights, I chose to share my story so that I might have an impact on other survivors in Nebraska. While my ultimate hope is that no person experiences any type of sexual violence, I want to be sure that no person feels the same isolation, confusion, and hopelessness as I felt. Please support LB43 and give control back to survivors. Thank you.

**LATHROP:** Thank you. Appreciate you being here today. Good afternoon.

**AMANDA TIMMERMAN:** Good afternoon. Thank you. My name is Amanda Timmerman, A-m-a-n-d-a T-i-m-m-e-r-m-a-n, and I am the lead child and family advocate through the Lincoln Child Advocacy Center. I have worked as an advocate for almost seven years and I've had just over 1,200 cases. Out of those 1,200 cases, about 50 percent of them have been court involved. I'm here today to testify in support of LB43 on behalf of the Nebraska Alliance of Child Advocacy Centers. I have distributed a letter from the ED of the Nebraska alliance that lays out many of the different reasons why we support LB43. What I am going to speak to is the importance of the right to have an advocate present. Every case that comes to the Child Advocacy Center, they're assigned an advocate, and advocates such as myself are with that family throughout the life of their case. During that time, advocates provide ongoing follow-up and support to children and families while assessing for needs and safety. We offer referrals for mental health and medical treatment, basic needs resources, assistance with protection orders, providing updates on the statuses of their case, and court education and court support and accompaniment. All of these services provided are in effort to help reduce the trauma for children and families we serve and improve outcomes for hope and healing. Oftentimes, children and families have never experienced the court system before and we are the ones to help them navigate through that process. We are there to answer their questions, coordinate meetings, advise them on victims' rights, and give them the support that they need. When a child is deposed, which is the time before trial where

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the defense attorney gets to ask questions of the child victims about what might have happened, depositions are especially difficult because there is not a judge present to ensure that the questions asked are fair and appropriate. Some examples of questions or statements that have been asked of children in depositions that I have observed are, have you ever lied before, why didn't you yell or fight them off of you, why didn't you tell sooner, you know this means you aren't a virgin anymore, your grandpa could go to prison for a long time because of what you say today, and the list goes on. These children have to answer these questions. They don't get a choice. Specifically, when it comes to children being deposed or having to testify, parents are oftentimes not allowed to be in the room with them during those proceedings because they are witnesses as well. Advocates have built relationships with these children. We are the piece that connects everything together for families and survivors. We are their source of support and comfort available to them during that time. Simply, our presence is what gives them the comfort as we are not able to give them any answers or tell children what to say. We only ask them to tell the truth. I have heard from child survivors and their parents that it gives them peace of mind knowing that they have someone in there with them who supports them and believes them. For example, I have sat through many depositions with child survivors where they are-- where they are made to feel like they are lying or not believed or that this is somehow their fault. They are asked questions that confuse them and cause them a lot of stress and even retraumatizes them. Going into a deposition with at least an advocate who has been there for them since the beginning of their case, who they know is there for them, believes them, is there to give them the strength to get through yet another time of talking about something that every child wishes they never had to relive. Thank you for the opportunity to talk today.

**LATHROP:** Senator Brandt has a question for you.

**BRANDT:** Thank you, Ms. Timmerman, for testifying.

**AMANDA TIMMERMAN:** You're welcome.

**BRANDT:** It sounds like you've got a lot of experience in this area. How will this bill improve what you do now?

**AMANDA TIMMERMAN:** I've had experiences where they do not allow advocates into the deposition with a child victim, and I've been able to see the difference of the outcome of that when the child has an

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advocate present for them, when they're in there to support them, versus how it affects them when they don't have anybody in there with them that is there to solely be there for them. So I think that this is going to ensure that advocates are going to be able to tell these children ahead of time I'm going to be in there with you, I'm going to be there to support you. You know, they know we can't say anything or tell them what to say, but they know that they have someone in there who is there on their side.

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

**AMANDA TIMMERMAN:** Thank you.

**LATHROP:** I do have a question for you.

**AMANDA TIMMERMAN:** Sure.

**LATHROP:** If this bill passes-- so take a-- perhaps a typical situation, someone goes into the emergency room and says I've been sexually assaulted. Do the emergency room now-- personnel now say, well, call the YWCA or the WCA or call--

**AMANDA TIMMERMAN:** The Child Advocacy Center.

**LATHROP:** --Child Advocacy Center?

**AMANDA TIMMERMAN:** If-- if the victim presenting to the emergency room is under the age of 18, they would give them resources for the Child Advocacy Center to be able to have an advocate to work through that case.

**LATHROP:** OK. So currently, are they doing that for adults?

**AMANDA TIMMERMAN:** Yes, I believe they are, and they are contacting Voices of Hope advocates.

**LATHROP:** So the people that don't go-- we heard some testimony, I didn't go, I didn't--

**AMANDA TIMMERMAN:** Sure.

**LATHROP:** --the shame or whatever that stops somebody from actually going and-- or the disbelief or the feelings that we've heard described today, they may not get to the emergency room and/or talk to anybody for years. They're not going to know about the advocate

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because no one can tell him about it until they share the story with somebody, right?

**AMANDA TIMMERMAN:** Correct. If it's a situation where they simply report to law enforcement and maybe it's been a long period of time where they wouldn't present to a hospital at that time anymore because it's belated, you know, Nebraska statute would say that if no-- if it's a child involved in this situation as the victim, that they would come to the Child Advocacy Center--

**LATHROP:** Right.

**AMANDA TIMMERMAN:** --for a forensic interview and then they get assigned an advocate at that time.

**LATHROP:** OK. Thank you.

**AMANDA TIMMERMAN:** Thank you.

**LATHROP:** Good afternoon.

**SHERRY HELMKE:** Good afternoon, Senator Lathrop and Judiciary-- Judiciary Committee members. My name is Sherry Helmke, S-h-e-r-r-y H-e-l-m-k-e, and I'm the executive director of Survivors Rising. I'm here today to read on behalf of survivor Sharon Robino-West. Here are her words: Thank you to each and every one of you for assembling to hear testimony on this bill. I regret that I am unable to appear in person to deliver my testimony, but I feel strongly that I need to add my voice to the written support of LB43 today. As a survivor of sexual assault and an advocate for victims through the work that I have done with the Women's Center for Advancement, Lutheran Family Services' At Ease program, my work with men and women veterans who are sexual assault survivors, and numerous other boards and organizations, I-- that I am part of supporting the safety and rights of women and girls, I feel that I must share my expertise. It took me 30 years to finally have the courage to come forward on my own behalf, seeking the help and support that I needed after my assault-- thirty years. I can tell you countless stories of many more men and women in the same situation who waited years longer or never sought help at all because they never felt they had adequate support. Medical remedies were not provided in my case at the time. Legal support was not available, and I certainly did not have the emotional support of an advocate. I happened to be in the military at the time. I believe that the assault cost me my career and the chance to reenlist. I also believe the military lost a good

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leader that day. For the reasons listed above, I firmly believe that being provided a bill of rights that includes all of the provisions Senator Bolz is asking for, but especially the rights brought forward for interviews or depositions, a victim should have the right to have an advocate present. And in fact even today in unrestricted military cases, victims are provided with victim special advocates who work with them during their case, accompany them to proceedings, and-- and are encouraged to be a liaison in the survivor's pending hearings. It took a long time for the military to come to these terms, but even the military has done so, realizing the importance of a survivor's rights and full engagement in what may be the most traumatic set of events in their lives. Victim advocates are not there to coach, coerce, or determine for the survivor what she believes or how she wants to proceed. They are not there to hold sway on law enforcement or the courts. They are simply there for the emotional support and comfort of the survivor at a time when she needs it the most. In seeking a better outcome, a better life for all survivors of sexual assault whether they be victims of incest, trafficking, assault by someone who is known to them, as in so many cases, or an assault by a stranger, just knowing that a bill of rights has been carefully crafted and is-- and is available can make all the difference in beginning the healing of survivors of these heinous crimes and as an advocate, navigating the system with them, as is provided in the military, makes even more difference. I pray that future victims don't feel that they have to carry the heaviness of an assault through 30 years of their lifetime, as I did. Please vote yes today in support of LB43. My sincerest respect and gratitude, Sharon Robino-West.

**LATHROP:** Thank you. We appreciate you sharing that with us. Next testifier. Good afternoon.

**SYDNEY BUTLER:** Good afternoon. Chairman Lathrop and members of the Judiciary Committee, my name is Sydney Butler, S-y-d-n-e-y B-u-t-l-e-r. I am here in support of LB43 because I worked as an advocate for five years across southeast Nebraska and it is time for the rights of survivors to be at the forefront. My job as an advocate was to provide support and guidance to survivors as they move through the medical, legal, and criminal justice processes. I no longer work as an advocate. There are a number of reasons I left direct services, but the primary reason was the burnout that I experienced. My burnout did not come from secondary trauma or compassion fatigue, as many would assume. Instead, my burnout came from what was at worst a blatant lack of respect towards survivors and at best complete apathy

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toward them from the other helping professionals I worked alongside, like law enforcement, hospital and clinical staff, and attorneys. I believe LB43 is a step in the right direction toward addressing the problems I encountered as an advocate and that survivors in Nebraska have to face every day. In my experience, it was not uncommon for a survivor to go through the reporting process and the SANE exam without ever even being told that there was an agency that could provide emergency services or sit with them during the exam. Once they were at the hospital, they were made to feel that if they wanted to do any part of the exam, they were required to do all of it. And as a side note, that could mean that they were there for a six-hour exam when all they wanted was STD testing and emergency contraceptive. Survivors did not know that while the hospital was required to call the police, they were not required to talk with the police if they didn't want to. In other words, after having their autonomy taken from them by a perpetrator, the system that is supposed to be in place to help them continued to strip them of their ability to make an informed decision that the survivor felt was best for them. I believe that by advancing LB43 we are telling survivors in Nebraska that we are trying to create a system that works for them, a system that will treat them with respect and dignity after they take the courageous step of coming forward after being assaulted. Thank you, and I will answer any questions if you have them.

**LATHROP:** I don't see any questions today but thank you for being here.

**SYDNEY BUTLER:** Thank you.

**LATHROP:** Good afternoon.

**SUZANNAH ROGAN:** Good afternoon. My name is Suzannah Rogan, S-u-z-a-n-n-a-h R-o-g-a-n. I'm here to support LB43 as a private citizen who has worked in the violence prevention field for over six years. Currently I have the pleasure of working with college students across several locations in Nebraska, and I believe this bill will help lead survivors to much-needed services that they do not seek at this time due to lack of trust and knowledge of their rights. Two important words, "power" and "control," when we speak about victims of sexual assault, it is important to remember these two words. It may seem insignificant to those who do not work in this field, but remembering these words can make all the difference in how a person heals after they've been assaulted because initial interactions will dictate whether they continue to seek services and how well they are cared for. When someone is assaulted, another is exerting power and

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control over the victim. Victims are approaching our services already having had their power stripped from them by their perpetrator. Providing them with a survivor's bill of rights not only provides them an option, a choice, but that choice is the first moment they are given a chance to reclaim some of their power, to take back a level of control. When our services continue to strip them of their power, not giving them the option of an advocate present, not allowing for the option of a medical exam free from economic burden, not allowing a law enforcement of their preferred gender, or not keeping their name private, and so much more that this bill will protect, when we deprive these survivors of that power and control by stripping them of their choices and options, we are ensuring that victims will feel more brutalized by our response processes than supported and helped. Thus, sexual assault will continue to be one of the most underreported crimes in the country and we cannot solve a problem if we don't fully understand the scope of the problem we are trying to solve. I choose to work at a university doing this work for many reasons, one of which is that I am able to create a culture and an atmosphere that provides survivors options and guidance on our campus. When I first moved here for work and discovered there could be a long wait time, up to two hours sometimes depending on how far away the on-call advocate was, I worked with our on-campus first responders, professionals, and students to ensure they understood exactly how to empower victims and provide a list of all the options available. Being able to guide faculty, staff, and students to create a space that gives options to survivors helps me know that until prevention work and bystander interventions are more effective in decreasing sexual assault, we have a comprehensive, coordinated safety net that will catch and uplift survivors. Nebraska overall doesn't have that safety net, but LB43 is a huge step in the right direction. I urge you to please support this bill and provide a moment of much-needed power and reassurance back to someone who has had their power stripped away. Thank you. I can answer any questions.

**LATHROP:** Very good. I don't see any questions but thank you for being here, Ms. Rogan.

**SUZANNAH ROGAN:** Thank you.

**LATHROP:** Welcome.

**ALEXIS STEELE:** Thank you. Dear Chairperson Lathrop and honorable members the committee, my name is Alexis Steele, that is A-l-e-x-i-s S-t-e-e-l-e, and I am the policy staff attorney for the Immigrant

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Legal Center, a nonprofit law firm that serves clients from across Nebraska, many of whom are victims of sexual crimes.

**LATHROP:** Can you speak up just a little bit?

**ALEXIS STEELE:** Yes, sorry. I'm testifying today in support of LB43 on behalf of my firm and as a survivor. The Immigrant Legal Center supports this bill because its passage would significantly benefit survivors of sexual assault by guaranteeing them legal protections that they deserve and really need. This bill secures basic rights for survivors through their assault-related medical care, collaboration with law enforcement, and participation with the criminal justice system. Many of these rights include-- of these rights, they include the right to a medical exam, a shower at the hospital after examination, prompt analysis of submitted forensic evidence, and the right to have an advocate present throughout the experience. These rights are common sense and directly respond to the real needs of survivors based on statistical data and extensively documented lived experiences. The right to a medical exam, for instance, responds to the fact that survivors of sexual assault are at risk of contracting-- contracting a sexually transmitted disease by nature of the crime itself. While some of the components of this bill have very obvious benefits, I am here to tell you that each is needed and each responds to a real need that victims have. The bill's most profoundly responsive right that fortifies each other right is the right to an advocate throughout the process described above. Having the right to an advocate present not only ensures that the survivor at least has one trauma-informed source of support, but it also ensures that there is someone available to make sure the survivor knows of his or her rights. Without the option of having an advocate present, a survivor is left to navigate a surprisingly complex and incredibly stressful process alone. That survivor cannot reasonably be expected to attempt to research and assert his or her rights as a survivor while doing this. In addition, on top of processing and attempting to recover from the crime itself, I cannot begin to adequately describe how-- sorry-- how traumatizing sexual assault is and how intensively challenging each step of recovery can be, even without engaging in reporting, and all that follows. Survivors need support. Having an advocate throughout this process is so fundamental because without the advocate, it is unlikely that the victim has a consistent source of trauma-informed support. And that consistence is so vital. After a sexual assault, no thing in the victim's life seems consistent or reliable, and sometimes survivors don't have any other support in



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their lives. Their advocates are lifesavers. Even with an advocate, recovery and engagement is hard enough. While sexual assault is a horrible, common crime, knowledge about what follows a report or even how to recover is uncommon. I have not met a survivor yet who knew what to expect after reporting an assault or how to begin recovery, and I have been an advocate for victims of sexual crimes for almost five years. Advocates are necessary and do so much needed good for vulnerable survivors. This right alone justifies this bill. In 2018, 403 survivors of rape, just one type of sexual assault, reported their victimization in Omaha. That same year, 284 victims of that same type of sexual assault reported their victimization in Lincoln. That is 687 survivors between two municipalities alone. Taking into account that 63 percent of victims of sexual assault do not report to law enforcement, there are easily thousands of victims in Nebraska each year that could stand to substantially benefit from this sexual assault survivor's bill of rights. If this bill were enacted, the difficulty of reporting an assault and the aftermath of that report would be a little less painful, creating a system in which victims can be a little more comfortable engaging in healing, a system where victims can become survivors. Sexual assaults happen. Our laws might not be able to prevent this crime, but we have the power to prevent survivors' unnecessary additional suffering by guaranteeing the rights promised by this bill. You, honorable members of the Judiciary Committee, have the opportunity to vote for their rights. The Immigrant Legal Center strongly requests that you exercise your vote for the well-being of thousands of survivors who depend on it. I welcome any questions, thanking you for your consideration and appealing to your compassion in voting.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** I want to thank you so much for coming and I just want to say to all of the survivors that I believe that most of us up here believe you, we stand with you, and we're sick that you have had to endure this pain and suffering and we all demand an end. So thank you very much for your courage, each of you, to come forward today. I appreciate it and I know that the rest of the committee feels strongly too. Thank you.

**ALEXIS STEELE:** Thank you.

**JUDY KING:** I'm going to read it and then I'll give it to you. Is that OK? Thank you.

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**LATHROP:** Good afternoon.

**JUDY KING:** Hi. My name is Judy King, and I want to thank Senator Bolz for bringing this bill forward. And I have a lot of friends that appreciate her bringing it forward too. I'm here today in support of LB43 because I understand the importance of providing survivors of sexual assault with knowledge of their rights. An event of sexual assault can cause trauma for the survivor and this trauma can cause cognitive disturbances that make searching for information and rights a difficult process. Providing this information and a clearer and coherent-- coherent manner to the survivor will allow them to understand the processes and options. I also want to say that I went to the Kavanaugh hearings with a lot of Nebraska women that told their story, tried to tell their story out there, and we couldn't-- we made or tried to make appointments with our U.S. Senators Sasse and Fischer and we got into their staff but not with them. And the girls weren't even allowed-- not all of them were able to tell their story out there. So I appreciate all of you listening to these survivors and I appreciate this bill coming forward. Thank you.

**ANGIE LAURITSEN:** Thank you. Appreciate your testimony. Hello my name is Angie Lauritsen; it's A-n-g-i-e L-a-u-r-i-t-s-e-n. Thank you so much for-- Chairman Lathrop and the other committee members, for the opportunity to be able to speak today. I currently serve on the board of directors for the-- for Survivors Rising. The survivor bill of rights is critical to supporting and ensuring the safety of those thrust into a terrible and overwhelming situation. No one is ever prepared to find themselves as a survivor with a complex legal system. It's overwhelming and survivors often feel intimidated by the process. Having the right to advocate throughout the process is vital. I am a survivor of intimate partner abuse, and I'm here to tell you some of my story. March 20 of this year will be my 30-year anniversary of the day that we escaped my abusive father. We literally packed and left in the middle of the night, but due to lack of resources, my mother had to go to work the next day or risk losing her job. So my brother and I went to school as if nothing had happened. My younger brother told his teacher what had happened. I was then pulled out of my class and placed into the school administrator's board room alone with a social worker who asked me some questions and that prompted our school to be placed into what we call today a lockout. Due to my answers, a series of events started to unfold. Law enforcement was contacted. A time was set for the next day for a sheriff to take-- to take my personal victim statement. My mother, unfortunately, had no choice but to go to

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work the next day so she couldn't be with me. When the male sheriff arrived for the appointment, both of my grandparents were in the room during the questioning. The victim statement process was incredibly uncomfortable, embarrassing, and I felt an overwhelming sense of shame. I was the victim of childhood sexual abuse. It's been 30 years since this happened and I can still vividly remember the male officer coming into my grandparents' home and placing a cassette-recording device on my grandparents' kitchen table. Then the questions started. In front of my grandmother and grandfather, I had to lay out every single detail that related to the abuse caused by my father. Watching a loved one hear for the first time about the abuse you suffered is incredibly hard. It only amplifies your own pain and shame. I needed a true advocate with me that day and the many trying days that followed. A good advocate is someone that a victim can choose and trust with their story that will help make the victim feel comfortable telling their story. Giving my testimony to an older male sheriff was uncomfortable. Doing it in front of my grandparents was uncomfortable. I desperately needed someone to help me understand what was happening and why. My father was arrested the following day for indecent contact with a minor. The process was traumatic for my family. My mother was a victim who needed an advocate. My brother and I were both victims in need of an advocate. Without that support, my mother became frightened and overwhelmed by the process. As a result, she decided to not pursue charges against my father and face him in court. Just over two years later, I received a phone call from the daughter of a woman who my father was dating. He was abusing her. He repeated this cycle of abuse for many years. Had we had true advocates, I firmly believe we could have stopped the cycle of abuse and violence. This bill takes a big step to ensure that victims in Nebraska will have the support they need during one of the most traumatic times of their lives. Thank you for your support of LB43.

**LATHROP:** Thank you. Good afternoon.

**ELENA SALISBURY:** Good afternoon. Thank you for the opportunity to speak. My name is Elena Salisbury. That's E-l-e-n-a S-a-l-i-s-b-u-r-y. I live in Legislative District 8 in Omaha and I am here to testify in support of LB43. I work as a mental health practitioner and I am a licensed social worker in the state of Nebraska. I've been sexually assaulted twice, first when I was 13 and again when I was 17 years old. It took years for me to find the language to describe what happened to me and it was only this year, more than a decade later, that I spoke publicly about it for the first time. While I did not

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report either one of my assaults, I would like to speak about the impact a law such as LB43 could have had. For me, the hardest thing to work through has been the overwhelming feeling of shame related to both assaults. Like most survivors, I was not assaulted by strangers but by people that I knew and trusted. Because of this, I didn't immediately think of what happened as rape. I was afraid that my friends wouldn't believe me if I told them, let alone the police. I had prior existing friendships with both of my rapists and I worried that this would somehow work against me. If I had had access to accurate information and resources to help me through the process, it still would have been terrifying and awful, but I think that I would have been more likely to report. I truly believe that LB43 it will help empower survivors of sexual assault and increase the likelihood that they will report. Knowing that the law is on your side and that there are protections in place makes a huge difference. Having access to medical and legal professionals who are specially trained to work with survivors says that we are valued and deserving of compassionate care. Professionally, I also have a master's degree in criminology and I work in the criminal justice field. We know that crimes of sexual violence are vastly underreported for a variety of reasons. According to the most recent National Crime Victimization Survey, only 23 percent of sexual assaults are reported to the police. Survivors fear that existing laws won't protect us, that the police will fail to take action, and most commonly, that no one will believe us. It was just last month that I sat in a parole hearing at my job and witnessed a professional question a survivor about the details of her prior relationship with the person who had raped her. Victim blaming is not a problem of the past and it has a profound impact on survivors' likeliness to tell anyone about what has happened to them. I ask that you please vote to support LB43 to send a message to survivors that we are heard, that our stories matter, and that we are believed. Thank you for your time.

**LATHROP:** Yeah, thank you for coming in today. I don't see any questions but thank you. Good afternoon.

**CHRISTON MacTAGGART:** Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Christon MacTaggart, C-h-r-i-s-t-o-n, last name M-a-c-T-a-g-g-a-r-t. I'm the domestic and sexual violence project manager for the Women's Fund of Omaha. You've heard a lot of testimony about the impact of this bill, mostly from survivors who are really in a better position than I am to tell-- to share the -- the personal impact of that. And so I will be brief in my

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remarks. I-- one of the things that our agency does is we provide coordination and support for the Sexual Violence [SIC] Response Team in Douglas County, or SART, if you will, and that team creates and implement standards around medical criminal justice and victims' services approaches to this issue. And my role as coordinator of that team is to ensure that all of our policies and practices are grounded in research and best practice. And so what I can tell you today is that the provisions of this bill are in line with national best practice around sexual assault response and supporting research on it. I would note that many of these provisions are already happening in Douglas County in our approximate 400 adult sexual assaults every year and as well as other areas of Nebraska that have sexual assault response teams that are well established. Our sexual assaults have increased about 45 percent over the last three years in our county, and so this bill will continue to increase the impact around sexual assault and consistency in response. Just a note about a comment that was made earlier or a question I believe that you had, Senator Lathrop, regarding best practice around medical response by advocates. The International Association of Forensic Nurses does provide guidance on sexual assault response in hospitals which does include an advocate being called to provide support to the sexual assault victim that's there. I can tell you in Douglas County, our three hospital systems all ensure that that-- that that happens regularly, and I believe most hospitals around the state are doing that. I would say that just in-- we know that victims identify their experience with the criminal justice system typically as a-- as a primary factor in terms of how they were treated, not always necessarily with the outcome of the-- of the case. And there's research that supports that and this is a conversation that our team in Douglas County has often around how we balance accountability for offenders with the victim's wishes and their experience in the system. Devastating a victim that results in a conviction is not necessarily something that we should always consider a success or possibly ever consider a success. And so I think LB43 attempts to create this balance and is a solid step in ensuring basic rights for sexual assault survivors. I'd be happy to answer any questions that you have about the bill in general.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for coming, Miss MacTaggart. So I was wondering, and of course this-- this isn't exactly my whole area, but there are-- you're talking about best practices and I don't-- I don't necessarily see information regarding like information on STDs.

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Are-- is that something that would normally be in something like this or is that just left up to the protocol for medical examiners and-- and what is the norm there?

**CHRISTON MacTAGGART:** Sure. So in-- in Doug-- in Douglas County our communitywide protocol is established so that the three hospital systems providing SANE exams provide STD prophylaxis and emergency contraception after a pregnancy test that's not positive to all sexual assault victims. And that is considered best practice by the IAFN, so we would-- we would support that as a provision if-- if-- whether that be this bill or a future bill.

**PANSING BROOKS:** OK. So is that left out of this bill or is that something that just would happen anyway in the course of-- of-- of a person going into a hospital and-- and having the exam and-- under these rights?

**CHRISTON MacTAGGART:** It is not in this bill. I cannot speak necessarily for the entire state. I can tell you that that happens in Douglas County, but I don't know that it happens in-- in all hospitals across the state.

**PANSING BROOKS:** OK. But-- and what about the rest of the states? Is that best practices to get-- because the STD especially seems like something that needs to be in-- that people need to be informed about, it seems like.

**CHRISTON MacTAGGART:** Right. I-- I mean the International Association of Forensic Nurses guidance is-- is nationwide, and so it would be best practice nationally for that.

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

**LATHROP:** I see no other questions, but thank you for your testimony. And for those who spoke as proponents, thank you for being here today. Are there-- is there anyone here to speak in opposition? Good afternoon.

**SPIKE EICKHOLT:** Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of-- of the Nebraska Criminal Defense Attorneys Association in opposition of the bill. I first want to say that our opposition as an association should not be-- and what I'm going to say today, should not be interpreted by anyone as being

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disrespectful or insensitive to anything that anyone has shared with the committee here today. We as an association have an obligation to make sure that the means that we have to defend those of our clients who are charged with crimes are maintained. As attorneys, we have an obligation to zealously defend people charged with crimes. As an association, we make sure that those means are maintained, and that statutory restrictions that are in this bill are why we oppose this portion of the bill. Really, most of the bill doesn't really apply to anything we do, but there are a couple of sections that do. Section 7, and it's on-- it's the same section both on the original bill and also the white-copy amendment, but sexual [SIC] 7-- Section 7 of the bill provides that survivors have a right to have an advocate present during deposition. We would first argue that this is unnecessary because you've heard from some advocates today and they've testify to their presence in depositions. There are ways that advocates can appear and be with a victim in a deposition. I think Ms. Timmerman testified earlier. I'm pretty sure she's been at depositions that I have done because generally I don't as a practicing attorney object or have any problem with an advocate being there. That's not always the case with every attorney and it's not always the case in every case. There are rules now that provide for how that is worked out. Section 29-1917 is the statutory authority for defendants to depose witnesses who are endorsed by the state in criminal cases. Sub (3) of that section provides that the rules regarding the proceedings and taking the deposition shall be governed as the taking of depositions in civil cases, and those are controlled by court rules. So in other words, if the prosecutor wants an advocate there, the defense attorney doesn't, you can argue about it. There was an article in the Journal Star earlier this week about a case, a high-profile case involving a police officer defendant where the state objected to the taking of depositions. Courts settle these things on a case-by-case depending on the facts. That already exists. Our position of creating an automatic statutory right is-- is arguably going to interfere with our ability to do our job. Also, I think it's dangerous, the way the statute is written in Section 7, because the advocate is there to be for the victim to consult. A deposition is a legal proceeding. If the-- the opponent, if the victim is looking to the advocate for legal advice in these depositions, that's very precarious for the advocate, and we would argue that that has unintended consequences. Also, Section 10 of the bill seemingly places a barrier to any person who acts on behalf of-- of a defendant in a criminal or civil proceeding. In a civil or criminal proceeding, the only person acting on behalf of a defendant is the lawyer. Now I understand-- I talked to Senator Bolz's office

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earlier-- that that section of the bill, Section 10, is meant to sort of prohibit or restrict the witness from being intimidated by a family member of the victim or something like that, and I understand that. But the way that is laid out, it talks about in the context of a proceeding that the court or that the victim has certain rights to be not intimidated by anyone acting on behalf of the defendant, and that is directed at an attorney and I think that's how a court would read that. There are a couple other points of the bill that I've got in the handout that I distributed. So I'm at my time, so I'm not going to keep talking, but I'll answer any questions if anyone has any.

**LATHROP:** I do not see any questions.

**PANSING BROOKS:** I-- I have some questions.

**LATHROP:** Oh, I'm sorry, Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for coming, Mr. Eickholt. So have you-- you've talked with Senator Bolz and-- and what kind of-- have you offered amendments or different kinds of-- of suggestions about how-- because obviously the goal is quite clear, to have somebody there to help walk through and-- and help support--

**SPIKE EICKHOLT:** Right.

**PANSING BROOKS:** --the person who has been so violated. And I think you're aware of that part, of course. So I-- I know it's hard to take off the defense attorney's hat for-- momentarily. But do you have a suggestion how to better make sure that the-- that the defendants are protected but also that the person who has just been so traumatized has somebody to walk with them through the process?

**SPIKE EICKHOLT:** I did-- to answer your question that you first asked, I did talk to her legislative assistant earlier this week, I think on Tuesday, which I know is late but I did come before the hearing and visit with her, and I talked about the problems with Section 7. I can't remember if it was a suggestion I made or one that we discussed that perhaps you could have some sort of phraseology that allows for the-- the victim deponent to request to have an advocate present, to have that in statute, rather than the automatic right that they be present. That would perhaps be easier, and as a matter of practice, I think that's how it's done now. So that's one suggestion. And I can't remember what else you may have asked, but to answer your question, yes, I did propose-- and there may be a way to do that because you've



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heard from a number of different proponents today some of these things are being done in practice now. We're reluctant to put it in statute because sometimes they become-- you have unintended effects from that because even--

**PANSING BROOKS:** And vice-- vice versa.

**SPIKE EICKHOLT:** Right, for-- for good or for bad, because many people talked about personal experiences, they're talking about concepts that are not reflected in the letter of the bill. And when you look at this a couple of years from now if it's passed into law, all that is gone, unless you go look at the legislative history, but if you're just looking at a statute that's just there, the literal text and the language.

**PANSING BROOKS:** OK. Could you. I'm looking at your letter. Could you briefly discuss the privilege issue?

**SPIKE EICKHOLT:** Section 4 has a testimonial privilege and I know it's different-- well, I don't quite know what it means. It seemingly provides for a testimonial privilege between the survivor advocate that exists whether someone else is party to that conversation or not. That's kind of unusual because that seems to provide for a privilege that can never be waived. And that's greater than attorney-client or spousal privilege or priest-penitent or any of those things. And I understand that the role of a survivor-- of an advocate to a survivor is very, very important. But we should be very cautious putting that kind of privilege in statute, whatever its scope, because it seemingly is greater than anything we have had for years and it's difficult to enforce that. You know, if an attorney betrays a client's trust, there's different sanctions. I can be disbarred. I can be sued. I can be-- I can be prosecuted, possibly, with a crime. But there's no licensing of advocates. There's no regulation of them. There's not a way to sort of enforce that. So those are some of the concerns that we saw.

**PANSING BROOKS:** So what about a more limited privilege?

**SPIKE EICKHOLT:** We have one I think now for-- I think it might be domestic violence victim and that-- and that's similar, yeah, perhaps that, that anything said in confidence for the purpose of the survivor healing, describing what happened to-- to-- it's usually her-- what happened to her would make some sense. But the-- if you look at Section 4, it provides for more than that. It's-- it still-- it says

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the privilege sort of is there whether someone else may hear the information or not. Well, that's the whole-- that's counter to what a privilege is.

**PANSING BROOKS:** Thank you, Mr. Eickholt.

**LATHROP:** Thank you for your testimony and your thoughts today. Next testifier.

**GREGORY C. LAUBY:** Thank you, Senator Lathrop. My name is Gregory C. Lauby, G-r-e-g-o-r-y C., as in Christian, L-a-u-b-y. I'm here today to testify against LB43. When I initially looked at it, I thought that at most I would be testifying in the neutral because I certainly have no objection to additional assistance for survivors of sexual assault or sexual abuse. But when I continued to read the specific provisions, my concern grew and grew to the point where I decided I needed to testify in opposition. And I would start off by joining Mr. Eickholt in the objections that he expressed about specific provisions. Other provisions that concern me is that when I looked at Section 1, the definition of the advocate confines that role to someone involved in a program for victim assistance, and those are almost automatically strangers to the victim, at least initially. It does not include family members, friends, clergy, counselors, some of the very people who may be able to provide the most comfort and assistance to someone going through this type of trauma-- trauma. Second, Sections 6 and 7 seem to require that an advocate be contacted before any physical examination is conducted, and then 7, that requires that law enforcement, prosecuting attorney, or defense attorneys contact a victim advocate before interview-- any interview or deposition is conducted. I'm not sure exactly how in practice that would work out when the survivor hasn't yet selected an advocate. And that is a responsibility that does not exist for police, for example, to contact an attorney, even though a suspect may refuse to be questioned until his attorney or her attorney is-- is present, so I think that may be an affirmative duty that oversteps. Section 8(2) seems to create a duty on the part of health providers to report to law enforcement the report of an assault itself and any evidence obtained. That seems to be a further erosion of physician-patient privilege if it does not at least require the consent of the patient before that report is made, and that in turn then seems to discourage an honest and complete disclosure of what happened to a physician and run contrary to some pretty fundamental goals about getting proper medical care. Also, the a concern in Section 8-- 8(3) seems to require the retention of all

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evidence until the expiration of the statute of limitations. I note that there is a bill that will come up today that will eliminate the statute of limitations. If that bill is passed, it would then mean that county sheriffs and city police departments would have to require or retain evidence for the lifetime of the survivor. It seems to me there should be some way of shortening that period of evidence retention. And then Section 8(7) indicates that the right to police reports will be that of the survivor, but there are no restrictions on the fruit of distribution of those reports which could contain the personal information about suspects who were investigated but cleared, and I think that poses a danger to them. If there are no other questions, I thank you for your attention.

**LATHROP:** I see no questions. Thank you--

**GREGORY C. LAUBY:** Thank you.

**LATHROP:** --Mr. Lauby. Anyone else here to testify in opposition? Anyone here in a neutral capacity that wants to be heard? Seeing no other testimony, the record should reflect that we have 12 letters in support and they come and will be made part of the record, no letters in opposition or in a neutral capacity. And with that, I believe Senator Bolz waived her close. I'm getting an affirmative nod from her staff. That will close our hearing on LB249 and bring us to-- pardon me, close our hearing on LB43 and bring us to LB249. Senator Howard. Good afternoon.

**TIMOREE KLINGLER:** Good afternoon, Senators. For the record, my name is Timoree Klingler. That is T-i-m-o-r-e-e; last name is spelled K-l-i-n-g-l-e-r. Unfortunately, Senator Howard was unable to step away from committee this afternoon, so I will be reading her opening on the bill. Today I'm here to introduce LB249, a bill that eliminates the statute of limitations on civil actions regarding crimes of sexual assault in both the first and second degree. A civil lawsuit is a private lawsuit that is not a criminal proceeding. In these cases, the plaintiff is usually the victim and is the person that initiates the legal proceedings instead of a representative of the state. Benefits include having more control over a case and a plaintiff has the option of confront-- confronting their perpetrator. However, the plaintiff also may have to pay the costs of the legal proceedings which could be quite costly. Civil suits involve a lesser standard of proof than criminal cases. In a civil case, the burden of proof is known as the preponderance of evidence, which means that evidence must prove that the claim more likely than not occurred. You must provide proof of all

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harms claimed and must prove the damages that you claim for your injury in order to receive a monetary settlement. An example of this might be the cost for treatment and therapy that a victim has needed as a result of an assault. A decision to file a civil-- civil suit due to a sexual assault is a very personal decision. For some survivors, it may be an empowering experience and serve as an important step in the healing process. A victim must carefully weigh the costs and benefits, both emotionally and financially, when making this decision. Most victims that bring suit use it as an opportunity to tell their story, gain acknowledgement by the community, and perhaps as vindication. A civil suit may also strip the perpetrator of their power and secrecy surrounding any crime, especially if there was no criminal conviction to do so. 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. In 2017, Senator Bob Krist introduced and passed LB300 which eliminated that statute of limitations on civil actions for sexual assault of a child. LB249 goes to the next logical step, which we believe is to eliminate the time limit for adults. Currently the law says that for crimes against adults, the statute of limitations falls under our tort law which allows only a four-year window. Four years is a very short time. Victims of sexual violence may need years or even decades to fully process trauma and understand what has happened to them. Sexual violence affects millions of Americans. According to the Rape, Abuse and Incest National Network, on average, there are three-- 321,500 victims of age 12 or older in the United States each year. Due to the recent #MeToo movement, awareness on the prevalence of sexual assault and harassment has come into the spotlight. Many prominent individuals are being called out about their transgressions of many years ago because their victims are finally finding the courage. In response to this movement, several states are reexamining their laws on statute of limitations for sexual assault, and in California, State Senator Connie Leyva, in her testimony to the California Assembly when arguing her bill to abolish the statute of limitations for criminal cases, that legislation like this tells every rape and sexual assault victim in California that they matter and that regardless of when they are ready to come forward, they will always have an opportunity to see justice in a court of law. Rapists, she said, should never be able to evade legal consequences simply because an arbitrary time limit has expired. I am bringing an amendment, which I apologize I didn't hand to the page beforehand. This is AM280 which we've brought today at the

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request of the Women's Fund of Omaha that makes a change on page-- line 2, 20-- or page 2, line 28. This is in regard to an action brought against a party other than the individual causing the injury to the plaintiff, in other words, a person or entity who may have been indirectly involved in the assault. We are striking "plaintiff's twenty-first birthday" and replacing it with the date the injury or injuries occurred. As written in the green copy, a person could not bring action against another person or entity who they believe was a party to the crime if they were assaulted after their thirty-third birthday. AM280 fulfills the intent of the bill by removing this reference and tying the 12-year timeline action to a date that the injury occurred. Passing this bill will allow our state to be a leader in the zero tolerance of sexual assault of any individual. Thank you for your time and attention to this very important matter, and we'd ask for your support and advancement of the bill to the full Legislature for consideration. Thank you.

**LATHROP:** Thank you for introducing the bill in Senator Howard's place. We'll take the first proponent. Good afternoon again.

**ROBERT SANFORD:** Again, Senator Lathrop, members of the Judiciary Committee, my name is Robert Sanford R-o-b-e-r-t S-a-n-f-o-r-d. I am the legal director for the Nebraska Coalition to End Sexual and Domestic Violence. The Nebraska coalition is a non-profit organization whose primary membership consists of 20 organizations across Nebraska providing support services to victims of domestic and sexual violence. As I have shared in the past, the Nebraska Coalition seeks to enhance safety and justice where these horrible acts occur. We believe justice occurs in many ways, ways that may be different from one survivor to the next. The Nebraska Coalition is here today to support Senator Howard in her effort through LB249 to enhance the accountability of someone who has chosen to use sexual violence. As today's hearing was approaching, I contacted our member programs and asked them when it is they encounter a survivor of sexual violence. While some survivors come forward in the first few days or even weeks, programs pointed to many victims who had not sought support services until years had passed from the incident. I spoke with one survivor. She shared with me that she had been sexually assaulted as a minor by a family member. She never came forward and told what happened to her for nearly 30 years. During the last 20 years, I have served as an attorney working primarily with victims of domestic and sexual violence. These examples, shared with me in the last few weeks, repeat the stories I have heard from others over the years: I didn't come forward then and

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now it's too late. LB249 does not change the elements that a petitioner must show in a civil case. What it does is eliminate the statute of limitations in civil cases involving sexual violence. It eliminates a barrier that currently exists for those survivors who want to hold an offender accountable through the civil court system. This bill is an important step in accountability for those who have chosen to use sexual violence. The Nebraska coalition is grateful to Senator Howard in her efforts to assist survivors in this way. We ask that you support LB249 and advance it to the floor for further debate. Thank you.

**LATHROP:** Thank you, Mr. Sanford. Appreciate your testimony. Good afternoon again.

**CHRISTON MacTAGGART:** Good afternoon again. My name is Christon MacTaggart, C-h-r-i-s-t-o-n, last name M-a-c-T-a-g-g-a-r-t. I'm the domestic/sexual violence project manager for the Women's Fund of Omaha, testifying in support of LB249. We know that survivors of sexual violence often do not report at the time the assault occurred. Sexual violence trauma is incredibly complex. The reasons are many but include, among others, fear of retribution, fear for their safety or of not being believed, fear of losing friends and family, and our criminal statutes acknowledge this. And as such, there's no statute of limitations on criminal first-degree sexual assault. LB249 would align with that statute and remove the statute of limitations on civil lawsuits for sexual assault. We also support the amendment that Senator Howard brought which ensures that this will apply to all sexual assault victims regardless of age. We're in full support of creating consistency between these two processes as it relates to sexual assault and in giving victims the option for possible justice at a time when they choose and in a time when it's safe for them to come forward and at a time when they have the support that they need. And so I would ask you to move LB249 forward and would be happy to answer any questions.

**LATHROP:** I do not see any questions, but thank you for your testimony once again.

**JOHN LINDSAY:** Senator Lathrop, members of the committee, my name is John Lindsay, J-o-h-n L-i-n-d-s-a-y, appearing in support of the bill on behalf of the Nebraska Association of Trial Attorneys. You've heard a lot of testimony this afternoon from victims of sexual assault. We know-- I looked at the CDC Web site and saw the-- the-- the after effects are many and long term. PTSD will appear in 94 percent of

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sexual assault victims the first two weeks, long-term PTSD in up to 50 percent of sexual assault victims. The damage that a sexual assault does is long term, more likely lifetime. And as you've heard from other testifiers, the ability to-- to step up and confront the situation that these victims have experienced may take time, may take therapy and counseling before they're capable of doing that. We support the-- the bill and would urge its advancement.

**LATHROP:** I see no questions, Mr. Lindsay. Thanks for being here.

**ALEXIS STEELE:** Hello, honorable members of the committee. My name is Alexis Steele. That is Alexis, A-l-e-x-i-s, Steele, S-t-e-e-l-e, and I am here today on behalf of the Immigrant Legal Center, a nonprofit law firm that represents many victims of crimes across the state of Nebraska. And I am here today to lend our support to LB249, and I'm here to do that just by reviewing. I want to bring to light and to your attention certain statistics that speak to the extreme significance of this bill as it applies especially to children. There should be no statute of limitations for taking action based on a sexual assault of a child and there are many reasons why. Some of them go to the heart of what it means to be a child and the experience of facing sexual assault in that context. First, child victims face unique challenges to reporting sexual abuse. Thirty percent of child victims are abused by family members. This means that it is not uncommon for a child to live with an abuser whose presence can make reporting, even to another family member, very difficult. This is an even greater problem for children who are victims under the ages of six years old, 50 percent of whom are victimized at the hands of a family member. A child trapped in such a situation might not have the opportunity to disclose an experience of sexual abuse for years, and a statute of limitations does not take that into account. Second, sexual abuse of children is incredibly harmful in all its forms. Child victims are twice as likely to experience depression, substance abuse problems, and attempt suicide later on in life. This problem is far more prevalent than I think many people see. One in 7 girls and 1 in 25 boys will be sexually abused by their 18th birthday, and even one victim is one too many. The 60 percent of child victims who never tell anyone about what they suffer deserve the opportunity to come forward later in life and to take action as they see fit based on their victimization. The Immigrant Legal Center requests that the committee vote in favor of LB249 out of respect for the children victims and in

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recognition of their suffering. I welcome any questions and thank you for your consideration.

**LATHROP:** I do not see any questions today but thank you for your testimony.

**ALEXIS STEELE:** Thank you.

**JUDY KING:** Thank you.

**LATHROP:** Good afternoon.

**JUDY KING:** Hi. My name is Judy King, J-u-d-y K-i-n-g, and I'm in--proponent of LB249, and I want to bring up the Kavanaugh hearings again. They inspired a lot of women my age to talk about what had happened to them when they were in high school or college. And many--well, all of them hadn't talked about it to me or any of the rest of us for 40 or 50 years. And so I-- I-- I don't-- I believe that the statute of limit-- you know, the limit-- excuse me, statute of limitations for civil actions arising from sexual assault should be moved forward.

**LATHROP:** Very good.

**JUDY KING:** Thank you.

**LATHROP:** Thank you once again for your testimony.

**JUDY KING:** You bet.

**LATHROP:** Anyone else here in support of LB249 that cares to be heard? Anyone in opposition?

**GREGORY C. LAUBY:** Good afternoon, Senator Lathrop. Members of the committee, I am Gregory C. Lauby, G-r-e-g-o-r-y C. L-a-u-b-y. I oppose LB249 and any elimination of the statute of limitations for civil cause of actions based on allegations of sexual assault which now may be filed without any collaboration despite the publicity and damage that arises from false allegations. And I'd call your attention, as I-- I did the last time, a bill came up on this subject to the Commentaries of Laws of England by William Blackstone in 1765 through 1769, which, as best I can understand, contains the following passage. The use of statute of limitations is to preserve the peace of the kingdom and to prevent the innumerable perjuries which might ensue if a man were allowed to bring an action for any injury committed at any



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distance of time. Upon both these accounts, the law therefore holds that-- and then he quotes a Latin adage which has been translated "in the interests of society as a whole"-- litigation must come to an end. Blackstone continues: And upon the same principle, the Athenian laws in general prohibited all actions where injury was committed five years before the complaint was made. If, therefore, in any suit the injury or cause of action happened earlier than the period expressly limited by law, the defendant may plead the statutes of limitation at the bar. The present statute, as I understand it, is 12 years from the time the victim turns 21. That seems to provide a sufficient period of time for recovery to file a suit. Eliminating all time limitations allows for the filing of claims after the loss of evidence required to exonerate. Alibi witnesses may relocate. Diaries and other documents are discarded or lost. Memories fade. What barrier would remain to prevent lawsuits against those confined to nursing homes, the demented or otherwise vulnerable, even as-- an estate of the deceased? Judge Kavanaugh recently illustrated the difficulty in trying to convincingly rebut allegations and yet he now sits on the United States Supreme Court. I think that this-- this particular statute, given its history, may in some point be reside-- recognized as a fundamental right protected by the penumbra of the Sixth Amendment or the due process clause itself, much like the right to marry. To me, providing access to competent counsel to speed trauma recovery and healthy closure, permitting the timely filing of a well-founded lawsuit would be more constructive and less dangerous to the blameless and the integrity of the courts.

**LATHROP:** OK. Thank you for that opinion.

**GREGORY C. LAUBY:** Thank you.

**LATHROP:** I don't see any questions. Thank you. Anyone else here in opposition to LB249? Anyone here to speak in a neutral capacity? Seeing none, we have four letters of support from Marcia Blum with the National Association of Social Workers, Amy Richardson from the Women's Center for Advancement, Robert Way for himself, and Ed Mashek; no letters in opposition or in a neutral capacity. And with that, we will close our hearing on LB249. I appreciate that those of you who are still here have been waiting. We're going to take a five-minute break for the committee to stretch their legs. If you don't mind, we'll be back in five minutes.

[BREAK]

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**LATHROP:** And I was just told-- maybe you guys already know this-- that they're expecting sleet to start between 5:00 and 6:00. That's an hour from now. And so I suppose if you can consolidate your testimony or testifiers on these bills, that might help us get people out of here in time to get safely home, which is always a concern for me as the Chair of the committee. I want to make sure my staff and the other senators have an opportunity to get home safely. With that, we will move to Senator Cavanaugh and LB532. Senator Cavanaugh.

**DeBOER:** I can go real quick. I could go first.

**LATHROP:** We'll give her about a minute and then--

**DeBOER:** I'd go.

**LATHROP:** What?

**DeBOER:** I'll do my bill.

**LATHROP:** Yeah, why don't we do that. Senator DeBoer-- we're going to have Senator DeBoer introduce LB680. Senator DeBoer, go ahead. How many people are here to testify on LB680? Looks like two. Let's just take that real quickly and-- not quickly, but let's take that next while we're waiting for Senator DeBoer and we'll-- good afternoon.

**DeBOER:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10 which includes Bennington and parts of northwest Omaha. Today I am introducing LB680 which would adopt the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act. LB680 would create a civil cause of action for harm resulting from disclosure or threat of disclosure of intimate images. The nonconsensual disclosure of sexually explicit images, sometimes known colloquially-- colloquially as revenge porn, is an increasingly common problem that can cause severe and often irreversible harm to the victim. A 2017 report released by the Cy-- Cyber Civil Rights Initiative found that one in eight adult media users reported that they had been victimized or threatened with the nonconsensual distribution of intimate images with women 1.7 times more likely than men to be the victim of unauthorized dis-- distribution or threat to distribute. There are a variety of reasons why a person may distribute or threaten to distribute these intimate images. Some images are disclosed for profit; others are disclosed as part of an effort to control, extort, punish, or otherwise inflict harm on the individual.

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Disclosures may seek to destroy the reputation of a rival or as an attempt to discourage sexual-- or victims of domestic violence or sexual assault from reporting abuse. Regardless of the purpose of disclosure, unauthorized disclosure of intimate images can cause economic damage, emotional distress, or challenges for victims in their professional and personal lives. Some progress has been made to address this problem in other states, mainly through criminal litigation. Currently 42 states and the District of Columbia have some sort of legislation addressing nonconsensual disclosures of these images. While criminal law can serve as an important deterrent, an expression of social condemnation, civil law is better suited to compensate victims for the harm that they have suffered. However, existing civil remedies are often insufficient to address the problem. Because negligent tort actions typically require physical harm, such-- such actions are of little help when the harm suffered is emotional distress. Intentional-infliction-of-emotional-distress claims often fail due to the vagueness of the standard. Invasion-of-privacy torts actions vary from state to state making it difficult for victims, given that electronic disclosure-- disclosure often transcends state lines. In Nebraska, truth is a defense to a false light privacy claim unless the plaintiff can prove that the publica-- publication was made with actual malice which cannot be inferred or presumed by the publication. Because existing civil remedies are unable to address this problem, and because these disclosures are often carried out electronically, making it an interstate problem, it is best addressed through a narrowly written, uniform state law. LB680 requires that the image in question must be intimate in nature and that the plaintiff be both identifiable and suffer harm for the intentional disclosure or threat of disclosure. The image must be private, meaning that it was created or obtained under circumstances in which the depicted individual had a reasonable expectation of privacy, or be obtained through theft, bribery, voyeurism, or other such false pretenses. At this point I have an amendment to offer for the committee's consideration> This amendment-- this amendment makes several changes to the bills-- bill. In Section 6, which deals with remedies, the amendment removes the phrase "the greater of" on page 5, line 19, and limits the acquisition of presumed damages only if the actual damages are incapable or difficult to quantify. Also, in Section 6, the amendment strikes subsection (a) (3) which allows for statutory damages. Additionally, I'm inserting the language from amendment-- the amendment that begins on page 1, line 9, into Section 8 of the original bill beginning on page 6, line 24. Under this new language, no provider or user of an interactive computer service can be treated

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as a publisher or speaker of any information provided by another provider in an action brought under this act unless the provider is responsible for the creation or development of the information. The new language also provides that no provider or user of an interactive computer service can be held liable for action taken in good faith to restrict access to the images. Many of you may be aware that the fiscal note for LB680 estimates \$150,000 in expenditures. It is my understanding that this expense comes from a one-time expenditure for the modification to the court's management system-- case management system. LB680 allows plaintiffs to file a complaint under a pseudonym. The fear of further notoriety may deter victims from pursuing legal remedies and allowing the use of a pseudonym helps mitigate fears. The Supreme Court of Nebraska declared in 19-- in the 1983 case of Orr v. Knowles that a court may in appropriate cases allow a plaintiff to prop-- to proceed under a fictitious name. For example, many child custody cases are brought without identification of the child. The Court Administrator's Office is already under an obligation, therefore, to accommodate such cases and has been since 1983. I believe, therefore, that it would be inappropriate to attribute the cost of doing so to this bill, but I am of course willing to work with the Fiscal Office to address the issue. Thank you for your consideration of this legislation. The disclosures are happening with increasing frequency and due to the reach of social media, these images can be rapidly available to anyone with Internet access. The disclosures of a person's private and intimate images to numerous strangers or to close family, coworkers, and friends can cause extreme economic or emotional damage. I'm happy at this time to answer any of your questions.

**LATHROP:** Senator DeBoer, I'm puzzled by the fiscal note, why-- our office files complaints all the time for civil actions. I can't even imagine what would need to be modified in the JUSTICE system. It's a civil case. You're not filing any additional documents or pleadings with the complaint, are you?

**DeBOER:** No. The only-- the only difference would be if you're filing in-- under a pseudonym you--

**LATHROP:** We still can accommodate that.

**DeBOER:** --you have to--

**LATHROP:** That that happens already.

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**DeBOER:** Right.

**LATHROP:** Well, we'll talk to the Supreme Court about that.

**DeBOER:** Yeah.

**LATHROP:** But thank you for introducing this timely topic. I don't see any questions for you. Good afternoon.

**HARVEY PERLMAN:** Good afternoon.

**LATHROP:** Thanks for your patience, by the way.

**HARVEY PERLMAN:** It's no problem, Mr. Chairman. Thank you and members of the committee. I'm Harvey Perlman, H-a-r-v-e-y P-e-r-l-m-a-n. I'm currently professor of law at the University of Nebraska College of Law and I serve as a life member of the Nebraska Commission on Uniform State Laws. My testimony is on behalf of the Nebraska Commission, does not necessarily reflect the views of the university. LB680 comes to you as a recommendation from the National Commission on Uniform State Laws, and I hope I can have just a brief moment to remind the committee about the Uniform Law Commission. It's a national commission established by the states in 1892 as a way to develop laws that could be adopted on a uniform basis but not depend on federal congressional action. This Legislature supports the National Commission through payment of dues. The National Commission is a coalition of commissions in each state generally appointed by the Governor. Commissioners, all of whom are lawyers, serve as volunteers. When a proposal of a uniform law submitted, it is carefully reviewed to assess the appropriateness for uniform state legislation. If approved, a drafting committee of commissioners, broadly representative of the state, is selected to draft a proposal. The process is open, transparent, invites all stakeholders and special interest groups to appear. If approved, the product is then returned to you for your adoption, modification, or rejection. The benefits of the process are several. First and most important, it preserves state autonomy by giving the states a way to act in a uniform way without the need for federal intervention. Second, it allows a flexible uniformity that permits states to preserve any special or unique interest it may have, something that in federal legislation is not normally possible. Third, it's drafted by good lawyers from across the-- across the country and it creates a process where consensus among stakeholders or the surfacing of objections is possible before the bill comes to you. We've had a great history. The Uniform Commercial Code governs all uniform-- all

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commercial transactions in the United States. There are over 140 uniform act proposals; 116 of them have been enacted in Nebraska. So LB680 reflects the Uniform Civil Liability for Unauthorized Disclosure of Intimate Images Act. Senator DeBoer has provided you with the reasons for this act and how it's structured. I would just emphasize four points. First, the conduct creating liability is narrowly-- carefully and narrowly defined to be consistent with First Amendment jurisprudence. To be an intimate image under the act, it must show covered genitals or sexual conduct. The person accused of unauthorized disclosure must know or act with reckless disregard for whether the person depicted did not consent, whether the intimate image was private, whether the depicted individual could be identified. Second, the act does not require the plaintiff to prove a separate element of an intent to cause harm. Such a requirement would be an unnecessary burden. A defendant who knows the disclosure of a private matter without consent will hardly be surprised when such disclosure may cause harm. Third, there may be those who are uncomfortable with the standard of acting with reckless disregard and may want to require actual knowledge on the part of the defendant. Reckless disregard goes far beyond what might be characterized as an innocent or careless mistake. We have incorporated reckless disregard, believing it satisfies the Supreme Court's First Amendment jurisprudence and is consistent with Nebraska's more general statutes that govern civil actions for violation of a person's right of privacy. For example, Nebraska's Section 20-204 is the false light provision that has reckless disregard as the standard. And fourth, the Act promulgated by the commission contains a provision for statutory damages recognizing that it's often difficult to provide direct evidence of damage in cases like this. As you know, Nebraska prohibits a plaintiff from recovering punitive damages or damages that are regarded as a penalty. Senator DeBoer has an amendment to remove the statutory damages but would make clear that the case-- that in the case where actual damages cannot be proven directly, the plaintiff may recover presumed damages that bear a reasonable relationship to the probable damages the plaintiff suffered. The Nebraska Supreme Court has recognized in an analogous situation lawsuits for slander that where actual damages are hard to prove, a plaintiff may recover nominal or substantial damages. Thus, I would encourage you to protect Nebraska's citizens from the unauthorized disclosure of their intimate images and to do so in a way that has the expectation it will be largely uniform to other states' laws. I'd be happy to answer any questions you have.

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**LATHROP:** Very good. Senator Slama.

**SLAMA:** Thanks for coming out today, Professor Perlman. I was--

**HARVEY PERLMAN:** Senator, I-- I just can't comment on the fact that two months ago I was asking her questions.

**LATHROP:** Yeah, one of your students.

**HARVEY PERLMAN:** Yeah, so there is an irony here that--

**LATHROP:** This would be a rich opportunity for most of us.

**HARVEY PERLMAN:** This is. I--

**SLAMA:** Oh, yes. But I'd like to say on the record that you calling one of my arguments clever is one of the biggest compliments I've ever gotten. But "anyhoo," so this bill reflects the Uniform Civil Liability for Unauthorized Disclosure of Intimate Images Act. The point is to have uniform legislation towards this and across states. What other states have adopted this?

**HARVEY PERLMAN:** Senator, this act was approved by the national commission last summer, so it has not had an opportunity to be enacted by any state. It has been introduced in four at this point and we're confident it will be introduced in a good number of others.

**SLAMA:** OK. Thank you.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Professor Perlman, for coming here today. This reckless standard-- and I-- I realize this is a new era. We've got computers. We've all got cell phones. There's all manner of things on everybody's phone. Your phone is laying around and somebody else grabs it and transmits these images. Who's-- who's responsible if-- if that were to happen?

**HARVEY PERLMAN:** Well, first it would be the discloser. You're not liable for-- for somebody else using your phone. And second, the person that discloses it has to either know or act in reckless disregard of, so have some evidence that would put a normal person on notice, that (a) the person didn't consent to the disclosure, (b) the

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disclosure was private, the intimate image was taken in a private way, so, I mean, that would be the answer to your question.

**BRANDT:** OK. I guess my concern is a third party gets involved with this and-- and this-- this law would still apply, correct?

**HARVEY PERLMAN:** Well, it would apply, but only if the third part-- I don't know what you mean by third party. You're not going to be held responsible for somebody else's activities.

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

**HARVEY PERLMAN:** Yeah.

**LATHROP:** I see no other questions. But I am going to take this opportunity. I've-- I've sat on the Judiciary Committee for eight years and uniform laws from the commission have been brought. And as you said, the Uniform Commercial Code is maybe the-- the strongest example of the work they do. But I really appreciate your commitment to this organization and the thought that goes into the bills that are brought here for our consideration.

**HARVEY PERLMAN:** Thank you, Senator.

**LATHROP:** Thank you for your work.

**HARVEY PERLMAN:** Thank you.

**JOHN LINDSAY:** Thank you, Chairman Lathrop. Members of the committee, my name is John Lindsay, J-o-h-n L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys in support of LB680. We thank Senator DeBoer for bringing the bill. It, we believe, provides clarity in an area that is obviously emerging and new and still developing. This provides we believe a road map to helping folks protect themselves against something that we couldn't even have fathomed, at least when I was in law school. The-- we do note that it protects all other remedies. So if there are remedies that are available now, it would not interfere with those but would provide a clear path in-- in this particular area. We-- and given the fact that I, too, am concerned about sleet between Omaha and Lincoln, I'll stop there.

**LATHROP:** Well done. [LAUGHTER] I see no questions from a committee that's likewise worried about sleet between Omaha and Lincoln. Thank



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you, Mr. Lindsay. Anyone else here as a proponent of LB680? Anyone here in opposition?

**GREGORY C. LAUBY:** Good afternoon.

**LATHROP:** Good afternoon.

**GREGORY C. LAUBY:** Senator Lathrop and members of the committee, I'm Gregory C. Lauby, G-r-e-g-o-r-y, C as in Christian, L-a-u-b-y. I-- I hope you'll overlook and excuse the poor quality of the handouts that are going around. The originals are on the floor outside the door if you'd like to see some-- some good representation. I-- I-- I just would like to remind you that art often exceeds the vision of good lawyers. Think about the creation of those images for a minute and what kind of an impact this sort of legislation might have had on their creation. In fact, I-- I suspect that a couple of those images might even violate the bare language of some existing federal statutes. Now what future art could this bill put at risk if it was enacted in its present form? I'm not going to try and speculate that or belabor the point. I would just ask you to very carefully review and see if you can narrow it down to exactly the-- the evil that you're trying to prevent here, rather than have it possibly be interpreted to apply to something that we really don't need to eradicate that would still constitute First Amendment speech. I remember in law school being taught that the one thing the First Amendment clearly did not cover was yelling fire in a theater. And yet in '70s there was a very famous song where I think it was the Earth, Wind and Fire sang for about ten minutes, fire, fire, fire. There are ways to do even what we now consider unfathomable. And with that, I thank you for your attention.

**LATHROP:** Thank you. Anyone else here to testify in opposition to LB680? Anyone here in a neutral capacity? Seeing none, Senator DeBoer to close. And the record will reflect, as you find your way to this table, we have two letters of support from Amy Richardson at the Women's Center for Advancement, Sarah Hanify from the National Association of Soc-- Social Workers, and a letter in opposition from Amy Miller at the ACLU of Nebraska. With that, Senator DeBoer to close.

**DeBOER:** I will waive closing unless there are any additional questions.

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**LATHROP:** I don't see any. Must be Friday afternoon with sleet on the way. [LAUGHTER] Thank you all for your participation in the hearing on LB680. And with that, we will go once again to Senator Cavanaugh if she's here. She is. LB532.

**CAVANAUGH:** Good after-- it's still afternoon, right? Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h. I represent District 6 in west-central Omaha. I'm here to introduce LB532 and its amendment. I will try to be quick, but I have a little bit to say, so here we go. It is the intent of this bill to clean up, clarify, and streamline the statutes guiding the issuance of protection orders. The bill is intended to provide more clarity in the process for victims who often pursue these protection orders without the assistance of an attorney. The intent is also to provide more clarity for the court system and make the process the same for different kinds of orders. This bill was drafted with input from those who work directly to provide legal assistance to victims of domestic and sexual violence, as well as experts in best practices for systematic-- systemic responses to such violence. They were asked the questions: What are the biggest challenges facing victims in their pursuit of protection orders, and how can we address those challenges through legislation? Those who provided the input in the drafting of this bill will testify after me and can provide more detailed description of the need for the changes being sought in this important legislation. Generally, a victim of harassment or domestic or sexual violence will pursue a protection order to seek legally enforceable protections from physical or sexual violence, intimidation, or harassment. Protection orders may prohibit contact or impose restrictions on the reported perpetrator's behavior as it relates to the victim and their family in order to keep the victim safe from further violence or harassment. The type of protection order a victim will seek depends upon the specifics of their situation and the legal basis differs for issuing these orders. There are three primary types of protection orders: harassment protection orders, sexual assault protection orders, and domestic abuse protection orders. A harassment protection order, or HPO, does not depend upon the relationship between the perpetrator and victim but does require a number of telephone or personal contacts that seriously terrify, threaten, or intimidate the victim and serve no legitimate purpose. A sexual assault protection order, or a SAPO, is sought after subjecting or attempting to subject another person to sexual contact or sexual penetration without his or her consent. A domestic abuse protection order, or DAPO, is for people who have been

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in close relationships-- relatives, spouses, or former spouses-- people who have lived or are living together, etcetera, and is granted because someone attempted, threatened, caused bodily injury or intimidated the other person by credible threat or engaged in sexual contact or sexual penetration without consent. In 2018, there were 5,268 total protection orders granted in Nebraska, including renewals. This is a decline from the prior two years: 5,645 in 2016 and 5,581 in 2017. Statewide, a domestic abuse protection order was the most prevalent type of protection order-- 2,918 granted-- followed in prevalence by 2,091 harassment orders. The newest and least common protection order is a sexual assault protection order with only 175 granted statewide. With some basic background on protection orders established, I'd like to walk through the changes proposed in the introductory copy of LB532. The changes proposed to the harassment protection order will be found in Section 1 of the bill and the changes to the sexual assault protection orders will be in Section 2. The statutory language guiding these two types of protection orders is nearly identical. The changes to domestic abuse protection orders will be in Section 3 to 6-- through 6 of the bill. LB532 makes changes to clarify and make uniform the process of renewal for both sexual assault and domestic abuse protection orders. Under current law, harassment orders cannot be renewed upon expiration and LB532 does not seek to change that. The bill makes uniform the renewal time line and effective renewal date for sexual assault protection orders and domestic assault protection orders. Under current law, the renewal process is different for the two types of orders. LB532 makes the penalties for violation of a sexual assault and domestic abuse protection order the same. It does not change the penalty for violation of harassment orders. Under current law, violations for both the sexual assault protection orders and domestic abuse protection orders are a Class I misdemeanor for the first offense and enhanceable upon subsequent violations. For a DAPO, any subsequent violation is a Class IV felony. For SAPO, it is enhanced to a Class IV felony for a second violation that occurs within a 12-month period or for a third or subsequent violation. The 12-month period creates additional confusion and LB532 changes SAPO to match the penalty structure for a DAPO. LB532 makes changes to all three types of protection orders-- HPO, SAPO, and DAPO-- to specify what information should be included in the affidavit to include most recent and most severe incidents and approximate dates. Since the protection order process is often pursued without the assistance of an attorney, victims may be sub-- may submit an affidavit-- affidavit that is lacking in clarity or pertinent information about the harassment, assault, abuse. They may also

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include irrelevant information. The intent of this provision is to add clarity to the forms to ensure that the court is providing-- is provided the information they need to make a decision. There is also included a reference to approximate dates as victims of trauma may have difficulty remembering specific details of the abuse such as the date. This allows them to provide the information to the best of their knowledge. LB532 also clarifies to whom the order applies. Orders may offer protection for both an adult victim and minor children. At times, the protection-- protections ordered by the court may be different for each party. This seeks to provide clarification so that the petitioner fully understands the court's order in providing protections. For each party, as well as law enforcement when called upon to enforce these protections, LB532 seeks to clarify the process by which ex parte orders become final, enforceable orders. A protection order is granted ex parte if it is reasonable-- if it reasonably appears from the specific facts included in the affidavit that the petitioner will be in immediate danger. The ex parte protect-- protection order is legally enforceable upon service in person to the respondent. Current statute provides a five-day time limit for the respondent to request a hearing to show cause as to why the order should not remain in effect. However, an appellate decision found that the five-day time line is directory and not mandatory. This leaves a survivor in a state of uncertainty, not knowing if their ex parte-- ex parte protection order will remain in effect or if the respondent will eventually request a hearing putting the protections into question. The intent of the changes in LB532 is to provide a slightly extended time frame for the respondent to request a hearing-- ten days-- but also to clarify that if a hearing is not requested within those ten days, or if a hearing is held but the respondent does not appear, the temporary ex parte order becomes final and is enforceable. Under current law, and because of the court's interpretation of the existing five-day, nonmandatory time line, there is no statutory clarity as to when a temporary ex parte order becomes final. LB532 provides additional clarity as to the process for protection orders if not granted ex parte. There is no clear statutorily defined process for the court to dismiss a petition for a protection order outright, yet this is occurring in a number of jurisdictions. The DAPO state statute already explicitly states: If an order under 42-924 is not issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within 14 days after the filing of the petition. LB532 extends this clarity to the HPO and SAPO statutes which both include references to a hearing being held within 14 days if not granted ex parte, although not as explicitly. Victims

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whose requests for protection is denied outright may have no idea why their petition was denied, nor do they have any recourse to appeal the decision. LB532 seeks to provide victims of violence an opportunity to at least make their case to the court before being denied. LB532 clarifies that the court has the discretion to change the type of protection order for which the victim has initially applied either upon the request of the petitioner or with specific findings of the court that another type is more appropriate, and the bill provides statutory clarity that the petition and affidavit are to be considered evidence by the court unless an objection is sustained. This is an effort-- this is an effort to address a protection order that was overturned on appeal because proceeding-- quote, proceedings were so informal that there was no evidence properly admitted for the court's consideration. The record contains no sworn testimony or exhibits. The petition and affidavit cannot be considered as evidence until offered and accepted at the trial as such. In light of the fact that the court has-- had no evidence upon which it could base its findings, we find in our de novo review that the evidence is insufficient to support the protection order, end quote. Again, because protection orders are often pursued without an attorney, a person seeking a protection order may not know to ask the court-- that the court accept their petition affidavit as evidence. LB532 addresses an issue to provide access to protection order data enhanced law-- I'm sorry, to-- access to protection order data to enhance law enforcement efforts, and there will be a representative of the State Patrol to speak to this provision. LB532 has an operative date of January 1, 2020, in order to give stakeholders time to implement changes. Survivors and victims of domestic and sexual violence report that the decision to leave an abusive relationship often escalates physical violence, as well as mental and emotional abuse from the offender. A study published by the American Journal of Public Health found that domestic violence offenders, feeling a loss of control is the greatest risk factor for escalation of domestic violence and the time period directly following a victim's decision to leave an offender is the high risk-- highest risk time period for homicide. A victim's pursuit of a protection order is likely to represent a disruption in the offender's feeling of control and thus create a particularly high risk of further violence. Protection orders can be critical to survivor safety. However, orders will not be effective if survivor-- survivors aren't presented with an understandable and clear process to obtain an order. LB532 seeks to make the process as clear as possible for survivors to protect themselves and their families and for the courts to have the information they need to offer appropriate measures of

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safety and protection to such victims. Finally, I have an amendment to LB532 that seeks to keep firearms out of the hands of domestic abusers. Around one in three Nebraska women report experiencing some form of-- of intimate partner violence during their lifetime, and access to a gun in a domestic violence situation makes it five times more likely that a woman-- woman will be murdered. From 2013 to 2017, more than half of all people killed by intimate partner violence in Nebraska were shot to death. And research has shown that laws prohibiting abusers from-- from possessing or purchasing firearms are associated with a 13-percent reduction in intimate violence firearm homicides. This amendment will save lives. Thank you for your time and I'm happy to answer any questions.

**LATHROP:** Senator Slama.

**SLAMA:** Hi, Senator Cavanaugh, and thanks for bringing this bill. I was hoping you could just help me better understand and get on track. So LB532 it seems seeks to clarify and simplify a really complex web of three different types of protection orders. But in AM54, you seem to go in an almost completely different direction with a focus on that firearm possession aspect. Could you help me understand the reasoning behind AM54's inclusion in this bill or--

**CAVANAUGH:** Well, I intended to originally include it. But as you know, as a fellow first-year senator, I was kind of in a mad dash during the drafting process and did not include it. I have worked with the NRA and the Nebraskan-- or the-- I'm going to get the name wrong-- the gun safety groups on the language. And this was language that they agreed was suitable to address the concerns about gun violence that I spoke to in intimate partners. So it just wasn't originally included, but it was my intention to include that as an additional cleanup part.

**SLAMA:** Thank you.

**LATHROP:** I see no other questions. Thank you, Senator Cavanaugh.

**CAVANAUGH:** Thank you.

**LATHROP:** You're going to stick around to close, I presume?

**CAVANAUGH:** Yes.

**LATHROP:** OK. Mr. Sanford. Good afternoon.

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**ROBERT SANFORD:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d. I am here today on behalf of the Nebraska Coalition to End Sexual and Domestic Violence to express the coalition's support for LB532. During the years I have worked with survivors of abuse, I have seen judges become more interested in what has happened in the recent weeks of a relationship than they are in the history of the relationship, even when that history involves significant incidents of abuse that combined with current events to create fear. We often hear from advocates that the legal system is more focused on what may seem to be to many as a minor incident that happened in the days preceding the filing for a protection order than on more severe incidents that may be remote in time, yet the-- the fear a victim faces when filing an application for protection order may be based on those prior and more severe events in combination with the recent events. LB532 seeks to allow victims to identify the-- the most severe event that has happened, regardless of how remote in time it occurred, in order to give judges a point of reference for the more-- more recent events. LB532 also seeks to address an issue of confusion that was created when the Legislature created a renewal process through LB289 in 2017. At that time, LB289, created a renewal process for both the renewal-- for both the newly created sexual assault protection order and the domestic abuse protection order. However, there are significant differences in when to seek the renewal. A petition to renew a sexual assault protection order must currently be filed at least 40 day-- 45 days prior to the expiration of the current order, but a petition to renew a domestic abuse protection order cannot be filed until the last 30 days of the already existing order. LB532 seeks to harmonize this process by allowing the petitioner to file a request to renew during the last 45 days of the existing order. LB532 also seeks to clarify that an order renewing an existing sexual assault or domestic abuse protection order becomes effective the day following the expiration of the existing order. While a protection order should not be the sole tool used in safety planning, it is an important tool for victims of domestic abuse, sexual abuse, and harassment. LB532 seeks to clarify and improve on existing law. We would like to thank Senator Cavanaugh for bringing this important piece of legislation forward and we ask that you advance the bill out of committee.

**LATHROP:** Very good. Thank you, Mr. Sanford, for your testimony.

**ROBERT SANFORD:** Thank you.

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**LATHROP:** Good afternoon.

**LAUREN WARD:** Good afternoon. Chairperson Lathrop and members of the Judiciary Committee, my name is Lauren Ward, L-a-u-r-e-n W-a-r-d. I am the director of the Omaha/Douglas County victim assistance unit. I recognize the changes to this bill that-- that-- that are outlined are nuanced, so allow me to bring it to life and introduce you to-- let's call her Leah. Leah just ended a five-year relationship with her partner. She feels harassed ever since. Leah does a Google search and learns she can get something called a protection order. The court will stop him from harassing her for an entire year. She prints the forms off and applies for a harassment protection order. Like most survivors, Leah did not have an attorney help her file for a protection order. When the judge ordered it for a show-cause hearing, she still doesn't have an attorney, just like most survivors. Most survivors file for protection orders completely on their own, often without even the guidance of an advocate. Fast-forward to Leah's court hearing, but let's pretend this hearing is taking place after the passage of this bill before you today. The judge would have dismissed the order outright, based on what Leah submitted, but LB532 says that at its worst a judge is to set it for a show-cause hearing and she gets to be heard in court. Through the hearing, the court learns of the five-year relationship, which Leah just didn't make clear in her application because of the ways that she was prompted. She also didn't list out more than the most three recent examples, as prompted. Made possible by LB532, the presiding judge can change the type of order that Leah has applied for. She mistakenly, as so many laypeople and trauma victims do, applied for the wrong type of protection order. Because of the previous relationship, she could have applied for a domestic abuse protection order which not only affords more protection than the harassment protection order, but for which the statute better applies. Instead of having to start all over or worse, not being able to reapply with the same incidents, the judge can simply change the type of protection order from the bench, thanks to LB532. Additionally, had LB532 passed before she even applied for the protection order, there would have been a more user-friendly prompt to not only list the most recent three incidents but the most recent and the most severe. This would have prompted her to talk about the years of abuse that she endured when the three most inci-- most recent incidents may have been more mild and just may have more not fully fit the statute. But again, thankfully, she had a show-cause hearing to be able to explain all of that to the judge instead of it being dismissed outright, thanks to LB532. It is hard to convey the importance of



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protecting victims of crime in less than three minutes, so I've provided you more of Leah's story in print. Know that these small tweaks will inherently make the processes surrounding protection orders more user friendly, more clear, and more consistent. The gaps, nuances, and unintended differences between the types of protection orders make the path to safety harder for victims of crime. Please approve LB532. Thank you for your time. I'd love to answer any questions.

**LATHROP:** Thank you. Senator Wayne.

**WAYNE:** I-- I'm good. Sleet-- I'm not going to ask any [INAUDIBLE]

**LATHROP:** Pardon me?

**PANSING BROOKS:** He's asleep.

**LATHROP:** Oh.

**WAYNE:** [INAUDIBLE] -- sleet [INAUDIBLE]

**LATHROP:** You were wiping your hands.

**BRANDT:** Sleet.

**WAYNE:** No, I was going to--

**BRANDT:** Just ask the question.

**WAYNE:** I was--

**BRANDT:** Just ask the question.

**WAYNE:** OK. So in that situation, can't they just reapply? There's nothing in the law stopping them from firing multiple upon multiple corrected versions?

**LAUREN WARD:** Not necessarily. As an advocate, I've been doing this work for over 18 years. If I had the privilege of working with a survivor I would whisper and hope I didn't get thrown out of court, and it's because she doesn't have an attorney, and say, ask that it gets dismissed without prejudice, or somehow trying to get that to the judge. If it's dismissed without prejudice, those three incidents can never be on the record again. So if-- I've-- I've worked with-- with survivors in situations where they've just tried to fit it in those few little lines that are-- that are provided and they don't list out

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the witnesses; they didn't mention that the police were called and didn't take photographs and didn't arrest even though she had been strangled and had visible marks. And so if that was one of the most severe and it was, you know, we had an argument, the police made him leave, and it wasn't really described, she's not going to be able to even talk about that incident again in another affidavit.

**WAYNE:** How many-- the ones I'm familiar with are dismissed without prejudice, most of them, like 99 percent. So how many are you seeing that are dismissed with prejudice?

**LAUREN WARD:** I'm working with the survivor, so I am telling that-- I'm-- I'm kind of guiding them beforehand and saying, when all else fails, and I'll write it down because this language is like what's-- prejudice means something else to them. So I'm writing it down saying if all else fails and they're going to throw out the order, ask that it gets dismissed without prejudice, because otherwise they're really in a very unfortunate spot. So in the cases that I've worked, none, because that person had an advocate, but the majority of people are working with no support and the protection order office, at least in Douglas County-- no, I'm sorry, by statute is not allowed to provide that guidance. So a lot of people are literally just Google searching, which is why I kind of described Leah's story that way, because it's just like, oh, my gosh, there's something that will help me, I'm going to print this out and do it. They're following the instructions. It's not entirely self-explanatory, especially when people are experiencing trauma, and we're just trying to make that a little more self-explanatory, a little more user friendly so that they can say, OK, well, the last time they just wished me happy birthday on Facebook, but the time before that, which maybe would have been incident number four, is when they held me for four hours and, you know, strangled me and sexually assaulted me, so just making that a little more evident when they're filling that out on their own.

**WAYNE:** Thank you.

**LATHROP:** I see no other questions. Thank you for your testimony. Good afternoon.

**EILEEN REILLY:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Eileen Reilly, E-i-l-e-e-n R-e-i-l-l-y. I am the legal department manager at the Women's Center for Advancement in Omaha and I'm also a survivor of domestic violence and sexual assault. I have spent over 25 years working with survivors

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of domestic violence in the Omaha community as a member of the Women's Task Force on Domestic Violence, as the executive director of the Domestic Violence Coordinating Council of Greater Omaha, as a pro bono attorney, and in my current position. The WCA is here in support of LB532. From a national perspective, one in three women and one in seven men have experienced domestic violence, sexual assault, or stalking at some point in their life. In Omaha these crimes happen daily. According to our most recent data, the WCA received over 10,000 hot line calls in 2018 and our department provided legal services to over 1,000 clients last year. For many of these survivors, a protection order becomes their first line of defense against further violence from their abusers. The intent of LB532, as you've heard, is to clean up, clarify, and streamline the three types of protection orders that are currently available. The changes in LB532 will address a couple of areas that have been a source of personal frustration for me in my role as an attorney at the Women's Center for Advancement. First, the changes clarify that the petition and affidavit of the survivor shall be admitted into evidence unless there is an objection that is sustained. Oftentimes, pro se petitioners do not know to offer the affidavit into evidence, and then there is no evidence and it can be dismissed for lack of evidence. This change would ensure that those statements become a part of the evidence, part of the record, absent any objection on the part of the respondent. Second, LB532 clarifies that if a protection order is not granted ex parte, the court is required to hold a hearing within 14 days. I just met this morning with a woman in my office who has had two harassment protection orders dismissed without a hearing and charged court costs. I have no idea why they were dismissed. There's nothing on the record that says why they were dismissed. This law would prevent that from happening. She would at least have the opportunity to have a hearing. The protection order process, the whole process is designed for a pro se litigant who often may have an unsophisticated understanding of that process and how it works. Many times, it's the first time they've ever been in a courtroom. These petitioners are some of our most vulnerable population and their experience with the process can lead to distrust of how it works or respect for how it works. I would rather have the latter and I encourage you to support and promote LB532. Thank you.

**LATHROP:** Ms. Reilly, can I ask a question?

**EILEEN REILLY:** Certainly.

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**LATHROP:** How many of these are being dismissed with prejudice? If somebody comes in and-- and I get that these are done primarily pro se. If somebody comes into the court and they haven't-- you know, they-- they something-- say something very general in the affidavit, nothing specific enough or whatever that the deficiency is, how many of them then that are not accepted or don't result in an order are dismissed with prejudice?

**EILEEN REILLY:** I would say that that is changing. In the recent past within the last six months, I've seen some education of judges where they are changing their dismissals to be, and including the language, without prejudice. Previously, oftentimes, it was just dismissed and that was interpreted as being with prejudice and even--

**LATHROP:** Would it make sense-- would it make sense-- I have to tell you that I am a little concerned about this appeal and having an evidentiary hearing because I'm trying to get-- we need four district court judges in Douglas County. I'm trying to get one and I don't even know if I'll be able to get that done this year. So I don't know that turning these into evidentiary hearings 14 days later, if there isn't a different way-- and I'm going to ask you a question about that. If the-- if this were amended to say the dismissal is not with prejudice, so we're doing one thing, the affidavit is received into evidence unless there's an objection that's sustained. That's in the bill. If the-- if the affidavit is insufficient and is dismissed, it is dismissed without prejudice so that someone's free to come back, but that it must be dismissed if-- if it's dismissed, the court has to identify the deficiency. Would that be another way to approach this so that we don't have-- don't turn in-- don't turn every dismissal into a trial two weeks later?

**EILEEN REILLY:** It-- it would certainly be better than what we have right now. But it is not in my opinion very trauma informed because we have people who don't want to go to court who have had sit down and recount the brutality that they've experienced. And they've sat down, hopefully they've had the opportunity to do it with an advocate-- sometimes they don't even have that-- and now we're asking them to go back because there was something they didn't do quite right and they have to write it all over again. We have people who don't speak English who have to have their-- their affidavits translated again for them. So while technically, yes, you're going to get somebody another opportunity to present a better affidavit to the judge if you dismiss it without prejudice, but you're not really-- you're going to lose

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people in that process. They're going to say, fine, I'm not going to do this again.

**LATHROP:** OK, well, let me ask this question then, if-- appreciating your response. And I'm-- believe me, I'm not being argumentative with these questions. The person goes in. Their affidavit is insufficient and now they've got to show up in court. Same ex parte person now has to show up in court for an evidentiary proceeding. How is that-- how is that better than filing a second affidavit after you become aware of the deficiencies in the first one? I got to think that going into the courtroom and now your ex parte-- your affidavit was insufficient and now you're going to have-- the judge comes out and now you're going to put on evidence?

**EILEEN REILLY:** Well, there are a couple of things that happen. Oftentimes, the respondent doesn't show up, so the order gets entered.

**LATHROP:** So you would-- you would-- if the respondent doesn't show up-- after you filed an insufficient affidavit, how would the respondent show up?

**EILEEN REILLY:** Well, I-- and correct me if I'm wrong, but I think that LB532 says that if there is a hearing and either-- and the respondent does not show up, that the ex parte order would stay in place. So that would be a case where there was an ex parte--

**LATHROP:** But they haven't gotten an ex parte order because it was not accepted, right?

**EILEEN REILLY:** That-- I-- I think that's correct. I'm-- I'm not-- I don't have a bill right in front me.

**LATHROP:** No, that's OK.

**EILEEN REILLY:** But I remember there's some language about that. I think that-- that where I see the problem there is at a hearing, at an evidentiary hearing, I'm speaking from a position of being at the WCA. When we hear there's a hearing, we're going to get involved so they have an opportunity to have an attorney who then comes in and helps them flesh out the details or they come to one of our workshops and we give them advice on the things that they need to say so they do have an opportunity to present a better-- a better way to present their evidence than they did when they were sitting by themselves in the protection order office and didn't have a clue about what they were

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supposed to say. And judges are becoming more and more willing to, as long as you have the structure, to allow you to flesh out the details. It-- it used to be that if it wasn't on the affidavit, you couldn't-- you couldn't flesh anything out.

**LATHROP:** OK. I appreciate your-- your work in this area--

**EILEEN REILLY:** Thank you.

**LATHROP:** --your testimony today, and answering my questions. I don't see other-- any other questions.

**EILEEN REILLY:** Thank you.

**LATHROP:** Thank you.

**MARK BESTUL:** Good afternoon, Chairperson Lathrop and members of the committee. My name is Mark Bestul, M-a-r-k B-e-s-t-u-l, and I'm a supervising attorney at Legal Aid of Nebraska in the Lincoln office. And I have extensive experience in representing victims of domestic violence over the last 12 years and I've been doing that for Legal Aid. I'd like to thank to Senator Cavanaugh for inviting Legal Aid to come testify today. Legal Aid is a-- is the only statewide nonprofit law firm providing free civil legal services to low-income Nebraskans. And Legal Aid has a long and extensive experience in representing victims of domestic violence both in urban and rural areas. Protection orders provide immediate and necessary safety protections for victims and their children. And Legal Aid knows firsthand the critical need to clarify and harmonize the protection order process to ensure that victims consistently receive the safeguards, and so we're here today in support of LB532. I myself have just-- in the area protection orders have represented 239 people in protection order hearings. I counted this morning in preparation for test-- testifying today. I have written this out but kind of in the interest of time, I'm just going to sort of cut to the chase and-- and what I was mainly going to talk about, too, is this self-granted ability of courts to just dismiss these cases outright that goes contrary to what the statutes allow. They can either issue an ex parte order or they-- or they can set the matter for hearing. And what they are doing then by just dismissing them outright is-- is taking an authority that they don't have anywhere else. If you file a civil suit against me, Senator Lathrop, and you put in your complaint that-- you know, your allegations against me is that I wore a dark gray suit today. If the judge doesn't flip through those cases and dismiss that nonsense,

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there is a judicial process that that will sort that out and get-- and be rid of that. Right now what you're seeing is a lot of cases, a lot of protection order cases that are just dismissed, and it's a very high percentage, just dismissed at the onset before anything happens, before anybody is served, and they just dismiss the case just based on the judge's discretion. It could be for any number of reasons, and sometimes they give an explanation and sometimes they don't, but that has a chilling effect on the people that are applying for those protection orders that they feel like that this judge feels I don't deserve this protection order and it could be just over some error that they overlooked. Maybe they wrote down something happened in 2001 instead of 2019. But we don't know. And-- and-- and like other civil cases, you know, judges don't make those decis-- you have the right to file a complaint and-- and let that process flesh out whether there is, you know, a-- a-- a cause of action there or not. And the judges have kind of given themselves this power to go into a protection order case and dismiss it without, you know, the proverbial day in court. And-- and I think you were asking questions related to that of the-- of the-- of the previous person testifying. But that-- those-- I mean this is kind of more from the practitioner's standpoint is just you do not see the court having that ability in other civil matters. And it's-- it's very unusual and it's-- and then these are the cases that are always filed by non-- nonlawyers. I mean I have never-- of those 200-plus protection orders I've done, I don't fill those out. The victim is the one who was required to fill out that petition and affidavit. That's one thing. It's not two separate things. The petition and affidavit is one form and that initiates the cause of action. And so they are filled out by nonattorneys who are quite often uneducated, certainly not educated in civil procedure, certainly not educated in legal matters. They don't know the statutes, they don't know what venue means, they don't know, you know, what burden of proof or any of those things mean or maybe even what an allegation means. And-- and then so the courts have then taken these unsophisticated, you know, petitions for relief and decided that they're just not worth seeing the light of day and denying them. And-- and-- and like I said, that is going to lead victims to believe that their case isn't worthy of getting an order or they don't want to pursue it anymore and they're not given, like in other civil cases, the opportunity to amend or correct the deficiency in-- in what they filed.

**LATHROP:** OK. Yeah. I don't see any questions. I appreciate you being here. I know you waited a long time and I still have another bill, so

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I'm going to keep things moving along, but thank you for your testimony.

**MARK BESTUL:** Thank you.

**LATHROP:** Appreciate it.

**DANIELLE SAVINGTON:** Senators, Chairper-- Chairman Lathrop, thank you for having me today. My name is Danielle Savington, that's D-a-n-i-e-l-l-e S-a-v-i-n-g-t-o-n, testifying today on behalf of Nebraskans Against Gun Violence. We support LB532 as amended by AM54. And gosh, I'm really glad that Mr. Bestul said the things that he had to say because as I sat there and listened to some of the questions, my testimony fell to the wayside and I thought about how chilling it is for my clients, who typically are in juvenile court, when they have to face the judge, who is the end-all, be-all of what's going to happen in their family. It's very scary for them. So when the judge in their case-- and granted, this is a little bit different than a protection-ordered cases judge-- when that judge critiques them, it can be earth shattering for them and it really shakes the foundation of their courage and their confidence. So I can absolutely agree with his comment-- commentary as to the "chillingness" of being denied. However, what I had intended to speak to you about was the fact that Nebraskans Against Gun Violence supports this, particularly given the amendment, because it protects domestic violence victims from the most heavily dangerous point in time, when they are leaving a domestic violence relationship. A woman is 12 times more likely to ex-- to be murdered by a gun than she is by another domestic violence weapon of choice-- that would be a bodily injury or other weapons-- making gun-- gun violence the most dangerous form of domestic violence that a-- that a partner will face. Additionally, from 1990 to 2005, two-thirds of homicides were perpetuated against former spouses or spouses using firearms and abuse victims are five times more likely to be murdered if their abuser owns a gun. The important thing about this amendment is it balances, which is a very difficult needle to thread and-- and a very difficult balance to find, the right of Second Amendment firearms owners to have due process if their firearm rights are to be removed from them. And this amendment and this-- the changes made in the process-- to this protection order process really ensures that at all stages the firearms owner has the opportunity to appeal and be heard as to why their firearm should not be taken away. And I think it's especially important that we have that clean process for removal and restoration of firearms rights if we are going to remove rights



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because as of right now in Nebraska there is no "shall remove" or "must remove" when a protection order is filed, so a firearms owner is entitled to continue to own, purchase, carry their firearms if they have a protection order that's issued against them. So I think that really-- this amendment really cleans that up and clarifies it for the pro se litigant, which, as you've heard a lot of testimony, is what most of these-- both the-- the people who are filing the protection order and their respondents are, is typically pro se. So I'll wrap it up so you can get out of here.

**LATHROP:** OK. I do not see any questions but thank you for your testimony.

**DANIELLE SAVINGTON:** Drive safe.

**ALEXIS STEELE:** Hello, Senator Lathrop an honorable members of the committee. I'm going to go ahead and go with something a little-- with a little more brevity than I'd prepared. My name is Alexis Steele, S-t-e-e-l-e, and I am the policy staff attorney for the Immigrant Legal Center, and I'm testifying today in support of five-- LB532 on behalf of my firm because it would benefit victims of certain crimes by simplifying and streamlining the protection order application process. While I am a victim's advocate, my work focuses on other forms of relief and other areas of concern. But nonetheless, because I am a victim's advocate, issues that make applying for and petitioning a protection order relevant are common to my clients. And something that I first learned as I began practicing here was that-- that clients-- we could explain to clients that protection orders existed and that they would be able to apply. After some-- all of the atrocious sorts of stories that I hear, I often find myself making that recommendation. And I noticed a disturbing trend which was that later when I would follow up with that individual, there would be a lot of confusion and in the end they would say it just-- I don't know, I guess it just didn't work, which prompted me to involve myself in-- in attempting to help with the process, thinking surely with an attorney, even though this isn't my focus, I will be able to help. And I'm very honored to have been able to help, but the issues that came up once came up every single time, one which is all of these stem from not knowing the legal process. But one major difficulty is that of choosing which protection order to solicit. This is pretty simple, and this bill very simply remedies that by allowing for that change to be made postpetition. And that's incredibly significant because there is so much work and there is so much time that goes into preparing an

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application. Next is filling out the form. Simply changing dates to approximate dates when recalling incidents is very important, especially since harassment begins often suddenly and then escalates and victims don't know to document everything. And then with victims of sexual assault and domestic violence, there are effects of trauma that impair memory and make that very difficult to fill. Finally, understanding denials: Victims who have their petitions denied feel invalidated and don't understand what happened, and even I am baffled, knowing the stories and what this person has been through, how in the world a petition could have possibly been denied. And when we're looking over the result, there is no explanation. Not only is this seemingly-- not only is this unfair, but there is the very strong likelihood that if more information could have been more effectively conveyed in a way that wasn't possible for the pro se applicant to do, that there would have been possibly a grant. So we support this bill and we encourage that support.

**LATHROP:** Very good. Thank you for your testimony, Ms. Steele.

**ANGIE LAURITSEN:** Good afternoon--

**LATHROP:** Good afternoon.

**ANGIE LAURITSEN:** --Chairman Lathrop and other committee members. I am actually here to testify on behalf of a fellow board member of Survivors Rising. She is watching from home and we wanted to make sure that her voice was actually heard today. The following is her words.

**LATHROP:** Why don't you give us your name so we--

**ANGIE LAURITSEN:** Oh, sorry. Angie Lauritsen, L-a-u-r-i-t-s-e-n. The following are her words: I am a survivor domestic violence and would like to share some of my story with you today. After having endured physical, sexual, financial, and emotional abuse for over a decade, I knew in order for my life and my children's lives to become healthy and healed, we could no longer remain living with or being near our abuser. I had been cut off from my family for several years. But after another incident of violence where my abuser strangled me in front of my crying children, I secretly reached out to my brother to help us leave. When my abuser left for work, my brother came and got me and my children. When survivors and their children are living under constant threat by their abusers, the effect on the brain is catastrophic. According to the Journal of Psychoneuroendocrinology, the hormone cortisol floods the brain, and survivors typically have had prolonged

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exposure to the stress hormone, leaving the body in a constant state of fight or flight. This impedes every aspect of a survivor's life unless a reprieve from the abuse and violence can take place. As a survivor, having been in this very situation where my children and I had to be under the protection of a protection order, I see the necessity of protection orders in order to stop the abuse. A streamlined process is vital for survivors during the crucial period of finally leaving the abuser, which is one of the most dangerous times for a survivor and their children. This period-- time is likely where the violence will escalate to its highest point to prevent the survivor and her children from leaving. Often survivors have small children, just like I do, and without having been giving a domestic violence protection order it is very likely that I would not be alive today to be able to give this testimony, nor am I sure that my children would be able to start their healing journey as they work through their PTSD. It is crucial for adults to have that relief from violence so that they can continue to work a job and care for their children as they heal themselves and crucial for children in order for them to heal from the abuse and have an opportunity to have the right hormones flooding their brains in order to learn in school and to gain healthy socioemotional relationships. According to the American Journal of Public Health, women and children granted protection orders report significant-- significantly lower levels of abuse and reduced/eliminated workplace harassment from their abusers, giving them back control of their lives that their abuser had taken away. Just the sheer act of coming forward and making the abuse public as a survivor, ask for legal protection is a Herculean feat in and of itself. If the process is streamlined for survivors, it is more likely they will pursue legal protective orders for both them and their children's safety. You have an opportunity today to create legislation so that no women or children have to choose between freedom from violence or having to endure a lengthy, complicated process to have a protection order in place. Thank you for your support.

**LATHROP:** Very good. Thank you for sharing that.

**CHRISTON MacTAGGART:** Good afternoon. My name is Christon MacTaggart, last name M-a-c-T-a-g-g-a-r-t, first name C-h-r-i-s-t-o-n, from the Women's Fund of Omaha. I won't belabor any of the points that you've already heard in previous testimony, but I would like to make a note about the hearing issue because I know that that's a concern. We-- we have had some conversations already about-- with individuals that are concerned about that. And so if you happen to have the bill in front

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of you, I would just ask that you turn to page 17, lines 4 through 7. This is specific to the domestic abuse order. And there's language in it that says the court shall not dismiss the petition without a hearing and shall immediately schedule an evidentiary hearing within 14 days. And so this, the hearing issue, is actually not new language. The sexual assault protection order and the harassment protection order both have different language that is not as clear but essentially says the same thing. It's-- unfortunately, in practice it doesn't always happen, and so we've tried to provide some clarification around that. The other thing I would note about that is that Nebraska is one of two states in the country that does not have mandatory hearings on every protection order filed. Hearings in this state are obviously only required if it's not issued ex parte, unless of course the respondent requests one. But us and Minnesota are the only states that do not have automatic hearings scheduled on every protection order. So I just wanted to note those two things with regards to the hearing. The other thing I would note quickly is I provided you a copy that the State Patrol has given me that is a fact sheet on NCIC [SIC] the Nebraska Crime Information System, that, along with a letter of support from the Douglas County Sheriff's Department, really identify the component of this bill that talks about the need for access to identifying victim information and why it's crucial for enforcement. And then the last piece I would note is you heard Senator Cavanaugh introduce-- or when she introduced the bill, talk about creating consistency between penalties for enhancement on sexual assault protection orders and domestic abuse protection orders, and I would just-- I want to be clear on that, that that-- the intent of that is to create consistency around those orders, but we are not creating any new penalties or any increased penalties. We're just creating a similar process to clear up confusion for law enforcement and prosecutors when they're enforcing those. And I'd be happy to answer any questions that you may have.

**LATHROP:** Very good. I don't see any questions.

**CHRISTON MacTAGGART:** OK.

**LATHROP:** Thank you for your testimony again. Anyone else here to testify in support of LB532? Anyone here in opposition to LB532?

**TIM HRUZA:** Good evening, Chairman Lathrop, members of the Judiciary Committee. My name is Tim Hruza, last name spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association. Let me first start off by saying that we understand the concerns, the

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issues, and the interest in this bill, and the reason that it's brought forward. I appear today in opposition to the bill with respect to one specific provision in one portion of the bill, and that appears in Section 1 dealing with harassment protection orders and the language that was discussed by the last testifier with regard to the requirement for a hearing to be held within 14 days after an ex parte order has been dismissed. The concern with that, the Bar's legislation committee looks at all pieces of legislation that we identify as having-- being of interest to attorneys in the state of Nebraska. The legislation committee con-- consists of a number of different types of attorneys and judges from across the state. This provision stuck out with regard to concerns about the number of harassment protection orders that might require a hearing and the effect that it might have on dockets across the state on the civil docket, and especially in a number of courts not just in Douglas County and Lancaster County where we're already short some judges in different places, but also in rural parts of the state. To be clear, I don't say that to diminish the need or the concerns that might be raised in these sort of harassment protection orders but just simply to bring to the committee's attention concerns related to the number of these that might end up on the court's docket. And I would also point to the court's fiscal note as acknowledging the fact that-- that there may be a significant impact on court dockets as a result of this. We have reached out to Senator Cavanaugh. We have talked to representatives of the advocates here today. We're working on language and we are committed to continuing to discuss that language as far as-- as how the-- the process might be improved or might be changed to address that concern. With that, I would be happy to answer any specific questions that you might have.

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

**TIM HRUZA:** Thank you.

**LATHROP:** Any other opponents?

**GREGORY C. LAUBY:** Senator Lathrop, members of the Committee, I'm Gregory C. Lauby, G-r-e-g-o-r-y C. L-a-u-b-y. I'm here in opposition to LB332 primarily in regards to its effect on the possession of firearms. If I'm reading AM54 correctly, it makes the conviction of a domestic violence offense and felonizes that for a period of lifetime and prohibits the ownership of a firearm thereafter. That is very troubling given the section of the Nebraska Constitution, Article I, Section 1, that recognizes an inherent, inalienable right to firearms

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which will not be denied or infringed by the state or any subdivision thereof. And I'm curious about what percentage of those convicted of a domestic violation have either injured or threatened to injure a victim with a firearm in Nebraska after even a period of one year and whether it's really not necessary to extend the ban for a lifetime in order to give some protection to possible victims. I'm also kind of interested in the incident percentage of protection order abuse. Unfortunately there are times which judges are required to exercise their wisdom to separate out frivolous and even malicious filings, protection orders, and at one time, at least, it was a relatively easy thing for a judge to go ahead and grant because there was no consequence beside keeping two people who obviously were in disagreement apart. But now the contesting of those hearings becomes more important to one individual or another when it means the loss of my guns that I use for hunting or store in my closet. And so in that sense I think it's-- it's created some discord that may have been unnecessary for the protection of individuals. And the other thing that I would ask is that notice given out to individuals who are being threatened with a protection order include some notification that if they don't appear or don't request a show-cause hearing, they could be subject to an order that would cost them the possession of their firearms. And with that, if there are no questions, I thank you for your endurance.

**LATHROP:** No questions. Anyone else here in opposition to LB532?

**PANSING BROOKS:** He was neutral.

**LATHROP:** Oh, I'm sorry, was he neutral?

**PANSING BROOKS:** I think he was neutral.

**LATHROP:** He was opposed, wasn't he? Yeah. Anyone else here in a neutral capacity? Seeing none, Senator Cavanaugh, I have eight letters of support that will be entered in the record and one in opposition from the-- Mr. Hruza, who testified.

**CAVANAUGH:** Thank you. And I appreciate everyone's testimonies today. To Mr. Lauby's comment, there-- in my amendment it did originally strike "within the past seven years," but I intend to amend that so that the-- not changing the state statute at all, that your rights to own a gun are reinstated after you complete your course of the juvenile-- or not the juvenile-- the justice system, I'm sorry. So after your crime has been resolved and you've served your time, you

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can have access to your guns as state statute allows, so just to clarify that, although I don't think I did. But thank you all so much of-- for listening to this important bill today. So in 1977, no state in this country outlawed spousal rape. All 50 states allowed for that. Nebraska was the first state in this country to outlaw spousal rape. A different Cavanaugh introduced that legislation, and I'm very proud of that fact. This legislation would make us the 49th state that allows victims of assault, harassment, rape to have a hearing to understand why their-- their protection order is dismissed, to get an explanation when it's not enacted. And I think it's really important for us to keep in mind that this is not an easy thing for victims to do, this is not an easy thing for victims to go through. Nobody wants to fill out a protection order. It's a hard decision to make. You're often doing it in-- against someone who's very near and dear to you, and it takes a toll to do such a thing. So I'm happy to bring this bill that clarifies the process for victims and also creates some resolution where there currently isn't any. I appreciate your time this evening and I hope that you will vote to move forward my bill and my amendment. Thank you very much.

**LATHROP:** Very good. Thank you, Senator Cavanaugh. Have a great weekend.

**CAVANAUGH:** You too.

**LATHROP:** That will close our hearing on LB532 and bring us to our last hearing of the day, LB516, and our own Senator Pansing Brooks. Good evening, Senator Pansing Brooks, and welcome to the Judiciary Committee.

**PANSING BROOKS:** Good evening. Thank you for seeing this. I'm Senator Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I am here to introduce LB516, a bill intended to clarify that child victims of sex trafficking shall receive services for abuse and neglect, regardless of the relationship of the reported abuser to the victim. And just before I start, I didn't plan on-- I-- I did not want to bring this bill. I-- a number of the advocates decided-- really came and worked on me to bring this bill. I believe that the law already states that all of this that you're going to hear is part of our law that we've already decided upon, starting in 2013 with Senator-- Senator McGill, and so you'll hear-- and then following up in 2015 and '16 on legislation that we also passed and reconfirmed in legislative intent all of this information. But because of some confusion the--

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and this has to do with the 3(a) which is the abuse and neglect statute where in 2013 Senator McGill added language to include a child that's trafficked in the abuse and neglect language. What we decided was, and it was reconfirmed in 2015, my first year when I brought Senator Scheer's-- or cosponsored Senator Scheer's bill and when we talked about the Strengthening Families Act, we had all sorts of-- of testimony about the fact that these kids that are trafficked need to be under abuse and neg-- the-- the 3(a) abuse and neglect statute because they're vulnerable and something is going on wrong somewhere if they're being trafficked. So H-- we really need HHS to oversee it. Well, through a myriad of-- of misunderstandings, I guess, HHS did not exactly feel-- they felt that they had, and they will probably come and talk to-- they are here to talk about that. But they felt that they would only come in if a-- if a child is-- is trafficked by a parent, which leaves children trafficked by the boyfriend of a sister unattended and-- and, you know, uncared for and unwatched by the state. So you'll hear all this information. Today we had a very productive meeting with HHS and so I'm hopeful that, number one, we're going to take significant care of the giant fiscal note, which I was ready to come in and-- and really make-- make a big production about because of course our laws already require this to happen. So again, I really appreciate the Department of Health for coming in and working on this, the AG's Office, many things. I'm going forward now with my-- the rest of the opening of my bill. So I just wanted to clarify that little part. The-- the bill specifies that the Department of Health and Human Services shall respond to reports of trafficking, and I'm going to pass out some information here to everybody, but shall respond to reports of trafficking, conduct an in-person assessment, and appropriately coordinate with law enforcement agencies, the local Child Advocacy Center, and the child abuse and neglect assessment team. In collaboration, these agencies shall provide services or refer and connect the child and family to services based on the needs of the child and family. As outlined in a 2016 policy memo, the Department of Health and Human Services Division of Children and Family Services "considers youth involved in sex trafficking as victims due to their age and increased vulnerability to exploitation by adults." This is similar to the status of child-- children abused and neglected under 3(a). Despite this recognition, I think through confusion, but the department has treated reports of a youth being trafficked differently depending on who the trafficker is. Those reports of a youth being trafficked with-- with parental or caretaker involvement are categorized as-- as quote "child abuse and neglect intake" and are accepted as a "priority one" with a response time not to exceed 24



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hours. Reports that do not include parental involvement in trafficking of a youth are not categorized as child abuse and neglect intakes-- that was never intended-- and they do not receive the same priority response from the department. Let me repeat. The intent of this bill is to require, pursuant to Statute 28-831 and 28-710, that trafficked children, regardless of the relationship to their trafficker, have access to services necessary to address their need for safety and to prevent future abuse and exploitation. These services will be determined based upon the department's assessment of the safety risk and needs. We are also asking the department to do what is already required in existing statute 28-713, subsection (1)(b), for alleged out-of-home child abuse or neglect, see page 6, lines 16-21 of the current statute. "The department shall investigate for the purpose of assessing each report of child abuse or neglect to determine the risk of harm to the child involved. The department shall also provide such social services as are necessary and appropriate under the circumstances to protect and assist the child and to preserve the family." The current status of what is happening to youth who are trafficked by someone other than the parent is highly disturbing. I've heard from advocates that youth are being charged on ancillary charges and detained in detention centers in a misguided effort to keep these youth in presumed "safe" environments. Colleagues, it was never the intent of this body to treat a child sex trafficking victim who is trafficked by her boyfriend or the sister's boyfriend differently than one that was trafficked by his or her parents. We discussed and debated this before my time here, as you will hear, and I have included Senator Amanda McGill's-- some of her testimony and highlighted it for you. And-- and we have debated it during our time here. We made clear decisions that not only should youth who are brought-- who are bought and sold for sex that they should not be treated as criminals or detained, but also they should be treated in a way similar to abused and neglected children. Something is going on wrong somewhere and the families need support and help from HHS to figure out where the problem is rather than just leaving them abandoned. LB516 clearly lays this out and ensures that these victims can access services. A youth detention center is not an appropriate placement for a trafficked youth. We've already decided that. We must do better. LB516 also supports the prosecution of traffickers by increasing the statute of limitations for prosecuting traffickers of children and adults. Currently, pandering has a longer statute of limitations than trafficking of a minor. We know that it often takes time for survivors to come forward, especially someone who was mistreated as a child and especially with law enforcement and

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especially when these survivors are so young. Three years is not enough time for that. I know you are all looking at the beyond-belief \$16.9 million fiscal note on this bill and, as I stated-- stated earlier, we've been working with the Fiscal Policy Office, with the department, and we have come to an agreement to bring an amendment the second after-- after this hearing. And the fiscal note appears to arrive, and the concern by the department I think is miscommunication on all of our parts, due to the words "at risk" kids, and the fiscal note acknowledges that except for an at-risk case, it appears that these children would already be under the jurisdiction of the department. And certainly federal law also mirrors that-- that understanding. So I have an amendment right now to this bill that I have decided to bring after the stakeholders and I met with the Department of Health and Human Services this morning in an effort to be responsive to two main concerns they ex-- that have been expressed. I'm submitting AM327 which does two things. On page 7, line 6, the introduced copy includes language about the receipt of a report that a child "may be a victim." Out of concern that this is too broad, AM3-- AM327 tightens the language to strike "may be a" replaces it with "is a reported victim." Secondly, on page 7, (iv) the amendment replaces the paragraph to-- to-- to stress the following. First, the Department may provide or refer and connect services. This clarifies that the Department of Human Services is not obligated to provide the services for all children when a family may simply need appropriate guidance and referrals for community-based services. Secondly, the amendment also makes clear that the department only needs to provide or refer and connect to services as deemed appropriate by the department and based upon the department's assessment of the safety risk and needs of the child and family to respond to or prevent abuse, neglect, and sexual exploitation pursuant to trafficking. I am willing to continue to work with the department. I'm grateful that we made some real progress today on what statutory guidance and language they need to protect the safety of trafficked youth. I am not, however, willing to continue to allow the current policy and procedures to continue, a policy that legally recognized all trafficked youth as abused and neglected in state statute but only deems those trafficked by a parent in need of our protection and support. Today you'll hear testimony from some survivors, some service providers, and law enforcement regarding the critical needs of this bill. I ask that you please listen to the testimony today, consider the needs of the trafficking victims, and advance LB516 with AM327. And again, I want to thank the Women's Fund and the survivors and the AG's Office and-- and also the

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Department of Health and Human Services for working with us on this.  
Thank you.

**LATHROP:** Thank you, Senator Pansing Brooks. First testifier. We do have a little bit of a weather situation and I'm a little concerned about getting my committee back home safely, so if you can-- the three-minute light, that's probably pretty short to start with, but--

**MEGHAN MALIK:** I'll read quickly.

**LATHROP:** --I don't want everybody slip-sliding all the way home and people getting in accidents.

**MEGHAN MALIK:** OK. Thank you. Good afternoon, members of the Judiciary Committee. My name is Meghan Malik, M-e-g-h-a-n M-a-l-i-k, and I'm the trafficking project manager with the Women's Fund of Omaha. LB516 will address the gaps in our current response for sex trafficked children. Under our current state and federal law, a child that is purchased or sold for sex is considered sex trafficked. Traffickers are master manipulators and employ tactics to create trauma bonds or a strong loyalty in relationship to the abuser as a result of false promises, manipulation, and a need to be loved with victims. Most children who are sex trafficked will rarely disclose their trafficking. They will often feel shame and guilt as a result of their trafficking victimization. They may fear their trafficker or they may have a relationship with their trafficker. The fear and lack of trust from law enforcement and service providers also prevents disclosures. This requires us as adults to have a better system for identification and response. The problem that LB516 tries to solve is the Department of Health and Human Services by policy has a different response for trafficked children depending on who the trafficker is. If you are a child who is being trafficked by a boyfriend or a neighbor, you may very well end up in juvenile detention or probation for your own safety because of the inability to access services. The Health and Human Services memo, 3/2016, which Senator Pansing Brooks handed out, currently states any minor sex trafficked by a third party-- party perpetrator receives a law enforcement-only response. This is clearly a DHHS responsibility that is being selectively applied depending upon the identity of the trafficker. The important question here is, is a child any less abused and neglected if the person who is selling them is not their parent? LB516 ensures that DHHS would provide the same response to all child trafficking victims. This bill is consistent with federal law from May 2017 which amended the definition of abused and neglected children to include sex trafficking victims irrespective

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of the relationship of their abuser. Please see the fact sheet I handed out for more information on the federal law. I've been working on this issue for four years alongside with the Attorney General-led task force. Task force members and the department have met numerous times in the past three years discussing this concern, providing written feedback on policy, and creating resolutions. This is still the number-one call I receive from concerned partners, and it goes something like this: 15 year old sex trafficked by her boyfriend. Parents are disengaged but not the abusers. The Nebraska Child Health and Human Services neglect hot line refers this as a law enforcement-only case to criminally investigate it. Everyone is worried for her safety and knows she needs services. As a result, she's charged with theft, drugs, fill in the blank, and she's put in detention, DCYC, Madison County, fill in the blank. She's a victim and she is being actively abused and neglected and we are treating her like a criminal. That call I've had multiple times over the past four years. We respectfully request the Judiciary Committee to advance LB516 with AM327. Thank you for your time and consideration. I'd be happy to answer any questions.

**LATHROP:** Thank you, Ms. Malik. Senator DeBoer.

**DeBOER:** Sorry. Have you tried to work with the department on this problem?

**MEGHAN MALIK:** Yes. We've met multiple times over the past three years. We've done resolutions at the task force level. We've provided written feedback on policy.

**DeBOER:** And do we need this as-- as legislation to solve the problem? I mean--

**MEGHAN MALIK:** Yes, we believe that we need a clear statutory guideline that lays out how these cases should be handled because the entire-- the department is interpreting it differently. And so we believe that legislation is critical.

**DeBOER:** OK, thank you.

**LATHROP:** I see no other questions. Thank you for your testimony.

**MEGHAN MALIK:** Thank you.

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**AMANDA MCGILL JOHNSON:** I forgot to fill out the form. I will before I leave.

**LATHROP:** You what?

**AMANDA MCGILL JOHNSON:** I'm not used to having to fill out the form.

**LATHROP:** Out of the chair [INAUDIBLE] out of the chair.

**AMANDA MCGILL JOHNSON:** [LAUGH] I am Amanda McGill Johnson, M-c-G-i-l-l J-o-h-s-o-n [SIC] -- not used to spelling the second part of my last name either. Senator-- Chairman Lathrop, members of the committee, Senator Pansing Brooks, thank you for all the work that you've done on this issue over the last several years since I've left, and thank you for bringing this bill. She did a wonderful job of summarizing everything that we did six years ago, so I'm not going to read from this. But I will say that first of all I'm very proud that we as a state decriminalized prostitution for minors before just about anybody else did, something just to be-- a lot of other states still haven't done yet. And the whole point in that, or I remember as we were discussing that issue, was that oh, well, right now-- or back then the argument was, well, that's how we're getting these kids, that's how we're able to get them services, was by charging them with this. And so I time and time again told them it's OK, they're going to get services to HHS now, it's OK, they're going to get them this way. As Senator Pansing Brooks said, I have-- there's testimony on the record and the transcripts you can go back and look at. And so as I've been working with Meghan Malik and the Women's Fund over the last several years and being updated on this, it's just been incredibly frustrating that this has not gone into place. If the youth aren't being choose-- or charged with something else in order to get services, then they're just falling through the cracks altogether and getting nothing to help them. And so, you know, unfortunately it is necessary to come in and make some changes to the existing law to clarify that. You know, there are other things, like we were one-- again, this was such a new topic for every state that, you know, we were doing the best we could with language and legislation back then and you learn different-- you learn about the issue more and it evolves over time and so, you know, I can't say that I foresaw that these kids would be trapped-- that the department wouldn't take kids because their parents weren't the traffickers. We've realized now that law enforcement aren't the ones who are likely to find the youth, that it's other service providers, so we need a doorway to get those youth into services again. And Senator Pansing Brooks's bill lays that out in a much more clear way.

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The department isn't the only organization that has question. There have been judges over time that have questioned whether the language that we drafted years ago was really meeting the purpose or doing what we wanted it to do, so I just urge your consideration of this and hope you will advance it forward so we can fix this problem. Thank you.

**LATHROP:** Very good. I-- I'll just compliment you. I-- I have to say you-- you started down this road on the sex trafficking. I was sitting on Judiciary Committee when it happened. I had no idea--

**AMANDA MCGILL JOHNSON:** Yeah.

**LATHROP:** --at the time the scope of the problem. And the work you've done, and others since you've left, has been remarkable. So thank you and [INAUDIBLE]

**AMANDA MCGILL JOHNSON:** Thank you. We did a lot of good things back then.

**LATHROP:** Yeah. Good to see you.

**AMANDA MCGILL JOHNSON:** And they still do.

**LATHROP:** Good afternoon.

**JESSYCA VANDERCOY:** Well, good evening, actually, at this point.

**LATHROP:** Yes. Oh, no, I'm aware of it.

**JESSYCA VANDERCOY:** [LAUGH] But thank you to the committee. My name is Jessyca Vandercoy, J-e-s-s-y-c-a V-a-n-d-e-r-c-o-y, and I'm the director of Indigo, a program at the Women's Center for Advancement. Indigo serves victims of sex and labor trafficking in the Omaha area. We provide a really extensive array of services from food and clothing, emergency long-term housing options, emotional support, counseling, employment support, transportation, access to our medical and mental healthcare clinic, legal services, and intensive case management. Since March 2017, victims served in-- in Indigo are 90 percent domestic trafficking victims, 93 percent are female, 7 percent are male, 66 percent are under the age of 25, and 17 percent are under the age of 18. I could share with you many stories about traffic victims under the age of 18 who do not have a parent or legal guardian willing or able to piece together the services, support, and safety provisions for their children which are needed to heal from trauma caused by the violence and exploitation of trafficking. To illustrate,

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let me tell you about Leah [PHONETIC] and Nadia [PHONETIC]. Leah, a minor who was held in small quarters in an Omaha home where she was promised freedom after balancing her debt in a notebook ledger that was stored in her trafficker's top dresser drawer, she owed her trafficker \$10,000 for transport to the United States and was responsible for paying for rent, food, and a cell phone bill used to set up sexual assaults with local men seeking intimacy-free sex at an affordable rate. Leah, a minor in a foreign country, no formal education and limited English, was brave. She connected with a community professional, shared part of her story, and was ultimately connected to Indigo's extensive array of services. Because of her age and her victimization, our program reported the victimization to the Child Protective Services hot line. Our request for intake was denied because Leah's trafficker was not her parent. Leah was-- did not have a legal guardian or parent in the United States. Parents and legal guardians have rights, duties, responsibilities, but they also have authority and power. Legal guardians or parents give permission for people under the age of 18 to access medical care, dental care, medication, to get-- access medication, enroll in specialized educational programming, field trips, and summer school. In Leah's case, program staff signed permission slips to ensure Leah had access to educational community experiences and Leah waited until her 19th birthday to address her heart murmur and her need for dental surgery. Let's talk about Nadia. Nadia is a domestic trafficking victim born in Nebraska. Nadia has been involved in juvenile-- juvenile justice system for four years. Nadia has experienced significant community violence including the death of a parent to gun violence. She was raised in a home that was not always physically or emotionally safe. Over the four years she remained on juvenile probation, she traveled-- she was placed in facilities all over the country: group homes, boot camps, detention centers. No expense was spared to provide residential care by the juvenile justice system that unfortunately is limited on impact with these crossover youth, youth that fluctuate or are at risk for both-- entering both systems. In 2017 and nearly 2000 miles away, Nadia left the residential care program, engaged in survival sex to receive access to food, shelter, and transportation. Nadia was on her way back to familiar landscape, Nebraska. Somewhere on her journey, Nadia met a man, a dad-like figure eager to protect and make surviving on the streets a little easier-- shelter, transportation, food, connections to other young people to help with the fears of being on the streets alone, and companionship. Soon Nadia was on a dating and connections Web site in Colorado, Arizona, Nevada, Florida, Illinois. The shelter, food and transportation, companionship, and street

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protection were not free. Later that year, Nadia was tired, homesick, and brave. She--

**LATHROP:** Jessica--

**JESSYCA VANDERCOY:** Yeah.

**LATHROP:** --yeah, I got-- I-- the light is red.

**JESSYCA VANDERCOY:** Oh, it's getting good though.

**LATHROP:** No, I-- believe me, it's all very interesting but--

**JESSYCA VANDERCOY:** Can I end with just my ending here, just it's--

**LATHROP:** Which is you want us to support LB516?

**JESSYCA VANDERCOY:** I do, but I also want to say on the record that I'm not here to engage in any criticism or blame of any system but to really note that-- the specialized needs of trafficking victims and the need to explore abuse neglect for minor victims even when the traffickers, recruiters, and buyers are not their parent.

**LATHROP:** We-- we fully understand that. That-- I-- I get that and I can't believe that we're here on a bill like this, to be honest with you. I-- and--

**JESSYCA VANDERCOY:** Well, I echo your sentiment. Thank you.

**LATHROP:** I have to tell you, I am troubled that Health and Human Services made this distinction and we have to have a hearing to point out to them that these kids are the same victims as if their parents did it. I-- yeah, I-- I get it.

**JESSYCA VANDERCOY:** Good. Thank you.

**LATHROP:** And if I'm frustrated, it's because we have to have the hearing at all and it appears HHS has been trying to dodge responsibility for one class of kids that are exactly like the other class of kids that they're providing services to.

**JESSYCA VANDERCOY:** Yep, agreed. Thank you.

**LATHROP:** So I-- I appreciate you being here today. Good afternoon-- evening.



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**COLLEEN ROTH:** Good evening. Chairman Lathrop and members of the Judiciary Committee, my name is Colleen Roth, C-o-l-l-e-e-n R-o-t-h. I'm a senior director at Project Harmony Child Advocacy Services. As part of our core services at Project Harmony, we conduct forensic interviews of alleged trafficking minor victims for the FBI, Homeland Security, local law enforcement, PromiseShip, and DHHS. In 2018, we conducted only ten forensic interviews on suspected minor victims of sex trafficking, and I believe there are many more victims of sex trafficking that are slipping through the cracks. I give a lot of national statistics and explain my opinion by all the reports that we have reviewed at Project Harmony involving these youth that I'm going to skip through and just jump to the problem that this bill addresses. Currently the department only accepts kids with signs of trafficking if there is an alleged caregiver. I'd like to share with you an actual case example of the type of case we see with signs that youth is at risk for sex trafficking by someone other than a caregiver. These signs include missing, vulnerable youth, contract-- contact with older men, prior CPS history, youth participating in sexual acts in exchange for shelter, drugs, money, food, or any other item of value. We recently reviewed a nonaccepted DHHS report on a 14-year-old on January 28 of '19. This youth was missing 18 times. She has 14 prior CPS intakes. Her parents often don't know where she is and don't report her missing. There's allegations that older male provides her with cigarettes and marijuana. She has multiple mental health diagnoses. She's been seen with expensive items and she also claims that she is pregnant. This is a does-not-meet-definition intake. Currently the only agency receiving a report on this youth is law enforcement through a missing juvenile report. Law enforcement will investigate any elements of a crime from a DHHS report and when the investigation is complete, they are done. They are-- it is not their role to assess youth for safety or provide services to the family. These youth are at the highest risk for sexual exploitation and trafficking and they are slipping through the cracks. They deserve the same coordinated investigative response between DHHS, law enforcement, and the Child Advocacy Centers as any other alleged child abuse victim. So on behalf of Project Harmony, we respectfully support LB516.

**LATHROP:** Thank you.

**COLLEEN ROTH:** You're welcome.

**LATHROP:** I see no questions.

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**COLLEEN ROTH:** OK.

**ANNE BOATRIGHT:** Good evening, Chairperson--

**LATHROP:** Hello.

**ANNE BOATRIGHT:** Oh, sorry.

**LATHROP:** Welcome.

**ANNE BOATRIGHT:** Thank you. Chairperson Lathrop and members of the Judiciary Committee, my name is Anne Boatright, A-n-n-e B-o-a-t-r-i-g-h-t. Sorry if I talk fast, but I don't want to keep you here for hours on end. I'm a registered nurse and the state forensic nursing coordinator with the Nebraska Attorney General. I come here today as the representative for the Attorney General's Office in support of LB516. Over my more than 12 years as a forensic nurse, I've served over 350 victims of sexual assault trafficking and domestic violence. In my work across the state, I develop best-practice standards of the aforementioned crimes, and over the past 18 months I've trained over 2,500 law enforcement and healthcare providers in sexual assault and trafficking-- been a little busy. I recently have also trained each child abuse/neglect hot line employee regarding trafficking and the Attorney General's Office was very grateful for this opportunity. While working with dozens of children who could meet definition of victims of sex trafficking across our state, I have seen the need that exists to provide them with appropriate care and services. We know many services are needed to appropriately serve these victims. We also are cognizant of the concerns of the Department of Health and Human Services but are willing to collaborate to resolve all issues. Some examples I would like to share in relation to the victims that highlight the needs are as follows. I would also like to stress to the committee that these examples did occur within the last six months and have been resolved prior to my training of hot line staff in December. One such victim's abuse began around the age of eight years old. She was a witness to drug abuse, domestic violence, and eventually was sexually assaulted herself. At the age of 12, she began running away from home and exhibited signs of being at risk of trafficking, beginning with missing for days at a time, missing school, coming back with objects that the victim could not afford to purchase on her own. Those continued to escalate over the next four years. By the time of her 16th birthday, she had over 21 intakes to the hot line. After running away for the last time, she was missing for care for six months. When she was found, she was adjudicated as

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a delinquent and is currently under the supervision of probation in an appropriate foster care setting. Evidence existed she was trafficked across our state, but the investigation of her buyers and traffickers is ongoing. Another example is of a 14-year-old who presented at a hospital nine months pregnant. She had a two-year-old child also in her care. She was seen in a hospital parking lot being threatened by a male who was approximately 30 to 40 years old standing over her threatening to punch her. When she went to the hospital, care was provided. Notification of DHHS and law enforcement was made. The victim was discharged. The male was not identified. They quickly left the area. After the victim left, local law enforcement notified me of the potential trafficking of this minor. I called every hospital along I-80 with the description of the victim and adult male. Luckily, the victim presented at a different hospital on the other side of the state. Law enforcement, DHHS, and I were notified of the victim's arrival. The adult male was arrested and the minor victim and her children were placed in foster care. These are two personal examples from my own personal experience within the last six months that illustrate that we as a state need to examine how we provide necessary services to children who are reported to be trafficked. LB516 is one step to ensure this. Thank you and I'd welcome questions. Sorry.

**LATHROP:** I do not see any questions.

**ANNE BOATRIGHT:** Thank you.

**LATHROP:** But thank you.

**ANNE BOATRIGHT:** Yes.

**KAREN BOWLING:** I don't think I'll be able to talk as fast as Anne, but good evening.

**LATHROP:** Well, you could talk briefly too.

**KAREN BOWLING:** OK. Yes. That will pass. I will do that.

**LATHROP:** Nobody says you've got to read it all.

**KAREN BOWLING:** OK, fair enough. Good evening, Senator Lathrop and members of the Judiciary Committee. I'm Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g, and I'm the executive director at Nebraska Family Alliance. And I want to thank Senator Patty Pansing Brooks for bringing LB516, and we are here in support. And also, it is great to see Senator Amanda McGill Johnson once again. In 2007, NFA started

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advocating for traffic victims through public policy efforts and community awareness initiatives after meeting a trafficked survivor from Lincoln Nebraska. Her story was heartbreaking. To honor her privacy, I will refer to her as Maggie. Maggie was a minor and graduated early from Lincoln Southwest after receiving a full-ride scholarship to Southeast Community College. Before entering SCC, she became a victim of trafficking and was advertised for sex on-line, quote, as young and fresh, for more than seven months. Based upon research conducted by Creighton University Human Trafficking Initiative, 20 percent of individuals advertised on-line for sex in Nebraska are marketed as very young based on keywords or in their posted age. Sadly, Maggie was one of those victims. Maggie is more than a statistic to me. She was a daughter of a single mom that had reached out to me following a parenting class that I was teaching at the church we attended. At that time, there were no services and we were able to provide services for her to go to New York. Though there is no standard profile of child sex-- sex trafficking victim, several risk factors make certain children more-- are more success-- excuse me, susceptible. Reports indicate that traffickers often target children and youth with a history of sexual abuse, dating violence, low self-esteem, and minimal social support. There is also a strong correlation between sexually exploited youth and childhood sexual abuse and chronic maltreatment and neglect. Research findings estimate that between 33 and up to 90 percent of victims of commercial child sex exploitation have experienced these types of abuses, according to the Journal of Child and Adolescent Trauma. We're grateful for Senator Patty Pansing Brooks and her staff's commitment to work with Department of Human Services and find solutions because these traffic victims deserve our protection and care. Thank you for your time.

**LATHROP:** Yeah, thank you. I don't think anybody here argues with that right? Thank you. Welcome.

**TOM VENZOR:** Good evening, Chairman Lathrop and members of the Judiciary Committee. My name is Tom Venzor, T-o-m V-e-n-z-o-r, and I'm the executive director of the Nebraska Catholic Conference, and we're here today to support Senator Pansing Brooks's LB516 on behalf of the conference. I'll sort of skip over here the first couple paragraphs of my testimony, which is mostly just talking about some of the-- the statements that Pope Francis has made, very strong condemnations of human sex trafficking and really just it being an open wound on the body of contemporary society and a violation of the human dignity of these children, and step in here to the fourth paragraph. Our state's

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public policy has come a long way the last several years in recognizing the evil and crime of human trafficking and this has been certainly a noble effort on the part of many. In that we have a long way to go, we believe that LB516 is a step in the right direction to make sure that we can provide important services to those who have been trafficked. And again here a quote from Pope Francis where he says, you know, we need to ensure that our institutions are truly effective in the struggle against this scourge and we do believe that LB516 really equips our state and our state institutions to make sure that they have the infrastructure and the capacity to truly be effective as they encounter these trafficking victims and their families and their circumstances. As well, I-- I do want to note another thing, too, here. We just really want to recognize obviously all those who have their boots on the ground and-- and work day in and day out on this effort to end trafficking, but also most especially those-- we recognize the courage of those who are survivors because it's their witness that is an inexhaustible source of support for even the new victims. And our ability to listen to their stories and to meet their needs and to meet the needs of those victims who will be assisted in the future by the Department of Health and Human Services through this legislation will help I think further inform our abilities to encounter the suffering that they have, to meet their daily needs, and to help put them on the path of restoration. So we appreciate this legislation and thank you for your time.

**LATHROP:** No, thank you. I don't see any questions. Thanks, Tom.

**TOM VENZOR:** Thanks.

**ANGIE LAURITSEN:** Good evening again. My name is Angie Lauritsen, A-n-g-i-e L-a-u-r-i-t-s-e-n, and I currently serve on the board of directors for Survivors Rising. I-- the very first thing that I would like to say is that I appreciate the deletion of the word "prostitution." Prostitution over the years has taken on a social meaning for which sexual acts performed are consensual. I want to be perfectly clear about something by the very definition of why we are here. Children cannot provide consent to perform a sexual act. Sex without consent is rape and rape of a child by any definition is considered child abuse. For example, when I was 4 years old, my uncle was babysitting my brother and I. He was 14 and told me that he had a new game that he wanted to try out. He said that we needed to go back into one of the bedrooms and he would show me the game. He said that I had to pull my pants down and lean over the bed. And at that point,

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that is when he entered me from behind. I of course made a noise and he said that the game was over and to pull my pants back up and to not mention it to anyone. We went back out to the living room and I told him that it hurt, whatever he did to me, and he just told me to be quiet and that I could not say a word or he would get in a lot of trouble. I was not a victim of human trafficking. This is a story about rape and consent with children. Did I walk into the room with him? Yes. Did I pull down my own pants? Yes. But as a four-year-old little girl, could I have provided consent? Absolutely not. And under Nebraska law, I could have been 8 or 12 or 15 years old in the story and the result is the same. I was raped that day and rape of a child is child abuse. I hope that fact is never up for debate. Human trafficking of children is rape. These children deserve and desperately need the same support as any victim of child abuse. I'll admit that even as a survivor myself, I didn't truly understand the horrific realities of human trafficking. Shortly before being elected to Gretna City Council, I attended the Women's Fund annual luncheon where one of the things provided was a map of the state of Nebraska. On this map, there is a large red circle over Gretna, indicating that we had a high prevalence of human trafficking in our town. This was a surprise to me, so I started asking questions, unfortunately. At the time, I had a cousin who worked as a child sex crimes detective for Douglas County Sheriff's Department and when I asked him about human trafficking in our area, his first response was, are you sure you want to know? And I'll skip everything that he told me and-- to conserve time. But imagine a 12-year-old girl or boy that you know. Imagine that they made one bad decision that trapped them into a cycle of being repeatedly raped. Imagine that they are finally rescued from this horror. Would you want them to have the same support of any victim of child abuse? Today, without this legislation, that's not what would happen. We need HHS to step up and provide the same services to traffic survivors as they currently provide to victims of child abuse. They are one and the same and needed to be treated as such. Our job here today is to make sure that we are protecting the victims of sex trafficking to the best of our abilities. We need to provide these victims the necessary tools in order to become successful humans in our society. We need to look past any excuses there might be in preventing this piece of legislation from moving forward. And I thank you and I appreciate your time and I can offer or I can answer any questions that you may have.

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

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**ANGIE LAURITSEN:** Thank you.

**SARAH FORREST:** Good evening. Good evening, Chairman Lathrop and members of the Judiciary Committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t, and I am the special projects coordinator at the Nebraska Alliance of Child Advocacy Centers where my work focuses on the response to commercial sexual exploitation of children. I'm testifying on behalf of the Nebraska Alliance in support of LB516 today, which will make important improvements to our state's ability to prevent, identify, and respond to the trafficking of minors in our state. My written testimony provides details and some sort of facts and figures on some of the gaps in Nebraska's approach to trafficking of minors that the Nebraska Alliance is seeing. I want to emphasize that these gaps in our opinion are not the-- due to the failing of any particular agency, per se. Rather, it's really rather new in Nebraska and the United States to consider sex trafficking a form of child abuse, and it's taking time for our statutes and our systems to catch up and implement effective responses. We strongly believe that LB516 is an important step forward in this regard. First of all, this bill provides a consistent statewide response by DHHS, the expert agency in responding to child abuse, to all reports of suspected sex trafficking. I do want to say that it's actually quite common in other states across the nation, as well, where you'll have a different response for trafficking of minors based on who the-- who is the trafficker, whether it be a caretaker or someone outside of the family home. And so that's been a real effort-- place where federal and state laws have been shifting and really trying to get child welfare systems to step up and begin addressing these problems in new ways. And I think LB516 is part of that national move because we realize these cases are special and we need a special response to them and we need to help fill in this gap, which, again, is not-- this is just a system gap that really has spanned across the United States. Currently, as you've heard, we have a patchwork system where too many child victims are missed or end up in the juvenile justice system because we are relying on law enforcement agencies alone to investigate many of these cases. In our reading of the law, DHHS must respond to trafficking only when a law enforcement custody-- has taken a child into custody or a child has been made a state ward. LB516 allows children and families to access services in many different, less-restrictive ways. Through an assessment process, children and families can be put in contact with community-based services, which would actually save money and resources and we think also would help in those situations where maybe a child is very at risk of trafficking but has not actually yet

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been trafficked. And this would be similar to what DHHS already does for other child abuse and neglect cases. Something else I want to point out is the important change in substantiating reports. Currently, unless you can prove a specific perpetrator abused a child, a case cannot be considered substantiated under Nebraska law. This would basically allow cases where there's evidence that a child has been exploited, perhaps through sexual abuse images or on-line postings, for that case to still be considered substantiated as opposed to unfounded, and so that way we can have a better and more accurate count of child victims of sex trafficking, and labor trafficking, as well, which is included in this bill. I will just wrap it up and say this is very important. And I also have some thoughts on the fiscal note if anyone cares to ask me questions. Thank you.

**LATHROP:** I do not see any questions, surprisingly.

**SARAH FORREST:** OK. Thank you. Safe drive home.

**LATHROP:** Thanks, Sarah. Any other supporters of LB516? Any opponents?

**SPIKE EICKHOLT:** Good evening, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of Nebraska Criminal Defense Attorneys Association. We are opposed to a very narrow portion of the bill. No one's testified to it. Senator Pansing Brooks mentioned it in opening and that's on page 11, lines 25 to 26. Part of what this bill does, and it's a small part, it eliminates a statute of limitations for a couple of different crimes. Our association has traditionally opposed that; to be consistent, we continue to do so. That's the only focus. That's our only position on this bill. Having said that, though, when Senator Pansing Brooks began to legislate in this area, our association also opposed some of the other things she did in years past with respect to increasing penalties and so on. But one observation I would just make is that I think it was her clear legislative intent to provide services for all victims of human and sex trafficking. I don't think that was ever negotiated, debated. It was always assumed what she was doing, what the committee did, and the disagreements that we had, had nothing to do with that and it does not have anything to do with that. So that's our only opposition, just on page 11, those two lines.

**LATHROP:** OK, your opposition is duly noted and I don't see any questions. Welcome.



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**MATT WALLEN:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Matt Wallen, M-a-t-t W-a-l-l-e-n, and I serve as the director of the Division of Children and Family Services in the Department of Health and Human Services. I'm here to testify in opposition to LB516 on behalf of the department. To be clear, DHHS supports efforts to prevent human trafficking and other services to the victims of such awful crimes. Furthermore, DHHS believes LB516 in concept is a positive step for the state of Nebraska in bringing awareness to human trafficking and providing support for victims. However, I have serious concerns with our ability to implement LB516 based on the green copy. DHHS met with Senator Pansing Brooks, the Women's Fund of Omaha, and the Attorney General's Office, expressing concerns with the bill as introduced. In a meeting this morning with the senator and the Women's Fund, it is the department's understanding an amendment is forthcoming that will alleviate much of the fiscal and statutory concerns of the department with regards to LB516, as provided in the green copy. As was discussed this morning, the amendment will address concerns around the definition, timing of some of the requirements set forth in the bill, and clarify and provide flexibility around services. I appreciate the collaborative effort and I look forward to reviewing this amendment. Again, I am thankful for the opportunity to collaborate with Senator Pansing Brooks, the Women's Fund, and the Attorney General's Office regarding such a critical issue. Currently DHHS serves-- serves youth involved in the child welfare system which are identified as victims of trafficking. CFS regularly reviews current programs and procedures to ensure best practices are developed regarding this important issue. For instance, trafficking training was provided to the hot line teammates in December of 2018 by the members of the Nebraska Human Trafficking Task Force. In addition, CFS is developing desk aids for teammates to better identify possible signs of trafficking when a report comes into the hot line, updates to the CFS intake manual that include relevant definitions for labor and sex trafficking, and collaborating with NHTTF to develop and implement a statewide screening tool for trafficking. DHHS believes efforts to end human trafficking serve the common good and should be an absolute priority for Nebraska. I welcome the opportunity to continue to collaborate with the Nebraska Human Trafficking Task Force, the Legislature, and advocacy organizations to further improve our practice to better prevent and respond to human trafficking in the state. I'd just like to note one thing. I'd like to thank our hot line workers. They are dedicated, committed, and passionate about assuring child safety and pursuing reports that come into the hot line. There's not a team

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that-- that's more dedicated and cares more deeply about serving the families and children in Nebraska than the folks at our hot line. So with that, I-- I thank the committee for the opportunity to testify before you today. I'm happy to answer any questions that you might have.

**LATHROP:** Are you really?

**MATT WALLEN:** I-- just remember it's--

**LATHROP:** I-- I got to tell you, I--

**MATT WALLEN:** --just remember it's storming outside.

**LATHROP:** No, I-- [LAUGHTER] Yeah, now you're worried about [INAUDIBLE]

**MATT WALLEN:** All right, thank you.

**LATHROP:** I-- I'm astonished. I-- I really am astonished that if there are kids whose parents have put them in sex trafficking and we recognize that they're victims and they need services, that when you're-- these dedicated people on the hot lines find out that somebody else is sex trafficking them, our answer is to turn them into criminals instead of giving them-- giving them the same services the very same victim would get if their mom or dad put them up to it. And I don't-- I-- I really am, I'm-- I'm disappointed that we have to have a bill to make you guys treat these kids that are similarly situated in a similar manner and provide them with services. And then I get that there's something in the bill about "at risk" instead of identified as victims, but that \$17 million fiscal note looks like we don't want to bother with this, to me.

**MATT WALLEN:** No, no, that's not the case. And in-- to address kind of your first concern around--

**LATHROP:** Yeah, go ahead.

**MATT WALLEN:** --I mean--

**LATHROP:** And you got to do it briefly because it's sleeting out.

**MATT WALLEN:** Right. I-- I-- I mean our teammates at the hot line aren't trying to criminalize victims in-- in any way.

**LATHROP:** But they're not get-- they weren't getting the care.

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**MATT WALLEN:** What they're doing is following a policy from 2016 that identifies that when it's not the parent or the caregiver, it's a referral to law enforcement to pursue from a criminal perspective, whether there's-- there's criminal activity that's taking place there.

**LATHROP:** Don't you think they need the same care as the ones whose parents had put them up--

**MATT WALLEN:** Oh, absolutely. And-- and oftentimes-- not often-- not-- not always but oftentimes, when a law enforcement referral is made, law enforcement will contact us back and say this family needs some sort of assistance and we will go out and provide some sort of necessary assistance.

**LATHROP:** Well, you think that would make the fiscal note a lot less than \$17 million if you're already doing it.

**MATT WALLEN:** Well, when it says "at risk" and "may be at risk" of trafficking, that-- that--

**LATHROP:** So if we take that out, can we look forward to a--

**MATT WALLEN:** And that's what--

**LATHROP:** --zero fiscal impact?

**MATT WALLEN:** --that's what the amendment we worked on is -- is looking at that, that definition, and it's-- and it's-- it has to do with a-- a confirmed report to the hot line of trafficking--

**LATHROP:** OK.

**MATT WALLEN:** --that we can go out and not just anyone that may be at risk. That "may be at risk" really opens up, like it's-- like 10,000 or so cases.

**LATHROP:** OK. Well--

**MATT WALLEN:** We're working on an amendment.

**LATHROP:** --once we get the "at risk" out of there and we get back to reported cases, then-- then we'll look forward to no fiscal impact.

**MATT WALLEN:** It-- it will certainly address several aspects in-- in--

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**LATHROP:** No fiscal impact, Mr. Wallen?

**MATT WALLEN:** --in a pretty significant amount of the fiscal impact.

**LATHROP:** OK. I think that's it. Thank you.

**MATT WALLEN:** Thank you.

**LATHROP:** Neutral testimony?

**JULIE ROGERS:** Chairperson Lathrop and members of the Judiciary Committee, my name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s, and I serve as your Inspector General of Nebraska Child Welfare. December 2017 we released a report on sexual abuse of state wards, youth in adoptive and guardian homes, and youth and residential placements. You'll receive a copy. Our chapter on investigations by DHHS is tabbed for you. A lot of the points that have already been made are covered in our report. I wanted to make sure the committee has the report. And LB516 is a step in the right direction. Thank you.

**LATHROP:** We got the report.

**JULIE ROGERS:** Thank you.

**LATHROP:** Any questions for the Inspector General? I see none. Julie, thanks for being here. We appreciate it. We do appreciate-- by the way, I know we're-- we appreciate the testimony of everybody who had insight into this issue, believe me, and I certainly appreciate Senator Pansing Brooks's work in this area. And we do have-- before we have-- Senator Pansing Brooks waived closing. Thank you. We have 13 letters of support--

**SLAMA:** Yeah, I just--

**LATHROP:** --none in opposition--

**SLAMA:** I just wanted to get on the record with something. Yeah. Just a--

**PANSING BROOKS:** There's a question.

**LATHROP:** Oh, I'm sorry. Go ahead.

**SLAMA:** I'll make it brief. Sorry. So I'd really just like to echo on the record Senator Lathrop's frustration on the treatment of these victims differently. The testimony we've heard today has exposed what

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I see as an appalling gap in how we're treating these child human trafficking victims. It's an honor to work with you on this, Senator Pansing Brooks, and thank you for your leadership on this issue and for this bill.

**PANSING BROOKS:** Thank you very much, Senator Slama, appreciate it.

**LATHROP:** Thank you. That will close our hearing on LB516 and our hearings for this evening. Thank you, everyone.