

Judiciary Committee September 13, 2019

LATHROP: Good morning.

BRANDT: Good morning.

LATHROP: Senator Brandt, good to see you. Good morning. Today, we're going to have two resolutions that deal with bail generally. It's broadly speaking. Before I talk about that let me give the opening with a preamble that Laurie has me read every time we have a hearing. Good afternoon, Vice Chair Pansing Brooks, who is not quite here yet, and members of the Judiciary Committee. My name is Steve Lathrop, and I'm the state senator from District 12 and the Chairman of the committee. That's the wrong one. We're a little rusty. We haven't done anything since - so assisting me in the committee today is Laurie Vollertsen, our committee clerk, and Josh Henningsen, one of our two legal counsel. If you're planning on testifying today, please fill out one of the yellow testifier sheets at the back of the room and put it in the box by the clerk when you come up to testify. We will begin testimony with an opening statement by the introducer of each resolution. We will hear combined testimony on both resolutions if you wish to testify. That's gonna be important. We're going to have one hearing. And so if you come up to testify, it will be your opportunity to testify on either,

either of the two resolutions given that they are on basically the same topic. Please begin your testimony by giving us your first and last name and spell them for the record. If you have any handouts, please bring 12 copies and give them to the page. If you do not have enough copies, the page will make more. We will be using a light system. Given the size of the crowd, I'm gonna-- usually it's three minutes, we'll go to five given that this is an interim hearing and we have some people with particular expertise that we'll be hearing from today. The way the light system works, you'll have a green light for four minutes, a yellow light for a minute, and then it will turn red. When it turns red, we'll ask you to wrap it up. And I'll just say this you, don't have to use all five minutes. It's OK if you, if you can say what you need to say in less than five minutes. After you testify, then the senators will have an opportunity to ask questions. As a matter of committee policy, I'd like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings. And the senators may use them to take notes or stay in contact with staff. At this time, I'd ask everyone to make sure their cell phones are in the silent mode. And with that, I'll have the senators introduce themselves, and then I'll have a few more

remarks about my resolution. Thank you. We'll start with Senator Wayne.

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

SLAMA: Senator Julie Slama, representing District 1 in southeast Nebraska.

CHAMBERS: Ernie Chambers, District 11 in Omaha.

BRANDT: Tom Brandt, Legislative District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

LATHROP: Thank you. The way this usually works is the senators doing the resolution step up and they introduce the resolution. I have one of the two resolutions today, and I'm just gonna do that from where I sit. I put in LR206 because we had hearings on two different bills last year, one introduced by Senator Chambers and another introduced by Senator Hansen both on the topic of bail reform. It seems to be an issue which has taken across the country or come across the country as, as a concern as we take a sort of a second look at how we deal with the criminal justice system and at the front door is the pretrial detention. So today what we hope to do is to hear testimony on-- from various people on what the problem is, how the counties are

dealing with it, where there's an opportunity to make changes, whether those changes need to be made legislatively or is that something that should simply happen at the county level. And we look forward to having folks testify today. We do have somebody from the Pretrial Release Program--

JOSH HENNINGSEN: Justice Institute-- Pretrial Justice Institute.

LATHROP: --Pretrial Justice Institute. I'm having trouble remembering the name of their, their group. But their focus is entirely on that pretrial detention and that person is on the phone. Is she ready to go? We're going-- so our first testifier is going to be somebody from that organization who will talk to us and testify by telephone, which we permit, I guess we do, for people with expertise who are going to testify on a legislative resolution. And with that, can you hear me or can you hear us?

MEGHAN GUEVARA: I can. Good morning.

LATHROP: Good morning. Can you start by introducing this? Tell us a little bit about your organization and then we'll allow you to testify.

MEGHAN GUEVARA: Thank you so much. Good morning, everyone, and thank you for the opportunity to testify today. My name is Meghan Guevara, M-e-g-h-a-n G-u-e-v-a-r-a, and I'm a vice

president with the Pretrial Justice Institute, which is a nonpartisan, nonprofit organization committed to ensuring safe, fair, and effective pretrial justice. We've been around for more than 40 years and have supported thousands of criminal justice stakeholders in hundreds of cities, counties, and states as we work to improve the administration of justice and the decision to arrest through disposition of a criminal case. I'm located outside of Denver and appreciate the opportunity to be able to call in today. A provision of safe, fair, and effective pretrial justice has three basic obligations. The first, is that it must keep the public safe. The second, is that it must assure that individuals accused of crime appear in court as needed. And the third, according to the U.S. Constitution, is that it must respect the presumption of innocence and not unfairly interfere with the freedom of people who have not been found guilty. In many states, the pretrial justice system is not meeting these obligations and change is necessary. Unfortunately, there is a significant body of research and legal precedent available to guide policy improvement. Today, I'm gonna speak briefly to four recommendations for effective pretrial policy that reflects this law and research, as well as the underlying values of justice, liberty, and safety. At PJI, we refer to these as the four R's and we encourage them-- you to consider them as you're thinking

about your resolutions around interim study. The first is reducing arrest. We know from research that even three days in jail can have a negative impact on people accused of crimes and their families. People incarcerated before trial lose their jobs, their housing, or custody of their children in many cases even though they have not been convicted of a crime. We recommend that law enforcement have the ability, and in some cases the mandate for cite and release for a large body of charges rather than taking custodial arrest of people and bringing them to jail. With this, accused people have the opportunity to maintain professional ties to the community and the likelihood that they'll be arrested again is reduced. Additionally, many people come in contact with law enforcement as a result of mental health and behavioral health issues. Partnerships with law enforcement and community-based treatment providers have been proven effective to reduce future arrest and improve community stability all while reducing overall justice system costs. Our second R is replacing money bail. Nearly 100 percent of the jail population growth in the United States over the last 30 years is due to the detention of people prior to trial. The use of money bonds is a condition of pretrial release is the primary driver of this. They are ubiquitous in the United States despite the fact that they have not been proven to

increase court appearance and are irrelevant for court and public safety. Money bail is 100 percent effective at increasing the length of pretrial jail stays. And it's estimated that four out of every five people detained before trial have been legally released by the court but are unable to post the monetary bond amount that's been set. Even that this represents nearly two-thirds of the jail population nationwide, these unaffordable money bonds are a significant burden on taxpayers as well. Money bonds are also failing to hold up for legal scrutiny. Several recent lawsuits have challenged the constitutionality of monetary bonds and a detention as a result of the inability to pay monetary bond. Federal courts have ruled that it is unconstitutional to detain someone based on their inability to pay. And that rigid bond schedules violate a person's right to an individualized bail determination. Jurisdictions including municipalities, counties, and state are making changes to their pretrial policies either to fulfill the terms of settlement agreement or to attempt to avoid this litigation. Our third R is restricting detention. And the U.S. Supreme Court Justice William Rehnquist wrote "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." Though there may be a small number of people who warrant detention before trial because they're likely to

flee, the vast majority of people released or returned to court arrest free and require nothing beyond a reminder to return to court. Restricting detention means not just inside the jail building but also in the community. There is no need to replace money bonds with onerous and expensive supervision and monitoring them. And common interventions like electronic monitoring has not been proven effective with pretrial population. And finally our fourth R is raising equity. Racial and ethnic disparities are pervasive throughout the criminal justice system including arrest and bail decisions. Often the impact of these disparities is unknown due to a lack of data. And racial equity should be interrogated as any new policies or practices are being considered. At a minimum, data collection and public reporting should be required to monitor racial impact, and beyond the transparency with an engagement with community members when policy development and implementation can increase the likelihood that new policies will litigate bias and support impacted communities. New Jersey offers a great example of a state that has taken on comprehensive and bipartisan legislative change in concert with cultural and structural reforms within the state court. A few statutes and a constitutional amendment took effect on January 1, 2017. Sixty-nine percent of nearly 150,000 cases statewide were cited by law

enforcement rather than jailed. And of the remaining 30 percent of people who were booked in jail, half were quickly released with least restrictive conditions of supervision. The use of money bonds have been nearly eliminated in the state. And New Jersey has a 94 percent pretrial release rate. And the pretrial population in the jail is down 44 percent statewide. And throughout this time, there has been no negative impact on court appearance or public safety. Achieving pretrial justice is not a small undertaking, but the four R's offer many policy options for achieving safe, fair, and effective pretrial justice for Nebraska. Thank you for the opportunity to speak today, and I'm happy to answer any questions.

LATHROP: Do the committee members have any questions for the witness? Testifier, I should say.

WAYNE: You're in court-- you're still in court mode.

LATHROP: Yeah, I know, I, I, I had to be reminded of that early on. I, I don't think so. Meghan, we appreciate the work you do, what your-- what you've been able to help the committee counsel with. And I suspect we'll be in touch with you as we go down the road. Senator Wayne, do you have a--

WAYNE: Senator Wayne here. Can you e-mail me your, your data and your research on particularly this issue? I know testimony is good, but my, my guess is there's gonna be some bills come out of this and I'd like to be able to share those with the colleagues on the floor.

MEGHAN GUEVARA: Absolutely. I can share some specific resources related to the testimony I provided and also give you access to our on-line research library.

WAYNE: Thank you.

PANSING BROOKS: For the, for the whole committee, please. Thank you.

MEGHAN GUEVARA: Yes.

LATHROP: You have a Web site, too. Am I right?

MEGHAN GUEVARA: We do. It is www.pretrial.org.

LATHROP: Some of that information is contained on your Web site.

MEGHAN GUEVARA: Yes, it is.

LATHROP: And as it turns out, Commissioner Rodgers was a chairman of your organization for a time, was he not?

MEGHAN GUEVARA: Yes, he is still on our Board of Directors.

LATHROP: OK. Perfect. Anybody else have questions? I see none.

Megan, thank you for your testimony.

MEGHAN GUEVARA: Thank you so much.

LATHROP: So in my excitement to get this witness in and testifying by phone, I neglected to have Senator Hansen introduce his LR. So again, I'm a little rusty. We've been off and not having hearings for a few months. So we'll let Senator Hansen next introduce his resolution.

M. HANSEN: Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here to introduce LR144, which is an interim study to examine the effectiveness of cash bail and cash bonds from misdemeanors in city, village-- city and village ordinance violations. This interim study is to continue conversations that we've had over the last several years about examining possible reforms to our current system of cash bail for those accused of low-level crimes. Testifiers behind me will go into some more detail. And we've already had one testifier cover some of this. But kind of as the quick overview, county jails are often overcrowded and

underfunded largely because they are filled with pretrial detainees who are simply awaiting their day in court and who have not actually been convicted of a crime yet. Nationally, this population makes up over 70 percent of the entire jail population. Consider the fact that the research shows that setting a cash bail is not always associated with increased court appearance rates which is kind of the stated purpose, meaning oftentimes the alleged offender would have shown up for court anyways without having to spend that time away in their job-- from the job and their family. I also want to carefully consider whether it's our best interest to continue to house people accused of low-level offenses when it's a high expense to our counties and has minimal impact or whether that they appear in court while it can also disrupt people's life proportionally-- disproportionately due to their income and assets. One of the largest issues in my mind and why my LR and previous bill had focused in this area is that it's not uncommon for the time held in jail prior up to a court date if you're unable to afford bail can actually be longer than the potential maximum sentence then if you're found guilty. This is simply unfair in my mind. And on the pragmatic side, is a pretty inefficient use of our county's funds. Some states are completely turning away from the cash bail system in favor of pretrial release programs. I know this

would be a massive undertaking. So my goal is to first consider other changes that would provide relief to our jails while at the same time making our cash bail system more just. I understand that changes need to happen thoughtfully, carefully, and incrementally so as not to disrupt our criminal justice system and to ensure public safety. That was why last session I introduced my LB282, which would have eliminated cash bail for those low-level offenses including city and county ordinances. Many of those involved in shaping that bill and proposed amendments are here to testify today. I'm thankful to all of their help who have worked with me so far and willing to discuss this issue. And with that, I will close.

LATHROP: Thanks, Senator Hansen. Anybody have questions for Senator Hansen? I see none.

M. HANSEN: Thank you.

LATHROP: Thanks. I appreciate you being here and introducing the resolution. I see that we have the head of Corrections from Lancaster and Douglas County here. Am I right? And do we have that-- anybody from Sarpy County here? OK. I bring that up because they seem to be the three county Departments of Corrections that are more-- maybe involved particularly in this

issue with respect to getting near or over capacity. And we have somebody from NCSL. Is Amber here?

AMBER WIDGERY: Yeah.

LATHROP: Amber, I'm gonna have you testify third. I'd, I'd like to hear from the-- if we can. And I'm not gonna develop an order other than maybe this. I'd like to hear from the Directors of Corrections in Douglas and Lancaster County if they want to come up and testify first to give us sort of the starting point. We'll hear from NCSL, who does work in this area, and then we'll open the, open the floor up to people who wish to be heard if you want to come forward. Good morning.

BRAD JOHNSON: Good morning. These chairs are always so low and I'm a tall guy. I don't know what a short person would do.

LATHROP: You know, I'm gonna have you pull that mike a little bit closer to you so that we can make sure everybody has a chance to hear what you have to say.

BRAD JOHNSON: All right. My name is Brad Johnson, B-r-a-d J-o-h-n-s-o-n. Good morning, Senator Lathrop and members of the Judiciary Committee. My name is Brad Johnson. I'm the director of the Lancaster County Department of Corrections. I am here to testify on behalf of our county board and my department on LR144

and LR206. Our facility has a designed bed capacity of 786 detainees. Our operational capacity is currently 665. On Tuesday, September 10, our population was 627. As you consider these numbers, please keep in mind that although they indicate we are below our capacity, the reality is that at times we struggle to properly accommodate these numbers. Looking in from the outside, most people see our facility as one big, one big box that could hold 786 detainees. In reality, that box is divided into several smaller boxes and the smaller boxes are not completely interchangeable due to our classification system. We find ourselves in situations where the smaller boxes are over capacity and we need to make adjustments based on risk assessments. We are also frequently above our capacity for female detainees. In fact, we have had our reserve housing unit open most of the summer to accommodate this particular population. Many cases are very complex and have multiple charges associated with their incarceration. A large number of them have bonds associated with some cases and are setting out sentences on others. Some also have holds from other jurisdictions, Probation or Parole or have violated some form of court order. The numbers I am going to provide only include those individuals who could be released if they had access to the money required to post their bond. On Tuesday, September 10,

283, which is 45.1 percent of our 627 detainees were in custody as pretrial detainees. Of those 283, 253 or 89.3 percent were afforded cash bond. Thirty individuals were being held in custody as hold for court. Of those 30, 3 were being held for misdemeanor offenses. These offenses included domestic assault, attempted possession of a controlled substance, child abuse, fail to appear, and violation of a protection order. We also had two felony IV cases that involved possession of controlled substances. The remaining hold for court cases involved felony IIIA and above offenses. Of the 283 pretrial detainees, 52 were in custody for misdemeanor offenses. The majority of those charges involved domestic assault, violation of protection order, child abuse, DUI second offense or higher. It should be mentioned that the majority of these individuals had extensive criminal histories and a history of failing to appear in court. My mission is to safely and securely house individuals placed into our custody by law enforcement in the courts. I'm not opposed to adjusting the method that determines how detainees are released pretrial. However, I do believe we need to be cautious as to how that change occurs. When I look at those 52 individuals in custody for misdemeanor offenses and place myself in the position of deciding if they should be released or not, I find myself believing the community is safer with most of them

remaining in custody. Our personal experience is that at least in Lancaster County the judge has already taken to account individuals ability to post bond while weighing the individual's risk to the community and their likelihood to appear at future court appearances. With that being said, I believe that if some of these individuals could be supervised and are monitored while in the community, community that risk is reduced. It is my opinion that simply eliminating cash bond will likely increase the number of individuals being held as hold for court detainees or increase the churn of those individuals that rotate in and out of our facility for reoffending or not appearing in court. I strongly encourage any change in this area to also include some form of appropriate supervision.

LATHROP: Very good. Thanks for your testimony. Anybody have questions for Mr. Johnson? Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming today. Appreciate it. Do you have-- I'm interested in, in even more specific like how many were being held for attempted possession of controlled substance. I mean, on a specific day, obviously. But some of the information that we've received in the past indicate that, that there are, there are way more people that are in for

misdemeanors that are for nonviolent non-- nonproblematic for the community.

BRAD JOHNSON: And I can provide you whatever you want. What I'll-- what, what I'd say about that is, a lot of those numbers are when you're-- you know, flying over 30,000 feet and kind of looking down and looking at a real broad picture. But when you delve into the individual cases, a lot of those folks, like I mentioned, have a-- they're sitting on a three-week sentence for someone on that day or they have a hold from another jurisdiction. So even though they have their pretrial on the attempted possession they, they wouldn't be able to get out even if they had the money. So I was trying to focus on folks who if they had the money that day they could have got, got out. And this is how the numbers came, came out.

PANSING BROOKS: OK. Thank you.

LATHROP: I do have a couple of questions for you as it relates to-- I've done a little bit of reading on the topic. And in some of those jurisdictions who have made progress on this topic-- not the total elimination of bail, but made progress, there is an assessment process done. The court is advised of the assessment and then the court is better informed about trying to set a bond and an assessment-- an objective assessment also

makes certain that the measures used to determine what's an appropriate bond aren't influenced by race or other circumstances that don't really affect a person's risk to reoffend while they're out or their likelihood of appearance. So I've got a few questions for you about that. In Lancaster County, if I'm arrested-- let's say, on a Class IV felony, is there some type of an assessment that's done of the inmate before they appear before a judge for a bond setting?

BRAD JOHNSON: Not that I'm aware of. We, we had the-- Corrections Department doesn't do that. You know, my experience would be that the prosecutor does a quick overview of their history and as a rule they make a recommendation on what type, type of bond they would like to see.

LATHROP: OK. And that's kind of-- I did criminal work a long, long, long time ago, and it's kind of people stand up there and, and what they-- what information they can get from somebody's rap sheet,--

BRAD JOHNSON: Right.

LATHROP: --the offense, and whatever the defense lawyer may offer with about one minute to talk to their client is what the judge considers. But there's no assessment in Lancaster County

done by any pretrial group. If I am released from Lancaster County, am I going to be followed, or do I have any responsibility to check in with somebody? Do we have supervision, in other words, of those people who are released?

BRAD JOHNSON: As a rule, the majority if, if you post a, a money bond you're, you're just released. Now we do have Community Corrections in Lancaster County and they have a pretrial release program where sometimes-- you know, the, the judges will order that they be a part of that program and then there's some supervision provided, yes.

LATHROP: OK.

BRAD JOHNSON: But as, as, as a rule no.

LATHROP: OK. So the process at least in Lancaster County, and I'll-- we'll find out if it's any different in Douglas in just a minute, but the process would be-- person goes in front of a county court judge. If they have a lawyer or a public defender, that person has an opportunity to talk to them briefly. Prosecutor offers what they think is the seriousness of the offense, the likelihood or the connections to the community as much as somebody can discern. And these are conversations that happen like briefly before an appearance.

BRAD JOHNSON: Correct.

LATHROP: And that's the information the judge relies upon. And if you are released you are not supervised, you're just given a lawyer or a, a court date.

BRAD JOHNSON: Correct. Now there should-- I should mention that-- you know, we do have pretrial bond at the jail so-- you know, a majority of misdemeanor offenses, some felony IVs, some felony IIIs if you-- you can post bond prior to going to court in front from the judge and just be released from the jail as well. So there's--

LATHROP: OK. I'm glad you brought that up. So is that a, is that a schedule?

BRAD JOHNSON: It is. It's set by the judges.

LATHROP: So the offenses are listed here and this is how much I'm gonna have to post.

BRAD JOHNSON: Correct.

LATHROP: And that-- would that be true even if I, if I have a history of failing to appear?

BRAD JOHNSON: It is.

LATHROP: So if I have a DWI first, there's a number for that, \$500 or something.

BRAD JOHNSON: Correct.

LATHROP: And that would-- I can get out on \$500 regardless of whether I've failed to appear on three prior criminal charges.

BRAD JOHNSON: That's true.

LATHROP: OK. I think I understand your system. I got another question for you. I have been told-- and, and I'm asking this as a question, I've been told that there have been some groups have put together-- I'll call it a pot of money, and that they have bailed some people out with that pot of money from Lancaster County Jail.

BRAD JOHNSON: There was--

LATHROP: Are you familiar with that?

BRAD JOHNSON: I am familiar.

LATHROP: Tell me what you know about that or inform the committee about what you know about that.

BRAD JOHNSON: Well, that was a pilot program put on by the ACLU and they had an individual who donated some money towards a, a

fund that they used to come in and after-- you know, a bit of a screening on their end and communication with us would release folks pretrial on, on a bond amount.

LATHROP: When did that start?

BRAD JOHNSON: I want to say that was June of last year and it ran through December. I think it was about six-month period.

LATHROP: And then it stopped.

BRAD JOHNSON: Correct.

LATHROP: They just ended the program.

BRAD JOHNSON: Yes.

LATHROP: OK. Do you know what the-- I think I saw somebody from the ACLU here, maybe they'll have an opportunity to tell us how effective that was whether the people showed up or didn't show up. But do you have any information about whether that-- those folks who had someone else post a bond for them actually appeared for court or is the incidence of nonappearance higher?

BRAD JOHNSON: I think we had. It's-- I would say it probably wasn't a lot different from if they posted the bond themselves. It's kind of-- I, I can't get failed to appear

numbers from the courts. Apparently, people-- it's hard to keep track of that. I, I, I tried to get what it was aside from this group so I could compare it to this, this group. But I think that-- you know, the failed to appear rate was probably 60 to 70 percent within that, that group from what numbers I could see or-- and, and I include in, in that-- the group that was rearrested for offending while they're out on bond.

LATHROP: OK.

BRAD JOHNSON: So maybe the recidivism rate would be a better description of being returned to jail either for not going to court or for reoffending.

LATHROP: And just to be clear, you're not, you're not-- you're giving us sort of your understanding but not necessarily data we can rely on?

BRAD JOHNSON: I can get that. I mean,--

LATHROP: OK.

BRAD JOHNSON: --I, I kept track of all [INAUDIBLE].

LATHROP: I think we'd be interested.

BRAD JOHNSON: I'm trying to do it from memory right now.

LATHROP: No, that's fine, that's fine. Do any other-- that's all the questions I have. Anybody else have questions for the testifier? Thank you for your testimony.

BRAD JOHNSON: Sure.

LATHROP: I do want to thank you. And this committee, I think, appreciates you came and testified on a bill dealing-- I think it was a Hansen bill dealing with the waiting time for people in your Department of Corrections waiting for a trip to the Regional Center to have their competency restored. I thought that was important testimony when you were here before the committee in the past. And I appreciate not only that, but your appearance here today.

BRAD JOHNSON: Thank you very much.

LATHROP: Thank you. Mike, do you want to come up and testify? Is this your first time in front of our committee?

MICHAEL MYERS: It is not.

LATHROP: It's not.

MICHAEL MYERS: I've been here once or twice before.

LATHROP: All right. Good, good. Well, welcome.

MICHAEL MYERS: Thank you. Good morning, Senators. We are in a--
I will tell you a similar story.

LATHROP: Let's start with your name though.

MICHAEL MYERS: Oh, sorry. Absolutely. Acted like a rookie even if I'm not. My name is Michael Myers. I am the Director of Corrections for Douglas County. Our, our story is somewhat similar to Lancaster County's in terms of the growth of our pretrial detention numbers. It has taken somewhat of an alarming trend over the past few years and has pushed the resources of our Department to its limits. In 2015, we averaged 654 individuals per day who were held on a pretrial status. By 2018, that number increased to 959. And in 2019, we may average over a 1,000. Having held recently, 1,061 people on a pretrial status in custody. Thankfully, we have gone down a little bit in the past couple of weeks. Our proportion of pretrial detainees as an overall function of our population has also increased. Approximately five years ago, we were at around 65 percent. And most recently, we are about at 82 percent of our population being pretrial. So it's not just a-- this growth isn't occurring in a vacuum, it's growing as a proportion of our, of our whole population. Today, we have 872 individuals in custody who are pretrial on a felony. And we have 125 individuals who are

pretrial on a misdemeanor. Today, our total population is 1,279. We have a capacity-- an official capacity of 1,452. However, similar to what Mr. Johnson just shared with you, the practical capacity-- the working capacity is less than that. We are currently limited due to renovations going on in our facility which take about 75 beds out of use, out of service. And we currently-- and we also have many individuals because of various reasons, most primarily due to untreated or unstable mental health issues, we can't safely house with a cellmate so those individuals take two beds out of production or out of service for-- to only house one person. So our practical capacity right now is about 1,300. That includes-- right now we are housing inmates on a gym floor because of the renovations and having a couple of housing units closed. We've also seen our female population increase fairly dramatically over the course of the past several years. We used to average around 115 to 125 would typically be our range of females who are in custody. We are now routinely running between 200 and 220 females in custody. We have made efforts to address our pretrial population and we have seen some evidence of success in terms of we've developed a 24/7 sobriety program. Which wasn't envisioned at its inception as a pretrial release program specifically, but that's essentially what it's become. Almost everyone on that program is assigned to

it as a condition of their bond, and there are nearly 300 people on that program each day. We have approximately 500 more people who call in each day to a call-in system on pretrial release. But despite those efforts, the numbers have still increased. Another factor which I think doesn't necessarily jump out at people in the pretrial release discussion is the change and as a result of LB605 in terms of the scope that probation plays. Our probation-- our population of individuals who are in custody due to a probation violation has increased dramatically in the past couple of years from around 60 per day in 2017, to around 200 a day. We-- actually well over 200 recently. You can be held pretrial on a probation violation. So that kind of exacerbates the problem. We have made efforts to devise a system a matrix of pretrial release supervision based upon individuals risks and current charges. We-- while we got the stakeholders support locally and, and throughout the course of 2018, the practical benefits of those efforts have been very limited. And to respond to that, we're actually allocating-- reallocating our own resources within our department to attempt to assist the courts to increase their utilization of those programs. I see I'm out of time.

LATHROP: OK. Let's see if people have questions. I know I will. But-- Senator Chambers.

CHAMBERS: What percentage of your jail population is black?

MICHAEL MYERS: I don't have that right in front of me, Senator. I can certainly provide that to you. I, I would like-- I believe it's approximately in the 40s, but I-- 40 percent, 40 percent.

CHAMBERS: Forty percent.

MICHAEL MYERS: Forty to 50 percent would be my range off the top of my head.

CHAMBERS: Do you have any idea of the percentage of black people in Douglas County population-wise?

MICHAEL MYERS: They are overrepresented in our county and our jail by far.

CHAMBERS: And are they overrepresented in terms of the types of crimes committed?

MICHAEL MYERS: I would have to--

CHAMBERS: Here's what I'm-- OK. And I don't want to hold you too long because there are other people who want to testify. But I'm trying to give you an idea of the areas of interest that I have and I will pursue them later, but I want it a matter of record.

What seems to be leading to the increase in female arrestees or those who are being detained?

MICHAEL MYERS: We have seen an increase in the, in the severity of offenses that females are charged with. There-- there's an increase in the number of females who've been charged with more violent offenses which has led to higher bond settings for those offenses.

CHAMBERS: You said more violent offenses?

MICHAEL MYERS: Correct.

CHAMBERS: What, what nature-- what is the nature of the violence? I mean, guns, knives, fighting, what?

MICHAEL MYERS: To certain degrees, Senator, probably all of the above. The-- we've seen them become more involved in some criminal activities that in the past seemed to be more, more that the male population seemed to be involved in, in terms of some assaults and robberies. Things that are related maybe to, to, to drug trafficking activities that females seem to be increased their involvement in recently.

CHAMBERS: Do you have a breakdown, not here necessarily, of the number of arrests made by Douglas County Sheriff's Department as opposed to the Omaha Police Department?

MICHAEL MYERS: I don't have those numbers specifically. I can tell you that the, the vast majority of arrests in Douglas County are made by the Omaha Police Department.

CHAMBERS: OK.

MICHAEL MYERS: I, I would say that they probably book in at least 80 percent.

CHAMBERS: My final question, I think. Is there an increase in the number of people being held on drug offenses than formerly?

MICHAEL MYERS: And my apologies, Senator. To, to answer that definitively, I'd have to go back and look at what those numbers were a few years ago and compare them to now.

CHAMBERS: And again to let you know the area of interest.

MICHAEL MYERS: Absolutely, we'll certainly research that.

CHAMBERS: And here is what I was gonna ask about that. Is there an increase in the number of people being arrested for marijuana offenses and being held?

MICHAEL MYERS: I can't say that I've noticed that. I-- unless it's related to the trafficking of the-- of marijuana. I think--

CHAMBERS: And that's all I'll ask you right now, because I think you know where, where I'm going. Thank you.

MICHAEL MYERS: You're welcome.

LATHROP: I do have a couple of questions and maybe I can start by saying I had an opportunity to sit down and visit with you a couple of months ago perhaps about this topic. And in that conversation, I learned that you-- before you were promoted to Director when Director Foxall left the Department, you were involved in trying to develop some kind of a pretrial release assessment program and do something within the county relative to this very issue.

MICHAEL MYERS: Correct.

LATHROP: OK. And generally where progress gets made in these efforts, at least as an, as an initial matter, is the development of a-- an assessment tool. And that tool is then used by the judges as an objective measure of whether someone should be released without posting a bond and/or what the bond should be so that it becomes more objective and not dependent upon what the person looks like in front of the judge.

MICHAEL MYERS: Absolutely.

LATHROP: And once that assessment tool is in place then this process, if implemented, and it really wasn't completely implemented due in part because of your promotion if I understand correctly, there is some kind of a pretrial program.

MICHAEL MYERS: That's correct.

LATHROP: So they're gonna have to check in. I want to talk about those two things just because you have the background in it and you were, you were working towards us. Tell us about sort of best practices with a pretrial release assessment tool.

MICHAEL MYERS: Sure. With any sort of assessment pretrial risk assessments included, the use of a validated assessment is, is critical. We moved from one that was sort of homegrown that got altered at different times over the course of time which invalidated its, its, its ability to predict to a validated risk assessment. We are currently using an instrument called the Virginia Pretrial Risk Assessment Instrument. We are exploring another instrument specifically because there are certain elements that the Virginia Instrument measures that may have-- could be interpreted as a bias. There is another new instrument that was made available to the public last year called the

Public Safety Assessment. That, that instrument has a couple of advantages. It removes some of those questions that have been voiced as a matter of concern by some-- by certain individuals to me. And it also gives the judges a little more information. And it-- and in terms of its separates out the risk of failing to reappear from the risk of committing a violent act. Which is really what I think is holding up the progress is the fear of letting someone out and having that individual commit a violent act. So there is a risk assessment out there that, that has a violent risk component of it.

LATHROP: I want to interrupt you for just a second to follow up on as much as you've given us so far. The Public Safety Assessment, if, if that were implemented fully in Douglas County or anywhere else in the state that would-- someone would come in, meet with a-- somebody recently arrested who is not otherwise released in a-- in the short-term. That assessment then is done. How long does that take?

MICHAEL MYERS: That assessment-- that the reason we didn't switch to it right away was basically because it took longer to administer and we didn't have the personnel to administer it prior to making their initial court appearance. That's part of our mission is to reorganize our resources to be able to

administer that instrument prior to their first court appearance.

LATHROP: Sure.

MICHAEL MYERS: Currently right now, the Virginia Instrument, we are able to give the judge the risk score and a recommended level of pretrial release supervision at their initial court appearance. The PSA, or Public Safety Assessment, we believe is a better instrument. We, we just have to reallocate our resources in able to implement it.

LATHROP: If you-- or when that is, when that is implemented, would it give two scores to the court?

MICHAEL MYERS: Yes.

LATHROP: So I'm going to appear before a county court judge for the first time and they're gonna set my, my bond or my bail or allow me to be released on my own recognizance. The court would then have before it two numbers or two assessments. One would be the likelihood that I'm gonna show up,--

MICHAEL MYERS: Correct.

LATHROP: --which is one of the reasons bail is set in the first place, and the other is the likelihood that I'm gonna commit

some violent act between now and the time I have to next appear for court.

MICHAEL MYERS: That's correct, Senator.

LATHROP: OK. This has been validated. Is it in use in other parts of the country?

MICHAEL MYERS: It is in use. Like I said, it is a new instrument. It was tested for a period of time, and it became public available-- publicly available last fall. So I can't tell you how widely its use has spread since it's gone into the public domain, but I hear it referenced quite frequently when I talk to professionals around the country.

LATHROP: Another question for you, Mr. Myers. If you, if you have this assessment and it gives two scores, does it then-- then does a number show up giving these two scores? The bail or the bond, if any, should be \$500 or the judges then going to use their discretion given the scores?

MICHAEL MYERS: It, it does not recommend a bond amount. In part because those, those procedures are different in every state, and this is an assessment that's meant to be used everywhere. It, it would-- it recommends-- it gives you a risk score. We would then tie that risk score to a recommended level or, or

recommended specific conditions of supervision such as drug and alcohol testing if that's appropriate for the person's history or their current charge, GPS monitoring. We're also looking at some newer technologies regarding check-in using mobile phones and so forth to, to ver-- to, to maintain contact and communication with individuals as well.

LATHROP: OK. And that's-- you brought up the second piece of this, which is the pretrial monitoring. And unlike the-- what we heard from Mr. Johnson in Lancaster County, Douglas County has a process: (A) to do an assessment; and (B) to provide some-- the court with information where the court can set in addition to a bond amount some form of supervision or checking-in that has to happen--

MICHAEL MYERS: That's correct.

LATHROP: --pretrial. It sounds like you're still working on this. So are you satisfied with where Douglas County is at right now or is there work to be done?

MICHAEL MYERS: There-- there's work to be done. And actually we're-- a committee was just established this week to-- with the local stakeholders again to look at this issue. Basically, where we kind of-- where things left off last year is we had presented

to this new model to the public defender's office, city prosecutor's office, the county attorney's office, the county court, and district court had their verbal agreement with the model, but it just didn't result in behavior change in all the courtrooms. When you consider you have 30 judges and between all those offices probably well over 150 attorneys, it became clear to me we need to be more involved actively in the courts and until these-- this vernacular of assigning somebody to a level of pretrial release supervision instead of just setting bonds becomes more commonplace.

LATHROP: Last area that I want to explore with you is, if you do an assessment and you reduce your population with the use of this, of this assessment tool and the pretrial supervision that we're talking about, does that pay for itself with the savings from having a lower population inside the Department of Corrections? In other words, can the county handle this financially with savings from having a lower population?

MICHAEL MYERS: My, my qualified answer is, yes. And the, and the qualification on it is that-- that's assuming it works. We will take some upfront investment to provide by Douglas County to establish the positions to do, to do these assessments thoroughly and to be present-- having, having somebody to be

present in all these court hearings to make-- to remind the judges, remind the attorneys that, hey, we have options for you. Assuming that those efforts bear fruit and we're able to close housing units, then, yes, this program should easily be able to sustain itself.

LATHROP: OK. Now the last question. Is this something that requires legislative intervention? Do we need to do something from our side of the table to make all this happen? Or is this something that's going to happen in the case of Douglas County without some intervention? Or is there some law that we need to change in order to facilitate the kind of changes you're talking about?

MICHAEL MYERS: Senator, I think that depends a little bit on how successful our efforts are. If we, if we develop what we find to be the protocols which are backed by sound research and are credible, and, and we provide alternatives for the courts which balance-- or actually are weighed in favor of public safety but still allow for an individual to be out of jail and they're simply not used, then we, then we probably need help.

LATHROP: OK. That's all the questions I have for you, Mr. Myers. I appreciate your testimony. Any follow-up? Senator Chambers.

CHAMBERS: Is there any occasion when a juvenile may be held at the Correctional Center?

MICHAEL MYERS: No, we do not hold juveniles.

CHAMBERS: OK. That terminated my need to ask any other questions.

MICHAEL MYERS: No problem.

LATHROP: I see no other questions. Thanks for your testimony,--

MICHAEL MYERS: Thank you.

LATHROP: --and what you're doing in Douglas County. We're going to hear from Amber from the NCSL. And then we'll-- you know, if you want to testify, I encourage you to come up to the front row and we'll just start taking people in order.

AMBER WIDGERY: I have handouts. Would you--

LATHROP: Oh, we love handouts.

AMBER WIDGERY: All right, good.

LATHROP: If you want to hand them to Laurie, she'll get them to the pages. Welcome to Nebraska. You're not from Nebraska, right?

AMBER WIDGERY: Close. Actually, I grew up 30 miles from the border on the Colorado side. So--

LATHROP: All right, all right. Well, welcome. We always appreciate the expertise of the Conference of State Legislatures. And with that, you can begin.

AMBER WIDGERY: Thank you for having me, Mr. Chair. My name is Amber Widgery, that's A-m-b-e-r W-i-d-g-e-r-y, and I'm a senior policy specialist with the National Conference of State Legislatures Criminal Justice Program. For those in the room who may not know, NCSL is the bipartisan organization for the more than 7,000 state legislators and 30,000 state legislative staff in all 50 states, D.C., and the territories. I'm thinking-- slides for my presentation are in the folders that just went around so I might reference those on occasion. I think I'll skip over the initial data because I think you got some of that from the earlier testimony, but pretrial policy can be broken down into a number of smaller policy areas. And on slide 5, I've listed out the areas that NCSL tracks and has 50-state information on. The slide should look like this if that's helpful to the committee and I'm sorry, I apologize it they're not numbered, but this is the slide I'm referencing. These are all of the areas of policy where NCSL has 50-state information.

On the following slide 6, you'll see NCSL started tracking pretrial policy in 2012. And since that time, every state has addressed at least some portion of pretrial policy at some point. More than 800 bills were enacted between 2012 and 2018 on this issue. In 2019, preliminary analysis shows that we're gonna have about another 76 enactments across the 50 states.

Successful legislative efforts to change pretrial policy have largely been bipartisan and recent polling from the Charles Koch Institute and the Pretrial Justice Institute shows that a majority of Americans favor ending the practice of jailing individuals who cannot afford money bail in all but extreme cases. Overarching themes of legislation have really focused sort of on two things. One, reducing the number of people who even make it to the point of being in the pretrial system who may otherwise be better served in their communities.

Individuals, say who might benefit from a community-based behavioral health services or other nontraditional booking process. So individuals who may be more appropriate for a citation in lieu of arrest or a nontraditional booking process where they are taken to the jail but not actually booked into jail. The second portion of legislative attention has focused on moving pretrial policy away from a charge-based bail schedule and monetary-based decision making frameworks towards a

decision-making model that focuses instead on limiting detention and mitigating an individual's risk of nonappearance or rearrest. So I'm just want to touch on a few policies today specifically. And the first thing I want to talk about is pretrial risk assessment. In the materials, you'll find an unpublished reference document from NCSL that looks like this. It provides a 50-state scan of legislation that has addressed risk assessment at the state level in the 50 states. You'll also find another resource that looks like this. This is a primer for defense attorneys, judges, and prosecutors. But I think it provides a great high level overview of risk assessments and some of the best practices. It also provides information on some of the issues that have been raised including bias buy-in, cost, and timing of the risk assessment. Courts have been conducting unstructured risk assessments using their experience and professional judgment for decades. Older statutes, in fact, instructed courts to conduct risk assessments with a specific statutory list of factors for them to consider. More modern, more structured risk assessments have taken the same approach, but have utilized research and science to determine which factors have the most predictive value for a defendant's success on pretrial release. There are currently about two dozen tools in the U.S. used for pretrial populations. And the slides I

provided for you with the risk assessment report highlighted there gives you a little bit of information about what those-- you know, two dozen risk assessments' predict and the types of scores that they give. A couple of things to highlight, the low, moderate, and high-risk scores are in fact policy decisions that have to be made at a local level. Risk assessment tools aren't necessarily set up specifically to tell a defendant that you are low, moderate, or high risk. You have to determine if this person has a 10 percent chance of success or failure on pretrial release. Then is that person in your jurisdiction low, moderate, or high risk. That's a policy decision that has to be made.

PANSING BROOKS: Excuse me, I'm sorry, but I know that a number of us are having trouble finding--

AMBER WIDGERY: I'm so sorry.

PANSING BROOKS: --which page you're talking about.

AMBER WIDGERY: Yep.

PANSING BROOKS: --and you've shown us quickly, but it's a smaller version than what you have.

AMBER WIDGERY: Yep.

PANSING BROOKS: So it's [INAUDIBLE].

AMBER WIDGERY: I'm looking at-- it has a picture-- the first slide with this has a picture.

PANSING BROOKS: OK.

AMBER WIDGERY: It's a slide. It should be around ten if you count the pages. So predicting what it helps to identify low, moderate, and high risk defendants. And then the slide following that list is-- lists out the common factors considered by risk assessment tools. I know that we've heard a little bit about the VPRAI today and also the PSA. The Public Safety Assessment was initially piloted in, I believe, 20 jurisdictions. It was then expanded to 40 jurisdictions both local and statewide jurisdictions. It has now been released publicly for other jurisdictions to look at implementing that risk assessment. Factors in a risk assessment are generally considered risk factors or protective factors and those tend to follow static or dynamic factors. So a static factor or risk factor would include age at first arrest. Whereas, a protective factor or dynamic factor would include possibly an individual's job stability. Do they have a solid employment position or they may be in school. And in particular, legislation has focused on dynamic factors because dynamic factors can be used to increase an individual's likelihood of success on pretrial release. So setting conditions

that bolster those dynamic factors can actually increase the odds that an individual will succeed on pretrial release. A couple of other things that I should highlight on that third slide that has the picture of the pretrial risk assessment primer report is that pretrial risk assessment tools can inform, but should not replace judicial discretion. Alaska is the only state that has attempted to require courts to strictly adhere to a risk assessment tool. That law was repealed almost before it was implemented, and it was generally seen as not a success. The vast majority of other enactments that I've seen in other states have in fact done exactly the opposite which has required courts to base their decision making pretrial, not only on a risk assessment, but also a consideration of other factors in addition to the risk assessment. A couple other considerations, a tool is only as good as the information that we are able to put into it. So there's a heavy emphasis on being able to have good data, training on the use of the tool to make sure that we're implementing it appropriately. And as has been previously mentioned, validation is really important. Legislation in particular, addressing risk assessments mostly has focused on requiring encouraging courts to consider a risk assessment. And some are the majority of cases where it would not otherwise delay a defendant's release. Enactments have also funded the

development and validation of risk assessment tools. And they've also set up a framework for the use of a risk assessment tool. Most legislation doesn't actually specifically select a risk assessment tool to be used but they can uniformly require that the same assessment be used across the state. They've also required that assessments be empirically developed. That a tool be validated and revalidated regularly. They required courts to develop guidelines and training for use of an assessment. They've required standardized assessments across the state as I've said. They've required that assessment data and validation be publicly available. They've required that individual defendant's assessment data in the calculations for their individual score be available to counsel and the defendant so they can review for accuracy. States have prohibited proprietary tool use. And most recently, states have required that any tool adopted be free from racial or gender bias. Between 2012 and 2018, 29 states enacted 58 new laws related to the use or funding of risk assessment. Each of these enactments regulated or promoted the use of risk assessment. Iowa is the sole exception to this, previously last year, and there's a map in here where you'll see enactments where Iowa is starred. But last year, they had an amendment to their budget bill that would have shut down county level pilot programs utilizing pretrial safety

assessment. The governor did veto that amendment to their budget bill and allowed the pilot programs to continue their work through the end of December. But that provision was reintroduced and enacted this last session. So that's not reflected on that map. I just wanted to highlight that. And it does make Iowa the only state to prohibit or restrict the use of a risk assessment. Every other enactment has promoted or regulated the use of a risk assessment instead. There is--

LATHROP: Why don't see if anybody has questions for you.

AMBER WIDGERY: Sure.

LATHROP: You're, you're giving us a lot of--

AMBER WIDGERY: Sure.

LATHROP: --information. You clearly have the expertise--

AMBER WIDGERY: Um-hum.

LATHROP: --and let's see if that is-- Senator Chambers.

CHAMBERS: Thank you for coming. The information that NCSL puts out is self-explanatory, clear, and precise. So I like to use these opportunities to go in a different direction when I can.

Words carry a lot of meaning to me. Did the NCSL take a formal decision to refer to itself as a bipartisan organization?

AMBER WIDGERY: Yes. I believe at our original founding that's worked into our founding documents. And we are-- represent-- I mean, we are--

CHAMBERS: OK. Just as-- bi- means two, correct?

AMBER WIDGERY: Um-hum.

CHAMBERS: Which two parties does this organization represent?

AMBER WIDGERY: So our bylaws make our leadership representative of the Republican and Democratic Parties. But every state legislator who is duly elected in their state is automatically a member.

CHAMBERS: There are several political parties now which do have a degree of influence in the outcome of elections. Has this organization ever considered calling itself nonpartisan? See I don't fit in this organization because I don't belong to either of the parties.

AMBER WIDGERY: I'm not aware of any such action. I can say that our research is nonpartisan, but that's the limitation of what I would be able to comment on that. I apologize.

CHAMBERS: What I believe-- and my belief doesn't carry much weight in the Nebraska Legislature. My colleagues don't even listen to me. I've given them information on bills to show they were unconstitutional. They'll pass them anyway because they don't pay attention to what I say. I'm a nonentity. I'm a nonperson for various reasons. So you have no direct knowledge of me. Therefore, my questions may not carry the same significance while I poses them to you as they do to my colleagues. Do you think it might be beneficial given the direction that politics is taking in this country to refer to the organization as nonpartisan or would the two parties object to that?

AMBER WIDGERY: I apologize. But I don't think that's something that I can comment on from my position. It's not related to my policy work.

CHAMBERS: And they probably don't care anyway, but it's something that I pay attention to. And when-- the only parties recognized are the Democrats and the "Repelicans," I'm outside. So I don't think this organization represents me even though I'm a member of the Legislature. And I don't think they have any concern or interest in anything I would say. But you are more or

less a captive person this morning so I thought I would just use you as a sounding board--

AMBER WIDGERY: Yeah.

CHAMBERS: --to get some things into the record. That's all that I have.

LATHROP: I want to ask a few questions. Did you say that the Public Safety Assessment has been used in 40 states?

AMBER WIDGERY: Not 40 states, jurisdictions.

LATHROP: Oh, 40 jurisdictions.

AMBER WIDGERY: Uh-huh.

LATHROP: And how long has that been? So there must have been some kind of a pilot to see if it was useful--

AMBER WIDGERY: Correct.

LATHROP: --and predictive of information a court would want to know before setting a bail or a bond.

AMBER WIDGERY: Correct. So the initial, I think, cohort of pilots there were 20 jurisdictions. A couple of those I believe were states, and then mostly local jurisdictions, and they did a

bunch of rigorous analysis in terms of predictive effectiveness. And they've continued to revise the assessment as well. I know that the Arnold Ventures Foundation has actually just released new funding to take a look at the current PSA and revise it to make it even better. Going forward, I can't speak specifically on the way in which that assessment has been evaluated, but I do know that it's based on national data and that's why it's been popularly-- popular nationally because it can be validated for any jurisdiction.

LATHROP: So here's, here's gonna be my next question--

AMBER WIDGERY: Yep.

LATHROP: --since this is what Douglas County's considering--

AMBER WIDGERY: Yep.

LATHROP: --moving to, and is this-- would you call the Public Safety Assessment best practices at this point?

AMBER WIDGERY: I don't know that I could endorse it as best practices, but I would say that other jurisdictions have done tons though. So--

LATHROP: OK. So here's the, here's the question I suppose all of us are interested in. When that assessment is used, does it

result in fewer people with pretrial or shorter periods of pretrial detention? And what has been the result using this tool and having people appear and not commit violent acts in the meantime?

AMBER WIDGERY: I would say that that overwhelmingly depends on how the assessment is validated and implemented. In jurisdictions like New Jersey, there's been wild success in terms of increasing individual's pretrial success. That being they're not rearrested. They don't commit a new offense, and they show up to court. New Jersey has been very successful using the PSA. There are other jurisdictions who may have had pressure or pain points using the PSA. But a lot of that goes back to how the assessment is implemented and whether or not it's appropriately validated for local populations as well. So training and some of those sort of thresholds are really important. And a lot of those are where legislation does play a role in a lot of states by setting sort of that baseline of best practices for implementing any assessment.

LATHROP: So New Jersey seems to be doing it well. Some people bought the program and maybe didn't follow it, train. There may be a lot of reasons why they might not be happy with it. But I'd like to ask you what's New Jersey doing that makes their use of

this assessment tool and their changes wildly successful to use your words?

AMBER WIDGERY: Yeah. I think that a lot of New Jersey success is important because they've been able to show with data and track their progress so that they can make course adjustments as they move through this process. They also had a constitutional amendment that restructured their system allowing courts to detain individuals not based on charge, but based on a risk calculation. And that was a big change for the state. But they also, I think, what is important to highlight about their success is that they left time for implementation and that big culture shift that's important when you make such radical changes. And so they had a robust process in terms of making the changes that they made. And I think that's contributed to their success.

LATHROP: And again, the problem, of course, is judges don't want to be the judge who let somebody out--

AMBER WIDGERY: Correct.

LATHROP: --who goes out and commits some crazy offense that ends up on the front page of the paper.

AMBER WIDGERY: Correct.

LATHROP: OK. So you got to have buy-in from the court.

AMBER WIDGERY: Correct.

LATHROP: OK. That's all the questions I have, unless anybody has any more? I don't see any. Thank you for--

WAYNE: Sorry.

LATHROP: Oh, I'm sorry. Senator Wayne.

WAYNE: Do you know of any jurisdictions where if there is-- that they have strict diversion like this list of offenses are automatically, automatically for diversion? And then the second part of that is, is, are those offenses automatically ROR bonds?

AMBER WIDGERY: There has been some legislation recently based on class of offense that automatically puts people on ROR bonds. In terms of diversion, that's more a matter of local law enforcement policy. Some states, I think Texas being one of them, at one time tried to mandate certain offenses be a cite and release unless the law enforcement officer had concerns about the individual safety. But I'm not sure-- you know, in terms of automatic diversion that tends to be a matter for local law enforcement policy. And I know those policies do exist. And then for New York is the recent example of restricting any sort

of financial or other conditions of release for all misdemeanors and their nonviolent felonies. You-- they're, they're no longer allowed to set a monetary bail.

WAYNE: All right. Thank you.

LATHROP: OK. Thanks for your help. We appreciate your testimony and your being here today. Good, good morning.

LaVon STENNIS-WILLIAMS: Good morning,--

LATHROP: Welcome back to the Judiciary Committee.

LaVon STENNIS-WILLIAMS: --Mr. Chair and other members of the Judiciary Committee. My name is LaVon Stennis-Williams, L-a-V-o-n S-t-e-n-n-i-s hyphen Williams. I was required to use my married name. I'm here to testify in support of the LR206 specifically, because I believe it's a necessary first step to bringing about the bill reform that's desperately needed. Each Wednesday and Thursday and throughout the rest of week, I teach and all of Nebraska state prisons. On Wednesdays and Thursdays, I teach at Douglas County Correction. I teach life skills and reentry classes to the program units at Douglas County and the same type of classes in Nebraska Department state prisons. More than half the program participants are nonviolent offenders at the Corrections who are unable to post bail and must wait out

their time in jail until their trial. Many will be forced to take plea agreements because they just simply want to get out of jail. In a study the other day, I took with the men who serve and who have served our country they're now housed in the Douglas County Correction veterans unit. I just asked them their bail amount. I added up that bail amount and collectively the average bail was \$200,000. That meant they were required to post \$20,000 to get out which is oftentimes more than half of what any of them are making. In talking with the men at the Nebraska State Prisons I talked with, ask them about their pretrial experiences as well as the men and women in Douglas County. What I learned is that the average length of time that these individuals are waiting to go to trial because they can't post bail is 8 to 10 months. Our current cash bail system in Nebraska has created a two-tier system of justice where poverty is criminalized and poor people are penalized for their inability to bail out. National statistics show that 70 percent of people locked up in our local jails have not, have not been convicted of a crime and are there because they simply cannot post bail. The hardship and disproportionality on African-Americans and Latinos is far greater. On average, African-Americans are spending four times the number of days pretrial that other individuals for similar offenses, and that needs to be

corrected. Many are being held awaiting bail suffer from addictions and mental health issues. Where, once again, we are criminalizing issues that should be-- they should be-- we should be serving these people not criminalizing when they have these addictions and mental health. In speaking with men and women in our classes, we hear firsthand the devastating impact on families and communities when the head of household isn't able to make bail. Most will lose their jobs. Many of the kids will be taken away. Rent will not get paid, will not get paid. And families will be broken up and so on. I've heard a lot of testimony about the pretrial assessment tools. And one of the tools I found to be probably the most helpful to working with pretrial issues is the one that's used in Davidson County Nashville, Tennessee. It's called a proxy score with just three simple questions: your age at your first arrest, your current age, and the number of times you've been arrested, has helped them come up with a proxy score that allows them to then measure a person's risk of reoffending and coming back to jail. And that score immediately is, is available to judges that results in them being able to get out quicker. The other good thing about that score is that it has been validated to alleviate the racial and ethnic disparity that often factors into many of these scores. Another good thing about the score is that it cannot be

overridden. It does not matter what type of assessment tool you use, if there is a process that allow people to override it. As we see that in Douglas County with our juvenile justice system. Over 50 percent of that time, that tool is overridden resulting in detention. So I would think legislation will be needed to keep something like that from happening. Another good factor that I would, would want to suggest, regardless of the studies, that you do this study, but you do it very quickly because justice denied is justice delayed, and that you also use local people. Oftentimes, we go out, out of our state and we look to national resources to help validate and develop these studies. What we need to do is make sure that people who are serving this population, people who are closer to the problem are gonna be closer to the solution. But oftentimes, we're further away from the input. And so that was just a suggestion that I would, I would, I would strongly recommend in developing this study and moving forward. Finally, we know there are more acceptable alternatives to pretrial incarceration and we must explore them, but we also must act and consider them. Thank you very much.

LATHROP: Very good. Any questions? Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Miss Stennis-Williams. I was just wondering, you, you said in the juvenile justice system the tool is overwritten. What does that mean?

LaVon STENNIS-WILLIAMS: The person who is conducting the assessment has the ability to override the tool.

PANSING BROOKS: Oh, overridden.

LaVon STENNIS-WILLIAMS: And as a result, it-- usually it is overridden in favor of detention as opposed to releasing a person. And it's-- and the greatest impact is on African-American males.

PANSING BROOKS: And so they'll, they'll do the tool, they'll, they'll assess the person, and then determining upon-- just depending on the result, they may say, oh no, this person definitely needs to stay and so they just ignore it. Is that how it works?

LaVon STENNIS-WILLIAMS: Absolutely. And oftentimes the reason why it's overridden is because there is some information given to them about their child's potential gang involvement. But there, there are issues that are unique to African-American communities that often find their way into these tools to make them more at risk. So that's why I suggest that when we develop

them that we do not give an opportunity to have them overridden. And then secondly, that when we do develop them that we use culturally competent local experts to help in developing those tools in the implementation.

PANSING BROOKS: Thank you. When I heard you first say it, I thought you said overwritten with t's,--

LaVon STENNIS-WILLIAMS: No, overridden.

PANSING BROOKS: --instead of overridden with d's, but this was helpful to hear. Thank you.

LATHROP: Senator Chambers.

CHAMBERS: As-- glad to see you.

LaVon STENNIS-WILLIAMS: Thank you.

CHAMBERS: I knew this lady before she knew herself. But I know most people before they know themselves due to my age. But as with other situations in this society, our black youth are overwhelmingly disproportionately represented in detention. Is that true or false?

LaVon STENNIS-WILLIAMS: That's true. Very true.

CHAMBERS: The U.S. Code says many things about the American flag. I have some things to say about it that people don't like. But I won't go into mine. The code says that the flag of the United States should be flown over every public building. Does Douglas County fly the American flag over its buildings?

LaVon STENNIS-WILLIAMS: I believe they do.

CHAMBERS: And under that flag there is a disproportionate representation of black people when it comes to detention. Is that correct?

LaVon STENNIS-WILLIAMS: Yes, sir, in the juvenile and in the adult correction.

CHAMBERS: And one thing that bothers me-- I keep, I keep articles. I have a couple of them where white youngsters had shot at the police. And in one case had shot two deputies and was released to his parents.

LaVon STENNIS-WILLIAMS: That's correct.

CHAMBERS: And our children are locked up even if what they did would not be considered a crime. So when people talk to me about this flag, it doesn't mean the same thing to me as it does to others when I see it as a, as a symbol of oppression. Now the

U.S. Code says that in respecting this flag, and they want me to respect it, it should not be a part of apparel-- part of wearing apparel. When Nike put the flag on those shoes, a lot of white people were offended because Colin Kaepernick said that that flag was emblematic of a time when there were slavery. So white people got irate because Nike pulled the shoe. But in their ignorance, white people fail to recognize, and they don't study so they don't realize that the shoe should never have been put out there because the flag is not appropriately placed on any attire and certainly not a shoe. So instead of being outraged that Nike pulled it because Kaepernick and other people found it offensive, the flag itself. If these white people who were offended such as the Governor of Nebraska, the governor of Arizona they should have taken offense because Nike put the flag on the shoe. And the American flag is defined in the U.S. Code. It is that flag with the stripes and the 13 stars and then any additional states added will have a star placed in what is called the union. Most of these people don't even know that the blue rectangle is known as the union. They don't realize that that union is always to be to the left when an observer is looking at the flag. I saw a uniform that my colleague Senator Brewer was wearing. He is connected with the military, but the union is on the wrong side. So even on this uniform, they do not

place that flag according to the way that the United States Code says it should be placed. I'm using you as a sounding board in a sense because I read what white people read-- write. I read their constitution and when I read the Eighth Amendment, there's not to be excessive bail and that's done in Douglas County all the time. And these white people act like-- and maybe they're sincere because they're ignorant why I'm offended about the praise of the flag, praise of the constitution, and all of those things of which the flag is to be emblematic are violated by the very white people who pretend to be offended because black people take offense at what's happening to us in this country. When Kaepernick and other black football players took a knee during the Star-Spangled Banner, there is nothing that says that you have to stand for the Star- Spangled Banner. But there is a great deal said about respect for the flag. The flag is supposed to represent a living entity which is this country and its government. And it says that the flag therefore is a living object. That's what the U.S. Code says. These people don't know that. But I know it because I read about the thing they say they respect. The flag should never be a woman's bikini. It should never be a bandanna. When it's posted on a wall, the blue area-- the union should never be on the right side as it's being looked at. It's always to be on the left side as the observer looks at

the flag. It's not to be flown in inclement weather unless it's an all-weather material. It is not to touch the ground or anything beneath the flag. It is not to be used in connection with advertising, their flag. But the newspapers that will editorialize against me when it comes to Flag Day, they will print advertisements with the flag. That's not to be done, but they do it. That's their hypocrisy. But it's more a matter of ignorance. Now here's what I want to ask you. When you are teaching, do you ever encounter anything that might lead you to make recommendations to people who are operating any of these facilities? When, when the inmates talk to you for react-- interact with you, are there issues they raise that should be brought to the attention?

LaVon STENNIS-WILLIAMS: Yes, they do. And I've been given a great deal of support with Douglas County administrators when I bring suggestions or concerns that the men and women have raised. And same thing with Nebraska state prisons. I'm able to work with our grant administrator, don't always see the result.

CHAMBERS: Could you, could you speak a little louder?

LaVon STENNIS-WILLIAMS: I don't always get the result, but I'm able to at least share the concerns that, that are brought to me

from the men and women who take my classes at both Douglas County and at Nebraska State Department of Corrections.

CHAMBERS: And did you say that changes result as a consequence of you bringing that information?

LaVon STENNIS-WILLIAMS: There are some, and then there are some that, that don't. And I don't get a chance to follow up, but there are some recommendations that I have suggested regarding the classes and how people are getting into the classes and concerns that they raised about the classes that I've seen them implemented.

CHAMBERS: That's all I wanted to ask you. And my young friend, I'm apologizing to you for using you as a sounding board. But there are things that need to be said when we had these legislative hearings and I pick somebody who has an understanding of what is being said and will not feel that she is being picked on or abused or taken advantage of because I expressed views that we all understand. And I'm in a position where I can express these views and will where other people could face negative consequences if they do. So that's all that I have, and thanks for coming.

LaVon STENNIS-WILLIAMS: Thank you. I just hope that cultural competency will form all of your decisions going forward and not just use these random reports and assessment tools that have not been tested against the racial ethnic and transgender bias that could take place in these tools.

LATHROP: OK.

PANSING BROOKS: Thank you.

LATHROP: I think that's all. Thank you very much for your testimony. Next testifier.

DEB SCHORR: Good afternoon, Senator and members of the Judiciary Committee. My name is Deb Schorr, D-e-b S-c-h-o-r-r. I'm a member at the Lancaster County Board of Commissioners and part of the Lancaster County team here to provide you with information as you make these important decisions. And thank you for this opportunity to testify on LR144 and LB206. The Lancaster County Board recognizes that jail reform is a significant issue regarding our immediate attention. Jurisdictions across the country are addressing inherent inequities of the bail system based on pretrial detainee's ability to pay. Some jurisdictions, such as New Jersey, which has been mentioned earlier, and California have legislatively

addressed this issue. In other jurisdictions, the issue is being addressed in courts where lawsuits are being successfully litigated under the equal protection and due process clauses of the federal and state constitutions. The Lancaster County Board believes the better approach to bail reform is to address the issue legislatively. The County Board also believes bail reform will not be successful without a comprehensive pretrial release program. Community-based services are essential to make sure pretrial detainees show up for their court dates as well as to protect public safety. Lancaster County established our Community Corrections Department in 2003 to reduce our jail population. We stand ready to dedicate additional resources to Community Corrections if bail reform is adopted. Our County Board will support funding to monitor pretrial detainees. So rather than sitting in our county jails they are back in their home environment spending time with family, going to school or work, or receiving a specialized treatment they need to prevent recidivism. Bail reform will be successful with innovative new funding for diversion programming, and we hope that we can count on the state to assist in providing services for the specific population. Now I'd like to address some of the questions you had earlier about pretrial release programming. Lancaster County is different than Douglas County. In Douglas County, that

programming is run as part of the Corrections Department. In Lancaster County, it's run separately through our Community Corrections Department. And I'd like, with your permission, to have Kim Etherton, our Community Corrections Director, follow me in testifying to provide additional information about our existing pretrial programs and possible expansion should bill reform exist or be a result of becoming a legislative session.

LATHROP: OK. Any questions for Commissioner Schorr? I see none. Thank you--

DEB SCHORR: Thank you.

LATHROP: --for your testimony. You're Kim with the Community Corrections?

KIM ETHERTON: I'll be quick. I know there are people around that really want to go next. So I do just want to-- my name is Kim--

LATHROP: Let's start with your name.

KIM ETHERTON: Kim Etherton, K-i-m E-t-h-e-r-t-o-n. So thank you, Senator Lathrop and the Judiciary Committee for letting me step in. I was not planning on testifying today, but I do want to talk a little bit about what my agency has done since 2003. We actually do use a risk assessment instrument. We use the

Virginia Pretrial Risk Assessment Instrument. I actually worked with the University of Nebraska in Omaha to identify a tool back in 2004 that had been validated against a jurisdiction the similar size and makeup of Lancaster County. What we determined was the best fit was the Virginia Instrument. And so we have been using that instrument for quite a while. And sadly, what is, what is best practice is to get those instruments or those scores in front of a judge as soon as possible. There hasn't actually been-- we, we don't-- we aren't actually able to do that in Lancaster County. What, what does happen for us is we wait to see if somebody can bond out of jail. We don't just do that risk assessment instrument. We also do substance abuse screenings. We look at their adversity child experience scores. Multiple screening instruments that we use. We give folks about three days to post bond. And if that hasn't happened after three days, then we look at the charge to make sure it's an eligible offense. And we will go in then and screen the individual for the program. That information is all gathered and given to all parties: prosecution, the judge, and the defense counsel. And that bond review where decisions are made. The reason why bail reform would be useful in Lancaster County is oftentimes, even with my supervision, my Department's supervision, the courts are assigning a cash bond as well. And so we do have folks who have

trouble coming up with that cash bond so that they can get out and be supervised by, by my agency. So that's in a nutshell. I just wanted to briefly clarify that, yes, we do a risk assessment screening. We've been doing it for quite some time. The, the courts do get that information. It is based on eligible charges. So we do not screen folks with violent offenses and we are not looking at the misdemeanor population. It is purely a felony pretrial release program at this point in time. I'll take any questions.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Miss Etherton, if I'm, if I'm reading this right, what you would, would like the law to say would be that if your agency determines that this individual was eligible for score to be released that the, the court could not impose a cash bond. Is that correct?

KIM ETHERTON: Well, I'm, I'm never-- I never want to tell the courts what they can and can't do.

BRANDT: You can here.

KIM ETHERTON: But, but it would certainly,--

WAYNE: It still goes back to the court. [LAUGHTER]

KIM ETHERTON: --it would certainly benefit the defendants that are in jail. Yes. And it would-- and we often-- we-- it comes across our desk often where we have somebody who-- and we-- you know, we do a lot of work ahead of time getting services in place: treatment, beds available, the kinds of things that they need to be successful. And when that cash is imposed oftentimes it limits their ability to, to get out of jail and, and start working and, and-- you know, being able to participate in the defense of their case.

BRANDT: OK. Thank you.

KIM ETHERTON: Yeah.

LATHROP: Do you see the-- after you do a risk assessment-- so there's a schedule that says I need to post 10 percent of \$5,000. I don't have the \$500. You do your assessment. Do you see judges changing their mind and those bond reviews? Lowering it as a result of your assessment?

KIM ETHERTON: I guess I don't know the answer to that. Possibly, yes. What our screening instrument does is gives us information about what level of supervision that individual needs. And so it is anywhere from checking in every day to checking in once a week. And so I don't know that the information we give them

actually has an impact on their decision about the cash, the cash bond. I think that probably comes more from the prosecutor's office.

LATHROP: OK. Well, I see one of the defense bar here shaking their head while you're testifying so I suspect we'll get some more information about that. Any other questions? I see none. Thanks for your testimony, Miss Etherton. Good Morning.

SPIKE EICKHOLT: Good morning, Chairman Lathrop, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska as a registered lobbyist. Earlier this week, I sent around my testimony because it was lengthy and I think I e-mailed it to everyone on the committee except for maybe a couple of people who don't-- well, one person doesn't use e-mail, and I also referenced in the letter testimony that I had, the state of New Jersey, and I actually attached and included the 2018 State Court Administrators of New Jersey's summary report of their-- they call the CJR Program, the detachment of the money bond program. So I'm not gonna repeat my testimony, but I just would respond to some of the things that have been discussed before. When Miss Stennis-Williams testified, she talked about the hazards or the dangers or the pitfalls of relying on a preassessment or

pretrial release assessment or being sort of detaching from money bond reform to simply replacing it with a screening instrument sort of system. I think New Jersey got it right because they have-- they did sort of both. If you look at what New Jersey did, is they sort of eliminated money bond or reduced it for low-level offenses, and then they allowed for money bond options and supervised release options for more serious offenses. And they really changed the entire way that cases are prosecuted, and you can see it in the summary of the report. The way it works now is, as Chairman Lathrop indicated before, police arrest somebody, they're taken to jail. If that case that they're booked in on, or the charge they're booked in on is a bondable offense and they've got that amount of money according to the schedule, they're out. If they have to see the judge, the judge then sets the bond. But the way it works New Jersey, the presumption is the other way, a person is not detained, a person is cited and released. If the prosecutor wants to detain somebody they file a motion for detention and the burden is on the state then to show why they should be detained. They're screened according to whatever assessment they use and they do use that public safety assessment method. And then they-- and then they're released according to those conditions if the judge sees that-- thinks that's appropriate. What they did in New

Jersey, they have lowered the jail population significantly. I referenced the 2018 summary because after two years of having that system, New Jersey did not notice any difference in the failing to appear rates with people who didn't miss court or the reoffense rate. They went up slightly, but statistically it was insignificant. So I would submit that that is the right approach. Maybe have a blended way of looking at this. And I'm gonna say a couple of other things. I think that what Senator Hansen has in LB282 eliminating the option to have money bonds for city ordinances and low-level offenses makes sense for a couple of reasons. First, those are minor offenses that are often minimal jail sentences if they all are fines. But I think it's also important because that is sort of the-- if we're gonna affect the culture of the courts-- if we're gonna somehow have an impact, the only way that the Legislature can do that is by statutory change and that's-- will have a change. I would submit on the cultural impact. I think judges do things [INAUDIBLE] comparatively. They give a maximum sentence for what they think that the worst crime is, and then they sort of go down to according to whatever happens. And I think they do the same thing with bonds. If they're setting \$200, \$250 bonds for city ordinance trespass for homeless people in parking garages. That's their starting point when they're looking at residue

amounts for felonies, third offense shoplifting felonies, or these other more serious charges. And I think you're just going to drag that dollar amount average down. I mean, when we heard these numbers of people who were held in Lancaster County and Douglas County Jail, there's 283 that could just-- if they had the money they'd be out. Eight hundred and seventy-two in Douglas County, same thing. Those people are presumed innocent and they-- and many of them probably are. At least not guilty of some of the crimes they are charged with. In the reports and the letter I mentioned, being locked up equals not only the immediate destruction of your life, but equals you're more likely to have a more significant sentence imposed. You're gonna plead to charges you would not otherwise plead to even if you're not guilty of it because that's your only way out of jail. And even if you think, well, I've been in jail for 30 or 60 days, that doesn't seem like much. It's the daily uncertainty of being unable to predict the future of your life. I was arrested out of a car. I've got a dog at home. I can't get a hold of anybody because the phone system is all screwed up and I'm here. One other thing that I would ask the committee to consider doing with legislative change, and that's in LB282 also, is prohibit court's ability to set a money bond if they're not appointing someone a lawyer. You see that happen. You have a right to have

an attorney if someone cannot afford one and the state is seeking jail time. What happens typically, and it has happened for years, is that the state will indicate, well, we're not out asking for jail judge. The judge will say, well, I'm not appointing you a lawyer. How do you want to plead? And the guy will say, not guilty. OK, then we'll set a bond for you. He can't post that money bond. He's sitting in jail. If it's not serious enough to appoint a lawyer, it shouldn't be serious enough to set a money bond. And so I think that-- and there's a provision in LB282 that would have that. I think that's a good legislative change as well. And I can talk about the bail fund if you want me to in that little bit of time that I have.

LATHROP: I would.

SPIKE EICKHOLT: As Mr. Johnson indicated before the ACLU did receive a-- ACLU Nebraska did receive a donation from one of our donors for a bail fund. And we never intended it to be a permanent solution, because in reality it is not a solution. But we do want to do it because, one, it would provide some immediate relief for some people. And we also wanted to sort of spur and contribute to the debate on the subject. I'm past my light time. Can I--

LATHROP: Go-- no, you're on a question now. Go ahead.

SPIKE EICKHOLT: And the way that it worked, and then as Mr. Johnson indicated, we did work with his office. We try to focus not necessarily on the charge or anything particular about the defendants necessarily. We try to focus on the bond amounts. We had a limited amount of money. We wanted to help as many people as we could so we focused on lower bond amounts. We did work with Brad Johnson's staff to sort of identify people who they thought may have mental health problems, may have holds from other counties, things like that that perhaps we would not, would not necessarily-- would not help them necessarily to bond them out. Well, what we would do is that we would meet with these detainees. If they had lawyers, we would notify the lawyers beforehand. But we would explain to them that we have a bail fund. We will bond you out if you want us to. We just ask that you go to court. And we also ask them to agree to assign the bond back to us. The court has a standard bond assignment form where a person-- the way it works even though somebody else may put the money down on a bond, the law presumes that that money goes to the defendant in the case. But you can file some sort of waiver of that and assign it to somebody else. So they were told when they were in custody before they even leave the jail, you're not getting this money back. We're gonna post it, and you're free, but you're never gonna get this money back. Do

you understand that? And most people appeared in court. We still have some people actually, even though we discontinued the program. I guess, almost a year ago now. Well, maybe it's like the beginning of the year, so it would be about nine months. We settle for people who are out on the bond, so we don't have a complete number of them all. It's difficult to compare the appearance rate compared to whatever regular bonds are because there's not really any hard numbers. I heard a lot of anecdotal numbers. And I'll tell you from my experience as a practitioner, I think most of the people, the appearance rate was comparable. Most people came back to court knowing full well that they weren't gonna get their money back. I don't think that's what drove a lot of them. We did have a lot of people not appear-- or more people-- the people who are not likely to appear are those people who did not have attorneys, because we were bonding people out. We had court appointed counsel on people who-- because judges again weren't gonna impose jail time. But they still had a money bond. We bonded those people out. I think because they had a higher nonappearance rate, I think what that was is maybe intimidation of the court system. Just unfamiliarity with how things work. Just not sure what to do, not sure where to go. And so that's some of the information we had about that. And that was a-- even though it was a temporary

thing, it did contribute to the discussion on this issue. The Lancaster County Attorney and the City Attorney of Lincoln did provide for warrant report, where they had like a limited amnesty for people who weren't connected to the bond funded side, but people would just have warrants. Because what you find is that-- I mean, one of the arguments for having a money bond, right, is that you require someone to pay to invest in the case. Right? So they don't just take off. And that's why they're gonna come back to court. And the people who don't show up don't really go anywhere. Right? They're living a marginal life as it is anyway. And for many-- and I've worked with poor people for a long time, for many poor people they don't make that kind of financial decision. Right? But financial decisions happen to them. Right? They don't make it. So the notion that somehow I'm gonna get this money back is just-- they're just paying, they're reacting. They got to pay a fine, they got to pay a fine. They got to pay a bond, they look at it the same way. So-- and that challenges the assumption of the money bond system. If people are coming back to court when they have no financial incentive to do so, I think that challenges the-- that's one sort of takeaway, if you will. And other jurisdictions have had similar results with that.

LATHROP: Senator Chambers.

CHAMBERS: Mr. Eickholt, you practice law. Correct?

SPIKE EICKHOLT: Yes.

CHAMBERS: This is for the record. Now most people are familiar with language in the Eighth Amendment to the U.S. Constitution that prohibits cruel and unusual punishments. I made the statement that it also says something about bail. Is there something in the Eighth Amendment relative to bail? And if so, what does it say?

SPIKE EICKHOLT: Can't remember the exact language, but the prohibition in the Eighth Amendment to the U.S. Constitution and also in our state constitution in Article I, Section 9, that prohibits the courts setting excessive bonds or excessive fines.

CHAMBERS: In your experience from what you have observed, do you think there are examples of excessive bail being imposed?

SPIKE EICKHOLT: Yes.

CHAMBERS: Have there been instances where people who could not post bond have stayed in jail longer than would have been the sentence had they been convicted?

SPIKE EICKHOLT: Absolutely. I've had cases where my clients have sat in jail for close to a year acquitted at trial and walked free.

CHAMBERS: You, you anticipated the next question I was gonna say. And if somebody is acquitted, that person should not have been punished at all and jail is a punishment.

SPIKE EICKHOLT: That's right.

CHAMBERS: I think it was Blackstone, and people like to, to quote it, especially Americans: Better that 100 guilty persons escape than that one innocent person suffer any punishment. But in practice like so many things that America, that's thrown out the window when it comes to poor people or unpopular groups. And I'm glad that we're having the hearing. I'm glad that-- or I anticipate some legislation will be enacted or introduced. But what I'm wondering, and I'm just saying this for the record. If a person is charged with an offense and is locked up because he or she cannot post bail when a number of days have elapsed that would have equaled the maximum penalty, that person would have to be released. I don't think that would be unreasonable.

SPIKE EICKHOLT: No.

CHAMBERS: Because to make them stay longer knowing that it's a period longer than they would be punished for, I think is the crowning injustice. But that's all that I have. Thank you.

LATHROP: Just one, one more question. And I don't know that we've worked this into the record so far, so talk to me or, or educate the committee and those here today. When a person has a bond imposed and they sit there for a period of time because they've pled not guilty, tell us the number of people that actually plead guilty just to get out of there because somebody has offered them time served?

SPIKE EICKHOLT: I mean, for the misdemeanors, for people not represented, I say it's close to 100 percent. For people who are not represented by a lawyer--

LATHROP: So describe the-- typically this--

SPIKE EICKHOLT: Say for instance somebody is caught on campus, and I'm always thought this was a meritorious defense, and they're charged under some sort of trespass. But I don't know that it's clear that you can't be on campus after certain hours. There's no real signs and so on. And I think arguably the law requires the state's got to show, you were on notice, you couldn't be there. They'll pick somebody up. They'll book them

in the jail. If they want to plead not guilty, they plead not guilty. They'll set of money bond, they'll sit there for a while. And then generally often, with assistance from the jail staff, they'll send a note to the judge. They'll go back in front of the judge and they'll plead, and the judge will impose a fine. And then they are done, and they get time served. Right? Or they'll get a minimal jail sentence if they have an attorney for equal to the time. And you're really just kind of warehousing somebody for a while and then just releasing them.

LATHROP: I saw something on the Web site of the group that we've we heard from in the very first testimony, the number of, the number of convictions once you have bail reform goes down because of the number of people who otherwise just go in and say, I need to get out of here.

SPIKE EICKHOLT: I'll plead guilty.

LATHROP: I'll plead guilty for time served.

SPIKE EICKHOLT: I agree. And people are pleading guilty and they have defenses. I mean, they may not be factually innocent. But I mean, that wasn't them wanting involved, but they've got legal defenses. And it's more than just getting it done and getting time served and get out. If you've got just a day or two jail

sentence, remember you can't get a set aside for that conviction. That's gonna follow you. You can get a set aside if you've made your bond and you got a fine for it. Right? And you can come back later on and get that off your record somehow. You can't do that if you just get one day of jail. Fortunately, there's a bill in your committee that would resolve that to a certain extent. But that-- there's other collateral consequences and not just the immediate ones of I got behind in my rent and I come home and my landlord has locked the door and all my stuff is gone. Right? That's one other consequence. But you've lost your job. If you get behind and you lose your insurance for your car, you've lost your license. All those things just spiral.

LATHROP: OK. Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thanks for coming, Mr. Eickholt. So I love your comment, if it's not serious enough to appoint a lawyer, then why are we setting a bond. And so I think that most people in Nebraska would be flabbergasted that people in our state are in jail without a lawyer. Really. So what, what percentage of those people have not been allowed to get a lawyer and are actually sitting there having, I guess, pled not guilty. Right? Or the-- we're waiting--

SPIKE EICKHOLT: They have an opportunity, usually a day or two after they're arrested, to go in front of the judge. And if they-- most of them when they find out they're not gonna get jail time, will just plead to it, and they'll get a fine.

PANSING BROOKS: Will just what?

SPIKE EICKHOLT: Plead to it, plead guilty to it.

PANSING BROOKS: Plead guilty, yeah.

SPIKE EICKHOLT: The judge will give them a fine. They can get \$150 for time served per day to apply toward the fine and costs and they're just done. Those people that don't want to plead, they'll sit there for a few more days. Now there's not that many over all, but it's a constant percentage. Right? And it contributes to your overall number. You know, we're talking about relatives. It's like the state prison thing-- you know, well, it's only gonna bring it down 10 percent. That's 10 percent right. I mean that's a number.

PANSING BROOKS: Right.

SPIKE EICKHOLT: And like I said before, there's the indirect. That's, that's the-- if you're setting money bonds for people who aren't even gonna get a-- they're not even gonna get jail

for the offense. And it doesn't take much to set even higher bonds for those people that are gonna get jail.

PANSING BROOKS: Right. So-- but at what point-- have they asked for lawyers? I was trying to look at the, at the timing.

SPIKE EICKHOLT: Sometimes they do. And the judge will just tell them, I'm not gonna give you one because you don't have a right to have it if you're not gonna get jail. And I've-- yeah, I've had people, I would like to have a lawyer.

PANSING BROOKS: Except they're in jail for waiting.

SPIKE EICKHOLT: Well, that's right. But they're that-- they're not getting jail as a sentence. And that's the sort of myth.

PANSING BROOKS: That's ridiculous.

SPIKE EICKHOLT: That's why we suggest that it not be allowed.

PANSING BROOKS: I, I, I don't believe that most people realize that.

SPIKE EICKHOLT: It doesn't feel any different to the person who has to sit there that's for sure.

PANSING BROOKS: Pardon me?

SPIKE EICKHOLT: The person who has got to sit in jail for the two days, they-- to sit out a fine versus two days jail. It doesn't feel any different to them.

PANSING BROOKS: All right. Thank you.

CHAMBERS: That's why I think the flag salute says, with liberty and justice for all, liberty and justice for all. And that's a lie. And that's what the flag salute says. I couldn't help it.

LATHROP: OK. Senator Wayne.

WAYNE: Do, do you practice a lot in Douglas County?

SPIKE EICKHOLT: I've been there some, but not much.

WAYNE: Have you ever been to courtroom 50?

SPIKE EICKHOLT: I have.

WAYNE: So courtroom 50 for the public and for, I guess, for the transcribers, people reading this later is the jail courthouse. So you brought Lancaster, and so just to put on the record how it works a little bit in Douglas County, is if you're arrested on a Thursday or a Friday or over the weekend-- but typically on a Thursday, you're not gonna see court until probably Monday. And if it's a serious misdemeanor or a felony, you're not gonna

see it until Tuesday. On Monday, court's push back to one because of all the people that supposedly got arrested over the weekend and Friday. So what typically happens is, if you have a one- or two-day sentence, you've already got your time served. So if you go down there at 10:00 or 9:00 on a Tuesday-- I guess, to answer your question, Senator Pansing Brooks, it's hard to collect that number because they're offered right when they walk up if you plead to this, you'll get time served. And so if you have a job and you have to go back to your job on Tuesday or Wednesday-- or you missed one day already on Monday, you plead. And yeah, they're low-level misdemeanors, but what I'm seeing from our previous practice and for the last four months that I've been digging into this, especially around the city code violations in ordinance violations, they're pleading to one or two days, but then they get this rap sheet. And then if something happens and you're-- you make another mistake or something happens, you're sitting in front of a judge, a judge looks at your rap sheet and says, well, you've been involved with the law enforcement for the last ten years at least once a year. So then they crack you on a maximum sentence. But the reality was these were just small things, open liquor container, usually a citable offense. But let's say you get a little agitated with the police because you're arguing about whether it

is to be on campus or not. So they cite you for something else that is arrestable offense and you sit there. They dropped your arrestable offense and say, hey, just plead to this and time served. And so that courtroom has more pleads in it or the arraignment day in 29 because prosecutors offer a deal. And usually it's a fine, or usually it's time served. But people don't know the impact that it'll have because they haven't sat down with an attorney. And most of them unfortunately are 21- to 30-years-old, and they're thinking, oh, time served. I've got to get back to work. I've got to go back to West Telemarketing and get on the telemarketing. I can't sit in here. And then it builds up over time. So that's how Douglas County works. And I just wanted to-- I didn't know if we have anybody-- attorneys from Douglas County here. But we can go down there on a Monday. We can take the committee down there and sit in the classroom and just look, and you'll see the number of people who plead that morning just to get back to work.

PANSING BROOKS: Thank you.

SPIKE EICKHOLT: You're absolutely right.

LATHROP: OK. Thank you for that. And thanks for your testimony, Spike. Appreciate it. Good morning.

DOMINIQUE MORGAN: Good morning. My name is Dominique Morgan, D-o-m-i-n-i-q-u-e M-o-r-g-a-n, and I am the national director of Black and Pink. We are the largest prison abolitionist organization in the United States specifically focusing on supporting LGBTQ+ people, gender nonconforming individuals, and people who are living with HIV and AIDS in this country. We are walking into our 15th year. And in January of 2018, I was appointed as the national director. And 90 days later, I moved our national offices from Boston to Omaha, Nebraska. I stand in front of you as a person who is a service provider. And we are now the only bail support program in the state of Nebraska. In 2018, Black and Pink supported over 30 individuals and spent about \$30,000 in bail support. But I also sit in front of you as the former inmate number 56892 through Nebraska's Department of Corrections. I spent 342 days in Lancaster County pending a court hearing with a \$1,000 bond, as I navigated mental health issues and depression and being a young person who was then diagnosed with HIV and AIDS and not having access to medication inside of that jail. I was then sent to the state system where it took another 90 days for me to get an assessment, for me to see a doctor, for me to get access to medication. And that was in 2002. And in 2019, as we serve our members here, here in Omaha but across the country, I'm seeing the same issues. We are

having people call us and say, well, I've told them that I'm HIV positive. They say I have a medical appointment, but I may not get in for three days. I'm afraid of getting resistance to my medication. So it's not only us spending \$800 to get someone out of a facility that we don't feel they should be in simply because we don't believe that humans should be caged. But that \$800 will get someone access to their medication. That \$800 are gonna get folks back to their homes, to their children, to their jobs. I took-- my testimony has really fluctuated as I heard other folks speak, because there's just some things that folks are saying that I think they're saying with good intentions. People are either data people or narrative people. You all have the data. If you all are gonna make this decision based on numbers, you could Google that. And there would be no point for a-- now what, almost three-hour hearing. I'm gonna bring you narrative for why this is important. You have people specifically looking at this issue from an intersectional standpoint, and that's what I would challenge you all to do. Talking about mass incarceration is new for us in Nebraska when we've been over capacity since 2000, since Hastings was closed. So we're 19 years in of being over capacity, but we're just now really having conversation about mass incarceration. But these need to be intersectional conversations. A queer person, a

person who is transgender, a person who identifies as gender nonconforming, who are these-- who are in these institutions most likely are not only there with a bond that's \$500 to \$800 from most of the people that we do bail support for, but many of them are either classified and put into some sort of administrative confinement for their safety based on standards set out in the Prison Rape Elimination Act, or they are seeking protective custody simply because that's the only space where they can feel safe, not only physically, but mentally. So you have folks who are in these institutions who have very small bonds that are also doing that time in solitary confinement. In my eight and a half years in Nebraska Department of Corrections, I served 18 months in solitary confinement, 788,401 minutes in the Special Management Unit in Tecumseh state institution and without Senator Chambers and the ACLU of Nebraska. I don't know if I would have gotten out when I did but I was placed in solitary confinement simply because of the mandates of PREA. And as you see county institutions, as you see community-based institutions lean into PREA implementation, you're also seeing them be very careless, and not be educated, not have foundational understandings about identities and how you can house folks based on, on gender identity. And, and that's very scary. We're also looking at reproductive justice. You have

folks who are pregnant. You have folks who are navigating other issues around their reproductive support, and that support ends when they're inside of these institutions. If you believe a county jail is going to be able to give someone proper support during their pregnancy, I have a bunch of land that I want to sell you that's on the moon right now. We also had an influx of folks we supported when FOSTA went through. It was a federal mandate on that, that wanted to address sex trafficking, but it impacted folks who identified as sex workers because many of them went from the Internet and these safe spaces to the streets to engage in sex work which is how they were surviving. So we also have a high population of folks that we are bonding out through that process. I, I just want to say that this is a very intersectional issue. If you don't care about mass incarceration, you have to look at the things you do care about. And I promise, I can show you how that can be addressed through supporting these issues.

LATHROP: OK. Senator Wayne.

WAYNE: And this is somewhat of an unfair question because I, I really want to talk about my experience, but I'm trying to do it via your testimony. Can you talk about, particularly in Douglas County, the gang file or the mention as Miss Stennis-Williams

said, being somehow tied to a gang and how that impacts your pretrial ability to bond out?

DOMINIQUE MORGAN: Yes. So we at Black and Pink-- you know, we uplift and center LGBTQ+ folks and folks who are navigating HIV and AIDS. But as an abolitionist organization, we believe in liberation for all, or liberation for none. And so what we are seeing with folks who are just coming to our healing circles reaching out to us in general, there was a gentleman who was 50-years-old and his ability to go to community custody through Douglas County was impacted by his gang file when he was 20. And I'm trying to reach out to individuals at the county jail to try to understand how this lives in their scoring. And I really couldn't get any clear answers. So not only does it impact them, my concern about the tools that we're using to dictate who should be in the community, who should have access to a lower bail. Yes, the tool may be valid and you've done the evaluation to craft the questions in a way that bias doesn't sneak in. But folks are then taking that score. And then individuals with inherent bias are then deciding who is safe, and who is unsafe. And so this conversation about the gang files, we have to figure out how to see people who-- for who they are now. We have to understand that affiliations with gangs are larger than folks who just want to be involved in bad behavior. These are folks

who have been abandoned. These are homeless youth who are seeking some sort of refuge. And for that to affect someone in this instance 30 years later, is, is, is, is scary. And we were not able to get that person to community custody level.

WAYNE: So for the committee, a gang file is kept by law enforcement. And how a gang file-- on how you're put on a gang file typically is-- let's say, they pull somebody over and they run everybody's name in the car. Well, that name is then attached to if there is a known gang member in that car. So I was on a gang file from '94, my first year of high school through up to the point where I was at law school. And I first got on the gang file-- because the night before Christmas, we were all over at Grandmother's house, and I'm riding with my cousins who, one of them was supposedly a known gang member. Got pulled over, ran everybody's names, and now I was linked to 60th Street Crips. I knew some of them. But I, I thought if anything, they would associate me with the 40th [INAUDIBLE] Bloods, because that's who I knew more of. But that stayed with me. And when we got pulled over, whether it was speeding, traffic tickets, or whatever, anytime you were in the car with somebody they attached you. And so at pretrial when I'm representing my clients they say, known gang affiliation or association with 40th Street Bloods or whatever. And so you would ask your

client-- you know, tell me about your gang members. Well, they are all my cousins. Those are all my family members. When we go out, we're at a family function and the cops go by, and they look at who's hanging around each other. That's my family. And then the crazy part-- and this goes to the violation of probation that Spike talked about and some people sitting in jail for violation of probation, part of your terms and conditions when they think you're in a gang-- and let's say it's a minor offense of theft, they stole a Snickers bar. If they think you're in a gang, they're gonna put on what they put the gang probation on which you can't affiliate with any gangs. And almost all of my clients who get a violation charge and they have to sit in bonds happens to be a family member who's also in a gang, or a childhood friend that they grew up with who is associated with a gang. And they expect a 21-year-old kid or even 16-year-olds-- in juvenile they do a lot of this, too. After they walk out of the juvenile system or walk out the courthouse that day to say, I'm no longer gonna associate with the kids at my school. That I'm somehow gonna ignore the neighborhood that I'm in and say I can't associate with you anymore, or that I'm just not gonna show up to Grandma's house anymore. But you get violated on that condition because you can't be around gang members. And if you know your cousin is a

gang member, you're supposed to say, I can't get to work today. Can you pick me up? No, I can't have you pick me up because you're a known gang member. Well, that travels very well throughout the family when you won't hang out with your family anymore because they're known gang members. Who do you think you are? You think you're better. Blah-blah-blah-blah-blah. So there's this inherent system that, particularly in Omaha and north Omaha, every factor and that's why I'm, I'm worried about this assessment as we've talked about weighs against you because of just the nature of what zip code you grew up in. And that's my biggest concern. And I, as Senator Cambers said, thank you for allowing me to use the sound-- you as a sounding board. But I knew that you worked with some individuals who loosely have gang ties to this gang file and I wanted to make sure that's on the record because if the individual director backed up from county were to come in and we had a conversation not about bonds but about life inside of county corrections and the number of gangs and how you're forced to pick and figure out just for your own safety. That doesn't leave when you just get bonded out. You can't just turn it off because you still have this trial hanging over your head that you might end up back in. So now you got a choice of denouncing and then being maybe found guilty and you're back there for three more days. All that factors in. So

it's just a, a bigger issue than just bond and posting a bond because those conditions of your bond still have gangs ties to it. And then where do you? You can't go home because your dad's a Crip. So you're violating. You know your dad's using drugs and you're 21-years- old and you can't be around drugs. You violate your bond. So now you're back incarcerated because you're around drugs. Those are the real life situations that we deal with in Omaha. And I appreciate you, Dominique, for taking time to listen to me and letting me put those things on the record.

LATHROP: Senator Chambers.

CHAMBERS: Sounding board use number two. [LAUGHTER] This is how white people are so clever-- so fiendishly clever. They create a system that can look like it has nothing to do with race but they fashion it and shape it to fit what black people do. And then they make that a crime and they say, we're getting you for this, not because you're black. But it just happens that that always fits black people. Senator Wayne mentioned he was on the gang list or whatever. I have a longer arrest record than Jesse James, John Dillinger, Legs Diamond, Paul Castellano, and most of the members of the La Cosa Nostra, but no convictions. These things happened when I was a very young person. I've never been afraid of white people. And I went to city council meetings. I

confronted the police. I went down to the police station early in the morning to be there with people who had been arrested. And I'd be arrested. But I was-- and sometimes I'd get charged with felonies. All dismissed. There was one time that I was picked up and charged with a felony. And before bond could even be mentioned, a bondsman said, [INAUDIBLE] bond. They said, well, we're really not gonna charge him. So if you just go by arrest record, I'm one of the worst criminals that Omaha produced while I was a young man. I was investigated extensively by the FBI. And I know it, because I've got files. And I have a distinction that John F. Kennedy didn't have. Robert Kennedy didn't have. No white or black men ever had. And that's where in the record, FBI agents said-- the director who happened to have been J. Edgar Hoover said, do not confront Chambers because he will embarrass the Bureau. The FBI was afraid-- the only way I knew it, because it was right there where the agents put that in their report. And that's what they do to a young black man who's following all their rules, who studied their books but would talk back to them. And if I hadn't been as strong or as recalcitrant as I was I would have been destroyed. But they made me stronger. They showed me what they are from the time the white teacher read Little Black Sambo when I was a child and they-- the little white kids were allowed to laugh. It taught me

something that I never forgot. And it put something in me that makes me able to stand all these 40-some-odd years and never weaken, never take low, never bite my tongue, and tell him the flag is a rag and dare them to do something about it because they don't want to hear what I have to say in terms of why I say it. We have to let these white people know that when you are black in America, whether you're a state senator, a U.S. senator, or hold any badge or title that you respect if it's carried by white person, you are conscious of what you are from the moment you wake up in the morning until the time you go to bed at night. And that's one thing then I will have used you for a sounding board as much as I want to. I will go into a store and there's a counter like a meat counter or a deli counter, and there is no line set up so that you're in place, and I'll be there and I know people know who I am, and I'm not being arrogant to say that, white person comes up and they go to the white person. I say, hey, let's be fair. That's what I say. And then the clerk, oh, I'm sorry. And a white person is going to accept being put in front of me says, oh, I'm sorry. They're sorry because I said something. That mess happens today. It happens in Lincoln. It happens in Omaha. And these people in this Legislature think that I'm gonna sit up there and let things pass and not say something. See I know if it happens to

me, what is happening to black people who are not in a position to speak up at all. If I bring legislation, they're not gonna consider it because it doesn't impact them so they're gonna listen to what I have to say. And I have one more session of the Legislature before being term limited out again. And that is gonna be my bully pulpit. They're gonna learn something about black history. They're gonna learn about the history of lynching in this country. They're going to learn how it became incorporated into the laws of this country. And how everybody down south knew that a lot of black men were accused of rape when a white woman was caught in consensual sex with a black man and all she had to do is say rape. William Brown was lynched in 1919 in Omaha. And everybody knew he could not have committed a rape. The man had rheumatism. He had a bad arm. And this white guy with the woman who accused him said that Willie Brown held a pistol on him while he raped this woman and there was nothing he could do about it. There was a guy named Tom Dennison who was king of the underworld in Omaha. And a tactic they had was to get these white people who came from other countries in Nebraska and Omaha, they were called DPs, displaced persons. They were usually from Eastern Europe where they are looked down upon. They put cork on their face and everybody knew they were not black people. And then they would grab a woman. It was set up.

And then she would scream and say she was raped. And this guy in the court didn't even bother. All they had to do is get that appearance of a black man doing something to a white woman. Then they could go into the black community. They could kick people's doors in. They could snatch people out of their houses and beat them. They could drag them down the streets. They threw them in jail. The white people's act like they don't think that happened. I know it happened. And all I can do about it, is talk about it. But they're either gonna listen or they're gonna get off the floor of the Legislature like a lot of them do right now. And at these hearings, we've got to put these things into the record because that's the only thing we're going to be able to do. And as long as I have hair and mop, and breath in my body, that I am black, and my hair will turn white. As long as I have breath in my body, I'm going to tell the truth as I know the truth to be based on my experiences. Not what I learn in these white classes that people like Senator Slama want to put in the books to act like America is what it ought to be. Talk about American exceptionalism. You know why they're exceptional, because they're more hypocritical than any other country on the face of the earth. They're more vicious. They're more brutal than any other country on the face of the earth. And they mistreat people who are citizens worse than citizens are treated

anywhere else. We were in this country longer than anybody with a name like Slama, or these other white people's names. When the first white person set foot over here, whether Columbus or somebody else, black people were with them. And these white people came later. Oh, and by the way, there were people in this country when the white people came here. We have to use certain testifiers as a sounding board. And see all they have to do is give a little time. That's all. They can leave here. They can laugh. They can scoff. They can mock. But for this brief period of time, they are a captive audience. And everything we say is recorded and is transcribed. And there will be people who will get the transcripts and they will know that there were some black people who did what was available for them to do. And sometimes it was only to use our voice. I know more about their constitution than they know. I can quote provisions of their constitution that they don't even know are there. I can quote the Declaration of Independence. But what good does it do? It lets me know like I know about their flag that I know more about their country and their government than they do. And that's why they don't understand or want to pretend they don't understand why I say what I say about their flag. And then when they get mad because I say it's a rag. I say, why didn't you all get mad because they put it on shoes when the U.S. code says it should

not be a part of wearing apparel? Because they don't know anything. They don't have to know anything. All they have to do is be white. But thank you, my brother.

DOMINIQUE MORGAN: Yes, sir.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming. First, which pronoun do you use?

DOMINIQUE MORGAN: [INAUDIBLE].

PANSING BROOKS: [INAUDIBLE] OK. So Mr. Morgan, I was-- what I was wondering about was with Black and Pink, are you, are you finding that when people are first put into the, the jails, are, are there issues there regarding solitary versus what's happening to LG-- LGBTQIA community? Is, is something different happening?

DOMINIQUE MORGAN: Well, they will use different labels inside of classification. But solitary-- if you've been in solitary confinement, solitary confinement is solitary confinement.

PANSING BROOKS: Right.

DOMINIQUE MORGAN: If you've been in a rat motel, it could be the number six, it could be number eight. It's a rat motel. Right? So folks who are there because of administrative confinement, it feels no different than being in there due to disciplinary segregation. They are still in there 23 hours a day. They are still having the same amount of showers. And based on the overcrowding of these facilities, many folks are not being housed in solitary confinement alone. So you have two, three people in these cells for 23 hours a day navigating multiple issues. And so when we're looking at queer and trans folks--

PANSING BROOKS: But you're talking about the jails as well as the prisons.

DOMINIQUE MORGAN: Yes. You look at the, the murder of the young man the year before last at Tecumseh who was placed in the--

PANSING BROOKS: Yes.

DOMINIQUE MORGAN: --cell with someone and which he shouldn't have been. He was on protective custody,--

PANSING BROOKS: Right.

DOMINIQUE MORGAN: --and the other person was down there for disciplinary segregation. So on top of the issues with these

institutions being over capacity even the, the, the avenues that folks have tried to use to access their own safety still put them in danger because of, of how they identify.

PANSING BROOKS: OK. Do you feel that the LGBTQIA community is, is disproportionately represented similar to people of, of-- people of color, or other?

DOMINIQUE MORGAN: Absolutely. And I think when you look at DMC, one of the biggest issues that I've had to push forward is that, if you look at the data, most folks in this country do not identify as straight. Right? They identify as something other than straight. Right? When you look at it-- at those intersections, most of those folks are people of color as well. So you are-- and, and again, that's people like-- well, no one-- we don't have any gay folks in here will have you ask anyone if there bi. Have you asked anyone if they're just anything other than straight? Right? And, and in a society that works on binary spectrums that puts them in danger. So we are seeing people-- overwhelmingly, people of color, trans women of color are the 20-- 23 of the women that we bonded out in 2018. What we did is that we took them straight from the jail and we put them in housing and employment programs. Twenty-three of those black trans women are still housed. We only paid rent for three

months. We don't do a system where we ask for the bail back. Because for us, that feels like that's an additional case management process that isn't beneficial to these folks just being in a healthy, safe space. And, and these women are still successful. In, in two hours, we have to-- we're going to go bond out three more trans women from Douglas County to put them in our housing program. We're getting calls on a daily basis. And we don't base, we don't base our bail out on, on the crime or a scoring system. I look at what I have in my budget and I'm finding myself-- you know, looking at my 2020 budget and bumping it up to \$50,000 for our bill support program and that's just for, for Nebraska.

PANSING BROOKS: So just quickly then, one more. When my daughter was in high school she was bullied. The principal at that point said, well, we'll just have her stay in the classroom and then she can move to the next class after the classes have already moved. And I said, well, that's punishing her for that, for that act. And he said, well, what else can we do? And they ended up starting a whole anti-bullying club, and she helped lead it. And I said, one of the things you can do is have more teachers out listening so that that bullying isn't going on. So right now because a person is the member of the LGBTQIA community, it looks similar, it looks like the people in that community,

through no fault of their own or no action of their own, are being discriminated against and held, and, and being forced to endure greater punishment rather than protecting them in a different way. I mean, by putting that community into solitary to protect them causes more damage. So as you are in prison and saw all this, do you see other ways that, that would be better? Could there be ways to protect people from this community without necessarily putting them in isolation and causing more mental health damage and other things?

DOMINIQUE MORGAN: Well, we are implementing that-- those, those measures through Black and Pink. We have a transformative justice model that looks at everything from our application to how our programs live. And it's the belief that there are folks who cause harm. There are folks who have been impacted by harm, and both of those folks are connected to the community. So inherently, the community has caused harm. We are not talking to folks about healing, healing for themselves, healing through justice, and healing as a community. We're looking at queer folks, and we're looking at trans people, GNC folks. Again, the hit is harder. If you're giving me an assessment that's going to figure out whether I'm appropriate to come back to the community, but you just ripped out all of my hair. You just took off my fingernails. I'm in underwear that's not-- that does not

correspond to my gender identity. But you want me to be present, and you want me to make a good impression on you that makes you feel like I'm safe to be in the community. How do I do that in that sort of space? How do I sit in jail in Lancaster County for three days to wait for you to come and assess me? And I've been navigating body dysmorphia issues, but you want me to be present enough to go through an assessment with you. Every step of this process, if we're looking at race, we know it's there. But when you add race, when you have-- when you add gender, when you add presentation, the impact it's deeper and it's harder. Tran's folks to get jobs in our community are next to none. A trans person that goes to jail and loses their job and then we have to figure out another place for them to get a job. It's not as easy as just go sign up at Burger King. It's not as easy as, well, just go to another place. So, so, so, so Miss Pansing Brooks, it's the impact is harder and that's what I'm saying. And that's what the challenge is that I pose to you all is as you look at this look intersectionally. If you think it hits heavy when it's just black folks, think about a black trans person whose life expectancy is 32 years old. Think about a black trans person who's living with HIV and AIDS who is in these systems. Like, there's levels to it. So it's, it's scary. We're doing what we can. We're looking at a healing model. But the first step is to

get them out and directly into programming that supports them in sustaining their release and, and their success.

PANSING BROOKS: Thank you for your testimony, Mr. Morgan.

DOMINIQUE MORGAN: Yeah, thanks.

LATHROP: I see nothing else. Thanks for being here today. Appreciate it. Morning, Joe.

JOE NIGRO: Morning.

LATHROP: I'm gonna take myself a break. So I'm gonna have Senator Pansing Brooks chair the committee briefly while I run down the hall. But that's not to be interpreted as disinterest in your enthusiasm for this topic.

JOE NIGRO: OK.

PANSING BROOKS: Welcome, Mr. Nigro.

JOE NIGRO: Thank you, Senator Pansing Brooks, members of the committee. I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender, and I appear on behalf of our office and also on behalf of the Nebraska Criminal Defense Attorneys Association. We strongly support ending the money bond system in Nebraska. I want to thank Senators Hansen and Lathrop for asking

for these interim studies. And I want to thank Senators Hansen and Chambers for introducing legislation that would reform the money bond system. The money bond system criminalizes poverty. Legislatures and judges around the country are deciding and keeping humans in cages based upon how much money they have is wrong. The main purpose of bond going back to Anglo-Saxon England has been to assure that someone appears in court. In 2009, the Legislature added safety of the community to factors for courts to consider in setting bond. The evidence is clear that money bond is not assure that people come back to court. Nor does it protect a community. It just means that people with money get out of jail. People in poverty and people of color are disproportionately kept in jail. Most of the people in this room wouldn't lose their job if they missed work tomorrow. Many of the people we represent will lose their job if they missed one shift. Then they lose their housing and their children can be taken away. And these are people who are presumed innocent. Five hundred dollars to some people may as well be a million dollars. And two years ago, the Legislature passed LB259, which required judges to look at defendants' financial ability to pay. The prosecutors don't use that when they request bond and some judges just go with the prosecutor's recommendation. That's why the Legislature must do more. Some prosecutors set a high bond

just to show that they're serious or tough and that's not the purpose of bond. Our district judges require defendants to personally swear to the bond in front of them to, to be released. We may be the only county that does that. We've had people who have to wait days to get in front of a judge to swear to the bond and Senator Chambers' bill would address that problem as part of, as part of the overall structure. I brought one of my attorneys here who can speak to not only how things work-- he actually did arraignments yesterday, but he also just returned from a pretrial release programming conference and he can speak to reforms that are going on in other states. The District of Columbia stopped using money bond years ago. Ninety percent of the people there arrested are released. Ninety percent of the people released return to court without committing new offenses. And 98 percent of those people released do not commit new violent offenses. Litigation against money bond has been successful in New Orleans, Houston, and California, among other places. We should act before there is successful litigation here. In California, that litigation then motivated the Legislature to pass legislation ending money bond that's been put on hold because the bail bond industry has financed a referendum because they want to stay in business. Now New Jersey severely restricted money bond. And a recent report

found that detentions there decreased by about 40 percent, appearance rates, and the rates of those rearrested after release are basically the same as before. The average number of days people are detained is decreased. New Jersey uses a public safety assessment. Now the areas in New Jersey in this report found needs to improve on are reducing the detention rate for African-Americans which hasn't changed, and increasing funding for their state pretrial service agency funding has been inadequate. I would anticipate a county-based system here. Overall though, the New Jersey reforms have been a big success. People in jail are more likely to be convicted and they receive harsher sentences. Reform will ultimately-- bond reform will ultimately reduce the prison population. Pretrial release programs are more likely to get people back to court and they keep communities safer than money bond because people are supervised. The bills pending require communities to make greater use of these proven pretrial release programs. Now most people who miss court aren't running away. They likely forgot their court date because they were trying to figure out where they were going to sleep that night, where they were gonna get their next meal or maybe they just couldn't get off work. In Lancaster County, 3 percent of our population is African-American. But I can guarantee you that that population in our

jail is much greater. Out of-- on, on one particular day, there were 604 people earlier this year in Lancaster County jail, 401 were pretrial detainees. It costs \$100 a day to incarcerate someone, \$14 billion a year spent nationally incarcerating pretrial detainees. Our pretrial release program has been under-- been very effective, but it's underutilized. It's a model other counties can emulate. What we will need to change is increasing staff to get people assessed prior to trial, and that will be-- but it will be cheaper than keeping people in jail. In 2016, I was volunteering for our office at Project Homeless Connect, which is a really wonderful event held at Pinnacle Bank Arena every year providing different services to homeless people. A man came up to tell me his story. He had just arrived from California and he was behind a building. The police arrested him for trespassing. The next day he's arraigned by video from the jail and he pleads not guilty because he never saw a sign behind that building saying, no trespassing. The judge sets a \$1,000 percentage bond, so he needs \$100 to be released. They don't appoint an attorney because if he's found guilty, he's only gonna get a fine so he doesn't have a right to counsel. He didn't realize he could ask for an attorney or come back to court and request a bond review or set an early change a plea. He sat in jail for 36 days. He went to court, decided to

plead guilty, probably after the prosecutor advised him since he didn't have an attorney, and he was fined \$50. You know, and-- I mean, we see at least if they have our office appointed-- you know, we can request bond reviews and maybe we'll have some success. But there are people caught like him-- I mean, you talk-- you asked questions about this earlier, and I did go on record-- on-line and checked his case. Everything he told me was, was accurate. And those kinds of things happen. Now people may tell you that any money bond will let scary people out of jail but it's just not true. It's not true in D.C. or anywhere that's reformed its system. A domestic abuser with \$500 or a \$1,000 isn't less of a risk. It just means they have \$500 or a \$1,000. Ask opponents of, of reforming the money bond system, if they are OK with a system that keeps humans in cages based on how much money they have. Wealth-based detention is wrong. The money bond, money bond system punishes poverty. The time to end it is now. Thank you.

LATHROP: Thank you. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Nigro. If-- and I know the hearing today is about getting rid of the bail and it disproportionately affects a, a population. But I, I guess my question is, if, if that were to happen in the existing

system to prevent what just happened to that individual, is there some red flag that can pop up in the system that says this guy has been sitting here for days with no representation. I mean, is there another way to cure that problem so that maybe your office is brought into this sooner than later?

JOE NIGRO: Well, the court would have to set up some sort of system to, to receive some kind of an alert that this person is still in custody. Because if the person themselves doesn't request a hearing and we're not going to be alerted, the, the court would have to set that up. Now could-- I, I suppose that could happen.

BRANDT: But is there not-- is there not an incentive for the whole system to look at-- you know, we've just spent \$3,600 housing and feeding and, and taking care of an individual that could be out on his own. I mean, is there not another way to approach this problem to prevent, to prevent that situation from happening?

JOE NIGRO: Well, absolutely. But it needs to start at the very beginning. I'm guessing the prosecutor asked for a bond because that individual did not have ties to the community. But people have to break out of this notion that somehow because you've posted money you're more likely to come back. You know, I've

heard that phrase, skin in the game, and it's like-- but these places that have reformed their systems, that, that doesn't do anything. And, and instead what they should have done is perhaps have this person screened for pretrial release, or the prosecutor could have said, you know, I'm not gonna ask for a bond because even though this guy doesn't have ties to the community he's gonna get a \$50 dollar fine if he gets convicted. So why on earth would we spend \$3,600 as a community to keep this guy? Was it keeping us safe? The offense was trespassing. But that requires prosecutors and judges to take a different approach. I mean, they are really the key players in this system. And, and the reason why I think there needs to be reform is because I think unless the Legislature changes the law-- I mean, it just-- there are some prosecutors and judges who will continue to be difficult. And, and they're not all that way. But in fact, I, I know the judges who were on that particular case are good people. But I think people get used to the system. And the thing that happens, that I think George can also speak to, when judges are doing arraignments is, it can be like a cattle call. I mean, if you've got person after person after person, what they're trying to do is go fast. And maybe instead of having the trains run on time, the goal ought to be justice for every individual who comes up in front of that judge.

BRANDT: OK. Thank you.

JOE NIGRO: You're welcome.

LATHROP: Do you have a question? Oh. You're the second person from Lancaster County today to bring up money. And you know, I listened to Mike Myers testify from Douglas County, and his suggestion is-- or, or what he suggested is, that if they got a good assessment tool and had a good pretrial release program that it would pay for itself. Why isn't that the case in Lancaster? Why--

JOE NIGRO: Well--

LATHROP: --we had--

JOE NIGRO: --I mean--

LATHROP: --the Commissioner up here that said give us a bunch of money and we'll get something like this going. And you've suggested that you need resources to make it happen. Why is this not just happening as a county board process of making reforms within the county? And if those reforms happened, is it necessary that we legislate?

JOE NIGRO: Well, I think that Lancaster County could expand our pretrial release program. I think our pretrial release program

has been effective. I think that when they set that program up, the county attorney that was in office at that time said, well, people are only gonna be screened for certain offenses and-- but judges can override that. And people screen for more serious offenses. We now have some judges though who won't screen people for more serious offenses. So there are people that in the past maybe with different judges and I-- so I think we could do more. But some of it again-- I mean, I think the Legislature forcing change-- you know, then require-- you know, gets prosecutors who might be reluctant.

LATHROP: What would you have us do? What would you have-- what's the bill look like that you would have us pass that would bring about this change?

JOE NIGRO: Well, Senator Chambers, Senator Chambers has had an amendment that I know he submitted to the Committee for his bill. And I thought that, that, that amendment really did a good job. I think it addressed some concerns about the state constitution and, and, and the language about bail in the constitution. And I think it set up a structure for people to be reviewed and for judges who declined to release people under a pretrial release program to make findings so it helps holds under some standards and talks about criteria for release. And I

think George will tell you, as he was just at this conference, that he thought that that compared well with, with some reforms. Apparently, New York has, has a law that will take effect next year that might, might be another one for us to look at. Some of these states-- I, I know, I know I talk-- I've, I've been at multiple conferences and listen to people from the Civil Rights Corps which is an organization that's been going around one of these lawsuits. And I asked them and, and they thought New Jersey statute was really well written. You know-- and I think that view seems to be universally held. Now they didn't completely get rid of money bond. Obviously, if we completely get rid of money bond there are some judges that might put more people in custody.

LATHROP: Exactly.

JOE NIGRO: From my perspective, I would rather do that though because the current system discriminates against poor people. I would rather take the risk that judges are gonna keep more people in jail. But New Jersey still allows for money bond, and maybe that's a way to look at it. You know, I just-- to me the District of Columbia is such a great model because it's, it's been so effective there. And we all know the District of Columbia would have serious crime. And yet, people get out, they

come back to court. But I think New Jersey's a good one. It sounds like New York is another one to look at. I know in California it was amended late in the process, and a lot of reformers thought it was gonna give way too much discretion to the courts. But now it's on hold until they have this referendum. But you know, when you look at some of that litigation in places like Houston and New Orleans. At some point, people here are gonna challenge our system. And, and it would be way smarter for the Legislature to get ahead of this and, and reform it.

LATHROP: Well, we will most certainly take a look at it. That's why we're here.

JOE NIGRO: Thank you.

LATHROP: OK. Thanks, Mr. Nigro.

GEORGE DUNGAN: Good morning, Senators. My name is George Dungan. I work for the public defender's office, and I'm also here on behalf of NCDAA today. Joe caveated my testimony quite a bit there. So--and we're also getting kind of late in the day, so I want to speak more directly with the time that I have to the things that Joe was talking about specifically.

PANSING BROOKS: I'm sorry, what was the group that you're representing?

GEORGE DUNGAN: I'm sorry, the Nebraska Defense Attorneys Association.

PANSING BROOKS: Thank you.

GEORGE DUNGAN: I want to speak specifically regarding a couple of things. Joe referenced arraignments, and we've talked about this, I think, a number of times whether it's individuals who are currently sitting in jail with no attorney and no bond or whether it's who actually is asking for the bond and how that's being granted. So yesterday, I was the public defender who was assigned to sit in on arraignments in County Court here in Lancaster County. It is a cattle call. I mean, we're talking 40, 50 people who are supposed to be arraigned and given a bond based on particular categories of things that they've been instructed by the Legislature to take into consideration in about 30 minutes. And they appear on a video screen, and I'm there, and the prosecutor's there, and they-- it sounds like an auctioneer. They come in and they just rattle off the charges, they rattle off the offenses. Almost every single defendant on the video screen says, what? And makes them repeat the entire thing again, so that takes more time. And at some point in time

after they plead not guilty if they're not looking at jail time, the prosecutor asks them-- or the judge asks the prosecutor what the bond is gonna be. And they say, Judge, we're recommending, and they look down at the list and say \$20,000, 10 percent. And the judge then inquires, are you able to post \$20,000, 10 percent? And the person says, no. And then proceeds to list off a number of factors. One I heard yesterday was my son's first birthday is this Saturday, which we verified because we interviewed him earlier in the day. He had a job that he had to get back to. And the judge says, thank you, we're gonna leave set at \$20,000, 10 percent. You're able to ask for a bond review if you want that in 24 hours. There's another individual yesterday named Noah, and I represented Noah when he was a juvenile. So I know Noah pretty well, and Noah's currently about 19- or 20-years-old, has no adult history, and he showed up on a theft. It was a Class II misdemeanor punishable by up to six months in jail or up to a \$1,000 fine. The judge asked Noah-- or the judge asked the prosecutor if they were asking for jail on this offense? The prosecutor said, no. And then the judge noted to Noah that he's actually diversion eligible, meaning that he fits the criteria on the face of it. That he could potentially go to diversion and participate in a program and ultimately have this charge dismissed, not even on his record. And he said,

thanks. I'm interested in looking into that. The judge said, OK. Prosecutor, what do you ask for the bond to be set at? The prosecutor asked for a \$2,500, 10 percent bond. Two hundred and fifty dollars for a 19-year-old who doesn't have a job. The judge said initially-- and I was there, and I caught what was going on, and I told the judge, wait, wait, wait, he's diversion eligible. He's looking at potentially not even having this on his record, he's not looking at jail time. What are we doing? And the judge caught it, and I don't think he intended to do that immediately. But said, sure you're right. Let's go ahead and set a PR bond so he can get out on his own recognizance. But that was the process. The procedure in his mind wasn't even to consider that. And I've seen that multiple times. So, yes, there is-- this is not just academics, and this is not just numbers. It's incredibly real. It happened to Noah yesterday. He would still be sitting in jail today. He has a brand new kid that he has to take care of. And he would still be in jail. So I think it's important to recognize that while I very much understand the importance of numbers and studies and data because this has to be based on good data. Any reform that we do has to be done correctly. It has to be done on good data. But at the end of the day, it is real. And I think that's important to take into consideration. I want to speak briefly, and I know we're running

late the day but Joe also mentioned a conference that I just went to and that was the National Adult Pretrial Services Administrative Conference. That was NAPSA, is what they go by. And it was a four-day conference specifically geared towards practitioners, not attorneys, who work in pretrial services and specifically pretrial detention alternatives. And across the board, the, the NAPSA organization is one of the premium organizations that people want to get certified by NAPSA or supported by NAPSA. And I will tell you that in my experience there, it is-- it's amazing how similar the legislation we're looking at here is to other states. Specifically, the one that I pointed out to Joe was New York. The New York legislation that they are currently looking at is akin to our legislation except for it does permit money bond in certain circumstances. Now the legislation that we're looking at here, specifically Ernie Chambers' bill which I helped write with a couple of other attorneys in our office, does specifically-- or I do amendments to rather, does specifically get rid of money bond in its entirety. And that is the goal. The goal is to move away from a system where individuals are not judged based on the amount of money they have, and rather does utilize a risk assessment tool. Now I want to thank the gentleman who was here earlier speaking about the fact that some risk assessment tools do take into

account factors that are proxies for race and that are proxies for class and that is important to take into consideration. This bill specifically puts in there that any county that utilizes a specific risk assessment tool or a release assessment tool, as they're actually called now by a lot of practitioners through NAPSA, it does require that it do its absolute best to be validated to not discriminate based on gender, race, sexual orientation, class, any of those kinds of things. And so that is addressed in the bill. I am out of time now, and I don't want to take much more time because I know we're running late today. I would answer any questions though about the bulk of the bill and also the formatting of the actual way that this works. I know last time that this came up for the Judiciary, there was some questions about the actual process and procedure of this, and I'm happy to talk about that because that was something that we've really worked hard to put together.

LATHROP: OK. I'll see if there's any questions? I don't see any. I will make this comment. The idea of getting rid of bail completely-- when we heard this bill the first time, Senator Chambers' bill, I did have some concern that without these assessment tools and a program in place to keep track people, I think it's just gonna result in more people being held in the county jails. And that it's got to end up at the end of the day

being some kind of a hybrid. But to the extent we learned something today, and will most certainly look at New York and New Jersey to see what they've done whether the community has been kept safe and people show up in the same numbers. I, I just can't imagine having no bail, where it's either a binary choice for the court. You either stay there or you don't. Because bail may be the difference for some people who would otherwise remain incarcerated pretrial. So anyway for whatever it's worth. That's not really a question, but thanks for your--

GEORGE DUNGAN: I can answer it, if you'd like. But--

LATHROP: --thanks for your testimony and your presence here today and your commitment to the--

PANSING BROOKS: I would like to hear his answer on that, if you don't mind, please.

LATHROP: OK.

GEORGE DUNGAN: Well, I think that's the system we currently have.

PANSING BROOKS: Yeah.

GEORGE DUNGAN: I think people who are held on a \$20,000 percentage bond who don't have any money are being held without

any possibility of release. And I think that that is the issue that we run into. And I think that-- and again, not to belabor the point, I know there's been conversations about the constitutionality of the statute. Specifically, what do we do if we get rid of money bond in general? Individual-- we live in a right to, right to bail state. So the constitution specifically requires that bail-- certain offenses be bailable. Now at this conference, we talked a lot-- and other and practitioners throughout my time as an attorney, have talked a lot about the fact that bail and bond are different. It's not a proxy for the other. And I think it's important to delineate that. And my hope would be that if Ernie Chambers' bill-- Senator Chambers' bill-- pardon me, were to go forward we define bail. Bond is the actual money that is set of the provisions. Bail is the processing procedure through which an individual is released. And so as we currently have a system, there are any number of offenses. I think, misdemeanors specifically, that I've seen a lot of that are not currently available. And I think that when the argument is made or when the, the contention is made by some that-- you know, well, at least there's money in place at this juncture so they could post that money and get out. The answer is they can't. And I guess it becomes-- to me it's more than just a semantic difference. You know, Senator Chambers was also

speaking about excessive bail and the fact that it is inherently unconstitutional. And so I think the system we currently have is unconstitutional of individuals that are not able to post that. And the hypothetical proxy-- or the hypothetical idea that an individual could potentially post \$20,000, 10 percent on their trespassing charge for being at the gas station because they're homeless, and they just got out of the Mission on West O here in Lincoln, and walked to the U-Stop down there. I, I don't think we currently have a system where people can get out. And so in my mind, leaving money bond set as a failsafe or leaving money bond set for those really serious crimes or the really serious charges we have, effectively does the exact same thing that this bill or this amendment rather does do, which is say that in certain circumstances there are certain charges that after exhausting a very structured tiered process the court could reach the conclusion that an individual cannot be released on the recommended Community Corrections supervision plan. But it does leave the possibility open for further analysis and for the review through Community Corrections or another pretrial service to see if a different plan can be put in place. That at least opens the possibility for future modifications to a plan that an individual could be released on as opposed to setting a \$2 million bail that nobody's ever going to be able to post. So I

think that under the structure of the amendment that Senator Chambers has proposed here, we actually end up with a system that potentially ends up in more release for more individuals and doesn't just utilize money as, as a way to say, well, we've given them the opportunity to get out, to get out when that's not actually a feasible or reasonable option for the vast majority of people that I represent or that I see in the court system.

LATHROP: OK.

GEORGE DUNGAN: That was a little bit longer than I anticipated.

LATHROP: Yeah. But so--

PANSING BROOKS: Thank you.

LATHROP: But thank you.

GEORGE DUNGAN: Thank you.

LATHROP: How many more people are interested in testifying by a show of hands? Good afternoon.

MEGHAN MALIK: Good afternoon--

LATHROP: Good morning, not good afternoon.

MEGHAN MALIK: Yeah, I had good morning on here.

LATHROP: It might be afternoon, by the time you're done.

MEGHAN MALIK: Maybe, it's good afternoon. Good afternoon, Chairperson Lathrop and 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 at the Women's Fund of Omaha. Thank you for the opportunity to testify on cash bail reform and the intersections with intimate partner violence and violence perpetrated by traffickers and sexual abusers. The Women's Fund recognizes the need for more equitable criminal justice practices including a pretrial detention system determined by offender risk rather than ability to pay. We believe that reform is important for many including trafficking victims who are often arrested and held on prostitution charges without the ability to pay. However, offender risk should be considered. The time period directly following law enforcement contact and domestic violence instances is often the most dangerous time for victims. A domestic abuser feeling a loss of control is the single greatest risk factor for escalation of violence. And if a victim decides to leave an abuser, the period directly following that decision is the highest risk time for a homicide. Additionally, domestic violence has a particularly high rate of

reoffense with 53 percent of Douglas County offenders having been previously charged with a domestic violence related offense. As such, the pretrial time period is a particular threat for further violence. Currently, many victims utilize this critical time while their offender is held in pretrial detention to create and implement safety plans and ensure future protection from violence. The planning often includes securing safe housing, ensuring workplace safety, removing weapons from the home, assessing child care needs, assessing transportation needs, and gathering important documents and financial resources while also connecting to local resources, such as legal services, protection orders, and more. However, our current pretrial release system as well as other potential alternatives may not always promote victim protection equally. Rather under our current system, some offenders with greater financial means are released from pretrial detention despite the continued threat they may pose to their victim. Alternatives to cash bail such as pretrial cite and release pose their own potential considerations for victim safety as well. Given the escalating nature of domestic violence and this time period of increased threat, the Women's Fund finds uniform cite and release practices to be an appropriate response for instances of intimate partner violence, sexual abuse, and trafficking. We

recommend responding to such cases with a risk assessment of the offender allowing for pretrial detention of offenders deemed to be a particular danger for reoffense. While these risk assessments may not identify all potential threats to victim safety, there are risk assessment tools validated for such intimate partner violence that hold a more promising and equitable alternative to cite and release or monetary bail practices when promoting survivors well-being. We recommend a risk assessment tool specific to domestic assault be utilized in conjunction with additional considerations and policies that prioritize victim safety and minimize biases. The Ontario Domestic Assault Risk Assessment or, or ODARA, is an evidence-based tool used to assess potential threat that an abuser may reoffend. Other states that have addressed cash bail reform have begun utilizing ODARA for instances of domestic violence, namely New Jersey. And you've heard about that several times today. The certification for criminal justice professionals using ODARA is free. The Women's Fund urges this committee to consider future legislation to reform the pretrial system that utilizes risk assessment tools validated for intimate partner violence in determining any crimes occurring between intimate partners or sexual offenders and traffickers. In light of the increased risks experienced by victims in the pretrial period, we ask that

you recommend a framework centered around victim safety. Thank you for your time. And I'd be happy to answer any questions.

LATHROP: I see no questions. But thanks for your testimony and your input. Good morning.

MINDY HUDDLESTON: Good morning, Chairman Lathrop and members of the committee. My name is Mindy Huddleston, M-i-n-d-y H-u-d-d-l-e-s-t-o-n, and I'm the director of Government Relations for SCRAM Systems, which is the largest provider of electronic monitoring and software solutions for the criminal justice industry. VigilNet is our service provider here in Nebraska and they are located in Omaha. As you know, cash bail has long been a subject of debate. The goal of bail reform is to create a fairer justice system for the benefit of all by eliminating the wealth-based pretrial system without creating the unintended consequences of both increased crime rates as well as decreased court appearances. As we've heard, many states are moving toward a risk-based assessment system in which pretrial release decisions are made based on risks such as likelihood of reoffending or appearing in court rather than one's ability to post cash bond. A pretrial risk assessment performed at intake enables the court to determine the defendant's risk of flight and/or danger to the public. By making release decisions based

on an objective evaluation of risk, more defendants can be released safely pending trial. Incarceration should be reserved solely for individuals who are at risk to the community. Releasing people who are at risk of recidivating puts the public at extreme risk. Therefore, pretrial supervision is key to preserving public safety. The defendant's risk of reoffending must be taken into account when considering their release on bond. Not all defendants should simply be released on their own recognizance. Those arrested for violent crimes, sex crimes, and repeat DUI offenses pose high risks to their victims as well as the public at large. These are the offenders that we are scared of and for good reason. Because not all defendants should remain in jail prior to a trial, alternatives to incarceration like electronic monitoring are critical components to the pretrial system nationwide. Here in Nebraska, the state and counties use electronic monitoring to better manage offender accountability and public safety, and the use of these devices is widely supported by the judiciary. According to several studies, electronic monitoring is effective at reducing recidivism and increasing compliance. Specifically research shows, subjects wearing GPS were less likely to be arrested in general or for a violent offense. Offenders on GPS monitoring had significantly lower recidivism rates than those traditionally supervised. GPS

tracking increased defendants' compliance with programmatic rules, and repeat DUI offenders wearing Continuous Alcohol Monitoring for at least 90 days recidivated at half the rate of those not wearing the bracelet. Nebraska has a compelling interest in ensuring the appearance of the accused and protecting public safety while reducing jail populations and cash bond requirements. These interests can be served by electronic monitoring. Therefore, the state should consider utilizing electronic monitoring devices as an effective public safety alternative to incarceration. Any questions?

LATHROP: Senator Wayne.

WAYNE: What is the cost per day?

MINDY HUDDLESTON: Really it-- the answer is, it depends. If you are talking about GPS, there are numerous companies that provide that service. It could be anywhere, \$3 or more a day. I, I include ignition interlock in, in this price. And electronic monitoring, I don't know what their cost is. A Continuous Alcohol Monitoring device is somewhere around \$10 a day. So it, it really depends.

WAYNE: And oftentimes, at least in Douglas County, it's up to \$12 a day, and those are shift to the defendant. Correct?

MINDY HUDDLESTON: So in different areas it is, it is a defendant paid model. You are right. In Douglas County, I do believe that's the model that they utilize. Other states provide funding to the counties to pay for, for electronic monitoring based upon the savings that they are gaining from not incarcerating so many people in jail.

WAYNE: So if the average trial is-- say, Douglas County, 90 days to 120 days out at \$3 a day, we're still talking the same amount of bond money, aren't we?

MINDY HUDDLESTON: Yes, you would be.

WAYNE: OK. Thank you.

MINDY HUDDLESTON: What I didn't-- what I did not say in my testimony was that the, the state should consider based upon the savings that they are gaining from not incarcerating so many people for such lengths of time as then-- you know, maybe diverting some of that funding to the county so that they could pay for that monitoring.

WAYNE: I agree. Thank you.

LATHROP: OK. I don't see any other questions. But thank you--

MINDY HUDDLESTON: Thank you.

LATHROP: --for your testimony.

AARON HANSON: Chairman Lathrop and members of the Judiciary Committee, Sergeant Aaron Hanson, representing the men and women of the Omaha Police Officers Association. I'm gonna keep my comments extremely brief so we get to lunch hopefully very quickly. A lot of very interesting testimony today. And speaking on behalf of the men and women of the Omaha POA, I, I can't imagine any officer who would ever want to see a, a truly minor low-level offender lose his livelihood or her livelihood simply because not, not making bond. However, we do routinely interact with individuals who, who we do consider to be a threat to public safety. Who we do know that when they're, when they're in, in jail or in Douglas County Corrections, that the public is safer. I did like-- I think Senator Hansen said it best when he said that these concepts should be implemented thoughtfully, carefully, and incrementally. And what I'm here to tell you is that we're, we're offering our, our help and our assistance and our input, and we're asking to be involved. I can't speak on behalf of Chief Schmaderer or the Douglas County Attorney's office, but I can imagine as closely as we work with them that I can't imagine them not wanting to be involved as well. Because not only can we help give street realistic scenarios and stress test concepts on the local level, we can also contact these

other agencies that are actually working with these new concepts in the other states. And see how well they're actually working, not just what the spreadsheet says that they're working. We can, we can actually speak with the professionals that are using these new systems and see how the end product is actually working out when it comes to public safety and victim safety.

LATHROP: Questions? I have one for you.

AARON HANSON: Yes, sir.

LATHROP: So I read in the paper that Douglas County put together some kind of a working group to look at these issues. Are you familiar with that or did you--

AARON HANSON: I remember hearing stories about that. I, I was not a part of that [INAUDIBLE].

LATHROP: This was a story I read about a week and a half ago maybe.

AARON HANSON: I don't think I read that same story. I'm not familiar with that working group, but I'm definitely going to try to find out who, who is it.

LATHROP: Well, then, then answer to the next question probably is, I don't know when that is. Do you guys have a seat at that

table? It sounded like they had the public defender, the prosecutor, the-- number of sort of county officials at the table to try to address what is becoming an increasingly fully populated Department of Corrections in Douglas County.

AARON HANSON: Sure. I would imagine the Police Department has been invited to that table. I'm actually gonna find out who that representative is because I think that would be a-- that'd be good to have, have these discussions with that individual.

LATHROP: OK, good. I appreciate it. Any other questions for Sergeant Hanson? I see none. Thanks for your testimony.

JOANNA LINDBERG: I will be really quick. I won't read my testimony, and I will just shorten it just a paragraph or two.

LATHROP: OK.

JOANNA LINDBERG: My name is Joanna Lindberg, J-o-a-n-n-a Lindberg L-i-n-d-b-e-r-g. I represent the nearly 500 members of the League of Women Voters of Nebraska, a statewide nonpartisan organization that encourages informed and active participation in government. We work to increase understanding of major policy issues and to influence policy through education and advocacy. And LR144 introduces policies important to League, namely combating poverty and discrimination. Two things that weren't

mentioned, was a March 2019 report from the Hamilton Project of the Brookings Institute and that's named after Alexander Hamilton. It's a group that meets to try to promote economic security in our country. And they set forth a clear policy to promote our nation's growth, emphasizing that the imposition of monetary bail tends to increase recidivism and impairs our-- the subsequent labor force-- labor market outcomes. And that report was produced in 2019 in March. And then the Policy Justice Institute report called Bail Fail, they indicated people who remain in jail before trial are more likely to get stiffer sentences than their counterparts who remain free. So in summary, money bonds, we feel contribute to poverty because the prisoners cannot make bond, remain in jail, which takes away their opportunity to continue working, supporting themselves, and their families. With Nebraska jails overcrowded, it's a good opportunity for the State Legislature to help state-- the entire state address this problem because I know it's not just Douglas and Lancaster.

LATHROP: OK. I don't see any questions. But thanks for your testimony.

JOANNA LINDBERG: Thank you.

LATHROP: Appreciate it. Next testifier.

JOHN MEZGER: Good afternoon, members of the committee and Chairman. My name is John Mezger. I represent just myself. I--

LATHROP: Can you spell your last name for us, sir?

JOHN MEZGER: M-e-z-g-e-r.

LATHROP: Thank you. Go ahead.

JOHN MEZGER: I have studied this situation and I have discovered that in some states that have adopted a no bail process. The prosecutors, who are the fear mechanisms in the courtroom tend to portray such a bad case for the defendant that nothing is given. So there is no bail. There is-- nothing changes. So I suggest to the committee that they strongly recommend that there be some provision to prevent that from happening. I understand there are certain characters that cannot be-- that bail couldn't be given to now and that wouldn't change. But there is-- I know of a case of a person that's been sitting in prison for six months and in the county jail in Omaha for six months. He's got a \$300,000 bail. He's a handy man. He cannot afford the fee for the \$300,000. He is the sole provider for his family of four and one on the way. The wife does not work. The wife is being evicted from her house. The landlord has been very kind to let her stay this long, but he has mortgages to pay. So he's-- she's

being evicted. They have no other place to go. She's gone to the various county services, and they recommended divorce, break the family up. I'm not making this up. And it's-- one of the things I have learned about recidivism and, and repairing of, of people back into society is to have a family connection. And yet the state agencies recommendation for that woman in order for her to survive is to break up the family. Three hundred thousand dollars is way beyond his reach. He probably has never seen anything close to \$300,000 or the \$30,000 to get out. So I am very much a proponent of this idea of finding an alternative to high bail. I think it's a discrimination against poor people, it's a discrimination against black people and other minorities who cannot seem to have a-- you know, a way of coming up with the money to pay for the bail. So in a sense, there is no bail for them. It's a-- bail is something for rich people. Thank you for your time.

LATHROP: Thank you. We appreciate your testimony. Do you have involvement in the, in the system, or you're just a-- today are a citizen?

JOHN MEZGER: Yes, I am a past offender.

LATHROP: Oh.

JOHN MEZGER: I, I-- on a, on a federal level, yes.

LATHROP: OK.

JOHN MEZGER: I, I was a perfect citizen until I retired, and then I get stupid. So I did not have any experience with the judicial system until that time. But since that time, I have gotten very smart. And you will be seeing me at other hearings that you have a long schedule for the rest of the month and early next month.

LATHROP: OK. I get it.

JOHN MEZGER: So thank you for your time.

LATHROP: Yeah. Thank you. I appreciate your testimony. Anyone else here to testify on either of these two resolutions? OK, just one more thing for the record. We do have letters, and I'm gonna take a second to recognize. We've received letters on LR144 from Spike Eickholt, at the ACLU; Robert Sanford, at the Nebraska Coalition to End Sexual Assault and Domestic Violence; Sara Kay, with the Nebraska County Attorneys; Joanna Lindberg, League of Women Voters; Matt Kuhse, Omaha City Prosecutor. And on LR206: again, Robert Sanford, same organization; Sara Kay, also with the County Attorneys again; Matt Kuhse, Kuhse, I guess from the City Prosecutors; and then Jeanie Shoemaker Mezger,

representing herself. That will close our hearings today. Thank you, everyone, for your participation and your patience in some cases. And our hearing is adjourned.