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LATHROP: Morning and welcome to the Judiciary Committee. My name is Steve Lathrop and I represent Legislative District 12 and I am also the Chair of the Judiciary Committee. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, has been complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you to consider taking advantage of the additional methods of sharing your thoughts and opinions. For a complete list of the four options available, go to the Legislature's website at NebraskaLegislature.gov. We will be following COVID-19 procedures in this session. For the safety of our committee members, staff, pages, and the public, we ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you enter the hearing room when necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to remove, pardon me, to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and Transcribers in clearly hearing and understanding the testimony. And the pages will sanitize the front table and chair in between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based on seating availability. Persons waiting to enter the hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability of an overflow room this year. For hearings with large attendance, we ask that only testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns, we're providing two options this year for testifying at committee hearings. First, you may drop off written testimony prior to the hearing. Please note that four requirements must be met to qualify to be on the committee statement. First, submissions of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 in this hearing room. Two, individuals must present their

written testimony in person and fill out a testifier sheet. Three, testifiers must submit at least 12 copies. Four, testimony must be a written statement no more than two pages single-spaced or four pages double-spaced in length. No additional handouts or letters from other may be included. This written testimony will be-- the written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official hearing transcript. This testimony will be included on the committee statement only if these four requirements are met. And as always, persons attending public hearings will have an opportunity to give verbal testimony. On the table inside the doors, you will find yellow testifier sheets. Fill out a yellow testifier sheet only if you're actually going to be testifying before the committee. And please print legibly when you fill that out. Hand the yellow testifier sheet to the page as you come forward to testify. While there is also a white sheet on the table if you do not wish to testify but would like your position on a bill recorded, this sheet will be included as an exhibit in the official hearing record. If you're not testifying or submitting written testimony in person, but would like to submit a position letter for the official record, all committees have a deadline of 12 noon the last workday before a hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or delivered to the Chair's office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally anyone wanting to speak in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, bring up at least 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record but will not be allowed to read it. We will be using the three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, we would like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in

contact with staff. At this time, we'd ask everyone to look at their cell phones and make sure they're in the silent mode as a reminder. Verbal outbursts or applause are not permitted in the hearing room. Since we've gone paperless this year in the Judiciary Committee, senators will instead be using their laptops to pull up documents and follow along on each bill. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill under consideration. But senators may have other bills to introduce in other committees or other meetings to attend to. And just as a matter of one additional note, generally this year, because of COVID and the limited amount of time we have to get all the bills heard, we are permitting a half hour for proponents and a half hour for opponent testimony this year. And with that, I'd like to have the committee members introduce themselves, beginning with Senator DeBoer.

DeBOER: Good morning, everyone. My name is Wendy DeBoer. I represent District 10, which is Bennington and parts of northwest Omaha.

BRANDT: Good morning. I'm Tom Brandt. I represent Legislative District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

MORFELD: Good morning. Adam Morfeld, District 46, northeast Lincoln.

McKINNEY: Good morning. Terrell McKinney. I represent District 11, north Omaha.

LATHROP: Assisting the committee today are Laurie Vollertsen, the hardest working committee clerk in the building, I think, and Josh Henningsen, one of our two legal counsel. We also have two pages, Evan Tillman and Mason Ellis, who are students at UNL, assisting the committee. With that, we'll begin our hearing on the first bill of the day, LB271 and Senator Morfeld.

MORFELD: Good morning.

LATHROP: Good morning, Senator.

MORFELD: Good morning, Chairman Lathrop, members of the Judiciary Committee. For the record, my name is Adam Morfeld. That's A-d-a-m M-o-r-f as in Frank-e-l-d, representing the 46th Legislative District, here today to introduce LB271. LB271 would create the 24/7 Sobriety Program Act and would set statewide standards to guide Nebraska

counties in their implementation of 24/7 sobriety programs. The idea behind these programs is to conduct twice daily on-site drug and alcohol testing. Under the bill, counties would, if they choose to start a program, set up site facilities and protocols through their sheriff's department or someone the sheriff's department designates using statewide minimum standards and recommendations. The state, in turn, would issue a 24/7 sobriety program driving permit to qualifying program participants, similar to the current interlock driving permits now in use. Participation would be voluntary, and participants would undergo immediate consequences if alcohol or drugs are detected and they would be ineligible to continue the program after six failed tests. Research so far has shown that these programs are more effective at reducing recidivism of drug and alcohol-related offenses than traditional monitoring methods. Seeing the same facility staff twice daily creates a unique sense of accountability that is often lacking with just an interlock device or a suspended license. Unlike off-site monitoring devices, alcohol use is caught right away and has immediate consequences. Early evidence shows that not only increased rates of sobriety among the participants, but also a reduction in alcohol-related traffic accidents and even domestic violence among the populations that are in these programs. By way of history, the first pilot program started in South Dakota in 2005, and they continue to have a successful and popular program. Since then, many other states have followed, including Iowa, Montana, Wyoming and North Dakota, with many other counties and many other states implementing programs. From 2005 through February, 2017 more than 30,000 unique South Dakotans participated in a 24/7 program and more than 99 percent of the breathalyzer tests were taken and passed. This legislation was brought to me by stakeholders in Lancaster County who have already launched a pilot 24/7 program. Although they're off to a great start, we need this legislation for three reasons. First, the legislation would allow participants to apply for a special driving permit through the DMV. Program staff report that the ability to drive and the independence that brings is a major incentive to sobriety in the program. Second, as 24/7 programs become more popular, it is important to set minimum statewide standards based on best practices that are likely to bring more effective results. Third, statewide minimum standards allow for counties to apply for national grant funding only available in states that do have the statewide legislation. So this would provide more pro-- more resources for these programs. The original version of this bill introduced as LB335 in 2019 was a result of discussions with the

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Lancaster County Community Corrections staff, the County Attorney's Office, and the County Public Defender. After that bill was introduced, changes were requested by those who participated in the 24/7 program in Douglas County. After the hearing, discussions were held between Lancaster County, Vigilnet, changes that would be-- make the-- the bill a little bit more technologically neutral. I want to note, however, that I'm willing to work with all interested parties to make this a better bill and we've been in discussions with folks. There is one change to the bill that we were not able to satisfy. The additional costs would be borne by DMV in implementing the new form of the driver's license in the bill. There is a flat cost borne by the DMV that will-- that they will owe to the vendor of our statewide DMV system for any new license that is issued. I've been authorized to share with you that the Lancaster County or Lancaster County has agreed to bear this cost and make the payment to the Department of Motor Vehicles for this cost, essentially making it neutral. They have agreed to do this because they believe in the program. They have invested dollars in the program and want to do what they need to to make the program successful. And so this-- this cost that would be borne by Lancaster County would make it so that every county in the state would be able to do this and utilize this as well, at least the-- the DMV licenses. So I just want to close by saying this is a team effort that resulted in a measured first step in implementing this popular and effective program. With that, there are several people behind me that will testify to this and be able to answer maybe more technical questions. But I'd be happy to answer any questions in the meantime.

LATHROP: I don't see any questions, but I will make note that the ACLU has broken another record today with coming in support of this bill, along with the Attorney General's Office.

MORFELD: I think you're going to find that there's a lot of strange bedfellows in this. [LAUGHTER]

LATHROP: Something's going on there.

MORFELD: Don't become too suspicious.

LATHROP: All right. We will take proponent testimony on LB271. Good morning, welcome.

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JOE NIGRO: Morning. Mr. Chairman, 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 the Nebraska State Bar Association, the Nebraska Criminal Defense Attorneys Association, Lancaster County, and my office in support of LB271. I want to thank Senator Morfeld for introducing this bill. LB271 adds valuable tools to reduce DUIs and make our streets safer. It authorizes 24/7 programs and most importantly, creates 24/7 operator's permits which are essential to expanding these programs. It also allows for pretrial diversion for first offense DUIs. The first 24/7 program was created in South Dakota to reduce drunk driving has proven to be incredibly successful. In a 24/7 program, a judge releases a defendant on bond with the condition they must appear twice a day to take a breath test to determine the presence of alcohol. The tests are 12 hours apart. If people test positive, they go to jail for increasing amounts of time. People pay $2 a day to be in the program. The compliance rate is something like 98 percent. The program was so successful they started using it across South Dakota for DUIs and other offenses. A study by the RAND Corporation found that drunk driving and domestic violence decreased and the mortality rate in the community decreased due to 24/7. South Dakota allows drivers with DUI charges to get a 24/7 permit to drive. This is crucial because people have to be able to drive to testing and to their jobs. The South Dakota judge can order interlock but 24/7 has proven to be more effective. Other states have adopted 24/7 programs. Douglas County and Lancaster County have each established successful 24/7 pilot programs. We need this bill so a judge can authorize a 24/7 operator's permit. Currently, someone charged with a DUI can only drive if they get an ignition interlock device installed. The $90-a-month cost of these devices prevents people from getting interlock. People can get around interlock by driving a different car or having someone else start the car. With 24/7, you cannot beat the test. Pretrial diversion programs are set up by county attorneys. They decide which offenses are eligible and other criteria such as prior criminal history. Successful completion of a diversion program means the case gets dismissed. People pay fees to participate, do community service, and take classes. They may be required to go to treatment. Sarpy County has operated such a program since 1976. The Legislature later restricted the use of diversion for DUIs, and Sarpy County was allowed to continue operating their program. Their program has had less than 10 percent of participants get arrested for another DUI, compared to 25 percent nationally. They can show a lower recidivism

rate for people who have completed diversion. Sarpy includes aggravated first offense DUIs, and I encourage you to amend the bill to include them. Most people convicted of a first offense DUI get a seven-day jail sentence. Whether they serve it in jail or on house arrest, it does nothing to address a drinking problem. A diversion program can identify those who need treatment. 24/7 and pretrial diversion are proven programs which reduce drunken driv-- drunk driving and make our streets safer. Urge you to advance LB271. And I'm happy to take questions now. I was trying very hard to complete that in less than three minutes.

LATHROP: You did a great job. We appreciate observing the three-minute rule. Any questions? Senator Geist.

GEIST: Yes, thank you. Thank you for bringing your testimony today and reading so quickly. I do have a question about this. Does-- does this mandate treatment or is it-- is that what the mandate of going through this program is, is the interlock device or the twice a week, twice a day check in? Can you explain--

JOE NIGRO: There--

GEIST: --exactly how the program works?

JOE NIGRO: Well, there's two different programs. I mean, one is 24/7 and then the pretrial diversion.

GEIST: OK.

JOE NIGRO: And neither would interlock be mandated. In South Dakota and it would be true here, and I think the way the bill is written interlock would be required the first 30 days. But beyond that, that's optional. A judge could order it, but South Dakota has found that 24/7 is more effective than interlock. Treatment is not part of 24/7.

GEIST: OK.

JOE NIGRO: Because basically people-- the point of it and what they found is by having people come in 12 hours apart twice a day, it's possible somebody could drink a beer right after they tested and blow zero 12 hours later. But they can't-- if you drink any quantity at all, it's still going to be in your system. And the sys-- and so this program has gotten people to stop drinking. And as I indicated, I

mean, the study by the RAND Corporation showed that not only did it reduce drunk driving, but it reduced domestic violence because alcohol abuse is a major component of domestic violence and it actually lowered the mortality rate in the communities that have it. That's not connected to people just in the program. That's the overall mortality rate. I mean, it's had an incredibly effective-- been incredibly effective. What happens is for those few people in the program who keep violating by the third time, you know, the first time you go into custody for 12 hours, the second time for 24, the third time for 48 hours. The way South Dakota does it, by the fourth time, you have to go in front of a judge because you probably need a higher level of care.

GEIST: In this, it's six times, I believe, before you're kicked off the program.

JOE NIGRO: I think that's correct. Yes. I mean, you know, it's obviously I mean, the judge-- but I know that in our pilot program here, it's been 98 percent successful. And that means people got through the program without--

GEIST: So--

JOE NIGRO: --having several violations.

GEIST: So basically, the program itself is the check in twice, every 12 hours.

JOE NIGRO: That's correct.

GEIST: Correct, OK.

JOE NIGRO: Yeah. And what they did in South Dakota in rural areas is where people may have to drive great distances, just like out in western Nebraska, there may be a deputy sheriff who meets somebody in a Wal-Mart parking lot because the test you're blowing on is a preliminary breath test and every cruiser has one.

GEIST: OK.

JOE NIGRO: So, you know, that-- they found ways to work around it in rural areas.

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GEIST: And that was my next question.

JOE NIGRO: It started in Sioux Falls and then spread across South Dakota and they expanded it to other fences. And-- but the lack of a driver's license is a real hindrance.

GEIST: Um-hum.

JOE NIGRO: I mean, when you-- when you talk, look at these prices, I mean, the people I represent, they're not going to be able to afford interlock. And what happens is people drive when they shouldn't. I mean, we just know that. And-- and then people get driving on suspended charges and things just snowball. But with that permit, then people would have the opportunity to drive so they can get the job, go to school and they can get to the testing. The diversion program's different and that, you know, but based on Sarpy County's numbers, they can show lower recidivism. Now in diversion, you could identify people who have a problem and get them into treatment. Most people who get one DUI are not going to get another one. But by identifying those people after the first one who need treatment, you're going to reduce the likelihood they'll reoffend.

GEIST: OK, thank you.

JOE NIGRO: Sure.

LATHROP: I don't see any. Oh, Senator DeBoer.

DeBOER: So it seems like this is a 30-day program. You have to go 30 days on the 24/7 without any-- any sanctions, without getting caught, I guess.

JOE NIGRO: Well, it's more than 30 days because, you know, if you're on-- I mean, generally, you're not going to have somebody on this program on a first offense DUI. I mean, I think when our people went out and talked to people in Sioux Falls, they said, don't go for low hanging fruit. Those people don't need this program. You're looking probably more like third offenses, fourth offenses, people who have had-- had more trouble with their behavior. And at least in our program, it's anybody fourth offense and lower, but they're evaluated whether they're appropriate. If you're looking at a third or fourth offense DUI, especially felony, it's going to take months for that case to be resolved. So the person would be on 24/7. I mean, that's a

bond condition, basically. So the court's going to have them on there as long as they think it's necessary. And, you know, and obviously, the longer people can maintain sobriety, the better their chances to be successful, whether it's going to be ultimately on probation and they'd be less likely to reoffend.

DeBOER: So it does say, though, that the court shall only issue an order under subsection (1) of this if it is sufficient proof of the individual is enrolled in a 24/7 and has gone at least 30 consecutive days without any sanction being imposed. So it seems like they only have to be-- I don't know. I'll look into that, too. But

JOE NIGRO: Which page are you on? I'm sorry.

DeBOER: I'm sorry, 4.

JOE NIGRO: OK.

DeBOER: Page 4, line 21. No, sorry, line 17.

JOE NIGRO: Line 17.

DeBOER: So--

JOE NIGRO: OK, so basically that's-- that part I think has to do with-- that's for getting a driver's permit. So basically what that's saying is that the person has to have been in 24/7 for 30 days. They've gone 30 days without any sanctions. And at that point, the court could consider allowing them to operate under a permit. So the program itself is going to be longer.

DeBOER: OK.

JOE NIGRO: But to qualify for an operator's permit, they want to see that the person's gone 30 days without any sanctions.

DeBOER: And then how widespread is interlock right now?

JOE NIGRO: Well, I think interlock is used by lots and lots of people because it's the only way they can drive. But I can tell you that our office represents lots of people who cannot afford it. I mean, the cost, you know, those are operated by private companies. So they're not, you know, they're not going to waive it because you're poor.

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They're-- they're in business to make money. And I mean, it might be $75 a month, but it's also as much as maybe $95 a month. Well, that's a lot of money.

DeBOER: No, I get that part. I'm just--

JOE NIGRO: Yeah.

DeBOER: So I'll ask someone after you if they know how widespread it is.

JOE NIGRO: Yeah I, I mean I think a lot of people use interlock.

DeBOER: OK.

JOE NIGRO: It's not a small program, but, you know, I think it's interesting that South Dakota found that the interlock didn't work as well as the 24/7. And-- and I know Sarpy County in their diversion program doesn't require an interlock and they can show lower recidivism. So it's not that interlock isn't a good thing, but people do find ways to cheat and get around it. And there are some bad stories. I mean, I think there's a story might about a mom who had the kid blowing so she could drive drunk or, you know,--

DeBOER: Yeah.

JOE NIGRO: --and people only install it on one vehicle so you could drive another vehicle. Whereas in 24/7,--

DeBOER: Yeah.

JOE NIGRO: --they know it's you coming in to take the test.

DeBOER: Yeah.

JOE NIGRO: So I think it's a more-- it's a more fail-- it's a-- it's a better failsafe.

DeBOER: All right. Thank you.

LATHROP: OK, I don't see any other questions for you. Thanks for being here today, Joe.

JOE NIGRO: You're welcome.

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LATHROP: Next proponent. Good morning.

PATRICK CONDON: Good morning, Chairman Lathrop, members of the Judiciary Committee. Hopefully I can read as fast as Mr. Nigro. Good morning. My name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am the Lancaster County Attorney and president of the Nebraska County Attorneys Association. And I'm testifying on behalf of Lancaster County and the County Attorneys Association in support of LB271 and the 24/7 bill. I first want to thank the Judiciary for hearing this bill again. As past members of this committee may remember, Senator Hansen brought this bill before you in 2019 on behalf of Lancaster County. In 2019, I, along with Lancaster County Public Defender, the State Bar Association, the Nebraska Criminal Defense Association, Nebraska County Attorneys Association all supported the 24/7 program. And my support for this program remains steadfast. 24/7 is a program where the participants agree to pay and submit to testing twice a day, approximately 12 hours apart, to determine the use of alcohol. The nominal daily payment and frequent testing provides a buy-in incentive for the program. These are keys to the success of this program. There are many examples of individuals who are supposed to have interlock on-- in their vehicles who drive without having them installed, drive another family member's car, or drive a friend's car. There are ways to circumvent the interlock device. In 2020-- in 2020, law enforcement officers in Lancaster County stopped at least one vehicle where the driver had been drinking and the vehicle was equipped with an interlock device. There is a growing body of cases where the interlock device is the cause of accidents because the driver is distracted when they must provide a sample while driving. Much like a cell phone, this-- this device distracts the driver and accidents happen. It is unknown how many accidents the device has caused. With an interlock device, participants simply avoid the problem by not being able to drive when they have been drinking. With 24/7, you cannot avoid your alcohol abuse problem. You must face it at least two times a day. Along with the 99 percent pass rate in South Dakota mentioned by Senator Morfeld, 24/7 participants in South Dakota were shown to have a substantially lower recidivism rate; next DUI offense one and two and three years out. This decreased even further for those in the program in excess of 90 days. Compared to those not in the South-- not in the South Dakota 24/7 program, the RAND program-- The RAND Corporation in 2012 found a 12 percent reduction in DUI arrest for those involved in the programs compared to those not involved in the

programs. And in 2020, a 13.7 percent reduction in DUI arrest. In 2011, Montana Legislature established the 24/7 program by-- and by September of 2019, Montana had administered 1,377,287 twice-daily testing with a 99.7 percent success rate. This program works. This-- this bill does not take away the court's ability to require an interlock device on the vehicle or an individual's ability to have one installed in their vehicle. In fact, the initial mandatory use of the interlock device is currently in the statute remains. This bill does give participants a way to drive without the cost of monitoring and recalibration of the interlock device after the initial period and drive without distraction. 24/7 programs allow participants to continue working, going to school, and bettering their lives while keeping the community safe. Thank you. And I would take any questions.

LATHROP: You got it all in. Any questions for Mr. Condon? Senator DeBoer.

DeBOER: I'm going to just keep asking until somebody knows the answer. So how widespread is the interlock program right now? How many people are-- are on it? Do you have any idea in your--

PATRICK CONDON: I don't have any idea. I know the-- they-- they talk that in Nebraska there's been, you know, 308 or three hundred-- over 380,000 times that the interlock device has stopped an individual from driving when it registers an alcohol event. But I don't know what period of time that-- that spans. I agree with Mr. Nigro. It is widely used.

DeBOER: OK. Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Good morning, Mr. Condon.

PATRICK CONDON: Good morning, Senator.

PANSING BROOKS: Glad you're here. So you really helped develop the program in Lancaster County, didn't you? This was sort of your baby in a way.

PATRICK CONDON: I think-- I think community corrections. I think it was 2018 or so that Kim Apertune [PHONETIC] with our community corrections and Paul Clooney [PHONETIC] with the Public Defender's

Office and myself went up to South Dakota and watched-- were introduced to the program up there and watched how it occurred up there.

PANSING BROOKS: And you spoke a little bit, but I think you were speaking so fast that it was hard for me to hear. Can you just recount a little bit of the positive change that you've seen? And I know you talked about some of the numbers, but you must have some personal experience of what-- what you value most in the program.

PATRICK CONDON: Well, I think the-- my thought has always been after-- after viewing the program in action is that twice daily testing is really the key component. I believe that the participants in the program, they build up a bond with each other. They build up a test-- a bond with the people that are testing with them. They have that buy-in. They're paying $1, $2 a day. They're having that buy-in and they get to a point where they don't want to lose their money by testing positive and they don't want to disappoint the other participants or the people that-- that are taking the test. You know, up in South Dakota, during one of the ones that we were watching, the individual came in and blew hot, as they say, so tested positive and they told him to sit because he's going to take another test in 15 minutes. And people were coming up to him saying, don't leave, because if you leave, there's just going to be a warrant for your arrest. Just stay here, take your medicine, and be done with it. Another one walked in and the tester said, my, Miss So-and-so, you look nice today. She said, yeah, thanks, I have a job interview. And so it's that relationship. And I think that's-- that's pretty key to the success of the program. It is part of the-- we are attempting to get the DUI court set up here in Lancaster County. And it is-- it would be a component of our DUI court program here in Lancaster County also.

PANSING BROOKS: That-- it was-- I was here in 2016 when Senator Seiler brought his bill and the study that we had. And it's truly a remarkable program. So thank you for your work.

PATRICK CONDON: Thank you.

LATHROP: I see no other questions for you. Thanks for being here.

PATRICK CONDON: Thank you.

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***DAVE BYDALEK:** Senator Lathrop and members of the Judiciary Committee, my name is Dave Bydalek, Chief Deputy Attorney General in the Nebraska Attorney General's Office. The Attorney General is supportive of LB271. 24/7 Sobriety programs have been implemented in surrounding states to great success. In 2016, Attorney General Peterson collaborated with then committee Chairman Seiler to hold an interim study on implementation of 24/7 sobriety programs. At that interim study hearing our office facilitated the testimony of Judge Larry Long of South Dakota who is largely cited as having founded the first successful 24/7 sobriety program. We recommend the Committee to review the transcript of LR506(Seiler) from 2016. The Attorney General is deferential to the particular needs of counties in employing best practices for implementing 24/7 Sobriety programs and thus has not heretofore sought introduction of such legislation. Nevertheless, given successful implementation of this important program in Douglas County, Lancaster County and elsewhen in the state, the Attorney General is supportive of the goals and objectives set forth in LB271.

***JON CANNON:** Good morning members of the Judiciary Committee. My name is Jon Cannon. I am the Executive Director of the Nebraska Association of County Officials. I appear today in support of LB271. LB271 would allow a county, through its county sheriff or an entity designated by the sheriff, to participate in a 24/7 sobriety program. The 24/7 sobriety program must coordinate efforts among various state and local government agencies for finding and implementing alternatives to incarceration for offenses that involve operating a motor vehicle under the influence of alcohol or other drugs. The sheriff or designated entity shall establish a reasonable fee to cover the setup and operation of a 24/7 sobriety program for all participants. Reasonable program and testing fees may be charged. Costs and fees may be waived by the court if the participant has made a showing to the court of an inability to pay. These are reasonable items that will advance our policy goals of reducing overcrowding in our jails and reducing the caseloads in our courts, while maintaining a deterrent effect on driving under the influence of alcohol or other drugs. We ask you to please consider our thoughts as you evaluate the merits of LB271. Thank you for your willingness to consider our comments. We encourage you to advance LB271 for the reasons we have outlined. If you have any questions, please feel free to discuss them·with me.

***SEAN FLOWERDAY:** Good morning, Senator Lathrop and members of the Judiciary Committee. My name is Sean Flowerday, member of the

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Lancaster County Board of County Commissioners, and I am appearing on behalf of the Lancaster County Board of County Commissioners in support of LB271. Please accept this written testimony and make it part of the record on the aforementioned bill. LB271 would authorize implementation of 24/7 Sobriety Programs state-wide. 24/7 Sobriety Programs work by conducting twice daily on-site drug and alcohol testing. In addition, the State DMV would issue special 24/7 Sobriety Program driving permits to qualifying program participants. Although this permit is similar to those permits currently issued in conjunction with the use of interlock devices, it is important to note that LB271 does not take the place of interlock devices. LB271 merely provides one more alternative to incarceration that will complement other diversion and supervision programs, like the use of interlock devices. Inspired by successful results in jurisdictions that have implemented 24/7 Sobriety Programs, Lancaster County already has implemented a pilot 24/7 Sobriety Program. Although it is off to a great start, Lancaster County's pilot program cannot become fully functioning without this legislation, which will allow participants to apply for a 24/7 Sobriety Program driving Permit. The ability to drive is an integral component of this alternative to incarceration, providing a substantial incentive to participants to be successful in the program while also keeping participants employed and with their families. Finally, we want to emphasize that Lancaster County is completely committed to LB271 and 24/7 Sobriety Programs. To that end, Lancaster County stands ready, willing, and able to reimburse the State DMV for its costs to implement the 24/7 Sobriety Programs driving permit program that LB271 would create. Thank you for the opportunity to provide this written testimony. We would be happy to answer any questions that you may wish to direct to us.

***SPIKE EICKHOLT:** Members of the Committee: My name is Spike Eickholt and I am a Registered Lobbyist for the ACLU of Nebraska and we are in support of LB271. LB271 would authorize a "24/7" sobriety program for serious driving under the influence offenders and create a limited operator's permit. This type of program holds the promise of creating an alternative to traditional incarceration and meaningful rehabilitation for those who suffer from alcohol use. The type of programs that this bill seeks to facilitate can be very effective at reducing recidivism. Such problem-solving courts and similar programs are sound public policy and are consistent with other alternatives to incarceration that the Legislature has encouraged in recent sessions,

including drug courts, veterans treatment courts, and mental health courts. We encourage the Committee to advance this b'n and pledge our assistance in supporting this effort.

LATHROP: Any other proponents? Anyone else here to speak in favor of LB271? Anyone here in opposition? Good morning.

KEN LACKEY: Good morning. Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Ken Lackey, K-e-n L-a-c-k-e-y, and I'm the agency legal counsel for the Department of Motor Vehicles. I'm appearing before you today to offer testimony in opposition to LB271. To give you a background on the ALR process, the administrative license revocation process, if an individual is arrested for driving under the influence, current law allows for the person's driver's license to be administratively revoked by the DMV for a set period, either 180 days or a one-year period. This is triggered by the arresting officer filing a sworn report with the DMV. Eligible individuals receive a temporary license for 15 days after arrest and then they may apply for ignition interlock permit, an IIP. This process is considered separate from the criminal court process. As introduced, LB271 will authorize a new 24/7 sobriety program permit that an individual will be eligible for during this administrative license revocation period. That's very important. The bill states that the costs associated with the IIP as one of the reasons for implementing this new permit. However, the fee to obtain the 24/7 permit will be $45, the same as the ignition interlock permit. And there is a separate-- separate indigent fund set up for people that cannot afford the interlock permit. In addition, there is significant fiscal impact to the agency to implement the new permit. The creation of the 24/7 permit will cost the DMV over $100,000, including more than $30,000 in programming costs. The DMV cash fund is not positioned to support this significant one-time expenditure. Therefore, an alternative funding source will need to be identified to offset these costs. And I understand Senator Morfeld addressed that, that concern in part this morning. The DMV is also concerned that LB271 changes the Driver Safety Training Program, commonly referred to as STOP, which the DMV oversees. LB271 would allow DUI offenders, first-time DUI offenders to enter the pretrial diversion program for the first time in Nebraska history. The pretrial diversion program was designed specifically to educate individuals committing minor traffic offenses. The current statute makes it clear that minor traffic violations do not include driving under the influence. In addition, there is a

concern as to whether the court has the authority as a condition of bail prior to sentencing to order someone to obtain a 24/7 prior to jurisdiction. Finally, the 24/7 permit is tied into the ALR revocation period. The ALR revocation period can be dismissed for a variety of different reasons, including if the officer fails to file a sworn report, the sworn report is deficient, there would be no revocation period and therefore no issuance period tied in to the 24/7 permit in and of itself. It can also be dismissed by the court itself, either through the prosecutor declined to file the DUI or if the-- if the court dismisses it after trial. Once the ALR revocation is dismissed, the person is then put back into valid status and can obtain a Class O license. If they have an IIP, currently under current law, they surrender the IIP and they apply for the Class O. Under-- under LB271, if the ALR revocation is dismissed, there would no longer be a valid revocation period tied to that 24/7 permit and there would be no ability to obtain the 24/7 permit in that issuance period. And just closing, I would like to-- I would ask the committee to consider these concerns and I would be happy to answer any questions.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming today. Were you able to talk with Senator Morfeld about these concerns?

KEN LACKEY: No, I don't believe the DMV spoke directly to Senator Morfeld. We did work on LB335 in 2019 with Senator Hansen and also the Lancaster County Attorney's Office, because there were some concerns with LB335, but we worked through those. But we still have these remaining concerns.

PANSING BROOKS: OK. Why didn't you before coming here?

KEN LACKEY: We-- we as an agency don't normally reach out to, you know, if they want to come to us and-- and allow us to look over their bill, we'll be happy to do that. But that never occurred.

PANSING BROOKS: Well, usually just from here on, if you have a concern, you approach the senators about it because we can't go to every single agency and say to them, do you have a concern? Do you have a concern? Do you have a concern? And generally agencies come to us to let us know so we can start working with, which I do all the time with all sorts of people and so does Senator Morfeld. So

hopefully that will-- you can change that process, because these-- I think these are new and different issues that were even-- that were even discussed in any part of the bill. So it's important. I know Senator-- I'm sure Senator Morfeld would be happy to work with you. You know, you come publicly to announce it, but you don't want to go privately to the senator to work it out. That doesn't make much sense.

KEN LACKEY: I understand. Well noted. And we'll be happy to work with the senator.

PANSING BROOKS: Thank you.

LATHROP: Senator DeBoer.

DeBOER: Did I understand this correctly? First time, under the bill now, first-time offenders could enter a diversion program that is essentially like a safe driving class?

KEN LACKEY: Well, currently, they changed it to allow a first-time DUI offender to enter a pretrial diversion that's approved by the county. And certain sections under that, the DMV oversees with the STOP program for the-- for minor traffic offenses. Correct.

DeBOER: So could it happen that I get pulled over for DUI and they're like, oh, she seems like a nice person. We'll give her a diversion and I end up going to a Saturday class on safe driving and that's what my consequence is?

KEN LACKEY: It could as long as the county approves it, that particular county, under the current introduction of LB271.

DeBOER: OK, thank you.

KEN LACKEY: And to answer your question previously about the use of, the widespread use of

DeBOER: Oh, yeah.

KEN LACKEY: --interlock permits, and these are just numbers from 2020, there were 3,339 IIPs issued, and that's in conjunction with us receiving 5,548 sworn reports. And we receive about 90 percent of the sworn consistent with the total number of DUI arrests. So that would

go up an additional 10 percent for the number of DUIs in the state of Nebraska.

DeBOER: Can you-- can you say it again? How many did you say there were of the interlock devices?

KEN LACKEY: 3,339 in 2020.

DeBOER: OK.

KEN LACKEY: And those numbers--

DeBOER: And that's--

KEN LACKEY: --fluctuate a little bit. But since the introduction of LB667 in 2011, that's when the advent of the interlock permit was widespread.

DeBOER: And is that-- that's across the state?

KEN LACKEY: Across the state, yes.

DeBOER: OK, thank you.

LATHROP: Senator McKinney.

McKINNEY: Thank you. I just got one question. How common is it for an officer to not file this report, this ALR report, sworn report or to file a deficient report? How common is that?

KEN LACKEY: Well, current statistics show we receive about 90 percent of the-- of the total number of DUI arrests in the state of Nebraska, so about 10 percent are not being filed.

McKINNEY: OK, thank you.

LATHROP: I have a question for you. So the Department of Motor-- my experience with the Department of Motor Vehicles is limited to walking in there once a year and paying my taxes. So the DMV issues the license plates and they issue my driver's license. Is that right?

KEN LACKEY: No, that's not 100 percent correct. The DMV is authorized by statute to issue your driver's license, any driving document. But the county, the county treasurers are our agents that issue your--

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LATHROP: OK. It's--

KEN LACKEY: --your vehicle.

LATHROP: --in Douglas County, it's in the same building. But all you do is issue the driver's licenses,

KEN LACKEY: Correct.

LATHROP: You're not law enforcement at all, are you?

KEN LACKEY: No, no.

LATHROP: OK. I got to tell you and I-- and I'm listening to people over in the Health Committee complain about HHS coming in, in opposition to their bill. Your role is to do what we say is the policy with respect to a driver's license. I am surprised that you came in, in opposition. There is the opportunity to testify in a neutral capacity to share with the senators what affect a particular bill would have on how you run your shop. But coming in and taking a position when you're not law enforcement, it isn't your role to tell us what good policy and bad policy is with respect to how we treat a drunk driver. And so going forward, I would encourage you and you probably already know this, but if you are coming in to tell us that this is going to cause us to have to reprogram our computers and that's going to cost us $30,000, that's neutral testimony. But coming in, in opposition has-- it makes a big deal when the bill gets to the floor. And there you are opposing something when your role is literally issuing driver's licenses and putting them in different statuses, depending upon how we want to treat offenders. OK?

KEN LACKEY: Well, and I agree with that completely, Senator,

LATHROP: OK.

KEN LACKEY: But one of the-- one of the DMV's roles is also public safety and ensuring that drivers on the streets and the public highways of the state of Nebraska operate safely. So we do administer the administrative license program in conjunction with that to make sure we revoke drivers.

LATHROP: You don't do any of that until law enforcement intervenes and pulls somebody over.

KEN LACKEY: Correct.

LATHROP: Right? So it's law enforcement that's enforcing safety on the roads. And you are doing with driver's licenses what we as policymakers instruct you to do once law enforcement has had some contact with a citizen. Am I right about that?

KEN LACKEY: That is true.

LATHROP: OK. I just-- I think it's important because this is happening in a lot of committees where agencies are coming in, in opposition on bills and then they sit down and basically say, well, this is going to do this and this and this, and it's going to cost this much to reprogram our computers. All important stuff for us to know as we decide whether to-- to buy into this 24/7 program. But it's not opposition testimony.

KEN LACKEY: OK, well noted.

LATHROP: OK. Any other questions? I see none. Thanks for being here today.

KEN LACKEY: Thank you.

LATHROP: Anyone else or is anyone here in opposition? Good afternoon or good morning.

ERIKA ECKLEY: Good morning. Good morning, Chairman Lathrop and members of the committee. My name is Erika Eckley, E-r-i-k-a E-c-k-l-e-y, and I am here representing the Coalition for Ignition Interlock Manufacturers. And we're here speaking in opposition to LB271, and we would ask this committee to vote no on this bill. First, I want to state that our position is-- on this bill is not a statement in opposition of the 24/7 program. In fact, we believe that when used in conjis-- in conjunction with ignition interlock devices, both can be effective in reducing drunk driving. We are opposed to this specific bill because it would allow individuals to get driving privileges after a driving license suspension without requiring the protections of an ignition interlock. This proposal would actually weaken Nebraska's law and make the roads less safe. Retaining the requirement that individuals regain driving privileges only after installing an interlock is the best way to ensure that DUI offenders who may have consumed alcohol are stopped before driving on Nebraska's roads.

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According to MADD, in 2018 alone, interlocks prevented 3,873 vehicle starts in Nebraska by drivers who had BACs of .08 or above. These are specific instances in which an individual who knew they had an interlock installed on their vehicle that they would have to blow in to start their vehicle provided a breath sample over the legal limit and they're still trying to drive. This bill puts at risk the possibility that those 3,800 attempts were not stopped before it occurred, before the designated testing-- because it would have occurred between the two designated testing requirements of the 24/7 program. And those drivers were able to continue on to the road legally drunk. We recognize that neither 24/7 nor ignition interlock programs alone are silver bullets. The fight to reduce alcohol and drug impaired fatalities requires states to be able to use any program that has proven successful. This includes both evidence-based programs. But these programs should not be implemented in a vacuum. There's a continuum wherein both programs can actually complement one another and help meet the goals on reducing drunk driving. In the same context, however, interlock and 24/7 programs are not interchangeable and should not be allowed to be substituted for each other. Each program serves a distinct purpose. Interlock individuals on the 24/7 can be ordered not to drink or visit bars, but abstinence is difficult to enforce because alcohol passes through the system. An example from the RAND Corporation states that a 160-pound man will exceed the legal drinking-- drinking limit after consuming five drinks in two hours, but he will likely register a .00 in a breathalyzer test eight hours after drinking. All of this can occur between scheduled 24/7 testing periods. This program by itself cannot keep people from driving after drinking. And we would ask you to vote no on this bill. Thank you very much.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for being here today. So you heard some of the former, the prior testimony and there were examples of kids, the kids of the drunk driver use-- blowing into it. There were, let's see, what else did I have, that interlock can be distracting, I think County Attorney Condon mentioned how distracted it is if you're doing it while driving. And what about using another car?

ERIKA ECKLEY: Well, we will agree that no program is an absolute silver bullet. There are individual instances where that can occur. I

believe the-- the issue of a drive-- of a child blowing into the interlock, there's an article in the news today about a New Mexico woman who had a child do that. In Nebraska, the interlocks have a camera requirement. So any kind of circumvention like that can be caught and can be enforced as a violation. In addition, that woman was caught and there-- there-- there are things that-- that make it clear that can be stopped. But we-- you can't prevent every single individual instance. There are random retests that do occur with ignition interlock to ensure, to better address the circumvention issue of having somebody else blow into it. The instances of people being distracted from that are very minor compared to the number of interlocks out there. And when people have their interlocks installed, they are trained that when they are given notice that they need to provide one of these random retests, they need to pull over, come to a safe place to do that. And they do have time on that that's programmed in that allows them to do that.

PANSING BROOKS: Do you know how often that footage you talked about is reviewed or how does that work?

ERIKA ECKLEY: I know that every time somebody blows into the interlock device, a camera takes a picture of that. There are records that are included in every person's file. I am not personally familiar with how Nebraska would do that. And in a lot of states, it depends on if there is probation involved or various things. But if there are compliance-based removal requirements, there will be notices sent to the state if somebody has any of those violations. But I apologize. I'm not familiar with Nebraska's process.

PANSING BROOKS: Well, I think that most people would agree that interlock has provided a really valuable technology to many states. But now there's additional knowledge that there are programs that are truly beneficial and that can reduce recidivism rate. And so I don't know. I just thank you for coming. And, you know, sometimes-- sometimes programming is recognized as important. And I appreciate your being here.

ERIKA ECKLEY: Thank you.

LATHROP: Senator McKinney.

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McKINNEY: Thank you. My question is if this bill was to pass, what financial effect would it have on interlock?

ERIKA ECKLEY: I'm not sure what the financial effect there would be on interlock. I will say that the cost of interlock Nebraska is roughly $60 to $70 a month. And there is an indigent program for individuals who can't afford that. It's basically the same cost if you look at Lancaster's financial note about--

McKINNEY: I don't--

ERIKA ECKLEY: --the cost of [INAUDIBLE]

McKINNEY: I guess I wasn't clear. Would there be a negative effect on your business if this bill passes?

ERIKA ECKLEY: There-- if fewer people use interlocks, then-- then, yes, there would be an impact.

McKINNEY: How much is that weighed into your opposition?

ERIKA ECKLEY: That is not weighted to the opposition. We work with Mothers Against Drunk Driving and we believe that interlocks are here to-- to make safer roads. I'm part of the Coalition for Ignition Interlock Manufacturers. Our sole requirement is to go out and advocate for better drunk driving laws.

McKINNEY: But you don't weigh your profit and loss either?

ERIKA ECKLEY: Every company will weigh that. I don't know what this bill would, how that would impact this.

McKINNEY: All right. Thank you.

LATHROP: OK. I don't see any other questions. Thank you.

ERIKA ECKLEY: Thank you.

***ERIN AYAD:** Good morning, Chairman Lathrop, and members of the committee. My name is Erin Ayad, and I am submitting written testimony in opposition of LB271 on behalf of Project Extra Mile, a network of community partnerships working in Nebraska to prevent and reduce alcohol-related harms. Project Extra Mile opposes LB271 due to the

inclusion of pre-trial diversion eligibility for first-time, non-aggravated DUI offenders. We believe strongly that our state should continue to seek accountability through existing statutes to prevent the significant harms caused by drunk drivers. Several studies have estimated that individuals may drive impaired between 200 and 2,000 times before being arrested (Rauch et al., 2010). It is imperative that drunk diving, including first-time arrests, be treated as a serious crime for which diversion is not an option. Diversion programs often lead to less severe punishment for drunk driving offenses and have a negative effect on deterrence. Limiting diversion programs is one of several policy recommendations identified by the National Academies of Sciences, Engineering, and Medicine (NASEM) in the 2018 report Getting to Zero Alcohol-Impaired Driving Fatalities: A Comprehensive Approach to a Persistent Problem. Nebraska has a drunk driving problem, having been ranked as the second-w~rst state in the country with 955 episodes of self-reported alcohol-impaired driving per 1,000 population (jewett et aI., 2015). Extrapolating that data to our current population indicates approximately 1.85 million episodes of drunk driving occur every year. Over the past five years, our state has averaged 74 alcohol-related traffic fatalities annually (NDOT-HSO, 2019). Project Extra Mile provided testimony in support of LB335 during the last legIslative session that would have authorized a 24/7 sobriety program. We recognize that South Dakota's 24/7 sobriety program has shown positive results that warrant additional consideration. At the county level, DUI arrests were reduced by 12 percent and domestic violence arrests fell by nine percent following adoption of the program, according to a RAND Corporation study. However, leaving sanctions up to individual programs as LB271 does is concerning given best practice recommendations around swift, certain, proportional, and consistent sanctions for all violations. Researchers who led a 2020 study evaluating North Dakota's program concluded that their results were generally consistent with South Dakota but identified the need for additional research through randomized controlled trials that vary time on the program, testing technology, and level of sanction (Midgette et aI., 2020). Project Extra Mile supports strengthening our DUI laws as well as enacting comprehensive evidence-based policies to prevent the loss of lives on our roads, including th~oseidentified in the National Academies report and by the Community Preventive Services Task Force (CPSTF). Researchers established a rating system for alcohol policies' impact to reduce binge drinking and alcohol-impaired driving (Nelson et aI., 2013). The

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highest efficacy ratings were given to policies which limit price, increase alcohol taxes, and regulate alcoh11 availability. Our laws should reflect that all DUls are serious offenses. The truth is, there are many repeat offenders on our roadways that simply have not been caught. Our state needs to continue to send a strong message that DUls will not be tolerated in our state. With that aid, we urge the committee to indefinitely postpone LB271. Thank you for your consideration of our comments.

***ERIC GERRARD:** Chairman Lathrop and members of the Judiciary Committee, my name is Eric Gerrard and I am a registered lobbyist for Vigilnet. Vigilnet works directly with SCRAM Systems, a leading provider of electronic monitoring and software solutions for the criminal justice industry. We applaud Senator Morfeld and the State of Nebraska for seeking to decrease impaired driving's impact on Nebraska communities. We are neutral on LB271 because we believe in the concepts in the bill but have suggested some modifications to Senator Morfeld and other advocates of the bill. We have listed information and experience from other states to be helpful to the committee as you move forward on LB271. NHTSA Alcohol Countermeasure Program. The 24/7 Sobriety Program requires abstinence from alcohol and illegal drugs. Abstinence is mandated by the courts as a condition of bond, post-adjudication sentence, condition of probation or parole, or a special condition of the court. The program model is implemented by local courts, law enforcement agencies and in some cases authorized third party providers. 24x7 Program Effectiveness. The South Dakota 24/7 Sobriety Program has been evaluated and deemed highly successful. As published in the American Journal of Public Health in November 2012, a RAND study showed that between 2005 and 2010 there was a reduction in the incidence of heavy drinking among the 17,000 participants, a 12% reduction in repeat DUI arrests, and a 9% reduction in domestic violence arrests following adoption of the program. To date, no peer-reviewed studies have been published to determine what alcohol testing methodology works best. Technology Inclusive Platforms. The program model should be technology neutral and utilize a combination of approved and validated alcohol and drug testing modalities and secure configurable software designed. Programs should also utilize a secure, configurable, 24x7 Program specific software application that supports supervised x2 a day breath testing instruments, unsupervised remote breath testing devices, ignition interlock devices, transdermal drug monitoring patches, and

traditional urine screens that detect illicit drugs. The key to successful program implementation is to have an inclusive toolbox of testing methods and software that matches the risk and needs of the program participants. Participants who fail to maintain abstinence are subject to swift, certain but moderate sanctions such as a day in jail or an increase in testing/reporting frequency. Efficacy of Transdermal Testing Effectiveness. Research shows that the use of the SCRAM's Continuous Alcohol Monitoring bracelet (CAM) for a minimum of 90 days significantly reduces the probability of recidivism among high-risk DUI offenders. Recidivism rates for repeat DUI offenders who wore CAM for at least 90 days were 50% less than those who were alternatively sentenced. Remarkably, 98% of the offenders did not commit a new offense while wearing CAM. The newest NHSTA study on CAM replicated these powerful effects; showing that 90 days on CAM significantly decreased the risk of recidivism up to 43%. Only 2% of CAM user's recidivated while on the device. According to The North Dakota 24/7 Sobriety Program, local jurisdiction utilizes transdermal continuous alcohol monitoring for the vast majority (70%) of their program participants due to the rural nature of the state. Public Safety Benefits. In exchange for participating in the 24/7 Sobriety Program, participants are afforded considerable accountability and such freedoms as being permitted to obtain a restricted license, maintain employment, re-connect with family, and stay sober. There is also a benefit to local jurisdictions as 24x7 offers noncustodial detention alternatives that can reduce the local jail populations, enable a revenue positive program model to offset operational·costs, and reduce the harm that impaired drivers have on the community. Conclusion. Therefore, it's important to enable local jurisdictions to implement a "toolbox approach" to managing the local implementation. In rural jurisdictions where resources are constrained and driving to a local jail twice a day creates barrier to success. The use of remote testing or continuous testing that offer more accountability in the number of alcohol tests administered to program participants is critical to the scalability of the program. The bill's intent to allow local jurisdictions to have access to the testing methodologies that they believe are best for their program aligns with how other programs have implemented across the country. We plan to work with Senator Morfeld, Lancaster County and any other interested stakeholders on LB271 and to further 24/7 Sobriety Programs throughout Nebraska. Thank you to the committee for your time.

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LATHROP: Anyone else here to testify in opposition? Anyone here in a neutral capacity? Seeing none, Senator Morfeld, you may close. We do have position letters, three of them: one as a proponent, two in opposition. We also have written testimony received this morning from the following: proponents include Spike Eickholt with the ACLU; Commissioner Sean Flowerday with the Lancaster County Board of Commissioners; Jon Cannon with NACO; David Bydalek with the Attorney General's Office. In the neutral capacity: Eric Gerrard with Vigilnet. And as an opponent: Evan Ayad, A-y-a-d, pardon me, Erin Ayad with Project Extra Mile. Senator Morfeld, you may close.

MORFELD: Thank you, Chairman Lathrop, members of the committee. I appreciate all the good questions. Just a few different things. We've checked with people with interlock system. I think the testifier indicated it'd be $60 to $75 per month. The people that we're talking with that are currently using the interlock system pays $85 a month, one person did, another person $90 a month. There was an installation fee of about $150. And, you know, so I think it varies, but that's just kind of anecdotally from some Nebraskans. And the bottom line is, is that it is out of reach. It is expensive for some folks. And just like any system, it's not perfect. But I think that I rely on what I'm hearing on the ground with our folks in the county on both public defense side and then also the county attorney side, that if this is an effective program and a more effective program, then this is something that requires serious consideration. In addition, I also have family members in South Dakota and I know of people in South Dakota that have been part of the 24/7 program and it was also very effective program for them as well. And so in closing, I just want to say that I'm happy to work with the Department of Motor Vehicles. As noted, those are-- some of those concerns are new. The Lancaster County or excuse me, Lancaster County has agreed to pay the programming and set-up costs, which I think is very generous for Lancaster County, because they would have-- make this programming system more available statewide to all the counties. I could probably say a few more things, but I'll just end it at that and be happy to answer any other questions.

LATHROP: I don't see any questions, but thank you for bringing LB271.

MORFELD: OK, thank you.

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LATHROP: That will close our hearing on LB271 and bring us to Senator Geist and LB500. You may want to wait just a couple of seconds for the room to clear. Welcome, Senator Geist.

GEIST: Thank you very much.

LATHROP: You may open on LB500.

GEIST: Thank you very much, Chairman Lathrop. And good morning, members of the Judiciary Committee. For the record, my name is Suzanne Geist, S-u-z-a-n-n-e G-e-i-s-t. I represent the 25th District in the Legislature. I have introduced LB500 to create clarity when certain crimes are committed with an electronic device. LB500 provides that when specific criminal offenses are committed using an electronic communication device such as a cell phone, such violation is legally deemed to have been committed either at the place where the communication was initiated or where the electronic communication was received. The criminal offenses are-- are associated with domestic violence and sexual assault when using terroristic threats, use of an electronic communication device to solicit or entice a child, stalking and harassment, as well as witness or jury tampering. This bill also clarifies the legal venue that is proper for these offenses when an electronic communication originates in one jurisdiction and is received in another. Hopefully that's clear. Thank you for your time and attention. This is a very simple bill, but it's very much needed. There will also be someone behind me who can answer any questions I might not be able to answer, but I'm happy to answer any of the questions you may have at this time.

LATHROP: Senator DeBoer.

DeBOER: Do you have a lawyer coming to speak to jurisdictional issues?

GEIST: Yes, I do.

DeBOER: That is what I wanted to know.

GEIST: OK.

LATHROP: Can you tell us who brought this to you?

GEIST: The Attorney General's Office.

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LATHROP: AG, OK, perfect. I don't see any other questions for you.

GEIST: OK.

LATHROP: Thanks, Senator. We will take proponent testimony.

GEORGE WELCH: Good morning, Chairperson Lathrop, members of the Judiciary Committee. My name is George Welch, G-e-o-r-g-e. I am an Assistant Attorney General. I am assigned to the Criminal Bureau of the Attorney General's Office and prosecute crimes of domestic violence and sexual assault throughout the state of Nebraska. I come here today as a representative for the Attorney General's Office and the Nebraska County Attorneys Association in support of LB500. As we move further into the digital age, the laws that govern Nebraska must adapt to confront the challenges of the day. Establishing venue should be one of the easier elements of a crime that a prosecutor must prove. Ordinarily, venue is clear. The fight happened outside of XYZ bar in Omaha, or the suspect vehicle was stopped on the corner of 72nd and Dodge. Therefore, Douglas County is the clear venue for both matters. However, smart technology has muddied the waters in some instances. LB500 clarifies venue for certain crimes associated with domestic violence and sexual assault when an electronic communication device is used. Terroristic threats, stalking, harassment, witness tampering and use of an electronic communications device to commit sexual assault can be easily committed using a cellular phone, tablet, or computer. And the parties involved may not always be in the same jurisdiction when the crime is perpetrated. This bill allows venue to be brought either at the place where the electronic communication was initiated or where such electronic communication was received. For example, a perpetrator staying in Johnson County can easily send a threatening message, an ominous video via text or Snapchat to a current or former partner who happens to be residing at their home a few counties over in Fairbury. This common-- this is a common situation, especially when no contact or protection orders separate individuals. Traditionally, the county where the message was initiated would be a likely place for the charge of terroristic threats to be brought. However, law enforcement, prosecutors, the courts, and even defense attorneys may be best suited to handle a criminal case in the county where the victim resides because they may have other ongoing matters or a history with the parties involved. A victim is also more likely to report the threat to law enforcement in the county where the message was received, thus initiating the investigation. Nebraska Revised

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Statutes Sections 28-833 and 28-1310 already provide venue, either at the place where the communication was initiated or where it was received. LB500 uses these statutes' framework to clarify a venue in the aforementioned crimes. We are not creating new crimes. By clarifying venue and allowing for a case to be brought where a threatening message is initiated or received, law enforcement, prosecutors, and the courts will be able to better hold offenders accountable for their actions and provide safety and security for those victims in our society most in need. I thank you today for your time and welcome any questions that you may have.

LATHROP: Senator DeBoer.

DeBOER: My civ pro is pretty rusty and it's from pre-Smartphones, any of that stuff. So can you help me with jurisdictional issues? If I am sending a threatening message or some sort of criminal message from a different state, then is there jurisdiction over me? Although all of the, I mean, I'm doing all the typing and whatever from a different state, would Nebraska have jurisdiction over me?

GEORGE WELCH: So that's what this-- that's what this bill attempts to clarify and attempts to provide jurisdiction in certain circumstances. First of all, if it-- if-- if it met the elements of terroristic threats and I'm assuming your--

DeBOER: Example does.

GEORGE WELCH: --hypothetical gives that, yes. So as of right now, that-- that's kind of the question that we're addressing. It would depend on the facts and circumstances of the case, but also how the courts would interpret the issue.

DeBOER: So-- and I'm sorry, this may be too elementary. What theory of jurisdiction is there for a person whose contact is only the bits and bytes that go over, you know, the Internet or the cell tower waves, whatever technology stuff? What-- what-- what is the theory of jurisdiction over a person who's not located and who? I mean, I can't think of an analogous one except maybe like some sort of business that doesn't have--

GEORGE WELCH: Yeah, absolutely. So-- so what we're trying to address is that-- that-- that from the victim's perspective, in your example,

would be trying to address it from the-- from the victim's perspective, the victim who might be residing in in Omaha--

DeBOER: I--

GEORGE WELCH: --that they are-- that they're, excuse me, I didn't mean to interrupt.

DeBOER: Sorry, no, no, no, I get the--

GEORGE WELCH: [INAUDIBLE] intimidated.

DeBOER: I get the venue piece. That makes sense to me.

GEORGE WELCH: OK.

DeBOER: It's the jurisdictional question. And maybe this is just something where I need to go read a book. But I don't understand how-- basically how does e-jurisdiction work right now? Are there other examples where we have jurisdiction over a person who is not physically located in Nebraska?

GEORGE WELCH: At the time of the incident?

DeBOER: Yeah.

GEORGE WELCH: I would have to look into that issue and maybe-- and maybe work with you outside of the office on maybe clarifying some of the--

DeBOER: Yeah, maybe I need to-- yeah, maybe that's the idea. But I think the-- the venue thing makes case-- makes sense that we have other examples where the incident occurs in a place. I can kind of see the venue question, but I need to know more about the jurisdiction, so I'll see if I can look into that. Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for being here. I guess I'm interested because what you're talking about and I need to look up the statutes that are cited herein, but you're talking about sexual assault with a communication device.

GEORGE WELCH: Yes, ma'am.

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PANSING BROOKS: So if somebody shows pornography to somebody else, is that sexual assault? Or that seems new to me.

GEORGE WELCH: Are you talking about, like, revenge porn or I--

PANSING BROOKS: No. I was just talking about-- I don't know.

GEORGE WELCH: So three--

PANSING BROOKS: What are you talking about?

GEORGE WELCH: Yep. So-- so this bill specifically addresses 28-320.02. That is sexual assault when you knowingly solicit, coax, or entice a certain-- a 16-year-old officers by any means of electronic communication to engage in a sexual assault. So the classic example would be if an individual is talking to somebody online through a chat room, some-- something along those lines and they're trying to get an underage person, an adult is trying to get an underage individual to come engage in a statutory sexual assault.

PANSING BROOKS: OK, so that's enticement. It's not sexual assault.

GEORGE WELCH: There-- it's entice-- I believe it's the technical statute. And I have it right here is I mean, it's-- it's it's-- 320.02 so it's in the sexual assault-- sexual assault, use of electronic communication device. It's-- it's enticing somebody to come and commit a sexual assault.

PANSING BROOKS: OK. So it's not-- I'm just confused with the verbiage here a little. It's not actual sexual assault. It's enticement.

GEORGE WELCH: To-- to commit a sexual assault.

PANSING BROOKS: OK.

GEORGE WELCH: Yes.

PANSING BROOKS: All right. Thank you. That's what I wanted to know. Thank you.

LATHROP: So I have a-- I have a maybe a concern similar to the questions presented by Senator DeBoer. And that is you tell us that this is about venue, but your statute or your bill says jurisdiction.

So I'm wondering if a person is sitting in Des Moines and makes a phone call threatening somebody in Omaha, it seems to me like Iowa would have something to say about that behavior since I'm sitting in Des Moines while I communicate this threat. And now you're saying you can prosecute somebody who's sitting in Des Moines making threats to somebody in Omaha. I understand venue. If everything's happening in Nebraska, then you want to be able to choose whether you do this where the victim lives or where the perpetrator performed this act. But jurisdiction is different than venue.

GEORGE WELCH: Yes.

LATHROP: Right? And so I don't know if you can because you're not creating a new crime. And I appreciate that we're not getting a wave of those this year from your office. On the other hand, I don't know that you can make something criminal that's happening in another state. That's sort of the job of the feds, isn't it?

GEORGE WELCH: That may be-- that may be a time when we would look into-- to working with another state or sorry, the feds, I mean, you know, based off whatever statutes that they might have that would be--

LATHROP: Just so that Senator Geist knows what we're talking about, jurisdiction is-- is broader than venue. Venue is what county are we going to prosecute this in.

GEORGE WELCH: Yes.

LATHROP: Righ? And jurisdiction is the ability of the court to take something up.

GEORGE WELCH: Yes.

LATHROP: And you are conferring jurisdiction on a Nebraska court potentially for something that took place, the phone call and the threat, in New York could be somewhere where it's not even illegal. Right? I might be in Nevada sending a phone call or making a proposition to somebody that Nevada may not regard as even criminal activity.

DeBOER: Right.

GEORGE WELCH: We would be willing to work with--

LATHROP: Yeah.

GEORGE WELCH: --Senator Geist.

LATHROP: At least I think you need to come back and-- and make us more comfortable with the idea that we're not criminalizing behavior in another state, because I don't think we can.

GEORGE WELCH: Maybe-- maybe, yes, we'd be willing to work with Senator Geist--

LATHROP: OK.

GEORGE WELCH: --to-- to address the issues of yourself, Senator DeBoer, and maybe Senator Pansing Brooks.

LATHROP: OK. Senator McKinney.

McKINNEY: Thank you. I may be wrong, but don't you have to have a certain number of contacts to establish jurisdiction in a certain place?

GEORGE WELCH: I'm not following. I'm sorry.

McKINNEY: Don't you have to have a certain number of contacts in a certain venue to establish jurisdiction?

GEORGE WELCH: Sorry, are you-- are you going back to Senator Lathrop andr Senator or--

McKINNEY: No. I was just asking a different question. To establish jurisdiction, do you have to have a number of--

GEORGE WELCH: Yes, you have to have some type

McKINNEY: --a certain number of physical contacts?

GEORGE WELCH: Yes, I believe so.

McKINNEY: OK. I'm just curious of how we would be able to establish those number of contacts, because, for instance, if I'm in Washington State and whoever I'm Snapchatting or whatever is in Nebraska, but I don't know they're in Nebraska.

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GEORGE WELCH: Right.

McKINNEY: How do we establish jurisdiction if-- I don't know? I'm just curious of how.

GEORGE WELCH: Right. As I said, we can work--

McKINNEY: OK.

GEORGE WELCH: --we'd be happy to work with Senator Geist on addressing some of these issues.

McKINNEY: All right. Thank you.

LATHROP: OK. I don't see any other questions, but thanks for being here.

GEORGE WELCH: Thank you.

LATHROP: We get what you're after, by the way, you know.

GEORGE WELCH: Thank you.

LATHROP: All right. Any other proponents? Anyone here in opposition? Anyone here in a neutral capacity? Good morning.

SPIKE EICKHOLT: Good morning. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in a neutral capacity. We were actually just going to monitor this bill, but one of my members contacted me about this last night and brought something to mind that might be a different approach to it. And I very briefly talked about it with Senator Geist this morning.

LATHROP: Can you speak up just a little bit?

SPIKE EICKHOLT: Sure. I very briefly mentioned something to Senator Geist this morning, and I don't like to do this at the last minute, particularly to a committee member. So I usually try to give people notice that I'm going to oppose a bill or suggest something that is other than just support. We already have a statute that deals with venue and provides for prosecution in multiple counties, this-- and you're getting a copy of it now, 29-1301.01. And it essentially would

allow for some crimes involving an offense against a person of another. Now, that's generally defined as assaults, physical assaults, homicides, physical sexual assaults and so on. So maybe a different approach might be what Senator Geist may want to do. And I'm not trying to suggest this to rewrite her bill necessarily, but I think the committee was asking questions about this. Maybe just amending this venue provision might get the same thing just to broaden the types of offenses. If you look at some of the annotated cases, the courts have already sort of interpreted this pretty broadly anyway. That would allow for prosecution in any county, really where any part of the crime takes place. So I just offer that to the committee and I'll answer any questions that you might have.

LATHROP: This really does demonstrate like there are limitations on what we can make a crime, that somebody is actually committing in another state. Feds have plenty of stuff on the-- on the books, on doing stuff across state lines. But when we talk about jurisdiction this broadly, when we're really referring to venue similar to this bill--

SPIKE EICKHOLT: Right.

LATHROP: --you're literally criminalizing behavior in another state, potentially. Person could be charged there, too. Right?

SPIKE EICKHOLT: Right.

LATHROP: If they have a similar statute. So I do think you're probably right with this approach to just clarify that if the perpetrator and the victim are in the state, the crime has happened here, then they can choose whether they file it in the state-- in the-- in the district court or the county court where the person lives when they received it or where they were at when they received it or where the person made it from.

SPIKE EICKHOLT: That's right. That-- it's tricky. Like, Senator DeBoer, you asked about [INAUDIBLE] with digital means of committing some of these crimes. It's difficult because where you retrieve it may be very arbitrary. Right? Could be on the interstate riding back home. I just happened to check your voicemail and your ex is giving you a threatening message. He lives in Douglas County, but you happen to

listen to it in Seward County and you live in Kearney County or Buffalo County.

LATHROP: OK. Senator DeBoer.

DeBOER: So maybe you can answer a general jurisdictional question, Spike, Professor Spike. So what-- what now are we doing on jurisdictional issues with e-anything with any of these electronic sorts of crimes? Is that something that there are other instances in which we can exercise jurisdiction over someone or-- or are we limited within the state? Because I can see this getting very complex if somebody is in Germany and sending information to people here in the U.S..

SPIKE EICKHOLT: Yeah, I've never had a case where somebody is outside of Nebraska and been prosecuted in Nebraska for committing that crime. And I think that that's just-- that's a due process issue or if it's a jurisdictional issue or, you know, because you've got all kinds of things that people in Nebraska are upset about that are happening outside the world. You see something on Twitter that's disturbing. Who knows where that's happened? You've got the Interstate Detainer Act and Extradition Act and all those different things. And you just can't send the Lancaster County Sheriff to go to Germany to arrest somebody--

DeBOER: Right.

SPIKE EICKHOLT: --and bring them back here to face a state charge. There's certain ways you have to do that. And I don't think this-- I don't think that's what Senator Geist means to do. But you're kind of running into that here.

DeBOER: OK. So we can fix the venue issue within--

SPIKE EICKHOLT: Within.

DeBOER: --Nebraska. Yeah, OK. Thank you.

LATHROP: OK. Seeing no other questions, thanks for your input. Any other neutral testimony? Seeing none, Senator Geist, you may close. We do have one position letter in support and that will be noted in the record. No written testimony this morning.

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GEIST: Oh, and simple close, I'm willing to work with everyone on the issues and make this exactly what we need. So thank you for your questions and that's it.

LATHROP: I think we all know what you were shooting for.

GEIST: Yes.

LATHROP: Maybe it just needs cleaned up a little bit, but thanks for introducing LB500.

GEIST: Sure.

LATHROP: Any questions for Senator Geist? I see none.

GEIST: OK. Thank you.

LATHROP: Thank you. That will close our hearing on LB500 and bring us to Senator Pansing Brooks and LB109. Good morning, Senator Pansing Brooks.

PANSING BROOKS: Good morning, Chair Lathrop. Good morning, Judiciary Committee. I am-- I am-- for the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB109, which provides that a person does not commit the act of obstructing a peace officer simply by taking a photograph or making an audio or video recording of a peace officer while the peace officer is acting under color of such peace officer's official authority. If the person taking the photograph or making the recording is in a place, a public place or in a place the person has a right to be within a reasonable distance. Former Senator Rick Kolowski brought this bill last year and we had a hearing on it last February. This was, of course, prior to the events in Minneapolis last May and the video that we all saw of George Floyd dying while his neck was pinned under the knee of an officer. As this committee held listening sessions in June in Lincoln and Omaha, I couldn't help but think that we needed to ensure that our statutes were clear in providing protections for citizens who recorded such events. The existence of both police body cams and citizen recordings provide an important tool to ensure the safety of both our officers and our citizens. Following the events of last summer, I decided to take another look at what Senator Kolowski had proposed and examine our current statutes. In reading Nebraska Revised Statute

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25-906, it appeared that recording or photographing an officer might be considered obstructing a peace officer. So LB109 clarifies that these recordings or photographs are not to be considered obstruction. I spoke with Wahoo Chief of Police Bruce Ferrell, with the Police Chiefs Association of Nebraska, and also with Lincoln's acting police chief, Brian Jackson and Captain Jason Stille regarding LB109 to get their input and to listen to their concerns about this bill. In response, I propose a minor amendment to my bill. AM213, which I have just had the pages distribute, is intended to clarify that a person has the right to record police activity so long as the act of recording does not jeopardize the safety of police or any other person who may be present. I want to be clear. The right to record is paramount. But even when exercising that right, a person does not have the authority to be at a distance which would be found unreasonable in regards to the safety of the officer and the public. As I stated on previous legislation that I brought before the committee, the safety of the police and the safety of members of the community are not either/or propositions. They're inextricably intertwined. So I offer LB109 as a small but important component in our attempts to address the persistence of racial disparities throughout our criminal justice system. I want to again thank law enforcement for all the work that they do to keep our communities safe and for the work of all the good officers and troopers across the state. I also want to thank those from the Black Lives Matter movement and the advocates throughout Nebraska for calling attention to the systemic racial injustices and biases throughout our criminal justice system. The Nebraska Legislature must answer that call this session, not just through LB109, but through some of the other bills brought before this committee. I ask this committee to advance LB109 with AM213. Thank you. And I'll be glad to answer any questions that you might have.

LATHROP: I do not see any questions.

PANSING BROOKS: OK.

LATHROP: Thanks for the introduction though.

PANSING BROOKS: Thank you.

LATHROP: We'll take proponent testimony. Good Morning. Welcome.

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SPIKE EICKHOLT: 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 and the Nebraska Criminal Defense Attorneys Association in support of LB109. We want to thank Senator Pansing Brooks for introducing the bill. As Senator Pansingr Brooks explained, this was a very similar version or a bill that Senator Kolowski did was very similar to this bill. The First Amendment protects the public's right of access to what government does. And to make that right meaningful, courts have interpreted the right of access to include the right to record and the right to photograph. Government obviously includes the police. And as Senator Pansing Brooks explained, police-citizen encounters that are recorded can have significant consequences if people see something that's objectionable or even something that they like on the recording. I think the whole thing-- I think it's safe to say that without that video of George Floyd, we never have had the reaction to it and arguably never even had a nationwide protest movement stemming from that reaction. That shows the power that can happen when you record something that the state does at the right time. I think what Senator Pansing Brooks has done here is clarify that it is not obstruction of a peace officer if you record or photograph that peace officer while the peace officer is on duty. The reason that Senator Kolowski introduced this bill is because he had a constituent who was cited with this offense for recording. Now, that charge was later dropped right away because, of course, it's been clear that merely recording in and of itself is not a crime. I mean, obviously, you can't record something while you're committing a crime and then claim somehow you're recording and therefore you can't be prosecuted. That's not what the law provides and that's not what the courts have said. But I think what Senator Pansing Brooks has picked up where Senator Kolowski has left off, I would urge the committee to advance this bill. I think the amendment is responsive to some of the concerns that the law enforcement officials have regarding this bill. And I would urge the committee to consider that as well.

LATHROP: OK. Senator Geist.

GEIST: I just have an elementary question. Who establishes what is reasonable?

SPIKE EICKHOLT: Well, I mean, ultimately, that's going to be something that you fight about in court if it does go to court. One of the things that I-- that we talked about with Senator Pansing Brooks's

office when she was considering the amendments was just that issue. You don't want to somehow delegate that to law enforcement to claim an arbitrary barrier, like a 30-feet recording barrier or something like that. I think it's probably a case and fact specific, right? If you have a bunch of people on the street, protest is getting maybe a little bit more animated or something like that, well, that's a different consideration of reasonable. If you have a situation where you have like in Omaha a few years ago and where a neighbor was recording officers that were towing a vehicle. Right? Then you have, I think, a different situation of what might be considered reasonable.

GEIST: OK.

SPIKE EICKHOLT: I mean, ultimately, you want to have the law clear enough so that law enforcement can understand what they're allowed and not allowed to do. And similarly, you want to have something that's clear enough that lets the courts have some guidance that cases are ever prosecuted or defended on that ground.

GEIST: So in this amendment, I guess-- I guess my question is what's reasonable? And you're saying that's on a case-by-case--

SPIKE EICKHOLT: Right.

GEIST: --basis. And so would that be the-- I think I'm answering as I talk about it, answering my question, but it's kind of arbitrary given what the situation is?

SPIKE EICKHOLT: It is. But I think what Senator Pansing Brooks explained reasonable should be considered in terms of safety of the officers and the safety of the other people present.

GEIST: OK.

SPIKE EICKHOLT: So that might be the benchmark for measuring what's reasonable, not whether it's inconvenient for people, not whether it's embarrassing to people, but whether it's jeopardizing the physical safety.

GEIST: OK. Thank you.

***KORBY GILBERTSON:** Chairman Lathrop and members of the Judiciary Committee, my name is Korby Gilbertson and I am testifying today on

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behalf of Media of Nebraska, Inc. in support of LB109. Media of Nebraska is composed of the following five organizations: Nebraska Press Association, Nebraska Broadcasters Association, Nebraska Publishers Association, Omaha World-Herald and the Lincoln Journal Star. The primary focus of this non-profit organization is to advocate for the protection of free speech rights, open meetings, and public records access. Senator Pansing Brooks proposal will codify a First Amendment right to photograph or record a peace officer while they are exercising their professional duties in public. LB109 establishes a clear standard for both the public and law enforcement to follow. Media of Nebraska hopes that the Committee will view this legislation in a favorable manner and see fit to advance it to the full Legislature for further debate.

LATHROP: OK. I think that's it. Thanks for being here. Any other proponents? OK, we're out of proponents. Any opponents? Jim, are you here as an opponent?

JIM MAGUIRE: [INAUDIBLE]

LATHROP: Neutral.

JIM MAGUIRE: Neutral.

LATHROP: OK, we'll take neutral, we'll take neutral testimony, if you want to hop in the seat real quick and tell us your thoughts.

JIM MAGUIRE: Chairman Lathrop, senators of the Judiciary Committee, good morning. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police and I'm here to testify in a neutral capacity with the-- the amendment that was submitted. It-- it cleared up a lot of the, some of the, not a lot, some of the concerns that were originally brought with this bill. The courts have already established that somebody that's simply tape recording us is not a crime. I understand-- I completely understand the intent behind the bill. So with this amendment, we don't have any concerns. So thank you very much.

LATHROP: OK, good to know. Thanks for coming in.

JIM MAGUIRE: Thank you.

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LATHROP: Senator Pansing Brooks. We have no additional testimony. We do have written testimony in support from Korby Gilbertson representing Media of Nebraska. And we have three letters, position letters that were received, one proponent, two opposed.

PANSING BROOKS: So thank you for listening to this today. Thank you for the testimony of Mr. Maguire. Senator. Geist, we purposely left that nebulous with reasonable because it will be a reasonable person standard. So certainly being this close, filming would not be reasonable six inches away. But, you know, six feet maybe. But there may be a case where it's not.

GEIST: Yeah.

PANSING BROOKS: So it's-- it's going to have to be, unfortunately, up to the-- what-- what the police think is reasonable and what the judge ultimately thinks is reasonable. And, you know, the point is to be able to be transparent and allow people to witness what is-- what is going on. And hopefully it just shows law enforcement doing their job in a positive, good way, keeping our communities safe. So that's-- that's the goal of it to show good things happening, not necessarily bad. But if bad things do, then they ought to be able to-- to videotape it. So that's-- that's the main thing. And we purposely left it. You know, we fought back and forth, should we say six feet or should we? But there might be a case where six feet is not appropriate. So it's going to have to be taken in the-- in the circumstance and what happens.

GEIST: OK.

PANSING BROOKS: So that's why we were-- we left it with the reasonable standard. And I don't have any other--

LATHROP: A standard we use all the time.

PANSING BROOKS: It is. Yeah.

LATHROP: OK.

PANSING BROOKS: So.

LATHROP: Senator Pansing Brooks, I see no other questions.

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PANSING BROOKS: OK, thank you.

LATHROP: That will close our hearing on LB109 and bring us to LB56.

PANSING BROOKS: Good morning, Senator Lathrop.

LATHROP: Good morning, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I represent Legislative District 12, and I'm here today to introduce LB56. LB56 changes the law on parole eligibility. The rule currently is you are eligible for parole at half of the lower number of an indeterminate sentence. So if you receive a sentence of 5 to 10 years, you're eligible, eligible for parole at half of the lower number so at two and a half years. This bill makes a simple addition to parole eligibility and says-- leaves the law as it is, but adds parole eligibility for anyone within two years of their mandatory discharge date. This is a bill that was heard and actually passed by the Legislature and vetoed by the Governor last year. I think there was some misinformation that accompanied that. Last year, the county attorneys and the law enforcement supported the bill. It was-- this idea came to me from Roz Cotton, who's the chair of the Parole Board. For those that don't already understand the advantages to parole, I'll share this. When a person is paroled from the Department of Corrections versus jamming out, jamming out is a term that generally means you leave and you are free the moment you are discharged from the Department of Corrections. Parole is a process by which individuals who are discharged from the Department of Corrections have a parole officer. They're accountable to somebody. Typically, as conditions of parole, they have to maintain employment, perhaps maintain sobriety, do follow-up treatment, follow-up care, avoid certain individuals. The parole officer will then check in on them or they have a responsibility and some accountability to a parole officer. Why is that important? Because when an individual paroles, we know looking at the science or the data that those people have a lower likelihood to recidivate. People who have services and who are followed on discharge do better because they have guardrails that keep them going down the right path. They're accountable for maintaining employment, doing the right thing. This just gives the Parole Board more individuals to look at. Getting or being parole eligible is not the same as getting out two years early. If you arrive at the Department of Corrections within two years of your mandatory discharge date, that doesn't mean you get out right away. It doesn't mean you

get parole. You would still have to be assessed by the Department of Corrections. If you need clinical programming, you'll still need to get the clinical programming. You wouldn't be a suitable candidate, although you may be eligible. If you had some kind of a discipline violation, that might take you out of being a suitable candidate even though you're parole eligible. One bit of misinformation that came around last year after the bill was heard was whether this affected mandatory minimums. It does not. It only applies to those offenses and those sentences that make you or would allow you to be parole eligible in the first instance. So it does not affect mandatory minimum sentences. The bill also addresses parole officers, parole officer standards so that we get the right ratio of parole officers to offenders, not unlike Senator McDonnell's bill that we heard earlier this year. And finally, I would draw your attention to the fiscal note. The fiscal note in this case indicates that it potentially would have a number of individuals ready for parole or parole-- paroled sooner, resulting in a million dollars' worth of savings to the Department of Corrections. This is important for overcrowding. By having or allowing people to be parole eligible, you would incentivize them to participate in programming. If I'm just going to jam out, I say I'm not going to do any of this stuff you want me to do. I'm not going to go through the substance abuse program. You can keep that. I'm not going to participate. When people have an opportunity to parole, they have an opportunity to get out sooner and that's incentive to participate in parole or, pardon me, programming. And all in all, this will help with better outcomes and will make a small contribution to alleviating overcrowding. And with that, I would encourage your support of LB56, and I'd be happy to answer any questions.

PANSING BROOKS: Senator Geist.

GEIST: I do have one. As you explain it, it sounds like this is just an option. It's not-- this doesn't mean if you go in with a two-year sentence, you're automatically ready to be paroled or a four-year sentence and then it's cut in half. So you're already-- so is that what you're saying, that this gives the Parole Board just a broader view of people who can--

LATHROP: Right.

GEIST: --choose from?

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LATHROP: There's a lot of people that are sitting at the Department of Corrections that have learned their lesson.

GEIST: Um-hum.

LATHROP: Right? And this supports-- the Parole Board is still going to use the same standards, they're still going to do a risk assessment. They're still going to make sure that you've got a plan when you get out and you still have to have completed your clinical programming. And you heard Roz here the other day when she testified. If people haven't completed their clinical programming, they're not suitable candidates and if they have significant disciplinary issues. So if they break one of the rules--

GEIST: Um-hum.

LATHROP: --that's consequential, then they are not suitable candidates. So those people are getting out sooner and we still can take comfort in the fact that they still have to pass by the Parole Board--

GEIST: OK.

LATHROP: --and be found to be suitable candidates.

GEIST: Thank you.

LATHROP: I don't see any other questions. OK.

***MICHELLE WEBER:** Chairman Lathrop and members of the Judiciary Committee: My name is Michelle Weber, and I am testifying in support of LB56 on behalf of the Nebraska County Attorneys Association. Last year Deputy County Attorney for Douglas County Jeff Lux testified in support of LB1004, expressing the association's appreciation for the opportunity to work with Chairman Lathrop and the Judiciary Committee on solutions to address prison overcrowding, and this is one solution that prosecutors can support. Mr. Lux emphasized the importance of the funding provided to ensure parole officer caseloads remain manageable, as sentences that include a parole option are more likely to be recommended if it is understood that Parole is not overwhelmed by its supervision duties. The Nebraska County Attorneys Association appreciates the committee's favorable consideration of LB56.

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***JASMINE HARRIS:** Dear Senator Lathrop and Judiciary Committee Board Members, my name is Jasmine L. Harris. I am the Director of Public Policy & Advocacy for RISE. I request that this written testimony be included as part of the public hearing record that shows RISE is giving testimony in support of LB56 and ask that committee members vote to advance this bill to General File. RISE is a non-profit organization that works with people who are currently and formerly incarcerated. We offer a six-month program that focuses on employment readiness, character development and entrepreneurship. We serve people incarcerated at seven of the Nebraska Correctional Facilities with this program and offer reentry case management services as people return home. As we all know, the Nebraska Department of Correctional Services (NDCS) is facing an overcrowding crisis. LB56 provides for a solution that will extend parole to individuals that may not have been eligible before. Because we see first hand the impacts of incarceration on people, RISE supports this legislation to offer an alternative for people to complete their sentences under supervision in the community where they can rebuild their lives, families and careers. NDCS reports that there were 387 people who were mandatorily discharged from correctional facilities in 2019. The concern with mandatory discharges is that people haven't had time to transition to acclimate themselves being back in a community setting. Preparing for reentry as much as possible is a big factor in successfully transitioning back home. LB56 will not restructure sentences given by judges. It will incentivize individuals to complete programming to become parole eligible sooner. From June 2018 to July 2019, the Parole Board held 1,918 parole hearings. About 1,100 people were paroled. LB56 does not take away the process of parole hearings and parole supervision for individuals. It allows for more individuals to be eligible to see the parole board and prove they are good candidates for parole. This would include describing what they have done with their time during incarceration, completion of their programming and how this will help them succeed once going back into the community. This bill gives people another opportunity to take advantage of tools and resources through available programming to succeed. LB56 will only help us further address the issue of overcrowding in Nebraska’s correctional facilities, not hinder public safety. It helps increase public safety as it gives people more of an incentive to complete programming to transition back home. Let's create smart reforms that will help decrease our prison population. We ask that you vote LB56 to general file.

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PANSING BROOKS: Any other questions? OK. Are there-- I see no proponents for this bill, Senator Lathrop. I see no opponents for this bill, Senator Lathrop, and no neutral testimony.

LATHROP: Probably a good time to waive close.

PANSING BROOKS: I think it's a good time to waive. Quit while you're ahead, right? OK, thank you. And that closes LB56. Oh, wait a minute. And I have, sorry. I have-- there were-- there were-- there was one position letter, proponent; zero opposition; zero neutral. And then we had one testifier who dropped off their testimony. Right? Oh, there's two, sorry. OK. One is Jasmine Harris from the RISE organization in Omaha and the other letter-- and that was a proponent. And then a proponent was Michelle Weber from the Nebraska County Attorneys Association. So that closes the hearing on LB56 and it closes our hearing for this morning. Thank you.

[BREAK]

LATHROP: Laurie, are we on? Before we begin the hearings, I have a little spiel I read so that everybody-- and I see new faces here today, so it's particularly important. But we do it so that people understand kind of what the ground rules are in testifying. But it takes a little bit of time to cover this ground, so with your indulgence, good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop and I represent Legislative District 12. I also Chair the Judiciary Committee. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, has been complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you to consider taking advantage of the additional methods of sharing your thoughts and opinions. For a complete list on the four options available, go to the Legislature's website at nebraskalegislature.gov. We will be following COVID-19 procedures this session for the safety of our committee members, staff, pages and the public. We ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you enter the hearing room only when necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside the hearing room. The list will

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be updated after each hearing to identify which bill is currently under consideration. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that you wear face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and the transcribers in clearly hearing and understanding the testimony. Pages will be sanitizing the front table and chair in between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by a Sergeant at Arms who will allow people to enter the hearing room based on seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability of an overflow room this year for hearings which may attract many testifiers and observers. For hearings with large attendance, we ask only testifiers enter the hearing room. We also ask that you limit or eliminate handouts. Due to COVID concerns, we're providing two options this year for testifying at a committee hearing. First, you may drop off written testimony prior to the hearing. Please note the following four requirements must be met to qualify to be on the committee statement. One, the submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 here in the Judiciary Committee hearing room. Number two, individuals must present their written testimony in, in person and fill out a testifier sheet. Number three, testifiers must submit at least 12 copies of their testimony. And number four, testimony must be a written statement no more than two pages single-spaced or four pages double-spaced in length. No additional handouts or letters from others may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned in to the official hearing transcript. And as always, people attending a public hearing will have an opportunity to give verbal testimony. On the table inside the doors you'll find yellow testifier sheets. Fill out a yellow testifier sheet only if you are actually testifying before the committee, please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There is also a white sheet on the table, if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a

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deadline of noon the last workday before a hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or by delivering that testimony, written testimony to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at the hearing, but not both. Position leaders will be included in the hearing record as exhibits. We will begin each bill this afternoon with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, by anyone speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, bring up at least 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but will not be allowed to read it. We will be using the three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning, and when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, we'd like to remind everyone the use of cell phones and other electronic devices in the hearing room is not allowed during public hearings, though you may see senators take notes or stay in contact with staff using such devices. At this time, we'd ask you to look at your cell phone and make sure it's in silent mode. This is just a reminder, there are no-- we don't allow verbal outbursts or applause in the hearing room. Since we've gone paperless this year, the Judiciary Committee-- in the Judiciary Committee, senators will be using their laptops to pull up documents and follow along on each bill. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the matter under consideration. But senators may have bills to introduce in other committees or other things to attend to. I would like to explain one other rule that we have, which is because of the number of bills that we have this afternoon and the limited amount we have, to hear all the bills this year, we are allowing a half-hour for proponents of bills and a half-hour of testimony for opponents, and then we'll take up neutral testimony. So I'll be keeping the time on that. And with that, we'll have members of the committee introduce themselves, beginning with Senator DeBoer.

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DeBOER: Good afternoon, everyone. My name is Wendy DeBoer, I represent District 10, which is Bennington and parts of northwest Omaha.

BRANDT: Good afternoon, I'm Senator Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline and southwestern Lancaster Counties.

PANSING BROOKS: Hello, Patty Pansing Brooks, Legislative District 28 right here in the heart of Lincoln.

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

McKINNEY: Hi, Terrell McKinney, I represent District 11: north Omaha.

GEIST: Good afternoon, Suzanne Gesit, District 25, which is the east side of Lincoln and Lancaster County.

LATHROP: We are also assisted today by Laurie Vollertsen, to my left, our committee clerk; and Josh Henningsen, one of our two legal counsel. Our pages this afternoon are Ashton Krebs and Samuel Sweeney, both students at UNL. And with that, we will take up our first bill of the afternoon, Senator-- LB114 and Senator McCollister. Welcome.

McCOLLISTER: Thank you, Chairman Lathrop and members of the committee. I am John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. Today I'm introducing LB114. Nebraska currently faces unprecedented prison overcrowding. The solution advanced by our Executive Branch is to build a $230 million prison that we will not be able to staff. Rather than the untenable and wasteful solution advanced by the current administration, I suggest that sentencing, good time and parole reforms are the real answers to our crowded prison conundrum. Although LB114 won't reduce overcrowding itself, it is a bill that warrants your serious consideration. Pennsylvania and Utah have been shining examples of a Clean Slate law initiative. Since June of 2019, Clean Slate record sealing in Pennsylvania has processed over one million reviews via their new system. LB114, inspired by successful legislation in the Keystone State. Once an individual completes his or her sentence and obeys the law long enough to demonstrate rehabilitation, the individual has rightfully earned relief from the low-level offenses hanging over one's head like a scarlet letter for the rest of his or her life. The bulk of LB114 consist of specific offenses that the Clean Slate Act would and would not apply to. The

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Clean Slate Act outlined in LB114 would provide an incentive for offenders to remain crime-free, provide hope to offenders working to rehabil-- rehabilitate themselves, save money for the state, ensure appropriate access to criminal justice history by criminal justice agencies and for other purposes essential for the health and safety of the public. Aside from the many serious offenses that would not qualify for Clean Slate relief, this bill creates a new group of offenders who would automatically be eligible for Clean Slate relief and a group of offenders who would be eligible to petition the court for Clean Slate relief. Offenses can vary widely in severity, and to address this disparity, we have proposed a tiered system similar to the Pennsylvania legislation. Tier one for conviction of a qualified offense that is a Class I or Class II misdemeanor. Ten years after conviction, the record-- the offense is eligible-- ten years after conviction, the record of this offense is eligible for sealing. Tier two, adjudication for a qualified offense, that is a Class I or Class II misdemeanor, seven years must pass. Tier three, finally for a conviction or an adjudication for a qualifying offense that is a Class III or a lower misdemeanor, five years must pass before the offender would be eligible for Clean Slate relief under this bill. This is a very substantive bill, and its goal is to reduce the long-term impact of mistakes on a person's life. It is important to note that eligible, eligibility is dependent on the offender not receiving any subsequent convictions or adjudications, and the offender must pay all court-ordered financial obligations. You'll note that there's a substantial fiscal note associated with LB114. In conversations with Corey Steel, the court administrator, I've agreed to work with his office to simplify and reduce the fiscal impact of this bill, if possible. In addition, I recognize there are additional Clean Slate bills under consideration by this committee, and the likely result will be a composite bill that takes the best features of each bill and a serious effort to reduce the fiscal impact on the Nebraska Judicial Branch of government. I think LB114 is a good first effort to give low-level offenders the promise of a clean slate. There's an opportunity for Nebraska to be an early adopter of this legislation. And I believe this, the incentives in this bill will create and reduce recidivism and ultimately help control our growing prison population. With that, thank you for your attention. I'll be happy to take any questions.

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LATHROP: Very good. Thank you, Senator McCollister. Any questions for the introducer? Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you, Senator McCollister, for bringing this bill. We've done a number of slate-- Clean Slate legislation recently, some for trafficking victims and some for children. So I appreciate your bringing this bill. You said that there are other Clean Slate bills and that maybe they'll be joined together and take the best parts out of each bill. What do you see are the critical and best parts of this bill?

McCOLLISTER: Well, certainly we must address the fiscal impact and we need to work with the judicial system and understand the computer system they have and how we can dovetail these bills with that effort. Other states have done this successfully, but perhaps they have different computer systems. But, you know, we need to make a, particularly for the judicial system, we need to have one approach and we can't have three or four different approaches, which would make it almost impossible for them to figure out a system to comply.

PANSING BROOKS: All right, thank you.

LATHROP: Any other questions? I see none. Thanks.

McCOLLISTER: Thank you. And I'll stay for closing.

LATHROP: Very well. How many people are here to testify on this particular bill? Oh, boy. How many are proponents? Two, four-- keep your hands up, if you don't mind. And how many are here in opposition? Two. Anybody in the neutral capacity? OK. All right, we will begin taking proponent testimony, recognizing that we are going to limit proponent testimony to 30 minutes. So if you need to visit with people or recognize that if somebody said what you came here to say, allow, allow somebody else an opportunity, if you can. With that, we'll take the first person to testify. Welcome.

DEANNA HOBBS: Hello, Senator Lathrop and members of the Judiciary Committee. My name is Deanna Hobbs, D-e-a-n-n-a H-o-b-b-s, I am a law student at the Nebraska College of Law and I'm currently enrolled in the civil clinic. My main responsibility at the civil clinic is to lead the Clean Slate project, and today I'm here to speak in support of LB114 as a citizen and not as representative of the university. One

indiscretion should not lead to a life of poverty. Clean Slate legislation strives to reduce the negative effects of having a criminal record. It creates mechanisms to seal records of past crimes that no longer reflect who the person is today. This bill will ensure that thousands of Nebraskans who have had past run-ins with the justice system have an opportunity to fully reenter society and be an active member of their communities. If someone is convicted of a crime, there are a lot of collateral consequences that make moving forward very difficult. Due to the stigma of having a criminal record, no matter how small the offense, these individuals face significant challenges finding employment, securing housing and getting education. Because the vast majority of employers, landlords and colleges look to these criminal records, they often make the decision to deny people based on the existence of an old conviction on their records. LB114 would allow qualifying records to be sealed, meaning that these records would no longer come up in a third-party background check. They will be shielded from the public view and to give these individuals a chance for a better life. They will have options to find meaningful employment, get stable housing and education opportunities they need, and because they no longer will be disqualified simply for having an old conviction on their record. LB114 would also have a positive impact on these people's families because they would have more opportunities to provide for them, and it would also give them the psychological benefit of shedding the stigma associated with having a criminal conviction. Another benefit of this bill is to allow some records to be sealed automatically. So there are currently records sealing laws in place, but they require the individual to pay an attorney or try to navigate the difficult process on their own. Automatic sealing would also benefit the court because it would also save them time and the cost of hearing the amount of these cases because fewer of them would need to be brought. A criminal, a criminal offense committed a long time ago should not haunt people for their entire life. Successful reentry into society is crucial to lower recidivism and lowering crime in general. It will also reduce levels of poverty among this group of Nebraskans. Passing one-- LB114 would help provide a pathway forward and let them leave their convictions in the past. I'd like to thank the committee for listening to my testimony and I ask you all to support and advance this legislation. Thank you.

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LATHROP: Very good. Thank you, Ms Hobbs. Any questions? I don't see any, but thanks for being here. Next testifier.

STEVEN SCOTT: Dear senators, my name is Steven Scott, S-t-e-v-e-n S-c-o-t-t, and I am a felon. I'm here today to express my support of LB114 and to explain why this bill would benefit our community. I would also like to express my desire to see this bill expanded in order that it may meet additional needs of Nebraskans who are struggling with the burden and bondage that a felony conviction places over them. I was incarcerated in Nebraska for four years between 2011 and 2015. During my time in prison, I decided to turn my life around and use my time incarcerated to better myself. Therefore, when I reached the Omaha Work Release Center, I reenrolled at UNO and completed the last two years of my bachelor's degree. Upon release, I enrolled in the master's degree, which I completed in 2017. I then decided to begin the pursuit of a PhD. I attended classes and volunteered in the cardiovascular research lab at UNO full-time, maintaining a 4.0 GPA and the high regard from all my instructors. Over a year into the program, however, my faculty mentor insisted that I apply for a paid teaching assistantship within the university, as this was expected of all doctoral students. Knowing that my felony may interfere with my being hired, I still went through with the application, as I hoped that over the-- over five years of showing myself to be an exemplary student and researcher would be enough to be offered the opportunity at a second chance. Unfortunately, it was not. Not only was I not given a position to teach, but once my felony was revealed, my faculty mentor, along with the other faculty and students, began to treat me differently. Eventually, the ill will of my faculty mentor and others was too much to bear and so I resigned my position. I was an excellent student and I could have significantly contributed to the field of health sciences, helping to cure diseases and produce life-changing research. However, a mistake I made nearly 10 years ago changed all that. This story is one that happens every day, and although this bill advanced as written will help to change this, it would not currently prevent what has happened to me and others like me. I hope that this story will help to encourage you to consider including all felonies, regardless of their severity to this bill, because as of now, a felony conviction acts as a life sentence, regardless of how much time is spent in prison. As it is Ash Wednesday today, I would like to close with this final consideration. What would the Christian world look like if the early church had deter-- had

determined that Saul's acts were too terrible to forgive? The Apostle Paul wouldn't exist and Christianity may not have been present in the western world. I would encourage you to show the same partiality when considering the crimes included in this bill, as education and employment should be made available for everybody, especially after 10 years, regardless of their crimes. Thank you all for your time and for your exceptional work towards improving our criminal justice system. Thank you.

LATHROP: All right. Well, thanks for your testimony, Mr. Scott. I don't see any questions right now, but thanks for coming down today. I appreciate, we appreciate hearing from you. Next testifier. Good afternoon.

TIMOTHY C. MELCHER: Good afternoon, senators. My name is Timothy C. Melcher, T-i-m-o-t-h-y C as in Clifford M as in Mary-e-l-c-h-e-r. I come today in support of LB114. However, I think the provisions regarding registerable offenses relating to the sex offense registry, such as third degree sexual assault, should be further evaluated. In short, many nonviolent crimes can land you on the SOR, including urinating in a park and third degree sexual assault. And I note that third degree sexual assault is not a violent crime. Additionally, charges of third degree sexual assault can be enhanced to first degree sexual assault if the victim becomes pregnant since pregnancy is considered serious bodily injury. I know this because the personal experience. Consent was questionable in my case. And since the victim was pregnant, I was initially charged with first degree sexual assault. After taking the victim's deposition, the county attorney decided to drop the charges to second degree. Additionally, since the victim attempted to drop the charges herself and asked the county attorney to do so, he had agreed to offer a plea agreement that dropped the charges to third degree sexual assault. The statutes in place at that time stated that if a person convicted of third degree sexual assault is proven to not be a threat, they are allowed visitations with the child conceived, conceived of said sexual assault. Therefore, I ultimately accepted the plea agreement in order to exercise visitations with my daughter. Since then, I have overcome every hurdle that was put in front of me, including LB289 that was passed in May of 2017 that terminates the parental rights of persons who conceived a child as a result of sexual assault. I have proven over and over to be a fit and proper person to parent my daughter, and so I would appreciate this bill be revised to help me eliminate the

last lingering obstacle that inhibits, that inhibits my parenting ability. And while I'm up here, I would also like to include a story of a friend that I have in Norfolk. Her family was living in Minnesota and she became pregnant at the age of 18 from a 15-year-old. The laws in that state state that if a 15-year-old is involved in a sexual encounter with anybody within 24 months of their own age, so, you know, you can do the math on that, about 17-years-old, then it's not considered a serious crime. However, she was 30 months older than him, and so he was deemed by the court to be an involuntary father and she was slapped with a conviction of a felony. And then came back to Nebraska and raised her son for 22 years and is still a felon and is restricted by where she can live because of that record. And I knew at one point she was living in a tent in her sister's backyard with her son. And I don't think that's right. And that's all I have.

LATHROP: Very good. Any questions for this testifier? I don't see any. Thanks for coming down. We appreciate hearing from you. Good afternoon and welcome.

TERESA KAI: Good afternoon, senators. Thank you. My name is Teresa Kai, spelling, T-e-r-e-s-a, spelling last, K-a-i. LB114 would give me as an ex-felon a second chance, and I've received a whole lot of second chance here in Lincoln. I'm from a small town where everybody knows everybody, and that is one of the reasons why I decided to stay here in Lincoln, because I knew that I would not get that second chance in my hometown. I served my time in York. York's not a fun place, but I toughed it out. I did my time in county jail, over a year before I was finally sentenced in February of 2016 and went to York, like I said. Then I went to Community Corrections here in Lincoln, did my time, finished up my time there. Went to [INAUDIBLE] house, got everything else situated and got involved with church. And that is when I started working with inmates that were still in Community Corrections. They don't have the funds to hire an attorney to work their way through getting their slates clean. This bill would tremendously help them do that, and it would also tremendously help me wipe that charge off, off my record. My case is complicated, and I will not go into it, but I, I can't say enough what it would mean to wipe that, to wipe that charge off my record, to give me a clean heart. Like I said, the inmates don't have the dough that's needed to hire an attorney. So, you know, Nebraska's motto is the "Good Life". We could give them a chance at a-- I don't want to say "gooder," because that's not really a word, but a better life if they decided to

stay in Nebraska. I want to thank you for your time. And I want to thank you, Senator McCollister, for working on this bill. The only change I would make was maybe the date, pushing that 2017 date back so that we could get rid of some other felonies on the record. That's all I have.

LATHROP: OK, I don't-- oh, Senator Geist.

GEIST: Yes. I don't really have a question, I just have a comment that I've met a number of people who have been through what you have. And I find you courageous. And I appreciate you coming and testifying today.

TERESA KAI: Thank you. And I successfully completed my parole.

LATHROP: That's good.

TERESA KAI: Yes.

LATHROP: That's good. We appreciate that too.

TERESA KAI: Thank you.

LATHROP: Thanks for being here.

TERESA KAI: No problem.

LATHROP: Good afternoon.

KAYLA ALLMENDINGER: Hello. This is really nerve-wracking. Hello, senators. I want to thank you guys for the opportunity to share my testimony today. I spent a lot of time thinking about--

LATHROP: Can we have you start with your name? I'm sorry.

KAYLA ALLMENDINGER: I'm super sorry.

LATHROP: No, no, not at all.

KAYLA ALLMENDINGER: Kayla Allmendinger, K-a-y-l-a A-l-l-m-e-n-d-i-n-g-e-r. I spent a ton of time thinking about how I wanted to address this today. Should I address it as a licensed alcohol and drug counselor? Should I address it as a social worker? All those are really amazing things. And they would help, really help address the issue that the blocks that fell in space, they're just

these giant hurdles that are so hard to overcome. But ultimately, I decided to address it as Kayla Allmendinger, a convicted felon. I'm a recovering meth addict. I'll save you all the really dark details, I'm sure that you can imagine how absolutely terrible and bad it gets. It just gets bad. By the time that I entered recovery, I had two felonies, a Class IV felony and a Class II felony. Not once, while I was in my active addiction, did I have to complete a background check or did I even want to complete a background check. It was something I never did. But as soon as I entered college and started doing things, background checks became a part of my regular life. And I'll tell you that to this day, after many years of recovery, it still makes me cringe every time that someone says, oh, and a background check. Got to be kidding me. It's this huge hurdle and it causes great anxiety and stress. Like, look at me, I'm crying. So I have a little story. I'm in college and I'm doing great and my life is awesome and I made these really amazing changes. And I have to apply for internships, I'm literally going to work for these people for free. They want a background check. I fill out the background check and they call me, and I'm denied not once, not twice, but three times for internships. It's devastating, not just for me, but for many, many people. This bill would be great. This bill provides hope for people who are trying to change their lives and trying to do better things. That's all I got. Thank you.

LATHROP: OK, well, thanks for coming down. I don't see any questions, but you did a great job. Yeah, thank you. Next testifier. We'll let him sanitize the table before you sit down. Good afternoon and welcome.

TIMOTHY LOPEZ: Good afternoon. Thank you for this opportunity and thank you all for your hard work. My name is Timothy Lopez, T-i-m-o-t-h-y L-o-p-e-z. Today I'm in support of LB114. This is hard and difficult. Today is the senators' opportunity to show belief in second chances in individuals. I was incarcerated from the early, my early teens to the age of 30. I understand that some crimes may not qualify for the Clean Slate law, but I'm here to ask you individuals to take a chance to show how much you believe in them, for sometimes their own belief is not enough. The opportunities that you can give these individuals by giving them a clean slate and for them to overcome their obstacles would be so amazing. A lot of individuals are hindered from employment, from living locations, from housing and all type of things. And this is a problem for, for us, not just here in

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Lincoln, but all over in the United States. Individuals are being hindered from their ability to live a productive life. And also, as the person said before, living in poverty because of a choice that they made so long ago. For, for myself as an advocate, I'm here for the voice of other individuals who does not have a voice for themselves. And I understand how impactful that is. For 15 years incarcerated, I had nobody to be a voice for me. You know, I went through trauma after trauma after trauma and overcame that. At the age of 25, I decided to change my life and I overcame certain obstacles and became a better person and became in growth. But like I said, today is not about me. It's about all those individuals who show consistency and continuous pattern of behavior of positiveness, production and being a productive citizen to society that can contribute to the growth as long as we stop this obstacle that's hindering them from moving forward. Me myself, I've been out of prison for a year now. I'm up for parole in October of this year. I'm living, I'm living in the life of a convicted sex offender for a crime that I allegedly committed when I was a teenager before the age of 18. I no longer allow any obstacles to stop me from doing what I want to do. I haven't worked a job at minimum wage, I continue to grow. If I can't make it one place, I'll make it to the next. And I understand that. But not a lot of people has the ability or has the tools or the resources and support as I do for myself. As you individuals passing this into a law and allowing other individuals, other individuals to see that other people has hope in them as much as they have in theirself would be amazing and give them an actual breath at a second chance of life. Thank you.

LATHROP: OK, did I meet you when we were going through the-- when I was on one of the tours?

TIMOTHY LOPEZ: Yes, sir. I also testified about the overuse of segregation bill.

LATHROP: Yep. I think Inspector Koebernick introduced me to you one time, right?

TIMOTHY LOPEZ: Yes. Yes, sir.

LATHROP: Yeah, yeah. Well, I'm glad to see you here. I'm glad you're doing well. We appreciate your testimony and what you're sharing with the committee today.

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TIMOTHY LOPEZ: Yes, sir.

LATHROP: Yeah. Thank you.

TIMOTHY LOPEZ: Thank you.

LATHROP: Next testifier. Good afternoon.

NATALIE SCARPA: Hi, how are you?

LATHROP: We're doing well.

NATALIE SCARPA: Good. So my name is Natalie Scarpa, that's N-a-t-a-l-i-e S-c-a-r-p-a, of Omaha, Nebraska. I'm here as a proponent of LB114 because reducing legal discrimination is good for everyone. And this will have an impact on thousands of Nebraskans. As a professional social worker and a person in recovery with previous system contact, I can tell you that people do change their lives. They change their lives every day against all odds. LB114 is an opportunity to release them from their past mistakes. Right now, I'd like to ask you to think of one of your most regrettable moments. Now, imagine that is made publicly available indefinitely for anyone to read and there is no recourse for you to get that off your record. No matter what else you accomplish in your life, education, career, family, volunteering, you must still answer to the mistakes made years earlier, despite the more recent and relevant data on your behavior. When criminal records are indefinitely available to the public, it functions as an incessant public shaming tool that not only leads to real discrimination, it leads to internalized stigma that impacts your sense of who you are. Such labels have profound impacts on the way you see yourself and what is possible for your life. This internalized stigma is incompatible with hope. It leads people to limit dreams, their dreams in life, assuming they can't achieve or aren't worthy of more. If you have never had this experience, take my word for it, this disillusionment is painful and difficult to cope with. Every day people are discriminated against based upon their public criminal records, and the possibility of being rejected stops countless more from even trying in the first place. These profoundly negative consequences are even more pronounced for individuals with marginalized identities. You see, being a white woman means that I can pass as a nonoffender. I am more likely to be given a chance despite my record. My entire experience with the justice system is riddled

with evidence of this advantage. The judge stating at my sentencing that I had just been sidetracked by drugs, another person telling me: You were never meant to be an addict. Seeing myself through the eyes of others absolutely helped me to recover, to hope for a better future when people saw more for me than I saw for myself. I ache to imagine the feelings of those messages reversed. If the world around me considered me destined for crime, dangerous, and that I would amount to little more based on my appearance. For some, public criminal records only affirm what others have assumed about them. For those that are trying to overcome discrimination based upon their race or other identities, this legal form of discrimination may prove too much to overcome. The compounding negative consequences described here contribute to the high rates of economic suffering experienced by minority groups which have been mentioned by other, others here today. These lifelong consequences of a public criminal record not only impact individuals negatively, they have generational impacts of the children who are affected by these individuals. So if we examine our motives as a society, we decide that what we really-- that we really do want people to change, that we believe in the forgiveness described in Christianity, that we believe in the redemption of the human spirit, then we must provide, then we must provide a reason to hope. And there is nothing that will kill hope like being discriminated against for possibly the rest of your life. This is why I urge the Judiciary Committee to not only advance this bill, but to make it a priority. And while doing so, be sure that the bill is written in such a way that is inclusive of individuals, regardless of the point in time their crime was committed.

LATHROP: OK, thank you.

NATALIE SCARPA: You're welcome.

LATHROP: You did a nice job. We appreciate you being here too.

NATALIE SCARPA: Yeah.

LATHROP: Yeah. I don't see any questions.

DUSTIN PENDLEY: Greetings, Senators.

LATHROP: Welcome.

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DUSTIN PENDLEY: My name is Dustin Pendley, D-u-s-t-i-n P-e-n-d-l-e-y, and I'm here to speak in favor of LB114, the Clean Slate Act. I believe this legislation will be a life-changer for many. In my first draft, I use the term game-changer, but this is no game. We are talking about people's lives. What a great honor it must be for you senators to push forward legislation that would eliminate impediments to employment, education and housing for so many Nebraskans. Though I'm not currently a college student, I hope to make the argument that this bill is absolutely necessary for the best future for all American-- Nebraskans, especially college students held back by actions performed by their younger selves. Many people who have felony and misdemeanor convictions committed their crimes before the age of 25. This is important because a young person does not think the same way as they will when they reach the age of 25. Teenagers and folks in their early twenties are not thinking what their prefrontal cortexes. This means that younger people are not thinking about risk the same way, nor are they making long-term plans as they will later in life. They often act impetuously. They act in the moment. I bring this not up to discount any crime that might have been committed by a young person, but to advocate for the older version of this person who committed a crime in their youth. They have likely reformed and admitted their actions of the past, and now they possess a fully developed brain that is prepared to mitigate risk and plan for the future. They have served their time, paid their fines and met the stipulations of their release or probation that they are still confronted with impediments to housing, education and employment and unwilling participants in a criminal caste system. Skipping down the paragraph five for time. As a university employee, I happily participate in the process of helping students achieve their dreams, elevate their economic situation, increase their well-being every day. However, I have also seen the dreams of exceptional students be shattered because of their criminal histories. One student in particular comes to mind. She has won outstanding major awards, and she has maintained a 4.0 GPA as an undergraduate as well as a graduate school. However, she has been shut out from going to medical school or PhD programs in neuroscience because of past drug offenses. It is likely that her past is actually an asset at this point. Yes, she has not received access because she has been forever marked as a felon. LB114 is not a perfect bill. It should be adjusted to allow more people access to the clean slate. It should not prevent people who are convicted of crimes involving methamphetamine, chemical substances and

paraphernalia from having access to a clean slate. It should also be applied retroactively to clean the slate of the thousands of Nebraskans who are experiencing impediments to housing, employment and education because they have been permanently assigned to the criminal caste. This bill offers justice.

LATHROP: OK. Mr. Pendley, thanks for being here. Appreciate that. Looks like we have time for one more testifier. If you don't have an opportunity to testify because of the time limit, there's a white sheet where you can record your position on the table there.

SPIKE EICKHOLT: Good afternoon, 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 and the Nebraska Criminal Defense Attorneys Association in support of LB114. I won't take all the time because you've heard a lot of testimony. I would just highlight the fact that this is a real consequential bill, or at least it has the potential to be such. You know, we are in the middle of a pandemic and we've been in hearings for a while. You have-- I've been here sitting watching them. There has not been a lot of what I would call this kind of testimony for people to show up speaking for themselves. There's been a lot of letter testimony dropped off and so on, but this is a bill that really has struck a chord. And you heard from several people who are former offenders who are now living professional, successful lives, and they're haunted by their felony conviction. Senator Pansing Brooks is right. She did do a bill a couple of years ago to provide for a record sealing provision for a trafficking victim to clean up their criminal history. Under 29, Section 29-3523, we already have an automatic record sealing provision and it can be applied for as well for cases that are charged and then dismissed or if somebody completes a diversion program as charged and the case is dismissed and the record is sealed. This goes one step further. And if you heard from some of the proponents, and I think it's fair to say that Senator McCollister was thoughtful in his approach on this, that applies to low-level felonies and misdemeanors. And then that's got about six pages of exclusions, even for those category offenses. And the 10-year look back or the 10-year window with no criminal contacts and the 7-year window for misdemeanors, I think that's a fair, reasonable approach. I know it's got a fiscal note, I know it's going to cost some accommodation to be implemented. Senator Pansing Brooks had, I think, a smaller fiscal note. And I would at least encourage the

committee to consider this for the reasons that you've heard people articulate today. I'll answer any questions if anyone has any.

***ELENA SALISBURY:** Chairman Lathrop and Members of the Judiciary Committee, my name is Elena Salisbury and I live in legislative district 27 in Lincoln. I am testifying in support of LB114, the Clean Slate Act. This act would dramatically improve the lives of countless Nebraskans by giving people a chance to have certain criminal records sealed. It is in the best interest of our state to remove employment, housing, and educational barriers for those with criminal histories who have been trying to improve their lives. How do we expect to lower rates of recidivism when we are not giving people a real chance to be successful? As a clinical social worker and criminologist, I have spent my entire career working with system-involved individuals. I have seen firsthand how criminal records follow people for their entire lives and limit their options for future success. I have heard countless stories from clients about not being able to find an apartment or a job because their potential employer or landlord has access to information about a years-old conviction. Everyone has made decisions in the past that we would go back and change if we could. Imagine if that one bad decision followed you for the rest of your life and prevented you from entering the workforce or finding an apartment. This is the reality for many Nebraskans with criminal histories. It is no surprise that, after years of constant rejection and judgment, some people end up returning to the same unhealthy behavior that led to their conviction. How can we realistically expect anything else when we have kept in place so many barriers to success? After decades of policies that led to overcriminalization in the United States, the Center for American Progress estimates that 1 in 3 Americans now have some kind of Criminal record. In an era when nearly all employers, landlords, and colleges use background checks to screen applicants' criminal records, a past felony or misdemeanor charge can be a life sentence to poverty. This does not only impact the person with the record, but their children and families as well. We know that children who grow up in poverty face additional barriers to success in all areas of their lives. It is unfair to punish a child for their parent's past mistakes and perpetuate an existing cycle of economic inequality. In states where clean slate bills have become law, preliminary research has shown positive outcomes. In one University of Michigan study, one year after a record was cleared, people were 11 percent more likely to be employed and were earning 22 percent higher

wages. Passing clean slate legislation allows system-involved people to earn a livable wage, obtain safe and stable housing, and access the education they need to get ahead. It reduces incarce~ation by removing barriers from the reentry process, saving taxpayers huge amounts of money. It benefits our economy by allowing qualified job seekers to reenter the labor force, and will make our communities safer by lowering recidivism rates. I urge you to think about Nebraska values in the context of this bill. Are we a state that genuinely wants to provide opportunity for our most vulnerable citizens, or do we want to continue to perpetuate systems of inequality? Do we believe in second chances for people who are desperately trying to better their lives, or only for corporations? Do we actually care about reducing rates of recidivism, or will we waste enormous amounts of money trying to build our way out of a criminal justice crisis? People with criminal records are people. They deserve compassion, empathy, and the chance to live up to their enormous potential. I ask you to please support LB114 and help make Nebraska a true place of opportunity for all. Thank you for your time.

***MILO MUMGAARD:** Good afternoon Chairperson Lathrop and members of the Judiciary Committee. My name is Milo Mumgaard, and I presently serve as Executive Director of Legal Aid of Nebraska. Accompanying me in this written testimony is Muirne Heaney, who serves as the Director of Access at Legal Aid, as well as Managing Attorney of our Access to Justice (A2J) self-help initiatives. In these positions, Ms. Heaney has developed numerous creative approaches to expanding access to equal justice for all, including for ex-offenders reentering our workforces and seeking to build a better life for their families and themselves. Thank you for the opportunity to provide this written testimony in support of LB114, a bill to provide ex-offenders the opportunity to seal their non-violent criminal records and give them a chance to build a productive life. As this committee is aware, a few laws already exist in Nebraska to help people get some limited criminal records sealed or set aside. Laws exist to provide for pardons. Laws exist to help people get child support orders modified. But these laws are extremely limited, do not address most of the population in need, and are only accessible through lengthy legal proceedings, for which there is little available legal assistance. The legal piece is frequently overlooked in re-entry and vocational programming. Not until a person runs into the wall created by a criminal record or child support arrears does one understand the full

nature of the barrier to gainful employment. At Legal Aid, we try to use these existing yet limited law to remove those barriers that keep people from gainful employment and family ability. It is in this context that Legal Aid strongly supports LB114. LB114 crates a more realistic pathway for thousands of hard striving Nebraskans to seek and realize the opportunities they deserve after paying the price for their past mistakes. LB114 would open doors that presently stand closed, damaging families across Nebraska, Nebraska today. Thousands of able-bodied, capable human beings are precluded often permanently. The stigma of a criminal conviction is one of the major economic issues facing from being fully productive because of a criminal conviction. And unfortunately, these convictions are disproportionately felt by minority and lower income populations. Law enforcement is simply more active in these communities than elsewhere, for many reasons, and the net effect is pernicious and long-lasting. This situation leads to, among many other issues, teenagers caught shoplifting being prosecuted as adults, and bearing the life-long burden of that conviction. The conviction becomes a barrier to honest employment, which most people seek. An inability to work legally, because of a conviction, is an incentive to earn money illegally. Many states have recognized that their economies are impacted by cutting out a significant portion of the entry level work force. That is what Nebraska does: it cuts off a significant portion of its able-bodied community from the opportunity to work honestly. An individual or single error in judgment, particularly with a misdemeanor or a non-violent offense committed when young, should not be a barrier to future employment. If we want to provide people with an incentive to work, it is important to remove the false barriers we have erected to separate "us" from "them." LB114 provides an incentive to remain law abiding, with the knowledge that a record can be sealed at the end of a designated period of time. Once a record is sealed, an individual can apply for work unhindered, and be fairly appraised by potential employers. The time period in the bill for sealing a conviction is also sufficiently long that employers need not fear a repeat of criminal activity. Equal justice for all, we all know, takes a commitment to fairness and opportunity for everyone. In how we make this happen, society makes judgment calls every day. Fortunately, LB114 gives this committee and the Nebraska Legislature one of these chances to make such a judgment, allowing all of us to go forward with strong support for even the most marginalized among us. It is time to level the playing field and return Nebraskans to being fully able to

work and support their families. It is wrong to permanently shackle a person's productive potential. It is time to move forward with the Clean Slate Act. We would be happy to answer any questions at any time. Thank you again for this opportunity to support LB114.

LATHROP: OK? I don't see any questions, but thanks for stopping down and sharing the thoughts of the ACLU and the criminal defense lawyers. We will now shift to opponent testimony. So if you're here in opposition, you may come forward.

BRENT SMOYER: Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, and I'm the state government relations director for the Professional Background Screening Association, or PBSA. It's nice to be back in the Capitol here among some familiar and new faces. Here to, today, to oppose LB114 as currently written. PBSA is a nonprofit organization consisting of over 850 small and large companies engaged in the background screening profession. We've been dedicated to providing the public with safe spaces to live and work since 2003, and our members conduct millions of employment and tenancy-related background checks each year, helping employers, landlords and nonprofit organizations make more informed decisions regarding the suitability of potential employees, tenants and volunteers. Before the folks behind me start throwing tomatoes, I would begin by saying that, saying very plainly that PBSA has no official position for or against the core idea of Clean Slate relief. In fact, we were a key stakeholder under both the Obama and Trump administrations with involvement in the First Step Act passed federally. But we do believe it is entirely the purview of the Legislature and your constituency as to how you choose to address second chances and who is eligible for them. Our greatest concern comes down to record accuracy and access. Much like our colleagues at the Consumer Data Industry Association who will be testifying today, our members rely on public records, most especially court records, to verify the education, employment and criminal histories of applicants. There are a number of important reasons for conducting these searches, including ensuring a safe working environment by reducing likelihood of workplace violence; ensuring property managers have the ability to provide safe living environments for tenants, most especially where housing is provided for vulnerable populations; avoiding legal exposure for negligent hiring; and meeting state law requirements designed to protect vulnerable populations like the elderly, disabled and children. Due to the importance of the work we do, accuracy is the

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lifeblood of background screening and consumer reporting agencies like my members strive for maximum possible accuracy as contained in the federal Fair Credit Reporting Act, not only to meet high standards set by state and federal law, but to protect the interests of applicants themselves. As the current bill language lacks the adequate reporting mechanisms to ensure consumer reporting agencies can rely on public records to have accurate and updated information, PBSA must oppose LB114, as written. That said, PBSA say fully supports the amendment that will be presented by CDIA to fix our mutual concerns with LB114 and would be, consider altering our stance if this amendment were to be adopted. Proposed amendment language would fulfill our legal and ethical desire for maximum possible accuracy by providing minimum standards for record formatting, containing necessary personal case record and time identifiers, including an individual's first, middle and last names, aliases, maiden names, full date of birth and the criminal record information that will remain part of the record following the issuance of the order of expungement or sealing. The date of-- and of course the date of the record modification. By ensuring the consumer reporting agencies are provided with a comprehensive list of orders for Clean Slate relief issued by the courts and the state in the prior month, we would update and delete records to reflect the expungements to the benefit of applicants. It should be noted that similar such provisions were key components of the recently enacted Clean Slate laws in Pennsylvania and Michigan and currently under consideration in the Virginia legislature. It should also be noted that in Pennsylvania and Michigan, the information and notification provisions have proven to be effective for all parties involved. By ensuring accurate and up-to-date information in the background screens-- I guess I'm cut out here, but essentially it's a win-win scenario for both my members and for those folks that are applying. And I would answer any questions.

LATHROP: Do I understand your position to be that you don't mind that these people get their record expunged, but you want to be able to report that to your clients?

BRENT SMOYER: Absolutely.

LATHROP: So doesn't that defeat the purpose? As soon as the landlord knows that there was a felony-- applicant had a felony, but it was expunged?

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BRENT SMOYER: They would not be--

LATHROP: It's not even expunged at that point, is it? I mean, what point is there an expunging something if we're leaving enough of a, of a trail behind for you to report to some landlord or prospective employer that the person has been convicted of a felony, but it was expunged?

BRENT SMOYER: With respect, Senator, I think you might be hearing my, my approach wrong. And I apologize if I did not voice that appropriately. The idea of reporting to us what records have been expunged, et cetera, allows us to delete and prevent from even reporting that to the landlord and the employer. To make sure that we are not accidentally bringing in a record that--

LATHROP: Oh, so you're not going to report the fact that it's been expunged.

BRENT SMOYER: No.

LATHROP: You just want to know when it happens.

BRENT SMOYER: We want to make sure that our, our records are clean and scrubbed to the standards that were intended by the court.

LATHROP: OK, that makes more sense. Thank you. I appreciate your time.

BRENT SMOYER: Thank you. I appreciate the chance to clarify.

LATHROP: Senator Geist.

GEIST: Did you say that amendment is forthcoming?

BRENT SMOYER: Yes. Again, Consumer Data Industry Association took the lead on amendment language for this. I believe what they have drafted up would be a fix for the situation we're looking at. And again, the big thing we want is accuracy. And this would, the amendment would provide that.

LATHROP: OK, very good. Thanks for being here, Mr. Smoyer.

BRENT SMOYER: Thank you.

LATHROP: Next opponent. Good afternoon, welcome.

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MARY JACOBSON: Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Mary Jacobson, M-a-r-y J-a-c-o-b-s-o-n, and I'm here today as a registered lobbyist for the Consumer Data Industry Association. CDIA's membership includes the three national consumer reporting agencies; nationwide, regional and specialized credit bureaus; background check companies and others. Our members rely on public records, including court records, to accumulate consumer data, which are used by prospective employers, landlords, financial institutions and other vital service providers. Like the testifier before me, CDIA takes no position on whether or not the Legislature should provide Clean Slate relief. Rather, CDIA is here in opposition to LB114 because the bill, as introduced, does not provide sufficient reporting mechanisms to ensure businesses that rely on public records have timely and accurate consumer information. The page has kindly distributed the amendment language that we just discussed, and it does two things. First, it directs the State Court Administrator or other court personnel to create a standard format for Clean Slate relief orders issued in Nebraska. The standard format should require each court to provide sufficient personal case, record and time identifiers in their orders, which should include, at a minimum, the individual's first, middle, last name, any aliases or maiden names, their full date of birth, the case number, the criminal history record information that remains part of the public record following the issuance of the order, and the date that the public record is modified. Second, LB114 should direct the State Court Administrator or other court personnel to compile and release monthly a comprehensive list of orders for Clean Slate relief issued by courts in the state in the prior month. Other states typically make this list available by subscription or XML format. Background checks are often required by employers, landlords and others. We want individuals who are granted Clean Slate relief to fully realize the benefit of their modified criminal history record information. Providing a centralized and uniform means of accessing Clean Slate orders is the best way to ensure our members have accurate and up-to-date information when generating consumer products. On behalf of CDIA, I urge you to amend LB114 prior to advancement. Thank you, and I'll do my best to answer any questions.

LATHROP: OK, any questions? Just want to be clear. You agree with Mr. Smoyer there that you don't want to leave this or share this

information. You just, you're just trying to make sure you're not sharing it if it's been expunged?

MARY JACOBSON: Yes, that's correct. And that's why we've asked that the public record reflect what, what should be included as part of the order rather than listing the charges that have been expunged. And we just want to ensure that we're eliminating prior records when appropriate.

LATHROP: OK. OK, I think that helps me understand your position anyway. OK, thank you.

MARY JACOBSON: Thank you.

***KORBY GILBERTSON:** Chairman Lathrop and members of the Judiciary Committee, my name is Korby Gilbertson and I am testifying today on behalf of Media of Nebraska, Inc. in opposition to LB114. Media of Nebraska is composed of the following five organizations: Nebraska Press Association, Nebraska Broadcasters Association, Nebraska Publishers Association, Omaha World-Herald, and the Lincoln Journal Star. The primary focus of this non-profit organization is to advocate for the protection of free speech rights, open meetings, and public records access. The Nebraska Supreme Court, the U.S. Supreme Court, and the 8th Circuit Court of Appeals have all recognized "a First Amendment right of public access" to traditionally open court records and proceedings. See Golnick v. Callender, 290 Neb. 395, 414 (2015), citing Press-Enterprise Co. v. Superior Court of Cal., 464 U.S. 501 (1984); see also Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986) and Zink v. Lombardi, 783 F. 3d 1089 (8th Cir. 2015). That right applies to records in criminal cases, such as those LB114 seeks to automatically remove from public view, because such records are both traditionally open and because public access to such records "plays a significant positive role in the functioning" of the judicial system. Zink, 783 F. 3d at 1112. Denying access to criminal records in this wholesale manner would unreasonably deprive journalists of an essential tool to keep the public informed about matters of public safety and judicial administration. Happily, Nebrask law already allows those convicted of a crime to counter the evidence of their conviction on the public record, affording such persons a reasonable alternative to erasing the conviction from the record in its entirety. Offenders currently have the right to "set aside" criminal convictions two years after an offender completes their sentence upon a showing

that doing so is "in the best interest of the offender and consistent with the public welfare." See Nebraska Revised Statute 29-2264. Although such an order does not remove convictions from view, "a potential employer doing a criminal background check will see the conviction and the order with sets aside that conviction.", thereby communicating to potential employers and anyone else that the offender has changed their ways. See Nebraska Judicial Branch, Petition to Set Aside a Criminal Conviction, retrieved from https://supremecourt.nebraska.gov/self-help/court-records/petition-set-aside-criminal-conviction. January 28, 2021 (emphasis in original). Moreover, existing law already allows for several ways to protect the privacy and employment prospects of those wrongly arrested or charged with a crim based on inadequate or flawed evidence. If a person is arrested, but no charges are filed, the record of the arrest is removed from the public record one year from the arrest. See Nebraska Revised Statute 29-3523(3)(a). For persons who successfully complete a criminal diversion program to resolve minor offenses, the criminal history information related to that case is stricken from the public record after two years. Nebraska Revised Statute 29-3523(3)(b). Moreover, if a case is dismissed or overturned on appeal, that criminal history is also removed from the public record. Nebraska Revised Statute 29-3523(3)(b). Finally, existing law affords Nebraskans the ability to petition for an expungement of their arrest records if such person was arrested "due to an error of a law enforcement agency." Nebraska Revised Statute 29-3523(9). The myriad ways Nebraskans are already empowered to minimize the impacts related to both minor offenses and instances where the state failed to prove its case are sufficient to protect the privacy interests LB114 seeks to address. Further restrictions, such as those proposed in LB114, unnecessarily infringe on the public's First Amendment right to access traditionally open court records given existing alternatives. Media of Nebraska hopes that the Committee will see fit to protect access to records and indefinitely postpone this legislation.

***DAVE BYDALEK:** Senator Lathrop and members of the Judiciary Committee, my name is Dave Bydalek, Chief Deputy Attorney General in the Nebraska Attorney General's Office. The Attorney General is opposed to LB114 for the following reasons. First, from a drafting perspective, the enumerated exemptions to what constitutes a qualified offense in Section 5 are so voluminous that it would appear to invite error amongst the agencies responsible for complying with the Act and thus

invite the petition of the county attorney or city attorney provided under Section 9. Second, Section 9 is unclear as to the basis for a county attorney or city attorney to file a petition to vacate a prior order for the relief granted under section 8. When narrowly construed, it appears to allow for the county attorney or city attorney to file such a petition only upon the discovery that an error was made by the State Court Administrator or the court itself in granting the relief available under Section 8. Third, the relief provided in Section 8 is substantially similar to that air ady provided under Neb. Rev. Stat. §29-3523, specifically subsection 5 which allows for a court order to seal the criminal record upon a finding that the petitioner has received a pardon. Recognizing that Section 5, subsection 3(b) of LB114 exempts the relief provided in Section 8 of the bill from applying to anyone who has already obtained similar relief under Section 29-3523, the procedure for granting relief under Section 29-3523 is far more in keeping with recognition of the separation of powers. LB114, specifically the relief granted in Section 8 and the means by which it is provided may present a constitutional concern in that the relief provided requires no action by the Board of Pardons. The Attorney General respectfully requests that the Committee not advance LB114 to General File.

LATHROP: Anyone else here in opposition? Anyone here in a neutral capacity? Good afternoon and welcome.

COREY STEEL: Good afternoon, Senator Lathrop and the Judiciary Committee. My name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I am the State Court Administrator for the state of Nebraska and the Judicial Branch. I'm here in a neutral capacity. I first want to say that the Judicial Branch takes no position whatsoever on the fact of should or should you not have a Clean Slate Act or how that impacts. That's a legislative decision. What we're here today, is I've spoken with Senator McCollister regarding the bill. I also want to expand this briefly. I've talked to Senator McKinney about his Clean Slate Act bill and Senator Wayne about his Clean Slate Act bill. One of the things that we have, as you see, we have a large fiscal note. And as I met with my staff and particularly my justice team and my IT staff, I said, can we accommodate what is in this bill? And the first answer was no. Our justice system is not an intuitive system. It cannot think in the sense that this bill would like it to, where there's a lot of caveats that say if this, then that. That's not the type of system that, court system that we have in the state of Nebraska. As Senator

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McCollister talked about Pennsylvania and Utah, they have been states that have been able to make these types of Clean State Act bills work. I have spoken with the state court administrator for Utah. They actually are using artificial intelligence. So they have a system much more robust than what we have for our, for our court system, and so they're able to utilize artificial intelligence so it can think, the system can think for itself. So it says in this scenario, X type of an offense within five years with no prior adjudication. So you can see where the trail goes and a system has to think in order to, is this something that should be sealed? Is this something that should not be sealed? So that's, that's one of the main reasons I wanted to come before you today to say we don't take a position on any of the policy decision. But I wanted to explain a little bit why our fiscal note was what it was and why it was so high, because we actually have to have people take a look at some of these cases to say, does it fit the criteria that is set forth within the legislation? We're willing to work with Senator McCollister and the Judiciary Committee. But one of our preferences would be that if there is going to be some Clean Slate that come out, and that's why I talked with Senator McKinney today and Senator Wayne today, to say if there is something that comes out that we all meet so that there is a logic behind what a Clean Slate Act looks like for those types of offenses, and we can come up with a little bit easier logic for our system in order to quasi-seal those records and how it works. So I'd be happy to answer any questions that anybody may have.

LATHROP: OK. Senator DeBoer.

DeBOER: I'm-- so what you're saying is that the justice system can't do a query to find those qualified instances?

COREY STEEL: So if you read this bill, Senator DeBoer, there are so many qualifying factors in the sense. So if it's over five years and there's been no prior, no, no--

DeBOER: Right.

COREY STEEL: --like another adjudication. The other, the other issue with our justice system that we have, I say issue, but our other thing that our justice system is, it is not a court-based case management system. It's a person-based case management system. So that makes it even a little bit more difficult when you talk about specific court

cases. Way before my time, way before anybody's time here, the justice system was built and that's the framework it has been built on. And we continue to use it up to this date. So there are-- yes, we can create queries to say how many people have X offense, but when you start to get qualifiers, and that's what this bill does, is there's qualifiers to say if this takes place, then this would happen. And if this then that. The other piece is we can't, we can't determine who is, if somebody passes away. So now we're going to have to do research to see who passes away and who doesn't, you know? So there's a lot of different things in there that, that we don't have control over as well with that's outside the framework. There is no national database as well to say, has anybody been adjudicated? Yes, there's, as we know, there's the CJIS system, the FBI CJIS system. But again, that's, that's only about 60 percent accurate. There's only about 60 percent of states that put 100 percent of their dispositions in there. Some only put felony, some don't put misdemeanors. So there's not a national database I can go to to say, did this person get picked up in Iowa and go through the system or was adjudicated on this offense in Iowa?

DeBOER: OK, so I get, I get the you don't have access or you won't have a necessarily way to sort of merge with people who died. I get that point. I suppose if you didn't want to have-- if it were not limited to just cases in Nebraska, I see the point there. But the rest, like any good programmer is going to be able to deal with 20, 30 variables, as many variables as we wanted to get it. I mean, that's, that's going to be a patch that isn't that hard to do.

COREY STEEL: I guess I would answer it was if you want to take a walk down our justice system, I'd be more than willing to have you sit with our programmers and our people so they can under-- so they can explain to you the logic as why it can't work in the current scenario that the bill has laid out. I'm not saying we don't, we don't want to sit with Senator McCollister. And I've offered we will sit and we will figure out a way. Give me your end goal. What is the end goal? Is it to seal records of somebody for a, for some sort of offense? We can get to that point. But when there's three or four qualifiers along the way, to say if this than that, our system can't think that way.

DeBOER: OK. All right. Thank you.

LATHROP: OK, I don't see any other questions. Thank you, Mr. Steel.

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COREY STEEL: Thank you.

LATHROP: Other neutral testimony? Good afternoon, welcome.

JERRY STILMOCK: Mr. Chair, members, my name is Jerry Stilmock, J-e-r-r-y S-t-i-l-m-o-c-k, testifying on behalf of my client the Nebraska Bankers Association in a neutral capacity. We've had an opportunity to visit with Senator McCollister prior to this afternoon's hearing, and I look forward to be able to resolve the slight issue. I think we are able to. The issue is this, senators, the Federal Deposit Insurance Act requires banks to make reasonable inquiry as to whether or not a candidate for employment would have been convicted of three particular areas of criminal offenses: dishonesty, breach of trust, and money laundering. If so, then it is required to make application to the FDIC to receive specific authority in order to hire that potential employee. So this is just a clarification within the language of LB11-- of LB114 to make sure that banks would be able to garner that information so that if a candidate would be in one of those three categories, that an application would be able to be submitted in order to obtain permission from the FDIC. Those conclude my comments.

LATHROP: How many crimes are included in dishonesty?

JERRY STILMOCK: The FDIC in its guidance talks about Rule 19, Senator. It's a great question. It basically jumps back and says it's based upon the statute from the originating state. And it can all-- it, the FDIC, can also consider the, the actual conviction by the trial court in finding and making an entry of conviction or entry of guilt, sir. So it's, it's, it's, it's set forth as best it's able to cover all the states, but yet there is some parameters, some guardrails that, that one would be able to look at and make that determination, sir. Thank you.

LATHROP: OK, Senator Pansing Brooks.

PANSING BROOKS: Thank you for being here, Mr. Stilmock. So is the way around it to just exclude the provisions listed under federal sec-- FDIC Section 19? What's the way around it?

JERRY STILMOCK: Federal law, so we're not able to.

PANSING BROOKS: I know.

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JERRY STILMOCK: OK.

PANSING BROOKS: So I'm saying for his bill to exclude that federal, the portions under--

JERRY STILMOCK: I want to go right, you want to go left. I want to go left, and you want to go right. So, yes, I think no matter how we get there, I think that, that may be acceptable. If I understood your point, Senator. Certainly.

PANSING BROOKS: Just exclude what's already stated in federal statute.

JERRY STILMOCK: That so that we would have the ability. You want to get to the same, you're posing to get to the same places so that we can get the information.

PANSING BROOKS: OK.

JERRY STILMOCK: Yes, ma'am. Thank you for the question.

LATHROP: I have one more for you,--

JERRY STILMOCK: Sir.

LATHROP: --Jerry. So does the federal, does the FDIC regulation that you want us to com-- not offend, does that have a window of time? Do they look back forever or does the FDIC regulation just look back five, 10, 20 years?

JERRY STILMOCK: I better reserve and look and get back to you.

LATHROP: That would be an important question.

JERRY STILMOCK: Yes, sir. And I can see why you, why would you ask the question. Yes, sir.

LATHROP: OK.

JERRY STILMOCK: Thank you.

LATHROP: I don't see any other questions, so thanks for being here.

JERRY STILMOCK: Very well. Thank you, Senators.

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***JASMINE HARRIS:** Dear Senator Lathrop and Judiciary Committee Members, my name is Jasmine L. Harris. I am the Director of Public Policy & Advocacy for RISE. I request that this letter be included as part of the public hearing record that shows RISEis submitting testimony in a neutral capacity for LB114. RISE is a non-profit that works with people who are currently and formerly incarcerated. We run a six-month program that focuses on employment readiness, character development and entrepreneurship. We serve people incarcerated at seven of the Nebraska Correctional Facilities with this program and offer reentry case management services as people return home While RISE is in support of policy that proactively helps individuals reintegrate back into society after incarceration, we are providing testimony in a neutral capacity on this bill because we understand the importance of people having a chance to start over without their background check causing barriers to employment and housing opportunities, but we also work with many individuals that this bill will exclude from being able to take advantage of a "clean slate". We have graduated close to 500 individuals from our in-prison program and have about 125 graduates who have been released. Our recidivism rate of program participants is nearly 20% less than national averages Our Reentry team works tirelessly to ensure that we are helping our program participants adjust to being back in the community and walking alongside them on their reentry journey to be successful We have seen many people who would not benefit from this policy (because of cluded convictions) who have completed their sentences successfully and become great role model for not only others coming out of incarceration, but also for people who have not been impacted by the criminal justice system. They have dedicated their lives to doing better and we see this first hand. We do understand that this policy would be beneficial for a lot of people. But we would implore that a closer look be given to how this bill can be more inclusive in providing a path to a clean slate by taking into consideration the many people who may have been wrongfully convicted and those who have excluded convictions, but have successfully completed their sentences and returned to the community. For these reasons, RISE is neutral for LB114 and asks that Sen. McCollister and other introducing senators work with people with lived experience, community advocates,orga~izations and others to find ways to decrease barriers to take advantage of the Clean Slate Act an€l make it less inaccessible.

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***ROBERT M. BELL:** Chairperson Lathrop and members of the Judiciary Committee, my name is Robert M. Bell and I am the Executive Director of and registered lobbyist for the Nebraska Insurance Federation. I am writing today to testify in a neutral position on LB114. I appreciate the ability to provide this written testimony as I will be occupied testifying in another Committee this afternoon. The Nebraska Insurance Federation I is the primary trade association of insurers domiciled in, or with a significant economic presence in Nebraska. Currently, the Federation consists of 29 member companies and 8 associate members. Members write all lines of insurance. One of the goals of the Federation is to promote the concepts and importance of insurance products to the public. Nebraska insurers provide high value, quality insurance products to Nebraskans that help protect Nebraskans during difficult times. Not only do Nebraska insurers provide financial protections to Nebraskans, but insurers also provide high-paying jobs. Members of the Nebraska Insurance Federation alone provide well over 14,000 jobs to the Nebraska economy. According to a 2016 study, the insurance industry had a $14.24 billon impact on the Nebraska economy in 2015. The members of the Federation certainly appreciate the underlying policy issue that LB114 is attempting to address. The concern of the Federation is for the ability of insurance companies to comply with provisions of federal law. On September 13, 1994, President Bill Clinton signed into law an anti-crime law titled the "Violent Crime Control and Law Enforcement Act of 1994," which included new provisions aimed at white collar crime and insurance fraud. Relevant to the discussion today, the federal Act created a new section of Title 8 of the United States Code, Section 1033, that essentially prohibits individuals who have been convicted of felony rimes "involving dishonesty or a breach of trust" from engaging in the business of insurance. The prohibition includes officers, directors, agents, or employees of insurers. Section 1033 does include waiver provision that allows the chief insurance regulatory official of a jurisdiction to consent to permit an individual convicted of such an offense to engage in the business of insurance. In the insurance world, such waivers are referred to as 1033 waivers. Because of Section 1033, LB114 as drafted gives insurance companies pause because federal law prohibits the hiring of individuals of crimes that could be sealed by the provisions of LB114. 0 properly comply with this federal requirement, insurance companies would need clear, explicit language in the legislation that would permit insurers to run criminal history checks that include any sealed crimes "involving dishonesty or

a breach of trust." Section 8 of LB114 does include language that would permit a criminal justice agency to disclose sealed records to comply with federal law, however that the burden in federal law is on insurer not to hire these individuals, not necessarily on a criminal justice agency to release the information. Also, it is not clear if a licensing agency such as the Department of Insurance, who could issue a 1033 waiver to an individual convicted of such a crime, could seek the information from the law enforcement agency. Fortunately, I have spoken with Senator McCollister and he has agreed to work with the insurance industry on its concerns. I am confident that working together we will be able to find acceptable language. For this reason, the Nebraska Insurance Federation is neutral on LB114 as introduced. Again, I appreciate the opportunity to provide written testimony. Should any member of the committee have any questions or concerns regarding this written testimony, please do not hesitate to contact me.

LATHROP: Any other neutral testimony. Seeing none, Senator McCollister, you may close. And as you approach, we have 13 position letters. Ten are proponents, three are opponents. And we have the following written testimony, supporter Elena-- proponent, Elena Salisberg [SIC]; proponent, Milo Mumgaard with the Legal Aid of Nebraska. Opponent, Korby Gilbertson with the Media of Nebraska; David Bydalek from the Attorney General's Office has provided opposition testimony in writing. And Jasmine Harris with RISE, has offered neutral testimony; and finally, Robert Bell with the Nebraska Insurance Federation has also offered neutral testimony. You may close, Senator McCollister.

McCOLLISTER: Thank you, Chairman Lathrop and members of the committee. Thank you for your kind attention. We've heard some poignant stories here this afternoon and we could have heard a great many more. This is a consequential bill, according to Spike Eickholt, and that is absolutely true. So we need to find a way to move this through, this bill through the committee and onto the floor. And I will do my very best to work with the stakeholders in this bill and pull it across the line.

LATHROP: OK.

McCOLLISTER: Thank you, Mr. Chairman.

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LATHROP: Senator McCollister, I don't see any questions for you. Thanks for being here.

McCOLLISTER: Thank you.

LATHROP: And thank you for introducing LB114. And that will close our hearing on LB114. We'll give people a chance that are leaving to move out of the room. Thank you to everybody that showed up today to testify. We really appreciate hearing from you.

DeBOER: I think everybody got to speak, right? Was there anyone that, who didn't get to speak? I think we saw nine.

LATHROP: Good to see you. All right, we will next take up LB484 and Senator John Cavanaugh. Welcome to the Judiciary Committee.

J. CAVANAUGH: Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, I represent the 9th Legislative District in midtown Omaha. Today I'm here to introduce LB484, which would create an intermediate felony offense for theft between $5,000 and $10,000. I won't spend too much time talking about the green copy because I have submitted an amendment which would replace the bill. Originally LB484 would create a new felony classification of IIB, which would carry a sentence of zero to 10 years for intermediate offenses. In speaking with the county attorneys about this bill, they had concerns about creating a new felony classification and logistical problems that would present. I worked with the Nebraska County Attorneys Association to come up with an amendment that would remove their opposition and that resulting amendment is AM205. AM205 would make theft offenses $5,000 or more but less than $10,000 a Class III felony. Theft offenses of $10,000 or more would remain a Class IIA felony. The current structure of theft offenses in our law resulted in a great sentencing disparity. Theft of $1,500 or more but less than $5,000 is a Class IV felony, with a maximum sentence of two years. Theft of $5,000 or more is a Class IIA felony, which carries a sentence from zero to 20 years. Which means that an individual convicted of stealing a car valued at $4,999 could be sentenced to two years in prison, whereas an individual convicted of stealing a car valued at $5,000 could be sentenced to 20 years in prison. Everyone can agree that the harm to society and to the victim in the second example is not ten times that of the first example. What the bill as amended does is create an

intermediary, intermediary penalty for offenses $5,000-- or greater than $5,000 but less than $10,000. And the, the new intermediate penalty would be at the next lower level below the IIA, at a Class III, which carries a penalty of four years. The intermediate theft offense will decrease disproportionate outcomes and increase fairness in our justice system. The Department of Corrections estimates in the fiscal note that over the last five years, 265 individuals have been admitted to corrections for theft of $5,000 or more. They estimate the cost of incarceration at $27.89 per day per inmate or $10,000 per year. With the amendment, I would expect the cost contained in the fiscal note would be no long-- it would no longer be necessary. Thank you for your time and I respectfully ask you to admit-- to advance LB484 as amended with AM205, and I'd be happy to take any questions.

LATHROP: OK, any-- Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Cavanaugh, for testifying today. Wouldn't a judge exercised discretion? I mean, they know the amount that was stolen. And right now, the category is something above $5,000. So, I mean, $5,000 to me is different than $20,000 is different than $200,000. I mean--

J. CAVANAUGH: Yes, that's true.

BRANDT: Is this, is this a big problem out there right now?

J. CAVANAUGH: Well, my philosophy is when crafting law, our position is to establish what, what the law should be and how we should treat certain offenses. Under the current statute, there is discretion for a judge to give someone zero years, give them probation. But the same judge or a different judge could give for the same, same facts, same circumstances, 20 years. And so that the, the problem is in the law and not necessarily in the discretion as enacted. I, there are examples and I know people where the sentence has been much higher for an offense just over $5,000.

BRANDT: But under the new law, you could make the same argument for $9,999 and $10,000. So, I mean, how many, how many individuals will this affect and how many sentences will we shorten? Do we know that number?

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J. CAVANAUGH: Well, we do know the number of people who are currently incarcerated on the over $5,000 amount. I don't know-- we don't know where that caps out of the $10,000, obviously. One of the virtues of this is, aside from that, it gives more room for the kind of the discretion of the prosecutor as well to choose whether to charge something that they think should be more serious than a Class IV felony but they don't want to make a Class IIA felony. My original intent of this bill was to create that dead center intermediate offense of the 10 years, which would then stop the huge leaps forward. We don't have an offense at that grade. They're still currently that you go from III to IIA. But in my conversations with the County Attorneys Association, this was a good compromise where we get some stepped-up approach to these theft offenses without creating that kind of cumbersome part of creating an intermediate offense. So yeah, it's not going to solve the problem exactly that I was attempting to solve, but it does give us at least a little bit more latitude in how we approach those things.

BRANDT: All right. Thank you.

LATHROP: I do not see any other questions for you. Thanks for being here and introducing LB484. We will take the proponent testimony.

SPIKE EICKHOLT: Good afternoon, my name is--

LATHROP: Good afternoon.

SPIKE EICKHOLT: My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB484. I talked to Senator John Cavanaugh, I think, last week, and he mentioned the County Attorneys Association had approached him about that amendment. And maybe I misunderstood. I didn't know that, that that would become the bill. So I, I think the way I understand the amendment, I've not actually seen it, I think that still would be a step in the right direction because it does provide for some proportionality for the level of that defense. But one approach that we really liked in the bill as introduced was this creation of a new classification of felony. If you look at the felony table or the different level of felony offenses that we have, there's what I would call a cliff effect or a big jump effect. The low-level felonies start at Class IV, and goes Class IV, Class IIIA, Class III and then goes to IIA. The low-level felony Class IV are zero to two

years, then it goes zero to three years, then zero to four, and then it jumps to zero to 20. There's not really an intermediary level of felony offense. And as Senator John Cavanaugh kind of alluded to, that's kind of important. As a practical matter, most of your cases are going to get resolved by pleas. And I've been involved in a number of different negotiations with prosecutors where they want my guy to plead to a zero to 20 and I don't want to expose my client to that level of offense. The prosecutor doesn't want to come down to zero to four and, and that's just sort of the impasse that sometimes we find ourselves. There's other parts of the criminal code that are like that, and Senator Pansing Brooks actually has another bill later on that sort of addresses that on the upper end. But I think that's an important thing for this committee to consider, because in answer to what Senator Brandt asked earlier, there are some judges that you expose your client to zero to 20, some of these judges are going to give them time. They may think they're being proportional, but their discretion is going to be on the high end of that. It's going to be 10 years tops, and then even closer to 20 if it's a real bad theft. My having said that, the way at least I understand the bill as amended, it would at least provide for a different moderation for those level of offenses that are just over $5,000, yet not all the way up to even beyond that. And you do get some pretty significant theft dollar amounts when you got people stealing two or three hundred thousand dollars, embezzlement type offenses, that kind of thing. And perhaps those people ought to be exposed to more than, than zero to four years. But as a practical matter of theft of a car, a theft of electronic devices, you can get beyond $5,000 pretty easily. So I think the bill, even as amended, does accomplish some moderate, moderation or mitigation in the criminal code, so we urge the committee to consider it.

LATHROP: OK. Have we seen this amendment?

SPIKE EICKHOLT: I haven't.

LATHROP: Oh, OK, it's on the gadget, apparently.

SPIKE EICKHOLT: OK.

LATHROP: All right. Thanks Spike.

SPIKE EICKHOLT: Thank you.

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LATHROP: Next proponent. Anyone here to testify in opposition? Anyone here in the neutral capacity? Seeing none, Senator Cavanaugh, you may close. We do have on LB484 no position letters and no written testimony.

J. CAVANAUGH: Thank you, Chairman Lathrop. We did file the amendment, the AM, I believe it was AM205 with the Clerk of the Legislature, and I guess I didn't bring it, I can get a copy to everybody.

LATHROP: That's OK.

J. CAVANAUGH: But I just, per conversation with the, the county attorneys as well as with Mr. Eickholt about this, it is-- obviously I presented LB484 as written. And I do think it's important that we create some mechanism to alleviate that cliff effect, that Mr. Eickholt addressed, and that was my intent with LB484. But in the interest of compromise with the county attorneys, we did come to that agreement. And obviously, as you noted, we don't have any opposition letters. The County Attorneys Association is not opposing this bill, and so I think that's a good-- speaks to why this is a good idea and a good bill. And I'd ask the committee to vote it out.

LATHROP: OK. Any questions? Seeing none that will close our hearing on LB484, bring us to LB505, also Senator John Cavanaugh. And you may open on that bill.

J. CAVANAUGH: Thank you, Chairman Lathrop, and thank you, members of the Judiciary Committee. And my name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, I represent the 9th Legislative District in midtown Omaha. And I'm here to introduce LB505, which reforms the habitual criminal statute by limiting the enhancement to specific felonies. The habitual criminal is an enhancement penalty that can be added to a felony offense at the discretion of the prosecutor. The defendant must have previously been convicted of two separate felony offenses and have been sentenced to more than one year on each separate event. Currently, any prior felony offense can serve as a predicate offense, providing the sentence was more than a year. Currently, most felony offenses are eligible for the addition of the habitual criminal if those two prior offenses are present. If a defendant is convicted of the enhanced charge, the penalty range becomes a mandatory minimum 10 years up to 60 years. Meaning, if the habitual criminal is added to a Class IV felony, the maximum sentence goes from one year with good

time to a minimum ten years. Over the last few years, the Judiciary Committee has heard a number of bills relating to the sentencing reform, with one goal-- with the goal of reducing prison overcrowding by limiting sentences for nonviolent offenses. One of the biggest obstacles to sentencing reform is the habitual criminal statute. My approach in this bill was to enumerate the offenses rather than characterize them as violent or nonviolent, as I've seen many times that this debate gets bogged down in a semantic argument about what constitutes a violent offense. I've tried to be exhaustive in the list of offenses that should be eligible for enhancement, and I am certainly willing to discuss including specific felonies that are not included. But I also want to be clear that my intent is to move away from this blanket three-strikes policy to something more thoughtful. In addition to the enumerated offenses in the bill, we've also included in the definition: any felony that has an element of the offense of sexual contact or sexual penetration or threat to inflict serious bodily injury or death on another person, the infliction of serious bodily injury on another person, or causing the death of another person so that we would not unintentionally exclude anything broadly considered a violent crime. The fiscal note for this bill points out that there are 207 inmates serving time in the Nebraska Department of Corrections on a habitual criminal enhancement. This is not the whole story. There are countless others in prison who were not sentenced under habitual criminal enhancement, but rather only accepted a plea deal under the threat of habitual criminal enhancement being added. This bill will address the overuse of the habitual criminal as a threat on lower-level offenses. I personally have had clients charged with possession of a controlled substance, a class IV, and been threatened with the habitual criminal if they didn't accept a plea. This threat is designed to push defendants to plea rather than exercise their right to trial and contest the charges. Some opponents of reforming the habitual criminal law have argued that enhancement is a necessary in instances where you cannot prove a more serious offense. One person argued last year with an example that Al Capone being caught on tax evasion. But a criminal, our criminal justice system is supposed to be built on a fundamental principle of innocent until proven guilty. We should not create or allow to persist a shortcut where prosecutors can get to decide that someone is guilty of a more serious crime, even if they cannot prove it, and then seek to deprive someone of their liberty for 10 years or more based on the unprovable belief of the prosecutor. The standard of proof beyond a

reasonable doubt exists for just these types of examples. The habitual criminal enhancement as it, as it currently exists, is used as a demonstration of the broader-- as a, it currently exists and is used as a demonstration of a broader problem in our criminal justice system that have led to our prison crowding crisis we currently face. We need to stop taking shortcuts and be more deliberate about why we incarcerate people and for how long. LB505 represents a modest but obvious step in the right direction towards a more just justice system. And I thank you, the Judiciary Committee, for your time. And I'd ask your favorable consideration of LB505, and I'd be happy to take any questions.

LATHROP: OK, I do not see any questions at this time, Senator Cavanaugh. Thanks for introducing LB505. We will take proponent testimony at this time.

JOHN JORGENSEN: Good afternoon, my name is John Jorgensen, J-o-h-n J-o-r-g-e-n-s-e-n. I'm currently employed at the Lancaster County Public Defender's Office as a felony attorney and dealing with cases involving habitual criminal for 15-plus years. I'm here today testifying in support of this, in some regards, remedial measure. I think that in some regards it doesn't go far enough, but certainly a step in the right direction. In my work, one of the things I've come across recently was to look at the number of cases who have been charged, sentenced and appealed their case to the Court of Appeals or the Nebraska Supreme Court over the last 15 years where their case involved the habitual criminal. Then cross-referenced that, that information, those individuals' data from the DCS publicly available off their website and looked at how many were white, how many were black, how many were of other and so forth. And it's really interesting to me to see that 5 percent of the population of Nebraska constitutes 27 percent of the prison population and constitutes 45 percent of the cases where someone has received a habitual criminal sentence. That, to me, ladies and gentlemen, seems to appear to be a case of institutional racism. And I think that this measure is, again, I think it's remedial because I don't know that it goes far enough, but it's certainly a step in the right direction to curb what I think would be the greatest cause for such racial inequality, and that is the unbridled discretion from the prosecutors. We have it. We see it all the time. We know that this, these things happen. I'm not saying that every prosecutor is racist, I'm not saying that that's the sole problem. There is the war on drugs, there's, there's any-- economic

inequality. There's so many different contributing factors. But what we really have is a clear demonstration that there's a racial impact here. And so I would ask that the, this body consider passing this as a remedial measure to try and draw back those who were negatively impacted. On the other hand, to be clear, I would suggest that you take it away from the prosecutors altogether, give it to a judge where the judge can, as part of a presentence investigation, look at psychiatric, psychological recidivism, risk factors and make an objective determination as to who should get the habitual sentencing. If you're not going to go that far, at least put some sort of constraint on that unbridled prosecutorial discretion such as is set forth in this measure. And so with that, I thank you for hearing me here today and I'll be happy to answer any questions.

LATHROP: OK. I do not see any questions at this time, but thanks for your testimony. It's like a double-team from the Lancaster County Public Defender's Office.

JOE NIGRO: That's correct. I thought-- well, Mr. Chairman, members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o, and I'm the Lancaster County Public Defender, and I appear on behalf of the Nebraska Criminal Defense Attorneys Association and my office in support of LB505. I want to thank Senator Cavanaugh for introducing this bill. I only became aware of that research John had done recently. And I thought it was important that the committee hear that because it's just a disturbing racial disparity and it bears further analysis. This bill would limit adding the habitual criminal allegation to specific offenses, basically violent offenses and a few other offenses. When a habitual criminal allegation is added to a charge, that means if the prosecutor can show that the defendant has been sentenced to prison twice previously the penalty changes to 10 to 16-- 60 years. The 10 years is a mandatory minimum, meaning you must serve 10 years before you earn good time for either parole eligibility or discharge. The habitual criminal allegation may not get added that often, although, as you've heard, it appears that it disturbingly gets added more often against black people, but prosecutors frequently threaten to add it to coerce people to plead. If you're facing a Class IV felony theft or possession of a controlled substance charge that carries zero to two years in prison, you cannot risk taking that case to trial. Because if you lose, you're going to do 10 years in prison at least. And so people who might have a valid defense or legitimate issues to raise sometimes, sometimes even just a suppression issue, wind up pleading.

Because if you got two years, if you got the maximum, you do one. But with habitual criminal, the minimum you're going to do is 10 years. And so and that gets threatened frequently, as Senator Cavanaugh said, and I've certainly seen it over the, over time. LB505 would limit the use of habitual criminal allegation to appropriate offenses and limit the threat that it will be added in, in most nonviolent offenses. And so I urge the committee to add it, to advance LB505, and I'm happy to answer any questions.

LATHROP: OK, Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Nigro, for appearing today. Would it be fair to say this is the same as the third-strike law?

JOE NIGRO: Yes. I mean, it's not exactly the same. I mean, in California, the three strikes law meant somebody did life in prison. But it's, it's our version of that. It's been in existence longer than I've been an attorney, but, but yeah. That's the same, I mean, it's, it's, it's, it's similar, I guess, in nature to the three strikes law. You have to have two, two prior prison sentences or for felonies. So if you've been twice sentenced to prison. And so when prosecutors add it, if the person is found guilty, there's a hearing where they have to offer two certified copies of prior convictions. That's all it takes to. And then, and then if they, if they, if they have offer those and the court receives them, it automatically changes the penalty to 10 to 60 years

BRANDT: And those prior convictions could be Class IV felonies?

JOE NIGRO: Correct. It could be, the underlying charge could be a Class IV felony and the prior convictions could be Class IV felonies. And as I read the bill, this would limit the use of habitual criminal to the specified offenses, which are primarily violent offenses, and the priors would also have to be violent.

BRANDT: And I don't know if you know the answer to this, but what percent of our criminals are habitual, or in your experience, maybe through Lancaster County, maybe you could answer that?

JOE NIGRO: Well, I can't tell you how many people have two prior felony convictions. The number of people in the prison system with a

habitual criminal is not an overwhelming number. That, and that's why-- but, but it gets threatened frequently. I mean, at arraignments frequently the prosecutors will say this person is eligible for habitual criminal, which is putting the defense attorney on notice right away. And then sometimes there's an overt threat basically made, if you take the case to trial, we're going to add habitual criminal. And I wish I could tell you what percentage of the people in the system have two prior felonies for which they've served time. I don't have that number off hand. I mean, it's not most people. But it's a, it's a significant enough number. And then when you look at, you're dealing with prison overcrowding and I think at least 60 percent and probably higher of the people in prison are there for nonviolent offenses and, and you kind of wonder if some of those people had not been under this threat and had litigated those issues, maybe they get a different outcome or, or maybe, maybe they get treated differently and their, their Class IV felony gets knocked down to a misdemeanor or something.

BRANDT: OK, thank you.

JOE NIGRO: Sure.

LATHROP: OK. I don't see any other questions. Thanks for being here.

JOE NIGRO: You're welcome.

LATHROP: Welcome.

SPIKE EICKHOLT: Thank you. Good afternoon, 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 in support of LB505. We want to thank Senator John Cavanaugh and Senator McKinney for introducing the bill. You've seen this bill before. I think Senator Vargas did a version of this last year. And I thank Senator Pansing Brooks did one year before. Senator Cavanaugh has modified it slightly. I think this is a good bill as is. And I don't think the prosecutor is going to be here to testify at least live, but I suspect they're going to be opposed to it. So I'd just like to maybe argue somewhat on their behalf. What you've heard people testify, what Senator John Cavanaugh explained has happened in his practice, what's happened to me in my practice is that people are rarely-- if your client is-- one of the first things I would talk about when I worked in the Public Defender's Office, I would talk

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about my client's prior criminal record because it's going to matter for bond and everything else. And I would ask them, how many felony convictions do you have? Have you been in prison for those? And then I would just make a mental note, write it on the file. He's habitual criminal-eligible. Because if I want to have, if I want to contest bond, if I want to have a preliminary hearing, if I want to file a motion to suppress the prosecutor will invariably respond: If he does that, I'm going to do, I'm going to allege he's a habitual criminal. They have to file a motion. They don't charge it initially. And they do that-- they don't do that deliberately because they don't, the prosecutors in my experience and my perspective don't want to cross that line, because once you back somebody against the wall, then you're going to have a trial and you're going to litigate it. It's used as a negotiation tactic. It's used to leverage a plea. Now, there may be some instances when that is valid, right? Or that is legitimate. That is warranted in violent felonies. If you've got somebody who's charged with sexually assaulting a child or charged with a forcible rape or something like that, and I say we're going to have a trial, we're going to have a prelim, I'm going to take as many depositions as I can of that victim, then the prosecutor might say to spare the victim the discomfort and the horror of reliving this, they ought to have this leverage. And I think what Senator John Cavanaugh has done with this bill is strike the right balance. This only applies to nonviolent drug offenses and nonviolent theft offenses. The violent felonies will still be allowed to be able to use that leverage. And I think it's a reasonable compromise. It is a modification of our version of the three strikes law that a lot of states have done over these last few years. And this is something that I think is a measured approach. Some would argue it should go farther, but I think this is a right balance and I would urge the committee to advance it. I'll answer any questions you might have.

***MICHELLE WEBER:** Good afternoon Chairman Lathrop and members of the Judiciary Committee. I am Michelle Weber, testifying on behalf of the Nebraska County Attorneys Association in opposition to LB505. LB505 prohibits several categories of felony convictions from being used to deter~ine whether certain multi-convicted felons are eligible to be considered for the sentence enhancement known as the Habitual Criminal. In addition to felony theft convictions and possession of controlled substance convictions when the sentence was a year or more, all of the following felony convictions where a sentence of over a

year or more was imposed would also be prohibited under LB505: Witness Tampering; 2nd Offense Carrying a Concealed Weapon; Possession with Intent to Deliver Heroin, Meth, Cocaine, Crack; Delivery of Heroin, Meth, Cocaine, Crack with a Firearm; Possession with Intent to Deliver other drugs like: Fentanyl, N-Bomb, Molly Mushrooms, Pain Pills, LSD; Delivery of other drugs like: Fentanyl, N-Bomb, Molly, Mushrooms, Pain Pill, LSD, with a Firearm; Possession of a Short Shotgun; Jury Tampering; Possession of a Deadly Weapon by a Prohibited Person; Delivery of Heroin, Meth, Cocaine, Crack; Possession with Intent to Deliver Heroin, Meth, Cocaine, Crack at a School or Youth Center; Delivery of other drugs like: Fentanyl, N-Bomb, Molly, Mushrooms, Pain Pills, LSD; Possession of a Defaced Firearm; Possession of a Short Rifle; Bribery; Possession of a Firearm at a School; possession with Intent to Deliver Heroin, Meth, Cocaine, Crack with a Firearm; Delivery of Heroin, Meth, Cocaine, Crack at a School or Youth Center; Possession with Intent to Deliver other drugs like: Fentanyl, N-Bomb, Molly, Mushrooms, Pain Pills, LSDwith a Firearm; possession or Transportation of a machine gun; And possession with Intent to Deliver, and Delivery of Marijuana. Additionally, this bill retroactively prohibits the use of convictions, several of which were the result of plea bargains, obtained before this legislative session. In some of these cases, if the prosecutors would have known certain crimes were going to be prohibited from being considered for Habitual Criminal Enhancement, they may have crafted different plea bargains. We cannot now, years later, undermine the intent of those plea bargains and sentences. Guns, drugs, and the combination of both, along with the cash and thefts which surround them, all routinely lead to very dangerous situations in our community. There are certainly situations where diversion, probation, treatment, and problem-solving courts are appropriate. However, there are also members of our society who have committed numerous crimes upon our community and have been given many chances at rehabilitation. For some, lengthy periods of incarceration keep the public safe. For all these reasons, we ask you to oppose LB505. Thank you.

LATHROP: OK, any questions? I see none. Thank you once again for being here. Anyone else here to testify as a proponent of LB505? Anyone here to testify in opposition? Anyone in the neutral capacity? Seeing none, Senator Cavanaugh, you may close. And we do have two lett-- two position letters, one proponent and one opponent. And we have written

testimony in opposition by, submitted by Michelle Weber with the Nebraska County Attorneys Association.

J. CAVANAUGH: Thank you, Chairman Lathrop. And thank you to those who came to testify today, there were some good examples there. And Senator Brandt, while you were asking the question about how this kind of plays out, my mind was going back to the countless number of times that I was involved in one of these particular negotiations. And I wish I could tell you that it never happened, that all of the offenses were Class IV nonviolent possession or shopliftings. The number of people who end up in the criminal justice system on those low-level offenses a couple of times and then get threatened because they don't want to plead on the possession of a controlled substance, it happens a lot. It happens more than anybody was willing to admit. I read the testimony from last year here, and I think incredulous is probably the right word for how I felt reading that testimony. Seeing the, the Attorney General's Office come and testify, the County Attorney's Office come to testify and say we don't behave that way, we don't do that. That's-- it happens. It happens on these Class IV felonies all the time. And I'm one person who practiced for seven years, and I can't count the number of times. I wish I could. So this is happening. It's, and I'm attempting to make a change that is modest, a step in the right direction, a jumping-off point to say these are the things we all agree about. This is what we all think it should not be used for, and going from there. I immediately, upon finding out that I won election, I reached out to the County Attorneys Association. I know a number of people there to tell them that I was planning to bring this type of bill and to have that conversation. I reached out to the Defense Attorneys Association with the same conversation to tell them that I wanted to bring this, this type of bill with this particular constraint. I've had many conversations with the County Attorneys Association about particularly how to reasonably constrain this. I've seen their opposition letter here in listing off the offenses that are not included that they think should be included, and I welcome that conversation. I wish I'd gotten that response before we got here today. I had a number of conversations with them and I said, I'm willing to work with you and find the things that don't work for you and potentially integrate them into this conversation. This is a bill fundamentally we're talking about negotiations and the, there is an unbalanced aspect to the negotiations as a result of the habitual criminal, which is leading to more people going to prison. I'm asking

you to rebalance that negotiation so that we get a better access to justice. You pass this out of committee and maybe it will rebalance the negotiation that we're having as to what exactly should be in this bill. So at this point, I'd ask the committee's favorable consideration of LB505 as written. And I am willing to continue the conversation with the County Attorneys Association in good faith.

LATHROP: OK.

J. CAVANAUGH: And I welcome any questions.

LATHROP: I do not see any questions. Thanks for being here.

J. CAVANAUGH: Thank you. Thank you for your time.

LATHROP: LB505. That will close our hearing on LB505 and bring this to LB32 and the Pansing Brooks sleight of bills today.

PANSING BROOKS: I think it's a trifecta, huh?

LATHROP: Something like that.

PANSING BROOKS: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, I'm Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB32, which adds two new penalty classifications, Class ICA and Class IDA. This would create 12 classifications instead of the current 10. Under LB32, Class ICA and IDA felonies carry the same penalties as IC and ID classes, respectively, except that the minimum sentences are not mandatory under ICA and IDA felonies. When an offense, when an offense is a ICA-- or IC or ICA penalty, a prosecutor may elect a charge as a IC or a ICA penalty at their discretion. When an offense is a ID or IDA penalty, a prosecutor may elect a charge as a ID or IDA penalty, also at their discretion. I came up with the idea for this bill as I worked on other legislation related to penalties, particularly concerning our successful efforts to increase penalties on human traffickers. In the process of working in partnership with the Attorney General's Office and county attorneys, it became highly apparent to me that the mandatory minimum penalties imposed on IC and ID penalties were creating a special problem as we all work to bring justice to traffickers. Similarly, when we work to coalesce child sexual assault laws within our Nebraska statutes, we couldn't align

penalties because we would be required to impose additional mandatory minimum laws, and that is a nonstarter for many of us in the Legislature. I do not want to set penalties within the classifications that had mandatory minimums because I believe judges should retain the discretion to weigh the myriad of circumstances relevant to the crime. I also believe mandatory minimums contribute to our prison overcrowding crisis. So when we looked at the penalties for trafficking offenses, in order to put penalties in the mandatory minimum categories, we either had to bump the classification up to a IB, which carries a maximum of life imprisonment and a minimum of 20 years, or place the offense in a Class II category, which carries a maximum 50 at a minimum of one year imprisonment. That is a large gap between those classes, one year to 20. I have, I have had disagreements with the county attorneys on the issue of mandatory minimums and as they oppose all efforts to abolish them. They argue that there are cases where a mandatory minimum sentence is appropriate. They do not want judges to have sentencing discretion on IC and ID classes, the only classes that do carry mandatory minimums. So LB32 presents a wonderful opportunity for county attorneys to weigh whether they believe an offense is truly worthy of a mandatory minimum. It allows an opportunity for a prosecutorial pause. It is my hope that they will use this discretion seriously, particularly since many of the offenses that fall under these mandatory minimum classifications are nonviolent drug possession cases. Officials from the Department of Corrections have indicated on the fiscal notes for other sentencing-related legislation that a decrease of sentences tied to mandatory minimums could help the prison overcrowding crisis. I've said it before and I'll say it again, I believe we all have a responsibility to help with our prison overcrowding crisis. This includes the Governor, legislators, judges and prosecutors. As, as the Council of State Governments has told us, sentencing reform is a crucial component of any attempts to reduce the prison overcrowding crisis. While I continue to believe that judges should not have their hand tied, their hands tied with mandatory minimum sentences and should be able to weigh the myriad of circumstances in each case, I also believe that LB32 could help reduce mandatory minimum sentences under the current framework and give prosecutors an, an ability to voluntarily help with our prison overcrowding crisis. So I ask you to move LB32 to General File. With that, I'm happy to answer any questions that you may have. No questions?

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LATHROP: I don't see any questions. Kind of a quiet group today.

PANSING BROOKS: Yeah, well.

LATHROP: Might just be a thorough explanation of the bill.

PANSING BROOKS: It was so well done, wasn't it?

LATHROP: It was. Proponents. Good afternoon.

SPIKE EICKHOLT: Thank you. Good afternoon, 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 and the Nebraska Criminal Defense Attorneys Association in support of LB32. I had referenced this bill earlier because what this does, it creates a couple of new classifications of felonies to sort of what I would call or what I referred to earlier as moderating the penalty level. If, if you look at what the bill does, it seems pretty modest, and it is. But it's important and it really is pretty deferential to the prosecutor because as Senator Pansing Brooks explains, it lets them choose whether to charge somebody with a Class IC or a ICA felony or a ID or a IDA felony. It's important, though, and until you practice, you may not actually appreciate it, it's mandatory minimum three to 50. That's the range. So there's a pretty high window, or a pretty wide window that judges can give a lot of time on the top. What's dangerous about the bottom number, or the mandatory minimum, is that you've heard already a mandatory minimum means no good time, you go to prison. Mandatory minimum means no probation. The judge has no discretion, even if the judge wants to. That's a hard number at the bottom. And some of these crimes that are Class ICs, and IDs are violent crimes. There are some drug, there are some gun charges or other crimes like that. But there are a lot of them that are nonviolent, possession with intent and having a sizable amount of drugs, or possession with intent or distribution within a school zone or some similar prohibited area can bump you up to a mandatory minimum level. And that applies unlike the habitual criminal law, it applies to true first-time offenders. So you can have a young person who's charged as an adult with a significant amount of methamphetamine or a significant amount of cocaine, and they're at that mandatory minimum already. That matters because in those kind of instances, because it's a mandatory minimum, the prosecutors are just unreasonable. They're not as sympathetic and they use that just like they do when the habitual criminal law is. And it's something that you just do not

expose your client to. You'll plead your client to something even as serious, if not more, to avoid a mandatory minimum, because you want at least get that hope that you're not going to get that same hard number at the bottom that you'll automatically get when you're found guilty of a mandatory minimum sentence. What Senator Pansing Brooks proposes is, is important, I think, because I think this, I would suggest to this committee, if you ever have a chance to look at our criminal code in total and reform some sentencing process, this is one area to look at maybe having a proper, smoother gradation between the different levels of felony offenses. And this is a step toward that direction. And I would encourage the committee to consider the bill.

LATHROP: OK, Senator DeBoer.

DeBOER: I am looking at the Attorney General's submitted testimony and his argument, or the argument that was submitted is that this creating this second class of offenses with the same elements is transferring the role of discretion in terms of sentencing from the judge to the prosecutor. And considering the, the gist of it is, I can see is that it's based on the fact that they have the same elements and so it's the prosecutor who's deciding what to charge-- or not what to charge, but what the, what the sentence is?

SPIKE EICKHOLT: Well--

DeBOER: Can you speak to that?

SPIKE EICKHOLT: I haven't seen the letter. It's unfortunate they're not here to answer your question for themselves, but I'll take an opportunity to answer it. I don't think that that's a valid point. The prosecutors have pretty much unfettered discretion now. In other words, if the prosecutor wanted to charge a mandatory minimum-- say my client's arrested, he's charged with a mandatory minimum of five to 50. The prosecutor would say, OK, I'll drop it down to an attempt, that's a one to 50, no mandatory minimum amount. They have that choice. The elements, the facts are the same.

DeBOER: The facts are the same. But wouldn't the attempt be a different element, because it would be a different attempt, a different--

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SPIKE EICKHOLT: It would be, and it would be something they would have to plead in the amended charge, just as if they would have to plead, presumably in this instance. And if that's not clear, then I think Senator Pansing, well, I suspect Senator Pansing Brooks would be willing to accommodate that. In other words, the state would have to plead that this is a ID felony, not a IDA felony and state clearly in the charging document and have the defendant arraigned and told in open court what the actual consequence is. I think that that concern is addressed.

DeBOER: Would the elements then be the same between a ID and a, I mean, would they be-- sorry between whatever the two are, ICA and IDA-- or IC and ICA, there we go. Would the elements remain the same, but they're just charged? Because I, I mean this is a, this is-- I want you to have the opportunity to speak to us about this because I think this is an argument we need to address.

SPIKE EICKHOLT: They would be. But you see that, you see this situation happen now. For instance, somebody can be charged with possession of a controlled substance with intent to deliver. And that can be of any amount. If the state charges possession of a controlled substance of at least 10 grams, then that's a more serious felony. So many times the prosecutors will charge simply possession of a controlled substance with intent. That's a one to 50. The factual allegations and the charge alleges more than 10 grams. But just because it says that in there, the prosecutor is only charging you with a lesser possession, not for the possession with intent of 10 grams. That's something that they just delineate in the charging document that the defendant is arraigned on. And I think that that could be done here, right? That they are saying you're charged with possession of a stolen firearm or use of a firearm. That's a IDA felony, and the prosecutors charge that as a IDA felony. The penalty for that is minimum, not mandatory, but minimum of five-- or three to 50 years in prison. I hadn't thought about that, I think it could be addressed easily. If not, I think Senator Pansing Brooks could, well, some, the committee could or somebody could-- the bill could be amended in such a way to require the prosecutor to designate or choose at some point in the process.

DeBOER: And that would not be an unusual use of prosecutorial discretion to determine based on the same factual pattern, which minimum, right? Because the thing that they're alleging is that the

reason a prosecutor uses their discretion is because they feel that they couldn't prove a certain case, so they, they go to a different case. Now, in practice, I think we all know that that's maybe not totally always reality, but--

SPIKE EICKHOLT: Right.

DeBOER: --but--

SPIKE EICKHOLT: I mean, there's many reasons why prosecutors decide to reduce charges or charge cases differently and resolve cases pursuant to a plea agreement. And one of those might be because they had difficulty proving the original charge offense. But this legal fiction, if you will, happens all the time. Many charges are reduced to an attempted commission that drops it down one level automatically. But when you hear the factual basis, when you talk to your client about what they did, there was no attempt about it, right? They did it. It's just a concession from the state, it's something that they have broad discretion to do and the courts have upheld for years.

DeBOER: OK.

SPIKE EICKHOLT: And I think that that can be done in this, in this bill text.

DeBOER: OK. Thank you.

LATHROP: OK, I don't see any other questions. Thanks for being here. Any other proponents? Anyone here in opposition to LB32?

JERRY BRITTAIN: Hello, Senator, I'm Jerry Brittain, J-e-r-r-y B-r-i-t-t-a-i-n. Many of you know I'm the vice president of the FOP88 and represent correctional staff, particularly those on the first line of defense in those facilities. I am a state employee, but I'm not testifying on behalf of the state, nor am I allowed to. Basically, the FOP's concern here is it can be very difficult to have crimes committed against our staff in our facilities prosecuted, particularly in counties that don't have a budget. Tecumseh, we have a very large facility and there's a higher rate of crime against our staff, and the county just can't afford to prosecute. And so we would be concerned that this could lead to serious assaults against our staff having a lesser sentence against the individual conducting that crime. So short and sweet to the point. As always, I'd love to answer questions.

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LATHROP: Well, I don't see any today.

JERRY BRITTAIN: Thank you.

***DAVE BYDALEK:** Senator Lathrop and members of the Judiciary Committee, my name is Dave Bydalek, Chief Deputy Attorney General in the Nebraska Attorney General's Office. The Attorney General is opposed to LB32. The Attorney General opposed this legislation last session when introduced as LB985 (2020). The Attorney General remains opposed to the creation of these new felony classifications: Class ICA and Class IDA felonies. While the Legislature is certainly capable of implementing new classifications of felonies or misdemeanors, this legislation confuses the role of the prosecutor with that of the sentencing judge. Under the Nebraska Supreme Court's Rules of Professional Conduct (§3-503.8) prosecutors must limit prosecution to charges known t be supported by probable cause and thus the first exercise of discretion of the prosecutor must be based on the evidence and the ability of a prosecutor to satisfy his or her burden of proof for each element of the crime charged. If the prosecutor's discretion is used in charging a lesser offense, the elements necessary to prove the defendant's guilt beyond a reasonable doubt are necessarily less than the offense for which the prosecutor could otherwise ethically charge. LB32 proposes neither any new element, nor any distinction between existing elements necessary for one to have committed any criminal offense otherwise punishable as a Class IC or Class 10 felony. In this manner, LB32 is wholly without st tutory precedent. LB32's effect is to abdicate both the authority of the Legislature to define: criminal offenses as well as to undermine the authority of the judiciary to determine sentencing, and supercharging the role of the prosecutor. Although the Attorney General possesses concurrent criminal jurisdiction in prosecution throughout Nebraska, the Attorney General does not think the ability of a prosecutor to effectively determine sentencing for commission of the same crime is a proper exercise of executive power. Second, the practical effect of LB32 would appear to have the unintended consequence of potentially exacerbating the stated problem that the bill is intended to solve. Under our current statutory scheme, if the prosecutor could ethically charge a Class 1D offense but reasonably exercises his or her discretion to charge a lesser offense, the next statutory option is a Class II felony which carries a minimum term of at least one-year imprisonment. LB32, on the other hand, presents a new intermediate option for the prosecutor to exercise his or her discretion to charge

a Class lDA felony which carries a minimum term of at least three years imprisonment. Additionally, such additional options to pursue in charging may lead to additional disparities in sentencing. Third, in some instances in which the legislature has enacted a specific mandatory minimum sentence that exceeds the statutory mandatory minimum for Class IC or Class 1D felonies, LB32 creates opportunity for substantial disparity in sentencing that is adverse to the interests of the victim. For example, Section 9 of LB32 amends Section 28-320.01 (4) which provides for a statutorily-required penalty enhancement for repeating the offense of sexual assault of a child in the second degree of a Class IC felony with a mandatory minimum term of 25 years imprisonment, rather than the standard 5-year mandatory minimum. LB32 would allow for the prosecutor to seek either the twenty-five-year mandatory minimum or no mandatory minimum at all. For the foregoing reasons, the Attorney General respectfully requests that the Committee not advance LB32 to General File.

LATHROP: Thanks for being here. Any other opposition testimony? Anyone here to testify in the neutral capacity? Seeing none, Senator Pansing Brooks, you may approach. We do have two, two position letters, one a proponent, one an opponent. And we also have an opponent letter from David Bydalek in the Nebraska Attorney General's Office.

PANSING BROOKS: Thank you. First off, I'm not sure what the man, Mr. Brittain, from the Fraternal Order of Police was testifying on, because it seems like it was a different bill. But I don't know, as he was talking about things at Tecumseh. So anyway, I'll try and talk to him after to see what that was about. So we're not taking away mandatory minimums. What, what we have is the ability of prosecutors to continue to use mandatory minimums in every case. But even if there's one where, where-- one case that doesn't need to be a mandatory minimum, that takes off some pressure on the system. It's, it's to me, it's interesting because the AG, the Attorney General's Office is opposed to this because they're opposed to judicial discretion normally. But in this bill, they're opposed to prosecutorial discretion. So, you know, I'm not really sure which it is, what they want other than just don't change the status quo. So I appreciate your time. I think this would be a really good way for them to decide, OK, does it really need to be a mandatory minimum or could we use in this case a nonmandatory minimum and let somebody go to probation, let, let there be a way to not have these people jamming out? Let there be some hope for those inmates, 96 percent of whom are

going to be coming back into our communities. So thank you. That's all I have on this.

LATHROP: OK, well, that will close our hearing on LB32 and bring us to LB33, also a Senator Pansing Brooks bill.

PANSING BROOKS: OK. Good afternoon again, Chairman Lathrop and members of the Judiciary Committee. For the record, I'm Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB33, a bill to establish an important sentencing reform measure to help address our prison overcrowding crisis. I first brought a version of this bill in 2015 to restore an element of sentencing policy that was previously in place in Nebraska and worked effectively. I continue to believe that this bill should have made it into LB605, to the LB605 package in 2015, when the Council on State Governments came and studied our system and attempted to thwart the overcrowding crisis that was looming. While LB605 had important reforms, it has obviously not resulted in the reduction of prison overcapacity that we had hoped to see. Let me first provide a little background from-- a little background. In the 1970s, the Legislature began to change the correctional system in Nebraska to a model that was more treatment and rehabilitation focused. The Legislature amended the criminal code to provide for a sentencing framework that allowed for those inmates who were sent to prison to work toward reforming themselves and assimilating back into the community after being rehabilitated once they were released from incarceration. The Legislature developed the quote unquote, one-third rule, which provided that the maximum sentence imposed could not be more than one-third of the maximum possible for the category of penalty available. I have changed this time period in this bill today due to concerns of good time. And so LB33 will be considered the one-half rule. Historically, the one-third rule provided that the offender could have time and opportunity for rehabilitation in the prison system before being paroled and would also ensure meaningful time for the offender to be supervised once paroled into the community. Inmates have the incentive to actively participate in constructive rehabilitation programs within the prison system, so they were better candidates to be paroled when they became eligible. Additionally, the one-third rule still allow judges to pose a significant maximum sentence for offenders to be supervised while on parole or incarcerated, which such inmates-- should such inmates not comply with the terms of parole conditions. The one-third rule was law

in Nebraska from about 1971 until 1993, when it was removed. The legislative history provides little explanation for why that one-third rule was eliminated. And from what I have heard, it is likely that the one-third rule was removed surreptitiously in an omnibus bill. Be careful the omnibus bill. To bolster that conclusion, I would add that we have been unable to locate any record of a public hearing or floor discussion in the Legislature concerning the removal of the one-third rule. Move forward 28 years and now Nebraska has the second most overcrowded prison system in the country. Judges are now imposing sentences with maximum and minimum sentences that are nearly identical, leaving very little time for meaningful parole, which results in more frequent jam outs. According to CSG, the Council of State Governments' Justice Center, in fiscal year 2013, 17 percent of people newly admitted to prison received a sentence with a parole window of one month or less or no opportunity to parole at all. The slim or non-existent parole windows of these flat sentences ensure that these individuals would leave prison without supervision when released. In fiscal year 2013, 57 percent of flat sentences were for terms of one year, which equates to a six-month stay in prison after good time is applied. Especially considering that 95 percent of people incarcerated in our state prisons will be released back into our communities, we should all be concerned by this short window of time for inmates to become parole ready. LB33, which compromises even further by reestablishing the rule as the one-half rule instead of the one-third rule doesn't purport to by itself solve our overcrowding crisis, although numbers from the Fiscal Office are highly encouraging. What this bill does do is set a framework whereby people can get rehabilitation and treatment they need so they don't stay in prison longer than necessary and jam out, thereby entering back into our communities as less productive, potentially more dangerous and at greater risk of recidivism. The Council of State Governments, during its initial report that led to LB605 showed that minimum sentences have grown in proportion to maximums, which has narrowed the parole window. I have submitted page 36 of that report to each of you, which shows the minimum sentence length as a percentage of the maximum sentence length. The average inmate will have only one chance for a parole hearing, according to CSG. The Justice Reinvestment final report also says, quote, Courts frequently impose sentence structures that allow no opportunity to parole-- for parole or so short a period that it provides little chance of meaningful post-release supervision. LB33 will alleviate this problem, allowing more of those 95 percent of

individuals who are going to be released back into our communities earlier access to parole so that they can enter our society ready to be productive citizens and not recidivate. In turn, it will provide a cost savings to the state and can keep our communities safer. When I previously brought this bill, the fiscal note estimated that 660 inmates would be placed on parole per year because of that bill. The fiscal note show, thus showed a cost to parole of $2,209,000. However, this was dwarfed by the cost of savings that was shown at that time of $31,271 per inmate for a total of $20,638,860. The differential would be more than $5.7 million in savings to the state. According to the fiscal note, this could have moved our state at that time to 136 percent of design capacity. You will notice the same agencies didn't provide the same information for this year's bill, even though the bill is exactly the same as it was before. Perhaps someone realized they revealed too much. This week there are Appropriations Committee hearings where that committee will hear a proposal to build a new prison that would cost taxpayers hundreds of millions of dollars. I once again offer an alternative route to our overcrowding crisis with LB33 and other sentencing reform proposals. We can do better for Nebraska by being smarter and comprehensive in our approach, as our conservative neighbors are do, doing, implementing laws to close rather than build more prisons. Texas is the perfect example. In closing, I would ask that you advance will be LB33. And with that, I'm glad to answer any questions that you have.

LATHROP: OK. I don't see any questions, but thanks, Senator.

PANSING BROOKS: Thank you.

LATHROP: Proponents of LB33. Welcome.

TOM RILEY: Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Tom Riley, T-o-m R-i-l-e-y, and I am here in support of LB33. And I speak on behalf of the, of Nebraska Criminal Defense Attorneys Association and the Douglas County Public Defender's Office. I'm here on my annual trip in support of Senator Pansing bills-- Pansing Brooks's bill. She did a, she did a great job of giving the history of what's going on. Without being too much revealing in my age, I've been in the Public Defender's Office since 1975, and when I first started, the one-third rule was in effect. And basically, if a person was charged with a robbery, for a sentence that carried one to 50, the maximum sentence the judge could impose would

be 16 and two-thirds to 50. The good time laws we're a little bit different than they are today. And roughly, if you got a 16 and two-thirds, you'd be eligible for parole in about nine to ten years. So it was a little different. And this bill that makes it one-half kind of brings it back into the same parameters, so to speak. Senator Pansing Brooks is also 1,000 percent correct on the history. I know exactly what happened, and I can name the names if you want me to. And it was surreptitiously a line was just drawn, drawn through in an omnibus bill that eliminated the one-third. And all of a sudden the judges were giving 48 to 50 or 49 to 50 instead of 16 and two-thirds to 50. And that has exponentially increased over the years. The number of sentences that are extremely, extremely heavy is, is very-- it's sad to say, it's very common now, at least in Douglas County. And what's important is that the truth of the matter is a lot of these serious offenses or with high time, some, some of them are drug cases and others may be violent cases that are committed by very useful offenders. And by giving a, some block of how much time a judge can impose, I think it's important because I am 1,000 percent convinced that there are a number of people who are in prison today that are serving these 48 to 50-year sentences that have been corrected. Their conduct has been corrected, but they have no chance to get out on parole. I think that the system should work in unison and that we have to trust not only the, the courts but the, the parole board. And if someone is, is should be parole eligible and has done-- jumped through all the hoops and is ready to be released, but can't be because they have to do basically 24 years, in the example I gave, that does not serve our correctional purposes at all well. Thank you.

LATHROP: Yeah. Senator Geist.

GEIST: I do have a quick question. Was good time used when the one-third rule was employed in the past? Were they both calculated together?

TOM RILEY: Yes. Well, there basically it was a good time rule that, as I said, I'm ballparking the number. So if you get, if you get a-- let's say you got a 16 to 50-year sentence today, you'd be able to parole in eight years and you would be jammed out assuming you don't lose good time in 25.

GEIST: Right.

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TOM RILEY: Back then, if you got a 16 to 50, you were probably going to be eligible for parole somewhere in the area of ten years and jam out somewhere in the area of in the 30s, assuming you don't lose good time, 30-plus years. I can't accurately, accurately calculate it because the good laws, good time laws changed a number of different times between '75 and when the, the line went through the, the bill to eliminate the one-third rule.

GEIST: But it wouldn't be calculated the same as it is today, which is half the time. And then this would third that time?

TOM RILEY: Yeah, just like the senator said, it, it was one-third. So it would have been 16 and two-thirds to 50, if it was a one to 50. And now it would be 25 to 50, and the good time law that is applicable today would be applied. So a person, if you got a 25 to 50-year sentence, your parole eligibility would be 12 and a half years and your mandatory release date would be 25, assuming you don't lose good time. And of course, the whole point of the good time issue is it, it, you're basically rewarded for good conduct. And if you screw up when you're in prison, they take your good time away from you. And so even though a jam date of 25 years is, is possible, you could get further-- you can do a longer time because you haven't comported to the rules of the institution. Let me just add that my experience is that when individuals get lengthy sentences, any-- typically, and I can't say this for everyone, but typically the misconduct is the first few years that they're in prison because they've got to kind of protect themselves and say, I'm not going to let someone beat me up or make me a punk or, or whatever. And as time goes on, their misconduct frequency goes significantly down. And that's why I'm saying these folks frequently are, would be low risk to to release, but can't be because they're, they're stuck behind the eight ball of a sentence that was imposed by the court that, you know, didn't look forward and can't see into the crystal ball as to whether or not a person is going to be amenable to, to the correctional facility and, and programs that are available.

GEIST: Thank you.

TOM RILEY: Sure.

LATHROP: And maybe to belabor the obvious, all they are is eligible for parole.

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TOM RILEY: Absolutely.

LATHROP: If they, if they have misconducts, if they're not doing the programming--

TOM RILEY: Right.

LATHROP: --then they got to sit there.

TOM RILEY: Absolutely. And that's why I, I mentioned I think we have to kind of look at this in a, in a big picture. And we have to rely on, give the parole board a chance to exercise discretion, just like we give the judges a chance to exercise discretion. The parole board, I mean, the judges are looking into the future. The parole board is looking into the past to see what they have done. And, yes, they do have to project a little bit into the future to say this person is a good risk or not. But that's what they do anyway. This just gives them an opportunity do it at an earlier date.

LATHROP: Yeah. And I don't need to testify on this bill, but members will have an opportunity at, at some point when it's safe to go out and meet some of these people. And I have been inside of the, all of the correctional facilities, and when you go in there, you can see the guys that are still causing trouble and still want to make trouble and be difficult. But you also see where people round the corner. And when they round the corner, they are in prosocial activities. They're doing things, trying to mentor the younger guys and tell them to behave themselves while they're incarcerated. And we do miss out on opportunities to put people out that, that we should no longer, or need not longer be afraid of.

TOM RILEY: Couldn't have said it better myself.

LATHROP: Yeah. All right. Senator Brown.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Riley, for testifying today. Would there be a tendency of judges to use a higher or harsher penalty if this were enacted?

TOM RILEY: Not, not from what I can see. The harsh penalties are what's going on right now. They obviously, they, they have the discretion in one to 50 they could give you two to four, they could give you three to five. All we're doing is saying, you know what,

we're not going to let you do this 48 to 50 or 45 to 50 stuff anymore. If you want to, if you want to max someone, it's going to be 25 to 50 if it's a, you know, Class II that carries a one to 50. All we're doing is saying that, that's as far as you can go as far as a minimum sentence.

BRANDT: OK, thank you.

LATHROP: OK. It does incent people to go through their programming too.

TOM RILEY: No doubt. Absolutely no doubt. I mean, some folks have no hope. And I'll talk about that in my next, in the next bill, but and still comported with the rules. It's--

LATHROP: Thanks. I appreciate your testimony. Welcome back.

JOE NIGRO: Thank you. Mr. Chairman, members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o, and I'm the Lancaster County Public Defender. I appear on behalf of the Nebraska Criminal Defense Attorneys Association and my office in support of LB33. I want to thank Senator Pansing Brooks for introducing this bill. LB33 is an intelligent approach which will increase the use of parole, which increases community safety. Until around 1993, Nebraska's sentencing laws provided at the maximum-- minimum be no more than one-third of the possible maximum. This meant that for a Class IV felony, the maximum sentence was 20 months to five years. For a Class III felony, it was six and two-thirds to 20 years. And for Class II felony, it was 16 and a third to 50 years. Then late in the legislative session, I'm pretty sure it was 1993, but it's around that time period, an amendment to a large bill was slipped in that repealed this. No one caught it. Judges could suddenly sentence people to five to five years, 20 to 20 years and 50 to 50 years. And they did. Attempts to reinstate the old system failed, despite the deceptive way this was done. In fact, people made representations the next year that, oh, we're going-- this was a mistake, we're going to correct it. And then people came in and said, oh, no, we really like this. And, and so the only change came was that the Class IV felonies prior to LB605, that was reinstated after many years, but never for Class IIIs and Class IIs. Research is clear that people who come out of prison under supervision are less likely to reoffend. When someone serves 20 to 20 years, their parole eligibility date and discharge date are the same, so they will not be released on

parole. That makes us less safe. Where it really makes a difference is comparing a sentence of 18 to 20 years. Under the formula of this bill it would, it could only be ten to 20 years. So when you apply good time to a sentence of 18 to 20 years, it becomes nine to ten years. Someone who becomes eligible for parole after nine years, who only has one year left, will decline parole because they know that there's a risk that they could screw up during that year of supervision. And by that time, they think, I can do one more year in the institution. So they're going to come out without supervision. We want people to be released under supervision, so someone's checking on how they're doing. Someone's making sure they're working, going to treatment, they're going through drug testing. Under this bill, if the pers-- if the person is sentenced to ten to 20 years, with good time that becomes five to ten years. With that bigger gap, the offender will want to be paroled. They don't want to sit and wait for five more years, so they'll behave better in prison and they'll try harder to succeed when they're released. This makes us all safer. Opponents may say the change will threaten community safety by releasing dangerous criminals. This is wrong.

LATHROP: OK.

JOE NIGRO: I have got just a-- if somebody wants to ask me to finish, I just have a couple of sentences.

LATHROP: I think we got the point.

JOE NIGRO: OK, I just--

LATHROP: Let's see if there's any questions.

JOE NIGRO: Yeah, I don't know if anybody has any questions. I-- Senator Geist, I was going to address, I don't have the date exactly, but I can tell you I started practicing in 1983 and the good time formula at that time was very comp-- there was always, there's been good time, I mean, this is prior to when Mr. Riley became an attorney. But the formula was really complicated. I think it was in the late 1980s that it was changed to day for day where you got half.

GEIST: OK.

JOE NIGRO: So I think that change occurred prior to this being removed. And, of course, the way it happened, because this was not a

bill that was debated in the Legislature or in a committee hearing discussed, it just nobody caught it. And then, you know, and for those of us in the system, suddenly people were getting the, their time was-- they were suddenly getting, you know, sentences that were either the parole and the jam date were the same or there was very little gap. And, you know, people don't quite understand that the people who have behavior problems in the institution, they're not going to get paroled. And the people who commit really dangerous acts, like the sex offenders, they're unlikely to get paroled. But it's keeping other people in. And the reality is it makes us less safe because the top number is what keeps people in the institution, that bottom number guarantees that come out under supervision. And we're all better off if people, I mean, the research is really clear. People who come out under supervision are less likely to reoffend. So the people who would oppose this change are actually, they're actually advocating something that makes us less safe. This is a more thoughtful approach. It doesn't take us back to the one-third rule, but I, I think it's a big improvement.

LATHROP: OK.

JOE NIGRO: I again, I'm like Mr. Riley, I've been here.

LATHROP: I don't think anybody has asked you a question yet. [LAUGHTER]

JOE NIGRO: Sorry. I, I've been here, you know, Mr. Riley and I have been here a long time and so we've--

LATHROP: No, I know. I know. And you feel strongly about it. And most of us heard this bill two years ago, too, and understand it. We had it on the floor, actually, but--

JOE NIGRO: Well and I know, you know, there was talk about prison overcrowding. And I think I heard a number a couple of weeks ago that the United States would have to reduce their prison population by 80 percent to be comparable to similar nations.

LATHROP: OK. Thanks, Mr. Nigro.

JOE NIGRO: You're welcome.

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LATHROP: Anyone else here to testify as a proponent? Good afternoon once again.

SPIKE EICKHOLT: Good afternoon. Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska. I'm not going to duplicate the testimony you've already heard. This committee understands this bill. I just want to put a couple other things on the record, maybe for the history of it. What Senator Pansing Brooks said in her introduction is right, when CSG was here in 2014 and '15 and we were looking at prison reform, one of the things that they sort of diagnosed or identified with this state was our problem with flat sentences. Not just on a serious flat sentences where people are getting 19 to 20 years imprisonment, but on the low level where people are getting 18 months to 20 months imprisonment. And that's problematic for a variety of reasons. It contributes to higher recidivism. You've got a rotating perpetual percentage of your population is going in and out of your jails and prisons with no supervision, no reform. And that's why CSG recommended and we adopted with LB605 the postrelease supervision component that's mandatory for low-level felonies. And that's why we put a bunch of money into that probation, supervising that, and that's why we put more money in Parole. There was a companion bill that Senator Pansing Brooks had that would reinstitute the one-third rule that we did away with in 1993. And I don't need to go into all the hurt feelings history about it, but the fact of the matter is it was not a conscious, deliberate decision that the state did to do away with it. It just got done away with, and you're now living with the consequences. Senator McCollister had a bill a couple of weeks ago that tried to identify the elderly population that's not yet parole-eligible because they're serving these lengthy sentences. That's the generational, that's the consequence of these high numbers. We all ended up with LB605 debates at the Hruska Center across the street. It was a half day arguing, prosecutors wouldn't budge, Attorney General wouldn't budge. We're not going to do the one-third, and it just went by the wayside. Otherwise, it was going to jeopardize all the reform. And that's the decision that we have. I think what Senator Pansing Brooks has is, is a compromise on that. It says, though, it's one-half, the minimum on an indeterminate sentence has to be-- cannot-- has to be one-half of the maximum sentence. The judge still has ample discretion. Prosecutors have all kinds of discretion. They can stack multiple charges. I mean, typically, somebody does something at that felony level kind of crime,

there's companion charges. You can stack charges, you can make a sentence pretty much whatever way you want someone to plead to, at least within a general range. This just provides for a meaningful time for rehabilitation and supervision on parole. And we'd urge the community to adopt the bill-- or advance the bill.

***MICHELLE WEBER:** Good afternoon Chairman Lathrop and members of the Judiciary Committee. I am Michelle Weber appearing today to testify on behalf of the Nebraska County Attorneys Association in opposition to LB33. LB33, known as the "1/2 Rule," would provide in sentencing that a minimum term cannot be more than half of the maximum term imposed by the court. Therefore, if a judge wanted to hand down a 20-year sentence in a violent robbery case in which a defendant had been convicted, LB33 ould mandate such sentence to become 10-20 years. LB33 mandates that a bottom number be impose (in this case the 10 years) and that such bottom number must be half of the top number (in this case the original 20-year figure). Thereby transforming a 20-year sentence to become a 10-20-year sentence. Additionally, if LB33 were to become law, this defendant would be eligible for parole in just 5 years Parole eligibility is determined by taking the bottom number (in this case 10 years) and dividing it in half (in this case 5 years). So in this case the victim would initially believe the defendant would be incarcerated for 20 years but would then surprisingly find out the defendant would be released in 10 years because of good time and eligible for parole in only 5 years. In another example, say a judge hands down a sentence of 10 years for a defendant who was convicted of committing a burglary with intent to commit sexual assault. The victim rightly believes the defendant will be imprisoned for 10 years. However, this is not the case under the proposed "1/2 Rule." This defendant will be eligible to be released on parole after 2.5 years-a huge difference to this victim and the community. Arbitrarily providing a benefit to defendants in certain criminal cases, regardless of the facts and circumstances of the particular case, is bad public policy. It is also immensely confusing to the victims and the public at large. The implementation of LB605 in 2015 provided that judges must generally hand down indeterminate sentences (sentences containing a lower and a higher number, like 3-5 years) for felony convictions in cases involving Class IIA and above. Since this time, sentences are being crafted with a minimum term and a maximum term, thereby allowing for the opportunity to parole a greater number of inmates. Additionally, the Nebraska County Attorneys Association has

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supported in the past and continues to support the concept of allowing the Parole Board the ability to review more cases, thereby allowing for the opportunity to choose more inmates to be put on parole. Our association once·again supports this concept as proposed by Judiciary Chairman Lathrop in LB56. This bill allows the Parole Board to review additional inmates for the opportunity of parole, while also providing for caseload standards and other policies to prevent parole officers from being overburdened with new cases for supervision in our community. We respectfully believe and propose the path forward as proposed by LB56 makes more sense, allows for consideration of the facts and circumstances of each case, provides for supervised release, and is safer for the community, while allowing for the opportunity to parole more inmates. Our association also believes the use of diversion, problem-solving courts, and probation options should be provided for on a statewide basis in order to further divert cases from the prison system. LB33 would also award the "1/2 Rule" benefit to individuals who had already been given these opportunities in prior cases and have re-offended. It is a sad thing, but certain offenders have demonstrated they cannot live a lawful existence, even after receiving the benefit of such non-incarceration options. Limiting judicial sentencing authority with a rule that the minimum sentence cannot exceed half of the maximum sentence fails to take into account the individual circumstances of the person being sentenced to prison, the facts of and circumstances of that specific case, if there is a victim in the case, the impact of the crime; and the needs of the Parole Board in having more cases of a serious nature to supervise. For all these reasons, the Nebraska County Attorneys Association asks you to oppose LB33. Thank you.

***DAVE BYDALEK:** Senator Lathrop and members of the Judiciary Committee, my name is Dave Bydalek, Chief Deputy Attorney General in the Nebraska Attorney General's Office. The Attorney General is opposed to LB33. The Attorney General has opposed the repeated attempts to implement the "one-third rule" or the "one-half rule" since the 104th Legislature, including when proposed in 2015 under LB483, in 2018 under LB84!12,in 2019 under LB131, and again this year as introduced in LB33. The Attorney General remains opposed to the implementation of the "one-half rule" or the "one-third rule" and the bill's proposed elimination of life to life sentences for Class 1B Felonies for the following reasons. First, under our day-for-day good time provisions this policy would substantially and indiscriminately hasten the

mandatory parole eligibility date of felons who have been sentenced for commission of any felony classified as a Class IIA fel ny to a Class 1B felony. Such policy unnecessarily risks jeopardization of public safety and interferes with the power of the judicial branch to impose appropriate case-specific sentences. For example, sexual assault of a child in the second degree is a Class II telony for the first offense, punishable by imprisonment from a minimum of one year to FI maximum of 50 years. If the judge would sentence such offender to a term of 25 to 30 years, meaning the offender's mandatory parole eligibility date would be in 12.5 years assuming no loss of day for day good time. In this hypothetical, the limit the judge mTY impose for the minimum term if LB33 were to be enacted is half of the maximum imposed by the court-15 years, meaning the mandatory parole eligibility date would be 7.5 years assuming no loss of day for day good time, a difference in mandatory parole eligibility of five years. Second, the practical effect of implementing the one-half rule today is more detrimental and not comparable to its prior existence in statute from 1972 through 1992 due to the vastly different statutory scheme for "good time" calculation. Day-for-day "good time", found at Neb. Rev. Stat. §83-1, 107, occurred through the legislatu e's enactment of LB816 in 1992. The one-third rule was repealed in LB529 the following year by repealing Neb. Rev. Stat. §83-1, 105. Thus the "one-third rule" and day-for-day "good time" co-existed for less than one year. At the time that the "one-third rule" was enacted, prisoners received "good time" credit in the amount of: 2 months on the first year, 2 months on the second year, 3 months on the third year, 4 months for each succeeding year, and pro rata for any part of a term that is less than 1 year. Third, implementation of the "one-third" rule or any variation thereof, cannot be found in the Council of State Government's ("CSG") January 2015 "Justice Reinvestment Analysis and Policy Framework," which was the blueprint for LB605 in 2015. In recognition of this reality, then Committee Chairman Seiler and other senators spearheading LB605 introduced and adopted AM1530 which became the bill. AM1530 to LB605 removed the insertion of LB483(2015), the first attempt at implementing the "one-third rule," and created the current prohibition on "flat sentences" found in Neb. Rev. Stat. §29-2204(1)(a)- requiring the minimum sentence to be less than the maximum sentence. The Attorney General maintains that the policy change effectuated by this provision of LB605 was and continues to be an appropriate measure that does not unduly interfere with judicial discretion in sentencing. Fourth, the Attorney General is opposed to

the elimination of the ability of a judge to sentence one convicted of a Class 1B felony to a minimum life sentence. LB33 would eliminate judicial discretion to sentence one to a life to life sentence, for murder in the second degree. The Attorney General maintains that judicial discretion in imposing a life-to-life sentence for one duly convicted of a Class 1B felony should be retained. As experienced through the passage and implementation of LB605(2015) and LB1094(2016), sentencing reform, if undertaken at all, should be undertaken with careful examination of specific offenses and always with the primary aim to enhance, not diminish, public safety. The Attorney General respectfully urges the Committee to not advance LB33 to General File.

LATHROP: OK, I don't see any questions. Thanks for being here. Any other proponents of LB33? Anyone here in opposition? Anyone here in a neutral capacity? Seeing none, Senator Pansing Brooks, you make close. There are two letters, position letters, one in support and one in opposition. We also have written testimony in opposition. The first one from Dave Bydalek in the Attorney General's Office; and the second one, Michelle Weber representing the Nebraska County Attorneys Association.

PANSING BROOKS: Thank you for listening carefully and for all of your thoughtful questions, it's pretty darn clear that we need to create sentencing reform. You know, I, I-- what I don't continue to get sitting here in Judiciary is this tendency to only listen to the county attorneys. Why is it that we don't, that we only trust the county attorneys or what they say? There have been no constructive ideas on these sentencing reform changes from the county attorney situation, other than at one point they did say there should be more programming, which bills like this would help. It's, it's pretty clear that we need to give the parole board a chance. They're not walking all over themselves, as we heard with Ros Cotton last week, to just release people willy-nilly. The county attorneys do not need to be the gatekeepers at all points in the criminal justice system. And that's what they're setting themselves up to do. Any single thing, if it deals with their charging, then come in. But when it deals with trying to lighten the load and to try to get people programming and probation and to get out and to be safer, why are they weighing in and why are we only listening to them? I don't get it. We've got incredible people here that spoke today from the Public Defender's Office. And I don't understand our tendency to, to believe county attorneys more than we

believe public defenders. And I'm not trying to insult the fabulous people behind me, but we all know that's true, that we do that. And we, we just heard that we are less safe when they come out without supervision. Less safe. So we are contributing to the issues which they, which the county attorneys claim that they are fighting for: safer communities. But we're contributing by not getting these people programming, by not making sure that they have what they need to go before the parole board. And I just think it's, it's really too bad that we-- that it is on us. That prison that's about to be built, if this goes forward, is just as much on the Judiciary Committee as anyone else. And the people should be coming to the Judiciary Committee saying, why haven't you done sentencing reform? Why haven't you figured out other alternatives to help the overcrowding crisis, rather than expecting our tax dollars to be used to pay for this hundreds of millions dollar prison? We're scared to do anything and so we do nothing, and then the taxpayers come. So that's my thought. I'm not aggravated at you, because I'm as much a part of this as anybody, but it is on us to do something. And we've heard sentencing reform, CSG said sentencing reform. But then we backed off because we were scared to do anything. And the county attorneys told us, oh, no, if you do that sentencing reform, then, you know, all heck is going to break loose and all the dangerous people are going to come out into community. And instead we're just jamming people out. We all know what happened with Nikko Jenkins and other people like that. People get killed, people get hurt because we release people without programming back into our communities. Thank you for your time.

LATHROP: OK, I don't see questions. That will close our hearing on LB33 and bring us to LB34--

PANSING BROOKS: Last one.

LATHROP: --also Senator Pansing Brooks.

PANSING BROOKS: OK, thank you, Chair Lathrop and fellow members of the Judiciary Committee. I'm Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB34, which changes sentencing provisions for crimes committed by a person under 21 years of age at the time of the commission of the crime. These changes would ensure that a juvenile does not receive a sentence of life imprisonment without parole. LB34, also removes mandatory minimum penalties for

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Class IC or Class ID felonies for offenses committed when such a person was under 21 years of age. The bill provides that these penalties shall not be a mandatory minimum, but a minimum term only. In 2012, Miller v. Alabama, the U.S. Supreme Court struck down life without parole sentences for most juvenile homicides, homicides, and ruled that the courts must, quote, take into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison. The court-- unquote. The court followed up in 2016 in Montgomery v. Louisiana that quote, Even if a court considers a child's age before sentencing him or her to lifetime in prison, that sentence still violates the Eighth Amendment for, for a child whose crime-- I'm sorry, that still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity, unquote. This immaturity is documented in numerous studies that show that a juvenile's brain isn't fully developed until ages 25 to, to 26. Because of this brain science and the demonstrated potential for children-- for all children to rehabilitate, the Campaign for Fair Sentencing of Youth has concluded that it is impossible for courts at the time of sentencing to accurately predict which children are, quote, irreparably corrupt, unquote. The United States currently stands alone as the only nation that sentences people to life without parole for crimes committed before turning 18. However, 24 states have taken the lead in prohibiting life without parole as a sentencing option for children, including most of our neighbors: Wyoming, South Dakota, Colorado, Iowa, and Kansas. Other states that prohibit life without parole for juveniles also include: Arkansas, Texas, West Virginia, Kentucky, Alaska, Utah, and North Dakota, among others. All conservative states. When we sentence youth under 18 to life in prison without parole, we are sentencing them to die in prison. Think about that. We are taking away all hope. Under LB34, these children may still receive harsh sentences, but they will also know that they have the option of paying their debt, coming to terms with their mistakes, and someday returning to society and become productive citizens. In addition to the human price, Nebraska also incurs a financial price. It costs $31,271 a year to incarcerate an individual in Nebraska. Meanwhile-- and those are adults. Meanwhile, Nebraska has one of the lowest unemployment rates in the nation. Prior to COVID, it was 3 percent. We have every incentive to rehabilitate those who can be rehabilitated and move them back into our society at some point and into our workforce. As I stated earlier, LB34 has another major component. It eliminates

mandatory minimum sentences for those under 21 for those felonies that carry mandatory minimum sentences. In the U.S. Supreme Court cases cited earlier, the court said that judges must be able to consider the characteristics of juvenile defendants so they can issue fair and individualized sentences because adolescence is marked by, quote unquote, transient rashness, provide-- proclivity for risk, and inability to assess consequences, unquote. Since these court decisions, states have taken action to curtail mandatory minimums for juveniles for both life and nonlife sentences. In 2014, the Iowa Supreme Court held in State v. Lyle that quote, one size fits all, unquote, mandatory minimum sentences were unconstitutional when applied to juveniles. Finding such sentences, quote, cannot satisfy the standard of decency and fairness embedded in Article I, Section 17 of the Iowa State Constitution, unquote. Chief Justice Cady wrote in the ruling that, quote, Mandatory minimum sentences for juveniles are simply too punitive for what we know about juveniles, unquote. The court said trial judges may sentence a juvenile to a minimum sentence, but only after a separate hearing that examined five factors, including the offender's age, family environment, the circumstances of the crime, the offender's competency in navigating the legal system, and the potential for rehabilitation. In 2017, the Iowa Supreme Court, in a subsequent ruling, said even these minimum sentences should be uncommon. Many states have taken measures to reform mandatory minimum laws for both adults and juveniles, including Arkansas, Georgia, Louisiana, Michigan, Ohio, Pennsylvania, and South Carolina. Mandatory minimums are particularly harmful and counterproductive for juveniles. Nearly 200,000 juveniles are tried, sentenced or incarcerated as adults each year according to the Cardozo Law Review. A 2012 Sentencing Project study of those sentenced to juvenile law-- juvenile life without parole shows 79 percent of them witnessed violence in their homes regularly. Prior to their interaction with the criminal justice system, fewer than half were attending school at the time of their arrest, and nearly half were physically abused. When Nebraska-- with Nebraska having the second most overcrowded prison system in the country because of this overcrowding crisis, it is important to move forward on both short-term and long- term steps to fix our overcrowding crisis. We must ensure that our prisons are not packed with people where the punishment does not fit the specific circumstances of the juvenile's crime. Especially in the case of juveniles, we must shift our state resources from excessive and expensive interminable incarceration to rehabilitative programs proven

to reduce crime and recidivism and keep our communities safer. So in closing, I ask that you advance LB34 to General File and I'll be glad to answer any questions you have. And thank you for your patience through all these bills.

LATHROP: OK. I don't see any questions at this point.

PANSING BROOKS: Thank you.

LATHROP: Thanks, Senator.

PANSING BROOKS: Thank you, all.

LATHROP: We'll take proponent testimony. Welcome back.

TOM RILEY: Good afternoon, again. My name is Tom Riley, T-o-m R-i-l-e-y. I'm Douglas County Public Defender and I'm here in support of LB34 and speak on behalf of the Nebraska Criminal Defense Attorneys Association and Douglas County Public Defender's Office. I'm going to just address the portion about the life without parole aspect. As Senator Pansing Brooks accurately states, there are 24 states that have banned life without parole for juveniles. And actually there are six more that, although they have that statute on the books, do not have anyone serving-- any, any juvenile serving a life sentence. In the wake of Miller v. Alabama, I was able to represent 13 individuals who had previously been-- have been sentenced to life in prison without parole for offenses they committed as juveniles. And as I look through this room, I see one of those individuals sitting in here right now. And I know there are other folks who have personal stories to tell you about their experiences with this. The one thing I want to mention about that is this is the science. The science is irrefutable. In every single of the case that I had the resentencing on, I presented evidence in the, the form of testimony from adolescent neuropsychologists who gave lengthy testimony about the science and the fact that the brain is not developed fully until 25 or 30 years old. Consequently, the-- to put it in lay terms, the juveniles or the individuals who are not fully developed act rashly, act, act without-- it's their executive function, they call it. They don't think things through, and consequently they do sometimes some really bad stuff. That doesn't mean that they are irreparably corrupt. And not, not one hearing that I had, not one did-- was there any refutation by, by the prosecutors about whether or not the science was accurate. So this,

this is a-- this bill's a big deal. This makes it, makes it 21 instead of 18. There, there are people who are under 21 years old who are doing life sentences right now, who the science says are the same, basically, as an 18 year old who is now had the opportunity to get resentenced. The, the changes in the sentencing structure are not gifts, they're harsh sentences. In many, in many cases, there will be a firearm or weapons charge included in addition to the, the 20 to 60 on a second degree murder and the 40 to 80 on a first-degree murder. So these are not, these are not gifts, so to speak. Once again, just like with, with regard to LB33, this gives individuals the opportunity to participate in programming, demonstrate once again that they are-- they have rehabilitated themselves and they are eligible for release and do not pose a threat to society.

LATHROP: OK. I don't see any questions for you, but thanks for being here and--

TOM RILEY: Thank you.

LATHROP: --waiting all afternoon.

TOM RILEY: Thank you.

LATHROP: Yeah. Good afternoon.

DWAYNE TUCKER: Good afternoon, senators. My name is Dwayne Tucker, D-w-a-y-n-e T-u-c-k-e-r. I am one of the first individuals in Nebraska to benefit from the Miller v. Alabama decision, one of the 13 that Mr. Riley and his team helped release from prison under that law. As we move forward with LB34, I'm basically here to ask that-- first, that the committee change the verbiage from under 21 to 21 and under because it will also affect a lot of men and women who are still not mature enough to make those right decisions in life because of life circumstances and experiences. I was thrown into the system. I caught my case at 17, but I had the mentality of a 12- to 13-year-old child. But I was thrown into adult system with no knowledge of what that really meant. I was still 32 years old before I even realized what it meant to be incarcerated for the rest of my life. That's the maturity level that I had. And growing up in a adult prison, a child don't have the opportunity to grow as a child should. A child has to survive. And whatever that means to survive in an adult prison, you would do those things to survive. I had to do unactable acts in that prison to

survive to be here today. And thank God I am here today because there was chances where I could not been here and opportunities. What I would like to bring forward also is that we talked about the maturity level of a person. I'm still at 57, still learning how to grow as a person because of the 35 years that I spent incarcerated going in as a child and not having guidance other than the environment. And we all know the environment of prison. You know, sometimes we're lucky enough to have someone pull you aside and guide you on how to get educated. They took education, they took trades. So a person is just mainly sitting in there going crazy. And then we talk about the mental health piece. There's no mental health piece. I sit in a group and talk about how I feel today. That is not mental health. Today, I've-- since being released from prison, I've worked two jobs and I've been going to school to try to get my degree. I've maintained that for the last five years. That's what I do. I worked in a packing house because that was the only job I could get started off at $10 an hour. You know, because I lived within my means and I learned how to do that in prison with $24 a month, I learned how to live off $10 an hour. So-- but everybody don't have that opportunity in their life to do those things. I'd also like to bring forth that when you're incarcerated-- OK, red light means stop.

LATHROP: Yeah, you can-- I appreciate your strict compliance. You can finish your last thought, though.

DWAYNE TUCKER: OK. When incarcerated for 35 years, it does not take 35 years to train or teach a person how to become a model citizen. I've been out five years. I've been promoted to a-- from a facilitator to a graduate coordinator. [INAUDIBLE], giving many men and women in prison are very intelligent after so many years of educating theirself. And if given an opportunity, I guarantee they would serve society much better outside versus being inside.

LATHROP: OK, very good.

DWAYNE TUCKER: Thank you.

LATHROP: Any questions for this-- Senator McKinney.

McKINNEY: Thank you. I just want to say thank you for your testimony. And, you know, I really appreciate you coming down here and telling your story. Because as we all know, it's many more individuals that

have-- are-- that have ended up in similar situations like you. And I just, I just appreciate you and I'm glad you're doing great. Thank you.

DWAYNE TUCKER: Thank you, Senator.

LATHROP: There you have it. Thanks for being here, Mr. Tucker, and--

DWAYNE TUCKER: Thank you.

LATHROP: --for waiting this afternoon patiently.

DWAYNE TUCKER: That's what you learn in prison.

LATHROP: Yeah, I suppose, among other things. Yeah.

DWAYNE TUCKER: Among other things.

LATHROP: Sure. Welcome back.

TIMOTHY LOPEZ: Yes. Real quick, I just ask if you can let me finish this even if the light's on. I ask that if you can let me finish this even if the light's on. This is one of the most important things in my life right now. My name is Timothy Lopez, T-i-m-o-t-h-y L-o-p-e-z. I reside at 877 North 26th Street in Lincoln. I support this bill, LB34. I want to talk to you today about individuals who had a major impact in my life when I went through the processes of change. These individuals don't have a second chance at society because it's been stripped of them by choices that they made well over decades ago. These individuals have become my mentors, my brothers, my family members, and helped me through all kinds of struggles. Things that you could never even imagine. I got locked up when I was a young teen. I was released when I was 30 years old. It took to 2015 at the age of 25 for me to learn from my mistakes that I committed a long time ago. At the age of 25, your brain is said to reach its full capacity of growth. But the true aspect of growth is not by mass or by length, but yet by the true enhancement of knowledge. These individuals that doesn't have a second chance at life are individuals that will never be, be able to reflect the acknowledgement of their learning by actions so society can see-- so they can see their true purpose and meaning of growth. Robert Norfolk, David Ware, Michael Jackson, and Lucky [INAUDIBLE], are individuals who became mentors, brothers, and father figures to me while incarcerated. I live out here doing, doing

proper things and making positive choices and doing activist work in the light of the things that they have taught me as bright, smart men. I feel these individuals deserve a second chance at society so society can see the true purpose of these individuals learning by the aspect of empathy, knowledge, and personal growth in the light of better, and better meaning. I would not be sitting here today a productive citizen, respectful, hardworking man without the knowledge of these individuals put into my life. When I was a kid in the penal system with no hope, these brothers, these mentors, these father figures would help guide me, educate me, and show me a better life to things to come. I sit here a proud, humble human being because of the life these individuals taught me. These individuals are in charge of facilitating programs in the prison systems for other individuals to get out in society and be productive. These individuals deserve a second chance at society. Allow society to witness firsthand how individuals can come from long periods of incarceration to becoming productive citizens and give back. Thank you for your time. One thing, that picture right there is David Ware. He missed the deadline for the juvenile life by three months because of 18 months-- 18 years old and 3 months. That is a recognition by the Community Justice Center. David Ware saved a correctional institution staff's life when a, a convicted predator who was known to abuse and try to perpetrate other individuals, he was there to save that lady's life when correctional staff wasn't. And that's a true-- that's-- that just goes to show that he's [INAUDIBLE]. Thank you.

LATHROP: Thank you for your testimony. Thanks for coming down and you, you spoke well for these people who are still behind bars. I know I've met Mr. Jackson at a RISE event. He's, he's involved in RISE, isn't he?

TIMOTHY LOPEZ: Yes, sir. He helped me. We were at RISE together at OCC, but I got moved back to LCC for programming.

LATHROP: Right.

TIMOTHY LOPEZ: David Ware took over and helped me deal with that process.

LATHROP: Yeah.

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TIMOTHY LOPEZ: You know, David Ware and Robert Norfolk, they work on a secure-- on the mental health unit taking care of vulnerable individuals who, who don't know how to take care of theirselves.

LATHROP: OK.

TIMOTHY LOPEZ: Robert Norfolk is part of the dog program that helps train dogs for special needs people, whether it's for seizures. Lucky helps facilitate the Community Justice Center program. Me, Lucky, and David Ware, we got certified to help be a peer facilitator on the empathy as well. You know, without those individuals, I honestly can sit here and look all of you in your eyes right now and tell you I wouldn't be sitting here.

LATHROP: Right. There's a lot of important peer-to-peer programs that go on--

TIMOTHY LOPEZ: It is.

LATHROP: --that are very, very credible people to, to get leadership from.

TIMOTHY LOPEZ: You know, when I got out of the gangs in 2015, I would always have to look over my back and make sure that I wasn't subject to something. But something that those individuals had told me was, Tim, you don't have to look over your back because we got your back. And if you're going to do right, we're going to protect you. And those are my brothers in everything.

LATHROP: OK. Well, thanks for being, thanks for being here today, Mr. Lopez.

TIMOTHY LOPEZ: I miss them so much.

LATHROP: Yeah. OK, well, visit them.

TIMOTHY LOPEZ: I can't, I'm on parole. I wish, I wish I could visit them. I can't even contact them through email because I'm on parole.

LATHROP: OK. Well, thanks, thanks for being here. I appreciate your sharing your-- the importance of these people in your lives.

TIMOTHY LOPEZ: Yes, sir.

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LATHROP: OK. Any other questions or-- Senator McKinney.

McKINNEY: I just, I just want to say thank you for your testimony and keep staying strong and keep fighting.

TIMOTHY LOPEZ: I appreciate it.

LATHROP: All right.

TIMOTHY LOPEZ: Thank you.

LATHROP: Thank you. Good afternoon.

ALEX M. HOUCHIN: Wow. Good afternoon, Senator Pansing Brooks, Chair Lathrop, other members of the committee, my name is Alex M. Houchin. That's A-l-e-x M. H-o-u-c-h-i-n, and I'm here--

LATHROP: Alex, can you talk just a little bit louder so I can hear you.

ALEX M. HOUCHIN: Louder, yeah, OK.

LATHROP: Yeah.

ALEX M. HOUCHIN: A-l-e-x M. H-o-u-c-h-i-n. I'm here representing Nebraskans for Alternatives to the Death Penalty. NADP is a nonpartisan 501(c)(3) that enjoys support from Nebraskans across the political spectrum and from every legislative district. Although many of us reach this conclusion via different paths, we stand united behind the belief that the death penalty is bad public policy. Today, NADP announces its support for LB34, as written and strongly urges its smooth passage into law. In 2005, the U.S. Supreme Court ruled in Roper v. Simmons that imposing the death penalty on defendants whose offenses were committed while they were under the age of 18 violated the Eighth Amendment's prohibition on cruel and unusual punishment. Writing for the majority, Justice Kennedy said, quote, Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished to a substantial degree by reason of youth and immaturity. End quote. While there perhaps can be no truly objective answer to the question of when a young person sufficiently grows out of the youth and immaturity that Justice Kennedy wrote about, as experts' understanding of developing brains and adolescent behavior continues to deepen, a clear answer

begins to come into focus. Last June, the American Academy of Pediatric Neuropsychology, the Center for Law, Brain and Behavior at Massachusetts General Hospital, and the Society for Adolescent Health and Medicine, in conjunction with numerous independent experts, filed an amicus brief in support of a petition by Texas death row inmate Billy Joe Wardlow, who was sentenced to die for a murder committed when he was 18. Wardlow's petition in part argued that, quote, Scientific research has established that the brains of young people between 18 and 20 years old are functionally indistinguishable from those of 17 year olds in ways that are relevant to Eighth Amendment moral culpability. And that the character of these young people is not yet fully formed. End quote. The amicus brief supporting this claim-- supported this claim by emphasizing to adolescents and young adults with developing brains are more prone to impulsivity and risk taking. And that new research in the field of brain science, quote, has made visible the differences between the developing brain and the adult brain as never before, affecting a paradigm shift in the way the behavior of emerging adults is understood in the scientific community. End quote. And I would just reference testimony offered by Mr. Riley. And if you go all the way back to LB114, I believe his name was Mr. Pendley [PHONETIC], gave excellent examples of, of what they're talking about. So underpinning all of these statements is the unifying idea that it is simply unjust to permanently deprive someone of their life in response to an act committed as an adolescent and this becomes even more true as we continue to deepen our collective understanding of the nature of adolescence and how the human brain develops over time. On behalf of NADP, I urge you all to support this bill and pass it into law. Thanks for your time and if anyone has questions.

LATHROP: I don't see any questions, but thank you for your testimony and your being here today.

ALEX M. HOUCHIN: Absolutely.

LATHROP: Good afternoon.

VICKIE TAYLOR: Good afternoon. Thank you, Senator Lathrop and the Judiciary Committee. My name is Vickie Taylor, V-i-c-k-i-e T-a-y-l-o-r, and I am here in support of LB34. My son, Gabriel Hansen, is serving a life sentence at Tecumseh Correctional Institution. He committed his crime just three weeks after his 18th birthday. He's currently 44. Spending the last 25 and a half years being incarcerated

has impacted Gabe in so many ways, accepting the responsibility of his actions in having taken someone's life and the reality of never being able to correct that horrible moment in time. He's remorseful. He has learned to live the daily reminders of his sentence. He no longer is driven by adrenaline and emotion. But the real impact on his current mindset and character reflects simply time. Time to grow and time to understand and develop, time to mature. Things that are critical for all youth to develop. Gabe experienced many childhood challenges that impacted his path starting at age four. He battled with the onset of juvenile diabetes at age seven and continued health issues that were overwhelming for him. He got lost early on as a teenager with a single mother working all the time and no father figure present in his daily activity, daily active life. He could not recognize the value-- his value or his abilities. Although he was gifted, he eventually dropped out of school. He was vulnerable. He was caught in the immature mind of a juvenile unable to find strong foothold. I don't share these things with you for sympathy. I share these as a reality that young minds are irrational and they cannot value risk, reward or consequences to the full extent that we hold them accountable to as adults. So when I spoke to Gabe about what he would like for me to share with you today, he said, "Please share my concerns that the current law does not allow for them to review my sentence based on my current character." This is 25 and a half years later. I'm so sorry. "It does not recognize the amount of work and discipline that is needed to rise above the environment we all live in, in order to become the person that I am, not the juvenile that I was when I arrived. As a kid, I never thought about how my actions affected others, now that is the first thing I think about when making a decision! The only things that I share with the 18-year-old me is DNA and past experiences." He went on to state that over the years he's developed an impeccable work ethic, as evidenced by his 15 years as a foreman of the woodshop. And his want to help others, as demonstrated by his consistently teaching and mentoring others through woodworking and his current job as a licensed certified nursing assistant where he's taking care of the most vulnerable members of the population. He has compassion and empathy. He is a former RISE graduate and he is currently a group facilitator, continuing to mentor and share the RISE values with other incarcerated persons on a weekly basis. I'm a proud father, is what he said of his three-year-old son, and he's completed all levels of parenting classes that were available. He treasures his relationship with his son, although it's been difficult to nurture

that based on the no visits that are currently in place. He also has been a husband for 19 years, which he says could be his biggest accomplishment given all the circumstances. I'm sorry. I, I think that I just would want, Senator Lathrop, you to know how much I appreciate your focused energy on going into those communities and being a part of those interactions with people. Because the more you are exposed to how people live and grow, the more you come to understand that there is not the things to fear that we have been led to believe we should continue to fear. What we need to recognize is that you have young people at the very brink of their adolescence growing up to be an adult in that environment. And so I just-- I really when I look at 18 year olds, I would ask you to please review how you are able to draw a line at 18 to separate who is a juvenile and who is an adult. There's way too much that is still on that growth process. So I know you've heard all of the statistics. I don't want to reiterate that, but I just do really ask that you help look for alternatives and to allow that these people that are serving life without parole have some type of hope, some type of understanding that you see the conditions that they've been subjected to and that you'll work towards an alternative.

LATHROP: OK, well, we appreciate that you came down here today and you shared your son's story, and thanks for doing that.

VICKIE TAYLOR: Absolutely.

LATHROP: Yeah.

VICKIE TAYLOR: If necessary, I'll be back,

LATHROP: OK.

VICKIE TAYLOR: Hopefully, I won't need to.

LATHROP: All right. Well, thank you once again.

VICKIE TAYLOR: Thank you.

LATHROP: Next proponent. Welcome.

TOM VENZOR: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Tom Venzor, that's T-o-m V-e-n-z-o-r. I'm the executive director of the Nebraska Catholic Conference. And I'm here to express our support for a specific, more specific

provision of LB34, which is in Section 2, which relates to the death penalty. So currently, Nebraska prohibits imposing the death penalty upon any person who was under the age of 18 at the time of the commission of the crime. Section 2 of LB34, proposes to change this law and would prohibit the death penalty from being "imposed upon any person who was under the age of twenty-one years at the time of the commission." The Nebraska Catholic Conference has long supported a broader repeal of the death penalty and in the absence of a broader repeal which was rejected by Nebraska voters in 2016, this committee has an opportunity to look at a more nuance and incremental ways to repeal the death penalty. To provide some context, the Church's ethical approach to the death penalty can be summarized as follows. The state may exercise recourse of the death penalty under certain conditions. Among those conditions is if nonlethal means are sufficient to defend the innocent and preserve public order and safety, then public authority should limit itself to such nonlethal means, as they are more in keeping with the common good and more in conformity with the dignity of human life. In other words, we can ask ourselves: Is the death penalty absolutely necessary for the protection of public safety? And are there no other means by which to defend society from an unjust aggressor? More recently, Pope Francis has further applied this Church's traditional teaching on the death penalty and concluded that "the death penalty is inadmissible because it is an attack on the inviolability and the dignity of the person." This position recognizes that the primary purpose of the, of the penal system is to redress a disorder caused by the offense. And as Pope John Paul II has articulated: "Public authority must redress the violation of personal and social rights by imposing on the offender an adequate punishment for the crime, as a condition for the offender to regain the exercise of his or her freedom." But this position also recognizes that criminal law must also pursue other elements of justice, such as restorative and rehabilitative justice. Section 2 of LB34 gives this committee and the whole Legislature a real opportunity to confront some important topics. I think you've heard a lot of that already to restorative and rehabilitative justice for those who are 18, 19 and 20 years old. And in short, you know, is the death penalty basically a just penalty for persons in their late teens and early years of being a young adult? In light of the Church's teaching on the death penalty and the need to balance justice and mercy, we believe that the answer to this is no. We respectfully ask the Judiciary Committee to prohibit the imposition of the death penalty on persons

under the age of 21 at the time of the commission of otherwise what would be capital offenses. And we thank you for your time and consideration.

LATHROP: OK. Any questions for, for Mr. Venzor? I see none, thanks for being here.

TOM VENZOR: Thank you.

LATHROP: Appreciate hearing from you.

SPIKE EICKHOLT: Good afternoon. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU Nebraska in support of LB34. You've heard a lot from me today. Everything that's been said, I could just restate again, but I won't do that. I'll just highlight one other component of the bill, which is important that no one specifically talked about when they, when they came up and testified. And that is the amendment that's pretty small, but it's significant that for a Class IC or ID felony for persons under age 21 years of age when they commit that crime, that it's not a mandatory minimum sentence, but it's a minimum sentence. That is similar to a bill I think, Senator Pansing Brooks, that we heard earlier. That's a small step. And I would submit that that's a reasonable step. And that's something that, as I said, no one specifically talked about. We are in support of the bill. I actually wanted to testify live so I could be on the record with Tom Venzor. I think it's the third time this year I've testified on the same side of a bill with him. Twice today, as a matter of fact. So I didn't want to let that opportunity go and I don't think I testified against him-- Hi, Tom, at all, at all for anything this year. So that should hopefully matter to the committee. I'll answer any questions anyone has. But I would just echo everything that has been said earlier about this bill.

***JULIE ERICKSON:** Thank you, Chairperson Lathrop and members ofthe Judiciary Committee. My name is Julie Erickson and today I am representing Voices for Children in Nebraska in support of LB34. All children deserve society's protection to grow into healthy, productive adults. Even children who commit serious offenses are still children, and we should respond to youth behavior in a thoughtful and effective way that prEserves community safety, contributes to Nebraska's future prosperity, and gives both children and communities the protection they need. We support LB34 because it distinguishes youth offenses

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from other offenses, acknowledging that developmental factors simply make youth defendants different. Eliminating life without parole as a sentencing option for individuals up to age 21 and removing mandatory minimum penalties for certain felony offenses committed by youth up to age 21, will ensure that youth will receive access to age-appropriate, evidence based juvenile justice measures. Sentencing youth to life without the possibility of parole is inconsistent with empirical, evidence-based knowledge of child and adolescent development. Children and youth are not little adults. Youth have poorer impulse control, are more susceptible to peer pressure, and are incapable of weighing long-term consequences because their brains are still developing and hanging, even into their twenties. For these reasons, the Supreme Court has consistently ruled that youth are less culpable for their actions and more amenable to rehabilitation, and as a result, must be treated differently. The Supreme Court held in 2016 and reaffirmed in 2018 that life without parole sentences as imposed by mandatory statute on a minor are unconstitutional. Since then, however, twenty-two states and Washington D.C. have banned juvenile life without parole (JLWOP) sentences entirely as of January 20120, including: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Iowa, Kansas, Kentucky, Massachusetts, Nevada, New Jersey, North Dakota, Oregon, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming. Another six states, Maine, Minnesota, Missouri, New Mexico, New York, and Rhode Island do not have any individuals serving a life without parole sentence for a crime committed as a minor, though they have not banned the practice entirely. This widespread trend in banning and reducing JLVfOP sentences signals a crucial normative and practical shift towards evidence-base~, age-appropriate youth justice. LB34 follows in that vein, and I would note a particular strength of the bill is its application up to age 21, which is more aligned with the science of brain development than age 18 or 19 would be. Voices for Children also supports removing mandatory minimums for juveniles. LB34 would take a commonsense next step to these court decisions and follow Nebraska's recent path of legislative juvenile justice reform, by offering judges the discretion to sentence minors below statutory mandatory minimums. To be clear, judges would still have the discretion to sentence minors to lengthy sentences of incarceration if warranted. By allowing the opportunity for individualized consideration at sentencing, however, the bill comports with what we know about children's capacity for change. Our responsibility to protect children requires us to hold

them accountable in a way that gives them the opportunity for rehabilitation, redemption, and hope for a second chance. At Voices for Children, we believe LB34 is an important step in this work. I'd like to thank Senator Pansing Brooks for bringing it and would urge the committee to advance it.

LATHROP: Any questions? I don't see any. Thanks for coming in. Anyone else here to testify as a proponent? Anyone here in opposition?

ERIN TANGEMAN: Good afternoon, Chairman Lathrop and members of the committee. My name is Erin, E-r-i-n, Tangeman, T-a-n-g-e-m-a-n. I am an assistant attorney general in chief of the criminal appellate section of the Nebraska Attorney General's Office. I am here on behalf of our office in opposition to LB34. The Attorney General opposes any legislation that allows an offender under 21 to avoid incarceration for first-degree murder and other serious felony offenses. LB34 eliminates mandatory minimums for IC and ID felonies and drastically reduces the penalties for IA and IB felonies. While we oppose all of these changes, I will focus my remarks today on the changes to IA felonies. Currently, an offender under 18 who commits first-degree murder faces a sentence of 40 years to life in prison and must serve at least 20 years before becoming parole eligible. Under LB34 however, that sentencing range is reduced to zero to 80 years for anyone under 21. This eliminates not only life without the possibility of parole, but also life with parole. By setting the maximum penalty at 80 years, LB34 effectively mandates that a convicted murderer under 21 spend no more than 40 years in prison. Also, reducing the minimum penalty to zero allows a convicted murderer to be sentenced to probation or to be immediately parole eligible if sentenced to prison. Eliminating the possibility of life in prison for any defendant under 21 is a significant extension of the constitutional protections set forth in Miller v. Alabama and is simply not warranted. While it cannot be disputed that juveniles are different from adults and that rehabilitation is an important consideration in determining an appropriate sentence, punishment and public safety remain legitimate goals of the criminal justice system. This is especially true for offenses that do grave harm to another human being. The concerns expressed by the court in Miller explain why mandatory life imprisonment without parole is not appropriate for juveniles. But this does not mean that a juvenile should not be severely punished for committing a serious felony. In fact, the court itself in Miller stated that it was beyond question that Miller, who was 14, deserved

to be severely punished. By lumping together all offenders under 21 who commit serious felonies and giving them more lenient sentences based solely on their age, LB34 minimizes the nature of the crimes committed and the dangers some of these offenders pose to the public. The leniency given by LB34 ignores the victim and the victim's families, who lives have often been shattered by these offenses. Determining the appropriate punishment and the best outcome for public safety should be done on a case-by-case basis with life imprisonment an available option. Age should always be a factor to consider when fashioning a sentence, but never the sole factor. I am out of time. For those reasons, the Attorney General opposes LB34 and I will attempt to answer any questions you may have.

LATHROP: OK. Senator McKinney.

McKINNEY: Is it the-- I, I guess my first question is, how often does somebody that serves 20 or more years reoffend?

ERIN TANGEMAN: I do not know. I do not have any statistics on that.

McKINNEY: Do you-- would there be a way to track that or see?

ERIN TANGEMAN: Potentially, I don't know. I mean, based on what I do in my job, I don't-- we don't keep any type of numbers like that. I'm not certain to tell you the truth.

McKINNEY: Do you think if the Attorney General was in another committee advocating for more economic resources to reduce the poverty rate in our state, do you think that would help with public safety?

ERIN TANGEMAN: I'm not sure. Can you repeat that?

McKINNEY: So instead of coming to Judiciary, maybe you went to Appropriations, Revenue or Business and Labor--

ERIN TANGEMAN: Right.

McKINNEY: --to advocate for bills to reduce the poverty rate in districts like mine--

ERIN TANGEMAN: Yes.

McKINNEY: --that has the poverty-- high poverty rate.

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ERIN TANGEMAN: Right.

McKINNEY: Do you think that would increase public safety if we reduced the poverty rate across our state?

ERIN TANGEMAN: I don't know that I can speak to that directly. I'm assuming the answer is likely, yes. I don't know for certain. I don't have any numbers on that.

McKINNEY: Is it common practice for the AG's Office to go advocate other bills that would, that would, that would reduce, that would reduce the poverty rate?

ERIN TANGEMAN: I also have no knowledge of that. I am a criminal appellate attorney. This is my first time testifying and my first time diving into this legislation area that this committee and other committees practice.

McKINNEY: Because I guess my thing is when we, when we always-- people come in here all the time and talk about public safety, but they leave out the fact that a lot of these individuals that end up in these situations live in poverty, extreme poverty.

ERIN TANGEMAN: Yes.

McKINNEY: And no one ever wants to go across this building or across this state to address that issue.

ERIN TANGEMAN: Yes.

McKINNEY: It's always let's lock them up, they're horrible people, instead of preventing them from being in those situations. So I think it would be a better practice for the AG's Office to go advocate for more economic equity across our state to, to decrease the amount of individuals that might end up in these situations.

ERIN TANGEMAN: I understand.

McKINNEY: Thank you.

***MICHELLE WEBER:** Good afternoon Chairman Lathrop and members of the Judiciary Committee. I am Michelle Weber testifying on behalf of the Nebraska County Attorneys Association in opposition to LB34. LB34

removes any possibility of a mandatory minimum sentence being imposed for anyone 21 years of age or below for Class IC and ID felony convictions. Class IC felony convictions normally carry a mandatory minimum 5 year sentence. Class ID felony convictions normally carry a mandatory minimum 3-year sentence. The convictions for crimes which we are talking about here include: Narcotics Trafficking over 10 grams of Heroin, Meth, Cocaine, and Crack; Narcotics Trafficking with a Firearm; Narcotics Trafficking at or near a School; First Degree Assault on an Officer or Healthcare Provider; Discharging a Firearm at an Occupied Dwelling; Discharging a Firearm from a Motor Vehicle in a drive-by shooting scenario; Human and Sex Trafficking of a Minor; Possession of a Firearm by a Prohibited Person; Possession of Child Pornography with a prior offense; Certain Sexual Assault of a Child offenses with a prior offense; Use of a Weapon to Commit a Felony; and Conspiracy to commit any of these mentioned crimes. Mandatory Minimum sentences for these types of crimes rightly prohibits the opportunity for probation. Mandatory minimums are established only for the most severe crimes arnd create conformity and uniformity for sentences of such crimes. Many defendants, including first-time offenders and young adults, are given the opportunity for as much rehabilitation as possible before they are tried in adult court and face these types of penalties for committing serious crimes. Several of these defendants are there because juvenile court or other diversionary programs such as felony diversion, drug court, or young adult court did not rehabilitate the individual. This bill not only raises the age proposed in last year's bill from 19 to 21, but also uses age as the only factor to determine whether a mandatory minimum charge and sentence is appropriate. County attorneys consider multiple factors in deciding what crimes to charge and in determining a plea offer and fair sentencing outcomes for more and less culpable offenders. In addition to considering the facts and circumstances, prosecutors also consider the following factors in determining whether to charge any individual with a crime carrying an mandatory minimum: the offender's criminal history; whether the offender used violence in connection with the offense; whether the offender used a dangerous weapon in connection with the offense; whether the offender was a leader or organizer in committing the offense; whether the offender's actions resulted in serious injury or death; and whether the offender took responsibility for their actions and provided authorities with all the information and evidence at their disposal. Multiple factors are used in making a responsible determination whether a charge carrying a

mandatory minimum is appropriate. Throwing out all of these factors and making age the determining factor is irresponsible given the weight of the other factors. Our association is also concerned that LB34 creates an incentive for our youth to commit some of our most dangerous crimes. Criminal-minded adults are directed to use the youth in our community to commit some of our most dangerous crimes on their behalf because the youthful offender will automatically face less punishment under such a law. For all these reasons, the Nebraska County Attorneys Association requests you oppose LB34. Thank you.

LATHROP: I don't see any other questions. Thanks for being here today. Anyone else here to testify in opposition to LB34? Seeing none, Senator Pansing Brooks, you may close. We do have 33 letters, position letters, 31 are proponents, 2 are opponents. We also have written testimony received this morning, first from Michelle Weber with the County Attorneys Association in opposition, and Julie Erickson with Voices for Children as a proponent. Oh, is there any neutral testimony? OK, seeing none.

PANSING BROOKS: Thank you. Thank you, Senator Brandt. OK, first off, I want to thank Mr. Riley for coming down from Omaha. That was really kind of him and also all the speakers, Mr., Mr. Venzor, Mr. Tucker, Mr. Lopez, Mr. Houchin, Ms. Taylor. I, I know we all heard very heartrending testimony. I guess first I'd just say we all have to try to remember when we were 18 to 21 or try to remember if we know an 18 to 20 year old, you know, to 21 year old. Literally, we don't let anybody smoke until they're 21. Why is that? Well, partly because they make bad decisions so they're not going to take care of their health like we think they should. So, I mean, that's just a, a little tiny piece of how we recognize, even in law, that those under 21 are, are not sufficiently able to make serious decisions or make good decisions. These-- many of these kids fall through the cracks as Senator McKinney was talking about. I do not believe that people-- that somebody is irreparably corrupt. If we believe that they're irreparably corrupt, then we should just put them away forever. You know, the AG, Ms. Tangeman, said that, that, well, they're only going to be put away for 40 years. Well, if you add 40 to the 20 years that they have, that's-- they're 60. So hopefully, you know, they can move forward. She also said that she wants it determined on a case-by-case basis. But of course, the AG's Office and the County Attorney's Office don't believe in mandatory minimums. So we can't have those on a case-by-case basis. But so it's, it's all according to what fits,

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whatever we're talking about at the time. Young minds are irrational. The current law, as we heard, does not allow any redemption. And so we are, we are just going forward with our justice system and saying you're unredeemable, you should be put away forever and we should never see you again in, in our society. I don't believe in that. That's not my faith. It's not my belief in, in forgiveness and moving forward and recognizing that a child is very different than a 60 year old. Ms. Tangeman also said that the Class IA felony would be from zero to 80 years. That's not right. I'm going to now have to read it: Notwithstanding any other provision of law, the penalty for a person convicted of a Class IA felony for an offense committed when such a person was under the age of twenty-one years shall be a maximum sentence of not greater than 80 years' imprisonment and a minimum sentence of not greater than 40 years' imprisonment. So that-- there's no place that it says zero years. So I don't, I don't know what she's talking about on that. The other thing that I just wanted to say is that I, I appreciate the people who have been in, who came, and who have turned their lives around. It's possible. We all know that. We-- most of us know Mr. Shakur Abdullah, and these men that came forward. People are able to turn their lives around. There is hope. There is a life ahead for people. Otherwise, you must believe that that person should never have been born. I guess. I, I don't get it, but I just want to thank you all for this time. I, I hope we can move forward and pass this to General File. And thank you very much for the long afternoon.

LATHROP: OK. I don't see any questions. So that will close our hearing on LB34 and our hearings for today. Thanks, Senator.

PANSING BROOKS: Thank you.