

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 17, 2022

LATHROP: I see we got a lot of lawyers in the room, so you'll understand when I describe the light system in a moment. Before we get started, I got a little thing we read so that everybody understands our processes here. Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12 in Omaha, and I'm also the Chair of this committee. Committee hearings are an important part of the legislative process and provide an important opportunity for legislators to receive input from Nebraskans. If you plan to testify today, you'll find yellow testifier sheets on the table inside the doors. Fill out a testifier sheet only if you're actually testifying before the committee and please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. If you're not going to testify in person on a bill and would like to submit a position letter for the official record, all committees have a deadline of 12 noon central time, the last workday before the hearing. Please note there's been a change this year in position letters to be included in the official record must be submitted by way of the Legislature's website at nebraskalegislature.gov. This will be the only method for submission of letters for the record, other than to testify in person. Letters and comments submitted by way of email or hand delivered will no longer be included as part of the hearing record, although they are a viable option for communicating your views with an individual senator. Keep in mind you may submit a letter for the record or on the website or testify in person at the hearing, but not both. We begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally by anyone speaking 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 ten 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 you will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. 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 you may see senators using them to take notes or stay in contact with staff. I'd ask everyone to check their cell phone and make sure it's in the silent mode. A reminder that verbal outbursts or applause are not permitted in the hearing

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room. Finally, since we have gone paperless in the Judiciary Committee, senators will be using their laptops to pull up documents and follow along with bills. 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 bills to introduce in other committees or other hearings to attend to. And with that, I'd like members of the committee to introduce themselves, beginning with Senator Pansing Brooks.

PANSING BROOKS: Hi, I'm Patty Pansing Brooks, representing Legislative District 28, right here in the heart of Lincoln, and I'm Vice Chair of the Judiciary Committee.

MORFELD: Hello, everybody. My name is Adam Morfeld and I represent District 46.

LATHROP: That didn't take long. We do have a number of people that are introducing bills in other committees so we're down to three at the moment. But you'll see other people show up later on. Assisting the committee today are Laurie Vollertsen, our committee clerk; and Neal Erickson, one of our two legal counsel. Our pages today are Bobby Busk and Logan Brtek, both students at UNL. And with that, we'll begin today with LB1059 and Senator Flood. Senator Flood, welcome to the Judiciary Committee.

FLOOD: Thank you, Chairman Lathrop. Members of the committee, my name is Mike Flood, F-l-o-o-d, and I am the state senator for District 19, which is all of Madison and the southern half of Pierce County. I'm proud to introduce LB1059. This is a bill that I think is a candidate for consent calendar. This bill would generally exempt the state's Judicial Resources Commission from the requirements of the state's Open Meetings Act. Last session, following the COVID-19 pandemic, I offered and the Legislature passed LB83, providing a statutory framework for the use of virtual conferencing by Nebraska's public bodies. That bill amended and restructured language to ensure an opportunity for important public input, a visual-- a virtual conferencing setting, while also providing public bodies needed flexibility to manage their affairs in light of emergencies. With an eye toward widely available technologies, LB83 put in place a few provisions, however, that have raised concern regarding how the state's Judicial Resources Commission operates. This commission is a statutorily created body with a limited purpose. It is led by the judicial branch, comprised of lawyers, judges, and lay persons appointed by the Governor, and it exists to do two specific things. First, it meets once a year to review caseloads across the state and

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to issue recommendations about the distribution of court resources; and second, and most important for the purpose of this bill, it meets on an as-needed basis when a judge leaves the bench to determine whether a vacancy should be declared and a new appointment made. After making the finding that a vacancy exists, the commission's mission is served and the appointment process proceeds without any further input from its members. In light of the realization that some provisions of LB83 have an adverse effect on the Judicial Resources Commission's ability to function, and with respect for the limited scope and importance of the Commission's charge, this bill was crafted. The bill simply removes the restrictive provisions of the Opens Meeting [SIC] Act that have impacted the Commission's ability to conduct its business effectively and swiftly. Ensuring that vacancies on the bench are considered and the process for replacement begins quickly is vital to ensuring Nebraskans have access to a court. I would also like to note that I've been in communication with the Nebraska League of Municipalities throughout the drafting process for LB1059 and at this time would ask the-- one of the pages to distribute a letter stating that-- their support to the committee. There are just a few testifiers following me, including Nebraska's Supreme Court Justice Stephanie Stacy, who chairs the commission, who can explain the manner in which the commission operates and how it intends to operate moving forward if this bill is approved. With that, I would be happy to answer any questions that you have.

LATHROP: Did I understand your introduction? Last year you passed a bill, LB83, and it caused a problem that you're fixing today?

FLOOD: That's very accurate. Instead of amending LB83, what I'm proposing to do here is just exempting the judicial branch committee that we're talking about from having to comply with these rules and--

LATHROP: Does that put us back where we were before LB83 passed?

FLOOD: Right.

LATHROP: OK, got it. I don't see any other questions, Senator Flood. Are you going to stick around now?

FLOOD: I am going to go to Revenue Committee and I would ask to waive my closing.

LATHROP: Consider it waived.

FLOOD: May I be excused?

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LATHROP: You may be excused, Senator Flood. All right. We will take proponent testimony at this time. Welcome, Your Honor.

STEPHANIE STACY: This feels very odd.

LATHROP: Other side of the green light, that's what you're thinking, isn't it? [LAUGHTER]

STEPHANIE STACY: Yeah. Good afternoon.

LATHROP: Well, we've all been on this side of it. Welcome.

STEPHANIE STACY: Thank you. My name is Stephanie Stacy, S-t-e-p-h-a-n-i-e S-t-a-c-y. I am one of the justices on the Nebraska Supreme Court, but I'm here today in my capacity as the chair of the Judicial Resources Commission. I have been the chair since 2015 and I am here to support LB1059. I do think it returns things to the status quo, and I think it recognizes two important characteristics. One is that the Judicial Resources Commission is not a public policy-making commission. It is an advisory commission and the-- and as Senator Flood appropriately identified, we've got two statutory responsibilities. Both of them are very important. They're important to the continued and efficient functioning of the judicial branch, but they're limited. One is to essentially keep the status quo in the event of a judicial retirement or death or resignation or removal. In that instance, a public hearing is held. The members of the commission make a determination about whether that retirement or death or resignation creates a vacancy, in other words should this position be filled, because, as you know, the Legislature has identified in each judicial district the number of judicial officers that-- that will serve that district. If the vacancy is declared, maintains the status quo and then the judicial nominating commission process kicks into gear and that vacancy is filled. The other important role is the annual meeting, where the data on the resources available in Nebraska is gathered and presented to the commissioners and the commissioners make any recommendations to the Legislature that they think are necessary in terms of increasing or decreasing the number of judges in a district or tinkering with the judicial districts or the boundaries. That report comes to you before the end of the year in electronic form. And if you act on it and it recommends, you know, adding a judge or decreasing a judge, if you act on it, then-- we all know what happens if you don't act on it. The statutes tell the Resources Commission to sort of do it again, meet again, think about it again, and decide if that's still what you want to recommend. So there is no public policy decision, no rules, no changes to the statutes that the

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commission does, but its work is critically important and the makeup of the commission is important. It is weighted heavily toward the citizen input. There are more citizens on this commission than there are lawyers or judges. So the-- the bill, I think, puts it back where it was. We have had specific statutory-- uh-oh. I know what that means.

LATHROP: No, you're fine to go to red.

STEPHANIE STACY: We've had specific statutory authority to use video conferencing in our public hearings since the 1990s, and we use video conferencing in almost every meeting because we've got members, commission members from across the state. The-- you know, the judges can't leave the bench to drive to Lincoln for every hearing. I want to emphasize one last thing while my light's still yellow.

LATHROP: You're good.

STEPHANIE STACY: We are heading into a phase, if you will, where we anticipate a higher than normal number of judicial retirements. It's-- it's just cyclical and we're heading into that phase. We anticipate somewhere around 35 judicial retirements in the next five-year period. So the commission will meet often. And in particular, the requirement that you not use video conferencing for more than half your meetings is a problem. And because we have-- we only conduct our business in a public hearing-- the statutes require that-- all of our meetings are public hearings. They're-- they're-- it's baked into the system.

LATHROP: OK.

STEPHANIE STACY: So there is transparency. The minutes are posted publicly and everything we do is reported to the Legislature publicly. I think this is a good bill, and I'm here to answer any questions that you may have really about the practical impact or the process.

LATHROP: Oh, I got one for you, but we'll see if anybody else does before I do.

STEPHANIE STACY: All right.

LATHROP: I see none. So for the benefit of the committee and-- and to aid in the bill that I will introduce in a moment, when we see that-- from this report that we're talking about, the judicial--

STEPHANIE STACY: Are you holding up the weighted caseload report?

LATHROP: Yes.

STEPHANIE STACY: Thank you.

LATHROP: The weighted caseload report shows that Douglas County needs 20.04 judges and we currently have 17. Tell us how-- how that commission arrives at the conclusion that Douglas County needs 20 judges.

STEPHANIE STACY: The commission doesn't put the weighted caseload report together. The weighted caseload report is the statutory duty of the Administrative Office of the Courts.

LATHROP: OK.

STEPHANIE STACY: And so that's-- the courts gather the data, put the report together, and then the commission has several factors that we are required to consider, including the weighted caseload reports, including the testimony-- testimony that we hear at the hearing from judges, from court users, from attorneys in the district on the impact, the practical impact of-- of managing the docket with the number of judges that they have. And one of the decisions that-- well, we also consider the population of the judicial district, a whole list of things that you will find in the statute, and then make a recommendation on whether--

LATHROP: So maybe I'm asking you a question about the weighted caseload study.

STEPHANIE STACY: Perhaps.

LATHROP: When-- when they conclude or this report reports that Douglas County needs 20, how do they tell how many judges Douglas County needs--

STEPHANIE STACY: Oh--

LATHROP: --to come to a conclusion--

STEPHANIE STACY: I think I understand this time.

LATHROP: --that they need 20 versus the 17 they have there.

STEPHANIE STACY: The weighted caseload model is-- is a-- there's a little bit of magic involved. You need to be a social scientist. But the-- the model is recommended by the National Center for State

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Courts. We have had it for years. We recently improved it with the assistance of the National Center and did a brand-new time study. So it is based on a statistical weight that is given to each case type, so every divorce case, every abuse/neglect case, right, that-- that sort of thing. There's a particular weight given to it based on a judicial time study that is conducted where the judges keep track of their time just like an attorney in private practice does for a monthlong period, so that we take all that data from all across the state and determine the weights to be given to certain kinds of cases. Then, twice a year, the AOCPC pulls all the data from the JUSTICE system, counts the cases, and in the case of abuse/neglect cases counts the children, applies the weighting formula, and then determines how many judges are needed in that district because of their particular docket at that time.

LATHROP: And-- and arriving at the conclusion, as this report does, that they-- that Douglas County needs 20, that's not 20 and then they have time for vacations and they can leave the office at 3:30, right?

STEPHANIE STACY: [LAUGH] The-- the 20, if you look at the report-- and I'd be happy to get the report to you, the National Center's most recent update on the--

LATHROP: I'm hoping we don't have to go that deep into it.

STEPHANIE STACY: Well, it-- it's a fascinating read and it-- and, Senator, it does explain how the weights are put together and what they mean. The-- there is a rounding convention, a rounding rule, and one of the important things in that report is the-- the per-judge caseload. So there are a lot of factors other than just the raw number of-- of the weight in a particular district. I-- I didn't know you were going to have a question on that, and that's not really what I'm here to talk about.

LATHROP: No, it's not, but sometimes I do that. I'll ask un--
[LAUGHTER] questions that were--

STEPHANIE STACY: That-- that makes judges a little itchy. But I--

LATHROP: A lot of people feel that way when I start asking questions.

STEPHANIE STACY: I am a nerd about the weighted caseload study, Senator, and I'm happy to meet with you and talk with you about it and answer any questions you have at all.

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LATHROP: But what it would tell us is, in order for the judges to be fully staffed in Douglas County, we would need 20 judges.

STEPHANIE STACY: That is not what it means.

LATHROP: OK, well, then you better explain what it-- what it-- why it does--

STEPHANIE STACY: Well, I-- I'm not prepared to--

LATHROP: OK.

STEPHANIE STACY: I'm not prepared to meet--

LATHROP: OK.

STEPHANIE STACY: --to-- to talk with you about that today, but I will talk with-- I'm happy to explain what the weighted caseloads mean.

LATHROP: OK.

STEPHANIE STACY: Anything else?

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

STEPHANIE STACY: Absolutely. We'll-- and I'll answer that question.

LATHROP: OK. I appreciate that.

TIM HRUZA: Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Tim Hruza, last name spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association in support of LB1059. I want to thank Senator Flood for introducing this legislation, and I don't have a ton to add beyond what Senator Flood gave during his opening or what Justice Stacy testified about, except to tell you a couple of things about the bar's interest, right, in ensuring that we have-- that the Judicial Resources Commission acts quickly and swiftly and has the ability to do so. It is critical that we move and work toward replacing judges as vacancies occur on the courts. I have appeared before you a number of times. I've watched this committee for several years and you know very well how important it is that our courts continue to operate and that folks who appear in our courts have an opportunity to have their case heard and justice be served. It is for that reason that the Bar Association recognizes what the Judicial Resources Commission needs to do and the limited scope in which they operate. They are the first step in making an appointment

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to the bench. They declare-- when a vacancy occurs, they make the declaration, they meet, and they consider whether or not that-- the judge that's retiring, being replaced, should be-- whether that should be filled, and they make a recommendation about where that location should be. The Bar Association is very much involved and very much follows that process, so we have an internal committee that reviews that-- it's-- it's comprised of lawyers-- that also makes a recommendation to the Resources Commission for their consideration on a routine basis. Once the Judicial Resources Commission makes the declaration that a vacancy occurs, then we move into the process of actually appointing that judgeship, so it goes to the judicial nominating commission's process. Those are comprised of local attorneys that-- that meet, interview candidates for the judgeship, and then make a recommendation to the Governor for his or her consideration for appointment. It is important that the Judicial Resources Commission has the flexibility to meet. This bill addresses some of the things that have hampered or may hamper those, which-- which I think were entirely unintentional with the passage of LB83 last year. With that, I-- I thank you for your consideration of the bill, I ask for your support for it, and I agree with Senator Flood and I am hopeful that this is a consent calendar-appropriate piece of legislation. I'm happy to answer any questions you might have. Thank you for your time.

LATHROP: OK. I don't see any questions. Thanks for being here, Mr. Hruza.

TIM HRUZA: Thank you.

LATHROP: Anyone else here to testify as a proponent on LB1059? Anyone here in opposition? Anyone here in the neutral capacity?

JOEY LITWINOWICZ: I'm in opposition.

LATHROP: Pardon me?

JOEY LITWINOWICZ: I'm in opposition.

PANSING BROOKS: He's in opposition.

LATHROP: Yeah, I heard him.

PANSING BROOKS: OK. So he's going to come up and--

LATHROP: Right. Yeah, you're neutral?

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BROCK WURL: Neutral. Yes, sir.

LATHROP: OK, we're going to hear from--

BROCK WURL: Yeah.

LATHROP: --opposition first. Thank you.

BROCK WURL: I'll hang out over here.

JOEY LITWINOWICZ: [INAUDIBLE] really, plus the large front and back wheels make it jerky.

LATHROP: Good afternoon and welcome.

JOEY LITWINOWICZ: Good afternoon, Chairman Lathrop, members of the committee. My name Joey Litwinowicz and--

LATHROP: Can you speak up just a little bit for me?

JOEY LITWINOWICZ: I'm coming on in. Just-- I'm going to open the door. My name-- my name is Joey Litwinowicz, J-o-e-y L-i-t-w-i-n-o-w-i-c-z. And I'm-- I'm starting up-- just a brief second, because I-- I give a little [INAUDIBLE] for disabled people. I can't-- if I were to have a job, I could get a ride every day, but I can't be a mentor. I just-- that's it. I called DHH, got shut down, and I'm going to get to this. The reason why I oppose this bill, and it kind of goes on-- it goes hand in hand what's going on now. It seems there's a disability access problem, even though this information is available. What I don't understand is why we can't just broadcast it. If-- if everything-- and so like to give you an example, I spoke with Professor Hilke-- Speaker Hilkemann [SIC] about giving access for disabled people on the floor like was traditionally done. And so, you know, two weeks ago, he said he would think about it for two weeks, and-- and so he's putting it off. I said, come on. I go, talk with-- I said, come on, man, you're talking to me. If people can sit up there-- so this is analogous. If people can sit without masks, bunches of them in the bleacher seats, why can't I sit in the back like was custom, like I did before? And so this is-- this is exactly the same. And I'm still waiting, I actually came here today to talk the Speaker Hilkemann [SIC] and I-- I thought, well, I'd stop here, too, because it's a big deal. And so, you know, when you have this happening, you just-- it's distressing to me. And like, for example, I mean-- yeah, I-- maybe I could-- should call Danielle Conrad, you know, who-- they could talk to each other because this is-- anyway, so that's the reason, and that's why I decided to come here. And I've got to go back up to the office, so I was here

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anyway. But it's important to me and-- just like everything is, seems like it's closing in. And thank you very much. And I'm going to-- yeah.

LATHROP: Before you get away, can I ask you a couple questions?

JOEY LITWINOWICZ: Yes.

LATHROP: So you've chosen an opportunity to come up in opposition, and it sounds like your concern is access to the floor of the Legislature.

JOEY LITWINOWICZ: It's both. No, I'm sorry. I'm con-- I think I was confusing the issue. It just seems like everything, like it-- it seem-- lately we-- I was comparing it because I'm not being given fair access because I'm disabled. I can't, you know-- it would be-- cost way too much money to make it so I could sit up there and-- and so-- and there suff-- you know, really good explanation given. And I'd like a really good explanation of why we can't keep this for disability access because things are-- disabled people have a problem in various ways of getting information, even if it's publicized, even if it's made public.

LATHROP: So you-- you you're not just here to talk about the con-- and not-- I hate to use the term "just," but I want to make sure I understand why you're here, because when you're here in opposition, this thing won't be on the consent calendar. OK? So if you're-- if you're using this as an opportunity to talk about access to the floor--

JOEY LITWINOWICZ: I'm not.

LATHROP: OK.

JOEY LITWINOWICZ: OK.

LATHROP: OK, I just want to be really clear. What you are is in opposition to the bill.

JOEY LITWINOWICZ: Yes.

LATHROP: And you have a problem getting onto the floor of the Legislature.

JOEY LITWINOWICZ: Well, it's-- it's-- they're-- they're hand in hand. It just seems like, from my perspective, this is sort of happening.

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LATHROP: OK.

JOEY LITWINOWICZ: I look at this bill because I look at all of certain people's bills, right? And so I knew-- I knew about it. I came here today and, you know, my-- when I-- I wasn't necessarily-- I was going to just sit here because, you know, I have to wait to go back. And I say, well, no, it's-- it matters that much, and I'm not just complaining about the floor, but I am. But it's a perfect example. I think it illustrates perfectly. You know, I just don't get it. Why can't it be done, you know?

LATHROP: OK.

JOEY LITWINOWICZ: I'm sorry. I don't mean to--

LATHROP: No, no, no. I just wanted to clarify because it's-- you coming up has some consequence on the-- the direction or the path this bill--

JOEY LITWINOWICZ: OK.

LATHROP: --might or might not take, and I just wanted to be clear that you-- you are an opponent.

JOEY LITWINOWICZ: Yeah.

LATHROP: We appreciate you being here today.

JOEY LITWINOWICZ: And that's the reason, disability access. OK.

LATHROP: OK. We appreciate your being here today.

JOEY LITWINOWICZ: Thank you, Senator.

LATHROP: Thanks for sharing your views.

JOEY LITWINOWICZ: All right, and thanks a lot. I appreciate it. And I'm--

LATHROP: You're very welcome.

JOEY LITWINOWICZ: --I'm really serious. I don't just come up here.

LATHROP: Oh, and I don't mean to suggest I don't think you're serious--

JOEY LITWINOWICZ: Right.

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LATHROP: --not at all.

JOEY LITWINOWICZ: OK, because it--

LATHROP: All right. Thanks for being here today.

JOEY LITWINOWICZ: Thank you, Senator Lathrop and committee members.

LATHROP: OK. We will take-- is there anyone else here that's-- wishes to testify in opposition to LB1059? Seeing none, we will take neutral testimony. Good afternoon, welcome.

BROCK WURL: Thank you. Chairman Lathrop, members of the committee, my name is Brock Wurl, B-r-o-c-k W-u-r-l. I'm here on behalf of the Nebraska Association of Trial Attorneys, and we have no objection to the-- the purpose of this bill, to allow the judicial committee to-- to meet electronically by Zoom. We-- we have no issue with that. Our only concerns were that notice to the public still be preserved and then also public access to the meetings. And I-- I don't think those were probably issues that Senator Flood is trying to-- to run afoul of or anything or change. Those were our only two concerns, just wanted to be on record for that. And with that, I'd take any questions if anybody had any.

LATHROP: As-- as this bill is drafted, do you have a problem with it? You've identified two issues. Are they issues in this bill or you're just putting us on notice not to--

BROCK WURL: More put--

LATHROP: --go into another area?

BROCK WURL: More putting it on notice--

LATHROP: OK.

BROCK WURL: --that-- that our concern would be public access as well as notice requirements. So--so we're not in opposition to the bill itself--

LATHROP: And you don't need to see it amended?

BROCK WURL: I don't-- I don't know as there was any amendments that we're proposing to this--

LATHROP: OK. OK.

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BROCK WURL: --just on those two issues would-- we bring it forth.

LATHROP: Very good. Appreciate hearing from you. I don't see any questions today.

BROCK WURL: Thanks.

LATHROP: Thanks for being here. Any other neutral testimony? Good afternoon.

SPIKE EICKHOLT: Good afternoon, members of the committee. My name is Spike Eickholt; first name is spelled S-p-i-k-e; last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in a neutral capacity on LB1059, and I hope that this is seen as truly neutral. When we saw the bill be introduced, or when I saw it was introduced, we reviewed it and it did cause us some concern because we are always reluctant or cautious when we see a public body being eliminated from the Open Meetings Act, and that's seemingly, at first glance, what this bill did. And the reason I want to say this on the record is because, and the reason we're not opposed to this, is because there are separate statutes that Justice Stacy alluded to that provides what we would consider as akin to the Open Meetings Act as far as providing public notice. For the record, Section 24-1204 provides for a public hearing to be declared and held by the Judicial Resource Commission, and that was the existing law that provides for virtual conferencing for those public meetings. That's separate from the Open Meetings Act and Chapter 84. And similarly, Section 24-1206 is a sta-- another statute that directs the Judicial Resource Commission to write an annual report to the Legislature that you heard Justice Stacy reference before. So those statutes stand separate from whatever this bill deletes from the Open Meetings Act, so that would presumably still have, as the last testifier indicated, still a public hearing process that has some sort of meaningful notice and a record be kept. The reason I want-- that we want to state something on the record is, respectfully to Justice Stacy, the inconvenience or the difficulty for a public body to comply with the Open Meetings Act should not be considered, in our opinion, a reason necessarily to delete that agency from the Public [SIC] Meetings Act. Similarly, the self-described description of that public body that what they do is not necessarily a public interest should not be the measure either. So with that, I think if this bill does pass, deleting the Judicial Resource Commission from the Open Meetings Act, there are still separate statutes that relate to the Judicial Resource Commission that would still provide that that commission meet publicly and keep public minutes and a public record of what they do.

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LATHROP: OK. I don't see any questions. I-- I did notice that you're speaking very carefully as you disagree with a member of the Supreme Court.

SPIKE EICKHOLT: Thank you.

LATHROP: Yeah, [LAUGH] thanks for being here. Have a good weekend. Anyone else here in the neutral capacity? Seeing none, we have no position letters, so that-- Senator Flood has waived his close on LB1059. That will bring us to Senator Erdman and LB1124.

ERDMAN: Thank you.

LATHROP: Good afternoon. Welcome.

ERDMAN: Thank you, Senator Lathrop. My first appearance here in the Judiciary Committee. I am Steve Erdman, S-t-e-v-e E-r-d-m-a-n. I represent nine counties in the Panhandle. I, I come to you today with LB1124. LB1124 is like a lot of bills I introduced came from a constituent. Because of the redistricting this last year, the city of Alliance became part of my district. I had Box Butte County except for Alliance. Nathan Jagggers brought me this information as we were discussing the inheritance tax bill, and he had a suggestion that we needed to fix the affidavits for probate of personal property. It's currently at \$50,000. And because we live so close to Wyoming, we kind of relate to what Wyoming does. And you'll see in the position letter or the testimony letter that he sent, he being further from Lincoln than I, there's only two people I know, him and Stinner, live further than I do. And so he sent, he sent a letter for you to read for the information there. But what we're trying to do, what the goal of the bill is to change the personal property limitation from the current \$50,000 and move it up to \$200,000, which is currently what Wyoming does. You will know that-- notice that, that was last-- that was first-time adjusted from \$10,000 to \$25,000 in, in 1996. And then again in 2009, they adjusted it from \$25,000 to \$50,000. So it's been a while since they adjusted the, the amount. And as you may already realize, I'm here as a farmer speaking about legal things. If you were about Game and Parks or branding, I could give you an answer. So, so what I'm trying to do today is, is make it easier for a family's recipients, heirs of estates who have 200-- up to \$200,000 not to have to go through probate. A friend of mine was in Omaha this weekend and he said a Grand Cherokee fully loaded is \$114,000. So it doesn't take a whole lot of property to exceed \$50,000. And so I think it's, I think it's an opportunity for us to fix those things that, that we can fix. And I, I don't know that there will be opposition, there could

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be. Following me, will be a gentleman that you may recognize. He looked very similar to someone you know well, and he is an attorney. And so he'll understand this issue far better than I do. But it made sense. And, and when things come from my constituents that seem to make sense to me, I think it's an opportunity for me to try to help them. So with that, I'll leave that. If there's any questions I can answer, I'll try. And if I can't answer them, I know Rick can.

LATHROP: OK. Well, we have no questions for you, it doesn't look like.

ERDMAN: Thank you.

LATHROP: Thanks, Senator Erdman. We will take proponent testimony at this time. Good afternoon and welcome.

RICHARD CLEMENTS: Good afternoon, Senator Lathrop. I'm Richard Clements, R-i-c-h-a-r-d, last name C-l-e-m-e-n-t-s. I'm one minute younger than my older brother, Robert, who's a senator, and I'm here in favor of LB1124. The increase of the personal property transferred by affidavit to, to \$200,000 makes sense with assets continuing to climb in, in value. Many, many estate plans include trusts or beneficiary designations that would also, that also allow transfers of property without probate. But persons with smaller estates typically don't, don't engage attorneys to take advantage of some of the estate planning techniques that can avoid probate. And therefore, those, those individuals with \$52,000 worth of personal property assets are required then to go through a probate process, which is expensive relative to the size of the estate. I had-- I'm also a president of the bank in Elmwood, Nebraska, and I had a former, former employee who had transferred her house to her children and her name as joint tenants thinking she is going to avoid probate for them. Unfortunately, her bank accounts increased in, in value of just above \$50,000, and therefore her estate required a probate process. In my view, unnecessarily. She had not thought to put beneficiaries designation on those assets. One other, one other concern I have is persons that use joint tenancy or beneficiary designations in order to try, to try to avoid probate sometimes you have unintended consequences of a child predeceasing them. And then if there are three children, one child diseases, the joint tenancy of a method of avoiding probate fails to allow them to pass assets as they would like to do so in a will. So if there are any questions, I'd be glad to answer them.

LATHROP: I thought you-- I thought-- I saw you sitting over there, I thought you were your brother. Striking resemblance, and now I

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understand you're a minute apart, so it is a familiar face. I do have a question. Do you practice law too?

RICHARD CLEMENTS: Yes, sir. I have since 1976.

LATHROP: OK. So is that number, we, we use \$50,000 now because there, there are exempt assets in an estate, right? So if we keep it small enough, they're probably going to be exempt anyway and, and making the affidavit process make sense.

RICHARD CLEMENTS: The \$50,000 amount was increased, as Senator Erdman said, simply to allow smaller, smaller estates that have not done estate planning and simply have an asset owned only by the decedent and not by a beneficiary to pass by affidavit process.

LATHROP: OK. And I want to ask a question about going to 200.

RICHARD CLEMENTS: Yeah.

LATHROP: So when we-- if we took this all the way up to 200, that's four times higher than it is right now. And are we now allowing assets to pass by affidavit where there might be an actual claim that somebody could actually make against the assets of the decedent? For example, funeral expenses, expenses of last illness and the like.

RICHARD CLEMENTS: That, that is true. The, the claim process allows a, a claimant to file a Demand for Notice in the county court if there were a probate process instituted. The, the issue of, of claims in my practice has not been a problem where there are positive assets of 40-some thousand dollars in existence. And I guess I haven't, I really haven't taken time to try to address--

LATHROP: I just wonder, those would be exempt anyway wouldn't they? Doesn't a certain amount of the, of the assets passed to family without respect to claims?

RICHARD CLEMENTS: Somewhat, yeah, they're-- the, the homestead exemption and family allowance is not-- do not add up to the \$50,000 amount.

LATHROP: OK, well, we'll see if somebody's got a problem with that. I'm not a probate lawyer. I'll be the first one to admit.

GEIST: I, I--

LATHROP: Do you have a question?

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GEIST: You know, I, I was--

LATHROP: Yeah, Senator Geist.

GEIST: --wondering some of the same things you were, but probably less lawyerly mentality because I'm not. But why the, why the fourfold increase? Why not \$100,000?

RICHARD CLEMENTS: I don't know the answer to that,--

GEIST: OK.

RICHARD CLEMENTS: --Senator Erdman would have to answer that. But the, the, I guess, one thing that comes to my mind is an individual with \$200,000 in a bank account with no, with no beneficiary designation, then would it be able to pass this without-- with just an affidavit? If they just had one beneficiary of joint tenant, the joint tenant can walk in the day after death and cash that account with, with no requirement of paying claims either. So really, the claim issue doesn't really change with this affidavit process versus a joint tenancy process. But the reason for the higher valuation probably is more, more related to vehicles. The Department of Rev-- the Motor Vehicle Department has a form that is in the same form of affidavit for transfer of vehicles, which are personal property. And if you have three vehicles worth \$60,000, then you have to go through a probate process. And I think Senator Erdman mentioned the, the high cost of, of vehicles these days and trucks would accommodate the transfer of some higher value vehicles and other items that are often overlooked by estate planner, people doing estate planning.

GEIST: That would make sense. OK, thank you.

LATHROP: I see no other questions. Thanks for being here, Mr. Clements. Any other proponents of LB1124? Anyone here in opposition to this legislation? Seeing none, anyone here in the neutral capacity? Seeing none, Senator Erdman, you may close. We have one letter and that's a proponent letter, a position letter from an individual in Oshkosh.

ERDMAN: OK, thank you. Thank you for allowing us this opportunity to be here. Senator Geist, that's exactly right. And as I mentioned in my opening, Wyoming is at \$200,000. And if you've bought a new vehicle recently, you understand it often doesn't take much to get past \$50,000. So that is the opportunity there. It's been a long time since we adjusted it, we adjusted it in '96. From '96 to 2009, was \$25,000. And then in 2009, they adjusted it from 10 to 25. And so consequently,

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with inflation being as high as it's ever been and the price of things going up, it doesn't take much to reach that. So that was, that was the thought process. So I appreciate that. Appreciate your time. And I told you I had somebody that looked a lot like somebody you knew.

LATHROP: You did.

ERDMAN: Senator Clements said he's a little older, but I'm not sure. But anyway, I might just say this in closing, looks like consent calendar to me.

LATHROP: Oh, maybe.

ERDMAN: And it's kind of amusing because I've been here six years. I've had one consent calendar bill and this year I have three. So either I'm making a difference in some way or whatever, maybe got better bills, but.

LATHROP: You're having more luck than I am.

PANSING BROOKS: Wow.

ERDMAN: Appreciate it.

LATHROP: All right, thanks,--

ERDMAN: Thanks, everybody.

LATHROP: --Senator Erdman.

ERDMAN: Thank you.

LATHROP: Have a safe trip back. That'll close our hearing on LB1124 and bring us to LB1132 and Senator Morfeld.

MORFELD: Good afternoon, 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 Fighting 46th Legislative District in northeast Lincoln, here today to introduce LB1132, a bill that would extend a transferor's insurance policy to cover the property transferred by a transfer on death deed for a period of 60 days after the death of a transferor. After the 60-day period, the insurance policy would no longer cover the property. Under current Nebraska law, our transfer on death deed provisions do not contain a provision relating to insurance coverage of real property after the death of the transferor. As a result, after the death of the

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transferor, a beneficiary is left without protection in the event of damage or loss of the property occurring. This can lead to a significant loss in the event that the damages occur before the beneficiary has the opportunity to obtain insurance. Indeed, this very problem was highlighted in a recent court case from the Eighth Circuit Court of Appeals in Strobe-Robinson v. State Farm. In that case, the court considered a situation in which property transferred by a transfer on death deed was destroyed shortly after the death of the transferor. The proposed 60-day coverage window in LB1132 would allow the beneficiary with a reasonable window of protection against loss in the wake of a death of the transferor. LB1132 is not meant to take advantage of the insurers, but rather is intended to extend the contracted and paid-for coverage on a policy until a beneficiary can make proper arrangements. I understand that there are insurance companies who have raised some concerns, and I'm happy to work with them to amend the bill moving forward. However, there is a clear gap in coverage that has resulted in bad outcomes for some beneficiaries. I encourage the committee to advance LB1132 to General File. I'd be happy to answer any questions. There's also an attorney who practices in this area following me to testify that can maybe answer some of your more specific questions. And with that, I think this might be my last opening in Judiciary Committee.

LATHROP: Forever.

MORFELD: Forever.

LATHROP: All right. Well, I guess we're not going to ask you any questions.

MORFELD: I was ready for the tough ones.

LATHROP: Thanks, Senator Morfeld. We will take proponent testimony at this time. Welcome back. It's good to see you.

WILLIAM LINDSAY: Senator, it's good to be back. I'm William Lindsay, W-i-l-l-i-a-m L-i-n-d-s-a-y, a practicing attorney in Omaha. Estate planning and administration is a large part of what I do. I spoke on this topic at the State Bar meeting last October, and a number of attorneys were a little scared when they walked out. What happens with insurance is there's really two components to a homeowner's insurance policy. There's the real estate that's insured and there is the named insured. Somebody has to be an insured. Under the case out of Minnesota that Senator Morfeld talked about, once that person died, there was no longer somebody on the contract who was an insured. And

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an, an interesting part about the case was there was personal property that was covered because it was owned by the estate. So if we had an estate, we could have the same person owning the property. It's just been through an estate, the insurance coverage would continue. In this-- in the case in Minnesota, the person had a disgruntled ex-spouse who six days after death torched the house. So if you have a choice, I guess, it's don't have a disgruntled ex-spouse.

LATHROP: Can't always control that.

WILLIAM LINDSAY: I, I understand. What a transfer on death deed is like, is like an insurance-- life insurance policy. Upon death, the estate does not own the property. The person named as the beneficiary in the transfer on death deed immediately owns the property. And that's the source of the problem is the estate doesn't own it, so the estate's insurance policy would not cover it. So what this is designed to do is for 60 days, at most, after death the insurance would continue. That would be subject to all the obligations. So for example, if you have somebody paying a monthly premium on the policy, you have to continue paying the monthly premiums. You would have-- be subject to all the normal exclusions on the policy, such as you can't damage the property yourself and claim coverage. So the goal here is basically to give some time to the people to get coverage. Right now, my advice to clients when they call me up and says mom or dad have died, used to be take care of what you need to now and talk to me next week, now it's call the insurance agent, get coverage on the house bound, then take care of what you need to and call me next week. Thank you. If you have any questions, I'd be happy to try to answer.

LATHROP: That seems pretty straightforward and I get it.

WILLIAM LINDSAY: Thanks.

LATHROP: Appreciate you being here, Mr. Lindsay. It's always a pleasure to see you.

WILLIAM LINDSAY: Good to see you again.

LATHROP: Any other proponents of LB1132? Seeing none, we will take opponent testimony. Is there anyone here to testify in opposition?

COLEEN NIELSEN: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Coleen Nielsen. That is spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I represent the Nebraska Insurance Information Service. The Nebraska Insurance Information Service is a local trade organization of property casualty insurers doing business

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in Nebraska. I'm also testifying on behalf of the Nebraska Insurance Federation, and I'm testifying in opposition to LB1132. LB1132 tries to address an interesting situation in estate planning. It comes because, it comes because of a case in the Eighth Circuit Court of Appeals entitled Strobe-Robinson v. State Farm Fire and Casualty. In this case, Strobe executed a transfer on death deed to convey property to his niece. The transfer on death deed was recorded on August 11. Strobe died on August 14 and six days later Strobe's ex-wife intentionally set the house on fire, damaging the home and personal property. State Farm denied the claim because David Strobe as named insured had no insurable interest in the home at the time of the fire. Court noted that the insurance contract is one that is personal to the insured and the insurance company. There was no contract between the beneficiary and the company and the policy did not run with the property when it was conveyed. The Nebraska Bar Association committee on real estate, probate, and trust is seeking to address this issue in LB1132. The bill essentially does two things: it provides that the beneficiary becomes the named insured for a period of 60 days following the death of the transferor, and it provides a warning to persons using a transfer on death deed, there'd be no insurance after 60 days if arrangements for coverage are not made. Transfer on death deeds permit the direct transfer of real estate to a designated beneficiary upon the death of the owner. In this way, probate is avoided. The owner can change or revoke the transfer on death at any time. The main reason for the opposition is that the insurance company is forced to insure a risk that they have not been given the opportunity to underwrite or [INAUDIBLE], the beneficiary may represent an unacceptable risk to the insurance company, and in addition, the beneficiary is under no obligation to accept the transfer or the obligations that may be attached to it. The bill forces a personal contract between the insurance company and the beneficiary. One way the estate planner could fix this problem now, even without legislation, is to work with the insurance agent in executing a transfer on death deed and add the beneficiary to the policy as an additional insured. It's my understanding that the situation set out in Strobe is rare. Consequently, we would like to continue to work with the committee on real estate, probate, and trust during the interim and thoroughly let the situation come to a resolution. Thank you for your consideration.

LATHROP: How is the risk change in this circumstance if that guy had been in the house or still owned it before his ex-wife set fire to it, State Farm would have been on the hook?

COLEEN NIELSEN: If he was still alive?

LATHROP: If he were still alive--

COLEEN NIELSEN: Yes.

LATHROP: --and not dead, he's the named insured, State Farm would have been on the line for the arson committed by his ex-wife?

COLEEN NIELSEN: Yes.

LATHROP: Right. They would have had to pay. How does their risk change when someone else becomes by virtue of this transfer the owner of the property--

COLEEN NIELSEN: When the person--

LATHROP: --during a, during the short window we're talking about?

COLEEN NIELSEN: --when the person dies, there's no contract any, any longer as a result of transfer on death.

LATHROP: But what we're essentially doing legislatively is saying the person who is the transferee becomes the name insured for 60 days.

COLEEN NIELSEN: Right, if we know who that person is.

LATHROP: How does that, how does that affect their risk?

COLEEN NIELSEN: Because they do not know-- because the name insured has certain obligations under the policy to protect the property during the time, the rate could be, could be different, they can move into the property, there could be all sorts of problems with the particular person.

LATHROP: If they--

COLEEN NIELSEN: But the insurance company doesn't know who they're insuring at all or where that person is.

LATHROP: Has any other-- how, how old is this Opinion?

COLEEN NIELSEN: I think-- I, I meant to, to look that up, but I don't think it's very old. I mean, maybe a year or two old, but I'll tell you that the transfer on death statute's been around since 2012, I think.

LATHROP: OK. Has any other state dealt with this?

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COLEEN NIELSEN: No, not at all. It's a-- it really-- it happened in Minnesota. I, I couldn't find any legislation on it. I haven't seen any legislation or-- and, and I looked for statutes in other states and I didn't find any.

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

COLEEN NIELSEN: All right.

LATHROP: Thank you.

COLEEN NIELSEN: Thanks.

LATHROP: Anyone else here to testify in opposition?

KORBY GILBERTSON: Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as registered lobbyist on behalf of the American Property Casualty Insurance Association. I'm not going to repeat everything that Ms. Nielsen said, but just to say that the concern is that the forcing of an insurance company to cover someone that they have not had a chance to evaluate and to say whether or not to make that contract that was mentioned in the, in the court case. And that is the reason for our opposition. We are happy to talk, to work with the Bar Association to see if we could come to some type of agreement. But as Ms. Nielsen said, one easy way to do this would be to have the beneficiary named as a named insured on the policy. And apparently they don't want to do that because they don't want anybody else to know that that person's going to get the property.

LATHROP: Or they don't want to pay the extra premium for having two named insureds.

KORBY GILBERTSON: Possibly.

LATHROP: Possibly.

KORBY GILBERTSON: But they make the choice to do that transfer on death deed.

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

KORBY GILBERTSON: OK. Thank you.

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LATHROP: Any other opposition? Seeing none, anyone here in a neutral capacity? Seeing none, Senator Morfeld, you may close. We do have one letter of support from Robert Hallstrom.

MORFELD: Oh, good. Thank you.

LATHROP: You got the bankers with you.

MORFELD: Yeah, I got the bankers with me. That's great. Thank you, thank you, Chairman Lathrop and also a real pleasure to have Mr. Lindsay testify in support of my legislation. I was actually a legal clerk under him for a while and I learned a lot. So in any case, I think that, you know, to the, to the concerns of the insurance companies, I think that the concern that I have with their nonlegislative route of just adding a beneficiary is I was thinking as I was sitting in my chair over there as a hypothetical of what if the other beneficiary, named beneficiary on the insurance is another spouse and say there's a car accident or something like that, and both are actually killed in that accident. And so you could plan ahead and add somebody else on your insurance that you think would be the beneficiary or the person that needs to be named on there. And if both of you die in some type of accident and something happens to your property, you still need a legislative or statutory fix, so it leads to an absurd result, in my view. And it's, it's bad public policy, and it's unjust. And so I, I would hope that we can come up with a statutory fix to this and I'm happy to work with those that are opposed to do just that.

LATHROP: OK, we'll look forward to your solution. Thanks, Senator Morfeld.

MORFELD: Thank you.

LATHROP: That'll close our hearing on LB1132.

PANSING BROOKS: Welcome to your committee, Chairman Lathrop. And now we will open the hearing on LB922.

LATHROP: Thank you, Vice Chair Pansing Brooks. My name is Steve Lathrop, L-a-t-h-r-o-p. I am the state senator from Legislative District 12 that includes Ralston and parts of southwest Omaha. I'm here today to introduce LB922, and you heard Justice Stacy go through sort of the process that the courts go through or this process we, we have in statute for determining whether our judges are-- whether we have adequate judicial resources, and the weighted caseload report is the beginning of that process. As Justice Stacy indicated, there's

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more to the process than that, but I'm here today to, to introduce a bill that would add a judicial or, or a district court judge in Douglas County, and here's why I'm doing it. When the weighted caseload report was done last, it demonstrated that in Douglas County we need 20 district court judges. Now they do a study, the study shows how much work they have to do. Judge-- Justice Stacy kind of went through that in her answer to my questions earlier. But what it, what it means is that in Douglas County, which is a growing county, they have a great deal of divorce cases. They have criminal cases, they have all, all manner of cases. Up in Douglas County, we have 17 judges on the bench up there. And actually the weighted caseload study shows that we need 20. I recently put a bill in a couple of years ago to add a district court judge. That was added, I, I think in 2019 or '20. July '21, we just added our, our 17th judge. We're still three short in Douglas County and we hear in this committee more recently that we're interested in seeing more problem-solving courts in Douglas County, for example. And we're running into judicial resource issues. As I look at the weighted caseload report that I have in front of me, all of the districts are within a half a judge of being fully staffed. I was going to say manned, but I don't want to say that. We are three short in Douglas County, this bill would add one more judge. We, we really need it. These men and women who serve in Douglas County work hard. We, as the political branch of government, it's our responsibility to make sure the judiciary, which is a nonpolitical branch, has the resources it needs to administer justice in, in the courts across the state in a timely manner. And this bill would make an improvement, although still not get us to fully staffed in Douglas County. With that, I would take any questions and encourage your support of LB922.

PANSING BROOKS: Thank you for bringing LB922, Senator Lathrop. Any questions? I don't see any.

LATHROP: All right.

PANSING BROOKS: You'll be here to close, I think.

LATHROP: I will.

PANSING BROOKS: OK. OK, proponents for LB922. Welcome, Mr. Steel.

COREY STEEL: Thank you, Senator Pansing Brooks, members of the Judiciary Committee. My name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I'm the State Court Administrator for the state of Nebraska. I'm here in support of an additional judgeship for the district court in the

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fourth judicial district in Douglas County, Nebraska. As Senator Lathrop alluded to currently in our December 31, 2021 weighted caseload report, the judicial district in Omaha, Douglas County, is slated for 20.43 judges. Currently, they have 17 district court judges. In that report, it also breaks down their type of workload. As far as case type, which is criminal and then Class I felonies, civil domestic relations, appeals, administrative appeals, protection orders, and then their problem-solving court caseload. It does justify the need for an additional judgeship. I have handed out to you the Nebraska judicial workload assessment that was alluded to in earlier testimony for your light reading pleasure, which goes through how we went about calculating our figures for judicial workload. This report was finalized in October of 2020. This was about a year process that we went through on coming up with calculations for this particular weight per case per judge. This process has been in effect for several years in Nebraska, and we've updated this quite extensively. One of the things that I will note in the judicial workload study, one of the things that we made adjustments on were Class I felonies. We know that Douglas County has the highest Class I, high-end Class I felonies in the state. Those take an enormous amount of time, and so we added weight particular to just that weighted category, which in our previous studies was not there. So there was additional weight for those trials that take place that I'm sure Mr. Kleine will talk about later. One of the other questions that was asked of Justice Stacy was, does it really mean there needs to be 20 or 20.43 judges within Douglas County or any judicial district across the state? And during our weighted caseload study with the National Center for State Courts on page 17 of the report that I showed you goes into what we call the rounding rule. The rounding rule is in effect that 1.15 is that mechanism that says if it is greater than 1.15 caseload per judge, that then equates to-- that's when another judge would be needed. If it's less than that 1.15, that would mean at that point in time a judge would not be needed. There's a little bit of wiggle room there. With one additional judge in the Douglas County area that would put their weighted caseload per judge, as you can see workload per judge, it would put that under the 1.15. Doesn't mean that it's one for one, it does put it a little bit below that 1.15 somewhere in the 1.2, 1.3 range. And there's more I can add to the weighted caseload, but I'll open it up to any questions you may have at this point in time.

PANSING BROOKS: Yes, Senator DeBoer.

DeBOER: Thank you. Thank you for your testimony. Can you clarify something that you just said I'm trying to understand. If we add the,

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the judge that is requested in this bill, we will get within that 1.15 rounding, situation rounding--

COREY STEEL: Rounding rule is what--

DeBOER: Rule.

COREY STEEL: --it is called.

DeBOER: OK.

COREY STEEL: Correct. So because of 18 judges that disperses that caseload amongst--

DeBOER: Right.

COREY STEEL: --18 judges. If you obviously have less judges, that makes a difference. But it would put it just below that 1.15 in which, which the recommendation from the National Center for State Courts is where you kind of start determining. There are states that have set that higher. During this process, National Center for State Courts has done workload assessments in close to 25 to 30 other states. Some states have set that higher, they've set that at 1.25. It takes 1.25 of a weighted caseload before it would kick in--

DeBOER: It triggers the next--

COREY STEEL: --and trigger the need for an additional judgeship.

DeBOER: Where are we at, where are we at right now before we add the, the judge in this bill?

COREY STEEL: Right now, the workload per judge based on the December 31, 2021 is 1.20.

DeBOER: OK. Thank you.

PANSING BROOKS: You have any other questions? So, OK, I guess I do. So thank you for coming, Mr. Steel.

COREY STEEL: Absolutely.

PANSING BROOKS: So did, did Senator Lathrop say we need 20-- that the, the capacity is really 20 judges and we're only asking for one more and we really need three.

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COREY STEEL: So that's based on the calculation if it was exactly 1.0 for the entire caseload, it equals 20.43. We don't include the rounding rule. That's kind of the rule you look at when you start to look at where that caseload-- or that-- where that workload is. And so if it was completely 1.0, it would be 20.43. That's what this figure is telling us.

PANSING BROOKS: 20.43 judges.

COREY STEEL: Correct.

PANSING BROOKS: OK. Can't wait to read this, this weekend.

COREY STEEL: Yes, it's, it's, it's enlightening. And--

PANSING BROOKS: Yeah.

COREY STEEL: --just if I could quick add one of the questions Senator Lathrop asked is what's included in that? And so it does include holidays. It does include weekends. It does include 20 vacation days. It does include eight sick days. So those things are attributed into the overall workload of that--those, those days and hours are backed out of the formula. And so it gets to a true-- and, and even we take into consideration education. We know that there's a requirement for ten hours of education, that's backed out. Those things are backed out. So it gets to a true how much-- how many hours in that year should a judge be able to do their activity both on the bench and behind in their chambers, their work that they do as well?

PANSING BROOKS: OK, I'm just trying to check. So we really need three more judges. Is that right? I feel like we're, we're--

COREY STEEL: So--

PANSING BROOKS: --that we continue to be behind.

COREY STEEL: Right, so--

PANSING BROOKS: And we have a good year.

COREY STEEL: --if you want the-- if, if the Legislature wants the, wants the, we want a judge per 1.0 of the weighted workload, then that's where it is at that 20.43. I just wanted to make you aware of kind of where that period is when it kicks in for the Resources Commission at 1.5 to say there needs to be additional judicial

resources. And then there's also a figure if it drops below a certain amount, that that could also trigger the reduction of a judge--

PANSING BROOKS: OK.

COREY STEEL: --based on that calculation.

PANSING BROOKS: All right. Thank you so much, Mr. Steel. I don't see any other questions, so thank you for coming.

COREY STEEL: Thank you.

PANSING BROOKS: Additional proponents? Welcome Mr. Kleine.

DON KLEINE: Good afternoon.

PANSING BROOKS: Good afternoon.

DON KLEINE: My name is Don Kleine, D-o-n K-l-e-i-n-e, and I'm here as the Douglas County Attorney as a proponent of LB922. I, you know, I've listened to the experts really come in and tell you about the weighted caseload. I at one time served on the Judicial Resources Commission. So I know what-- how much work goes into setting up those statistics and the, the weighted caseload. And Senator Pansing Brooks, I think you're right. I think we need three judges actually in Douglas County, but we have to have-- it's, it's very necessary that we at least get this one. I could just speak to the how busy we are there. As Mr. Steel said, we have the highest rate of, of homicide cases, which are the Class I felonies. Those are very complex. They take a lot of time up. And the weighted caseload considers that and also the complexity of cases, the amount of cases, the time that a judge spends on those cases and certainly in Douglas County we seem to have a lot of those cases, whether they're, whether they're civil or they're criminal. And what this is really about is citizens having access to justice in, in the justice system generally, whether they're civil plaintiffs or defendants or the people of the state of Nebraska or defendants who happen to be in custody maybe awaiting trial. And it's important for them to have the access that they need to the judicial system to get their cases resolved. And that's what this is about, just having the citizens be able to get into court as soon as they can. And there's been examples that you've probably seen lately with high profile cases that there needs to be an expedited hearing on and the quickest they can get a hearing in Douglas County is in June. I think there was one that was up, up recently. So that's just an example, anecdotally, it's about timeliness, it's about fairness, it's about not delaying justice for people. And I appreciate Senator Lathrop bringing this bill

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forward. I know how hard the, the judges of Douglas County work at this point in time, and they'll continue to work that hard. But it's just about giving people access or opportunity to be heard. And I'd be happy to answer any questions.

PANSING BROOKS: Thank you, Mr. Kleine. Any questions? Senator DeBoer.

DeBOER: Thank you very much for being here. Do we have the other resources that we need to support having one, two, three more-- like, if we, if we did put three more judges in, would we have the courtroom space and that sort of thing?

DON KLEINE: That's, that's a, that's a great question because the space has, has been a problem. That was kind of a-- I think I testified here before about a year ago or two years ago that we were at the point about putting little trailers in front of the-- on the grass in front of the courthouse just to have places to put people.

DeBOER: Right.

DON KLEINE: We're building that new building that's being built across the street, across Harney Street there, that will ease the, the space issue. And I think we'll have room for courtrooms, but that's-- that has been a problem before. We wouldn't have a place to put the 18th judge unless we just put him in a cubbyhole somewhere right now. But we should be able to next spring because that new building will be done. But I didn't speak, but also goes to the-- as resources to the problem-solving courts. We have more problem-solving courts in Douglas County than anywhere. Those take up a lot of time, a lot of resources from a judicial perspective, and they are-- they work very well and we need to have those filled also.

DeBOER: OK. Thank you.

DON KLEINE: OK. Any other questions?

PANSING BROOKS: Thank you. Any other questions? I don't see any.

DON KLEINE: Thank you.

PANSING BROOKS: Thank you for coming today. Appreciate it. Next proponent. Welcome.

KEN HARTMAN: Good afternoon. Good afternoon, Senator Pansing Brooks, members of the committee. My name is Ken Hartman, K-e-n H-a-r-t-m-a-n. I am the chair elect of the House of Delegates to the Nebraska State

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Bar Association. I, as a member of the House, I represent the 4th District, which is in Omaha, and I'm here today on behalf of the Bar Association in support of LB922. Much of what I have to say has been covered already by Mr. Steel and Mr. Kleine. But I also have a letter from the presiding judge for the fourth judicial district Judge Masteller. He wanted to be here this afternoon to speak with all of you but he is unfortunately unable to be here. He's in the middle of a jury trial, and the rest of his colleagues are also tied up this afternoon. So we said we would bring the letter and pass along his thoughts as well because they're consistent with ours and they're consistent with what you've already heard here this afternoon. In his letter, he points, he points to you-- to the, to the caseload studies again. I was recently appointed to the Nebraska Judicial Resources Commission. My first meeting was in December, so I've started to get to know what those weighted caseload studies are and all the other information that we look at. And so the, the points that he points out are the same things you heard from Mr. Steel, but also one that I'll direct you to in his letter is just the hard case number at the end of the year last year that in Douglas County, each judge, there was a total of 8,094 cases pending. And what the judges from the fourth judicial district wanted to express here is that that impacts their ability to schedule and impact-- and that congested docket, their concern will continue to impact their ability not only to schedule hearings, but then to address issues and, and orders in a timely manner. And that's what we hear from our members, our members are-- tell us what I'm sure you've heard justice delayed is justice denied, and it just has a snowball effect. You need a hearing, you have to have a hearing for every motion that you file. You file your motion, but you can't get in, as Mr. Kleine just said, until June. So you, so you have a hearing in June and then when is the ruling on that motion going to be? It's not going to be for sometimes weeks and months after that and you have a snowballing effect there. So the Bar Association and its members would reinforce that, yes, this-- the fourth judicial district does need an 18th judge. At the commission hearing in December, I, I asked a similar question as Senator DeBoer, do they actually have the space? And because that was my concern, I go over there all the time. Where are you going to, where are you going to put another judge? And along the lines of what Senator-- what Mr. Kleine said was the answer that I got to that made me feel like this is the time to do this because with the judici-- with the new Juvenile Justice Center-- I'm sorry.

PANSING BROOKS: Please go ahead and finish what you're saying.

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KEN HARTMAN: So what was explained to me was that, that-- and I was persuaded that with the new Juvenile Justice Center, the amount of folks that are moving out of Douglas, Douglas County District Courthouse, not only the, not only the judges, but I believe Mr. Kleine's entire office and the, and the public defender's office, there's going to be a large amount of space becoming available within the Douglas County District Courthouse. And there's going to be now time and space available within this. And I think, if I remember right, the testimony was that's going to be around 2023. So the timing all kind of coalesces in. There's going to be new space available. How are they going to reconfigure? They're going to be reconfiguring, so adding a new judge for that space is the right timing for this. And is it, is it one more judge, two more judges, three more judges? I'm, I'm, I'm with you, Senator Pansing Brooks, I'm afraid that we get behind the times--

PANSING BROOKS: Yeah.

KEN HARTMAN: --and we're always trying to catch up so more--

PANSING BROOKS: OK.

KEN HARTMAN: --would be better, but-- in my view, but.

PANSING BROOKS: OK. So thank you. Let me see if there are any questions from anybody, Mr. Hartman. Thank you for coming. So I, I-- do you know if the judges did discuss adding more than one judge? You know, it is-- we've lived through quite a few cycles while I've been in the Legislature, and we've had really lean, tough years and we have some more availability this year. And I just-- it seems like when there's a need, we ought to be working to meet that need.

KEN HARTMAN: Yeah, great question. I, I have reached out to, to some of the judges that-- Judge Lux testified at the Judicial Resources Commission. He is a law school classmate of mine, so I reached out to him and asked him, what's the judge's position of that? But I have not, I have not heard back of what the fourth judicial district has said about, yes, we would. I would imagine the answer is yes, but--

PANSING BROOKS: That's-- yeah.

KEN HARTMAN: --I can't officially say that.

PANSING BROOKS: That's really a leading question, wasn't it?
[LAUGHTER] So, OK, well, thank you very much for being here, Mr.

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Hartman. I don't see any other questions, so. Next proponent, proponent.

SPIKE EICKHOLT: Thank you, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association as a registered lobbyist in support of LB922. I can't say anything that's not already been said, both by Mr. Kleine and by Mr. Hartman. We have about 350 members and when we had our legislative committee sort of meet and discuss the different bills I flagged this to discuss early on this year, all the members who are from Douglas County strongly urged that we support this for the reasons that you've heard before, particularly for those people who are in Douglas County being charged criminally and cannot make bond. The time that you have to sit in jail when you're in that situation before you can resolve your case in a meaningful way is arbitrarily delayed because of court, because of the court caseloads and one additional judge would ease that pressure. So we would urge the committee to advance the bill.

PANSING BROOKS: Thank you. Any questions for Mr. Eickholt? Do you think the criminal just-- defense organization would be supportive if it were two judges?

SPIKE EICKHOLT: I, I didn't-- we didn't ask or discuss that. I, I can't speak to the logistics of having two judges in the Douglas County--

PANSING BROOKS: I wasn't talking about--

SPIKE EICKHOLT: --building.

PANSING BROOKS: --logistics, I was just talking about--

SPIKE EICKHOLT: Right.

PANSING BROOKS: --needing.

SPIKE EICKHOLT: I can't--

PANSING BROOKS: OK.

SPIKE EICKHOLT: --I wouldn't see any reason why they wouldn't, answer it that way.

PANSING BROOKS: OK.

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SPIKE EICKHOLT: I mean, I think the reasons that we supported one would be the same reason why we would support two. But I worry about saying that because we didn't actually discuss that.

PANSING BROOKS: OK. Thank you, Mr. Eickholt. Appreciate it. OK, next proponent. Welcome.

BROCK WURL: Thank you. Vice Chair Pansing Brooks, members of committee, thank you. My name is Brock Wurl, attorney out in North Platte, Nebraska. Current president of Nebraska Association of Trial Attorneys. I'm here on behalf of that group today. As has already been said, justice delayed is justice denied. And to preemptively answer the question, I assume I will get, we also didn't discuss one judges or two-- or, excuse me, one judge or two judges. But if it speeds up access to the court system for our clients, I'm certain that we would be in favor of that.

PANSING BROOKS: OK. Thank you.

BROCK WURL: So with that, I'd take any questions. We would encourage this, this bill to pass.

PANSING BROOKS: Thank you. Any questions for Mr. Wurl? I don't see any. Thank you for coming today. Appreciate it.

BROCK WURL: Thank you.

PANSING BROOKS: Any other proponents, proponents? Any opponents? Anybody in the neutral here? Seeing none, Senator Lathrop, to close.

LATHROP: I think the case has been made for adding an additional judge. There's a practical consideration that is how many judges, we all understand it this committee because we deal with judicial capacity, the courts running well, it isn't always viewed the same way when it gets to the floor. I am more than content to add an additional judge and at another time we can take up the idea of adding a, a second judge. I just can't agree enough with those who have said that it's really important for our political branches of government to take care of the judiciary, whether that's in what they make, their salary, it's-- and making sure that they have the resources, not taking them for granted and thinking they'll get by with 17, when in fact they need more judges because it does ultimately trickle down to the litigants, the citizens and their access to the, to the court and timely rulings. So that will conclude my close on LB922.

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PANSING BROOKS: Wonderful. Before we close the hearing on LB922, for the record, there were no position letters--

LATHROP: OK.

PANSING BROOKS: --on LB922. So that closes the hearing on LB922 and we are now going to open the hearing on LB1053 and Senator Lathrop.

LATHROP: OK, well, this will be another consent calendar bill. Good afternoon, 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 LB1053. COVID has brought our judicial system to the realization that sometimes there's other ways to discharge the function of having hearings and having trials other than in person. LB1053 makes changes to the ability of the court to hold hearings and trials virtually. It is not without controversy and, and you will hear from those who support it and those who oppose it and concerns by lawyers that are in courtrooms and their views on who should be responsible for making that decision. Should it simply be the judge that makes that decision, should it be the litigant's? Should it require essentially the consent of all three? This bill would leave it to the discretion of the court. And I appreciate we have members of the criminal bar that are concerned. We have members of-- that practice in the realm of civil law that have concerns. When this bill was brought to me by the courts, I have to tell you, it was a little difficult to flush everybody out and say, let's have this conversation and let's talk about what our process should be for having a motion or having a hearing, evidentiary or non evidentiary, or a trial or simply motion practice done virtually. I can tell you virtual hearings increase efficiency by the court. It also provides an opportunity for efficiency for the lawyers. If you're having a motion, you don't need to drive all the way down to the courthouse to argue over a set of interrogatories. That said, that said, there has been a great deal of interest in the bar. You will hear from proponents and opponents and I think this will begin, begin a conversation on what parameters we place and under what circumstances will we have hearings and trials done virtually? With that, I'd be happy to answer questions.

PANSING BROOKS: Thank you, Senator Lathrop. Any questions? I just perused it quickly, but it doesn't seem to affect juveniles. Does it affect juveniles? Oh, sorry.

LATHROP: I'll let somebody else answer that question.

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PANSING BROOKS: OK, good.

LATHROP: I don't know if they come within civil or, or--

PANSING BROOKS: OK.

LATHROP: --how they're--

PANSING BROOKS: OK, it doesn't.

LATHROP: --how they're regarded--

PANSING BROOKS: OK.

LATHROP: Because it, it certainly--

PANSING BROOKS: All right.

LATHROP: --isn't criminal, so I assume it's civil, but--

PANSING BROOKS: Yeah, thank you. OK.

LATHROP: OK.

PANSING BROOKS: No other questions. Thank you and proponents. Welcome.

COREY STEEL: Welcome. Thank you, Senator Pansing Brooks, members of the Judiciary Committee. Thank you, Senator Lathrop, Lathrop, for introducing this bill on the court's behalf. I want to start by saying I wish I could have recorded a few things that were said in the last hearing and used them here. As you had heard, is access deny-- or access to justice, justice delayed is justice denied and that's what's happening at this point in time. National research has shown over the-- during the pandemic an increased participation in court use by those using virtual hearings. There was a dramatic increase in divorce proceedings by both participants because of the use of virtual hearings. Child custodies, a lot of different types of hearings were done on a national basis. There were states that went total virtual for every court hearing that they had during the pandemic. This was done either through statute changes or some states have the authority, with Supreme Court rule, to enact the use of virtual hearings. Our state, the state laws dictate when virtual hearings can be used and when they can't. This is another mechanism in order for the judicial branch to continue to move cases through our dockets so that we do not continue to see a backlog. There were many instances during the pandemic where a virtual hearing would get set and somebody would,

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would say, no, I don't want to have that in a virtual manner. It is something that a judge could have addressed, could have taken care of on their caseload, but now it is set way back because of the mechanism right now in our state law where somebody can object to the use of a virtual hearing. Again, if justice is delayed to some, justice is denied to others. This gives judges, again, the ability to move cases forward to deal with their docket and manage their docket. We trust judges every single day to make decisions, multiple decisions every single day, but what you'll hear is we should not let judges determine whether or not it should or should not be a virtual hearing. To me, that doesn't make sense. We trust, trust judges to make a lot of decisions each and every day based on the evidence in front of them, but we're not going to allow them to make a decision on how a hearing should be moved forward. Again, we have video technology in our court systems. We're advancing video technology in every court. We're going courthouse by courthouse, courtroom by courtroom and installing all of the latest technology so that virtual hearings can take place in a, in a manner that needs to be done. One of the things, as Chief Justice talked about in his State of the Judiciary, was the broadband issue. And we know that's a continued issue, but we want to have our courts equipped with the latest technology so these hearings can take place and we can move our dockets along and get things taken care of that we need to. You'll hear NSBA will come in and we want to thank them for allowing us to be part of their workgroup where they've come up with some options on virtual hearing testimony and how it can be done, but we support the bill that we submitted to Senator Lathrop and we support the use of our judges allowing hearings to move forward. This does not include trials. That was one thing we did omit. It does not include criminal at this time because we knew that was the largest controversy. This is civil and some juvenile cases that would be allowed to be moved forward. So one, one of the examples, while I have time, is in Omaha, we have schools that we have iPads at where the kid comes out of class, goes to the counselor's office, gets on the video, and has their hearing that way because we know they're in school. To take them out, to go downtown, have the hearings, sit and wait and go back is a half a day at the minimum, where here, it can be 20, 30 minutes. And if a parent would object to that, we wouldn't be able to do that. We would have to bring that child downtown and do that. So those are the type of things that we're looking at, how to expedite the system, make it more meaningful, and again, increase participation across the United States because of virtual hearings. So I'd hap-- I'd be happy to answer any questions anybody may have.

PANSING BROOKS: Yes, go ahead, Senator Geist.

GEIST: Yes, I'm curious if you-- if in the experience that you had or read about or whatever with COVID, how confident the attorneys feel in getting accurate reads on testimony when it's virtual.

COREY STEEL: Right, so that is, that is one of the things that has been brought up is what about that, that-- I can't see maybe all of their body movements or what have you and I think that's why we've taken out the, the criminal part of that and the trial part of that because that's where a lot of that cross-examination comes in. Doesn't mean in all hearings there isn't some type of testimony that may be given in, in some, but what I can tell you is I can-- and I'll share with you. I should have brought that as well. I'm sorry. We, we were part of a National Center for State Courts study on juvenile hearings, child abuse and neglect hearings, that were being held virtually. And so what took place is all of the hearings were held virtual for child abuse, neglect. We had, we had six judges in the state of Nebraska participate in this national study. The folks that were putting on the study, psychologists, psychiatrists, were all watching the hearings. So they are allowed to be-- watch and participate-- not participate, but be a part of the hearings so they could see what was going on. They then interviewed attorneys, they interviewed the children, they interviewed the families afterwards to talk about how do you think this went? Were there barriers? Were there issues and concerns? And that report comes out and shows that there is actually really good remarks that people felt that they have their day in court and they were comfortable with the way the proceeding was held in a virtual manner.

GEIST: OK. I would like to see--

COREY STEEL: OK, I'll share that with the committee.

GEIST: Thank you.

PANSING BROOKS: OK. Senator DeBoer.

DeBOER: Thank you. Hello again.

COREY STEEL: Hello.

DeBOER: So does this include mainly just sort of procedural hearings or are we talking about full-- you know, you gotta bring someone in and see if they're an expert and have a, a hearing on their testimony or-- I didn't have as much time to review this bill as I should have.

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COREY STEEL: Right, so that's one of the reasons we did not come because we've come to Senator Lathrop in the past on criminal, civil, juvenile--

DeBOER: Right.

COREY STEEL: --all of that package and we know in the criminal element, there's a lot more testimony and trials and what have you. And so we felt we weren't comfortable in moving forward at that point in time-- at this point in time with the criminal because of the opposition. We do know in the civil cases there is a lot of testimony as well in those types of things that take place. Really, what we're looking at here is there is some testimony that could take place.

DeBOER: OK.

COREY STEEL: But again, it is-- this isn't in the fact of-- I'm trying to think of the, of the right terminology to, to put forth, but in, in, in this bill, it would allow the judge to determine whether or not that testimony should move forward virtually prior to the hearing. So it, it, it brings the discretion from all parties must agree during this hearing that, that it take place to the judge on their determination, based on the-- what type of here it is and what evidence is going to be represented, that the, the hearing should move forward.

DeBOER: What if the judge halfway through says, actually, I think maybe-- I started out-- and this is telephonic or whatever we're calling it, electronic, whatever-- and now I see that, oh, actually, this is a little more in-depth than I thought it was going to be or the witness is for some reason more than I thought--

COREY STEEL: Right.

DeBOER: --it was going to be and so therefore, I'd like to switch to a different-- would that be an option that the judge would have to switch--

COREY STEEL: Absolutely, the judge would have that discretion that, that if they were too far into this and felt that the video technology wasn't doing the job or wasn't allowing for kind of what Senator Geist had, had talked about, to move it to then a-- say we're going to take a recess, we're going to bring this back in a personal manner because of the testimony or the ability to see the witness or, or those types of things.

DeBOER: So what--

COREY STEEL: There's nothing that would prohibit that.

DeBOER: --what, what right now is happening in terms of how video hearings are being used? So right now, are you seeing a lot of, you know, arguments about motions in pretrial or something like that happening in these video, teleconferencing formats?

COREY STEEL: I think that's what you're seeing now is the bare minimum of what we can use technology for, just to kind of move some things around and if it's, if it's discussion of a motion or if it's-- you know, those types of things. But I think when, when I was talking with judges and we had meetings with judges on this, it really came to the point that they felt there were a lot of cases that they could move using the technology, now that everybody's comfortable with it. And again, this isn't new. We could have used technology before the pandemic and we did have technology in some courtrooms. It was-- we weren't forced in a manner that we were when the pandemic came to use it. I would say at one point in time, our state was 75-plus percent virtual in the sense of how we were holding hearings. We know that there are judges in a lot of our areas that were holding almost 100 percent of their hearings virtual. Now that they're comfortable and they understand how to utilize the technology, attorneys now across the state have been engaged. I would be hard pressed to say there's one attorney that hasn't-- that's and that-- that practices a lot in the court system hasn't been part of a virtual hearing because it's just the way we were for so many months. There were judges that said because state statute didn't allow me to move forward on this type of case, we had to continue it and we had to continue it for a lengthy period of time because--

DeBOER: Right.

COREY STEEL: --a defendant or somebody was saying, no, I want to come from jail, I want to come from the Department of Corrections. I don't want to be-- have this in a virtual manner. I want to come to the courtroom.

DeBOER: I remember when I was practicing in '99 that my law firm would-- I would get up at 6:00 in the morning. They would put me on a plane. I'd fly from Kansas City to St. Louis. I'd go to the courtroom. I'd be there for five minutes. I'd fly home, whatever. It took the whole day for a five-minute hearing in which I said five or six words. So I think in those kinds of cases, we certainly have a case to make

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that there really is some case to be made for, for electronic. Is there a way to divide those out, those kinds of fairly routine kind of hearings to, to maybe the ones that are a little more and, and give them a special category in terms of--

COREY STEEL: I, I think that that, that's possible to say these type of hearings can, these types, you know, can't. And that's why we, we excluded trials. That's why we excluded the criminal element because we felt that that's just, at this point in time, a little too, too dicey to use sole video. An example an attorney gave me is exactly what you talked about. This is a western Nebraska attorney. She is in a trial in one jurisdiction and she had a real quick motion to handle. She asked the judge, can I take a recess at 10:00 to 10:30 so I can handle this other thing? She walked out on her computer, handled that other motion, and then came back in on their trial in the other area. She was able to handle two things in that day where before technology or not using technology, that wouldn't have happened. And so there's, there's huge benefit in continuing to move the ball forward. And I think we, we probably stretched that as far as we could during the pandemic and we just need-- again, coming out of the-- hopefully, coming out of a pandemic and moving forward, we need to continue to move our system in order to, to do these types of things where there's a big benefit for the system.

DeBOER: OK, thank you.

PANSING BROOKS: Thank you. I-- thank you, Mr. Steel. I just want to say one thing. I, I do have some concern about juveniles, as you can imagine, and the fact that, you know, they're, they're treated differently than adults. They're charged differently. They're dealt with differently. So I, I guess when you say, well, the-- it won't be for criminal cases. Children aren't really charged with--

COREY STEEL: Correct.

PANSING BROOKS: --I mean, it's a, it's a different system--

COREY STEEL: Correct.

PANSING BROOKS: --except if they go to adult court.

COREY STEEL: Correct.

PANSING BROOKS: So I, I just--

COREY STEEL: Those that are in the adult system.

PANSING BROOKS: Pardon me?

COREY STEEL: That are in the adult system, yes.

PANSING BROOKS: Right, so that's why I just-- I am concerned about that. Certainly, it's necessary for kids to have lawyers because just going into a, a counselor's office at the school and pleading certainly doesn't-- I don't think allows them to realize the seriousness of what they're going through necessarily, the ramifications lifelong to a, a some sort of plea that they make over their video processing equipment there. Because they use it for video games, mostly, but I just-- I, I think that all I did-- I'm not going to be here, so I just want you to please remember the children.

COREY STEEL: Right and I think that's why our, our-- especially our separate juvenile court judges, all of our, all of our judges that handle juvenile cases, I mean-- the, the things that we put in place and the mechanisms and, and the training and education that judges go through, I think that they-- again, we, we task them with making decisions and they, they should know the totality of is this going to be a hearing where it's not going to be taken seriously or is it something that we can handle as a review hearing or, or those types of things?

PANSING BROOKS: And I do want to just say I'm so grateful the judges have been-- worked with me so well, worked with all of us on making changes and I'm really grateful for that work. Thank you.

COREY STEEL: Yep, we got great judges everywhere.

PANSING BROOKS: Yep, thank you. I don't see any other questions. Next proponent.

COREY STEEL: Thank you.

PANSING BROOKS: Thank you, Mr. Steel. Next proponent. OK, opponents. OK, welcome. Well, you just caused a stir, didn't you, Mr. Eickholt?

SPIKE EICKHOLT: Thank you. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to LB1053. I want to make one thing clear: we have access and we do use virtual hearings now regularly. I'm pass-- having passed out to you today's District Court for Lancaster County schedules for all the different courtrooms that I found online this morning printed out. You can look and see that for all kinds of status hearings, criminal, civil cases, protection

orders, that the courts, majority of time, provide for a Zoom option to do so. So in other words, you don't need this bill to do that. You don't need the bill to address the flying from St. Louis to Kansas City scenario for five-minute hearings. You can do it now. The Chief Justice, in the State of the Judiciary Address on the Legislative Journal pages 404-405 that he gave on January 21, 2022, talked about the countless numbers of hearings, as he put it, that have been done via Zoom in the last two years of the pandemic. So this is not a COVID reaction bill. What this bill does do is for most civil cases and some pretrial criminal cases and juvenile matters, it allows for whether the decision to have a virtual hearing or a live hearing is solely up to the judge. Right now-- the way it works now, I disagree with Mr. Steel's representation that is because of the objection of the parties. Courts are for litigants. Courts are for the people to use as a branch of government. It's not for the convenience of judges. If somebody wants to have a live hearing to try to convince a judge of something or make some point, even on a procedural matter, that is their prerogative. I'm testifying now in front of the committee. Could testifiers make a better impression than I've made-- than I would ever make via Zoom? It's just disingenuous to say that a Zoom hearing is the same as live. Admittedly so, I have Zoom hearings all the time of my practice. It is convenient, it is easy, but there are various reasons why you don't want to do that, even for pretrial things. You have strategic things that you don't necessarily want to expose to the other side or even the judge. In the juvenile setting, you represent people who are not very sophisticated. They may not sort of get it or appreciate the situation they're in by appearing via Zoom. And to answer Senator Pansing Brooks' question before, if you look on page 7 of the bill, lines 5 through 8, they reference that juvenile court proceedings shall be done as provided in section 24-734 and that's the earlier statute that as amended by this bill. So I think it would apply to juvenile hearings. It would certainly apply to juvenile hearings that are not law violations, so it would apply to truancy cases, child abuse, neglect type cases that are civil in nature and not necessarily criminal. Admittedly, the bill does sort of exempt criminal cases for live testimony, but if you look on page 4, lines 20 through 21, that would still leave the judge's discretion for pretrial hearings, even in juvenile matters. And for that reason, we are opposed to the bill.

PANSING BROOKS: Thank you, Mr. Eickholt. Yes, Senator DeBoer.

DeBOER: Thank you, Vice Chair Pansing Brooks. So this bill does not allow any additional video conferencing than what can already be done now, is that correct?

SPIKE EICKHOLT: Not in my opinion, no. Well, I-- answer your question. No, if parties agree now-- I've, I've never done it myself, but I've known of jury trials where they pick the jury via Zoom. They've actually had the trial itself live, but to deal with the logistics of that many more people during the COVID outbreak times, they've picked the jury via Zoom. That's been done by arrangement of the parties. That's-- can be accommodated now under current law. I don't think this really adds anything to that. When we do a Zoom-- I had a guy who was at the Penitentiary get sentenced via Zoom. He never actually went to court ever and it was his choice that he made because he's going to have to be in the quarantine process when he went back for each transport. He didn't want to do that. The judge simply asked us-- and admittedly so, some judges are more persuasive, if you will, than others, right, for how they said these things via virtually right? They'll say unless the parties object in writing by a certain date, the following hearings will be set via Zoom. Usually what happens is we go on the record, the judge say-- state is represented by Senator-- or Ms. Pansing Brooks. Mr. Brandt represents the defendant. Defendant is with her attorney, Ms. DeBoer. We're doing this via Zoom. Does the state have any objection? No. Does the defense counsel have any objection? No. Does the defendant have any objection? No. And then we go and that's how it's handled. And you can do a great many things. Sometimes there might be reasons why, and I've seen some of the drafts that they've been working on that allow for judges to sort of hear good cause requests. I don't think that works because I'm having a hearing to have a hearing, right? I'm having an argument whether I can be there live or via virtual.

DeBOER: So the one thing, though, that I would worry about, if the litigants are the ones who can decide whether or not-- do you ever get a situation where somebody just wants to slow things down and therefore-- as a-- kind of a way of just causing trouble, as it were, says, we need to have this five-minute hearing in person, even though I know that one of the parties' counsel lives a long ways away or the party lives a long ways away or something like that.

SPIKE EICKHOLT: You might have that admittedly so, but you had that problem before 2019--

DeBOER: Sure, you did.

SPIKE EICKHOLT: --right? We did that for years, so that's nothing new and that was never a reason to ever come up with any kind of way to limit hearings arbitrarily to 15 minutes for certain types of things. We never would see that legislation. In other words, we shouldn't

overcorrect or overreact to the pandemic and make it something different than it really is. The flip side of that is if it's up to the judges-- and you'll notice there's a couple of protection order hearings and one or two of those in the exhibit I passed out are live. If it's up to the judges and the judges say oh, I want the person there and somebody who doesn't want to see their abuser doesn't want to be there live. They would prefer to be Zoom. It's not up to her. So it goes both ways.

DeBOER: So--

SPIKE EICKHOLT: When it's up to the judge, it's up to the judge.

DeBOER: So now if, if that's-- so under the current law, if I don't want to see my abuser and I would like it to be video conferencing, as long as I guess the abuser is OK with it-- if they respond in this, I don't know--

SPIKE EICKHOLT: Right.

DeBOER: --then, then it would be live even if the judge didn't want to do that-- or then it would be video conference even if the-- so in other words, can we cont-- as litigants, can we countermand what the judge wants?

SPIKE EICKHOLT: Can you-- what was--

DeBOER: Can we, can we decide-- Brandt and I are suing--

SPIKE EICKHOLT: Oh.

DeBOER: --each other. We want to have it video conferencing, judge wants it live. Can Brandt and I overrule the judge under current law?

SPIKE EICKHOLT: Well, as a-- I mean, you can certainly try. And I think the way the statutes read now, I think ultimately the judge doesn't have the final say.

DeBOER: I mean, it wouldn't be smart, but--

SPIKE EICKHOLT: It wouldn't be smart because then you got an arbitrary appeal issue for something that shouldn't have been there, right? I think the reason you see just the example of protection orders being in-person because many times, they're unrepresented. They just don't know how to reach out and ask either way, so the judges just set it for hearing in the courtroom like they've always done. People are

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going to do the easiest thing generally and the Zoom system works now. As you can see, what I passed out, the majority of those hearings are done via Zoom and that's how it is everywhere. I talked to Abbi Romshek in the Douglas County Public Defender's Office. She couldn't get me an example like this for Douglas County because she said about 75 percent of the hearings of criminal cases are Zoom done.

DeBOER: OK.

PANSING BROOKS: Any other questions for Mr. Eickholt? I don't see any. Thank you for coming today. Next opponent.

BROCK WURL: Vice Chair Pansing Brooks, members of the committee, thank you again for allowing me an opportunity to testify here. My name is Brock Wurl, B-r-o-c-k W-u-r-l. I am here on behalf of the Nebraska Association of Trial Attorneys and let me begin by saying I want to thank Senator Lathrop for his efforts over a great many years. We, we greatly appreciate his efforts. On this bill, however, we do have some issues, which is why we're here as an opponent today. My issues-- our issues with this bill are twofold: one is the issue that is-- that was just addressed, which is I believe it shifts the, the option of whether a hearing or, or trial would be in-- virtual or live from the parties to the judge. There could be strategic reasons for, for wanting it one way or the other. Senator DeBoer, you had asked a little bit earlier about some hearings that take two minutes to, to-- we've all had those. Many of those are currently held by, by telephone or video call, whichever the case may be. And, and I don't think our membership has any issue with those being continued to be done, be done that way and even if that is a judicial, judicial discretion issue. Where our issue comes in are primarily on the evidentiary hearings or the ones involving live testimony. In this bill, on-- it's page 4, starting with line 26 through 31, it does give the judge the discretion of having it, having it by video conferencing testimony-- or live testimony, testimony by video conferencing, excuse me. So that is, that is one major concern of ours. A second one as a, an attorney that practices out of North Platte, which is a rural area, if the judge has the discretion of putting every hearing in by video conference, what is to prevent the state from moving the judges east? What is to prevent the state from doing what has been done with the Workers Compensation Court or with the Social Security Administration judges where they all sit in one location and everything is done by, by a remote testimony? Everything is done virtually. That would be a denied-- in my opinion, that would be a denied access to justice where you don't have that in-person hearing, you don't have that opportunity for that, that in-person trial. So those are the bulk of our concerns.

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I think that would also be detrimental to the, the rural areas of the state, not just from a judicial standpoint, economic development standpoint as well, where you've got, you know, the courts and it's court day, everybody goes into the, the small town and eat at the, the restaurant and those sort of things. With that, I'd be happy to answer any questions, but I--

PANSING BROOKS: I don't see any questions for you, Mr. Wurl. Thank you for coming and being here today.

BROCK WURL: Thank you.

PANSING BROOKS: Next opponent. Welcome.

JASON GRAMS: Thank you, Senator, members of the committee. I'm Jason Grams, J-a-s-o-n G-r-a-m-s. I'm a lawyer with Lamson Dugan and Murray in Omaha, Nebraska, and the president elect of the Nebraska State Bar Association. I am here representing the bar association today and our position on LB1036 [SIC] is to oppose the legislation as introduced, but to support it if certain amendments that our group has come up with are adopted. And we, like the others, thank Senator Lathrop for his work on this issue. In the current form, the statutes that have been proposed to be amended here make a distinction between non evidentiary hearings and evidentiary hearings. And the non evidentiary hearings, the court, right now today, is authorized to hold those in whatever manner it wants; virtually, over the telephone, or however it likes. With respect to evidentiary hearings, the courts right now are able to do what they like with that with the consent of the parties. If one of the parties doesn't want to have the hearing virtually, then it must be held in person. That's the law as it exists today. The legislation proposed before you would expand the court's discretion to order hearings over the objection of a party to include essentially all hearings, including, according to the read of many of our members, jury trials. We're opposed to that outcome. This proposal was brought, once it was introduced, before our legislation committee and I will just tell you that the other officers and I have been encountering comments that run 80 to 90 percent opposed to this proposal from our members. And I'll remind you that our members include both lawyers and judges and it is not a uniform position of the judges that they would like this to be adopted. After the legislation committee recommended that we oppose this legislation, our president appointed a study group, put me and Ken Hartman, who will speak to you in a few minutes here, in charge of it. And we recruited 15 or 20 individuals who practiced in the civil area, the criminal area, the juvenile area, the family law area, the Workers Compensation Court, and we held a number

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of meetings beginning of the-- beginning of February; five meetings in total, each one of those meetings was multiple hours long. I have about 25 hours in this project since the beginning of February and we considered this from every angle we could and came up with what we think is a compromise solution because lawyers support expanding access to virtual hearings, just not-- and I'm sorry, may I finish my thought?

PANSING BROOKS: Yes.

JASON GRAMS: --just not exceeding the boundaries and, and going into territory where we would be forced to put witnesses on and have juries and judges make credibility determinations about what those witnesses are testifying to over a T.V. Are there any questions?

PANSING BROOKS: Does anyone have any questions? I don't see any. We, we appreciate your time, Mr. Grams and thank you also for bringing the suggested language.

JASON GRAMS: Thank you, Senator.

PANSING BROOKS: And the next opponent. Welcome.

KEN HARTMAN: Good afternoon, Senator Pansing Brooks and members of the committee. Again, I'm Ken Hartman, K-e-n H-a-r-t-m-a-n. As Mr. Grams mentioned, I am-- I was one of the members of the-- well, cochair of the study group at the Nebraska State Bar Association that we put-- that President Mueller put together to study LB1053 and when the legislation committee of the bar association voted to oppose it and as did the house of delegates. And he gave a background of where we got to where we are today and handed out our, our proposed amendments to that bill. We would oppose the bill or we oppose the bill as it's proposed, but as the study group met, we talked-- and we're thankful for Senator Lathrop for-- to-- with-- for talking with us. The court has also been engaged in conversations with us as well, so we thank Mr. Steel for taking part in our discussions. Part of that study group included Mr. Steel, included judges, district court judges, appellate court judges, included folks that practice in areas that I'm not familiar with-- in the juvenile law and criminal law and family law. And one thing that was loud and clear from our members across the board is that some of, some of this bill makes sense. Part of it takes out some of the ambiguity that's in the law when the current statutes say if, if it-- the hearing is a non evidentiary hearing, you can have it virtually, but if it's evidentiary, you can't, you can imagine there's plenty of lawyers that then start arguing about whether that

hearing is evidentiary or a non evidentiary hearing. So by striking that language from the statute and directing, and directing us all towards 24-734, it takes out the ambiguity about, hey, is this an evidentiary or not evidentiary hearing and directs to what's currently in the statute, which is what our members think is the most important, and that is, is there going to be testimony at the proceeding that is by oral examination? So you're going to have somebody appearing before a fact finder that is going to give testimony, that the fact finder is going to have to make credibility determinations. And our members believe that when that happens, the party should make that determination, by and large, about whether that credibility termination should be made in front of that decision-- in front of that fact finder. Now, the current statute has a structure in which if a party wants to ask for the, the judge to allow a particular witness to appear by the virtual conf--by-- well, the current statute says by tele-- by telephonic vir-- video conferencing or other similar means-- the new bill says virtual conferencing-- but to appear electronically, then there's a, there's a procedure to follow and to ask the court, show good cause-- I see my time's up, so.

PANSING BROOKS: That's OK. Do you want to finish your thought?

KEN HARTMAN: Yeah, so, so there's a current procedure in the statute that allows for that to happen and a judge can make the determination about whether a party has shown good cause. And there's a statutory procedure for that party to object. And the new-- the bill, as it stands today, takes out that procedure and takes out the ability for a party to object and, and eliminates that. That, that gives concern to our members. And one other thought that I wanted to make sure I addressed if, if I can be indulged--

PANSING BROOKS: Yes.

KEN HARTMAN: --is that one of the issues that was addressed within our study group is particularly by those folks that practice in the juvenile law area-- and we had Judge Pat McDermott, who's a retired juvenile judge, and others who practice in that area-- is that there's certain, there's certain proceedings in the juvenile area that are criminal in nature. So in our proposed language, in our proposed amendments, we included an amendment to, to 24-734 in the criminal language that would add those juvenile proceedings that are similar to, that are similar to criminal proceedings where constitutional rights are an issue, rights to confrontations and such. That would eliminate those proceedings from the other civil, civil proceedings in the rest of the statute.

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PANSING BROOKS: Thank you. Thank you for, for bringing that and for mentioning that, Mr. Hartman. Did-- does anyone have anything to add? Yes, Senato Geist.

GEIST: I hope this isn't a stupid question, but we'll see.

KEN HARTMAN: Well, I ask plenty of them, so.

GEIST: If you're Zooming-- let's say a juvenile is, is on a Zoom and is his attorney or her attorney in the room with them on a Zoom or are they Zooming from their location?

KEN HARTMAN: See, and that's, that's part of the problem in that I am a commercial litigator, so I don't get involved in that.

GEIST: OK.

KEN HARTMAN: The only times I show up in juvenile proceedings is when one of my clients' employees have been subpoenaed to show up and testify in a juvenile proceeding.

GEIST: OK.

KEN HARTMAN: And so what I've shown up in those instances with the witness, I show up in juvenile court in Douglas County and there are an amazing assortment of people bringing resources to bear to address that situation. So I think my answer to your question is I think it could be yes, they could be in the same place as the juvenile, but I think a lot of times they're not. And that's one of the concerns--

GEIST: Um-hum.

KEN HARTMAN: --of the juvenile practitioners in our study group is that I need to be there with my client--

GEIST: Right.

KEN HARTMAN: --because so often, they don't understand the, the gravity of the situation that they're in and the only way I can possibly convey that is if I'm right next to that--

GEIST: Right.

KEN HARTMAN: --young lady or young man.

GEIST: I guess I would have the same concern with an adult. I--

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KEN HARTMAN: And, and, and that's what, that's what the criminal practitioners would say and that's what I would say is as a, as a commercial litigator. I-- if I have somebody testify in court-- and that's what our members, that's our members loudly say-- I want to be able to be there next to my clients, but also in the court where the witness is testifying so not only can the trier of fact make that credibility termination, but I can also be doing it at the same time because as-- if it's on Zoom, how am I going to be-- my, my view of that--

GEIST: Um-hum.

KEN HARTMAN: --could be different than--

GEIST: Right.

KEN HARTMAN: --what the other person's--

GEIST: Right. OK, thank you.

PANSING BROOKS: Thank you. I will just add that of course, you know, a child could come in to plead to truancy and then-- in the interim and ask for an attorney. And in the interim, then goes and the-- you know, the kid is acting up and doing all sorts of things in the meantime, running away from home. And it started as something minor, but then it could end up in out-of-home placement. So that is the problem with saying, oh, it's just something that isn't-- the, the judges have the ability in juvenile court to use any, any dispensation of any case in any way they want. They have a whole panoply of dispositional powers for a juvenile case so they can place them out of home for something as minor as an MIP or truancy, depending on what happens in the interim and what they find out later. So I have real concern about juveniles, but-- in any case of it because you could start off that they're-- that it's-- and it's on videotape, but then-- and you think, well, it's not-- don't worry, we don't have to really worry about this, but then later, they're being sent out of the home, so I'm concerned about--

KEN HARTMAN: And your comments are consistent with those that were in our study group that practice in that area. I'm hearing those same words from those folks in--

PANSING BROOKS: OK.

KEN HARTMAN: --in that group.

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PANSING BROOKS: Thank you. Thank you for coming today, Mr. Hartman.

KEN HARTMAN: Thank you.

PANSING BROOKS: Any addition-- any other pro-- opponents? Anybody in the neutral? And is there-- are there other-- is there-- and Senator Lathrop, as you come to close, there are 2 proponents and 18 opponents and no neutral com-- position comments.

LATHROP: Thank you, Vice Chair, and I appreciate everybody that testified for and against this. I know that the lawyers that have come in here to talk about their opposition to this bill have their clients' interests as a paramount concern. I also think that this, this is-- we learned during the pandemic that the video conferencing is going to improve some efficiencies. When that should happen is what we're trying to drill down on. It's not as simple as just saying the lawyers or the parties should always agree and then, then the judge can say yes. I was told of a story about a-- and, and you-- well, I'll make this a hypothetical. Imagine, though, that you have a juvenile whose mom's parent-- parental rights have been terminated because she's just abandoned the kids and done nothing. Dad's incarcerated down in Alabama for the next 40 years and this juvenile would like to have a permanent placement . Dad says, I'm not, I'm not consenting to these proceedings. I won't do it virtually and I won't do-- I won't sign a release for my child to be adopted or to, or to have a permanent placement and now that, that child is stuck. So there are circumstances where we have to sort through this and figure out how do we do that when somebody is using-- from, from a, a corrections facility three states away saying, I'm not going to agree to it. You're going to have to take me up there. Well, we're not letting you out of the, you know, the Department of Corrections in Alabama to go up to a juvenile court hearing for 15 minutes and you haven't been around your kids and how, how do we, how do we work through that? I think this bill has served this purpose. It has given you what the court believes to be a framework. You have heard that it has also engaged lawyers to do this kind of work. I think it's going to take an awful lot of thought because I can also see where somebody may say, I'm not going to agree that your witness, your expert witness who's in New York, can testify virtually. I don't consent to it. And so somebody who might be a 20-minute witness, I'm now going to have to pay \$5,000 to fly him to Omaha and have him testify and then fly back to New York. So there are a lot of different aspects to this, but the, but the principle is we see that technology can make the courts more efficient, can allow courts to get through many of the proceedings without personal appearances. And just how we sort that out, I think,

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is something that still needs to be worked through, but I very much appreciate that the bar saw this, jumped on it, put a group together, and that people are working on it.

PANSING BROOKS: Thank you, Senator Lathrop. Any questions for Senator Lathrop? Thank you for bringing this bill. It's really interesting. You're right, it's important to discuss, so.

LATHROP: Yep, yep. OK.

PANSING BROOKS: And that closes the hearing on LB1053 and we are done for the day.

LATHROP: We are.

BRANDT: Excellent.