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Judiciary Committee February 2, 2023

Rough Draft

**WAYNE:** Good morning and welcome to the Judiciary Committee. My name is Senator Justin Wayne. I represent Legislative District 13, which is Douglas County, north-- north Omaha, northeast Douglas County. We will start off by having senators and staff do self-introductions, starting with my right, Senator Ibach.

**IBACH:** Thank you. I am Senator Ibach from District 44, which is southwest Nebraska.

**McKINNEY:** Good morning. Senator Terrell McKinney, District 11, north Omaha.

**GEIST:** Good morning. I'm Senator Suzanne Geist, District 25, which is the southeast corner of Lincoln and Lancaster County.

**MEGAN KIELTY:** Good morning. I'm Megan Kielty, legal counsel.

**ANGENITA PIERRE-LOUIS:** Angenita Pierre-Louis, committee clerk.

**DeBOER:** Good morning, everyone. I'm Wendy DeBoer, District 10, northwest Omaha.

**BLOOD:** Good morning. Senator Carol Blood, District 3, which is western Bellevue and southeastern Papillion, Nebraska.

**HOLDCROFT:** Rick Holdcroft, District 36, west and south Sarpy County.

**DeKAY:** Barry DeKay, District 40, which encompasses Holt, Knox, Cedar, Antelope, northern part of Pierce, and most of Dixon County.

**WAYNE:** All right. Also assisting us is our committee page, Luke McDermott from Omaha, who is studying political science and economics in-- at UNL. And then Morgan Baird from Gering, who is a political science major at UNL. This morning, we'll be hearing three bills. We'll be taking them up in the order that is outside of the room. On the tables in the back, you'll find a blue testifier sheet. If you're planning to testify today, please fill out one and hand it to the page when you come up so we can keep accurate records. If you do not wish to testify, but would like your record of your presence at the hearing, please fill out a gold sheet in the back. Also, I would like to note that the Legislature policy is that all letters for the record must be received by the committee noon the day prior to the hearing. Any handouts submitted by testifiers will be included as part of the record as exhibits. We would ask you to bring at least ten copies. If

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you don't have 10 copies, hand it to the page and we'll make sure we get copies for everybody on the committee. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill, then from opposition, followed by those speaking in a neutral capacity. The introducer will have the opportunity to make a closing statement if they so wish to. We ask that you begin your testimony by first saying and spelling your first and last name so we can have an accurate record. We will be using the three-minute system today. Oh, I'll get to that part where it tells you to silence your phone. When you begin your testimony, the table, the green light will be on. When there's one minute left, there'll be a yellow light; and then the red light, we ask you to wrap up. I'd like to remind everyone, including myself, to please turn off or vibrate your cell phones. And with that, we will start today's hearing with LB83. Welcome, Senator DeBoer.

**DeBOER:** Good morning, Chair Wayne and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y, D-e-B-o-e-r, and I represent District 10 in northwest Omaha. I'm here today to introduce LB83 to adopt the Uniform Community Property Disposition at Death Act. The law of marital property is not uniform. Nine states and a number of foreign countries are community property jurisdictions where any property acquired by a married couple is presumed to be jointly owned by both spouses. Nebraska follows the majority rule that makes no such presumption and recognizes individual ownership of property by married persons. Community property acquired by spouses in a community property state retains that status even if the spouse is eventually moved to Nebraska. a noncommunity property state. LB83 provides guidance to Nebraska trustees, judges, and estate administrators on how to deal with the distribution of community property at death. The act provides a set of default rules to ensure the equitable distribution of community property when the first spouse dies. It's-- it assists courts in determining the character of property when there is a dispute between potential heirs. The act also clarifies the process for partitioning or reclassifying community property for couples who mutually agree to separate their interests and provides a remedy to address bad faith transfers intended to impair the property rights of one spouse. I introduced this bill on behalf of the uniformed community-- Uniform Law Commission, and there will be testifiers following me who can speak on behalf of the commission. I will just say this does not in any way change the fact that we will not be a community property state. It's just this very narrow

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situation. So I appreciate your time and would be happy to answer any questions that you may have.

**WAYNE:** Any questions from the committee? Senator Blood.

**BLOOD:** Thank you, Chairman Wayne, just a quick one. Where did this come from? Was this something that you stumbled across or someone brought to you?

**DeBOER:** So this is from the Uniform Law Commission. The Uniform Law Commission is an organization which you will hear about when Professor Willborn comes up in a second,

**BLOOD:** Actually familiar with him so.

**DeBOER:** And so that's where the Uniform Law Commission brought the bill to me.

**BLOOD:** Thank you.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here. First proponent.

**STEVE WILLBORN:** Good morning, Mr. Chairman, members of the committee. My name is Steve Willborn, S-t-e-v-e W-i-l-l-b-o-r-n. I'm a professor of law at the University of Nebraska College of Law, and serve as a member of the Nebraska Commission on Uniform State Laws. And my testimony is on behalf of the Nebraska Commission. The Nebraska Uniform Law Commission is our delegation to the National Uniform Law Commission. The other members of the Nebraska delegation include Harvey Perlman, Arlen Beam, Larry Ruth, Joanne Pepperl, Jim O'Connor, Marcia McClurg, and Don Swanson. The National Uniform Law Commission is a confederation of all the states to draft laws where uniformity is appropriate, desirable. It drafts proposals through a very transparent process with active participation by all stakeholders and interest groups. We're also interested in having states enact our products. As a result, uniform acts tend to reflect a fair balance of the interests of multiple stakeholders in the area and every area we work in. As Senator DeBoer mentioned, this act provides guidance to trustees, judges, and estate administrators in Nebraska, a noncommunity property state, about how to deal with community property when it enters the state. This act is a recent update, an improvement of a 1971 uniform act on the same topic. That act was enacted in about half of the noncommunity property act states for which it was appropriate, including several in our general region like Colorado, Wyoming, Utah,

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Minnesota. Nebraska didn't adopt that. I don't think it was ever enacted for reasons I don't know. At any rate, this act improves on the prior act by attending to the now common practice of nonprobate transfers between spouses and by dealing with bad faith acts or mismanagement. Right now, nine states are community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Another five states permit spouses to acquire community property by agreement: Alaska, Tennessee, Kentucky, South Dakota and Florida. And in addition, community property can enter from hundreds of foreign or territorial civil law jurisdictions. LB83, I do have in my testimony information about how many people enter the state from other-- from community property states. So this would be an act that would be important in many circumstances. And you can see the evidence of that in my written testimony. LB83 clarifies rules about how to deal with community property, and in doing so, it should make litigation less likely. It protects against misuse of community property, and yet it retains great flexibility to permit people to manage their joint property by agreement. It's a kind of well drafted, just plain sort of good governance act, at which the Uniform Law Commission excels. I urge you to support LB83.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**STEVE WILLBORN:** Thank you so much.

**WAYNE:** Welcome.

**WILLIAM LINDSAY:** Senators, my name is William J. Lindsay, Jr., W-i-l-l-i-a-m L-i-n-d-s-a-y. I'm appearing on behalf of the Nebraska State Bar Association in support of LB83. First thing I want to make clear is that this bill does not adopt community property in Nebraska. It does not affect somebody who has always been a Nebraska resident. It's more a procedural bill. How do we handle the fact that people move here from community property states? People can have separate property, meaning it's not part of the community. They can agree to that. There are provisions in other state laws, for example, on inheritances and gifts allowing that to be separate property. So the question is, what do we do with people who have community property who come into Nebraska? This bill provides for procedures for that. For example, it provides for a short statute of limitations on the ability to-- you'll have it recognized by a court so that we can deal efficiently with an estate. Community property is just as Senator DeBoer told us. It's the community. The married couple holds the

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property together and it doesn't matter in whose name it's titled. This does not affect anything on Nebraska residents. And there's another point that comes into play that's commonly used in estate planning. There's something called a step up in basis. A step up in basis means that if I died, property that's in my name gets the value of the date of death, regardless of what I paid for it. Well, if my wife and I have community-- jointly owned property, she's considered to own half so that half is not stepped up. But the other half, my half, is. Now with community property, the entire thing is stepped up. So there is an income tax gain for the benefit of people who came from community property states. The final thing I wanted to mention is there would be a question under current law as to what court has authority. This particular statute amends the jurisdictional statute to allow the probate court to have jurisdiction to determine this. But everything's in one proceeding. For that reason, I ask that you support LB83. Let me know if there's any questions.

**WAYNE:** Any questions?

**GEIST:** I have one

**WAYNE:** Senator Geist.

**GEIST:** Just to clarify what you said. So the stepped up basis is, is taken on the entire property, even if there's one surviving entity in that or do both--

**WILLIAM LINDSAY:** No.

**GEIST:** --spouses have to?

**WILLIAM LINDSAY:** It's the first one to die there's an entire step up in basis if it's community property.

**GEIST:** Yes. OK. Yes.

**WILLIAM LINDSAY:** You're still going to establish that it was community property.

**GEIST:** OK. Thank you.

**WAYNE:** Any other questions from the committee? Senator DeKay.

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**DeKAY:** Thank you, Chairman Wayne. So how would this be different than the regulations that are in place with a will or a trust going forward?

**WILLIAM LINDSAY:** Well, somebody would have to bring up the fact that it's community property and then the court would determine that. It would determine ownership. In community property, you have one half belong to the spouse, even though one person may have control of it. So that half would be set aside to the surviving spouse, the half that that spouse owns. And so the court would have the authority to make that split. Right now, I'm not sure what is done because we don't really have good procedures set up for it.

**DeKAY:** Thank you.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here.

**WILLIAM LINDSAY:** Thank you.

**WAYNE:** Next proponent. Next proponent. We'll turn to opponent. First opponent. Anybody testifying in a neutral capacity can come, neutral capacity. There are no letters for the record. Senator DeBoer, you may close.

**DeBOER:** Thank you, Senator Wayne. I'll just say for closing that uniformity in laws is a desirable thing for states, particularly when there are transactions that occur across, you know, jurisdictional lines to help kind of bring some kind of chaos into order so that everybody knows if I do this, this is what happens, which is what we sort of want. So I'd ask the committee to move this forward. It might be a good item for consent calendar, and it is a good government kind of thing to do. So that is-- that's my closing.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. Oh, yes. We've got to close. We'll close the hearing on LB83 and open the hearing on LB330. Welcome back, Senator DeBoer.

**DeBOER:** Thank you. Good morning, Chair Wayne and members of the Judiciary Committee. I'm Wendy DeBoer, representing Legislative District 10. My name is spelled W-e-n-d-y D-e-B-o-e-r. District 10 is in northwest Omaha. I'm here today to introduce LB330. LB330 would allow a successor to a decedent, upon presentation of a small estate affidavit, to endorse or negotiate any instrument evidencing a debt belonging to the decedent that is a check, draft, or other negotiable

instrument payable to the decedent or the decedent's estate. Give me a second and I'll explain that. Currently, when a check is issued to a decedent or to the estate of the decedent, the person indebted to the decedent is the party issuing the check. As a result, if no estate proceedings are required, a successor, claiming through a decedent, may receive payment upon presentation of a small estate affidavit to the person indebted to the decedent. Individuals holding the check made payable to the decedent or the estate of the decedent frequently present a small estate affidavit to a financial, financial institution for purposes of cashing the check. Since the financial institution is not indebted to the decedent, the decedent should not or the financial institution should not cash the check based upon the small estate affidavit. Instead, the check should be returned to the issuer and a new check issued to the party or parties named in the small estate affidavit. So as you might imagine, this involves additional time to return and reissue the check to the successors. It's extremely inconvenient for the parties who will be ultimately entitled to the payment of the proceeds from the check. So LB330 would amend Nebraska Revised Statute 30-24,125 to streamline this process and increase the convenience for successors of the decedent. It does so by allowing a successor claiming through a decedent to present an affidavit to a financial institution without having to have the check reissued. Under these circumstances, a financial institute accepting such a check, draft, or other negotiable instrument presented for deposit and accompanied by a small estate affidavit, is discharged from all claims for the amount of the check. So that's the legalese for the record. But here's how it really works. If I die and my estate is less than \$100,000, we, we change the small estate affidavit. In Nebraska, we have this ability to do a small estate through affidavit rather than going through the whole process. So you have an affidavit. It says this is a small estate. It's worth less than \$100,000. If I die and I leave all of my property to Senator Geist, but Senator Blood owes me a hundred bucks before I die, she writes me a check for 100 bucks, comes in the mail after I die. Senator Geist has gotten the small estate affidavit that says I'm the successor. It's less than \$100,000. Here's the estate. Now she has a check that's written to me from Senator Blood. She takes it to the bank and they say, well, you're not Senator Blood. We can't cash it or you're not Senator DeBoer. You're not Wendy so we can't cash it. The bank says we can't cash it because it's not written to you. It's written to someone else. She says, but look here, I have my small estate affidavit. They say, too bad, it's not the right name. That's the way the law is currently. The change would say that she would be able to present to the bank the small estate

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affidavit showing that she's the successor and the check and that would be enough and they would cash it, rather than having to get it reissued out of my name and reissued into her name. So it's just taking the step of having to go get the name changed on the check because she's the successor to the estate. So that's sort of how it works. It's-- often if someone dies who's in a nursing home or something like that, there might be a prorated amount for the amount that's left over. It goes to the name of the person who paid it. Now there's a check that's payable to the person who's dead. The successors can't get it without going through and getting the check reissued. OK. Skipping that part. The Nebraska Bankers Association brought this bill to me and will be testifying after me. However, I'm happy to answer any questions you may have at this time. And thank you for your consideration of LB330 and I urge you to advance it to General File.

**WAYNE:** Any questions from the committee? Seeing none, first proponent.

**RYAN McINTOSH:** Good morning, Chairperson Wayne, members of the committee. My name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I appear before you today on behalf of the Nebraska Bankers Association in support of LB330. Senator DeBoer did a very eloquent job opening and took nearly all of my testimony so I'll keep it very brief and would be happy to answer any questions. I am handing out a copy of the form affidavit, affidavit promulgated by the Nebraska Supreme Court. Just for reference, this is what the affidavit looks like with an original death certificate attached to it. So under current law the, the summary is a successor can go to a bank and claim all the funds in that account but can't first deposit a check made payable to the decedent or the decedent's estate into that account. They also note in the bill that there's references to the Uniform Commercial Code. This is just for a check presentment for unauthorized signers, presentment warranties, and conversion of an instrument. As I said, Senator DeBoer covered everything else I was going to say, so I won't repeat all that, and I'd be happy to answer any questions.

**WAYNE:** Any questions from the committee?

**RYAN McINTOSH:** Thank you.

**WAYNE:** Seeing none, thank you.

**HOLDCROFT:** One question.

**WAYNE:** Go ahead.



**HOLDCROFT:** So what's to prevent somebody from off the street to come in and claim to be the individual who is now responsible for the property or the estate?

**RYAN McINTOSH:** So this doesn't change anything under current law as it relates to that. The difference would be the one thing might be that there has to be an original death certificate, so somebody off the street presumably shouldn't have one of those. We do have measures in place with the know your customer and all the sort of regulations that go on for bank compliance. But this doesn't change any of the provisions of the current law. The, the protections for the financial institution don't change.

**HOLDCROFT:** OK. Thank you.

**WAYNE:** Thank you.

**RYAN McINTOSH:** Thank you.

**WAYNE:** What a coincidence. I'm actually working on a probate matter today. Did not know this was coming up. This isn't an original death certificate, is it? Welcome.

**DEXTER SCHRODT:** Good morning, Chairman Wayne, members of the Judiciary Committee. My name is Dexter Schrod, D-e-x-t-e-r S-c-h-r-o-d-t. I'm president and CEO of the Nebraska Independent Community Bankers here in support of LB330. We thank Senator DeBoer for bringing this bill. It does happen more often than you would think. I'm going to zoom out a little because sometimes that helps when you see these bills, you only see the one statutory section. The next statutory section over really makes this all kind of make sense. That statutory section provides that the person paying the debt, so in this instance, in Senator DeBoer's example with Senator Blood, with reliance on the affidavit is discharged and released as if paying the decedent themselves. And they're not required to inquire as to the truth. So-- and then additionally, that statutory section says any person to whom the payment is made, so the successor after Senator DeBoer, is accountable either to the personal rep of the estate, if there ends up being one, or to a person having a superior right to that debt, so a different creditor. So the reason I bring that up is that's what makes this all make sense on why the bank should be allowed to accept it because the person writing it is told by the law to rely on the affidavit. So it makes sense that the bank should rely on the affidavit. And then the bank should be discharged from any future

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creditors, because the next statutory section over says that any person accepting it. Only the person that is the successor answers to secondary creditors. So a little zoom out, that's why it's drafted the way it is in that statutory section. And hopefully that makes a little more sense as to where this is all coming from. And then, Senator Holdcroft, to answer your question, the current law does provide that if you are forging one of these affidavits, that is perjury. So there would be a criminal penalty under that. So that is what is keeping people from making this up. And would it happen? Maybe. But there's already provisions in law to protect against that.

**HOLDCROFT:** Thank you.

**WAYNE:** Any questions from the committee? Seeing none--

**DEXTER SCHRODT:** Thank you.

**WAYNE:** --thank you for being here. Next proponent.

**WILLIAM LINDSAY:** Chair Wayne and Senators, again, I am William J. Lindsay, Jr., W-i-l-l-i-a-m L-i-n-d-s-a-y. I'm a practicing lawyer in Omaha. I've been practicing for about 44 years, a member of the American College of Trust Estate Counsel. On behalf of the State Bar association, we join in the support of this affidavit. You've already heard from prior testifiers about what the affidavit approach does. I want to give you a little historical background. Nebraska adopted the Uniform Probate Code in 1974, so nearly 50 years ago, The small estate affidavit has been part of the Probate Code for those 50 years. We've tried to have procedures in place to simplify estates where the value really doesn't-- we don't want to dwarf it with costs of administration. So the original statute was \$10,000. That was changed in the '90s to \$25,000, then it became \$50,000. And last year you changed it to \$100,000. So we have a history of trying to simplify things. That's what this bill does. So if there's any questions, I'd be happy to answer them.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**WILLIAM LINDSAY:** Thank you.

**WAYNE:** Next proponent. Proponent. Any opponents? Any opponents? Anyone testifying in the neutral capacity? Testifying in a neutral capacity? We have no letters for the record as Senator DeBoer makes her way back up for her closing.

**DeBOER:** Thank you, Senator Wayne. I'll just kind of say in closing that for policy reasons, we have decided a long time ago that there is a need to have these kind of small estates have a streamlined way of getting to their successors so that instead of going through the entire process, that there is a quicker sort of way to get them. Last year or whatever year he just said, we went from \$50,000 to \$100,000. I was on the committee where that happened and the testimony was this: You can have a \$50,000, you know, truck plus one piece of other property, and suddenly you're outside of that ability to pass on your-- your estate to your successor easily through this process. So we decided as a committee and then as a body to go up to \$100,000 so that we would be able to protect the original intent of these small estate affidavits, which is to get to those very small property or estates so that they don't have to go through the whole process. The safeguards we put in place are in part having this ability to say, OK, it's a crime if you forge one. Great. But as Senator Wayne showed, he randomly happens to have an original death certificate today. We did not plan this. And so those things are there. But it's a decision that this body has made that we should be helping people with those small estates, even if there is some small risk that someone will violate the law or attempt to violate the law or attempt to defraud someone. This is not going to ultimately change whether people try to take advantage in an illegal way the small estate affidavit. This is only going to say we're going to streamline this one situation where someone owes money to the estate so that they can deposit it in the estate account or into the successor. So that's kind of what we're trying to do here.

**WAYNE:** Any questions from the committee?

**DeKAY:** One.

**WAYNE:** Senator--

**DeKAY:** Thank you.

**WAYNE:** DeKay.

**DeKAY:** Going from \$50,000 to \$100,000, the way our world has changed in the last two or three years, if inflation or prices keep escalating, will this be something we will be visiting again to increase the amount that we will be able to work with going forward?

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**DeBOER:** I do not know. It was Senator Erdman who brought the bill, I believe, last time. And so I don't know.

**DeKAY:** OK.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here. And that will close the hearing on LB330 and open the hearing on LB579.

**DeBOER:** Good after or good morning, Chair Wayne. Happy Groundhog Day to everyone if you're feeling a little bit like you've seen this act before. Good afternoon, Chair Wayne and member-- morning, Chair Wayne and members of the Judiciary Committee. I'm Senator Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r. I represent District 10 in northwest Omaha. I'm here today to introduce LB579, 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 time after the death of the transferor. After this coverage period, the insurance policy would no longer cover the property. So 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 a transferor, a beneficiary is left without protection in the event damage or loss of the property occurs. This can lead to significant losses-- losses in the event the damages occur before the beneficiary has the opportunity to obtain insurance. Indeed, this very problem was highlighted in a 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 transfer by a transfer on death deed was destroyed shortly after the death of the transferor. The proposed coverage window in LB579 would allow the beneficiary a reasonable window of protection against loss in the wake of the death of the transferor. LB579 is not meant to take advantage of insurers, but rather it is intended to extend the coverage-- the contracted and paid for coverage. So this coverage for which the premium has already been paid on a policy until the beneficiary can make proper arrangements. I understand that there are insurance companies who have raised some concerns. I'm happy to work with them to amend the bill moving forward. There seems to be a gap in the coverage for folks who are doing these transfer on death deeds that has resulted in bad outcomes for some beneficiaries. You may remember that this bill was introduced last year by former Senator Adam Morfeld as LB1132. And based on insurance objections, attorneys for the insurance companies and the Nebraska State Bar Association have been in discussions about how best to amend the bill to make it workable for all state hold--

stakeholders. The conversation is ongoing. I'm committed to working with them to prepare an amendment for the committee to consider before advancing the bill to General File. If members of the committee have questions, I'd be happy to answer them. But an attorney who practices in this area will follow me in testifying and may be better situated to answer your specific questions. Thank you very much.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. First proponent. Proponents.

**WILLIAM LINDSAY:** Good morning, Senators. Again, I'm William J. Lindsay, Jr., W-i-l-l-i-a-m L-i-n-d-s-a-y. I'm testifying on behalf of the Nebraska State Bar Association. You heard Senator DeBoer talk about the case in Minnesota. Minnesota has a similar law to Nebraska's. Nebraska adopted the Uniform Transfer and Death Deed Act. An interesting thing about that case, though, was the insurance company paid for the damage to the household contents because they were owned by the estate. The estate already had coverage under that law because the insurance industry has two things that are involved in an insurance policy on property. There's the property and then there's the owner. The owner died. The other person was not named on the policy, and that was the basis for the denial of the claim. There's a concern that I now have to deal with, with clients when they use a transfer on death deed. Well, first off, what happens is quite often somebody will call up and say, Mom died last night. Quite often these calls come first thing in the morning. What do I need to do? My old answer was, check with me in the next week or two. Deal with what you need to deal with now. Now my answer is [INAUDIBLE]. The first thing you need to do is call your insurance-- insurance agent and make sure you have coverage bound on the house because there is no coverage now. So make sure you have that done. Get that done first and then go deal with everything you need to do. This is quite a burden to put on people. The particular legislation involved asks for 60 days' coverage. It has a provision in it that says if a premium is owed, if somebody is paying monthly premiums and they don't pay it, they have the standard procedural methods of canceling the policy for nonpayment just like they would if the owner had been alive. So we've had transfer on death deeds here in Nebraska for over ten years. We've also adopted the uniform law, and all we're asking for is a brief period of time. And there is a required warranty that will be in the transfer on death deed form to remind people that they need to get this covered. Thank you. If there are any questions, I'd be happy to answer.

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**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. Next proponent. Welcome.

**RYAN McINTOSH:** Chairperson Wayne, members of the committee, my name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I appear before you today on behalf of the Nebraska Bankers Association in support of LB579. Mr. Lindsay suggested the Nebraska Uniform Real Property Transfer and Death Act was first adopted in 2012 and has grown in popularity since that time as a revocable alternative to life estate deeds. Much of what I was going to say has already been said, so I'll skip ahead here. Under the current law, Nebraska Revised Statute Chapter 76, Section 3410 requires transferring death deeds already to contain certain disclaimers. This is to ensure that beneficiaries are aware of the issues that still arise outside of probate proceedings. This includes inheritance tax requirements, creditor issues, and Medicaid recovery. LB579 requires an additional disclaimer regarding insurance coverage and helps ensure that grantors have that conversation with their beneficiary regarding these insurance issues. Upon the death of a grantor, title to the real property is automatically transferred to the grantee beneficiary named in the transfer and death deed. And although this may seem like a seamless and efficient transfer of ownership, LB579 identifies serious pitfalls. LB579 ensures that those choosing to execute transfer and death deeds have a full understanding of the issues at play and protects those interests. With that, I thank you for your consideration and respectfully request the committee advance the bill.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here. Next proponent. Welcome.

**DEXTER SCHRODT:** Good morning, Chairman Wayne, members of the Judiciary Committee. My name is Dexter Schrod, D-e-x-t-e-r- S-c-h-r-o-d-t, president and CEO of the Nebraska Independent Community Bankers. Senator DeBoer mentioned it was Groundhog's Day, and I just thought I'd let you know that the authority on these matters, Unadilla Billy, did say six more weeks of winter, so I'm sorry to report that. I don't have much additional to add than what the Bar Association and the Bankers Association added. This is just something that makes sense. As Mr. McIntosh kind of said, if the owner is making the effort to do a transfer on death deed, which they don't necessarily need to, it then logically follows that that property means something and it should be protected, should be insured while the beneficiaries are going through the pain of losing a loved one. And this, of course, goes without saying that the lienholders have been protected as well. So this is

just something that makes common sense for everybody involved. And we're happy to work with the insurance industry to make sure we can get the right balance. But it seems like something that, that is important to have. So that's where I'll leave it.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**DEXTER SCHRODT:** Thank you.

**WAYNE:** Any other proponents? Proponents? Any opponents. Opponents? Welcome.

**ANN PARR:** Good morning. My name is Ann Parr, that's A-n-n P-a-r-r. I am the executive vice president, secretary and general counsel at Farmers Mutual of Nebraska, which is the leading Nebraska-based insurer of farms, homes, and autos in this state. And I appear here today in opposition to LB579. Just a little background. What does this bill do? First, without a transfer on death deed upon the death of an insured homeowner, ownership of the property would be settled through formal or informal probate process. And the insurance coverage does remain on the property until the ownership transfers. The policy provides that the legal representative of the estate is covered while acting within that capacity, And then when actual ownership does transfer, the new owner at that point would have to obtain coverage just like any new homeowner would. So in comparison on this transfer on death deed situation, ownership of the property is immediately transferred to the beneficiary upon the owner's death. It bypasses probate and all of that. And then under this bill, the beneficiary, the new owner of the property, would automatically become an insured under the insurance policy that was existing on that transferred property. So it's a different procedure. Ownership of the property transfers immediately. And under this bill, the new owner of the property would automatically and immediately have coverage under that insurance policy. Why do insurance companies have concerns about that? Well, because if the insurance policy automatically transfers to the beneficiary upon death, the insurance company doesn't have a chance to underwrite that risk. As a result, the insurance company might end up insuring someone we find to be undesirable as a risk. For instance, that beneficiary may live in a foreign country. That's not a risk we would ordinarily be able to insure. They may be a convicted arsonist, not somebody we would usually want to insure under a homeowner's policy. So this coverage would just automatically be in place. And now both parties to the insurance contract are in this contractual

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relationship with a party with whom they never intended to do business. They may not even know they're in this relationship. So one other thing to keep in mind that hasn't been mentioned, but property policies don't just cover the physical damage to the property. Typically, your homeowner's policy will also provide you with liability coverage for the insured person. So, for example, my homeowner's policy protects me if my house burns down, but it also provides protection for me, for instance, if I would get sued because I was out skiing in Colorado and ran into somebody negligently and hurt them. It's got that kind of coverage with it as well. It's not just a policy that pays out if your house burns down. So if the beneficiary happens to be a much more risky person than the original named insured, the insurer is on the hook for that sort of liability stuff too. I see my light's out. I thought I talked faster than that, but I would be happy to answer questions and I would just reiterate that we are more than willing to work on this. We understand there's a coverage gap in this situation and we want to do what we can to help with that. But we need to work through the details. So as written, we oppose and we would like you to give us a little bit more time to hash through the details of a solution.

**WAYNE:** Any questions from the committee? So, actually ran into this issue. A person passed on a small property. The person they passed it on to didn't know they passed it on to him. And so then actually somebody hit it with their car. So it's-- through no fault of their own. In that case, it was a little better cause we had somebody who hit it and they had insurance. But don't you underwrite the risk of the property? I mean, I understand you said your homeowner's insurance can do things, but you underwrite the risk of the property itself at the time you write it.

**ANN PARR:** We do, But it's twofold. We underwrite the condition of the property and we underwrite the person that owns the property, too, because we know that's-- that's part of the entire risk exposure. So we'll look at their prior loss history. We'll look at their criminal history, for instance, if it has anything to do with the ownership of the property.

**WAYNE:** OK, I have a question, but Senator Ibach.

**IBACH:** Thank you very much. Thank you for-- for your testimony too. Can you clarify if the extended benefits are for the life of the policy or for just that 30 days?



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**ANN PARR:** Under the bill or right now?

**IBACH:** Right now.

**ANN PARR:** Right now, the-- the insurance coverage will protect the legal representative of the estate for as long as they're the legal representative of the estate, acting within that capacity. Once the ownership finally transfers officially to a new homeowner, they would be expected to get a new policy at that point.

**IBACH:** But currently, does it-- does it cover them for the life of the policy for as long as the policy is paid up to? Or is it just a 30-day extension after death?

**ANN PARR:** Right now, there's no time limit--

**IBACH:** OK

**ANN PARR:** --on that. Yeah.

**IBACH:** Thank you. Thank you, Mr. Chair.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here.

**ANN PARR:** All right. Thank you.

**WAYNE:** Any other opponents? Welcome.

**ROBERT BELL:** Good morning, Chairman Wayne and members of the Judiciary Committee. My name is Robert M. Bell, last name is spelled B-e-l-l. I'm the executive director and registered lobbyist for the Nebraska Insurance Federation. I am here today in opposition to LB579 as written. And I've also been asked by the American Property Casualty Insurance Association to add their opposition to the record, Seeing how Dexter stole my Unadilla Bill joke and for the sake of brevity, I would just mention that the members of the Federation do look forward to working with the bar and with Senator DeBoer in coming up with a solution. I did have a member ask me to mention on the record that we did send a draft to the bar back in October of what we thought would be some acceptable changes. They did not accept those. And so the negotiation is ongoing. We just need some more time to work out those details. So with that, I respectfully oppose LB579 and thank you for your time.

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**WAYNE:** Thank you. Any questions from the committee? I'm just curious. I'm not involved in the negotiations, but what if we just limited the liability to the property itself, not the other?

**ROBERT BELL:** That would certainly be part of what we're requesting and have requested of the bar. So that-- that would be a portion. There are some disclosure notices that I believe are in LB579 right now. We-- we want some changes to that as well. And that in part is related to the coverage. And then it's a question of time. Right? And then when does that time start? Those are-- those are some questions that are-- that are out there. Whether or not-- in the bill it's 60 days, what we were proposing is 30 days. The bar came back on when does that time start? There's, there's just some open questions that we think that if we sit down at the table with the appropriate parties that we can definitely work those out.

**WAYNE:** We'll jump into those negotiations. Thank you for being here.

**ROBERT BELL:** You're welcome.

**WAYNE:** Any other opponents? Anybody testifying in a neutral capacity? There are no letters of support-- no letters for the record and as Senator DeBoer comes up to close on LB579.

**DeBOER:** So as you heard, this one is still kind of a work in progress. And we're going to keep kind of working on it until we get to the place where we think we've got a good bill. And that's all I got to say.

**WAYNE:** Any questions from the committee? Hearing none, that closes the hearing on LB579 and today's hearings.

**WAYNE:** Afternoon. Good afternoon. Good afternoon and welcome to the Judiciary Committee. My name is Senator Justin Wayne. I represent Legislative District 13, which is north Omaha and northeast Douglas County, and I serve as Chair of the Judiciary Committee. We'll start off by having members of the committee and staff do self-introductions, starting with my right, Senator Ibach.

**IBACH:** Thank you, Mr. Chairman. I'm Teresa Ibach. I represent eight counties in southwest Nebraska, District 44.

**McKINNEY:** Good afternoon. Terrell McKinney, District 11. north Omaha.

**MEGAN KIELTY:** Good afternoon. Megan Kielty, legal counsel.

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**WAYNE:** Your turn.

**ANGENITA PIERRE-LOUIS:** Angenita Pierre-Louis, committee clerk.

**DeBOER:** Hi, my name is Wendy DeBoer. I represent District 10, which is in northwest Omaha.

**BLOOD:** Good afternoon. Senator Carol Blood and I represent District 3, which is western Bellevue and southeastern Papillion, Nebraska.

**HOLDCROFT:** Rick Holdcroft, District 36, west and south Sarpy County.

**DeKAY:** Good afternoon. Barry DeKay, District 40. I represent Holt, Knox, Cedar, Antelope, northern part of Pierce, and most of Dixon County.

**WAYNE:** All right. And the pages today are Logan Brtek from Norfolk, who is a political science and criminology major at UNL and Isabel Kolb from Omaha, who is a political science and pre-law major. This afternoon, we'll be hearing five bills and it will be taken up in the order listed outside the courtroom. On the tables in the back of the room, you will find blue testifier sheets. If you are planning on testifying, please fill out a blue one and hand it to the pages so we can keep accurate records. If you are-- if you are not planning on testifying but would like your presence known and your position known, please fill out the gold sheet in the back of the room. Also, I would like to let you know the Legislature's policy is all letters of record must be received by the committee by noon prior to the day of the hearing. If you have handouts, please hand them to the pages. We would like for you to have ten handouts. If you don't, we'll get copies and make sure everybody gets it. Testimony for today will begin with the introducer's statement. After the opening statement, we will hear from supporters of the bill and then you'll hear from opposition, followed by those speaking in a neutral capacity. The introducer of the bill will be given an opportunity to close if they wish to do so. We ask that you begin your testimony by stating your first and last name and spell them for the record. We will be using the three-minute light system today. It'll be green. It'll turn yellow with one minute left, and then red we'll ask you to wrap up your final thoughts. I would like to remind everyone today, including senators, please turn off your cell phones or put them on vibrate. And with that, I'll turn it over to Senator DeBoer.

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**DeBOER:** Senator Geist, would you introduce yourself since you've joined us?

**GEIST:** Absolutely. Suzanne Geist, District 25, which is the east side, southeast side of Lincoln and Lancaster County.

**DeBOER:** OK. Well, now we will have Senator Wayne introduce LB18.

**WAYNE:** Thank you, Vice Chair DeBoer. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13. I told you guys this morning that I wasn't going to be here, but after talking and thinking about it, this is probably one of the most important bills that I've continued to introduce. And I hope this year we can craft whatever kind of amendment needs to be done. You're going to hear today about the story of Earnest Jackson. And let me just, because I got to get to Omaha for a sentencing hearing, I just want to put it this way for people who don't understand the criminal justice system. You may watch on TV where somebody is in a courtroom and they come up and they say, you did it or did you do it, and they take the Fifth Amendment. That in reality never happens in the courtroom. Typically, you will know if somebody is going to plead the Fifth Amendment. And if you know, well, you always know typically, but if you know somebody is going to plead the Fifth Amendment, it is an automatic mistrial if you do that in front of a jury. That's just what the Supreme Court and case law have said over and over and over, because it's an undue prejudice to either the prose-- typically the prosecution, because it casts a shadow of doubt on everything. So what does that mean? That means in this process, in this case, Earnest was arrested first and his case was going first. There were also two other codefendants. One of the main codefendants who was represented by another attorney repeatedly said he will not testify. He will take the Fifth. So by that person using their constitutional right to the Fifth Amendment, Earnest couldn't call him to testify, nor could his attorney, and have that conversation about what really happened. Mr. Jackson was found guilty. And I'm abbreviating it because there are going to be people who are going to go into detail, and I don't want to steal some of their thunder, who have been working hard on this. But what essentially happened is he was convicted of murder, but as an accessory, if you want to be simple terms. It's more legalese than that, but it's considered basically an accessory of a felony of a murder. Well, the person who was ultimately responsible for the killing got up in his own trial after Earnest's trial, testified and the jury believed him, it was self-defense. And he was found not guilty. The third codefendant who was the last one to go, also went in

front of a jury and that individual testified of what really happened. And that third defendant was found not guilty. But because of a constitutional right, something we all sit here and argue and believe in, a constitutional right was exercised and he happened to go first, he was convicted. That's essentially what happened in this case. That's essentially the dynamic of what we're trying to address, that if somebody uses their constitutional right to not incriminate themselves and somebody is convicted, who could have used that testimony, and then that person later tells their story, and you can file for a motion for a new trial. Now, I want to be clear here. This does not let somebody out tomorrow. This gives a person an opportunity to file a new motion for a new trial, which has to be heard in front of a judge. And we heard a lot of this talk about discretion yesterday. This gives the judge discretion on whether to grant a new trial or not. This is not an automatic get out of jail free. This is not an automatic new trial because there are other facts a judge can look at in a case and say, even with the testimony that was barred from a constitutional right, I still don't think there's enough evidence to grant you a new trial. That's what could be said by a judge. But right now, based off a Supreme Court ruling, we can't even get in the door to make that motion for a new trial based off of this evidence, because the Supreme Court said it's not newly discovered. It's not newly discovered because we knew about it. When I say we, I'm not his defense attorney, they knew about it, but they had no way of accessing it because the other person's constitutional right that he exercised forbid that from happening. So not only is he convicted of a crime in which everybody else was found not guilty, to be a codefendant where everybody else was found not guilty, that, one, is an injustice. But two, there was no way for this evidence to come to light. You can't compel somebody to testify against themselves in a Fifth Amendment situation. So it is new evidence for practical purposes. And this bill is simply trying to remedy this. Every year we have worked on amendments to narrow it and narrow it to where it doesn't, in the prosecutor's mind, maybe opens up a floodgate and we're going to try to work on narrowing it some more if we have to. But there is a true injustice being served right now that the actual person who fired the shot, one, said Earnest wasn't there, but, two, more importantly, convinced a jury it was self-defense. So why is somebody sitting in jail for a murder that was never a murder? Now, I don't know if there's another person underneath the exact same facts; but if there is, they still should have access to a new trial. There was no way for that evidence to come in. And with that, I will answer any questions.

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**DeBOER:** Are there any questions for Senator Wayne? I don't think there are.

**WAYNE:** I will waive closing because I have to go to Omaha for a hearing. If the hearings are still going on later on, Vice Chair, I will drive back down. But I appreciate everybody's time and appreciate it. Thank you.

**DeBOER:** Let's have our first proponent testifier. Welcome.

**JASON WITMER:** Jason Witmer, W-i-t-m-e-r. I only wanted to go first because I decided to read the statement of, verbatim statement of Shalamar Cooperrider, who is the young man that was acquitted. So I'm having them handed out the first page I wrote on. So in this thing, I'm not sure if Shalamar is the killer. They seem not to give no thanks. Possibly can. But I'm pretty sure Shalamar's killer is in this documentation that it had verbatim, which is why I kind of found it questionable when they kept trying to undermine Earnest by saying there was multiple shots. And nobody's talked about this. So to get to it, you heard some of the facts of the case. Shalamar trial was about a year after Earnest Jackson. He confesses to having a gun. You will see on and I-- I won't go verbatim for everything. You'll see that the prosecutor walks it through it. He has a 9 millimeter. It's in like page-- I got notes in there. You'll see it. He has a 9 millimeter. I'm just going to talk about it and then you can read it. He has a 9 millimeter. So I read this last night. Let me say, this has me frustrated because I don't know how two years has passed [INAUDIBLE] talking about this case. And none of us have really read this, including myself. So there's-- there's-- there's a big reason about the 9 millimeter. They talk about what happened. He went to confront or talk to Larry Perry, the young man that was killed. Everybody's about 18, 17 years old at this time. He's already said Earnest Jackson wasn't there under questioning. This is just partial of this Bill of Exceptions. He already said Chillous, Dante Chillous was not there. In fact, who he says was there while he's talking to Larry Perry is on the front page. I'll let it be read by you guys. These two individuals are from the same neighborhood that Larry Perry is in. One of them he can't identify. He don't know. The other one he does know as a friend and he identified. They-- him and Larry Perry's argument is about rims and tires getting stolen. These two individuals show up. They're mad at them for both being loud in the neighborhood. And then they get mad at Larry Perry for stealing rims and making the neighborhood hot. He decides to leave, Shalamar. Shalamar leaves. They ask him, the prosecutor is walking him through this. He walks, he crosses a fence.

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He's ending up down into the, wherever this field that he's at. And that's when he hears shots. They say, different sounds? He says, yes, different sound shots, meaning, for my tape, different guns. Right? He runs. He jumps down on the ground. They ask him, you know, to shoot back. He says, to try not to be shot. Did you have questions?

**DeBOER:** Are there any questions for this testifier? Senator McKinney.

**McKINNEY:** Thank you. Mr. Witmer, do you like-- do you have any closing statements you wanted to say?

**JASON WITMER:** Yeah. I do. Thank you. He says try not to be shot, but he says, I do turn and return fire. I see three individuals. He's asked again because there's multiple times, as you guys who are lawyers know, you go over and over this that the individuals are spread out. He says he takes shots at them. They ask about four or five shots. He gets up and runs. He sees two of them running and one of them fall. Whether or not that's from him or from the others, But I know the prosecution or whoever represent them have come up here and alluded but would not say no detail about multiple shots, which has always confused me. Do you guys know what happened to Shalamar and Dante Chillous, who was acquitted? Within five years, they were both murdered, unsolved murders. Do you think they was all-- do you think all murders are random? Because I don't think so. I think somebody knows that life sentences can be-- hit any time in your life, that murder cases stay forever. I think what I say could get me killed. But it don't matter, because it's in the record. You can't kill what's in the record. And if you look at this, somebody is identified. Somebody is not investigated. We have a prosecution team that often gets people who they are prosecuting. And once they do, they stick to it. They won't mess up their case to pull other things in. And we have-- we have somebody out there that we talk about accountability, Don. And I think it's time that we do accountability. Like, this case needs to be investigated. But as far as Earnest Jackson, no reference to him being a part of this other than him being friends with the individual and he's still in prison.

**DeBOER:** Let's see if there are any other questions. Senator McKinney, are you done asking questions?

**McKINNEY:** Yes.

**DeBOER:** Thank you. Are there any other questions? OK. Let me ask you a couple of questions just to kind of--

**JASON WITMER:** Clarify.

**DeBOER:** --set the stage for everybody, because I think we're kind of coming in in the middle of things here. Who was the individual who was killed in the first instance?

**JASON WITMER:** Larry Perry.

**DeBOER:** Larry Perry.

**JASON WITMER:** The young man that the-- the defendants is Shalamar Cooperrider, Earnest Jackson, and Dante Chillous were charged with use of the felony murder rule so they're charged with first degree. The felony murder rule only requires that you're convicted of a felony, are believed to have acted in a felony manner and that links you to first degree without premeditation.

**DeBOER:** OK. So Larry Perry--

**JASON WITMER:** Larry Perry was the one that was--

**DeBOER:** That was--

**JASON WITMER:** --killed in that case.

**DeBOER:** Larry Perry was the victim of the first shooting. And the the document that you gave us was--

**JASON WITMER:** Shalamar Cooperrider.

**DeBOER:** --the transcript from Cooperrider's--

**JASON WITMER:** Trial.

**DeBOER:** --trial. Yeah. OK. Thank you.

**JASON WITMER:** And his lawyer may even be here, Tom Riley [INAUDIBLE]

**DeBOER:** I see no-- I see no other questions for you. Thank you very much.

**JASON WITMER:** OK.

**DeBOER:** Let's have the next proponent testifier.



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**JONATHAN LATHAN:** My name is Jonathan Lathan J-o-n-a-t-h-a-n, last name Lathan, L-a-t-h-a-n. Good afternoon, Judiciary Committee members, here to hear this bill, LB18. I'm here to speak to you today as a proponent of LB18. Although this bill covers more than the case I'm familiar with, Earnest Jackson, I'd like to take some time to speak on it. I grew up in Omaha. I ran some of the same streets as Earnest. I actually grew up in church with Avery. Fortunately, I was able to enlist in the military before I found myself in a similar situation as those individuals. I'm a father of nine, six of my children being boys. My oldest is 19. He hangs out with friends, spends time with his family, and plays video games just like Earnest. I keep excellent track of where he is. But just as with Earnest, a case of mistaken identity or allegedly being at the wrong place at the wrong time could cost him over 20 years of his life, 20 years away from family, 20-plus years away from friends, losing the opportunity to be physically present raising children, losing the opportunity to be a free man. I couldn't imagine my son being taken away from me initially based on seemingly inconsistent charges and convictions. Earnest was found guilty of first-degree murder, but not the use of a weapon to commit that murder. On top of that, he's still incarcerated even after the actual shooter was acquitted of that same murder on a charge of self-defense at his own trial that he was able to testify at and didn't take his constitutional right. That trial happened to be after Jackson's. Even with the knowledge that another person confessed and was acquitted of that murder, Earnest is still in jail. State law has prohibited this information from giving Earnest a new trial, basically because of scheduling. LB18, allowing the testimony of a party who exercised their constitutional right to not speak at another trial, could be the key to freedom for a lot of individuals who are just pawns in the system. Earnest had his first trial. Earnest had his trial first, excuse me. And his legal team asked several times for Cooperrider, the shooter, to testify. Those requests were denied because it would potentially incriminate Cooperrider because his trial was set for a later date. This is why we're here today. If Earnest had been given a trial after Cooperrider, the verdict of self-defense would have counted. Earnest would potentially be free. That's not the only evidence that should be considered, though. An eyewitness placed Jackson at the scene, hitting the victim on the head with a pistol. The autopsy showed that not to be true. The witness last saw Jackson at the scene, but did not know it was Jackson until police told them. There are also many inconsistencies that LB18 are paramount in bringing justice to these families. We live in a society of second chances. We now have a second chance to make this right for Earnest,

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Avery, and every other inmate who may have similar circumstances. We talk about justice. We talk about how important family is. We talk about doing the right thing. Well, now's the time to do the right thing. Vote to pass LB18 for Earnest, for Avery, for their families. For our sons, who, even though we may be good parents, they end up being in a situation and be taken from us for 20-plus years. Earnest is just one example of countless others who this bill could bring justice to who deserve a chance at a retrial. Thank you.

**DeBOER:** Thank you very much. Are there any questions for this testifier? I don't see any, but thank you very much for being here.

**JONATHAN LATHAN:** You're welcome.

**DeBOER:** Let's have our next proponent testifier.

**NATURE M. VILLEGAS:** Hi. My name is Nature M. Villegas, N-a-t-u-r-e, middle initial M, last name V-i-l-l-e-g-a-s. In the past few years and even days of legislation hearings, I've heard phrases I visualize as coward shields to hide behind: public safety, tough on crime. What about the victims in the miraculous year 2020? We can put the shields down. Playing naive is over. This isn't something that bled out of 2020 Band-Aid. This is a genocide against our men, women, and children in our community, a genocide Nebraska loves to sweep under the rug with the infamous "Good Life" broom and refuses to take accountability. It's-- Nebraska's residents are required to be more accountable than the state itself and the operating officials. While LB118, excuse me, LB18 would not necessarily hold Nebraska accountable, it would give human beings that Nebraska has so easily thrown away a chance for a new trial based on new evidence. We have spent the last few years hearing senators and other prestigious positions-- people in prestigious positions say, we know Earnest Jackson is innocent, but our hands are tied legally. Well, LB18 will allow you to get from behind your comfort shields and your privilege and untie your hands. LB18 would allow Earnest Jackson and many others you are holding that are innocent a trial and chance to be returned home. If you can know you have innocent life in your systems and not do something to bring that change to the law to assist them to be returned, what does that really say about your true character and your true moral? We will not, as a community, continue to sit and let you take our men, women, and children or kill us. I was able to speak to Earnest yesterday and I was so humbled because I sit before people that cast so much judgment that do not hold a candle to his integrity, his wisdom, his peace, his kindness. It's uncanny. I have yet to see

it in the people that want to turn down their noses at us. I see Avery's family in-- behind me. I've heard their family, his-- him speak. We need our kids out here and they deserve to be home. They deserve this change in our system so they can be home. Otherwise, what is this justice you speak of and this system you have so much faith in? Those of you that hide behind your shields and privilege don't hold a candle to the loving, peaceful, kind, wisdom, and integrity filled in our kings and queens and our children that you are holding hostage. I want you to say his name because we are speaking highly of Earnest today, but I want to close this out, in his words of much love, more respect and all power to the people.

**DeBOER:** Thank you. Let's see if there are any questions for you. Are there any questions for this testifier? I don't see any. Thank you for being here. Let's have the next proponent testifier. Is there any other proponents? OK. Welcome to your Judiciary Committee.

**AMBER STROZIER:** Thank you. Good afternoon. My name is Amber Strozier, A-m-b-e-r S-t-r-o-z-i-e-r, and thank you for your time in hearing me today. I am here representing Inclusive Communities of Omaha. I am also coming on behalf of Earnest Jackson and Avery Tyler. I'm a wife. I am a mother, a homeschool mother of six children, ages ranging from 10 to 4 months. I am a daughter. I am a sister. I am an Omaha native. I come in support of LB18. It must be passed to serve as a check and balance to the courts that have gravely been misinterpreting the law at best when making decisions on denying granting new trials based on newly discovered evidence. As it stands now, there is a loophole that exists simply because of a wordplay on semantics that says that newly available evidence is not the same thing as newly discovered evidence, even in layman's terms, saying you knew this. So therefore, there is no way that it can be newly discovered. But we cannot take common sense out of the law and out of the courts. The fact remains that the defendant did not have access to this evidence during trial or even subsequent appeals. What happened to Earnest Jackson should never have happened at all. Twenty-plus years have gone by, but we must not miss this opportunity to make it right now. And passing this bill would allow for the opportunity to do just that because newly discovered must be synonymous with newly available. Also, I am coming to shed light on a similar injustice with another loophole in interpreting the newly discovered evidence directly affecting my brother, Avery Tyler. Avery is a son, a brother, an uncle, a father with a master's degree. At the time, he was a manager of Mutual Omaha and currently prison chaplain of NSP, cofounder of CAP program, and overall support to the men in NSP. Please follow me for a moment. In 2014, Avery was

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convicted of first-degree murder and sentenced to life without the possibility of parole on a clean record with nothing on it. Two months later, he requested that all transcripts be sent to him through his attorney. However, he was only sent a cover sheet and not the transcripts themselves. The Nebraska Supreme Court says that a copy of the transcripts, all requested transcripts, where it's going, and a copy of everything be sent-- that was sent be put into the court file so that a defendant could not come back and say, hey, you never sent it to me. All that was sent was a cover sheet. He reached out many times--

**DeBOER:** Ma-am.

**AMBER STROZIER:** --before his deadline. And with--

**DeBOER:** Ma'am, I'm sorry. I'm going to have to interrupt you because your red light is on.

**AMBER STROZIER:** Oh, yeah.

**DeBOER:** But I'm confident there will be a question for you. Senator McKinney.

**McKINNEY:** Thank you. Can you finish your last statement?

**AMBER STROZIER:** Yes, absolutely. Thank you. So my brother, Avery Tyler, reached out many times and was never actually sent all of his records from the court. The court system is a check and balance against lawyers or against lawyers as well. And this check and balance did not take place. It was violated. My brother did not receive the actual files that he requested. And so my brother had a deadline to meet. He met the deadline for the postconviction appeal, yet he could not bring any claims from records that were never given to him. 2017, and I'm almost finished, 2017 he requested officially the records again, and the clerk of the court on the last page wrote that the files originally requested in 2014 were not a part of his court file, proving what my brother has been saying all along that he did not receive it. Finally, in 2021, he requested again the entire file and I called and I requested, spent much time with the clerk who apologized and looked through every single request and finally said, I have it and I will send it. She sent it. And what we suspected that something was wrong, there was. My brother found out that his speedy trial had been violated and that his attorney, who was the head of the defense, I might not be saying the proper terminology, but the head of the--

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the public defenders knew of this and actually aided in doing so. It is our opinion that that is the reason why the file was never sent to my brother until it was too late. So on subsequent appeals, my brother was told denied. Your attorney had it, you had it, therefore. And so this is not newly discovered evidence, but this did not leave my brother with an option to bring forth ineffective assistance of counsel claims without the information. So this is a loophole that I'm asking to be closed, to close this loophole that allows the courts to suppress claims of defendants by withholding records until after the expiration of deadlines to file claims. So I'm asking that you pass this LB18 and also that it be amended to include language that deems records and transcripts that were expressly requested by incarcerated individuals after trial not sent to be classified as newly discovered evidence in relation to claims of ineffective assistance of counsel when transcripts are provided. There is no way that claims can be brought forth without access to the requested record. Finally, my--

**DeBOER:** Let's see if there are any other questions for you. Are there any other questions?

**McKINNEY:** No.

**DeBOER:** OK. All right. I don't see any other questions.

**McKINNEY:** Thank you.

**AMBER STROZIER:** OK.

**DeBOER:** Thank you for being here.

**AMBER STROZIER:** Yes, thank you.

**DeBOER:** Let's have our next proponent.

**TESSA DOMINGUS:** My name is Tessa Domingus, T-e-s-s-a D-o-m-i-n-g-u-s. I attended the hearing of this bill when it was introduced last year. And, one, I want to talk about one of the statements that was made during the opposition hearings of that bill. There was a prosecuting attorney that testified in opposition, and her statement was that allowing this bill to pass would be opening the floodgates. In my opinion, this gives us more than enough reason to take a look at this wording. The question is how many Nebraska citizens are being held unjustly, a question that none of us can answer, but one that we should be seeking in order to right? Allowing this-- this bill would protect the life and freedom of all Nebraska citizens from unjust

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practices. And I think it's something that we should be taking a closer look at. That's all I have.

**DeBOER:** All right. Are there any questions? All right. Thank you for being here. Next proponent testifier.

**JEFF PICKENS:** My name's Jeff Pickens, J-e-f-f P-i-c-k-e-n-s. I'm chief counsel at the Nebraska Commission on Public Advocacy. In 2000, Earnest Jackson was sentenced to life in prison without parole. In 2012, the Supreme Court in Miller v. Alabama held that life without parole for juvenile offenders is unconstitutional. I was then appointed to represent Mr. Jackson in his Miller claim. I represented him at resentencing and then on appeal therefrom. At one point I knew his case probably better than anybody. It's been a while since I represented him. I'm here to testify on behalf of myself. I consider myself a friend of Earnest Jackson. I had an opportunity to get to know him very well, and I still talk with him at least a few times a year. What you heard about the facts of the case I think-- I think I can try to summarize it maybe a little better. So these three men were charged with the murder. Mr. Jackson had the lowest case number. His case was filed first. Therefore, his case went to trial first. He wanted Mr. Cooperrider to testify for him but Cooperrider refused. Jackson went to trial without Cooperrider's testimony. He was found guilty of murder, not guilty of using a weapon to commit murder. And then Cooperrider went to trial. He testified at his trial that he shot Mr. Perry. He did it in self-defense. There were two other people with him, but it was not Mr. Jackson nor Mr. Chillous, and he was found not guilty. Mr. Chillous went to trial next. Cooperrider testified on his behalf. He provided the same testimony. This is to another jury, a totally different jury. And that jury believed Mr. Cooperrider and found Mr. Chillous not guilty. It's not a stretch to-- to-- to claim that if Mr. Jackson had gone to trial after Cooperrider and Cooperrider testified on his behalf, he would have been found not guilty as well. His lawyer filed a motion for new trial after he was found guilty. And while that was pending, Mr. Cooperrider was found guilty-- rather, found not guilty. So Mr. Jackson's lawyer filed a motion for new trial. That was denied and went to the Supreme Court on the grounds that it was newly discovered evidence. The Supreme Court said, no, it's not newly discovered evidence; it's newly available evidence. And that's not a statutory ground for a motion for a new trial. LB18 fixes that problem. It provides a ground for a situation like Mr. Jackson's case, where the evidence is not available at the time of trial, but it's available later. And I would urge you to support LB18.

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**DeBOER:** All right. Thank you very much. Are there questions from the committee?

**JEFF PICKENS:** Thank you.

**DeBOER:** I don't see-- oh, Senator McKinney has one.

**McKINNEY:** Thank you. Thank you for your testimony. What do you think happens when innocent individuals are sent to prison for years and are not giving-- given the ability to address their-- it's not-- they are not given the ability to be released or, you know, speak to their freedom of why they should be free?

**JEFF PICKENS:** Not given a mechanism to get back into court.

**McKINNEY:** Yeah.

**JEFF PICKENS:** That's-- that's a terrible injustice. And that's what happened to Mr. Jackson. He didn't have a mechanism to get back into court until the decision in Miller v. Alabama, but that only gave him an opportunity to get a new sentence, not to have a new trial.

**McKINNEY:** Thank you.

**DeBOER:** And I have a question for you. I have a question for you. How many cases would you suspect and maybe you're not the right person to ask this question, exist in a, let's say, first a year where there are codefendants in which this information, this evidence is not available and then later becomes available because of a later trial?

**JEFF PICKENS:** I think this is a very unique case. I don't think this happens very often. But-- but I don't think that's a reason not to amend the law so that it will handle a situation where there is an unjust-- an injustice, like in Mr. Jackson's case.

**DeBOER:** I'm more asking you, do you think this will lead to a bunch-- a bunch of postconviction work?

**JEFF PICKENS:** No, I don't think it will. I can't imagine it's going to [INAUDIBLE] there will be many people moving for postconviction relief based upon this amendment.

**DeBOER:** All right. Thank you.

**JEFF PICKENS:** You're welcome.

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**DeBOER:** Any other questions? I don't see any. Thank you.

**JEFF PICKENS:** Thanks.

**DeBOER:** Next proponent testifier.

**SPIKE EICKHOLT:** Good afternoon. Vice Chair DeBoer and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in support of LB18. This bill has been introduced before and we have supported it. I don't really have much to add. I think Mr. Pickens gave a very good summary of what the bill does. I would like to highlight one important point about Mr. Jackson's case is that Mr.-- as Mr. Pickens mentioned, Mr. Jackson was charged with two crimes, first-degree murder and use of a firearm or use of a weapon to commit that murder. The jury found him not guilty of using a firearm to commit a murder. So you might be wondering, well, how was he found guilty of a murder then? Nebraska law, like many states, allows for someone to be found guilty under an aiding and abetting or accessory theory. So what that means is that the jury was instructed that they could find Mr. Jackson guilty of murder even if they did not believe he actually shot the person. And that's apparently what the jury did. That's important because Mr. Cooperrider went to trial, later, says I shot him and Jackson was not there. And that jury believed Mr. Cooperrider. One of the things that's sort of very unusual and I would admit very unjust, is that Mr. Jackson is serving a sentence that was lowered to 60 to 80 years imprisonment. He is serving a sentence having been found guilty under an accessory theory. No one was found guilty of committing the principal offense to which he was convicted of helping aid and abet. That's sort of a legal perhaps not impossibility, but it's a legal peculiarity. It's very unjust, one would suspect. What's even more unjust is that without LB18 or similar-- similar law, if Mr. Jackson does not have a way to sort of relitigate this point or raise this legal issue, the issue of am I being justly imprisoned under an aiding and abetting theory, serving a sentence when there was no one convicted of-- as a principal offender? He can't do it in a postconviction claim. He cannot do it in a motion for new trial. This does provide a very narrow exception to the five-year prohibition or the really the absolute bar for bringing a motion for new trial for cases like him. To answer Senator DeBoer's question, I don't think it's going to come up that much. Even if there are circumstances where somebody has codefendants and somebody does invoke the Fifth, you still have to make the showing that whatever evidence you have is



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material to your guilt. It just can't be something that somehow happened and there's other evidence. In this case, this is material and I'd ask the committee to advance it to the floor. And I'll answer any questions if anyone has any.

**DeBOER:** Any questions? I have a question for you. In felony murder, there has to be an underlying felony that is the whole group, right?

**SPIKE EICKHOLT:** Right.

**DeBOER:** So what was the felony in this case that the whole group was participating in, in order to convict someone of felony murder?

**SPIKE EICKHOLT:** I think the theory of the prosecution's case was that it was a felony robbery. There was some sort of argument, I think if I remember right, between-- the state said between Mr. Cooperrider, Mr. Chillous, and Mr. Jackson and Larry Perry. And under a felony murder, just so the record is clear, you can be found guilty of first-degree murder if you intentionally and deliberately and with premeditation kill somebody. Another way you can be found guilty of first-degree murder and receive a life sentence or even worse, if you intentionally commit a felony, and there's about maybe six or seven felonies, and during the commission of that felony, someone is killed. Yesterday, a woman testified that I think her older brother is serving a life sentence for murder relating to a burglary. And it sounded to me like that that was an example in which somebody committed a burglary by forcing their way into someone's home. The woman who lived in the home had a heart attack. That is a burglary. During the commission of that burglary, if someone dies, that's a first-degree murder. Robbery is another underlying felony that can support a first-degree murder. Arson and the law school example that that happens in real life is somebody sets fire to a building. The fire department's on the way and somebody gets injured, a fire person falls off the truck or something like that and dies, that's murder. So that's sort of, I think, the theory that this may have done in this case. But what's notable is that the jury instruc-- was instructed on an aiding and abetting theory that you don't have to believe that Mr. Jackson was the actual principal offender of either the felony or the actual intentional murder to find him guilty.

**DeBOER:** So was Mr. Jackson convicted of any felony other than the felony murder?

**SPIKE EICKHOLT:** Just the murder.

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**DeBOER:** OK. Thank you. Any other questions for this testifier? Thank you. Next proponent testifier.

**JASMINE HARRIS:** Good afternoon, Vice Chair DeBoer and members of the Judiciary Committee. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s. I'm the director of public policy and advocacy with RISE. We're the largest nonprofit organization here in Nebraska, focused solely on rehabilitative programming in prisons and reentry support. And our mission is to break generational cycles of incarceration. The Innocence Project, which works to exonerate wrongfully convicted individuals through DNA testing, has estimated that about 1 percent of the U.S. prison population are wrongfully convicted. That is about 20,000 individuals. The Equal Justice Initiative has been providing legal services to people who have been wrongfully convicted and unfairly sentenced in prisons and jails in the United States since 1989. A lot of their exoneration cases have been based on wrongful conviction through false accusations made in court, government official and law enforcement misconduct, and false forensic science, among other leading causes. There have been over 3,175 exonerations since 1989 in the United States. RISE's vision is that all people will find freedom from cycles of incarceration. LB18 will provide a way for Nebraskans who have been wrongfully convicted to appeal their case and submit new evidence to prove their innocence, therefore being freed from the cycle of incarceration where they are currently held captive. While working with incarcerated people in Nebraska, we have been able to interact with many individuals and have given them one of the things that they need the most, a listening ear. We've heard the story of Earnest Jackson, and I've heard Avery Tyler's name mentioned today as well. Both of these gentlemen has taken RISE. They've graduated. They've become peer facilitators, which means they go and then help other young men who go through this program as well. RISE is here to encourage all elected officials to look at this from the perspective of empathy. We must stand on the side of justice and what is right in order to facilitate the vision that all innocent people should be free. Even if one person is freed through this legislation, it is worth it. And so for these reasons, RISE supports LB18 and asks that the committee members vote this bill out of committee to General File. Thank you.

**DeBOER:** All right. Are there any questions? Senator McKinney.

**McKINNEY:** Thank you, Senator DeBoer. Ms. Harris, can you speak to the person that is Earnest. Since my time in the Legislature, I have on multiple occasions had an opportunity to talk to him on the phone. And

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then when I visited the prison, I sat down and talked with him a lot. And the last time I seen him, it was during a Kwanzaa celebration for Harambee that he was leading. He was one of the mentors, and he is a mentor inside, and he helps younger individuals inside get on the right track, as well as keeping himself on the right track. Can you speak to who he is as a person from-- from what you've seen?

**JASMINE HARRIS:** Yeah. I was able to go into the facilities at this point in time as our postrelease program manager. And as our program stood, it's about six months and individuals would work on character development and employment readiness, entrepreneurship skills and present a business. So I was able to watch as we went in for business coaching days and listen to his personal statements, what growth he has gone through in the time that he's been incarcerated. He actually was one of the winners of our business coaching day, and his business was one of those top businesses. So to say who he is now compared to who he was then, I wouldn't be able to say that. But I know that as being in our program and being a peer facilitator for our program, he has done a lot of work to help individuals. And I know people look up to him in that facility.

**McKINNEY:** Thank you. And I wanted to highlight that because I wanted to show that considering the situation he's in and has been and he's still working to improve himself and others around him and trying to be a leader as best as possible, and also speaks to the bigger topic of individuals that do serve that amount of time. They do change and they don't-- they don't stay the same. They might go in young, but as time progresses they mature into men and women that deserve a second chance. In Earnest's case, he deserves a chance to be-- he deserves justice.

**JASMINE HARRIS:** Yes.

**McKINNEY:** Thank you.

**JASMINE HARRIS:** Thank you.

**McKINNEY:** Yes.

**DeBOER:** Any other questions? I don't see any. Thank you so much for being here.

**JASMINE HARRIS:** Thank you.

**DeBOER:** Next proponent testifier.

**ALEX M. HOUCHIN:** Good afternoon, members of the Judiciary Committee and fellow Nebraskans watching online. My name is Alex M. Houchin. That's A-l-e-x M as in Michael H-o-u-c-h-i-n. I'm speaking today not just for myself, but also on behalf of Nebraskans for Alternatives to the Death Penalty. We're an organization dedicated to reducing and eliminating the state's legal authority to kill its own people. Both the U.S. Constitution and the Nebraska state Constitution guarantee that once you're accused of a crime, whether or not you actually did it, you have the right to a fair trial. This includes not just the right to effective defense, but also the right to present any and all evidence or testimony that may exonerate you of that crime. This is true whether you committed the crime or not. But it's especially important when you're innocent, because although we all want to believe otherwise, we know that our system can and does convict people for crimes they didn't commit. Sometimes we lock away these people for a long time. Sometimes we kill them. That's years and lives taken away unjustly, stolen by the state. Of course, there are safeguards designed to prevent these outcomes, but these safeguards can always be improved. Currently, Nebraska Revised Statute 29-2101 states that if you're convicted of an offense, you can motion for a new trial for a number of reasons, including newly discovered evidence. LB18 would make a small expansion to the definition of newly discovered evidence to include exonerating or mitigating testimony or evidence that was not produced in your trial because someone else invoked the self-incrimination clause in their trial. It also eliminates the time limitation for seeking a new trial following conviction for the most serious crimes that carry the most severe punishments up to and including death sentences, because there should not be an arbitrary time limit on preventing executions of innocent people. Senators, this bill closes loopholes in the law that allows our justice system to continue punishing innocent people in our names, which is the last thing it's supposed to do. Please vote LB18 out to General File and please support it all the way to final passage. Let's make our system a little bit more just. That's something we should all want. Thanks very much. And I'll try to answer any questions you might have.

**DeBOER:** Are there any questions for this testifier? I don't see any, but thank you for being here. Next proponent testifier.

**JUDY KING:** Hi. My name is Judy King, J-u-d-y K-i-n-g, and I'm in support of LB18. Earnest Jackson is innocent and he's been in jail for over 20 years and nobody's doing anything about it. This will do something about it, about someone who's innocent that has been in prison for over 20 years. I would like to see some of you in the

Legislature go to a prison and spend the evening in the jail for a day and see what it's like just one day to be in prison and see how it might change your empathy on some of these things. He's innocent and he's been in there for 20 years. Another thing that is disgusting is the Pardons Board, who is run by Ricketts, let a sexual assault, first-degree sexual assault person free. But an actual innocent person he didn't do anything about. He opposed that all the way and along with the Pardons Board. You need to change the Pardons Board and give them the information on this gentleman so that the next time somebody is wrongly arrested and put in prison for 20 years, maybe they might have the information to release that person instead of making it political. They let out a man that court records indicate he broke into an Ogallala home of his estranged wife, then terrorized her with a knife. He tied her to a bed and sexually assaulted her while-- in front of their children, five and seven, were in the home. This gentleman then took the children and fled to Texas, leaving his wife bound and gagged. This is someone that Ricketts pardoned, but an innocent man, he didn't. Isn't that odd? He did it because there were a bunch of gentlemen with Legion-- Legion hats on in the front row. And after talking to a former state Legion commander that's-- that lived in Scottsbluff, her name was Beth Linn, who served as a state Legion commander from 2016 to '17, also said that while this gentleman has claimed the sexual assault was a misunderstanding, she said it was far from it. And Ricketts let that person on parole. I really thank Senator Wayne for bringing this forward. I sat through that same thing where I listened to that there was going to be an overflow of people-- I got it. Thank you.

**DeBOER:** Thank you, Ms. King.

**JUDY KING:** Thank you, Senator Wayne.

**DeBOER:** Are there--

**JUDY KING:** We really appreciate this.

**DeBOER:** Let's see if there's any questions for you. Anybody have any questions for this testifier? I don't see any. Thank you.

**JUDY KING:** Yep.

**DeBOER:** Next proponent. Are there any other proponents?

**TRACY JACKSON:** Hello. I'm Tracy Jackson, T-r-a-c-y J-a-c-k-s-o-n. I'm Earnest Jackson's wife. I want to apologize in advance. I'll probably

cry. So everybody spoke about LB18 and how it will affect them. But I'm going to tell you about Earnest Jackson. Earnest Jackson is a man that went to prison at the age of 17. It wasn't easy. He had trials and tribulations obviously, as a 17-year-old going into a grown man's prison. He had a lot of write-ups. But let me tell you about the man he is today. He's employed. He's educated. He's a mentor. He's a leader. He's the one in the prison that breaks the gang fights up or illuminates the fact that that situation even happening. That's the man that Earnest Jackson is. He deserves a second chance and this bill would do that. There are several other states that maintain postconviction laws and statutes and case law similar to LB18. These states are compromise [SIC] of red and blue so it's a bipartisan. LB18 allows for juries to hear all the evidence and will allow for more accurate outcomes. Let me ask you all a question. In a system that claims to seek what is right, whether the truth should be unseen in court because that's what we have today. That's what we have 22, almost 23 years ago. Earnest Jackson has been incarcerated for almost 23 years for a crime that somebody else admitted to, was acquitted on, and also got the other codefendant acquitted. So legitimately, he drew the short end of the stick. How would you guys like to pull in a bag and pull the short end of the stick just because that's what the wording is and that's what the judge understands or what he interprets as a newly discovered evidence. So that's my question to the panel.

**DeBOER:** Are there any questions for this testifier? Senator McKinney.

**McKINNEY:** Thank you, Senator DeBoer. And Ms. Jackson, thank you for your testimony.

**TRACY JACKSON:** Thank you.

**McKINNEY:** I also wanted to highlight something else. Yesterday, Senator Blood, when we were talking about terminal illness and medical parole and about the young man that lost his life due to an illness, it was Earnest that directed the department to help that young man. And if it wasn't for Earnest, that young man probably would have just died in a cell.

**TRACY JACKSON:** Correct, yeah. He was his roommate and he insisted staff several times, this man needs medical attention. There's something wrong with him. Like, it's not normal for a 20-some-year-old man to be slurring his words. So, yeah, absolutely. And that's-- that's just in general, the man that he is. He wants to help everybody. And that's what he's going to do to his community if you

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pass this bill and give him a chance for another retrial. So  
[INAUDIBLE]

**McKINNEY:** Thank you.

**TRACY JACKSON:** Thank you.

**DeBOER:** Thank you, Senator McKinney. Any other? I don't see any. Next proponent testifier.

**LORENE LUDY:** I'd really love to have Ms. Jackson have the last word, but I'm here anyway. Thank you to the Judiciary Committee for hearing this very important bill. My name is Lorene Ludy, L-o-r-e-n-e L-u-d-y. And I'm speaking for myself and also as a volunteer for the Alternatives to Violence Project. This is a project that was started in 1975 in Green Haven Prison in New York to reduce violence in prisons. Part of our model is to have a team of facilitators that we call insiders and outsiders, that some people come in from the outside and some of the facilitators are inmates. Earnest Jackson became a facilitator in this program in 2019. I've been working with him closely since then, and in the last year I've seen him probably every Saturday, almost every Saturday, 2022. So I feel like I know him in a professional status as a team member. One of the things that-- one of the homework in the Alternatives to Violence project is to do an act of kindness because kindness is the opposite of violence. People who are kind are not violent. Earnest Jackson is kind. He's compassionate. He's sensitive. He's empathetic. I-- I serve on a team with him. I trust him. I would be happy to have him as my neighbor, to marry my daughter if he weren't already married and I had a daughter. He's a decent human being. I was heartbroken. I was heartbroken when the Pardons Board dismissed his case without listening to any-- any-- any testimony from anybody. I am on the board of my homeowners association, and I often hear people bring issues or concerns or complaints about things that I can do nothing about with my power and authority on the board. But every once in a while, there's something I can do something about. And there's a great satisfaction to be able to do something that helps my neighbor that makes their life better. You are in this unique place to do something to make Earnest Jackson's life better. It's you. It's not the Pardons Board. We know that they kind of didn't step up to do that. But this free-- justice for Earnest Jackson bill, which is not-- that's not what it's called. But we all know that's what it is. You're in the position to take the step to improve the life of a concrete person who deserves to have his life

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improved. Are there any questions? Thank you for listening to my testimony.

**DeBOER:** Thank you. Are there any questions for this testifier? Thank you very much for being here. Are there any other proponent testifiers? Welcome.

**JADEN PERKINS:** Good afternoon, Vice Chair DeBoer and members of the Judiciary Committee. My name is Jaden Perkins and I am Heartland Workers Center's north Omaha community organizer. At Heartland Workers Center, we believe in policies that seek to tackle the gross mishandling of justice in Nebraska's criminal legal system and LB18 supports that mission. Due to the mass incarceration policies in Nebraska and the United States as a whole, black, brown and indigenous people are overrepresented in the system 6 to 1. If given a chance at a later trial, I bet a good number of them would be found innocent. Last year there was a lot of consensus around this bill and it failed by just a few votes, urging you all to strongly consider, along with your colleagues, to pass this bill once and for all, as it is a commonsense measure that will give people a true chance at freedom. Free Earnest Jackson and free any and all innocent Nebraskans who have been affected by a racist criminal legal system. Thank you.

**DeBOER:** Thank you. Sir, could you spell your name? We didn't get your spelling.

**JADEN PERKINS:** J-a-d-e-n P-e-r-k-i-n-s.

**DeBOER:** Thank you. Are there any questions for this testifier? I don't see any, but thank you for being here.

**JADEN PERKINS:** Thank you.

**DeBOER:** Next proponent testifier. Are there any other proponents? Welcome.

**SARAH SAWIN THOMAS:** Thank you. Good afternoon, Senators. My name is Dr. Sarah Sawin Thomas, S-a-r-a-h S-a-w-i-n T-h-o-m-a-s. I'm here representing both myself and Stand In For Nebraska, which is a 501(c)(3) human rights and justice organization in Nebraska. We advocate for and alongside multimarginalized Nebraskans. This case is one of the most important. And I hope you feel that way as well. As a white person with resources who's benefited from my privileges and my family in Nebraska, I am stunned really by, you know, why would there be such an omission in legislation, you know, that you could be



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convicted falsely and not be able to bring new evidence to exonerate yourself? And I guess it doesn't seem too surprising to me because white people with resources who craft policy tend to have blind spots, forgive the ablest language, tend to have omissions. It's interesting when white people get really mobilized by policy, usually there's some direct impact that they personally empathetically experience, and I think that's very sad. What's amazing to me is the ability to work alongside mostly 20 women who have radically different lives than mine. I see how the nuances of policy, and this is one, this nuanced omission in policy devastates so many Nebraskans. I'm grateful for the Innocence Project. I'm grateful for advocates like Jasmine Harris. I'm grateful for Jaden Perkins, who bring this research-based information to light. Yeah. And I was part of the pardons. That whole experience, which was horrifying, to be honest. It's sick. It made me sick to see a free man ignored, disregarded, dehumanized. But white people with resources who do violence with those resources lack empathy, lack conscience. And I sure hope this committee is not comprised of such folks with power and influence. I'm open for questions.

**DeBOER:** Are there any questions for this testifier? I don't see any, but thank you for being here.

**SARAH SAWIN THOMAS:** You're welcome.

**DeBOER:** Next proponent testifier. Are there any other proponent testifiers? We'll switch now to opponent testimony. Is there anyone here to testify in opposition to this bill? Welcome.

**MIKE GUINAN:** Welcome. Thank you. Good to be here. Good afternoon, Vice Chair DeBoer and members of the Judiciary Committee. My name is Mike Guinan, M-i-k-e G-u-i-n-a-n. I'm the criminal bureau chief for the Nebraska Attorney General's office. I appear here before you today on behalf of Attorney General Mike Hilgers and the Nebraska Attorney General's office in opposition to LB18. We are opposed to this bill as it purports to provide a postconviction remedy to a single individual which is not warranted given the facts and circumstances of that particular case. The basic facts were that Mr. Jackson went to trial first and he defended on the theory that he was not present at the scene of the shooting and that his codefendant, Mr. Cooperrider, would not testify in his case, given Mr. Copenride-- Cooperrider's assertion of his Fifth Amendment right to not incriminate himself. Subsequently, Mr. Cooperrider went to trial and defended on the theory of self-defense and was acquitted. Mr. Jackson asked for a new trial, saying that this was newly discovered evidence now that Mr.

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Cooperrider testified in his own trial. The trial court denied the motion, stating that this was not newly discovered evidence, but instead newly available evidence. This holding has been criticized as unjust, and LB18 is purported to address this injustice for Mr. Jackson. However, because the trial court actually conducted the very inquiry that this bill seeks to implement and because the results were not unfounded, this postconviction remedy created for this single individual is not warranted. As noted by the Nebraska Supreme Court in a well-reasoned opinion, such a remedy would encourage perjury when the second acquitted defendant were invited to testify in a retrial of the first case. Quote, Such testimony would be untrustworthy and should not be encouraged. As such, the Nebraska Attorney General's office respectfully asks the members of this committee to not advance LB18 to General File. Thank you, and I'd be happy to answer questions at this time.

**DeBOER:** Are there questions for this test-- Senator Blood.

**BLOOD:** Thank you, Vice Chair DeBoer. Can you please read that sentence again right before your closing? What was the sentence that you said?

**MIKE GUINAN:** The Supreme Court, what they said? Is that--

**BLOOD:** Yes.

**MIKE GUINAN:** OK. it's they said, quote, such testimony would be untrue-- untrustworthy and should not be encouraged.

**BLOOD:** Can you clarify that for me? I'm not understanding why it would be untrustworthy.

**MIKE GUINAN:** Sure. What-- what they were talking about in the Opinion at that point is if Mr. Cooperrider is acquitted in his case, correct, and then he comes in and testifies in a retrial on the first case, he could say whatever he wants. He can't be tried again. He can't be put in jeopardy again. So what the--

**BLOOD:** So that makes him untrustworthy?

**MIKE GUINAN:** It may, it could invite untrustworthy testimony. Yes.

**BLOOD:** Is that the norm would you say or you're saying this is one court's opinion?

**MIKE GUINAN:** Well, that's-- they were-- that's their quote. Right?

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**BLOOD:** So--

**MIKE GUINAN:** And they were following case law from other-- other jurisdictions where other courts have found to the same effect.

**BLOOD:** OK. So clearly, I'm not a lawyer so I like to get things right in my head--

**MIKE GUINAN:** Sure.

**BLOOD:** --so that's why I'm asking additional questions.

**MIKE GUINAN:** Sure.

**BLOOD:** So I guess the question that I have is in Nebraska is, is that the norm? So if you're-- two people are charged with a crime and one person is acquitted, that person generally is never invited to go and testify in the other trial. We just don't do that because we don't trust that they'll tell the truth?

**MIKE GUINAN:** Will they be invited to testify?

**BLOOD:** If they indeed they were invited to testify in the-- in the person who is still standing trial?

**MIKE GUINAN:** They could be, sure.

**BLOOD:** They can still testify.

**MIKE GUINAN:** Sure.

**BLOOD:** And not everybody will find it untrustworthy--

**MIKE GUINAN:** Right.

**BLOOD:** --if it's based on a court's Opinion in that case.

**MIKE GUINAN:** Right, right.

**BLOOD:** OK. Thank you very much.

**MIKE GUINAN:** Yeah.

**DeBOER:** Other-- Senator McKinney.

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**McKINNEY:** Thank you, Senator DeBoer. So two jury trials found Mr.-- they found the testimony to be trustworthy. Because if not, one would have got found not guilty because of self-defense and the other one wouldn't have got off. But my question is, isn't trustworthy-- isn't trustworthiness and credibility issues for a jury to decide, not a judge?

**MIKE GUINAN:** Sure. The fact-finder makes those findings, yes.

**McKINNEY:** And if they lie on the stand, you can charge them with perjury, right?

**MIKE GUINAN:** Could charge them with perjury, correct.

**McKINNEY:** All right. Thank you.

**MIKE GUINAN:** Um-hum.

**DeBOER:** Any other questions? I have a couple for you.

**MIKE GUINAN:** Sure.

**DeBOER:** So on the Supreme Court's theory that someone who has been acquitted would be potentially someone induced to lie, OK, then you have the perjury question. In addition, wouldn't that happen every time there were multiple defendants if the order were just different? So if Mr. Jackson's case had been second after Mr. Cooperrider's, would Mr. Cooperrider, then having been acquitted, not have the same inducement to false testimony as he would if there were another trial later? So--

**MIKE GUINAN:** Well, so I guess maybe to answer your question, I could walk through kind of factually, I think, my understanding of reading the case.

**DeBOER:** OK.

**MIKE GUINAN:** And-- and hopefully if I don't answer your question, I mean--

**DeBOER:** Yeah.

**MIKE GUINAN:** We-- we have the factual scenario, right, where the first individual went to trial.

**DeBOER:** Yeah.

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**MIKE GUINAN:** He requested the second individual to testify. He claimed the Fifth and the first individual was convicted. The second individual goes to trial in his own case and he goes-- two things that came out in that trial, Mr. Cooperrider's. One, he had a self-defense claim. And two, he said that Mr. Jackson was not present at that scene. So when Mr. Jackson now is asking for a retrial on that, he's saying, well, I'm asking for a retrial. Now, he can do that on one of two theories. His whole first trial was I wasn't there. Right? So he probably is not going to go on to theory on the second trial that I was there and that guy had a self-defense claim because in his own first trial, even though Mr. Cooperrider, if he was there--

**DeBOER:** But-- but I guess my question is this. If the Supreme Court's concern is about setting up the circumstances for someone to perjure themselves, aren't those circumstances already in place? If you have multiple defendants and, one, the primary defendant gets acquitted and then could come and speak because he no longer has a Fifth Amendment concern in all of the other cases, as we saw with, and I'm sorry, I can't remember the name of the third codefendant's trial.

**MIKE GUINAN:** Choley [PHONETIC] or something.

**DeBOER:** In the third codefendants trial. So wouldn't the-- the possibility of perjury in the third codefendant's trial be the same as what it would be in a new trial for Mr. Jackson?

**MIKE GUINAN:** That is-- that is a possibility, yes.

**DeBOER:** OK. And what was the under-- do you-- are you familiar with this? I don't know how familiar you are with the case.

**MIKE GUINAN:** Only what I've read in the-- in the Opinions.

**DeBOER:** OK. So do you know what the underlying felony was that the felony murder theory was based on?

**MIKE GUINAN:** I'm not aware that it was a felony murder. I just understood it to be first-degree. And I thought it was an aiding and abetting theory to first-degree murder.

**DeBOER:** OK. Can you distinguish those for me? It's been a while.

**MIKE GUINAN:** Sure. So first-degree murder is killing somebody intentionally--

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**DeBOER:** Sure.

**MIKE GUINAN:** --with premeditation.

**DeBOER:** Yeah.

**MIKE GUINAN:** So I can aid and abet you if you kill somebody intentionally by either actively being involved or if I encourage you to kill somebody.

**DeBOER:** So it wasn't felony murder that he was being charged on?

**MIKE GUINAN:** Not that-- I'm not familiar with that.

**DeBOER:** OK.

**MIKE GUINAN:** I thought it was aiding and abetting just a straight first-degree murder.

**DeBOER:** OK. I had a misapprehension. Sorry about that.

**MIKE GUINAN:** That's--

**DeBOER:** All right. So that helps clear up at least that piece for me. I think that's it that I have for you. Are there-- Senator McKinney.

**McKINNEY:** Can you explain how is it possible to aid and abet someone that is found not guilty of the crime that you're saying they aided and abetted? I don't-- that's the elephant in the room here is how is that possible?

**MIKE GUINAN:** Right. So if-- if Mr. Jackson said he was not present at the-- if he-- if let's say he says he was present at the first scene. Right? So he was there. Let's just say that that was the fact. And Mr. Cooperrider shot our victim in self-defense. That's-- if Mr. Cooperrider says, I don't want to testify in your case. It's a Fifth Amendment privilege. I don't want to testify. That doesn't prevent Mr. Jackson from asserting that same defense. Right? Because as an aider and abetter, I'm stepping into his shoes. So if I say he doesn't want to testify, but I still put on a defense that he acted in self-defense, you're right. I can't be an-- I can put that defense on because I can't be an aider and abetter to a noncrime, a self-defense. So he wasn't prevented from putting that defense on. I think the point is he-- he said he wasn't there at all. So I think my assumption is what he wanted a second trial on is Mr. Cooperrider said in his trial

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that Mr. Jackson was not present. I believe that that's probably the theory.

**McKINNEY:** I guess my last question, and you could just say yes or no, do you not see where there was an injustice that took-- that took place? Yes or no?

**MIKE GUINAN:** I don't. I'd like to finish that thought.

**McKINNEY:** No. Thank you.

**DeBOER:** Are there other questions? Let me-- let me ask you this.

**MIKE GUINAN:** Sure.

**DeBOER:** I think what I heard you just say was that he's-- Mr. Jackson wants to switch theories of the case from one theory of the case, which is I wasn't there to a theory of the case, which was it was self-defense. Is that what I just heard you say?

**MIKE GUINAN:** I'm saying if in the second trial that he's asking for, he's-- he puts on one of two defenses. Right? But he-- if he says now I was there and that guy shot in self-defense, that would be a new theory, because in his original trial he said, I wasn't there.

**DeBOER:** Isn't that even more of newly discovered evidence than that he's discovering that? I mean, that's actually discovered that it was self-defense. Maybe he didn't know it was self-defense in the first case. That's not for us to argue, but--

**MIKE GUINAN:** Yeah

**DeBOER:** --that might be--

**MIKE GUINAN:** Well--

**DeBOER:** --even more so--

**MIKE GUINAN:** But--

**DeBOER:** --discovered if-- if-- because so going back to law school--

**MIKE GUINAN:** Yeah.

**DeBOER:** --because it's been a while. If someone kills someone in self-defense, has a crime been committed?

**MIKE GUINAN:** Has a crime-- they are--

**DeBOER:** Just a random person. If I randomly kill, sorry, Angenita in self-defense--

**MIKE GUINAN:** Yes.

**DeBOER:** --has a crime been committed?

**MIKE GUINAN:** It is a crime until you-- until the-- the jury finds that you have or you are not guilty because you had affirmative defense of self-defense.

**DeBOER:** OK.

**MIKE GUINAN:** Right.

**DeBOER:** So when my affirmative offense is confirmed by a jury,--

**MIKE GUINAN:** Right.

**DeBOER:** --then a crime has no longer been committed.

**MIKE GUINAN:** Yeah, effectively.

**DeBOER:** I mean. OK.

**MIKE GUINAN:** So well, so to kind of I guess, finish that out, right, here's-- in that case, right, so in the second trial, let's say he's-- he's asking for a second trial. And let me change one fact. All the same facts, except Mr. Cooperrider is actually found guilty in the second trial. In his trial, I'm sorry, and Mr. Jackson says, I want-- I still want a new trial. Right? Because it's now newly available, newly discovered because the person who the first time around said, I'm not testifying, but now he has testified. So he says I want a new trial. So the question is, should he get a new trial?

**DeBOER:** That's an interesting point.

**MIKE GUINAN:** And if in-- and just to finish that thought out, the-- what the-- the-- the appellate court actually states on that, this-- I'll read you exactly what the appellate court said. So Jackson filed a motion for a new trial alleging that Cooperrider's testimony from Cooperrider's and Chillous's trials provided new evidence that would have changed the jury's verdict in Jackson's trial. The district court overruled Jackson motion for a new trial, finding that Cooperrider's



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testimony was not newly discovered, but newly available. Cooperrider merely controlled the dissemination of his testimony for tactical reasons. That's-- that's what's being complained about The very next two sentences that the court cites is: In its order, the district court referred to telephone conversations in which Cooperrider discussed coordinating his testimony with Chillous and other witnesses testifying in Chillous's trial. The district court concluded that even if Cooperrider's testimony had been presented at Jackson's trial, the jury still heard enough evidence to convict Jackson. In other words, the district court actually conducted the very analysis and said this is, yeah, I-- it's not newly discovered, but I conducted an analysis. I sat through the trial. It was, however long, a 12-member jury who listened to all the testimony, including, which I think is rather important, alibi testimony, which was Mr. Cooper-- I'm sorry, Mr. Jackson's aunt and cousin said he was over at their house from before the shooting through the shooting.

**DeBOER:** So-- so then I'm still kind of hung up on the available discovery piece.

**MIKE GUINAN:** Sure.

**DeBOER:** If I'm a smart codefendant then, do I just not ask anybody to testify in my trial so that once they testify in another trial, I can say, ho, ho, I never knew about that. Now it's newly discovered.

**MIKE GUINAN:** Sure, why not?

**DeBOER:** Well, that doesn't seem like a good idea, but that's not a question. I will--

**MIKE GUINAN:** That's a problem, isn't it? I mean, if you can just sit back and then you get a new trial.

**DeBOER:** Well, that's the law now, right?

**MIKE GUINAN:** It--

**DeBOER:** So OK. Are there other questions for this testifier?

**DeKAY:** One.

**DeBOER:** Senator DeKay.

**DeKAY:** Real quick, I don't understand law very well--

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**MIKE GUINAN:** Sure.

**DeKAY:** --or at all. But I am asking if, say, in the first trial, the defendant said that he wasn't there and then wanting a second trial, finds out that it was in self-defense. He was there, but it was self-defense, is there any grounds for perjury in that because it's two different testimonies where you were at at the time of the incident?

**MIKE GUINAN:** Are you talking the second individual that claims self-defense or--

**DeKAY:** No. If--

**MIKE GUINAN:** Oh, the first guy?

**DeKAY:** Yeah.

**MIKE GUINAN:** OK. So in the first case, he--

**DeKAY:** Said was--

**MIKE GUINAN:** Says-- says he was there.

**DeKAY:** Said he was-- he wasn't there.

**MIKE GUINAN:** Wasn't there.

**DeKAY:** And in the second instance he said he was there, but it was the guy that admitted to self-defense. And he said, well, I was there. It was self-defense. What's the course of-- what's the course of action with that?

**MIKE GUINAN:** Could he be charged with perjury?

**DeKAY:** Well, I'm just wondering if there is any because it seems like a different testimony for a different trial for the same incident.

**MIKE GUINAN:** If he testified in the first trial, which I don't think Mr. Jackson did, if I understand.

**DeKAY:** OK.

**MIKE GUINAN:** He-- he didn't testify. They just had a defense of he wasn't there. That-- that was my understanding.

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**DeKAY:** OK.

**MIKE GUINAN:** But if he did testify and he gave false statements.

**DeKAY:** I wasn't there for the trial or know a lot about it. I didn't know if or not Mr. Jackson testified in his own behalf or not in the first trial. So that's why I'm asking.

**MIKE GUINAN:** Yeah. My understanding from reading the case is that he did not.

**DeKAY:** OK. Thank you.

**DeBOER:** Are there other questions? Thank you so much.

**MIKE GUINAN:** Yep. Thank you.

**DeBOER:** Next opponent testifier. Welcome.

**DON KLEINE:** Good afternoon, members of the committee. My name is Don Kleine, K-l-e-i-n-e. I'm the Douglas County Attorney. I'm here as the Douglas County Attorney and as a representative of the Nebraska County Attorneys Association to oppose LB18. Just a little bit of background. I've tried probably over 50 first-degree murder cases. In fact, I also was a defense attorney and-- and tried many cases as a defense counsel and won two murder trials, one based on a self-defense defense as a defense counsel. In this case, you know, Mr. Jackson was represented by competent counsel. It's never been an issue. He chose not to testify in his own defense. There were eyewitnesses who testified he was there and he participated in the killing of Mr. Perry during this incident. He decided not to testify on his own behalf. The judge heard all the evidence in the case, heard a motion for a new trial. He was sentenced. This case has been up to the Nebraska Supreme Court twice. OK? And it was also sent back to the original judge for sentencing under Miller v. Alabama. Our office handled that. We said go ahead and put all the evidence in that you want to about the innocence or that he wasn't there or whatever it is. So defense counsel was able to do that. That-- the judge still sentenced Earnest Jackson to what he was sentenced to. Then it was the Supreme Court again, and then it was heard by the Pardons Board. There's been a lot of review of this particular case. So I have a hard time when I hear people say that Mr. Jackson is totally innocent in this thing. He didn't have any participation in this. You know, there are a lot of times when codefendants make decisions about cases and one of them decides, I'm going to go with the self-defense defense, and the other one says, I'm

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going to go on something else, and one gets acquitted and one gets found guilty. That happens. And when our Supreme Court looked at this and our Supreme Court has justices on there a lot smarter than me about regarding the law, they were very clear that this policy would cause-- encourage perjury to allow a new trial once codefendants have determined that testifying is no longer harmful to themselves. They may say whatever they think that might-- that might help their codefendant, even to the point of pinning the guilt on themselves, knowing they're safe from retrial. Such testimony would be untrustworthy and should not be encouraged. And then they cite a multiplicity of other states that agree with that-- that statement or that regard. So they don't just say, hey, this is-- we don't have the statutory authority to do this. They say, hey, this is not a good idea to do this at all anyway. And I'm sorry my time's up. I'll be happy to answer any questions.

**DeBOER:** Senator--

**DON KLEINE:** So I'm in opposition to this bill obviously and the county attorneys are.

**DeBOER:** Senator McKinney.

**McKINNEY:** Thank you. Thank you, Mr. Kleine. How many times in your experience as a prosecutor have you seen a take-- a case where multiple individuals are accused of murder; one admits to it, but is found not guilty by way of self-defense. And also in the trial says that the other person wasn't there, that another person ends up going to jail for that crime?

**DON KLEINE:** I don't know if I've ever seen that-- that came about where they said the other person wasn't there after the fact. So I'm aware of who Mr. Cooperrider is and his background and.

**McKINNEY:** Yeah, well, all right. I [INAUDIBLE] going to go all day. If this bill passes, would your office oppose Mr. Jackson's motion for a new trial?

**DON KLEINE:** Well, sure.

**McKINNEY:** You would?

**DON KLEINE:** Well, that would be-- that would be standard. We think he had a fair trial first time through.

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**McKINNEY:** All right. Well, my real last question, in your experience and your time in the DA's office, do you think every case you've tried was fair and justified in outcomes, every case, everything was perfect?

**DON KLEINE:** Sure, they are not perfect. Sometimes I think that maybe there's more evidence that we could have put in and we weren't able to get it because we found out about it later. Sometimes I think that maybe I want-- I question the strategy of counsel on the other side.

**McKINNEY:** So you've never-- you've never sent an inno-- so it's your belief you've never sent an innocent individual to prison.

**DON KLEINE:** Absolutely, never.

**McKINNEY:** All right. Thank you.

**DON KLEINE:** Sure.

**DeBOER:** Other questions? OK. I wanted to ask a clarifying question. You said that it sometimes happens that there are codefendants where one claims self-defense and another claims maybe they weren't there, something like that.

**DON KLEINE:** Well, and there could be a number of defenses somebody might say, you know, with codefendants. Doesn't necessarily have to be self-defense. They might say they went there, they might have an alibi, whatever it might be. But there are certain times that one person might be convicted and another person is not convicted is what I'm saying.

**DeBOER:** But the self-defense one is interesting to me because I wanted to-- to just kind of play with that one for a second, because self-defense kind of nullifies that the crime existed. Right? If you do--

**DON KLEINE:** Well, there's still a homicide that takes place.

**DeBOER:** It's still a homicide, but it's not a murder if it's self-defense.

**DON KLEINE:** It's because the jury found in that. And I think as a defense attorney, the best defense to have is self-defense, because the way the self-defense instruction reads is that you have to be in fear for your life or someone else's and that you have a reasonable

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belief about that. And the jury instruction says even if you're wrong about that belief, if it was reasonable, then self-defense is-- is a legitimate defense there.

**DeBOER:** But once that self-defense, affirmative defense is found by a trier of fact to have been, they say, yes, we agree with that. It was self-defense, then that nullifies the existence of a crime because it is not a crime to act in self-defense. Is that-- am I getting that right?

**DON KLEINE:** For that person. That's not what the-- that's not what the eyewitnesses said that testified at trial in Mr. Jackson's trial.

**DeBOER:** Sure. But I'm just right now I'm going with the theory, like the idea of self-defense is that the-- that the-- that the crime didn't exist.

**DON KLEINE:** No, it's not the [INAUDIBLE]. It's the person was justified [INAUDIBLE].

**DeBOER:** You're right. You're right. Justified. But then if you're justified, then there is no crime. Right? Because if I-- if I do something with a affirmative defense that justifies my actions, then I have not committed a crime. Is that right?

**DON KLEINE:** Well, the jury says you're-- you're not culpable because you were legitimately defending yourself.

**DeBOER:** So it goes to the intent.

**DON KLEINE:** Sure. It goes to I'll assume what's going on in your head, what you thought this person was doing, those kinds of things. And that applies to that individual who's asserting that defense.

**DeBOER:** But if I had a case where I had codefendants for some reason they were being tried together, I don't even know if that's even possible.

**DON KLEINE:** It's possible.

**DeBOER:** OK. And I have codefendants who are being tried together and you find out that it's self-defense. Doesn't that automatically for that trial where they're being tried together, wouldn't that automatically make the other person also not guilty?

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**DON KLEINE:** Well, that's one of the issues about trying people together.

**DeBOER:** Yeah.

**DON KLEINE:** Because if one defendant says this is my defense, the other defendant says this is my defense, then you don't have a joint trial with those two defendants.

**DeBOER:** But sure. But let's say they both say I pulled the trigger, Senator. Blood happened to be along. And both of us are going to say we were not guilty because I acted in self-defense. And if the jury finds that I acted in self-defense, her defense is that I acted in self-defense, then it would apply to both of us.

**DON KLEINE:** Right. I understand under those fact situations. But, you know, if you look at the facts situation on this case, Mr. Perry was shot many times.

**DeBOER:** Um-hum.

**DON KLEINE:** OK. And there's testimony that was multiple different guns that-- that were-- that were used. So that probably had an influence also on the jury the first time. OK.

**DeBOER:** It's the thing that always bothers me about this one is that I wonder if the order had been different, if things would have been different, if Mr. Jackson had been tried third, let's say, would there have been a difference? And if that's-- it's only the order that led to the outcome that it did?

**DON KLEINE:** No, it's not the order. It's the evidence. Look, that jury heard the evidence in that case and found him guilty.

**DeBOER:** So that--

**DON KLEINE:** They didn't know what the order was or what it was [INAUDIBLE].

**DeBOER:** Right. But what I'm saying is, because the evidence was limited based on the order that they were tried in, there was limited evidence, i.e., the evidence from Mr. Cooperrider was not available. So the-- the order mattered, right? If that--

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**DON KLEINE:** Well, but I don't know if anybody knew what Mr. Cooperrider would say at the time Mr. Jackson went to trial.

**DeBOER:** Yeah. OK. So then it was kind of newly discovered because they didn't know what he was going to say. They didn't--

**DON KLEINE:** I don't think-- I don't know if Mr. Cooperrider knew what he was going to say at that time.

**DeBOER:** Yeah. And it particularly would have to do with his intent. Then it was discovered because his intent was not discovered until he articulated it in that trial.

**DON KLEINE:** And that's probably what the Supreme Court's saying, that once he figures out that I can't be in trouble anymore, I can say whatever I want to say about everybody else.

**DeBOER:** Wouldn't that be true in any circumstance where the primary suspect is-- is tried first and then the accessories are tried second and third?

**DON KLEINE:** Well, it's not even-- even in necessarily just these cases. We have cases pending right now in a postconviction matter where we convict somebody, a jury trial and somebody who's already in the penitentiary doing life says, I did it. Pin it on me.

**DeBOER:** So there's--

**DON KLEINE:** So there's multiple situations where this can happen, and that's part of-- part of the issue here.

**DeBOER:** OK.

**DON KLEINE:** OK.

**DeBOER:** Are there other questions for this testifier? Senator Geist.

**GEIST:** And that part is what you're trying to con-- con-- trying to keep the situation you just said from happening is what you're trying to prevent in opposing this, correct?

**DON KLEINE:** And it's no, I would do-- I would do everything I could to make sure that we don't convict somebody who's innocent. OK. And we do that. We review all of our cases. There's a process that took place in this case. The Supreme Court of our state looked at this a couple of



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times. There was a Board of Pardons that looked at it. A judge resentenced this individual after knowing all this other evidence existed, OK or the allegations about this evidence. So there's-- there are safeguards within the system. There are seven ways in a postconviction action that a person can attack their conviction, besides their direct appeal that they can take to the Supreme Court immediately. But what we don't want is to have this morass of people coming in because they have-- they're not in jeopardy anymore or they have-- there's no issue. And that's why their credibility is suspect according to our Supreme Court.

**GEIST:** Thank you.

**DON KLEINE:** OK.

**DeBOER:** Other questions? I don't see any. Thank you.

**DON KLEINE:** Thank you.

**DeBOER:** Let's have the next opponent testifier. Next opponent. Is there anyone here to testify in the neutral capacity? Anyone neutral? For the record, we have 40 letters of support. And since Senator Wayne has waived closing, with that, we will close our hearing on LB18 and open up our hearing on LB19. And we understand that Senator Wayne's LA Jake will be introducing LB19 today so we will ask him all the difficult questions.

**JAKE SEEMAN:** Yeah, sure. Thank you, Vice Chair DeBoer, members of the Judiciary Committee. My name is Jake Seeman, J-a-k-e S-e-e-m-a-n, and I'm Senator Wayne's legislative aide. He wanted to be here today but had a hearing this afternoon in Omaha he needed to attend. He represents Legislative District 13, encompassing north Omaha and northeast Douglas County. I'm here on his behalf to introduce LB19, which would take the cash value thresholds of crimes in the state and double them. It's been almost a decade since this has been adjusted in Nebraska, and Senator Wayne believes it's time for an update. It's important to manage the values necessary to trigger certain levels of crimes to keep up with the modern cost of things, and for legislators to make sure that inflation rates don't make our criminal justice system any more harsh than it rightfully should be. Thanks to inflation, which was 5 percent in 2021; 7 percent last year, we are nearing the point where a person can easily become a felon for stealing a cell phone. Right now, some versions of the iPhone 13 are retailing for more than \$1,200. Tack on a fancy case or some fancy

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accessory and you're there. They're a felon now. There is no doubt that stealing is wrong, that those-- and those caught should be punished. But the punishment should fit the crime. Other states have gone forward with this as well. Texas and Wisconsin have \$2,500 felony thresholds. Alaska passed a law that required the legislature to evaluate and adjust their own cash value felony thresholds every five years. As in other states, this change will also prevent further an unnecessary strain on Nebraska's already stretched thin judicial and correctional resources, and will allow the state to prioritize costly, finite prison space for more serious offenders. Despite what opposition may say, there is ample evidence to include the felony threshold set by the state have no impact on actual crime. As is the case with government guardrails like this, they weigh very little on the mind of someone moments before they steal a cell phone or a bike. The numbers are clear. This has no bearing on the actual total rate of crime, nor the average value of thefts. Senator Wayne is open to collaboration and firm-- friendly amendments to help get this bill over the finish line and to make sure that our value-based penalties are regularly taking inflation into account. Vice Chair DeBoer, members of the committee, thank you for your time.

**DeBOER:** Thank you. We don't typically ask questions.

**GEIST:** Well, you said we were going to ask.

**DeBOER:** I was more joking.

**GEIST:** Were you being--

**DeBOER:** Sorry.

**GEIST:** No, that's fine.

**DeBOER:** Senator Geist, I'm sure there will be others to ask questions.

**GEIST:** I will ask someone else.

**DeBOER:** First proponent testifier.

**SPIKE EICKHOLT:** Good afternoon, Vice Chair DeBoer and 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 in support of LB19. What-- what Mr. Seeman explained earlier is accurate about the bill. It adjusts the dollar value or dollar demarcations that determine the level of penalty for various

theft, criminal mischief, arson, and other types of offenses. Our criminal code lays out a number of different crimes, and mostly in Chapter 28-500 block. It basically says what the penalty level is if you commit a certain crime. So the most common one that I think might be talking about today is the theft offenses. There's different ways you can be charged with theft. It could be theft by unlawful taking. It can be theft by shoplifting, theft by deception, and other different theories. And if you steal something or take something of value, even if it's got no dollar value, it's generally a Class II misdemeanor. And I think the dollar value now is 0 to \$500, that's a Class II misdemeanor; 0 to 6 months, up to \$1,000 fine. If you steal something that's got, say, more than \$1,000, more than \$1,500 now, in Nebraska, it's a felony. It depends on a little bit what type of felony. It's either a Class III or Class IV felony. You don't have to necessarily know what the value is when you steal it. And the example that happens sometimes is somebody will grab a package off a porch, take it home, not realize what it is, and it turns out to be a fancy computer device, something like that. And oh, my gosh, and they catch who it is, it's a felony. Or it could be just an insignificant clothing item, something like that, doesn't matter. The penalty level is assessed, if you will, after you're sort of found guilty of the underlying crime. What this bill does is it adjusts the dollar amounts to adjust for inflation. For a Class II misdemeanor, the dollar amount goes from \$500 to \$1,000. And for the most part, it doubles, although there's some changing depending on what the actual crime is. We support this because, as Mr. Seeman explained before, some of these dollar amounts have not been changed at all since even before 2015. LB605 what the Legislature did in 2016-- 2015, did make some adjustments to accommodate for inflation, but inflation has increased significantly. Other states have a similar value. So we would encourage the Legislature or the committee to consider this change. You may hear from the retailers about shoplifting. I would just tell you that we have an enhanced theft, an enhancement to our theft crimes, which you-- if you have one or two prior theft convictions and they can be theft by unlawful taking, a theft by shoplifting, you can be charged with a more serious crime. And in the theft, we have a three strikes law. So if you have a third offense shoplifting, it is a felony. It's a Class IV felony. That won't be impacted at all with this bill. This simply changes the dollar amounts for the instant crime that the person is convicted of. And I'll answer any questions if anyone has any.

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**DeBOER:** Are there any questions from the committee? We'll start with Senator Blood.

**BLOOD:** Thank you, Vice Chair DeBoer. Can you say in reference to the enhancement to the shoplifting again? When you would turn your head that way, I couldn't hear you.

**SPIKE EICKHOLT:** Oh, sorry. Well, I try to do that, but I can't talk [INAUDIBLE]. So we have an en-- some crimes are enhanceable, for instance, a protection order, a second offense protection order is a more serious crime than a first offense protection order. You have to be convicted of the first offense before you can be charged with a second offense or a third or subsequent offense, DUIs are enhanceable. Theft by shoplifting and other theft offenses is enhanceable as well. So if you have a theft by shoplifting prior, it can just be a candy bar, you get caught, you go to court, you get a fine. That's a conviction. Six months later get caught again, stealing from another KwikShop, another convenience store. And this happens a lot. I will just state with-- with marginal people, people who are living on the edge of homelessness, this is a regular occurrence. You can-- they can accumulate a number of insignificant theft by shoplift convictions. A third offense shoplift is a Class IV felony in Nebraska, and it does not matter what the value of the item is on a third offense. It doesn't make any difference. It can be zero. It can be less than \$500. It can be \$1,000. It doesn't matter. The state still has the option to charge it as a third offense. The prosecutor does not have to do that, but the prosecutor has that prerogative to do that. That's not impacted. So if you hear opposition testimony says, well, you're going to make a whole bunch of stuff that's felony misdemeanors, they still have the enhanced option.

**BLOOD:** Thank you.

**DeBOER:** Thank you, Senator Blood. Senator Geist.

**GEIST:** Yeah. The only thing I was going to ask is that if this is to account for inflation, which the gentleman said was around 3 to 7 percent that they calculated from 2017, but we're doubling the enhance-- I mean, we're doubling the fine or the amount what we're raising it in, that's really not accounting for inflation. That's doubling the amount. Inflation hasn't doubled the cost of everything. So it's more than inflation. Correct?

**SPIKE EICKHOLT:** That's probably accurate. I don't-- you are right. And I don't know how you add that all up year after year from when they were adjusted last, whatever the inflation was. But you're probably right. This is probably more. And that's something that I can't speak to--

**GEIST:** Right.

**SPIKE EICKHOLT:** --the way Senator Wayne drafted the bill.

**GEIST:** Yeah.

**SPIKE EICKHOLT:** But-- but I think that's what he's trying to do. And it could be what Mr. Seeman said, he's trying to make the dollar values comparable to what other states have. Yeah, so but-- but you're probably right about that.

**GEIST:** OK. Thank you.

**DeBOER:** Other questions from the committee? I don't see any. Thank you for being here. Next proponent testifier. Anyone else here to testify in favor of this bill? Then we will begin with opponent testimony.

**DON KLEINE:** Good afternoon again.

**DeBOER:** I kind of figured.

**DON KLEINE:** Committee members, my name is Don Kleine, K-l-e-i-n-e. I'm here as the Douglas County Attorney and as a representative of the Nebraska County Attorneys Association in opposition of LB19 for-- for many reasons. I understand the inflation aspect, but I would agree that our inflation hasn't been 100 percent, which-- which we would be if we were doubling the amounts. You know, and I can give you so many examples of why I think that I'm troubled by this. If something is a misdemeanor, number one, it probably doesn't get impacted as much even by law enforcement as far as the investigation. And so I see this kind of situation impacting people or lower middle income people more than anybody as victims, because what we're talking about here and I see it constantly, smash the window of a car, pull out a purse, pull out a computer that's they're college students and can give you several examples of that. And so, you know, if we look-- make this \$3,000 for a theft, that's not going to be a felony anymore, probably not a whole lot's going to happen in misdemeanor land or if the police are going to really work that very hard compared to a lot of those situations, The guy who's got a car that we say we get it appraised and that car's

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worth only \$2,500, well, OK, so that's just a misdemeanor then for his car being stolen. But to that guy, that's how he gets back and forth to work every day. And that's how he takes his kids to school. And it might not be the most expensive car, but we're saying, OK, well, listen, that's-- that's not-- not as big a deal. We'll make that a misdemeanor. So it affects people with lower income more so. And there are professionals in this business of stealing and forging checks. And I've been through that experience also where it's amazing how people come in and write forged checks and it's just under the felony limit that they use. Same thing with using somebody's credit card. They know what the limit is between a felony and a misdemeanor, and they'll write a check, a forged check, just under that amount, or they'll use the credit card only up to a certain amount that they know isn't going to be a felony. You know, I've got a guy right now, to give you anecdotal examples, seven-- six prior felonies. He's 27 years old and has a drug problem obviously. He just got put on probation again. He's been to the penitentiary twice for the same thing. He just, when he's on probation, he stole a car, got the credit cards, used them. They had to use the helicopter to chase him down, caught him, brought him back in again. And we would offer that, you know, that person we would offer even drug court to even though the crime, underlying crime is a theft if the basis for his problems is drugs. OK, I'm done.

**DeBOER:** Well--

**DON KLEINE:** There's a lot of things, examples I can give you.

**DeBOER:** I'll-- I'll ask you the first question, which is you can finish whatever you were saying.

**DON KLEINE:** Oh, it's just that so that's the example of people who either because, you know, there's catalytic converters or smashing out windows, people that maybe have drug problems. But when we-- when we lower, we make these penalties, I mean, extend it to a \$3,000 before it's a felony, that has any impact on public safety in the criminal justice system because people are-- are not-- are going to get away with more, quite honestly. And they won't get the help they need again. Sometimes it takes that felony conviction for somebody to be in custody and they say, what am I doing with my life? I need to get help. And that happens. That's how-- how people get into our drug courts. They don't just walk in and say, yeah, I'll go to drug court. It's usually because they have something that's-- that's happened. So that's-- that's part of this. And again, I think there's examples around the country where penalties have been lessened or lowered. The

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amount of money that it takes to commit a felony has been extended and people are walking into stores, stealing a lot of items and they know there's not really many-- any consequences for that.

**DeBOER:** OK.

**DON KLEINE:** OK.

**DeBOER:** Let's see if there are other questions. We'll start with Senator DeKay.

**DeKAY:** Thank you. If a-- if a person commits a crime, breaks into a store, convenience store, whatever, and does this multiple times over, say, two- to three-day period, whatever, is that-- and then are apprehended, are they con-- is that considered one crime--

**DON KLEINE:** No, that would--

**DeKAY:** --the threshold

**DON KLEINE:** --multiple crimes.

**DeKAY:** But does--

**DON KLEINE:** If they broke in, Senator, it would actually be like burglary then. But if-- if they just go in and steal something and run out, then it's a shoplifting theft.

**DeKAY:** Well, if it's a high-- high-dollar item, does that threshold, say, from \$1,500, or is that considered as one crime and the threshold doubles to \$3,000?

**DON KLEINE:** Well, if they grabbed a bunch of items and now it would have to be over--

**DeKAY:** But each instance--

**DON KLEINE:** --\$3,000 worth for it to be a felony.

**DeKAY:** In each incident.

**DON KLEINE:** Right.

**DeBOER:** Thank you, Senator DeKay. Other questions? Senator Blood.

**BLOOD:** Just-- just a quick question.

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**DON KLEINE:** Sure.

**BLOOD:** So, actually I have two questions. I'm sorry. So you said, look at other states, people are going in and stealing. And what-- what other states?

**DON KLEINE:** Well, yeah, people see the videos. San Francisco is one of the reasons that Walgreens left that city is because people aren't-- there's no consequences for people that are stealing from stores. So Walgreens says we're pulling out stakes in San Francisco because of problems with the law. I mean, that's a pretty well-known fact. I mean, it's same thing, Los Angeles, I mean, Union Pacific. I met with Union Pacific. They said we're not going to ship through Los Angeles anymore because all of our container cars are getting broken into. Stuff's getting taken and they're not being prosecuted. So it's-- it's a problem. And some of it's because, you know, they've expanded what the limits are with regard to what has to be stolen before it's a felony. And some of it's just because they're not enforcing the law.

**BLOOD:** What other states besides California?

**DON KLEINE:** Those are the only two that come to mind with regular theft crimes.

**BLOOD:** LA and San Francisco.

**DON KLEINE:** Yeah. The drug crimes that I talked about yesterday was like Portland and Seattle [INAUDIBLE].

**BLOOD:** I'm sorry. I didn't mean to talk over you.

**DON KLEINE:** I'm sorry.

**BLOOD:** And then the other example you-- one of the examples you gave was somebody comes and they smash the car window, they steal your purse, and you talked about the victim, which, of course, the victims are important. And I don't want you to think I think otherwise. But do we not do restitution anymore in Nebraska? I mean--

**DON KLEINE:** We try to, but most of the time, you know, either people don't pay it. If it's a misdemeanor in particular, that's what I'm saying, that it's not really something that's going to be-- that's enforceable. Sometimes they can make a deal where that they plea to something and they'll get a fine as long as they make restitution.



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**BLOOD:** Right.

**DON KLEINE:** That really doesn't fix-- that person then doesn't have really much of a consequence there. But-- but that's what I mean. It effect-- affects people, you know, middle- and lower-income people just as much as anything.

**BLOOD:** I'm sorry, what did you say?

**DON KLEINE:** Middle-income, lower-income people. Because like I said, the car, the value of the car, the value of items taken off the front porch, the value of items taken from a motor vehicle is a computer for a college kid and a backpack that, we've seen multiple instances of that. And I think it should be a felony, not just a misdemeanor.

**BLOOD:** Fair enough. Thank you.

**DeBOER:** Other questions for this testifier? I will ask one.

**DON KLEINE:** Sure.

**DeBOER:** Is there a-- so the number is too high? Is there a, if we went up 5 percent, 10 percent, something like that, would that still be objectionable to you?

**DON KLEINE:** That might be negotiable. It's not very much, 5 percent or-- or whatever it might be. But that-- that's something we can talk about.

**DeBOER:** So it's not just--

**DON KLEINE:** I would be willing to listen.

**DeBOER:** Sorry to interrupt you.

**DON KLEINE:** No, you're not.

**DeBOER:** It's not just the concept. It's that you think this is too high.

**DON KLEINE:** Yes.

**DeBOER:** Got it. Thank you.

**DON KLEINE:** All right.

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**DeBOER:** Other questions? Thank you for being here.

**DON KLEINE:** Thank you.

**DeBOER:** Next opponent testifier.

**MIKE GUINAN:** Good afternoon, again. Vice Chair DeBoer, members of the Judiciary Committee, my name is Mike Guinan, M-i-k-e G-u-i-n-a-n, again with the Attorney General's office. I appear before you on behalf of Attorney General Mike Hilgers and the office in opposition to LB19. We are opposed to this bill as it provides categorical and significant increases in the criminal offense thresholds, irrespective of the crime or the victim of the crime. Though the prices of consumer goods have increased recently, given rising inflation, the proposed substantial threshold increases for all crimes does not logically follow and are not warranted. For example, retail theft of a consumer electronic device has nothing to do with the embezzlement by a government official or someone writing bad checks or a stolen credit card and then steal from a business, or someone who steals your identity and uses it to steal from you or somebody else. Moreover, these substantial and categorical threshold increases are not warranted given the across-the-board hike in thresholds just seven years ago in LB605. As such, the Attorney General's office respectfully asks that members of this committee not advance the bill to General File. Be happy to take any questions.

**DeBOER:** Are there any questions for this testifier? Senator Blood.

**MIKE GUINAN:** Yes.

**BLOOD:** Thank you, Vice Chair DeBoer. Thank you for testifying. I know you're the messenger, and I want to say you've done a fine-- fine job of testifying. But you've been here for pretty much every bill that pertains to us trying to put the puzzle together of how do you keep people out of prison and work on the overcrowding. How come we don't see that same enthusiasm from the Attorney General's office when it comes to the hundreds of people who have been poisoned by AltEn plant in Mead, Nebraska? I think it's really interesting that-- that and again, Mike, you're doing a fine job. But I'm really curious how we keep seeing you guys show up for things. But you filed a case a year and a half ago coming this-- it'll be two years in March. And we really haven't seen anything except that we can't talk about it because there's litigation, which I think is actually really smart on your part, because then we don't have to be complicit. So the concern

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that I have is, is this more of a priority than something like the AltEn plant for the Attorney General's office?

**MIKE GUINAN:** Well, I can't-- I can't speak for the Attorney General himself. I can tell you that this bill, this categorical rise without respect to, in particular, any individual crime, this just straight across-the-board doubling, that is, I guess, the issue that we have with the bill. For instance, one of the sections deals with bingo and pickle cards and so on, and those are being raised. And though inflation's going up, I don't know that those-- those necessarily follow. I don't know why those thresholds. So that's our objection to this particular piece of legislation.

**BLOOD:** I appreciate that. I'm sorry that you're the one that got put on the spot.

**MIKE GUINAN:** No, no. That's fine.

**BLOOD:** No matter who it is would have been put on the spot today. You guys have shown up for all these bills. And I'm--

**MIKE GUINAN:** Yes.

**BLOOD:** --I'm always puzzled how we figure out our priorities. So--

**MIKE GUINAN:** Sure.

**BLOOD:** --thanks for being a good sport and allowing me to ask you that question.

**MIKE GUINAN:** You bet. Thank you.

**DeBOER:** Are there other questions for this testifier? I don't see any.

**MIKE GUINAN:** All right. Thank you.

**DeBOER:** Thank you. Next opponent testifier.

**RICH OTTO:** Thank you, Vice Chair DeBoer, members of the committee. My name is Rich Otto, R-i-c-h O-t-t-o, and I'm here on behalf of the Nebraska Grocery Industry Association and the Nebraska Retail Federation, testifying in opposition to LB19, which would increase the threshold for felony classifications. Theft, including shoplifting, costs retailers billions of dollars each year. In an effort to discourage theft but also reduce contact with police and incarcerate--

incarceration, all 50 states and the District of Columbia have established thresholds distinguishing these offenses. In the last 20 years, 40 states, including Nebraska, have raised their felony threshold. Nebraska's was raised recently in 2015. The handout from the page is a list of felony threshold state by state, which includes Washington, D.C. You can see 36 states actually have a threshold lower than Nebraska. Nine are equal to ours and six are higher. None have a threshold as high as \$3,000. Theft or shrink as it's often identified in the industry affects retailers of all kinds: grocers, convenience stores, drug stores, which stock small easy to steal items, tend to have fewer staff and often experience the highest incident. Yet stores with high-price items like electronics, power goods, tools, other things of that nature tend to hit the threshold and have a higher per incident amount that's stolen. I'd ask you to also consider not just our owners, but employee safety when looking at this. We-- lot of different policies on how employees handle this, and a lot of times most often our stores are discouraging from trying to apprehend at the point of theft due to escalation of violence. We understand why Senator Wayne brought the bill and would like the committee-- understand Corrections is a big thing, but last year, we do want to also point out that Senator Aguilar had LB603 last year, the INFORM bill. This bill was retail's attempt to let you know that we're going after the people that are running these syndicates. So it's not the individuals that are stealing that we're concerned about. Now in the modern day of being able to steal and then sell online, this INFORM Act, which was passed federally and will go into effect in June, I believe, basically says that these online sellers need to vet their third parties because right now, you can still sell stolen goods online. It looks like it's legitimate. You think-- the consumer thinks I'm getting a great deal on this. It's half the price, but it's actually been stolen goods. So retail is trying to come up with solutions. We're not after the individuals. We're after the crime syndicates that are doing this. And we think that's a good first step in accomplishing that. I'm happy to answer any questions you may have.

**DeBOER:** Questions for the committee? Senator Geist.

**GEIST:** How much do you write off each year for theft?

**RICH OTTO:** I can tell you my bigger box retailers, it is over 1 percent of sales in many times.

**GEIST:** OK. Thank you.

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**DeBOER:** Other questions? Senator Holdcroft.

**HOLDCROFT:** Thank you, Vice Chair DeBoer. So can you tell me what's with New Jersey? They have \$200 and they haven't updated it since 1978.

**RICH OTTO:** Well, I don't know New Jersey's situation. I do want to point out, I know the introducer brought up Texas and Wisconsin at \$2,500. Our bigger concern is our neighboring states, Iowa at \$1,000, Missouri at \$750. We feel that, again, many of these thefts that are coming are organized retail crime. They prey on individuals that may have a drug problem in a tough situation and those are the individuals going in to steal. We don't want those-- you know, if somebody is in the Omaha-Council Bluffs area, they know what they're doing and they'll gladly steal from Senator Blood's district well before they would steal in Council Bluffs because they can go up to the \$1,500 threshold, higher than Iowa. And so that is our bigger thing is that these individuals are smart. If we go to \$3,000, Nebraska is going to be preyed upon by people within a 500-mile district-- 500-mile area or larger to come here and be able to steal three to four times the amount they could in, in a neighboring state.

**HOLDCROFT:** I thought maybe they had some different system for this kind of felony.

**RICH OTTO:** I can look into New Jersey specifically for you, Senator, and see why theirs is so low.

**HOLDCROFT:** Thank you.

**DeBOER:** Other questions from the committee? Senator Blood.

**BLOOD:** Thank you, Vice Chair DeBoer. Thank you for coming in today. Can you tell me how many of these states that you, you brought forward have enhancement to felonies as part of their policy as well?

**RICH OTTO:** I know that typically when it gets raised, it is a thing that we bring up and they typically want that in. Now that-- OK, if we're going to raise it, it's often a bargaining chip to throw what they would call enhancement or aggregation where you can look at them together. And so those have been put in. I am not-- I-- and I can get the numbers on this. Rarely are they used, rarely. And we can try to look at the numbers. But again, you have to be charged--

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**BLOOD:** Why do you think that is? Because they're making negotiations in court or--

**RICH OTTO:** I just don't think these rate on prosecution's radar or the, the app. We can-- I don't know the answer to that why, but I don't believe it is commonly used.

**BLOOD:** Do you, do you know how much employee theft is written off? I know you give kind of a percentage of how much is written off. How much of that is employee theft?

**RICH OTTO:** Typically, my members say when they're quoting that over 1 percent, that that is not including employees theft.

**BLOOD:** Do you have any idea what that percentage may be?

**RICH OTTO:** I don't. I, I can look into that.

**BLOOD:** Do, do, do you think it's kind of odd that you've brought a report from a story that says states can safely raise their felony theft threshold report?

**RICH OTTO:** That's where I got the numbers from, but--

**BLOOD:** It was just like-- I kept reading it. It's like--

**RICH OTTO:** I'm just comparing it to our neighbor state--

**BLOOD:** That's from Pew because I remember reading that, right?

**RICH OTTO:** I believe so.

**BLOOD:** --several years ago. All right. Thank you.

**DeBOER:** Other questions for this testifier? I don't see any. Thank you so much. Next opponent testifier. Is there anyone else who would like to testify in opposition to this bill? Is there anyone here who would like to testify in the neutral capacity? Anyone else in the neutral? All right, for the record, there are two letters, one in support and one in opposition for this bill. Since Senator Wayne is not here, that means he waives closing and we'll close our hearing on LB19 and open our hearing on LB553. Welcome to your Judiciary Committee, Committee, Senator John Cavanaugh.

**J. CAVANAUGH:** Thank you, Vice Chair DeBoer. Thank you, members of the Judiciary Committee. Just go to-- here we are-- LB553. Got two bills

here this afternoon, both similarly numbered. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha and I'm here to introduce LB553, which provides for an automatic bail review after 21 days for misdemeanors and city ordinance violations. Article I, Section 9 of Nebraska Constitution says, "all persons shall be bailable by sufficient sureties." This lists exceptions. The question is what is bailable? If the court sets a dollar amount and the individual cannot post that amount, are they bailable? This Legislature has produced and passed in 29-901 saying that the court shall consider all methods of bond and conditions of release to avoid pretrial incarceration. If the judge determines that the defendant shall not be released on his or her personal cognizance, judge shall consider the defendant's financial ability to pay a bond and shall impose the least onerous of the following conditions. LB553 says that when a court sets conditions of bail for a defendant of low-level offenses and that person is unable to meet those conditions within three weeks, then the court has to hold a hearing to determine if those same conditions should still apply. And in light of the fact that the defendant could not post the bail, whether that person is still-- whether or not that person is still considered bailable. LB553 would make review of the defendant's bail a condition-- conditions for misdemeanors routine rather than something extraordinary. It does take-- not in any way eliminate the judge's ability to impose the same conditions, but makes it-- the process for getting in front of a judge automatic. LB553 would review-- it would make review of a defendant's bail condition-- oh, that's the same section, sorry-- consider-- considering what would happen if you didn't show up to work for two consecutive weeks or three consecutive weeks, you will likely lose your job. And as a result of that, being in the system or on pretrial release is a primary basis for-- your job is your primary basis for your ability to pay a cash bond. In my experience, I've seen people lose their jobs, their houses, miss doctor's appointments and the progress they've made on getting their life together when they're detained even for a few days. So basically what I'm saying here is the constitution says that somebody has to be bailable unless they're held on a homicide or a serious sexual assault. This bill would allow-- would say, if you're held on a misdemeanor and you're in jail for more than 21 days, that the dollar amount that was set clearly didn't contemplate your ability to pay correctly as is-- are required under the statute. And if your ability to pay is not properly considered, are you actually bailable as the constitution would require? So all it does, it says that someone needs-- that a judge needs to reestablish rereview of

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conditions of bail every 21 days to ensure that they are properly considering someone's ability to pay and that someone's not just sitting in jail because they cannot pay and they were inappropriately determined to have a higher ability to pay. So I can take some questions if you have any.

**GEIST:** Are there any questions from the committee? Yes, Senator Blood.

**BLOOD:** Thank you, Senator Geist. So I just have a quick question. So I always worry about bills like this, not because I don't think it's a good idea, but because we put more mandates on local government. Would you agree with what the fiscal note says from NACO? Because I actually think that that's very positive, that it insists in potentially reducing the days of stay for defendants, therefore reducing the costs incurred for lodging of defendants.

**J. CAVANAUGH:** Well, yeah, I'm, I'm a strong subscriber to that philosophy that if we do not detain people we don't need to detain, we don't have to pay to detain them. So we can save dollars for every day that someone's not sitting in jail.

**BLOOD:** So the sky is falling on the other fiscal notes, maybe need to be more balanced because it sounds like their cost may be balanced by the fact that we're not incarcerating people that don't need to be incarcerated.

**J. CAVANAUGH:** Well, yeah, certainly. And I would point out that the amount-- these are people who are already incarcerated. That's the biggest cost.

**BLOOD:** Right.

**J. CAVANAUGH:** The only cost is really, honestly-- I've done-- I've personally done thousands of misdemeanor bond hearings. It takes about five minutes and--

**BLOOD:** But there's still the transportation. They have to be transported, right?

**J. CAVANAUGH:** Not necessarily. They're doing a lot of those bond hearings via video conference now.

**BLOOD:** Oh, OK.



**J. CAVANAUGH:** And they have a-- at least in Douglas County, there's a court-- courtroom in the jail and they do bond hearings every day through that courtroom. And so essentially what this would require is that on the 21st day or the next business day after that, that that person would have to be put on the list for that bond hearing. And then that, that-- essentially, the bond that was previously sent would be reviewed and reaffirmed or potentially, under-- in light of this new information, the judge would have the opportunity to say, well, really, this is an offense that doesn't require you post that \$1,000. We just said that because we thought you had the ability to pay that. And now it's clear you've sat for 21 days. That seems like a demonstration that you don't have \$1,000.

**BLOOD:** So you don't see this as a potential burden for the more rural areas that they probably would have to drive somebody? Depending-- because I know a lot of time, the jails are in the same building as the court--

**J. CAVANAUGH:** Right, I-- you know--

**BLOOD:** [INAUDIBLE] County as an example.

**J. CAVANAUGH:** Realistically, it, it, it could be-- for a rural area, it might be a little bit more burdensome, but they're not going to have very many people that are in on a misdemeanor anyway. This is more a consideration-- I can tell you that the numbers in Douglas County is 55 individuals are currently in Douglas County on a misdemeanor right now, so-- and that's, that's our biggest county by far, so rural counties--

**BLOOD:** What's the cost per day for the-- I know what it is for state prison-- for a jail in Douglas?

**J. CAVANAUGH:** You know, I, I recall it being something like \$80 a day, but I don't know if it's gone up or down since then. Well, I assume it's gone up, but I don't know if that's what they're billing--

**BLOOD:** So 80 times 21?

**J. CAVANAUGH:** Yeah.

**BLOOD:** OK. Thank you.

**DeBOER:** Other questions? Senator DeKay.

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**DeKAY:** Yes. So if they're not making bail in 21 days, the judge has a chance to reestablish what the bail will be. And if it's a misdemeanor and it goes forward, does that also count as time served for them?

**J. CAVANAUGH:** Yeah, so this is-- only applies to misdemeanors. I'm not trying to-- I'm not saying we have to review felony bonds. But yeah, any time that somebody is sitting on an offense and they say-- hypothetically are convicted of that at a later date, they would get credit for the time that they've served towards that. And that's ultimately what happens in most of these cases. If somebody sits for that long and they get to their trial date, which is maybe 60 days down the road and they get convicted, most misdemeanors are going to get time served at that point. And really, the problem we have is if somebody posts a bond on day one and they come in, they go cycle through, they get either an ROR, release on their own recognizance, or they get a small enough bond that they can post, that person gets out. They come to their trial date in 60 days and they get a fine or they get probation. But if you sit there for 60 days, aside from losing your housing, losing your job, missing all those things, you're going-- they're going to say, well, you've already done 60 days. We're just going to give you time served. So the difference in penalty there is one, you spent all that time there and you lost all those things. But two, you have on your record a conviction that shows you did 60 days in jail, whereas if you had \$500 on the front end, you'd probably get probation. And so your record reflects differently as well for purposes of a set-aside, for purposes of some-- you know, how you report it to employers and things like that in the future and for purposes of how your record looks, if you happen to come back. So it has a lot of those other ancillary effects just based on the fact that you couldn't come up with \$500 on the front end.

**DeKAY:** Thank you.

**DeBOER:** Other questions? Senator Geist.

**GEIST:** So on the front end, when someone comes before a judge, does the judge not consider the person's ability to pay?

**J. CAVANAUGH:** No, they do and they're required by statute to consider ability to pay. What I'm saying is say they, they look, they look at you and they hear all of the evidence about you that they've got and you-- and they say, OK, \$500 cash so \$5,000 bond is the right amount. I-- what I'm saying is if you don't pay \$500 over 21 days, that is evidence of-- that they were incorrect in their assessment about your

ability to pay. And so it's new evidence that should be considered in reestablishing a bond.

**GEIST:** OK. Gosh, OK. It seems like the judge could ask a lot of questions, though, and find out that on the front end.

**J. CAVANAUGH:** They can, but in, in a adversarial criminal justice system, there's some hesitation to believe somebody when they-- if you say how much can you pay? And they say \$400 and they say, I don't believe you. I think you can pull-- pay \$500. Very common to have that conversation. And I'm not saying that that's the wrong approach to take. I'm just saying that this is a pretty solid evidence that you can't pay it if you're sitting in jail on a--

**GEIST:** OK. Thank you.

**DeBOER:** OK. Other questions? I don't see any. Let's have our first proponent testifier.

**JASON WITMER:** I usually come, even though I like to be past it, to share my past experience because I've been on the other side of these things. Jason Witmer, W-i-t-m-e-r. Way back when I was getting in a lot of trouble, I went to jail for different things. But there was times when I didn't do much, but I went to jail for misdemeanors. And I've been in a position where I didn't have no money to pay, like, a \$1,000 bond. And you just sit there for day after day, but it's just like they said, I've been in jail once where I had a job and they're not interested. First of all, if you go to jail, you're guilty for work. They're not trying to hear-- you know, some jobs, if you don't have a good established history, they're not trying to hear why you're in there. They just know that you're not showing up at work. So by the time I come out, I have no job and I'm back on the course of what was getting me in trouble in the first place, you know? Instead of the job, which was starting to put finances in my pocket to pay bills to shift to something else, I just went back to what I believed I knew and thought was best. And I just, I just think that's a perspective you should look at when we say-- like, the no bail places-- I mean the no bonds or the low bonds and like, that's just letting people-- but one, we say innocent until proven guilty until we're talking about misdemeanors. If somebody is going to rampage on a misdemeanor, I don't know what you do about that, but what you are doing when you're not adjusting something like this is kind of putting them on course to get back and not, not do well, lose their job. That was mentioned. So I actually have been in that position and things escalated for me. And

of course, things escalated for me a lot further than other people. However, I can't imagine what it would be like to be a single mother or a father or somebody who has these troubles and then you go into the jail and you can't pay your bond and you can't get somebody to get to your house or whatnot. So there are so many dynamics to this. I just feel like this is kind of a simple one in the basis of the impact it has not to do it is much harsher than the impact that you might feel that it has to, to do something like this. Because this doesn't this doesn't lesser crime-- lesser charges, I mean. It, it, it's just something to adjust so people can do what they need to do and not fall into a rabbit hole because that's what happens; you fall in a rabbit hole when you get these little things on you and it adds up to what it shouldn't even be adding up to. Guilt is meant for a reason; guilt. Misdemeanors are not-- shouldn't be punishment already. That's it.

**DeBOER:** All right. Are there questions for this testifier? I don't see any. Thank you. Next proponent.

**SPIKE EICKHOLT:** Good afternoon, members of the committee and-- Vice Chair DeBoer and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska and on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB553 The page is handing around a report that the ACLU published a few weeks ago-- I mean, actually a couple of months ago. In 2018 and 2020, the Legislature made some various reforms to the bond statutes and also the, the statutes that relate to-- impose the court's ability to impose fines and it basically required on both required to the front end of the court system and the case-- and in the back end of the case that the judge is required to consider the financial ability of a defendant to pay. If it's a defendant's ability dependent to pay the bond to be released to go back to court and contest the case and also, if the court imposes a fine, then the courts are directed to make sure that the defendant has the ability to pay that fine. These bills were generally supported overwhelmingly by the Legislature and in part, they were supported by a number of people or at least not opposed by the various interests for something that Senator Blood mentioned before. And that is for a lot of these low-level crimes, particularly in Lincoln and Omaha, if you lock somebody up and set a bond that's too high, they simply sit in your jail for an arbitrary length and period of time. And similarly, if a person is imposed-- the court imposes a fine on them and they cannot pay, then what will happen is they will eventually be arrested and required to what they call sit out that fine in the jail system. The other day, you heard a bill that Senator Conrad has that

would provide for some sort of tools for the courts to allow people to be released short of posting a cash bond, but to have some supervision and rehabilitative care. That's why that's important and why it fits in this bill as well. But what this bill does provide is for people who have bonds that are set-- a money/cash bond that's set and they cannot post that for 21 consecutive days, the issue goes back in front of the judge. You may hear from an opponent testimony today. And it is true that under current law, a defendant or the defendant's lawyer can always file a motion really at any time to review that bond. And that does happen and as Senator John Cavanaugh has said before, I've done hundreds or thousands of those myself over the years. But what this does, it has an automatic tool or an automatic way that courts are going to look at everyone's bond in a misdemeanor or a city ordinance case and make sure that is properly set and review that situation again. So we would encourage the committee to consider this bill and I'll answer any questions if anyone has any.

**DeBOER:** Are there questions for this testifier? I don't see any. Next proponent testifier.

**JASMINE HARRIS:** Good afternoon again, Vice Chair DeBoer and members of the Judiciary Committee. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s. I'm the director of public policy and advocacy with RISE. I like to bring in data and perspectives from people who have been impacted so that we balance out all of the lawyer and legal speak that comes in. So according to the Prison Policy Initiative, Nebraska's incarceration rate is 577 per 100,000 people, which includes prisons, jails, immigration detention and youth facilities. This rate is higher than countries like the U.K., Canada and Italy. So that's a state who has higher incarceration rates than countries. The National Institute of Corrections reported that in 2020, the general population in Nebraska was 4,240 individuals in 63 county jails. And although that number sounds low, we don't take into account the transient nature of the population that comes in and out of these jails. So annually, the unique jail admission is about 30,000, with over 70,000 people being released each year. We continue to ask for alternatives to help alleviate overcrowding, as we see our county jails are dealing with this as well, and the solution must be a proactive approach. At RISE, we believe that alleviation can happen on the front end by addressing the county jails and the pretrial system. And as part of our policy and advocacy work, we're interested in identifying and addressing those gaps and opportunities related to the pretrial justice system. In 2020, we asked community members through an assessment of our pretrial system here in Nebraska. Seventy-eight percent of respondents

disagreed with the statement that no one is detained due to the inability to pay a financial condition for release. According to the Board of Governors of the Federal Reserve System's "Economic Well-Being of U.S. Households in 2020" report, 35 percent of adults faced with an unexpected \$400 expense would have had difficulty completely covering those expenses. So we currently have people sitting in our jails in Nebraska with a \$5,000 bond, meaning they only need \$500 for release and cannot afford it. This continues to perpetuate cycles of poverty and incarceration. It results in people who do not have disposable income spending days to months in jail that further impact their livelihood. And it takes only three days before someone who is jailed and cannot afford cash bail to potentially lose their employment, housing and custody to their children. And we must remember, these people have only been charged. They are innocent until proven guilty. So we have them sitting incarcerated and have not had their due process yet. We're asking that LB553 be voted out of committee to General File, as this is a step in the right direction. Best practice is that these reviews happen within a maximum of 48 hours and we currently have no automatic review here in our state. So at least having 21-day review is getting us to that right direction.

**DeBOER:** Thank you. Are there any questions for this testifier? I do not see any.

**JASMINE HARRIS:** Thank you.

**DeBOER:** Next proponent testifier. Any proponents? Anyone here to testify in opposition to this bill?

**PATRICK CONDON:** Good afternoon, Vice Chair DeBoer, members of the Judiciary. My name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am the Lancaster County Attorney here testifying in-- for Lancaster County and also for the Nebraska County Attorneys Association. We are opposed to LB553 in particular because this is already in the statute. As, as you-- if you read the bill, the initial first paragraph talks about the ability for individuals who have not posted bail to have their bail reviewed within 24 hours after having bail set and not being able to post that. So this is already being-- this, this could already be done by any individual. It just sets up now an automatic review of those bonds within 21 days. What the bill doesn't say is who's responsible for that. Is that the jail that's supposed to keep track of the 21 days? Is it the defense attorney? Is it the court? Is it the prosecutor? Who is supposed to, who is supposed to keep track of those 21 days? And if those-- it-- if it is missed, is that a

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lawsuit that potentially there on the jail for holding somebody those 21 days without having that reviewed? So there's, there's-- that's, that's also a concern. The last-- the testifier-- the last proponent for this talked about there-- that individuals are innocent until proven guilty. That is correct. But on any case where a bond is set, there is a probable cause affidavit that's also filed with the court. And the court makes a probable cause finding in regards to any case in which an individual was in custody on a bond. If they, if they are-- do not have a probable cause affidavit, then it is set as a PR bond or an OR bond. So, so there is a review of individuals that are in custody prior to-- you know, they just don't sit there without having some type of judicial review. So with that, as I said, those are the things that, that are concerning to us. One, the fact that this is already something that is available to be done. Two, it doesn't say who is responsible for that. And there is a review of the individuals in custody if they have a bond set. And with that, I would entertain any questions.

**DeBOER:** Are there any questions for this testifier? Senator McKinney.

**McKINNEY:** Yes. Thank you, Senator DeBoer. So your, your argument is that it's already in statute. So what's wrong with it being automatic?

**PATRICK CONDON:** I get-- and the question is, is why? I mean, who's going to, who's going to be responsible for making sure those individuals get back? And then if they have a bond review at day 20 and then automatically at day 21, they get another bond review, that seems to me to be wasting resources of the, of the judiciary.

**McKINNEY:** But I'm going to operate in the assumption that if day 20 and day 21 are that close, somebody is smart enough to realize day 20 or day 21 is going to make-- you wouldn't do the-- both the-- in two days. Like, you wouldn't say, oh, day 20, come in, day 21, come in. I'm, I'm not going to operate with assumption that people are not smart enough to figure that out. Also, what if Senator Cavanaugh amended the bill to say who would track? Would you-- who. If-- and, and I'm sure you'll probably still disagree, but in the hypothetical that you wouldn't, who do you think should track this?

**PATRICK CONDON:** Well, I guess what I would say, Senator, is it depends on if that individual has an attorney or not.

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**McKINNEY:** No, I'm saying so regardless of them having an attorney or not, who should track it, the county facilities, the courts, who?  
And--

**PATRICK CONDON:** Well, I don't-- I, I--

**McKINNEY:** --who--

**PATRICK CONDON:** --think it, I think it would put, it would put us in a--

**McKINNEY:** Who do you think would be best suited to track it?

**PATRICK CONDON:** Well, I think the defendant. I mean, the defendant knows how long they're in jail. And if I, if I'm-- I don't want to get involved and interrupt or interfere with the defense attorney and their defense of this case however they may see that they want to go forward with it.

**McKINNEY:** But if it's automatic, the defense attorney would have a different strategy because it would be automatic. So you are not going to say who should or shouldn't. I just fundamentally have a--and you don't even have to respond. But there's many individuals that sit inside county jails only because they cannot pay to get out. And because of that, they lose a job, housing, probably their kids. It's all type-- it's a ripple effect and all this is asking is just a review, an automatic review. I don't see-- it-- and I think this is the problem where-- county attorneys and why people get so frustrated with you all. It's always the sky is falling. No. And you all act like they're not humans and that's the problem people have. And you don't have to respond, but I would say to you and other county attorneys and you can say it to the people you work with that you guys need to have some type of humanity on both sides. It can't just be victim, victim, victim, but you don't have no humanity for the other person on the side. It's not to disregard what they did. Yes, we can hold them accountable, but you also got to be humans. And up-- and during my time here, you and others have come in here-- you lack a lot of empathy and humanity and that's the problem and that's why people get frustrated with you all. Thank you.

**PATRICK CONDON:** Can I respond or--

**McKINNEY:** Thank you.

**DeBOER:** Are there other questions? Thank you for being here.



**PATRICK CONDON:** Thank you.

**DeBOER:** Next testifier in opposition. Is there anyone here to oppose this bill? Anyone in the neutral capacity? As Senator John Cavanaugh is coming up, I'll say that there was one letter of support for this bill. So Senator Cavanaugh to close.

**J. CAVANAUGH:** Thank you, Vice Chair DeBoer, and thank you, members of the Judiciary Committee. And Senator McKinney, to your question or point, there-- certainly I would be willing to tighten up the language in here. The language says that a person is entitled to this hearing. And the constitution says that a person, unless they're held on a homicide or a sexual assault, must be bailable. And the statute previously adopted says that a judge-- court has to consider ability to pay when considering what makes someone bailable. My point in this bill, though I would like it to pass, is to point out exactly the-- what you're getting at, is that there are folks who have cash bail that's set and they can't pay it. That is effectively making them not bailable in violation of the constitution, in violation of the statute. And this is giving the courts, and the prosecutors really, an opportunity to revisit that and say-- and either correct a mistake or to explain why it is not a mistake, why that person is bailable or why that is within their ability to pay. As I said, I've represented-- done hundreds of thousands of these hearings. And when you are on that side of the bar, the defense bar, you operate in a very, I would say, gritty part of reality. And one of the aspects of that reality are that you do have an opportunity to ask for a bond review basically every day. However, when you do that, you put yourself, your client really, in a position to upset the court for causing that work, for putting them, putting them to work. So what I'm doing here is saying that the system is essentially unjust when someone is in jail because they cannot post a cash bond. And I'm saying that the person the court should be mad at is us because the court should review-- automatically has to review that bond. And so I don't want people coming into court and asserting that they don't have the ability to pay and having the court be frustrated with them. In the number of times I've done this-- I brought somebody in about this timescale, I would say-- and the first question the judge will say is what's the change in condition? And that's where I came up with the idea for this because I would argue and I continue to argue the change in condition is the fact that they've been in here for 21 days. That is evidence that they can't pay this. And certainly, they've lost their job, they lost their house, they maybe lost their kids, they missed doctor's appointments. So all of those things have changed, but when you talk about the change in

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condition that the court wants to consider, those things don't meet that standard. And what I'm saying is they, they should and that's what the point of the statute is to say, is that sitting in jail without the ability to pay is evidence that the bond is too high and that you are unbailable and that we are violating the constitution. So whose obligation is it under this? Really, it's probably the courts and it prob-- and it should be the courts and so I'm happy to put in language that explicitly states that. And like I tell-- I could keep talking, but I don't, I don't know if anybody had any questions. But I've got the jail data. I can tell you there are 900-- I'm sorry, 861 individuals currently sitting in Douglas County Corrections pretrial. There are-- 55 of them are sitting on misdemeanors. But that means there's 861 people there who are sitting on a range from an offense that carries-- what is it-- 30 days, 60 days in jail, up to an offense that carries life or death, really in the state. And-- but the vast majority of them are people who are going to get a sentence of somewhere around the lines of 60 days. And a lot of those, the reason for that is that they're getting time served because they've sat there for that entire time. And then those folks have to start their life over again. So I think it's a simple bill, I think it's a simple premise and I think it's something we probably should have done a long time ago, so.

**DeBOER:** Any questions? Senator McKinney.

**McKINNEY:** Thank you, Senator DeBoer. Thank you, Senator Cavanaugh. Can you speak to the, the ability to be able to fight a case outside of a jail versus inside and how those outcomes are a lot different?

**J. CAVANAUGH:** Well, I can't say specific stats in data and certainly, yes, that's a, that's a good point. So, you know, when somebody is incarcerated, they're just much more likely to take a plea deal, right? They're going to-- you know, the longer somebody is in, the more likely they're going to plead guilty to a charge, whether they have a good defense or not, and especially on a misdemeanor. Because really, the court date and the sentence are coextensive when you're in and so in that regard, it essentially acts as a coercion into pleading, taking a deal just to get it resolved and move on with your life.

**McKINNEY:** So it's beneficial for county attorneys to oppose something like this because of the probability to get more pleas.

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**J. CAVANAUGH:** Yeah, I mean it probably-- really, the people that are incarcerated, it probably does make their job easier. Sure. But yeah, in terms of fighting the charge, 100 percent right on that too, right? If you're out of jail, you can work with your attorney more easily. They don't have to set a time to come visit you at the jail. They don't have-- you, you can get your papers together. I mean, the number of times somebody said, well, I had-- you know, if it's something that requires a cell phone or technical-- like, some building or something like that, getting that kind of stuff together is impossible. When you're in jail, you have to have somebody on the outside that helps you out with those sorts of things, tracking down phone numbers and things like that to help just to have your attorney have somebody call to talk to you to conduct an investigation. All of those things are so much harder from the inside in ways that, you know, those of us who have never been in a situation can't even contemplate. So, yeah, it is a lot easier to defend yourself. And it's-- you're much more likely to do it when you're out.

**McKINNEY:** Thank you.

**DeBOER:** Other questions? I'll ask you one. You said that it's much more difficult. They're more likely to take a plea deal, that sort of thing. But have you had situations where someone was sitting in there unable to pay bond and then was acquitted?

**J. CAVANAUGH:** Yeah.

**DeBOER:** So they just sat there and then they were acquitted?

**J. CAVANAUGH:** Yeah. I've won jury trials with somebody in custody before, yeah.

**DeBOER:** OK.

**J. CAVANAUGH:** I'm, I'm sure other people have as well.

**DeBOER:** That seems horrible for that person.

**J. CAVANAUGH:** Well--

**DeBOER:** Yeah. All right, thank you. Are there any other questions? All right, I think then there-- yeah, we'll close, that means the hearing on LB553 and we will open on LB555. Welcome back, Senator John Cavanaugh.

**J. CAVANAUGH:** Thank you, Vice Chair DeBoer. And I'm going to try and be brief on this one because I got some other folks here who can probably do the explanation portion better than I can. But my name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here to introduce LB555, which would allow for an additional funding source for the Commission on Public Advocacy and to state legislative intent to transfer indigent defense fee to the Legal Aid and Services Fund if the commission receives \$2 million in General Fund appropriation. And just so you know, I have a bill in Appropriations to appropriate those funds so I'm not asking for that here. This bill is the result of an interim study I introduced this last year, LR396, attempting to find a long-term funding solution for the commission. The Appropriations Committee held a hearing in October, but reached no consensus. The Commission on Public Advocacy serves a vital role in our criminal justice system. Created in 1995 by the Legislature, the commission provides legal services and resources to counties in fulfilling their constitutional obligation to provide effective assistance of counsel to indigent persons. In larger counties, full-time public defenders handle the vast majority of indigent clients. The Commission steps in where there is a conflict of interest or the public defender's office otherwise cannot represent a client. In smaller counties, defense will typically rely on court-appointed counsel. It is here where the commission is essential to providing an adequate defense. Because the commission's resources are limited, they typically only are able to take a major, a major felony and capital cases. These types of cases cost a lot of money. The commission can take on that cost, at no expense to the county, out of its budget. But the commission is funded by court fees. A revenue-- and revenue from court fees has been declining over the past several years. Thanks to the success of alternative resolution programs and decreased case filings, court fees are not a reliable funding source year to year. Additionally, raising fees diminishes access to the courts and overly burdens those least able to afford the increase. States like Kansas have gone entirely away from funding anything through court fees and has moved these type programs to general funds. It's time for Nebraska to do the same. The Commission on Public Advocacy is an essential function of the state and should be funded through general funds. And just, I guess, by way of interest, I've got an article that was in the Journal Star here. I think I-- can I give this to the clerk or the pages? Can you make copies and hand those out? But basically it shows you how many lawyers we have in each county in greater Nebraska and, and then what the projected future is going to be. Basically, we don't have a lot of

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lawyers in rural Nebraska and in the future, we're not looking like we're going to have a lot more. And so that's why the commission is important and that's why we're looking to figure out how to make sure it continues into the future. So with that, I'll take questions.

**DeBOER:** Are there questions? Senator McKinney.

**McKINNEY:** Thank you. Senator Cavanagh, can you elaborate more on why charging court fees is bad?

**J. CAVANAUGH:** Sure. So I'm trying to think of a good example. So, like, a misdemeanor court fee is-- I think it's \$49 right now and it goes to a whole lot of things. And so the Commission on Public Advocacy is about \$3 of that and so, you know, that, that dollar amount, if you were to increase it, which realistically, we would have to increase that and then all the other things that are supported by court fees need to go up as well. You start getting to a point where it becomes very onerous. And so in a misdemeanor case in county court, \$49 court fee right now. Say you get a fine and you get time to pay that, you fail to pay, your driver's license gets suspended because you didn't pay those court fees. You can get a warrant for failure to pay those court fees or, as I think Mr. Eickholt referenced in the last hearing, people sit out fines. And so then people end up sitting in jail. So these court fees, in that instance, can then become a way in which somebody then continually comes back to court to get more time to pay those. They have to take time off work, they lose their license, they can't drive, they get another-- they get a traffic ticket for driving on a suspended license. It becomes a cyclical problem that keeps people in the criminal justice system. But on the other hand, there's things like Small Claims Court. So if you need to file small claims for whatever reason under, you know, I think it's \$5,000, something like that, the Small Claims Court court fee is \$29. Of that, the indigent fund is again \$3. So it's about 10 percent of what it costs you to gain access to small claims, which is something that when you're going to small claims, obviously it's a smaller dollar amount and so you're, you're increasing the burden-- the barrier for someone to avail themselves of that court system by raising these court fees and all of the things that we fund through court fees: judges' retirement, which we raised two years ago, if you remember. And in that conversation, we raised it on civil filings, but not criminal filings and judges' retirement is-- I think on criminal filings are something like \$7 to \$9 right now. We have technology fees that pay for the technology of the courts. We have the-- actually, the, the fee that I'm talking about moving this money into funds

things like Legal Aid and you'll hear from some folks there. So it's the court fees fund essential things, things that, that I like, that you like, that we all like, but on the backs of poor folks who are least able to pay it. And the-- we continue to be dependent upon these things, you're going to one, can increase that burden, cause more people to have the problems I'm talking about. And you're going to further shut off access to the courts for everybody and make it just more difficult for anybody to avail themselves of the justice system. And so we need to find other ways that are more sustainable.

**McKINNEY:** Thank you.

**J. CAVANAUGH:** Thank you.

**DeBOER:** Other questions? Senator DeKay.

**DeKAY:** Senator Cavanaugh, I'm pleased to see you bring this bill before us today. I was just wondering, there's going to be a similar bill probably brought forward later on. By raising the court fees, would that-- or using the court fee system, would that help maybe put in perspective that the money is going forward that's it's supposed to be used for rather than going into general funds and just getting a set amount at the end of the day to fund these trials and stuff that are coming forward?

**J. CAVANAUGH:** So I guess is your question about transparency? Is that it?

**DeKAY:** No, it's just-- I mean, it gives credence to why the court fees-- in my case, why the court fees are used rather than going into General Funds after the-- you know, just to get a lump sum to start to pay off that-- you know, the public defenders and stuff. And so that's where I'm coming from, but I do-- I want to reiterate I do applaud you bringing this forward. I think this is something that we will be able to work out. At the end of the day, like I said before, I don't, I don't have a real problem on how the money gets there. It's just that we all get to the target date at the end of the road so however we can work together on this, I'd be open to that-- those conversations.

**J. CAVANAUGH:** I appreciate that. And yeah, certainly I can tell you the brush-ups of how we got to be where I-- where we are, where I'm here talking about this. I've historically opposed increases in any court fees, but I believe strongly in the mission of the Commission on Public Advocacy. And so I've-- I opposed their increase that they came

and asked for a couple years ago. And so as a result of that, I said, well, let's find a way to fund this. And my opposition to court fees is one thing, but-- and I think you'll hear this from somebody else who will testify, but the court fee dollar-- the dollar amount has been \$3 for a while, but the amount that has been generated as a result of that has continued to go down. And what that tells you is that a court fee is an incredibly unreliable way to fund a program because what happens is if we increase the court fee and we say we need to get to \$2 million, we need to do that with the number of filings we had last year, you know, got to, got to do this amount, what you'll have happen is in five or ten years, you're gonna need to increase that court fee again, right, because the filings are on a downward trajectory. And so that's why states like Kansas-- what Kansas did was they just took all of their court fees and put them into the general fund and then they funded everything from court fees out of general fund. And so the reason they did that was their courts were going to have to shut down because the filing fees were so low and they weren't getting enough money to cover it. And that's kind of what we're looking at with the Commission on Public Advocacy is if we don't give them money, which we did the last two years, to continue operating, they won't be able to provide the services to some counties in your district. Well, some counties in Senator Ibach's district don't-- well, they do cover some of Lancaster-- they have had cases-- I mean, they've had cases in Douglas and Lancaster before as well. But really the value they bring to the state is-- and you can see from the article I handed out-- is doing these high technical cases, a lot of work in rural Nebraska where there are basically either no lawyers or no lawyers who have ever tried a homicide before. And so that's, that's why it's a General Fund obligation. This is the value that comes to the entire state and court fees come from predominantly poor people in Douglas County and that's why I want to find a way to help solve this problem.

**DeKAY:** Just a quick question on, you know, General Funds part of it. So would this be a rollover effect, you know, if we're starting to use those funds on a specific trial so that we would want to come back here, say, in a year or two years, however-- when the funds get as low as they are right now? Would we need to readdress this going forward and ask General Funds for more money going forward?

**J. CAVANAUGH:** I mean, I think in an ideal world, it would be the commission-- we would treat the commission like any other general ongoing obligation. So they would get-- they would come through budget process and say we need \$2 million for this year, this biennium to

operate and do the-- you know, to do the number of cases that we expect in some-- so it's not on a case by case where they're not appropriating on a-- it wouldn't be on a case-by-case basis, but if they don't have the lawyers, they can't take the cases. So if we don't give them enough money, they can't hire enough lawyers. They're just have to turn down cases. And then if they turn down the case, essentially the burden falls to the county. The county is the one that has to pay the legal fees for an indigent defense appointment. And so this is-- the reason that the commission is property tax relief to rural counties is that some counties-- and I'm sure somebody behind me can say that-- reiterate this, but it's-- they, they have examples of cases where they've been codefendants and they've represented one and the other one cost the county something like \$800,000 to appoint representation for the codefendant. So you could say they save that county \$800,000, give or take. And so the other thing about this, the interesting dynamic is you can't plan for this. You couldn't have-- you know, Knox County can't say we're going to have a homicide in the next three years and we need to set aside \$800,000 over that amount of time. They happen, can't, can't predict them, and then the county has to pay for that representation. I mean, not always, but most of the time in a homicide, somebody-- they're not going to be able to afford the representation. And so it's-- it helps with that for that budgetary purpose. It helps ensure that we're having quality representation in these cases, which then means you don't get to this appeal-- the ineffective assistance of counsel situation where then the case gets kicked back down and has to be retried. And it-- you know, it pursues the interest of justice that people actually are getting quality representation, but-- so it saves money, promotes justice. And the issue here is where the money comes from. So that's-- I'm just trying to find that solution. Actually-- and really what this bill does is says if we do fund them, then we take the current pot of money and, and put it into other valuable services. And some folks behind me can talk about that.

**DeKAY:** In an ideal world, we wouldn't have to have these cases to try, but--

**J. CAVANAUGH:** Yeah.

**DeKAY:** --I do appreciate you bringing this forward. I look forward to conversations and at the end of the day, that it is funded however we need to fund it to get it to the levels we need to keep county courts out of harm's way of being bankrupt or having to go to local lenders



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to borrow money to run their basic county business, so appreciate that. Thank you.

**J. CAVANAUGH:** Thanks.

**DeBOER:** Other questions? See none, first proponent testifier. Welcome.

**JEFF PICKENS:** Thank you. Again, my name is Jeff Pickens, J-e-f-f P-i-c-k-e-n-s GFP. I don't know why I'm looking at my notes to spell my name. I'm chief counsel for the Nebraska Commission on Public Advocacy. I've been with the commission since the beginning, all the way back to 1996. The commission is appointed to represent indigent defendants charged with capital murder and other serious violent felonies throughout the state. We provide our services to the counties at no cost, no cost to the counties. I don't think we can talk about LB555 without talking about LB554, which Senator Cavanaugh has addressed. LB554 appropriates \$2.1 million from the General Fund to the commission for fiscal year 2023-2024 and fiscal year 2024-2025. LB55 [SIC, LB555] is contingent upon the passage of LB554, which, of course, you know, both those bills were introduced by Senator Cavanaugh. I support LB555 to the extent that if the commission receives more than two point-- well, more than \$2 million from the General Fund, the indigent, indigent defense fee would be used and transferred to the Legal Aid and Services Fund. I want to talk a little bit about the, the reason why the commission was created. Initially, we were created because of a problem in Richardson County. They had two high-profile murder cases, one in the '80s, one in the '90s, and in both cases, they were death sentences. And in both cases, Richardson County had to go to lawyers in Omaha and Lincoln. And Richardson County was on the brink of bankruptcy and had to take out a bank loan to pay for the lawyers that they had to hire in those cases. We were created in 1995 and started taking cases in 1996. Initially, we got General Funds and then in 2003, we were switched to Cash Funds. We initially received an indigent defense fee of \$2.75. In 2005, that went to \$3 and that's where it's been ever since. The number of cases that are filed in courts has gone down every year since fiscal year 2008-2009. The commission's revenue has dramatically declined because of the reduction in case filings. In fiscal year 2021-2022, our revenue was around \$540,000 less than the revenue we received in fiscal year 2008-2009. I provided you a handout with respect to LR396 that Senator Cavanaugh addressed, the interim study regarding the commission's funding issues. That provides an awful lot of information about the commission. There are charts in there that show the revenue issues. In the study, on page 6 and 7, you can see how our revenue has

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declined every year since fiscal year 2008-2009. And then there's also an attachment to that that shows projected revenue and expenses going forward. I am out of time. Hopefully, somebody will ask me a question.

**DeBOER:** Are there any questions for this testifier? Do you want to finish up in, like, two sentences?

**JEFF PICKENS:** In two sentences? That's hard to do. What I, what I would like to tell you is that since 1996, we have handled more than 1,500 cases throughout the state. Those are cases involving capital murder, other homicide offenses, kidnapping, sexual assault, robbery, child abuse, other serious violent felonies. We have provided our services in 72 Nebraska counties. We have handled at least 185 defendants who were charged with murder in at least 53 counties. We've handled 13 cases in which our clients were sentenced to death. We represented Carey Dean Moore at the time of his execution. I have much more information I'd like to provide you. Luckily, a lot of that is in the handout.

**DeBOER:** Perfect. Thank you so much.

**JEFF PICKENS:** Thank you.

**DeBOER:** Other questions? Senator DeKay.

**DeKAY:** Just a quick question. Where the cash funds are now and however this money comes forward-- if it does and I'm confident we can get there-- can we get to the level we need at an \$8 per filing or not?

**JEFF PICKENS:** Yeah. And I should, I should mention that you have graciously introduced a bill for us, LB767, which increases the indigent, indigent defense fee from \$3 to \$8, which is what we, we need now in order to continue to operate. I should say that our expenses are down right now, but only because we lost a lawyer in May and we cannot afford to hire another lawyer to replace that lawyer. So we're taking more cases than we can handle at this point. We're not going to be able to continue to do that. At some point, we're going to-- I will not say no to an appointment in a murder case. At some point, we might get, get there and then that's going to fall on the county. And as you know, in the case of Saline County with Aubrey Trail and Bailey Boswell, Aubrey Trail's lawyers have been paid well over \$300,000. We represented Bailey Boswell for free to the county. If we weren't here to take that case, two other lawyers would be

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appointed to represent her and their bill would be similar to, to what Aubrey Trail's lawyers were billed.

**DeKAY:** You're at six lawyers now?

**JEFF PICKENS:** We're at five now.

**DeKAY:** You're at five now.

**JEFF PICKENS:** Since 1996, up until last May, we always had six lawyers. We lost a lawyer in May. We're at five. We can't afford to hire another lawyer to replace her. We-- for, for many years now, we could have used a seventh lawyer. And the important thing to know about that is if we have a seventh-- if we had a sixth lawyer and then a seventh lawyer, we would be able to take on more cases. And the more cases we could take on, the more property tax relief we can provide. And that is the reason why we, we were created; to provide property tax relief. The act initially back in 1995 is called the Revenue Assistance Act and it's still called that. It's codified at 29-3919. And the Legislature's findings for creating the commission are found in 29-3920, which includes providing assistance to the counties in the event that they have a high-profile murder case that could significantly impact their financial resources.

**DeKAY:** Thank you. I appreciate it.

**JEFF PICKENS:** Thank you.

**DeBOER:** Thank you. Other questions? Thank you very much for being here.

**JEFF PICKENS:** Thank you.

**DeBOER:** Next testifier. Next proponent.

**LAURIE HEER DALE:** Good afternoon, Vice Chair DeBoer and members of the Judiciary Committee. My name is Laurie Heer Dale. That's spelled out L-a-u-r-i-e H-e-e-r D-a-l-e. I'm the executive director of Legal Aid of Nebraska and I want to thank you for the opportunity to be here to testify in support of LB555 today. Just briefly, I wanted to mention Legal Aid of Nebraska is a recipient of the Legal Aid and Services Fund, which is really what this bill would increase, right, if it passes. And so I wanted to also mention that we receive the largest share of the Legal Aid and Services Fund so this bill is, is critical for us and we obviously very heavily support it. So Legal Aid of

Nebraska is the only statewide provider of direct and free legal services to low-income individuals in Nebraska. We have seven offices across the state. We employ about 100 individuals about half of those are attorneys. We represent folks in all 93 counties of the state and we do that through cases involving housing law, family law, consumer law, juvenile law and public benefits, just to name a few. We represent folks who are-- or households who are at 125 percent or less of the federal poverty level. So for a one-person household, that's about \$17,000 a year. For a four-person household, that's about \$35,000 per year. As of 2021, more than 270,000 people in our state qualify for free civil legal services so that's about 14 percent of the folks in our state. We know that the need for our services is great. We have received 18-- 18,000 requests for assistance last year and unfortunately, we can't help everybody who comes to us because we don't have the funding to do that. So we were able to provide some form of legal assistance to about 13,000 people last year, but only in about 2,000 of those cases were we able to provide a lawyer to provide direct representation in court. So when you look at that, that's about 15 percent of the cases we handle every year. And if you want to put that into further perspective, we are able to provide a lawyer for approximately 1 percent of all of the low-income people in our state so those numbers are incredibly low. But we also know that the services we provide are impactful. They benefit individuals, they benefit the communities and we know that because we're tracking outcomes. And so in 2022, we were able to realize a total economic impact on behalf of our clients of about \$10.5 million. About half of that was in-- helping them increase income and about half of that was helping them decrease debt. And in more than 90 percent of our cases, we are able to successfully obtain a positive outcome for them. So our services are impactful. We-- and can I have just one more moment to finish up? I promise I'll be quick.

**DeBOER:** Two sentences.

**LAURIE HEER DALE:** Well, OK. I wanted to highlight for you all today that really this is all about-- really there's a huge demand for our services, but the funding that we receive, particularly through the Legal Aid and Services Fund, has significantly decreased. And so to illustrate that, in 2022, we are-- we were received about-- it was nearly \$400,000 less than we received in 2018. That has a significant impact on our budget and so Legal Aid of Nebraska, of course, heavily supports LB50-- LB555. I want to thank you for the opportunity and I'd open it up for any questions.

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**DeBOER:** Are there any questions for this testifier? I don't see any.

**LAURIE HEER DALE:** OK.

**DeBOER:** Thank you so much for being here.

**LAURIE HEER DALE:** Thank you so much.

**DeBOER:** Next proponent.

**DESTINY FANT:** Good afternoon, members of the Judiciary Committee. My name is Destiny Fant, D-e-s-t-i-n-y F-a-n-t. I live in Omaha. I am a client-eligible lived experience board member of Legal Aid of Nebraska and I'm testifying in my capacity as a Legal Aid board member. I'm pleased to give this committee a perspective about Legal Aid that you may not already know. I work for the nonprofit organization Together in Omaha. Together's mission is to prevent hunger and homelessness in the Omaha area. I'm the crisis engagement tenant assistance project specialist. In my position, I attend eviction court in Douglas County four days per week to work directly with low-income tenants being evicted from their homes. Through this work, I know firsthand the significant challenges these individuals and families face beyond the eviction, including harassment from debt collectors, difficulties with their spouses and significant others and families, and loss of income and governmental benefits. Each of these challenges prevents them from caring for themselves and their children, perpetuating poverty. These low-income tenants have a lot of worries on their minds. They cannot afford lawyers to represent them and this is where Legal Aid fits in. In this position, I work closely with Legal Aid. Legal Aid provides a lot of services, but one in particular is the housing justice project. I refer my clients directly to Legal Aid when I learn they're struggling to keep a roof over their heads or they do not have the money they need to feed their families. When they work with Legal Aid, they get an experienced lawyer and high-quality legal representation. I've seen firsthand hundreds of times people go from being terribly stressed over their immediate situation and desperate about their future to knowing their rights, having a plan and doing what they need to do to help themselves. In addition, if they're being evicted, they almost always get to remain in their homes. If not, they are given time to relocate. This ensures a more seamless transition, lessening the negative impact moving can have on a low come-- low-income family struggling to make ends meet. And all of this is made possible through Legal Aid. Of course, you would expect that I would praise Legal Aid's services due to my present role as a board member, but I have long

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known about and supported what Legal Aid is able to do for low-income Nebraskans. In fact, I was once a client. Legal Aid assisted me and my children. They helped me obtain custody of my son as I escaped an abusive relationship. They helped me and my children obtain safety. My attorney with Legal Aid was skilled, caring and respectful. I'll always be grateful for this help, for without it, I would not have custody of my son today. Legal Aid simply helps people deal with their critical legal problems and get a measure of fairness in court. I know, though, that only a fraction of Nebraskans who need these services can get it due to limited funding. An increase in funds to the Legal Aid and Services Fund through LB555 is a really minimal and simple way to get more funding to Legal Aid and its partners across the state. I encourage you to advance LB555 and I'd be happy to answer any questions you have. Thank you.

**DeBOER:** Are there questions for this testifier? I don't see any. Thank you so much for being here.

**LIZ NEELEY:** May I start?

**DeBOER:** Yes, welcome.

**LIZ NEELEY:** All right. Good afternoon, members of the Judiciary Committee. My name is Liz Neeley, L-i-z N-e-e-l-e-y. I am the executive director of the Nebraska State Bar Association. I'm here today in support of LB555. Just outcomes in the criminal justice system require capable counsel for both the prosecution and the defense. The Commission on Public Advocacy was created in part as a way to provide property tax relief and to protect smaller counties from bankruptcy. Prior to the commission, a small county could go broke covering legal fees associated with just one capital case. The commission of you-- as you've heard, is currently understaffed and without an increase, they'll have to further reduce services available, thereby increasing costs to counties. These are complicated cases. The stakes are high. Having a commission on public advocacy also helps ensure that the lawyers providing representation in these cases are well trained and experienced. If quality representation is not provided on the front end, then counties can expect a claim of ineffective assistance of counsel and incur additional legal fees on appeal. The commission is funded from court filing fees and over the years, they've been asked to take on additional functions without additional funding. Court filings have been steadily decreasing over the past two decades and the situation has really reached a crisis level. Several bills have been introduced this session to address

funding for the commission but LB555 and its companion bill move the commission from a filing fee system to a General Fund appropriation so we can bring stability to the organization. If the commission continues to be solely funded by filing fees, we're going to be back here in a few years because filings will continue to decrease and they'll need additional funding. This bill also directs excess funding to the Legal Aid and Services Cash Fund. That's also funded on filing fees and I provided you a chart to show you how that Legal Aid and Services Fund has also experienced a very sharp decline in revenue. We're trying to do more with a lot less in that fund. Although the level-- our primary source of funding for Legal Aid of Nebraska and the Volunteer Lawyers Project through the Bar Association is the Legal Aid and Services Funds. It's important that we continue to, to fund those. Due to limited resources, we're currently turning around-- turning away thousands. This bill could change the landscape by making more money available to help low-income Nebraskans, people who are facing homelessness, job loss, domestic abuse, custody issues that have nowhere else to turn, and we strongly encourage your support of LB555.

**DeBOER:** Thank you so much. Are there any questions? Doesn't look like that generated any questions, but we appreciate you being here.

**LIZ NEELEY:** Thank you.

**DeBOER:** Next proponent testifier.

**CHARLES LIESKE:** Flying at you from a little different direction. My name is Charles Lieske, C-h-a-r-l-e-s L-i-e-s-k-e. I'm executive director of Mediation West in Scottsbluff and we're approved by the State Court Administrator's Office to provide mediation services to 15 counties in western Nebraska. And since it was created, we have received funding from the public advocacy grant process to supplement us. And in more than one instance, Nebraska has structured funding programs that relieve burdens to the courts through court filing fees. And at first, this process made sense, 25, 30 years ago. But as these programs have been successful in diverting conflict from coming before the court and the would-be litigants are finding resolution at an earlier stage, the funding for these programs is reduced, along with those reduction in filing fees. So as legislators, I know that you take your fiduciary responsibility seriously, but I urge you to support this request because this funding upfront reduces costs to the state by helping litigants resolve problems outside the judicial system. And formal court processes cost a lot more. So each year, our

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center has needed funding at three to four times the level of what the commission has been able to provide us through their grant process. Because at any given time, we are serving-- two-thirds of our clients are falling below that 125 percent of poverty level. It's another thing to consider that a lot of our clients are not represented by counsel. They are pro se. And so when they don't have an attorney and they're not using an organization like ours, then they're taking additional court time, stet court staff time to get their questions answered and that's another burden. So we support, in our organization, families that are trying to learn how to parent from two homes, families that are involved in child welfare and juvenile justice system and just general community disputes that are better resolved when people can get to those underlying interests that are needing to be addressed rather than just getting a judgment from a court. One great example, we had a case at the end of last year. There were a total of eight protection orders in district court for some folks going through a fence dispute. And when they came to our center and went through mediation, they reached a full agreement and dropped all eight of those orders. And there's lots of other work that we do in restorative justice where we're working on reparations. I know you talked about reparations in an earlier bill, but I'd be happy to answer any questions that you all have about how our services impact the community or how an increase in funding through the Commission on Public Advocacy might have an impact on our organization.

**DeBOER:** Thank you very much. Are there any questions for this testifier? I don't see any. Did you come from Scottsbluff today?

**CHARLES LIESKE:** Yes, so it's--

**DeBOER:** Well, thank you.

**CHARLES LIESKE:** The Commission on Public Advocacy is an important part of our, our funding stream so it was worth the effort.

**DeBOER:** Thank you so very much for coming all the way out here and sitting, sitting here with us all day.

**CHARLES LIESKE:** Yeah, it was an entertaining day.

**DeBOER:** Are there other proponent testifiers? Is there anyone here to testify in opposition to this bill? Anyone here in the neutral capacity?



**SPIKE EICKHOLT:** Good afternoon. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in a neutral capacity to LB555. I was not planning on testifying, but when I started hearing the, the description of the bill and some of the arguments we made, I wanted to be on the record on this. We are neutral in the sense that we do support the Commission on Public Advocacy. They do good work. What Mr. Pickens says what they do is, is certainly true. They saved countless money and they can provide quality criminal defense. I'm not testifying right now on behalf of the Criminal Defense Attorneys Association, but the attorneys in that office are members of that association. They are some of the best attorneys in the state that practice criminal defense, including Mr. Pickens, and the ACLU supports that organization. What we are concerned about and what we would first support and argue is that since they do provide a valuable, valuable resource to the counties and to the state and to the court system overall, that they should be funded by the General Fund, by the budget of this state and not rely on user fees or court fees to do so. The ACLU opposes an increase in court fees and we generally are opposed to using court fees to fund necessary and quality government operations. Court fees are better to consider as user fees. We have a right to petition the court. The court fees are imposed in every case, not just criminal cases. I think most people think, well, if you do want to pay the court fees, don't break the law, but it's imposed for every case. If you file for divorce action, you pay court costs. If you filed to register a trust with a court, you pay a court cost. If you get a speeding ticket, you pay a court cost. It's a user fee that's imposed on everybody. And like all user fees, they're standard and they hurt the poor the most. The Legislature does not impose a user fee, right? If I have a-- if I want to testify on a bill-- I've been doing it all day. I haven't paid anything. But admittedly, it costs this branch of government some money to do and we don't consider that. Similarly, if I want to petition the court for redress and I just don't fight it out in the streets, I want to use the court system, I shouldn't have to pay a fee for that. That's our fundamental policy. It's a First Amendment principle and it's basic. We have court fees now. We should not increase them. We already have a number of court fees that are earmarked for different funds. It's \$3 on every case with the Commission on Public Advocacy. It's \$6.25 for the Legal Aid Fund. It's anywhere from \$2 to \$9 for judges' retirement fund, depending on the kind of case. The fees can be significant for some people. We should not increase those. I know that this bill does not envision that necessarily, but at least that's one of the things that's being

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discussed and so I just wanted to put that on the record. And I'll answer any questions if anyone has any.

**DeBOER:** Questions for Mr. Eickholt? Senator McKinney.

**McKINNEY:** Thank you, Senator DeBoer. Thank you, Spike. Can you speak to how court fees hurt the poor?

**SPIKE EICKHOLT:** You know, it hurts the poor in a number of different ways. If you're charged criminally and for a traffic ticket, a simple misdemeanor, you're going to have a \$50 court cost with it. That's in addition to any kind of fine. That's in addition to the bond that you might have to pay. That's in addition to probation fees. If you get a court-- if you get a speeding ticket and you don't pay the amount that you owe on that ticket by a certain date, whether it's a fine or whether it's the court costs, your license can be suspended. You get your license suspended, you've got to pay the DMV to have it reinstated. Somewhere along the line, your insurance is going to be canceled. So you've got to pay that company back to get your insurance reinstated. These things have an impact on the poor and this is just part of it and it's disproportionate to other people who are impacted by the court system.

**McKINNEY:** Thank you.

**DeBOER:** Other questions for Mr. Eickholt? I don't see any. Thank you so much for being here. Any other neutral testimony? Welcome back to the Judiciary Committee.

**ELAINE MENZEL:** Thank you. Good afternoon, Vice Chair DeBoer and members of the Judiciary Committee. For the record, my name is Elaine Menzel. It's E-l-a-i-n-e M-e-n-z-e-l here today in a neutral capacity on behalf of the Nebraska Association of County Officials. We're appearing here today in a neutral capacity because our focus isn't necessarily the legal aid provisions and the other aspects, but to emphasize the importance of the Public Advocacy Commission to the counties. I just will quick note a couple of things before I get further into what I've got going on and that's to let you know what I'm passing out or having passed out to you. One of the-- it's an article related to Richardson County, which is the county that was referred to earlier as being broke, and in part the impetus for the creation of the Public Advocacy Commission. And then also, second, a chart with each of the 93 counties showing the number of attorneys in counties. It's as of June of last year. That information was provided

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from the bar association. But then it also shows all of the counties where work has been done by the Public Advocacy Commission. When I just glanced at what the committee makeup was and the work of the Public Advocacy Commission, they have done work in each of your counties, with the exception of three of the smaller populated counties in Senator Ibach's district. With that said, some of those, there's perhaps only been one, but others there's been a great deal. Interestingly, some of the counties that are surprising is a county such as Cheyenne and I want to say it's roughly 80-some cases over the years. I believe that since 1995 that that chart shows that information from. Mr. Pickens also referred to the legislative findings when they created the legislation that created the Public Advocacy Commission. And again, it's related to property tax relief, but I'll jump to a piece that I believe Senator Blood will like this portion of the study that emphasizes essentially through some of the findings and what indigent defense is. It's through the constitution and court cases and therefore a federal mandate passed down to the state. That's passed down to the counties as a result of providing defense, but also enforcing prosecution on the other side. So as you evaluate the issues within LB555, please consider how invaluable the commission is to the clients first and foremost, but also to-- that must be my time--

**DeBOER:** You can finish your sentence.

**ELAINE MENZEL:** --OK-- but also to the counties in terms of providing effective indigent defense for capital cases and also for providing a portion of property tax relief to taxpayers. If there's any questions, I'd be glad to attempt to answer them. Oh, one more, I'll be back on this issue with respect to the other bills that are addressing this.

**DeBOER:** All right, thank you. Are there questions for Ms. Menzel? I don't see any.

**ELAINE MENZEL:** Thank you.

**DeBOER:** Thank you so much. Next neutral testifier. Anyone else here to speak in a neutral capacity? I don't see any. While Senator Cavanaugh is coming up, I'll just note for the record that there was one letter in support. Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Vice Chair DeBoer. And I just--- I don't have a lot more to say. I just wanted to draw your attention to-- I assume this is the handout that Mr. Pickens handed out. It's the second to

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last page where you can see the filing fees from 2005 to 2022 and they continue to decline in those filing fees. And the, you know, statement about what it would take in terms of an increase to get to what they need to operate, \$8 from \$3. That's more than double what they're bringing in now. And the reason for that is, as I-- I wrote down his name. Mr. Lieske, I think, was the-- said about mediation and things like that. It is the success of these programs that we have-- this committee has to a great extent put in place in the last decade or so to get folks to go to alternative forms of resolution and it's decreasing the number of filings. And we have not stopped doing that. We, we're trying to get more programs that are going to get people out of the court system and to resolve these issues. And so the-- if we-- we need to fund the Commission on Public Advocacy. That's not a question. You heard-- you can hear all those. You can see the maps that were handed out. The service they provide is one that is of great value to the state of Nebraska. The question is how do we do it? And the question is do we recognize the value and do it as an essential function of the state of Nebraska and give it certainty so they don't have to continue to come back and have this conversation and increase it again and again? Because if you increase the \$8, guarantee you that's not going to fund them in five years. They're going to have to come back and ask for either a supplement or an increase. And that's that is not in a-- that is not a system to do this. So that's why I'm advocating for moving them to General Funds. The other part about this is obviously, I think if anybody knows me, knows I do not like court fees. I think you can figure that out from today if you didn't already know me. But this bill proposes taking a court fee that already exists and shifting it to another valuable service to the state. And so that, that is a situation which, you know, I've got honestly mixed feelings about, right? I really appreciate the services of the Legal Aid and the other functions that this money goes to, but I'm of the belief that we should decrease court fees rather than, rather than increase them. But it is an opportunity at this point, if we do the right thing with the commission, rather than decreasing that court fee, we could fund some essential services. And I can tell you firsthand, I've seen a lot of the work that Legal Aid does in Omaha and it is very valuable and I appreciate the work they do. I would just point out I didn't get much conversation, but another kind of technical aspect of this bill is that it allows for the commission to be funded through General Funds. Commission has received General Funds in the last couple of years, even though the statute has legislative intent in there that they should only be funded through fee. But as we all know, legislative intent is legislative intent. We can't bind a future

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Legislature. And so we did, as a Legislature, give them funding to get them back up to where they needed to be in the last biennium. But this just clears that up and puts into statute that they can be funded through General Fund in addition to fee funding. So with that, I'd take any questions.

**DeBOER:** Are there any questions for Senator Cavanaugh? I do not see any, Senator Cavanaugh. With that, we'll close on LB555--

**J. CAVANAUGH:** Thank you.

**DeBOER:** --and open on LB27. Welcome to your Judiciary Committee, Senator Dungan.

**DUNGAN:** Thank you, Vice Chair DeBoer. I'll let them file out. My opening is only about 60 minutes long so you don't have to be here much longer.

**IBACH:** We [INAUDIBLE]

**DUNGAN:** Oh, right, right. That's it. Exactly. Good afternoon, Vice Chair DeBoer-- maybe good evening-- and members of the Judiciary Committee. I'm Senator George Duncan, G-e-o-r-g-e D-u-n-g-a-n. I represent the people of northeast Lincoln in Legislative District 26. Today, I am introducing LB27. LB27 is a bill to allow for the appointment of legal counsel in cases where the prosecutor appeals a decision to the appellate courts or other courts. It also removes the \$200 compensation cap and allows the court to set the compensation for the appointed attorneys. Under current law, if a prosecutor wishes to appeal a trial court's ruling or a decision to the appellate courts or to another court, the trial court may appoint an attorney to argue the case against the prosecutor. However, Section 29-2318 only provides courts with the authority to compensate an appointed attorney \$200 for the entire appeal. Additionally, that section, along with others that correspond in the Nebraska revised statutes, do not provide for a court to determine whether a defendant is indigent or to provide a-- for appointment of a public defender and such an appeal even if the public defender had previously been representing the defendant. LB27 would allow the courts, if they determine that a defendant is indigent, to appoint the public defender or in counties without a public defender, an attorney licensed to practice law in that state in order to argue the appellate case. The court shall appoint another attorney if the public defender or the attorney has a conflict of interest. An attorney other than the public defender appointed under

this section may be compensated as the trial courts deem appropriate for all fees and expenses reasonably necessary to permit such attorney to effectively perform the appeal. If the trial court does not find that a defendant is indigent and does not appoint the attorney, the defendant may still be represented by an attorney of their choice at their individual expense. If the trial courts determine a defendant is indigent, LB27 allows the appointment of a public defender. In counties without a public defender, trial courts would appoint an attorney licensed to practice law in the state. The appointed public defender or attorney would then argue the appellate case against the prosecutor-- prosecuting attorney. Members of the Judiciary, I know it's kind of complicated and you're probably very tired and it's been a long day. Essentially, when a case is being appealed, if the defense appeals the case, their attorney or public defender, whomever is representing them, can continue to represent them. The law is a little bit strange and it's frankly, I think, a little bit antiquated and written weirdly when the prosecution appeals the case. That's the statute we're lacking-- looking at here is if the prosecutor appeals the case, I believe the current statute is insufficient in terms of actually allowing that person to be appointed an attorney if they're deemed indigent or allowing them to hire their own attorney. And most problematically, it caps their pay at \$200. My understanding-- and folks who are going to testify here briefly after me have better examples, probably, but there are examples of this happening where the prosecution decides to appeal and the court reaches out to attorneys who turn the case down because they say \$200 is insufficient payment for me to handle this entire appeal. So effectively, it becomes difficult in certain counties for folks to have representation in cases like this where the prosecution is appealing the case. The amendment I have handed out changes things just slightly. Effectively, what it does is it adds the, the language in that's important into an additional part of statute that was neglected in the first one. So it's sort of two separate parts of the Nebraska revised statutes that both have to be modified to make this change happen. And most importantly, it essentially adds this extra step where the courts need to reach out to the attorney or the public defender's office first and say, hey, can you handle this case? Are you capable of taking this on with your current caseload? And if they say yes, then they can be appointed. So it's just adding that extra check to make sure that attorneys aren't getting this case added to their caseload and then subsequently have to file motions to conflict out or overload out or something like that. So it's mostly procedural. The effect with the amendment is still essentially the same, which is that we're trying to

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make sure folks have representation in these circumstances that a prosecutor appeals a matter to a higher court or a court of appeals. Happy to answer any questions if you have them.

**DeBOER:** OK. I see Senator Geist.

**GEIST:** I will just make it short. Does this happen very often?

**DUNGAN:** No.

**GEIST:** OK.

**DUNGAN:** And that's part of why I think-- that's a very good point. And I-- again, I think some folks after me probably have some better numbers. I know we reached out to the clerk of the district court here in Lancaster County trying to find out how often this happened because we had concerns about fiscal notes and impacts and--

**GEIST:** Right.

**DUNGAN:** --whether this was going to add a big case load.

**GEIST:** That was going to be my follow-up.

**DUNGAN:** Yeah.

**GEIST:** Yeah.

**DUNGAN:** What we heard back was that I believe Troy Hawk told us this has happened maybe two to three times in the last five years where it's been appealed to the Court of Appeals and then maybe once or twice from the county court to the district court. Maybe I'm flipping those, but we're talking--

**GEIST:** Rarely.

**DUNGAN:** ---five or six times this has happened in the last five or so years, so.

**GEIST:** So we're not passing a huge unfunded mandate down to the county. I guess that's--

**DUNGAN:** Correct. And that's, I think, a totally valid concern. But no, my understanding looking at the actual data is this happens rarely enough that it wouldn't be a huge unfunded mandate.

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**GEIST:** OK.

**DUNGAN:** And I think where it comes into play, in particular in these more rural counties that don't have public defender offices.

**GEIST:** Yeah.

**DUNGAN:** So if the prosecutor decides to appeal this case and you reach out to some attorney on the appointment list in that county and say, hey, can you take this on? And they say, not for \$200, I can't.

**GEIST:** Yeah.

**DUNGAN:** And then you can't find anybody in the entire area. So you effectively run into this problem with lack of payment and lack of attorneys that can take these on where if the prosecution appeals a matter, which they're completely within their rights to do, there may not be somebody to represent that defendant or to argue against that in the higher courts.

**GEIST:** Gotcha. Thank you.

**DeBOER:** Other questions for Senator Dungan? I don't see any. Are you going to stay around close?

**DUNGAN:** I'll stick around. I'll probably waive it, but I'll just listen here, so--

**DeBOER:** All right.

**DUNGAN:** --thank you.

**DeBOER:** First proponent testifier.

**SPIKE EICKHOLT:** Good evening. 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. I want to thank Senator Dungan for introducing the bill. Senator Dungan explained the purpose of the bill. To answer Senator Geist's question, this does not happen that much. And the reason that it's sort of an odd scenario now is because if the state decides to appeal a ruling from the trial court-- and it could be a, it could be an instruction that the, that the judge gave to the jury that the prosecutor is unhappy with or could be a ruling on a pretrial motion to suppress or something like that. If the state appeals that, the state is appealing a case that they have lost. So the defendant in



that case is free. They cannot be retried. They are done with the case. They don't have any interest in appealing. And they aren't entitled to necessarily have, have a lawyer appointed to represent them since they're not in jeopardy. The interest that our association has-- and we're about 370 attorneys across the state who practice criminal defense, some full-time public defenders, some private lawyers who do it part time-- is that you have these-- even though they aren't frequent cases, these cases going up on appeal that perhaps may not be completely fully argued and brief to the appellate court. And a Supreme Court or a court of appeals ruling may have consequences to other cases pending that our association might have an appreciation of. I didn't admittedly realize that the statute was like this. I've never been involved in one of these kind of cases myself or had any of my clients be involved in it. A judge who tried to appoint the Commission on Public Advocacy over the summer-- and Mr. Pickens explained they just could not do it-- was looking around and actually contacted me to see if he could-- I could find a lawyer that would do it for \$200. And he directed me to the statute and that's where our association got involved. I think somebody was able to step up and do it. If you look at the statute, it doesn't-- it just says something odd like you can-- the court can appoint somebody of the defendant's choosing to argue against the case. That's odd because you normally don't get to choose your lawyer in an appointment situation. I suspect-- I think Mr. Hruza might know for sure-- that the statute that provides for this option to appoint a lawyer to argue against the state was before we even had the public defenders in our state. I think in 1974, the State Legislature passed a bill to create the public defender system and I suspect this bill was written-- or this law was written before that. So it's, it's not-- you know, I come up here to argue about lessening penalties and arguing against increasing penalties. That's not what this is. This is a procedural thing. It's a small thing, but it could be a very consequential thing so we'd ask the community to support it. I'll answer any questions if anyone has any.

**DeBOER:** Any questions for this testifier? I don't see any. Next proponent testifier.

**TIM HRUZA:** Madam Vice Chair, Mr. Chair, members of the committee, my name is Tim Hruza, last name, H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association in support of LB27. I want to thank Senator Dungan for introducing the bill. This is my first time appearing before you. I know you've heard some of our members come up at various times, but the bar association represents all attorneys

from across the state who are members of our association. We take positions on legislation generally in areas or bills that a very large committee of attorneys and our eventual house of delegates, which is an elected body of the bar, determines to be generally in the interest of justice, of access to justice and then the furtherance of justice. So I appear today before you in support of the legislation after some long discussion about kind of what the bill does, what its intent is, and then I'll provide you a little bit of background. We're working on an amendment to the bill and I think Mr. Eickholt kind of previewed that for you. But there's two-- actually two provisions in the statute that set this fee and it's capped at \$200. The best research I could do is that that-- or that I could find was that that statute was initially passed in, like, 1959 to set that \$200 cap on these types of appeals. Obviously, a very different amount in 1959 than that amounts for attorneys nowadays. So when you look at an attorney who's appointed for the-- for these cases, if a, if a public defender can handle it or the Commission on Public Advocacy can, they will. Those are the ones they go to first, right? But in the event a private attorney needs to be appointed, just as in any other case where a private attorney is, is defending or appointed to for-- in furtherance of justice, we do believe they should be paid for their time. So that's why I appear before you today. We're working on some technical language to help make sure that we're not, we're not kind of upsetting the apple cart too far, right? The intent is just to ensure that attorneys are appointed to these cases take them up, defend the interest of, of justice, I guess, from the trial court to whatever the appellate court level is. And that's why there are two statutes, one for an appeal from the county court to the district court and one then from the district court to the appellate courts, the Court of Appeals or Supreme Court, right? There's various levels that you can go up through the trial court depending upon where the case originates. That's why we'll have an amendment that deals with both of those where it is capped at \$200. So with that, it's pretty straightforward. Appreciate Senator Dungan's interest in the bill and yours as well and we would ask that you advance LB27 with our committee amendment that is yet to come to General File.

**DeBOER:** All right. Are there questions for Mr. Hruza? I don't see any. Thanks for being here.

**TIM HRUZA:** Thank you.

**DeBOER:** Other proponent testifiers. Are there any opponent testifiers? Is there anyone here to testify in a neutral capacity? While Mr.

Dungan is considering his closing, I will say that there are two letters of support and Senator Dungan, Dungan waives closing and that will end our hearing on LB27 and will end our hearings for the day.