

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 16, 2023

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WAYNE: [RECORDER MALFUNCTION] Judiciary Committee. My name is Senator Justin Wayne. I represent Legislative District 13, which is north Omaha and northeast Douglas County. I will start off by having staff and senators do self-introductions starting to my right, Senator Ibach.

IBACH: Thank you very much. Senator Teresa Ibach, District 44, which is eight counties in southwest Nebraska.

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

JOSH HENNINGSEN: Josh Henningsen, committee legal counsel.

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

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

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

WAYNE: Also assisting us today are committee pages Trent-- how do you say your last name, Trent--

TRENT KADAVY: Kadavy.

WAYNE: --Kadavy from Lincoln, political science major at UNL, and Luke McDermott from Omaha, a political science and economics major at UNL. This afternoon, we will be hearing five bills that will be taken in the order that are outside. On the tables in the room, there are blue testifier sheets. If you plan on testifying, please fill one out so we can keep accurate records. If you do not want to testify but want your presence to be known or don't want to repeat the same thing that's already been said, there's a gold sheet right next to the blue sheets that you can fill out and let your position on a bill be known for the record. Also, note that it's the Legislature's policy that all letters of record must be received by the committee by noon the day prior to the hearing. Any handout submitted by testifiers will be included as part of the record. If you have a handout, please make sure you have ten copies. If you don't have ten copies, please give them to the page so we can make sure you get copies for 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 bills, then those who are in opposition, then we'll

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listen to those in neutral testimony and then the introducer will have 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 spelling it for the record. We'll be using the three minute light system. Green means good to go, yellow means you have one minute left, red we will ask you to wrap up your thoughts. I'd like to remind everyone, including senators, that please turn off your cell phones or put them on vibrate. And with that, we will begin today's hearing with LB162. Senator McDonnell.

McDONNELL: Thank you, Chairman Wayne and members of the committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l, represent Legislative District 5, south Omaha. LB162, which prohibits tampering with electronic monitoring devices, I draw your attention to a study from the National Institute of Justice, NIJ, which is being handed out right now, which found that GPS technology has been effective in improving public safety and rehabilitation outcomes for parolees. The research found that individuals on GPS tracking had higher rates of compliance with parole terms and lower rates of recidivism than those under traditional supervision. In addition, the cost analysis revealed that GPS monitoring was more expensive, yet more effective than traditional forms of supervision. The NIJ study also found that GPS monitoring has been increasingly used for cases involving intimate partner violence as a way to enhance victim safety. Results from the second component indicated that the defendants enrolled in the GPS program were more likely to comply with program rules compared to those who were monitored without tracking. This suggests that LB162 not only increases public safety by preventing tampering or removal of device, but also serves to protect victims and make those being monitored more likely to, to successfully complete their programming without incarceration. The Sheriff's Office in Pinellas County, Florida, reports that their statute making it a felony to tamper with an ankle monitor has proven to be an effective deterrent. Statistics show that 96 percent of individuals on pretrial release supervision in the county have not committed new offenses, a remarkable rate compared to other counties GPS technology represents an effective and affordable way to enhance public safety outcomes. In conclusion, I encourage you to support LB162 so that all Nebraska counties can benefit from its provisions and enhance public safety it will provide to our citizens. We have some testifiers here today, Sheriff Aaron Hanson and also Pat Dempsey representing the Omaha

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Police Officers Association that are subject matter experts. I want to be here to close. I have another bill in Revenue that's up second on their agenda so I will try to come back and answer any of your questions.

WAYNE: Thank you. Any questions from the committee? Seeing none, I'll see you at closing.

McDONNELL: Thank you.

WAYNE: First proponent. First proponent. Welcome back.

AARON HANSON: Thank you, Mr. Chairman and honorable members of the Judiciary Committee. My name is Aaron Hanson, A-a-r-o-n H-a-n-s-o-n. I am the Sheriff of Douglas County. I'm here to represent myself as well as the Nebraska Sheriffs Association, who is also in support of LB162. So last summer I did some traveling around the country in order to meet other sheriffs in anticipation of this new portion in my professional career. And in some of those travels, I had an opportunity to meet some of the leadership in the Sheriff's Office from Pinellas County, Florida, and specifically with their pretrial release supervision program that they have, I was shocked to find and impressed, impressed and shocked, to find that they had a 96 percent compliance rate with individuals involved in their pretrial release supervision program. And when I did a deep dive and asked the supervisors in charge of that effort, the sheriff in charge of that effort, why they're so successful, they pointed to a Florida statute which LB162 is largely patterned after which creates significant consequences for violating a GPS ankle monitor. They said they could not have the success rates that they do without that tool. They further elaborated that this not only keeps the community safe, not only helps avoid people having to go to jail or be in jail, but also it helps with rehabilitation. I can tell you that in my career I've dealt with a lot of young men and young women, mostly young men that have been involved in, in difficult lifestyles. I've known personally young men that have asked and begged to be kept on an ankle monitor, or at least even on a dead ankle monitor, just for the perception around other people that they're being monitored. Ankle monitors impact people's decision-making. They really do. This is not just about keeping our community safe. It's about helping to ensure people can rehabilitate. You increase those chances with structure and, and consequences. And I will also tell you this, I spoke with a defense

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attorney here recently who said one of the first questions he gets from his clients when they are fixed with an ankle monitor, what if I let it die? What if I cut it off? What happens? And he has to tell them, well, it's a procedural violation. It's not a, it's not a stand-alone crime. So there's a lot of really good reasons to model the states like Florida that are implementing policies like these. I can tell you speaking with the District Attorneys Association head from Texas, they are considering implementing this as well. It's good public policy. I'll take any questions you might have.

WAYNE: Any questions? Senator Blood.

BLOOD: Thank you, Chair. Thanks for coming in again. I see you a lot in this committee. I have two questions and I'm hoping you know because it sounds like you were very involved in this. So why is it only a procedural violation and what would that mean to the person, like, as far as what's going on and why they have an ankle bracelet? So we can say it's, it's not a felony, it's a procedural violation so this is the result of that. What is the result of a procedural violation?

AARON HANSON: Well, right now, it depends on what type of court setting you're talking about. Typically, ankle monitors are via court order or terms of supervision. And if somebody violates those terms of their community supervision, it could result in a multitude of potential consequences. One, the individual could go back into detention. I can tell you that, that may not be consistent across the board on how that is applied. They could be placed back on ankle monitor. I've seen that pretty routinely as well where individuals are not placed under detention. They are reattached with a new ankle monitor or forced to have them recharge it. In terms of other consequences, I've seen a lot of individuals who have committed much more serious crimes while their ankle monitors have been dead or cut. And I've seen them go to prison sometimes for the rest of their lives. So a lot of potential consequences and, fortunately, none of which specific to the action itself.

BLOOD: So why did we decide or why did you decide or whoever everybody's involved to make it a, a felony?

AARON HANSON: Well, I would say that many individuals under supervision, and again, this is going after the Florida model. The

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Florida model is a felony. I think it's appropriate, especially if you're talking a felony crime or if you're, if you're on ankle monitor for a felony crime, it should be a felony. I would not be opposed if, if the supervision is for a misdemeanor if the consequence would be a misdemeanor consequence.

BLOOD: That, that is one of probably my only concerns. I, I like the idea of that type of monitoring. Our prisons are way too full and if we have opportunities for people to get out, work, make their lives better, we want them to have or I want them to have that choice. But I, I mean, because a Class IV felony is incarceration up to two years.

AARON HANSON: Class IV felony is presumptive probation with a maximum of two years. Yes.

BLOOD: So that's one of my concerns but I'm going to listen to all of the questions and, and I can tell you the last time I saw someone with an ankle bracelet was at a Walgreens buying a jug of vodka who then got in the parking lot, drank and drove off. So I wish they had, like, little QR codes on them so we can scan them and report them that way or something because I worry sometimes that we need to do better when I see things like that. So I don't know if they would-- they should have had two years if they'd been stopped, like if they cut it off or they just need to go get some rehab, you know? So thank you.

DeBOER: Thank you, Senator Blood. Senator Holdcroft.

HOLDCROFT: Thank you, Vice Chair DeBoer. Thanks for coming, Sheriff. Appreciate it. I'm not familiar with the, the bracelets, can you describe what they-- how they, how they are attached? And you mentioned they let them go dead, they have to be recharged or how does that work?

AARON HANSON: Sure. They're typically, they are going to be a, a plastic or sometimes plastic with metal reinforced adjustable band which will be attached to a GPS device which could be maybe the size of maybe half of a cell phone, little thicker. They will be affixed to an ankle and, and they will give real-time positioning locations to whatever entity is in charge of the, of the supervision. They assist not only with location, but also to ensure behavior. If

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someone is supposed to be working, a supervision officer can tell if they're at work or if they didn't go to work, also with curfews. Some ankle monitors are there to test for alcohol, similar to what Senator Blood discussed, they can give-- it's called a SCRAM monitor, some are proximity based where it will tell you if you leave your house or not. They all look generally the same.

HOLDCROFT: And you mentioned they, they let them go dead so do they have to be recharged or--

AARON HANSON: Yeah, so they, they are recharged similar to how you would recharge a cell phone. There's a, there's a plug-in with a wire and it will, it will plug into the ankle monitor. The perfect scenario, you're supposed to charge until it's full and it should last you 24 hours.

HOLDCROFT: OK. Thank you.

DeBOER: Thank you, Senator Holdcroft. Senator Ibach.

IBACH: Thank you, Senator. How many of these per year in Douglas County do you actually affix or apply and how many of them are damaged and are no longer used?

AARON HANSON: I would say between Adult Probation, Juvenile Probation, Parole, Pretrial Release and Work Release because with, with Corrections, I'd say there's thousands that are being used at throughout the year. And I can tell you, unfortunately, because the consequences are, are minimal, many of them are cut or allowed to go dead. I don't have exact numbers, but anecdotally, I can tell you that it is not uncommon.

IBACH: OK. Thank you very much. Thank you.

DeBOER: Thank you, Senator Ibach. Other questions from the committee? Sheriff Hanson, so if they go every 24 hours dead, I mean, I have forgotten to charge my phone and my watch and things like that before, are the consequences typically the same for, like, failing to recharge as for cutting a monitor?

AARON HANSON: Well, there's fail safes built into these models.

DeBOER: OK.

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AARON HANSON: So before they go dead, they're going to give you alerts, they're going to chirp, they're going to vibrate.

DeBOER: Got it.

AARON HANSON: It's built in there so that it's not-- you're not surprised. I know, typically, supervision officers will also follow up with telephonic phone conversation. It's very difficult, I mean, the, the scenarios in which someone would have their monitor go dead without them at least not having the ability to recharge it or call someone to let them know, hey, I need a charger here, I think that's, that's minimal. It's not going to be-- rarely would it be inadvertent.

DeBOER: So under this bill, this only goes to cutting, doesn't go to--

AARON HANSON: I think tampering with it, allowing it to go dead, essentially violating the terms on it.

DeBOER: Allowing it to go dead would be the same, would be, would be a felony?

AARON HANSON: Yes, and should be, in my opinion, homicide prevention.

DeBOER: Allowing it to go dead because--

AARON HANSON: Because they're supposed to be under supervision.

DeBOER: It's the same effect.

AARON HANSON: Yes.

DeBOER: You get away from it. Could we find a way to make them last a little longer on a battery? I'm sure that if we could, we would have. And right now, if you are on a monitor and you get, like, a status offense, it's a violation of-- what is the violation-- you called it something-- procedural violation if it goes dead or

AARON HANSON: Could be, could be a variety of consequences, whether it's a sanction, whether it's no consequence at all.

DeBOER: Do they go back to jail ever?

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AARON HANSON: That is, that is one potential consequence could occur.

DeBOER: Does it happen very often to your knowledge?

AARON HANSON: I think it's case by case.

DeBOER: OK. Do you think that there will be a, I mean, I think you think this because you're here on this bill, that there will be a significant deterrent effect to tampering with the monitor whenever?

AARON HANSON: Not only a deterrent effect to tampering with the monitor, but incentive to actually embrace rehabilitation and, and supervision and structure. I think it's a win-win on both sides of the, of the perspective.

DeBOER: OK. Are there other questions from the committee? I don't see any. Thank you for being here.

AARON HANSON: Thank you.

PATRICK DEMPSEY: Good afternoon.

DeBOER: Welcome.

PATRICK DEMPSEY: Thank you. My name is Patrick Dempsey and I'm a 13-year veteran with the police department and serve as a secretary for the Omaha Police Officers Association. I appear today on behalf of the 800 sworn officers of our association in support of LB162, an important and necessary change that will reduce violent crime in Omaha. I'll give a little example, as a current homicide detective, I've seen the firsthand effects of tampering with GPS devices and the devastation it has in our community. In January of 2021, a young man lost his life leaving a barbershop in north Omaha with his good friend. Through the investigative efforts of the Omaha Police Department, it was later learned that the suspect in this homicide, who senselessly took the life of this 22-year-old man, was out on parole at the time and was supposed to be equipped with a GPS monitor. Through the investigation, it was learned that the suspect had tampered with his GPS device and it blocked the signal. This is not the only occasion in which he had done so. If we had enough time, I can give multiple other examples in my current line of work where this applies. We strongly support LB162 and its ability to hold these parties responsible who are released back to our communities in lieu

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of being in prison or in a county-run correctional facility who cut and tamper with their GPS devices. I thank this committee for their time and attention and willing to answer any questions.

DeBOER: Thank you for your testimony. Are there questions for this-- Senator Geist.

GEIST: Yeah. Thank you for your testimony. I'm curious, as an officer is this a big part of your job finding people who have cut their monitor or what, what happens when, when you find someone's done this or how are you notified and is that a big portion of your day, typically?

PATRICK DEMPSEY: So there are units, our fugitive unit will go out and look for some of the parole "abscondee." Our gang suppression unit will help and assist Probation, both Juvenile and Adult Probation, with looking for some of these "abscondee." I would say for those units it does eat up quite a bit of their time because there's usually generally a pretty good reason as to why they cut their monitor off. They want to be on the run from home, they're involved in criminal activity, and it does become somewhat of a priority for those units to go find these individuals.

GEIST: So is, is this easy to do?

PATRICK DEMPSEY: Yes, it can-- the monitor is equivalent to pretty much a hard rubber watchband. So with just a pair of scissors you can cut them off and they're usually done with their probation or whatever it is and they're told that they can cut them. They all cut them off at home--

GEIST: OK.

PATRICK DEMPSEY: --at the direction of Probation. So they do come off pretty easily.

GEIST: So when that's cut-- do you, do you mind if I keep going-- OK-- so when that's cut, does that alert their supervisor, whoever supervising them?

PATRICK DEMPSEY: Yes. So there's a couple different alerts on their system and it depends on what type of monitor you're on at the time. If you tamper with them, they're easily covered in foil which blocks

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the signal from being transmitted to the probation officer. If they're cut, they get an immediate alert. If they're just tampered with or put foil over them, most of the time they get an email stating that it's been tampered with.

GEIST: OK. Thank you.

WAYNE: Any other questions? Senator Blood.

BLOOD: Thank you, Chair. Just a quick question. I'm curious, who is-- who collects the EMDs?

PATRICK DEMPSEY: I'm not 100 percent sure. It's done through Probation and a lot of times we go through VeriTracks.

BLOOD: Is there any-- like, do they prepay? Do they pay-- I know, like, every state is different and I haven't had a chance to go through the statute yet so was curious.

PATRICK DEMPSEY: I'm not sure.

BLOOD: Thank you.

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

PATRICK DEMPSEY: Thank you.

WAYNE: Next proponent. Next proponent. Next proponent. Opponent? Opponent?

SPIKE EICKHOLT: Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in opposition to LB162. I did visit with Senator McDonnell earlier this week and explained that we would be opposing his bill. You've got a copy of my statement from the defense attorneys. I'm just going to summarize a couple of points. First, Sheriff Hanson mentioned before a defense attorney told him that he tells his clients it's just a status offense. I hope that attorney is not a member of my association because that is actually disinformation. There are a variety of reasons why an ankle monitor may be ordered or placed on an individual, and depending on why that

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monitor is there and authority for that monitor if you cut it, if you alter it, if you remove it, or if you don't charge it, it could result in the variety of criminal charges and immediate consequences far beyond just a procedural violation. If you actually damage or destroy a device, that's criminal mischief and likely-- in all likelihood is going to be a felony offense. If you are serving a sentence and you are permitted release either to go to a job or to attend an appointment, the Department of Corrections will often fit somebody with, with a GPS monitor. If you violate the terms of your release in any manner, including cutting the monitor, that arguably is felony escape. If you're out on bond and you violate a condition of the bond, the bond is immediately revoked and you're arrested for violating the bond and that can include cutting or tampering with the monitor. And I gave some other examples and I cite the statutes what arguably could be considered either a criminal consequence or some sort of violation of bond. Somebody mentioned this before, one other reason that we have opposition to the bill, it provides for disproportionate penalties to the bill. Everything is a felony. Even if a person might be on an ankle monitor, for instance, a juvenile, as you know from an earlier bill we heard this year, juveniles can be placed even for status offenses with an ankle monitor. This would expose them to a felony prosecution if they were to damage it. Another and probably because this bill is modeled after a Florida state law, it doesn't really mimic our state's law. If you look at lines-- page 2, lines 11 through 14, the sub (b) of how you violate this law, that's arguably what we would categorize as an attempted commission of a crime. In other words, if you solicit or request or ask or have someone try to help you do it, arguably you are attempting to damage or attempting to remove your ankle monitor and that is the equivalent as actually doing it. Normally when we have an attempt, we have one lesser degree of penalty as 28-201 provides and so that's one thing that we want to elevate. And frankly, the, the bill's mens rea is a little bit unclear. It states that-- on line 6 of page 2, it states that a person, quote, shall not intentionally and without authority. So arguably that would permit a person to recklessly remove their monitor and I don't think that's even the point of the-- intent of the bill so that's just one other issue that we have with the bill. I'll answer any questions if anyone has any.

WAYNE: Any questions from the committee? Senator Geist.

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GEIST: Yeah, I have one. Actually, first, I just want to say I-- so you know I've worked with these young people who run, not a single time have any of those young people had any, any repercussions for cutting or removing their monitor. Not a single time.

SPIKE EICKHOLT: They weren't arrested?

GEIST: No.

SPIKE EICKHOLT: Not detained?

GEIST: No. Not a single time. And I'm curious, so-- I can't read this fast enough, but if-- so if they're-- if I'm-- well, I'm just going to read the statute: A person commits escape if he or she unlawfully removes himself from official detention or fails to return official-- anyway, let's move on-- official detention does not include supervision of probation or parole for a constraint incidental to release on bail. So it's-- are you saying it's a felony to cut this off as it is now?

SPIKE EICKHOLT: If you are in the Department of Corrections like at the Work Release Center and you are permitted release, you're not paroled and you're not out on bond but you're permitted to go to work. And you see that in the paper sometimes where someone will cut their monitor and then they'll be arrested for escape.

GEIST: But if this person is on probation and cuts it, it's, it's not.

SPIKE EICKHOLT: That's not an escape.

GEIST: OK.

SPIKE EICKHOLT: That's correct. I'll give you that point.

GEIST: And it's not a felony either if a person is on, on probation when they cut it.

SPIKE EICKHOLT: If they just cut that sort of strap, that-- and somebody described it accurately earlier. For instance, Lancaster County, they have sort of a stockpile, if you will, of these pretrial ankle monitors that they recycle and reuse so the, the band, if you will, is somewhat disposable because the device itself that goes on

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it. If somebody cuts that, that band is probably worth just admittedly \$10. That's probably not going to be a felony criminal mischief. If they smash up the device itself, then you probably get felony vandalism, felony criminal mischief.

GEIST: Oh, I guess I'm just curious if that actually is happening.

SPIKE EICKHOLT: I mean, if they do cut it, they cut sort of the band itself just because it's easier in the hope that they're not going to get caught. My experience, they usually do get caught. If they're out on bond, I've never known anybody who's just going to get lectured and released. The judge specifically ordered them to be released in the community. A condition of that release is that they wear an ankle monitor and report as required. If they violate that order, they're not going to get probation if they get found guilty for the underlying crime because probation is a court order. If they can't obey the court orders, then they're not going to get rereleased on bond.

GEIST: So currently, though, if, if someone, let's say that they're on parole or on probation and they cut their monitor and that's called absconding, right?

SPIKE EICKHOLT: Right.

GEIST: So that's a status offense, right?

SPIKE EICKHOLT: That is.

GEIST: OK. That's it.

SPIKE EICKHOLT: But they can be arrested for that status offense.

GEIST: Um-hum.

WAYNE: Senator Blood.

BLOOD: Thank you, Chair. So maybe I've missed this, so shame on me if that's the case. But so-- yes or no-- I have, like, a three-part question.

SPIKE EICKHOLT: Sure.

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BLOOD: So in Nebraska, we have ankle bracelets for both pretrial and post sentence.

SPIKE EICKHOLT: Right. Yes.

BLOOD: So pretrial means you haven't been found guilty of anything.

SPIKE EICKHOLT: Yes.

BLOOD: I mean, yet. You are likely guilty if you're going to trial, but not necessarily. So the way this is written, wouldn't it still apply to people that are pretrial or am I reading that wrong?

SPIKE EICKHOLT: It would.

BLOOD: It would?

SPIKE EICKHOLT: It would because if--

BLOOD: OK.

SPIKE EICKHOLT: --you are released pretrial, as the bill provides, that's an order of the court that you have an ankle monitor. When we had a hearing earlier, Kim Etherton from Lancaster County, the Lancaster County Community Corrections, testified and she talked about some of the pretrial services they offered. And it's not uncommon, for instance, for misdemeanor crimes personally, particularly domestic violence crimes--

BLOOD: Right.

SPIKE EICKHOLT: --or--

BLOOD: So we would want one.

SPIKE EICKHOLT: Exactly right, felony offenses. The judge will [INAUDIBLE] if they set a high money bond that they cannot post. And then the judge will sometimes authorize them to be screened by Community Corrections and then released on a Community Corrections bond, which will include ankle monitoring and that's all an order of the court. And this bill would say that if you violate an order of the court by cutting your ankle monitor or damaging or tampering with it, that's a Class IV felony.

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BLOOD: So ultimately you could go to trial, be found innocent, but still be found guilty of this.

SPIKE EICKHOLT: Right.

BLOOD: Weird. Who pays the EM fees?

SPIKE EICKHOLT: They usually have it as a condition of their bond itself, they have to pay the supervision fees. There's another way post sentencing that you'll have monitoring, and that's typically for first offense DUIs in Lancaster County. There's a required-- if you're found guilty of driving under the influence, it's 7 to 60 days jail. Generally speaking, unless it's a high test or some bad case, the courts will authorize you to serve the jail part as house arrest. And that's an order of the court again that you have and they'll have an ankle monitor for you to make sure that you're at home when you're supposed to be at home and that you go to work when you're supposed to be at work as a condition of house arrest. And the person on that pays that, it's \$20 to sign up in Lancaster County, \$10 a day.

BLOOD: OK. Thank you.

WAYNE: Senator DeBoer.

DeBOER: Thank you. Does this bill-- would this, would this bill apply to juveniles?

SPIKE EICKHOLT: I see nothing in it that says it would not. If a person is on juvenile-- this person is ordered by a juvenile court judge to have an ankle monitor, that's a court order. So, yes, it would apply.

DeBOER: So how does-- so if-- I don't know enough about juvenile court. How does this work? If you're-- you have violated this as a juvenile-- let's say it's a juvenile that's-- they could potentially be charged in adult court for the felony even if they're--

SPIKE EICKHOLT: Right.

DeBOER: --under Juvenile Probation?

SPIKE EICKHOLT: Yeah, what could happen-- I think one of the officers may have referenced this earlier, is that they do have that-- I can't

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hear what it's called in Douglas County, but they do have a pre-alternative detention service in Douglas County for youth who are detained. They can be released in the community with an ankle monitor and it could be for a misdemeanor offense or for a felony offense or whatever they are in juvenile court for pending resolution of. But you are right, if they are out on supervision with a sort of ankle monitor, they cut it, they could be charged subsequently again with the new law violation of juvenile court because it's a Class IV felony and it's an option the county attorney has or they could find themselves getting charged in adult court.

DeBOER: OK. Thank you.

WAYNE: Senator McKinney followed by Senator Geist.

McKINNEY: Thank you, Senator Wayne. Thank you, Spike. I know this bill is shaped as a deterrent to people breaking their monitors, but honestly speaking, I don't know anybody I've ever known to cut a monitor disregarded everything anyway. So I, I know we want to say, like, it's going to be a deterrent and we're going to increase penalties, it's going to convince people who want to cut them not to cut them. But honestly speaking, in, in, in your experience, have you seen people who cut monitors actually contemplate if I cut a monitor, I'm going to-- this is-- like most people that cut these things don't care. So this deterrent of increasing this felony, isn't going to stop people from cutting.

SPIKE EICKHOLT: I think that people know they're not supposed to cut their monitor. They know they're going to get in trouble. They know if they're going to get caught they're going to get arrested. They may not know, they may not know-- admittedly, again, this is where I disagree with Sheriff Hanson, I don't think they think, oh, it's just a status offense. I'm going to be fine and I can explain it to everybody. I just don't see that happening.

McKINNEY: Because most people I know that cut them was like, yeah, I'm--

SPIKE EICKHOLT: I'm in trouble.

McKINNEY: --cutting this I'm going to jail. Like, you, you know you're going to jail.

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SPIKE EICKHOLT: And they don't necessarily realize, particularly young people, and that's admittedly perhaps why it's a little more dangerous because kids don't think these things through, they cut and they're going to run and they're not going to go anywhere that is going to eventually get caught and hopefully they don't do anything bad in the meantime. I don't think in my opinion, particularly for the target group, that making this a felony is going to have an impression as much as the immediate arrest of a bond or what the judge tells them. I'm going to release you, if you tamper with your monitor, if you cut it, if you try to do those things, I'm going to issue an order having you arrested and you're going to come right back in front of me. And at that point, I'm not going to release you in the community. That's the typically advisement I think sinks home with someone in the community.

McKINNEY: Thank you.

WAYNE: Senator Geist.

GEIST: So a Class IV felony for a juvenile is-- doesn't send you to adult court.

SPIKE EICKHOLT: No, but the county attorney could charge if they wanted to in adult court.

GEIST: But that's not very likely. I mean, they're not sending Class IV felonies from juveniles, that's not why they try a juvenile in adult court.

SPIKE EICKHOLT: Well, I have to respectfully disagree. I mean, it's something that county attorneys have an option to do. When I, when, when I testify on bills--

GEIST: Well--

SPIKE EICKHOLT: --that would somehow provide it and it goes to juvenile court, they certainly show up and oppose that option.

GEIST: Well, and too-- and you said that, that kids don't think about it, that when they cut their monitor they don't think about it. They're not thinking, they're just cutting and, and they're not thinking about it. So wouldn't it be a deterrent if they had to think about it, if, if it were something-- now if it-- Sheriff Hanson said

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earlier that he was, he was OK with the fact or discussing the fact that if it's a misdemeanor and then this becomes a misdemeanor.

SPIKE EICKHOLT: Right.

GEIST: And then-- but if-- but for instance, if someone is out on pretrial release, they have an ankle monitor and they committed a rape or something like that, now shouldn't cutting that monitor be a felony?

SPIKE EICKHOLT: Without changing my position in opposition to the bill, I'll concede that you have a point. It's similar to the witness tampering law that we have now and Senator Wayne actually did a bill with agreement of the county attorneys to, to have sort of the consequence for cutting a monitor, sort of in light of what you just said, what you're on--

GEIST: Match current--

SPIKE EICKHOLT: --exactly-- what you're on the monitor for. If you're doing 30 days house arrest for a DUI and you happen to actually break it or deliberately break it for whatever reason and you don't do anything else and maybe it shouldn't be a felony. I'll concede that's probably a more nuanced, perhaps appropriate way of looking at the bill, but that's not the form of the bill now and I can't speak to whether Senator McDonnell would want to make it that way.

GEIST: OK. Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. Anybody else in opposition? Opposition? Seeing none, anybody in neutral testimony? Neutral testimony? We have no letters of support or in opposition so no letters for the record. Senator McDonnell to close.

McDONNELL: Thank you, Chairman Wayne. Follow up on a couple of things. The Pinellas County, Florida, the, the population I just looked it up was about a million people. So you look at that, that study, the, the stats they're dealing with. We've had discussions, now what, what Spike was talking about with line 11 through 14, we'll have further discussions of it. Senator Wayne and I've had discussions on line 15, you're talking about the, the felony and we can continue those discussions on if there's a violation what is the

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appropriate punishment and any other ways we can try to improve this bill, I'm open to discussion. I'm here to answer any of your questions.

WAYNE: Any questions from the committee? Senator Blood.

BLOOD: How do you feel about going to a misdemeanor from a felony?

McDONNELL: If it was a misdemeanor to begin with? If you're talking about that versus the idea and that's some of the discussions with Senator Wayne and Senator-- or Sheriff Hanson was the idea that if it's a felony, of course, it's different.

BLOOD: Right.

McDONNELL: But if it's a misdemeanor, we're open to having those discussions.

BLOOD: How do you feel about the, the fact that it includes people that are pretrial? I mean, you haven't been found guilty of a crime yet, but yet you could be found innocent.

_____ : Amen.

BLOOD: You can't do that.

WAYNE: Next time there's an outburst, I'm going to have to ask you to leave. Go ahead.

BLOOD: So you could be found guilty of, of a felony when you weren't guilty of the original crime. That's one of the things that for me that I find concerning. So if we could find a way to change that language, I'd be great with that.

McDONNELL: We'd have those discussions.

WAYNE: Any other questions? Seeing none, thank you. That closes the hearing on--

McDONNELL: Thank you.

WAYNE: --LB162 and we'll open the hearing on LB338. Senator McKinney. Welcome, Senator McKinney.

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McKINNEY: Thank you, Senator Wayne.

WAYNE: You just want to do all three of yours at the same time? And I'm sorry. Go ahead.

McKINNEY: Good afternoon, Chairman Wayne and members of the Judiciary Committee. I am Terrell McKinney, T-e-r-r-e-l-l M-c-K-i-n-n-e-y. I represent District 11 in the Legislature, which is in north Omaha. I am presenting LB338 today, which would change provisions relating to pretrial release, sentencing, failure to appear, revocation and sanctions under probation and parole, and suspension of licenses under the License Suspension Act. The purpose of LB338 is to address the flow of Nebraskans in and out of the criminal justice system. As you all know, our state is in a crisis and we must explore ways to improve it as much as possible. The elements of LB338 will provide some needed improvements to our system. This bill would institute a seven-day grace period for low-level and nonjailable offenses for missed court appearances, require the court to consider if a nonviolent system-involved person is a primary caregiver and considered alternative, impose shorter sentences if the length of the mandatory sentence would cause substantial injustice, restrict incarceration for technical violation for parole, suspending-- stop suspending licenses for unpaid fees and child support, require prosecutors to bear the burden that someone should be electronically monitored. While I was preparing for the session, I came across a report by the Prison Policy Initiative entitled: Winnable Criminal Justice Reforms for 2023. After reading through the report, I opened my Google Docs and got to work on LB338. The changes in this legislation, in my opinion, will please all sides but, you know, people always oppose but I will go into further detail. So our jails and-- our jails are locally controlled, but the people held are generally accused of violating state law. The state is responsible for addressing concerns in our local jails as much as possible. We should institute grace periods for missed court appearances to reduce the use of bench warrants which lead to unnecessary incarceration for low-level and not-- and even nonjailable offenses. We should also establish more open courts across the state for those recently missed appearances to be rescheduled without fear of arrest. I know Douglas County utilizes the open court right now and I'm not sure about anywhere else in the state. Also, individuals forced to wear electronic monitors should not be required to pay for those devices, nor be fined or "reincarcerated" for their ability-- inability to, to

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pay monitoring fees. When ordered as a condition of pretrial supervision, defendants should be credited for time served on an electronic monitor. People placed on an electronic monitor should not be confined to their homes, but allowed to work, attend medical appointments, and spend time with their families and communities. In Illinois, they passed a bill in 2019 which requires that prosecutors bear the burden of providing the person should be monitored. It requires judges to reconsider the necess-- the necessity of monitoring every 60 days, guaranteeing a person on, on an electronic monitor freedom of movement to complete certain essential functions and require that people receive credit for time spent on electronic monitoring that will count as time served as sentences. Also in this bill, it takes into account primary caregivers. I firmly believe that our state should seek to avoid parental, parental incarceration. As a kid, I visited my father in prison, which has always stuck with me and I also witnessed my mother being arrested. And luckily she wasn't away from, from us for too long. If passed LB338, would require that a parent's status as a caregiver be considered at the time of sentencing and would consider alternatives for incarceration. If a parent is incarcerated, they should be placed as close as possible to the family. Meaningful transportation options should be available to guarantee that children can regularly visit their parent. Similar bills have been passed in other states like Tennessee, Massachusetts, and New Jersey. Also technical violations, our states should limit incarceration as a response to supervision violations when the violations has resulted-- only if the violation has resulted in a new criminal conviction and directly threatened public safety. If imprisonment is used to respond to technical violations, the time served should be limited and proportionate to the harm caused by the noncriminal rule violation. States like New York, Michigan, and Massachusetts have done some things on this. Next, is one thing that, you know, kind of always kind of perplexed me was that an individual can have their license suspended for not paying or getting, or getting behind on child support. And I understand that the need to hold parents accountable, but to me it's super counterproductive, especially in, in a state that does not have great public transportation like larger cities. Just think about it, John or Jane Doe drives to work daily, their job is in west Omaha where our bus system can barely reach, they get behind on child support due some-- due to some financial issues and have their license suspended. It is smart public policy to suspend their license which will more than

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likely do a few things: cause them to drive on a suspended license, lose their job and possibly spend some time in a county jail for back child support or a suspended license. Montana has passed a bill on this in the past. Next, I think we should also give discretion to our courts to evaluate if a sentence may or may not be overly punitive, which is why it's important to have the ability for them to look at it when imposing a sentence that would otherwise require a mandatory minimum if a sentence would result in substantial injustice and is not necessary for protection of the public, the court could impose a reduced mandatory minimum or minimal sentence and murder and sex offenses wouldn't be eligible. And with that, I open myself up to questions.

WAYNE: Any questions from the committee? Seeing none, thank you. First proponent. First proponent. First proponent. Welcome.

JASMINE HARRIS: Good afternoon, Chair Wayne 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 here as the director of Public Policy and Advocacy with RISE, and I request that this testimony be included as part of the hearing to show support for LB338. We want to thank Senator McKinney for introducing thoughtful legislation to address the different areas of Nebraska's legal system. And I'll try my best to address all the things that I want to address in the time that I have. As we're looking at how we can decrease the overcrowding in Nebraska's prisons, we must also keep in mind that some of the county jails are facing overcrowding as well. During the beginning of COVID, the pandemic forced jail officials and law enforcement officials to come up with different ways of how they can decrease admissions into those facilities and they were able to do that through diversion. The pandemic showed us that diversion can work. And so these policies that are introduced by Senator McKinney, they all look at how can we divert people, especially in this bill, they're all low-level offenses so it's not like it's some, some of the major crimes that people are hesitant about when it comes to diversion and things like that. As RISE embarked on this journey of the justice study, which looks at the long-term impacts of short-term incarceration, some of the things that we do with our case management is to ensure that we are trying to connect people with their court-appointed attorneys and send out court reminders. And in that time frame, what we still find is that people still fail to appear. It can run the gamut of they don't have transportation, they don't live in the county, or what

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we've heard also is that court dates have been rescheduled. They don't have reliable communication, so they're missing those days. So we believe that having this seven-day time frame in open court hours will allow for people to be able to get back to court. When they contact us and we say, you know, contact your attorney, make sure you're talking to them, they can go back in front of the court. So what they have been rendered is almost paralysis into inaction because they're so scared they're going to be hit with a warrant and rearrested and sent back to jail. So we have these opportunities for people to rectify what has happened, then they can get on the right track. Told you, I will not have enough time. Caregiver diversion is also one of the things that we're behind. What's important about this is people are able to stay out, keep working, address the issues that they're trying to remove out of their life, mental health, substance use, things like that. And it's important because over 77 percent of mothers and 26 percent of fathers in state prisons were the primary caregivers for their children. And children with a parent who is incarcerated is 70 percent more likely to end up incarcerated as well. We work with people on parole who do get technical violations. Majority of the people we work with are having technical violations because of mental health and substance use. So if we're able to help them with treatment and get them into treatment instead of sending them all the way back to prison, that will give them the opportunity to be on the right track. Yeah.

WAYNE: Thank you. Any questions from-- Senator Ibach.

IBACH: I have one. Thank you very much, Mr. Chairman.

JASMINE HARRIS: Yes.

IBACH: Thank you for being here. I was just going to add that every time you come and testify I learn so much.

JASMINE HARRIS: Thank you.

IBACH: So thank you for your thorough testimony and you always write it down. I actually was going to ask you a question about suspending the child support obligations, so if you could expand on that a little bit.

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JASMINE HARRIS: Yes. So we work with both men and women who are released from prison to tens of thousands of dollars of back child support. Accrual of interest doesn't stop when they're incarcerated so being able to put a cap on that to suspend that would really be beneficial. When you're coming out, when employment is a big barrier, so that and even career advancement is a barrier for most, you're already tens of thousands of dollars in the arrears and trying to get over that amount of debt is almost insurmountable for a lot of folks.

IBACH: All right. Thank you. Thank you.

WAYNE: Any other questions from the committee?

GEIST: I just have a real quick one.

WAYNE: Oh, Senator Geist.

GEIST: I'm curious, I'm, I'm looking through the bill and trying to find and if-- you probably know right where it's at, I should have probably asked Senator McKinney--

JASMINE HARRIS: Try to remember which pages.

GEIST: --but you're going to know the answer to this. It was where you incarcerate someone close to where they live. I just wonder if you would comment on the help or hindrance that would be? That just is intriguing to me and I'm curious what your thoughts are.

JASMINE HARRIS: So for women who are incarcerated in the state of Nebraska, they have to go to the facility in York. If you have majority of people who are living in Omaha where their fam-- you know, their families are in Omaha, that is a hindrance to drive almost two and a half hours. And I would say as part of RISE, one of our components is business pitch competition. People come up with these business ideas and we've had several people pitch the idea of a transportation business to get families to go visit their loved ones because a lot of people don't own cars, their licenses are suspended, whatever that may look like, it's hard to connect families to their incarcerated individual in the state of Nebraska.

GEIST: Thank you.

JASMINE HARRIS: You're welcome.

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GEIST: Interesting. Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you.

JASMINE HARRIS: Thank you.

WAYNE: And thank you for providing a letter. Next proponent.
Proponent.

SPIKE EICKHOLT: Good afternoon again. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in support of LB338. I'm not going to repeat some of the things that Ms. Harris just said. I just want to maybe talk about some of the components of the bill. One of the things this bill does provide for, it does provide for a safety valve provision where a court is allowed to deviate from a required minimum or mandatory minimum sentence. This is similar to, I think, something that was contained in LB920 of last year and has been proposed in other bills as well. And what it would do, it would allow a court to not impose an otherwise mandatory minimum requirement that they are required to impose by law for certain offenses and/or generally nonviolent offenses that are listed. Well, I think they're all nonviolent offenses that are listed in the statute or in the bill, as well as that the court finds that the defendant themselves is suitable for that. That's similar, actually, to what Senator-- or what President Trump signed with the federal First Step Act, which provided for an easing of mandatory minimums by creating this kind of safety valve for drug offenses. And that's a real unique approach and we think that's something the committee should really consider focusing on. Additionally, we do like the part where the courts are required to consider a defendant's status as primary caretaker of a dependent child or children when imposing a sentence because a sentence does have such a consequence not only on the person that's before the judge, but also their dependents as well. And the part that I hope people talk about the not requiring or the easing of their requirement of licensing or driver's license being suspended if nonpayment of child support happens is also good as well. The way it works and it's kind of a frustrating thing is a person can be ordered to pay child support months or even years before they end up incarcerated. The judge determines how much they're able to pay per month and orders it and

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it can be something like \$500 a month. That's that person's earning capacity. But if they end up getting arrested, charged, and in prison, then that rate just continues to grow. It doesn't-- in other words, a child support judge or the order of-- the court that ordered the child support doesn't necessarily even know the person's in prison and doesn't have any ability on its own to adjust that order. It simply just accumulates with interest. The license get suspended, when they get out they've got this mountain of debt, essentially, and they don't have a driver's license. And if they have any other kind of license besides a driver's license, it also is required to be suspended by law as well. And that's something that we would encourage the committee to focus on that as well. I'll answer any questions if you have any.

WAYNE: Any questions from the committee? I have a couple. What is it-- what's the, what's the daily rate for being in prison in Lancaster, like, if you sit, for them to sit out a fine?

SPIKE EICKHOLT: \$150.

WAYNE: A day?

SPIKE EICKHOLT: Yeah.

WAYNE: So you get a ticket-- let's walk through the scenario-- you get a ticket, you miss your court date, they pick you up so time and costs for cops picking up the person, taking them to court, they get there before 3 p.m.--

SPIKE EICKHOLT: Right, 3 p.m. is the time.

WAYNE: --they get \$150 for sitting there overnight--

SPIKE EICKHOLT: That's right.

WAYNE: --and the judge says time and costs go home.

SPIKE EICKHOLT: Right.

WAYNE: Who does that benefit?

SPIKE EICKHOLT: No one. I mean, I suppose it benefits a person that doesn't have the money to pay, at least in the short term. And unless

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you-- because on what you're doing is just like you're warehousing people for minor charges for limited periods of time.

WAYNE: So what I've ran into, it isn't so much somebody going to prison that is facing this child support issue. It's they change jobs or they lose their job and, you know, one year they're making a lot of overtime so a judge increased it to \$750. Then COVID hits, they lose, they can't afford an attorney to go back in and get it changed, right, so now they're behind on their-- on the arrears. Then they finally hire somebody or if the, if the mother or the whoever is the custodial parent is on Medicaid and the state steps in, then you get a order saying-- a show cause hearing, and you show up and say you have 60 days to pay or you got to do 60 days in jail for a purge to purge it.

SPIKE EICKHOLT: Right.

WAYNE: It doesn't take it off your--

SPIKE EICKHOLT: No.

WAYNE: --but used a 60-day sentence.

SPIKE EICKHOLT: Right.

WAYNE: Have you-- are you familiar with any-- I don't know if you practice in that area.

SPIKE EICKHOLT: Yeah, I've done some of that. I was appointed in a few of those cases. But what you describe is right, somebody who gets behind on child support that eventually the judge that ordered them to pay child support issues a contempt or, or a show cause, come before me and show me why I shouldn't hold you in contempt for violating my court order. And a court can order a term of imprisonment as a way to sort of hold them in contempt and cure them of their violation of the court order. What will happen lots of times is you'll get a guy who's arrested and then he will enter a purge plan or an agreement, a negotiated agreement, if you will, with the judge. Well, OK, I promise to pay the \$7,500 in arrears by paying so much more than I was supposed to be each month. Say they were ordered to pay \$500 a month, they agreed to pay \$750 per month until they get this debt paid. If, if they default on that agreement, then the court will have some sort of a hammer at the end or they've got to do 60

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days jail for contempt of court. And many times when they're in that-- when they're arrested and if they sign this agreement, they're out that day. And it's, it's not, it's not easy to negotiate that stuff with the prosecutor, they understand they're trying to collect this child support.

WAYNE: And just so the other scenario about how people get behind on child support and the impact is so they're behind on child support, they finally hire an attorney because that's the only way you can get into court or--

SPIKE EICKHOLT: Right.

WAYNE: --you try to petition yourself. Right?

SPIKE EICKHOLT: Right.

WAYNE: The judge agrees that instead of \$750, you can only do \$500, but you have arrearage because you've been out there for a year only paying 500 bucks so you got 250, so you got a \$5,000 arrearage. Under statute, they can't-- the judge can't change that arrearage. He can't go back and say I'm going to reduce your arrearage.

SPIKE EICKHOLT: I don't think you can unless you can somehow argue when you got this child support modified that it should be retroactive with the modified based on whatever reason you've got, injury, disability, something like that. In other words, that this started back [INAUDIBLE] court.

WAYNE: I don't, I don't think it can--

SPIKE EICKHOLT: And maybe not be able to do that.

WAYNE: --it can't be modified. They can go back to the modifying of the-- of your petition to first filing, but anything before that you're stuck. So even if a judge agrees--

SPIKE EICKHOLT: Yeah.

WAYNE: --yeah, you clearly have lost your job. You have disability now, but you still owe \$5,000 over the last year. I can't change that so you're still in arrear and you may never, ever catch up.

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SPIKE EICKHOLT: That's true.

WAYNE: So you're always facing the possibility of losing your license. So sorry, it's just a scenario that I-- we actually practice and deal with. So I wanted to get that on the record so people can understand it isn't just people going to jail, it's people who just lose their job for two months or three months or even the court modifies it a year later. But if you don't file a petition that year, you're stuck. You can't get it unless the mother or the party says, yes, he gave me or she gave me money during this time and signs a document.

SPIKE EICKHOLT: Right.

WAYNE: So it's--

SPIKE EICKHOLT: And if they-- if it's money owed to the state for Medicaid or ADC or SNAP, I guess, then you're not going to get it--

WAYNE: You're not going to get it.

SPIKE EICKHOLT: --or see it.

WAYNE: OK. Thank you. Any other questions? Seeing none, thank you. Any other proponent? Proponent? Opponent? I was wondering why you were down here.

ANTHONY CLOWE: It's been too long, [INAUDIBLE].

WAYNE: Welcome.

ANTHONY CLOWE: Good afternoon, my name is Anthony Clowe, A-n-t-h-o-n-y C-l-o-w-e, and I am a deputy county attorney in Douglas County here today to testify in opposition to LB338 on behalf the Nebraska County Attorneys Association. To provide context to my testimony, I want to tell you more about my background and my experiences with the criminal justice system. My biological mom graduated high school while she was committed to Geneva through juvenile court. Her problems didn't end when she left Geneva, she continued to struggle with mental health and eventually varying addictions. My dad came from a good home, but he also struggled with mental health issues. When my parents divorced, my dad fell into varying addictions as well. By the time I was 16, I ran away from

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home because it was safer to be on my own than to be at home. I was on my own for a while before my pastor learned about my situation and took me in and gave me the opportunity to experience what life is without neglect, abuse, and daily stress. He put me in a position to succeed. I went to law school with one goal to become a prosecutor so I could work every single day to try and make my community a better place. When I was first hired in the Douglas County Attorney's Office, I was assigned to our juvenile division, and my immediate boss was the same attorney who had filed an abuse neglect case on my mom. It really brought my, my professional and personal experience with criminal justice system full circle. I'm now the deputy county attorney in charge of the problem-solving courts for Douglas County. I work every day to try to reduce recidivism through evidence-based programming, and I try to problem solve for each person and their unique life circumstances. It is for these reasons I am here to testify in opposition to LB338. This bill is a hodgepodge of changes to the criminal justice system, none of which make a whole lot of sense. The safety valve release for the mandatory minimum sentences is offloading legislative responsibilities to the judges. If you don't think that a law should have a mandatory minimum, then change the provisions. A careful reading of the proposed changes reduces the charges that would be eligible for the safety valve to discharging a firearm in an occupied building, a felon in possession of a firearm, both of which are somehow not explicitly considered crimes of violence, and then the remaining offenses are distribution of narcotics in large volumes or with a firearm. And I don't mean marijuana, I mean methamphetamine, crack cocaine, cocaine, and heroin. The bill also seeks to remove accountability for anyone who is not fulfilling the requirements of their community supervision. It adds unnecessary definitions for absconding and removes the ability to ever revoke someone who continually shows noncompliance with community supervision. The evidence-based approaches show that people are more successful when there is a framework for swift and certain sanctions, which is why the current custodial sanction process was enacted by the Legislature. This bill does the opposite and largely divest probation or parole officers from having any authority other than to ask their clients to please follow the law. I think that the wholesale changes to bond and pretrial services is also misguided. You have an opportunity to do an intervention, to do an evaluation for mental health and chemical dependency and are not doing that at that time.

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WAYNE: Senator Geist.

GEIST: Yeah, I just wanted to ask a quick-- well, first I'll make a comment. You said something about swift and certain sanctions, which I think is one of the reasons why specialty courts, drug court, why those work so well.

ANTHONY CLOWE: Yes.

GEIST: Because they're equal across the board, people know what the, what the penalty is for whatever infraction they make and they're applied evenly and quickly. But, but you also said something about the safety valve and, and I've had people suggest that to me as a, as a discretion of the judge. Would you, would you repeat or maybe expound on what you were talking about with, with that and, and what-- were you saying the crimes that you listed did no longer applied or it only applied to this?

ANTHONY CLOWE: It would only-- the safety valve would be available under those crimes.

GEIST: OK.

ANTHONY CLOWE: And, and largely where this really comes in most often would be a felon in possession of a firearm, a first-time offense, a second offense is a Class ID felony, and then you're talking about any distribution of narcotics. And again, this is specifically methamphetamine, crack cocaine, cocaine, and heroin. Suspiciously absent is fentanyl from that list. But if you do any dealing with a firearm, that bumps you up to that level. And then if you don't have a firearm, you have to have a high enough quantity to go from a Class II or a Class IIA up to the Class ID. So then you're talking larger volumes of distribution as well, which is, is obviously more concerning. And I think, the reason I think that this is misguided is because there is already a lot of discretion to take things into consideration like this. I told you I'm in charge of our problem-solving courts, and that means I'm in charge of our drug court, our young adult court. I work with our veterans treatment court. I also do diversion and our mental health diversion pretrial diversion programs. But we-- I routinely get requests for screenings for people who have been arrested for distribution of, say, methamphetamine, maybe 20 grams, which is, you know, a decent amount.

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But they don't really have any prior felonies, their, their history isn't, isn't as high or isn't what you would think it would be for somebody who is dealing the amounts they're dealing and so and maybe there's some mitigating circumstances to consider and the defense attorney, you know, will request that we screen them for drug court and I can't plead anybody into drug court at a ID level because there's a mandatory minimum. Right? So what we do instead is if I find them to be an appropriate candidate, which there's more than a handful in our program, we reduce it to an attempt or we reduce it to a lower, you know, say, that it's zero to 10 grams as opposed to 10 to 28 and we plea them in, in that fashion. And then that way it allows them to participate in the program. And should they violate, again, because they're first-time offenders or if they don't have a history that indicates a need for further incarceration, they're not subject to that mandatory minimum because they've been plead down a level. So they've at least tried to do treatment, they've engaged and maybe they're not successful and they have to get terminated, but really the hope is that not only is it more than a safety valve release, it's a, it's a complete dismissal and sealing of the charges should they successfully graduate from the program. So we have really good pathways for individuals who are deserving of opportunities. But, you know, there's not a whole lot of wiggle room when firearms get involved because that just raises the stakes and especially when you're talking about the distribution of narcotics or prior convicted felons, especially if they have prior violent offenses on their record.

GEIST: Yeah, well, I know you have one of the gold standard specialty courts in Douglas County and I appreciate your work. I also want to throw in that the rewards are equally applied as well. It's not just about sanctions. It's about rewarding good behavior, too. And I wanted to throw that in because people think I'm so mean. So anyway.

ANTHONY CLOWE: No, and, yeah, incentives are, are certainly a part of the equation and I, I think that, you know, a lot of our law does reflect the consequences and the negative consequences and, you know, so it's up to Probation administration to develop the incentives which they've done, you know, and the problem-solving courts develop incentives, and they're not laid out statutorily the way consequences are. But it's usually a lot easier for people that want something good to happen, then have to be-- you know, to, to have to sit through something negative happening.

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GEIST: Which is an equal part of what you do well. So thank you for your work.

ANTHONY CLOWE: Thank you.

WAYNE: Senator DeBoer.

DeBOER: Thank you. Thank you for your testimony. Did you-- did I hear you right, did you say that we shouldn't outsource our legislative authority to judges discretions?

ANTHONY CLOWE: I think that if you have a crime that's listed as a mandatory minimum and you provide ways for it to no longer be a mandatory minimum, that you're necessarily getting rid of the word mandatory. What does mandatory mean if it's not mandatory? So if you want a Class ID felony to be able-- and be available to be sentenced in some way other than a mandatory minimum of three years, then why don't you legislate it in a way that reflects how you want it to be sentenced?

DeBOER: And would you support that?

ANTHONY CLOWE: I wouldn't, no, because I know what goes into somebody getting convicted of a Class ID felony. I know all the available pathways that somebody can avoid it. I know how routinely, at least in Douglas County I can only speak to, we avoid people getting ID felonies by coming to plea agreements. And the mandatory minimum, I think, is a great tool for deterrence when we're talking about--

DeBOER: But that doesn't allow the kind of judicial discretion that, I mean, if there are mandatory minimums that does take away the judge's discretion because there's a certain amount that the judge has to do. Right?

ANTHONY CLOWE: There's a certain amount at the bottom end. There's a lot of discretion. I mean, they can go a lot higher and, and sometimes they do and sometimes they don't. You know, again, it kind of depends on, on the circumstances. And I think that there was a new substantial injustice was introduced, you know, and is defined in there and, and, and the thing for me when I review this and I read through it is the, the crimes that we're talking about are substantial injustices to society. These are people that are dealing in large quantities of narcotics. These are felons who should not and

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know they cannot possess firearms, who are often found in a vehicle with a stolen firearm when they're not allowed to purchase it. You know, we're, we're talking about very dangerous situations. And when you talk about dealing drugs, it's not just the drug dealing, most-- a lot of our homicides are a result of a drug deal gone wrong, a drug deal gone bad, and that includes possession, you know, with intent to deliver marijuana. We have a lot of marijuana rip-offs that end up as a homicide, and that's not even ID territory. So when you get convicted of a ID that's really saying something about what you did, the circumstances that you're in that are unique to you because we can already maneuver--

DeBOER: OK.

ANTHONY CLOWE: --as necessary.

DeBOER: Yeah. OK. Thanks.

WAYNE: Any other questions? Seeing none, thank you for being here.

ANTHONY CLOWE: Thank you.

WAYNE: Next opponent. Next opponent. Seeing none, anybody testifying in a neutral capacity? Seeing none, we have seven letters for the record: five in support, one in opposition, and one in neutral. Senator McKinney to close on LB338.

McKINNEY: Oh, thank you, Chair Wayne and individuals that came to testify today, whether you're in support or you didn't support. I just think we should be taking these type of opportunities to look at our policies and how we can decrease the flow of individuals going in and out of our criminal justice system. People come here and say a bunch of big words to try to fear people not to do what's right. And, you know, honestly speaking, we just got to be humans. And we, we, we have a problem, but we have people that aren't willing to try to change the problem, they just want to stick to the status quo, because the status quo doesn't disproportionately and negatively affect people that look like you and that, and that's just a fact and I'll just leave it there.

WAYNE: Any questions for McKinney? Thank you. That will close the hearing on LB338 and open the hearing on LR27CA. Senator McKinney.

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McKINNEY: Thank you. Good afternoon again, Chair Wayne and members of the Judiciary Committee. I am Terrell McKinney, T-e-r-r-e-l-l M-c-k-i-n-n-e-y. I represent District 11 in the Legislature, which is in north Omaha. I'm presenting LR27CA today as a constitutional amendment to change provisions relating to the pardons and the Pardons Board and to create a Board of Commutation. Prior to my time in the Legislature, I had issues with the Pardons Board for many reasons. The biggest reasons were that they didn't meet a lot and the individuals seeking a pardon, for whatever reason, were not given a real opportunity to make their case for a pardon or commutation. It seemed as though the process was just, you know, just a formality, honestly. LR27CA would add four additional members to the Pardons Board: an individual who was formerly incarcerated, an individual with experience in restorative justice and reentry, an individual with experience as a victim rights representative, and an individual with experience in mental health, conflict resolution, trauma counseling, and trauma therapy. These additional members would bring perspectives that I believe are missing on the Pardons Board, and it's nothing against those currently serving, I just think we have a problem in our criminal justice system and we need as many perspectives, perspectives as possible to address these issues and it can't just be politicians. There are also additional changes that I believe are needed to improve the process of seeking a pardon, hearings and how decisions are made. LR27CA would make an individual eligible for a pardon immediately after conviction of an offense. The Pardons Board would not be able to deny a hearing for a pardon for any individual convicted of an offense. The Pardons Board would make, would make its decisions on an individual basis for each request for a pardon and not invoke. All members of the Board of Pardons would have to meet at least twice each month to hear any request for pardons from any individual convicted of an offense. And I know many of you are wondering why, but to that I say just like each bill gets a hearing in the Legislature, I believe each individual seeking a pardon should at least be heard and be able to make their case. This does not guarantee that they will get a pardon, but it gives them an opportunity to at least be heard. I find no logical reason for denying those seeking a pardon to be heard. Also, there should be no reason that if you are convicted of an offense that you shouldn't be eligible for a pardon. Because these, because these decisions are very important, the Board should not be making these decisions in bulk. I believe-- I forget the month, but they made a big decision in

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bulk, and in that and outside of that bulk, they pardoned an individual that was accused of a bunch of stuff and they denied a lot of people who I believe deserved a fair chance but they didn't get those people a fair chance. But because that person showed up with a bunch of people around him with American Legion stuff on they decided to give this person a pardon. How does that happen and then you, you group all these other people together and just tell them no? That don't make sense to me. For many reasons like-- and, and I think this is needed for many reasons because, like, I believe we have to eliminate the perception or the climate that the pardons process is rigged or is not fair. I think allowing people to be heard at least gives people hope. But also it takes away from the, the mistrust of the public of the process. Also creating the commutation review committee, and that's for, you know, to take some of the load off the Pardons Board to have a commutation review committee to look at these cases and then once they are in front of the Pardons Board, they're able to evaluate people a lot better. It's kind of like a screening system in a sense of anything that comes before it came-- went, went this body first and then they're able to look at it. But I do think we need some changes to our Pardons Board because it's just not working and I think adding new people and adding better processes would improve it. Thank you.

WAYNE: Thank you. Any questions from the committee? Senator Geist.

GEIST: I'm sorry, I just have to ask one quick one. I'm just curious if the authorization of the Judiciary Committee to be a part of that is a separation of powers issue?

McKINNEY: It's only if they fail to meet after a certain period of time. In our, in our constitution, I forget the article off the top of my head, but we have more power to address a lot of these issues than we actually exercise but this is a way to try to do that.

GEIST: OK.

WAYNE: What are your thoughts on getting rid of the Pardons Board altogether?

McKINNEY: I'm open to that, too. I think we, we need to do something.

WAYNE: I just think it might be easier to convince one versus three.

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McKINNEY: True.

WAYNE: One, I mean, nothing against Senator Hilgers-- not Senator Hilgers now, but it's just weird having the Attorney General on the Pardons Board, it's just weird to me. But, OK. Any other questions? Seeing none, thank you. First proponent. First proponent. Welcome.

FRAN KAYE: Thank you, Senator Wayne, members of the Judiciary Committee. My own senator, Senator Geist. My name is Fran Kaye, F-r-a-n K-a-y-e, and I am testifying in favor of LR3-- LR27CA. The Pardons Board has become ossified. While it works as intended for minor pardons and commutations necessary for people to receive licensing or otherwise become eligible for certain jobs, it avoids difficult cases, sometimes refusing to sit for months in order to escape the hard choices. We can do better. The original purpose of the Board is to dole out mercy to people who are over sentenced or who have demonstrated considerable change since their original crime and sentencing. Up until the 1960s, most people serving services for murder were pardoned or commuted, usually less than 20 years into a sentence. That system worked, and it was only changed in response to tough on crime posturing that did not make anyone safer. Notice that this is the Board of Pardons, not the board of unpardonable offenses. The rules for granting a pardon or commutation are deliberately left vague so that mercy can be shown in a variety of different circumstances. They are not about showing how tough a member is. LR27CA provides for a board that is much more qualified to make delicate decisions about pardons and commutations, including a person who has been incarcerated as well as those trained in restorative justice, reentry, and trauma recovery allows for lived, informed, and pragmatic decision-making. Such a board can restore to citizenship those persons who have been incarcerated and reformed themselves, men and women who can prevent others from following their downward path. It would also help clear our prisons of people no longer a threat to society, thus easing prison overcrowding. Please support LR27CA. Thank you.

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

MAGHIE MILLER-JENKINS: Hello, my name is Maghie Miller-Jenkins, M-a-g-h-i-e M-i-l-l-e-r-J-e-n-k-i-n-s, and I am here just representing myself. I'm a proponent for LR27CA, but I spend my time

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in these meetings talking about a lot of how we got here. And I'd like everybody to just recognize that our prison system is no more than a continuation of our enslavement practices, that black people in Nebraska make up approximately 5 percent of the population, yet we make up approximately 53 percent of the incarcerated population. I'd also like to bring up people like Earnest Jackson. If you don't know his name, please look him up. He is a not guilty proven in court man who has sat for over 20 years in a prison cell for something that he has legally been proven not to have done, yet when he was afforded the opportunity to speak at a pardon-- at a-- to come up on a pardon's thing, that he wouldn't even be heard, that he was in the first round of people to be dismissed. So when we talk about this judicial system, when we talk about equity, when we talk about how all of this works, especially for people that look like me, I just want to throw out there that it doesn't, that it never has. I want to throw out there that this country was built on genocide, that we have been perpetuating that genocide, that there has been no stop in that genocide that has been perpetuated continuously since this country was incepted and that our prison system, our policing system, they don't need reformed because they are working exactly how they were designed to work. There is no brokenness. There is no spots of, oh my goodness, how did this happen? This is working exactly as it was designed to work. Innocent people sitting behind prison bars so that this state can make money off of their labor, this state can make money off of their incarceration. So I just want to throw out there that these moments like this legislative reform are a chance. They're a chance for you to stand up and do something right, there a chance for you to make a baby step in the right direction, because the real work would be abolishment. The real work would be letting all of those people go and being able to figure out a system that actually works because this one doesn't. Thank you.

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

SPIKE EICKHOLT: Good afternoon again. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of ACLU of Nebraska and Nebraskans for Alternatives to the Death Penalty in support of LR27CA. In Nebraska, sentences are final and unless there's something wrong with the sentence or is found to be invalid in some way, it just stays that way. And the only ability for anyone to get a sentence commuted, changed, or altered in any way is to go to the

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Board of Pardons. Other states, it's not like that. If a person gets a lengthy sentence, some other states have a scheme where you can petition your sentencing judge for resentencing after 25 or 30 years. We don't have that option. And I think at least in theory when the constitution was created, the idea was to have a small, maybe nimble Board of Pardons that could hear these cases and pleas for commutations, which means shortening a sentence or altering a sentence in such a way or actually just fully pardoning somebody on a case-by-case basis to cure injustices. But as practice, it was Senator McKinney who mentioned it before his introduction, it really does not happen that way. This proposal does change the Board of Pardons and I would submit, we would submit for the better. Right now, the Board of Pardons is the Governor, the Attorney General, and the Secretary of State. I suppose an argument can be made that the Governor is the chief elected official. He represents the entire state, that should be a goal that that person has. I agree with Senator Wayne mentioning earlier about the referenced Attorney General, that's a little bit awkward because many times they are the entity that prosecuted the person that put them in prison to begin with. Secretary of State is a bit more unusual because they don't have to be a lawyer. They don't have anything to do with criminal justice. They're just in charge of elections and licensing businesses, yet somehow they are on this Board of Pardons. So the proposal in this amendment is good because it does diversify that membership for people who actually have some connection with the criminal justice system, formerly incarcerated people, people who associated closely with victims, and that sort of thing and that's good. The proposal also has a Board of Commutation which just considers a narrower request that people will make in prison to have their sentence reconsidered, to have their sentence altered in some way, shortened from, say, 50 to 30 years or something like that. We talked about some of the stuff yesterday when we talked about youth offenders getting very lengthy sentences. What's unfortunate, and we had a-- we had some experience with that in the state. You sentence somebody trying to look forward but you got this hotheaded 17-year-old kid who did a violent thing, just assume at that point nothing's really going to change, you give him a 60-, 70-, 80-year sentence, but what happens sometimes they change. Right now, the only remedy they have is a Board of Pardons or Board of Commutations. This provides for making that more workable and more serviceable, if you will, for those requests and we will support the proposal.

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

JASON WITMER: Jason Witmer, W-i-t-m-e-r. My name is Jason Witmer and I come to speak on this bill as a proponent and as a person directly impacted by our state system in many ways. But first, I want to say I am an American citizen. I was born and raised in Nebraska, and I'm as much as a midwest child as anybody that would oppose me being a part of changing this system, a part of how we operate this system, and I think that's something that we missed. Now, as far as my personal experience in the system, you know, I have spoke on it before that I've witnessed my mother's murder as a child, eventually ended up in foster care. I was moved in several towns Plattsmouth, Syracuse, Auburn. I can name about five or six of them around the state. As a child I often was treated with, there were good people there so I don't want to say that, but I was often more people that felt like treated me with disdain and malice and, and simple disregard, which for children that means a lot. Eventually, I began to embrace this identity that was put upon me, and then I became the harm rather than the sad child that overcame these obstacles. I became that child that caused harm and the young man that causes harm and I ended up in our prison legal system, which is the Penitentiary is where I ultimately ended up, which in itself became, I became worse as opposed to this rehabilitation mentality. I just got worse and worse, which is probably heavily on the record and but long story short, maturity, what had effect on me and then the men in there who chose took upon himself to educate themselves and do something different and in turn would reach out to men like me, kids like me and that changed my path. In 2016, I was released from prison after about two decades worth of two stays, and I spent a considerable amount of time volunteering in the community with several groups, a lot of nonprofit groups, a lot of churches. Today, seven years after my release, I can say without a doubt that I've spent hundreds of hours volunteering, not dozens, hundreds of hours of volunteering, heavily invested in the best interests of our communities. Not only because I've matured, because I too have children in the community, I have grandchildren in the community. I have neighbors that I care about in the community, I have neighbors that I care about who I don't think care about none of their other neighbors in the community. And I work full time, I pay taxes. I still volunteer. And, ultimately, what I want to say is the community is best served by giving those of us who've been on the

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other side of things and investment in the community. And this is one of them aspects is we're not going to take, nobody would-- if I was to be on this board, I wouldn't take this lightly. I wouldn't take one decision lightly. That's all.

WAYNE: Thank you for your testimony. Any questions? Seeing none, thank you for being here. Next proponent. Next proponent. Anybody-- opponent? Opponent? Opponent? Seeing none, anybody testifying in neutral capacity? Seeing none, we have 18 letters for the record: 16 in support, one in opposition, and one in neutral. Senator McKinney to close.

McKINNEY: Thank you and thank you for those who came in support. I'm not sure if this is the solution or what the solution necessarily is, but this is my effort to try to address it because our Pardons Board needs some changes and we need to make some changes within the Pardons Board in the process. So I'll just leave you guys with that and open myself up to any questions.

WAYNE: Any questions? Seeing none, that will close to hearing on LR27CA and we will open the hearing on LR17CA, back to the McKinney show. Welcome, Senator McKinney.

McKINNEY: Good afternoon again, Chairman Wayne and members of the Judiciary Committee. I am Terrell McKinney, T-e-r-r-e-l-l M-c-k-i-n-n-e-y. I represent District 11 in the Legislature, which is in north Omaha. I present LR17CA today, a constitutional amendment to prohibit the death penalty. This is an effort that was spearheaded, I won't say spearheaded, but it was championed by my predecessor, Senator Ernie Chambers. It did get passed in the Legislature and then it was repealed right after. And this is why I'm bringing it because I, I strongly believe that, that the death penalty should be, be banned. And to date also because currently because the drugs that are needed to execute somebody is illegal, what we essentially have on the books is a mental torture penalty. We have people sitting and waiting to be executed that cannot be executed. And to make it plain, the death penalty is and has always been inhumane. I am sure there are many who would argue about its benefit. It gets closure to victims families. It's a crime deterrent. A method of modern science can now eliminate uncertainty through DNA and whatever else they would like to say. But at the end of the day, murder is murder. If, if we want to advance as a civilization, we need to move away from

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this "eye for an eye" revenge mentality. It has proven over time to be ineffective in deterring murder and only ends in more of what, what it is trying to prevent, death, and leads to an endless cycle of violence. There is absolutely no reason for the death penalty if the, if the individual accused is locked away from society and is unable to cause additional harm. There is no credible evidence that supports the notion that the death penalty deters crime more effectively than longer term imprisonment. A study by the ACLU states that, states that states that have the death penalty-- that have death penalty laws do not have lower crime rates or murder rates than states without such laws. According to a Gallup poll, one of the top four reasons Americans support the death penalty is because they feel that "an eye for an eye" is necessary when a murder is committed, which goes to show that Americans are less concerned with using this, this tool as a deterrence and more so using it as a means for punishment. Life in prison gives the individual time to live with and think about their actions that can lead to the possibility of rehabilitation. The death penalty is unjust because sometimes it is also inflicted on innocent people. It makes it hard to remedy mistakes, especially if convicted people are later found to be innocent. Without the death penalty, those individuals can be released and be compensated for the time they, they would only serve. Innocent individuals will be convicted and sentenced to death with some regularity as long as the death penalty exists. There are many documented cases in which DNA testing have proved someone's innocence that had been put to death. Our criminal justice system is imperfect and defendants in poverty are often given minimal legal attention by often less qualified individuals. The death penalty carries the inherent risk of executing an innocent person. According to the Death Penalty Information Center since 1973, at least 190 people who have been wrongly, wrongly convicted and sentenced to death in the U.S. have been exonerated. Many people are born with brain defects that cause them to act a certain way. No amount of schooling, positive reinforcement, drug, drug rehab-- rehabilitation would change that. I don't feel it's fair for someone to be murdered because they were born with a brain effect. Although it's technically unconstitutional to put a mentally ill person to death, the rules can be vague and you still must convince a judge and jury that the defendant is mentally ill. Capital punishment is counterintuitive because it doesn't bring the victim back. I understand you want to make sure that there is accountability for a crime and an effective deterrent in place, however, the death

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penalty has a message, you kill so we're going to kill you. This is using murder to punish murder and it doesn't make sense. Many people spout about the Bible and their religious beliefs. And I know the Bible says: Thou shalt not kill. But why do we justify it when it comes to the death penalty? What many do not realize is that carrying out an execution costs two to five times more in keeping that same person in prison for the remainder of their life term. This is due to appeals, other required procedures, and other legal struggles that prolong the process. It's not uncommon for an individual to sit on death row for 15 to 20 years. Attorneys, court reporters, judges, and court facilities are required a substantial investment by taxpayers. The average cost of defending a trial in a, in a federal death case is \$620,000, about eight, eight times that of a federal murder case in which the death penalty is not sought. A study found that those defendants whose representation was least expensive and thus who received the least amount of attorney and expert time had an increased probability of receiving death. Defendants with less than \$320,000 in terms of representation costs had a 44 percent chance of receiving a death sentence at trial. On the other hand, those defendants whose representation costs were higher, \$320,000, had only, had only a 19 percent chance of being sentenced to death, thus, the study concluded that defendants with low representation costs were more than twice as likely to receive a death sentence. And to close, the death penalty harms society by cheapening the value of life. Allowing the state to inflict death on certain citizens legitimizes the taking of a life. The death of anyone, even a convicted killer, diminishes us all. Society has a duty to end this practice which causes harm, yet produces little in the way of benefits. Thank you.

WAYNE: Thank you. Any questions from the committee? Senator DeBoer.

DeBOER: Senator McKinney, you kept referencing the lex talionis the "eye for an eye" which is this principle that is supposed to be equal, but I think originally the lex talionis was: If I kill your wife, you kill my wife not me. So even the way we do it isn't exactly an equal proposition, right? I mean, we would never do that now. We would never say, well, Senator McKinney killed Senator Wayne's wife so now Senator Wayne says we're going to go kill McKinney's wife. I mean, it's--

McKINNEY: Right.

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DeBOER: --it's kind of a strange principle to still be talking about when we clearly don't want to obey that principle today. And it also was the maximum right, so you're not supposed to do more than "an eye for an eye," right, as opposed to a-- it's not a minimum-- it's not a mandatory minimum, it's the opposite, it's the maximum at this point. So--

McKINNEY: Yeah. Yeah. I just, you know, find it strange that a lot of people stand up year after year and say they care about life and they value life and all these type of things quoting the Bible and all these type of things, but they're OK with killing people. It makes no sense to me. It's a, it's a total contradiction.

DeBOER: OK. Thank you, Senator McKinney.

WAYNE: Any other questions? Senator Holdcroft.

HOLDCROFT: Thank you, Chair. And thank you, Senator McKinney, for bringing this. And I just want to review the history, and correct me if I'm wrong on, on any of this, but the Legislature passed or repealed the death penalty,--

McKINNEY: Yeah.

HOLDCROFT: --the Governor vetoed it, and then the Legislature came back and overcame the veto. And then there was a ballot initiative in which I think, correct me if I'm wrong, but 70 percent voted for the death penalty and that's why we have the death penalty today.

McKINNEY: I don't think it was 70. I think it was a lot lower than 70, maybe 60.

HOLDCROFT: OK.

McKINNEY: But also, yes, people-- but the wording in that initiative was very tricky and I think a lot of individuals really weren't aware of what they were voting on.

HOLDCROFT: So that your thought by bringing this again that--

McKINNEY: No, it's not that I thought people didn't know, I just firmly believe that the death penalty should be banned. So regardless

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of how the initiative happened, I disagree with the death penalty fundamentally as a person.

HOLDCROFT: OK.

McKINNEY: Yeah.

HOLDCROFT: Thank you.

WAYNE: Any other questions? Seeing none, thank you for being here. Oh, --

BLOOD: That's all right.

WAYNE: --Senator Blood. I, I wasn't looking, I was looking at--

BLOOD: I understand.

WAYNE: My bad. Senator Blood.

BLOOD: I'm invisible.

WAYNE: No, no, Senator Blood. Sorry.

BLOOD: Thank you. Two questions and a correction. So the district that Senator Holdcroft lived in at the time it was on the ballot it was 61.2 percent in District 3. I know, because I still have it in my desk, I keep it in my information. I may be transposing, it might be 62.1 or 61.2, but those are the correct numbers. So knowing that, what's different do you think between attitudes now and in 2016 when it was on the ballot?

McKINNEY: I think, you know, there's been changes across the country and I think there's more information, more access to resources, and I think the feel has changed. It's not to say that, you know, we could probably do it again, and I'm not sure if we'll get the same results, but I do think it's something that should be addressed and at least be put forward to the people so that people can make a decision. Because I think the last time we did this, the state did this, the people were, for better or worse, you know, kind of-- I don't know the wording, it was a little tricky. So I, I think society as a whole since-- was it 2016--

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BLOOD: Um-hum.

McKINNEY: --I think we've-- we lived through a pandemic.

BLOOD: Right. Some of us.

McKINNEY: We, we've lived, we lived through-- in that, the short period of time, the world as we know it has changed. So at least let's go back to this and re-- and reexamine it to see if we still get the same results.

BLOOD: I wish Senator Geist was still here because I'm going to quote her right now so I got to make sure she knows about this when she comes back on Tuesday. I remember the last debate on the floor in reference to the death penalty and Senator Geist's comment was that the way that she is able to support the death penalty is because she feels and compares it to abortion that babies are innocent, but those that are, are going-- that have been charged to death aren't innocent. How would you answer that?

McKINNEY: We've-- it's, it's documented that innocent men have been executed. So it's-- I, I don't know, I just think it's, it's a lot of hypocrisy in this place, and I'll just leave it there.

BLOOD: Yeah, I don't like to invoke people's names unless they're actually--

McKINNEY: Yep.

BLOOD: --in the room, so I'll, I'll make sure I own up to that one, but--

McKINNEY: Innocent people have been killed because of the death penalty and it--

BLOOD: Especially in states like Illinois, not, not as much our state, but definitely in other states.

McKINNEY: --and it, it disproportionately affects people that look like me as well.

BLOOD: I, I agree. Thank you.

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McKINNEY: Yeah.

WAYNE: Any other questions from the committee? Seeing none, thank you. Start with proponents. First proponent.

MAGHIE MILLER-JENKINS: Hello again.

WAYNE: Hello.

MAGHIE MILLER-JENKINS: Maghie Miller-Jenkins, M-a-g-h-i-e M-i-l-l-e-r-J-e-n-k-i-n-s, still representing myself. This particular bill to remove the death penalty, I think is an integral part of moving our society forward. I have three children. If my son punched my daughter in the face, I would not advocate for her to punch him back in the face. Right? Common sense. Just because somebody hits you doesn't mean that you hit them and we literally teach that to kindergartners. Right? So then it boggles my mind that we can take that into adulthood. Because for me, as a mother, there is nothing that my child could do that would make me say that that was unforgivable and I now no longer want to see you. Because whatever somebody does that is a poor action, 90 percent of the time it is a trauma response. They are doing it because they are either traumatized, they are hurt, or they are in a position where they are struggling for survival. And if those things are the motivating factors as to why people make choices, incarceration and death are not going to fix them. Killing somebody because they killed somebody only makes more sad families. That doesn't make anybody feel better. That doesn't make anybody's family member come back and it makes absolutely no logical sense. And then I will bring up his name again, there are men like Earnest Jackson, Edward Poindexter, who are innocent. Edward-- or Earnest Jackson has been sitting in prison for two decades-plus for a crime that he did not commit. What happens if they would have murdered him? Because it's murder, whether the state does it or whether somebody on the street does it, it doesn't matter, there's still a dead body that somebody has to take care of. So humanity. If people would look at this through the lowest lens possible, they wouldn't even offer up the death penalty as an option. That's somebody's child. That's somebody's daughter, that's somebody's son. And as soon as you lock them away and say that they have no chance at rehabilitation, that's the end of their life. If you want them to be a healthy, supportive Nebraskan person that can come and be a part of society, throwing them away isn't going to help

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them. Therapy will. Killing them isn't going to help them. Trauma healing will. Let's work on making sure that people don't need to commit the crimes that get them locked up. If they had food, clothing and shelter, they wouldn't have to steal and murder to get it. If the basic human needs were equally basic human rights, we most likely wouldn't be sitting in this room. And I still want to throw back in, this is a continuation of colonization because I don't see Bill Gates going on trial for all the murders that he's committed by proxy. I don't see any billionaire that has had a major mess up sit in front of a courtroom for the mass amount of murders that they have committed. Obama isn't in anybody's court for putting out cages.

WAYNE: Thank you for your testimony. Any questions? Thank you. Next proponent. The next proponent. Welcome.

MIRIAM THIMM KELLE: Thank you. Thank you for once again putting this bill forward. It's important to me. I'm supporting LR17CA. I'm Miriam Thimm Kelle. Many of you recognize me from previous years. This is the last thing I want to do today. Reflecting on James's death, I prefer to remember his quirky, funny sense of humor. However, here I am again crashing back to 1985. As a nurse, I lived through COVID-19. I do not know if I would live or die, being overweight, over 60, and asthmatic. This has made me more brave and more aware of what we can do when we all work together. Hospitals do not wait for code blues anymore, they have a crisis team called and even family sees a decline, they come in the room. Beatrice State Developmental Center has a crisis admission knowing how long-term admissions are not the answer. Early interventions bring better solutions. For a long time, the death penalty was the proposed solution. We have learned the financial cost. And if you don't know, there is an emotional cost. The point is, these crimes once committed cannot be undone. Torture remains and death is permanent. I value all Nebraska life, and Nebraska is taking a hard stand for life. Let us support all those who need help. Many knew Michael Ryan had problems even before he was involved in Rulo. Others also know when someone is in crisis. Nebraska's are leaders. Let's work together and find solutions. We have the opportunity not to-- opportunity to stop the death penalty and be national leaders in innovation to put theories in place and stop deaths like James before they happen. Thank you for your time once again.

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WAYNE: Thank you. Any questions? Can you spell your name for the record, I think you forgot?

MIRIAM THIMM KELLE: Oh, I'm sorry. M-i-r-i-a-m T-h-i-m-m K-e-l-l-e.

WAYNE: Thank you. Seeing none, thank you for being here. Next proponent. Next proponent. Welcome.

SCOTT THOMAS: Thank you, Senator Wayne, Senators. And these, these chairs are warm, I know the chairs back there they are kind of cold. And last time I came in, I was kind of, I played fast and loose with it and I like to testify without writing anything down and I see you guys do a lot of work in here.

WAYNE: Spell your name, spell your name, spell your name.

SCOTT THOMAS: My bad. S-c-o-t-t, Scott Thomas, S-c-o-t-t T-h-o-m-a-s. Yeah, I remember the last time I tried to walk away and come back, you say you can't do that so I made sure to jot down some notes. OK. I'm with Village In Progress and Nebraska Human Rights NGO, and I'm 100 percent pro-life. So who says conservatives aren't intellectually consistent. OK. In accordance with Article III of the 1948 UDHR, I do not believe that the state has the authority to end life, it has a duty to protect life and along with a number of other human rights violations that I think Senator McKinney touched on when he talked about the issue with the drugs and some other possible complications. But I would say then there's also the issue of competency so the position of the left is that inequality in our systems requires the expansion of government to correct, to rectify. The position of the right is that America is a free country, you know, and what you do or don't have, what you do or don't make of it, that's on you. So there's a consensus in the lack of confidence in government. Back in the day, there was a movie about a man who saved his son's life. And at the last scene in the movie he tells him, he says, [INAUDIBLE], if you hit a man in his face in time that man can heal and you can apologize to that man. He said if you steal a man's goods, in time you could repay them and make it right with that man. But when you kill, there's no coming back from that. You can never make that right with that man, there's no way to make it right. And the state killed Jesus. Any questions from the senators?

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WAYNE: Any questions? Seeing none, thank you for being here again. You sure you leaving now, you going-- you need to say something?

SCOTT THOMAS: I'm good.

WAYNE: All right. All right. Next proponent. Next proponent.

JASON WITMER: Jason Witmer, W-i-t-m-e-r. What he said is the state legally killed Jesus per the people, the same Christian faith that we have. But I don't come to talk about religion much or, or stats. We got guys like Spike there that can come up with just stats. I just talk of personal experience. All right. So what I've learned in my family with my mother's death, which was domestic violence and my first memory and probably my last, that in all the anger and desire for the worst that happened to the individual, there will be no comfort or resolution in that ever. And we won't even have somebody to be mad at it about no more, we'll just be hurt. With that said, I've been in the system and I've been on death row twice. Did you guys know that we could go on death row? I kind of want to step back out of the other one because now I can't get my emotions right. And I say that because it's-- when they built Tecumseh they needed room as you guys know, the incentive gallery when you go to the hole was death row and we intermixed freely and talked to them guys. We're no safer killing nobody. I have-- I know you can go in the system right now, anyone of you all that have a doubt, ask about 30 people and you'll find out anybody that's been there since that place been open, at least in the first ten years, probably been on death row, none of them are dead or murdered. The people I know out here who have committed murder, because there's several of them, none of them, if any of them violated, was violent crimes that were potentially led to somebody's death. So it's, it's an illusion, it's an illusion. The healing, healing section, it's an illusion, that took a long, long road of anger. It's not that I'm healed, it's just that I started to understand, especially since I've been in the system with the individuals who committed the acts that harmed my family and learned that there is no healing in death penalty. And I don't know how we get across this idea that there is a justice in the "eye for an eye." But if we're doing it on faith, they're right, he's right, Jesus was killed legally by the system. And that's what we're preaching because he came to disrupt the Old Testament if I believe that, that was the way per John the Baptist, they can go look it up. But I just wanted

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to say that there is no healing there. There is no healing in the system.

WAYNE: Thank you for your testimony. Any questions from the committee?

JASON WITMER: Thank you.

WAYNE: Senator Blood. Oh, they got a question. There's a question for you.

JASON WITMER: Sorry.

BLOOD: OK. So you've been in here several times this year, a lot which is great--

JASON WITMER: Too much.

BLOOD: --by the way. No, there's no such thing as too much if you have something to say. Can you tell me the window of time you were incarcerated?

JASON WITMER: Tell you when?

BLOOD: Window of time, like, like, from one year--

JASON WITMER: So--

BLOOD: --to what year.

JASON WITMER: Yep, I did two numbers, so I started when I was 18 or 19. I started before that. I went in the juvenile system and I did about four and a half. And when I was 23, I got out for three months, was even worse than I was, because now not only was I more violent from my time in there, I had more friends of the-- we just built on each other, because that's usually how it happens is you push each other into it higher and then I went back for 17 and a half years and I got out in 2016. I'm not done with the number until 2025.

BLOOD: But can you give the window of time so I don't have to do the math, when did you say?

JASON WITMER: OK, '95 to '99, and I was out for the summertime, and '99 to 2016.

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BLOOD: So at the Pen?

JASON WITMER: At, at the Pen, at LCC in the beginning.

BLOOD: OK.

JASON WITMER: It was a little different than it was--

BLOOD: You were at LCC or D&E?

JASON WITMER: D&E, everybody goes through D&E, it's a--

BLOOD: Right,--

JASON WITMER: --it's a processing center.

BLOOD: --but some people end up staying there before they end up over here.

JASON WITMER: It's called RTC now, so maybe you don't know it as that.

BLOOD: No, I don't. Yeah,--

JASON WITMER: That's just a recent development.

BLOOD: --when I worked there it was D&E and LCC and--

JASON WITMER: Yeah.

BLOOD: --it was minimum and maximum and, yeah.

JASON WITMER: Yep, I went to LCC initially when it was "gladiator school" and then NSP shortly until they built Tecumseh and then Tecumseh for 15, 16 years until shortly after the Mother's Day riot pushed some of us out.

BLOOD: All right. Thank you. I was just trying to put things in perspective. Thank you.

JASON WITMER: You're welcome.

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

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CINDY MAXWELL-OSTDIEK: Thank you, Chairperson Wayne and members of the Judiciary Committee. My name is Cindy Maxwell-Ostdiek. That's C-i-n-d-y M-a-x-w-e-l-l-O-s-t-d-i-e-k, and I wanted to thank you for holding this hearing open today for everybody that would come to testify. That's unfortunately not happened at all hearings this session, and it's an important responsibility for Nebraska's second house to help these senators make the best laws for our land. I'm a mom and a small business owner and a volunteer and cofounder of the Nebraska Legislative Study Group, and we feel strongly that you should pass LR27-- excuse me, LR17?

WAYNE: LR17CA.

CINDY MAXWELL-OSTDIEK: I apologize. I have the wrong number written down. It's LR172A-- [SIC-- LR17CA] to abolish the death penalty. Let's bring this to the Nebraska voters again. We feel that it is something that is past time. We are very worried about how this has been implemented over these last few years and it is something that we think that was confusing the last time it went to the voters and hopefully it can be corrected. That's all I had to say. If you have questions?

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you--

CINDY MAXWELL-OSTDIEK: Thank you.

WAYNE: --for being here. Next proponent. Next proponent. Welcome.

CHRISTY HARGESHEIMER: Good afternoon, I'm Christy Hargesheimer, C-h-r-i-s-t-y H-a-r-g-e-s-h-e-i-m-e-r. And I'm appearing as a long-term, longtime Nebraska opponent of the death penalty, but also as a representative of Amnesty International USA. I'm the state death penalty abolition coordinator. And Amnesty has a number of reasons that I'm just going to outline a few of them because so many people have already addressed these. But I think that even the staunchest pro-death penalty advocate would find some of these that would resonate with them. So to date, there have been 191 exonerations nationally from death row because of such factors as prosecutorial misconduct, biased juries, witness error, forensic error, and that has often been deliberate. Has this happened in Nebraska? Absolutely. And you can look it up. Racial bias is factored into whether or not a

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murder is tried as a capital case. Currently, the Nebraska death row has eight minorities, black and Hispanic, and three white inmates, I believe. And David Baldus conducted a study in Nebraska that's in the Nebraska Law Review and it showed that the murder of a white victim by a person of color is the determining factor in deciding whether or not a case would result in the death penalty. And Baldus also found that there was geographic-- there were geographic disparities in Nebraska. Depending on what jurisdiction you lived in, some of them didn't have the financial resources necessary to conduct the expensive death penalty trials, so they opted for the less costly murder trial. Several studies have shown that states that have no death penalty have a lower number of violent crimes than states that practice the death penalty. Mental illness is also a factor to be considered. We all know the case of Nikko Jenkins. He pleaded for treatment for his mental illness and he was sentenced to death because Nebraska didn't listen to him or help him. Victims' family members, of whom we've heard some today, are not categorically disposed to seek revenge on a murderer. And so many have religious reasons or other personal reasons to want to forgive the person who murdered their loved one. Nebraska stubbornly ignores, or has up to now, all of these arguments. And instead of joining the 26 states that now have-- either have-- eliminated the death penalty, we just have proved that Nebraska is not for everyone, so.

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

CHRISTY HARGESHEIMER: OK. Thank you.

WAYNE: Next propo-- next proponent. Welcome.

TOM VENZOR: Thank you. Good afternoon, Chairman Wayne, members of the Judiciary committee. My name is Tom Venzor, T-o-m V-e-n-z-o-r. I'm the executive director of the Nebraska Catholic Conference. In 2018, Pope Francis issued an update in the section of the Catechism of the Catholic Church on the death penalty. Consistent with prior teaching, this update more vigorously calls for an end to the death penalty. And it states: recourse to the death penalty on the part of legitimate authority, following a fair trial, was long considered an appropriate response to the gravity of certain crimes and an acceptable, albeit extreme, means of safeguarding the common good. Today, however, there is an increasing awareness that the dignity of

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the person is not lost, even after the commission-- a commission of very serious crimes. In addition, a new understanding has emerged of the significance of penal sanctions imposed by the state. Lastly, more effective systems of detention have been developed, which ensure the due protection of citizens, but at the same time, do not definitively deprive the guilty of the possibility of redemption. Consequently, the church teaches, in light of the Gospel, that the death penalty is inadmissible because it is an attack on the inviolability and dignity of the human person and she works with determination for its abolition worldwide. This standard, rooted in the faith and tradition of the Catholic Church, is also a reasonable measure by which sound and justified public policy can be founded. The Nebraska Catholic Conference both invites and urges legislators and all Nebraskans to consider LR17CA state within this framework. For nearly three decades now, the Catholic Bishops in Nebraska have called for the repeal of the death penalty. In addition to the fundamental principle noted above, this call for repeal is based on other public policy justifications, which I would like to summarize here. And more information can be found in the handout, in addition to my testimony. One, the death penalty threatens innocent life of those wrongly convicted. Also, the death penalty disproportionately affects people of color, particularly black and Latino defendants, those living in poverty and those with intellectual disabilities or severe mental illness, which leads to a failure by society to care for the least of-- these among us. The death penalty also does not make society safer and costs significantly more than comparable non-death penalty cases and the death penalty does not necessarily bring healing to victim families. I've got additional things in my testimony there, but mostly they deal with just-- the situation that we're in, with modern and technological, sophisticated age. The death penalty is really no longer necessary for maintaining public safety, even though some would have a real desire for things like, you know, just retribution. We can't be saying the death penalty is sort of a panacea for, for curing a lot of our other issues. We've got deeper issues going, taking place in our society, systemic issues dealing with poverty, race, etcetera. And those are the issues that need to be addressed, but unfortunately, the death penalty doesn't address those. It, it actually disproportionately, sort of, attacks things. And I will leave it at that because my red light is on and take any questions.

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WAYNE: Senator Blood.

BLOOD: Thank you, Senator Wayne.

WAYNE: I knew that was coming.

BLOOD: You set it up.

WAYNE: I know.

BLOOD: On a serious note, Tom, can you help me? And I'm, I'm not saying this to be rude in any fashion. I'm really asking you to clarify this for me, so I get my head wrapped around this. Can you explain to me, since you speak on behalf of the dioceses, how we justify, as Catholics, because I am Catholic, the fact that our former governor's family bankrolled this on the ballot, this, this movement for the death penalty. But yet, we say it is wrong to kill people. But our church takes millions of dollars from that family. How do we justify something like that as a Catholic? Can you tell me how I get my head wrapped around that?

TOM VENZOR: Yeah. So I think at the time, that was prior to this revision of the catechism. And, and the catechism of the Catholic Church, at the time, really leaned heavily on, basically, an analysis of public safety. And the question was really, the death penalty ought not be used, unless one thinks it's necessary for public safety. And of course, whether one determines whether it's necessary for public safety, of course, is a question of fact. And it's a question that, you know, two different people might disagree on. So for, for us, for the-- for, you know, John Paul II, for Pope Benedict, you know, for the Catholic Bishops here in Nebraska, for us, that issue was pretty clear that it wasn't necessary for public safety. And I think, probably, at that time, I think one large part of the Governor's position at that time was that it was necessary for public safety. So I think there was a fundamental disagreement there, on whether it was needed or not needed, for, for the purposes of public safety. And that was based on the understanding of the catechism, which really had a leaning on that issue of public safety.

BLOOD: So, so morally, when we come to this body or we speak in hearings-- again, I'm not sure-- how do we justify that our church has taken millions of dollars from people who push the issue of

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killing other people forward, as something that's, that's a good thing. Like, how do we justify that?

TOM VENZOR: Well, again, so the--

BLOOD: How do we, how do we take-- continue to take their money?

TOM VENZOR: So the church's teaching on this-- I'm, I'm here to speak mostly on the church's teaching on this issue.

BLOOD: But no-- but you come and you lobby us and you talk to it. So I--

TOM VENZOR: Sure.

BLOOD: --as a Catholic and a, and a policy maker, since you're my, my portal to the Catholic faith when I'm in here-- I'm, I'm not trying to make you uncomfortable. I'm-- I have yet to hear a good answer to this and I, I need to know.

TOM VENZOR: The, the answer is that there again, like I just acknowledged, there can be issues on which there's going to be legitimate disagreement on certain factors and certain circumstances where you do the analysis. Under the, under the prior paragraph of the catechism, the question of the application of the death penalty largely hinged on this question of public safety. And that's an area in which there's room for legitimate disagreement among people of, of goodwill, so to speak. We came down, the, the Catholic Bishops, Pope John Paul II, Pope Benedict, Pope Francis, etcetera, have come down pretty clearly on what we think that fact analysis is and that it's not necessary to protect public safety. And so, that's where I think the underlying issue is at.

BLOOD: So if I hear you correctly, when it comes to public safety, we support public safety. I mean, we look at like, Romans, right, obey the law of the land. So it's OK to take tainted money, as long as it's about public safety?

TOM VENZOR: Again, I, I think, I think--

BLOOD: Or am I misunderstanding?

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TOM VENZOR: Well, yeah, I think, Senator Blood, you're misunderstanding, I guess, the, the deeper-- I guess the nuances here, the history of the Catholic Church's teaching and understanding of the death penalty. It has recognized that states have had legitimate authority to exercise the death penalty, philosophically, principally. Also-- but as time has developed and figuring out some of the, some of the other circumstances, like restorative justice, rehabilitative justice, whether it's needed as a proportionate matter for the situation, whether it's needed for public safety, etcetera. It's come to a, sort of, a deeper understanding of some of those other considerations and come to the conclusion that it's, it's, it's not necessary, practically speaking, to utilize the death penalty. And it also, is-- undermines the human dignity of the, of the human person.

BLOOD: [INAUDIBLE]. I appreciate anything you can send me. That's a legit question. I'm still looking for better answers. So I didn't mean to--

TOM VENZOR: OK.

BLOOD: --put you on the spot, but you're the one I got to ask, so thank you.

TOM VENZOR: Sure. Thank you.

WAYNE: Senator DeBoer.

DeBOER: Thank you, Senator Wayne. This part of the catechism, then, was changed in 2018?

TOM VENZOR: Yeah. It was kind of-- it was an update to that specific paragraph, 2267.

DeBOER: So would it be fair to think that there might be a change in public sentiment about the death penalty in Nebraska, based on that change in the catechism, in 2018?

TOM VENZOR: Yeah, I think, I think-- yes. I mean, these-- at least, I can speak, you know, again, from a Catholic perspective here. For Catholics, this helps us have a deeper understanding of, sort of, other elements of justice that are involved, when, when the state's trying to execute and mete out-- I shouldn't use that-- but when the

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state is trying to, sort of, mete out justice. And when you've got other considerations that are being taken into account, like restorative justice, rehabilitative justice, those kind of aspects help us have a deeper understanding of the dignity of the human person. And so, I think those things, you know, form consciences, so that they can have a better understanding of what the right thing to do is in a particular scenario. So, yeah, I think this is helpful, in terms of helping people understand more deeply, kind of, what our moral call is, in this area.

DeBOER: So is it possible that the change, since the 2016 vote, in Nebraska, of this catechism would lead to, potentially, a change in some of the people who voted in that 2016 election versus today, since this catechism has, has been published?

TOM VENZOR: I think it would and I certainly hope it would. So.

DeBOER: Thank you.

WAYNE: Any other questions? Seeing none, thank you for being here.

TOM VENZOR: All right. Appreciate it. Thank you.

WAYNE: Welcome back, Spike.

SPIKE EICKHOLT: Thanks. Good afternoon. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska, in support of LR17CA. We want to thank Senator McKinney and-- for introducing and Senator Hunt for co-sponsoring it, as well. In order for the state of Nebraska to take a life, the state must do so fairly and our position is simply that the state cannot do so. We oppose the death penalty on Eighth Amendment grounds because it doesn't prohibit-- or does provide for cruel and unusual punishment. And we oppose it on 14th Amendment equal protection grounds, because it does provide for unequal treatment in the law. All of the unsavory features that, that exist in our criminal justice system are intensified and are present in the death penalty scheme that we have. Abuse of, abuse of prosecutorial discretion, disparity in application, racial overrepresentation of defendants and the disparate impact on the poor are evident in our death row. We are one of the 27 states that have the death penalty. And I'm glad that Senator McKinney brought this proposal because I think, of all the

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criminal justice bills that we've heard this year, I don't think anyone's ever talked about the death penalty. I don't know that anyone's ever even brought it up on floor debate or anything like that. More and more states are moving away from the death penalty. Even since we voted to retain or to keep it in our books, states have repealed it. We are still behind the nationwide trend. In 2021, Virginia repealed their death penalty, Colorado, in 2020, New Hampshire, in 2019, and Washington state, in 2018. If you got-- if you look at my handout, I attached a couple of graphs from the Death Penalty Information Center, that shows what other states are doing regarding the death penalty. Not only are more states doing away with the death penalty, but death sentences that are imposed are trending down, significantly. And fewer people are being executed each year. There was a slight uptick in 2022, both of those categories, but they are still significantly down from where they were before. We have, I think, 10 or 11 people on death row. I'm not certain. I think I can name them all. I kind of wrote them out earlier today. At one time, most people and the state policymakers were very familiar with the status of those cases, but many people don't know that. I just had to submit that. I did some canvassing for a couple of candidates last fall, where I walked around the districts. And I-- I've talked to many voters and I don't think anyone brought up death penalty. I mean, some people brought up crime: bonds and catalytic converter theft, those kind of things, but I don't know that anyone brought it up. In response to, maybe, what Senator Holdcroft mentioned before, the voters did vote for something. I was part of the litigation team that argued that some of the language was confusing. And I think, just the nature of where it ended up before the voters, was inherently confusing. We'd repealed the death penalty. The issue was, do we retain the repeal? Right. So it was just kind of confusing. And that language in there, people [INAUDIBLE]. But his-- Senator McKinney's proposal is fair, in that it does put the question back to the voters. In other words, he's not proposing to amend anything, statutorily to undo it like the, the voters did, he's proposing a constitutional amendment to put it back to the voters. I will answer any of your questions, if anyone has any.

WAYNE: Any questions? So one of my issues with the death penalty is the inconsistency on how it's applied. And I want to get your thoughts to this: if one murderer is death penalty worthy and the other one is not, are we saying that victim is worth less?

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SPIKE EICKHOLT: I mean, that's, that's a fair question. I-- first, I don't know that the death penalty is necessarily-- and I can't speak for victims, obviously and I probably shouldn't, but you probably will hear from some. I don't know if that makes their loss any easier.

WAYNE: Because, I mean, some people who are sitting on death row, while other ones plea down to second-degree murder--

SPIKE EICKHOLT: Right.

WAYNE: --for more heinous crime-- for--

SPIKE EICKHOLT: Right.

WAYNE: --all intents and purposes, the facts are worse than some of the people who are on death row. And so, I don't know, just-- you heard me on the floor, about trying to be consistent. Like, let's just make things consistent. It's just weird. Anyway, random thought. I'll be quiet. Any other questions? That wasn't a question, so. All right. Thank you for being here. Next proponent. Welcome.

KURT MESNER: Hello. My name is Kurt Mesner, K-u-r-t M-e-s-n-e-r. In 1980, my sister Janet was brutally murdered here in Lincoln. And my, my, my reaction, my family's reaction, was not of hate, but of I wouldn't call it forgiveness, but acceptance of what had happened. Forty-two years ago, on the, on the day that the trial began for the murder case Randolph Reeves, my dad, Kenneth Mesner, testified to this Judicial Committee, long before he knew that Randolph Reeves was going to be sentenced to death. When I found out that Randy was going to be sentenced to death, my reaction was, this is not right. At that time, my wish was that he would never be executed. And many years went by, execution date had been set once and it had been, had been a stay of execution by the court. In 1998, of November of 1998, execution date was set for early in January of 1999. The next day, I took a load of grain into the elevator and I found out what the general feeling was of people in Nebraska, when I walked up to a man in front of me in line and his first words out of his mouth was, your family is finally going to get justice. I, I, I took a deep breath and said, no. Justice would be if Randy had been given life imprisonment. Thank you. Any questions?

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WAYNE: Any questions from the committee? Seeing none, thank you for coming and testifying. Next proponent, next proponent. Welcome.

ELIZABETH OSBORNE: Hello. Welcome. Thank you. My name is Elizabeth Osborne, E-l-i-z-a-b-e-t-h O-s-b-o-r-n-e. I teach religion at Roncalli Catholic High School in Omaha, Nebraska. And I'm super nervous. When I saw the email from Nebraskans for Alternatives to the Death Penalty for this hearing, it was the perfect timing. I teach Catholic social teaching and we are presently going through the first principle of Catholic social teaching, which is the dignity of the human person. Just before our spring break, we watched Just Mercy and I have taken my kids through the wringer and learning about all the stuff: the facts, the statistics, what life on death row is like. And we tend to gloss over the difficult question, which is what do we do and how do we see the people that we think, maybe, deserve to be on death row, not the ones who shouldn't be there, but the people that have done atrocious things. And it's hard to do the thing, which is to believe that their lives have dignity and that they're still sacred and worthy in God's eyes. The death penalty, I think, eliminates us from being better people and living to a higher standard of not just, just disposing of people because they've done something bad or wrong. I'm not saying I'm perfect. I get upset with my students when they do stupid things in the classroom. But I think getting rid of the death penalty will challenge us, as people in the state of Nebraska, to really grow in compassion and mercy for each other, which we desperately need right now. And it's, it's great. You know, I-- I've had students really grasp this concept of the sacredness of the person and actually changed their minds on the death penalty. Like, I'm working with seniors in high school and it's not something they necessarily think about every day. But I spend two weeks looking at this life without parole, what it's like to be disadvantaged, mental health. And at the heart of it is the sacredness of the person. And, and we have to challenge ourselves to hold onto that, particularly in today's society, where it's really difficult to do that. Thank you.

WAYNE: Thank you. Any questions? Senator Blood.

BLOOD: Thank you, Chair Wayne. Boy, I wish I could sit in on your class. You're awesome.

ELIZABETH OSBORNE: Thank you.

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BLOOD: I, I think you should become a lobbyist for the church, because you did a great job of describing where we're coming from. But with that said, I had a question for you now, because I want to ask you, because this is exactly what you teach.

ELIZABETH OSBORNE: It is.

BLOOD: How do we, as a church, justify taking tainted millions of dollars from people who push for the death penalty? How is that right?

ELIZABETH OSBORNE: I don't think it's right. I, I have shown the documentary, *Stones*, that Nico [PHONETIC]-- I don't know his last name-- put together, in 2015, 2016. And I walked my students through the process of the legislative process and, and Governor Ricketts vetoing and then overcoming that, that veto and then, the petitions. And I tell my students that I remember seeing people at the College World Series, which is a ton of out, out, out-of-state people, will you sign this petition and, and then it was back on the ballot. And, and there we go. And I don't shy away from telling them that our Governor is Catholic. And while the provision wasn't there, in that time, in the catechism of the Catholic Church, I don't think most of the people on death row, in the state of Nebraska, are a threat to society. So I don't know if, necessarily, what the catechism taught at that time would even be applicable to those people. So I, I don't like that we take money. I, I think it's--

BLOOD: Yeah. I'm sorry to put you on the spot. I just-- like, you seem very hip, very intelligent, very-- you verbalize things very well. So I was curious, because we usually have one or two people that come over and over and over again to answer those questions. So thank you for, for taking that hard question for me. I'm really appreciative.

ELIZABETH OSBORNE: Did I answer it?

BLOOD: I'd say 75 percent.

ELIZABETH OSBORNE: OK.

BLOOD: I think it's probably more of a hallway conversation.

ELIZABETH OSBORNE: OK. Yeah. Yes.

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Judiciary Committee March 16, 2023

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WAYNE: Any other questions? Well, thank you for coming and thank you for teaching in my district. And just so anybody who may read this, she is not speaking on behalf of Roncalli.

ELIZABETH OSBORNE: I'm not. Just me.

WAYNE: Helping you out there.

ELIZABETH OSBORNE: Thank you.

WAYNE: No problem. You know, you got to say those things or everybody's going to assume that you were. It's weird. Next proponent.

MARGARET VRANA: Good afternoon. And thank you all. My name is Margaret Vrana, M-a-r-g-a-r-e-t V-r-a-n-a, and I live here in Lincoln. I, I wish to tell a story that I learned-- and I'm going to cry, probably-- from Frank LaMere himself. He and Ernie Chambers are my heroes, in terms of defending people who, who are on the outskirts of proper society. Oh, gosh. It's been, probably, 20 years ago, I met Frank. And he told the story of when his father was killed by three young men. Frank was a boy at the time. And in the wisdom of the Ho-Chunk or Winnebago tribe, the family offered to adopt these three young men. Well, was in a very short time, one young man committed suicide. And not long after, the other young man was killed in an automobile accident. The third accepted responsibility for his action. And in essence, sort of became the guardian angel for the LaMere family. If it was getting to the end of the month, they learned that their utility bill had been paid. If they were running low on wood, they'd get home-- arrive home one day and find a, a new big stack of wood, you know, firewood, cut up and left by the door to the house. He continued on this way and became a father and eventually his son married into the LaMere family. All this because of love and kindness extended to him, as an errant young man. Thank you.

DeBOER: Thank you for your testimony. Are there any questions? Thank you for being here. We'll have our next proponent.

FRAN KAYE: Thank you, members of the Judiciary Committee. My name is Fran Kaye, F-r-a-n K-a-y-e, and I'm testifying in favor of LR17CA. I've been testifying here against the death penalty since 1982. I

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could say a million things about why I believe the death penalty is wrong. But I focus today on innocence. The death penalty will inexorably lead us to execute an innocent person. Since 1976, when the death penalty was reestablished in Nebraska, 191 persons have been exonerated from death rows, not on some technicality, but because they were actually innocent. For every 8.2 persons executed in the U.S. since 1976, one has been exonerated. At least 20 persons have been executed despite serious doubts about their innocence. Bryan Stevenson weaves the story of Walter McMillian, a wrongly convicted and sentenced client, through his compelling memoir, Just Mercy. Walter is exonerated, but his story illustrates how a whole state and justice system can jump to and maintain a wrongful conclusion. In 2015, persons who had been exonerated, deeply influenced the Unicameral to abolish the death penalty. When their classmate was murdered, Curtis McCarty and others provided blood evidence that ruled him out. Police, unable to find the killer, circled back to the victim's network of friends. Irritated by Curtis, they decided to pressure him. An obliging police chemist, Joyce Gilchrist, whited out her original conclusion that his blood type did not match and typed in the opposite: from not a match to almost certainly a match. That testimony really got to a lot of senators. Curtis McCarty was convicted and sentenced to death. He spent 20 years in prison in Oklahoma. Despite many criticisms of Gilchrist's work as early as 1880-- 1987, when she implicated Curtis, her testimony led to 23 convictions and 11 executions, including Curtis's cellie, whom Curtis is sure was also innocent. Oklahoma executes the most people per capita of any state. Gilchrist got good results, and so the police kept her. Humans are not perfect. We make mistakes. Executing an innocent person makes all taxpayers guilty of felony murder. That's not OK. Please support LR17CA. Thank you.

DeBOER: Thank you for your testimony. Let's see if there are any questions. Any questions from the committee? I don't see any today. Thank you for being here. Let's have our next proponent.

ALEX M. HOUCHIN: Good afternoon, Vice Chair DeBoer and senators of the Judiciary Committee. My name is Alex M. Houchin, that's A-l-e-x M as in Michael, H-o-u-c-h-i-n. And I'm offering testimony today, both in an official capacity as the sole staff member of Nebraskans for Alternatives to the Death Penalty and as a private citizen, who cares very much about criminal justice reform in our state. One of the most interesting things I learned in doing this important work is that the

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individual paths that lead people to oppose the death penalty are as widely varied as you'll find on just about any issue. Today's testimony has been a wonderful example of this. In fact, you've heard from Nebraskans concerned about government overreach, the cruel brutality of the execution process, the death penalty's failure as a deterrent, the disparity and bias in its application, the unacceptable risk of executing innocents, its incompatibility with a variety of faiths and creeds, and even the false promise of closure for victim's families that delivers only retraumatization. Beyond that, I won't attempt to rehash all of that excellent commentary, but I did just want to add a couple of quick, quick statistics. First, the capital punishment system is very expensive. Dr. Ernie Goss, an economics professor at Creighton University, conducted an in-depth 2016 study on the costs of pursuing a death sentence versus pursuing a sentence of life. He ended up all those extra costs through all the stages of the process, from investigation to charging, to prosecuting, to sentencing, to incarceration and all the way through the years of constitutionally mandated appeals, as well as associated staffing and infrastructure costs all along the way and found that Nebraska spends an average of over \$18 million, each year, just to keep the death penalty on the books. Now, that's adjusted for 2023 dollars. But that means if you look back across the 46 years that Nebraska has allowed capital punishment, that means we've spent over \$800 million just to execute four people. I'm sure some of you can think of a lot more interesting ways to spend \$800 million in 2023. But second, although supporters of capital punishment often list public safety as a factor, the reality is often very different. Several national level surveys of a wide range of criminal policy experts and law enforcement professionals have found that the death penalty consistently ranks last on a list of policies to help reduce and prevent violent crime. I see my yellow light is on, so I'll just close by saying that I hope all of you will reflect on what you've heard today with an open mind and an open heart. I'm always happy to speak privately with any of you at length about this important issue or dig up any statistics you like. But for now, I urge the community to please vote LR17CA out to the floor for full debate and to support it through Final Reading. Let's build a better Nebraska together. Thank you very much. And please drive safe.

DeBOER: Are there any questions? Alex, I have one for you. What did you say the cost was? The cost to put those four people to death?

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ALEX M. HOUCHIN: Per year?

DeBOER: Yeah. What was the cost you said?

ALEX M. HOUCHIN: So the results of the 2016 study were \$14.7 million per year. But adjusted for 2023 dollars, that's a little over \$18 million.

DeBOER: \$18 million a year?

ALEX M. HOUCHIN: A year, just to have it on the books. That's if we use it or not.

DeBOER: And is that over and above the cost of life imprisonment for someone?

ALEX M. HOUCHIN: Yep. That's-- that was the whole gist of the study. And I can provide the, the study if you like. It's specifically versus not pursuing a death sentence, but instead, pursuing a life sentence.

DeBOER: And how many people, do you know, do we have on death row right now?

ALEX M. HOUCHIN: I think the number is 11.

DeBOER: So we're spending \$18 million a year for each one?

ALEX M. HOUCHIN: No.

DeBOER: Total.

ALEX M. HOUCHIN: Total. Total. That's just to have the system as it exists: you know, the infrastructure, the staff training, transportation to and from court hearings, court staff, like, all told, versus a case where they would seek a life sentence. That's the above and beyond cost.

DeBOER: OK. Thank you very much. Are there any other questions? I don't see any. Thank you for being here.

ALEX M. HOUCHIN: Thank you very much.

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DeBOER: Next proponent. Is there anyone else who would like to testify in favor of this bill? Let's switch to opposition. Is there anyone who would like to testify in opposition to this bill? Let's see if there's anyone in the neutral capacity. Anyone like to testify in neutral? All right. While Senator McKinney is preparing for his closing, I will say that there are 33 letters: 29 in support, 4 in opposition and there is 1 ADA comment in support, as well, from Lacy Smith. That will end our hearing on-- oh, no. You still get to close. I was going to end without you getting to close. So you get to close.

McKINNEY: Thank you. Sounds like the people want to ban the death penalty. But just honestly speaking, I think, you know-- and I love the testimony of the, the teacher from Roncalli. I think we do have to open ourselves to be humans and understand some of the things that were legal in the past and legal now, might be and are harmful. And it's on us to challenge ourselves, as humans, to change our perspectives in which we've been taught throughout life. I think as humans and as men and women of society, we have to continue to evolve each and every day, to learn from each other and learn to better ourselves. And I think, when you look at the Catholic Church's position currently on the death penalty, it shows that there's evolution and things change. And, and with more information and more facts, we can make better decisions in life. And we can't just always stand on just, oh, these are traditions, because sometimes, traditions are bad and harmful and disproportionately harmful. And I strongly believe that the death penalty should be banned. It should have never been a thing and it shouldn't be a thing in the state of Nebraska. And I'm hopeful that one day, we can get this passed and, and the voters will pass and, you know, ban the death penalty. Thank you.

DeBOER: Thank you, Senator McKinney. Any questions from the committee? That ends our hearing on LR17CA. And that will bring us to our next hearing on LB749 and Senator Machaela Cavanaugh. Welcome, Senator Cavanaugh.

M. CAVANAUGH: Good afternoon, Vice Chairwoman DeBoer and members of the Judiciary Committee. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h. I represent District 6 in west central Omaha, Douglas County. And I am here today to introduce LB749. And I am very mindful of the fact that I am standing between all of us and four days away from this place. So we will probably

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make our way through this with some speed. The bill that I'm introducing today is a prohibition on weapons in the Capitol. So the way it is currently, you cannot have concealed carry weapons in the Capitol, but you can have open carry. And this bill would-- essentially, seeks to make it so that you cannot have guns in the Capitol. Ideally, I would like to see our Capitol have a secured entrance, but that would be another, another day, another conversation. I think we are one of nine states that does not have a secured-entrance Capitol and I think that it's, maybe, time for us to start looking into that. Ten states allow-- in 2021, 10 states allowed open carry firearms. But since that time, Michigan has new restrictions and that leaves only nine states. And I did have an amendment. I can't remember if I-- yep. I did file the amendment, because it came to my attention, from the other Senator Cavanaugh, that the, the language in my bill did not mirror the current penalties for concealed carry and it was a more severe penalty, so my amendment would make the penalty for having an open carry gun in the Capitol the same as for a concealed carry. So, I think that's the nuts and bolts of it. I'm happy to take any questions. Yeah.

DeBOER: Oh, wait. You don't have to-- I forgot. Are there any questions?

M. CAVANAUGH: You want me to call on you?

DeBOER: Are there any questions? OK. So my question is, can you just tell us what the, the reason that you can't have a concealed carry in the Capitol is?

M. CAVANAUGH: Because law enforcement. Because of our law enforcement that's in the building, you cannot have concealed carry. It's like you can't have a-- you can't take a concealed carry into a police station. But we don't have anything strictly prohibiting open carry. So I want to make law enforcement in this building's job a little, a little less stressful, if possible. And the prohibit-- the prohibition of having open carry guns in, in the Capitol would make it, make it more secure for law enforcement, who will be still able to carry. So like today, the testifiers that came, that are law enforcement, they still would be able to carry. This does not prohibit law enforcement from carrying their weapons.

DeBOER: Thank you very much.

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M. CAVANAUGH: Thank you.

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

M. CAVANAUGH: Great.

DeBOER: Thank you. I'll have our first proponent testifier.

RON CUNNINGHAM: Ron Cunningham, R-o-n C-u-n-n-i-n-g-h-a-m. Ever since the Supreme Court ruled in the Heller case on gun rights, in my opinion, so many of the gun advocates have tried to convince me, personally, that, like a bolt of lightning out of the sky, they got absolute and almighty power on gun rights. Today's Lincoln Journal Star, if you look at the editorial, it was referencing misinformation and disinformation and so take a look at that. If I recall the vote in the Supreme Court, Scalia-- it was five and four. So it wasn't unanimous. It wasn't overwhelming. But yes, it's the law and we can accept that. But gun advocates never give a voice to those four dissenting votes. In a family, if I have a family and five of them vote for pepperoni pizza and four of them vote for hamburger pizza, I hope that we never get to the point that the hamburger people never get considered. I'm-- Justice Scalia, a lot of people misinterpreted him. And he even had said, you know and you're familiar with what he said, but the one thing, about you can't carry guns every place and do whatever you want and everything, but he said, the rights secured by the Second Amendment are not unlimited. In addition, he said, guns could be restricted in schools and government buildings. And to me, I don't know what this is, if it isn't a government building. Most people agree guns should be allowed at schools. I watch the Legislature sessions often. And there's very few days that I can't recall but what a group of school kids aren't recognized in the balcony. I don't see how, that as lawmakers, you can say, restrict guns at schools, but it's OK if we shoot one in the Legislature. I just don't see a realistic reason why anyone would need to bring, bring a gun into this building. You can't hunt. And I probably killed more pheasants, deer, geese than anyone in this building probably today. And you can't use it for recreational purposes. So the only purpose it, it could be brought in for is to injure someone. That's the only purpose. I, I think if we look at what our-- the intent of our forefathers, I think they would be embarrassed at how far we've come, in 300 years, in terms of what we recognize as governing and needing the use of guns. So I ask that you support this bill. It

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just-- guns have no place in, in governing. If this, if this is where we're at in a society, it's a sad situation. Thank you.

DeBOER: Thank you. Let's see if there are any questions. Are there any questions from-- doesn't look like it. Thank you very much. Senator Wayne's going to take back over.

WAYNE: Next proponent. Welcome.

JAYDEN SPEED: Thank you. Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Jayden Speed, J-a-y-d-e-n S-p-e-e-d. I'm 18 years old, a senior in high school, the leader of Nebraska's chapter of Students Demand Action and a member of the Students Demand Action National Advisory Board. I'm also a person who truly loves our state Capitol and admires our building. Our Capitol building is home to Chambers that honor Senator George Norris and Jerome Warner. It is home to our Unicameral, our Governor's Office and various other state officials. It is a place where fourth graders come to learn about civics and what it means to be a Nebraskan. It is the place where the second house fulfills the words of Hartley Burr, Burr Alexander, which appear above the north entrance to the building. However, as we've entered a time of increased polarization and political violence, our Capitol building has also become a battlefield. In 2020, this-- less than a year before armed extremists stormed the United States Capitol, men carrying rifles came into these halls. They did this in an attempt to intimidate senators and supporters of a commonsense, extreme risk, protection order bill. They did this in the wake of death threats to your former colleague, Senator Adam Morfeld. Political violence and violent intimidation has no place in this building. LB749 is the most commonsense measure to protect those that serve, work and advocate in the halls of our state's highest building. The standard is common across the state and across the United States. It's common courtesy for county courthouses or government buildings in this state to prohibit deadly weapons. Every time you enter my county courthouse, a deputy is there to greet you at the door and ensures that you're not carrying a deadly weapon. My grandfather, who's 79 years old, never convicted of a crime, happily turns in his pocket knife every time he enters the county courthouse, because he knows that it's common sense, that it ensures the safety of everyone within the building. One more story. I have a tradition that every year on my birthday, we come to this building and then we go downtown to eat. We come to admire the Christmas tree

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in the rotunda, to talk about the statues in these halls and to explore the building. We do this because of a passion for our democracy and because this building is worthy of our admiration. The moral is, I would like to know that everyone, including myself, is safe when visiting this building. Thank you.

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

JAYDEN SPEED: Thank you.

WAYNE: Next proponent.

MAGHIE MILLER-JENKINS: Hello, again.

WAYNE: Hello.

MAGHIE MILLER-JENKINS: My name is Maghie Miller-Jenkins, M-a-g-h-i-e M-i-l-l-e-r J-e-n-k-i-n-s, and I am at it again. This one, I definitely am a proponent for LB749, because there shouldn't be guns inside of here. Everybody witnessed January 6. Everybody watched it. We don't really want to live it. So in order to keep us safe, if that's their job, then it should be common sense to pass this. But I did want to just kind of like bring it up and throw it out there that all of you, barring DeBoer and Blood, voted to promote LB77, which eliminated safe storage for weapons. I'm just kind of throwing that to the people, that if, if we're really about making sure that our youth are safe, if we're really about making sure that Nebraskans can, you know, make it through any given day, I'd say eliminating the access to guns, to people that shouldn't have them, kind of important. Maybe just a little bit. I'd also say that if your job is to keep us safe and make sure that as I come in here with my two-, five-, eight- and ten-year-old children, that I'm not met with unstable men with guns, because it is statistically proven that 97.7 percent of mass shootings are performed by cis head, cis hetero white men. So statistically, they're not emotionally stable enough to be able to own weapons to begin with. So removing the mental health checks that need to be there, the concealed carry that needs to be there, the safety and precaution things that need to be there, so that we're safe, especially my two brothers sitting up here. You know that gun violence affects us more. You know that people that look like us not only get arrested and incarcerated more for gun violence,

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we are also the victims of gun violence more often than any other race. Right. So while you're sitting here in your jobs as senators with all this power and control that you have earned in your positions, please use it appropriately. I'm looking specifically at you two, because you two are my representation up here. You two are my hope that my children that look like you-- I have a little boy that's ten years old. He looks a lot like you, sir. He looks a lot like you. I'll bring him up here so you can say hi to him. His name's Ayden [PHONETIC]. So when you're looking at things like this, I want Ayden [PHONETIC] to be safe in these halls. Please pass this, so that when I bring my ten-year-old up here, I'm not scared that some big, dumb, white dude is going to have an AR-15 in these halls and scare the hell out of my child. Because that's not necessary and that's not why we come here. We come here so his mom can talk to you. And I know you love hearing from me, just so much. And you all should get used to my face, because I'm going to be here, just so often, in your emails, in your faces, you know, doing the job that I don't get paid to do. I don't make a salary being on this side.

WAYNE: Thank you. Any questions? Seeing none, thank you for being here again. Next proponent. Welcome back. You've been here before.

MELODY VACCARO: Hi. My name is Melody Vaccaro, M-e-l-o-d-y V-a-c-c-a-r-o. I'm representing Nebraskans Against Gun Violence. I sent every-- all the senators an e-mail today, letting you know that we were having a press conference to mark the five-year of all of the student walkouts across the state. We did that in the rotunda at noon. And I wanted you to know that there was a fifth grader that was too short for the podium. And we had to kind of move the mike to the side and everybody started crying, because she is not feeling safe at school. We had teachers-- elementary school teachers who talked about how there is no more learning after a safety drill. It's all done after that, because the children are upset by the shooter drills that they have to do. I've passed around a long article from the American Psychological Association. There's a gazillion studies linked in and they're, kind of, just summarizing all of the different, kind of, points that they want to make. One thing that they really harp on is that our children are facing mental health crises, which is a pretty reasonable response to climate catastrophes. When you look at Alvo and their tire piles, you look at Mead and their dirty soil and dirty water, where you have widespread poverty. We-- children know that they're growing up in a space where financial security is-- you can

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work really hard and that may not be on the table for you. And it's been five years since all those kids walked out, from Omaha to North Platte. And nothing's going on. We haven't moved forward. And in fact, since all the kids across the country, including in Nebraska, walked out of their schools, gun violence is now the number one cause of death for American children in the United States of America. The only thing we're really seeing to deal with children's safety right now is adding police, hardening of the schools. And we're not doing what is really the right thing to do, which is telling people who bring guns into spaces, you can't bring them everywhere you want. You have to lock them up. You are responsible for your own guns. And I would especially think about this Capitol and we're thinking about children today, especially I am. This is a place for children. They come here every single day, all across the state. And they don't deserve to see AR weapons. They don't deserve to know that that's possible. And so, I just wanted to bring all of that to the table.

WAYNE: Any questions from the committee? And thank you for this handout. You do come all the time with good facts. I really appreciate it.

MELODY VACCARO: Absolutely.

WAYNE: Any questions? Seeing none, thank you for being here. Next proponent. Next proponent.

MICHELLE BATES: My son inspired me [INAUDIBLE] talk, so. My name is Michelle Bates, M-i-c-h-e-l-l-e B-a-t-e-s. My son, Jayden, just came and spoke to you guys. I have to tell you, what I-- when he says he-- his tradition is to come here every year, we come here every year for his birthday. That is how we spend his birthday, December 26, the day after Christmas. We come here to this building to look around and to look at the phrases that are on the walls, to look at the mottos, to look at all of the things that make Nebraska the place that it is. We walk by all your offices, offices. You know, so he has to usually educate me more because he knows lots more about all of you than I do, myself. And I'm-- he's very educated in that. And we talk about what it means to be a Nebraskan. He talks about his love for this state, his love for this Capitol, his love for this building, his love for our legislator, our Unicameral. You guys are-- you are looked up to by many students, by many people. You are not just regular citizens to us. You are the ones who hold our state together.

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And so, by protecting this building, by protecting us, you're doing your jobs. So I just want you guys to know that we appreciate you and what you do. And we need you to have our backs just like we have yours.

WAYNE: Thank you. Senator Blood had a question for you, though.

MICHELLE BATES: Oh, I'm so sorry.

WAYNE: That's all right.

BLOOD: It's all right. We all want to go home. That's the problem. Now, just a quick question. Are you, like, super proud of your son, coming back from Washington, D.C., this week and all that he's achieved?

MICHELLE BATES: Yes, I am. Jayden actually went and represented the state of Nebraska in the United States Youth Senate program. And he is-- he did very well. He really enjoyed it. He had a \$10,000 scholarship. But I will tell you that Jayden is going to go on and fight for this state and fight for our country and be a representative, hopefully a legislator someday, hopefully a president someday. He is truly someone who loves our state. He, he loves this, this state and the United States. So I am very proud of him.

BLOOD: Thank you.

WAYNE: Any other proponents, proponents? Thank you. Welcome.

CINDY MAXWELL-OSTDIEK: Thank you. Chairperson Wayne and members of the Judiciary Committee, my name is CINDY Maxwell-Ostdiek, that's C-i-n-d-y M-a-x-w-e-l-l-O-s-t-d-i-e-k, and I know I mentioned this earlier, but at every hearing I am making sure to thank the Chairperson for holding it open for all who come to testify. It's unfortunate that's not been the case at all the committee hearings this session. And we want to make sure and draw this-- attention to this important responsibility we have, as the Unicameral's second house. I am a mom and a small business owner and a volunteer and co-founder of the Nebraska Legislative Study Group. And we have followed the Legislature closely and strongly support LB749, to prohibit possession of deadly weapons in the state Capitol or on state Capitol grounds. Nebraskans of good conscience encourage civic engagement and thoughtful consideration of proposed policy by our

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elected officials. And we understand, at a fundamental level, it's impossible to ensure that everyone, Nebraska's legislators and citizens of the second House can be safe and free of intimidation when they're in the state's Capitol, if they're confronted in the hallways, in the committee hearing rooms, the balcony and the floor of the Legislature, with other people carrying and displaying deadly weapons. As a concerned community member, the images from the Capitol and Judiciary hearing from a few years ago was very alarming. I record the Legislature every day and I remember how many of our members were scared and how it had an impact on whether they wanted to come and testify at future hearings. It also brought pause to parents with children, on field trips to the Capitol. And it's unfortunate still-- that it is still a concern. It's also discouraging that Nebraskans recently brought weapons to the Rules Committee hearing at the beginning of this current session. It just doesn't make sense. We don't allow props. We don't allow signs in the balconies or in the hearings, but we do allow weapons? We thank Senator Cavanaugh for bringing LB749. Please vote yes on this important legislation, so Nebraskans can freely participate in our Capitol and with your senators without any fear or intimidation. Thank you.

DeBOER: Thank you. Let's see if there are any questions. Any questions? Thank you for being here.

CINDY MAXWELL-OSTDIEK: Thank you.

DeBOER: Next proponent.

CARINA McCORMICK: Hello, my name is Carina McCormick, C-a-r-i-n-a M-c-C-o-r-m-i-c-k. And I don't remember which all of you were here last week, when I talked about my dad getting shot and the consequences that that had or could have had for our family. So you're probably thinking that's the family member I'm going to talk about today. It's not. I'm actually going to talk about my grandpa. My grandpa died when I was in first grade and I don't have very many memories of him. But one memory I had of him, remember, before I was in first grade, was him sitting me down at the kitchen table and explaining to me gun safety. He let me hold the weapon. He made sure that it was very important that first, I ascertain that the gun was unloaded. He explained very clearly that if I was unable to ascertain that the gun was unloaded, that it was to immediately leave. He also

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pointed out that I must never be around anyone who will hold-- who will point a gun, whether loaded or unloaded, towards any person and that if I was ever in a situation where a person did not follow that rule, I was to leave. Same with the gun-- the finger on the trigger, because a person who isn't fully trained in gun safety is not safe to be around. And when I am here on the days where guns are used as props for hearings, his rules are violated. And I have to disobey the instructions that my grandpa gave me when I was in kindergarten or younger. And I have internalized those instructions and I have an extremely strong reaction because I know he was right, that it's unsafe to be around weapons that aren't being safely handled, that are being used as props or for intimidation, as opposed for legitimate purposes or if I'm transporting a gun from one place to the other. And as you know, I like to testify often at matters that I think are important to me. And I will say, I have been intimidated and prevented from coming to testify at hearings, due to my knowledge of certain days where there will be guns, based on the coordinated efforts to have people bring guns, which I do believe is for intimidation and has a chilling effect on citizens' free speech rights to testify and be active members of the second house. I had my wedding here in the Capitol. And I met with Roxanne to make sure I knew to follow all the rules and all of the rules we weren't allowed to follow. I took some very seriously. You know, we weren't allowed to have music or any of that because this is an important place of business. And the current rule that we're allowed to have guns is completely inconsistent with every other very strict rule about what you can and cannot do in the Capitol. And that should be corrected with this bill. Thank you.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here. Next proponent. Any opponents? Anybody testifying in the neutral capacity? We had 26 letters, 19 in support, 7 in opposition. And we had one ADA comment, from Lacy Smith, in support.