

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 28, 2024

**WAYNE:** My name is Justin Wayne. I'm the Chair of the Judiciary Committee. I represent Legislative District 13, which is north Omaha and northeast Douglas County. We'll start off with self-introductions, starting to the right.

**BOSN:** My name is Carolyn Bosn. I represent District 25 which is southeast Lincoln, Lancaster County.

**IBACH:** Teresa Ibach. I represent District 44, which is 8 counties in southwest Nebraska.

**JOSH HENNINGSSEN:** Josh Henningsen, committee legal counsel.

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

**BLOOD:** Good afternoon. Senator Carol Blood, representing District 3, which is Bellevue and Papillion, Nebraska.

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

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

**WAYNE:** It's better. All right, also assisting us are our committee pages Elizabeth Kolb-- Isabel Kolb from Omaha who's a political science major and Ethan Dunn who is a political science major at UNL. We will have 5 bills today. On the table to my right is a blue testifier sheet. If you're planning to testify, please make sure you fill out a blue testifier sheet so we can have accurate records. Also, we have a gold testifier sheet over there if you want to list your position on a bill for the record but you do not want to testify or maybe they might have said something that already was said, please fill out a gold sheet. It is the Legislature's policy that all letters of record must be submitted by 8 a.m. Any handouts submitted today, we would ask that you have 10 copies. If you don't have 10 copies, please ask one of our pages to get 10 copies before you come up so we can have 10 copies for the entire committee. Each bill, we'll start with the-- or each bill or constitutional amendment today, we'll start with the opener-- senator opening statement, followed by proponents, then opponents, then those testifying in neutral capacity, then the senator will have the ability to close if they choose so. We also remind you that when you come up here to testify, please state and spell your first and last name so we can have an accurate record. We will be using the 3-minute light system. That means when you're testifying,

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the light will be green. It turns yellow with a 1-minute warning. And at red, I will ask you to wrap up your final thoughts. And I will ask everyone, including myself and all senators, to turn your-- turn your cell phone off or put it on vibrate. And if you're like me, you will get a text message or a phone call in a little bit from my significant other taking my kids to the state tournament. And we will start with LB967. Senator DeKay, welcome to your Judiciary.

**DeKAY:** Good afternoon, Senator Wayne, and members of the Judiciary Committee. For the record, my name is Senator Barry DeKay, spelled B-a-r-r-y D-e-K-a-y. I represent District 40 in northeast Nebraska and I'm here today to introduce LB967. LB967 would add 3 definitions to Nebraska's human trafficking status in Section 28-830 and, and add a use of Human Trafficking Victim Assistance Fund. In regards to the definitions, first, the bill would define coercion in our state's human trafficking statute. Currently, the statute has the phrase "without consent" which has what I would consider to be a fairly broad definition. By having a definition of coercion in the statute, we are better able to grasp other ways human trafficking victims might be manipulated into giving consent, such as using someone's immigration status as blackmail or exploiting mental disability to get them to engage in forced labor or sex trafficking. You can read all the different ways listed on page 2 of the bill. With this change, we would ultimately better align Nebraska's human trafficking status with the statutes of federal government and all of our 6 neighboring states, each which includes some sort of reference to the definition of coercion. Second, the bill would provide a definition of sex act. When I visited with the County Attorneys Association about amending this section, they wanted to clarify how this phrase is being used since there was no formal definition in the statute. And, finally, the bill would provide a definition of forced commercial sexual activity, which is simply to help make the definition of coercion fit better in the subsections pertaining to sex trafficking. In regards to Human Trafficking Victim Assistance Fund, LB967 would enable a victim of human trafficking and sexual exploitation of a child to receive aid to attend a public postsecondary educational institution in the state. This concept is modeled off of the-- something that the state of North Carolina now does and has in their statutes to help compensate victims of human trafficking. We need to continue to try to help victims of these crimes to recover, get back on their feet, and live a better life. I see this change as something we can do to help victims in the long term. I would be happy to work with the committee to firm up this language if needed. Finally, I want to touch on an amendment that my office put together prior to this hearing. The need for a fraud

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definition was pointed out to me by a couple of stakeholders. AM2600 would also add fraud as an element in our human trafficking statutes. This change is more in line with the federal definitions of human trafficking, which encompasses those situations of fraud such as false promises regarding employment, wages, working conditions, love, marriage which are not quite as well captured by our current statutory language. I will say that AM2600 limits fraud to apply to just sex trafficking. We didn't include the labor trafficking with this change, though, to avoid making that part too broad and creating unintended consequences. This was a last-second amendment and I acknowledge the definition used is probably too broad, but it does point to a direction that I think also needs to be discussed. I would be happy to work with the committee and the stakeholders to clean up this language if need be. There will be proponents following me that can offer more details on the importance of these changes. Otherwise, if there's any questions I would be happy to try to answer them for you. Thank you.

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

**DARA DELEHANT:** Good afternoon.

**WAYNE:** Hey, how are you doing?

**DARA DELEHANT:** I'm good. How are you?

**WAYNE:** Doing well.

**DARA DELEHANT:** Haven't seen you in a while.

**WAYNE:** Katie's on her way down here, actually, taking Mya to--

**DARA DELEHANT:** Is she?

**WAYNE:** Yeah.

**DARA DELEHANT:** I missed her. All right. Good afternoon, my name is Dara Delehant. First name is spelled D-a-r-a, last name is spelled D-e-l-e-h-a-n-t, and I'm a deputy county attorney with the Douglas County Attorney's Office, and I am testifying on behalf of the Nebraska County Attorneys Association in support of this bill. As a prosecutor, I specialize in crimes involving sexual assault, including sex trafficking and related offenses. My job is to hold accountable those that violate our laws and harm or endanger members of our community. The dynamics of relationships between perpetrators and victims in sex trafficking cases are often complex and nuanced.

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Coercive control and manipulation often play significant roles in these types of cases. The common thread amongst all sex trafficking cases is an imbalance of power. The perpetrator is the one to choose how to wield that power in order to obtain and maintain control over the victim. As a prosecutor, we see that power take many different forms. And LB967 and its amendments to the existing statutory language take those different forms into account so that we, as prosecutors, can better hold perpetrators accountable. Oftentimes, the stereotype that we think about with sex trafficking is that the perpetrator is using physical violence or threats of physical violence to force the victim into participating in sex acts in exchange for money. However, in the real world, manipulation can be much more subtle and nuanced than that. For example, traffickers often prey upon the most vulnerable citizens in our communities. That can include those struggling with substance abuse or with mental health disorders or those that don't have stable housing or those that have immigrated to our country. Traffickers then exploit those perceived weaknesses in a much more subtle way to get what they want, such as withholding daily medications that the victim relies upon unless she complies with the demands of the trafficker or withholding controlled substances that the trafficker knows the victim is dependent upon unless she engages in commercial sex acts that the trafficker has lined up for her or hiding a victim's passport unless she has sex with a man that he has set up for a date with. LB967's definitions of what kind of behaviors traffickers might use to obtain and maintain control over their victims capture a much more comprehensive and realistic sense of what we see in the types of cases that we prosecute. The specific language used in statute is so important to prosecutors because that language dictates the specific types of conduct or conduct that we are able to prosecute, particularly the addition of the definition for forced commercial sexual activity and the definitions for what constitutes coercion and fraud are very helpful in this amendment. These amendments will help us to be able to more effectively hold accountable the traffickers that are responsible for harming some of the most vulnerable members of our community across the state as both adults and children. Thank you.

**WAYNE:** Thank you. Any questions from the committee? Thank you for being here.

**DARA DELEHANT:** Thank you.

**WAYNE:** Next proponent. Proponent. Welcome.

**CHRISTON MacTAGGART:** Good afternoon, Chairperson Wayne, members of the committee. My name is Christon MacTaggart, C-h-r-i-s-t-o-n, last name M-a-c-T-a-g-g-a-r-t. I'm the executive director of the Nebraska Coalition to End Sexual and Domestic Violence. We're testifying in support of LB967 on behalf of our network of 20 member organizations who provide direct services and support to survivors of domestic, sexual violence, and trafficking in all 93 Nebraska counties. We support this bill as we see it as, essentially, good cleanup and enhancement of the language in the existing trafficking criminal statutes. Coercion is an implicit and ingrained part of the trafficking of individuals, and we should name it as such, which we believe this bill does. Introducing the definition into statute effectively does that and highlights the variety of ways that this looks like in practice and that our criminal justice system encounters it. In addition, economic security and support is a constant challenge for trafficking survivors and building out the Human Trafficking Assistance Fund helps ensure those who need it can access any funds that are available there. I would also just note that we worked with Senator DeKay on this bill. We appreciate his willingness to make a few adjustments to the original bill language before it was introduced based on some feedback on potential unintended consequences for survivors. I won't belabor the points that the prosecutor before me raised about what trafficking looks like in practice and the dynamics, but I'm happy to answer any questions if you have them.

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

**CHRISTON MacTAGGART:** Yeah.

**WAYNE:** Next proponent. Seeing none, moving to opponents. Opponents. Seeing none, moving to neutral testifiers. Neutral testifiers. Seeing none, as Senator DeKay comes up to close, we had 7 letters: 6 in support and 1 in opposition. Senator DeKay to close.

**DeKAY:** Thank you again, Senator Wayne and members of the committee for the hearing on this bill. The purpose of the bill still states that we need to do more to support and protect victims of sex trafficking and that's why this bill was brought forward at this time. And I appreciate the discussion we had on it today. If there are any further questions, I would try to answer them or we-- thank you.

**WAYNE:** Any questions? I have a general question. Do you think we should add some language in here that a minor can't sex traffic another minor?

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**DeKAY:** That would be-- yes-- I mean, if we're going to try to protect a victim, we got to protect all victims. So that's what I would be willing to work with the committee on going forward with this so that however you want to spell it out as far as grooming, whatever, we need to protect vic-- keep them-- keep it from being further victims.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here. And that will close the hearing on LB967 and we'll move to LR277CA. Senator Sanders.

**RACHEL HAUSE:** She's not here so I'm doing it.

**WAYNE:** OK. Welcome.

**RACHEL HAUSE:** Thank you.

**WAYNE:** Go ahead.

**RACHEL HAUSE:** OK. Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Rachel Hause, that's R-a-c-h-e-l H-a-u-s-e, and I'm the legislative aide to Senator Sanders who represents District 45, which encompasses much of the Bellevue and Offutt community. LR277CA is a constitutional amendment which instructs the Legislature to enact all laws necessary to protect children in Nebraska from human traffickers. This resolution establishes specific legislation that would enact a minimum life sentence in prison for those convicted of sex trafficking of a minor, labor trafficking of a minor, or paying for sex with a minor. She has also brought AM2572 which excludes victims of trafficking from the penalties established. According to a 2021 federal human trafficking report concerning Nebraska, 100% of traffic victims were female forced into-- were female forced into sex labor. 71% of trafficked female victims are children. Statistics by the Department of State have shown a rapid uptick in human trafficking in recent years. It's reported traffickers can rent a child for a single sex act for an average of \$90. Often, that child is forced to have sex 20 times per day, 6 days a week. Trafficking often occurs in motels, hotels, online websites, and at truck stops in the United States. The Department of Justice identified and reported that 83% of sex trafficking victims in America are U.S. citizens who are being bought and sold by U.S. citizens. Nebraskans, we must not allow such human injustice to our children. Increased penalties for these crimes sends a strong message to traffickers and victims. In Nebraska, our children are not for sale. Not ever. These penalties are harsh because the consequence of these

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young victims is often death before their 21st birthday. Thank you.  
Are there any questions?

**WAYNE:** Thank you for that. We'll start with proponents.

**THERESA THIBODEAU:** Good afternoon.

**WAYNE:** Good afternoon.

**THERESA THIBODEAU:** My name is Theresa Thibodeau, T-h-e-r-e-s-a T-h-i-b-o-d-e-a-u, 21325 A Street, Elkhorn. I am testifying in my individual capacity. I do want to start by thanking Senator Sanders for bringing this resolution to the Legislature and for making it her priority bill. It's-- it is tackling a very dark reality, unfortunately, the trafficking of children. And it's really an issue that should cut to all of our core because it really is about our most vulnerable and our most innocent. 27 million people are caught in the trap of modern day slavery. And with that staggering number, 1 million of these people are children, some of them as young as 3 years old. Every single minute, a child's life is bartered. Actually, it's 2 of them per minute. It's a very chilling statistic and it reflects a \$32 billion industry. The Department of Justice uses the 3P paradigm to fight trafficking: prosecute, protect, and prevent. This resolution that we are discussing hits very hard on the prosecution and the protection in protecting the victims. It's about bringing the hammer down with strict sentencing, and at the same time throwing a lifeline to the victims caught in the storm. Prevention is also very key to combating sex trafficking, and countless incredible organizations fight the good fight. But we can't ignore that part of prevention is about cutting off the demand, stopping those who buy children. We're dealing with a \$32 billion monster, and the only way to starve it is to make the cost of doing business too high. Harsh sentencing can do just that, sending a message loud and clear that we love and protect the most vulnerable among us. This bill is also about giving a voice to the victims who have been silenced by fear. It's hard to stand up in court when you've been threatened or beaten multiple times, have suffered endless sufferings, but their testimony can help put their abusers away for good. And that's how we start to heal. I'm asking that you please vote this resolution to the floor. Let's give every Nebraskan a chance to show the world that Nebraska stands tall and unyielding in protecting our children and we will not stand for treating them like a commodity to be bought and sold repeatedly. Thank you again to Senator Sanders for spearheading this. Thank you to the Judiciary Committee for bringing this to the forefront and I'm available for any questions.

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

**McKINNEY:** Thank you, Chair Wayne. Appreciate your testimony. But first of all, modern day slavery is slavery which is within the Nebraska Department of "Punitive" Services, which has not-- which has not been excluded from the constitution. But what are we going to do about survivors of sex trafficking which this bill provides no exceptions for?

**THERESA THIBODEAU:** It-- actually, if you read it with the amendment, it's protecting the victims to ensure that they are not prosecuted. I think protecting the survivors is of the utmost importance. I know there are a few people here that work in that sector, and making sure that the survivors feel as comfortable as possible absolutely is protected. But if we, you know, are reluctant to go after people who distribute and buy and sell people, I think that's saying that we, we want to turn a blind eye and I don't agree with that.

**McKINNEY:** I don't think we should turn a blind eye to sex trafficking or victims of sex trafficking. I'm just looking at the amendment. Where is the exception in the amendment?

**THERESA THIBODEAU:** From where I read it, and I would imagine Senator Sanders' legislative aide can address it, but as I read the language, it states that if you are a victim of sex trafficking you will not be prosecuted.

**McKINNEY:** But I think that's very vague. A lot of individuals who are victims or survivors of sex trafficking end up in a situation where they're forced in those situations where they're deemed as the individuals who are the sex, sex traffickers.

**THERESA THIBODEAU:** Correct. And, and I don't disagree with you, Senator. Where I think we could do better is if we get this passed and say, hey, we don't allow for the buying and selling of children, it allows for the opportunity to then have even stronger statutes in protecting those victims as well. Because I wholeheartedly agree we need to protect victims.

**McKINNEY:** But why would we pass this before we protect victims first?

**THERESA THIBODEAU:** We, we do already have some protections of victims that was done in, I think, 2018. I, I think that we could build upon those and I would definitely challenge this committee and the Legislature to do so.

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**McKINNEY:** But if this passed and we already have statutes that protect, protect victims, why would we have to come back-- come back and protect victims?

**THERESA THIBODEAU:** Well, so we do have statutes that protect victims. But if the Legislature and this committee is feeling that those statutes are not strong enough to protect them, then we need to make those statutes stronger.

**McKINNEY:** So how do you feel about those statutes?

**THERESA THIBODEAU:** When we passed them, I, I felt that they were strong and that they were protecting the victims. I think that we certainly can ask the people who are helping victims on a day-to-day basis if those statutes are working or if they need to be-- to be stronger.

**McKINNEY:** There's a lot of comments online saying survivors will be harmed in unintended consequences. So apparently to somebody there's a lot of unintended consequences so--

**THERESA THIBODEAU:** Well, and I think proba--

**McKINNEY:** --what am I missing?

**THERESA THIBODEAU:** Yeah, and I think, you know, lucky for you guys, I guess, or unlucky is that you have the opportunity to look at that and decipher through that. For me, I don't feel that the survivors are going to be harmed. For instance, quite frankly, if we-- if we can get as many buyers off the street as possible, the best way to kill a business is to take away the demand. So it-- you know, eventually it will certainly cut down on actual victims.

**McKINNEY:** Well-- but, but the best way to kill a business is not to take away demand, because we got laws that say cocaine is illegal. But people would argue that-- that's-- well, trafficking is-- like drug trafficking is one of the biggest problems in America or our borders are a problem and things like that, so. And we got a bunch of laws saying trafficking of cocaine is a problem. And we passed a bunch of laws which criminalized a lot of people and overincarcerated a lot of people and that has not taken away demand. So I don't think that philosophy has worked.

**THERESA THIBODEAU:** I think that when you're looking at where trafficking happens and it happens at a lot of big events, sporting events or big conference events, there are people that are purchasing,

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purchasing other people for sex that maybe don't necessarily purchase cocaine. And if they are given the threat of a life sentence in prison, I absolutely think that would deter them from that. You know, I, I suppose we could philosophize on the best way to combat the, the drug issue as well. But I want to address this issue-- one issue at a time, Senator.

**McKINNEY:** I mean, we've, we've tried heightening crimes and being tough on crime as a deterrence but the only effect that has is filled-- filling up our jails and causing taxpayers to pay for a \$350 million-plus prison. It hasn't deterred much of anything. I would argue that why don't you just go after, you know, the College World Series or the Berkshire, Berkshire Hathaways of the world or something like that?

**THERESA THIBODEAU:** Well, I would say that I would think that messaging that we have such strict penalties in Nebraska that it would tend to have those events that you mentioned probably not attract as many as the traffickers as they probably have in the past. I think it helps our law enforcement. And it's hard to get a victim to testify, absolutely, and I certainly don't blame them. But I do think that the thought of the person who had done this to them never getting out again, a, a lot of victims don't want to testify because they think, well, heck, you know, Nebraska, you may get a 14-year sentence, but in Nebraska you can be out in 7. Well, if you're a minor, you're thinking, this person can come back and get me again in 7 years, so why am I going to do anything? I'm just going to stay where I'm comfortable.

**McKINNEY:** But how does it help law enforcement when law enforcement doesn't prevent crime?

**THERESA THIBODEAU:** Well, I would say that law enforcement does prevent crime.

**McKINNEY:** How?

**THERESA THIBODEAU:** Now clearly they have to be present when a crime is committed, but most people aren't committing--

**McKINNEY:** How are they present when crime is committed?

**THERESA THIBODEAU:** Pardon me?

**McKINNEY:** How are they present when crime is committed and they respond to crime?

**THERESA THIBODEAU:** I guess I didn't hear what you said earlier.

**McKINNEY:** Law enforcement responds to crime.

**THERESA THIBODEAU:** They do respond to crime but they--

**McKINNEY:** But they're not present when most crimes are committed so how are they present when a crime is committed?

**THERESA THIBODEAU:** Well, they can be because they're present-- I mean, they're present-- you see them at large events and--

**McKINNEY:** But they're not present--

**THERESA THIBODEAU:** Their presence deters a lot of crime from happening at large events. I think law enforcement does a good job in building relationships with the community, which then deters crime. I mean, if you look at our city of Omaha.

**McKINNEY:** Well-- but-- I guess what I would say is, we-- the United States of America spends billions on law enforcement a year and we're not preventing this from happening so is that deterring anything?

**THERESA THIBODEAU:** I would disagree with you, because if you look at the cities that have done a good job at not only investing in their law enforcement in making sure good first responders are hired, but also in training them that those cities tend to have lower crime rates and, therefore, are safer cities and the, the individuals are protected.

**McKINNEY:** The city of Omaha spends \$100-plus million on law enforcement.

**THERESA THIBODEAU:** I think the city of Omaha has been looked to by many, many cities as the gold standard and has done a wonderful [INAUDIBLE].

**McKINNEY:** But you're here-- but you're here advocating for this bill.

**THERESA THIBODEAU:** Well, absolutely, because a police officer can pick somebody up off the street and arrest them for sex trafficking but it's the prosecutors and the DA and the state statute or constitutional amendment that's prosecuting them.

**McKINNEY:** But you just proved my point, they didn't prevent that crime from happening. Thank you.

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**THERESA THIBODEAU:** Thank you.

**WAYNE:** I, I generally-- you have a question, Senator Blood? OK, go ahead, Senator Blood. I'll wait.

**BLOOD:** I'm sorry to interrupt.

**WAYNE:** No, no, no. Go ahead, Senator Blood.

**BLOOD:** So Senator McKinney did touch down on part of what my concern is. Do you know the fastest demographic for people who participate in sex trafficking as customers?

**THERESA THIBODEAU:** As customers?

**BLOOD:** Um-hum.

**THERESA THIBODEAU:** Well, it's-- yeah, a lot of white men.

**BLOOD:** White, affluent, and well-connected men.

**THERESA THIBODEAU:** Correct. And so, therefore, if they have the threat or thought of spending life in prison and having everything taken away from them, I think it's a huge deterrent.

**BLOOD:** It, it didn't seem to deter Epstein. He, he did it for decades before he got busted.

**THERESA THIBODEAU:** Well, nobody would prosecute him. I'm, I'm pretty sure that our DAs in Nebraska will prosecute.

**BLOOD:** But you, you just did say that, nobody would prosecute them, because that-- that's the point that I want to make is that we have known-- I mean, the Governor's wife-- the previous Governor's wife and I, we did an anti-sex trafficking program at the, the College World Series one year: if you see something, say something kind of stuff. Like, boots on the ground, face to face with people. The, the bottom line, there-- there's-- when I worked for the prison system, you always hear the, the young people of color say there's no justice, Officer Blood, there's just us. In other words, if you are white and you are affluent and you are wealthy, you are less likely, regardless of what laws you pass, to, to not-- to, to, to not do this.

**THERESA THIBODEAU:** I guess, Senator Blood, I would disagree with you, especially in Nebraska. In Nebraska, we prosecute our crimes and we hold people accountable. And in Nebraska, we protect our children.

**BLOOD:** If that was the case, the College World Series would not be one of the number one places in Nebraska for trafficking. That is-- if that was true, it would not be--

**THERESA THIBODEAU:** Well, I don't have a crystal ball, but if I did-- if this goes through as a constitutional amendment and we are loud and strong and we are educating the state of Nebraska about how bad sex trafficking is, I'm pretty sure-- I would make a safe bet that it would definitely reduce sex trafficking during that event. I would also tend to believe-- you know, if you look at the statistics, actually, it's, it's good and bad. Sadly, we have a high charge rate in Nebraska and a high conviction rate, which means it's very prevalent. I think then that that gives the DAs and the prosecution even more leverage to make sure these people are put away for a very long time.

**BLOOD:** So statistically, when we up the charges for any crime, it's not really had an effect on the amount of crime. We don't see fewer murders because we have the death penalty. We don't see fewer drug crimes because they get more prison time. That's just-- it, it isn't-- it isn't--

**THERESA THIBODEAU:** You can also look at--

**BLOOD:** --it's more of a red flag that people like to wave when-- if we put the word sex trafficking, baby, or dog in any bill, regardless of how well that bill is written, everybody will wave-- will start waving their flags and saying we have to pass this bill. We have to pass this bill, it's going to make a difference. If we list all of these bills that we have passed in the last 2 decades and we look at the data when it comes to increasing penalties, not a single one of those crimes has been reduced.

**THERESA THIBODEAU:** Well, here's how I look at it. This is the children we're talking about--

**BLOOD:** Yeah, that's what everybody that comes forward on these bills says.

**THERESA THIBODEAU:** --and it's not-- the bill-- the bill is not going to do damage to the people who are convicted of it. And if there is a way that we can protect the most innocent and vulnerable among us, I think that as a state we should certainly do everything within our power to do that.

**BLOOD:** So you feel that raising the amount of punishment that has already been proven to make zero difference in these crimes--

**THERESA THIBODEAU:** I don't think it has been proven. In fact, if you look at the U.S. Department of Justice, it even states-- they even are quoted saying that the harsher the sentencing, the less that you have as far as trafficking goes.

**BLOOD:** I, I, I have to say that I am not a fan of sex trafficking.

**THERESA THIBODEAU:** That's [INAUDIBLE].

**BLOOD:** But I am a fan of us putting our resources and energy towards things that actually change things like sex trafficking, like face-to-face education and boots on the ground. And this is one area that you and I are going to have to disagree on is that changing it and making it now a death penalty is not going to do anything except potentially put more people in prison longer, but it's never going to stop sex trafficking.

**THERESA THIBODEAU:** Well, if you think about it, though, when a child is sex trafficked, that's essentially a life sentence and a death penalty for that child--

**BLOOD:** I, I agree but I don't hear anybody--

**THERESA THIBODEAU:** --because their life is ruined.

**BLOOD:** --addressing the white, affluent, and well-connected people who are the biggest growing demographic. This isn't going to change it, we keep looking the other way, these people are not prosecuted. So until we have a balanced judicial system in Nebraska, the, the, the people that truly should be sitting in prison will never be in prison.

**THERESA THIBODEAU:** Yeah, I, I would respectfully disagree with you, Senator, but I understand your position.

**WAYNE:** I just-- I-- so when I think of these bills, I, I think of fact patterns and I'm, I'm going to throw out a fact pattern and I want you to tell me where we might be able to make some changes. This is just-- so you have high school kids, a boy and a girl, and one's 18 and one's 15. They make a Craigslist post to invite a third or pay for money. In this fact pattern, the 15-year-old was sent-- I mean, the, the 18-year-old high school senior was sentenced to 20 to 40 years. The 15-year-old partner was not, she was the victim. But the john in this case was sentenced to 180 days. How do we fix that?

**THERESA THIBODEAU:** Well, this bill hopes to fix that. It prosecutes the johns.

**WAYNE:** To life?

**THERESA THIBODEAU:** Prosecutes the buyers.

**WAYNE:** No, it prosecutes the--

**THERESA THIBODEAU:** If you are caught buying--

**WAYNE:** --the trafficker.

**THERESA THIBODEAU:** --if you are caught trafficking or buying sex from a minor, you can have up to life in prison. So it gets both.

**WAYNE:** So what do we do about all the high school kids who are 19 dating 15-year-olds?

**THERESA THIBODEAU:** Well, I guess this might be getting a little out of my expertise. I'm not an attorney. I mean, if a 19-year-old is trafficking a 15-year-old then he needs to be-- he or she needs to be prosecuted just like everybody else.

**WAYNE:** Can a minor traffic another minor?

**THERESA THIBODEAU:** Well, I believe that the bill that was just heard before this one is, is addressing that.

**WAYNE:** I think this kind of supersedes it. No, this is just a fact pattern because I think-- I agree with you on anything you said, I'm trying to figure it out.

**THERESA THIBODEAU:** No, I understand.

**WAYNE:** All right. Thank you and thank you for always coming down here.

**THERESA THIBODEAU:** Thank you.

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

**THERESA THIBODEAU:** Thanks.

**WAYNE:** Next proponent. Welcome.

**AIMEE MELTON:** Hello.

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**WAYNE:** How are you doing today?

**AIMEE MELTON:** You'll, you'll hear a voice that sounds similar to the voice that was just here before. My name is Aimee Melton, A-i-m-e-e, last name M-e-l-t-o-n. I am here-- I am on the Omaha City Council, but I am here in my capacity as a-- as a citizen and actually as an attorney that practices in juvenile court and has experience with minor sex trafficking victims. I am here in support of this and I'm going to kind of go off what I was going to talk about based on what I just heard. I wanted to kind of clarify, we do already have a statute in place, 28-833. That statute makes-- already allows for sentencing of up to life in prison for sex trafficking a minor. That is a Class IB, which is a mandatory minimum 20 years up to life. What we're actually-- I think what Senator Sanders is trying to do here is codify that into the con-- into our constitution to allow the people of Nebraska to kind of have a voice that says we really care about this issue and we want it codified in our constitution. So in essence, we have a statute already in place, but we're making this issue that important. We're going to call attention to it. We're going to educate people. I completely understand the concerns about victims, which is why I wouldn't be down here supporting the original draft. I, I am down here supporting the amendment. You have to have the exception for victims. And we already have that in our statute in 28-833, other than victims of trafficking. Now what I would say as you're going to hear from some opponents, their problem with it is the concern for victims. That's mine as well. Because some of my clients are parents and children. Parents of sex trafficking victims and children of sex trafficking, so my number one priority is protecting the children. Our system, I think, in regards to sex trafficking, is broken. I actually also believe that traffickers are actually finding some of their victims in the correctional center. That's been my experience. And I can also tell you that sex trafficking victims come from all walks of life, all races, and all financial levels. It doesn't matter whether you're rich or poor. Our children are being groomed and sex trafficked and I think it's just really important that we allow the people of Nebraska to be educated, that we go through this process and that we codify this into our constitution. So I see my time is up. I'm going to open it up for any questions.

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

**AIMEE MELTON:** Thank you, Senator.

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

**DEBRA PORTZ:** Good afternoon. My name is Debra Portz, D-e-b-r-a P-o-r-t-z, and I testify in support of the amended LR277CA for a constitutional amendment to require the Legislature to enact laws providing for life imprisonment for sex or labor trafficking of a minor and-- involving minors. Human trafficking crime has grown tenfold in the recent decades. Despite heightened recognition and increased efforts towards awareness, the trend data on the existence of known sex trafficking survivors has increased, especially in the demographic categories of women, minorities, and minor children. An estimated 240,000 and 325,000 people are forced into sexual slavery in the United States every year, according to the U.S. Department of Health and Human Services. Reports by the U.S. National Human Trafficking Resource Center note that around 85% are women, girls, and gender-diverse people. These total numbers of reported victims vary widely across reporting sources, as human traffic [SIC] is very difficult to research. In contradiction to prominent sex trafficking media narratives, perpetrators of trafficking are almost never strangers or kidnappers. In 2020, 81% of sex trafficking who called into the National Human Trafficking Hotline were recruited by a family member or an intimate partner. This puts vulnerable youth at higher risk for victimization. How do we combat this horrific criminal activity in these rising trends affecting so many humans in the United States? When it's hard to document and research, it's often been misunderstood in the public square and it is highly complex process in the legal system to bring justice to the victims. Combating and deterring sex trafficking requires us to shift public perception of what sex, sex trafficking looks like and begin to look at the problem through the system-wide solutions working in tandem. We need to look through every lens possible, including a human rights lens, a public awareness lens, a legislative lens, and a criminal justice lens. As citizens, we should do everything in our power to stop human traffickers in Nebraska. To eradicate human traffickers, traffickers need to be deterred from engaging in the business. From a law and economics perspective, optimum deterrence is reached when a sentence is greater or, or a fine is greater than the probability of getting caught, multiplied by the benefit to the criminal. Utilizing this model in a system-wide solution approach, the proposed actions of this constitutional amendment attempts to sufficiently deter trafficker behavior by increasing the probability of criminal avoidance by threat of local laws. Codifying penalties into state statute based on public support is just one action that the criminal justice system can take to deter human trafficking. The reality of a threat of life imprisonment is the action that, that has the most behavioral altering consequences and youth victims of human trafficking deserve that

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closure to heal towards a more normal life. For this reason, I support this constitutional amendment.

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

**JULIE SHRADER:** Hi there. Thank you, Senator Wayne, Senator Sanders, and members of the Judiciary Committee. My name is Julie Shrader, S-h-r-a-d-e-r. As founder and CEO of Restored Wings, previously known as Rejuvenating Women, and an advocate for survivors of human trafficking, I support the constitutional amendment that mandates those convicted of sex and labor trafficking of a minor may be sentenced to a term with a minimum of life imprisonment. I do not support a single victim to spend time in prison. Appreciating the seriousness of any charge to our constitution, consideration must be given to what could be more momentous than ensuring the well-being of our youth? The, the numbers are important-- the number of convictions, the number of those sentenced, but all seem irrelevant when compared to the moral imperative for a deterrent to even one child forced to suffer the horrors of human trafficking. One problem that we have here is that the victims themselves do not always see themselves as a victim. In numbers, consider the cost of providing therapeutic housing and care from 90 days to 2 years for women escaping human trafficking, including the wages for trained staff and support to provide 24/7 care, facilitating programs and activities for those used as merchandise to again see themselves as whole, worthwhile individuals with purpose, case management to access needed community resource to be successful in-- and safe in their community. Add in the proven strategies for healing, including talk, EMDR, and equine therapies. All these supports paid for by grants and donations from Nebraskans that are motivated and devoted to our children and, and their futures. Using the women's home as a model, Restored Wings has answered the call to opening a ranch for youth involved in human trafficking. Again, reliant on Nebraskans' support whose first right listed our state's constitution has been violated. Convicted traffickers have profited in stealing the inherent inalienable rights of life, liberty, and pursuit of happiness from our children. Nebraskans demand justice and protection for our youth. Please give Nebraskans a voice and choice in protecting youth from the predators that robbed them of their hope, faith, without informed care in their futures. I do feel strongly that this bill should clearly define a victim from a trafficker, as many of our law enforcement officers still, even those that I talked to today, some don't-- are not fully trained to identify a victim from a trafficker. Many victims are forced to recruit, thus, thus making it very difficult to know his or her history as being a

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trafficked victim. I'm asking for a language of any kind to be put into this bill to protect any victim, including those forced by a trafficker to recruit others into his or her pit of hell. Thank you and I'm open to any questions.

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

**JULIE SHRADER:** Thank you.

**WAYNE:** Next proponent. Proponent. Proponent. Seeing none, opponents. Welcome.

**ERIN FEICHTINGER:** Chair Wayne, members of the Judiciary Committee, my name is Erin Feichtinger, E-r-i-n F-e-i-c-h-t-i-n-g-e-r. I'm the policy director for the Women's Fund of Omaha. I want to be very clear that our position does not mean that we oppose efforts to stop human trafficking. Rather, our position on this particular piece of legislation comes from our evolving understanding of the impact of human trafficking on its victims and survivors and our concern that broad general bills like this which create harsh, blanket penalties run the risk of actually harming the very same victims we are hoping to help. Extensive research has attempted to understand the complexity of the trauma that comes from human trafficking, particularly of children. And what this research has shown is that this trauma can mean that victims and survivors do not acknowledge their victimization to others, especially authorities. Additionally, as a result of the complex trauma which comes from their own victimization, trafficking victims may themselves help to support their traffickers. Many adult victims report either first being trafficked as children or having a history of abuse prior to their trafficking experience. Speaking to that level of really complex trauma, that may lead them to not identify as a victim. This bill, even with the amendment, could penalize the victims themselves because it assumes that traffickers and trafficking victims will be easy to identify and separate. But this simply is not the case. Of course, we all want to stop human trafficking. We would offer that the solution comes not just from harsher penalties, as has been the goal in a lot of the anti-trafficking bills introduced this session, but from offering commensurate legislative support for comprehensive assistance and evidence-based interventions for victims themselves. We have a long way to go in this regard and the Nebraska Legislature is clearly committed to those efforts. That commitment should start with and proceed alongside services and funding and support for victims. We would encourage this committee and the Nebraska Legislature to

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consider instead exploring how we can best support victims, pursue evidence-based interventions based on a fuller understanding of the complex trauma the trafficking victims' experience so that we do not ultimately hurt the very same people that we are attempting to help with bills like this. And I'm happy to answer any questions to the best of my abilities.

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

**AMBER HARPER:** Hello, my name is Amber Harper, A-m-b-e-r H-a-r-p-e-r. I'm grateful to share space with you today. I'm here to speak to you as a trafficking survivor. I was trafficked at the age of 18 and for several years as a young adult. Now, more than a decade later, I actively contribute to anti-trafficking efforts across the state. I am opposing LR277CA. Mandatory minimums can be harmful to survivors and have unintended consequences to underserved populations. Survivors don't want legislation like this. We want options outside of the criminal justice system and more accessible ways to heal. Because I experienced trafficking at such a young age, it was common to work with minors. There were times when my body was hurting, my mind was tired, and I did not want to do what was demanded of me. I knew that if it wasn't me, it had to be somebody else. In those moments, I had to make a decision to keep myself safe. At that time, I didn't see them as minors. I saw them as my friends, girls trying to do the same thing as me, stay alive and avoid pain. Under this resolution, my decision to keep myself safe could have ended with me spending life in prison. Setting my story aside, I want to uplift how underserved populations might be affected by this resolution. More often than not, trafficking survivors have also experienced some form of poverty, interpersonal or sexual violence, and oppression. These experiences and the resulting trauma increase risk for sexual exploitation. If we are not careful about our approaches to end trafficking, we will cause further harm to these populations by forcing them into systems, ignoring their voices, and incarcerating them. Another fear I have around this resolution is that the biggest cause of demand, men with disposable income, will easily navigate our legal systems and avoid consequences. I know that the resolution recently added some language around an exception for trafficking victims. However, I think survivors will still be at risk. Individuals don't often identify themselves while in the life. They're also hesitant to engage with systems. During my experience as a trafficking survivor, I felt as if I was coerced by law enforcement to engage in investigations that led to the prosecution of a trafficker. I was not informed of that process and carry a lot of fear to this day because of those consequences. In

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conclusion, I'm asking this committee to not move this resolution forward. I also want to encourage everyone that wants to contribute to the anti-trafficking movement to partner with survivors. Not one time in any of the proponents did I hear I consulted with survivors and this is what they told me. I heard a lot of white saviorism and desperate attempts to continue mass incarceration while ignoring avenues to successful healing for survivors and those that support them. Thank you.

**WAYNE:** Any questions? Senator Blood.

**BLOOD:** That's the second time I've done that. Would you like to speak before?

**WAYNE:** No, go ahead.

**BLOOD:** All right. So first of all, thank you so much for coming in. And you and I are clearly very like-minded on some of these issues. And I had-- never had an opportunity to speak with you about this. The question that I have, I have several. If I heard you correctly, would you say that it's your impression that even though clearly sex trafficking is illegal, that, that those that are more privileged have a tendency to escape prosecution?

**AMBER HARPER:** Can you repeat that one more time?

**BLOOD:** Based on what you shared with me, would you say that it's been your experience that those that are more privileged, those with disposable income, as you said, even though that they know that it's against the law also tend to be the ones that are less likely to be prosecuted?

**AMBER HARPER:** Yeah, absolutely. And I think we can look at prosecutions that have occurred across the state when it comes to, like, solicitation and things like that. Buyers are getting away with fines, tickets, rarely any kind of time. And it's because they have the money to invest in legal representation where they can make deals and plead out of things and avoid these penalties, whereas survivors and those who do not have disposable income are forced to navigate systems using public assistance, lack of knowledge, lack of opportunity, and are ultimately left with the, I don't know, making them an example.

**BLOOD:** Right. So would you also say that it's been your experience that-- and we already heard this on one of the people who were proponents, that there are often family dynamics involved, such as

incest that started the process of these, these young people being trafficked?

**AMBER HARPER:** Yeah, absolutely. I can share part of my experience involved a heavy amount of sexual assault in my childhood and other forms of violence which I do think set me up to be groomed for sexual exploitation. Because the messages are sent to, I'm going to call them survivors, that their physical bodies are all that they have to offer. And when you enter survival, right, every choice I make, I think, or my brain is telling me is going to end my life or save my life, then I'm going to use my physical body to protect myself to keep myself alive. I'm not sure if that answered your question.

**BLOOD:** So a bill like this, even though these people should most definitely be prosecuted, but to send family members to prison for life based on your experience and, and clearly you've seen people come into the system, come out of the system, "rebound" with their families and go to counseling, do you feel that this might affect some of the family dynamics for those that potentially could maybe eventually come back to a better place?

**AMBER HARPER:** Oh, yeah, absolutely. I think recovery is possible for anything that we've experienced as far as trauma. I think that by incarcerating people under this resolution we're contributing to generational trauma. We're contributing to poverty and the continuation of violence. Again, because we're putting people in places of survival. And, yes, would certainly agree that when it comes to trafficking, those are learned behaviors.

**BLOOD:** So if I hear you correctly, you're saying why are we not taking these efforts and this energy and investing in more resources to help people as opposed to just making it-- we just keep creating crime after crime after crime and sex trafficking is not going away. And by the way, I, I don't know about you but I find it really offensive that all of a sudden it seems to be so popular. My family's been helping labor traffickers that the Russian mafia brought into Nebraska to clean grocery stores since the early '80s. I don't know why everybody else finally sees you. Like, I don't understand how people could not know that this has been going on under their noses for decades, forever and ever. And it almost seems to me that we're at the point where we're more picking out special interest things to try and get, get certain groups engaged and motivated to maybe vote a certain way or to be concerned about certain things while we actually forget the root causes of all of these. Like, we're not investing in our families and we're not investing in, in drug and alcohol rehab and you've been

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in the system with that. I really am asking a question, I promise. You've been in the system. Do you ever feel that there was really good resources there for you that you could step out and say I'm safe, I'm fed, I have a future? Did that happen frequently for the people that, that-- you were-- that were trafficked?

**AMBER HARPER:** No, absolutely not. And I think that I have special concern when it comes to youth and those-- that are involved in systems because, let's be honest, a lot of times youth that are exploited are connected to systems in some way, shape, or form. And, actually, what I see from those that I work with in my experiences within the state is that youth are tossed into systems and then just kind of told to listen and obey and follow orders. But then as soon as they turn 19, we treat them as adults, we toss them out, and they have zero skills to successfully adult or care for themselves.

**BLOOD:** [INAUDIBLE]

**AMBER HARPER:** Correct. And so then if we're putting all of our efforts into movements that incarcerate people and I mean essentially move funding over to more policing, more incarceration, then we are taking resources and funding away from the service providers that are doing the work. Like capacity-- I'm, I'm from the central part of the state and, like, just capacity within our, our current organizations, like, is running out very quickly. It's hard to keep dedicated staff in programs to help survivors because we're interested in police operations. We're interested in increasing penalties, and I think it's really self-serving, quite honestly, for those that are trying to increase penalties because you're not actually contributing to any type of solution.

**BLOOD:** Right.

**AMBER HARPER:** Again, you're just slapping your name on this sexy topic that has quickly risen to the top thanks to social media and Hollywood.

**BLOOD:** Well, thank you, Amber. I appreciate your [INAUDIBLE].

**AMBER HARPER:** Thank you, Senator.

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

**DeKAY:** Thank you. Thank you for your testimony today. And I agree with you that do we need to be reactive when it comes to working with people that have been trafficked and stuff. I guess my question would

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be, how do we be proactive to keep these encounters from happening in the first place?

**AMBER HARPER:** Yeah, absolutely. I think it goes back to prevention and early intervention. A lot of survivors that I have worked with, including myself, experienced some form of violence from a very young age, and currently our only solutions are to toss them into systems that are overfilled, overworked and, frankly, not helping. They could be way better. And so, that's where I would like our focuses to be. How can we increase access to services? How can we help people meet their basic needs so selling their body or their children's body or their friend's body isn't an option, because it's only an option because they don't know any other way to live. And they're caught in cycles of power and control, which I would argue this legislation is also and exerts in controlling populations.

**DeKAY:** Thank you.

**AMBER HARPER:** Thank you.

**WAYNE:** Any other questions? Seeing none, thank you for being here and thank you for sharing your story.

**AMBER HARPER:** Thank you.

**WAYNE:** Next opponent.

**SPIKE EICKHOLT:** Good afternoon. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing as a registered lobbyist on behalf of the Nebraska Criminal Defense Attorneys Association and the ACLU of Nebraska in opposition to the proposal. Chair Wayne and members of the committee, you've heard me testify before on, on concepts like this. Our organization does not support human trafficking and that's not what this issue is about. We do, however, urge the policymakers to have proportional sentences when it comes to crimes. What this proposal is, is having a minimum life imprisonment for a series of offenses. First, I would just point out to the committee that although there is an amendment to exempt survivors from prosecution, or at least from legislation regarding exposure to life sentences, there's nothing in this proposal that accommodates defendants under the age of 18. And under *Miller v. Alabama*, our U.S. Supreme Court says that life imprisonment without the possibility of parole for minors under 18 is unconstitutional under the Eighth Amendment. So that's one flaw with this proposal. But, more importantly, this proposal, along with one that you'll hear later on today, is somewhat unusual in that it's

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asking the voters to tell the Legislature to pass laws to make minimum of life imprisonment. You can do this now. There's no reason to put this as a constitutional amendment. We just heard Senator DeKay's bill earlier where he did make some amendments to some statutes that deal with human trafficking and sex trafficking. We already have a statute that deals with sex-- human trafficking, labor trafficking, and sex trafficking of a minor, 28-831, which incidentally provides for not a minimum life imprisonment, but at least a maximum life imprisonment, 20 to life. And I don't know if it's some sort of tool for generating voter turnout to put it on the ballot. I'm not quite sure why, but it's really kind of an unnecessary step. And, more importantly, if you look at the language that's proposed on line 7 of proposal, it directs the Legislature to do so. So it's not even self-executing. What that means is if the voters approve it, it still has to come back for the Legislature to pass laws. So it's just almost like an unnecessary detail. One other thing that I would point out to the committee, and perhaps counsel has already caught it, is that this is highly suspect under our state's law or state constitution prohibition on log rolling. Or in other words, you have to have a single subject that's [INAUDIBLE] to present it to the voters. This asks a number of different questions. And the concept is, is that voters can't be sort of forced to choose or compromise their own principles. They either are voting up or down, yes or no on an issue that's presented to them on either a ballot initiative or a constitutional amendment. And this arguably asks 3, if not more questions. It asks, for instance, should it be a life sentence for sex trafficking of a minor, labor trafficking of a minor, or paying for sex of a minor, shall be a minimum term life imprisonment, and then the fourth one would be should victims be exempted? In other words, somebody could be in the vote-- in the-- in the ballot and say, well, I support life for sex trafficking but not labor trafficking. And if you look at state-- if you look at Wagner v. Evnen, which is a U.S.-- or a state Supreme Court case from 2020, which the medical marijuana question was kept off the ballot because that violated the constitutional requirement of a single subject. I think this will be interpreted as suspect as well. I'll answer any questions if anyone has any.

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

**ANGIE LAURITSEN:** Thank you, Chairman Wayne and committee members for-- and also, I want to thank the, the introducer. While I'm here in opposition to this bill, I do appreciate the fact that senators are looking into this and trying to find legislation that could possibly help survivors of sex trafficking. Unfortunately-- sorry, my name is

Angie Lauritsen, A-n-g-i-e L-a-u-r-i-t-s-e-n. Unfortunately, this is just not the way. I have been working with survivors. I identify as a survivor. I've been working with survivors for the last 6, 7 years pertaining to sexual assault, domestic violence, and human trafficking within the state. We focus on working with senators on bringing good policy that would support survivors. So a huge proponent of working with survivors to come up with really good legislative language. The-- I wanted to try to bring kind of a, a feeling of what it's like to be a survivor. As a kiddo that grew up in a very abusive home, during the day, I was not good enough to eat food so I would have food withheld from me. My father was my abuser. I would be told I wasn't good enough to sleep in his house so I'd be sent outside. I was withheld healthcare when I was ill and spent 3 consecutive days in the hospital trying to get adequate, adequate healthcare. But at night when he visited my room, I was his little princess. And so I have this very vivid memory of waking up in the morning and being, like, I survived that day. Now I have to figure out how to survive this one. And when you're in that survivor mentality, when you are just trying to figure out how to make it from one moment to the next, this is how victims of trafficking get caught up into the system. I want to be super, super clear on this. Today, across the state of Nebraska, victims of trafficking are being arrested. Today. The laws that we have on hand do not stop that from happening. This bill and the amendment do not clarify that. The amendment is feel-good language and is not good legislation. When you are being manipulated, when you are being coerced, when you are being threatened with bodily harm, if you want to take the pressure off of yourself, you may invite a friend to come with you. You may invite someone to come with you to take the pressure off of you so that you can find a moment of peace, a moment of survivorship, a moment to be able to live further. That's who's being caught up in this. That's who we are not working hard enough for. On the back of the sheet-- I'm gonna run out of time-- I put a graphic up of a group that rates states and how we are doing on a state level. We are currently a B when it comes to criminal provisions. But the rest of those things, when we are talking about support systems for survivors, we are not doing enough. We need to provide adequate housing, food, safety. Survivors will not report until they feel safe. They will not report until they feel safe.

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

**ANGIE LAURITSEN:** Thank you.

**WAYNE:** Next opponent. Opponent. Seeing-- oh, here comes somebody.

**CHRISTON MacTAGGART:** Hello again. My name is Christon MacTaggart, C-h-r-i-s-t-o-n, last name M-a-c-T-a-g-g-a-r-t, the executive director of the Nebraska Coalition to End Sexual and Domestic Violence, testifying on behalf of our network of programs that provide services and support to survivors across the state in opposition to this bill. The Nebraska Coalition took a careful and thoughtful approach to opposing this bill but, ultimately, felt as though the potential unintended consequences for survivors were too great not to. I do want to note that, you know, we met with Senator Sanders and shared our concerns about this bill. And while we absolutely appreciate the desire to find solutions to this very real issue in our state, we also believe based on our experience that this is not the way. You've heard about the complex nature of trafficking from the survivors who spoke to that more eloquently than I ever could. But the bottom line is, it's just not always easy to separate victims from traffickers. And because of that, in Nebraska, we see victims being trafficked, arrested, and prosecuted for trafficking on a regular basis. Only later when safe, maybe upon release from incarceration when accessing support services, do they even put a name sometimes to the full reality of what has happened to them. 62% of trafficking survivors have been arrested, detained, or cited by law enforcement and this bill will exacerbate that. It will create significant consequences. I appreciate the amendment language exempting victims. However, this is already in statute as an affirmative defense and it is not preventing victims from being prosecuted for trafficking. Oh, sorry about that. The good news is that we actually know what survivors need because they tell us repeatedly what they need, some of which is outlined on the back side of the fact sheet that I provided you. It focuses on access to support, prevention, economic security, primarily. Additionally, Shared Hope International, which is a well-respected national leadership organization focused on ending the trafficking of minors, which this bill is geared towards, has created state-by-state legislation scorecards. And the Nebraska summary scorecard is attached behind your fact sheet. In short, we have an F. However, we have a B in one of the 6 areas that they score, which is criminal provisions and that is because our current laws are sufficient in this area. So the remaining areas that Nebraska needs to build out legislation for are consistent with what we hear from survivors and the service providers that are on the front lines of doing this work in our state. So I'm happy to answer any questions about that, but we would ask you not to advance this bill.

**WAYNE:** Any questions? Senator DeKay.

**DeKAY:** Thank you. Thank you today-- for being here. My question would be, if, if we were able to separate victims from the survivors, would you be in favor of more stringent penalties for the traffickers?

**CHRISTON MacTAGGART:** We are not opposed to, you know, going after demand, so to speak of, of which I, I-- or I guess. Sorry, this bill is not necessarily about demand, but we're not-- we're not necessarily opposed to that. But the other thing I would say is that we have a really good trafficking law in place, and it has significant penalties. And for traffickers, I do think it's effective. I'm not sure-- again, the research doesn't support that greater penalties deters somebody from committing a crime. What deters them is if they believe they're going to be caught. And so I'm not sure that enhancing penalties for trafficking is going to be a deterrent, to be quite honest. Like, I just don't think the research supports that.

**DeKAY:** So what mechanisms can be put in place to have them be caught easier than what they are right now or how do you-- how do we work to have people come forward to testify against them [INAUDIBLE]?

**CHRISTON MacTAGGART:** I think-- I, I think that there is some good information outlined in the Shared Hope report card that really focuses on what does prevention look like? How do we get out in front of this and prevent this? How do we educate youth early? How do we implement prevention in our child welfare and our juvenile justice system knowing that most individuals that are being trafficked have a history of being at risk because-- and, and being system-involved youth? So I think there's a lot of pieces there. I think services and support built out for survivors, the ability to leave the life and live a full life outside of, of trafficking is also significant. So I think that if we ask survivors, like, what would make a difference? They will tell us what they believe will make a difference. And I think that that is also pretty in line with what a lot of the research supports.

**DeKAY:** Thank you.

**WAYNE:** Senator Blood.

**BLOOD:** Thank you, Chair Wayne. Do you find it frustrating that so much effort has been put in, especially this year, towards creating more laws as opposed to trying to find ways to help fund resources?

**CHRISTON MacTAGGART:** I mean--

**BLOOD:** I mean, be honest.

**CHRISTON MacTAGGART:** I think that's always frustrating for me when I look at what other states are, are putting towards victim services broadly. Also knowing that, like, like, so many trafficking survivors show up as domestic and sexual violence survivors and don't identify with trafficking right away. And when you look at the amount of funding that states are putting towards those services in other states, it's significantly higher than, than what we are doing in Nebraska. So, of course, we always want to see an increase in funding for those. I, I do think, just broadly, we would like to see-- we have built out our criminal penalties and we've spent the time to do that here and we would like to see the Legislature really focus on prevention and what survivors need.

**BLOOD:** But that doesn't seem to be the trend this year, does it? It seems to be about legislation and putting up posters and ignoring the, the core reasons as to why we have trafficking. And so are some of the nonprofits in Nebraska concerned about this trend? Because I-- what I see is us pulling away from providing resources for all of the, the, the systemic things that cause sex trafficking, the things that make these people better victims. Are our nonprofits finding that frustrating?

**CHRISTON MacTAGGART:** I mean, I can't speak for all nonprofits, but I can speak for our-- for us and for the 20 nonprofit organizations within our network that, yes, there is concern about kind of where the focus lies that, that we would prefer that, that we shift it.

**BLOOD:** It's super easy to, to stand up and say how you're against something, but it's harder for people to actually do something about it sometimes, I think. And I think that's what we're seeing, especially since Sound of Freedom came out. People are automatically incensed where they never were incensed before, which blows my mind, but I, I do worry about your nonprofit and others. I don't feel we're putting our energies in the right direction, so. I appreciate your testimony and your honest answers.

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

**JEANIE MEZGER:** Good afternoon. My name is Jeanie Mezger, J-e-a-n-i-e M-e-z-g-e-r, and I oppose not only sex trafficking, but mandatory minimum sentences. Nebraska prisons are overcrowded, a problem that has persisted for years now and will continue to persist unless the Legislature makes serious changes. Increasing the number of life sentences will result in more elderly people in prison with the

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increased costs of incarceration for those who are elderly-- excuse me-- elderly and sick. We should be working to get someone out of prison when we see that the person has truly corrected his or her course. How much money would we save the state if we concentrated on getting people out of prison? Maybe you think that bad people ought to be in prison, people who harm others need to be held, held accountable. I agree. But the idea that some people are good and some are bad is foolish thinking. Good people sometimes surprise us by committing a crime. People in prisons surprise us with complete turnaround so frequently that we should no longer be surprised. Our laws should leave room for us to recognize when someone no longer needs to be in prison. Mandatory minimum sentences prevent that. LR277CA would apply to, quote, any individual who is convicted of a criminal offense involving sex trafficking of a minor, labor trafficking of a minor, or paying for sex with a minor. Involving is a vague word that should bother you. What other crimes would end up with a life sentence because of this one word? Is that really what we're after? Creating a mandatory minimum sentence of life in prison through a constitutional amendment, as I understand it, would require another constitutional amendment to change it if and when we see that life sentences are not the solution to trafficking. The only other thing I would add here is that I wish we had a way to keep kids out of the foster care system, that if we were able to keep kids out of the foster care system we would reduce the number of kids that were vulnerable to trafficking altogether. So I urge-- I urge you not to advance this bill. Thank you.

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

**FRAN KAYE:** I'm sorry, I didn't intend to--

**WAYNE:** You're fine.

**FRAN KAYE:** --speak to this. I'll get a blue sheet. My name is Fran Kaye, F-r-a-n K-a-y-e, and I just wanted to tell you something that happened to me. I had a friend who's homeless. Her daughter had just gotten out of, of juvie in, in Geneva. Her daughter was living on the streets. Her daughter was very much in danger of being trafficked. Her, her daughter was a mess. This mother and I tried and tried and tried to find shelter, food, structure for her daughter who had been let out and was on probation but had no probation officer watching over her or helping in any way. We even called one of the senators who had been very much in favor of increasing penalties for traffickers. "Crickets." If we really want to support children and young women and

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young men from being trafficked, we need to give them the safety to resist. We need to give them the structure to resist. We need to give them the resources to resist. Putting other young people, and her trafficker was just in his early 20s, in prison for life is not going to do anything for this girl and it's not going to do anything for this guy either. Jeanie is right, we can't just keep stuffing people in prisons. That doesn't do anybody any good. We really need to support our children and I see us failing at supporting our children. Until we do that, we are as guilty as any trafficker because we're setting kids up to fail. So let's not do that. OK? Thanks.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here. Next opponent. Opponent. Opponent. Seeing none, moving to neutral testifiers. Welcome.

**STEPHANIE OLSON:** Thank you. Thank you very much, Senators. Thank you, Judiciary Committee. My name is Stephanie Olson and I am with the nonprofit organization, The Set Me Free Project. And we are a nonprofit whose mission is to stop human trafficking before it starts by providing prevention education. And although we provide education to all ages, our focus is and always has been youth. And we have a curriculum and a training for adults and youth for every facet of the community. But we have been providing this prevention education for 10 years. When sex and labor trafficking and extreme sexual violence against a child, it isn't a crime of passion, it's not a crime of convenience or a spur-of-the-moment crime, it is cold and it is calculated and it takes planning. And so I am not against prosecuting buyers and prosecuting people who are doing the perpetration, but we need more training and education, and that's where we need to really focus our time and effort. We want Nebraska to be the leader in child welfare in this nation and the leader in the fight against child sexual violence. It's important that we set a precedent in Nebraska and we need to set it with prevention. We know that survivors, people who are being victimized by this crime don't self-identify as individuals who are being trafficked all of the time. And so if there is an instance where somebody is arrested and they're not identifying as a survivor of trafficking, they might be convicted and have a lifetime sentence. We need to protect our survivors. We find disclosures often of individuals sharing personal trauma of sexual violence of all ages. And some of the most striking testimonies that we receive, disclosures are from people in their 70s and above stating that they have been through this childhood trauma. They do get a lifetime sentence. We need to stop that before it starts. And we need to focus on the recovery of our children and stopping human

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trafficking before it starts. So because of that, I stay neutral on this bill, LR277CA, and I'm open to any questions.

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

**STEPHANIE OLSON:** Thank you so much.

**WAYNE:** Next proponent-- or neutral testifier. Sorry, neutral testifier. Welcome.

**SCOTT THOMAS:** Good afternoon, Senators. Scott Thomas, S-c-o-t-t T-h-o-m-a-s, with Village in Progress, and I testify neutral because I just want to say that there's been a lot of bills brought now in relation to human trafficking and I haven't heard any mention of how you address trafficking in the current through the public sector. So, for instance, if CFS should bring a case against a family in bad faith and maybe they withhold information from the courts, maybe they falsify or fabricate evidence, a series of modernizations occurs for that child. There's a bunch of cottage industries built up around that and they're all profiting off of the child, the child must be concealed and moved to monetize the child. So that's trafficking and exploitation. But I don't think that it's being recognized as such and so I would just like some kind of protections incorporated into subsequent bills that would provide the language should anybody need to seek recourse in the private sector for that. Or, or, you know, I guess it wouldn't be in the private sector. I guess if you provide it into law, then it's public sector. I'd like you guys to take a little bit more initiative in that, and then any questions anybody have.

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

**SCOTT THOMAS:** Thank you.

**WAYNE:** Next neutral testifier. Neutral testifier. Welcome.

**JULIA KEOWN:** Good afternoon. My name is Julia Keown, J-u-l-i-a K-e-o-w-n. I want to, first of all, thank Senators DeKay and Sanders for taking on such an important topic in their legislation. My testimony will be regarding LR277CA, though. So I am one of only 5 forensic nurses in Nebraska who is board-certified in working with both kids and adults, so I do through the range. So in my experience, and I've been working with sexual assault and domestic violence victims for 18 years now, in my experience the best way to help prevent that supply of sex trafficking is to help people with their

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basic needs, right? We, we all know the human development. We probably all took those classes. Maslow's hierarchy of needs, right? So research tells us to prevent human trafficking you have to provide these resources, you have to break generational trauma. You have to provide food, shelter, water, and love. Right? Other ways that I would maybe suggest to help trafficking victims and, you know, maybe increase prosecution instead of very, very harsh penalties like this that might end up penalizing human trafficking victims themselves, that I have seen include, like, Florida statute 914.6 that requires limiting interviews for victims, especially child victims. And that really helps prevent serial traumatization by the system and can help kind of get those kiddos through and get those traffickers prosecuted. Another thing that we can do and, I think, it's the state of Indiana, so Perryman v. The State of Indiana, they have been able to get statute allowing for use-- the use of forensic interviews as court testimony saying that it does not violate the Sixth Amendment. So that really helps those kiddos in preventing the trauma-- the traumatic experience of being in the court and helps get those prosecutions through so we can get these traffickers and these johns prosecuted earlier in the piece instead of years and years down the line. That's all I got. Happy to answer any questions if you guys have any.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. Next neutral testifier. Neutral testifier. Seeing none, we have 25 letters: 10 in support and 15 in opposition. And that will close the hearing on LR277CA. Next, we'll open up LR279CA. Senator Holdcroft.

**HOLDCROFT:** Good afternoon, Chairman Wayne and members of the Judiciary Committee. For the record, my name is Senator Rick Holdcroft, spelled R-i-c-k H-o-l-d-c-r-o-f-t. I represent Legislative District 36, which includes west and south Sarpy County, and I'm here today to discuss LR279CA. This resolution directs the Legislature to enact all laws necessary to protect and provide for the physical security of first responders throughout the state of Nebraska, specifically by establishing minimum sentences for individuals convicted of assault on a first responder that results in serious injury and for individuals convicted of murder of a first responder. The minimum sentence for those convicted of assaulting a first responder that results in serious injury would be 25 years in prison, and the minimum sentence for those convicted of murdering a first responder would be life imprisonment. For purposes of this amendment, first responders include: Police officers, sheriffs and their deputies, firefighters, emergency medical providers, Department of Health and Human Services employees, healthcare professionals, correctional officers, and

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Nebraska National Guard members who are deployed within the state. Recruiting for and retaining people within this position is challenging, and that challenge was magnified during the COVID-19 pandemic. It has only become harder for the state and municipalities to fill vacancies in these-- in these areas. By allowing citizens to enshrine their support of first responders in our constitution, we will signal to these heroes in our communities and across the country that Nebraska has their back. Increasing these specific felony penalties will deter careless and dangerous behavior and ensure to the fullest extent possible a safe working environment for Nebraska's first responders. We owe it to those who sacrifice for their community on a daily basis, and to those who have lost loved ones in the line of duty to strongly prosecute the lawless and injustice which endangers not only those serving in these duties, but also our communities at large. This resolution takes a positive step towards creating a safer state for our first responders. Chairman Wayne and members of the Judiciary Committee, thank you for giving your attention to LR279CA. I would, again, urge your support of this resolution and will do my best to answer any questions you may have. I have handed out a number of handouts. The first set illustrates some of the rise in violence against our first responders and the second set are all about the, the continued challenges in hiring first responders. With that, I'll answer any questions.

**WAYNE:** Senator McKinney.

**McKINNEY:** Thank you, Chair Wayne. Thank you, Senator Holdcroft. So should there be a twin bill for this for first responders who assault people as well?

**HOLDCROFT:** No.

**McKINNEY:** Why?

**HOLDCROFT:** Well, first of all, they're not contributing to their community.

**McKINNEY:** Who? So if a first responder assaults somebody seriously, they shouldn't be held accountable?

**HOLDCROFT:** In, in the line-- in, in-- can you give me more details about how this first responder--

**McKINNEY:** They seriously injure somebody, should they not have sovereign immunity, qualified immunity, should they not be convicted and sent to prison for life?

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**HOLDCROFT:** In my opinion, no. I think--

**McKINNEY:** Why?

**HOLDCROFT:** Because this is a special class of individuals, the first responders.

**McKINNEY:** How are they special?

**HOLDCROFT:** Because they're serving their community.

**McKINNEY:** So if they're serving a community and kill somebody unjustly, they should be just let off free?

**HOLDCROFT:** No, they should be prosecuted in accordance with the law.

**McKINNEY:** And they shouldn't serve life?

**HOLDCROFT:** No.

**McKINNEY:** Why?

**HOLDCROFT:** Not necessarily, it depends on the situation. They should be prosecuted as an individual.

**McKINNEY:** Well, currently, if a law enforcement officer kills somebody, they have qualified immunity.

**HOLDCROFT:** They will be prosecuted. I mean, that's not-- I don't believe that's true. I think anyone who-- any first responder or police officer who is, is automatically-- there's a process where they are-- the investigation is conducted. And if they-- if they acted illegally, then they can be prosecuted just like anyone else.

**McKINNEY:** So do you think Derek Chauvin operated without--

**HOLDCROFT:** I don't know-- I don't know that situation. I'm not familiar with that situation.

**McKINNEY:** George Floyd.

**HOLDCROFT:** George, George Floyd-- I mean, that was, obviously, a, a-- I think it was a, a rare situation and I think the 3 officers who were involved in that were properly investigated and punished.

**McKINNEY:** OK. So if that happens again, we-- if that happened in Nebraska do you think those officers-- if, if, if 3 officers in

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Nebraska did the same thing, should the same consequences happen to them?

**HOLDCROFT:** Yes. I mean, I think-- and I think Chief of Police Schmaderer and, and Sheriff Hanson would-- are excellent examples of leaders who hold their employees accountable for their actions.

**McKINNEY:** So why don't-- so should we end qualified immunity in Nebraska?

**HOLDCROFT:** I'd have to look into that more. I mean, that's not part of this bill to my, my understanding. So I'm certainly happy to work with you on that.

**McKINNEY:** I guess my overall issue is that the accountability that we want for regular citizens is not the same accountability we want for people who we deem as law enforcement officers or, or first responders that are somehow, on one hand, held to a certain standard. But if they don't uphold the law, we're supposed to disregard it. And in my opinion, they should be held to a higher standard but we don't hold them to that. So if, if we're going to advocate to send somebody to jail for murdering the first responder, a first responder should be also held accountable for murdering somebody.

**HOLDCROFT:** And they should be.

**McKINNEY:** So you would act-- so you would support a bill that would say a first responder who serious-- seriously injured somebody should go to jail for murdering somebody.

**HOLDCROFT:** And I think that's already in statute so it's not necessary. The purpose of this is to express the people of Nebraska's support of our first responders. That's why it's a constitutional amendment.

**McKINNEY:** So if I brought-- so if somebody brought a constitutional amendment to say that for first responders, first responder seriously injured somebody, they should-- they-- and they should go to jail for life, you would support it?

**HOLDCROFT:** You can bring it but I doubt the, the people of Nebraska would support it.

**McKINNEY:** Would you support it?

**HOLDCROFT:** No.

**McKINNEY:** So that's a contradiction.

**HOLDCROFT:** How is that a contradiction? Am I not a member of the state of Nebraska, it's just not in my common--

**McKINNEY:** But you're advocating for a bill that you-- it-- you know what, I'm done. I'm done asking questions.

**WAYNE:** OK. Any other questions? I have one general. So in your amendment-- in your bill-- so the statute defines, like, health and human services as, like, people in a regional-- mental health facilities and those kind of things. Underneath your bill, are you intended that a first responder to be underneath the language of Department of Health and Human Services employees? Are, are you saying, like, the person who answers the phone at the call center?

**HOLDCROFT:** I'm willing to, you know, further define employees of, of the Department of Health and Human Services. But if it's--

**WAYNE:** No, it's not a trick question, I'm just trying to figure out-- that's a broad-- Health and Human Services is a big agency.

**HOLDCROFT:** It's pretty broad. I agree, it's pretty broad.

**WAYNE:** So-- I mean, you-- there's some confusion around that for me. I just-- how'd you come up with 25 years?

**HOLDCROFT:** We just came up with 25 years. It was what was suggested.

**WAYNE:** OK. And so if a 14-year-old, 15-year-old commits a murder of one of these listed people, underneath the Supreme Court ruling, they can't have life in prison. So what do we do in that situation? Your, your section would be deemed unconstitutional as it relates to juveniles.

**HOLDCROFT:** Well, we'd have to look at that. I don't know. I don't have a good answer for that one.

**WAYNE:** OK.

**HOLDCROFT:** How could it be unconstitutional if it's part of the constitution?

**WAYNE:** Because federally you can't-- you can't-- a juvenile can't be sentenced for life because the federal constitution doesn't allow for that.

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**HOLDCROFT:** Well, we can work a-- an amendment or a-- an exception in that case.

**WAYNE:** OK. Any other questions from the committee? Seeing none, thank you for being here as always. I'm sure you'll be around for close.

**HOLDCROFT:** Yeah, I'll be here.

**WAYNE:** First proponent. Proponent. Welcome, sir.

**TIM DUNNING:** Good afternoon, Mr. Chairman. Members of the committee. My name is retired Douglas County Sheriff Tim Dunning, D-u-n-n-i-n-g. Nebraska is part of a crisis from policing that extends from coast to coast, putting at risk the lives of citizens and officers alike. The simple fact is we no longer have enough applicants willing to put on a badge and uniform to ensure public safety. Just as worrisome is the lack of qualified applicants pushing departments in some places to reduce hiring standards. This deficiency is occurring at the same time that the demand on officers and the risk inherent in that profession are increasing. A nationwide breakdown in social order and conduct is placing officers in harm's way with increasing frequency. Random and too often fatal attacks on first responders are up dramatically in the last few years, and it's not just police facing the risk of violent, potentially fatal assaults. Fatal assaults are among the leading cause of death for paramedics. Assaults on firefighters almost doubled between '21 and 2022, and 70% of emergency physicians report violence in emergency room settings is on the rise, taking a toll on hospital staff and patients alike. First responder advocates are calling for immediate measures to halt the vicious attacks police, fire, EMT, and healthcare workers face daily. These measures include arming all first responders, enhanced de-escalation training, and increased penalties for attackers. Assaults on first responders aren't limited to our big coastal cities. This is a nationwide problem that plagues virtually every community in every state, including Nebraska. We cannot allow this to continue. We must take steps now to ensure the safety of future generations of Nebraska citizens and the continuation of public order. First responders, including law enforcement, must have the ability to perform their lifesaving duties without the fear of unprovoked, violent, and potentially fatal assaults. That is why I encourage you to vote in support of LR279CA. We already have enough trouble recruiting police, fire, EMTs, and hospital workers. It is essential that Nebraskans show our clear support for the brave and hardworking men and women in these fields and take what steps we can to protect them from unnecessary harm. To counter the lack of applicants, many departments have increased pay and benefits, they

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have increased advertising and marketing of career opportunities in law enforcement. Those measures have-- haven't stemmed the decline in police staffing because they don't address the underlying issue that many officers, applicants, and their families are most concerned about, that the risk inherent in the job now outweigh the benefits. Departmental hiring will not return to safe levels until a clear message is sent by our political leadership and the citizens of Nebraska that we value and support our first responders and are willing to take clear action to protect them. We need your support, Mr. Chairman, Senators, and the support of all of our elected officials and citizens to demonstrate conclusively that Nebraska stands behind our first responders and send a message to, to prospective applicants and their families that we will take a strong stand against those who commit unprovoked attacks against them. Thank you and I'd be happy to answer any questions you might have.

**WAYNE:** Senator McKinney.

**McKINNEY:** So do you honor the innocent black lives who have been lost and demonized and injured and unprotected at the hands of first, first responders?

**TIM DUNNING:** Can you give me a specific example?

**McKINNEY:** There's many.

**TIM DUNNING:** Pardon?

**McKINNEY:** There's many. I don't need a specific example. There's many.

**TIM DUNNING:** I don't know anything about Black Lives Matter than the name. I don't know any--

**McKINNEY:** I didn't say Black Lives Matter.

**TIM DUNNING:** I thought-- I, I, I, I thought I heard you say that.

**McKINNEY:** I, I didn't at all. I said some black lives.

**TIM DUNNING:** I'm sorry, I'm hard of hearing.

**McKINNEY:** Yeah, I didn't say Black Lives Matter at all. I just said innocent black lives.

**TIM DUNNING:** OK. I'm sorry.

**McKINNEY:** That have innocent black people--

**TIM DUNNING:** OK.

**McKINNEY:** --who have been harmed at the hands of first responders who have not been given justice in America and in the state of Nebraska. Do you-- how are you advocating to protect their lives?

**TIM DUNNING:** I-- that's not part of this bill.

**McKINNEY:** I, I know, but it's, it's, it's part of this conversation. Because your, your argument is that law enforcement and first, first responders are not being honored and there's low recruiting numbers because people don't respect them and things like that. Have you ever considered that maybe the recruitment numbers are low because people are finally realizing that there is a lack of accountability?

**TIM DUNNING:** That's not any feedback that I've gotten.

**McKINNEY:** Who have you got feedback from?

**TIM DUNNING:** Recruits.

**McKINNEY:** Just recruits?

**TIM DUNNING:** Recruits--

**McKINNEY:** That's-- but, but that's the problem. Have you talked to people within communities like--

**TIM DUNNING:** Sure.

**McKINNEY:** What communities?

**TIM DUNNING:** Sure. I've, I've, I've not ever heard anybody say they don't want to go there because they're afraid of [INAUDIBLE].

**McKINNEY:** What communities have you talked to?

**TIM DUNNING:** Douglas County, the whole community.

**McKINNEY:** What, what communities in Douglas County?

**TIM DUNNING:** What do you mean what community? That's-- Douglas County is a large community.

**McKINNEY:** Yeah, but there's specific communities in Douglas County.

**TIM DUNNING:** I've, I've been all over Douglas County.

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**McKINNEY:** What communities?

**TIM DUNNING:** I guess, I'm not familiar with your question. If you're-- if you're talking about--

**McKINNEY:** It's a-- it's a very direct question.

**TIM DUNNING:** --the African American community, I have been there.

**McKINNEY:** I, I, I didn't say-- I, I didn't say African American, I said--

**TIM DUNNING:** I did.

**McKINNEY:** OK. So have you talked to--

**TIM DUNNING:** I have been there.

**McKINNEY:** Where?

**TIM DUNNING:** I've been at a forum at Mama's.

**McKINNEY:** Huh?

**TIM DUNNING:** I've been at a forum at Mama's.

**McKINNEY:** What?

**TIM DUNNING:** Restaurant.

**McKINNEY:** What restaurant?

**TIM DUNNING:** It used to be the, the Nebraska School for the Deaf.

**McKINNEY:** That's not a community, that's a restaurant.

**TIM DUNNING:** Pardon?

**McKINNEY:** A restaurant.

**TIM DUNNING:** That's the restaurant, they held the forum.

**McKINNEY:** But that's not a-- a restaurant is not a community.

**TIM DUNNING:** OK. I'm sorry.

**McKINNEY:** It's my point. You're, you're advocating for a bill but you haven't, in my opinion, and from your response, you haven't done your

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due diligence in, in, in speaking to all concerned parties. I-- and, and let, let me be truthful here. I don't think anybody should be harmed or anybody should be hurt. But if we're-- if you're advocating for accountability, accountability should be across the board. There's been many innocent people who have been harmed by first responders who are not afforded the same type of accountability that you're advocating for. So if you're advocating for this type of accountability, it should be reciprocated. And if you're not advocating for it to be reciprocated, in my opinion, then your, your testimony is invalid.

**TIM DUNNING:** Well, I thought assault and murder was against the law.

**McKINNEY:** It should be for everybody.

**TIM DUNNING:** It is.

**McKINNEY:** It, it-- it's not.

**TIM DUNNING:** Well, it's in the statute.

**McKINNEY:** It's not prosecuted the same.

**TIM DUNNING:** I'm not a prosecutor.

**McKINNEY:** But, but you're advocating for this to be prosecuted differently.

**TIM DUNNING:** I am.

**McKINNEY:** And that's the problem.

**TIM DUNNING:** I'm sorry.

**McKINNEY:** Sorry isn't enough.

**TIM DUNNING:** OK.

**McKINNEY:** Right. Thank you.

**BLOOD:** Thank you, Senator McKinney. Are there any other questions? Seeing none, thank you for your testimony.

**TIM DUNNING:** Thank you.

**BLOOD:** Any other, other proponents? Any other proponents? Welcome to the Judiciary Committee. Please spell your name.

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**SAM STONE:** Good afternoon, Senators. My name is Sam Stone. First name, S-a-m, last, S-t-o-n-e. I'm here on behalf of Back the Blue, a national initiative. We are working with states across the country to improve law enforcement and the public perception of law enforcement with the goal of increasing public safety and civil order for the benefit of all. And I am here to testify on behalf of this bill for many of the reasons that the sheriff just announced. We are facing a national crisis in law enforcement. Law enforcement across the country is stretched to the breaking point. In my hometown of Phoenix, Arizona, we are down 1,000 officers from where we were a decade ago. In many other communities, they are hundreds, even thousands of officers short of the need to protect the community. And having a deficiency in total law enforcement does not improve justice. It makes it more haphazard and makes it more responsive only to 911 calls, so that we are trapped in a cycle where our officers are running from one call to another. They do not have time to engage in proactive community policing. They do not have time to fully integrate themselves into all the neighborhoods they serve. And that deficiency cannot be corrected without turning around this national narrative. We have seen across the country that when states and cities have implemented soft-on-crime policies that crime has increased. When they have enforced the law fairly and in a manner that is consistent with the laws on their books, crime goes down to the benefit of all in those communities. When we have done polling in the poorest communities across the country, what we find is that the narrative that is being spun by an aggressive and very vocal percentage of those communities is not reflected in the broader interest of the community. In other words, when we have polled people in the poorest areas in, in many of our cities, we find that between 60 and 80% would like to see more police and more proactive policing, more community policing. That is not possible unless we take steps right now to stand up for our law enforcement. And in this measure, specifically, there is never an excuse for an assault on the first responder, not in the line of duty. They should be held to account when they step out of line. But at the end of the day, when somebody is trying to save lives, when they're trying to intervene to protect another person and they face an unwarranted and unprovoked assault, that is a heinous crime that steps up to a level that is different than the average everyday encounter that police are, are dealing with. So I thank you very much and I am pleased to answer any questions you may have.

**BLOOD:** Thank you for your testimony. Do we have any questions? Yes, Senator McKinney.

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**McKINNEY:** Thank you, Senator Blood. So being black in America and killed by a first responder is less of a heinous crime in, in your testimony than being killed by a first responder?

**SAM STONE:** Are you-- are you asking if a, a black first responder is killed [INAUDIBLE] the same?

**McKINNEY:** No, no, no. I'm not-- I'm not asking, I'm saying a regular citizen who is black being killed by a first responder is a less-- in your testimony, is that a less heinous crime?

**SAM STONE:** It's a less heinous-- there is a special imperative--

**McKINNEY:** That's, that's the argument that--

**SAM STONE:** Well, I'm, I'm trying to, to answer your question, sir.

**McKINNEY:** OK. Go.

**SAM STONE:** There is a special imperative when someone is engaged in the lifesaving duties of their office and of their obligation, so that at that moment their concern must be and must remain on the victims and the potential crime that they're dealing with or in the case of a physician on the ill person, in the case of a firefighter on somebody who may need EMS, immediate medical attention, or in a-- obviously, a fire where they need to get into a building, they need to have no concern at all that they will face an unprovoked attack in that situation so that they can carry out their duties to the best of their ability. So I do think that is different. However, I would say without any question that the law should be enforced absolutely equally on every civilian and every circumstance and that includes those individuals when they take off their uniform. But it also includes the legal jeopardy that they face if they break the law while in uniform.

**McKINNEY:** You just contradicted yourself. But--

**SAM STONE:** How so, Senator?

**McKINNEY:** You did. But never mind that. But my, my point-- and what I said to the previous testifier, is that you, you make this argument that, like, the poorest communities want--

**SAM STONE:** More police.

**McKINNEY:** --more police, and my argument would be I think the poorest communities want more economic opportunity because the, the issue,

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which is what you miss and I think a lot of people miss, is that the communities that-- it's kind of crazy. You say the communities that are the poorest need the most police and you-- and--

**SAM STONE:** I, I say the--

**McKINNEY:** No.

**SAM STONE:** Can I-- can I clarify, though--

**McKINNEY:** I'm not-- no, no,--

**SAM STONE:** --that's not what I said, sir.

**McKINNEY:** --no, I'm not done talking. We imple-- we, we deploy law enforcement in poor communities across America. We spend exorbitant budgets in poor communities across America, which I don't think is, is right and I don't think it's smart. But people come everyday in this place and say crime is high in all of these communities. So if we're spending all these dollars in the poorest communities in America to send law enforcement, but you have all these cops, because I live in north Omaha, for example, and every corner I turn I see a cop. But people will come down here and people write me on social media everyday and say I have the worst community in the state and everybody in my community should be locked up. And I shouldn't be advocating to demolish NSP because the people in my community deserve to be in there. And if-- and if that is what people think, then it's kind of-- it, it doesn't make any sense because if we're investing all these dollars in law enforcement to protect my community, then law enforcement isn't doing their job. So what that tells me is we're putting our money in the wrong space. We should be investing in community, investing in education. We should be investing in business. We should be investing in people. But you're, you're advocating to incarcerate more people unjustly. You're, you're, you're advocating to fill up our jails, which are going to be overcrowded anyway, but we're still building another prison, or we're going to keep NSP open anyway because we already know the new one is going to be overcrowded. And, and you're OK with that because you're going to feel good at night because you don't have to deal with the problem. And that is the issue. You don't care about people, you care about feeling good. And that's the issue with this bill, any bills like this.

**SAM STONE:** Well, OK, I, I will address several questions within there. Economic opportunity isn't possible without law and order.

**McKINNEY:** How?

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**SAM STONE:** Look at Los Angeles, San Francisco, Portland, Seattle, New York, Philadelphia, Washington, D.C., where the breakdown in law enforcement and law and order has led to an evacuation of businesses, has led to businesses that open up and turnover and disappear within weeks or months. Those communities are not benefiting from a withdrawal of law enforcement that has followed the type of policies that you are advocating for in your question and statement there. They have done so in total in the last few years.

**McKINNEY:** So we should have a police state?

**SAM STONE:** And they have not been effective, whereas in the past when they did a better job of enforcing the law and maintaining public order, the economic condition of people in the-- in inner city communities was increasing at a much higher rate than it is now. And--

**McKINNEY:** But that's not truthful.

**SAM STONE:** --in your--

**McKINNEY:** My, my district has been impoverished for 30-plus years. Don't-- that, that argument is not truthful, the inner cities of Los Angeles and, and those cities that you talk about have been impoverished for 30-plus years and, and, and this-- and this country has diverted millions, even billions of dollars to law enforcement and those communities have still been impoverished so your argument isn't truthful. So just tell the truth. You're not telling the truth.

**SAM STONE:** The truth-- no, no, Senator, that--

**McKINNEY:** Make your argument and tell the truth.

**SAM STONE:** --that is an opinion. I understand.

**McKINNEY:** No, it's not an opinion. It's a fact.

**SAM STONE:** But at the--

**McKINNEY:** Tell the truth.

**SAM STONE:** --end of the day, I live in a low-income, majority Hispanic and black community.

**McKINNEY:** But tell the truth.

**SAM STONE:** And so I'm-- you're talking about people who are essentially my neighbors also.

**McKINNEY:** But tell the truth.

**SAM STONE:** And I am telling the truth, Senator,--

**McKINNEY:** You're not.

**SAM STONE:** --when I say that in those communities and in my own community and in others, when you have a society that respects law and order, the quality of life in that community increases dramatically.

**McKINNEY:** So the people in my community don't respect law and order?

**SAM STONE:** Senator, I did not say that.

**McKINNEY:** That's what you implied.

**SAM STONE:** No, Senator.

**McKINNEY:** Yes, you did.

**SAM STONE:** That is not what I implied.

**McKINNEY:** Yes.

**SAM STONE:** What I implied is that when there is an absence of law enforcement that there--

**McKINNEY:** There, there-- there's more law enforcement--

**SAM STONE:** --becomes a breakdown.

**McKINNEY:** --but there's a lot more law enforcement in my community than the richest communities in this state so, so don't make that-- so, so don't imply that.

**SAM STONE:** But, Senator, those, those deployments--

**McKINNEY:** There's not an absence of law enforcement, though.

**SAM STONE:** --those deployments are based--

**McKINNEY:** But there's not an absence of law enforcement.

**SAM STONE:** Those, those--

**McKINNEY:** Your argument is, is, is not factual.

**SAM STONE:** No, Senator, it is factual.

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**McKINNEY:** It's not.

**SAM STONE:** The, the matter of fact is you might need more police in those communities.

**McKINNEY:** So we need a police state in north Omaha?

**SAM STONE:** Is a police state having an officer on the corner?

**McKINNEY:** We need a police state is what you're arguing.

**SAM STONE:** No, a police state is a state where everybody has their actions dictated to them in every single regard.

**McKINNEY:** So we need a police state. Thank you. Thank you.

**BLOOD:** All right. Do we have any more questions? Thank you for your testimony.

**SAM STONE:** Thank you, Senator.

**BLOOD:** Any other proponents for LR279CA? Any other proponents? Do we have any opponents? I'd like to remind people, if you are here to testify for a particular bill that is up, that you please come to the front so we can go ahead and expedite the process a little more efficiently. Welcome to Judiciary. Please spell your name.

**SPIKE EICKHOLT:** Thank you, Senator Blood and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association as their registered lobbyist in opposition to the proposal. Our-- both of our organizations support proportional crimes for criminal-- proportional penalties for criminal conduct. I'm going to speak directly to this proposed constitutional amendment because, in our opinion, there are some-- several things that are wrong with it. First of all, as I testified earlier today, this is not necessary. The Legislature has general plenary authority. If you want to pass a criminal law and make a penalty, you can and you have. And, and secondly, this is also not self-executing, which means if the voters approve at 95%, it still is going to have to come back to the Legislature to write a law. So in some respects, it's sort of-- no disrespect to Senator Holdcroft, sort of performative. It's sort of a show. And, and I don't know, again, if it's something they somehow generate voter turnout for the elections, whatever it might be. But if we truly do want to send a message that people the proponents have been talking about and truly do want something to protect people, do

it. [INAUDIBLE]-- for years, to do so. Secondly, this proposal particularly is subject to a single subject issue, as our constitution and our courts have understood that. Voters, when they're presented with a ballot or a proposed constitutional amendment are to-- be asked a singular question. The single subject is more narrow when it comes to ballot issues and things on the ballots for the voters to approve. Here, you have a whole series of questions that are asked of the voters, that will encourage what they call log rolling. Voters might support a mandatory life sentence for police officers, but not for Health and Human Services employees. Similarly, they might support life sentences for all these other people that are listed here, but not necessarily for second-degree murder, or alternatively, not necessarily the mandatory minimum of 25 years for an assault, even a misdemeanor assault, presumably. With respect to the proposal for the minimum sentence of first-degree murder, we already have a minimum sentence, a life sent-- there's 2 penalties for first-degree murder. It's life or it's death. So we already have that. What this does, if it's provided to the voters, is add some uncertainty to that. Because an aggravating factor-- you can get the death penalty in Nebraska if the state proves an aggravating factor. One of the aggravators is if you kill a police officer. This would imply that perhaps the death penalty is no longer an option. It was just gonna be a life sentence. And I don't think that's the intent of the proponents and Senator Holdcroft, but that's one of the tricky things that you need to be careful of when you have a constitutional amendment. So for the reasons that I tried to state, we would oppose this proposal and ask the committee not to act on it. I'll answer any questions if anyone has any.

**BLOOD:** Thank you for your testimony. Do we have any questions? Any questions? Senator McKinney.

**McKINNEY:** Thank you, Senator Blood. Thank you, Spike. I guess my question would be has the tough on crime approach in America in the last 30 years decreased our prison populations?

**SPIKE EICKHOLT:** I would say it has not. I mean, we've increased penalties consistently in this state, on a whole variety of things: drugs, human trafficking, sexual assault.

**McKINNEY:** Has it deterred crime?

**SPIKE EICKHOLT:** I don't think it has. I mean, I've represented people charged with crimes. I think what deters more and somebody said it on a bill earlier today, is the concept of getting caught. I mean, I

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think that people generally know what they might be doing is wrong. It's illegal, as far as whether it's a misdemeanor, a felony, what level of felony, if it's got a mandatory minimum. Maybe a handful of people out there in the community who are involved in, in organized criminal conduct sort of appreciate the penalty.

**McKINNEY:** Have communities who have more police patrolling them seen more or less people from those communities sent to prison?

**SPIKE EICKHOLT:** I think the studies are pretty clear that the more policed a community is, the more interaction they have with law enforcement, the more those actions result in citation, arrest, charges, and imprisonment.

**McKINNEY:** Thank you.

**BLOOD:** Thank you, Senator McKinney. Do we have any other questions? With that, thank you for your testimony. Do we have any more opponents? Any more opponents for LR279CA? Anyone in the neutral? Welcome to the Judiciary Committee. Please spell your name.

**JUSTIN HUBLY:** Good afternoon, Senator Blood, members of the committee. My name is Justin Hubly, J-u-s-t-i-n H-u-b-l-y. I'm the executive director of the Nebraska Association of Public Employees, AFSCME Local 61. Our union represents over 8,000 frontline state employees and more than 43 different code and noncode agencies who work more than 360 different jobs in all of 90-- all 93 of Nebraska's counties. We're here today, neutral on this bill. And give-- thank Senator Holdcroft for including DHHS employees in the definition. But we think that's a little vague, as to there's almost 4,000 people who work for DHHS and who needs to be defined. And we'd be happy to work with him on defining those folks a little bit more. Also, the definition of a correctional officer is in the bill. We think that that could be brought into the folks who work in a prison, such as a nurse that might have interaction with inmates. However, the main reason why we are neutral on this bill, is what our members want is to be safe when they perform their job. And we feel the best way to do that is to have prevention as opposed to something punitive after something goes wrong. And so we'd encourage the Legislature to work on solutions to prevent attacks on first responders. The other piece is we have not-- we've, we've researched this quite a bit. You, you don't see me in this committee too often dealing with criminal type things. We couldn't find any research that showed that enhancing penalties keeps frontline first responders safe. And since we couldn't find anything to support that, we didn't think that perhaps this bill was the best

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way to go about doing this. But instead, we should be finding preventative measures to keep frontline first responders safe. I'd be happy to answer any questions.

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

**BLOOD:** Thank you, Chair Wayne. Thank you for your testimony. So just for example-- so an example of maybe better protecting our employees would-- maybe we'll use Lincoln Regional Center as an example that we know that staff are being brutally assaulted, but only receive training that is meant to basically protect the patients and not themselves. So is that maybe one of the cases that you can see better training that could protect them?

**JUSTIN HUBLY:** Certainly. For example, if somebody is assaulted at, at the Lincoln Regional Center, or some of you might remember, here in Lincoln, we had a child family service specialist who was shot when walking up to a door to do a well-being check. What are some preventative measures? Maybe better training to keep--

**BLOOD:** Right.

**JUSTIN HUBLY:** --people safe at those facilities. Perhaps, it's increasing funding, to make sure nobody's doing those checks alone. Perhaps, there are ways to have de-escalation training our social workers out in the field with these workers to defuse situations before somebody ends up in a situation where they get hurt.

**BLOOD:** Isn't that the type of training they already receive? Don't they need more procedural, much as we do with, say, in the prison system? Sorry, I couldn't get the word out.

**JUSTIN HUBLY:** You bet. I would tell you, from our members, we feel that there's a strong lack of training. I know the department would come in and say they do a great job of training. And I think they believe that in their heart of hearts. From the front line, that-- we need better training to make sure people know how to protect themselves, to protect others, but how to best interact with the folks-- you know, the folks that we're interfacing with in the community. They're, they're suffering from something, and we're there to help them. And they don't always know what they're doing. And our members sometimes react in ways that they haven't been trained in how to react in.

**BLOOD:** Fair. Thank you.

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**WAYNE:** Any other questions? Senator McKinney.

**McKINNEY:** Thank you, Chair Wayne. Thank you. Can you repeat-- so you found no evidence that increasing-- enhancing penalties prevented crime?

**JUSTIN HUBLY:** Yeah. We have a committee of 15 union members. And honestly, we're all frontline workers, and so this is not our wheelhouse. So when I say we researched, it was a lot of googling in our office and people on different computers to say it doesn't enhance penalty. Does that prevent that or does it in-- discourage people from attacking a frontline worker? And we just didn't find any results that supported that.

**McKINNEY:** I appreciate that testimony. Thank you.

**WAYNE:** Senator DeKay.

**DeKAY:** Thank you. Do you think because of lack of protection or whatever-- however we want to explain it, do you think we are losing frontline responders in the police force, fire department, everything else downline, is there any correlation between the lack of backing for first line responders or not?

**JUSTIN HUBLY:** Yeah. The, the work that our members do is absolut-- it's challenging, and we do lose people who don't feel safe in those, in those situations. Absolutely.

**DeKAY:** So where do you think we could go with this to keep first line responders, regardless if it's firefighters, police officers, ambulance drivers. How do we protect them and how do we keep them on the streets to keep our community safe?

**JUSTIN HUBLY:** Sure. Well, what I tell you is our members-- the reason why we're neutral on this bill. I don't think anybody's going to lose any sleep if somebody who assaults one of our first responders goes to prison for a long time. Nobody's going to lose-- our members aren't going to lose sleep over that. However, our members thoughtfully have said, does that solve, said the person who got assaulted or the person who was attacked. Maybe we can prevent that in other ways.

**DeKAY:** Thank you.

**WAYNE:** Thank you. Any other questions from the committee? Seeing none, thank you for being here. Next neutral testifier. Seeing none, as

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Senator Holdcroft comes up to close, we have 6 letters, 2 in support and 4 in opposition. Senator Holdcroft.

**HOLDCROFT:** Thank you, Chairman Wayne and members of the Judiciary Committee. And I thank the testifiers for being here today. Again, this is a constitutional amendment. And the purpose of it is to express-- for the people of Nebraska to express their support for first responders by setting some very strict penalties for harming or murdering our first responders. And yes, we, we have a very long list of first responders. And we, we probably need to address that. And we also need to address the juvenile piece of it, also. But with that, I hope you'll consider advancing this resolution.

**WAYNE:** Any questions from the committee? I-- one general. Is your intent to have these people-- this punishment be for those who are active, like on duty? Because the way it's written, I think it can apply to anybody off duty, too.

**HOLDCROFT:** Well, we can look at that. But yeah, it was to be people who were performing their duties-- in the line of duty.

**WAYNE:** So like-- and [INAUDIBLE].

**HOLDCROFT:** Nurses would, for instance, have to be in a hospital doing their type of work and that. And EMTs, performing their duties on [INAUDIBLE].

**WAYNE:** And since it's in the constitution, is there discretion for a prosecutor? Like, let's say 2 cops got in a fight, and one broke somebody's nose. Do they have to be charged for 25 years?

**HOLDCROFT:** Is that a serious offense?

**WAYNE:** It's a serious injury.

**HOLDCROFT:** Punching somebody's nose is a serious injury?

**WAYNE:** Breaking it, if you break a nose.

**HOLDCROFT:** Well, I think that's up to the county prosecutor or the DA to, to make that kind of call.

**WAYNE:** OK. Any questions? Seeing none, thank you for being here. And that-- oh. Senator McKinney.

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**McKINNEY:** Thank you, Chair Wayne. Senator Holdcroft, the neutral testifier said that his organization was not able to find any evidence that increase-- enhancing or increasing penalties--

**HOLDCROFT:** You're talking about the--

**McKINNEY:** --deterred?

**HOLDCROFT:** --representative for the--

**McKINNEY:** Yeah, yeah.

**HOLDCROFT:** --the state employees. Well, I would challenge his ability to make that kind of a call. Because I am, I am a big believer in deterrence. I believe that enhanced penalties do deter.

**McKINNEY:** What evidence do you have to, to make that statement?

**HOLDCROFT:** OK. I have evidence from the IG's Office that shows that our incarceration rates have been going down. I assume that's because of enhanced penalties. I also have information from the IG's Office that shows that our occupancy rates in the prisons are going down. And I expect-- I, I hope to, in the coming years, delve into more of that, and get some ground truth as to numbers that illustrates whether or not, you know, enhanced penalties do. My personal experience, being in the service and being everywhere else is enhanced penalties do, do deter criminals from [INAUDIBLE].

**McKINNEY:** So if enhanced penalties deter, why do people continue to bring more bills to deter? And, if that is the fact, then why are we building a new prison?

**HOLDCROFT:** We're building a new prison because NSP is falling apart. In fact, part of the issues with overcrowding is that we've had to close a number of buildings inside NSP due to water main breakage and others, which have, have really pushed, you know, inmates to being crowded or moved to other facilities. So we definitely need to replace NSP. And as we discussed before, I'm, I'm all for demolishing most of the buildings in, in NSP, repurposing others. As far as-- and what was the rest of the part of your question? Oh. Go ahead. Can you repeat the question, please?

**McKINNEY:** It was if enhanced penalties deter, why would people keep bringing more bills to enhance penalties?

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**HOLDCROFT:** And, and I would challenge something else. I don't, I don't have a crystal ball. I don't know what the impacts have been on increased penalties. Increased penalties may very well have deterred crime. We don't-- you don't know that. You don't know--

**McKINNEY:** There's-- but, but there's evidence that shows that--

**HOLDCROFT:** What?

**McKINNEY:** --increased penalties, in the past, from the Legislature is the reason why we are building a new prison. Not we, because I didn't vote for it. But it's the reason why there is a new prison being built.

**HOLDCROFT:** And I would challenge that in that the reason we're building a new prison is to replace NSP.

**McKINNEY:** There's direct evidence that shows it.

**HOLDCROFT:** I would like to see that evidence.

**McKINNEY:** OK.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here. That will close the hearing on LR279CA. Next, we will open the hearing on LB980, Senator McKinney.

**McKINNEY:** Thank you, Chair Wayne and members of the Judiciary Committee. My name is Terrell McKinney, T-e-r-r-e-l-l M-c-K-i-n-n-e-y, state senator for District 11, in north Omaha, introducing LB980, which changes provisions relating to persons present when the death penalty is carried out. LB980 would ensure that state executions are fully witnessed by designated observers. This bill provides that witnesses who are present for an execution must consistently observe the entire execution process, commencing from the moment the convicted person enters the execution chamber until the declaration of death or succession of, of the execution. The witness's ability to the view-- to view them-- to view must be unobstructed, unshielded, and unhindered in order, in order that they must witness the execution. The bill does allow that those who are administering or conducting the execution as per the execution protocol may, upon request, wear a mask or make measures to conceal their ident-- their personal identity from the witnesses. This is to protect the privacy of employees of the Department of "Punitive" Services. Finally, the, the bill also outlines that 2 members of the Legislature, selected by the Executive Board of the Legislative Council, must be present to observe the

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execution process, since people of the Legislature supports the death penalty. This bill is consistent with maintaining public and legislative oversight of the Department of "Punitive" Services. If public officials are going to execute people in the name of the state, then it should be done-- it, it should not be done in secrecy. The taking of a person's life is the most extreme use of state power. The death penalty is certainly a matter of public concern, and voters approved maintaining the death penalty in 2016. To have confidence in that process, the public must have as much information as possible about it. We should know that executions are being carried out effectively and without unnecessary suffering. The only way to ensure that is to provide that witnesses to executions actually witness the process. The provision of the bill that provides that members of the Legislature shall be included as observers with other laws-- is consistent with other laws that provide, that provide that the Legislature to provide acc-- oversight and access to the Department of "Punitive" Services. For instance, Section 83-8--83-186 provides that members of the Legislature are able to visit prison facilities at any time. And now that the Inspector General and the Ombudsman are generally denied access to the Department of "Punitive" Services by the executive branch and Attorney General, because we are going with an opinion that's just an opinion, we need to make sure that the Legislature is in a position to oversee the death penalty process. Finally, a nearly identical bill LB2-- LB238 in 2020, was passed by the Legislature but was vetoed by Governor Ricketts. The Legislature had already adjourned sine die and couldn't attempt an override. The bill was advanced by the Judiciary Committee 8-0, and that's why I brought this bill. I think that if people are going to support the death penalty, which I think is very inhumane-- it shouldn't be on the books. It shouldn't have been put on a petition again. I think that people of the Legislature who support the death penalty should have to sit through it. And, and, and that's just the honest truth. I also think that, according to the constitution, we, as a body, have a lot more control of a-- of the Department of "Punitive" Services than we like to exercise, and continue the curr-- and according to the current, current state that we're going through with the department and, you know, our Executive Board not trying to wield the authority that I believe that we do have, according to the constitution, we should pass this bill, mainly for transparency and just to make sure things go right. Because the last exe-- execution had a lot of questionable things occur. And I just fundamentally think that if you-- if you're going to support the death penalty, you should have to sit through it. And I'll open myself up to any questions. Thank you.

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**WAYNE:** Thank you. Any questions from the committee? Seeing none-- why [INAUDIBLE] for the Exec Board to [INAUDIBLE]?

**McKINNEY:** I mean, I could change that. I mean, we could probably have people nominate themselves if they want to sit through the death penalty. I just added the Exec Board just as a process thing. But we could have-- just because I'm, I'm not sure who would sign themselves up to sit through the process. So the, so the Executive Board could just appoint people. I mean, you know, although people say they support the death penalty, I don't know who's going to actually say, hey, I want to sit through and watch these executions. Although, right now, people can't be killed because the drugs are illegal. Although there are bills to try to kill people going through this place, if that is able to happen again. Just mainly because unless people are going to raise their hands and say, hey, I want to watch executions, at least we have the Exec Board saying, Chair Wayne and Senator so-and-so, you have to go watch.

**WAYNE:** No, I-- I'm just asking because I-- when I got elected Judiciary Chair, there was a lot of committees that I didn't know I was on-- that I-- I'm statutorily on.

**McKINNEY:** Yeah.

**WAYNE:** Thank you.

**McKINNEY:** Yep.

**WAYNE:** Seeing no other questions, we'll start with proponents. Proponents.

**SPIKE EICKHOLT:** Good afternoon, Chair Wayne and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska and also for Nebraskans for Alternatives to the Death Penalty as their registered lobbyist. We do support LB980, and we thank Senator McKinney for introducing the bill. The bill generally does 2 things. One, it sort of requires that-- if you just look at the bill, it amends the current statute that provides for certain witnesses to be present at executions. The bill first provides that the witnesses will actually witness the execution itself. The last time the state killed somebody by execution was in August of 2018, when Carey Dean Moore was executed. And during that time, when the witnesses were observing, something seemed to happen and the curtain was pulled closed for 14 minutes, blocking the witnesses from seeing what was going on behind the curtain. So this is

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one response that the Legislature did back in 2021, Senator Pansing Brooks was here-- is to maintain some actual meaning to what it meant to be a witness to an execution, and that's part of it. Now the second thing that, that Senator McKinney proposes and what was passed by the Legislature before, was to have 2 members of the Legislature to be present as witnesses there, for the execution itself. After the referendum there were significant debates here in the Legislature about the death penalty, why we have it, and I think there was a sense at the time and I think it's even more prominent now, that the Legislature should witness this. It's not unlike-- it's not unusual for the senators on this committee and other people in the body to go tour prisons or to be at a parole board hearing. And I think the thought that-- and I can't speak for Senator McKinney, but I think the thought or at least the intent for this, is that this would be similar. If we're going to have the death penalty, the Legislature is going to be asked to uphold it, perpetuate it. They should at least have some oversight over it. And I think it's even more meaningful and more important, as Senator McKinney explained, now that the Legislature, to a certain extent, is denied access through the Ombudsman's Office and the Inspector General, as well. The bill was passed in 2020. It was advanced unanimously from the committee at the time. It was vetoed after the Legislature had already adjourned. There were about 5 or 6 bills where that happened, and this is one of them. The Legislature adjourned sine die. The Governor still had some bills within the 5 days, and he simply returned all of them. And this was one of them. I mean, not-- maybe not all of them, but several of them were turned back, and the Legislature was unable to override any of those. So, this is a good policy for this. And we would encourage the committee to consider it and advance it to the floor. I'll answer any questions if anyone has any.

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

**DeKAY:** Thank you. My summary of this bill reads like this. LB980 would amend Section 83-970 to allow 2 members of the legislative-- Legislature to be present during execution. Would that be correct, or would that be a wrong summary of this bill?

**SPIKE EICKHOLT:** That would be a correct summary for part of the bill. If you look at the pa-- the bill itself, page 2, lines 17-19-- actually 17-22, that's the part that provides that the witnesses, the legislative witnesses, the victim or the representative of the victim's family, all those folks continuously see and view the execution process itself, so.

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**DeKAY:** Well, I guess with-- my question with this is that between my-- one page on this and this verbiage is that to allow and then on the one page it said would require and be mandated. There's a difference between allow and require, in my estimation, on this.

**SPIKE EICKHOLT:** I, I see what you're saying, if I could respond to that. If you look at 83-970, it says, besides the Department of Correctional Services and those persons required to be present under the execution protocol, the following persons and no others may be present. And the peop-- and that's permissive-- may be present, and that includes 2 members of the Legislature.

**DeKAY:** If this come down from Exec Committee, does-- and a senator was appointed to be there, do they have the ability to reject being there? Say, if they're an opponent to the death penalty and--

**SPIKE EICKHOLT:** Right.

**DeKAY:** --their name is however-- pulled from a hat or whatever, can they say, no, I don't want to be present?

**SPIKE EICKHOLT:** I-- you know, I can't speak to the workings of that, because that's maybe something done within the Legislature. I remember when Senator Pansing Brooks did her bill, that that was sort of the requested solution, if you will, or requested option, to have the Executive Board make that decision. I think it's consistent with the Executive Board selecting membership for other types of committees. I don't know how the process will work, but I think what could be developed consistent with the statute is just-- the Executive Board could consider requests to be witnesses, similar to what the Legislature-- or what the Executive Board is doing right now, for the LR298 committee. They've got the 3 at-large members that can be in addition to Senator Wayne and the other chairs and this-- and the Exec Board, themselves. That-- I think Chair Aguilar and the Speaker are accepting requests from senators to be on there. So I, I think that could be a similar thing that could be done, but that's just my opinion.

**DeKAY:** OK. Thank you.

**WAYNE:** Any other questions? Senator Bosn.

**BOSN:** Thank you. So kind of following up on that, what would be the remedy? I mean, if my name is drawn out of the hat and I don't show up, what happens that day?

**SPIKE EICKHOLT:** I don't think there is any kind of remedy or consequence. I don't think your attendance is required. There are-- if you look at the statute [INAUDIBLE], it references another statute that requires and mandates certain people to be there-- the Department of Corrections director, I think, a, a physician, to sort of determine death. And I can't remember if there's other people who are part of the actual execution team. The execution team identity is not known, but they do refer to the execution team themselves. I think, in my quick read of it without doing significant research, I think those people are required by law to be present at an execution. The witnesses, I don't think you can compel a representative of the victim's family or a victim to be there if they didn't want to be there. They are permitted to be there. If you look at that--

**BOSN:** May be present.

**SPIKE EICKHOLT:** --page-- where it may be present, it lists the sort of-- a member of the clergy that-- you know, maybe they don't have a clergy member that is going to be there or the person being executed doesn't want that person there, I don't know. That's permissive. And I don't know what the consequence is. I'm, I'm assuming-- I don't know if anyone was representing the victim's family, necessarily, at Carey Dean Moore. I think there was somebody there. But I don't know if there is any consequence or remedy for it.

**BOSN:** OK. So is it your position right now that 2 members of the Legislature could not appear at this, because they are not listed in there and "no others" is included, in terms of language? Line 5, "and no others"?

**SPIKE EICKHOLT:** No. I think that they could now, if they were one of the, perhaps, the 3 persons selected by the convicted person, by the person to be executed. The ex-- person being executed can select up to 3 people. And I know that in prior executions, there was a member of the Legislature who had been present at a number of those, because he was chosen to be present by the person being killed. I think that the intent-- and I can't speak for Senator McKinney-- he can close-- is to provide for a mechanism to let the Legislature be involved in this.

**BOSN:** OK.

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

**DeKAY:** Thank you. You were addressing Senator Bosn, you had-- and maybe you had mentioned this and I didn't catch it.

**SPIKE EICKHOLT:** Sure.

**DeKAY:** Who's required to be there right now?

**SPIKE EICKHOLT:** They're, they're referenced in another statute. And I probably should have printed it off and brought it, but the director of the Department of Corrections has to be there. The members of the execution team themselves have to be there. Those are the people who man the IVs, the doctor that there-- determines death. Those people are required to be present at an execution-- and maybe the warden, as well, for the actual facility itself. I'm not certain off the top of my head.

**DeKAY:** OK. Thank you.

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

**MAGGIE BALLARD:** Hi. Good afternoon, Chairperson Wayne, members of the Judiciary Committee. My name is Maggie Ballard, M-a-g-g-i-e B-a-l-l-a-r-d, and I am here today on behalf of Nebraskans for Peace. While you usually see me here on behalf of the behavioral health organization I work for, I want to make sure to clarify to all of you and to those watching at home that I am here today as a supporter of LB980, as the board president of Nebraskans for Peace. NFP does not support anything with the death penalty, because we are absolutely and unequivocally against it. If any state, including Nebraska, has the death penalty, though, the state needs to take responsibility for it. Just as people convicted of murder are expected and encouraged to take responsibility for their crime, the state needs to take responsibility when the state kills. Senator McKinney's bill would accomplish more responsibility being taken by the state if 2 lawmakers were present for an execution. Too often, actors in death penalty cases escape responsibility. A jury examines whether there are aggravated circumstances present in a crime that could make the person eligible for the death penalty. They tell themselves that they might not be making this decision about life and death; that is being decided by the panel of 3 judges. The 3 judges look at the case and cast their vote, but can point fingers to the jury as having already gotten the ball rolling. And of course, they know that the Governor can ultimately pardon the individual. The Governor points to what the jury and judges have already said and done, and says the people have already spoken. Everyone seems to be able to pass the buck. But if Nebraska is truly going to stand up and say that it wants the death penalty, the state of Nebraska needs to own up to this. Requiring 2

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members of the Legislature to be present would, would show that the state is doing the killing. The state is behind the decision. If someone on death row is executed, witnesses are present. If a witness chooses not to watch the entire process, we should ask ourselves why the state is carrying out an action that people cannot bear to see. Therefore, if we are implementing an execution, we need to ensure that everyone is facing everything that is happening. In conclusion, we ask you to support LB980 and vote it out of committee. And I would be happy to answer any questions.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. Next proponent. Proponent. First opponent. First opponent, opponent. Anybody testifying in a neutral capacity? Just want to note that there are no opponents here. Welcome.

**FRAN KAYE:** Thank you, Senator Wayne and committee, my own senator, Senator Bosn. My name is Fran Kaye, F-r-a-n K-a-y-e, and I am speaking from a neutral position. I have appeared before the Judiciary Committee in almost every legislative session since 1982 arguing against the death penalty. I cannot say I support LB980 because it allows the death penalty to stay on the books, but is a better death penalty law than what we have now, because it requires the Legislature to take accountability for its decision to keep putting Nebraskans to death. There is a saying among people who are utilitarian rather than trophy hunters: If you kill it, you eat it. Similarly, if state senators want homicides to be committed at their behest, they should at least have representatives who are willing to watch the whole sorry business of putting a helpless and unresisting person to death. Most murders are committed in a panic or a passion. The state's murders are cold-blooded and premeditated. We not-- do not burn down the homes of arsonists nor rape racists. We should not murder murderers. Violence leads to violence, not healing. States without the death penalty almost all have lower murder rates than states with the death penalty. Canada has not had a death penalty for almost 50 years. But although its crime rate is about the same as the United States, its murder rate is half that of the U.S. Poor people and people of color are proportionately more likely to be sentenced to death than rich, white people, though rich, white people kill, too. Despite mandatory appeals and other procedures supposed to ensure that only the guilty are put to death, some 200 death row inmates have been recently exonerated, not because of some obscure technicality, but because as many as 4% of our people on death row are factually innocent. Many murder victims' families oppose the death penalty. Having lost a loved one themselves, they have no desire to put another family through similar grief. Even families who call for vengeance in a death sentence to find closure

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often end up unsatisfied by a display of vengeance, not healing. But if we are going to have a death penalty, let us take accountability for the state-sponsored murder by requiring chosen members of the Legislature to watch. After all, accountability is what we, as a state, claim we want from those who unlawfully take a life. Why should it be different for senators who built the mechanism to kill people? Thank you.

**BLOOD:** Thank you for your testimony. Do we have any questions? Seeing none, thank you. Next proponent. Oh, neutral? I apologize. Next neutral. Last call for neutral. All right. Seeing none, Senator Mckinney, would you like to come up and close? Sorry about that.

**McKINNEY:** Thank you, and thank you to-- my bad-- everybody that came to testify. Again, I oppose the death penalty. I introduced a bill to abolish the death penalty. I think the death penalty is inhumane. I think, for a state that says it's right to life and cares about life and advocates for life and those type of things, I think it's, it's a abomination to have the death penalty on the books. But with that said, we should, as a body, if we're going to support, you know, the death penalty, I think members of the Legislature should be required to sit and watch through this. You know, and honestly, I don't think it should, it should matter whether you support or oppose the death penalty, whether or not you should have to sit through it. And I say that because although I oppose it-- I oppose a lot of bills that I have to live with, all the time. I opposed the prison. I have to live with the conversations in my community about a prison being built, and have to live with those questions and people coming up to me saying, y'all building a prison? That's crazy. I have to live with bills about property taxes, that-- bills on taxes I don't support. I have to live, live with a lot of bills that I don't support, but I'm a member of the Legislature. So no matter if I support or oppose a bill, I am a member of the Legislature. I am inherently a part of the process. So whether or not I support or oppose a bill, I'm, I'm here. So it shouldn't matter if I oppose or support, you know? I'm here. I signed up for it. And, and until this body chooses, in my opinion, to do what's right, if I have to sit through it, I have to sit through it. And it'll be hard, you know. And I wouldn't want to, honestly. But if I have to, I have to. And that's something I would have to live with. And hopefully it's not a friend, somebody I know, you know? I know people on death row. But, I also signed up for the job. So if, if I opposed it and I signed up for the job, it's, it's just something I have to live through, you know? But I think, as a body, if, if this body continues to not do what I think is right and putting it back on the ballot for the people of Nebraska to eliminate the death penalty, or, or we don't

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find a way to get it back off the books, then I don't care if you oppose or support, you should have to sit through that. This committee voted it out 8-0 in 2020. It was passed. And, you know, Governor Ricketts vetoed it in a pocket veto, so the body wasn't able to come back and override it. So I'm really not sure how the body would have voted. None of us know. And we're all kind of unsure because it was a pocket veto. So I think this should be voted out of committee 8-0 again, and we should see what happens. And I'm a open myself up for any questions. Thank you.

**BLOOD:** Thank you. Senator McKinney. Do we have any questions? I do have one. Where is the Governor on this bill? Have you had an opportunity to speak with him about it?

**McKINNEY:** No, I haven't talked to the Governor since this summer.

**BLOOD:** OK.

**McKINNEY:** Yep.

**BLOOD:** Or anybody from his office?

**McKINNEY:** No.

**BLOOD:** All right. OK. Thank you so much. And with that, we will close the hearing. And for the record, we've received 21 letters: 18 letters of support, 2 in opposition, and 1 in the neutral. With that, we will close the hearing on LB980, and open up the hearing for LB970, welcoming Senator Lippincott to the Judiciary Committee.

**LIPPINCOTT:** Hi, Chairman Blood and Judiciary Committee. My name is Loren Lippincott. That's L-o-r-e-n L-i-p-p-i-n-c-o-t-t, and I am here representing District number 34. LB970 is a bill to add nitrogen hypoxia to, to the allowable methods of execution. I want to speak about this with the utmost dignity and care, while still presenting facts to this committee, committee, because I know that this subject can be somewhat divisive. I'm not here to cast judgment on anyone, and all of our voices that follow behind me are valid and should be heard. I have before you an article referencing lethal injection drugs and why they are hard to acquire. The article outlines American companies refusing the sale of drugs to correctional facilities for use in capital punishment. This committee knows the history of the death penalty in Nebraska, and I'm not here to debate its existence. I am here to give us another option to use. Nitrogen hypoxia is another option. Currently, nitrogen can be used for the death penalty in Alabama, Oklahoma, Mississippi, and Missouri, and it's also being

heard in Ohio and Louisiana legislatures. I have handed out those statutes and bills. Now what is nitrogen hypoxia? The Cleveland Clinic defines it as such: Hypoxia is low levels of oxygen in your blood tissues. It causes symptoms like confusion, restlessness, difficulty breathing, rapid heart rate, and bluish, bluish skin. Many chronic heart and lung conditions can put you to risk for hypoxia. Hypoxia can be life-threatening. In my time as an Air Force pilot, we had training where we would undergo hypoxia symptoms in a controlled environment, in an altitude chamber, so we could recognize them, our symptoms, in case we ever experienced that event on an aircraft in an emergency situation. It just so happens that my symptoms were feeling sleepiness and warmth, so it was important for pilots to know what their symptoms were in case we lost cabin pressurization. Alabama used nitrogen for the first time on the 25th of January of this year, for Kenneth Eugene Smith. The death penalty was successfully carried out, and Alabama has asked for a second man to be put to death using this method. I have a letter from the Alabama attorney general about the execution of Kenneth Eugene Smith, and I would like to read that for the committee now. And I think that you have that in front of you. It's dated February 23, just last week, from the attorney general. Dear Senator Lippincott: Alabama's experience has shown that a judicial execution can be carried out by means of nitrogen hypoxia using a medical gas symptom and a type C respiratory mask. While there have been sensational and graphic accounts published in the media about the execution of Kenneth Smith, all of these accounts have been based on rampant speculation about when the nitrogen gas was administered, and they have avoided discussing medical and scientific facts. These accounts have refused to consider whether Smith held his breath or whether his initial behavior was intentional, conscientious behavior, explaining why it ceased when Smith lost consciousness after he could no longer hold his breath. Opponents of capital punishment are upset that the games and guerrilla warfare they have employed against the death penalty are threatened by the introduction of a method of execution endorsed by Smith's own expert. Convicted killers who have identified nitrogen hypoxia as an alternative method of execution for years in countless lawsuits challenging lethal injection costing states time and judicial resources are terrified that the method of execution they said they wanted is now available and can be implemented. These people are terrified by the fact that nitrogen hypoxia is not as vulnerable to the same type of supply disruptions that they have used to thwart the will of the people in the states that have chosen to impose the harshest sanction on those who would prey on their fellow citizens through gruesome acts of violence and hatred. Kenneth Smith claimed that he would vomit while wearing the

mask, and that did not happen. Smith said that Alabama's mask would not fit properly and that he would be left in a permanent vegetative state, and that did not happen. He claimed that air would be entrained into the mask and that his death would be prolonged, yet his execution was carried out within the time established by the-- Alabama's protocol. Not once has Smith's spiritual adviser claimed that Smith cried out in pain because Smith was silent as he held his breath. Smith shook, but those movements were the product of his conscious behavior. As Commissioner Hamm stated, the agonal respirations and uncoordinated muscle movements that followed were a normal part of a hypoxic death, something well known to Smith's experts and yet never mentioned in his last-minute challenge to the method of execution that he had requested only months earlier. Those who challenge lethal injection know that they're asking for a method of, of execution that will no longer employ a paralytic agent, and that these involuntary movements normally associated with death will occur. Adopting nitrogen hypoxia and allowing condemned killers to elect this method of execution will either expose their litigation games for what they have been, or it will provide them the humane death that they have claimed to be pursuing. But states should not be surprised if their population of condemned murderers suddenly changes their tune and claim to want firing squad, hanging, or even execution, once they are permitted to choose nitrogen hypoxia. But this, too, will only prove to the federal judiciary that the courts have been complicit for years in enabling this guerrilla warfare against capital punishment. And that, too, can be a victory in itself. In closing, note that the state of Alabama moved on February 21, this year, to carry out its second execution by nitrogen. Nebraska has 11 men on death row as of September of last year. I have a case study of a suicide where someone put a scuba mask on, which was attached to a nitrogen tank. There's documentation before you that suicides with nitrogen or helium gases are painless. Again, this is not about whether the death penalty should exist or not, but about the ethic in which we treat those who are sentenced to death. And the best and most humane way is painless, which I believe, with resounding medical support, to be death by hypoxia.

**WAYNE:** Oh. That's it? I was waiting for more. Senator Blood.

**BLOOD:** Thank you, Chair Wayne. Thank you, Senator Lippincott, for coming in today. I have a couple of quick questions. You talked about someone's opinion on the Smith execution. But what I've read from witnesses is that not only did he pull against his constraints, but-- and I think you got a letter about this-- but his body was shaking. He was going through convulsions. He clenched his fists, his legs shook,

he gasped for air, the gurney shook. Did you have the same type of reaction when you went through your hypoxia simulation?

**LIPPINCOTT:** In Air Force pilot training, when we went into the altitude chamber, on our way up in altitude, although it's stationed on the ground, they take air out of the altitude chamber.

**BLOOD:** Right.

**LIPPINCOTT:** And so, you're wearing your mask and they will have you drop your mask at 15,000 feet, see if you have any symptoms. Then again, at 20,000 feet, again at 25,000 feet, and they'll take you up to about 35,000 feet. And at 35,000 feet, you take your mask off. You can only maintain consciousness for a few seconds. So, they obviously have somebody that's right there with you. And there'd be about 15, 20 guys in there at one time. They would have an instructor with us to ensure that you can put your mask back on. So your question specifically is what kind of symptoms do you have? The symptoms that I ex--

**BLOOD:** You, you, you compared the two. And I guess the question I have is how can you compare the two?

**LIPPINCOTT:** Well, the same principle is true, regardless of how you have an absence of oxygen in your lungs. So it can either be dis-- your oxygen, oxygen can be displaced with nitrogen, like in this case that we're talking here. So now you're just breathing-- and we know that we have 78% nitrogen right now in our air, which we also have 21% oxygen. This would replace the 21% oxygen, so now you're just breathing nitrogen.

**BLOOD:** Which is very-- it's very painful when your body runs out of oxygen.

**LIPPINCOTT:** No. It's-- it-- it's not. That-- that's why they would have us experience the altitude chamber, because it is-- it's painless. It's not noticeable. If you remember, about 15, 20 years ago, remember Payne Stewart, the golfer? And they lost pressurization in-- on that airplane? And everybody just went to sleep. No pressurization, oxygen-- they were deprived of oxygen. And the airplane just flew until it ran out of gas and it crashed up in North Dakota.

**BLOOD:** Well, I, I think that if you talk to somebody that has something like congestive heart failure, where their oxygen level drops and-- substantially, that they will tell you differently. But

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that's, perhaps, a conversation that we can have on the floor later. The other question I have is you said something about guerilla warfare against the death penalty. What was that about?

**LIPPINCOTT:** I was just reading the, the statement of the attorney general from Alabama.

**BLOOD:** OK. What does that mean?

**LIPPINCOTT:** [INAUDIBLE] know.

**BLOOD:** You don't, you don't know?

**LIPPINCOTT:** What I believe he was saying was that when-- regardless of what kind of death-- what kind of method is used in the death penalty, people are obviously going to be against it.

**BLOOD:** How is that guerilla warfare?

**LIPPINCOTT:** It's, it's probably hyperbole on his part.

**BLOOD:** Yeah. I would say so. I think--

**LIPPINCOTT:** Yeah, those are his words, not mine.

**BLOOD:** --people have opinions. I don't know if that makes it guerrilla warfare.

**LIPPINCOTT:** Yeah.

**BLOOD:** So that was-- that confused me. All right. Thank you very much.

**LIPPINCOTT:** Yeah. And just to kind of PS that. My whole intention here, it's-- whether you're for or against death penalty, this is humane. This is a kind way. As a matter of fact, just thinking about this, when we take our dog or our cat to the veterinary, we say, well, we're going to put it to sleep. But yet, when we're putting a person to, to sleep, we call it death. It's-- I think that this is a kind, painless way of carrying out the will of the people of Nebraska, in carrying out their will.

**BLOOD:** I, I, I appreciate what you're doing, Senator Lippincott. But I, I am here to tell you, again, if you talk to somebody who has had congestive heart failure, whose heart chambers fall to a level of 15% and they lack oxygen, they are in pain. So regardless of how you paint this, I think if you talk to a physician, they're going to tell you when a body lacks oxygen, they are in pain.

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**LIPPINCOTT:** Well, again, if I can make a comment on that. There's another handout that I, I gave, gave you all. And this says, within 8 to 10 seconds, you lose consciousness.

**BLOOD:** Doesn't mean you're not in pain.

**LIPPINCOTT:** What's that?

**BLOOD:** Doesn't mean you're not in pain.

**LIPPINCOTT:** That's not the right--

**BLOOD:** It does not mean you're not in pain. It means you've lost consciousness, but it does not mean in the leading up-- in that period leading up to that, that you were not in pain. Correct?

**LIPPINCOTT:** Well, from my experience in the altitude chamber, yeah. You, you go to sleep and there is no pain. You just lose consciousness. And then if you're continued to be deprived of oxygen, then death follows. As a matter of fact, it's also interesting-- I gave you a lot of handouts. There's a lot to read there, and we don't have much time. But individuals-- you know, there are people that choose to want to commit suicide, right? And the use of nitrogen is the method most used by individuals that do commit suicide, like by gas. They, they either use nitrogen or helium. Helium does the same thing because it simply replaces oxygen.

**BLOOD:** I, I, I-- I'm not going to go back and forth with you on this, but I, I think--

**LIPPINCOTT:** That's fine.

**BLOOD:** --that if we talk to a cardiologist, if we talk to most people that pertain to this type of medicine, that-- the fact that you continue to state that it's painless, I think that they would differ. And again, that's a conversation we can have outside this hearing, because I certainly don't want to waste time going back and forth. But I do appreciate your answer.

**LIPPINCOTT:** OK. OK. All right. Thank you so kindly.

**WAYNE:** Any other questions? Senator McKinney.

**McKINNEY:** Thank you, Chair Wayne. Thank you, Senator Lippincott. UN human rights experts warned against this. Said it's a-- one, it's a untested, you know, method of execution, which might result in painful

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and hu-- and harmful deaths. Also, veterinary scientists who have carried out laboratory studies on animals have even ruled out nitrogen gas as a, you know, euthanasia method, because of ethical concerns. And authorities in the U.S. and Europe have even-- have issued guidelines dis-- discouraging its use for mammals, citing potential distress, panic, and seizure-like behaviors. What is your response to that?

**LIPPINCOTT:** My response to that is-- and this is-- I've thought about that question. And the only thing that I can think of-- you know, with human beings, we've got masks. We've had masks for a long time, you know, medical masks, pilots wear masks in airplanes and stuff. And it's kind of tough to have a mask that fits your dog or your cat. They-- I would think that their-- the seal around their face would be impaired because of fur. As a matter of fact, in the airlines, you notice that pilots are not-- you don't see them with a beard. And the reason that is, is because that impairs the seal of the face mask. So it's leakage.

**McKINNEY:** Yeah, but even somebody on death row does not walk around with a mask on every day. It's not-- I don't think it's practice for them to even practice wearing a mask up until their death or their potential death. So, I mean-- yes. I, I just--

**LIPPINCOTT:** You mean the, the, the prisoner? Is that what you're talking about?

**McKINNEY:** Yeah, the individual that's going to be killed.

**LIPPINCOTT:** They, they, they, they strap them down.

**McKINNEY:** Yeah, which is inhumane. I guess my next question is, what do you think is the overall impact of an execution? Does that resolve or does that alleviate the pain that a family or individual who was affected by the actions of that person who was put on death row did? Does that take the pain away?

**LIPPINCOTT:** Well, that's kind of a subjective question, and has a subjective answer to it. But again, the death penalty, I don't-- you know, what this bill is, is trying to carry out the will of the people. Nebraskans have voted that they want the death penalty. And so my personal desire is to make it as painless and as humane as possible. And whether or not-- and I hear what you're saying loud and clear. And that's up to the families.

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**McKINNEY:** Oh. Last question. Why not do an interim study? Why not even propose a bill to get UNO, who does a bunch of studies on our criminal justice system, to go out and do a study around this to even see if it's in-- humane, or just get more research around it. Because it's not a lot of-- it's, it's not a lot of information on this. And Alabama did it. And what I've looked at in trying to prepare for this bill, is that it's a lot of negative-- everything I've seen from the results of what happened in Alabama-- yes, the person died, which, I think-- what they wanted to do in Alabama. But that process wasn't humane. So why not do an interim study? Or why not do a bill to say, let's allocate or appropriate X amount of dollars to do a study to see-- although, let me be clear. I do not support the death penalty. But why not do a study on-- to try to figure out what's best?

**LIPPINCOTT:** We gave you a ton of stuff there, in the little red binder. I've been reading about this for a good long time, and there's actually been-- this one study, it's toward the middle of your binder there. There's a very exhaustive study that's, I think, well-researched, that--

**McKINNEY:** But-- no. No. And I ask that because this Legislature is very hesitant to-- since I've been here, to approve, and support, or even agree with outside studies that are done from anybody that is not from the state of Nebraska. We've had multiple reports and studies done on our criminal justice system from outside organizations that have said we need to do a bunch of things that we have refused to do because they are outside organizations. And I say, why not ask UNO to do something?

**LIPPINCOTT:** Well, again, I would just refer you back to a lot of data that's already been collected.

**McKINNEY:** And, and, and, and I'm not even saying the data is incorrect. What I'm saying is, I would argue that data from other studies is not incorrect. But because it was done from outside organizations, when bills get to the floor, the arguments are that those bills were subjective or from-- you kind of get where I'm getting at with this. So why not ask UNO to do a study?

**LIPPINCOTT:** Well, that's something this committee can talk about.

**McKINNEY:** But why not do a bill?

**LIPPINCOTT:** I believe it's good the way it is. That's just my personal idea, but thank you for bringing that to my attention.

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**McKINNEY:** Thank you.

**LIPPINCOTT:** Yes, sir.

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

**LIPPINCOTT:** Thank you, sir.

**WAYNE:** We'll start with proponents. Pro-- proponents. Pro, pro, pro, pro. OK. Moving to opponents, opponents, opponents.

**SPIKE EICKHOLT:** Good afternoon, Chair Wayne and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska and Nebraskans for Alternatives to the Death Penalty as their registered lobbyist in opposition to LB970. I did visit with Senator Lippincott and explained that we would be testifying against his bill. You've got my testimony. It's fairly lengthy, because I do talk about Nebraska's sort of troubled saga with the death penalty, and a few timely things as well. This bill that changes or offers an alternative method is not going to fix the brokenness of Nebraska's death penalty system. You can read my statement, so I want to deviate from it to respond to some of the things that Senator Lippincott explained. This seems very odd, if you will, that-- I think-- I'm trying to paraphrase what Senator Lippincott said, that his sort of number one priority is to make this humane. Why? It's punishment. This is the worst of the worst. We don't-- I don't want to hear bills that require comfortable beds for people serving time in prison, or good TV options, or good meals. What I think Senator Lippincott is expressing is the ambivalence that people have over the death penalty. They want it to be nice. They want it to be humane. They want it to be medical-like. They want it to be like putting a pet down. And what I think that really reflects is the discomfort that people have in supporting the death penalty. What I really think they are doing when people say they support the death penalty, is they just want people to go away. They do bad things so they don't have to deal with them again. We have that. We have life imprisonment without parole. We have no problem having actual life sentences in this state, de facto life sentences for a variety of crimes. One of the other things that Senator Lippincott, Lippincott talked about, when he referenced the Alabama attorney general's argument that this would solve the guerrilla warfare. Presumably, they're talking about the legal uncertainty, if you will, or the difficulty in executing people, based on the legal landscape. In my opinion, this bill is going to revive litigation in Nebraska. There's

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11 people on death row. One is probably close to having his, sort of, number called up. He's going to exhaust his appeals here, at some point. What this bill does is a couple things that raise in-- some serious constitutional issues. And if I run out of time, maybe somebody can ask. One of the things that I would first argue-- and I don't represent anybody on death row. But if I did, one of the first things if this bill would pass, I would say, how can the Legislature change a sentence after the fact? When my guy was sentenced, he was sentenced to death by lethal injection. And now, this bill says the Department of Corrections can come in with a different method. We all know what our case law is in this state. Once a sentence is final, the Legislature cannot alter it. Now, the state is going to say, we're not altering the sentence. We're just saying it's going to be carried out in a different way. Just like when we say you do 10 years in prison, we don't say 10 years in the Department of Corrections-- or we don't say 10 years in Tecumseh, we say 10 years in the Department of Corrections. That will be litigated. And that little snippet I gave, that's 6 months minimum. We talk about how Alabama is a success story. They started that road to get that guy killed by the leth-- by that nitrogen gas almost 3 years before they did it. This is not going to give uncertainty. This is going to provide for more uncertainty, more arguments, and just contribute to that broken saga that we have with the death penalty. I'll answer any questions if anyone has any.

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

**ALEX M. HOUCHIN:** Hi. Good afternoon, everyone. My name is Alex M. Houchin, that's H-o-u-c-h-i-n, and I offer testimony today, not just as a private citizen, but as the sole staff member of the nonpartisan nonprofit Nebraskans for Alternatives to the Death Penalty. Before I get rolling, I wanted to let you know that we received a statement this morning from our friend and colleague, Abraham Bono. It's on behalf of the organization, L'Chaim! Jews Against the Death Penalty, and I'll be reading that into the record in just a moment. I could easily talk to any one of you for hours about all the different avenues that death penalty opponents can and do take to reach our shared conclusion that capital punishment is a failed public policy and that it needs to be dismantled. Cost, fairness, the deterrence myth, the closure myth, faith perspectives, et cetera. And whether you think that sounds like a promise or a threat, you're right. However, since I only have a few minutes, I thought I'd draw some connections between this bill, the capital punishment system that it seeks to prop up and revitalize, and a topical matter that has echoed within the legislative chamber often in the last couple of years-- oversight. As

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you may know, both the Department of Corrections and DHHS have suffered a series of scandals stretching all the way back to the Heineman administration, if not earlier. It's important to point out the major commonalities between these 2 departments. Both are charged with the safety and protection of some of our most vulnerable Nebraskans: kids in the foster care system and adults locked in cells. And both have failed in this regard, multiple times. In response to these failures, the Legislature empowered Inspectors General to provide oversight and report findings to guide possible legislative remedies. The Attorney General's Office then released a nonbinding opinion suggesting that legislative oversight of departments under the executive branch is a violation of the separation of powers principle, and is therefore unconstitutional. The agencies in question then, immediately shut out the Inspectors General and denied them access to relevant data, and the bickering continues on into the present. To be very clear, every entity I just mentioned is part of our state government. This entire debate centers, centers on whether some parts of our government can trust other parts of our government to, to discharge their prescribed duty to protect our most vulnerable and to treat them with dignity and humanity, and after numerous failures to do so, whether that trust can ever be rebuilt. In short, our government doesn't even trust itself. Why would anyone in their right mind then trust the government with authority to irreversibly take a life? In the end, I might not be able to convince you to oppose capital punishment with just a 3-minute speech. But I would ask you all to spend some time thinking about how serious this matter is-- excuse me-- how great the risks are, and how state violence seeps down into our culture and influences the ways that we treat each other. You might not yet be open to the conclusion that we need to make it harder to execute people, but I hope you can at least understand that an act as serious and irreversible as taking a life should never be made easier. Please vote no on this bill. And what follows is a statement from L'chaim! Jewish tradition presents somewhat contradictory statements regarding the death penalty. While the Torah permits the death penalty, the Talmud and Tractate Sanhedrin imposes severe limits on capital punishment, even where the crime is murder. Contemporary U.S. law does not meet the standards for fairness and accuracy as articulated in Jewish law. Today, we are writing not about the death penalty as a whole, but about proposed, proposed forms of execution. Certainly, there are members of Jewish communities who support the death penalty in concept or in practice. However, we stand united in, in opposition to the introduction of gasification as a form of execution in Nebraska. We do not suggest comparisons to atrocities of Nazi Germany, under which millions of our relatives were murdered,

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many by suffocation in sealed chambers. I see I'm out of time. If I could be allowed to finish, if that's all right.

**WAYNE:** Go ahead.

**ALEX M. HOUCHIN:** OK. Thank you. Still, we cannot imagine it possible that Jewish communities anywhere could stand by while prisoners are executed in our names, using any variation of that mechanism. Therefore, the undersigned rabbis, cantors and other leaders and members of the Jewish community call on you to reject the conduct of executions by suffocation, using a mask, or in any sort of gas chamber in your state. Thanks for the extra time. I'm available for questions if anyone has any.

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

**McKINNEY:** Thank you, Chair Wayne. And thank you for your testimony. Has there been situations not just in Nebraska, but across the country, where there's been people who have been killed because of the death penalty that have been-- later been found to be innocent?

**ALEX M. HOUCHIN:** Absolutely. In fact, it's been argued before in this very room, that the capital punishment system requires this as a possibility, because we cannot rule out with 100% certainty that this won't happen. Therefore, it is an accepted cost.

**McKINNEY:** So if LB970 passed, there's potential to kill an innocent person?

**ALEX M. HOUCHIN:** Yes, as with any execution method. Absolutely.

**McKINNEY:** Thank you.

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

**ALEX M. HOUCHIN:** Thanks.

**WAYNE:** Next opponent. Welcome.

**MAGGIE BALLARD:** Thank you. Good afternoon, again, Chairperson Wayne, members of the Judiciary Committee. My name is Maggie Ballard, M-a-g-g-i-e B-a-l-l-a-r-d, and I'm here today on behalf of Nebraskans for Peace. I'm here today in strong opposition to LB970 as the board president of Nebraskans for Peace. The reason I took off work this afternoon and came to Lincoln to testify on behalf of the longest

existing statewide peace organization in the country is because there are few topics that I am as passionate about as I am the death penalty. So the fact that our Legislature is spending, spending so much time focusing on which way to take a human life is appalling to me. When an individual puts this much thought and effort into deciding which method would be the best way to kill someone, we convict them of first-degree murder. When the state does it, we accept it, legitimize it, and pretend that it's justice. Our state has yet to accomplish finding a moral, humane method of execution. We obviously deserve no pats on the back for finally getting rid of the electric chair in 2008, and we are against Senator Lippincott's bill because it is also humane. Now, I do prefer to think the best about people. And I want to give Senator Lippincott the benefit of the doubt, so I'm hoping that he was approached to introduce this bill, thought to himself, maybe this is more humane than lethal injection. Let's have a hearing and discuss it. If that's the case, I'm hoping that he and everyone that is listening can feel like their question is being answered, when listening to why it is not more humane. I cannot sit here and state that any other method is better. And again, I want to be very clear that we, at this time, do not support any method of execution.

Nitrogen hypoxia is a process that suffocates a person by forcing them to breathe pure nitrogen, depriving them of oxygen. And like Senator McKenney pointed out, veterinarians have stopped using nitrogen hypoxia to put animals to sleep because they found it was too violent. Last month, when Alabama executed a man this way, like Senator Blood had pointed out, witnesses reported that he experienced violent spasms for 2 of the 22 minutes it took before he was pronounced dead. The spasms were so severe that it cause-- hit-- that it caused his gurney to shake. And so if the goal of that execution and Nebraska's executions is to exert revenge, then nitrogen hypoxia might be a good fit. But that should not be our goal. I'm going to ask if everyone would make eye contact with me for a second. I'm just going to make sure we understand that any penalty is supposed to serve 1 of 4 purposes. It's either a deterrent, incapacitation, restitution, or rehabilitation. And traditionally, our system has aimed for restitution. But recently, we have been trying to aim towards rehabilitation. Research has shown that the death penalty is not a deterrent. It has also not been carried out swiftly or effectively enough in order for it to be restitution. Instead, it serves more as a revenge. And handing out revenge is a threat to our rational, rational legal system, because it is, is immeasurable, it is not rational, and then is not always about righting a wrong. So that's what makes this unacceptable. So in conclusion, those of us that love

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the law must hate the death penalty because of what it does to the object of our affection. So please vote no on LB970.

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

**FRAN KAYE:** Good afternoon, again. And thank you, again. My name is Fran Kaye, F-r-a-n K-a-y-e. Senator Lippincott has asserted in promoting this bill that the voters of Nebraska approved the death penalty by voting for it in a referendum. That is misleading. The Legislature, after studying the matter and listening attentively to such people as the wrongfully convicted and the survivors of murder victims who oppose the death penalty, wisely passed abolition and overrode the Governor's veto. The Governor then used his own and his family's money to finance a petition drive to get the death penalty onto the ballot and a publicity campaign that distorted the facts. The mere appearance that the then-Governor of Nebraska had purchased a license to kill fatally taints the outcome. Senator Hunt's firing squad amendment, like all good satire, makes a serious point. If today's senators vote in favor of capital punishment, then they should take accountability for their votes by committing the state-sponsored homicide themselves. Nitrogen hypoxia has now been used once, in Alabama. It turned out to kill, but not to kill humanely, despite the really contorted description in, in-- that Senator Lippincott wrote. Observers watched the condemned man struggle and contort for several minutes, despite the claim that nitrogen would produce unconsciousness in seconds. Torturing the one to be executed is not part of the statute in either Alabama or Nebraska. Compounding the morally questionable re-institution of the death penalty by adopting a method that is clearly cruel and unusual, does not serve any Nebraskan well. We cannot attain social safety by gratuitous violence. I'm attaching an article discussing nitrogen hypoxia and its failings as a matter of-- as a method of execution that is done by a scholar of failed executions. It is graphic and disturbing. Please do not send LB970 to the floor. I oppose all capital punishment. But if you feel you must do something, please advance Senator Hunt's amendment rather than the main bill. Thank you.

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

**MARY KELLY:** Good afternoon, Senators. I'm Mary Kelly, M-a-r-y K-e-l-l-y, and I'm representing the League of Women Voters of Nebraska. The League of Women Voters of Nebraska stands opposed to LB970, which seeks to expand inhumane methods to kill people who are

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incarcerated and have been sentenced to death. On its face, the League of Women Voters supports abolition of the death penalty. The League of Women Voters of Nebraska especially opposes allowing nitrogen hypoxia as a method of execution, as the method is untested, dangerous, and explicitly inhumane. The death penalty is cruel, ineffective, and irreversible. According to the Death Penalty Information Center, there have been 1,583 executions in the United States since 1976. A 2019 Gallup poll found that a majority of voters support life in prison over the death penalty for those convicted of murder. Moreover, most Americans believe executors carry out the death penalty unfairly, further justifying the lack of need for alternative execution methods. In January 2024, the state of Alabama executed Kenneth Smith using nit-- nitrogen gas. This was the second effort to kill Mr. Smith, after hours of attempting lethal injection failed in November 2022. The American Veterinary Medical Association has deemed execution by nitrogen hypoxia as unacceptable for all mammals, as it could be painful for the animal. This fact stands. And yet, Alabama deliberately made history as the first state to complete an execution of this kind. This leaves a black mark on Alabama's history, not so different from the blacked out redactions peppering the Alabama Department of Corrections execution protocol for death by nitrogen hypoxia. Alabama allows spiritual advisers in the room while execution teams kill those sentenced to death. Death by nitrogen hypoxia is so untested that Alabama's execution protocol requires spiritual advisers to sign an acknowledgment form before being allowed to be present in the execution chamber. This is not the case for death by lethal injection or electrocution. The spiritual adviser for Kenneth Smith was required to stand at least 3 feet away from Mr. Smith to mitigate the risk of inhaling gas seeping out the mask covering Mr. Smith's face. The LWVNE stands strongly opposed to LB970, and urges the Judiciary Committee to stick to the facts. The death penalty remains an outdated and ineffective method of deterrence and should be abolished. Nitrogen hypoxia is a dangerous, untested method of execution that Nebraska does not need. Please do not advance LB970 to the General File. Thank you. Do you have any questions?

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

**JULIA KEOWN:** Thank you. Good afternoon. My name is Julia Keown, J-u-l-i-a K-e-o-w-n. I'm a critical care and forensic nurse in Nebraska. I write to you on behalf of the Nebraska Nurses Association, the NNA, which represents the more than 30,000 Nebraska-- nurses in Nebraska. All nurses in Nebraska and the United States of America are bound by our code of ethics delineated by our overarching parent

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organization, the American Nurses Association, or the ANA. The following statements represent the American Nurses Association and Nebraska Nurses Association capital on punish-- excuse me-- position on capital punishment and nurses' participation in capital punishment. Statement number 1: We oppose both capital punishment and nurse participation in capital punishment. Participation in executions, either directly or indirectly, is contrary to the fundamental goals and ethical traditions of the nursing profession. This position is in alignment with the International Council of Nurses position that considers the death penalty to be cruel, inhuman, and unacceptable. Statement number 2: Our opposition extends to all forms of participation by nurses in capital punishment, by whatever means, whether under civil or military legal authority. The ethical principle of nonmaleficence requires that nurses act in such a way as to prevent harm, not to inflict it. The act of participating in capital punishment clearly inflicts harm. Nurses are ethically bound to abstain from any activities in carrying out the death penalty process. Nurses must not participate in capital punishment, whether by chemical, electrical, or mechanical means. The Nebraska Nurses Association opposes LB970 and use of capital punishment in Nebraska. We respectfully ask the committee to stop the advancement of this bill. And as a private citizen, I would like to editorialize this. I'm a neurotrauma, critical care nurse in forensics, so I deal with neuro, trauma, and death. OK. So my-- one of my main concerns with this bill is, at 7:58 p.m., we have that Smith was thrashing about. And then, his time of death-- his cardiac time of death was 8:25 p.m. OK. So that's 27 minutes. If you guys know anything about neuroscience, there's this really fascinating thing called spreading depolarization, right. We also call it brain tsunamis. So the thing with that is you're not brain dead until your heart stops. And then after your heart stops, all of the neurons in your brain die. OK. So, we don't know when consciousness ends. So it's entirely possible that, because your brainstem is intact, because your spinal cord is intact, all of your peripheral nerves are intact, from that 7:58 p.m. to 8:27, so those 27 minutes, because all of that's intact, it is very possible that we were feeling pain that entire 27 minutes. Regardless of whether he was conscious or not, he could have been feeling pain. That's all I have.

**WAYNE:** Any more-- any questions from the committee? Senator Holdcroft.

**HOLDCROFT:** Thank you, Chairman Wayne. So what is the Nebraska Nurses Association's position on abortion?

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**JULIA KEOWN:** I am here regarding LB970. But the position on abortion we take is patients have a right to autonomy and self-determination. That is a-- that is a decision that's best left to the experts on the situation, which are the patient and the medical provider. That is not a place for legislation.

**HOLDCROFT:** Thank you.

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

**JULIA KEOWN:** Thank you.

**WAYNE:** Next opponent. Welcome.

**MARGARET VRANA:** Good afternoon. I'm Margaret Vrana, M-a-r-g-a-r-e-t V-r-a-n-a. I'm speaking against LB7-- LB970. At least one supreme court in, in the U.S. has cited nitrogen hypoxia as cruel and unusual punishment. It is the same method, the same-- yeah-- the same method employed by the Third Reich to annihilate millions of Jews during World War II. So adopting this method would make the state of Nebraska a most heinous killer, murderer. Please do not advance LB7-- LB970. Thank you.

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

**MARGARET VRANA:** Thank you.

**WAYNE:** Next opponent.

**TOM VENZOR:** Good afternoon, Chairman Wayne and 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. Kind of the first part of my testimony is just kind of laying out the-- kind of the general principles for the Catholic Church's opposition to the death penalty, with the recognition that in Catholic social teaching and Catholic moral theology, there's an understanding that the death penalty may in principle be used by the state. But nevertheless, there's obviously criteria by which you need to meet to actually use it morally. And the church has been very clear in the last several decades that, unless the death penalty is absolutely necessary for the protection of public safety, it should not be used. So, in other words, if there's other nonlethal means that can be utilized, we ought to pursue those rather than pursue the death penalty. And more recently, Pope Francis has further applied the church's traditional teaching and reached the conclusion that the death penalty is

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inadmiss-- inadmissible because it is, it is an attack on the inviolability of the dignity of the person, and that we should work with determination for the death penalty abolition worldwide. The next part of my testimony kind of goes a little bit through the experience of Mr. Smith in Alabama. And I won't discuss that further because that was talked about a little bit earlier, about what his experience was with the death penalty. And, and even if that-- let's, you know, assume for a moment that the facts are that that was a completely peaceful death. That's not the point. The, the underlying problem is the ethical problem about the use of the death penalty. So there's no ethical, I think, analysis here that even if it's peaceful, it's OK. That's not how the ethical analysis works. And so, the underlying ethic of the death penalty is problematic. And then the last portion here, that I want to talk about, is the implications on religious liberty. So this is kind of midway down in the second part. And I'll just read from here. Additionally, while the NCC is very appreciative for Senator Lippincott's efforts on religious liberty this session-- he's introduced several bills on that theme-- we are concerned about an unintended consequence. It implicates how the death-- how death row inmates may be unable to access a chaplain. So the U.S. Supreme Court has a case on this, Ramirez v. Collier. It's a 2002 case, where Texas basically violated the rights of a death row inmate under RLUIPA, because of the lack of access that they could have to a chaplain, in the situation of capital execute-- capital punishment. And the court easily decided that case on an 8-1 vote. And then as well, as you heard earlier with Alabama, their protocol makes it very clear that chaplains cannot be very near the, the person who's being executed. And so again, that creates-- if we adopted similar protocol as Alabama, that would obviously be very problematic in terms of religious liberty implications in the access of a chaplain to-- the access of chaplains to the death row inmate or the death row-- the person being executed. And this is at a critical moment in their life, when they're obviously, you know, going to be entering eternal life, and the importance of having their chaplain with them is critical. So, for those reasons, we would ask that the committee indefinitely postpone LB1970.

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

**TOM VENZOR:** All right. Thank you.

**WAYNE:** Next opponent, opponent. Anybody testifying in the neutral capacity, neutral capacity? Seeing none, as Senator Lippincott comes

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up to close, we got 69 letters: 2 in support, 66 in opposition, and 1 in neutral capacity. Senator Lippincott to close.

**LIPPINCOTT:** Yes, sir. Thank you. Just to recap, what we're talking about here is Nebraska has the death penalty. And death by nitrogen is a humane way. It's painless. It's quick. And it's a method that cannot be disrupted with a lack of supply from companies that make nitrogen. It's plentiful. It's everywhere. So, it's very straightforward.

**WAYNE:** Thank you. Any questions from the committee, committee? Sorry, for those who are transcribing. That was, any questions from the, from the committee? Seeing none, thank you for being here. And that will close the hearing on LB970--

**LIPPINCOTT:** Thank you, sir.

**WAYNE:** --and close today's hearings.