BOSN: Good afternoon. We'll go ahead and get started. Welcome to the 2025 Judiciary Committee. I am Senator Carolyn Bosn from Lincoln, Legislative District 25, and I serve as chair of this committee. The committee will take up the bills in the order they are proposed. This public hearing is your opportunity to be part of the legislative process and to express your position on the proposed legislation before us. If you're planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Please be sure to print clearly and fill it out completely. When it is your turn to testify, come forward, give us the test-- give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also yellow sign-in sheets on the back of the table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name, and spell your first and last name to ensure that we get an accurate record. We will begin each hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, anyone wishing to speak in the ne-- in the neutral capacity. We will finish with the closing statement by the introducer, if they wish to give one. We will be using a three-minute light system on the table in front of me for all testifiers. When you begin your testimony, the light on the table will be green. When the light changes to yellow, you have one minute remaining. And when the light changes red, it indicates you need to wrap up your final thought and stop. Questions from the committee members may follow. Also, please know committee members may be coming and going during the hearing. This has nothing to do with the importance of the bills being heard. It is just part of the process, as senators have many bills to introduce in other committees as well. A few final items to today's-- to facilitate today's hearing. If you have handouts or copies of your testimony, please bring up at least 12 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may cau-- be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only acceptable method of submission is via the Leg--Legislature's website at nebras-- excuse me, at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included in the committee statement. Also, you may submit a position comment for

the record or testify in person, but not both. I will now have the committee members with us today introduce themselves, starting with my left.

HALLSTROM: Thank you, Senator. Bob Hallstrom, representing the Legislative District 1, consisting of the counties of Otoe, Johnson, Nemaha, Pawnee and Richardson.

STORM: Jared Storm, it's Legislative District 23. That would be Saunders County, Colfax and Butler County.

STORER: Senator Tanya Storer, District 43, 11 counties up in north-central Nebraska.

DeBOER: Hello everyone. Good afternoon, my name is Wendy DeBoer. I represent District 10, which is in northwest Omaha.

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

ROUNTREE: Good afternoon. Senator Victor Rountree, LD 3, Bellevue, Papillion and a little Sarpy County.

BOSN: Thank you. Also assisting the committee today to my left is our legal counsel, Danny Vagalis, and also Tim Young. To my far right is our committee clerk, Valerie [SIC] Vollertsen. Our pages for the committee today are Ruby Kinzie. Ruby, do you want to-- OK. Alberto, is it Donis [PHONETIC]?

ALBERTO DONIS: Donis.

BOSN: Donis. Sorry. Alberto Donis. And Ayden Topping, is that right? OK. With that, we will begin today's hearing starting with LB51.

IBACH: I feel like I should be sitting over there. Set? Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. My name is Senator Teresa Ibach, T-e-r-e-s-a I-b-a-c-h, and I'm here to introduce LB51 today for your consideration. If Nebraska were to adopt LB51, we would join the National Crime Prevention and Privacy Compact, which has 35 member states as of October, 2023. Currently, the Nebraska State Patrol is required to submit every fingerprint-based arrest to the FBI to ensure FBI records match Nebraska's records. By joining the compact, Nebraska would become the sole maintainer and provider of our state's criminal history records, thus eliminating the need to submit subsequent arrest events, expungement notices, and disposition information to the FBI. Testifiers who follow me will be

more quick to explain this compact in depth and the benefits to the state for joining this compact. That being said, this same legislation was introduced last session in the form of LB898 and was advanced to General File but was not scheduled for debate due to lack of time remaining. Thank you for your time and for your consideration of LB51.

BOSN: Are there questions from the committee? Senator Hallstrom.

HALLSTROM: Senator Ibach, would this just basically streamline our process, and are there any cost-savings associated with it?

IBACH: Absolutely. What it would do would be eliminate the need to go outside the state for background checks. The cost-savings, if you look at the fiscal note, and this is based on our-- on last year for, so last session, $178,200 in fiscal year '25-26, and $356,400 in the year following that. So it does streamline, and it, and it is a savings to the state. And I believe that testifiers behind me will outline a lot more of those numbers.

HALLSTROM: Thank you.

BOSN: Any other questions from the committee? Senator DeBoer.

DeBOER: Thank you. Thank you, Chair. Senator Ibach, it's weird not to have you up here with us, but how did this come out of committee? Can you remember from last time?

IBACH: Oh.

DeBOER: I just thought maybe you--

IBACH: It was-- I think it-- I'm not going to say.

DeBOER: OK. No, I just thought if you remembered--

IBACH: I don't recall that and I don't have it.

DeBOER: Thank you.

IBACH: Sorry.

BOSN: Any other questions from the committee of this witness? All right, thank you. Now we will have our proponents. Are there any proponents for this bill? And if-- when you get started, if you can please state and spell your first and last name for the record as well.

SHAWNA BACKEMEYER: Absolutely.

BOSN: You can begin.

SHAWNA BACKEMEYER: OK. Thank you. Committee Chair Bosn and members of the Judic-- Judiciary Committee, my name is Shawna Backemeyer, S-h-a-w-n-a B-a-c-k-e-m-e-y-e-r, and I am the research manager with the Nebraska State Patrol Criminal Identification Division. I'm here today on behalf of NSP to testify in support of LB51. On October 9, 1998, President Clinton signed into law the National Crime Prevention and Compact Act. This established an infrastructure by which states can exchange criminal history records for noncriminal justice purposes according to the laws of the requesting state, without charging each other for the information. The compact makes available the most complete and up-to-date records possible for noncriminal justice purposes with the mission to enhance public safety through noncriminal background checks based on positive identification while protecting individual privacy rights. It was determined that a state's criminal history records were more accurate and complete than the records maintained by the FBI, which is also true for the state of Nebraska. As of October 2024, 35 states have ratified the compact. Ratifying the compact facilitates the interstate and federal exchange information of criminal history information to streamline the process of background checks for noncriminal justice purposes. Ratifying the compact is the first step to becoming a national fingerprint file program participant. This is a benefit only to those states who have ratified. Participation in the NFF program is the final step in ensuring the most accurate, up-to-date criminal history information available when a fingerprint-based background check is conducted, ensuring a higher level of security benefiting the most vulnerable populations. Participating in the NFF program allows agencies to reduce duplicate processing and decrease operational costs. Under the NFF program, states are no longer required to send duplicate information to the FBI for criminal history record check purposes. Instead, the state responds directly with their individual state record when a background check is requested on a record that they maintain. Because Nebraska is currently not an NFF program participant, it is a requirement to submit every fingerprint-based arrest to the FBI to ensure the FBI records match any Nebraska record. This results in duplicate maintenance of criminal history records by both the state and the FBI. When a state becomes the sole maintainer and provider of its criminal history records the requirement to submit subsequent information to the FBI, including any subsequent arrest, expungements, disposition reports and death notices are eliminated. The NFF program participation requires the state to submit fingerprints and

identification data to the FBI for the individual's first arrest only, which establishes the FBI's universal control number. This will relieve Nebraska of any burden and costs, submitting all arrests of fingerprints and charge disposition data to the FBI. Currently, each fingerprint-based background check requires NSP to reach out to the FBI to obtain the individual's national cri-- criminal history record information. This yearly cost has averaged approximately $400,000 over the previous five years. These costs are waived with the NFF program implementation and participation. In closing, Nebraska State Patrol supports LB51 and the compact ratification. Complete and current criminal history records for background check purposes are a cornerstone for public safety. We appreciate this opportunity to testify for you, and I'm happy to answer any questions.

BOSN: Thank you. Are there any questions from the committee? Senator Storer.

STORER: Good afternoon, Shawna. Thank you. I just wanted to follow up on the comment that this was the first step in becoming part of the national fingerprint files. So are there subsequent things that would need to be done?

SHAWNA BACKEMEYER: So the first step is becoming ratified. That is correct. So then the step after that, the NFF participation is the final step. So once we become a compact state and we join, and hopefully we would be the 36th state, there are some programming that we need to do and internally for the state. Once we get that done, then we start testing with the FBI to make sure that the connections are accurate and correct. Once that happens, we start taking back our own records from the FBI. So then basically what we're doing is decentralizing it and we're maintaining everything ourselves. So that is the, the final step, is starting to take back our own records.

STORER: OK. And I guess one other additional question. So one, assuming we got to the point that, that we were part of the compact, things were up and running, then the FBI automatically has access. There's no need for Nebraska to share fingerprint data with the FBI because the FBI will have access to that as well--

SHAWNA BACKEMEYER: So--

STORER: --automatically?

SHAWNA BACKEMEYER: OK. So how it works when you're in NFF states, we start taking everything back. So the FBI will have the first set of

fingerprints. They will maintain those first set of fingerprints for any FBI so that they have it for their prosecution for a federal case. We have it for our own now. When Iowa, for example, when they would reach out for a criminal history, they would be, they would be reaching out. But rather than getting it from the FBI, it's going to point. So it's going to go out, it's going to point straight to us. So the FBI is out of that equation. Now, if-- currently that's not the case. So, for example, if somebody reaches out, the FBI is going to give them whatever they have. It may not be the most accurate, the most current record that we would have had, but that state doesn't know that.

STORER: Thank you.

SHAWNA BACKEMEYER: Uh-huh.

BOSN: Any other questions? Thank you for your testimony.

SHAWNA BACKEMEYER: Absolutely.

BOSN: Next, witness in support or proponent of LB51. Testifier, not witness. Wrong hat. If you could please state and spell your first and last name.

TONY CLOWE: Thank you for having me here today. My name is Tony Clowe, which is T-o-n-y C-l-o-w-e, and I am a deputy county attorney in Douglas County. I've been in that role for more than ten years, and I currently within my office serve on our problem-solving courts and head all of our activities relating to problem-solving courts. I'm here testifying in support of this bill on behalf of the Nebraska County Attorneys Association. This is an important bill for a number of reasons, but I wanted to provide a more practical look at, at how this can impact the citizens of Douglas County just-- beyond just the cost-saving measures that were testified to here. Nebraska Statute 29-3523 is the statute that governs when a case is dismissed and sealed what happens to a person's criminal record. And the way it currently works is if you are acquitted, your case is supposed to be automatically sealed. If your case is dismissed, say you have two separate criminal proceedings and one is dismissed pursuant to a plea agreement, that one is supposed to be automatically sealed. The, the whole point behind 29-3523 is that people aren't having things on their record being shared that they were never actually convicted of. But specific to what I want to talk about here today is for individuals who enroll in problem-solving courts. When they are allowed to enter a problem-solving court, they are promised that if

they successfully complete-- they have to enter a guilty plea. And should they successfully complete the program at the time of their graduation, they're allowed to withdraw their guilty plea. And at that time, as a result of their hard work, they've earned a, a dismissal, which comes along with the sealing of their case. And as it happens right now, we've had a number of people who have successfully graduated the program who have unfortunately been impacted by the way that the criminal-- the FBI's system currently manages that criminal history information. And so my understanding, after getting into a very deep dive with Kelsey Remmers from the Nebraska State Patrol, is that essentially there is a code that you can only have access to if you are in the compact. And that code allows the FBI system to differentiate between whether a request is a law enforcement request or a private request. And since we're not a part of the compact, we don't have the ability to code our information to, to deliver it to the FBI and so-- in a way that that makes sense for them. And so if an employer makes a request, it just spits out all the information it has, whether it's a law enforcement request or not, and people are being negatively affected by that. So we're here in support of the bill today because I think that Nebraska's practices are currently not in line with what was contemplated by 29-3523. I think that when we make those promises that we should be upholding them. And I would like to see that when people have their case dismissed, especially pursuant to problem-solving court, that that is protected from any nonlaw-enforcement-related request, which is currently what's happening.

BOSN: Are there any questions from the committee members? I have a couple of questions. Can you tell me, so following up on what you were talking about with individuals who are in a problem-solving court, some of those courts go almost two years. Would they be flagged then during the pendency of their programming?

TONY CLOWE: What do you mean by flagged?

BOSN: Well, or would their, their conviction would show up then during the pendency of--

TONY CLOWE: Yeah, so it's-- the way it works is kind of odd because we're-- the way Nebraska's system works, a person isn't technically convicted. They've been adjudicated guilty on their case.

BOSN: Right. Not sentenced.

TONY CLOWE: And under federal law, say for possession of a firearm by a prohibited person, under federal law, when you enter a guilty plea and a judge has made a finding of guilt, that is a conviction for their purposes. Under Nebraska law, you're not convicted until you're sentenced. So at the time of your sentence. And so if somebody in problem-solving court, if they successfully complete, they enter their plea of guilty but we essentially pause--

BOSN: We didn't accept it.

TONY CLOWE: Yeah, we just, we never go to sentencing and that's, that's indefinitely delayed until they either complete or they don't. And then if, if it's-- if they do successfully complete, then the case is dismissed in the end. And so it will report while they're in a problem-solving court, it will still show that they have entered a plea of guilty, but that they have not been sentenced on it yet. And, and that does have a different implication under federal law than it does under Nebraska law. And this is, I mean, it kind of is in the same category. But, you know, when they, when we-- when the Nebraska Legislature introduced the deferred judgment statutes, they amended-- they specifically amended the prohibited person statute to prohibit individuals on deferred judgment from possessing a firearm while they're on deferred judgment. And problem-solving courts are actually in the same place. I don't know if it was intentional or not that that category of people were-- was left out, but the way deferred judgment works is essentially exactly the way that problem-solving courts works. And so it will affect people in both categories if they've done a deferred judgment and that they successfully complete and the judge does order a dismissal of that case, they'd be affected in the same way that a problem-solving court participant would be too.

BOSN: Thank you. Any other questions of this wit-- testifier? Thank you.

TONY CLOWE: Thank you.

BOSN: Any other proponents? Any opponents? Any individuals wishing to testify in a neutral capacity? Senator Ibach, would you wish to close?

IBACH: Well, thank you very much, committee. And, and I would note, Senator DeBoer, that it did come out of committee 5-3 last time. So and as you'll recall, also last year, this program expedites the background checks. We were working on child care issues and trying to get people into the workforce more readily and, and more expeditiously. And this bill certainly addressed that. It served-- it

addresses other folks trying to get to work, too. But it did address the child care labor issue at that time. I appreciate Ms. Beckemeyer coming again to testify and, and I think her information is very thorough and very thoughtful. And the problem-solving courts, I think, is a big deal, too. So I appreciate their testimony. And like I said, the savings to the state really does add up. And with our revenue issue, this could be one way to, to give some money back. So anyway, thank you for listening to LB51.

BOSN: Thank you. That concludes our hearing on LB51. Our-- we had two proponents of-- although I have the wrong bill here, I'm sorry. I'm sorry. We had four proponents submit online comments, no opponents and one neutral. Next, moving on to LB52. In anticipation of the senator who's after that testifying in another hearing, could I get a show of hands of individuals who are planning to testify on LB52. No one? OK. We will send that message then. Senator Ibach, you may proceed.

IBACH: Thank you very much. Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. I'm senator Teresa Ibach, T-e-r-e-s-a I-b-a-c-h, and I'm here presenting LB52 for your consideration. LB52 is a continuation of the work this committee and the Legislature undertook two years ago in making sure victims of crimes are notified in a timely manner when the person who perpetrated a crime against them applies for a pardon or commutation, or if a pardon or commutation has been granted. Unfortunately, at the beginning of the last legislative session, it came to my attention that a victim of a violent crime was not notified when the person who committed the crime against them applied for a pardon because the crime wasn't explicitly listed in statute. After combing through Chapter 81 to identify additional violent crimes that were inadvertently left out last year, and which should be included. The expanded list of crimes in which a victim shall be notified should LB52 be enacted includes manslaughter, motor vehicle homicide, first degree false imprisonment, assault by strangulation or suffocation, domestic assault in the first or second degree, child enticement by means of an electronic communications device, sexual abuse by a school employee, sexual abuse of a protected individual, terrorist-- terroristic threats, sex trafficking, sex trafficking of a minor, labor trafficking or labor trafficking of a minor. LB52, was introduced last year as LB1159 and was advanced from committee unanimously, but unfortunately was not scheduled for floor deb-- floor debate due to lack of time. Therefore, I hope you will support LB52 to provide additional victims the ability to know when the person who committed a violent crime against them is asking for or has received a

pardon or commutation. With that, I thank you for your time and I am happy to answer any questions.

BOSN: Thank you, Senator Ibach. Are there any questions from the committee? All right, are there any proponents wishing to testify on behalf of LB52? Any opponents? Any individuals wishing to testify in the neutral capacity? On this bill, we had four proponents submit letters, no opponents, and no individuals in the neutral capacity. Senator Ibach, do you wish to close on LB52?

IBACH: I would just thank the committee for hearing this bill, and appreciate your consideration. Thank you.

BOSN: You bet. That will conclude LB52. We're going to take a five minute recess for some of our growing pains.

BOSN: Laurie, are you ready? All right, we're back. Senator Hallstrom, if you would like to introduce LB72.

HALLSTROM: I would. Thank you, Chairwoman Bosn, members of the Judiciary Committee. My name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m, I'm the state senator for Legislative District 1, consisting of the counties of Otoe, Johnson, Nemaha, Pawnee and Richardson County in southeast Nebraska. I bring before you today LB72, which updates the Nebraska Uniform Controlled Substances Act to conform the state schedule to the federal controlled substances schedule. Having a state controlled substance schedule allows for local enforcement of violations involving the unlawful use, possession, manufacture or distribution of controlled substances. Each time the federal government updates its controlled substance schedule, Nebraska also follows suit by updating its state controlled substance schedules. This year we are taking the last two years of federal updates because we were not able to pass the bill that was introduced by Senator Bosn last session. When you look at schedules of controlled substances, this bill makes specific changes in accordance with the federal revisions to Schedules I, III and IV. Schedule I controlled substances currently have no accepted medical use in the United States and a high potential for abuse. And Schedule II, III, and IV substances also have potential for abuse and are, some are available by prescription. In my testimony, I've just basically gone through a general description. The changes to Schedule I: add a series of fentanyl-like compounds, compounds with opioid-like effects, and a substance structurally similar to methamphetamine. With respect to changes to Schedule III, as the bill did last year, we're adding xylazine as a Schedule III controlled substance. This is a

prescription animal sedative used to facilitate safe medical evaluation, treatment, and surgical care of animals. And while we are adding xylazine to Schedule III, the bill expressly excludes utilization of xylazine by licensed pharmacists or veterinarians for nonhuman species. And then finally, with regard to the changes to Schedule IV, we are removing fenfluramine and adding zuranolone to Schedule IV. And additionally, psilocybin remains a Schedule I drug, but there are currently phase three clinical, clinical trials being undertaken with regard to a, a pharmaceutical composition of crystalline polymorph psilocybin. And upon approval and only upon approval by the federal Food and Drug Administration, that would appear as a Schedule IV controlled substance. There are some letters with regard to the veterinarian exception for xylazine resign as well as the psilocybin exemption that were submitted to the committee. And attached at the end of my opening statement that I handed out is a little more descriptive summary of the particular substances that are being added to the various controlled substance schedules under Nebraska law. With that, I'd be happy to answer any questions, and would ask for the favorable consideration by this committee of LB72.

HALLSTROM: Thank you, Senator Hallstrom. Are there any questions from the committee? Senator DeBoer.

DeBOER: I would just comment that you did a very excellent job pronouncing all of those drugs that I would not have, and I would ask you if it's any different being on this side of the situation as the introducer?

HALLSTROM: Well, I just hope that I can inform, educate and be persuasive and develop relationships. So that's what it's all about.

DeBOER: Very good job pronouncing those things.

HALLSTROM: Thank you.

BOSN: Any other questions? Thank you, Senator.

HALLSTROM: Thank you.

BOSN: Are there any proponents for LB72 wishing to testify? If you could just state and spell your first and last name.

HALEY PERTZBORN: Yep. Chairperson Bosn and members of the Judiciary Committee, my name is Haley Pertzborn, H-a-l-e-y P-e-r-t-z-b-o-r-n. I'm a licensed pharmacist, the CEO of the Nebraska Pharmacists Association, and a registered lobbyist. LB72 updates the Nebraska

Uniform Controlled Substance Act to mirror what the federal controlled substance schedules are. So I'll just quickly go through the three schedule changes. Schedule I, page 6, lines 7 through 23 are fentanyline compounds. Page six, lines 25 through 31, and page 7, lines 1 to 6 are all compounds with opioid-like effects. Page 7, line 25 adds metonitazine, which is a street drug that is opioid-like. Page 9, line 27 exempts crystalline polymorph psilocybin. And we discussed this with our membership and the Nebraska State Patrol, and we are OK with this exemption. Page 11, line 13 is a street drug similar to MDMA, and is also known as psychoactive bath salts. Page 21, line 19 adds mesocarb, which is a street drug and a central ner-- central nervous system stimulant. Page 21, line 21 adds methiopropamine, which is a drug structurally similar to methamphetamine and amphetamine. For Schedule III drugs, page 27, line 21 adds xylazine, which is FDA approved for animal use only. And our membership is also OK with the exception for xylazine when used in animals. Schedule IV, page 36, line 25 adds zuranolone, which is an FDA approved antidepressant used to treat postpartum depression in adults. Page 36, lines 28 through 37, and page 37, line 1 removes fenfluramine per the DEA final rule. This drug is used for rare seizures. The NPA would respectfully ask the committee to advance LB72 for consideration by the full Legislature, and I'd be happy to take any questions. Thank you.

BOSN: Thank you. That was some speed-talking, but we got it.

HALEY PERTZBORN: Just I didn't want to do too much.

BOSN: Are there any questions for this testifier? Thank you very much.

HALEY PERTZBORN: Thank you.

BOSN: Next proponent for LB72. Proponent. Are there any opponents, individuals wishing to testify opposed to this bill? Any individuals wishing to testify in the neutral capacity? All right. While our introducer comes back up for closing, closing, I will tell you there were three proponents, no opponents and no neutral comments submitted for the record.

HALLSTROM: Yes. Chairman Bosn, just in closing briefly, I'd like to thank the Nebraska Pharmacists Association and Ms. Pertzborn for annually coming up and giving us their expertise on the issue, those who commented online, and also the main reason I came up here, is to do a shoutout to Celeste Laird with the Nebraska State Patrol. She's the person that's our point person that, that goes to the federal

statutes and helps us locate the, the changes that are necessary to keep our law up-to-date. So thank you.

BOSN: Thank you, Senator. That concludes our hearing on LB72. All right. Thank you, Senator DeBoer, for being willing to fill in. We will next proceed with LB85, that is Senator DeBoer's bill, as she's making her way around.

DeBOER: Good afternoon, Chair Bosn and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent District 10 in northwest Omaha. I appear today to introduce to you LB85. LB85 would authorize the use-- use of an abstract of death-- I just said I would say it that way-- an abstract of death to be attached to a small estate affidavit to allow a successor of the decedent after the passage of 30 days from the date of death to liquidate an account at a financial institution and collect other personal property authorized by law. OK. Simply put, the bill updates our small estate affidavit statute to add that an abstract of death can be used in the event that the production of a death certificate takes longer than 30 days. For some background on our small estate aff-- affidavit statutes, for those who are new to the committee, the Nebraska law for the collection of assets of the decedent by use of the small estate affidavit was first adopted in 1974 and has been amended several times since then. There are limitations on the use of the small estate affidavit. The fair market value of the entire estate of the deceased has less liens and encumbrances, sorry, must be $100,000 or less, 30 days must have passed since the date of death, the person signing the affidavit cannot be a creditor to the estate of the decedent, a personal representative has not been appointed for the estate of the decedent, nor an application for the appointment of a personal representative is pending, and no other person has a right to the property, or everyone who has inherited an interest in the property must sign the affidavit. Meanwhile, the abstract of death was introduced by Senator Riepe in LB1173 in 2024 and passed as part of LB1215. LB1173 expanded the Vital Statistics Act to allow for the issuance of an abstract of death in the event there are delays in the production of a death certificate. Since an abstract of death is a new document, I was approached by the Nebraska Bankers Association to update our small estate affidavit section accordingly. And this is a simple bill before you today, even though it doesn't sound simple, I promise it is. I'm happy to answer any questions that you may have, but basically it's that last year when we created this abstract of death, we forgot to have it apply to the small estate affidavit portion of estate law. So this basically just harmonizes that with our small estate affidavit portion and prevents the problem of if I now

were to go with a small estate affidavit to a bank and say, give me the money, and they would say-- prior to last year, they'd say, show me the certificate of death, this year they would say, show me the abstract or-- of death or the certificate of death. If I show them the abstract of death, they're technically wrong. But they don't know that because they think an abstract of death could be used because it can in all matters except for the small estate affidavit. So we just need to harmonize it so that we don't have banks inadvertently getting on the wrong side of the law by assuming that it applies to all ways that estates can be taken care of and not just-- yeah, that's it. That's my testimony. Any questions after I've convoluted that now?

BOSN: Thank you, Senator DeBoer. Are there any questions from the committee? Senator Hallstrom.

HALLSTROM: Senator DeBoer, I was just going to say thank you for bringing the bill. This is an area of the law that's helpful in terms of saving cost and avoiding expense for individuals. Allows them to avoid having to probate the estate and incur additional expenses. And this is a good clarification, in my opinion.

DeBOER: Thank you, Senator Hallstrom.

BOSN: Are there other senators? I just have--

DeBOER: Yeah?

BOSN: --just for sake of explanation, can you explain what the difference is between a death certificate and an abstract of death?

DeBOER: So the death certificate may not be finalized because, for example, if, if there's an autopsy for some reason, a child dies at home, nobody knows why, there might be an autopsy. In situations where there's an autopsy, that can sometimes take longer than 30 days. So they would like to handle the estate. They would have the affidavit of death, which says the person is dead, we just don't have the final death certificate which lists cause of death and all of those things. So sometimes getting a death certificate, particularly in cases where there's an autopsy, will take longer.

BOSN: So an abstract of death is essentially a death certificate that doesn't require cause of death.

DeBOER: It's like the preliminary thing before you get the final--

BOSN: OK.

DeBOER: --death certificate. So the death certificate is the final document that will be there for all time. The abstract is like the temporary document that says, yes, this person is dead, dead, but we don't have all the materials.

BOSN: Thank you. Any other questions?

STORER: And just--

BOSN: Senator Storer.

STORER: --just for clarification.

BOSN: Sorry, I didn't see you.

STORER: No, that's all right. Senator DeBoer, so the-- this is just for my own personal understanding of abstract of death as well. So who issues that, the same-- does the coroner--

DeBOER: You know, that's a really--

STORER: --issue the abstract of death as well?

DeBOER: That's a really good question and one I should know the answer to, but which I do not so.

STORER: Well, I wasn't trying to trip you up. I was just curious.

DeBOER: No, no, no, I knew you weren't. No, I should know the answer to that, but I'm not actually 100% sure. Instead of speaking wrong, I'll figure it out and I'll tell you on my close.

STORER: Cool. Thank you.

DeBOER: Yeah.

BOSN: All-righty. If there are no other questions for this witness, we will move on to our first proponent. First proponent of LB85.

JERRY STILMOCK: Thank you.

BOSN: Good afternoon. If you could please state--

JERRY STILMOCK: Madam Chairperson, good afternoon, thank you. Members of the committee, my name is Jerry Stilmock, J-e-r-r-y S-t-i-l-m-o-c-k, testifying on behalf of our clients, the Nebraska Bankers Association in support of LB85. Thank you to Senator DeBoer

for bringing the legislation. Certainly appreciated a simple amendment to existing law found at 34-24,125. The whole concept behind small estate affidavit is to alleviate the need to go to court to have an estate set up. Why? Because years ago, back in 1974, other states were doing it in order to streamline a small estate ergo the name small estate affidavit. Before 1974, in order to get any value of property placed in the hands of the beneficiaries or the heirs, one would have to go through an estate proceeding. Before my time as an attorney, but that's what history tells us. Senator Riepe, as Senator DeBoer recited, the legislation was brought by funeral directors. But in our lives as bankers, at that moment in time, in 2024, as a moment in bankers and as practicing attorneys, we weren't aware that this was causing a delay for our members. Our association is member-driven. That's our slogan. That's what we go by. So a member brought this to us. Why? And here's the why. A press release by the state was issued that said abstract of death. Go and do these things with it. For grieving families, you can liquidate. So what happened? Of course, the terrible circumstance, a parent lost an adult child. The means of that adult child were under $100,000, means meaning assets in my statement. All the parents wanted to do was pay for the funeral. All they wanted to do is take care of the final bills. And yet the banker was placed in the dilemma. And of course, they notified our offices and said, well, the press release says an abstract of death will be sufficient. Well, there's another piece of the pie, obviously, and that comes in today's bill that Senator DeBoer has brought to you, LB85. It simply brings in the fact that as she well-- so well stated, grieving is a terrible thing to go through for death. And the last thing you want to do is fight paperwork. So in order to allow this to happen, the abstract of death is brought on-line with being able to do this when the cause of death, and it's the cause of death is unknown. The elements in an abstract of death: the name, the date of death and the location of the death. The cause of death is the only item that is not in the abstract that it does appear in a death certificate. So in order to help our members deal with grieving family members liquidate those assets, we're asking that this be successful at the Legislature and would ask you, please, to advance it to General File. And I'd be happy to answer any questions if, if you have any, and if I'm able to. Senator Storer, may I-- I'll conclude quick. Senator, the agency that prepares a ab-- abstract will be the Bureau of Vital Statistics, the same agency that, that releases and publishes the death certificate. But it was a very, very good question, ma'am.

STORER: Thank you.

BOSN: Thank you.

JERRY STILMOCK: You're welcome.

BOSN: Are there any questions for this witness? Seeing none.

JERRY STILMOCK: Very well.

BOSN: You're off the hook.

JERRY STILMOCK: Senators, thank you. Good afternoon.

BOSN: Are there any pro-- other proponents for LB85? Good afternoon.

DEXTER SCHRODT: Good afternoon, Chairwoman Bosn, members of the Judiciary Committee. My name is Dexter Schrodt, D-e-x-t-e-r S-c-h-r-o-d-t, president and CEO of the Nebraska Independent Community Bankers Association. First, I'd like to thank Senator DeBoer for bringing this bill. And Mr. Stilmock summarized the need for the bill rather quite well. Banks just need to be able to accept this new item in statute in order to handle small estates. I do want the record to show that Mr. Stilmock and I did not coordinate outfits today, but excellent suit and tie choice by him. And he was right that the difference is the abstract of death does not the list of cause of death, only the name of the decedent, date of the death, and the place of the death. And an abstract of death does not include signatures, is what the statute says, because a death certificate with the cause of death either includes a signature by an attending medical professional or the county attorney for which the death took place. So I just wanted to, to clarify a little more further on the differences there, and that is all I have. Thank you.

BOSN: Are there any questions for this witness? Senator Hallstrom.

HALLSTROM: Mr. Schrodt, do you consider Mr. Stilmock to be a fashion mogul?

DEXTER SCHRODT: I do, actually, yes.

HALLSTROM: Good. Thank you. Good answer.

BOSN: Are there any other questions?

ROUNTREE: Yes, ma'am. Mr. Schrodt, thank you so much. And yes, you are matching rather well. You said there are no signatures on the abstract of death, but those signatures, would there be any issues as far as banks and financial institutions receiving that? A number of times

what we have is a type of stamp, signature or something. But without that, with that do you anticipate any problems?

DEXTER SCHRODT: I don't anticipate problems because as to-- as Mr. Stilmock said, it's coming from the Depart-- or the Bureau of Vital Statis-- Statistics, that's a hard word, under the Department of Health and Human Services. And in the existing small estate affidavit statute, it's actually attached to an affidavit. So the signatures that the bank would be concerned with are on-- are going to be on the affidavit, which is often notarized.

ROUNTREE: OK, thank you.

DEXTER SCHRODT: Yep.

BOSN: Good question. Any other questions? Thank you for your testimony.

DEXTER SCHRODT: Thank you.

BOSN: Next proponent of LB85. Good afternoon.

TIM HRUZA: Good afternoon, Chair Bosn, members of the Judiciary Committee. My name is Tim Hruza, last name spelled H-r-u-z-a, appearing on behalf of the Nebraska State Bar Association in support of LB85. I want to thank Senator DeBoer for introducing the bill. I think the previous two testifiers have laid out the need for this. The only thing I would note, the reason we're appearing in support, obviously estate planning lawyers deal with these issues on a regular basis. As you've heard, I think the outstanding concern or the issue is that when an autopsy is pending, it can take several months to get a death certificate issued from the department. And I-- using this process will help expedite and allow the estate to do what it needs to do in a lot quicker way, but also in instances where the fact of the person's death is the only thing that's really at issue to allow banks to, to operate moving forward under the small estate affidavit proceedings. So I'm happy to answer any questions. We thank Senator DeBoer again for introducing the bill, and ask the committee to advance it to General File.

BOSN: All right. Senator McKinney.

McKINNEY: Thank you, Chair. Quick question. I know like when, when people pass away, especially with estates, they, they can become a little tricky and controversial with families. Do you think

potentially expediting this process might allow for that, that to be a little more toxic?

TIM HRUZA: I understand your concern. I think any estate attorney deals with families and after a family member's death has dealt with controversial issues, disputes among family members. Correct me for shooting from the hip here, because I'm not an expert, but I've dealt with this issue enough times. Senator Hallstrom is probably your expert on the committee having dealt with these most often. But I do believe under the small estate affidavit approach, you're required to verify and that through that affidavit process that you are the beneficiary or the sole beneficiary. And I think in a lot of times, too, you ask any other interested parties have to submit those affidavits. Lawyers do them differently for different practices, but that small estate affidavit process is meant to protect against, you know, a brother or sister who might be in a dispute with another brother or sister from, from running in and taking the money out of the account or taking the property or transferring it otherwise. It's a pretty long-- the, this particular bill doesn't affect the underlying small estate affidavit process, which has been sort of longstanding. And we've actually, this committee has made tweaks to it over the years in terms of the amount that you can use it, increasing the amounts for which you can use this process to avoid having to go into court, pay a lawyer a bunch of fees and do that. So it's a little bit of an expedited process. It's supposed to be fairly narrowly tailored to, in this instance, the $100,000 or less situations, right? There's less than $100,000 of assets. And then also where all beneficiaries are supposed to be engaged in that process. You might have one-off examples where people abuse it. But I would tell you that from the attorney standpoint and what we advise clients to and what I hear from lawyers is that you're doing it that way and using that affidavit as the way to determine that there isn't a dispute, right, about where the money should be going.

McKINNEY: All right.

TIM HRUZA: Things happen, though. I'm not gon-- not going to vouch for every situation so.

BOSN: Thank you. Senator Hallstrom.

HALLSTROM: Thank you, Chair Bosn. And nice job, Mr. Hruza. The only thing for Senator McKinney, the other protective measure that's in that statute is that there is under penalty of perjury. So the person that is filing the affidavit has penalty of perjury as a potential

criminal consequence, or in the event that they have, have falsified something. And most typically, you may have one person sign that. You could have all of the beneficiaries sign that, but you typically have one beneficiary sign, but they would acknowledge that there's four children in the family and they're going to be split equally. So the bank would have that guidance.

McKINNEY: OK.

BOSN: Thank you, Senator Hallstrom. Any other questions for this witness-- or testifier? Someday. Not today. All right--

TIM HRUZA: Thank you, Chair.

BOSN: --next proponent. Any individuals wishing to testify in opposition to LB85? Any individuals wishing to testify in the neutral capacity? While-- are you planning to close? She's waiving her close. But I will tell you that there was one proponent, no opponents and no neutral comments submitted for this bill. That concludes our hearing on LB85. And last but definitely not least-- oh no, second to last but not least, Senator Cavanaugh. I apologize for the mixup earlier.

J. CAVANAUGH: No, it's not your fault. I was delayed introducing a bill that should have been shorter in Natural Resources. But thank you for moving around to accommodate me.

BOSN: Sure. If you need a minute. Are you ready?

J. CAVANAUGH: I'm ready.

BOSN: All right. You may begin.

J. CAVANAUGH: Good afternoon, Chair Bosn and members of the Judiciary Committee. My name is Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here to introduce LB24, which provides for the possible extension of probation terms upon agreement of the parties and provides for a waiver of fees under certain circumstances. LB24 was brought in response to the Nebraska Supreme Court's decision in State v. Simons. In that case, the court ruled that probation terms could not be extended pending a re-- a revocation hearing. But there were many times when it's in the defendant's best interest to request or acquiesce to a continuance of probation. The County Attorney's Association approached me with this bill to correct this part of the statute last session. The other part of LB24 deals with the waiver of fees for indigent probationers in limited circumstances. As you can

see from the fiscal note of this bill, the Office of the Courts does not expect this to have a significant financial impact on the state. I want to thank the Judiciary Committee for your time, and I'd ask for you-- your support to move this bill forward. And I know some of the folks here were on the committee last year and we had the hearing on this bill. But basically what happened was those of us who practice in criminal court and had either clients who were on probation or were on the other side know that it was kind of common practice when somebody was on probation and they were having trouble finishing all the services, that then they would ask to continue that term of probation and it would just usually be extended. What happened was there was a case where somebody-- the court extended somebody's probation without a hearing upon the violation. And the Nebraska Supreme Court found that that was not the appropriate way to extend the term of probation, and basically found that the probation had ended and therefore that probationer was no longer subjected to the jurisdiction of the court. And so it created this problem wherein, in for both probationer defendants and the state took a tool out of the toolbox for how we might deal with people when we're trying to get them much-needed services and rehabilitation. So what my bill does is creates a mechanism by which a probationer and the state in the, in the form of the prosecution, the county attorney could-- can agree to extend the term of probation either if the probationer is represented by counsel, which in my experience in Douglas County is very common, when somebody is on probation, they'll still have the services of the public defender's office, or if that probationer is-- waives their right to, to counsel and agrees to the extension in front of the judge. And so it creates that mechanism to do that. And then the other part is that, again, by practice, a number of courts, in my experience, have waived drug testing and monitoring fees, and it's unclear whether that's permissible under the statute. And so this bill clarifies that part and then additionally creates a presumption of waiver of some portion of supervision and drug testing and, and probation fees for people who have previously been found indigent, meaning previously been found not to have adequate resources to provide for their own defense. So that's the broad strokes, and I'd be happy to take any questions.

BOSN: Are there any questions from the committee? I have just a few questions. So with regard to the waiver of fees for probation, so right now, and correct me if I'm wrong, individuals who are found indigent can appear and request to have those fees waived. But the-- your concern is they have to go back before the court, take time, take court time and appear to request that they be waived?

J. CAVANAUGH: Well, I mean, that's part of the concern. Thanks for the question, Chair Bosn. So that's part of the concern. But under my bill, it's there's no, there's no guarantee that you wouldn't go in front of a judge again. It's more that it's a presumption that you're entitled to some relief if you've been previously found indigent. So the current standard is you can go and ask for a waiver of some or all the fees. And the judge makes a determination of, one, whether you're eligible for a waiver, and two, how much to waive. Under the change that I proposed, if you've previously been found indigent, meaning that the court has made a determination that you could not provide for your own defense, that that would be a presumption of some or, or all. So it doesn't have to be a total waiver. And so, again, the judge would then still have the discretion for how much. So if the, you know, say drug testing fee is $15 a month, the judge could waive $1 of that or they could waive the whole $15 based off of still the argument that is presented. But there would still be a presumption you're entitled to some waiver is what the change would be.

BOSN: So I guess one of the concerns that I would anticipate individuals may have is that when you're placed on probation, one of almost usually, I guess I should say, usually one of the terms and conditions of your probation is lawful employment, right? And part of that is to show fiscal responsibility as a candidate for reentry back into the community and a good candidate for probation, which I think is how they typically word that. But then you're changing your financial status if now you've gained lawful employment and you-- that presumption is no longer really factually accurate, because perhaps at the time that you were appointed legal counsel, that was the right call to make, but now you've earned the right to be on probation and are lawfully employed. But we've now given you that presumption based on a set of facts that has changed since the time we made that finding, the court made that finding. Does that make sense?

J. CAVANAUGH: Yeah.

BOSN: And do you have a solution for that or--

J. CAVANAUGH: Well, I mean, I would-- certainly I would be hesitant to create a system where somebody is going to be charged more as they go through probation. I mean, I think in a scenario you're talking about, I mean, you know, that people come through the criminal justice system and are put on probation, they might be in an unstable situation. And they're seeking stability through probation. And by achieving that, then maybe they would be able to pay more at that point. But I think that the objective is, sure, to demonstrate that you can be a

law-abiding citizen, you can have a job and you can, and you can participate. But really, our goal as the, you know, the state and, and public policymakers is to get people the services they need to make sure that they can-- then they won't reoffend, right? So they get back into a situation. And so I think the point my bill, I guess, is trying to articulate, is that we should not be-- one, we should clarify which services people can have an opportunity to receive, and even if they can't afford it. And then they can make a specific articulation about how much they can and can't afford. But they're entitled to-- my my bill says they're entitled to deference if they've already been established to be indigent. And yeah, people's financial situation changes, but the real goal is not to extract the money, it's to get them the services they need. So I guess, yeah, I think I'd have to think about a scenario in which somebody getting a job would make sense. I mean, I think you could go back in front of a judge and have another hearing about whether they're still entitled to the waiver. And I, I don't know if my bill contemplates that, and I don't know if I've seen any situation like that. But I know of times where people have had, you know, their indigency challenged in court based off of how much they've put up, posted in bond, and a court has made a determination of whether somebody is still indigent at that point. But I don't know. I'd have to think on what the mechanism might be appropriate there.

BOSN: Thank you. Are there any other-- Senator Hallstrom and then Senator Storer.

HALLSTROM: Senator Cavanaugh. Thank you. Do you have the name of the case, and a citation?

J. CAVANAUGH: I don't have the citation in front of me, but it's State v. Simons.

HALLSTROM: State v. Simons.

J. CAVANAUGH: S-i-m-m-o-n-s [SIC].

HALLSTROM: And then just a couple other questions.

J. CAVANAUGH: It's from about a year ago.

HALLSTROM: I've got LB404, which I am working with the state supreme court administrator. So I'd like to work with you on this issue if we can. Your bill is a little bit different in terms of requiring a motion or information to revoke probation to have been filed. Is that necessary based on the court case? Do you believe that's necessary for

the joint request to extend probation, or would there be situations where you're not facing revocation but you'd still have some interest in a benefit to the, to the individual to extend the probation?

J. CAVANAUGH: Well, thanks for the question, Senator Hallstrom, and, and I would certainly be interested. I haven't read your LB404, I apologize. I would be interested in working to get us this to a place that we all feel comfortable. So, yeah, this bill is in response to Simons, which is about that situation. I think I could envision a situation where a voluntary agreement about extension might be appropriate even without a revocation pending. My-- I guess for me, the important part is safeguarding that the extension is not coerced. And so a situation in which someone is not threatened with a revocation if they don't agree to extend. And so that's why there's the safeguards about making sure they're represented and making sure that it's done in front of a judge as opposed to just signing a document in a probation officer's office.

HALLSTROM: And, and would that be less, less important to you if it wasn't triggered by a pending revocation motion?

J. CAVANAUGH: No, I think that the safeguards are important regardless of when the, the extension is effectuated. The important, really important part is making sure that the-- we protect the voluntariness of the extension. And so I, and I think that's the-- that's what the protections that I have in here are. I do think that there would be room for con-- those other noncurrently-contemplated situations of somebody needing more time to pay their fees. Although I'm generally opposed to extending the length of, length of probation merely for the extraction of more money. I very much think that probation serves the purpose of rehabilitation. And if somebody has achieved all of the classes they need to achieve and, and stayed out of trouble for the duration of time that they've been asked to, then we shouldn't be extending probation. But I do think there are very much often times where, you know, a certain class is just not available and so somebody needs a little bit more time. So I think that there are possibilities where you could argue revocat-- or extension would be in order without revocation.

HALLSTROM: And if you can give some thought, as it appears to me that if you get something where it says the protection is that it's shown that it's freely, voluntarily, knowingly and intelligently granted, whether or not there's a, a separate requirement short of that, that they're represented by counsel. I'm not sure whether they'd always have counsel to represent them.

J. CAVANAUGH: So those are two separate ones.

HALLSTROM: OK.

J. CAVANAUGH: And so if they're represented by counsel, they don't have to be demonstrated in front of the judge.

HALLSTROM: OK.

J. CAVANAUGH: If they're represented by counsel, then they could file a joint document.

HALLSTROM: OK. Thank you.

BOSN: Any other questions for this testifier? Oh, sorry. Yes?

STORER: That's fine. And this is just a little bit of clarification based on the way the language reads. So this, the waiver would be really a one time-- they, they could have those fees waived one time. I mean, it's not specific in the language. So, I mean, if they, if probation was being extended, it would just be for the case that they're on probation for. And is that-- would there be a possibility that that waive-- those could be waived more than once, if that's extended more than once?

J. CAVANAUGH: So, well, thank you for the question, Senator Storer. Did I get it right?

STORER: You did.

J. CAVANAUGH: It's the first time. So yeah, to clarify, the waiver is generally-- so it's-- when somebody is put on probation, there's a monthly probation fee. And what normally will happen is they'll say monthly probation fee is actually, I've been-- it's been a while for me, but say $50 a month, and they'll say we're waiving it down to $25. So we're waiving the first $25 a month. So for whatever the duration of probation is, that's what the judge's order will say that they're ordered to pay. And then on top of that, there's maybe a $15 a month drug testing fee and then there's another $15 a month electronic monitoring fee. And so it would be a waiver of whatever amount they waive for per month for the duration of the probation. And then I, I don't think my bill specifically says, but the, the agreed acquiescence to extension, I think it's not-- I think you could agree to a change in terms of the probation. So you could say we're going to extend it within the confines. So a probation can only be a maximum of five years, and so if you've already been on four and a half years of

probation, you can only extend it six months. But so you can't extend it beyond that duration. And then but, yeah, you could in theory agree, say, well, we're not going to violate you, but you've done something else, like not a, not a law violation, but maybe some failed drug tests.

STORER: Right.

J. CAVANAUGH: And so we want to step up your supervision for this extended period to make sure you satisfactorily complete. And so then there might be an agreed upon an additional thing, requirements of your probation. And that's one of the reasons why representation by counsel or a waiver, a clear waiver in front of a judge would be so important in the extension, is because it's not just subjecting yourself to probation for more time, but it's potentially more requirements.

STORER: Right. Thank you.

BOSN: Now are there any other questions? Thank you.

J. CAVANAUGH: Thank you.

BOSN: We will now take our first proponent in support of LB24. Welcome back.

TONY CLOWE: Thank you. Thank you again for having me. Again, my name is Tony Clowe, which is T-o-n-y C-l-o-w-e. I am a deputy county attorney in Douglas County. I have been in that role for more than a decade. Some of my prior experience involves being the sole person responsible for all violations of probation and post-release supervision in Douglas County, so I can confidently tell you that I have handled thousands of these types of proceedings and situations. I am here today testifying on behalf of, of the Nebraska County Attorney's Association. We are in-- there as discussed, there's two portions to this bill. There's a fee waiver and a probation extension. And I just want to be clear that we're not here taking any position on the fee waiver portion, I am here testifying solely in favor of the probation extension as contemplated in the proposed legislation. I'm not going to rehash too much of what Senator Cavanaugh said, but I did want to go over a couple of different things about why I believe this is important. Following the Supreme Court decision, they essentially said there's only two ways to do this. So there wasn't a finding that what was happening, our, our prior practice was unconstitutional. It's just simply that the statutory language did not allow for it. And so

by doing this and presenting this legislation, we are essentially creating the mechanism by which we can continue to operate the way that we always have operated. And I can tell you that, you know, on its face, this might have been a win for defendants because, well, you can't keep me on probation any longer than I, I should have been originally. But one of the reasons I was pretty eager to reach out to Mr. Cavanaugh on this is because I can tell you from experience that, and I agree with Mr. Cavanaugh that the whole point of probation is to rehabilitate an individual and make sure that they can successfully integrate back into society. And people have slip-ups, especially when you're talking about addiction. You know, relapse is an expected part of that process. And depending on when that happens, you know, they, they could put themselves in a position where their probation is being violated. But what they really need is a therapeutic response, not, not incarceration. And in order to effectuate that, because they've entered a plea, they're no longer entitled to bond. So if we file a violation, we put them in jail. They're not entitled to bond. It's really up to the state whether or not, you know, we want to agree to let them out. And obviously, a judge has final say. But when they get out, if, if they're not able to have their probation extended, then they're getting out and they're not supervised while they're out, while this VOP is pending. And the whole point of letting someone out is to try to hopefully dismiss the violation or agree to extend the, you know, extend the probation at a later time. And the other concern is that probation does provide vouchers for treatment. And so if you let somebody out and you put them in a treatment facility, they're not currently employed and probation is paying for it, and then that payment ends because their technical end date has hit, it just doesn't make sense. And I think that last time the, the, the-- when we testified last year, there was someone said "a measured solution." And this is that measured solution. It's something I think both parties can-- both sides agree should be in place.

BOSN: Thank you, sir. Are there any questions for this testifier? I just have a quick question for follow up.

TONY CLOWE: Yep.

BOSN: So my recollection, similar to yours, is a lot of times this is by agreement of parties for the purposes of a successful completion of probation, which does go on your record as either successful or unsuccessful. So even if your term is ending, and, and there are defendants, who would say, I'd rather have an unsuccessful completion, this is providing an opportunity for those defendants who say, no, I'd rather complete the program and earn the successful completion, I

don't-- certificate isn't the right word, but you know what I'm saying?

TONY CLOWE: Yeah.

BOSN: Is that fair to say that there are cases like that as well?

TONY CLOWE: Yeah, I think this can apply in a lot of different scenarios where, you know, somebody is close to finishing but hasn't quite gotten there. So we end up filing a violation because they haven't technically met their, their obligations, but it's not like they haven't done anything. You know, they've been productive while on probation, just maybe not at the pace that we would have liked them to have been. And, and, so this, again, allows a mechanism whereby we can agree to extend the probation while we have these proceedings pending. Now, if somebody ha-- if somebody has their, their probation revoked, the judge has the ability to resentence them to an extended term of probation. That's not out of the question. The real question is, what do you do in the interim while this is pending? And right now, from my, you know, from the state's perspective, it makes no sense to have people who we placed on probation, and the only reason we put them on probation was because we thought they needed supervision. And so now that they've been violated, we're going to let them out and they're not going to be supervised pending these proceedings. And so that's where the state would, you know, under-- after this opinion, our incentive then is just to keep the person incarcerated and to revoke their probation. But frequently that's not what's needed. What's needed is, is them to get back out and get into the good graces of probation. And it's kind of a sink or swim deal. You know, it's we'll let you out while this is pending. And having that hammer above their head can be a motivator. A lot of people will take that and be motivated by it and do what they're asked to do because they don't want to go back to jail. They don't want their probation revoked. They don't want a prison sentence. Other people won't be so motivated, and they kind of make it pretty easy for the judge to figure out what the next step is. Because despite being granted a yet another opportunity to do things right, they've chosen not to take advantage of it. And but, but in either event, to have nobody supervising just doesn't make a whole lot of sense to me. I mean, they're-- they can't be supervised by pretrial release because they're no longer pretrial. Probation is the only office that can actually provide the supervision. And, and if we have a pending violation and our intent is to work with probation, we should be able to put probation in place to continue that supervision for the period that this is pending.

BOSN: Would you still support this bill if, in fact, there was an agreement to allow it to occur without a court hearing? So by agreement of parties and some sort of a joint motion or affidavit that all parties agreed to the extension, would you still support it in that particular case?

TONY CLOWE: Well, I again, I'm aware that there was something else filed. I haven't gotten my eyes on it directly. But I can imagine scenarios where, and I know of plenty of scenarios where a probationer has asked the probation officer to extend their probation. Again, from a defendant's perspective, yes, there's a lot of restrictions and expectations that come with probation, but there are also a lot of benefits that come with being placed on probation in terms of assistance with housing, with treatment, with evaluations, whatever might be needed. You know, probation does have those resources to provide that to people. And so I've had people that were in treatment and it was being paid for by a voucher who would have before this opinion would have submitted something to the court without me being involved, without the defense attorney being involved. It's just them and their probationer essentially saying, hey, I want the opportunity to continue in treatment and probation is paying for that treatment. I'd ask that my probation be extended three months so I can finish treatment. So there are situations like that. I, I definitely understand Senator Cavanaugh's concerns about, you know, due process violations. I think it's fairly easy to imagine a situation where somebody could be coerced into extending it or being essentially threatened. You know what, we're going to file a violation unless you agree to do this. So I understand the concern of protecting from a due process perspective against that. But there are times, you know, right now, according to this opinion, even when a defendant wants it, when a probationer wants it extended and it's their request, it can't be done unless their probation is revoked. And that seems unnecessary waste of judicial time and everyone's resources if we can just agree to do that in some manner. But we have to have the legislative language there to make it available.

BOSN: Thank you. Any other questions? All-righty.

TONY CLOWE: Thank you.

BOSN: Next proponent. Good afternoon.

SPIKE EICKHOLT: Good afternoon, Chair Bosn 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 Nebraska Criminal Defense Attorneys

Association as a registered lobbyist and in support of LB24. I don't want to echo what Senator Cavanaugh and the last testifier said, but I do want to make a couple of points. The bill has two components, and we do support both components. With respect to the fees provision, what this bill does provide for is a presumptive waiver of fees for someone who's already been found to be indigent and unable to pay for other costs of representation. The cost to be on probation is an enrollment fee of $30 and then either $25 a month and $35 a month. And there's an additional at least $5 a month fee that's assessed for drug testing purposes. That doesn't seem that much, but to be on probation many times, there's other expectations of you that are expected. For instance, many times to be on probation, you'll have to complete an intensive outpatient treatment or some kind of treatment program. That costs money. Unless you have insurance, you're going to have to pay for that out of pocket. Many times, depending on the nature of the offense, you'll have to take a batterers intervention course or some sort of intensive therapy course. Again, that costs money. And the providers do have sliding fees. But again, unless you have a decent health insurance policy, and most, most people don't, you're going to be paying that cost. And as, as well, there's the cost of living and that sort of thing. In response to what Senator Bosn asked about earlier, if you look on page 3, lines 15 through 18 of the bill, the current law does provide that the waiver of fees is limited to the time that the person is indigent. So I think, and, and the current law does sort of anticipate the situation where somebody is when they start on probation, not really making that much money, but they get a great job and they are able to pay the fees, that issue of charging that person, raising the money can be revisited. With respect to the other part of the bill, the motion to revoke and the extension of probation, I know-- I have a copy of Simons here, and I can answer any questions if I run out of time. But the last testifier was right. There are instances when somebody is facing a motion to revoke where you do want to extend the term that they're on probation. Because if somebody has their probation violated, they're back in front of the judge, just as they were the first time to be sentenced, and the judge has sent them to jail or prison, give them a fine or whatever, what you want to do many times is you want to put that person in a position and have as much time as you can to show that they-- the reason they got violated was a mistake, a one-time thing, and it's not going to happen again. If anything, that can mitigate whatever kind of prison or jail sentence they are going to get. Simons is a bit unusual because it involved a motion to revoke that was pending. While the motion to revoke was pending, law enforcement then the probation officer went to his residence. And a condition of his probation was

that he, his place could be searched at any time. While they were doing the probation search, they found some controlled substances and they charged him subsequently with a separate felony charge of possession. The probation term had extended. His attorney in the second case was successful in suppressing that search because he argued that the probation term had ended. The authority that the probation officer, law enforcement had to go into the house didn't exist anymore. Therefore, this search should be suppressed and all evidence seized. I'll answer any questions, if anyone has any.

BOSN: Any questions for this witness-- testifier. Senator Hallstrom.

HALLSTROM: Thank you. The extension can be for the maximum period of the original?

SPIKE EICKHOLT: That's right.

HALLSTROM: And so a short period of time to the maximum, the judge would have the discretion to make the decision if it goes before a judge?

SPIKE EICKHOLT: That's exactly right.

HALLSTROM: And do you have any concerns with the judge just automatically extending it to the maximum duration or does that make any difference?

SPIKE EICKHOLT: Not necessarily. The reason I want to mention Simons, because that was an unusual look at this issue. In other words, it wasn't looking at it should his probation have been extended, was it right that the judge extended that kind of thing. It was this unrelated possession case and somebody using the search provision as an, as being expired as a defense for that subsequent felony charge. There are instances, and really judges do have the authority in statute and case law to always amend that the terms of conditions of probation. They can't extend the term after Simons, but they can modify the terms. And that's beneficial many times. For instance, if somebody is drug tested three times a week and it's consistently negative, the probation officer will say to the judge, hey, this guy doesn't need three times a week testing. You know, he's, he can't hardly get around anyway, transportation. How about we go once a week or at random? And that judge can enter an order modifying that, sort of lessening that condition. And it can go the other way as well. And really before Simons, it was not unusual for judges to extend probation at the request of the probation office or at least with

counsel representing them. But Simons put a stop to that, and I think the last testifier was right that the understanding was the judge had that authority to do. I'm concerned about the uncounseled waiver and extension, because probation is a penalty. It does have onerous conditions in certain circumstances. To prove a violation of probation, the state has to prove by clear and convincing evidence. And there are instances, albeit not many, that you might have a defense and a probationer unrepresented, uncounseled, just trying not to go to jail today just may agree to any kind of thing, not realizing they might have a defense to what the probation officer is concerned about.

HALLSTROM: But the last witness did acknowledge that there are also benefits--

SPIKE EICKHOLT: There are.

HALLSTROM: --to probation.

SPIKE EICKHOLT: Yeah, I would, I would agree with that.

HALLSTROM: You know, I guess my, my question was if the judge-- do you see the judge as just rubber-stamping the max-- extending it to the maximum duration?

SPIKE EICKHOLT: I don't think so.

HALLSTROM: OK.

SPIKE EICKHOLT: That would obviously depend on why they sort of got caught up in the question of extending, but I don't think it would be automatic.

HALLSTROM: Thank you.

BOSN: Any other questions? I have just a couple. I'm a little bit confused about the case, so I may have misunderstood something someone previously said. Simons-- is it Simons or Simmons [PHONETIC]?

SPIKE EICKHOLT: Well, I call it Simons, because that's how it looks to me.

BOSN: OK.

SPIKE EICKHOLT: I don't know if it's called--

BOSN: We'll call it Simons then. So that case was the search of his resident after the term that if his case, his probation was supposed to end December 31st. The search took place on January 5th, but the motion to revoke was still pending. Or was it that his term of probation didn't end until January 31st, but the motion to revoke had already been filed and he was searched on January 5th?

SPIKE EICKHOLT: It's the first--

BOSN: I'm using examples.

SPIKE EICKHOLT: That's right. I think it was the first example. He-- Simons had-- he'd been on probation. There was a motion to revoke his probation, probably for dirty testing and that sort of thing. And he was extending his probation to try to again put himself in a better spot, presumably, for the ultimate resolution of his probation case. The case A. While he was still on probation for case A and continuing his case, after the original term of probation ended on case A, the probation office and law enforcement went to his residence to search. Surprise. We're here and we're going to look around your house. They found drugs. They charged him with that case, possession of controlled substance. The only authority-- they didn't have consent, at least not freely, voluntarily consent. They didn't have a warrant. They were operating under the authority of the condition of his probation in case they had let them go into the house.

BOSN: OK. That does explain it.

SPIKE EICKHOLT: So it's, it's, it's kind of an un-- it's kind of an unfair question maybe of looking at this issue of extending probation, because it kind of came at it from a different way. In other words, the court wasn't saying could Simons just extend his probation, that wasn't the simple issue.

BOSN: May have had a different answer.

SPIKE EICKHOLT: Right.

BOSN: Thank you.

SPIKE EICKHOLT: This is a-- we're supportive of this resolution in response to that case.

BOSN: Thank you. Are there any additional questions in light of that? All right. Thank you. Next proponent. Are there any opponents? Oh, are you getting up to testify in support? You're fine.

HOLDCROFT: Testify in court?

BOSN: Any witnesses wishing to testify in opposition? You just got here.

STORER: She's working on it.

BOSN: Any neutral testifiers? Good afternoon.

COREY STEEL: Good afternoon, Chairman Bosn, members of the Judiciary Committee. My name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I'm the Nebraska state court administrator. I'm, I'm in a neutral capacity today based on listening to some of the testimony from my office, and thought I better come down here. We in the Supreme Court have asked Senator Hallstrom to have a bill introduced on our behalf that is very similar to this bill on one area, and that's LB404. And a supreme court committee-- probation services committee has been meeting on the specifics of extending the supervision of probation during the motion to revoke. And so on that component of this bill, we are in agreement with, obviously, as we've had another bill similar in that stance. The fee portion of the bill, that's a policy decision, so we won't weigh in on that. And the council portion again is a policy decision, so we don't want to weigh on, in on that. And that's why I'm in a neutral capacity to say that component of the bill to extend the supervision and the services while a motion to revoke is pending, we would be in support of that concept. So I'd be happy to answer any questions that the committee may have.

BOSN: Thank you. Are there any questions for this testifier?

COREY STEEL: Thank you.

BOSN: You're off the hook. Any other neutral testifiers. In anticipation of Senator Cavanaugh's closing, I will tell you that there were two comments submitted, both in support, no opponents and no neutral. You may close.

J. CAVANAUGH: Thank you, Chair Bosn. And thank you, members of the Judiciary Committee. And I was remiss in not pointing out this is the lovely new confines of the Judiciary Committee.

BOSN: Thank you.

J. CAVANAUGH: It's just easier place to have a hearing than the old place. So, I mean, we all agree that probation, it serves a meritorious objective, and that we want people to get the services

that probation provides. We want people to be successful on probation. But we all, anybody who has worked in the criminal justice system is a realist and knows that a lot of folks find themselves in the criminal justice system because they have some underlying issue, and it is often very difficult to be successful the first attempt at drug treatment or mental health counseling. And that people need a little bit of leeway and, and grace in those situations. And under the current state of affairs, you know, I think the courts would be required either to, you know, we'd have to have a revocation hearing. And as Mr. Clowe pointed out, folks would have to be detained and we'd have to go through this whole rigamarole that would upset the progress people made. Even if they screw up, they still have made some progress. And we want people to be able to continue to make that progress. The other option, of course, is to put everyone on a maximum extent of probation. And we don't want that either because we want probation to be narrowly tailored to the crime for which you are placed on probation, and that the services are specifically tailored to rehabilitate the person for that offense. And so what, what we're attempting to do here, what I'm attempting to do with this bill, is give that option when somebody does need more time, to give, give a pathway that, one, protects their rights, but also gives a mechanism where we don't have to lock people up. We don't have to disrupt their life to make sure that they get more time. The other part about this and why it the-- why I have the, you know, obviously the protection of this, the person's rights in that process. But the other part is the fees. And these two things are tied. And I know that the court administrator is here saying, you know, obviously explaining why it's important that we have this mechanism for extension. And I appreciate that and I agree with that, and Mr. Clowe, similarly. And of course, neither one of them is commenting on the fees. But the reason the fees are important from the perspective of somebody who has worked with these folks are that a lot of people don't get services because they can't afford them. They can't find them, they can't get the services. And I know there's vouchers available, and I-- certainly, Mr. Clowe is correct, that he has been involved in many more of these cases than I have. But there are instances where they're not readily forthcoming with vouchers or with waivers of fees. And so, in my opinion, it's important that we are giving people more time when needed. But we're also trying to make probation less cumbersome in the, in the aspects that we are not interested in, which is the cost. If we could give people all the services without any fee, that would be fantastic, because then we'd make sure we got it. My-- one of the things I always like to say when we're talking about this policy is, as policymakers, the only thing that we can do, we can't make people want to do these

things, but we can eliminate everything but desire. And so we need to take away the hurdles that people have to getting these services and being successful, and that then the only hurdle that they have is their own willingness to do the work that they-- that is before them. So that's why I think it's important that we take the fee waiver up together with the voluntary extension. And if you have any more questions, I'd be happy to take them. But I would appreciate your positive reporting on this bill to the floor.

BOSN: I just want one clarification. You're agreeing that they can be waived as it stands right now. You're just wanting the addition of a previous finding of indigency as a factor in favor of weighing them going forward?

J. CAVANAUGH: As a presumption. But I would point out that, so that's one part. So there's a reason there's two parts in here, and I believe it's on page 4 and it's paragraph 9, also line 9. There's a clarification that section (2)(m) and (2)(o) are waivable fees. In my experience, those fees have been waived at times. I don't think the statute is clear that those are waivable fees. So that's why that section is in there, in addition to the section that's on page 3. So that's why that's kind of-- it might look repetitive, but that's why that's specific to the court shall waive payment of fees in subdivision (2)(m) and (2)(o) and then has that similar language about if they found out that's undue hardship, as well as the presumption that we've added in on page 3. So that is a, a-- like I said, in my experience, those fees, the courts have waived those fees from time to time. When I was starting to write the statute and I was looking at that, it came to my attention that I think it's not clear that that is, the courts are doing or allowed to do that. And so I was trying to head off that by specifically articulating. So those are (2)(m), I believe is drug testing and (2)(o) is electronic monitoring.

BOSN: And (2)(m) is also treatment. Is that correct?

J. CAVANAUGH: I don't have it in front of me, but that was my recollection, was it was drug-- substance abuse testing, but it might-- but yeah, so some-- they often do waive those fees or some portion of those fees. I just think my reading of the statute as it is currently written, it's unclear that they're actually allowed to do that. So I think it is really important that we clarify that as well.

BOSN: Thank you. Any other questions from the committee? All right, thanks for being here.

J. CAVANAUGH: Thank you.

BOSN: And I think I read the comments, did I not? That concludes our hearing on LB24. Last but not least. Good afternoon, Senator Holdcroft. Welcome to your Judiciary Committee.

HOLDCROFT: Thank you. Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. My name is Senator Rick Holdcroft, spelled R-i-c-k H-o-l-d-c-r-o-f-t, and I represent Legislative District 36, which includes west and south Sarpy County. I am here today to introduce LB133. This bill is a targeted effort to address an important gap in Nebraska statutes regarding the authority of animal control officers to carry out their critical responsibilities. LB133 seeks to amend Section 28-1008 of state statute to explicitly add "animal control officer" to the definition of law enforcement officer. This is for the limited purpose of enforcing animal welfare, welfare laws. These animal control officers are given authority by cities, villages or counties. While animal control officers have long been integral partners in safeguarding animal welfare and public safety, recent judic-- judicial interpretations have highlighted ambiguities in the statute that have hindered the ability of animal control officers to efficiently obtain search warrants and address pressing animal welfare concerns. Addressing these concerns is a reflection of Nebraska's commitment to the ethical treatment of animals and the safety of our communities. This clarification is vital to ensuring that animal control officers can continue working effectively and in partnership with law enforcement agencies without placing additional burdens on sworn law enforcement officers who are already stretched thin. I am distributing copies of letters of support from the Sarpy County Sheriff's Office, the Douglas County Sheriff's Office, the city of Papillion police chief, the city of Bellevue police chief, the city of La Vista police chief, the city of Ralston police chief, and the city of the Omaha police chief. I want to thank the Nebraska Humane Society and local law enforcement agencies for their collaboration in identifying this issue and proposing this legislative solution. I urge your thoughtful consideration of LB133, and I am happy to answer any questions you may have.

BOSN: Thank you, Senator Holdcroft. Senator McKinney.

McKINNEY: Thank you, Chair Bosn. Thank you, Senator Holdcroft. I guess my first initial question, are you-- I read the, like, the summary. So you're saying that animal control officers will be considered law enforcement officers?

HOLDCROFT: Well, they, within the limited capacity of their functions to, to provide protection for animal [INAUDIBLE]. Now, you know, why are we doing this? Why? Because we've had a couple instances. In most parts of Nebraska, if a, if an animal control officer needs, you know, a warrant or a search warrant or something else, they've been able to get that from the courts. Of late, we've had a few instances of where the, the judge has denied that issuance because they could not find in the statutes where it says animal control officer listed underneath law enforcement officer. This does not give them the authority to do anything beyond their function as animal control officers. In other words, they're not police officers, they are not sheriffs. They're just performing the function as an animal control officer. And I do have an animal control officer here who will-- chief who will explain that further.

McKINNEY: I guess my, I guess my sort of concern, concern is if we're listing them as law enforcement officers and they're executing warrants, what type of training are they going through? Because maybe executing a warrant one day might be simple, but you might end up in a situation where you step on somebody's property and they pull out a shotgun.

HOLDCROFT: I'll let the chief coming up here to--

McKINNEY: OK.

HOLDCROFT: --explain what training they get before they're-- become animal control officers.

McKINNEY: All right. Thank you.

HOLDCROFT: [INAUDIBLE].

BOSN: Any other questions for this testifier? All right, thank you, Senator Holdcroft. Are there any proponents? Those wishing to testify in support of LB133? Good afternoon.

STEVE GLANDT: Good afternoon, Chair Bosn and members of the Judiciary. My name is Steve Glandt, it's spelled S-t-e-v-e G-l-a-n-d-t, and I serve as the executive vice president of the-- for field operations for the Nebraska Humane Society. Thank you for the opportunity to testify in support of LB133. For over 20 years, animal control officers have relied on Nebraska's animal welfare statutes, including Sections 28-1008 and 28-1012 as the legal foundation for our authority to request and execute search warrants. This process has enabled us to swiftly and effectively respond to animal-- cases of animal cruelty

and neglect. However, last summer, a Sarpy County judge raised concerns about whether animal control officers are explicitly authorized to, under current law, to [INAUDIBLE] search warrants for animal welfare offenses. This interpretation has disrupted longstanding practices in Sarpy County and could potentially affect other counties, including Douglas, where judges continue to approve warrants without issue. A workaround was implemented which requires sworn law enforcement officers to handle these search warrants. This creates delays that jeopardize animal welfare and burdens law enforcement agencies that are already facing significant demands. LB133 provides a straightforward solution by clarifying that animal control officers are included within the definition of law enforcement for the limited purpose of enforcing animal welfare laws only. This amendment ensures timely and consistent responses to the urgent cases while maintaining collaboration and oversight with local law enforcement. This bill is not only about operational efficiency. It underscores Nebraska's commitment to protecting vulnerable animals and promoting public safety. I urge you to support LB133 and help us continue the essential work of safeguarding our communities. Thank you, and I'm happy to answer any questions you might have.

BOSN: Thank you. Are there any questions? Senator McKinney.

McKINNEY: Thank you, Chair Bosn. And thank you. What kind of train-- since we're going to list animal control officers as law enforcement officers, are you going to go through the same training as law enforcement officers?

STEVE GLANDT: We don't go through the same training as law enforcement officers because we don't execute the full scope of duties that a law enforcement officer would execute. We go through initially 13 weeks of training to certify an animal control officer, and then we have ongoing in-service training annually between probably 15 and 20 hours per year.

McKINNEY: Where does that take place?

STEVE GLANDT: It takes place at the Humane Society. We have a training room there. We bring in trainers to-- certified trainers to take carry out that.

McKINNEY: I guess I'm just wondering, like if we make this change, does that trigger animal-- animal control officers having to go to Kearney or some other law enforcement training center, because we're listing you as law enforcement officers?

STEVE GLANDT: In my opinion, I don't believe so. In fact, the Nebraska Humane Society provides training for police recruits in those situations. So we're providing training to police recruits at-- both at Omaha Police Academy and the Douglas-- or Sarpy Douglas Law Enforcement training Academy. I don't believe that this would in any way expand, well, it's not going to expand our scope of authority anything beyond enforcing the animal control or animal welfare ordinances and statutes.

McKINNEY: OK. I'll ponder on this some more.

STEVE GLANDT: OK.

McKINNEY: Thank you.

STEVE GLANDT: Yeah. Thank you, Senator.

BOSN: OK, We'll move on to Senator DeBoer and then maybe come back to Senator McKinney.

STEVE GLANDT: OK.

DeBOER: Thank you. So I'm looking at the bill itself and it adds "or animal control officer." It's in the section on animal, you know what crimes against animals are. I guess the question I would have is if we-- and I don't know the answer to this at all. So this is just do you have, and you may not know. If you change a group of people into becoming police officers for purposes of this limited thing, if they are executing a search warrant for animals, they get there. The animals are, in fact, being abused in the way that you thought, but then you also see a large amount of cocaine. Because you are an animal control officer are you now authorized, obligated-- what happens with respect to the cocaine for purposes of the--

STEVE GLANDT: Yeah, that's a great question. It doesn't expand our authority in any way, because we don't have statutory authority to enforce anything other than animal control or animal welfare-related offenses. We do have a uniformed police officer present with us when we execute search warrants, and that is for officer safety. Because as Senator McKinney, I think, brought up to Senator Holdcroft about concern for, you know, the potential volatility of those situations. And so we have a uniformed officer present, but their, their scope is merely to provide protection for us, keep people who are in the house within their, you know, control.

DeBOER: So is there the requirement, or is it just the practice that there be a uniformed officer?

STEVE GLANDT: It's been our practice and it will continue to be.

DeBOER: So if we were to, and I don't know how to do this, so I'm building the plane as we're flying it. If we were to require that practice to be in place with respect to this so that there's always-- because I'm thinking about if you go somewhere and you're there to look for a puppy mill, but you find the cocaine, you don't have the authority to do anything, but you also would probably get in trouble if you did nothing. So you kind of put people in a bad position.

STEVE GLANDT: Right.

DeBOER: So that's where I would want to at least have some clarity on if there's someone else with you--

STEVE GLANDT: Sure.

DeBOER: --not just by practice, because then, OK, this one time we can't. And so then now you put some person who went to find a puppy mill, found the puppy mill, but also found--

STEVE GLANDT: Sure, sure.

DeBOER: --in a bad position.

STEVE GLANDT: So there's nothing that would prohibit us from reporting that to law enforcement. And if we were to do so, law enforcement would have to get a separate search warrant--

DeBOER: Right.

STEVE GLANDT: --you know, because the scope of ours doesn't cover that. I wouldn't be opposed to require, you know, having the law require a uniformed presence. My big concern is in response to what Judge Palm interpreted. In Sarpy County, we developed a workaround law enforcement that was very cumbersome and it involved having us still write the affidavit. So we're doing all the legwork. We give it to a sworn officer to swear out. So he's swearing to something that he didn't really write and he has no knowledge of the case. And then that same officer has to be present when the search warrant is executed, and has to do the return afterwards. And we've been doing all that. We're fully capable of doing all that, and it's just adding extra hoops to jump through that aren't, aren't necessary.

DeBOER: I totally get that.

STEVE GLANDT: Yeah.

DeBOER: And then I also think, but if you're going to have a uniformed officer there anyway, I-- there's just more to think about with respect to how to coordinate those two ideas.

STEVE GLANDT: Uh-huh. OK. I--

DeBOER: Yeah. Thanks for your, thanks for your testimony.

STEVE GLANDT: Uh-huh.

BOSN: Senator McKinney.

McKINNEY: Thank you. Under this change, would you be restricted from making arrest?

STEVE GLANDT: We currently don't make arrests. We're not authorized to make arrests. We only can write citations and serve the search warrants. But we are not authorized to physically take anyone into custody.

McKINNEY: But under this change, if we make you a law enforcement officer, is that possible?

STEVE GLANDT: I don't believe so, because it's going to be a law-- we're going to be included in the definition only for animal welfare-related offenses.

McKINNEY: That's why I ask that. Because you're, you're saying you're enforcing an-- laws pertaining to animal welfare. And if you're enforcing the law pertaining to animal welfare and you find a violation, under that scope, can you potentially arrest somebody for a violation?

STEVE GLANDT: No. I, I don't see how that could-- how we would be able to make that leap.

McKINNEY: So if you see somebody kicking a dog, you can't arrest them.

STEVE GLANDT: Well, we can, we can detain them. We can stop the action. But if there's going to be a physical arrest, we'd have to call a uniformed officer to come and take custody. It's always been that way, and that-- it'll be that way, you know, in the future.

McKINNEY: No, I just ask you because I just don't--

STEVE GLANDT: Yeah.

McKINNEY: --think it's clear that those-- that context is in this. That's why I'm asking.

STEVE GLANDT: OK.

McKINNEY: Thank you.

STEVE GLANDT: Yeah, I appreciate that.

BOSN: Any other questions?

ROUNTREE: Yes.

BOSN: Senator Rountree.

ROUNTREE: Mr. Glandt, so over in Douglas County, and you said right now the same practice is happening in Douglas County. It was Sarpy who prevented the action from continuing. So what is your process in Douglas County? When you go in-- back to what Senator McKinney was saying, when you go in and you see the animals there abused, you have authority. But if you stop that abuse, you have authority to pull the animal out of the home. So when this uniformed police officer goes with you in Douglas County, he's there ready for protection as you go in. But as Senator DeBoer said, if he sees something else in the house, that's incidental to discovery, then does that fall in his lap or are you still working with the animals?

STEVE GLANDT: I'm sure it would fall under the plain view doctrine. So, yeah, I mean, if the officer was able to, you know, he was legally there to assist us and if he saw that contraband or whatever it may be, there would be, in my opinion, nothing to prevent that officer from taking action based on plain view.

ROUNTREE: OK. But your authority would deal strictly with the animals and animal welfare?

STEVE GLANDT: Correct.

BOSN: Senator DeBoer.

DeBOER: So I'm looking at 28-1012, the law enforcement officer; powers and duties, that is the one that gives you the right-- or that authorize a law enforcement officer to seek a warrant. So it says a

law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry, blah, blah, blah, blah, blah. Instead of making you all law enforcement officers, could we just say a law enforcement officer or animal control agent? Is that what you're called?

STEVE GLANDT: Animal control officer.

DeBOER: Sorry. Or could we say a law enforcement officer or animal control officer who has reason to believe that an animal has been abandoned may seek a warrant authorizing entry? And then that way we, we don't have to make you into law enforcement officers, which deals with McKinney's concern about whether or not you have to be trained.

STEVE GLANDT: Sure.

DeBOER: I mean, is that another way we could do this that would get the same--

STEVE GLANDT: I would think so.

DeBOER: OK.

STEVE GLANDT: I mean--

DeBOER: Maybe we can look into that.

STEVE GLANDT: Yeah. Yeah.

DeBOER: OK. Thank you.

BOSN: Any other questions? Thank you.

STEVE GLANDT: All right. Thank you.

BOSN: Next proponent. Are there any opponents for LB133? Good afternoon.

ABBI ROMSHEK: Good afternoon, Committee Chairperson Bosn, members of the Judiciary Committee. My name is Abbi Romshek, first name, A-b-b-i, last name, Romshek, R-o-m-s-h-e-k. I'm here testifying on behalf of the Nebraska Criminal Defense Attorneys Association. I am an attorney with the Douglas County Public Defender's Office, and I am here in opposition of LB133. While on the face it seems like this is going to streamline the process, there are issues that you'd only be aware of if you are a practitioner of criminal law. This essentially gives the

animal control officers the same level and authority as police officers. While they say it's simply just for animal welfare cases, it's important to keep in mind that these statutes of references are animal cruelty cases. So we're talking about felony, potentially felony-level offenses. So this isn't just you didn't register your dog, right? These are up to felony-level offenses. It would allow them under 28-1012 to apply for search warrants and also execute search warrants. Under (2), it would-- it says an officer may, in lieu of making an arrest, issue a citation. So it also gives them the authority to make an arrest. Now, while they say this is not their practice, that may change if the law about what they're allowed to do changes. The problem with that is law enforcement goes to an academy, has field training, has yearly ongoing education. That education is required under chapter 81-1414.07. It includes legal updates. It includes constitutional issues. And while they mentioned animal control officers do have some training and yearly training, that's not required by law. I'm unaware of what constitutional education they have. Now, that's important because when we're talking about search warrants and when we're talking about arrests, we're talking about constitutional law. Search, seizure. If someone is being arrested, Miranda is going to be an issue. And to our knowledge, they have no training onto that-- into that constitutional issues. We have concerns with this would give them the authority to make arrests, and that they would not be made safely or legally without that knowledge of the constitutional law. Police officers have training about deescalation techniques. They have the authority to arrest, restrain, take people into custody, give directives. And animal control officers don't have any of that training or knowledge. With regard to executing search warrants, they'd be responsible for documenting and collecting evidence. Our concern is that if they find evidence of other crimes, what, what do they do with that when they don't have knowledge about collecting and documenting evidence and the importance of preserving a crime scene? All of these things require training that they don't have. Their practice currently is that they call in law enforcement to be present while they execute warrants or they call them in to make arrests. But the change in this law means that that would not be necessary. Those sort of things should be necessary. They say it streamlines the process because they don't have to call in a police officer to get a warrant. However, if they're calling in the police officer to execute the warrant anyways, there should be no issue with calling in the officer to execute the warrant. Does anyone have any questions?

BOSN: Any questions for this testifier? Senator McKinney.

McKINNEY: Thank you, Chair. Do you have any additional concerns?

ABBI ROMSHEK: Yes. So these types of crimes, when we're talking about animal neglect, often those sort of things go hand in hand with underlying mental health issues. They're sensitive issues. If you're going to someone's house that have sensitive issues, people might not be aware of authority of the animal control officers versus the authority of police officers, so they may be uncooperative. And police officers have yearly ongoing training. The statute specifically requires that they have training with regard to mental health. Animal control officers don't have that training. And so additionally, we have concerns about, as I previously mentioned, constitutional violations occurring. When we're talking about municipal code violations, which is what a lot of the animal control officers deal with, you know, all constitutional violations are serious. When we're talking about municipal code violations versus constitutional violations in felony cases, it's gonna be much more serious in a felony case because you're talking about people who are sometimes in custody pending the outcome of their case on a felony versus out of custody. And you're having people who are potentially violating the Constitution because they just don't have the training, as opposed to law enforcement officers. People are in custody for months at a time fighting these cases and fighting these potential constitutional violations.

McKINNEY: I do have a question. I just thought about it while you were talking. Under current law, let's say animal control comes to your house and you don't want to talk to them, so you say your name is not your name. What is the consequence?

ABBI ROMSHEK: Under current law? I don't think they would qualify as law enforcement officers, so I don't think that obstruction would be a problem under current practice if the person does not-- my understanding is that they do not have an identification, they call out a law enforcement officer to try to identify the person.

McKINNEY: OK. So if passed, and let's say animal control comes and you say that you're not who you say you are, is that a felony?

ABBI ROMSHEK: I, I don't believe so.

McKINNEY: OK. All right, just wondering.

ABBI ROMSHEK: The felonies that I was concerned about are animal neglect. But again, that goes hand in hand that if they're going to be

making arrests or that this gives them the authority to make arrests, if a person would then be uncooperative with them or resist, I'm not sure they're contemplated as a law enforcement officer under resisting arrest statutes or under obstructing statutes. Because you're making them a law enforcement officer under very specific statutes, but not under other statutes.

McKINNEY: All right. Thank you.

BOSN: Senator DeBoer.

DeBOER: Thank you, Chairwoman Bosn. So you heard me talking with the previous testifier perhaps that in 28-1012, that's the, the place where you can get-- seek a warrant as a law enforcement officer. If we just add to that, the people who may seek a warrant includes animal control officers, does that get to your concerns?

ABBI ROMSHEK: No, because where you've changed the definition of law enforcement officer, I believe, acts on 28-1012.

DeBOER: But I mean, if we don't do anything else, so get rid of-- sorry, Senator Holdcroft-- we get rid of Senator Holdcroft's bill, and instead we put in "a law enforcement officer or an animal control officer who has reason to believe that an animal has been da, da, da, da, da may seek a warrant." So we just add them as a person who can seek a warrant without making them a law enforcement officer.

ABBI ROMSHEK: And I think our biggest concern is going to be the execution of that warrant. The other concerns that we have with seeking a warrant is that judges rely on that information in terms of motion to suppress the warrant. When you're having someone author a warrant that's not law enforcement and doesn't have as much training or expertise or knowledge about constitutional law, I think that could still be problematic. The representative from the Humane Society indicated that it's cumbersome to call in an officer to, to get the warrants. Again, they call in an officer currently to execute the warrant as their policy. But with the change in the law, it wouldn't be required to. I, I don't see why it's any more cumbersome to have them get the warrant when they're going to present to execute the warrant anyways. And with regard to officers swearing information they don't know, it is normal for officers to get information from witnesses and to swear to that information. So it would make the animal control officer no different than any other witness who is describing a crime to an officer that then is the basis for a warrant.

DeBOER: But when the animal control officer doesn't have firsthand knowledge of the crime, they've ostensibly heard it from someone else. So is it normal that I hear it from Senator McKinney and then I explain it to Senator Bosn, and then Senator Bosn has to issue the warr-- or has to seek the warrant. So is she going to swear to what Senator McKinney told me? And then you see what I'm saying?

ABBI ROMSHEK: I would say it's normal practice with an Omaha Police Department that they're going to have a detective who is in charge of the case and they're the ones swearing all the warrants, and all of their other detectives under them and other uniformed police officers and other people engaged in the investigation and then one person is swearing all the warrants.

DeBOER: OK. Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: If the affidavit and the search warrant or more likely to be defective if they're taken care of by the animal control officer, wouldn't your clients have a better chance of being acquitted of the charges?

ABBI ROMSHEK: I appreciate what you're saying. However, I think that it's in society's best interest and everybody's best interests that police work and investigation is done properly. If a person is acquitted because of a constitutional violation, that may mean months' imprisonment pending that case. And so I think it's in everybody's best interest that things are done legally and lawfully.

HALLSTROM: Thank you.

BOSN: Is that it? Anyone else? All right. Thank you, Ms. Romshek. Are there any other opponents? Those wishing to testify in the neutral capacity? Senator Holdcroft to close.

HOLDCROFT: So in most of the counties of Nebraska, other than Sarpy, animal control is-- are, are able to get application for search warrants and execute them with the assistance of a uniformed officer. This is a case where now we have to do a burdensome workaround where we have to get a detective from, from law enforcement. And again, this was already told, the animal control officer is doing all the work as far as what to look for and what, what, what the scope is of the, of the search warrant. So the detective really is not the expert on this, the animal control officer. But the detective, he has to, he has to apply for it because he's the only guy he can apply for it. But he's

not really the expert. So really what we're trying to do is streamline the process and get the experts to be able to get the search warrant, to execute the search warrants with the assistance of a uniformed officer. And this is a burden, this is becoming a burden for, for law enforcement, and that's why we have all these letters. Letters from county sheriffs and from police chiefs, because they recognize they have a limited capacity to do something that they really have no expertise in, but they're required by statute to provide service, essentially, to animal control officers that the animal control officers really don't need. So I'm happy to work with Senator DeBoer on some additional, you know, tweaking of the language to, to, to get to what we want. We're-- it's not our intent to turn animal control officers into full-blown law enforcement officers with all of their authorities. If, if we can tailor it, that'd be great. But, you know, right now we're just trying to give authority to the animal control officers to do their job. So with that, I'll be happy to answer any questions.

BOSN: Any questions for this testifier? Seeing none, that concludes this hearing. I will note for the record, sorry. So not to conclude the hearing, but before I conclude the hearing, I will note that for LB133 there were three proponents, one opponent and no neutral comments submitted online. That concludes the hearing. Thank you. And that concludes our hearings for the day, right? Thank you all.