

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 12, 2025

**BOSN:** All right. Welcome to the Judiciary Committee. I am Senator Carolyn Bosn from Lincoln, representing the 25th Legislative District, and I serve as chair of this committee. The committee will take up the bills in the order posted. This is a public hearing; it 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 on the back table of the room. Be sure to print clearly and fill it out completely. When it is your turn to come forward to testify, 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, telling us your name and spelling your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally any-- anyone wishing to speak in the neutral capacity. We will finish with a closing statement by the introducer, if they wish to give one. We will be using a three-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the light comes yellow, you will have one minute remaining, and when the light indicates red, you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may come and go 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 may have bills to introduce in other committees. A few final items 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, and such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees state that the 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 Legislature's website at [nebraskalegislature.gov](http://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 on 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.

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**HALLSTROM:** Bob Hallstrom, Legislative District 1, representing Otoe, Johnson, Nemaha, Pawnee and Richardson Counties in southeast Nebraska.

**STORM:** Good afternoon, Jared Storm, District 23; Saunders, Butler, Colfax County.

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

**DeBOER:** Good afternoon, everyone. Hello. My name is Wendy DeBoer. I represent District 10 in beautiful northwest Omaha.

**ROUNTREE:** Good afternoon. I'm Victor Rountree, representing District 3, which includes Bellevue and Papillion.

**BOSN:** Also assisting the committee today, to my left is our legal counsel, Tim Young, and to my far right is our committee clerk, Laurie Vollertsen. Our pages for the committee today are Ruby Kinzie, Alberto Donis, and Ayden Topping, all from UNL. With that, we will begin today's hearings with LB206 and Senator von Gillern. Welcome.

**von GILLERN:** Thank you. Good to see you all. Good afternoon, Chairwoman Bosn, and members of the Judiciary Committee. For the record, my name is Senator Brad von Gillern, B-r-a-d v-o-n G-i-l-l-e-r-n. I represent Legislative District 4 in west Omaha and Elkhorn. I'm here today to introduce LB206, which would enhance penalties for crimes committed in disaster areas and emergency zones. After the tornado struck in Elkhorn on April-- in-- on April 26th of last year, my son and I left our basement, threw chainsaws in his truck, and headed just one mile west of our home to see if we could help people whose homes were destroyed, and possibly those who might even be trapped in their homes. We were immediately struck by the incredible power of the tornado and the damage that was before us, but also were shocked to so quickly learn that law enforcement had already cordoned off the most damaged areas in order to protect those people, allow for first responders to gain access, and to limit sightseers and looting, two things that had never crossed my mind. In the days that followed, there were heartwarming stories of folks who survived, and our community swarmed out in physical, emotional and financial support. I've not been prouder of my hometown of Omaha and Nebraskans in recent times. Some of that pride was unfortunately dampened when stories of looting began to emerge. As hard as it is to believe, there are people who prey on those in such a disastrous situation, which has led to our conversation today. LB206 was conceived in conversations with Douglas County Sheriff Aaron Hanson in the aftermath of that '24 tor-- tornado. Crimes like the ones identified in LB206-- assault,

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robbery, burglary, arson, to name a few-- are especially egregious when committed against people in communities when disasters strike. Not only do they inflict harm on people who are already suffering, but they also place an additional burden on law enforcement and first responders whose job it is to assist people and keep them safe in these emergency situations. LB206 provides for enhanced penalties by upgrading crimes committed in disaster areas to the next higher class of offense. Thus, a Class III felony would become a Class IIA, a Class IIA would become a Class II, and so on. Ordinarily, robbery, burglary and second-degree assault, intentionally or recklessly causing bodily injury to another person are all Class IIA felonies. The intention behind this bill is that penalty enhass-- enhancements would have a deterring effect against those who would seek to take advantage of Nebraskans in periods of vulnerability. One of our most important duties as legislators is to make sure that Nebraskans are protected by our laws, and that is the ultimate purpose of LB206. With that, I respectfully urge you to advance LB206. I'm happy to take any questions. I do have a couple other notes I added on to the end here to my scripted notes. I did run this past Douglas County Sheriff's Office and past the Omaha Police Officers Association to get their input, and they were both in support. I did not reach out, in respect for all of your time-- because I've, I've obviously sat on the other side of the desk too-- did not drum up numerous testifiers from law enforcement to test on behalf of-- or, to testify as proponents, but all who I have spoken to have been advocates for what this bill attempts to do. So with that, I'd be happy to take any questions.

**BOSN:** Are there questions from the committee? OK, well, I guess I'll ask a couple.

**von GILLERN:** OK.

**BOSN:** In anticipation of today's hearing, some of what I anticipate to be the opposition for this is that sometimes natural disasters occur in a small area, but it's declared as a statewide emergency. Are you open to language that would tighten that up so that if we declare a statewide emergency because of a tornado that occurred in Elkhorn, suddenly an assault in Scottsbluff isn't getting incorporated into this? Not that I'm minimizing the assault in Scottsbluff, but I think your intention is to limit this more to the impacted area. Correct?

**von GILLERN:** Yes, absolutely open to that. Yeah.

**BOSN:** OK. Seeing none, I will--

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**HALLSTROM:** Senator, Senator--

**BOSN:** Oh, I'm sorry. I didn't--

**HALLSTROM:** Just to, just to clarify. There are two components to this. One is that a disaster area has been declared, and that an emergency has been declared. Isn't it more likely that the disaster area would be limited in scope, but the emergency might be broader?

**von GILLERN:** 100% correct.

**HALLSTROM:** OK.

**von GILLERN:** Yes. Yeah. In fact-- and, and my respect and gratitude for one of the opposing testifiers who shared some of his thoughts and comments with me. In fact, there, there were-- in 2023, there was a statewide burn ban, which was considered a statewide emergency. By no means am I attempting to capture the entire state with this.

**HALLSTROM:** OK.

**von GILLERN:** I think from my comments it's obvious what I would like to see done with this, and if we need to fine-tune the definition of the area, I'm, I'm more than happy to do that.

**HALLSTROM:** Thank you.

**BOSN:** Thank you.

**von GILLERN:** Thank you. I'll stay to close.

**BOSN:** Awesome.

**von GILLERN:** Thank you.

**BOSN:** Before we start with proponents and opponents, can I just see a showing of hands of how many individuals wish to testify in some capacity on this bill? One, two, three, four, five. OK. All righty, we'll begin with our first proponent. Welcome.

**WILLIAM RINN:** Good afternoon, Madam Chair, members of the Judiciary. Thank you for hearing my testimony. My name is William Rinn, W-i-l-l-i-a-m R-i-n-n. I'm the chief deputy of administration for the Douglas County Sheriff's Office, here representing Sheriff Aaron Hanson. In April of 2024, multiple areas of incorporated and unincorporated Douglas County were hit by a violent and destructive EF-4 tornado, causing multiple-- excuse me, major damage to

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communities in Waterloo, Omaha, Elkhorn, and Bennington, Nebraska. The path of destruction left hundreds of families displaced and faced with sorting through the rubble and rent-- for remnants of their lives. Families took on the insurmountable task of cleanup, rebuilding their homes while still attending to the burdens of everyday life. What could not yet be comprehended was the depth to which opportunists would descend to take advantage of disaster victims while advancing their own interests. Douglas County Sheriff's Office answered requests for assistance to combat looters, scam artists and organized theft "thrings"-- theft rings. Despite this increased presence, Douglas County sheriffs received over 17 complaints of storm-related thefts and trespassing in unincorporated Douglas County alone over a several-month period of time. The numbers for other affected communities of incorporated [INAUDIBLE] were exponentially higher. Beyond the statistics are real people, victims whose lives are irrevocably impacted by having their homes damaged or wiped out at a time when they can least afford it. These "dictim"-- victims have suffered enough emotional turmoil through this process without adding to the insult of being twice-victimized by both nature and man. Combating mindsets such as these must be a multifaceted approach during times of disaster. Substantial interlocal efforts of law enforcement professionals must be paired with legislation as outlined in LB206. The state of Nebraska must send an unambiguous and impactful message to opportunist criminals. Properly communicated and enforced, such initiatives will result in a strengthened line to protect our citizens and allow them to focus on the recovery efforts both offensively and defensively. And to that, I will have-- take any of your questions.

**BOSN:** Are there any questions for this testifier? Seeing none. Thank you for being here.

**WILLIAM RINN:** Thank you.

**BOSN:** Next proponent. Welcome.

**KEN CLARY:** Well, thank you. Good afternoon, Chairman Bosn, members of the committee. My name is Ken Clary, K-e-n C-l-a-r-y. I'm testifying today on behalf of the city of Bellevue, where I have the privilege of serving as the police chief, as well as United Cities of Sarpy County, a coalition of five cities in Sarpy County-- Papillion, La Vista, Gretna, Springfield and Bellevue-- in support of LB206, a bill relating to the enhanced penalties for certain offenses committed in a disaster area during emergency period. I appreciate the opportunity to appear before you today. Throughout my 30-plus years in law

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enforcement, I've had the responsibility of responding to numerous natural disasters across Iowa and Nebraska. Due to our geographic location, our communities are especially vulnerable to severe weather events, including devastating floods and tornadoes. These disasters not only cause widespread destruction, but often necessitate large-scale evacuations, displacing families for days, weeks, or even longer. During those critical moments, first responders and public officials work tirelessly to protect lives and maintain order. However, while our efforts are focused on safeguarding our communities, criminal elements too often seize the opportunity to exploit the chaos. Whether through looting, fraud or other predatory crimes, bad actors take advantage of individuals when they're at their most vulnerable, compounding the hardship and loss they've suffered. Unfortunately, law enforcement resources are stretched thin in these emergencies; we simply cannot be everywhere at once. That's why I strongly believe that enhanced penalties for those who commit crimes during these times of disaster are necessary to strengthen the deterrence and ensure that those who seek to prey on disaster, disaster victims face serious consequences. For these reasons, I wholeheartedly support this bill and respectfully urge you to do the same. Your leadership and commitment to protecting our communities is deeply appreciated, and I sincerely thank you for your time, consideration, and service. I would take any questions you might have.

**BOSN:** Thank you. Thank you for being here. Any questions from the committee? Senator Rountree?

**ROUNTREE:** Thank you, Chairwoman Bosn. Chief Clary, welcome, and I thank you for your testimony today, as we do experience a lot of disasters. Do you have any numbers on the number of people that have been arrested for looting and pillaging, scavenging and taking advantage of those, and, you know, what types of punishments we've had on those?

**KEN CLARY:** I don't have numbers. I can give you anecdotal experiences--

**ROUNTREE:** OK.

**KEN CLARY:** --from flooding in Cedar Rapids and Iowa City area.

**ROUNTREE:** OK.

**KEN CLARY:** We, we had cordoned off blocks for literally weeks. The Iowa-- I was with the Iowa State Patrol at the time, and we were

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constantly having to report to people who were from outside the area wandering through, taking things, so. Parkersburg tornado, Creston tornado that hit the hospital, just numbers of disasters. I only been in Nebraska four, four-and-a-half years; just experienced the one flood recently in eastern Bellevue, but luckily it wasn't that bad that we had to cordon anything off. But it's coming. You all, you all have lived in the Midwest long enough to know that, so. Unfortunately, it doesn't take many, but those people can do quite a bit of damage in a short period of time.

**ROUNTREE:** Excellent. Thank you so much. Appreciate it.

**BOSN:** Thank you. Any other questions? Thank you for being here.

**KEN CLARY:** Thank you.

**BOSN:** Next proponent. Welcome.

**MICHEAL DWYER:** Good afternoon, Chairman "Bolson." Did I pronounce that right? "Bossin?"

**BOSN:** Bosn. But that's OK.

**MICHEAL DWYER:** Bosn. Excuse me. Excuse me. Members of the Judiciary Committee. My name is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r, and I appreciate the opportunity to testify in support of LB206. Thank you, Senator von Gillern, for introducing this important legislation to strengthen the deterrence and the penalties for those who choose to interfere with the process of responding to an emergency in Nebraska. I'm a 41 active-- 41-year active veteran of the volunteer fire and EMS service. I currently co-chair the Nebraska EMS Task Force, and I was an emergency management director of Washington County for 16 years. I have about 12 hours of stories of the crazy, stupid, illegal things that people do in emergencies; out of respect for the committee, I'll try to sum those up in one story. On April 26, I was providing EMS coverage for a horse show-- my wife rides quarter jumpers-- at 220th and Maple. That property was one of the first to be hit in the devastating tornadoes that day. Nearly the entire 220-acre farm, six buildings were destroyed except for a small wash stall where we sheltered 23 people-- by the way, that wash stall was in the middle of a pole barn-- where we sheltered 23 people and 45 horses. Two horses were killed, however, none of our people were injured. The damage and the response that weekend showed me that the-- showed me and showed the country the worst and the best that Nebraska has to offer. Within moments of the tornados, the farm was inundated with people, some

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wanting to help, some wanting to see, some wanting to do what-- I have no idea what they wanted to do. They just wanted to be there. I remained at the property until after 1 a.m., largely to keep looky-loos out, and all-- but also, to prevent looting. Clearly, the Douglas County Sheriff was incredibly busy that afternoon; they were clear out in the main part of Elkhorn and just didn't have time for a little farm. A few of the conversations that night with people that tried to get in were pretty intense. Two of the vehicles sped away as I approached. LB206 is important. It's important to protect citizens, to protect the effectiveness of the process of emergency response, and most importantly, to protect first responders. Nothing in LB206 will prevent people from doing stupid stuff; LB206 will provide specific reasonable deterrence and penalties for those people who interfere with the protection and the care of our neighbors. For myself, as a responder and a former, former emergency manager, page 2 lines 17 through 20 give penalties for the common infractions that I have seen, and the rest of the bill speaks to those with much more serious infractions. Thank you. I would encourage your support for LB206, and I'd be honored to take any questions.

**BOSN:** Any questions of this testifier? Senator McKinney.

**McKINNEY:** Thank you, Chair Bosn. Thank you. When you say "reasonable deterrence," I'm just trying to understand. If the people we're looking to prevent from doing these things-- how often they're following the Legislature, seeing these law changes and knowing, like-- just practically speaking, how is it going to deter them? Are there going to be-- you kind of get what I'm getting to?

**MICHEAL DWYER:** Yeah, I do.

**McKINNEY:** Like, are there going to be signs put up, like, the law's changed?

**MICHEAL DWYER:** Yeah.

**McKINNEY:** You do this-- you, you kind of get what I'm getting at?

**MICHEAL DWYER:** I do. And I think you make a reasonable point. There's nothing that, that we can do as responders, arguably-- and I say this as a conservative-- that the body can do to protect people from doing everything that they might do. On the other hand, I do think that having a statute that makes it clear that if you don't have a reason to be there, if you don't have some permission to be there, you shouldn't be in there. If only-- even if you're not doing bad things,

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if only because it puts such a tremendous weight on those that are trying to respond. The first thing that I did on that scene, that I had to do as an emergency manager, was to control the chaos, and to a certain extent, control the volume of people. I stood at the front gate of our-- it's-- so there's a long lane into the property; I stood in the middle of the lane just keeping people out that didn't need to be there. And if they didn't have some kind of an ID, or couldn't convince me that they had a horse at the farm, they just didn't get in, only because we didn't have a place to put them. I hope that answers your question, and I think the question's valid. As a responder, I will-- still agree that-- I think the provisions in LB206 will at least give some pause when somebody's driving around middle of the night. I hope that helps.

**McKINNEY:** Thank you.

**MICHEAL DWYER:** No problem.

**BOSN:** Any other questions of this testifier? Thank you for being here. Next proponent.

**SCOTT THOMAS:** Good afternoon, Judiciary Committee, and Chair Bosn. My name's Scott Thomas, S-c-o-t-t T-h-o-m-a-s, with Village in Progress. And in 2019, I stay in Fremont. 2019, our town got flooded, and I joined the Red Cross in sheltering disaster response. And before Red Cross came to town, we had to set up all the shelters at smaller sites, at churches, a couple of schools. But we had people in our shelters that were arguing; you know, people are cramped, they're in a small area, they're right on top of each other. So there's boundary issues. And we had people that we had to ask to leave the shelter. There were people that were asked to leave. Nothing that ever came to blows, but I'd like to think that there's something in here that would work as a deterrent to keep people from fighting in the shelters as well. So, I know it's mostly, like, an anti-looting bill, but I just saw two uses for it. And that's all I have on that, unless anybody have any questions for me.

**BOSN:** Any questions for this testifier? Thank you for being here.

**SCOTT THOMAS:** Thank you.

**BOSN:** Next proponent? We'll move to opponents. Are there any opponents to LB206? Welcome.

**SPIKE EICKHOLT:** Thank you. 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.

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I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to LB206. You're going to receive a copy of my testimony eventually, along with a couple of examples of governor-declared emergencies. We're opposed to the bill essentially for three reasons. First, our position is that if you look at the designated crimes that are going to be enhanced under this bill, almost all of them are felony offenses already, and many of those are upper-level felony crimes. In my handout, I break down and lay out exactly what level-- classification level of felonies that they are. In other words, we're talking about felonies already. There's ample latitude and ability for people to be held accountable if they are doing things that are nefarious following a disastrous situation. The second reason that we are opposed is that some of the designated crimes arguably aren't necessarily related to looting, but they would be subject to enhancement. For instance, shoplifting is included in the designated listing of crimes; simple trespass, which would be any sort of crime, somebody's where they're not supposed to be. Strangulation is one of the crimes that's noted that's-- typically, we often see that in domestic-type conflict situations and so on. But one of the other part is something that Senator Bosn and Senator Holdcroft asked about before-- or, it was Hallstrom who asked about before, excuse me. And that is the triggering declaration enhances crimes that are not necessarily related to an area that suffered an emergency. If you look on page 2 of the bill, line 26 defines what disaster area means, and "disaster area means an area that is subject to any of the following," and then lines 28 and 29 say, "an emergency proclamation by the Governor pursuant to 81-829.40." The two examples I gave you are statewide declared emergencies. One is for a burn ban that had a limited duration, another-- and I don't have my copy to say what it was-- another deals with sort of-- the governor declared an emergency to suspend some statutes from going into effect that relate to load limits for transportation of fuel. And I know that's not necessarily the intent of-- well, I think that's not the, the intent of the introducer of this bill to have that trigger an enhanced, but those are statewide "decalbration"-- emergency declarations, and they're going to automatically boost all these things up, many of them from misdemeanors to felonies. And then you would have-- exactly like Senator Bosn asked, you'd have simple trespass; homeless people being where they're not supposed to be subject to felony prosecution because of the statewide declaration. It may be resolved by amendment. Respectfully, we're still opposed to the bill if it is. We ultimately think the ample-- the current penalties are significant enough. And one other thing I would add, you know, we're regularly in some sort of emergency declaration. When the governor gave a State of the State, he

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noted that he declared 11 emergencies just last year. The bill also provides that unless there's an end date to the emergency, it lasts for 30 days. And one of the examples has an end date; the burn ban had a-- I think it's a three- or four-day window that it was in effect. But the other one didn't have an end date. So, those are the reasons we're opposed. I'll answer any questions if you have any.

**BOSN:** Thank you. Questions for this testifier? Senator Hallstrom.

**HALLSTROM:** In one of the online comments, they indicated their concern over whether it's a deterrent, whether it increases public safety, and instead they support increased investment in mental health, substance abuse treatment. In your opinion, does mental health conditions or substance abuse have anything to do with people being opportunistic after a, a tornado or some type of disaster to go into those areas and, and loot and pillage and plunder houses and, and people who are now being victimized a second time?

**SPIKE EICKHOLT:** Well, no, I would agree that probably doesn't have anything to do with it. But, to kind of-- if I could take issue with some of your question,--

**HALLSTROM:** Sure, sure.

**SPIKE EICKHOLT:** What you've heard from the proponents is that post-emergency-- the post-tornado situation, you've had a lot of people out and about, and not all of them are there to loot or pillage; sometimes, they're just curious. They want to put something on social media. I mean, I remember when it happened in Elkhorn, my friends that I had on Facebook, I saw all kinds of pictures that were-- presumably, they were out there in the areas taking those photos. People are just curious. People may want to go to help, don't even have nefarious intent, but they're there. And they shouldn't be there, because it's chaotic, it's kind of a mess. You heard from Mr.-- I can't remember his last-- is McGuire his last name? You know, you have this-- communication systems are down, houses are destroyed, people are out about, there's no sort of organization. That's what I think is happening, and there are some people that are going to take advantage of the situation and steal, and I admit that's probably not related to mental health; it's probably not at least directly related to substance abuse. But there's a significant deterrent now in the law for that, and that's the position we have.

**HALLSTROM:** Thank you.

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**BOSN:** Any other questions for this testifier? Seeing none. Thank you for being here. Next opponent. Move on to neutral testifiers. Anyone here to testify in the neutral capacity? All right. While Senator von Gillern is making his way back up, I will note there were 6 proponent comments, 2 opponent comments, and no neutral comments submitted for the record. Welcome back.

**von GILLERN:** Thank you. I'll make this quick, but open to questions. Obviously, Mr. Eick-- Eickhorst's [SIC] opposition-- he, he's got some good points. I, I mentioned that I'm open to an amendment to, to provide a stricter definition of what emergency area might be. He, I think, believed-- if I heard him correctly, he's not necessarily open to an amendment because he believes, number one, his first point was that the penalties were already significant enough. I just-- I, I, I can't even imagine being in the situation that some of these folks were in. I think everybody in this room would agree that it's wrong to steal from somebody, that it's wrong to commit arson, that it's wrong to commit assault. But to do that at a time when people are at their most vulnerable-- and if my wife were here, she'd smack me, but it's "wronger." It-- there-- it's-- what-- however-- whatever level of right and wrong there is, it just-- it's multiplied by some, some big number. I-- it-- I'm sorry I'm not articulating it better than that, but I think you all know what I'm trying to say, here. Again, to take advantage of people in, in, in a situation like that should be subject to a greater level of penalty than the same crime committed in, in a more normal circumstance. So, I ask you to consider that. I'd be happy to work towards an amendment, again, to, to further define the emergency areas, but I, I ask you to consider, if you were in a situation such as those that were just described, what types of penalties you would like to see against those who might pursue harm against you. So, thank you.

**BOSN:** Questions from the committee? Senator Hallstrom.

**HALLSTROM:** Senator von Gillern, in civil law, we have a notion that you take the plaintiff as you find them. And isn't that kind of what your, your bill does, is you find somebody in a vulnerable position? And--

**von GILLERN:** I went to engineering school, not law school, so. I'm-- I-- I'll take your word for it. In fact, I had-- I, I truly-- to, to Senator McKinney's question a little bit ago about the, the scale of the penalty-- I-- before this bill was assembled, I could not have told you what the penalties are for a Class II, Class IIA, Class III, whatever those-- that, that's all Greek to me. All I know, again, is

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that-- should be a greater penalty for, for someone in that type of circumstance.

**HALLSTROM:** Thank you.

**von GILLERN:** Thank you.

**BOSN:** Anyone else? Senator Rountree, followed by-- or, Senator McKinney, followed by Senator Rountree. Thank you.

**McKINNEY:** Thank you. And thank you, Senator von Gillern. Just kind of a question I asked one of the proponents, just practically thinking about this. Will it actually be a deterrent? Because a lot of people that we're talking about don't follow the Legislature, don't follow when laws change. So, how, how will it actually deter if they don't even know this increase in penalty happened?

**von GILLERN:** I, I, I don't know how these individuals know what the penalties are for anything, but if there's a shred of human dignity in them, or kindness, they have to know that it's a greater crime being committed under these circumstances. So, I-- if, if you were to quiz somebody who was arrested yesterday for, for theft, or for robbery or for arson and ask them what the penalty is, I bet they couldn't tell you what the penalty was. But if you ask them, is it, is it-- should it be a greater penalty if you've done greater harm to someone, I would have to believe that the answer is yes. So I, I don't know how we educate the public on this. I don't-- I've-- consider myself relatively well-educated and, and knowledgeable about many things, but this is not one of them, and I couldn't tell you what the penalties are. But I do, do feel strongly that they should be enhanced.

**McKINNEY:** Thank you.

**von GILLERN:** Thank you.

**BOSN:** Senator Rountree.

**ROUNTREE:** Thank you, Chairwoman Bosn. Yes, sir. Thank you so much for bringing the bill. One of the things, as we look at-- you are going to be open to refining some of the language in this that determines the disaster area, timeframe of a disaster. It may be work prohibitive, but it'd be nice to know if we could get data on how many personnel have been arrested for these crimes that were alleged here during a disaster period and see what those penalties are. It's been alleged that the current penalties are sufficient for that. It'd be good to get some numbers and, and be able to see what we have already. I mean,

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we've arrested, or those penalties have been, and then we could compare that to what we want to push it forward to.

**VON GILLERN:** I would be happy to do some more homework and provide that to the committee. I'll reach out to the, to the organizations that I worked with to develop the bill and the language, and I'm sure they'd be friendly and providing that information.

**ROUNTREE:** That'd be good.

**VON GILLERN:** It's a great request. Thank you.

**ROUNTREE:** Well, thanks so much, sir. I appreciate that.

**BOSN:** Senator DeBoer.

**DEBOER:** Thank you. I just-- as I was sitting here at the end, here, had a question, and you may have said this in your-- somebody may have said this already. Did you say that they're actually-- so, sometimes I worry that there's a fear of crimes happening as opposed to the actual crimes happening. And I know, because that was part of my original district where the, where the tornado took place, that I of course went to see if I could help, and whatever. I mean, I know I'm a little, you know, sketchy, but-- you know, I went, and actually somebody turned me away, and I was like, OK, I don't want to be in the way. So, I know there are folks that are going there for other reasons. Do you know, were there-- like, what kind of actual crime was happening there, or was it just a lot of concern that there would be? Or--

**VON GILLERN:** The representative-- Mr. Rinn, from the Douglas County Sheriff, in his testimony said that there were 17 theft arrests. I don't know if there are any other-- he didn't mention, and I don't know if there were any assault arrests, or anything other than that. Again, just the-- one of the-- one of the stories that I heard firsthand was from a family that had gone back that evening, and-- were you, were you home the night of the tornado?

**DEBOER:** Mmhmm.

**VON GILLERN:** So, that's what I thought. So, you were there, you know. I mean, it struck late afternoon, early evening, as they often do. It was still light for a long time. They went, they went back to their home, they gathered up as many-- I don't know if they had them there, or if they went by Menards or what, but they, they gathered Rubbermaid

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tubs and filled them up with everything they could find, put them in the garage,--

**DeBOER:** Oh, yeah.

**von GILLERN:** --came back the next day, and they were gone.

**DeBOER:** Yeah, I did hear that.

**von GILLERN:** It just breaks my heart. I-- that-- to, to think-- I would not have even-- I couldn't even get my head around the possibility that that would happen. And, and some did, and, and the other gentleman, Mr. Dwyer, was wise enough to know that he needed to hang around at that property and protect the property, and, and--

**DeBOER:** I think there was a lot of-- a fog of war, as it were, right after that happened.

**von GILLERN:** Oh, absolutely.

**DeBOER:** I mean, if you were around, it was just--

**von GILLERN:** Absolutely.

**DeBOER:** --a little chaotic. We did this--

**von GILLERN:** Yeah. And like you, like I said, my son and I went to help, and we felt very helpless because we couldn't get in to help, at least in the, in the urgent situation. There was lots to do in the days and weeks to come. So--

**DeBOER:** Yeah.

**von GILLERN:** Yeah.

**DeBOER:** OK. Well, thank you.

**von GILLERN:** Thank you.

**BOSN:** Senator McKinney.

**McKINNEY:** Thank you. I'm looking at this fiscal note, and it says no fiscal impact. But if this is an issue, I would assume that people will end up getting arrested, going to jail, ending up in our criminal justice system. So, have you-- and our state is going broke. So, have you considered the fiscal impact on the state and our prison systems?

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**von GILLERN:** Well, number one, our state is not going broke. Just to start there. We've got a billion dollars in cash reserve funds. But if, if you commit a crime, you need to go to jail. And if that costs the state money to protect the public from people that want to do bad things, I'm, I'm good with that, and I think most of the public is good with that.

**McKINNEY:** I ask that because our prisons are overcrowded.

**von GILLERN:** Agreed.

**McKINNEY:** Although we're building a new prison that's going to be overcrowded day one.

**von GILLERN:** Different topic for a different day.

**McKINNEY:** But it, it-- but I think it's-- is relevant, because we're talking about a bill to increase penalties, and if it is an issue, that means people are going to end up in prison. So, I don't think it's-- it-- I don't think it's-- they both intersect each other. So, I'm, I'm, I'm just bringing it up because when we increase penalties, which has been shown as, as far as reports and evidence that our prison population increases.

**von GILLERN:** Mmhmm.

**McKINNEY:** So there's going to be an impact on the state, and I just hate that we have fiscal notes that don't address that issue.

**von GILLERN:** You know, I can't speak to the fiscal note. Obviously, we don't get the opportunity to do those. I wish we did. My, my hope-- and I don't know how we communicate this, I'd be hap-- if you've got some ideas, I would be more than happy to sit down and talk to you. My greatest hope is that this acts as a deterrent, that our-- all of our hope is that no one ever commits these crimes, whether they're in a disaster area or not. And that solves more than one problem, and one of those problems is overcrowding in the prison system. So, that-- that's my number one hope, is that we create a system that is a deterrent to where this doesn't happen. So, we're 100% in alignment on that topic.

**McKINNEY:** Thank you.

**von GILLERN:** Yep.

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**BOSN:** Any other questions for Senator von Gillern? Thank you for being here.

**von GILLERN:** Thank you.

**BOSN:** Yes. That concludes our hearing on LB206, and next, we will take up LB322 with Senator Clouse. Welcome to your Judiciary Committee.

**CLOUSE:** Thank you, Senator Bosn, and members of the Judiciary Committee. The bill that I bring before you-- first of all, Stan Clouse, S-t-a-n C-l-o-u-s-e. And the bill that I'm bringing forward to you is the first of three coming up on assault issues. LB677 was passed in 2012, which is initial law passed in our state that increased penalties for assaulting health care officials-- or, professionals, while they were performing their duties. And it's unclear why some professionals within the health care industry were included and others were excluded, and one such group that was excluded was pharmacists. And in the past few years, assaults on pharmacists have increased nationwide, and according to a study published by the Journal of American Pharmacists Association, just under 30% of pharmacists have been assaulted, and 56% have reported physical or verbal violence over the last year. So, with this and their immediate access to controlled substance, I believe it's necessary to grant them the same protections as doctors, nurses, public safety officers, correctional officers, and some other employees of the Department of Health and Human Services. And so, in addition to ending pharmacists-- adding pharmacists to the list protected, the bill cleans up some language and harmonizes in Chapter 28 of the Revised Statutes, and there is an amendment, AM208, which says pharmacists or those working under their supervision. And that's the genesis of AM208. And we have few testifiers on behalf of the Nebraska Pharmacists Association who can speak to the need for this change. Pharmacists actually have the most contact with the general public, as far as-- from the medical and health care side. And so, there-- they are obviously exposed a lot more than others. And Senator Rountree and I were discussing-- oh, he just stepped out-- discussing why singling them out. And I think when you look at the statute, it mentions in there that other health care professionals either working at a hospital or a clinic, and it doesn't mention the pharmacy, so there are some things that, that can be melded together and, and worked through on this, if we so choose to take that type of position. But this is simply specifying that pharmacists are included, and then, as a deterrent, there's also language in there that when you go to the pharmacist, there will be specific signages posted, saying that this-- that if you're engaged in their duties that striking a pharmacist with

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any bodily fluid, there's a serious crime, bodily injury-- or the wording can be changed on that, too-- which may be punished as a felony. So, with that, I would ask you to seriously give this consideration and support this, and I will open up to any questions.

**BOSN:** Thank you. Any questions from the committee? Senator McKinney.

**McKINNEY:** Thank you. And thank you, Senator Clouse. Do you have any data on these situations in the state-- in the state of Nebraska?

**CLOUSE:** In the state? No, I do not. I've got-- there's a survey that really talks about the percentages. Some of it, it's a physical assault, some of it's spitting, things of that nature, bodily fluid. But that's more of a nationwide, I believe.

**McKINNEY:** OK. And do you know-- no, I, I, I-- that's my only question. I'll think of another one later. Thank you.

**CLOUSE:** Well, if you think of it, I'll be around.

**BOSN:** Would you be willing to share that study with the committee members--

**CLOUSE:** Yes, I will.

**BOSN:** --at some point? Not right now, but at some point, just perhaps emailing it to us so we can be--

**CLOUSE:** Sorry I scared you.

**BOSN:** No, no. You're OK. Senator Hallstrom.

**HALLSTROM:** Yes. Senator Clouse, you indicated that pharmacists were being singled out. They actually were singled out when they were excluded, and now we're righting the wrong and bringing them into-- to have the same protections that other health care providers are [INAUDIBLE]

**CLOUSE:** Yes. And there's a lot of strikethrough language in, in the, the bill, and the amendment still contains all that strikethrough, but it's just to add "or anyone working under their supervision."

**HALLSTROM:** Thank you.

**CLOUSE:** Thank you.

**BOSN:** Any other questions? Are you saying to close?

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**CLOUSE:** I will. Thank you.

**BOSN:** Awesome. Thank you. First proponent on LB322. Welcome.

**HALEY PERTZBORN:** Hi. Sorry for my voice. I'm getting over a sickness. 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. LB322 would recognize how our pharmacy teams are on the frontlines of health care. According to a 2023 metaanalysis that Senator Clouse also referenced, 39% of the nearly 2,000 pharmacists included reporting a violent event at work within the last 12 months. The study was done in 2023. Also, according to OSHA, health care settings are almost four times as likely to pry-- as to private industries to experience workplace violence. OSHA also recognizes the increased risk that pharmacies and therefore pharmacy teams are at, due to the inventory of medications, money, and the frontline nature of community pharmacies. Since starting at the NPA in 2023, I have heard stories from multiple members on their robbery or assault encounters, or both. It frustrates me how common it is, and how traumatic the experience is. One pharmacy in Lincoln actually keeps their doors locked due to two robberies within a year at gunpoint. They have to let their patients in with a Ring doorbell now. I've also attached a testimony from a pharmacist who was unable to be here due to the snow, and unfortunately, her story is more common than one might think. Although a pharmacist is a health care professional, the definition lacks inclusion of our community pharmacists and pharmacy staff. LB322 and the amendment that Senator Clouse referenced would ensure that there is no question whether a pharmacist and pharmacy staff are included in this. I would respectfully request that the committee advance LB322, and I'd be happy to answer any questions.

**BOSN:** Any questions for this testifier? Senator McKinney.

**McKINNEY:** Thank you. Does your organization have any data on these situations that we could see, as a committee?

**HALEY PERTZBORN:** I'm trying to gather data right now. Right now, I just started with getting comments from our members, but I'm working on getting the data. I don't have anything right now. I know I've personally talked to at least five pharmacies within the last year that have had something within the last two years, but I know that it's way more than that. But I'm working on it.

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

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**HALEY PERTZBORN:** Yeah. Thank you.

**BOSN:** Any other questions? Ope, sorry, Senator DeBoer.

**DeBOER:** So, I'm reading the story from-- or, the testimony from Jill Stanberry.

**HALEY PERTZBORN:** Yeah.

**DeBOER:** And I mean, this already seems like it would have been a felony situation. Was, was there a police response to this situ-- I mean, this is an armed robbery with a gun,--

**HALEY PERTZBORN:** Yeah.

**DeBOER:** This seems like--

**HALEY PERTZBORN:** Yeah, I think--

**DeBOER:** --like something that they would respond to.

**HALEY PERTZBORN:** Yeah, I think her testimony did say the police responded. I-- this was quite a few years ago, so I'm not sure the exact-- I only have her testimony. But I know that there was a presence. Relatively quickly, yes.

**DeBOER:** So, so-- yeah, so this would already be a felony situation.

**HALEY PERTZBORN:** Mhmm.

**DeBOER:** She says once the police arrived, I was able to leave. It doesn't say more about the--

**HALEY PERTZBORN:** Yeah.

**DeBOER:** --prosecution of the situation afterwards, but I-- this-- to my understanding, this story would be unchanged by what we do here on this bill today.

**HALEY PERTZBORN:** Fair.

**DeBOER:** Is that your understanding?

**HALEY PERTZBORN:** Fair. Yes.

**DeBOER:** OK.

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**HALEY PERTZBORN:** I think it was just the, the most serious one we've had recently, just to kind of talk about. Mo-- more often than not, it's pretty-- it's not as serious as that, but they're on the front lines. Whether it's spitting, whether it's been cussed out, whether it's being threatened, those things are very, very common in a pharmacy. When I was practicing, I experienced these things very often. So, yes, you are correct, though.

**DeBOER:** OK. Thank you.

**BOSN:** Senator Hallstrom.

**HALLSTROM:** Doesn't it just underscore the gravity of the exposure? If the gentleman hadn't had a gun, had come in, there could have been an assault. You're on the front lines. This happened to occur in my hometown.

**HALEY PERTZBORN:** Yes. Yeah, most definitely.

**HALLSTROM:** Thank you.

**HALEY PERTZBORN:** Thank you.

**BOSN:** Senator McKinney.

**McKINNEY:** Thank you. What is the-- I don't know if demographic is the right word, but the nature of individuals we're talking about. Are these people with drug addictions? Are these people with mental health issues? Like, what is--

**HALEY PERTZBORN:** Good question.

**McKINNEY:** Who are we talking about?

**HALEY PERTZBORN:** Great question. I know that that example specifically was a patient that was having some frustrations with their own personal health care. I know of a lot of rural pharmacies that have been robbed, from, I think, a ring of some sort that originated out of Texas. I know-- again, there's multiple other ones that are patients, too. I don't know exactly. I don't have that data. I just know the stories that I've heard, but--

**McKINNEY:** OK.

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**HALEY PERTZBORN:** I haven't heard any that have been in accordance with being under the influence, or substance use disorder, or mental illness, though.

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

**BOSN:** Thank you, Senator McKinney. Any other questions? Thank you for being here.

**HALEY PERTZBORN:** Thank you, guys.

**BOSN:** Next proponent. Opponents. Do we have anyone here in opposition? Anyone? Anyone? Welcome back.

**SPIKE EICKHOLT:** Thank you, 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, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to LB322. I did visit with Senator Clouse last week, and explained that we would be opposing and why. You've heard me testify against bills like this to enhance penalties. I understand the concern to be responsive to the bad things that happen to people, and I'm not trying to minimize anything that happened in Senator Hallstrom's district. But I did a quick look at that story; he was facing, I think, six felony charges. I don't know that it was necessarily an oversight when the Legislature provided for the enhancement for health care professionals to be treated like law enforcement officers, where every sort of assault, no matter how slight, is a felony. Respectfully, I think there's a difference between being a pharmacist and being someone like an E.R. doctor working in a hospital, and the difference is, is that there at least is some obligation sometimes of that health care professional to actually interact with somebody who might be suffering a mental health episode or who might be intoxicated, because they have an obligation to treat that person medically. Similar to when a law enforcement officer has an obligation to interact with somebody who is drunk, violent, that officer is duty-bound to arrest them, take them into custody, or restrain them somehow. I don't know that's the same thing with a pharmacist, and we would suggest that there is not-- that's, that's not the same thing. The examples, the instances and the justification for the bill are because of violent things that happened now that are felony robbery, use of a weapon, first-degree assault, second-degree assault is already a felony. The biggest jump this is going to have is third-degree assault, which not to be-- it's a Class I misdemeanor now. That's not de minimis; that's a fairly serious sanction. And unlike the last bill that we heard, I think you are almost exclusively

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going to be dealing with people who are suffering from mental health crisis, substance abuse addiction, because many times the pharmacist-- the interaction, the confrontation is because that person is unable to get the controlled substances they want, either because the pharmacist denies them the refill, because they heard that they were either counterfeiting prescriptions or whatever, or confronts them on whether they're the actual person that should be picking it up, or whatever it might be. So, for those reasons, we would encourage the committee to not advance this bill. I'll answer any questions that you have.

**BOSN:** Thank you. Senator DeBoer.

**DeBOER:** Thank you, Mr. Eickholt. If-- let the record reflect that if a cop had come up here, I would ask them this question as well. I'm not just singling you out. The thing that I wonder about, with-- because we see a number of these different enhancement for this person, or that category of person and that category of person type bills. And I've seen a number over the years, and usually the-- oftentimes, the sort of spotlight case is already a felony that is discussed. Here's what I'm wondering, and I in no way mean this to be a question that supplies the answer. I really am curious. If we enhance all of these different crimes, and if we do a bunch of enhancements, and then less serious-- like, I think we could say that, you know, if somebody's got a gun, and they're-- and that's going to be more serious than if someone spit on you, just across the board. Is there a risk that when we treat both crimes the same under the law, that, that we don't-- we may miss some of the prosecution of some of these more serious ones because we're trying to get to all of the different felonies? Is that a risk? Is that something I've made up in my head? Is that a real thing? I would have asked a cop or a, a county attorney the same thing.

**SPIKE EICKHOLT:** I don't know. Maybe a cop would have understood it. Could you restate it, like, simpler?

**DeBOER:** OK. If we're making-- if we're making this, this-- the case where somebody spits on someone a felony--

**SPIKE EICKHOLT:** Right.

**DeBOER:** Does that in any way risk that we're not going to spend the cop time,--

**SPIKE EICKHOLT:** Oh, on the, the misdemeanor-level stuff?

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**DeBOER:** --the prosecutorial time-- are we, are we going to diminish our ability to get to the rest of the, the crimes that we need to spend our time on?

**SPIKE EICKHOLT:** Oh, I see what you're [INAUDIBLE].

**DeBOER:** And I would ask anyone this question.

**SPIKE EICKHOLT:** Well, I mean, it's probably not fair for me to answer from the perspective of law enforcement or the prosecutors. But, you know, most, most police departments have a mandatory arrest policy for felony charges. They don't always have to arrest for every misdemeanor. Right? But they usually have an internal policy. Every felony is a felony,--

**DeBOER:** Oh, really?

**SPIKE EICKHOLT:** --you're going to jail. So, there you got the booking process, you got that time in the field. Prosecutors-- and there's one that's going to testify later, maybe she can speak to it, but-- they'll tell you that the process of when they consider to charge a case is different when it comes in as a felony. Many times, they're held without bond, they think about it for a day or two, and then they decide what to charge it as. So, I mean, it's-- it--

**DeBOER:** So this is going to take more resources if we see some of these-- what are less severe than, than the felony-- current felonies.

**SPIKE EICKHOLT:** Right.

**DeBOER:** And not to diminish getting spit on or anything like that, but to say, compared to having a gun in your face, those are different scenarios.

**SPIKE EICKHOLT:** Right.

**DeBOER:** So it is going to take more time to-- I just-- I worry about stretching-- I mean, I, I did a bill recently to try to do retention bonuses-- or to-- we passed retention bonuses for cops, because we know, especially in western Nebraska, that's a real problem. And I worry about, you know, just all the resources we have, and then elevating some of the situations we have. It's just a real concern. How are we going to be able to, to staff that?

**SPIKE EICKHOLT:** If I could just supplement my answer, the concern we have in asso-- as an association is that it-- I mean, this is business

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for us, as-- you know, many of our members, right? More felonies you make, more we can charge. That's just come down to it. But the reality is, is that you are, you are dealing with so many things that are so much more consequential to your clients. The public defenders are sort of stretched thin because they've got more and more felonies to defend, as are the prosecutors, right? So, that's one dynamic. But the reality is, there's a lot at stake when you're charged with a felony. You get found guilty of a felony, and then you get sober, you try to clean up your past, you've got these felony assaults. And you can tell, well, you know, I just pushed this pharmacist aside when I tried to grab something off the counter; they're like, well, you're a convicted felon for a felony assault. It's pretty serious, and the Legislature has found it to be very serious, and so on.

**DeBOER:** I mean, are they really going to charge those thing? I mean, I'll play both sides of this. Are they really going to charge-- if I just, you know, grab something and get a little grabby with somebody, are they really going to charge that as a felony?

**SPIKE EICKHOLT:** If the person is injured, yes. I mean, I can tell you that when it comes to-- many prosecutors take assault on officer cases very seriously, and have a zero-tolerance when it comes to that. You know, the same entities, the same groups who are asking for this law change, they communicate with prosecutors' offices as well.

**DeBOER:** OK. Thank you.

**BOSN:** Senator Hallstrom.

**HALLSTROM:** I'd just note that community pharmacist-- you talked about, you know-- I, I don't think you were trying to justify that enhanced penalties are acceptable, because that's not your position. But you distinguish between those in the hospital having more interaction. But community pharmacists interact with their patients on a daily basis. They have patient counseling requirements, they're probably hands-on as much as any other health care provider. But the one thing that I can't match up is you've, you've made the case that they may interact more frequently in the hospital setting with someone with a mental health condition--

**SPIKE EICKHOLT:** Right.

**HALLSTROM:** --or a substance abuse. And at the same time, Senator McKinney's line of questioning on these types of cases is that you shouldn't give those people with mental health conditions enhanced

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penalties. How do-- how do we match up those two two competing theories? You're more apt to encounter them, but yet we ought not to be more severe because of that.

**SPIKE EICKHOLT:** I think that the rationale for the-- a bill like this is that if we make it more punitive, it's going to deter that person from doing that. But at the same time, if we consider the person who's likely to do it, are they weighing that it's only a misdemeanor now, therefore I'll do it? Do they even know what the level of penalty is now? They know probably they shouldn't do it, right? And I think that when it comes to law enforcement-- I think from a very young age, we're taught as kids, do what a cop tells you, do what a cop tells you. I think people-- even though I can see that point, but-- you assault an officer, you know it's a very bad thing. I don't think it's the same thing for someone who works at a pharmacy, or even at a hospital or a clinic, or anything like that. I think-- and I can't speak for Senator McKinney, but I think the point he's trying to make is that if the argument for this is deterrence, we're not dealing with a rational decision-maker that this is going to impact.

**HALLSTROM:** OK. Thank you.

**BOSN:** Thank you. Any questions based on that? Thanks for being here. Next opponent. Opponents to LB322. Welcome.

**MATTHEW JEFFREY:** Welcome. Thank you. My name is Matthew Jeffrey, M-a-t-t-h-e-w J-e-f-f-r-e-y. I'm a case manager that for the past year and a half has worked with people living with HIV. I oppose this bill not because of enhanced penalties-- I'm more neutral on that-- but only because it furthers unfair criminalization against people living with HIV. So, I'm going to talk mostly about-- in Section 7, which it refers to statute 28-934 with assault with bodily fluid. According to an article called How HIV is Transmitted [SIC] by hiv.gov, quote, "You can only get HIV by coming into direct contact with certain bodily fluids from a person with HIV who has a detectable viral load." These fluids are blood, semen and pre seminal fluid, rectal fluids, vaginal fluids and breast milk. "For transmission to occur, the HIV in these fluids must get into the bloodstream of an HIV negative person through a mucous membrane found in the rectum, vagina, mouth or tip of the penis through open cuts or sores or by direct injection." End quote. In statute 28-934, section (3) says "Assault with a bodily fluid against a public safety officer is a Class IIIA felony if the person committing the offense strikes with the bodily fluid, the eyes, mouth or skin." In section (5)(a) of that, it says "bodily fluid means any naturally produced secretion or waste product generated by the human

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body and shall include, but not be limited to, any quantity of human blood, urine, saliva, mucus, vomitus, seminal fluid, or feces." So, if a person living with HIV and a person not living with HIV both spit on a person that's covered by the statute and by this bill, there would be the same chance of transmitting HIV, but one would be charged with the felony and the other could be charged with the misdemeanor. So, it's just further-- it's not anything about the bill, with adding more people that are covered; it's more just adding more ways that people living with HIV are criminalized just for existing. So, that's it for me. Is there any questions?

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

**MATTHEW JEFFREY:** All right. Perfect. Thank you.

**BOSN:** Next opponent. Anyone wishing to testify in the neutral capacity. All right. While Senator Clouse makes his way up, I will note for the record there were 11 proponent comments, 3 opponent comments, and 1 neutral comment submitted online. Welcome back.

**CLOUSE:** Thank you. I appreciate the testimony of, of those that took the time to be here and to speak to this topic. But the point I'm trying to make on this particular bill is it's not changing the penalties. Not doing that at all. All it's doing is adding pharmacists to those that would be under the protected group. And you really have to ask yourself who is the easiest target? And I'm going to liken that analogy to a bank. If you're going to rob the bank, or are you going to wait until 2 or 3 in the morning and try to take the ATM that's out there all by itself? So, the pharmacists have we-- as we said, they are-- have the most contact with the general public. Generally, they're at, at a higher risk, but they just need to be included in this protected group, and it doesn't really change anything as far as the, the penalties. So, with that, if there's any questions, I'd encourage you to move this forward.

**BOSN:** Thank you. Any questions? Senator McKinney.

**McKINNEY:** Thank you. And thank you, Senator Clouse. Just one question. Probably actually, it's on most of these bills today. Looking at the fiscal note, it says no fiscal impact, but we're increasing the penalty and we're making the law change, because there's an issue perceived. And, because of that, it's potentially going to increase our population of individuals in our state prisons, which are overcrowded. So, have you considered that?

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**CLOUSE:** I was here when you asked Senator von Gillern that, that same question, and what's going through my mind is we always have to look in our prison overcrowding, the element or the level of the criminals that are supporting. And we-- is an assault, a significant assault more critical than somebody that's in possession of, of a narcotic? You know, I don't know. I think the answer to that question-- that's a-- pretty detailed. But in my mind, anytime that anybody is committing an assault, they-- regardless, it's not acceptable. And if that's something we need to do, we need to address it. But I also think that goes into the bigger issue of who do we have in there, what's the-- how are they being-- I don't even know if it's processed or addressed? Are they-- do we have some of those that maybe can be released? And, you know, you have to look at all those things when you look at prison overcrowding. That's my view, anyway.

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

**BOSN:** Any other questions? Thank you for being here.

**CLOUSE:** Oh.

**BOSN:** I'm sorry. I apologize. Senator Rountree.

**ROUNTREE:** [INAUDIBLE] Thank you so much, Chairwoman Bosn. I'm a little late on that; I'm just formulating my questions. So, as we-- Senator Clouse, you and I talked earlier during the day, we're asking about the inclusion of the pharmacists and why they had been left out of the definition of a health care professional. But it spurred my thinking a little further. Are we going to come back at a later time and-- maybe not on yours, but some other profession-- let's say the chiropractor, and have that private business. And I've been to physical therapy, they have a private business out, so-- a massage therapist, they are therapists. Are we going to come back at a later time and probably bring all of those in for inclusion as well?

**CLOUSE:** Yeah. And you had stepped out when I made that comment prior,--

**ROUNTREE:** OK. Thank you.

**CLOUSE:** What it included here was health care professionals, while they're on duty at a hospital or health clinic, which did not include pharmacists in their, their pharmacy. OK? But to answer your question, who knows where this goes? And, and that's always a question in my mind, where does it stop? But I think the more important issue right now is the issue that they're dealing with drugs and, and those

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things, it's little more-- it's a little more dangerous than the chiropractor, I guess, if you want to scale it. But I think there's always potential of coming back and keep adding to it.

**ROUNTREE:** All right. I appreciate it. I appreciate coming forward with [INAUDIBLE]. So that's-- [INAUDIBLE]

**CLOUSE:** Yep. Thank you.

**ROUNTREE:** Thank you so much.

**BOSN:** Senator DeBoer.

**DeBOER:** In order to be fair, I want to give a proponent the opportunity to answer the same question I asked the opponent, which is basically I'm trying to balance in mind-- there's, there's a limited amount of court time, prosecutorial time, you know, et cetera. Cop time, all of that. And so, I'm trying to balance in my mind if I should say we're going to make spitting on a pharmacist equal to hitting a state senator and breaking their arm. Right? Or hitting a person at a hearing that it [INAUDIBLE] that's an architect. Hitting an architect, breaking their arm, breaking their leg, a pretty serious assault. And now, we should make that equal under the law with a pharmacist getting spit on. I'm not saying it's not bad; I'm saying if I'm looking at this from a very practical standpoint and I'm trying to balance things, I'm worried that, that that doesn't balance in my head. And I just-- and you said, "where does it stop?" And I've been on this committee, I've seen these things come through here, and I just-- I worry about making sure that someone who doesn't have a good lobbying group to come in here has the ability to get their assault prosecuted and, and taken seriously by the law as someone who, who doesn't.

**CLOUSE:** Thank you. My response to that is this particular bill is, is dealing with those engaged in public safety or health. And I agree 100%, if somebody gets assaulted to the point that it's a first degree or whatever, it should be no difference, no matter what their profession, no matter who they are; if they get assaulted at that level, it should be at that felony. This is dealing just primarily with those that are in the business of health care and taking care of people and providing public safety, so that's how I would differentiate that. But that's a fine line to differentiate, I agree.

**DeBOER:** And you, you understand my point that, like--

**CLOUSE:** Absolutely.

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**DeBOER:** --I don't want to equate things-- OK. Thank you.

**BOSN:** I guess in light of that, I would-- I think it's worth clarifying. In terms of the prosecutorial time, whether it's a felony or misdemeanor, they're still going to-- they still have to prove all the elements, and they-- am I correct?

**CLOUSE:** I'm not a lawyer either.

**BOSN:** OK. Well,--

**CLOUSE:** You got more lawyers sitting around you.

**BOSN:** I, I, I think they do.

**CLOUSE:** I've never been around so many lawyers.

**BOSN:** I think they also are going to put on all the evidence, whether the underlying penalty is a felony versus a misdemeanor, the evidence still has to be-- all be presented. So, I guess I would push back on this is going to create more of a prosecutorial time, albeit I understand the point. I guess I, I, I don't-- I don't think that's worth not clarifying, if that makes sense.

**CLOUSE:** So, you want me to clarify it in this bill? Or you're just--

**BOSN:** Well, she was asking you whether or not this is going to create an additional burden--

**CLOUSE:** Oh.

**BOSN:** --on prosecutors, and it seems as though your answer was, I don't know, that's not the intent. And I think--

**CLOUSE:** Yeah. It--

**BOSN:** --making sure that it's clear that there's pushback from--

**CLOUSE:** It'd be the same process, just a different class.

**BOSN:** Right. Any other questions in light of that? Thank you for being here.

**CLOUSE:** Thank you.

**BOSN:** Next, we will take up LB535 with Senator Kauth. And before we get started on that bill, can I just see a show of hands of how many

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individuals wish to testify in some capacity on LB535? One, two, three, four-- one, two, three, four, five, six, seven, eight.

**HOLDCROFT:** [INAUDIBLE] about 24. Eight times three.

**BOSN:** Thank you. All right, Senator Kauth.

**KAUTH:** Good afternoon,--

**BOSN:** Good afternoon.

**KAUTH:** --Chairwoman Bosn, and members of the Judiciary Committee. My name is Kathleen Kauth, K-a-t-h-l-e-e-n K-a-u-t-h, and I'm here to introduce LB535. LB535 addresses an imbalance in how employees working in health care are viewed. Over the years, various categories of employees have been given extra protection from assault in the form of extra penalties for the assailant. In 2012, LB677 added health care professionals. That's a specific legal designation that includes physician or other health care practitioner who is licensed, certified or registered to perform specific health services consistent with state law, who practices at a hospital or health clinic. I think everyone is seeing the signage in hospitals, clinics and other health care environments stating that assaulting a health care professional results in increased penalties. This was done to provide protections, deterrents; maybe helping people to think twice before they react in anger to understandably stressful situations, but only for those with the professional designation. This has put those without the professional designation-- but no less involved, and sometimes more directly involved in the care of patients-- at higher risk. This bill, in its original form adds public safety officer, health care worker, and frontline behavioral health care provider to that designation. Behavioral health was specifically identified because of the significant increase in mental health issues in the community that are causing strains in the capacity of these facilities. The difficulties of maintaining a strong, competent workforce are enhanced by the stress of attacks by patients. In further conversations, the need to protect all employees was made clear, and we filed for an amendment. AM244 cleans up the definition and simplifies it to "health care worker." This bill was brought after meeting with Jessi Giebelhaus, who will be here testifying today, a mental health tech at the crisis center here in Lincoln. Her story of being assaulted is unfortunately not an uncommon event. I'll let her provide the details in her testimony, and I encourage you to ask questions. I was unaware of both Senator Ballard's LB26 and Senator Clouse's LB322, which essentially does the same thing. Those are actually a little bit simpler bills.

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I'm actually going to ask the committee to look at all three of these and determine whether or not we either need to do a legislative resolution to study this, because it seems like we have a patchwork of professionals who keep-- as, as you pointed out-- keep getting added to this. So, we're not enhancing penalties. That's already there. We're enhancing who can be covered under these penalties. And when I originally brought this, I was, I was very surprised, after talking to Jessi, to understand-- I always read that sign as if you're here working in a health care facility and somebody assaults you, that person is going to be an extra trouble, but it only refers to a few people in that building. And I do think that that is patently unfair, that we have two strata of people who are given extra protections. So, I would like to have the committee look at those three things, and I'd be happy to work with you. I did speak with individuals in the individuals with developmental disabilities community, and there are concerns about people who are competent-- or in the mental health community-- who are competent to understand their actions. And I have to stress that it is always the case that someone who's assaulted does not have to press charges. The prosecutor or the police can say, hey, this person is not competent, the judge can dismiss. There are always those protections in place. But again, right now, we have some people who are in health care who are protected, and some who are not, and I think that that's patently unfair. So, I am open for any questions.

**BOSN:** Any questions from the committee? Are you raising your hand, Senator Storm?

**STORM:** No.

**BOSN:** OK. Senator McKinney.

**McKINNEY:** Thank you. Thank you, Senator Kauth. I'm just looking at this bill, and you mentioned individuals with developmental disabilities. And I'm reading session-- Section 5, and it says "intentionally, knowingly or recklessly" causing bodily harm. Individuals with developmental disabilities or somebody dealing, dealing with or going through a mental health crisis, I, I just-- my biggest fear is that those individuals won't intentionally-- they might do it without that understanding.

**KAUTH:** Right. And that--

**McKINNEY:** And they'd get charged.

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**KAUTH:** That-- and-- well, and that is absolutely part of the, the discretion that's involved with the people who work there, with people who are being assaulted, understanding what is going on with that patient. And, and the testimony that you're going to hear behind me will be from people who have worked in those environments and have direct contact with people who are dealing with-- and, and being able to say, OK, yeah, this person is clearly either having a, a mental health crisis or an individual with devel-- developmental disability who does not and has a pattern of not knowing what they're doing. Those are-- this is a very case-by-case kind of thing. But again, right now the protection is offered to only some. And I would say, you know, the doctors and the, the nurses, absolutely protect them. But if we're going to protect some people in a facility, I don't understand why we're not saying everyone who's providing those-- that care.

**McKINNEY:** But isn't it fair to say most people, if not all people in behavioral, behavioral health facilities, they're-- they're dealing with something.

**KAUTH:** I would-- and I, I would ask you to, to-- again, ask the testifiers behind who actually work in that environment, because yes, you're absolutely right. However, in that mental health facility, doctors and nurses are protected more than other people, and that's, that's what this boils down to, is we have two different levels of, of protections that people who have those professional certifications and then the people who are, are doing the real hands-on work. And I think that that needs to be adjusted.

**McKINNEY:** OK. And last question. You probably heard--

**KAUTH:** The prison question?

**McKINNEY:** My, my-- yeah. My quest-- well, it's a bigger question on this, because not only are prisons overcrowded, when you dig into the details, there's a lot of people in prison that do have mental health issues--

**KAUTH:** Yes.

**McKINNEY:** --and substance abuse issues. And have you calculated that into your thought about this bill, of an over-- overcrowded prison system and a overcrowded prison system with a lot of people that deal with mental health, and all those issues as well.

**KAUTH:** Not financially calculated out, but I do think it is a good point. The goal of, of this bill-- and I think the goal of all-- there

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are-- I-- we looked at, like, 10 different bills over the last 20 years where people have, again, kind of piecemeal added categories into this. And the goal is deterrence. So, specifically, I would like the committee to look at do we need to revamp everything and say, "how do we deter people being assaulted?" My biggest concern is it is so hard to get people to work in this industry. It is so hard to get the caring kind of people who we need to take care of people who are dealing with serious mental health crisis, or individuals with developmental disabilities. If we don't say that they are worthy of being protected in the same way as other people in the, the building, I really fear that we are going to start seeing them lose-- losing interest in working there. I mean-- or being so badly injured that they no longer have the ability to work there, and you'll hear that from Jessi.

**McKINNEY:** Thank you.

**KAUTH:** Thank you.

**BOSN:** Senator DeBoer.

**DeBOER:** Thank you.

**KAUTH:** Hi.

**DeBOER:** Hi. So, did I hear you right? Did you say that when you-- that there are signs up in the-- whatever. And you saw those, and you thought that--

**KAUTH:** I just assumed that was anybody who was working there.

**DeBOER:** That-- that's everybody. Yeah, I think that's probably what most people would assume when they see that, is that it would be everyone. So, if what we're trying to do is deter people, if everybody already thinks that everyone is covered, then wouldn't that already be deterring them? And not-- there wouldn't be any additional deterrence. So, so that's one question I have for you. And then the other is-- you keep saying "protected,"--

**KAUTH:** Mmhmm.

**DeBOER:** --and I kind of want to know what you mean by that.

**KAUTH:** Given the-- maybe it's an illusion of protection by saying that this category of employee, the professionals, if you assault them, well, then you get in more trouble. And I-- I'll ask you to ask both

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of these questions again to the, the women who are testifying behind me, who actually work in these-- this environment. Because what they have seen is that, once that went into place, assaults tended to go more towards other people. And so, that's-- I really want to ask-- have you ask that question.

**DeBOER:** So-- yeah. I mean, I will ask the question. But it-- but that's-- so, if the protection that you were referring to is this criminal protection, the--

**KAUTH:** Enhance-- the enhanced penalty. Right.

**DeBOER:** --the enhanced penalty. Like, I don't-- if everyone is already assuming that everyone's covered by the signs, I don't understand how that's a protection. I get it. I would be mad if I was one of those people and I was like, I'm standing right next to her, and if you do the exact same thing to her that you do to me, there's a different outcome. I wouldn't-- I understand that that would-- first of all, it'd have a kind of a effect on the culture of the place.

**KAUTH:** Very much so.

**DeBOER:** OK. Those things I get. But from a criminal standpoint, if everyone that is going to be deterred is already deterred because people rightly look at that sign and say that means everybody, unless they're crazy enough to be right now watching this hearing, may think that.

**BOSN:** Bored.

**DeBOER:** Bored enough, right? Then they, then they think that. So--

**KAUTH:** Or, or unless they've been involved with that facility, that institution, that, that--

**DeBOER:** With a criminal int--

**KAUTH:** --and, and understand that there are-- that there's a difference. And so, again, I'm going to ask you to ask the people who have actually lived this, because I kind of assumed that.

**DeBOER:** I actually like your approach to say the Legislature should consider this situation we have with enhanced penalties in general,--

**KAUTH:** Yes.

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**DeBOER:** --because it's kind of like the license plate. Somebody comes in and says, we need this license plate.

**KAUTH:** Exactly.

**DeBOER:** And I'm like, I'm not going to argue with that license plate.

**KAUTH:** Right.

**DeBOER:** You know?

**KAUTH:** Right. But then how do you argue with the other one? We've got a piecemeal--

**DeBOER:** But we've got to kind of figure out as a holistic thing,--

**KAUTH:** Yes.

**DeBOER:** --because I don't want to argue, well, no, you're not worthy of this. Well, you're not worthy of this. But then, my fear-- I think you may have heard from the last bill-- is that if we start treating--

**KAUTH:** Where does it end?

**DeBOER:** Well, and, and, and if we start treating-- if we equalize minor assaults, not that they're de minimis, not that-- but minor assaults to some people with pretty major assaults in terms of things. I just-- from a justice perspective, am like, yeah, that kind of makes me feel a certain way.

**KAUTH:** OK.

**DeBOER:** So, thank you for the suggestion.

**KAUTH:** Thank you very much.

**BOSN:** Senator McKinney.

**McKINNEY:** Thank you. And thank you, Senator Kauth. Just one more question. In preparation, like, for the hearing and bringing the bill, were you able to find any evidence of any of these enhancements actually working to deter?

**KAUTH:** I'm going to ask you, again, to ask-- the, the people testifying behind me did.

**McKINNEY:** OK.

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**KAUTH:** Yes.

**McKINNEY:** Thank you.

**KAUTH:** Yeah. So, thank you.

**BOSN:** Going once. Are you staying to close?

**KAUTH:** I am. Thank you very much.

**BOSN:** All right. We'll call up our first testifier-- is Jessi Giebelhaus. And if I mispronounced that, I apologize. How bad did I do?

**JESSI GIEBELHAUS:** What did-- OK, I didn't even catch all of it. What'd you say?

**BOSN:** Is it "Giebel-hoss?" [PHONETIC]

**JESSI GIEBELHAUS:** Pretty much. Giebelhaus.

**BOSN:** Giebelhaus.

**JESSI GIEBELHAUS:** I can't even say it myself right now, so you're OK.

**BOSN:** Welcome.

**JESSI GIEBELHAUS:** OK. So please bear with me. I do speak a little differently because of my injury. So, my name is Jessi Giebelhaus, G-i-e-b-e-l-h-a-u-s, and-- I'm just going to read what I wrote. I also have something passed around to everyone. I was working as a mental health tech at the Lancaster County Crisis Center when I was attacked in November 2023 by a client, which resulted in a TBI and neck injuries, which have changed my life for me and my family, as we have alr-- always known it. My injuries have affected every aspect of my life, left me with weakness on one side of my body and my face, along with speech issues, other cognitive issues, and daily pain, lots of sensory issues, and I'm still struggling to try to get-- to work consistently, even part-time at my own business. The person who attacked me was stable on their medications, knew what they were doing, planned the timing out, and had a long history of serious assaults on mental health care staff as long-- as well as peers. Because I was a mental health tech and not someone who completed a degree to be considered a licensed professional person, the person was written a misdemeanor assault ticket with the charges later being dismissed by the county attorney, and the person who assaulted me

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having no consequences for their actions. If I would have been a licensed professional, the person would have faced felony charges. I worked in mental health care since 2007. I enjoyed working with the clients that we served, and I really took pride in being able to help the people that I cared for. I dedicated my work day for advocating for clients, creating therapeutic activities for everyone to enjoy, and helped support each of the individual clients' need. I loved my job, my coworkers and people we helped. All that came to an end after I was assaulted. The person who assaulted me had been housed at the crisis center for roughly 200 days, due to every place in the state refusing to take them, including the regional center. The person who assaulted me was stable on their meds, not psychotic, knew what they were doing. The same person who assaulted me has a long history of assaults on staff, peers and people in community. The nu-- with numerous attacks being unprovoked by their victim. The person who assaulted me has been held accountable in the past for terroristic threats for threatening to kill someone after stealing a car, and assaulting someone. The same person who assaulted me has hospitalized two to three people, leaving two-- without including me-- resulting in head injuries after the same person who assaulted me hit the people over the head with a chair because they were upset over a phone call. The person who assaulted me has never been held accountable for those victims or any other victims, with the system, I feel, enabling the behavior by not holding people who severely hurt others on purpose accountable because of a diagnosis of mental illness. I was working at the regional center as a tech in March of 2012, when it became a felony to assault a health care worker in the line of duty, and I can remember the staff and patients talking about it. All the techs, along with the patients, thought that we were covered under the new law. I can remember the patients having second thoughts when they got upset, and even patients reminding each other that it was now a felony to assault us. No one wanted to be charged with a felony. I remember assaults stopped on staff briefly until everyone, staff and patients, came to realize that the mental health techs were not covered under the law. It was only for doctors and nurses who were protected, and techs were now fair game. I have stats and numbers from LRC showing the number of assaults on staff and patients from-- all the way from April 2010 to the present. In February 2012, before the laws protecting healthcare workers were placed, there was 13 assaults on direct care staff. In March, when LB677 was signed by the governor, there was only four assaults on direct care staff, and what's even more amazing, in April 2012, one month after the law was passed, is the only month on record at LRC from 2000-- dating all the way back from 2010 to the present of there being zero assaults on staff at LRC.

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In May, the assaults started back up, with six that month. The numbers show that two years after the law was in place, there was a 24% decrease in the number of assaults on direct care staff than there was two years prior. Sadly, assaults on direct care staff drastically increased in 2024 to a record high of 161 assaults on staff for the year, and a new record of 23 assaults in one month, which is more-- which is 10 more than the previous high of 14 over the last 14 years. Laws are needed to protect everyone, regardless of the level of education they have, the license they hold, or the initials behind their name. Laws are not going to pretend-- prevent all assaults on staff, but the data shows that they did, and have prevented some. The numbers also show an increased need for protection for direct care staff due to assaults on staff being at an all-time high. Me and my family may never receive justice for everything that we lost and the assault took from us, but we do plan to continue to share my story in hopes that it can promote change and prevent others from having to go through the same thing.

**BOSN:** Thank you very much for sharing your story. Let's see if there's any questions from the committee. Senator DeBoer.

**DeBOER:** Thank you so much for sharing your story. I-- first of all, thank you for doing the work.

**JESSI GIEBELHAUS:** Yeah.

**DeBOER:** This is important work, and I know firsthand how important it is for all levels of health care worker. Doesn't matter who you are, doesn't matter what your degrees are. It's all the same team. So, thank you for that. It really does matter. Did you say your case was-- what happened with the case? Did they bring it-- did the police bring a case?

**JESSI GIEBELHAUS:** So she were-- they were written a misdemeanor assault charge, because it was me and then there was another girl with me, and she got her chin split open. So the person was just ticketed as a misdemeanor assault on both-- you know, two tickets. And then, they ended up getting dismissed. I was number 7 or 8 of assaults while the person was at the crisis center, and they went on to assault more people who tried to press charges also. That-- is a no.

**DeBOER:** Why were they-- do you know why they were dismissed?

**JESSI GIEBELHAUS:** I don't know. I really don't. I don't. I--

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**DeBOER:** Were your injuries at the-- you know, like, did your injuries manifest right away?

**JESSI GIEBELHAUS:** So, yes, but I did not notice it. But I also talked to a investigator. I can't remember his name, but he came to get things, like, from my doctors and stuff after we found out how bad everything-- you know, I mean, had gotten, because I had to go to rehab, and obviously, like--

**DeBOER:** Yeah.

**JESSI GIEBELHAUS:** So, I don't really know.

**DeBOER:** So, it took a little time to kind of get all the information about--

**JESSI GIEBELHAUS:** It did, and I, and I called the [INAUDIBLE] for myself and asked him, and he just told me that it was dismissed and something, and I haven't heard anything else about it since.

**DeBOER:** Do you know that if-- were any of the other cases not dismissed, or was everything dismissed against them?

**JESSI GIEBELHAUS:** I believe everything was, because you can't even call, and the-- it's like not even on there-- they sealed the record, or something like that.

**DeBOER:** OK. Well, I'm so sorry it happened to you.

**JESSI GIEBELHAUS:** Yeah, me too, but--

**BOSN:** Any other questions for this testifier? This is very helpful. I mean, this information is compelling and certainly very helpful, so, I don't know how you compiled this. Is this from your own employer, or where did this come from?

**JESSI GIEBELHAUS:** It is a kind of a group effort--

**BOSN:** OK.

**JESSI GIEBELHAUS:** --with some mental health techs that-- they had to obviously help me. I've been trying to focus on living, getting back to living my life, so.

**BOSN:** Sure.

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**JESSI GIEBELHAUS:** I just-- it-- other direct care staff were able to help get information.

**BOSN:** Sure. And are these based on just the Lincoln Crisis Center, or are these Nebraska-wide?

**JESSI GIEBELHAUS:** We, we-- it is, it is the Lincoln region-- Regional Center.

**BOSN:** OK. So, I guess I thought you were at the crisis center.

**JESSI GIEBELHAUS:** Yeah, I was. I had worked at the, at the regional center before the crisis center. And I was attacked at the crisis center, but I wasn't able to get data. I don't know if they keep even data at the crisis center like that.

**BOSN:** That makes more sense. Thank you very much. I appreciate that. All right. Thank you for being here.

**JESSI GIEBELHAUS:** Thank you, guys.

**BOSN:** Next proponent will be Ashley-- is it--

**ASHLEY DOUTHIT:** Douthit.

**BOSN:** Douthit. Thank you.

**ASHLEY DOUTHIT:** Hello. I'm Ashley Douthit, D-o-u-t-h-i-t. The woman before me I would describe as resilient, strong, creative, determined, caring and humble. Jessi's story is her story, but she is part of mine. In 2011, after graduating Seward High School, I joined the volunteer fire department and later served on Tamora, David City and Staplehurst Fire and Rescue until 2014, when I laid my bunker gear down. In September of 2015, I got my nurse aide license, and a year later obtained my national registry license and-- in 2016. My Nebraska state license just expired last year in the state, but I do actively hold an NREMT license. I got hired at the crisis center in October of 2022, and resigned there as of, like, this year. There, I met Jessi. Jessi treated our clients with respect, she gave them hope, treated them with fairness. Jesse's creativity, bright personality and cool attitude brought joy to our clients as we got to tap into art, music and just, like, good, authentic conversation, you know? Just like-- just our lives. Jessi and another coworker were assaulted on my day off. I remember returning to work to hear that my coworkers were assaulted. The client was ticketed for a misdemeanor assault, but my coworker, mentor and friend had-- Jessi had continued to work

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resiliently after the incident, but while working with her, I could see, like, a change in her. She seemed to have trouble focusing on the computer, she was slower in responses, it was just-- it took her longer to have, like-- have part of a conversation. She-- sorry. She later expressed concerns with her vision, and expressed headaches. As an active EMT at that time, I suggested that she should probably take-- if she was-- she hit her head during the assault. She said she couldn't-- she had been-- sorry. I apologize. I'd asked her during the assault if she had hit her head or been hit in the head. Jessi stated that she did black out for a moment, but she couldn't exactly remember. Common of someone who experiences a trauma. I expressed to her, as an EMT and as her coworker, that she should still have obtained a brain injury from the assault, and that it's important to get checked out. JC-- or Jessi letter-- later confirmed my fear. Jessi stated that her TBI-- or Jessi started her TBI healing journey, and I was left without my coworker, an important and vital part of our team at the crisis center. That client was put on HRS status-- which is highly restrictive-- due to the assault, and her continued unpredictable behavior. I myself would experience a similar but not so life-changing event a few weeks later. The same client who had just assaulted two of my coworkers had-- and leaving one with a TBI would assault me next. I still having two active state licenses, my EMT and nurse aide, and would be insulted and-- or, assaulted in the presence of our nursing director also. I filed a police report, an investigation was done, and footage of my assault was obtained by the police. I believe under this exact law that I should have been protected and she should have been charged with a felony assault charge. That was not the case. That individual [INAUDIBLE] sits free of consequences, isn't-- and is not at all held accountable for her actions. I think with this, I personally ask that all of us, like, essential workers are protected. Health care settings are defined as a place where health care is provided, including hospitals, clinics and homes. The type of care provided depends on the setting; hospitals, urgent care, nursing homes, rehab centers, home care, blood banks, pharmacies, imaging and radiology center, human services such as CenterPointe, Matt Talbot, The People's City Mission, mental health crisis center, the [INAUDIBLE] Regional Center. Even for foster care specialists in homes and within dangerous, you know, family situations. I am a per-- a public servant naturally. I've lived in this community my whole entire life; born and raised a Nebraskan, traveled the state. I want to be protected in all fields that I do that help my community. It doesn't mean just fire and EMS, doesn't mean just as a mental health technician. It means as a mental health aid-- or, as a home health aide, which I also do. I'm a foster care

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parent. I want to be able to get back to my daughter. I want to be able to provide care for other children in our state. I-- you know, Jessi has a family, you know? We all have people to, you know, go home to. And Jessi's lives matter, and so does mine. And, you know, this bill is meant to protect us.

**BOSN:** Thank you. Let's see if there's any questions from the committee. Senator McKinney.

**McKINNEY:** Thank you. And thank you for your testimony. Couple questions. What is the purpose of the crisis center? Like, how does somebody get--

**ASHLEY DOUTHIT:** A person at the crisis center is usually brought during the EP. So, the crisis center serves 16 counties in the Region V systems. You are brought in by law enforcement, typically. So, any law offi-- a law enforcement officer or a doctor can issue an emergency protective custody. If it is a legal civil hold, there is a-- there is a process with the county attorneys and everything, so there you-- that's how you get brought here. And then you're evaluated, it's usually three to seven days, and depending on--

**McKINNEY:** OK.

**ASHLEY DOUTHIT:** --the mental health board at that point, would they be determined to stay at our facility. And what that looks like from there depends on, like, obviously, care from psychiatrists, psychologists. If the resources are available for them to move forward, or what that looks like.

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

**BOSN:** Any other questions for this testifier? Thank you very much for being here and sharing your story.

**ASHLEY DOUTHIT:** Thank you.

**BOSN:** Appreciate that. Next proponent on LB535. Welcome back.

**MICHEAL DWYER:** Thank you. Good afternoon again, Chairman Bosn, and members of the Judiciary Committee. My name, again, is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r, and I appreciate the opportunity to testify in strong support for LB535. Thank you, Senator Kauth, for bringing this important legislation to strengthen and protect-- and protect those of us who choose to work in health care. As I mentioned on LB206, I'm a 40-year one-- 41-year active veteran firefighter and EMT,

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and current co-chair of the Nebraska EMS. I'm going to pause for a minute and mention that my testimony is largely technical and more broad, and I feel a little bit inept after the two testifiers before me with incredible passionate testimony about the importance of this bill. So, I'll give you a little bit of context on the bigger picture, perhaps as it relates to volunteer fire and EMS, and then I would encourage you to think deeply about what was just said. LB535 is another important step in protecting first responders. It is important to note that in rural Nebraska-- in emergency medical services as defined in LB535 as public, public safety officers-- roughly 75% of those responders are volunteers. We're short enough without anybody else hurting us or, God forbid, something worse, to Senator Kauth's point during her opening testimony. I would amplify what she said, as particularly in rural areas, these are volunteers who are trying to [INAUDIBLE] provide an essential public service, and as volunteers, I think everybody in the committee knows that, that we're really short. I have had a good conversation with Senator Kauth's office about how EMS providers are defined in LB535. The senator's staff clarified that public safety officers and the definition later in Section 3 of emergency care providers is clear, and I appreciate and agree with that definition. I personally have not had an experience of being assaulted in my 41 -year career. It's been really close a couple of times. And, but for my friends on the department and law enforcement, was spared from that. But the fact that I haven't been hurt doesn't mean-- shouldn't diminish at all the issue that anybody in public service-- and specifically in-- as a first responder-- is certainly affected by-- potentially by LB535. Again, I thank you for listening. I would appreciate if you would advance LB535, and I would be happy and honored to take any questions.

**BOSN:** Any questions for the senat-- testifier? Thank you, Senator Storer.

**STORER:** Thank you, Chairman Bosn. And thank you, Mr. Dwyer, for your testimony. I, I was just-- and maybe you can help explain this a little bit better. This-- one of the previous testifiers did give some graphs, which I know you haven't had the privilege of seeing. But what my question generally is, is it is referencing before and after a l-- a, a change to our law. Can, can you help me understand what the change was in, apparently, 2012?

**MICHEAL DWYER:** Oh, boy. I, I--

**STORER:** And if not, that's fine. I don't mean to put you on the spot.

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**MICHEAL DWYER:** No. And that's fine; you're welcome to do that. I personally can't speak to that. I know there were significant changes in 2016 around fire and EMS, specifically on the EMS side. I don't remember this topic--

**STORER:** And what were those changes?

**MICHEAL DWYER:** There was a \$250 tax credit, we restructured the way the EMS board-- the advisory board to the Department of EMS was structured--

**STORER:** OK.

**MICHEAL DWYER:** --but nothing, in my recollection anyway, that speaks to assaults or the issues in LB535.

**STORER:** OK.

**MICHEAL DWYER:** I would mention Jerry Stilmock is our lobbyist, and he knows everything about everything. So, if you have an opportunity to ask that question to Jerry-- and by the way, if that's on the record, I appreciate that. Certainly, certainly Jerry would be the guy to, to ask those kind of technical questions, because he remembers all those things. Thank you--

**STORER:** Thank you.

**MICHEAL DWYER:** --for the question [INAUDIBLE].

**BOSN:** Any other questions for this testifier? Did you hear us say Jerry Stilmock can decide I better get back in there and fix something?

**MICHEAL DWYER:** And I, I don't want to make light of the, the testimony earlier. But yeah, we had a good conversation [INAUDIBLE].

**BOSN:** We understand, yes. Thank you for being here. Next proponent. Welcome.

**JUSTIN HUBLY:** Good afternoon, Senator Bosn, members of the committee. My name is Justin Hubly, J-u-s-t-i-n H-u-b-l-y. I'm the executive director of the Nebraska Association of Public Employees, NAPE/AFSCME Local 61. Our union represents over 8,000 frontline state employees. They work over 500 different jobs at 43 different code and non-code agencies in all 93 counties. That includes the Lincoln and Norfolk Regional Centers, as well as the YRTC's in Kearney, Lincoln and

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Hastings. And I was really hoping to have two of our members from Kearney that planned to be here today, but because of the weather, they couldn't, so you're going to get hearsay testimony from me. We're in support of this bill, and some of you who've been on this committee for a while have heard-- usually, we come neutral on these types of bills. But because there is no enhanced penalty in the bill-- it's just changing the definition-- the equity piece that you heard about a little earlier is why our members are in support of this. There was an assault at the YRTC in Kearney last year where a licensed mental health practitioner and a registered nurse were walking together, and both were assaulted. The crime that would be charged based on that assault is different, because of each one of them. And so, that's the main reason why we're here. With respect to Senator Kauth, we've had some good conversations about this; it's a soft support, and when you've heard me talk about this, we've been neutral before, because where the Legislature can really help us is in three ways. What we're trying to do is keep our staff who care for vulnerable folks safe, and the three ways that we feel it can do that is to ensure appropriate staffing at our facilities; two is to enhance training and how to deal with these types of situations; and three is preparedness in the facility as to-- we know that, from time to time, working with these populations, an assault may happen, but if we're prepared to the best of our ability, we might be able to mitigate some of the consequences. And so, again, I'm sorry that I don't have all the firsthand knowledge from what's happened at some of our facilities, but I'd be happy to entertain questions that I might be able to answer.

**BOSN:** Thank you. Senator McKinney.

**McKINNEY:** Thank you. So, a YRTC is a Youth Rehabilitative Treatment Center, right?

**JUSTIN HUBLY:** It is.

**McKINNEY:** So how does a youth end up there?

**JUSTIN HUBLY:** A youth is sentenced by a judge. And Senator McKinney, I do want to say on behalf of our members, we take the rehabilitation part of that name in the facility is paramount, and our members want to help rehabilitate the youth. There is some concern in that facility, again, just based on equity, that if the county attorney in Buffalo County, for example, is going to charge a crime based on an assault, that the charging standard is equitable across everybody who works there.

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**McKINNEY:** Do any of these you deal with any type of mental, physical, any type of issues [INAUDIBLE]?

**JUSTIN HUBLY:** In theory, they're supposed to be in Lincoln if they do, and the, the non-mental-- ones that don't have a mental health diagnosis should be in Kearney. Between you and me and everybody listening to this, I don't know that the Department of Health and Human Services actually gets them to the appropriate place at the appropriate time. So, I'm sure there are some that are suffering from mental health crises in Kearney, even though they shouldn't be.

**McKINNEY:** OK. Do any of these youth, like, take medication for those issues, possibly?

**JUSTIN HUBLY:** I would assume. Yes.

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

**JUSTIN HUBLY:** You bet.

**BOSN:** Any other questions? Thank you for being here.

**JUSTIN HUBLY:** Thank you.

**BOSN:** Yes. Next proponent. Welcome.

**SHAUNA KISTER:** Hi. My name is Shauna Kister, S-h-a-u-n-a K-i-s-t-e-r. I am a-- let me gather my thoughts. I am a mental health security specialist and Lincoln Regional Center, and I am also a mental, a mental health technician at the Mental Health Crisis Center. My journey begins in 2006. I started out as a psych tech at Lincoln Regional Center. Now that you know Jessi today, I started there before her, and I actually trained her. In my time, I've seen a lot of things in almost 19 years. We are involved on the front line of everything, including putting people in restraints, de-escalating, and having a rapport with all of our clients. I've been lucky enough to not be physically hurt as much as what Jessi has experienced, but that does not mean that I haven't been spit on, hit, slapped, punched, et cetera. This is part of our job. But it also doesn't mean that assault should be a part of it. And if that does happen, that does not mean that people should not be held accountable. At the time of the bill that was referenced earlier in 2012, I was also a technician. I was working overnights in the forensics building, Building 5. Since I was working overnights, I didn't quite see the difference of change of assaults because, historically, third shift, you're going to-- most people are sleeping, ideally. From 2006 to 2015, I mostly worked

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second shift and third shift at that time, then I left the Lincoln Regional Center as a mental health security specialist. I will note too, that our-- even though our titles change throughout the years-- I started out as a psych tech and then it changed to security specialist, and now we're considered mental health security specialists-- just because our titles have changed does not mean the work has changed. Part of this bill is all about wording. That's huge. We are not included in that, much as Jessi has said earlier. At the time, in 2012, it was-- we, we really thought that we were included in it. As time went on and we more talked, we realized we were not covered. As it was apparent to us, it was apparent to our patients that we serve. I know in talking with our hospital administrator-- currently Mitchell Bruening-- he is-- he backs this bill. He wants us to be protected. We are the frontline staff that deal with the patients the majority of the time. Professional staff also interact with the patients, but they're there-- I would say around 10%, compared to our 100% of the time. Working at the crisis center, too, same thing. It's us. We're, we're there for the clients, to serve them and to help them through their journey. But we should not be-- we should not be in fear of being assaulted and to the point that we cannot even live our lives the same, much as Jessi has professed. Thank you for your time.

**BOSN:** Thank you very much for your testimony. Senator DeBoer.

**DeBOER:** Thank you. I wanted to say thank you again to you, because we're hearing these stories, and we're hearing from you firsthand, and I first of all want to thank you for coming, because I'm sure you had to take time off from work, or, you know, find it in your schedule.

**SHAUNA KISTER:** Well-- as you notice, I'm the only one here. That's because it just happens to be my day off.

**DeBOER:** Yeah. So, I appreciate you coming on your day off, and I think probably I speak for everyone on this committee when I say, you know, hearing what you all do and knowing what you all do-- because we see these kinds of things on this committee-- we appreciate you. And right now, I'm seeing you, I'm hearing you, and I'm, I'm, I'm grateful. I don't, I don't know what comes of this bill, if we do some LR, we work on things in general. But at least from my perspective, know that I think you are just as important as everyone who spends 10% of time with them.

**SHAUNA KISTER:** Well, what I will say is that I'm a dying breed. I've been working this 18, going on 19 years. I would say there's about--

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out of over 250 employees at Lincoln Regional Center, there's less than 20 of us that have been there over five years. Lincoln is not that big a town to, to be able to do this job. There needs-- now, we get paid decently now, compared to what we originally did, but we need to be protected.

**DeBOER:** Thank you so much.

**SHAUNA KISTER:** Welcome.

**BOSN:** Any other questions for this testifier? Seeing none. Thank you for being here.

**SHAUNA KISTER:** You're welcome.

**BOSN:** Next proponent. We'll move on to opponents, anyone wishing to oppose this bill.

**EDISON McDONALD:** Hello, My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d. I'm the executive director for the Arc of Nebraska. We are the state's largest membership group for people with intellectual and developmental disabilities and their families. I want to begin by thanking Senator Kauth for her efforts to support and protect these frontline staff. They are absolutely critical, and I believe the intent of this bill is spot-on. However, while we appreciate the intent, the language and the approach here is absolutely wrong, and would have devastating implications for people with intellectual and developmental disabilities. LB535 seeks to increase criminal penalties for assaults on frontline behavioral health providers, DSPs, and other care professionals. However, self-advocates, families, providers and direct care staff have serious concerns about how this bill may lead to increased criminalization of individuals with disabilities, especially for those with intellectual and developmental disabilities, autism and mental health conditions. Many individuals with disabilities experience communication, sensory, and behavioral challenges that can result in involuntary or misunderstood behaviors. Instead of recognizing these actions as a function of their disability, LB535 could result in individuals with disabilities being charged with felony assaults for behaviors related to sensory overload, involuntary movements, or difficulties regulating emotions in crisis situations. This is particularly concerning because many individuals with disabilities already face discrimination and barriers within the criminal justice system. There is a well-documented history of individuals with disabilities being incarcerated instead of receiving appropriate services. This bill does

not include sufficient safeguards to distinguish between intentional harm and disability-related behaviors. Talking about an alternative approach-- number one, Senator Kauth has approached us with an amendment that significantly decreases our concerns, and that's why-- yeah, this has been a huge issue in the disability community. I've encouraged folks to kind of stand down because I do recognize that alternative approach is out there. Number two, I think this needs to be a longer interim study. This is a very complex issue, and not one to be dealt with quickly. And we really need to make sure that we are looking at all of these pieces, and that's going to take a lot longer time. Ultimately, you know, the, the biggest pieces of defending staff, number one, we need to make sure we've got adequate funding so we can pay our DSPs a quality wage, and number two, we need to make sure that we are decreasing the regulatory barriers that are increasing the cost that-- actually, I was just in the Government Committee with Senator Quick's bill, working at-- on some of the deregulatory issues to figure out how we can address this. Lastly, I see the red light, so I'll just close and say if we're going to address this, the place to start instead is the Disa-- Developmental Disabilities Court-Ordered Custody Act, which is in Section 71-1101 to 71-1134. While there are issues with this, mostly because many judges and attorneys are not familiar with it, that's really where this conversation should be. The Legislature did a lot of this work back in 2005, had a lot of these more detailed conversations, and I think that's the place that we want to start, is where this body kind of took off in 2005. Thank you.

**BOSN:** Questions for this testifier? Senator Rountree.

**ROUNTREE:** Thank you, Chairwoman Bosn. Thank you so much, sir, for coming in and testifying today. I am a father of a developmentally disabled son. He's 36 now. No issues as far as-- and I do appreciate all the other testimonies. And, if you knew my son, you'd really come to love him and so forth. But I couldn't see him being in the prison system, going to jail; that would totally disrupt everything. So, I appreciate you taking the time to talk with Senator Kauth. And coming to that I prayed, I have some great providers that come and provide for him, so I am totally about protecting. Everyone deserves an opportunity to go to work and be able to do their jobs that they are passionate about. We need great caregivers, totally, but also to protect them as well. So, I'm a proponent of trying to find that balance where we can take care of our providers as well as take care of our population as well. And so--

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**EDISON McDONALD:** Yeah, I think, I think that's really important just because that spectrum of disability is so wide, and also it varies from time to time.

**ROUNTREE:** It does.

**EDISON McDONALD:** You know, you may have a time when there is an issue that's more significant, and you may have a time when, you know, things aren't as problematic. But ultimately, as you said, there are a lot of great staff out there. And I just want to say to the staff, I so appreciate everything that you all do. It is tremendously important work, and I want to figure out the right pathway to ensure we can protect staff without hurting individuals with disabilities.

**ROUNTREE:** So I applaud the study recommended. Thank you.

**BOSN:** Thank you. Senator Storm.

**STORM:** Thank you, Chair. Thank you for being here. So, you know, you pointed out-- you said the approach is wrong.

**EDISON McDONALD:** Mmhmm.

**STORM:** And maybe what you cited at the end, you cited some--

**EDISON McDONALD:** The DD Court-Ordered Custody Act.

**STORM:** OK. I don't know what that is, or have that.

**EDISON McDONALD:** Yeah.

**STORM:** But so, can you just kind of maybe clarify what, what you would think would be the right approach?

**EDISON McDONALD:** Yeah. And, and I think a lot of this, honestly, and in conversations with Senator Kauth and her staff-- I don't have all the answers. I do think it needs to be an interim study and we need to bring in a variety of expertise. We've tried to kind of quickly set together some of those groups, but it's just been too quick to really have them sit down. The, the Court-Ordered Custody Act is really looking in particular at, you know, those individuals with intellectual and developmental disabilities, and in those types of cases, addressing how you can actually-- how you can actually, you know, ensure that there is justice while recognizing that their disability may impact what that action was.

**STORM:** Now you-- a follow-up question. So, at these care centers like we're talking about, is everyone there-- are they mentally or intellectually impaired? Or-- I don't know that I-- the terminology--

**EDISON McDONALD:** That's where this gets complex, too, because the testifiers that we heard from today, it sounded mostly like from the Lincoln Regional Center.

**STORM:** Right.

**EDISON McDONALD:** You know, and that is much more of a congregated setting. But this also would apply to community-based settings, like Senator Rountree's son. So, you know, it's, it's in a wide variety of settings which you have to go and put it, you know, at each house, or would it just be for the facility? You know, I think each of those requires a, a nuanced approach.

**STORM:** So, is that the amendment you're talking about?

**EDISON McDONALD:** No, no. The amendment we had talked about really cut out those direct support professionals that are those more community-based services. It does still leave more of the behavioral health side, which we do still have concerns about, although much more minor. Those concerns are basically that, you know, people with intellectual and developmental disabilities frequently have that crossover in terms of diagnosis of also having a behavioral health condition. And those cases are tremendously complicated, and-- especially in terms of cost and in terms of potential litigation on these cases could be a real mess.

**STORM:** OK. Thank you.

**BOSN:** Any other questions in light of that? Thank you for being here. Next opponent. Welcome back.

**MATTHEW JEFFREY:** Hello again. My name is Matthew Jeffrey, M-a-t-t-h-e-w J-e-f-f-r-e-y. Still been the case manager for the last year and a half with people living with HIV. Prior to that, for four-and-a-half years, I was a peer support specialist; I'm still state certified as a peer support specialist now. So, for the same reason as with the last bill, I oppose this just because it does add extra criminalization for people living with HIV. Again, if someone with HIV spits on you, you're not going to get HIV from that. So, then the-- for this bill with Section 3, Subsection (4) that references statute 77-3155 when defining frontline behavioral health providers, but that statute refers to working with people that have intellectual

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and developmental disabilities. Just wording-wise, I don't know if that would apply to behavioral health or mental health or substance use. Also, Section 4, Subsection (1)(c) only applies to working in a facility. So, as a peer support specialist, I was community-based. I spent very little time in the office. I would meet people in their apartments or, like, downtown, sitting on the street with them. So, if something was to happen to me then, it doesn't seem like this bill would actually protect me because I wasn't in a facility at the time. I never-- you know, in the four-and-a-half years of being a peer support specialist, I never feared for my safety. I also am a man, so I know that changes that, that situation, but a lot of times what I heard from other peer supports or case managers that the individuals we worked with were more likely to protect us, and it was not likely that we'd be harmed by them. If I was to be assaulted, I don't want them to completely avoid any consequences. I still think, like, a misdemeanor assault or-- depending how serious it was, I feel like the law would apply to a, a tougher sentence. To actually provide insight from the other side, which I didn't realize until after I was looking at this that I had actually-- what got me sober back in the day, I was being charged for assault on an officer. So, that was over 11 years ago. And when I was arrested, I am blackout drunk; I blew like a 0.24.

**DeBOER:** Oh.

**MATTHEW JEFFREY:** I-- yeah. So, I was-- all I remember is being in a bar and then waking up with both arms handcuffed to a bench. So, I didn't have any time to think about should I assault this officer or not. It just happened. I had the-- because it was in 2013, so I had a felony charge for assault that was dropped down to a third-degree misdemeanor. And I don't think anyone that, you know, assaults somebody should get away with that. I think the proponents that testified earlier-- to me, those sounded more like systematic failures than-- that this bill wouldn't fix. But, you know, I'm extremely grateful for the consequences of my actions and the things I chose to do, because it got me sober and got me where I am today. So, I-- you know, I'm not here to say we shouldn't have consequences for people that, you know, assault employees or different workers. I just think what's going to be the, the best for them and also the HIV part, as well. That's it, and I'll answer any questions.

**BOSN:** Thank you very much for sharing your story. Senator Storer.

**STORER:** Thank you, Chairman Bosn. I know this is the second time up-- you've come up to testify, and, and I just want to be sure I

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understand what about this bill you believe is more punitive to folks with HIV.

**MATTHEW JEFFREY:** So, in Section 7-- I'll pull that up here. So, that re-- relates to Statute 28-934, which is assault with the bodily fluid. So, as we expand who can be-- or who's covered by these statutes, it opens up people living with HIV from, like, more chances to be like charged with a felony assault when-- if they are-- if there was spit on somebody. Like, you can't transmit HIV through saliva, which this bill isn't-- like, that statute isn't backed by science. I think it's an old, old law that hasn't been updated. So, I think anything that builds off of that negatively impacts people living with HIV, where if you were to get, you know, not include these people in the-- with the bodily fluid assault section, then I'd be fine with it, or more neutral. But I just-- you open up the number of people-- I'm repeating myself. Did I answer your question?

**STORER:** Sure, but-- I mean, I think so. I would just have to say I, I don't-- I think you're reading something into that that I don't believe that's doing. I understand how you may infer that, but I-- is there any reason to think that someone infected with HIV is more likely to spit on someone than someone who's not infected with HIV?

**MATTHEW JEFFREY:** No, there's-- no.

**STORER:** OK. Thank you.

**MATTHEW JEFFREY:** Yeah, I just think if you look at anyone that is living with HIV, we're just increasing-- like, if they do the same behavior as somebody not living with HIV, they're going to have an increased penalty, which-- there's-- like, science doesn't back up why there would be an increased penalty for that.

**STORER:** I, I can appreciate your concern for that. I just-- I don't see that this differentiates in any way someone with any specific condition, health condition. It, it is the behavior and the act itself with the penalty across the board. But I--

**MATTHEW JEFFREY:** Yeah. I, I-- and I agree. I don't condone the, the behavior and I'm not saying that they shouldn't still have, like, a misdemeanor assault. But it's just as we go from just, like, how the law would be before this bill with just a, like, police officer and, like, the certain health care workers. As we increase that to frontline workers, then there's more chances that somebody living with HIV could potentially have a felony charge.

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**BOSN:** Senator Hallstrom.

**HALLSTROM:** Yeah, I, I was just going to clarify. We generically tend to talk about spitting on a health care worker, but the, the law says strike with a bodily fluid. So, I think it's broader than just spitting. So, there could be bodily fluids that may be problematic from the perspective of a person with HIV, hepatitis B or hepatitis C. And the other issue that I think is important, just for, for your understanding, and, and certainly comment, but it indicates-- and the person knew the source of the bodily fluid was infected. So, I think it there's both the knowing and it's broader than just spitting when you suggest saliva can't, can't cause issues, but it's broader than that.

**MATTHEW JEFFREY:** I-- yeah, thank you for mentioning that. Where-- you know, I'm talking specifically for HIV, where hepatitis and B, hepatitis C, there is ways, like, saliva can transmit those, whereas striking, you know, from just my personal experience or, you know, like reading stuff online, or YouTube videos or whatever-- striking with a bodily fluid would be, like, the same as spitting on-- I, I mean, I'm also not a lawyer, but--

**HALLSTROM:** And, and just-- bodily fluid is broader than just saliva.

**MATTHEW JEFFREY:** It, it is, yes. But for-- if you look at-- the chance of the bodily fluids that can carry HIV, it's very unlikely that that's, you know-- so, like, blood, semen, rectal fluids, vaginal fluids and breast milk, like, those are your fluids that can transmit HIV. So, if somebody was to get like a jug of those and toss them on somebody, like, yeah, that-- you know, that's different than just, like, an interaction where maybe somebody does, like, spit or-- you know, I, I find it-- it's just kind of hard for me to see how in a normal situation where you might get a little bit more violent, or someone might get more violent than they should, that there would be any risk of HIV transmission. But even though HIV can't be transmitted, like, they can still be charged with a felony just because of how the law is written currently.

**HALLSTROM:** Thank you.

**MATTHEW JEFFREY:** Yeah, thank you.

**BOSN:** Any other questions for this testifier? Thank you for being here.

**MATTHEW JEFFREY:** Thank you.

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**BOSN:** Next opponent. Good afternoon.

**JASON WITMER:** Hi. I'm a little different capacity this time. My name is Jason Witmer, J-a-s-o-n W-i-t-m-e-r. I'm here in my personal capacity and not in my work capacity, and this is based off of experience. In 2017, I was hired by an organization, who I'm also not going to mention because I'm not here in the capacity of that organization. They are the first to do peer support in the state of Nebraska, the first to connect with LPD to do outreach. As peer support, LPD would refer them, and they would go out and see individuals in the community to try to maybe not have that interaction no more. And then also, first to do hospital diversion home, which-- the hospital diversion home involves individuals in the community could come to this home for hours or up to about five days to perhaps resolve their issues in the sense of the immediate, and then hopefully balance out enough to, you know, resume their life at the time, and not necessarily end up in the hospital crisis center. I managed the hospital diversion home for about two years, and first, I want to say that it's hard to deal with people that are dealing with things, especially trauma, moving into crisis, et cetera. So, I, I do hear what is being said, but I would say that I not only managed it, I worked there repeatedly, and people would come in with different mental health-- I want to be-- because I have, too, gone through it. But different mental health that they're dealing with, we would say. And people are thankful to get the, the location, but at some point what they're dealing with will start coming through, and there'll be a, a-- personalities that would conflict, which would drive some things. And so, there would be a-- quite a few situations. And then, myself-- and since we are talking about physical altercations, I have been spit on, I have been physically contacted. I have not been assaulted in such a degree that the, the indiv-- the lady has. And so, I can't speak on that. But I do know that criminalizing further than what we already have is not something that helping individuals. Somebody that repeatedly does it over and over and over, you might be talking about a sit-- different situation, different whatnot. But criminalizing further people that going through the crisis does not help. The peer support is a frontline thing. We would not ask for that. We also try to minimize the, the law enforcement engagement because often, when law enforcement comes, it's not a de-escalation situation. And so, I've learned personally, having done it multiple times, that there is possibility of de-escalation after an escalation. And so, for here, all that I'm asking is the intent and the impacts are two different things, so there's two different realities. Our intentions of protecting the front lines has a greater impact on what

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we would want from people to come around to a different position in their life and since the [INAUDIBLE]. If there's any questions, I'll be happy to answer them. I'll be back for something else in a different capacity. But I did want to present-- there is other sides of this, with respect to those who have been through the, the worst parts of this, when people are not quite respectful of situations.

**BOSN:** Thank you for sharing your testimony. Any questions from the committee? Just for clarification. So, since I've toured that facility with you, and I--

**JASON WITMER:** Yes.

**BOSN:** Is it your position that those escalate-- did I understand you correctly to say that you have concerns that those individuals who are volun-- because my recollection was they're volunteers who staff that.

**JASON WITMER:** No.

**BOSN:** Oh, they're not?

**JASON WITMER:** Volunteers can come and get trained and staff it, but everybody is trained in intentional peer support, and then there's further training that goes on.

**BOSN:** OK. And so, are those individ-- is it your concern that they would be looped into this, and they wouldn't want to be?

**JASON WITMER:** Well, that is a concern. I tried to talk fast. I was not prepared to do this, so I, I asked you to, you know, hear that, but-- yeah, and when we're talking about frontliners, peer support is the frontline as well. Where-- you know, hospital diversion house, that means somebody was going towards a crisis and they chose us. We talked to peer support inside the prison system. Often, individuals in the prison system who are taught peer support are diverting from physical contact with correctional officers, which is a frontline. What I-- what I'm saying is all them people doing help, we're also on the other side of this. How many of those who are already in the community and who are-- don't have felonies are now felons with the consequences of felonies, which are deep impacting, not to mention a, a situation that we already have penalties around. It's moving to another area, and where does that end for the individual with, with all due respects to the harm? It's a complicated area, because I work in it now; talking about the harm, harm done to people who've done harm, and how we can best practice this without disregarding the harm done, if that all made sense right there.

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**BOSN:** Maybe. We can talk about it later.

**JASON WITMER:** Well, I'm saying when I talk about prisons, just in reference,--

**BOSN:** I understand.

**JASON WITMER:** --I'm not disregarding those who have suffered the harm at what people have done. But there is more to what society's accountability is in this area, and I think this is one of those areas where we're starting to move towards who-- what-- who we most cherish when we protect, and forgetting that it's a whole community that we want to protect, and we need to think about even those who at this moment we don't-- or, we're not happy with. Pleasant way of putting it.

**BOSN:** Fair enough. Thank you for being here.

**JASON WITMER:** Thank you.

**BOSN:** Next opponent. Anyone else wishing to testify? Moving to neutral testifiers.

**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 in opposition to the bill, and also on behalf of Voices for Children, because this bill is a little bit broader than the similar bill that Senator Ballard did earlier, and it does impact some youth that are in some facilities. You've got my testimony. You've heard me make this argument not only earlier today, but also on a similar bill that Senator Ballard did. Maybe I'll just respond to some of the things that were discussed before. Senator Storer asked about what happened in 2012. Well, that's when we sort of started this broadening of-- it used to just be assault on an officer, and I think assault on correctional officers that were entitled to the automatic enhanced felony level for every assault and every incident. And then in 2012, it was expanded to health care providers. If you look on page 10 of the bill, lines 17 through 20, when the Legislature passed that law, they directed that all hospitals and clinics that would be impacted by it post signs that were clearly visible with these exact words. And I think Senator Kauth even acknowledged that in her introduction, that if you're there and you are a patient, or you're likely to get caught up in something like this, you can see that sign. And I don't know-- if we talk about deterrence-- how anyone, just by

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reading the sign, is able to somehow delineate the difference between a health care worker and a health care professional. And I've made this point before, but I don't want to overstate it, but I think it is-- to answer the question, do we have any evidence that this is deterring any behavior in the hospitals and clinics? I think this is an argument that it does not, because we're still hearing these bills. I think what it does do, what Senator DeBoer alluded to in her questioning earlier, is it does create an impression among the workers that some are more special or more entitled to protection than others. And I don't think that's the intent of the Legislature necessarily, but that's just kind of what the Legislature did when they were asked to increase a penalty. They were asked by a specific group, and they did it. And now, they're asked by another group to do it as well. Senator Kauth mentioned one thing-- the, the, the woman who spoke before about being assaulted referenced that her case, albeit it was a misdemeanor charge, was dismissed. I don't know why it was dismissed. I'm speculating, but it could be because the person that committed the crime was perhaps not competent to stand trial, and Senator Kauth referenced competency. Competency is something that the courts have created to make sure that a person who is on trial understands the trial process. It's not a defense that you raise at the time you committed the crime; that's an insanity defense, that's completely different. But competency is really something that's just of convenience, if you will, to the court system. And the U.S. Supreme Courts developed a standard, and so has the Nebraska state Supreme Court. But basically, before you can be put on trial, you need to have at least some appreciation that you're in a courtroom; that you're charged some kind of a crime; that you know what the judge is there to do; that you understand what the prosecutor is there to do; and that you know what your lawyer's there to do for you. It's very rudimentary. If they cannot make somebody competent, then the court system can dismiss a case, or many times order that the person be restored to competency. So, Senator Kauth talked about some people who perhaps are developmentally disabled or people who have serious mental health conditions. It's not a filter process that law enforcement has anything to do, and it's not even a filter process that the county attorney has anything to do, although they will sometimes consider it when to charge cases. But I want to make that clear, that we're talking about competency; we're talking about something different than any kind of mental health defense. I'll answer any questions, if anyone has any.

**BOSN:** Thank you. I have a few questions, and maybe that'll spur some others. But you-- your examples, I think, almost prove her point of

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the competency safeguards protect a-- any prosecutorial misconduct-- or even someone--

**SPIKE EICKHOLT:** Right.

**BOSN:** --charging this on somebody who has a developmental disability, and didn't understand the gravity of the situation and, and acted because of a med cha-- you know, those are the things I recall.

**SPIKE EICKHOLT:** Right, right.

**BOSN:** Often, it would be someone at the crisis center would have a med change, would have an, a, you know, bad reaction-- I'm not, I'm not good with the medical terms,--

**SPIKE EICKHOLT:** Right.

**BOSN:** --but you know what I'm trying to say-- to the medical treatment, and then would do something physical to someone, and we would say, OK, this is clearly in response to this, we-- they were not competent at that moment and we wouldn't charge those. That also goes into the prosecutorial discretion, which I also assume had something to do with the example that we received earlier, given the individual who she said she spoke with from the county attorney's office. But there's also things where they do mental health treatment courts, and someone could complete those mental health treatment programs or mental health diversion. All of those are designed to protect the individuals who fall into that category, but there still has to be some protections for these individuals who-- and you have somewhat conceded that, you know, we've made this carve-out for law enforcement because they're acting within the scope of their responsibilities, and we need them to act within the scope of their responsibilities. And to some extent, I think you agreed that that's why we did the carve-out for medical professionals, because they can't walk out of the room; they have to be there, that has to be their job. But why should-- I would argue that, you know, I'll-- as an example, when you go in to have a baby, the doctor who's the medical professional is there for a very short period of time. The other individuals who help in that delivery process are there for hours. They are just as-- if not more important than the person who qualifies under this, than the individuals who really spent the majority of the time during the, you know, "experience," we'll call it. So, if-- the point is, we want to protect those who are acting within the capacity and the scope of their responsibilities, why would you oppose these, given that there's

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all these safeguards in place for any misuse or any individuals who are being caught up that shouldn't be?

**SPIKE EICKHOLT:** OK. I'll try to answer some of the things that you said and be responsive. First, with respect to competency, I don't know that it's necessarily a safeguard for the defendant. As I said before, competency is really, for lack of a better term, a convenience for the court and to make sure there's some kind of dignity in the process, that you're not just putting somebody in the process of a criminal trial when they are just babbling incoherently or they're just sitting in a catatonic state. The court-- if you look at the reasoning-- Guatney and those-- it has nothing to do with a safeguard for the defendant; it's basically to make sure that the dignity of the criminal justice process is maintained, that we just don't try mentally ill people when they have no idea they're even in a courtroom. So, that's the purpose of competency. So, I understand that point, that-- for lack of a better term, your word "safeguard" is there. But increasing the penalty doesn't impact that at all. You could make these things punishable by death. If a person is not competent to stand trial, those charges are going to be dismissed, and a victim that's injured is not going to feel that their injury was acknowledged by the state. And I think that brings the problem, what do you do? And Edison McDonald referenced it before, we do have a developmental disability custody act, it's in Chapter 71, and it is a relatively new law. And I was involved in a case when I was still in the public defender's office where that was prosecuted, where you can hold somebody accountable who is never going to be found competent. Right? Who's ever going to be able to understand the process in the criminal setting, but that's not a factor in the Developmental Disability Act, because you're not necessarily punishing them in the criminal system as much as you are making sure that they are not a threat to themselves or others, and can be in custody. So, that's maybe some way to look at it, right? And then, the mental state of the defendant, if you will, is not really material. But that's not what this bill does; this bill doubles down, or at least it sort of looks to the criminal justice system to address this problem that's happening with people, many times, who are having mental illness. So, I don't know what else you said there that I, I-- maybe I missed.

**BOSN:** Well, I, I, I think your answers are-- address most of my questions. But I guess I also think that it-- there's a difference between increasing a penalty versus broadening, opening the umbrella and covering more individuals who are, you know, acting within the scope of--

**SPIKE EICKHOLT:** Right. OK. That's the point.

**BOSN:** --the men-- medical facility. We're not increasing the penalty from assaults, you know, which is the alternative, right?

**SPIKE EICKHOLT:** Right.

**BOSN:** If everyone-- if we're going to start including all these groups, then maybe we should just say all third-degree assaults are Class IV felonies.

**SPIKE EICKHOLT:** Well, [INAUDIBLE]--

**BOSN:** And I know you oppose that, so. But my point is, what we're doing is we're opening the umbrella to cover more individuals who are in the medical field to protect them. And I think, you know, I, I get the concerns and the-- overall look-- looking at this to make sure that we're taking a, a more meaningful approach to it.

**SPIKE EICKHOLT:** Right.

**BOSN:** But I do think we're being faced with a problem, and it's a workforce shortage problem as much as it is respecting those who are suffering from a mental health crisis.

**SPIKE EICKHOLT:** Right. I mean, you're right. The argument you made about opening the umbrella is an argument why, arguably, the Legislature shouldn't have gone down this road. But you understand how it's so-- you want to do something to be responsive to people who suffer this. You can't, you can't charge cases. That's the county attorney's decision; that's the cops. You can't make competency findings. That's the court's role. But what you can do is you can pass a law, you can increase a penalty, and there's no fiscal note for it. It's not like funding behavioral health, right? That's going to cost the state something. This doesn't. So, it's very tempting, and it's our position, it's just wrong, and it's not even really responsive.

**BOSN:** I can appreciate that. Any other questions in light of that? Thank you for being here. Any other opponents? Moving to neutral testifiers. And while Senator Kauth makes her way back up here, I will note there were 13 proponent comments, 24 opponent comments, and 1 neutral comments submitted.

**KAUTH:** Thank you very much, Chair Bosn, and committee. I do want to respond real quick again, to reiterate your point, Senator Bosn. This is about opening the umbrella, this is about saying if we are offering

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protections to some of our workers, they should be offered to all of our workers. This is definitely not about expanding penalties and making things tougher for people who are already in a tough situation. But we are-- I am very concerned about our workforce. You heard some amazing test-- by the way, thank you for your kindness to our testifiers. They're there to take care of people; that is their mission in life. For them to be able to do that, they need to be able to believe that when they go to work, they're going to be protected by the system that they are serving. And that system will occasionally have failures, but it's our job to make sure that we put as many protections in place so that they can continue to serve those people who so desperately need it. So, this bill is about expanding that protection, making sure that we don't have two separate levels of people who qualify to have those added enhancements. I would very much like to-- again, we heard Senator Ballard's bill, LB26; we heard Senator Clouse's bill, LB322. It looks like we have a lot of work to do. I would like to encourage this committee to consider doing a legislative resolution, whether it's the committee, whether it's myself with, you know, other senators who are interested in, in doing it, to do a deeper dive and study this, because again, it was kind of like, OK, we need to protect these people. We've already got these protections in place, but we kept finding more and more little piecemeal kind of protections added, and yeah, Spike was exactly right when we said, you know, we want to do something, so someone comes to us and we, we say, OK, we'll try to fix that. So, we've piecemealed this, and I think that we do owe it to the people who take care of those who are most in need in our-- of our-- in our community to look at this a little bit more holistically. So, with that, I'll close.

**BOSN:** Any questions? Senator Storer.

**STORER:** Thank you, Chairman Bosn, and thank you, Senator Kauth. After listening, do you-- would you agree-- I mean, I, I feel like some of my questions or concerns have been answered, just in listening to all the testimony and the questions, in terms of competency. But that sort of is that safety net for those-- you know, those that have expressed their concern if somebody is having a mental health crisis, if they're developmentally, you know, disabled in some way, that, that we do have protections in place to prevent those folks from unduly being--

**KAUTH:** Charged.

**STORER:** --prosecuted. Right.

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**KAUTH:** Exactly. And, and it was, it was great that Spike kind of gave the definition of competency, because I think I did use it incorrectly. But yes, those are in place, and we do need to make sure individuals with disabilities who do not know what they're doing-- they're not going to be acting maliciously. People who are having a mental health break or, or some sort of a psychotic episode, they can't be held responsible, and that's already in law. So, yes, it's my intention that we're not punishing people for health care crises, but that we are making sure that the people who are there to take care of them during their health care crises are as protected as possible.

**STORER:** Thank you.

**KAUTH:** Thank you.

**BOSN:** Any other questions? Thank you very much.

**KAUTH:** Thank you very much.

**BOSN:** That concludes LB650-- excuse me, LB535. We will next take up LB657 with Senator Andersen. Before we get started on LB657, can I see a show of hands who here is intending to testify on this bill? Four in the back, five, six. All righty. Thank you. Senator Andersen.

**ANDERSEN:** Good afternoon, Chairwoman Bosn, members of the Judiciary Committee. I am Senator Bob Andersen. B-o-b A-n-d-e-r-s-e-n, and I represent District 49, which includes northwest Sarpy County in Omaha, Nebraska. Today, I'm introducing LB657, the "Respecting and Ensuring Fairness for Sporting Officials Act"-- I'll always called it the REFS Act-- to address the rising incidents of violence and harassment against sports officials in Nebraska. LB657 does three things. First, it creates the offense of assault on a sports official. LB657 will make it a Class IIIA felony to intentionally or knowingly cause bodily injury to a registered referee, umpire, or similar official before, during, or immediately following an athletic contest. Second, it ensures that sports officials receive similar legal protections as other public service officials, such as officers, emergency responders, state correctional employees, so on and so forth. Third, it reinforces Nebraska's commitment to fostering a safe and respectful environment for athletic competition. I'd like to thank Nate Neuhaus, assistant director and supervisor of officials for the Nebraska School Activities Association, the NSAA, and Senator Barry DeKay for their collaboration on this legislation. There's a growing problem in Nebraska and nationwide. Sports officials are facing escalating threats, harassment, and physical assaults. Senator DeKay's

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legislative study, study-- LR129, during the summer of 2023-- confirmed this troubling reality with firsthand accounts and survey data from more than 1,000 Nebraska officials. The study found 53% of sports officials have been verbally assaulted by a spectator; 20% have been threatened by a coach; 14% have been physically threatened by a spectator; and 3% have been physically threatened by a coach or player. These numbers reflect a widespread culture of hostility and a lack of accountability that's discouraging officials from continuing their service to youth sports. As a result, Nebraska is experiencing a shortage of sports officials, leading to fewer athletic opportunities for our children, increased scheduling difficulties, and a diminished quality of competition. If we do not take action now, this shortage will worsen, negatively impacting high school and youth sports programs. Simply put, without officials, there are no games. LB657 establishes the specific legal penalty for assaulting a sports official, bringing Nebraska in line with 22 other states that have enacted similar protections. The bill defines a sports official as a registered referee, umpire, or similar official participating in an athletic contest. It creates the offense of assault on a sports official when an individual knowingly causes bodily injury to an official while they are performing their duties. It classifies this offense as a Class IIIA felony, ensuring that violent actions against officials carry meaningful legal consequences. In front of you, there should be a three-- there should be a page and line amendment that makes some minor changes to the paper, but it would broaden the range of sports officials by striking the "and" on page 2, line 11 and replacing it with "or." This may seem small, with a significant change clarifies that all sports officials, whether affiliated with an associating organization or not, are protected under this law. Regarding the felony charge-- change from Class IV to Class IIIA, we were advised by the Sarpy County Attorney's office that a penalty of Class IIIA would be most appropriate. Mr. Scott Earl from the Sarpy County Attorney's office will address that suggested change immediately following my opening. Thank you for your time and attention. I look forward to working with the committee to advance LB657 to the entire Legislature for consideration, and I'm happy to answer any questions you might have. Thank you.

**BOSN:** Thank you. Senator McKinney.

**McKINNEY:** Thank you. Thank you, Senator Andersen. This is a-- this is an interesting bill. Being a coach myself and, you know, seeing the interactions between parents and coaches and referees, and the sort. I'm just wondering-- just because I've, I've been at the youth level,

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the high school level, why just-- if-- why just, why just referees?  
Why not coaches?

**ANDERSEN:** It says sporting officials, period.

**McKINNEY:** No, I'm saying-- why-- but a, a coach isn't an official.

**ANDERSEN:** True. We'd certainly entertain an amendment to add that to the bill.

**McKINNEY:** Also, what does a cla-- what does a IIIA carry?

**ANDERSEN:** I would defer to the Sarpy County Attorney. I'm obviously not a lawyer, so.

**McKINNEY:** OK.

**ANDERSEN:** That's more their lane than mine.

**McKINNEY:** And last one for now. How do you practically see this, like, being implemented? So, this law passes, what happens next?

**ANDERSEN:** I don't understand what you mean. I mean, are you asking what would happen at an, at an official event?

**McKINNEY:** Yeah. So, if this law passes and, and there is a penalty enhance-- there is a penalty.

**ANDERSEN:** Sure.

**McKINNEY:** How does it get implemented?

**ANDERSEN:** No different than it does now. If you look at the event in Papillion back in November of 2024, just what, three months ago, a, a, a spectator assaulted the referee, they were arrested. Unfortunately, they paid \$1,000 fine, it was a simple misdemeanor, and they're gone.

**McKINNEY:** No, I'm just wondering--

**ANDERSEN:** Maybe I don't understand your question.

**McKINNEY:** Because I'm assuming the, the change is meant to also deter.

**ANDERSEN:** Absolutely.

**McKINNEY:** So, if, if that's so, if the, if the law changes, how is this going to be implemented to deter? Like, how are-- how are

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spectators or somebody who might potentially assault a referee going to be deterred?

**ANDERSEN:** Sure, I, I, I appreciate your question, and actually must have read my closing, because in my closing, I speak directly to that, that the primary purpose of this bill in it being a felony is as a primary deterrent. Right? But if somebody does choose to take those actions and assault a referee, there have to be, you know, significant consequences to their actions. Now, for how do you get the word out-- I guess that's kind of what you're asking, right? I would assume through the schools, through the sporting organizations, through the referees. I mean, there's any number of different organizations that you could educate them, and say, "Here's the way it is in Nebraska. Don't do it." It could be at the orientation for whatever sports team, when the parents come. That could be part of the information passed on to them.

**McKINNEY:** All right. And actually, last question. So I've been asking everybody that brought bills today this, this same question about-- well, yeah, everybody. I see that your bill technically doesn't have a fiscal note, but if we're potentially-- if, if this is a widespread issue and the reason why you brought this bill, people get charged with a IIIA-- I don't know if they actually go to prison or not, if, if, if-- but if they do-- let's say they do. We have a prison overcrowding crisis. Have you calculated that, that factor into your bill, that we're already overcrowded, and--

**ANDERSEN:** Sure.

**McKINNEY:** --passage of this bill is going to make us more overcrowded?

**ANDERSEN:** So as you referenced, as the straight man for me, the primary purpose is as a deterrent, right? So, we'd hope this would be enough to deter people from doing it, and we wouldn't get to the actual event where it's Class III [SIC] felony. Now, what I would say to you-- I understand your question about the, the prisons and overcrowding and all that. And I guess I'd defer you to the, to the Fiscal Office here, since they put together the fiscal note.

**McKINNEY:** Yeah, I know.

**ANDERSEN:** --that's not really my lane to go and look at prison overcrowding and what the implications would be.

**McKINNEY:** Thank you. It, it did, it did give me a bill idea for next year. But thank you.

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**ANDERSEN:** Sir.

**BOSN:** Senator Storm.

**STORM:** Thank you, Chairwoman Bosn. Thank you, Senator Andersen. So is this-- have other states done this?

**ANDERSEN:** 22.

**STORM:** 22?

**ANDERSEN:** Yes, sir.

**STORM:** I guess I didn't hear that. OK. OK. And have they seen an effect from this? In a positive manner, I guess. Do you know?

**ANDERSEN:** That I don't know. I haven't studied the results of their--

**STORM:** OK. That's all I need. Thanks.

**BOSN:** Any other questions for this testifier-- for Senator Andersen? Sorry.

**ANDERSEN:** I answer to anything.

**BOSN:** You are the testifier, but I got caught off guard. OK. Thank you. Are you saying to close?

**ANDERSEN:** Yes, I will. Thank you.

**BOSN:** Thank you. First proponent. Welcome.

**SCOTT EARL:** Thank you. Good afternoon, Chair Bosn, and members of the committee. My name is Scott Earl. I'm an-- I'm the criminal division lead for Sarpy County. I've been--

**BOSN:** Could I have you spell your first and last name for the record?

**SCOTT EARL:** I, I apologize. Thank you.

**BOSN:** That's all right.

**SCOTT EARL:** S-c-o-t-t E-a-r-l. I'm the criminal division lead for Sarpy County. I have over ten years of experience prosecuting criminal cases. I'm here to speak in support of LB657, specifically regarding the change in the penalty. When the Legislature, Legislature previously amended the felony sentencing structure, Class IV felonies

carry with it a presumption toward probation. It seemed the legislative intent of this presumption was for the sake of assisting individuals with substance abuse issues by providing probation services. It seems inappropriate to offer that presumption to this type of targeted assaultive behavior, especially because a tradition of third-degree-- or, traditional third-degree assault does not carry such a presumption of probation; it would be a Class I misdemeanor, which does not carry that, that presumption. That is my primary purpose in coming to speak to you here today. I will say I personally did u-- did used to ref youth sports myself for about five years. I've had experiences of parents and, and coaches confronting me, including one following me to, to my car once before. Thankfully, I was never actually physically assaulted, but we do have a real issue in which we've just lost our sense of decorum. The behavior of fans, where they start to dehumanize officials has just got-- gotten to a point where it's been quite unreasonable. And so, that's why I do think this is something that is appropriate. I, I wish Senator DeBoer was still here, because-- to speak to her question that I noticed she had brought for similar, similar bills that have been brought up today, she mentioned, hey, is this going to be more of a burden on prosecutors and law enforcement? Law enforcement, I don't think it would be any additional burden. The law enforcement process is really still going to be the same as far as the investigation. As far as prosecutors, it shouldn't be a major difference in burden. The process is a little bit slower going through the felony pro-- progression, and there may be dep-- depositions that are taken, but realistically, it would not be an additional burden, hardly at all, in my opinion. I'm welcome to take any questions if-- that anybody has.

**BOSN:** Senator McKinney.

**McKINNEY:** Thank you. What does a IIIA carry?

**SCOTT EARL:** IIIA is 0 to 3 years in prison. Also carries with it, if incarceration-- there's a mandatory post-release supervision sentence, which is like a probation or a parole that's after incarceration. That's up to 18 months. It is also finable, it is also probation-eligible.

**McKINNEY:** Oh, I did just think of something. So, couldn't-- if, if, if somebody's-- like, defendants, could they argue a crime of passion? Because it's at a sporting event, it's a heightened situation, and I've seen dads and moms jump out of stands because their kid is lost, and ran on mat. So, I'm just wondering.

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**SCOTT EARL:** Sure. You know, I mean, certainly there's going to be aspects of those kinds of things. I don't think that's going to be an appropriate offense [SIC] in the, in the court system, but that may be things that are considered as far as some of the aspects of what is an appropriate plea or eventual sentence, as far as things. Because I-- yeah, I understand what you're saying. You know, this-- kind of flipping it from the inverse though, at the same time, officials are often-- especially when it comes to-- well, I used to ref YMCA sports-- they're often alone, or maybe have one backup.

**McKINNEY:** Yeah.

**SCOTT EARL:** Sometimes they're even teenagers, and there can be a large angry crowd, sometimes. That can happen.

**McKINNEY:** Yeah.

**SCOTT EARL:** Hopefully, the other side is willing to kind of step up for the referee. But, you know, we can't promise that's going to be the case. Unfortunately, we've gotten into a culture where nobody seems to like the ref anymore, right?

**McKINNEY:** I "reffed" before and had parents walk up on me, so I-- I've, I've been in the position. I'm officially been a ref, but-- when I was at UNO, I did it, so. All right.

**SCOTT EARL:** Fair enough.

**McKINNEY:** Thank you.

**BOSN:** Any other questions for this testifier?

**SCOTT EARL:** If, if I may, just getting back to the IIIA penalty, to distinguish it from the Class IV, though-- the Class IV is up to two years in prison. However, like I said, it does-- the Class IV does carry with it that mandatory presumption of probation, which means that by default, that should be going towards probation versus at least the IIIA felony that don't-- does not have that presumption, which I think is-- again, for assaultive behavior, I don't think that having that presumption is appropriate, so.

**BOSN:** Thank you. Senator Rountree.

**ROUNTREE:** Thank you, Chairwoman Bosn. I appreciate it. Yes, sir. You were talking about the difference in the Class IIIA and the Class IV. But as prosecuted, and we talked about the one that happened back in

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November, how many have we had? I know you talked about the loss of sense of decorum, and it is prevalent all over. But as far as arrests that have been made or attacks that have been made, how many have we had that you might know of?

**SCOTT EARL:** That's the only one I know of.

**ROUNTREE:** Only one you know of?

**SCOTT EARL:** Yes, sir.

**ROUNTREE:** OK.

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

**SCOTT EARL:** Thank you.

**BOSN:** Yes. Next proponent.

**SYLVO JOHNSON:** Good afternoon, everyone. My name is Sylvo Johnson, S-y-l-v-o J-o-h-n-s-o-n. I'm a senior. I've been an official. There's a difference between referees and an officials. Referee, anybody can do that. That's the people who are in the stands. They're referees. But when you're an official, you have the jersey on that represents your craft. And I happen to have been doing that since 1993. I've been an official since 19-- 2003. That's when I took it serious. The NSAA, national-- it's the Nebraska School Activities Association, sports officials-- I'm concerned about the ability to recruit, train, work and member-- to mentor new sports officials. I currently am a vice president of an organization in the metro area in Omaha. There's four of us on staff-- four of us on the committee, that we have a staff of over 170 officials. And there is a variety of skills of-- that officials' teams, including time management skills, developing leadership skills, maintaining physical fitness and resolving inter, inter, intra-- entrepreneur-- sorry-- intra-- interpersonal conflicts. Based on Nebraska Schools Activities Association survey completed in 2022, 5.4-- 5.43%, that's 59 out of a 100-- 1,000 of-- 1,087 registered officials were under the age of 24. In terms of when officials begin working, 492-- that's 45% or more started prior to their 25th birthday. And more recent-- more recent than 2025, an essay-- a webinar, 117 officials were first-time registrants. The 2022 survey, they'll also show an opposite trend. When asked, "In your opinion, is there a problem with poor sportsmanship?" "Who causes the most problems?" 81% of them stated the spectators were the issue. When asked "Have you ever removed or requested that a spectator be removed for poor sportsmanship or behavior?" 40-- 46%-- it's about 505

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officials-- stated that, that had, had done so at least one time in their officiating career. When asked "Have you ever been verbally or physically assaulted/threatened before, during or after a contest," 51%-- it's about 560 of those officials-- had stated they had been "expectator"-- they had been by the spectator. And finally, when asked, "Have you ever felt unsafe or feared for your safety" due, due to unsporting behavior, 308, 20% officials stated that a spectator was the cause. I'm, I'm concluding [SIC] this data to show that when there is a feeling of safety, we can reduce the shortage of officials and the end of their three-year by maintaining a high-quality number of impactful individuals. I want to say that when you ask questions about felonies and all this stuff, there's nothing in place in Nebraska for officials' safety. And if you want to ask me the question about imprisoning or putting someone in jail, I worked in the federal law enforcement. I was in the Department of Justice, Federal Bureau of Prisons-- Bureau of Prisons. I've seen all kinds of backgrounds of individuals in those prisons. None of them were in jail because they assaulted officials. Referees perhaps, or basketball, sports officials-- I'm, I'm generalizing officials in general. There needs to be some kind of protection. Our prisons are overcrowded, there's a place for somebody-- there's a place for everybody who commits a crime. Doesn't have to necess-- necessarily be here in Nebraska, but it could be-- they can be placed in other places until their time is served, I believe. So, again, I appreciate all of the information that I share with you, and any questions that you may have, I can answer them the best I can.

**BOSN:** Thank you. Any questions from the committee? Seeing none. Thank you for being here. I appreciate it.

**SYLVO JOHNSON:** You're welcome. Thank you.

**BOSN:** Next proponent. Welcome back.

**DeKAY:** Good afternoon, Chairman Bosn, and member of the Judiciary Committee. For the record, my name is Senator Barry DeKay. I represent District 40 in northeast Nebraska, and I am here today in a personal capacity to testify on the support of LB657. I know it is a bit unusual to have a senator testify on another senator's bill, but given that I am a retired women's college official, still working high school basketball, and have been working as an official for the last 41 years, I figured I would be able to give a little bit of background to-- insight on this legislation. Two years ago, I introduced an interim study, L-- LR129, to examine-- to try to examine whether sportsmanship issues are linked to the shortage of officials

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registered by the Nebraska School Activities Association, which is to say high school sports officials. This study was done in collaboration with Nate Neuhaus, with the NSAA assistant director and supervisor of officials. If you need a copy of the LR report-- LR129 report, either you or your office can reach out to my legislative aide, and he can provide a copy. As Senator Andersen highlighted, of the 1,096 sports officials in Nebraska, he described the results of my survey of LR129 from 1923 [SIC], so I won't repeat those survey results. The results of the 33% the officials surveyed indicated that they have considered stepping away from officiating due to poor sportsmanship issues. I did consider introducing legislation on this topic last year, but since I am still officiating games here and there, I did not feel it was fully appropriate for me to bring legislation until I am fully retired. This is why I appreciate Senator Andersen for taking up this issue and introducing this bill, so that we can have this conversation. From what I have seen and heard or experienced, something needs to be done about sportsmanship. Anecdotally, a lot of young officials are leaving after maybe two or three years because-- primarily because of bad sportsmanship by players and fans. We don't really do this for the money; we do it for the camaraderie and with other officials and the love of the game. Without officials, you do not have games, which would be devastating to many student athletes. I think LB657 is a good place to start. With that, I would be happy to take any questions, and I appreciate them. Thank you.

**BOSN:** Thank you. Any questions? Senator Holdcroft.

**HOLDCROFT:** Thank you, Chairwoman Bosn. Senator DeKay, you know, I've seen you officiating. Do you think you're really the best person to be speaking for this bill?

**DeKAY:** And you won-- you would wonder why anybody would yell at me. No. Yes, sports officials-- and I will give a little bit of history. When you're a young official, people are going to test you. Coaches are going to test you, fans are going to test you. The longer you're in it and the more you're seen in different venues, fans do come to appreciate you. They may not always agree with your calls, but they do appreciate the job you're doing, and, and the work you're doing for the game. So, with that, like I said earlier, if you're a five-year official, a five-, six-year official, the chances of you having a long-term career in officiating go up a lot. If you're two to three years, when you're first starting out, you accept some of the criticism you're taking. After you get into it, you're tested beyond your bounds of what you think is acceptable, and if you don't have the-- if you don't get that hardened skin, thick skin, that's when

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officials walk away from the game. And to not let those younger officials have the opportunity to grow in a game is very detrimental. In the urban areas, Lincoln and Omaha, you do have more officials, but you're still starting to see that shortage. And it's not just in basketball; it's in wrestling, it's in football, it's in every, every sport out there. And it's going out to rural Nebraska, and it's tough-- when you're traveling 150 miles to do a basketball game for \$150, it's tough to say you're doing it for the money. But to do that, the time commitment that these people put into the game is worthy of being recognized in this capacity, and have safeguards put into place to protect them from unnecessary verbal or physical abuse.

**HOLDCROFT:** Thank you, Senator DeKay.

**DeBOER:** Are there other questions? Senator Hallstrom.

**HALLSTROM:** Senator DeKay, more of a comment. I know you've officiated for more than 40 years. The time commitment, the personal commitment is great, the compensation is small, but your love of the game keeps you in it. And-- thank you for your service.

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

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

**ROUNTREE:** Thank you, Vice Chair. Senator DeKay, as you have officiated, we do thank you for that great love of basketball. But as we talked earlier about the loss of decorum, do you think this bill goes far enough? And we talk about all of the items that you might get from the stands, parents are really just criticizing, and sometimes they might issue some threats to you, could be terroristic threats. We talked to someone, talk about somebody following them out to the car and things of that nature. So, does this bill encompass all that we want it to encompass, or?

**DeKAY:** This bill is a great-- thank you for the question. This bill is a great starting place. There have been other practices tried to be implemented, from banning fans one, five games a season, whatever, and that's-- it-- and that would have been great, if that would have deterred it at that point. But to implement those restrictions, is-- it's tough on the schools to implement them, especially in school-- small schools. You might have-- you might have an unruly fan that might be the president of the school board. Are you going to tell him-- and those things are tough to implement. And in the large schools, you have to have people that can and will take up that banner

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for you. So, to put more of a-- more teeth into a bill like this, to implement a fine and know that there are consequences for the action, I think it's appropriate first step because softer issue-- softer approaches have been tried, and they have not been successful. And you could see the amount of officials that have dropped since particularly 2020, and have not returned to any of these games. So, we're-- if there-- I mean, it-- it's high school sports, and it's for the love of the game. But we're at a crisis point with our officiating where people are doing multiple, multiple site games in a day. [INAUDIBLE] and when I say that in rural Nebraska, you might have a football game on a Friday afternoon at 2:00 at one place and have to drive 75 miles to another place to do a game that night, and it used to be on Friday nights-- everybody talked about Friday Night Lights, but now we're talking Thursday night; we're talking Friday nights; we're talking Saturday afternoon; we're talking Saturday nights, because we don't have football crews to cover those games. And it's same way with basketball, we're-- officials-- especially when we get into the conference tournaments and holiday tournaments and stuff, you have officials that are driving from one venue to another, and those venues might be 100 miles away, to cover those games. So, we're at a-- we're at a tipping point. And in rural Nebraska, where I'm from, if we start having people come from the urban area of Omaha, Lincoln out-- to drive four hours out to a Valentine or a school like that, it's going to dictate how long they want to stay in the game if they think they have to drive 4 hours to work basketball when they're not able to get games 20, 30 minutes from home. So, it, it dictates how-- I think this dictates how the future of officiating goes, so.

**ROUNTREE:** All right. Thanks. So I think I took a little bit out of this that the schools themselves already have some-- we use the term "guardrails"-- some guardrails in place--

**DeKAY:** The--

**ROUNTREE:** --in order to kind of deal with that unruly behavior.

**DeKAY:** The school-- the schools and the NSAA have tried different approaches, and, and we tried to be as applicable as we could with it, and-- but with that taking the softer approach, it hasn't showed the results that we would have liked to see, so.

**ROUNTREE:** All right. Thanks so much. I appreciate it.

**BOSN:** Senator McKinney.

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**McKINNEY:** Thank you. Thank you, Senator DeKay. I had asked a question earlier about a possible, like, crime of passion. Because as a coach that's been in the trenches, you know, coaching, I've seen the situations happen where parents ran on the mat, or a coach and a ref is going at it, or a parent and a ref. And that's what I'm wondering, if this would even deter, because of-- it's such a heat-- usually, it's such a heated situation, especially when it's like a close game or a close match, that the stuff just happens. And you'd be like what, what just happened? So, I don't even know if, like, the conscious mind is there to stop and think, because people are so passionate and it gets so heated. And that's what I'm wondering when I think about this. Even if we enh-- like, make this a-- enhance this penalty, will it even prevent it? Because I've seen the situations firsthand, and a lot of them just, just happen like that, where it's just a heated match and you just see somebody just jump out the stands, or, or it-- it's just-- that's what I'm just wondering.

**DeKAY:** Well-- and thank you for the question, and I understand where you're coming from with that. My response to that would be I think it would be a deterrent. Possibly, if a situation like this happens when you have a student athlete who's junior high or high school-- especially in their younger years of high school, freshman, sophomore, whatever-- if that parent or if that fan is levied a fine of \$1,000 or whatever that penalty will be as a results of what we come up with here, knowing that they are going to be banned for one thing, but they're paying a substantial fine, and, and if it happens at the young-- lower levels, where they're freshmen, sophomore or whatever, it-- I think it would be a deterrent going forward, when that student might be going from junior varsity where this incident could have taken place. And it's not going to stop it if they've really that impassioned and engrossed in that situation. But I think if they stop and think, "Hey, I just paid \$1,000 fine last year and got banned for X amount of games," I think it would be a deterrent going forward, that possibly that penalty might be stiffer and with a longer-- so, I think when they-- those athletes get to be juniors and seniors, those situations with that particular athlete or that particular fan might be slowed down.

**McKINNEY:** So you bring up an interesting part of this. Like, the athlete. Because athletes are also going through heated situations, and-- I don't know, I, I think I understand the reason. I just-- especially when you talk about athletes-- especially in wrestling. Like, it is heated and tensions are there, and a lot of the kids, whether it was a kid I'm coaching or another kid, they do things without thinking, and it just happens. And that's what-- then, they'll

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end up with a IIIA felony, I-- it's just-- and we teach sportsmanship, and I know every coach does, and I've seen it from every school across the state where this stuff just happens. That's what I-- that's what I'm concerned about.

**DeKAY:** Well, well, people still got to be held accountable for their actions. And so, for-- and, and I know wrestling is physical, I know it's very heated, but every sport's that way, especially when you get into districts, subdist-- subdistricts, districts, state tournaments, playoffs, every-- it gets expedited a lot. But some of this needs-- and this is outside probably the NSA's [SIC] scope or our scope, but it-- this bill would help cover that. I've, I've worked YMCA tournaments where you have fifth grade parents, and I helped eject fans out of a YMCA tournament when there were fifth graders playing. That's how heated and out-of-control some of these parents get. And, and I think if that can be squelched at that level, know that they have consequences to pay, it might pay dividends going forward, you know, when those kids are at-- high school athletes.

**McKINNEY:** Thank you.

**DeKAY:** Thank you.

**BOSN:** Senator DeBoer.

**DeBOER:** I can't believe I have a question because I know so little about sports, but I'm going to ask a question. What do the professional leagues or sports teams do? Right? So, the NBA, or-- what do they do to police, like, if, if fans assault someone in the NBA, what happens?

**DeKAY:** I wish I knew the answer to that, because that would mean that I've would have experienced it at that level. But I'm a high school official and college official. But if you watch college games, and you watch college football, when a coach is leaving the floor, when you're setting at a Nebraska basketball game, there's, there's police behind them to protect them. So, I'm not saying that has to happen at every high school event, but there ought to be authority in those gymnasiums to handle situations, just like we have Red Coats or security here for our hearings and stuff. I don't know what happens at the NBA level, but at the college level, that takes place. You watch coaches meet at midfield after a game; there's, there's cops around. When, when Fred Hoiberg's leaving the court, there's an official-- or, there's a campus security with him. Same way if Nick Saban's leaving; there's security with those guys. So, at the college level and probably down

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at the high school level, it, it's pretty much covered, but I don't know what the penalties are. I'm sure there's pretty aggravated penalties that go with assaulting players, you know. I--

**DeBOER:** So, so in the instance of a, an individual sports person, contestant-- what do they-- what, what sort of things do they do to police them? Right? Is there-- in the, you know, the big Super Bowl players, do they just not threaten them with if you assault someone, you're going to be out of your-- I mean, all the regular criminal things that happen if you assault anyone that you and I have as well, but--

**DeKAY:** Well, those--

**DeBOER:** --do they threaten to keep them out of games, or is there something like that we might try?

**DeKAY:** Well, it, it, it-- the Super Bowl and those events are totally different deals.

**DeBOER:** I, I get--

**DeKAY:** The security there--

**DeBOER:** --well, actually, I don't get that. But I do.

**DeKAY:** But the security's already in place, so they're handling that. So, you know, back to the high school level, I've been in a lot of gyms where the administration is watching. Of course, they will go talk to people and try to squelch that problem before it happens, but there are-- there's security at every-- you know, when we're down here for state tournaments and stuff, there's security that's going to take care of and protect officials leaving the floor, and we--

**DeBOER:** So, you don't need it in those situations. That's not the situations that you're talking about you need it for. Because in those situations, it sounds like you've got protection in the form of-- so, it's in the situations where you've got a junior high game that you're officiating, and they maybe don't have those resources. Would it be-- since Senator McKinney was talking about the heat of the moment kind of problems, would it be maybe more effective to your cause of protection and, and supporting referees and officials to have some kind of a movement towards getting some kind of a responsible adult for security in the-- you know, you are in charge of officiating, this person is in charge of security. Would that make more sense?

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**DeKAY:** Basically, getting back to two points that you made and Senator McKinney made. You know, sometimes these happen in the heat of the moment, and I get that. But there's still a time lapse in there, where they've had time to think things through. It's not one event that brings them to that boiling point, that throws them over the edge. It's a-- they've had time to set there in a basketball game, they've had time to set there and think about it. And to part of your point on this is, it's sad that we even have to have this conversation about junior high basketball and about junior high wrestling or football, that we have to come to security measures. Basically, in a lot of situations, you're going to take eyewitness accounts. If I-- if I'm walking out of a gymnasium and some mad dad comes up to me and punches me, I'm gonna be looking for somebody to say-- have an eyewitness account to see what action, and then I'm going to take it to the proper authorities after that.

**DeBOER:** OK. So then-- and I apologize, I missed the part of the intro of this bill. What is the point of this bill if what we know is that you're going to have recourse for any kind of assault, just like anyone else would? And if you-- I mean, I would say that the better course might be to have some kind of-- as sad as it is, and I will agree with you-- some kind of official, unofficial security person at whatever game you're going to do, to kind of be in charge of that aspect of things, so that you can focus on officiating.

**DeKAY:** Well-- and I agree, but when you get into the smaller schools,--

**DeBOER:** Uh-huh.

**DeKAY:** --the only law enforcement there, it would be, you know, a county cop. And in, in some counties where I represent, there's-- you-- they can't be every--

**DeBOER:** No, I, I totally understand the exigencies of that.

**DeKAY:** OK.

**DeBOER:** So, maybe it wouldn't be an actual cop, maybe it would be someone that wears some other kind of vest that says "Security" that is just an adult that's going to sort of know that they take that on, and maybe they have EMT training or something. Anyway. I just think maybe I'm coming in in the middle of the thing with very little knowledge of this world, but--

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**DeKAY:** Well, if we-- if we don't have some kind of consequences, and if it's not a law enforcement or something that's going to put some bite into the assault, and then we're right back to square one. So, personally, I haven't had to be affected by an assault, or-- but there, there are proponents during a lot of different sporting events where-- that brings fans to the point-- boiling point that could be addressed, and-- but at that point, those, those fans need to be escorted out. And in a lot of places, the officials have that jurisdiction to say "Fan A, B and C, you're gone." And, and schools do a great job of adhering to our concerns in those games. Over the course of 41 years, I have not had to exercise that right on a, on a large scale. Very small scale. And, and I have not been assaulted by a fan or-- but verbal, verbal jug-- jabs, and that's not what this bill's about. They are very harsh, and-- but they could expedite somebody's mental thinking on, "OK, Joe right here is right. This guy needs to be held accountable for missing a travel call that caused my kid a junior high game." So.

**DeBOER:** OK. I have no further questions.

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

**DeKAY:** Thank you.

**BOSN:** Do you miss us? That's my question.

**DeKAY:** I miss you guys so much.

**BOSN:** Next proponent. Welcome.

**MICHAEL FERGUSON:** Thank you, Chairwoman Bosn, members of the committee. My name is Michael Ferguson. For the record, that is M-i-c-h-a-e-l F-e-r-g-u-s-o-n. If I'm looking familiar to you, no, I don't have a twin; I am the legislative aide to Senator Brian Hardin of District 48. However, don't worry, my time sheet will reflect that I'm on my own personal time right now, representing the Eastern Nebraska Officials Association as their board secretary. The ENOA is an association of officials of-- there's about 120 of us that-- we provide football and basketball officials for Lincoln Public Schools and some surrounding towns in-- around Lincoln. You've heard the, the stats, so I won't get into that. I'll talk more from a personal level. I almost was a statistic in officiating sports. I nearly quit three years ago after a summer of doing youth sports, youth basketball in particular. It's gotten pretty bad. We've talked a lot about the high schools and what they have done, and I think our high schools in

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Nebraska do a fantastic job. The administrators, in my experience, do a very good job of treating officials well, making sure we feel protected and taken care of. That's never been an issue in my experience. The ex-- the real issue comes at the youth sports level. I help assign officials for the youth-- Lincoln youth football here in town, and that has been where some of the worst interactions have been. I actually have been yelled at from across a parking lot, leaving, over very minute things. And it just-- it, it's pulling away from what I believe youth sports is supposed to be, and teaching kids what-- the idea of what sports are, teamwork, and, you know, learning about life and winning and losing, all that stuff. I believe that it has gotten better in some instances, where it's not everyone hating on the official. I think the NSAA and Mr. Neuhaus, who's, who's here today, they did a campaign of "Respect the Ref," and I think that had a very good impact, and which is what I-- I have seen it at the high school level. But it's really the lower-level stuff where we cannot have administrators there to help protect all the officials. You're going through games where in one facility you could have 8 to 12 courts running at the same time with two officials per court, and just sometimes one or two administrators that are there trying to police everything. And they, they do their best, but they can't be everywhere at once. So I feel like a, a law like this to protect officials would help encourage people to stay, to know-- I know I would feel a little bit safer stepping out onto the floor or onto the field, knowing that if something were to happen, there's a little bit higher level of protection for officials. It's getting to the point where there are times where you just spend a lot of time in there, and the yelling and, and-- that you get, you're taking time away from your family and your friends, missing events, and you start to wonder if it's worth it. Right now, I still think it is. And I hope I never get to the point where I don't think it's worth it, but it definitely could get to that point. And with that, I'll close, and see if there's any questions.

**BOSN:** Thank you for being here. Any questions for this testifier?  
Seeing-- oh, sorry.

**HALLSTROM:** Have you officiated with my son Grant, by any chance?

**MICHAEL FERGUSON:** I did. I actually, I actually helped train him. So, when he started in the intramural sports department and-- at UNL, I was one of the staff assistants that helped bring that up. So, that's where I got my start was UNL, and it's, it's a great program and has produced a lot of officials for the state of Nebraska, so.

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**HALLSTROM:** I did, I did some officiating at UNL back in the day. So, thank you for helping Grant.

**MICHAEL FERGUSON:** No problem. I don't know how much help I actually wa-- really was for him, but.

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

**MICHAEL FERGUSON:** Thank you, ma'am.

**BOSN:** Next proponent. Welcome.

**MONTSHO WILSON:** Well, how are you doing?

**BOSN:** Good. How are you?

**MONTSHO WILSON:** I'm doing well. My name is Montsho Wilson; first name is M-o-n-t-s-h-o, last name is Wilson, W-i-l-s-o-n. I'm currently the head of basketball operations for Supreme Basketball, and also I am the director of officials for Supreme Basketball and OSA Basketball in Omaha. And I also am part of the group of Elite Officials of Nebraska that's based out of Omaha, and we also assign the Metro Conference in Omaha. So, I want to talk mainly from a personal standpoint, and also from the youth standpoint, because the high school levels, yeah, they have administration, something she was referring to earlier as far as, like, do they have people in vests or anything like that. High school level has the administration, so those are your people who's going to be, so-to-speak, in their vests, trying to [INAUDIBLE] contain the fans and crowds and whatnot. But on the youth level, there's nothing, nothing done. Yeah, we can get security, but that, that, that costs, right? That costs. You've got to pay for security. And sometimes, on the youth level, you don't have the-- those means to pay for that-- for security. So-- but fans are getting out of hand, so-to-speak, and it starts at the third grade level. We talk about passion. Yeah, we can talk about that. But most of the time it's parents living vicariously through their kids, and it's not passion. So, I don't want to get that mixed up with passion or living vicariously through their kids. Because we all-- we have laws in place. But do those laws deter everybody from doing things? Do they deter people from speeding? Do they deter people from assaulting others? Do they deter people from killing? They don't. But this, this bill will actually help. At least it's a start to help protect officials on that level. Like, I, I assign 700 games per weekend, and that's from Lincoln and Omaha. So, I'm doing 700 games per weekend, and we've started our fall-winter season in October and, and it ends beginning of March. Since the

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beginning of October, we have to escort 26 people out of our, our facilities. 26 people. And is-- and, and it's more-- it could be more, but we-- sometimes we, we, we, we reason with the fans, too. Hey, let's be quiet, all right? I don't have to escort you out. I know you're here watching your son and daughter. Let's make sure we just sit here and clap and, you know, don't, don't, don't attack the official, so-to-speak. Right? So, in those 26 escorts, three of them have been physical. Three. Not just with our officials, but also our site directors, the people who oversee our facilities. OK? So, they-- they've been escorted, and those type of things don't get mentioned, right? They don't get mentioned. Yes, the one in November got mentioned because it was viral, right? You can talk about passion again. That parent walked through the whole gym behind a referee for a good eight minutes. So, that passion could have faded away during that eight-minute period, but instead, that parent continued, and he ended up assaulting that official. So, passion has nothing to do with any of this that's going on. Nothing. So we want to keep it real, so-to-speak. I think officials really need to be protected on a level to where fans, parents, whoever are going to think like, OK, if I do this, I know this is in place. I cannot, I cannot, I cannot take that step. I cannot embarrass my kid. I cannot embarrass my family. Right? So, we got to-- we got to-- we got to make sure that we're protected on the official level. So, that's all I have to say. If you have any questions for me, feel free to ask.

**BOSN:** Thank you. Any questions for this testifier? Senator McKinney.

**McKINNEY:** Thank you. And I get what you're saying, but I still think it's passion. I think people are passionate about their kids. That's why they're at the game. They're supporting their kids, and they're passionate. But you're saying protection, and even if this law pass, what's protecting an official from getting hit in the face?

**MONTSHO WILSON:** What's protecting a kid from getting hurt by foul being blown? You can, you can say a lot of things like that. But what, what--

**McKINNEY:** But, but you're, but you're saying "protection."

**MONTSHO WILSON:** Right. You're, you're protecting us by putting something in place. It'll make us feel comfortable that, OK, you guys are where-- are caring about what we're doing and caring about our craft. Officiating basketball is already difficult, as-is. So, us going in, dealing with the crowd, dealing with the coaches, dealing with the players, dealing with unruly things that's going on in the

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game-- putting this in place will allow us to be at least somewhat comfortable knowing that we have some protection going further. Like, if we get assaulted, like, we know that person is going to have something done to them. Like, right now, there's nothing in place. OK, you got a little hit on the hand, get banned from a, from a, a, a gym or whatnot, but what else is in place? That, that fan can still go to the next gym and still partake in whatever his son or daughter is doing.

**McKINNEY:** But even in describing that, somebody could-- if this law passed it-- get charged with a IIIA, bail out, and still go to the game. So, I don't-- I miss-- am I missing something?

**MONTSHO WILSON:** What you mean?

**McKINNEY:** What you just scribe-- described is currently thinking a pat on the wrist or something. So, even if this law pass, somebody gets charged with the felony, they could still bail out and go to a game.

**MONTSHO WILSON:** But it's a felony.

**McKINNEY:** But they could still bail out and come to the game.

**MONTSHO WILSON:** It doesn't matter, it's a felony. Don't nobody want no felony on their record.

**McKINNEY:** But you missing what I'm saying. You just said they get a pat on the wrist and they can still jump to gym to gym. But still, even if this passes, they still could jump from gym to gym.

**MONTSHO WILSON:** Do they have a felony on their record right now, if they-- if it happens?

**McKINNEY:** They got-- it's a charge.

**MONTSHO WILSON:** But it's not a felony charge.

**McKINNEY:** It doesn't-- but it's still not stopping them from jumping gym to gym.

**MONTSHO WILSON:** It's still not stopping anyone from any rules that we have in place anywhere else, whether it be speeding, whatever we do. Like, people are going to do what they're going to do. But at least there's something in place, all right? Something in place that, that protects us in a sense. Like, people gonna still do what they want to do. I'm not saying that this bill is going to necessarily stop

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everybody from being unruly on the court; that's not going to happen. But at least they'd have something to think about if they do start to be unruly and, and attacking officials.

**McKINNEY:** All right. Well, I just don't think people think in those situations. But it's neither here or there. Thank you.

**MONTSHO WILSON:** Mmhmm.

**BOSN:** Any other questions for this testifier?

**HALLSTROM:** I guess you talked about that earlier incident. Seems to me as much as things can go viral right now, that the fact that we have a felony penalty for these types of offenses, the word will get out, and people will have a better understanding and comprehension that there are consequences for these types of acts.

**MONTSHO WILSON:** Correct.

**HALLSTROM:** Thank you.

**BOSN:** Seeing no one else, thank you for being here.

**MONTSHO WILSON:** Thank you.

**BOSN:** Appreciate your testimony. Any other proponents? Welcome.

**NATE NEUHAUS:** Good afternoon. Chairperson Bosn, members of the committee, appreciate the opportunity to be here. Good afternoon. My name is Nate Neuhaus, and I appreciate the compelling testimony heard before me. I'm here today in support of LB657, which seeks to protect officials from acts of violence and ensure they can continue to perform their essential roles without fear of harm. Every year, thousands of officials dedicate their time and energy to facilitate fair competition for student athletes across Nebraska. These individuals are not just enforcing the rules; they are also mentors, educators and key figures in fostering positive sportsmanship. For far too long, officials have endured verbal criticism, abuse, and threats. But now, more than ever, they are faced with physical violence. LB657 sends a clear message: violence against officials will not be tolerated. By strengthening protections for these individuals, we are taking a monumental step towards ensuring a safer environment. I want to take this opportunity and once again thank our officials for their service, dedication and resilience. Officiating is too often a thankless job, yet without them, high school extracurricular activities would not be possible. Their commitment to fairness,

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integrity and the development of young student athletes is deeply valued, and I want to know that the NSAA and our member schools support them. I want to thank Senator Bob Andersen for introducing bill LB657, and thank this committee for hearing my testimony. And I would be happy to answer questions.

**BOSN:** Thank you. Any questions from the committee? Oh, I guess I should start, if I can--

**NATE NEUHAUS:** I didn't spell my name.

**BOSN:** --just have you spell your last name.

**NATE NEUHAUS:** I got in a hurry.

**BOSN:** That's OK.

**NATE NEUHAUS:** Nate, N-a-t-e, Neuhaus, N-e-u-h-a-u-s.

**BOSN:** Senator McKinney.

**McKINNEY:** Thank you. If this bill passes, what will the NSAA do different?

**NATE NEUHAUS:** We'd use our platforms to first make it known that this was a monumental bill that was passed, and that we supported it. We would communicate with our member schools and across our platforms to make sure that people are aware of the passing.

**McKINNEY:** OK. But would this deter anything, actually?

**NATE NEUHAUS:** I don't know. There's a lot of laws and penalties out there that don't deter people from breaking the law. I understand that. I, I might be less concerned about deterring and more concerned with-- let's hold people accountable. These are adults. I don't know the legal definition of a crime of passion, but I would argue many of the assaults that we faced with happened 10 to 15 to 20 minutes after the contest, in the hallway or in the parking lot. So, I don't know. To your point, it's a fair question, but I don't know if that fits the definition of crime of passion. So, again, I'm probably less concerned about deterring and let's hold people accountable for their actions. These adults don't seem to make great decisions.

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

**BOSN:** Senator Hallstrom.

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**HALLSTROM:** I know one, one good thing that I see-- and I don't know how long ago it was instituted, I assume it came from the NSAA-- is they do have something about observing sportsmanship before the game starts and so forth. And I don't necessarily know that you would need to do this, but you could certainly say and with the passage of this bill, assaulting a, a official is now a Class IIIA felony. So, there's certainly some opportunities, some platforms, and some forums to, to get that word out.

**NATE NEUHAUS:** I, I appreciate that. And you're correct, we have many platforms. We make announcements before games, during games, after games. I've been over 50 to 60 different high schools across the state with our "Respect the Ref" message, where I regurgitate many of the facts you've heard here today and the data supported from our surveys, and encouraging schools and spectators to enforce good sportsmanship. And to your point, Senator McKinney-- Coach, how you doing? It is a [INAUDIBLE] adults have flat told me I, I-- I've lost-- I lost my mind for ten minutes. I got upset. And it is emotional. We just wish that we could better control our emotions as adults.

**BOSN:** Senator McKinney.

**McKINNEY:** Thank you. If somebody right now hits an official, what happens?

**NATE NEUHAUS:** Generally it would come to me, and I would address it with the school and get the facts of the situation. But if it does come to a physical act and a crime of law, then it would be turned over to law enforcement.

**McKINNEY:** OK. Thank you.

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

**NATE NEUHAUS:** Appreciate it. Thank you.

**BOSN:** Next proponent? Opponents. Are there any opponents to LB657?

**SPIKE EICKHOLT:** Good evening, 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, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to LB657. I did tell Senator Andersen last week that we would be opposing his bill, and I explained why. I didn't have a chance to tell Senator DeKay that I would be opposing the bill, and I will probably explain it to him later, nor did I tell Senator Hardin's office that we'd be supporting it as well, but-- or, opposing

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as well, but I'll make a point to do that. I'm not going to repeat the argument that I made in earlier bills and bills heard earlier this session that enhance penalties, but I want to make a couple of points. First, it's already a crime to assault a person. It's third-degree assault. The penalty for third-degree assault is 0 to 1 year imprisonment, 0 to \$1000 fine. It's not a slap on the wrist, it's not de minimis, it's a serious misdemeanor; it's the highest-level misdemeanor crime. Some of the proponents are making arguments that essentially just want to have people prosecuted under current law. Senator DeKay made the point that he wants people to be fined. That can happen now, that does happen now. The argument that this bill should be passed so that a message can be sent to the different platforms, the training manuals, and maybe even signs as we have directed in statute for health care providers, that can be done now. People can be told now it's a misdemeanor assault to assault somebody. And you can commit a third-degree assault simply by threatening somebody in a menacing manner without actually even making physical contact with them. So, there's already a penalty now for that. There's no presumption of a probation for a misdemeanor, so, I'd argue that this law is unnecessary. I understand that people have experienced negative conduct and negative behavior from parents and so on. There is not a crime of passion, to be honest. That's not a defense. If I argue that, I'm not essentially-- I'm [INAUDIBLE] essentially inducing evidence to convict my own client. If you do something and you really mean to do it, and you're really angry at the time, that's not a justification, that's not a defense; that's simply you're acknowledging you're committing the crime. One difference about this bill-- and it's a technical difference, and I want to bring it to the committee's attention, because I'm always here anyway, testifying on these things. And maybe it won't matter. But this is different than the earlier bills because this doesn't actually create only an enhancement. It doesn't include sports officials in that category. That's significant. This creates a separate, new law. If you look at the sort of-- the one-liner, "to create the offense of assault on the sports official." That means, because the elements are different, that somebody could be charged with this crime and the existing third-degree assault, maybe. That also probably means that I have a double jeopardy argument, maybe. I don't know, but when you do something like this, it's more than simply just making this person entitled to the enhanced penalty; it's a substantive new crime. And I mention that because, in some respects, you're going to be bringing uncertainty to areas of the law that are certain by doing something like this. And I'll just be blunt, that's something that gives people like me an argument that they don't have now. So, I just want to

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disclose that to the committee. I'd urge the committee to not advance the bill, and I'll answer any questions if you have any.

**BOSN:** Questions from the committee? We always appreciate hearing from you.

**SPIKE EICKHOLT:** Well--

**BOSN:** Any other opponents? Neutral testifiers? And while Senator Andersen is making his way back up, I will note for the record that LB657 received 16 proponent comments, 4 opponent comments, and no neutral comments. Welcome back.

**ANDERSEN:** Thank you, Chairwoman. Chairwoman Bosn, Judiciary Committee, I'd like to thank the testifiers online and those behind me who took the time out of their day to support the, the "REFS Act." One of the comments I'd-- I would make to Senator DeBoer when she talked about having more security at games and things like that, I, I, I-- there may be a compromise with that, but I think we really need to get back to the personal accountability and responsibility of the people. Everyone is responsible for their own actions, and they should be held accountable, good, bad or indifferent. The cultural problem we have right now is that there has to be a deterrent, and there has to be consequences for bad actions. LB6-- LB657 creates a Class IIIA felony to attack a registered referee, umpire, or similar official before, during, and immediately after an athletic event. It ensures sports officials receive similar legal protections as others in public service-- other public service officials, and it reinforces Nebraska's commitment to fostering a safe and respectful environment for athletic competition. Hopefully, this bill will provide a deterrent, and, contrary to what Mr. Eickhorn [SIC] said, it's not there about sending a message. It's about providing a real, measurable deterrent to bad action. If you take the bad action, either there is going to be responsible action to you. Negative. All for keeping the officials safe. Now, when it does not happen, it'll provide the appropriate penalty to ensure it doesn't happen again. There was one gentleman, and if you'll allow me, he wasn't able to make it here because the weather, so I'll read a short email that he had sent in and submitted to me. It was from Pete Marinkovich. I hope I pronounced that quickly. He writes: I'd like to express my sincere gratitude for your efforts in proposing this important legislation. As a long-time referee for football and basketball in Nebraska, I have seen firsthand the challenges and risks faced by officials in our sports community. I'd like to share a personal incident that underscores the necessity of this legislation. Last November, my son, who is also a referee, was

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unfortunately attacked by a spectator during a youth basketball game. He was taken to the hospital for treatment, and is now dealing with the medical bills as well as lost wages due to this incident. The act-- the attacker was apprehended and charged with third-degree assault, which is simply classified as a misdemeanor, and he was released. With that, I'm happy to take questions. The last time I'll leave you with is that I have two sons, 18 and 22. They played sports all the way up, and one of the fantastic things-- I was a coach at one point-- the fantastic thing about sports is it teaches our kids life lessons. We have to be careful, we give them great examples, we teach about responsibility, we teach them about-- when the going gets tough, you have to work harder, right? Power through it all. You're as a team, your, your, your teammates rely on you and you rely on them. Let's not let physical violence be one of those lessons that we tell them to accept for one life. So with that, Chairwoman, if you have any questions, I'd be happy to answer them.

**BOSN:** Thank you. Any questions for Senator Andersen? Seeing none. Thank you.

**ANDERSEN:** Thank you.

**DeBOER:** That ends our hearing on LB657, and will bring us to our hearing on LB150 and our own Chair Bosn.

**HOLDCROFT:** Oh, man.

**BOSN:** Audible. That's audible. That's audible.

**HOLDCROFT:** They don't know who it came from.

**BOSN:** I do.

**DeBOER:** They don't know, Senator Holdcroft. They don't know. Welcome, Chair Bosn.

**BOSN:** Thank you, Vice Chair DeBoer, and good evening to the members of the Judiciary Committee. For the record, my name is Carolyn Bosn, C-a-r-o-l-y-n B-o-s-n. I represent District 25, which consists of the southeast part of Lincoln and Lancaster County, including Bennet. LB150 was introduced based on confusion that has surfaced since LB50 was passed in 2023. Long story short, this bill proposes to strike subsection (c) in statute Chapter 29-2221. Seems as though in that bill we have picked winners and losers when we allowed for a reduced mandatory minimum when sentencing a habitual criminal. We allowed for, perhaps inadvertently or otherwise, serious and egregious crimes that

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would not count toward sentencing a habitual criminal. For those of you who are less familiar with the habitual criminal statutes in Chapter 29-2221, I want to take a moment to try to explain it. The current statute sets forth general habitual criminal enhancement penalties for anyone who has been twice convicted of a crime, sentenced and committed to prison for terms of not less than one year. Upon conviction of a third felony, you are then eligible for what we call the habitual criminal statute, which includes a more strict penalty, sentenced to imprisonment for a mandatory minimum-- we call that a hard bottom number-- of ten years and a maximum of not more than 60 years. Starting in 2024, situations have now been passed where you can reduce that habitual criminal enhancement to a mandatory minimum of three years and a maximum of not more than 20 years, so thereby reducing the hard bottom number from 10 to 3. This-- we've colloquially referred to it as the "baby habitual criminal," and that is the specific portion of that subsection (c) that I am proposing to strike. Over the past year, we've learned, while that bill has been in effect, that this statute does not fit with its legislative intent, and I can say that with some degree of experience, although having joined in the middle of 2023, I was someone who negotiated the intent of LB50 and can tell you that there were ongoing negotiations that took place on LB50 even after it passed out of the committee regarding what crimes would and would not be considered for purposes of the baby habitual criminal. There were-- in those conversations, there was efforts made to-- how, how we would actually put that in, in effect. Would we list crimes that did constitute? Would we put in terms and conditions? And the overall consensus from all-- and some of you are still here-- was that we were intending to only apply it to crimes where there wasn't violence and, and-- or sexual violence and things of that nature. That was certainly the intent. At least that's my impression, and I hope that that was yours, as well. However, as drafted, that has not always been the result. For example being *State v. Briggs*, which I do have, if anyone would like the citation. This is a case where the Nebraska Supreme Court has interpreted the statute, and the results did not comport with our legislative intent. The facts of this case: Mr. Briggs was convicted of second-degree assault for a violent assault on prison guards. Second-degree assault requires the state to prove intentionally or knowingly causing bodily injury to another person with a dangerous instrument, instrument; recklessly causing serious bodily injury to another with a dangerous instrument; or unlawfully strikes or wounds another 1) while legally confined in a jail or adult correctional or penal institute; or 2) while otherwise in the legal custody of the Department of Correctional Services; or 3) while committed as a dangerous sex offender under the Sex Offender

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Commitment Act. Despite the fact that Mr. Briggs committed a violent felony by attacking and assaulting prison guards, 28-309 subsection (c) does not contain an element with the language contained in Section 29-2221, Subsection (1)(c). Therefore, Mr. Briggs benefited by having this baby habitual criminal enhancement rather than the standard habitual criminal enhancement, despite having committed a violent felony. One would assume this statute was not intended to apply to violent offenders like Mr. Briggs, but due to the language that was drafted and ultimately passed by the Legislature, it does. I will share another example. This is State v.-- I don't know how to pronounce this. Guardiola. So, my apologies. This defendant's new conviction was for possession of a controlled substance, methamphetamine specifically, which is a Class IV felony, obviously not a violent offense. However, his prior convictions did include multiple crimes of violence, third-degree assault on a peace officer, aiding and abetting a robbery, and a second-degree assault. Because one of these prior convictions did not involve the descriptions in Subsection (1)(c), using an elements-based review, the defendant was deemed eligible for the baby habitual criminal enhancement only. Thus, Mr. Guardiola received a reduced habitual enhancement despite having a violent criminal record. Again, this was not the intention of the statute to apply to violent offenders like Mr. Guardiola, but it did. As you can hear in these examples, not only is the statute applying to unintended violent offenses, but the language is creating legal complexities for those in the criminal justice fields, ones that are having drastic consequences. The following questions have been arising in regards to whether a crime involves one of the enumerated acts in Subsection (c). How can we decide if it does fit or doesn't? Does one look at the elements of the specific crime? Can you get into the facts of what was charged versus just what's on the charge? Does one look at the sort of discrepancies that can arise when a defendant enters a plea versus has a trial; pled no contest versus pled guilty? Who decides if the crime involves one of the acts? Is that the judge or the jury? These are just a few of the issues that have been coming up as time goes by. I have been-- before I conclude, I have been approached by Mr. Eickholt with a potential amendment that would resolve some of his opposition, which I anticipate he'll elaborate on. We aren't there yet. We're still working on it, and I'm open to continuing those conversations, but I think the reality here is the intention of LB50, at least as it related to this habitual criminal enhancement minimizer-- I don't know what the word to use is, but-- was instances-- and I recall Senator Wayne, the Chairperson at the time, saying where individuals had been convicted of multiple possession of a controlled substances, sentenced to a year, and then

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had another one, sent-- and these are addicts. That was, that was the concern, was this was going to catch up a bunch of individuals who are suffering from an addiction and be sentenced. So, we tried to-- although I didn't agree with it at the time, as an ultimate solution-- I know he made those efforts to try to create guardrails to avoid individuals who had a violent conviction from being swept up in the baby habitual criminal enhancement. His efforts were there; I know he had them, but we didn't get it. And so, it's not working, and I think that, given what we've got in the very short period of time that this has been an effect already, that we need to reevaluate. I'll happily answer any questions.

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

**McKINNEY:** Thank you. And thank you, Chair Bosn. You kind of listed out, like, the issues, and I'm just kind of wondering-- instead of striking it, why not bring a bill to address those issues, to kind of clean it up?

**BOSN:** Right. So, I mean, a couple of things. First of all, I opposed doing it in the first place. So, my incentive is different than perhaps Mr. Eickholt's or someone else's. I don't think that this reaches the legislative intent, in my mind, of keeping the public safe. I think when you've been convicted twice, sent to prison, come out, convicted, sent to prison for a full year and come out, we've, we've exhausted strike one and strike two, right? So, I disagree with it on that face. However, additionally, every single effort that we made with Senator Wayne-- whether that was listing all the crimes that were eligible for it, which-- my recollection was, his concern in, in doing that was you'd forget something, or a crime would be added and then we would have a problem with that. And so we came to the conclusion that that wasn't going to be a good fix. The solution that we've tried to accommodate between the parties that are going to follow me and maybe will do a better job of answering the specifics is you get into the double negatives; was not convicted of a not violent [INAUDIBLE]. So, it became more complicated than it seemed we could get to.

**McKINNEY:** OK.

**BOSN:** As a consensus, I guess.

**McKINNEY:** No, I'm just curious because it's only been on the books for, what, a year, year-and-a-half? And I just would rather see us trying to clean it up than to try to just strike it.

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**BOSN:** And I guess my position is, in that short period of time, we've already had two individuals who have received the benefit of our intentions, which they were not included in. Right? They weren't individuals who we felt deserved-- I don't know if that's the right word-- but deserved a lesser sentence because of their violent convictions. In that very short period of time, we've already had those problems. I don't.

**McKINNEY:** But I-- I guess my follow-up would be, how many people that it was intended for have benefited from it?

**BOSN:** That's a great question, and there's also differing opinions on that as well. I'm not sure whether the opposition will get into those, but there are some who would tell you that-- and this was another consideration that we had at the time we passed it-- having a baby habitual criminal enhancement would lose some of the, the sting that goes with a 10-year sentence, and prosecutors would say, OK, we aren't putting you in for 10; we're going to start adding the habitual criminal enhancement in cases where we otherwise wouldn't have, because it's a lesser penalty. And there are some defense attorneys who would say, I don't want this because it's being used more now, since it's not 10 years.

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

**DeBOER:** Senator Rountree.

**ROUNTREE:** Thank you, Vice Chair. Now, my question to this, really, is a baby habitual offender. Can you explain that to me just a little bit more?

**BOSN:** Yeah.

**ROUNTREE:** I'm not that-- I don't have "lawyer-ese", so--

**BOSN:** That's OK. I'm sorry. And I probably talk too fast as well. OK, so there's habitual criminal sentences, which is you've been convicted of a felony, sentenced to a year of incarceration or more, come out of the correctional facility, committed a second felony and been sentenced to a year or more and come out again, and now committed another felony.

**ROUNTREE:** OK, it's third time.

**BOSN:** And that is you are eligible for an enhancement. We've talked about enhancements today. But that enhancement in that particular

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instance is a sentence of a hard 10 years. We call it 10 years on the bottom. Right? So you have 10 years, no good time.

**ROUNTREE:** OK.

**BOSN:** The habitual criminal is intended, certainly, to deter people who have had two strikes and are now back for their third felony crime, right? But the intention-- my conversations with Senator Wayne who proposed that legislation were that there are instances where they are nonviolent offenders who are-- I think his examples were individuals who are perpetually shoplifting to feed an addiction, or who are using methamphetamine and are tragically addicted to it and can't stop. Right?

**ROUNTREE:** All right.

**BOSN:** So, they go in on-- and I don't want to minimize the seriousness of those offenses, but what we would consider nonviolent offenses like possession of a controlled substance; come out, get another possession of a controlled substance because sadly, they're still addicted, and then come out and get another one. They would be eligible for a baby habitual criminal, which would be a sentence of three years, a hard three instead of that hard ten.

**ROUNTREE:** Because the prior two were nonviolent?

**BOSN:** Because they're what we're categorizing-- and I-- and I'm always very cogni-- cautious to use those terms to minimize the severity, but yes, they're nonviolent. Possession of a controlled substance, I think everyone can agree, is different than a second-degree domestic assault.

**DeBOER:** Senator McKinney-- although let me ask my question first, because you took my first one and I was going to ask you--

**McKINNEY:** Oh, all right.

**DeBOER:** --with greater style, because I was going to say, "Why throw the baby out with the bath water on this?"

**BOSN:** Oh, wow.

**DeBOER:** So, that was my question, is why we're not trying to modify this to come up with-- I think the in-- the, the legislative intent may not have been uniform across all legislators.

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**BOSN:** Sure. And I conceded that, I think.

**DeBOER:** Yeah. And so-- I didn't say you didn't, but I-- for the record. And so, I think my intent in supporting this portion of the bill was to try to find a way to make sure that there is a recognition; that there is-- that if you are creating-- or if you are doing the violent crimes, right? I know that the-- that dichotomy is tricky. That you are exposed to the greater penalty from the habitual criminal statute, and that if what you are doing is you are getting caught up in the law enforcement system for shoplifting, for whatever-- writing bad checks, whatever-- like, there's a number of things that I don't think we should treat those things the same. And it does beg the question of shouldn't there be a distinction between those? In other states, those crimes aren't even eligible to be within a habitual criminal statute. Like, depending on the state, right? So, I guess my question would be, why are we throwing this all out? And is-- if the answer is it's just too complex, I can't figure out how to fix it, that's fair.

**BOSN:** Well, I, I guess I sort of already answered that question, but I think it is the position of those who will likely come behind me who have practiced and, and had to try to navigate their way through our efforts that it's not having the intended effect, it's being misused, and there isn't a solution that fixes it without diminishing the seriousness of these felonies. Because I, I, I am very much aware of the possession of a controlled substance individuals. But I will tell you, your first conviction is almost-- I'd say your first dozen convictions are not resulting in any year-long sentence for incarceration. So, I think that while some in western Nebraska-- I never was presented with a case, but I often heard of all these western Nebraska defendants who, on their very first time being picked up with a residue baggie, were going to prison for an entire year. Never met one; heard they existed. But I don't think that that's getting fixed with the language that we've drafted.

**DeBOER:** I, I don't disagree. From, from what you have said-- and obviously, I haven't made an extensive research-- it sounds like maybe this language isn't working, but the concept retains the same conceptual validity now that it had then. So, I guess my question is, although I understand that you are always opposed and so it should not-- the homework should not be on you. If we can present to you--

**BOSN:** And I've said I'm open to that. So, I, I, I tried to get there with Mr. Eickholt prior to getting--

**DeBOER:** Got it.

**BOSN:** --to coming in today. I think we're on the same-- I mean, I anticipate he's going to tell you he thought this was problematic when we passed it. I don't know that he's going to say that, but he may. He thought there was going to be problems with it at the time it was drafted, exactly as we're seeing now. His solution, he thinks, will fix it. I kind of disagree, but I think his efforts are at least moving the needle in the right direction.

**DeBOER:** So, you would be open-- I, I should have asked you a much simpler question. You would be open to doing the intent of what this section does but does not currently do?

**BOSN:** I would be open to that conversation. I'm probably still not in favor of it, but certainly think that if it fixes the problem we're seeing right now, that it's worth at least having those conversations in a genuine sense.

**DeBOER:** OK. I did promise Senator McKinney, and then--

**McKINNEY:** OK. Well, just kind of on the line of the other questions, I've asked the other test-- other people have introduced today. I'm looking at the fiscal note. It says no fiscal impact, but if we make-- if, if, if this bill was to pass, have you considered the potential fiscal impact on the state, considering our overcrowding and mass incarceration situation?

**BOSN:** I think that this is a net positive for you, Mr.-- or, Senator McKinney, because I think right now, you're seeing it used more; more individuals are getting sentenced to the baby habitual criminal enhancement than would or have been sentenced under the original habitual criminal hard ten. So, I think that you might be a co-sponsor, from a fiscal perspective.

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

**DeBOER:** Thank you, Senator McKinney. Senator Hallstrom.

**HALLSTROM:** Are you saying that-- did the courts get it wrong and the language is being misinterpreted, or?

**BOSN:** No, because the language does not encompass the specific crimes sufficiently that it weeds out the convictions that these individuals had previously committed that were being used for enhancement purposes.

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**HALLSTROM:** OK. So, the ones that are on the face aren't all-encompassing.

**BOSN:** Aren't sufficiently encompassing.

**DeBOER:** Other questions? Thanks, Senator Bosn. Let's have our first proponent.

**AMY GOODRO:** Good evening, Senators. I didn't think I was going to be here till the evening, but I am. My name is Amy Goodro, it's A-m-y G-o-o-d-r-o. I'm a deputy county attorney with the Lancaster County Attorney's office, testifying on behalf of the Nebraska County Attorney Association. I've been a prosecutor my entire legal career, which is ten years. I'm here today to support Carolyn Bosn-- Senator Carolyn Bosn's bill, LB50 [SIC], as the drafting of 29-2222-- 21, subsection (c) in its current form has unintentionally reduced sentences for violent offenders and introduces legal complexities, making its practical application a challenge for those of us who work in the criminal justice system every day. First and foremost, the wording is convoluted and imprecise. What does "involve" mean? Involve is not a legal term, and it's not defined anywhere in the statute. Secondly, in determining if a crime involves one of those enumerated acts, there is confusion over whether we use an elements-based test-- that means we look at the elements of a crime-- or whether or not we use a fact-based test, where we look at the surrounding circumstances that make up the crime. If it's an elements test, that would be easier, but some of the enumerated acts are not even elements in any crime in the state of Nebraska. And secondly, even looking at the elements doesn't always answer the question, as one crime can be committed in a multitude of different ways. If we're using a fact-based approach, that raises much more legal questions. One of them, when you have prior offenses that are very old, how do we determine the facts of that case? We're looking at old documents. Do we look at PSIs? If those are from other jurisdictions, if it's from a federal court, how do we get those documents? Can a judge or a jury even look at those documents? The statute doesn't say so. Other sections of the criminal code, like the Sex Offender Registration Act, specifically allows a judge to look at a PSI or a, a factual basis for a plea-based conviction, but this statute doesn't specifically say that. Additionally, what if there's a jury trial where the facts are inherently in dispute? Then, who determines the facts, a judge or jury? Most significantly, a fact-based approach could implicate a line of recent federal cases which may overturn convictions, change the way the habitual criminal enhancement is decided as a whole, and negate the legislative intent of Section 2 of the same statute where it says

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that a judge should decide these issues and a jury never gets to know that a person is a habitual criminal. The next issue we're seeing, as Senator Bosn pointed out in her opening, is that defendants with longer criminal histories are benefiting from the lower sentencing range of the 3 to 20. For instance, she brought up the Guardiola case. It's my understanding that maybe this statute was written presuming that people only have two prior eligible felony offenses. Well, I'm here to tell you that, oftentimes, people have more felonies than just two, and so people who have a longer criminal history are getting a lower sentencing range as long as at least one of their prior convictions is for what you're referring to as a nonviolent offense. Finally, violent sexual offenders are getting the benefit of a reduced sentencing range. Just quickly, I came up with a list of offenses that do not involve one of the enumerated acts, which may surprise you: human trafficking, arson, possession of child pornography, residential burglaries, child enticement, false imprisonment, strangulation. It's my understanding that this bill was created to address, as pointed out in, in the opening, individuals convicted that may have drug problems or drug addicted, possession of controlled substance, and theft offenses. But you can't create a law that applies to everyone just to carve out a few specific rare circumstances for some. This results in legal uncertainties, legal abnormalities, and unforeseen consequences.

**DeBOER:** OK--

**AMY GOODRO:** And, as pointed out earlier today,--

**DeBOER:** Wait.

**AMY GOODRO:** --the only people that benefit from that is defendants.

**DeBOER:** I see the red light.

**AMY GOODRO:** Thank you.

**DeBOER:** I'm only going to stop you so that I can tell you you may continue, but you can do it at a regular speed so we can--

**AMY GOODRO:** I was just trying to beat that light.

**DeBOER:** So we could actually hear it. Would you like to please continue at a regular speed?

**AMY GOODRO:** Sorry. Yes. I wasn't nervous, I just-- I--

**DeBOER:** No, I know.

**AMY GOODRO:** --was only given three minutes, and unfortunately, as pointed out, this bill creates a lot of questions and a lot of uncertainty for those of us who are working in the system every day. So, it was hard to concisely say in three minutes all the issues. But what I wanted to pointed out was that when you try to create-- carve out one exception for a, a specific circumstance, it's hard to do that in the law, when we're applying it to everyone. What ends up happening is that you have these uncertainties, you have legal abnormalities, and you have unforeseen consequences and confusion. And the only people that benefit from legal confusions are criminal defendants. I'll be happy to answer any questions. I know there was some posed to Senator Bosn.

**DeBOER:** OK, so we're going to start over with Senator Hallstrom this time.

**AMY GOODRO:** Yes.

**HALLSTROM:** Are there any existing problems of a similar nature with the interpretation of 29-2221 (1)(a) and (b)?

**AMY GOODRO:** No, because those Sections are specifically listing the crimes.

**HALLSTROM:** By section?

**AMY GOODRO:** Yes. And that's the issue that subsection (c) has, is you're using this word "involve," and you're coming up with these scenarios. Like I said, some of them are not elements in an offense. You need to specifically state what crimes you want it to apply to and what you don't want it to apply to. You need to be consistent with, essentially, yourself in the own statute in the other subsections.

**HALLSTROM:** And, and subsection (c) varied from what we had done historically by failing to reference specific violations of specific statutory provisions.

**AMY GOODRO:** Correct.

**HALLSTROM:** And so, would that-- along with some of the questions that have been asked, would that seemingly be a potential resolution, if that is the desired resolution, to just follow the pattern that we have under existing law?

**AMY GOODRO:** Certainly, that is a start to making a better law, is to list the specific statutes. You're still going to get into some legal

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confusion, because it's going to be a very long list. If you want to avoid double negatives and you want to be clear, you may perhaps have to say something like, if this is a violation of the statute for PCS 416(3) and at least one of your priors is for the same offense, then you get this reduced sentence. But you could still have somebody who-- let's say John Doe is currently charged with the PCS, possession of a controlled substance. They have three prior felonies. One of them is for terroristic threats, one of them's for robbery, the other one is for possession of a controlled substance. When you use the same language, at least one of their priors, that means that as long as they have one PCS case-- conviction that's eligible, then they still get the reduction of 3 to 20. So, somebody who may have committed less crimes--

**HALLSTROM:** But we actually wanted to achieve the result that says if any one of those was, for lack of a better term, a violent crime, you don't qualify for the reduced penalty.

**AMY GOODRO:** But it was said-- a lot of the involved acts aren't necessarily elements, and it's not accounting for, like, third-degree assault on an officer-- that was the Guardiola case. The court said that didn't involve any one of the enumerated acts, so that defendant got the benefit of the reduced range of 3 to 20.

**HALLSTROM:** But if we do the language correctly and identify specific statutes or sections of law, was the intent to provide that if any one of the felonies was a violation of those statutes, you don't qualify for the, for the reduced penalty?

**AMY GOODRO:** I'm sorry, Senator, I don't understand the question.

**HALLSTROM:** OK. This seems to tell me if any one of the three was nonviolent you get the reduced penalty, and I can't imagine that was the intent of it.

**AMY GOODRO:** I-- sorry.

**HALLSTROM:** OK. I'll ask, I'll ask you off the mic, or I'll talk to Senator Bosn.

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

**McKINNEY:** Thank you. Thank you for your testimony. Did the County Attorney Association support LB50?

**AMY GOODRO:** I don't think so.

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**McKINNEY:** I guess when, when were y'all aware that it was going to pass?

**AMY GOODRO:** You would have to talk to our lobbyist about all of those specifics.

**McKINNEY:** Because I, I bring this up because if you're bringing these issues with, like, the technical problems of the way the law was written and it was about to pass, it would have been helpful during that process for somebody to come in and say, hey, there are some technicalities, technical issues wrong with the language; we could-- it-- here's a suggestion to clean this up. And we wouldn't be here today.

**AMY GOODRO:** Sure. I wasn't involved and I wasn't necessarily consulted in the process of the last bill. But from my own memory and my own personal observations, it seemed to be happening very quickly in an effort to get something passed. Additionally, some of these issues have arisen in the last year because of new federal cases that have come out. One of them came out last year, and basically said that it was interpreting the federal version of the habitual criminal law, and it was an issue about the date range. And what the court said is anything that's surrounding a, a fact of a prior conviction needs to be decided by a jury and not the judge. So, the conviction there was reversed. And that was just talking about a date range. So, if this statute is going to use a fact-based approach, that means we're going to look at the facts of the prior offense to determine if it involves one of those acts, then-- and if those federal cases and reasoning apply, then it would mean that a jury would have to decide those. And anything that's come up since then that a jury hasn't decided, those convictions could be overturned and sent back. Then, you would deal with how do you decide if a jury-- how does a jury decide if the facts involve that? Because Section 2 of that same statute indicates that a jury shall never know that a person is a habitual criminal and it's the judge that should decide. You might end up having a process where you have to bifurcate trials.

**McKINNEY:** Cool. So, the other issue is that stuff happens on the federal level, and sometimes, we have to come back and clean it up. So, it's not just the language, it's federal courts do things and we have to come back and introduce bills. But I just-- instead-- my opinion, I guess-- and I guess I'll ask you how you feel about that-- instead of just striking it completely, I heard a lot of technical problems you-- that are making it confusing, that maybe people should get to a-- around the table and kind of figure out, you know, how to

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make it work in a sense, instead of just getting rid of it. Would you be open to that?

**AMY GOODRO:** Yes, I'd be open up to some options, certainly. Anything is better than what we currently have. And I've been in negotiations and would be more than willing to help Senator Bosn if she needed any advice on how particular amendments or different wording may affect us.

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

**AMY GOODRO:** Thank you.

**DeBOER:** Thank you, Senator McKinney. Other questions? I have a couple.

**AMY GOODRO:** Yes.

**DeBOER:** I think I would want to know, first of all from you, if there's any world in which you would support a-- let's say I can write it perfectly; I have a magic pen, all the words, and I can write it perfectly. Would you support this lesser baby habitual criminal if I can write it perfectly?

**AMY GOODRO:** I'm-- I guess you're posing such a hypothetical that I, I don't necessarily know that I can agree to. I mean, I don't know what perfectly is. You might have a different definition than me--

**DeBOER:** Well, I, I understand that. But it's perfect to you. I've written it such that it perfectly enacts the intent that I have to create a lesser habitual criminal statute for nonviolent-- what I want to know is, are you, as a county attorney, even open-- like, should we have a conversation? Are you even open to doing this, or is your mind already closed to the lower habitual criminal statute? Because as a legislator, we need to know kind of where we're working. Like, if you're not interested, then we're not going to keep asking you about it. Right? So, are you, are you interested in doing one that gets it done right? Or are you just not interested in the concept?

**AMY GOODRO:** Again, I would be open to amendments and looking at language and consulting with senators on how different wordings and different formats can affect us in the criminal justice system. This isn't a closed conversation, this isn't an end-all, be-all. Again, I'm-- we would be open up to amendments to 20--

**DeBOER:** The reason I ask is because I remember back in LB50 conversations-- and it wasn't you that I recall being in, in those

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conversations. The county attorneys were just never supportive of this idea as a concept. They didn't like the concept. So, if the concept is the problem and not the word-- like, I fully see the wording problems that you've brought to us, why it's a problem. I also think this is not an effective way to write this. You've made a great case for that. Is the problem, though, that it's convenient that this does not work well to do what others would like to do, or is the problem just that you don't like the concept?

**AMY GOODRO:** Well, what we have here is that this law is on the books. So, there's not really a whole lot of going back. So, like I said, anything is better than what we have.

**DeBOER:** Perfect. So let's make it better together, right? Instead of just striking it, let's, let's make it work. And I think you made some really good ideas about how to make it work, make it more-- I think the fact-based pattern, for all the reasons you said-- if we make this fact based, it's really problematic.

**AMY GOODRO:** Fair.

**DeBOER:** I don't see a way to fix that. Right? But if we list out the, the crimes that are eligible, yeah, we might miss some, yeah, there might be new crimes that are added, but that's for a future Legislature to deal with and not-- we can't borrow-- we can't borrow that trouble now, we can't make it perfect forever. Right? So, if we can list them out, does that seem like a better approach here?

**AMY GOODRO:** Certainly, you can list out offenses that you want it to apply to, and what you'd probably have to do is say if anyone has any conviction for, and then list out every violent weapons, child or sexual offense--

**DeBOER:** I was going to do it the other way, maybe, and say these crimes would-- but whichever way.

**AMY GOODRO:** It gets a little bit confusing when you do that. When this law was enacted, we had to have trainings-- prosecutors-- for decades. The AG's office had to create flowcharts in order for us to figure out and properly "concepulize"-- conceptualize exactly when this subsection (c) applied.

**DeBOER:** Would it be better just to do-- sorry, I didn't mean to cut you off.

**AMY GOODRO:** It's OK.

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**DeBOER:** Would it be better to just say, look, if they're more than this many years old, we're not going to count them? Because I know that was one of the things that was floated. So like, if we said, look, if it's a-- in fact, somebody approached me in my freshman year and tried to get me to bring a bill that would say for our habitual criminal statute, if you-- if it's 10 years or more, if it's 20-- I don't even remember what it was-- then you-- then it doesn't count towards the habitual criminal. Would that be a--

**AMY GOODRO:** I don't think that I would-- sorry. I don't think that would be a good option. That, that's addressing a separate issue and not cleaning up any of the issues that we're having now.

**DeBOER:** It isn't cleaning it up, but I'm asking if going down that path might lead to better fruit than trying to list all the crimes, or--

**AMY GOODRO:** No.

**DeBOER:** You don't think so?

**AMY GOODRO:** I don't think so, no.

**DeBOER:** OK. All right. Well, we'll keep working on this, I guess. Are there any other questions from the committee? Thank you for being here.

**AMY GOODRO:** Thank you all for your time. Appreciate it.

**DeBOER:** Let's have our next proponent. Now let's go to opponents.

**SPIKE EICKHOLT:** Good evening, Vice Chair DeBoer, and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to LB150. As Senator Bosn alluded to, I have been in conversation with her about a resolution on what she's trying to do with the bill. I'm handing out my testimony, and I'm also handing out one of the CJI-- the Crime and Justice Institute's final reports that was under-- the underpinning, if you will, of LB50 that was passed by the Legislature in 2023 that created this lesser habitual criminal penalty. Just want to kind of tell the committee again, since you're new to-- some of you are new, are new to the committee, the habitual criminal law is Nebraska's three strikes laws, and most states have a-- some version of the three strikes law. When CJI sort of analyzed our sentencing trends, our prison populations, and reform for our criminal code that other states have done, one of

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the things that they recommended with respect to our three strikes laws-- and, and it's on page three regarding policy recommendations-- it was to ensure the habitual criminal "enhats"-- enhancement statutes is used only for violent or sex offenses. In other words, CJI looked at the data, they looked at the numbers, and there were instances of people who were found to be a habitual criminal for what were considered nonviolent, non-sexual crimes. Attached to my testimony is a proposal, an earlier version of an amendment that I shared with Senator Bosn that would, instead of repealing this lesser habitual criminal category, would actually just narrow it to simple drug possession and theft offenses. The language is not quite right, and I acknowledge that the version you have is not right. I did this earlier this week-- actually, on Sunday I did. So, I have reformed it and shared it with Senator Bosn subsequent to that, but that at least gives you some idea. And it's similar to what Senator Hallstrom suggested, that we simply list the actual designated offenses that are eligible for, for enhancement. That's what we do in DUIs, that's what we do in other enhanced crimes, and that's what we do under prior LB50 law with a habitual criminal enhancements. So, that's our proposal: instead of repealing it, to simply reform it, to narrow it. It's responsive to the State v. Briggs, it's responsive to the other case that Senator Bosn talked about, and, as Senator DeBoer alluded, it does not throw out the baby with the bathwater. And so, we'd encourage the committee to look at doing that instead. I'll answer any questions if anyone has any on this, but that's what our proposal would be. It was a recommended change based on your reforms. And Senator DeBoer is right, the county attorney association did not like it. I saw this issue going through, but I was not part of the writing of the bill. And in defense of the senators-- and if I could just make one point, I've learned it's never too soon to like to say I told you so. But one of the things that I want to draw your attention to, when I talk about bills, you need to look at the actual language of the text, because this is a perfect example. When they passed this LB50, you all conceptually thought it was only going to impact drugs, nonviolent cases, but the courts don't look at all of that. They only look at the text of the statute itself. So, that's just one thing I want the committee to appreciate, and I will answer any questions if you have any.

**DeBOER:** Are there questions for Mr. Eickholt? I don't see any. Thank you, Mr. Eickholt. Next opponent.

**JASON WITMER:** Thank you, Co-Chair [SIC] DeBoer, committee. My name is Jason Witmer, J-a-s-o-n W-i-t-m-e-r, and I'm here on behalf of ACLU in opposition of LB150. I didn't realize Spike was passing out this, so--

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the report that he sent, these are just punch lines out of the report. I was reading it, and it felt it very relevant. However, I will go directly into some of my testimony because, as was said-- first, considered alone, a bill that creates a new crime or increases the penalty for existing crimes might seem straightforward and benign to the growth of the prison population. Focusing on the categories of crime individually does not reflect significant prison numbers. However, when considered cumulatively year after year, the lawmaking practice of continually making new crimes and enhancing existing crimes not only causes the tide of imprisonment to rise, but also the cost to the "taxpayer"-- taxpayer. As was said, LB150 strikes out some reforms that was done by LB50, a 2023 reform bill, and-- involving the habitual offender enhancements. And then also, as was said, the habitual offender is our three strikes. So, 10 years means day for day, when they say "no good time;" that means you do 10 years, and then you start anything else you might have. Three years is day for day. With that being said-- well, I'll point that out afterwards. LB50, which passed in 2023, made recommendations to change, to curtail the prison overcrowding. It also-- I would add the habitual criminal disproportionately affects those minority commun-- minority communities. And I, I just want to add that, because when we address situations like that, we address the-- some of the problems across the board. What occurring with-- when we do this, is-- it's mass incarceration by a thousand cuts. It's just adding up and it's adding up. If you look at that bill, LB50, and you look back, LB920, what came from that report-- CGI [SIC] which was nonpartisan and was an independent organization come to look at our system and what's going wrong, and if we should have a new prison. And they said no, and they've recommended many reforms. And then, the body sat with the current administration, the state administration then-- which was the one before this-- and we couldn't get LB920, so LB50 is only a tamed-down version of that. And you should think about that when you look at where we are at with our prison system; when we talk about overincarceration, when we talk about recidivism hasn't gone on, when that talks about a 10-year period, one of four-- one of four states, and we were one of them-- we're the only one that increased our prison population and didn't decrease the crime. So, I think that should be looking reference when we talk about something as such as a habitual criminal, which is just maxing people out.

**DeBOER:** OK.

**JASON WITMER:** Yes.

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**DeBOER:** Let's see if there are any questions for you. Are there any questions? I don't see any today.

**JASON WITMER:** Thank you.

**DeBOER:** Any other opponents? Any neutral testifiers? Not seen any. That will bring Senator Bosn up. I will read for the record that there was 1 proponent comment and 1 opponent comment, and 0 neutral comments for LB150. Senator Bosn.

**BOSN:** Thank you. Couple of points of clarification. I haven't had a chance to look over the CJI report that was submitted to everyone by Mr. Eickholt, but my recommenda-- or, my recollection from reading it when I joined the Legislature, as well as what is stated on the bottom of page 3, is that those policy recommendations were not a consensus item. The, the individuals who made up that committee didn't all agree to all of those. Some probably agreed to some and not others, but I just-- I always am a little bit nervous to say that this is a policy recommendation on behalf of a board that didn't unanimously support that policy recommendation, so. I think that the habitual criminal statute, as it's currently-- or as it was prior to 2023, is addressing the most violent offenders. And this committee is going to be faced with looking at how do we reduce the prison population, how can we give individuals who are worthy of it second chances? And I think we have to really be willing to say who deserves second chances, and who we are giving a fourth chance to. These are individuals who have been convicted, released back into the community, convicted, released back into the community, convicted again. So, this is not individuals who are getting a second chance; these are individuals who are getting multiple chances at felony convictions resulting in a year of incarceration. So, I urge all of you to keep in mind that a Class IV felony has a presumption of probation, so they are presumed to get probation on those. There has to have been something heightened that required them to get a full year on a Class IV felony conviction. That's going-- that only exacerbates as you get to more serious and more serious crimes, but I, I think you have to have some teeth to these habitual criminal statutes. I also want to make sure that I'm very clear, given Senator McKinney's questions of the testifier. I repeatedly pointed out these concerns during the debate on LB50. I had been in the Legislature 12 days. I filibustered a bill, 12 days, no freshman orientation. I'm not tooting my own horn, but I made every effort to point these concerns out repeatedly as it relates to this section, and also to giving individuals parole eligibility sooner. Those were the two things. Both of those have had ongoing problems since the day we passed that bill. As it relates to Senator DeBoer's

question about, you know, you don't like this, you didn't like it then, so why should we trust that you're going to even be willing-- you know, am I going to continue having problems with this? I think there's a difference between opposing a concept-- which I do-- and at least saying I don't like it, but you still have to have a fix for the problem. And so, I-- yes, I'm willing to come to a solution if there is one. My position is I won't like it, but I can get over it. But I still think that requires the reverse: if there isn't a solution that we can work, we have to be willing to say we were wrong and we need to, we need to exclude this unless and until we can come up with a solution. And then, you can propose a bill that brings the baby habitual criminal back in 2026. There was a question about whether or not we should have some sort of time limit. Like, you can't use enhancements on a DUI that are over a certain number of years. The problem with these particular cases is these are individuals who went to prison for a very long period of time. Where does that time start? If I'm convicted in 1982 and I serve 20 years, I get out in 2002, and then I'm convicted in 2010 and I go in for another 20 years. I'm still in, but that doesn't mean that those crimes shouldn't count. Most of my life I've now spent in prison, right? So, I, I don't think you can use-- I don't think you can treat habitual criminal the same as you can some of those enhancements in other places, given that its very nature is to essentially include some of the worst offenders who have likely served long prison sentences rather than exclude some of the worst offenders. I'm happy to answer any questions. I appreciate the conversation, and certainly appreciate Ms. Goodro coming in and articulating, although at rapid speed, her concerns.

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

**McKINNEY:** Thank you, and thank you, Chair Bosn. I was on the CJI task force, and the reason why-- because it was option 20, I believe-- and the reason why it was a non-consensus item-- well, the last four were non-consensus-- it wasn't because people couldn't agree. I think that got overstated. The problem was we didn't have time to meet. So, it, it wasn't that people were disagreeing with none of the four concepts; it was that we didn't have enough time to get to the language piece of it. So, it wasn't that people were-- it was nonconsensus because people were in disagreement; it was non-consensus because we didn't have time to hash out the language before the report came out on all four. And even-- but also, during the debate for-- I guess my question would be, do you plan, I guess, at least to entertain the conversation with Spike? Yeah.

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**BOSN:** So, the language that he attached here-- yes I do, to answer your question.

**McKINNEY:** OK.

**BOSN:** But if you look at the language that he sent to me the other day, the concern that I had was at least one of the prior convictions. So let's say I have a prior conviction for a PCS, but I have a prior conviction for first-degree domestic assault, right? First degree DV, and I have a third conviction for terroristic threats. Right? So, this says since at least one of the prior convictions is that PCS, I'm eligible for the baby habitual criminal. It almost gives a benefit to someone who has been convicted of one of these. Even though I have a first-degree domestic assault and a terroristic threats, since I had that prior PCS, I now get the baby habitual automatically, right? And he agreed, OK, that's not what my intent was, we got to keep working on this. So, we're not there. I'm not going to mislead anyone. But I think at least it's-- I think we have the same ultimate goal. It's-- can we do it? And then, are we foreseeing any potential problems that will bring us back next year to have the same debate?

**McKINNEY:** Thank you.

**DeBOER:** Other questions? I'll say thank you for-- you know, I, I understand-- you very clearly stated you don't love it, but you'll work on it. That's, that's very helpful. Thank you. And I do see your problem that you're talking about. I think the idea was to say we don't-- we want only two of the three to be violent, and so we ended up writing the one. So now, you're right, it's like I should be-- I should carry a bag of cocaine around--

**BOSN:** Correct.

**DeBOER:** --in my pocket just to make sure that if I get pulled over, I've got that on my record. So I can-- I get that. That's a problem, and I think we can fix that because we were, I think, imagining the-- as I remember, we were thinking there are three, and so we want only two of the-- but we could probably find a way to fix that, so.

**BOSN:** I look forward to seeing your language and Mr. Eickholt's language.

**DeBOER:** All right. OK. Any other questions? That ends our hearing on LB150, and ends our hearings for the day.