*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

BOSN: Welcome to the Judiciary Committee. I'm Senator Carolyn Bosn from Lincoln. I represent district 25, which is southeast Lincoln, Lancaster County, including Bennett. I serve as the chair of the committee. The committee will take up bills in the order posted. This public hearing is your opportunity to be part of the legislative process and to express your position on the proposed legislation before us. If you're planning to testify today, please fill out one of the green testifier sheets on the back table. Be sure to print clearly and fill it out completely, giving it to the test-- the testifier sheet to the page or the committee clerk when you come forward. If you do not wish to testify but would like to indicate your position on a bill, there are yellow sign-in sheets on the back table, and these will be included as an exhibit in the official hearing record. When you come up to testify, please state your name, spelling your first and last name so that we can get an accurate record. We will begin each hearing today with the introducer's opening, followed by proponents, then opponents, and finally, neutral testifiers. We will finish with a closing statement by the introducer if they wish to give one. We are using a 3-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have 1 minute remaining, and the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Given the number of bills, my committee members have asked that I really stick to the 3 minutes, so I will respectfully be pretty firm on that. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard, but is just part of the process, as senators may have bills to introduce in other committees. A few final things, if you have handouts or copies of your testimony, please bring up 12 copies and hand them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted and will be cause for you to be asked to leave. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included 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 to my left.

HALLSTROM: Thank you, Chairwoman Bosn. Bob Hallstrom from Legislative District 1, representing the counties in southeast Nebraska, of Otoe, Johnson, Nemaha, Pawnee, and Richardson.

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

STORER: Good afternoon. Senator Tanya Storer. I represent District 43, 11 counties in north central Nebraska, Dodge, Sheridan, Cherry, Brown, Rock, Keya Paha, Boyd, Garfield, Loup, Blaine, and Custer.

HOLDCROFT: Senator 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.

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. I'll have our pages for today introduce themselves, please.

AYDEN TOPPING: My name's Ayden. I am a second-year student at UNL.

RUBY KINZIE: I'm Ruby Kinzie. I'm a third-year political science major at UNL.

ALBERTO DONIS: Alberto Donis, first-year at UNL.

BOSN: Thank you. And with that, we will begin today's hearing with LB443 and Senator von Gillern.

von GILLERN: Good afternoon, Chairman Bosn and members of the Judiciary Committee. For the record, I'm 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. The page is handing out a white copy amendment, AM489, and also testimony from someone who was unable to be here today, so that's what you'll have in your hands here shortly. I'm here today to introduce LB443, a bill dealing with un-- unlawful squatting. At the outset, I want to offer a very sincere thank you to

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

both Spike Eickholt with the ACLU and Alicia Christensen with Together, Inc. of Omaha. The two of them have each provided valuable input, and hearing their concerns has helped us to make LB443 better legislation. AM489 in front of you is a result of those conversations. Before I actually describe what LB443 does and how I want to anticipate a few misconceptions and state clearly what the bill does not do. First, LB443 does not criminalize homelessness. You'll hear otherwise today. It does not criminalize homelessness. I recognize that that's an extremely delicate issue requiring careful and measured touch, and I'm sensitive to the nature of this issue, particularly during a housing shortage, and grateful what Together, Inc. and others do in that cause. Second, LB443 does not seek to use criminal justice procedures to circumvent established measures in civil law for adjudicating cases in which legitimate property rights are genuinely in dispute. In fact, the bill contains measures specifically designed to counter attempts to do so. Where the rights of holdover tenants are concerned, existing eviction proceedings afford due process. No aspect of LB443 is applicable in these cases. So what does bill do-- what does the bill do? LB443 modifies the section of the Nebraska Criminal Code governing first-degree criminal trespass, first, to specify and in-- and include and define squatting, and second, to provide a fair and reasonable procedure for removal of a squatter by law enforcement. Under the proposed revision to Section 28-- or 28-520. Squatting is defined as, quote, occupying a dwelling, unit or parcel of land containing a dwelling unit, meaning a building intended for residence in which a person is not entitled to occupy under a rental agreement or is not authorized to do so by a tenant who is so entitled. Subsection, subsection (4)(d)(i) [SIC] of the bill explicitly excludes holdover tenants from the definition of a squatter. Under LB443, if a home's owner or authorized tenant has a problem with squatters in or around their place of residence, they're empowered to initiate an expedited removal process that is governed by laws that address the situation for what it is: unlawful trespassing and a criminal violation of someone's right to their home. The removal process requires the party requesting removal to submit a sworn affidavit to their local sheriff, testifying that each of the following conditions are met. First, the person is the owner or lawful occupy-- occupant of the dwelling or parcel of land. Second, a person is occupying the dwelling unit or parcel and is not authorized to do so by rental agreement or authorized by a tenant who is party to one. Third, the owner or lawful occupant has asked the unauthorized person

to vacate the property. Fourth, the unauthorized person cannot produce documentation, correspondence, or government identification indicating that they used the address of the dwelling unit as an address of record within the previous 12 months. Fifth, the unauthorized person is not a holdover tenant. Sixth, the unauthorized person is not an immediate family member of the owner or law-- or lawful occupant. And seventh, there is no pending litigation such as an eviction suit related to the property and the unauthorized person. When they receive a request for removal of a squatter, the sheriff or deputy is responsible for conducting a reasonable verification that all of the above conditions have, in fact, been met. If these conditions have been met, the sheriff or his, or his or her deputy are responsible for removing the squatter and may arrest and charge him with a Class I misdemeanor for criminal trespass. If the sheriff or deputy discovers that the person requesting the removal intentionally misled law enforcement through their affidavit, LB443 makes them liable for a Class I misdemeanor, the same level of offense as someone author-- someone arrested for squatting. In closing, I want to emphasize that we worked hard to tailor the bill to protect people's rights to their homes. The removal process outlined in LB443 has been vetted to ensure that it affords timely relief for people who find themselves in a truly distressing situations-- situation. With that, I'm happy to take any questions from the committee members.

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

DeBOER: Thank you. Senator von Gillern, I'm just getting this white copy amendment, so I'm trying to--

von GILLERN: My, my apologies for not getting that out sooner.

DeBOER: No, that's OK. I'm just trying to get up to speed here. So did I hear you right? Did you say that if there is a person that the owner requests to be removed for squatting, that if the cops go there, they will arrest them for trespass? I'm like, is there a new-- I'm trying to understand. Is there a new crime, squatting or are we using criminal trespass still?

von GILLERN: It's a version of a criminal trespass, but I'm going to have the-- there's some folks behind me that will be able to address--

DeBOER: OK.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

von GILLERN: --it better than I will. This-- and thank you. I'm sorry. I'm, I'm not as well-versed in the legalese about that. What I'm-- the-- what we're attempting to do is, is the, the criminal trespass laws and the civil laws regarding landlord-tenant rights, there's a gap between the two of those that we're trying to fill, and to, to ensure that a, a party who is squatting can be removed in a timely manner and, and not be mired into the landlord-tenant process, where, if you've got a squatter in your home, where the police come out and say, well, we don't have the evidence that we need, we don't have the tools that we need. Therefore, you need to contact an attorney and file a suit, or file a complaint to have them removed. Well, that can-- as we all know, that can take an extended period of time. So we're trying to, to fill the slot between those two. But as far as the specifics about the law, I'm going to let some others respond to that for me.

DeBOER: Is this a problem-- where did-- who brought this bill to you?

von GILLERN: It was not brought to me by anybody. It was-- it generated from conversations from different, different law enforcement agencies, both in Omaha, Douglas County, Lancaster County.

DeBOER: So the gap that you see is the gap between-- because its-- it does not apply to holdover tenants, doesn't apply to anyone who ever-- so it would be someone who's just like goes up to a property, says, well-- Goldilocks. Right? This looks like a nice house. I'm going to walk in and--

von GILLERN: Wish I'd worked that into my opening statement, but keep going.

DeBOER: Yes. It was good, right? So this is Goldilocks, and, and that's the problem you're trying to solve, is that Goldilocks is eating their food and sleeping in their bed.

von GILLERN: What we're doing is, is LB443 does, does not create a new crime.

DeBOER: OK.

von GILLERN: What it does is it specifies that squatting as defined in the bill constitutes a first-degree criminal trespass. It provides a clear process for law enforcement to remove people at that point. And,

and, and again, my intent is that it accelerates that process, doesn't get it mired. It-- because at this point, if, if-- under-- my understanding of the way that the law stands currently, someone could make the claim that they have a right to be there, and the sheriff or the, the, the law enforcement individual would require documentation. Again, you know, call an attorney and, and have them removed and, and all those kinds of things. And that-- that's a, that's a lengthy process. Well, if someone's living in your home, you don't want that to be a lengthy process.

DeBOER: So what if I do have a right to be there? I'm Goldilocks, but I'm-- the 3 bears have asked me to vacation sit for them and watch the dog or whatever.

von GILLERN: Yeah. And again, the, the 7 items that I, that I rattled off that are required, it would be very easy to, to provide evidence in one of those that shows that you have some right to be there.

DeBOER: OK.

von GILLERN: Number one, if, if, if the owner of the property gave you permission to be there and the owner of the property is asking you to leave.

DeBOER: But the--

von GILLERN: There's--

DeBOER: So then it has to be initiated by the owner of the property.

von GILLERN: Yes. Yeah. The-- item one, the person, the person or the owner is the lawful occupant of the building and the--

DeBOER: So--

von GILLERN: --parcel of land.

DeBOER: OK.

von GILLERN: --and/or the parcel of land.

DeBOER: Sorry, but let me set up a problem scenario, and you can defer it or whatever. So me and my non-existent husband are getting a

divorce, but we're, we're just going through the process. I'm in the home for now. We have a dog. None of these things are true, but-- you know. And I say, von Gillern, will you come stay at my house and watch Fido? And then my husband says, ha ha. Now I'm going to get back at her, and has you brought up on trespass charges while I'm in my underwater scuba vacation. Right. I mean, like-- but there are vacations where you're, you know, I'm on a cruise ship or something and you can't get a hold of me.

von GILLERN: Right.

DeBOER: And so now you are-- you're there by permission of me, but the other guy who also owns the house-- I mean, do you see what I'm saying?

von GILLERN: Sure. Yeah. So the, the second item in my, in my long list says, the person occupying the dwelling unit or parcel is not authorized to do so by rental agreement, agreement or authorized by a tenant who has party to one. Now, did you and your friend-- did you write him a note, say, hey, you know--

DeBOER: I don't normally write--

von GILLERN: --so-and-so, you're, you're allowed to be here for--

DeBOER: I don't normally make it a habit of writing notes for my dogsitter to be there.

von GILLERN: I, I understand that. You might want to going forward, if you have-- if you-- if your fictitious husband and you aren't getting along well. So there, there might be a situation--

DeBOER: OK.

von GILLERN: --where evidence might be challenging to produce, but I mean via whether it's text messages, whether it's notes, whether it's-- I mean, the-- if, if you lived there-- I thought where you were going to go was, was that your, you know, the, the spouse is unhappy about their sig-- their-- still their spouse--

DeBOER: No, because that--

von GILLERN: --being in there, but that's easy to overcome.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: You've got that, you've got that taken care of in here.

von GILLERN: Yes. Yeah.

DeBOER: I see that. I was more worried about, you know, several occupiers of the property in one of them.

von GILLERN: Yeah.

DeBOER: OK.

von GILLERN: Yep.

DeBOER: All right. Thank you.

von GILLERN: If, if there's gaps we need to fill, then be happy to fill out a-- figure out a way to cover those. And I think you understand the intent.

DeBOER: Yeah. Thank you. That's-- I was just trying to--

von GILLERN: Thank you.

DeBOER: --get there, since we had a white copy.

von GILLERN: Yeah. Thank you. So, again, I'm sorry for the delay on the white copy.

BOSN: Senator Hallstrom.

HALLSTROM: Just looking again at this white copy. But it, it occurs to me that immediate family members and squatters aren't necessarily mutually exclusive in the universe.

von GILLERN: I-- something else I almost worked into my opening statement. Yeah. Is mother-in-law an immediate family member? I'm not sure.

HALLSTROM: Our estranged child or something.

von GILLERN: Yeah.

HALLSTROM: My, my son's down in my basement--

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

von GILLERN: Uh-huh.

HALLSTROM: --type of thing. It just occurs to me that we may want to give that some, some thought.

von GILLERN: Yeah. And, and again, not to interrupt you, but, but what we felt was that that did not fit into what we were trying to do. That's a fa-- a family--

HALLSTROM: Yeah.

von GILLERN: --familial issue. There are, there are other laws that cover those things, and, and other better ways to address those kinds of challenges, rather than claiming that they're squatting.

HALLSTROM: Second quick question is, are you intending for this to apply to unimproved parcels of land? Because there appears to be some-- some of them say a dwelling unit or parcel of land containing a dwelling unit, and others don't have the containing a dwelling unit.

von GILLERN: Yeah. And that was one of the points that we, that we took out of the original bill. Because that, rightly or wrongly, it was felt that that was targeted at homelessness. And again, that was not our intent. My first draft of the bill included that, but again, in, in speaking with others, that, that felt like it was a target against homeless individuals, again, which was not the intent. The, the intent of this is: I come home; I'm, I'm a snowbird; I go to Arizona for 4 months; I come home, and there's somebody else living in my home. How do I get them out?

HALLSTROM: Yeah. And, and my point is, I think it ought to be consistent throughout because there's some definitions--

DeBOER: Mm-hmm.

HALLSTROM: --and some references in here--

von GILLERN: Yeah.

HALLSTROM: --that seem to say if it's only a parcel of land that's going to be covered under this.

von GILLERN: Got it. OK. If there's a way to-- if we need to clean--

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: Yeah.

von GILLERN: --something up again, happy to do it.

HALLSTROM: OK.

von GILLERN: Thank you for catching that.

BOSN: Any other questions for Senator von Gillern? Maybe?

STORER: Me.

BOSN: Senator Storer.

von GILLERN: Oh, the anticipation.

STORER: Thank you, Chairman Bosn. I'm just-- for those-- I'm trying to think through if there's a way to include undeveloped parcels of land without-- out target-- targeting homelessness. And, and where I'm going with that, you know, obviously in agricult-- agriculture, on occasion, you can have people that decide they're going to take a-- I mean--

von GILLERN: Mm-hmm.

STORER: --there have been instances where it's private property and individuals have insisted that it's not, and they have a campsite there and don't want to leave. It's--

von GILLERN: Right. Right.

STORER: While it's, I don't think a rampant problem at this point, it seems like it still kind of falls into the same--

von GILLERN: We-- in conversations, we felt that, that the existing criminal trespass laws covered that.

STORER: OK.

von GILLERN: Again, the, the-- if that's the case, that's certainly not-- as the landowner, that's certainly not a pleasant scenario, but it's not nearly as urgent as somebody living in your home.

STORER: Right.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

von GILLERN: So we felt that the existing trespass laws and landlord rights laws were, were strong enough to deal with a situation like that. And again, probably didn't-- if I own a piece of industrial property in the middle of Omaha and there's somebody camped on it, I don't like it. It's not the way it should be, but the existing trespass laws can, can adequately address that.

STORER: OK.

von GILLERN: And again, not the urgency-- not the same level of urgency.

STORER: OK. Thank you.

von GILLERN: Thank you.

BOSN: Any other questions? Are you staying to close?

von GILLERN: I will.

BOSN: All right. Thank you.

von GILLERN: Thank you.

BOSN: Before we begin with proponents and opponents and neutral testifiers, can I see a show of hands how many individuals wish to testify in some capacity on LB443? 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12. Wow. OK. Please keep in mind the ability to just second someone before you's testimony if you feel so inclined. First proponent. Good afternoon.

LYNN FISHER: Good afternoon, Senator Bosn. Thank you for allowing me to testify. My name is Lynn Fisher, L-y-n-n F-i-s-h-e-r. I represent the Statewide Property Owners Association and the Real Estate Owners and Landlord Association of Lincoln. We support the passage of LB443. Similar laws have been proposed or enacted in states like Florida and Georgia to prevent abuse of property rights. Under current circumstances, if a law enforcement-- if law enforcement won't take action to remove squatters, property owners only have the civil court system to remove the squatters. This takes too long, and the lost rent and property damage is a high-cost burden on the owner. Most owners don't have much or any financial cushion to absorb this expense. According to the IRS, nearly 40% of rental property owners, like most

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

of our members, show a loss on their tax returns each year for their rental property investment. Having to add removing squatters to the expense side of the ledger could mean financial disaster for some owners. The process for civil removal is long. (1) Issue a 30-day notice to vacate. (2) Deliver the notice in person or mail it to the address. (3) Wait to see if they move out on their own. (4) File an eviction lawsuit. (5) The court will set a hearing date, usually within a few weeks. In, in Nebraska, it's actually fairly soon, within a-- about 10 days. (6) Obtain a, a writ of restitution; and (7) enforce the eviction and change the lock. Altogether, this could take a couple of months or more, leading to the huge expense and time and then, of course, potential damages. If LB443-- LB443, if passed, would allow law enforce-- law enforcement to remove squatters who are using fraudulent documents or who have no documents to claim possession of a property. Law enforcement would give the squatter 72 hours to present proof of their right to the property. If they can't, they would be arrested and removed. LB443, if amended, could classify presenting false-- fake leases, forged deeds, or fraudulent rental agreements as a felony offense rather than a civil matter, and criminalize the use of fraud-- fraudulent documents for squatting. Also, before utility companies or cities record-- records recognize a lease, they should be required to verify the lease with the property owner. We have all seen reports of criminal-- criminals manipulating the system and squatting in homes. I've personally experienced instances where we've had to use the civil court process to remove unauthorized persons when law enforcement could not assist us. If we, if we would have had LB443 in place, we could have saved some time and-- much time and money. Please vote to advance LB443. Thank you very much. I'll be hans-- happy to answer any questions.

BOSN: Thank you. Questions for this testifier? Seeing none, thank you for being here.

LYNN FISHER: Thank you very much.

BOSN: You bet. Next proponent.

AARON HANSON: Thank you, Madam Chair, members of the committee. My name is Aaron Hanson, A-a-r-o-n H-a-n-s-o-n. I'm the Sheriff of Douglas County. I do apologize for my casual attire. We were battling a blizzard since 4:30 this morning. Didn't get a chance to go home and change, so I apologize. Thought I could hide the hat head, but Dr.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

Feichtinger told me it was bad decorum to wear my hat in here. So, when we were asked by Senator von Gillern and the Metropolitan Omaha Property Owners Association to, to come testify in support of this LB, it made sense. You know, obviously, sheriffs' offices across the state do have a statutory relationship with the eviction process. I actually have 1 deputy whose sole job is to work those type of cases. We're, we're built for 2 because they are so complex and the, the eviction-- the follow-up to the eviction process is, is such a specialized area. And although we don't have a huge epidemic of squatting in Nebraska and in Douglas County, I can tell you that it's an issue that comes up with regularity with many of my peers in other states across the nation. I think you need only take time to Google squatter nightmare, and you will see across the country, where squatters have taken up residence, either in a house that maybe they initially gained access to through Airbnb or some other short-term rental situation, or even taking up residence in a house-- in a home that was abandoned or maybe under reconstruction. And so, in my view, this bill would allow for an even brighter line for law enforcement and for property owners to ensure that there is a clear line of demarcation between a typical dispute between a landlord and a tenant, the traditional due process that occurs with the, the eviction process between a landlord and, and a tenant, and individuals that are clearly trying to game the system and engaging in, in trespassing and theft, essentially, of, of a landlord-- a landowner's property. Appreciate your consideration. I'll take any questions that you may have.

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

HALLSTROM: Yes. You and the previous witness have both referenced a lot about landlord and tenant, but the way I read the amendment is that the owner of a personal residence, absent any rental agreement or tenancy relationship, would be covered under this. And that be your intention that that should be covered as well? It's not just limited to landlord-tenant?

AARON HANSON: Well, my, my intention, my belief would be-- and just for fairness and due process, that if there was not a relationship, a legal transactional relationship between a land owner, a property owner and someone who is living on their property. If there was no intent to be a landlord-tenant relationship, then I think that, that is-- that line should be the-- a divider between those 2--

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

HALLSTROM: OK. Thank you.

AARON HANSON: --scenarios.

BOSN: Is that a hand?

DeBOER: Yeah. Sorry.

BOSN: Senator DeBoer.

DeBOER: Thank you. How are you dealing with these situations now? So if somebody does-- they Airbnb my house, then they stay there and won't leave. Could I call you now, and what would you do now if I called you?

AARON HANSON: You know, they're all going to be case by case. You know, there are scenarios in which there would be clear trespassing. We have had scenarios in which, let's say it was a, a vacant house or a, a house under construction, in which there is someone that just takes up residence. They had no utilities and there's no clear professional relationship between them and the residents, whether it was a written contract, a verbal contract. It's all case by case, but I think that the trespassing scenarios, for the most part, can be straightforward. But there, there can be some scenarios that I can envision in which there would be a long-term living situation in which maybe someone is and even does start to get mail there because they've been there long enough, but the owner had no idea they were there. I think, I think it all comes down to the evidence in every situation, because--

DeBOER: But--

AARON HANSON: --it would be case by case.

DeBOER: So if I called you with that situation now, you're saying you don't know how you would respond. It would depend on the facts of the case.

AARON HANSON: Give me the scenario and I could, I could tell you how we could--

DeBOER: I mean, I have an Airbnb house.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

AARON HANSON: Yeah.

DeBOER: Somebody stays over, they're still there a couple weeks later. I'm trying to get rid of them there. What would you do?

AARON HANSON: Well, if you have an Airbnb house and you have a contractual relationship with, with that person, and that showed a, a beginning and an ending term, and it was defined. And if the individual refused to leave, very likely that individual would be coming close to a scenario in which they could be arrested for trespassing.

DeBOER: So in that case, you wouldn't need this. You could already get them for trespass.

AARON HANSON: It all depends on the time in which the scenario comes into play. So let's say, for example, somebody owns an Airbnb, and let's say it's in a place where maybe they own a vacation home and it's not rented out constantly, or they don't live in it between Airbnbs. And come to find out, someone's been living there for 3 months, not just a week or a week and a half. You can imagine it could, it could become complicated for law enforcement to be able to navigate. OK, now is this a, is this a legal residence for this individual, or is this a trespassing scenario?

DeBOER: So what you're envisioning then is for the longer term, not the shorter term situations, for this to be useful as a way to help law enforcement sort out who is the rightful possessor of the property. Is that right?

AARON HANSON: Correct.

DeBOER: So the fact that they would be de facto criminally trespassed and then have to prove themselves not, is that a problem for the innocent until proven guilty aspect of our law? They have to-- so like you're going to come in and you're going to say not just get out, but that you are going to get this misdemeanor criminal trespass.

AARON HANSON: Well, obviously the innocent until proven guilty procedure is going to happen in the courtroom, not necessarily as we're standing there trying to navigate the scenario. But let me give you-- in your scenario, let me, let me lay out those 2 timelines. Let's say you're, you're 5 days after the Airbnb contract ended, or

you're 3 days, OK. Very likely, when an officer or deputy walks in there, you're going to see maybe a duffel bag with some of their clothes, and it's going to be very apparent that this is, this is very proximate to the time in which they transitioned from a, a renter or a tenant in a Airbnb scenario to now, a trespasser. Now, let's flash forward 4 months. You may have a, a-- you may--

DeBOER: Right. Now you're moved in. You've got a new couch.

AARON HANSON: You may tote multiple possessions. You might have pictures up. You might have actually received some Amazon packages there that, that if you're like, well look I had Amazon deliver some items here at this address, so.

DeBOER: So it's confusing then, at that point, for you, as a law enforcement officer.

AARON HANSON: It can be, especially the longer the time goes--

DeBOER: Sure.

AARON HANSON: --along.

DeBOER: So what you're saying, I think-- what I'm trying to understand is what you would like is for, in those kinds of circumstances, for law enforcement to have a mechanism for being able to determine who is the rightful possessor of the property.

AARON HANSON: I would say to determine who is trespassing, that's a-- that's one way to put it, yes. Who, who is rightfully residing on the property.

DeBOER: OK.

AARON HANSON: Understanding that there is going to be no clear line of demarcation.

DeBOER: So the, the one thing that I would be concerned about is putting you all in a position to kind of have to adjudicate that. Right? Because as you say, if you come in early and they've got a suitcase and you know, the pictures on the wall don't look like them and all of that, then you're not really adjudicating anything. It's kind of-- the situation is pretty clear. But if it's 3 months in and

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

the situation is not clear to you and you're having to adjudicate whether or not this person should be pushed out or not pushed out, I mean, it seems like that's a lot of responsibility on you all to try and make a snap decision right there.

AARON HANSON: Well, and I don't think we'd ever make a snap decision.

DeBOER: Well, sure.

AARON HANSON: And obviously, we're not part of the adjudication process. Our job-- law enforcement's job at the front end of an investigation like that is to determine whether or not we believe we have met the legal elements of probable cause for a crime, regardless of the statute.

DeBOER: So that's my concern here is it seems like you're having to make a-- you're having to take responsibility for things that are not sort of clear on their face.

AARON HANSON: Well, I would argue that that's, that's, that's the majority of law enforcement scenarios. So let's take, for example, a domestic violence, a he said versus she said, where a law enforcement officer has to make a tough decision in real time based on what one side and the other side says and oftentimes, minimal amounts of evidence. You have to make a decision. And you have to make the right decision because if you don't, you know, someone could get hurt if you leave and don't make an arrest. And if you make the wrong decision, someone's civil rights could be violated. So I would say that law enforcement is, is well built for that process. And also, you've got supervisors on duty that also help you navigate that process, as well.

DeBOER: Yeah. It just seems like this is putting a lot more on you all, but I'm going to keep listening as we--

AARON HANSON: We're used to it. We're used to it.

BOSN: Senator Hallstrom.

HALLSTROM: Just one quick thing. Senator DeBoer's example gives rise to one thing I think we need to look at on this, is whether or not that constitutes a holdover tenant, which, under the amendment, is excluded from coverage, so we might have to sort that out.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

AARON HANSON: Well, one thing that could be a different scenario-- and I guess it all depends on the timeline. You can imagine that once you get into an Airbnb scenario, you know where the lockbox is, you know the code, you know where the key is. You know what I mean? And so you might end up coming back, even after there's been a break in the, in the occupancy in the rental. And then you come back, and you're clearly now trespassing because you, you-- there's no holdover tenant--

HALLSTROM: Correct.

AARON HANSON: --scenario at all.

HALLSTROM: Yeah. Thank you.

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

NATHAN HAUGEN: Nathan Haugen. Good afternoon. N-a-t-h-a-n H-a-u-g-e-n, testifying on behalf of MOPOA. And MOPOA is a group of mom and pop landlords in Omaha. Senators, LB443 will strengthen Nebraska law to discourage squatters. I believe Nebraska residents need to support LB443, as every family is vulnerable any time their home is left unattended in our community. LB443 is a strong start to provide a swift and timely response for local law en sport-- law enforcement. And as we heard from Sheriff Hanson, we believe strongly to support our law enforcement and giving them the tools, the legal grounds, and that direction that they need to bring common sense and protect our, our tenants and our properties. We have testimony from our members, where folks are trespassing-- I, I don't want to muddy the waters here too much, but-- in laundry rooms. And, and they, they say that they're a tenant of the building, but there-- there's no lease. But a lot of times, they just run into a lot of problems where the, where the-- we need some clear guidance on, on that to help them with this issue. And we're asking you to take a stand for the citizens of Nebraska to send a strong message that squatters are not welcome here in Nebraska. Please pass LB443. Thank you.

BOSN: Thank you. Any questions for this testifier? Seeing none, thank you for being here. Next proponent. Welcome.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DENNIS TIERNEY: Thank you. Good afternoon. Dennis, D-e-n-n-i-s, Tierney, T-i-e-r-n-e-y. Senators, LB443 is needed to protect homeowners, neighborhoods, and landlords from the illegal taking of property by squatters. There have been a number of news reports about the problem with squatting in Omaha in the last year. KETV had reports on August 29, December 11, January 27, and, and February 21 of this year. WOT [SIC] reports on May 23, June 24, and November 11. These were incidents of squatting in abandoned homes that en--endangered neighbors, an Airbnb that lasted months, illegal structures put up on private property, fires in 2 homes that the fire department said were started by squatters, and a fire at Crossroad-- Crossroads Mall, started by squatters. Just like we have laws against shoplifting in groceries or clothing stores, we need similar legislation that criminalizes squatting that I consider shoplifting someone's residence or apartment or commercial building. I personally have had a number of incidents in which people have accessed apartment buildings and slept in hallways and used them as a toilet. We strive to have safe and clean facilities for our residents, and squatting poses a safety and cleanliness problem for us. We had a squatter light a fire in a laundry room in February that caused damage to that room, but also led to firemen kicking in and ruining 9 doors to apartments that we had to replace. I don't blame the fire department. I blame the squatter. On Monday, I spoke to a property owner, to an owner of a property management company that managed an apartment building in south Omaha that has even worse problems with squatters. Now I have her, her permission to relate this to you. We've had units broken into. We've had squatters in the hallways. They are defecating and using the hallways as bathrooms. There have been drugs found, knives pulled, and lives threatened, including myself and my team. The police response has been limited. Unfortunately, even after calling the police, the response is, quote, do you have a ban and bar, unquote-- or unless you lock that building, we will not come to the property to remove individuals. They were slow to respond, most likely because resources are limited. We have since locked the doors to the building now. This, this-- actually, they had locks-- locked doors, but it was poor door jambs so they had-- got their door jambs improved and so that-- this is more secure now. But they had to set up another-- but they have set up another encampment behind garages at the property. They've had to clean out them-- 10-15 encampments over the last several months. Calling the mayor's hotline is a joke, to say the least. They do not come, they do not clean up, and they do not help us combat this issue.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

We need this legislation for our police departments to have the ability to remove these people from our property and the law to have enough attorneys to prevent recurrent episodes. Thank you.

DeBOER: Thank you. Are there questions for Mr. Tierney? I don't see any. Thank you for being here.

DENNIS TIERNEY: Thank you.

DeBOER: Take our next proponent. Anyone else here in favor of the bill? Let's move to opponents.

SPIKE EICKHOLT: Good afternoon, Vice Chair DeBoer and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association and the ACLU of Nebraska in opposition to the bill. I almost testified neutral. And I appreciate Senator von Gillern and listening to our concerns when we first visited with him in his office, maybe 3 or 4 weeks ago. I didn't get the amendment until yesterday, and I was somewhat surprised that-- I, I didn't hear anything back after I met with him, so I assumed it, it was just not [INAUDIBLE] responded to, but I appreciate what he did. If you look at the bill and the amendment, what-- one significant thing that Senator von Gillern did do is he did not create a new crime called squatting, which is what the original bill did. Then, you would have somebody who would be simultaneously charged with trespassing, then also squatting. The concern that we have now is-- and I'll-- I'm only going to speak to the amendment itself-- is that what this does do, it does sort of blend, if you will, or at least criminalize the remedy of forcible entry and detainer. The first proponent talked about that, and that is a remedy that's at 25-21,219. It's a civil remedy where, if you own a property and someone's there and they are not a tenant and there's no landlord-tenant relationship, you can file a civil action to have them removed and have the property reconstituted back to you. The first proponent testified and talked about the time it takes to execute that. It can take a couple of months, as he said. But what this does is it sort of fast tracks it in a substantive criminal law as a remedy, which is a bit odd. It's a bit unusual. And it is problematic, and Senator DeBoer sort of picked up on that, too. If you look, if you look on page 1, lines 25-27, it's got this sort of burden on the person who's either going to be cited or charged with this to sort of prove their innocence. And that's unusual. And it arguably is not

permitted in a criminal, criminal setting. You have a right to remain silent. You cannot be compelled to testify and produce evidence to establish your innocence, and I think that shifts a burden on a person to escape this criminal charge. And I don't know, really-- and I don't think this is Senator von Gillern's intent. I think if you look at page 2, lines 5-12, if a person is in a building where they're not authorized to be, they've committed the crime. The rest of the new bill is simply just the remedy that some of the proponents are seeking to do. And the concern that we have, particularly the ACLU, is that you are sort of criminalizing the forcible entry and detainer process with arrest, with charge that you could pursue, and still-- I guess you could still pursue it even with this law in a civil setting, so that's one of the concerns that we have. If you want to-- if the committee is interested in perhaps-- I don't know if Senator von Gillern is willing to do that, but I think if you just strike lines 14-27 on page 1 all the way down to line 14 on page 2, that would remove the remedy. It would still allow for proof of squatting as a type of criminal trespass under the first degree, and that would make it a simple criminal statute and it would broaden the criminal trespass. And I think that would maybe purs--accomplish some of the purpose of what the bill is meant to do. In answer to Senator Storer's question, 28-521 provides for trespass if you're just on someone else's property, not in a building, but if you're just somewhere where you're not supposed to be. So there's another statute that does provide for that.

BOSN: Questions? Senator DeBoer.

DeBOER: So I think what you're arguing is that the-- that they're sort of-- in the white copy amendment, you're not doing a new crime, but what you are arguing is that there is a remedy that is other than criminal within the crime.

SPIKE EICKHOLT: Right.

DeBOER: But instead, could it be-- because you could-- I could see how-- you produce whatever evidence to Sheriff Hanson. Sheriff Hanson says, no, you don't belong, kicked out.

SPIKE EICKHOLT: Right.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: Then you go to trial, you produce the same evidence. And for whatever reason, you're more convincing that time. And they say, oh, not guilty.

SPIKE EICKHOLT: Right.

DeBOER: So you're, you're kicked out of the place, which arguably, as Sheriff Hanson was saying, could happen anyway. Right. Like it-- under the current law, nothing here. But under current law, Sheriff Hanson goes. The owner says they're in the hallway. They shouldn't be there. Kicks them out. I mean, I don't see how it changes anything except I think it requires even more. Like, instead of him just going in, trying to assess the situation as it is, there's now a mechanism that he has to at least have some information about the owner and that-- in some ways it might be more protective of the folks there. Do you see what I'm arguing?

SPIKE EICKHOLT: He in that sentence is the sheriff?

DeBOER: He. Sorry.

SPIKE EICKHOLT: OK. Yes. Possibly. If you look at 28-522, and I know you don't have that in front--

DeBOER: I don't have that.

SPIKE EICKHOLT: --of you. I'm sorry. That is an affirmative defense statute for both criminal trespasses in a building or on property. That's not referenced here, but that's something that you can raise at trial if you're cited with current law trespass, and one of the affirmative defenses you can is that the building or occupied structure was abandoned.

DeBOER: You could still do that.

SPIKE EICKHOLT: Exactly. So it-- the concern, as the defense attorneys have, is that because you have this now sort of, in a substantive body of the crime, and then you can still somehow raise it as an affirmative defense. It's just sort of-- and, and frankly, maybe it's more of a prosecutor perspective that's going to be confusing for anybody. It's going to be more difficult for them to prove it, frankly, but, but that's the issue. You don't have to raise an affirmative defense. You can stand on your, you can stand on your

guilt. You can stand on your innocence. You don't have to introduce any kind of evidence that shows I was authorized to be there somehow. But you have that opportunity now. But this sort of shifts it in the field and requires interplay with the investigating officer, the land owner.

DeBOER: But see, that's where I think it's actually probably more helpful to the squatter in that sense, in that the squatter now, if he can, he or she can--

SPIKE EICKHOLT: All right.

DeBOER: --show any kind of evidence that they have some tenuous relationship to be there, then they get to stay. Whereas, if there's no information-- before this bill, there's no information presented in the moment, there's just a cop making a snap decision.

SPIKE EICKHOLT: Well, that's-- that might be fair to say. Speaking more from the ACLU now, but when we're talking squatters, we're talking about people who are homeless. And what you have is you have a lot of police interaction, a lot of government surveillance sort of bolstered through the, the trespass statute. I mean, I think the issue-- this is sort of symptomatic of people who are unable to find places to live. You've heard about people squatting in places without utilities, that sort of thing. That's a homeless population. So I--

DeBOER: So--

SPIKE EICKHOLT: I think what you-- what this could do is it could just sort of enhance police interaction and surveillance with that group of people.

DeBOER: How does it do that?

SPIKE EICKHOLT: Well, because you-- I mean, right now, I think Sheriff Hanson sort of alluded to it. If someone's there and they're not supposed to be there, they can be arrested and taken to jail for trespass. That's it. I'll write the citation when I get to the jail. That's the end of it. I don't start asking them for paperwork. I don't start asking if they're related to anybody who lives there.

DeBOER: But don't you want someone to be able to say yes, this is an unusual circumstance. I'm in this only half-built house, but this is

actually my half-built house. And here, I can give you some paperwork to show you that. Because then ostensibly-- whereas before, the cops might just come in and say, no, you're in a half-built house.

SPIKE EICKHOLT: Right.

DeBOER: Now, you can show them the paperwork.

SPIKE EICKHOLT: Well, I still, as written, I think-- still think they can, because this is an alternative way to do trespass. So it's "or," it's not "and." So in other words, if they're not there, they can still arrest under the first current law. But what this does is it gives them the ability to sort of go further. And maybe Sheriff Hanson's department wants to do that, to sort of help the people. I don't know first, and I can't-- I shouldn't speak for law enforcement. I don't know that-- this is a lot of work, I think, for law enforcement. But what-- it's, it's-- you're dealing with a homeless population, you're dealing with a criminal law enforcement response to that when it comes to basic housing issues. That's the concern, particularly, that ACLU has. And I know that we can't say it's criminalizing homelessness, and I don't think that's Senator von Gillern's perspective at all. But this falls on police. It falls in the Criminal Code. It's not necessarily benevolent. So that's the concern that, that we have on that point.

DeBOER: Yeah. It's hard to, to sort of think your way through it because on the one hand, it's creating a, a path to showing it's OK for me to be here.

SPIKE EICKHOLT: And you have that path in the civil setting. You don't have a right to--

DeBOER: Right, but--

SPIKE EICKHOLT: Because you don't have a right to remain silent.

DeBOER: But the civil setting doesn't do me a lot of good if the sheriff has kicked me out.

SPIKE EICKHOLT: And that's, and that's, I think, the motivation for the bill.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: No. I mean this-- so if I am not actually a squatter, but it appears I'm a squatter--

SPIKE EICKHOLT: OK.

DeBOER: --and I get kicked out of my place that I'm, you know, staying, now I, at least, can prove up the fact that--

SPIKE EICKHOLT: Well, yeah. Perhaps.

DeBOER: But you think that that's not how it's going to be used?

SPIKE EICKHOLT: I don't, I don't think so. No.

DeBOER: All right. Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: Yeah. Mr. Eickholt, one of us is misreading the statute-- the-- under the amendment. And we're both just looking at it without too much time elapsing. But what you're suggesting almost makes squatting strict liability if you took out lines 14-27 on page 1 and lines 1-14 on page 2, and if you're correct because your elements of the criminal trespass of squatting, which I don't believe it is. Subsections (2)--

SPIKE EICKHOLT: Oh, well, maybe I shouldn't have suggested that on the fly here on the record.

HALLSTROM: Subsections (2) and (3) only relate to removing the person from the premises, which I think is the-- if, if there is a need to remove the person from the premises without deeming them to be a criminal.

SPIKE EICKHOLT: All right.

HALLSTROM: That, that to me would be what (2) and (3) are designed to do, not, not as elements of criminal trespass.

SPIKE EICKHOLT: Right. But I think if you look at page 2, lines 25-30, it defines what squatting is, and I don't know if that's necessarily strict liability.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

HALLSTROM: Well, it's pretty darn close because you don't have any elements of defense on there. But it-- that's a different issue. I-- my point is I think (2) and (3)--

SPIKE EICKHOLT: Right.

HALLSTROM: --address the issue of if there is a need to have somebody--

SPIKE EICKHOLT: Right.

HALLSTROM: --that's not there without presuming guilt or innocence--

SPIKE EICKHOLT: Right.

HALLSTROM: --but satisfying the criteria for saying you're not supposed to be here and there's got to be a remedy. I think that's, that's appropriate and, and it's not part of the criminal offense, in, in my opinion.

SPIKE EICKHOLT: And, and that might be. That's one of the issues we have with it. Because you have this sort of accelerated, maybe civil, enforced by law enforcement remedy of removal basically, under the-- and I don't know how it interplays with the affirmative defense that you might have to that at 28-522.

HALLSTROM: OK. Thank you.

BOSN: Other questions? Thank you for be-- oh.

DeBOER: One more. Sorry.

BOSN: Go ahead.

DeBOER: So basically, this is the same-- the Sheriff's Office would, would enact a writ for eviction. Right? So this is the same thing. It's just being done before going through the civil process of eviction. It's like a writ before the, the process.

SPIKE EICKHOLT: Right? I think one of the proponents sort of explained that this would allow them to execute the affidavit and sort of get it right away.

DeBOER: So it's a writ without the process.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

SPIKE EICKHOLT: Right.

DeBOER: Thank you.

BOSN: Thank you for being here. Next proponent-- or opponent. Excuse me. Welcome.

ERIN FEICHTINGER: Chair Bosn, members of the Judiciary Committee, my name is Erin Feichtinger, E-r-i-n F-e-i-c-h-t-i-n-g-e-r, and I'm the policy director for the Women's Fund. We oppose LB443 as introduced. And I want to apologize. I haven't had time to familiarize myself with the amendment. But hopefully-- the written testimony that's being passed out in front of you, it has a lot of numbers, a lot of data about who is becoming homeless, who's, you know, at-- most at risk of becoming homeless. And I hope that that will help you better understand who would be impacted if the procedural questions that have already been raised today aren't answered and-- like, in a way that makes sure that we aren't targeting these specific populations. And I appreciate always, Senator von Gillern, for being thoughtful about his bills, and attempting to ameliorate the worst parts of LB443, and would look forward to working with him further in this committee on how to make sure that we're not actually criminalizing homelessness or the most-- our most vulnerable neighbors. And that's it.

BOSN: Thank you. Any questions for this testifier? Bless you.

McKINNEY: Thank you.

BOSN: Seeing none, thank you for being here. Next opponent. Welcome.

NOAH RASMUSSEN: Good afternoon. My name is Noah Rasmussen. I'm an attorney with Legal Aid of Nebraska. And I apologize. Noah, N-o-a-h, Rasmussen, R-a-s-m-u-s-s-e-n. I'm an attorney with Legal Aid of Nebraska's Housing Justice Project, and I am based in Legal Aid of Nebraska's Lincoln office. Thank you, Chairperson Bosn and all members of this committee for the opportunity to appear today. And thank you for the invitation to testify-- for the invitation from Senator McKinney to testify. I do not represent defendants in criminal proceedings. I do work with low-income tenants in eviction proceedings and other housing-related matters. Between me and other attorneys at Legal Aid of Nebraska, we assist thousands of tenants across the state each year. Based on our experience, we are concerned that LB443 will

harm tenants who have a legitimate and lawful right to remain in their home. Throughout my years representing tenants, I've had many clients who lack written leases or formal documentation of their tenancy. Landlords are not required to provide written lease agreements, or if there is a written agreement, they are not required to provide an executed copy of the lease to the tenant. Lease agreements may also be verbal agreements under Nebraska law. Additionally, I have helped many tenants who do not retain rent receipts or receipts, receipts were never provided by their landlord. Additionally, landlords are not required under the law to provide the tenant with receipts for rental payments. I've had clients who are locked out of their rental portals, losing all access to their proof of tenancy once there is any conflict with their landlord, but all these tenants possess the same legal right under Nebraska law as to-- as those with written leases and receipts for payments to their landlord. LB443 undermines existing protections by shifting the burden onto tenants to prove their legal right to reside in their home. This requirement is impractical, as the Nebraska law does not require tenants to maintain written proof of tenancy. Additionally, tenants cannot force landlords to provide such documentation. As a result, lawful tenants, especially those with verbal agreements or missing paperwork, could face wrongful arrest and misdemeanor charges simply for lacking paperwork that the law does not mandate. Existing laws already provide landlords with swift and effective remedies to remove unauthorized occupants. Nebraska's current trespassing law allows for the prosecution of unauthorized occupants. Additionally, the forcible entry and detainer statutes provide a streamlined civil process for property owners to lawfully remove individuals from their property. Using this process, a property owner can issue a 3-day notice to vacate, file a restitution complaint for just $51, and obtain a court order for removal in as little as 10 days. This nearly century-old process coupled with existing criminal laws already offers property owners the necessary tools to protect their rights and remove unauthorized occupants. LB443 also creates an opportunity for bad faith evictions, where landlords could misuse the law to bypass civil eviction proceedings. We are concerned that LB443 will have a chilling effect on tenants, placing them at risk of arrest simply for not having sufficient proof of an existing landlord-tenant relationship. This bill does not account for the realities of rental agreement in Nebraska and subjects lawful tenants-- I see I'm out of time.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

BOSN: You can finish your last thought here.

NOAH RASMUSSEN: OK.

BOSN: I know where you're at. I'm following along.

NOAH RASMUSSEN: OK. Lost my place here-- who were unable to produce paperwork that the law does not require them to have-- criminal proceedings. We are concerned this bill will destabilize housing security, undermine tenant protections, and disp-- disproportionately harm low-income Nebraskans. For those reasons, Legal Aid of Nebraska opposes LB443. Thank you again for this opportunity, and I'm happy to answer any questions.

BOSN: Senator DeBoer, followed by Senator Storm.

DeBOER: OK. So is the gist of your argument that the paperwork requirement to prevent yourself from getting kicked out--

NOAH RASMUSSEN: Mm-hmm.

DeBOER: --is that you may not have access to it, and therefore you may get kicked out inadvertently?

NOAH RASMUSSEN: That's definitely part of the concern, is that there's no requirement to ever have had these written leases, but then it's a requirement almost to prove that you're not a squatter.

DeBOER: So if you look like a squatter by nature, because your hair is like mine and it's sort of crazy, then you better keep your lease in your pocket and make sure you get it written. But if you're clean cut like Senator McKinney over here, then you don't need to worry about it. Is that kind of the concern?

NOAH RASMUSSEN: Well, and, and that you maybe didn't get-- you know, 2 people can enter into a verbal lease agreement and that's perfectly valid and enforceable under Nebraska law. So it's maybe just not even keeping your documents. It might just be that you couldn't even get a written one in the first place.

DeBOER: Well, so I better, I better make sure that I get a written document. McKinney maybe doesn't have to, but I need to because I'm kind of unkempt. Is that kind of the concern?

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

NOAH RASMUSSEN: I mean, that, that is--

DeBOER: Is that-- that it--

NOAH RASMUSSEN: That's part of the concern is right, that the it puts a lot of requirements on the tenant to maintain--

DeBOER: But--

NOAH RASMUSSEN: --written documents at the threat of criminal charges if they don't, basically.

DeBOER: But the, the bill says it-- it's not for tenants, it's not for holdover tenants, not about tenants. So your concern is that a tenant will be mistaken for a non-tenant.

NOAH RASMUSSEN: Yeah. I mean, I mean there's a few different things you can imagine. You know, one is you, you never-- you know, you always want to assume everyone will act completely properly. A landlord could always submit an affidavit saying that this person is not a tenant, knowing that they never did a written lease agreement, and the tenant might not have much documentation. I mean, there's also situations where property transfers or where people die. And, you know, the new owner doesn't understand this person as a tenant. They just don't have a written lease to show.

DeBOER: So you're saying it basically be like a left-handed eviction motion for someone who has a-- an oral agreement with their tenant.

NOAH RASMUSSEN: Exactly. Right. And that, you know, back to the sheriff who was testifying, you know, there's all that gray area. You know, for these super clear trespassing charges, they can remove the person. And for those more gray area situations, that's the exact situation where this forcible entry and detainer statute that already exists is the perfect remedy, because it's not forcing a sheriff to make these judgment calls. It's allowing a tenant, a landlord, and a judge-- or a tenant and landlord to make their case to a judge, and a judge be the one to ultimately make the decision.

DeBOER: But you can also understand the problem that a landlord might have, that if someone just shows up and starts living in your property and now you have to take them to eviction court and you never had any agreement with them that that is also a problem.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

NOAH RASMUSSEN: Right. I mean, that would be a problem if someone breaks into the property. And I mean, I do think in that situation, the sheriff under existing Nebraska law, the law enforcement does have rights to remove trespassers. I mean, I think if someone breaks into a person's living room and is just there when you get home from work, I mean, I don't think anyone thinks that the sheriff is just going to let them stay there on the couch.

DeBOER: No. But those aren't the kind of situations we're talking about, though. We're talking about the more complicated situation, where someone stays in an Airbnb, then they come back a month later, get the key in the same lock box. You should probably move your lock box. And now, they go in and they hang out there for 2 months. It didn't happen to be rented because it's the off season. And now they're sitting there. They've got pictures of themselves on the wall, whatever, or they're just a very canny trespasser, who brings pictures with themselves and dresses the room before the cops get there. Like--

NOAH RASMUSSEN: Right.

DeBOER: I mean, what do you do in those kinds of situations with the long-term squatter?

NOAH RASMUSSEN: Well, I mean, I think you can always contact law enforcement. And I mean, if they-- I think that, you know, there are existing trespassing laws that can be enforced, even without this extra squatting provision. I think in the situation where it is more complicated and maybe it's a bit grayer, you know, you just-- because there was a mention of a 30-day notice during the proponent testimony. I want to be clear. It's just a 3-day notice under forcible entry and detainer. So 3-day notice, and then you can be in front of a judge within 10 days. Obviously not ideal, but that is allowing everyone to make their case rather than, you know, the, the sheriff relying on how many photos are hung from a wall and things like that, that I think in those situations, in those trickier situations, the existing forcible entry and detainer statutes provide the effective remedy, while protecting everyone's rights.

DeBOER: OK.

BOSN: Senator Storer.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

STORER: I have a brief question. So you had mentioned the 3-day notice as, as a remedy. And thank you, by the way, for coming and your testimony. Wouldn't that imply-- so, so this proposed legislation does not apply to tenants.

NOAH RASMUSSEN: Right.

STORER: And if, and if I legitimate-- had a legitimate squatter and the 3-day notice was my only remedy to get them out, by issuing a 3-day notice, I'm implying they're a tenant.

NOAH RASMUSSEN: No. So there are 2 separate sets of statutes. There is the Landlord Tenant Act, which is 5-day, 7-day, 30-day, 14, 30-days. There's a separate set of statutes called forcible entry and detainer statutes. Those are, at this point, specifically used for nontenants, people without that landlord-tenant relationship. So a 3-day notice, I think, actually apply-- it doesn't at all imply that they're a tenant. I would say it actually implies the opposite, that they're not a tenant.

STORER: OK.

NOAH RASMUSSEN: Because it-- a 3-days for someone without a legal right to live there.

STORER: That-- say that again.

NOAH RASMUSSEN: A 3-day notice is what you would use for someone without a legal right to live there.

STORER: OK. Thank you.

NOAH RASMUSSEN: Yes. Absolutely.

BOSN: OK. So let me try and sum up. Your concern is, is that because there are no written leases in certain circumstances or formal leases we'll call them-- I mean, I-- in reading the amendment, which perhaps is different enough from the originally proposed bill that you haven't had the fair chance to read it, which is fair, you're-- the assumption is that you're going to have a landlord who swears under oath, penalty of perjury, and also penalty in this law of lying is greater than the, the harm that it seeks-- the bill seeks to, to fix?

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

NOAH RASMUSSEN: So, I mean, I think definitely-- I, I did have the chance to review the amendment.

BOSN: OK.

NOAH RASMUSSEN: I think it does definitely move in the right direction from the original. I mean, there are situations outside of just someone submitting a false affidavit, though, where you could still imagine someone that nobody would think of as a squatter, but they would still technically fall under that squatter definition in this. So I think that there's-- the idea of someone submitting a false affidavit in order to get someone out is definitely a concern, but I think there are, you know, a dozen other situations you could imagine where they would still fall under that squatter definition, even though that's not what anyone would think they are. So I think it's a broader thing than just false affidavits.

BOSN: OK. I mean, I guess I, I perhaps fundamentally disagree that people are submitting false affidavits under penalty of perjury, but we can agree to disagree on that. I can't think of that other example, though, where there's a legitimate person who you, the, the landlord, has to have asked to vacate. So they have to have some ability to show that. They are dwelling it and they have no rental agreement or no authorization. They've also been-- cannot produce any documentation. They don't fall under the definition-- statutory definition of holdover tenant. They aren't a family member or immediate family member. They aren't the subject of any pending litigation. I mean, you say they exist. Can you give me an example of one?

NOAH RASMUSSEN: Yeah. So-- and, and you know, the amendment is relatively new, but I think my understanding of it would be if you imagine a situation where, you know, man owns a house, his girlfriend moves in with him. They never get married. They break up. Man now wants the girlfriend to move out. Right. I mean, I think under the way that this is written, he could, he could say, hey, I want you to get out. And I think if she doesn't then immediately get out, I think that that would fall under this definition of squatting, even though we don't think that that girlfriend is a squatter, right, just because they broke up, I mean, especially within a day or something. But I, I think that under these sort of things, they weren't ever, you know, family members or anything like that. I think they would fall under that definition. And you could imagine other situations where, you

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

know, people, you know, college students, other people are moving in or out and it's maybe not the original leaseholder that's there. And I think they may be breaking the lease, but I don't think that we would ever think of these people as that's a squatter who deserves a misdemeanor charge, basically. And, and in those situations, a 3-day forcible entry and detainer is the perfect remedy that just provide a 3-day notice, and then you're in front of a judge within 10-14 days.

BOSN: Well, that-- that's great if you're not the landlord who's paying for the property for those 10-14 plus 3 plus time to get them out, plus time to make the repairs--

NOAH RASMUSSEN: Right.

BOSN: --costs. But, agreed. OK.

NOAH RASMUSSEN: And, and I would just like-- you know, all of this is for people who aren't being removed under the existing trespassing statute. I think there is the ability to remove people under existing trespassing statutes.

BOSN: Fair enough. OK. Any other questions in light of that? Thank you for being here.

NOAH RASMUSSEN: Thank you.

BOSN: Next opponent.

ALICIA CHRISTENSEN: Hello.

BOSN: Welcome.

ALICIA CHRISTENSEN: Good afternoon, Chair Bosn and members of the Judiciary Committee. I'm Alicia Christensen, A-l-i-c-i-a C-h-r-i-s-t-e-n-s-e-n, testifying on behalf of Together, which works to ensure everyone in our community has access to healthy food and a safe, affordable home. I'm going to switch gears a little bit and talk about Together and their housing program-- programs that cover a broad spectrum of housing insecurity, from preventative work at the Housing Stability Clinic to our work helping people exit homelessness. Through this extensive frontline experience, we know what works to address homelessness. It's safe housing paired with voluntary services. When folks are stably housed, they can have meaningful and sustained

engagement with programs and treatments that facilitate long-term housing stability, better health outcomes, reduced alcohol and substance use, lower arrest and incarceration rates, improved employment outcomes, less public spending. In the past 2 years, none, none of the individuals, like zero people who Together helped exit homelessness have returned to homelessness. And if our first-hand experience seems anecdotal, our success is reinforced by a substantial body of research, as well as success at the Department of Veterans Affairs. The VA has permanently housed over 133,000 veterans in just the last 3 years, and in October, announced that the number of veterans experiencing homelessness has dropped to a record low. We also know that ticketing, fining, arresting, and jailing people experiencing homelessness makes this issue worse by ignoring the root causes of homelessness while increasing barriers to stable housing. These approaches also divert resources from effective solutions as well as law enforcement priorities. This was what prompted our initial opposition to LB443, which, as introduced, would have provided expansive grounds for law enforcement to cite, arrest, and jail people experiencing homelessness. While actual conviction seemed unlikely since it would be difficult to prove the intent prong of the original offense, the original bill would still make significantly-- make it significantly more difficult for folks to exit homelessness, imposing substantial harms to individuals, service providers, and communities. Since bringing these concerns to Senator von Gillern, I've worked with him and his staff to make sure that LB443 would match the Senator's aims without, without creating-- sorry-- unintended consequences and undermining our efforts to reduce homelessness. We really appreciate Senator von Gillern's receptiveness to our input and thoughtful attention to our feedback throughout our discussions. I'm still not-- I, I also debated about coming in neutral, because I'm, I'm still not convinced that this legislation is necessary. I think our current mix of laws properly safeguards due process where there are sort of, you know, those conflicting stories and complicated issues with who has the legitimate right to be there. But I think it's a stronger bill, and I'm pleased that the amended LB443 would be-- likely no longer create sort of a dragnet for people experiencing homelessness. So thank you for your time this afternoon. I just wanted to make sure you understood our opposition, and I'm happy to answer any questions. I also wanted to mention that if you google "squatters nightmare," I did a lot of research on this bill, and I can tell you, if you dig into some of the cases that are in these sort of-- some of them are

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

sensationalized. I think some of them are completely legitimate. Many of them do involve some of those gray area disputes that here, would fall under a landlord-tenant relationship or other things like that. So you have to be careful about looking at the reporting on that, because sometimes they don't get that legal distinction that's confounded us a bit today here, too, so just to, I don't know, put in a grain of salt for you to take with those reports, as well.

BOSN: Questions from the committee? Senator DeBoer.

DeBOER: Do you work-- are-- I can't remember. Are you an attorney?

ALICIA CHRISTENSEN: I am an attorney. Yes.

DeBOER: And you work in this area of law?

ALICIA CHRISTENSEN: Yes.

DeBOER: What if-- what-- this is real-time thinking happening here.

ALICIA CHRISTENSEN: All right. I'm ready. I'm ready. Bring it.

DeBOER: What if we moved the squatting provisions and the mechanism for removing someone unless they can show the information, all that, out of the criminal forcible trespass part and moved it over to the forcible entry and detainer part?

ALICIA CHRISTENSEN: Maybe you have a-- like a civil remedy, like damages--

DeBOER: Uh-huh.

ALICIA CHRISTENSEN: --or something associated with it?

DeBOER: Well, just the civil remedy of getting them out--

ALICIA CHRISTENSEN: Right.

DeBOER: --faster, with the-- like, we're-- we modify forcible entry and detainer in situations where there's a squatter. You can define squatter. And so in that situation, you can do a forcible entry and detainer on an expedited way.

ALICIA CHRISTENSEN: Right.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: Do you see what I'm saying?

ALICIA CHRISTENSEN: Yes.

DeBOER: So exactly what he's got set up here, but instead of doing it within the statute on criminal trespass, you do it in the forcible entry and detainer portion, so that it is not getting mixed up with the criminal aspect of it. So you're not asking to-- somebody to prove their innocence or anything like that, but you just move it over there. And so now we have the forcible entry and detainer statute has this one expedited process for demonstrably squatting.

ALICIA CHRISTENSEN: Mm-hmm. I mean, I think-- I, I fully agree with taking it out of the criminal realm. And if the intent of the senator is to get the removal, if that's our focus, is the property owner removing someone that's moved into their house, I think that, yeah, removing the criminal is, you know, if that's something that's amenable, I think that helps, but I worry that the forcible entry and detainer is already expedited to the point of like being on the verge of not comporting with due process in my mind. You know, it's very expedited already. You have a 3-day notice that you can just post on the door. There's relaxed service requirements, so you don't have to serve as you normally would for like a summons or things like that. You don't have to leave it with someone of a certain age that resides at the place. You can just put it, tape it up on the door, and the time allotted is sort of the minimal possible. And so, I don't know if making it more streamlined is possible to actually give that person that notice and that, you know, that that's sort of required.

DeBOER: But if they're squatting.

ALICIA CHRISTENSEN: Right. But we're just saying-- but we're saying that person-- but you're assuming the squatting, right? I'm assuming that we don't know if this person is squatting, right?

DeBOER: And I'm saying that this is a streamlined process. And again, thinking in the moment.

ALICIA CHRISTENSEN: I already know from the-- looking at them again if you-- if they're, if they're squatting or not.

DeBOER: Well that's what I think the-- you need to prove you can be here kind of stuff. But they get a written notice, I think. And then

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

they get 3 days or some-- I can't remember if that's in the original or if that's in this one.

ALICIA CHRISTENSEN: That was the original.

DeBOER: OK. Sorry. So this one, you just have to be able to immediately produce the information that you were supposed to be there?

ALICIA CHRISTENSEN: And I've only had this a couple days but-- at my under-- I, I think there's the option. Like, as it's written now, it's not mandatory that they're arrested. The only mandatory part is for law enforcement to remove them.

DeBOER: Well, and that's what I would be envisioning by moving it over to forcible--

ALICIA CHRISTENSEN: It's a "may" arrest. At-- in one-- I don't--

DeBOER: I think they should probably also have a "may" remove, because if you get there and it is that girlfriend-boyfriend situation, where the girlfriend was-- that just broke up.

ALICIA CHRISTENSEN: Right. I think that's the way-- the [INAUDIBLE] like, it's a sworn affidavit, so you're unlikely to lie--

DeBOER: Lie.

ALICIA CHRISTENSEN: But also, then, you are just not hearing the full story. There's might be-- there might be com-- we can think of a million scenarios that might complicate the truth of an affidavit. Right, like you can maybe--

DeBOER: But your objection is to the bill-- the amendment, the white copy amendment. Would you prefer it if you were in the criminal statute as it's written in the white copy or would it be better-- do you think it would be better if it was under forcible entry and detainer? Same process, just one is under the criminal and the other is-- doesn't mention criminal at all. It just creates a mechanism under forcible entry and detainer.

ALICIA CHRISTENSEN: I guess I feel like forcible entry and detainer already provides that mechanism.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: But if you had to choose.

ALICIA CHRISTENSEN: So I guess I would take the existing forcible entry and detainer statute, I guess. The-- I think, I think our current statutory scheme addresses it the way it is.

DeBOER: OK.

ALICIA CHRISTENSEN: I'm sorry if I'm misunderstanding your question.

DeBOER: No. I'm saying you have to choose to take this process--

ALICIA CHRISTENSEN: Uh-huh.

DeBOER: --either as it's written in the white copy--

ALICIA CHRISTENSEN: Oh, putting the, like, affidavit stuff in there.

DeBOER: Yeah. Either as under the criminal as it's written in the white copy or under forcible entry and detainer.

ALICIA CHRISTENSEN: Oh, I would put it in the civil, for sure, I guess--

DeBOER: Yes.

ALICIA CHRISTENSEN: --if I had to choose. Yeah.

DeBOER: OK. Thank you.

ALICIA CHRISTENSEN: Yeah. No problem. Sorry. Oh, yeah.

BOSN: Any other questions for this testifier? Seeing none, thank you for being here.

ALICIA CHRISTENSEN: Thank you.

BOSN: Yes. Next opponent. Welcome.

ISABELLA WORTHING: Thank you, Senator Bosn and all-- chair and committee. My name is Isabella Worthing, and this is my first time testifying. So I'm going to be reading off some of my notes.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

BOSN: You're all right. Could you first spell your first and last name, please?

ISABELLA WORTHING: Oh, yes. I-s-a-b-e-l-l-a W-o-r-t-h-i-n-g.

BOSN: Now you can begin.

ISABELLA WORTHING: Thank you.

BOSN: You bet.

ISABELLA WORTHING: I am here on behalf of Hope of the Poor and the Society of Saint Vincent de Paul, and we brought some of our friends who are living or have lived on the street. I want to specifically address how this bill could impact the homeless negatively. I work with the homeless in downtown Omaha, and I oppose bill LB443, because I believe it will not help the homeless, but be harmful to them. I believe that we all want to do good and care for the least of these in our communities, but this is not the way to do that. Criminalizing homelessness will not reduce the homeless population, but will only drive them farther away from the resources they need to get off the street. Many people ask why they don't just stay in the shelters, but of-- the people I work with, many of them do not feel safe in the shelter. Take, for example, a man we just recently helped get off the street. I will call him Jeff. Jeff had a tumor, lost his job and housing because of his cancer, and ended up on the street and is now dealing with frostbite. On a Friday this past month, we said we can get you into housing on Monday on the condition that you stay in the shelter over this weekend so that you don't freeze to death before we can get you into your apartment. We needed him to stay for only 3 nights in the shelter, and within those 3 nights, one of the men staying right next to him was stabbed in the night. He said, that's why I do not stay here. I'm not safe in a shelter. And I would encourage you all to visit a homeless shelter on a random day when they aren't expecting you, and see what you find. You may be shocked and come to understand why some of these individuals decide to stay outside. I also want to state, I believe that we are all on the same team and we want to reduce suffering and homelessness, but I worry that this is not the way to do that. If this bill passes, it will not incentivize the homeless to go to shelters, but more so drive them to camp further and further away from the resources that could help them. Not only that, but if they are arrested and fined, it will only put

another person into our already overcrowded jails and lay on them a burden of, a burden of a fine that they already don't have the means to pay. I believe that we can find a better solution than this and as individuals in a society on coming up with ways to help this situation, but passing a bill that could criminalize, criminalize the homeless is not the solution that we need. Thank you.

BOSN: Thank you. Nice job. Any questions for this testifier? Senator Storer.

STORER: Thank you and good job.

ISABELLA WORTHING: Thank you.

STORER: It is always nerve wracking the first time I think, you know, I-- I'm listening to a lot of the, the concerns, and it all kind of seems to come full circle back to insinuating this is criminalizing homelessness, and I'm having a little bit of trouble with that. And, and I know you probably haven't had the opportunity to see the amendment as well, which maybe fine tunes some of those concerns or sort of eliminates, I think, some of those concerns and not-- clearly, homelessness is, is a problem. Often, very complicated situations with no easy solutions. So that, that, that, you know, is not-- my, my question-- my next question to you is not to diminish the seriousness and the, and the heartbreaking situations there, but are, are you implying that, that someone occupying someone else's property without permission is a solution to homelessness, homelessness?

ISABELLA WORTHING: I think my problem with it is it grays and blurs the lines of people who are already mis-stereotyped as being criminalized. And so I think-- I'm not, I'm not for squatting and I'm not for unlawfully being in someone else's space. But for many of them, they are on public land and they get arrested just for being on public land. And so that's where it just grays and blurs the lines more for me, and that makes me worried.

STORER: So you feel like this, this piece of legislation would apply to public land?

ISABELLA WORTHING: I think overarching-- and once again, I, I want to read through the whole thing, and I haven't had the chance to do yet-- that yet. But from what I understood, from what I know of it, that it

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

would just blur the lines of people who are already more so seen as criminal, even if they're not. And so, that was just my concern.

STORER: Sure. And I, and I do appreciate your heart and certainly thank you for, you know, what you do for those people in, in need. The way-- when I read this, I, I don't see that, that gray area. It's very specific to property owners, private property and nontenants occupying that private property. So I, I am a little bit worried that we're, we're putting something on this bill that it just-- it doesn't say, that isn't there. But, thank you.

ISABELLA WORTHING: Yes. Thank you very much.

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

ISABELLA WORTHING: Thank you so much.

BOSN: Yep. Next opponent. Welcome.

KASEY OGLE: Hello. Chairperson Bosn and members of the Judiciary Committee, my name is Kasey Ogle, K-a-s-e-y O-g-l-e, and I'm a senior staff attorney at Nebraska Appleseed for Collective Impact Lincoln. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans. Collective Impact Lincoln is a partnership between Nebraska Appleseed and Civic Nebraska that works with residents of 6 Lincoln neighborhoods to build community, develop neighborhood leaders, and take action on policy that's responsive to their needs. I'm-- I've handed out a, a copy of the testimony that I drafted before we learned about the amendment to this bill. So just for reference to, to the original version of this bill, we were opposed and we, we do remain opposed to the amendment as well, but we definitely appreciate Senator von Gillern's work to ensure that we aren't targeting homeless people, which I think is a concern that we had with the original version of this bill. I think our remaining concern is some of what's been said here before today, which is that this gives access to a writ of restitution without the process necessary to gain a writ of restitution. Where law enforcement has said these-- they're hoping for more ability to act in situations, those sort of gray areas, as a previous testifier spoke about. And I, I agree that in those situations where things are grayer, that, that those actions should be, should be left to the court's discretion. I'd

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

like to talk a little bit about the history of eviction actions in general. Several hundred years ago, there were no eviction actions, and landowners would forcibly remove trespassers, tenants they didn't want on their land anymore. And this was, again, several hundred years ago. And as a society, we, we agreed that that was not how we wanted to negotiate our, our relationships, and so we moved towards forcible entry and detainer, which still exists in Nebraska statutes today. And a version of forcible entry and detainer has been created in the Landlord Tenant Act. And so, I think where-- what this does is it, it sort of gets us back to, unfortunately, a, a self-help sort of place, where if someone presents an affidavit to law enforcement swearing to X, Y, and Z, they can have someone immediately forcibly removed by the, by the sheriff, rather than the landowner themselves. And we think that that's a concern for reasons of, of due process, of general justice concerns. And so for those reasons, we are opposed to LB443. Thank you.

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

HALLSTROM: Yeah. Thank you for your testimony. You, you mentioned somewhere in your testimony about giving the judges discretion. And it occurs to me-- what, what is your position on giving law enforcement the discretion? And, and I know you haven't had a chance to, to thoroughly review the amendment, but the amendment does provide for some ability of the person who is being evicted, quote, unquote, to say their piece and, and show why they're entitled to be there. Do you not trust law enforcement to have the proper discretion to make those decisions, or, or what would be your preference then?

KASEY OGLE: My understanding of the amendment, Senator Hallstrom, is that the landowner presents an affidavit to law enforcement, and there is no opportunity then. There was opportunity in the original version of the bill, and maybe I, I haven't reviewed it--

HALLSTROM: Right. Yeah. Yeah. And I understand.

KASEY OGLE: --thoroughly enough, but my understanding is that there is no process for the supposed squatter to present any sort of defense to the law enforcement officer. Instead, it's just an automatic review-- re-- removal once the affidavit has been accepted.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

HALLSTROM: And, and I would appreciate you reviewing the amendment. I, I read it to say that there is. And, and Mr. Eickholt mentioned that, that that wasn't really something that they had to disclose at that time. So there, there is some language in there, and I'd be interested to know if you think it's sufficient to, to balance that.

KASEY OGLE: OK. Sure. Thank you.

HALLSTROM: And, and last question would be, what alternatives do you have to balancing your interest in not targeting homelessness versus the rights of the private landowner to, to have full access and use of their property?

KASEY OGLE: Absolutely. I, I think it's, it's sort of that question about the gray area. I think the-- Sheriff Hanson's discussion was very interesting to me about if it's a, you know, the some-- the person who supposedly is squatting has been there beyond their agreement-- or I shouldn't say supposedly-- are squatting-- beyond-- for a day or 2, it's much easier to say that that's trespassing. When they've set up, you know, possessions or, or otherwise had deliveries or things, that that's a little bit more of a gray area. I think it gets to the question of absentee landowners, as well. That means, you know, that a landowner hasn't been in their property or, or keeping track of their property for however long, long enough for these things to happen. And so I think it's a balance of, of absentee landowners, the, the rights of their-- their right to the property, and their responsibilities to maintaining the property. And I think right now, the balance that we have is that where there are not-- where it's much clearer, the criminal trespass statutes take care of the situation. And when we have these grayer areas, it's best left to a judge.

HALLSTROM: Thank you.

BOSN: Senator Storer.

STORER: Thank you, Chairman Bosn. Can you just briefly explain what you mean by-- and I don't want to misunderstand what you said-- regarding absentee landowners, that, that somehow they would have-- be at some fault just for not having put their eyes on their property for a period of months or having-- can you just touch on that real quick?

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

KASEY OGLE: Well, sure. Yeah. I-- you know, from my understanding of, of properties that we, we have as-- that we as a society expect landowners to be not absentee, to be there, to be taking care of their property, and that if-- where-- the situations that Sheriff Hansen was talking about where things get more gray or where maybe someone has been vacationing in Florida for 4 months and haven't been back, they haven't checked on the property. And there's, there's someone there. I'm not saying that that entitles the squatter to any rights. I'm, I'm not implying-- trying to imply that, but I am saying that there are mechanisms in place where if it's unclear who has a right to be on the property, that there are existing mechanisms to figure out who has that right. And, you know, 4 months is not that long to be an absentee landowner. I also don't mean to imply that, but it's, it's a question here of like, what, what are the remedies and what are-- what-- what's the appropriate response? If someone's been living there for 4 months, do we really want someone to, to be immediately kicked out? Do we want landowners to be able to, to submit that affidavit and have that happen in that way?

STORER: So is there any-- is there some legal basis that I'm unaware of that a landowner forgoes their rights after not being physically present on their property for a period of time?

KASEY OGLE: Not that I'm aware of. I, I do mean to say that the existing-- where these things are, are a gray area, that the mechanisms we have in place, including forcible entry and detainer actions are sufficient to address the situation.

STORER: So if I have a property 3 states away and I'm gone for 6 months, and I come back and somebody has been there for 5 1/2 of those 6 months, I have fewer rights because I haven't been there for 5-- I mean, I'm just trying to wrap my head around the concept that you're presenting, in terms of the absentee piece.

KASEY OGLE: Well, I mean, these are small amounts of time that we're talking about. And so I'm not meaning to imply that you, you give up any rights. There is a mechanism of adverse possession where if you've been absent from your property long enough or have not enforced the boundaries of your property, your neighbor can adversely possess part of it, or someone who comes by can do that. There are these, these mechanisms in the law, but not-- the--

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

STORER: That's pretty long term.

KASEY OGLE: Those are like 10.

STORER: That's a, that's a matter of years, I think, if I'm correct.

KASEY OGLE: It's much longer. Absolutely.

STORER: Yeah.

KASEY OGLE: Absolutely.

STORER: Yeah.

KASEY OGLE: Yes.

STORER: OK. Thank you.

KASEY OGLE: Yeah.

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

KASEY OGLE: Thank you.

BOSN: Next opponent. Welcome.

TANYA BUCHER: I apologize for my attire. My name is Tanya Bucher, T-a-n-y-a B-u-c-h-e-r, and I would like to thank all of you for giving me a few moments. I would just like to say that it's, it's hard when you come to different circumstances to what brings you to be homeless or squatters, as we're talking about. If there was more resources out there for people, I think that, that would help out a lot, and-- or if there was just like more places, like some of the shelters are really not good. Where I was, you know, there's like bedbugs. I have scars on my body from bedbug bites. And like, you know, just-- there's a lot of dangers, you know, theft and, and stuff inside the homeless shelters. And they don't have a lot of staff. So the staff they do have, you know, are overworked and, and everything. And, and it's, it's hard. Like, you know, for me, I was living in a tent for a-- many, many years. And there's not a whole lot of places to go to where you can, you know, stay with a group of people that you're safe with and go and put your tents up somewhere without somebody coming along. And I

understand that. And-- but if we just had more-- like, I, I asked resources or spots that would be safe for us and would be OK for, you know, squatters or homeless people to be, then I think that would eliminate, you know, a lot of problems. I'm sorry. I'm nervous, but--

BOSN: You're doing fine.

TANYA BUCHER: And, and I just, you know, speaking for myself on behalf of people that can't be here, just. Yeah. If we could just have more places to be. So.

BOSN: So thank you for sharing your story.

TANYA BUCHER: Yes. Thank you.

BOSN: Are there any questions of this testifier? Senator McKinney. Sorry.

McKINNEY: Thank you. And thank you for your testimony. Are you aware of anyone from your experience that has been cited for trespassing or anything like that?

TANYA BUCHER: Yes. There was, about-- I think about a year ago, quite a few people that I knew that police had come and taken people in to jail, and they had spent a few days in jail. And even with people that have pets, there was a gal that had a service animal that she had to have with her, and even her pet went to jail, the, the pound. And we had to get him out after she had gotten out of jail. And that's another reason why people don't stay in shelters, because there are people with service animals, and they don't allow them there. So yeah, there has been times where people had gone for, you know, trespassing or just property you're not supposed to be on, even if we're on like a church property. And the church people are like, oh, you guys can, you know, put your tents up and be here. Just clean up after yourselves. No big fires, no loud parties, which you know, we didn't do. But then the police would still come along and oh, you guys can't be here, even though we did have permission to be there from the, the people who ran the church.

McKINNEY: And so after they were arrested or in any of these situations, were-- was there anyone offering any type of like, help or like, any type of like, resources or services?

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

TANYA BUCHER: No. They-- we were just told, you know, oh, there's resources out there. You know, look into the outreach program or the, you know, like the Saint Vincent de Paul. They-- I mean, they would refer us to go places. But as far as like, really like helping us and giving us, like, in-- good information to go on, no. I mean, we were always told, oh, you could go here or you could go there and-- or just being told, you know, there are places that can help you. Well, where are these places? You know, where, where do we go to sign up for this or that and like, you know, some places there's waiting lists or they don't have the funding. And so it's hard. And, you know, people get frustrated. And they're just like, you know, OK, well, nobody cares about me. So, you know, I'm just going to give up and just do what, you know, just do what I can to survive out there.

McKINNEY: Thank you.

TANYA BUCHER: Thank you.

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

TANYA BUCHER: Thank you very--

BOSN: Next opponent. Welcome.

ANGELA ROGERS: My name's Angela Rogers. It's spelled A-n-g-e-l-a R-o-g-e-r-s. I am homeless at the time. I stay in a tent. I stay safer in a tent than I do a homeless shelter. I have woken up to people peeing beside my bed in a homeless shelter. I have woken up to finding people stabbed beside me in a homeless shelter. I end up staying, but I don't think the-- that you guys should pass the law of all of us on the homeless side because of that. We don't have no other places to go, but we have some places that will let us stay on their land. But we all get judged because of what squatters are doing, and we're not all the ones that are doing it. I stay outside in a tent, and I'm allowed to stay on this property because I help keep the property clean. But we all get in trouble because of other people. I don't know what else to say.

BOSN: That's OK. Thank you very much for your testimony. Before you go, let's see if there's any questions from the committee. Any questions for this testifier? All right. Nevermind. I guess you're

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

free to go. Thank you for being here and sharing your story. Next opponent. Anyone else wishing to testify in opposition?

***SHANNON CORYELL:** Criminalizing homelessness does not solve the problem. Addressing the problem would be more effective than punishing people for their circumstances.

***JENNIE CALENTINE:** Good afternoon Esteemed Senators and those giving testimony, I oppose LB443. We in Nebraska do not need to create an offense for unlawful squatting. Someone who is in a building which has been condemned or abandoned, who is looking for shelter, is already being punished enough by the circumstances of their life. Criminalizing homelessness is inhumane. The time and energy used to write this bill would be better spent finding solutions to lift people up rather than send them to jail. Crisis mental health professionals are one possible solution and finding safe homes for unhoused folks is another. People from all walks of life can suddenly find themselves without a place to stay. Not every person has a happy home life, with the blessing of parents, friends, or family who love them and will act as a safety net. I encourage anyone thinking of voting for this bill to inquire about the facts of their life to understand what drove them to the decision to stay in a place they were technically not permitted. Support and compassion goes so much further than cut and dry regulation. In short, please do not pass LB443 out of committee, or by a vote of the Legislature. It's not Nebraska nice. Thank you for your time, Jen Calentine.

BOSN: We'll move to neutral testifiers. Anyone wishing to testify in the neutral capacity on LB443? All right. While Senator-- really quick, if I can, there were 57-- excuse me, 59 proponent comments submitted, 97 opponent comments submitted and I do have 2-- actually, let me clarify. Is it just the one or are these both? OK, so I have two ADA accommodation written testimony that I need to read into the record. Do you mind if I do that quickly while you're gathering your thoughts? Shannon Coryell. She reports she's an opponent. Criminalizing homelessness does not solve the problem. Addressing the problem would be more effective than punishing people for their circumstances. Jenny Calentine is also an opponent. Good afternoon, esteemed senators and those giving testimony. I oppose LB443. We in Nebraska do not need to create an offense for unlawful squatting. Someone who is in a building which has been condemned or abandoned, who is looking for shelter, is already being punished enough by the

circumstances of their life. Criminalizing homelessness is inhumane. The time and energy used to write this bill would be better spent finding solutions to lift people up, rather than send them to jail. Crisis mental health professionals are one possible solution and finding safe homes for unhoused folks is another. People from all walks of life can suddenly find themselves without a place to stay. Not every person has a happy home life with the blessing of parents, friends, or family who love them and will act as a safety net. I encourage anyone thinking of voting for this bill or voting it out of committee to talk to people who are in different financial states, to inquire about the facts of their life to understand what drove them to the decision to stay in a place they were technically not permitted. Support and compassion go so much further than cut and dry regulation. In short, please do not pass LB443 out of committee or by a vote of the Legislature. It's not Nebraska nice. Thank you for your time, Jen Calentine. Now you need-- again. Sorry. I think that was both of them.

von GILLERN: Did both of them? OK. Ready? OK. Thank you, Chairwoman Bosn. I've got a bunch of notes written randomly here, so if this sounds like shotgun, then, then forgive-- please ask your forgiveness. I, I guess the first thing I want to start with is where the testimony ended here, and that is there's a lot of emphasis on homelessness. And, and I do-- again, I apologize for the lateness of providing the white copy amendment. For those who have had the opportunity to read the white copy amendment, you can see it clearly is not about homelessness. I, I just want to take-- I've got an opportunity and I want to take it right now, to, to make clear that nothing that-- I, I hope I never do anything that negatively impacts the homeless population. I have worked-- I've put many, many, many hours in, in a volunteer position with the Salvation Army, and, and one of their big emphasis in Omaha is, is homeless services. I've supported the Open Door Mission, the Siena Francis House, I've been down to Together, Inc. with, with Miss-- Ms. Christensen and, and toured that with their executive director, Mike Hornacek, to learn about what they do. So I think it's important to, to, to make clear that homelessness is, is, is a very serious issue. We need to do whatever we can to help that population. That-- but that unfortunate-- fortunately, has nothing to do with the bill that we're discussing today, based upon the white copy amendment. So, happy to do whatever I can to, to further and better the lives of those individuals, but I do want to make sure that that is a separate topic. I want to give a little bit different

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

scenario for us to think about, because it's, it's, it's hard to be sympathetic for somebody that owns multiple homes, travels around the world, and comes home and finds somebody living in their home. That might, that might not be easy to get your empathy around. But let me, let me give you a different scenario, and this is one that I bet almost everybody in the room can connect with. Grandma goes to a nursing home. And grandma is in that home for a long period of time, or your mother or your father-- extended period of time. What do you do with her home? We've all heard stories, as soon as you sell the home, grandma is gone because she has no hope of going home. So I'll speak from my personal story because that's the best thing to do in these scenarios. We kept grandma's home for a long time, because we wanted grandma to have home-- hope that she was coming home. Well, grandma wasn't coming home. We all knew it, but we kept that home. You'd go by, you'd check the water, you'd check the plants, you'd mow the grass. You'd do all the things that you need to do to make sure that it was well cared for. Can you imagine going over to grandma's house and finding somebody else living there? That's what this bill is designed to protect from-- protect us from. Again, I want to kind of go through some of the comments that were made and respond to them. Several individuals talked about the fact that you have-- and, and I had a hard time keeping up on all the days. You have 3 days, then you have 10 days, then you have this. You can file that. You have any idea how much damage can be done to a home in 3 hours, let alone 3 days, let alone after you've made the squatter, the individual that's not supposed to be there mad by telling them that they're going to get kicked out. Whatever damages have been done have just been multiplied by a big number. There was a question about a-- potentially a couple living together. Boyfriend gets mad at the girlfriend and whatever. The bill, amendment has in item 4 in my notes, unauthorized person must produce document-- or could produce document, correspondence, or government identification indicating that he or she has used the address of the dwelling unit as an address of record. That might imply a driver's license. It might be as simple as showing a piece of mail. I've gotten mail here. Because I know that that-- if you go to open a bank account or get a Social Security card, you have to take a piece of mail with you to-- as evidence of your, of your address. So that's a government-issued piece of documentation showing where you live. The bill says very clearly that the police or the law enforcement-- page 2, lines 7-11, they shall remove the person-- and then as you go on down to line 10-- and such person may be arrested. It doesn't say that

they will be arrested. It says that they may be arrested. So to, to say that every person is going to be arrested if, if the person leaves, if they're easily removed-- I-- I've had enough interact-- inter-- it just sounds bad. I've had enough interaction with law enforcement. I know enough law enforcement individuals to know that they're not looking for-- to make life hard on them or other people. If somebody is cooperating, they're going to take-- they're going to make the most of that cooperation. One of the things I really want to stress, and, and I-- and Chairwoman Bosn, I think you brought this up, is the fact that if someone files this affidavit and they do it falsely, they are subject to the same crime, the same level of penalty that the squatter would be subject to. So if I'm claiming that this individual doesn't belong there and that's found to be false, I'm subject to 1 year in jail or a $1,000 fine. That's a pretty big limb to go out on to, to try and get somebody out of your house that you don't like. I've got lots and lots of notes. I-- in interest of time-- I'm sorry. This-- I'm just going to hit a couple things real quickly here before I wrap up. 3 quick stories about interest-- instances of squatting in Nebraska, and I'll abbreviate these. In Lincoln, an individual had a case where a family moved without notice and gave the keys to the rental unit to another unauthorized family who moved in without the knowledge of the owner. When they found out, they contacted the Lincoln police, who told us it was a civil matter and they had to go through the eviction process. 2) An Omaha property owner encountered someone in a vacant unit who had forced their way in and set up living there. When the owner brought the Omaha police to the property, the squatter claimed to be the owner of the property. The police said the actual owner-- told the actual owner that it was a civil matter and they couldn't help. Lastly, in Omaha, some, some people forced entry into a vacant unit. Owner discovered them, called the police, who responded. The police said that without identification, they couldn't help, so it took an eviction notice and a long delay to move the squatters. Those are the, those are the situations that we're, we're trying to write this around. Senator DeBoer, you've offered some suggestions. I'm, I'm absolutely happy to take you up on the offer to, to try and fine tune this. I don't care what section of law this falls under. And frankly, I'm not that wound up in a knot about whether penalties are invoked unless someone is a repetitive squatter. If they're doing this as a way of li-- of life, there probably should be a penalty to-- in order to deter them from doing that. And then, Senator McKinney, you hit on something that I

think would be a great add to the bill. And that is I'd be willing to add something here that says, if, if these folks are encountered and if they are arrested or taken into custody, that they have to be prov-- given direction towards resources to address poten-- a potential homeless issue. I think that would be a great thing to weave into this. So with that, I'd be willing to take any questions.

BOSN: Questions from the committee? Senator DeBoer.

DeBOER: So do you intend to make things more illegal or differently illegal than they are now in terms of squatting? Is that the intention of this bill?

von GILLERN: My intention of the bill is to give the tools to, to the law enforcement officers to, to number one, get people out of the residence.

DeBOER: So that was my question. Is your-- is this bill trying to get people out? And do you care about making things differently illegal or more illegal?

von GILLERN: Well, as I just said, the only-- I-- I'm not as concerned about the illegality or the penalties unless someone is a, is a serial squatter, for lack of a better term.

DeBOER: But maybe--

von GILLERN: If they're, if they're going from house to house to house or unit to unit in an apartment building, then we should probably have penalties involved. So maybe there's a 2 strikes and then you get a penalty. I don't, I don't know. I'm--

DeBOER: There's a different bill for that.

von GILLERN: Pardon me?

DeBOER: Maybe there's a different bill for that. Maybe you handle that--

von GILLERN: Or maybe there's a way to, to tailor this. I, I don't know. I'm sure you'll--

DeBOER: Because--

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

von GILLERN: I'm sure you'll help me.

DeBOER: I just got "volun-told." No. What I'm thinking here is it sounds like what you're really trying to do is create a different kind of forcible entry and detainer process that would be a civil process that has nothing to do with criminal. It gets rid of all the allegations of criminalizing anything, because you take it completely out of the criminal side. And then you just create a, a sort of sped-up forcible entry and detainer process-- if they don't have mail, they don't have-- you know, and you have your list of all your exceptions. If they're not this, if they're not that, if they're this, then you can have a sped-up process that gets people out of there even faster than the 14 days or whatever. Is that-- would that be more what you want?

von GILLERN: I, I don't know that I'm willing to completely surrender the criminal part, simply, again, because if someone is a serial squatter, there needs to be a criminal penalty for that.

DeBOER: So I suppose there already is, right? Because what you're-- you're not creating a new crime, right? You remember-- so--

von GILLERN: Right.

DeBOER: So there already is the criminal side. If you're not creating a new crime-- this is the problem. If you're not creating a new crime but you still have this located in the criminal part, it gets really confusing about what you are doing. So what I would push back on that is, if you're not creating a new crime, then they can still be charged with criminal trespass, just like they could before your bill, but you've created a faster way just to get them out. And so, I would submit to you that you already have taken the, the criminal part out.

von GILLERN: Yeah. The, the difference as, as I understand it, not being an attorney, the difference, as I understand it, is we've now added a new definition to trespass that includes squatting. It's a different form of trespass.

DeBOER: Let me think on that, but we'll talk more.

von GILLERN: I'm happy to do that. Thank you. I, I truly appreciate your help.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

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

von GILLERN: Thank you, committee. I appreciate it. Thank you, Chairwoman Bosn.

BOSN: That concludes LB443. Next up, we have LB518 and Senator Juarez. Before she gets started, could I see a show of hands how many individuals wish to testify in some capacity on LB518, LB518? Frolf wins. Sorry. For the record, there were no hands raised. Thank you. Welcome. Bless you.

JUAREZ: Should I go ahead and get started, Senator Bosn?

BOSN: You can. Sure. Whenever you're ready, ma'am.

JUAREZ: Thank you. It's good to see you guys again. Good afternoon,Chair Bosn and members of the Judiciary Committee. My name is Margo Juarez, M-a-r-g-o J-u-a-r-e-z, and I represent District 5 in south Omaha. Today, I'm excited to introduce LB518, which combines 2 reports released by the Department of Correctional Services. I am having handed out 2 reports that would be combined and wanted to give a little "explainater"-- explainer about each of them. First, the Mandatory Discharge Report is required by statute and contains data about every parolee and every indi-- individual who was denied parole. Excuse me. The second report, the Division of Parole Supervision Annual Report, is not required by statute and contains data about parole revocations, individuals incarcerated past their parole eligibility date, and the cost savings to the state resulting from individuals being paroled. Now that the Division of Parole Supervision is under NDCS, combining these 2 reports is a no-brainer. This data is already being collected and is valuable information for both the public and us as senators to have. NDCS has also assured me that there will be no cost or extra administrative burden in adding these data to their annual report. With that, I'd be happy to answer any questions you may have. And I wanted you to know that Doug Koebernick is out sick today, but he was planning on testifying in support of my bill. So, any questions that I could address?

BOSN: Thank you. Any questions for the senator? Senator McKinney.

McKINNEY: Thank you. Thank you, Senator Juarez. Besides, I guess-- has the Parole Board said anything about this?

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

JUAREZ: I, I think that it's been proposed to them that they're aware that this was being combined. I mean, I don't know that for sure, but I haven't heard from them in-- as far as any objections.

McKINNEY: OK. No problem. Thank you.

BOSN: Senator Juarez, am I understanding that basically, the report is already being generated by the department. This would just provide another place where it's going to be made available to the public?

JUAREZ: Yeah. And it's just that, you know, to try to combine them so I guess there's some more cohesiveness, you know, to a topic that makes sense everything being together, you know, sort of like how we discussed how you got to go to different, different websites to try to get to the same answer. Basically, it's sort of the same thing about-- with these reports. It just would be convenient to have the data in one place.

BOSN: And did someone bring you this bill, or is this just something you thought would be streamlined if it's more accessible in one-- a one-stop-shop approach?

JUAREZ: No, I, I can't take credit for the idea. It was, it was brought forth to me to consider proposing this bill to combine these.

BOSN: OK. And was that from Mr. Koebernick?

JUAREZ: I'm guessing so. Yes.

BOSN: OK. He and I briefly discussed it yesterday, so that is why I was wondering that-- if this was what he was going for. Any other questions in light of that? Seeing none-- I don't think I saw anyone so before she leaves the chair, can I just see if there's any proponents, opponents, neutral testifiers? Are you closing or waiving?

JUAREZ: Well, I can make a comment about it.

BOSN: Please.

JUAREZ: I did-- I actually wasn't familiar with the reports, so I did take a look at them, and I found the information interesting and I just think that it, it, it does make sense and is a good idea to have

them combined. But that's about all I can say, as far, as far as my opinion on it.

BOSN: Thank you. Any questions in light of that? You win the most efficient bill of the day award.

JUAREZ: Thank you so much.

BOSN: Thank you very much for being here. I will note-- let me just see if there were any comments. I know there were. Sorry. There were 4 proponent, no opponent, and no neutral comments submitted for this bill. And that will conclude our hearing on LB518. Thank you, Senator Juarez.

JUAREZ: Thank you.

BOSN: You're up.

DeBOER: Yep. That will lead us to LB464 and our own Senator Bosn. Very excited to hear her introduction here. Welcome, Senator Bosn, to your Judiciary Committee.

BOSN: Thank you. Thank you, Vice Chair DeBoer. Good afternoon, members of the committee. For the record, Carolyn Bosn, C-a-r-o-l-y-n B-o-s-n. I represent District 25, which is southeast Lincoln, Lancaster County, including Bennett. LB464 was introduced in an effort to combat organized retail crime. Organized retail crime is not simple shoplifting. This is a sophisticated and growing criminal enterprise that threatens businesses, consumers, and communities across the country, including those in Nebraska. Over 30 states have now taken measures to address this growing issue, including our neighboring state, Iowa. LB464 takes the first step in an effort to combat organized retail crime in Nebraska by defining it as theft of merchandise with the intent to resell, distribute, or otherwise reintroduce the stolen goods into commerce. The ease with which stolen merchandise can be sold, resold, or sold online has fueled the rise of these crimes, making it more profitable and harder to trace. Law enforcement and prosecutors need the right tools in their toolbox in an effort to stop this trend. Organized retail crime involves coordinated groups. They steal large quantities of goods, and they are quickly reselling them, often through online platforms. This isn't just an issue about lost revenue for businesses. It also encompasses

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

public safety. These crimes are often linked to broader criminal networks engaged in drug trafficking, human trafficking, and other serious offenses. When repeat offenders act with impunity, small businesses suffer, employees are put in harm's way, law-abiding citizens pay the increased and inflated prices. Nebraska retailers, from large chains to family-owned stores, are now feeling the impacts. I've heard from business owners who are struggling with rising theft and from law enforcement officers, who say that existing laws don't do enough to target the organized nature of these crimes. This is why we must ensure they have the ability to track down these networks and hold offenders accountable. Strengthening penalties, improving coordination between state and federal agencies, and holding those accountable for the sale of stolen goods online are all critical steps forward. I'd like to share a story for-- with you from the online comments. A young man by the name of Nathan shared that he was working in loss prevention in 2018 while he was in college. He shared that there is a common misconception that shoplifting is primarily committed by juveniles engaging in petty crime. However, the majority of repeat offenders he saw were career criminals. He shared that these individuals routinely stole thousands of dollars worth of merchandise, faced minimum-- minimal legal consequences, often only a fine or a lenient sentence, and quickly resumed right back to their illicit activities. Nathan reported that meaningful legal consequences were typically only imposed when those individuals escalated their offenses to serious-- excuse me, to severe felony levels, or combined them with other serious crimes such as motor vehicle theft or robberies. He went on to share that he frequently encountered organized groups that systematically targeted retail markets in metropolitan areas such as Omaha and Kansas City. These groups traveled from location to location, stealing large quantities of high-value merchandise, including copper wire, circuit breakers, security cameras, makeup and perfume. This is a public safety issue and an economic issue. I urge you to support this effort to protect businesses, consumers, and law enforcement officers working on the front lines. Thank you for your time and attention, and I'm happy to answer any questions. I would just add, as all of you that are here, were here on Friday. I know it was a late night. There was a bill that is in the same vein as this that we ended up having to move to Friday, because some of the witnesses who were present for that couldn't be here today. So, yes, there are some similarities between this and the skimmer bill that we heard on Friday, in that these are crimes that current statutes just

are not addressing sufficiently. The technology and the real, almost kingpin-- I think we used-- nature that's going on here and the impact that it's having on individuals below them.

DeBOER: OK. Thank you, Senator Bosn. Are there questions for Senator Bosn? Senator Hallstrom.

HALLSTROM: Is the key here that this isn't petty theft? This is organized activity that combines the, the efforts of multiple parties?

BOSN: Yes.

HALLSTROM: OK. Thank you.

DeBOER: Thank you, Senator Hallstrom. Other questions? Senator Bosn, I have a question for you. On Section 5, it says it is not a defense to a violation of Section 3 of this act that the retail merchandise was not stolen, embezzled, or converted property at the time of the violation if it was explicitly represented as being stolen. So the fact that it wasn't stolen, it could still be charged? I, I'm very confused by that part.

BOSN: So that's-- All right. And I think I had asked my legislative aide about that specific, and she had a great answer and I'm not remembering it exactly right now. But my recollection was that these are often deals where they get the lower-- the resale and they haven't even stole it yet. And so if you've already made the end of the bargain, that you're going to resell it for me, or you're going to buy it for me when I steal it tomorrow, I'm going to rob the TV station-- or the Best Buy of all their TVs tomorrow, but I've already lined you up to start the resale of them. The TVs aren't technically stolen at the time that I've made that sale to you. Does that make sense? So it's just at the time, they still have to have been a stolen item, but they weren't stolen at the time that you got involved in it, is my recollection, but I'll ask her between--

DeBOER: I mean, I think that, that makes sense, that that's what that's getting at, but-- so, I might have concerns about that section. OK.

BOSN: Do you understand what I'm saying, though?

DeBOER: I think I do.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

BOSN: OK.

DeBOER: That they haven't stolen them yet. They plan to steal them if they can only sell them to you. They sell them to you, but they haven't stolen them yet, and you could still be convicted of the organized retail crime?

BOSN: No, because they still have to have stolen them. But if the date of-- well, wait. You're alleging that you sold them to Senator DeBoer on March 5, but you're showing the video of the theft from Best Buy, and the date stamp on that that I stole them is March 6. So how can they be stolen goods? They aren't stolen on March 5, but they are becau-- you're selling them--

DeBOER: Prior to--

BOSN: --prior to the date that you've stole them, so that doesn't create a defense to it.

DeBOER: OK. All right. Other questions? Thank you, Senator Bosn. Let's have our first proponent.

AARON HANSON: Thank you. Madam Vice Chair and members of the committee, my name is Aaron Hanson, A-a-r-o-n H-a-n-s-o-n. I am the sheriff of Douglas County. And again, if you weren't here earlier, I do apologize for my casual appearance, out dealing with the blizzard since 4:30 this morning. Very important bill. And I'm not going to rehash a lot of what Senator Bosn brought up with regard to the, the crime groups. There's a couple things I want to, I want to address. You know, I have opportunities to meet with my peer sheriffs about 2, 3 times a year. Most of those meetings are with sheriffs of comparable size. And the one thing that I hear consistently from my peers, especially on the West Coast, where really, this flash mob, organized retail theft trend was born, was that the impact that this crime is having on the retail industry is immense. And although some people may say, well, it's a business, they have insurance. I mean, their, their-- it's built into their, their profit-loss margin, not the case. If you look at what's happened, especially in California recently, we have seen retail industry after retail industry shuttering their buildings, and that's not only a loss to local government, state government in terms of reduced tax revenue, which is our life plug, so that we can do what we do to keep the community safe, it's also a

massive impact on loss of jobs. I can tell you that I'm, I'm always impressed when I interact with folks in the retail industry. A lot of entry-level jobs, but there's a lot of career jobs in retail. And aside from the economic impact and the employment impact of these attacks on our retail community members, there is also the risk. So we just had one recently, where there was 2 women who were at a local Target in Omaha, and they were wheeling out 2 huge shopping carts of Legos, which, again, can you imagine to Senator Bosn's point, not a lot of people can articulate they're trying to feed their starving kids with Legos. This specifically is for the value of resale on the underground market, which is big. You'll probably see more coming from my agency soon on that. But as they're fleeing-- I want you to imagine, it's not just the theft. It's the high potential of fatality accidents as they're fleeing in their vehicles across the parking lot. And, and so this bill makes sense, because a lot of people try to navigate these loopholes, try to steal under $1,500 worth of items to keep it at a misdemeanor. There's a lot of things that make a lot of sense about this bill. They separate traditional petty thieves from organized criminal shoplifters. And I, for one, really hope that this does pass. This would be a great tool for protecting our community and our business community, and our employment community. Thank you.

DeBOER: Are there questions for this testifier? Senator Storer.

STORER: Thank you, Vice Chair DeBoer, and thank you for putting in a long day.

AARON HANSON: Yeah.

STORER: Just so I'm clear, currently, the-- these crimes can only be charged as what?

AARON HANSON: So right now under current state statute, it is a misdemeanor theft if the theft is under $1,500 in value. Now, upon your third conviction, then that will escalate, I believe, to a Class IV felony for felony shoplifting, upon your third conviction.

STORER: Regardless of the value.

AARON HANSON: Regardless of the value. Now there is enhanced theft penalties if you steal over a-- like over $5,000. So it's anything right now, $1,500 or less, $5,000 to $1,500 would be the Class IV with

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

a higher felony penalty for a, for a total value over $5,000. And the other thing I like about this is the aggregation, so that if you have 10 people go in and you each steal $500 worth of items, you can aggregate that, because that is a conspiratorial act. That's an organized act.

STORER: OK. Thank you.

DeBOER: Thank you, Senator Storer. Senator Storm.

STORM: Thank you, Vice Chair DeBoer. Thank you for testifying. So if it is a group of people like you said and it's over $1,500, do they all get-- will they all get classified with the increased penalty or was there a kingpin-type person on that?

AARON HANSON: You know, currently it's-- I think that, as I read the bill, that it's the total dollar impact aggregated, and it is everyone is responsible--

STORM: Everyone? OK.

AARON HANSON: --for that aggregated value.

STORM: OK. Thank you.

AARON HANSON: That's as I interpret the bill.

DeBOER: Thank you, Senator Storm. Other questions? I don't see any. Thank you so much for being here.

AARON HANSON: Thank you very much.

DeBOER: Next proponent.

RICH OTTO: Good afternoon, Vice Chair DeBoer, members of the Judiciary Committee. My name is Rich Otto, R-i-c-h O-t-t-o, and I'm testifying in support of LB464 on behalf of the Nebraska Retail Federation and the National Federation of Independent Businesses. This bill is a critical step in addressing the growing issue of organized retail crime, and we're very appreciative of Senator Bosn and her staff, the work they've done on this legislation. I do want to let the committee know that they worked with retailers, law enforcement, and prosecutors on the language. Retailers across Nebraska have been seeing the

alarming rate in organized retail crime. These crimes are not isolated shoplifting, shoplifting incidents. They are coordinated efforts involving multiple individuals to steal large quantities of merchandise with the intent to resell, ofter-- often funding larger criminal enterprises. Organized retail crime threatens the safety of customers, employees, increases the cost of business, and ultimately impacts Nebraska consumers with higher prices. First, I did want to highlight a little bit of what retailers and law enforcement have been doing proactively to combat this issue. One of the key methods is collaborating through online information-sharing platforms, which allows retailers and law enforcement to track, identify, and show repeat offenders within these crime rings. Additionally, Lincoln Police Department currently holds a monthly retail meeting which provides a forum, forum for businesses and law enforcement to coordinate some of these efforts. We're very appreciative of that. Omaha has seen this trend so much that they recently created a retail crime division within the Omaha Police Department. And then in 2023, we also created the Midwest Organized Retail Crime Association, which allows retailers to continually collaborate with police departments and for those police departments to collaborate across each division. So these are some of the steps that we've taken. With these steps over the past few years, law enforcement has told us that this is an issue, this is a missing piece to the puzzle. Often, these crimes have to be prosecuted federally for selling commerce across interstate lines. That requires typically getting the FBI or one other federal agency involved, which is difficult at best. And often, they have to get extremely large before those agencies come into play. I did want to point out, the article is for-- from Kansas. And if you look, Cabela's $30,000 a month, I think that's a name that a lot of Nebraskans can recognize. That is a Nebraska-based company that now faces this in Kansas. We're seeing the trend from Topeka to Kansas City, up to Minnesota, and Omaha is in the middle. We also see along the I-80 corridor, Grand Island, Lincoln, where these groups will go hit one retailer after another, often staying under the $1,500 threshold at each case. So that's one of the advantages that the sheriff talked about, is being able to aggregate those when they go to multiple stores, keeping what they take under a certain level, but then hit 5 stores in 1 day. We do have some other portions in that. I do want to-- I know my time's up, but just wanted to highlight that this is trying to get the fencing of the operation, the bigger fish. We're not necessarily trying to target the individuals going into the store, but

those that are selling the goods online. Happy to answer any questions you may have.

DeBOER: All right. Let's see if there are any questions. Anyone have any questions for this testifier? So I'll ask you to kind of finish up the discussion on the fencing then. So what you're trying to do is get at the buyer, who knows that the folks maybe even commissioned the folks in some way to go and do the, the stealing.

RICH OTTO: Absolutely. You're correct. So what we often see is that these individuals are not going into the store. They're preying upon, often people with a substance abuse problem, some other mental illness, or some reason that they owe money or need to come up with quick cash. So they'll have online platforms with goods that aren't even stolen yet. They'll actually have power tools on eBay, potentially. And then when it's sold, they'll just tell the individual that, because looking--

DeBOER: Go steal it.

RICH OTTO: Exactly. And so--

DeBOER: Interesting.

RICH OTTO: --it's not necessarily-- again, those individuals could be already charged with shoplifting going in. We're trying to get to the next level up that's preying upon these individuals and profiting off the, the resale of these stolen goods.

DeBOER: OK. Any other questions? Thank you for being here. We'll take our next proponent.

JARED MINARY: Good afternoon. My name is Jared Minary, J-a-r-e-d M-i-n-a-r-y. I'm here today testifying in support of LB464, and would like to thank Senator Bosn for introducing it. I believe this is a well-intended bill that defines and provides penalties for those participating in organized retail crime throughout our state. For the past 25 years, I worked for the Lincoln Police Department. I serve as the director of Lincoln's Retail Coalition, a partnership between law enforcement and our local loss prevention teams. I also advise the civilian-run Crime Stoppers program, which has a great success rate with clearing shoplifting cases in Lancaster County. As previously stated several, several times now, shoplifting cases are really are

far more complex than they initially appear. This is habitual. Theft suspects who have outstanding warrants are struggling with drug addiction carry weapons. They commonly lead to confrontations with store employees, which can extend to customers within the store. They frequently plan ahead by renting or stealing cars to avoid detection. They are commonly, as I said, using drugs. They will commonly use this money in order to obtain drugs, sell them, consume them. This is not an impulse event. This is not somebody stealing a cute sweater to go to school the next day. This is an organized group of people that are using this means to fund something. One of the things we have seen in the past is gangs. The men in the gangs will go out and they will commit the crime, sell the drugs. The women will commonly go out and steal in order to provide money for the gang in order for them to buy-- purchase guns, drugs, and support the gang that they are in. When penalties are reduced or enforcement options are limited, offenders exploit those gaps, creating significant issues for the community. I've witnessed countless examples of this and the consequences are readily apparent. I could go on on that topic, based on some of our retail coalition members that have dropped off. We have lost many of them because they have lost faith in prosecutions and being sued for anything that they might try to effect. In one of the most egregious of cases that I've seen, 3 women from Omaha stole $1,838 worth of merchandise from Victoria's Secret at Gateway Mall in less than 5 minutes. Further investigation revealed they had made 3 separate trips to Lincoln-area Victoria's Secret stores, stealing a total of $4,569 in merchandise. The same individuals were then later connected to similar crimes throughout southeast Nebraska all along the Interstate, amassing over $50,000 in stolen goods, which they were selling online for profit to benefit their gang members. I later learned the Nebraska Victoria's Secret stores suffered a millions of dollars of loss that same year because of this kind of activity. And that is Nebraska. In another case, just last month, a woman from Omaha used Facebook to literally take orders and sell her stolen items. She was posting pictures of the items she had stolen, and while people were commenting and saying I would like to buy that, she would list the price. And some people were saying, I want one of those. I know you already got one, but can you get me one of these? And she was literally taking orders on her Facebook page. I also want to touch on one more topic if I get the chance, but it's basically a case that happened this morning and it's involving Walmarts. And I'm aware my time is up, but I'll make this extremely quick. In this case, just

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

this morning we had 5 people that came through town. One of them stole from one store a total of $1,200 in Apple products. We have now linked them to multiple cases in multiple states, and we cannot prosecute these individuals because the only one that stole in Lincoln stole $1,200, which is a misdemeanor. We can write a warrant for this individual and ask this individual to show up, but he's probably not going to come back to Nebraska, which means he will never face charges for the misdemeanor that happened in Lancaster County, and he cannot be linked to any of the other ones that have happened across the state, let alone the country. Thank you.

DeBOER: Thank you. Are there questions for this testifier? Senator Storer.

STORER: Thank you, Vice Chair DeBoer. And thank you. So in the, in the example you just gave us, you could-- under this bill, you could aggregate those crimes for-- that were committed within the state of Nebraska. It still wouldn't allow you to, to combine them with--

JARED MINARY: My understanding, there is some in this-- I can't speak to all of the law in-- regarding this. We've talked with the Lancaster County attorneys and our city attorneys, and that is the hope that that's what this is going to do is allow us to aggregate those beyond just a county line.

STORER: But probably not across state lines, but at least within the state.

JARED MINARY: My understanding is it would not go across the state line.

STORER: Right. OK. Thank you.

JARED MINARY: That would end up going into some kind of federal organization, which we have a hard time getting them to bite on these types of cases.

STORER: Thank you.

DeBOER: Senator Hallstrom.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

HALLSTROM: If you know, it's not uncommon for us to aggregate crimes for these very reasons because they, they steal or have theft just below the, the felony theft amount. Would that be correct?

JARED MINARY: Yes. And much like our previous testifier said, where you can aggregate, say, 3 misdemeanors and create a felony case out of that, that has been removed from Lancaster County and we are not able to do this. They have all been shifted to the City Attorney, and that is where they remain. We're not able to make felony cases on repeated thefts at this time. I can't speak to why that is, but I can say that when that occurred, there was a extreme amount of frustration between law enforcement officers and loss prevention members.

HALLSTROM: Thank you.

DeBOER: Thank you, Senator Hallstrom. Other questions? Thank you for being here.

JARED MINARY: Thank you.

DeBOER: Take our next proponent. Can I see a show of hands of how many people are intending to testify? Looks like 3 or 4 more. OK. Welcome.

JUSTIN OTOSKI: Good afternoon. Good afternoon, committee. I appreciate the time. I want to say thank you to Senator Boden [SIC] for introducing this bill. My name is Justin Otoski. That's spelled J-u-s-t-i-n, last name O-t-o-s-k-i, and I'm here speaking as a proponent for LB464. I've worked in loss prevention, asset protection in retail for 7 years, and currently have witnessed the effects of organized retail crime here in Nebraska while working for both national and local retailers. Organized retail crime is not just a problem that occurs that we hear on the coasts, but it is common here in Lincoln. I commonly see cases where people are traveling along the I-80 corridor, coming through Lincoln. I was going to go into more detail what Mr. Minary previously talked about, but I, I work for the retailer, and I, I, I worked on that, that case with the Apple products. And yeah, those individuals came through Lincoln, they hit multiple stores, all targeted between $1,200 and $1,400, but not only Lincoln, but Omaha, Crete, York, all across Nebraska. They were finally arrested in Wyoming. And when we discovered, you know, that-- who they were and reported it to law enforcement, we-- you know, it's not an uncommon thing that we hear that, you know, they were at that

misdemeanor level. That's what is going to be prosecuted, and likely, those individuals will never come back or face justice here in Nebraska, especially these travelling groups. I just want to kind of reiterate that we're not talking about like, impulse or people stealing a candy bar. We're talking about large groups that are organized. They have methods. I've seen everything from electronic devices used to defeat our antitheft devices to various tools, schemes using technology, everything from fake receipts to using apps to deceive employees on certain fraud schemes. But I, I-- I'd strongly urge you to, to support LB464, and I think this is a good tool to help all of our retailers combat organized retail crime, which has, I've seen, been a big uptick here, in Nebraska. Thank you.

DeBOER: All right. Thank you so much for your testimony. Are there questions for this testifier? Senator Rountree.

ROUNTREE: Thank you so much, Vice Chair. And thank you so much for your testimony. Would you be able to elaborate just a little bit more, if you are able to, on like, these whatever kind of tools they're using. It-- it's amazing they can all get out of the store undetected. Well, you might see them, but these tools they're using or the fake receipts that they're bringing in to get-- any type of those materials?

JUSTIN OTOSKI: Yes. So, for example, this, this case that, that Mr. Minary talked about, and myself. The individual came, he had a, a, a fake screenshot app and used that to deceive employees into handing over large amounts of merchandise. And then, it wasn't until afterwards that employees realized that it was a fraud scheme. He, he identified himself as a legitimate third-party shopper from Walmart, had a fake receipt on his phone, used that to obtain the merchandise and, and essentially get out. There are other tools. I've seen electronic devices that people use to-- this one specifically, it's called a flipper. But they've used that to identify which items have anti-theft devices in them, and, and can then target the, the merchandise, take anti-theft devices off so it won't set the door alarms off, things like that. Those are a couple of examples. Yeah.

ROUNTREE: All right. Thank you.

JUSTIN OTOSKI: Yeah. Thank you.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

ROUNTREE: Appreciate it.

DeBOER: Thank you, Senator Rountree. Other questions? Thank you for being here.

JUSTIN OTOSKI: Awesome. Thank you.

DeBOER: Next proponent.

ANSLEY FELLERS: All right.

DeBOER: Welcome.

ANSLEY FELLERS: Thank you, Vice Chair DeBoer and members of the Judiciary Committee. My name is Ansley Fellers, A-n-s-l-e-y F-e-l-l-e-r-s. I'm the executive director of the Nebraska Grocery Industry Association, and I'm here today testifying in support of LB464, Senator Bosn's bill to prohibit and provide for penalties for organized retail crime or, or ORC. Like other retailers, grocery stores, supermarkets, pharmacies, and convenience stores are increasingly affected by ORC. It's become one of the most pressing security issues facing retailers and suppliers. 4 years ago, when I was in front of the committee, ORC accounted for anywhere from $15-40 billion in retail losses annually across the country. By 2023, it was a $122 billion problem. The economic impact, however, extends beyond the manufacturing and retail industry and includes additional costs incurred by customers and taxes lost by states. The theft and resale of stolen consumables such as infant formula or health and beauty products, which is often repackaged, relabeled, and subjected to altered expiration dates, poses safety concerns for individuals unknowingly purchasing such goods. Organized retail crime is separate and distinct from petty shoplifting. It often involves professionals, as you've heard, moving quickly from community to community and across the state lines to steal large amounts of merchandise, which is fenced, then sold back into the marketplace. Organized rings, as Senator Bosn mentioned, are often involved in other crimes within the community, including narcotics, laundering, and human trafficking. Petty shoplifting, on the other hand, is limited to items stolen for personal use or consumption. I wanted to just mention, I jotted down a note about Section 5, given your question, Senator DeBoer. And I know opponents will probably bring that up. That's actually really important. I think it's pretty standard in ORC language that's passed

across the country, to basically go after what you discussed with Mr. Otto, which are the actual fencers. So you don't have to have stolen the item to be subject to penalties under the law. Organized retail crime is a threat to the economy, public health, and domestic security. It's a problem not only for retailers, but also for manufacturers, consumers, taxpayers, and local and state governments. We thank Senator Bosn for bringing this bill forward and ask the committee to advance LB464. With that, I'd be happy to answer questions.

DeBOER: Are there any questions? I don't see any, Ms. Fellers. Thank you--

ANSLEY FELLERS: Thank you.

DeBOER: --for being here. Next proponent. Any other proponents? Welcome.

BRISA LARA: Good afternoon. Hello. Good afternoon, Chairman and members of the committee. My name is Brisa Lara, spelled B-r-i-s-a, and then last name is Lara, L-a-r-a. I'm speaking in support of the bill LB464, as a former loss prevention employee, I have been in the loss prevention industry since 2019. And throughout 2018 to this year, I have experienced numerous retail theft crimes and have made numerous apprehensions. As a result, I am very familiar with retail theft around the city of Lincoln and elsewhere. I stand before you today as a former loss prevention employee to advocate for stricter penalties for retail crime theft. The current consequences for stealing from retailers are often too lenient, allowing offenders to escape without meaningful repercussions. This only involves repeat offenders and encourages further criminal activity and creating a cycle that harms everyone. When I worked in retail stores doing loss prevention, I experienced traveling groups. These traveling groups, local or non-local, have negatively impacted retail stores. For example, when I worked for a retail store, we found a group of individuals who traveled to lots of cities and towns in Nebraska who stole over $14,000 worth of garage heaters. These same individuals hit the same retail stores more than once the same day. They would then pawn all the merchandise or sell it online. I also experienced fraud along with these retail thefts. These individuals that shoplift and return these items to the same store or other stores elsewhere to get the store credit or money in return. As a result, those incident took hours of

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

video review and paperwork for both law enforcement and loss prevention employees from each jurisdiction. As of today, these same indi-- individuals are continuing to impact retail stores. By all these experiences, I'm for imposing stricter penalties that can send a clear message that retail crime theft is a serious crime and will not be tolerated in the community. Thank you for your consideration.

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

BRISA LARA: Thank you.

DeBOER: --being here. Let's have our next proponent. Anyone else here like to testify in favor of the bill? Now we'll switch to opponents.

SPIKE EICKHOLT: Good afternoon, Vice Chair, 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 a couple of portions-- 2 portions of the bill. I did email our specific concerns to Senator Bosn and to at least some of the supporters-- proponents of the bill. I didn't hear back, so I think I know what my answer is. But you're receiving my testimony, and I'll just kind of highlight the concerns that our association has. First, on page 3-- actually, starting on page 2-- excuse me. Page 2, line 30: A person commits the offense of organized retail crime when that person, quote, acting alone or in association with another person-- and then if you see on page 3, lines 8 and 9, it has sort of another way of committing the crime of conspiracy. In other words, it's sort of listed twice as duplicative. So one suggestion we have is just a technical like, drafting thing, and that is just to delete lines 8 and 9 on page 3, because that's really what is being said on page 2, line 30. The other portion that we propose is probably more consequential, and that is to strike Section 5 of the bill. Admittedly, when I read that, I don't know what it was trying to say. I don't know what it means. I understand from Senator Bosn what it's stating, but respectfully, I think that Section 3 that creates the crime criminalizes that behavior. In other words, if somebody sort of places an order, for lack of a better term, for something that's not actually stolen, that is what organized retail crime is. If you look on page 2, lines 16-19, it lays one of the ways that you can prove it. Organized retail crime means the theft of retail merchandise with the intent or purpose of reselling. That's exactly what you're doing when

you're placing an order. You're conspiring with somebody to steal something to either get it or to resell it. So the concern we have is in Section 5, it's odd because in a-- it's rare that you say what a defense not is-- it's rare in a body-- in a subset of criminal law that you state what a defense is not. Right. You say what the elements are, how you commit the crime, what the mens rea, what the actus rea is, and that's it. You don't say what a defense is not. So is this something that needs to be disproven, that I can raise in a defense? Is it something that I can't even raise if somebody does not know that they purchased something on Facebook Marketplace is stolen? And that's happened to my wife. She ordered some things on Facebook Marketplace. When we got it delivered, it had all those like, security devices on them. The concern we have is that you're going to capture some of those people who genuinely don't know that what they're purchasing online is stolen. We're not opposing the bill. We're not denying this is not an issue. That's not it at all. I know I appear in front of you all the time and testify in opposition. I try to reach out to introducers and proponents to try to work these things out. And I'm not-- Senator Holdcroft's not here to call me on that. I'm not frustrated, necessarily, but we're trying to raise something that might be an issue that we, as practitioners, see. So I would encourage the committee to consider our points, and I'll answer any questions you have.

DeBOER: Are there questions for this testifier? Mr. Eickholt, I think you will agree that you did not draw my attention to Section 5. That was something I independently saw. But having now talked to Senator Bosn, she sort of indicated that the part of the nondefense that she's trying to get at is that just because you sort of have not yet gotten through the, the part of the stealing happening at the time that you ordered them--

SPIKE EICKHOLT: Right.

DeBOER: Do you see a way to get to that group of people? Because we heard from the testifiers before you that, that it's really important to get at the folks who are sort of ordering things. Is there a way that you would alternatively-- I mean, because I will admit I did not understand what that meant when I first read it. So is there a way you would word it alternatively that would sort of get at what they're trying to get at, but not-- I know you hate that I always ask you to

fix the bill, but if you are opposing the bill, do you have a proposed solution?

SPIKE EICKHOLT: I think it makes sense in any kind of criminal law just to state what a crime is. There's no common law crimes, right? So you, the Legislature, defines the crimes. You got to affirmatively say what they are and try to do it with some specificity. And I think, arguably, the bill does already, without Section 5. Page 2, line 16 says organized retail crime means the theft of retail merchandise with the intent or purpose of reselling, distributing, or otherwise reentering the retail merchandise in commerce. So if I'm--

DeBOER: Could I just say-- sorry to interrupt you.

SPIKE EICKHOLT: No, you're all right.

DeBOER: Could I just say regardless-- so the buyer receives purchases or possesses, so this is line 10 and 11 on page 3.

SPIKE EICKHOLT: OK.

DeBOER: Could I just say, receives, purchases, or possesses retail merchandise for sale or resale if a reasonable person would know such retail merchandise to be stolen and then say something like, regardless of whether or not the purchase agreement occurs before the stealing or something like that. Would that-- because what they're trying to do is say that you can't get out of this by--

SPIKE EICKHOLT: Well, I--

DeBOER: Because I know you're a canny defense attorney. I know you would probably raise that defense that well, yes, they, they did order it, but it wasn't stolen at the time, so they just made a harmless order in the air, not really intending for it to be stolen.

SPIKE EICKHOLT: Well, I don't-- first of all, respectfully, with that point, it's not, it's not an imagined thing. There's a market out there, where a lot of the buyers don't quite realize--

DeBOER: No, I get that.

SPIKE EICKHOLT: --that it's stolen. So that's, that's one fact. Because we're not denying this is not a thing. When I read the bill,

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

until I got to Section 5, I understood the part that you read and what I read is to already criminalize the exa-- the instance that Senator Bosn explained. If you're working with somebody else to steal something off a shelf with the intent to resell or distribute it, that's placing an order.

DeBOER: OK.

SPIKE EICKHOLT: Because it-- it's future looking. You are-- it's, it's a-- it's an organized-- it 's prosecuting an organized, planned, it's basically lack of a better word to sort of shoplift. That's the whole point of the crime.

DeBOER: I assume--

SPIKE EICKHOLT: And I think it's-- I don't think the court is going to read Section 5 as superfluous. I don't think it's going to read it as just restating the same things. Every word in the statute has meaning.

DeBOER: OK. So the conspire with another person, that line 4, that's not a hill you're going to die on. That just-- you think is mainly a--

SPIKE EICKHOLT: Just--

DeBOER: --drafting error.

SPIKE EICKHOLT: Yeah. I mean, if anything, it's probably an inconvenience for prosecutors, because just going to state sort of a, a double proof of conspiracy, basically.

DeBOER: OK. All right. Any other questions?

SPIKE EICKHOLT: I'm trying to be helpful.

DeBOER: Senator Hallstrom.

HALLSTROM: Yeah, Mr. Eickholt, it-- and I agree with you. Every word in the statute does have meaning. But if we're talking about organized retail theft, it would occur to me that somebody is going to try to use a defense that if the theft hasn't occurred, how could I have committed a crime if the--

SPIKE EICKHOLT: Right.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

HALLSTROM: --theft is yet to occur. And I think we can-- if, if your interest is-- I think other states have used this language, so I, I kind of tend to go that route. But if your interest is in making this part of the criminal offense, I think we can re-- reword Section 5 so that if retail merchandise was explicit-- was explicitly represented as being stolen, embezzled, or converted property, it's a violation irrespective of whether the theft had occurred prior to that time.

SPIKE EICKHOLT: That's right. And I'm not, I'm not necessarily opposed to that. I reached out before, and no one's really given me any kind of invitation, if you will, to sort of work on moving that. But that would probably make more sense, in my opinion, to put it in the body of the crime somehow, and say what it is instead of what it not is. Because the concern we have is that I think, of course, going to read Section 3 as saying what the crime is. I think there is the risk that you're going to get people caught up in these things that generally don't know any better. Perhaps they should. But they're not necessarily, they're not necessarily part of the conspiracy itself.

HALLSTROM: Thank you.

DeBOER: Any other questions? Thank you, Mr. Eickholt. Other opponents? Is there anyone here to testify in the neutral capacity? While Senator Bosn is making her way back up for her close, I will note for the record that there were 13 proponent position comments and 1 opponent position comment. Welcome back, Senator Bosn.

BOSN: Thank you. First of all, I want to thank those who came in to testify on behalf and in opposition to this bill. I didn't know that some of those individuals were coming in. And Mr. Otoski has testified in one of my jury trials. He probably doesn't remember that. That was several jobs ago. But I appreciate all the work that he and Miss Lara do. Full disclosure, apparently Mr. Eickholt did email me those things and my staff provided them to me this morning. They were emailed to me on Friday, so I've had plenty of time. It was me that dropped the ball. But I will say, I think that there was feedback provided from some of the retail groups to him explaining their opposition to those, but I'll let them hash that out at a later time. As far as Section 5 goes, which seems to be the, the sticking point here, I don't necessarily disagree that it can be put somewhere different. I don't, I don't think that's the hill. I do think-- it's model language from other states, so that's where it came from. This wasn't like, oh,

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

Carolyn decided to do this. But I, I guess I fundamentally disagree with the argument that on page 2, starting with line 16, you can't resell something until it's been stolen, you can't distribute it until it's been stolen, and you can't reenter the retail merchandise into commerce until it's been stolen, so that's what it's directly trying to allow for, because the goal here is not the petty theft who's stealing for their own-- to fill their own needs. This is to go after the big fish. This is to go after those who are taking advantage of individuals who are living in poverty and need to make 50 bucks. Hey, if you participate in this, or if you find me a buyer, or if I can use your Facebook to resell this, and now they've been roped into something much bigger than them, is the goal here. And so, how to accommodate for those, because oftentimes, you don't want to have the goods in your possession for any longer than is necessary. You want literally every single one of the 50 TVs you stole to be already spoken for by a buyer before you steal them, because where are you going to put them? So that's the goal with that Section 5. And so, to the extent that we need to work on that, I'm happy to do so. But I will acknowledge this the first time Mr. Eickholt has come in and acknowledged there was a problem and that he wants to work with me on finding the solution, and so I am grateful that he agrees this is also a crime worthy of addressing in Nebraska.

DeBOER: OK. Questions for Senator Bosn? I don't see any. That ends our hearing on LB464, and that will bring us to LB127, Senator McKeon, McKeon.

BOSN: Welcome. Go ahead. Sorry.

McKEON: Good afternoon, Chair Bosn and members of the Judiciary Committee. I'm Senator Dan McKeon, D-a-n M-c-K-e-o-n, representing District 41 in the Nebraska State Legislature. I'm here, here to introduce LB127. Too often, the court system creates an undue financial hardship on people when it fails to prove its case in a criminal trial. The intent of LB127 is to reduce this hardship. LB127 would require the state to pick up the costs for a person found not guilty of charged crime accusations in the following circumstances: A not guilty verdict by jury trial; a not guilty verdict by bench trial; charges are dismissed by the trial court or on an appeal; or an absolute discharge as proven in Section 29-1208, a speedy trial; and the conviction is overturned on an appeal or pursuant to any form of post-conviction relief. In these situations, damages allowed are

reasonable attorney fees, other litigation expenses including for trial or any appeals of action for post-conviction relief. In addition, the actual damages caused by the filing of charges, arrest, detention, prosecution, conviction or imprisonment, including but limited to lost wages. This is a limited scope. If a defendant is convicted of other crimes arising out of the same offense or the same level of a misdemeanor or a felony or a higher offense, there's no relief available. Also, a defendant may enter into an agreement with the prosecutor to dismiss charges and may waive the payment of damages in such an agreement. Lawfare has become a household word, meaning trying to conduct political war in a court system to try and smear and bankrupt people, regardless of the legitimacy of the allegation. This is happening more often from the highest offices in the country to average citizens. Innocent until proven guilty is a fundamental right we claim to believe, but too often fall short of when we can bankrupt somebody to defend this right. We need accountability to restore confidence in our courts. That's why LB127 is needed. We are here for simple accountability within our legal system. Court ethics are supposed to be as such that the state of Nebraska exercises caution and restraint when making a prosecution decision. For the vast majority of our prosecutors, this is not a problem. They are careful to make sure the evidence warrants a charge, and they have high conviction rates, which would make the shift in cost manageable. This is a method of-- to protect our fundamental rights, keep the people to protect against a few bad apples that abuse our power. LB20-- LB127 provides accountability to the citizens for due process by the state. You'll be hearing from testimonies from people directly affected by Nebraska's lack of accountability and undue financial hardship that has placed on them. You will also hear from attorneys that can better discuss this legal implications. I ask that you advance LB127 to General File. I'll answer any questions if possible, but I will probably look to people that know more about law than me.

BOSN: Any questions for the senator? Senator Rountree.

ROUNTREE: Thank you so much, Chairman Bosn, and thank you so much for your opening, sir. How many of these cases or-- has, has happened in Nebraska? Do we, do we have any-- do you know the impetus for this bill coming? Have there been mistreatment or a misjudgment that someone has been harmed?

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

McKEON: That's a great question, Senator Rountree. I mean, I can't-- there might be somebody behind me that can probably answer that.

ROUNTREE: OK. Thanks so much, sir.

BOSN: Senator Hallstrom.

HALLSTROM: Just-- Senator McKeon, just want to make sure I'm clear on this. You've passed out lack of confidence in the court system. Isn't your bill directed more at the prosecutors bringing charges that ultimately aren't determined to have been valid--

McKEON: Well, I think--

HALLSTROM: --or result in a verdict?

McKEON: Well, I'm going to say that I think that literature was just a back-up on my closing.

HALLSTROM: OK.

McKEON: So you might have to ask that question behind me, too.

HALLSTROM: And, and do you anticipate that the county will pick up the, the damages on--

McKEON: That's, that's where-- wherever the-- it happened, that's where they'll--

HALLSTROM: So if it's the AG, it would be the state. If it's the county prosecutor, it would be--

McKEON: Right.

HALLSTROM: -- the county. Thank you.

BOSN: So I just have a couple of questions, having been a prosecutor for a number of years and being assigned to the domestic assault docket.

McKEON: Don't make them too tough.

BOSN: Well, you brought the bill. So do you know what the success rate is on trying domestic assault cases?

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

McKEON: Probably very low.

BOSN: It's very low. Do you think that's because the state doesn't have a good faith basis for bringing those?

McKEON: I didn't, I didn't say that.

BOSN: Well, so--

McKEON: From the, from the standpoint that I'm, I'm just bringing the bill because I, I had somebody that asked me to do it, so I don't know the numbers.

BOSN: I mean, the, the issue in those cases is it's often a he said, she said, right?

McKEON: Mm-hmm. Correct. Correct.

BOSN: You would acknowledge that. In those particular cases, they're very messy. They're very difficult. It's difficult to investigate, juries don't like believing that someone who claims they love you would do those things to you, and often the victim will come in and recant, all of which the prosecutor has very little control over. And now you're expecting-- or this bill, if, if you-- since you asked us to advance it to General File, and if it were passed, the state taxpayers would be paying the consequences of a victim who was chilled on the stand and who recanted, for any number of reasons, because it would be a finding of not guilty. Right?

McKEON: Correct.

BOSN: OK. Any other questions, in light of that? Senator Hallstrom.

HALLSTROM: And I might just add onto-- It would seem to me, in line with what Senator Bosn has just said, is that you may have recanting that occurs be-- because of coercion. I see a lot of issues with regard to the issuance of protection orders, and that's one of the concerns in that area of the law that, that one party exercises coercion or leverage over the other, and all of a sudden the charges are dismissed. So I-- I'd, I'd have some concerns about those, those types of situations, potentially.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

McKEON: And I think by any means, there's going to be a lot of possibility to do amending to, to those concerns, what you're talking about.

HALLSTROM: Thank you, Senator.

BOSN: Senator DeBoer.

DeBOER: I also note that you have the discharge because of a failure of a speedy trial. That means you could have an absolutely valid case against someone, but you missed the speedy trial issue. And so now, you're going to require the county or if it's the AG-- I mean, I guess isn't already the lack of be-- like, the total bar to the prosecution, isn't that enough punishment for the speedy trial violation?

McKEON: I can't answer that.

DeBOER: OK.

BOSN: Senator Rountree.

ROUNTREE: This is my last question for now. Thank you, Chairwoman. And someone asked you to bring the bill. Who, who, who asked you to bring the bill?

McKEON: They will be testifying here in a little while.

ROUNTREE: OK.

BOSN: Senator McKinney.

McKINNEY: Thank you. Thank you, Senator McKeon. On this bill, I guess, have you thought about maybe just-- and I know you're opening and we're just having it. But maybe to situations where-- like, I see overturned or where people were found to be like, wrongfully convicted, just tailoring it to that? Because I could-- it might be more digestible.

McKEON: Yeah. And I, and I--

McKINNEY: I get what you're trying to do, though.

McKEON: No. And, and I think that's exactly-- you, you got to open up the book to read it. Right?

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

McKINNEY: Yeah.

McKEON: So I'm sitting here thinking, too, that we'll look at everything and you can amend some things that's-- too. So.

McKINNEY: Mm-hmm. Thank you.

BOSN: All right. Are you staying to close?

McKEON: Yeah.

BOSN: All right. Are there-- can I just, before we begin, see a show of hands how many individuals wish to testify in some capacity on this bill? 1, 2, 3, 4, 5, 6, 7, 8, 9. All righty. Thank you. First proponent.

ANGEE HOCK: Thank you, Senator Bosn and Judiciary Committee. My name is Angee Hock, A-n-g-e-e H-o-c-k, and I'm the originator of LB127. Accountability. That is why we're here today. We all want to believe that code of ethics, case law, and an oath of office are enough for the state of Nebraska's legal system to only bring charges against someone if there's undeniable standard of evidence. I am one of many who were brutally and biasedly charged with a crime without proper evidence, no laws broken, based exclusively on unknowledgeable opinion. Simply put, if the state of Nebraska believes that they have enough evidence for conviction, they should be willing to pay the lost finances if, in fact, they lose or prosecution unnecessarily extends it. This bill will return the rights to the citizens, the defendants who are innocent until proven guilty. It will protect citizens from prosecutors withholding evidence past 6 months, which forces a defendant to choose between a right to a quick and speedy trial, or a fair trial, which I can personally attest to that does happen. This bill will strengthen the trust and the accountability of our legal system and bring it back to the people. If prosecutors are acting in due diligence, this bill will not add extreme, burdensome costs to Nebraska, as some might tell you. For if it does, we need to reexamine the standard of evidence as to why somebody is being charged in the first place. Almost 6 years ago, I was charged with a crime despite no laws being broken and parties involved pleading that I was not at fault. The state of Nebraska accused me of a felony crime with a max sentence of 20 years in prison. Despite my willingness to cooperate with the assistance of attorney counsel, I was torn away from my

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

exclusively breastfeeding baby, thrown in jail with prejudice not for one night, but purposely and maliciously over a holiday weekend, extending my jail stay to almost 3. My home was searched, my kids traumatized, my career and reputation damaged to malicious, malicious claims of perceived guilt. My trial was repeatedly on delay for 3.5 years, requiring hearings with evidence delays on the side of the prosecution with all lost income and extreme financial burden that came with the legal fees. During that time, we had to refinance our home, our office building, go into massive credit card debt, all to keep afloat. After 3 years, I was declared not guilty, but where was my victory? It wasn't mine. The state ultimately is the winner, whether they win, lose or drop the charges. This leaves defendants hopelessly traumatized, resulting in PSD-- PTSD, ruined lives, broken families, addiction, and in some cases, suicide or suicidal tendencies, which has happened here in the state, all because the state judicial system did not exercise restraint. The purpose of this bill, above all, is for the state to remember that when they bring charges against somebody, they are messing with people's lives and sometimes, with permanent consequences. If any good comes from my despair in the legal system, is that we give accountability in the system back to the people. With that, I encourage you to advance LB127. And now, I'm open for questions, and I can address your domestic abuse question, if you wish to.

BOSN: Senator McKinney.

McKINNEY: Thank you. All right. This bill makes-- listening to you talk and kind of thinking about it more, this bill makes a little more sense to me. Because I had-- just-- I had a cousin picked up for a robbery that he never did. And he was, like, on the news and for the robbery when he actually wasn't the person. But so I-- now I understand the purpose of this bill, but thank you.

BOSN: Other questions for this testifier? Seeing none, thank you for being here with us. Next proponent.

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 support of the bill. We were surprised to see it introduced, something that apparently came from Senator McKeon's office himself. And I understand- and I've talked to a number of

senators about this bill, I've talked to some of the opposition about this bill, so I understand sort of the issues with it. But we do support this concept because it does raise an important point. And I want to kind of highlight this because I've been before you all session opposing increasing penalties, opposing adding new crimes, because these things have a cost. Just because someone is charged with a crime doesn't mean they did it. It's that simple. And people-- we, you know, we get into questions and we talk about bills and say like, well, they can just go to trial and get found not guilty, I mean, then they got a defense and it's no big deal. What's the big deal? And I think you heard the last testifier, being charged with the crime has significant cost to the person charged. There's a psychological anxiety, the uncertainty of your future. What's going to happen to me? And it's compounded if you're in jail, unable to make a bond. There's the embarrassment and the cost of you explaining it to everyone that you know about why you're charged with this thing but you didn't do it. There's the delay of the case as the case and the defense sort of progresses through. There's the financial costs in paying for a defense. And at the end of it, if you're found not guilty or the charges are dismissed, what do you have? You've got that part of your life gone. As you heard the last testifier, you're-- many times, you're suffering from PTSD or similar symptoms. We have a wrongful conviction law in our state, where if you're wrongfully convicted and in prison for a period of time, you can recover some, some damages. But we don't have a wrongful charge statute. And you can be locked up post bond-- or pretrial-- on a pretrial bond for months awaiting trial, before you're ultimately found not guilty. In response to some of the questions before, particularly from Senator Bosn, respectfully, if I could just respond to that. The principle of innocent, proven guilty means that: you're not just kind of guilty, but I wasn't able to prove it, so you ought to be lucky you weren't found guilty. And you're not just guilty, but I couldn't get the witness to say what I wanted them to say. You're innocent under the law. And if you're not convicted, you're innocent, then. That's an important principle to our law. And I think this bill sort of reflects that. And we urge the committee's consideration of it. And I'll answer any questions that you have.

BOSN: Questions of the committee? Senator DeBoer.

DeBOER: This bill is pretty expansive. It's not just not guilty verdicts. It also goes to dismiss by the trial court on appeal, speedy

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

trial, post-conviction relief, overturned on appeal, which means if you have an overturned on an appeal, that means the trial court got the, the law wrong, maybe--

SPIKE EICKHOLT: Right.

DeBOER: --or something like that, or you had inadequate defense counsel or some other reason like that. We're now saying that the burden of that, of the inadequate defense counsel, the trial court, now we're suddenly going to say we're going to charge all the lawyers fees and all of the-- and maybe some additional cost to the county for that. Do you see how that, that won't-- not only have an extreme chilling effect on any kind of prosecuting-- which, I know that there's like a delicate balance between prosecuting too much, prosecuting too little. This is going to shift to prosecuting too little, because folks in counties that have a property tax issue or something like that are going to say, don't you dare, to their, their prosecuting attorney, charge too many cases because then we're going to have-- there might be a way to fix this. I'm not going to ask you to fix it this time. I'll find somebody else I can ask that, because I always make you, unless you'd like me to. But this-- do you not agree that this is a very, very broad bill?

SPIKE EICKHOLT: I'd say that it's comprehensive, yes. But to respond to your point when you talked about other things and just not guilty. If your, if your conviction is reversed on post-conviction motion, that means a fundamental right was at stake, a constitutional right was at stake. And as a practical matter, if you're going to get a conviction reversed, there's got to be some kind of constitutional deficiency in the prosecution. So we're not talking about little things. In my opinion, and I think the law opinion, there should be no separation between the means and the ends in these things. You don't just get to cut corners on Fourth, Fifth, and Sixth Amendment to get you're guilty, and say, oh, well, we'll try better next time.

DeBOER: But the inadequate representation by your defense counsel, they could be private defense counsel.

SPIKE EICKHOLT: That's exactly right. And that's Sixth Amendment. That's your right to effective counsel.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: But that's not on the county. You are-- as a defendant, are the person who gets to pick who your counsel is. So you picked somebody. That's your right.

SPIKE EICKHOLT: Right.

DeBOER: I don't want to take away that right. So you pick someone. Now, your conviction gets overturned because of the person you picked, and now the county has to pay for that?

SPIKE EICKHOLT: That's right. And I understand that's one of the points that perhaps is not necessarily intended with the meaning of the bill itself. I, I get that. I didn't draft the bill.

DeBOER: Yeah. In general, we don't have-- I mean, if you are found guilty, you don't pay for the prosecution. You pay court fees. But do you have to pay some kind of extra penalty? Not if you go to jail.

SPIKE EICKHOLT: Just your life. Maybe a fine.

DeBOER: But you don't pay the, the court fees, specifically. I, I just--

SPIKE EICKHOLT: It's not-- no. That's right. You pay, you pay the standard court costs, whatever it costs to prosecute you, and it's not-- there's not an additional payment because you were convicted.

DeBOER: I just-- I think this undermines the entire criminal justice system to say that if we prosecute you, you're now going to basically maybe get some kind of financial recompense. And yes, they didn't-- I get your point about you're innocent until proven guilty. So you're innocent the whole way. At the end, you're not guilty. So you're still innocent. The whole way, you're innocent. But if we start charging the court every time they prosecute someone if they're wrong. I mean, if you're in that jury and you don't want to pay, you might start to think as a jury member, hey, guys, we better find this guy guilty, or else we're all going to be paying property taxes for this guy's legal defense, which is a pretty big amount of money. So let's just find him guilty, because, I mean, there now is a weird thing on jurors. Does that--

SPIKE EICKHOLT: Well, you said a lot. I don't know that jurors would know that necessarily, and they would probably be instructed by the

court not to consider that because they have nothing to do with what happens with a person. They're only supposed to make the factual determination. Secondly, your, your premise ignores the fact that prosecutors have unlimited resources, at least for the most part, in this state, in the bigger jurisdictions, particularly. Lancaster, Douglas, Sarpy County, have full-time prosecutors with multiple staff people, a State Patrol crime lab. In this jurisdiction alone, there's 5 or 6 police agencies that help them do their job. You have the Attorney General's Office offering ancillary support and appellate assistance for free. You have all of that against the citizen accused. Chances are they won't be able to afford a lawyer. You have, in my opinion, plenty of crimes to charge people with. You can stack crimes. You can extract a plea really, on any kind of basis, in almost any kind of circumstance. In my opinion, prosecutors generally get a conviction on almost anything they want, so long as the facts show. If there is a process to encourage that prosecutors don't bring marginal cases because whether that case is marginal or a slam dunk, the impact on that citizen accused is the same. Whether it's deserved or not, it's the same. And this bill touches on that.

DeBOER: OK. Let's talk about what will actually result if this bill is passed. So the trial court is the one who would award damages. They can award reasonable attorney's fees and other litigation expenses and actual damages by the filing, but not limited to lost wages. How often is the trial court going to award that?

SPIKE EICKHOLT: I mean, we don't have that remedy now, so I'm not quite sure how-- you know, I'm not sure what courts would do with it. I mean, I think if you could find that you were fired from your job because of a charge that you were later acquitted of, you could quantify that in lost wages.

DeBOER: Wouldn't the state do some sort of a-- I mean wouldn't we do some sort of State Tort Claims Act or-- it's not a tort.

SPIKE EICKHOLT: Oh, I see what you mean. Well, I suppose yeah, you could reference this-- well, I guess it wouldn't be a tort, necessarily.

DeBOER: It wouldn't be a tort, but we'd still have common law sovereign immunity.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

SPIKE EICKHOLT: Right. But I suppose this is-- could be considered a waiver of that.

DeBOER: I suppose you'd have to litigate that out.

SPIKE EICKHOLT: If it was raised. Yeah, but I think it's probably-- I think the bill itself is probably at least a partial waiver of sovereign immunity, because it says the states shall be-- or the, the-- that the state or the county should be liable.

DeBOER: OK. All right. Thank you.

BOSN: Senator McKinney.

McKINNEY: Thank you. Thank you, Spike. Could you explain why are malicious prosecution actions rare and insufficient?

SPIKE EICKHOLT: As far as bringing one?

McKINNEY: Yeah.

SPIKE EICKHOLT: You know, prosecutors, they, they have to ethically sort of charge cases that they have a reason-- a good faith belief that they can get a conviction from. They have to have a-- I can't remember what the standard is, if it's a reasonable basis to believe they can get a conviction out of. And it's difficult to show, if they don't get a conviction, whether because when they first charge the case, the factual pattern changes, if it-- if there's things that develop from when they initially charged a case that result in dismissal or result in reduction of the charge. It's difficult to show that that was done with malicious intent. I mean, there are some instances, I think, and I can think of one in Nebraska, where a case was maybe charged or at least brought maliciously by a prosecutor. But it's just difficult to show as a practical matter.

McKINNEY: OK. So in the case of my cousin, who was accused of like, robbing a-- I think it was a convenience store or something, but he actually didn't do it. He wasn't even a person, but they had like put-- I think they put him on the news, picked him up, charged him and took him to the county-- and they, they figured it out eventually. But how, how do you quantify those damages for somebody who has their face put on the news, picked up, charged with robbery like that?

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

SPIKE EICKHOLT: Yeah. You're right. I mean-- and in that case, I don't think he could show malicious prosecution. Because, chances are, some witnesses probably described somebody who did it that matched your cousin's description, and, and law enforcement just kind of followed that until it was discovered it was not. It starts with law enforcement and the prosecutors, and then it was done. But you're right. Once it's out there, you can't unring it. You can't undo it. And you can tell people while I was-- you know, they dropped the charge. It wasn't me. But there's always that suspicion that it was and lost on a technicality. That's why-- and this is not separate of the bill-- that's why I'm troubled when law enforcement does snarky things on social media regarding that. I think, in my opinion, on this [INAUDIBLE]-- that's why these scamming thefts involving law enforcement are so believable to people. Because normally, you think, wow, cops-- real cops don't text because-- or don't tweet, but they do. Right? They're on social media all the time sharing those things. I get that. That's a, that's a damage to people, and it's a disregard, in my opinion, in the presumption of innocence. That's kind of what this bill speaks to. And I know it doesn't deal with that, but that's it. You get hit hard by this thing immediately and you're bowled over. And if you're caught up in it innocent, then you're never going to be the same.

McKINNEY: Because I think it would affect you also, let's say, my cousin, in this instance, goes to apply for a job, and the job does like some background check-- not even a background check, just a Google search.

SPIKE EICKHOLT: Right.

McKINNEY: And they see X person charged with robbery. Although it was all a drop, but the-- it's rare that you ever see that those-- that the news reports that that ever was a-- like a miss, like, it, it wasn't the person. It's rare that you see that, that follow-up.

SPIKE EICKHOLT: That's right. Rush Limbaugh called it the drive-by media. Right. They hit you and they keep going.

McKINNEY: Yeah. Thank you.

BOSN: Senator Storm, followed by Senator Storer.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

STORM: Thank you, Chair. So if this bill would pass, if I was a, a county attorney, I would never try to prosecute anybody hardly. Because I would always constantly be saying what if-- what if this, what if that, and ultimately, wouldn't that make society less safe?

SPIKE EICKHOLT: Well--

STORM: That's how I take this. I'm just--

SPIKE EICKHOLT: If I could respond. I-- first of all, you'd have to-- I think you'd be surprised-- not surprised, but a lot of cases are pretty easy to prove. People are caught and they immediately conve-- confess. So a lot of things are pretty easy to charge and convict on. But for those marginal cases, I think that's the intent of the bill. Before you charge somebody, you ought to be certain of it. And if this bill is going to require you as a prosecutor to sort of think it through a little more carefully, that's, that's the purpose of it.

STORM: But what if it's out of our hands? What if it's out of the county attorney's hands or the prosecutor's hands? It's like we talked about earlier. I'd constantly be saying what ifs.

SPIKE EICKHOLT: Yeah, that might be a concern. I admit that. But ultimately, the driving force of a criminal charge is the prosecutor. That's why they're given such discretion and authority to bring whatever charges they want to.

STORM: OK. Thanks.

BOSN: Senator Storer.

STORER: Thank you, Chairman Bosn. Thank you, Spike. I'm going to go back to something you said a, a little bit ago, and just to make sure I heard you correctly that the-- whether it's the county attorney or the attorney general has unlimited resources?

SPIKE EICKHOLT: Generally speaking, yeah. Compared to the defense, certainly.

STORER: So aren't they the taxpayers' dollars?

SPIKE EICKHOLT: Well, yeah. I-- yes.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

STORER: So. I mean, I-- I'm just going to be honest. I take a little bit of offense that, that we look at taxpayers' dollars as unlimited resources. I think that's a very--

SPIKE EICKHOLT: Right.

STORER: --a very reckless sort of way to look at how we are funding our judicial system.

SPIKE EICKHOLT: If I could respond?

STORER: Absolutely.

SPIKE EICKHOLT: I've never seen a case dropped because a prosecutor says, you know what, we're running low on our budget cycle, so I can't pursue it anymore. There is a cost, and that's exactly what I'm here arguing many times. There's a cost in imprisoning people. Most of the jails are full. There's a cost-- county attorneys can't staff. They have to pay more and more because they're dealing with staff turnover. These things cost counties money to charge--

STORER: Yes, they do.

SPIKE EICKHOLT: --these criminal cases. And compared to the person in charge, the state often has limited or unlimited or close to that resources to bring charges. They don't drop cases. We don't stop that conveyor belt of prosecuting cases.

STORER: You don't think that's ever happened?

SPIKE EICKHOLT: I have never known a prosecutor to drop a charge. Now, it might happen, I suppose, in the priority of things. I mean, you heard some of that on that retail theft case before-- or bill before, where people were talking about frustration that the county attorney's office here is not charging those enhanceable shoplift cases anymore. Maybe that was a budget-driven decision. I don't know.

STORER: I, I feel like there's just an underlying insinuation that county or, or the attorney general are going after people at any cost because they feel like they have an open checkbook and they're out for vengeance of some sort. I, I just-- it's not been my observation. I don't think that's a fair assumption, to assume that that's somehow the corrupt-- this corrupt side of our, of our judicial system because

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

there's this unlimited bank account to the access of, of the prosecutors defending the people of the counties or the state.

SPIKE EICKHOLT: Right.

STORER: So I, I just want to be clear about that. And I had another question, I guess, on-- in terms of-- back to something Senator DeBoer said, I think we have to be really cautious about, and, and I agree with her, about undermining sort of the whole judicial system by throwing in a component of adding this monetary aspect. And I understand that the intent with this is, you know, well-intended, to provide some caution, and that we're-- but I was once given advice, and I would bet you any attorney in this room would agree with me that there's never a case too bad to win or too good to lose. So things happen through the process that going into-- I'm not an attorney. But going into, you know, a case that you're prosecuting, you might think you have it all sewed up, and it could, it could-- you may not win it. Would you agree?

SPIKE EICKHOLT: Yeah. Absolutely, I would.

STORER: Or vice versa.

SPIKE EICKHOLT: Yes.

STORER: So it's almost like we're asking for prosecutors to be able to determine with certainty the, the guilt of someone before they actually start the prosecution or the case, which is-- sort of defeats the whole purpose of our judicial system.

SPIKE EICKHOLT: Well, I think we probably want prosecutors to be pretty certain before they charge somebody with a crime, regardless of the bill.

STORER: If there was certainty, we wouldn't need this system, would we?

SPIKE EICKHOLT: Well, if-- well, there's-- there should be certainty on the charging-- on the person who's starting the whole process of charging someone with a crime. There should be certainty on the prosecutor.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

STORER: Do you think there's a, a rash of prosecutors that are charging people with really faulty information because they don't have anything better to do?

SPIKE EICKHOLT: No. No. And that's not what I'm arguing. No.

STORER: I mean, I just-- I, I, I do get a bit-- you know, even at-- as serving as a county commissioner and seeing the real cost to the taxpayer for these things, too, I think we have to be very cautious about using this really reckless idea that we have prosecutors that are out of control, just trying to ruin people's lives with a little flimsy bit of information. I don't, I don't think that's the case.

SPIKE EICKHOLT: Well, respectfully, that's not the argument I made. OK. That's not the argument I made, and if it, if it was interpreted that way, then I, I want to restate that. Right now, prosecutors have to bring cases of good faith. I think they do. But they don't know everything. And a person's found not guilty, that means they're innocent. And now, there is no, there's no-- nothing can be done for the person who's wrongfully charged and who's acquitted.

STORER: But isn't that part of the judicial process is to, is to vet through and be certain about the guilt or the innocence?

SPIKE EICKHOLT: Yes.

STORER: If there was certainty, there would be no need for a trial--

SPIKE EICKHOLT: Right.

STORER: --or for the, or for the whole system. Right?

SPIKE EICKHOLT: Exactly right.

STORER: OK. Thank you.

BOSN: Just a couple of things. So prosecutors, you would agree, take an ethical obligation that they can only proceed on a case if they believe they have a good faith basis for doing so.

SPIKE EICKHOLT: Yes.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

BOSN: And I-- you didn't say that you don't think that's true, so I don't want to put those words in your mouth, but those ethical obligations are requirements, and they could lose their job, or they could lose their legal license, or they could be criminally prosecuted for doing things in violation of that. You would agree?

SPIKE EICKHOLT: Yes.

BOSN: And so, I guess-- and your words earlier were-- that I took issue with, were I couldn't get the witness to say what I wanted them to say, and that resulted in a conviction. I take strong issue with that, as a former domestic violence prosecutor. I'm sure you can imagine that because we've tried cases against each other where my victim flips, and the first time I heard she was going to say what she said is on the stand, when you heard it for the first time, as well, likely. And now I am going back to my boss, the county attorney, and the taxpayers in my community and saying, now we have to pay for this. I certainly didn't know she was going to do that. She may have had a really good reason for doing it. She felt threatened or, you know, whatever the circumstances are. And now, you know, I can be frustrated that she did that, but now we have a whole new layer here. Do you agree?

SPIKE EICKHOLT: Yes. And if, if I had said that before, that was reckless and cavalier, right. That's not what I meant to say regarding prosecutors, as far as getting them to say what they wanted them to say or whatever that was. I understand the, the significance of me saying that now. Sometimes I'm up here and I'm just winging it. You're right. I understand that. But I think, ultimately, and the purpose of the bill, I think, is to-- what do you do with the person who's acquitted? And sometimes it's not just a recantation, it's, it's just-- and we've had many times-- sometimes witnesses, victims, or otherwise will say things for the first time that change the dynamic of a case, significantly. When, when we were in county court many times, on bench trials, many times, that when, when you had a first opportunity to really appreciate the evidence you had, was in your direct in, in chief, right?

BOSN: Mm-hmm.

SPIKE EICKHOLT: Your case-in-chief. And, and there are some things that I suspect, as a prosecutor, once you sort of-- when the dust

settles after that, you kind of think, wow, if I had known that, dot, dot, dot. What's to be done with the person who's charged, right, whose name is everywhere and has lost a job, and really doesn't have any kind of relationship? That's what I think the bill is speaking to.

BOSN: And I don't disagree. I think that those are valid concerns that we have. And I think to the extent if there were a rash of cases where this was happening, having some teeth to frivolous prosecutions that were resulting in life-changing, horrible situations for defendants would be warranted. But this bill as written, if your witness dies and I have to dismiss the case because the witness died, taxpayers are paying for that. Every confession does not result in a conviction, quite frankly. I have a lot of cases where they had confessions and the jury did not find them-- or jury nullification cases, where we know the individual did it. We know we proved it beyond a reasonable doubt. But the jury still said, eh, I don't know that this is worthy of criminal penalties. And now, the state is paying for those. So while I agree with the individual who seems targeted for political or whatever the reasons may be, I don't-- I, I mean, this is like-- I don't even know if that fixes this, because the case that Senator McKinney presented wasn't even-- wouldn't even fit under this. He was never charged.

SPIKE EICKHOLT: I think he was charged. I think.

BOSN: Oh, I thought he said that it was just put on the newspaper and he was arrested. So I, I-- but to that extent-- OK. So maybe I am wrong there. I didn't hear him say that. But for the person who is just, you know, charged--

SPIKE EICKHOLT: Mm-hmm.

BOSN: --this doesn't protect those individuals. Right?

SPIKE EICKHOLT: Who's just cited but not criminally charged?

BOSN: Right.

SPIKE EICKHOLT: Probably not.

BOSN: If the, if the cousin's photo is on the screen and the cousin comes in and goes, I wasn't-- it wasn't me. You've got the wrong guy.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

And they say, well, yeah. We agree. This isn't the right person. They don't charge him. He's not protected under this. Right?

SPIKE EICKHOLT: Yeah. You're right.

BOSN: Senator DeBoer.

DeBOER: This is "National Beat Up on Mr. Eickholt Day." But-- not, not you. Me.

SPIKE EICKHOLT: I chose to support it.

HOLDCROFT: I love it.

SPIKE EICKHOLT: He came back here [INAUDIBLE].

DeBOER: Holdcroft's favorite holiday.

HOLDCROFT: I'm here just for this.

DeBOER: But-- so I think what we're talking about is who bears the burden of the consequences to a person's life when a conviction doesn't happen or gets return-- reversed. But here's, here's the thing. Like-- that it's, it's-- the-- first of all, a prosecutor's standard is not beyond reasonable doubt to bring a case. If we, if we went with this bill, we're kind of changing the standard that a prosecutor must adhere to from good faith basis, best information, whatever, to beyond a reasonable doubt. Because otherwise, we're saying if you are bringing cases that you are not sure beyond a reasonable doubt, then you are arguably going to end up in a situation where many of your cases are resulting in these, these difficulties, which-- I mean, there's a reason we don't require them to be beyond a reasonable doubt. It's because we don't want the prosecutor deciding by themselves the result of the case. We, we want a jury not just to protect the individual who's on the jury trial, but also to protect the state.

SPIKE EICKHOLT: Right.

DeBOER: Do you agree with that?

SPIKE EICKHOLT: Yes. Yes. Everything sounds accurate.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: So I understand that folks who are wrongly accused or who are found not guilty have had a lot of things happen in their life and it's unfortunate, and I get that there is a desire to try to make them whole. On the other hand, we know there are wrongful convictions, so I suspect there's probably also wrongful acquittals. So how is anyone to determine ahead of time? I mean, you're just hearing the same things [INAUDIBLE]. But do-- I told you I wasn't going to do this to you and now I'm going to do this to you. Do you-- I mean, is there another way to deal with the problems or the hardships, financial and otherwise, to someone who is acquitted, then putting it off on the county, who can-- who-- I mean-- maybe we have a wrongfully accused fund that you can get some sort of-- you know, court fees pay into it, and now you can get some kind of recompense or something. But it just does seem like you're asking prosecutors to adhere to a standard of beyond a reasonable doubt and we don't arguably want that.

SPIKE EICKHOLT: I think that the standard is that they have a reasonable or good faith belief that they can get a conviction. So that would imply that they have a good faith belief that they could get a conviction beyond a reasonable doubt.

DeBOER: But that is not the same thing as believing beyond a reasonable doubt. That is--

SPIKE EICKHOLT: Well, I think it's-- yeah, it is. But--

DeBOER: --I think I probably can prove my case, but that is not saying I believe beyond a reasonable doubt I can prove my case.

SPIKE EICKHOLT: Right. That's right.

DeBOER: And so, I think those are different standards.

SPIKE EICKHOLT: They are.

DeBOER: And I think that this bill imagines a higher standard than a good faith belief that they can get a conviction in a case by putting a financial burden on them if they do not.

SPIKE EICKHOLT: And that may be true. But, in fact-- I think, ult-- and I can't speak for the senator because I didn't talk to him about why he brought the bill. But I think what this is trying to address is what do you tell the person after 3.5 years and he's found not guilty?

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: I mean, that is a problem, and, and maybe--

SPIKE EICKHOLT: What do you do for them? There's nothing.

DeBOER: Maybe we should address it, but I don't think that this actually gets at that problem.

SPIKE EICKHOLT: I understand.

BOSN: Senator McKinney.

McKINNEY: Thank you. So--

HOLDCROFT: Don't forget to smile.

McKINNEY: Sitting here thinking, and just thinking about damages, don't the taxpayer technically-- to me, the taxpayer is paying damages on one end and not the other. Anyway-- because if the prosecutor gets a conviction, the taxpayer is paying damages, essentially, in a way. We don't call it damages. We just say we put them in prison and we pay for it.

SPIKE EICKHOLT: That's right. I mean, that's right. Because the-- most people who are charged with crimes can't afford to pay a lawyer, so the county pays not only just the prosecution but the defense balance.

McKINNEY: Right.

SPIKE EICKHOLT: And then if there's imprisonment, the county pays that or if it's imprisonment in the state, the state pays that. And that's just considered part of the cost of it, the whole thing. We accept that, right? That's what we got a budget for. We just accept that.

McKINNEY: So I'm just wondering, why can't we accept that when somebody is wrongfully convicted that there should be a damage pay for that? That's what I don't understand. Because if they are convicted, we're accepting of the damages. But if they're wrong-- wrongfully convicted, we're not acceptive-- accepting of the damages. Thank you.

BOSN: Senator Storer.

STORER: Last question, I promise. Would it be fair to say in the event when taxpayers are paying for their county attorney, right, and that

when someone is convicted, what the taxpayers are paying for is public safety?

SPIKE EICKHOLT: Yeah.

STORER: Thank you.

BOSN: Senator Rountree.

ROUNTREE: And this is my last question.

BOSN: You're OK.

ROUNTREE: Thank you, Ms. Chairwoman. Spike, thank you so much. I had a chance now to go back here and listen to testimony, especially back to the originator of the bill and try to be a little bit more educated. So you're familiar with this one totally, then. Is that correct?

SPIKE EICKHOLT: Familiar with what?

ROUNTREE: With the originator of the bill, the, the situation that brought this bill forward?

SPIKE EICKHOLT: Right. Yeah, I talked to her [INAUDIBLE].

ROUNTREE: OK, good. So what would be appropriate then, look at the 3.5 years of not being able to come to trial, but then finally coming and being declared not guilty, and all of the aftermath, the damage that's been done, and the damage that probably continues to be done. What would be appropriate? What would be an appropriate remedy? I see this bill [INAUDIUBLE] pass. What would you think would be an appropriate remedy in a case like this?

SPIKE EICKHOLT: I mean, I don't know. Right now, we have nothing. So in my opinion, anything would be better than what we have now. Because right now, she can recover nothing.

ROUNTREE: Right.

SPIKE EICKHOLT: The state's immune from being sued. There's no fund. There's no agency that can provide her with any kind of financial recompense. I mean, that's it. So in my opinion, anything is better than what we have now.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

ROUNTREE: OK. Thank you.

BOSN: Thank you for being here. Next proponent.

HOLDCROFT: Come back any time.

RICHARD SCHMELING: My name is Richard Schmeling, R-i-c-h-a-r-d S-c-h-m-e-l-i-n-g. I hadn't come down here to testify about this bill, but I'm absolutely fascinated by the dialogue that's taking place here. And I want to introduce an element here that I think is going to be helpful to you with analyzing this proposed bill. I was one of the defense attorneys for the trial of Beatrice Six. The Beatrice Six case was one of the greatest miscarriages of justice in the United States. A federal judge in New York said that. What happened, just to review the circumstances, is there was an old widow lady that was murdered down in Beatrice. The prosecutor and the sheriff were bound and determined that they were going to solve the case and find the people responsible. They tried six individuals. There was forensic evidence that none of the blood samples of these six individuals matched the blood sample that the perpetrator left at the crime scene. However, they were all convicted. They all served time. And Senator McKinney, one of the things that you talk about a lot, the death penalty. The death penalty is a huge hammer for prosecutors. And a lot of times, defendants are charged with first degree and they're hammered. And I'm convinced that there are a lot of people who are innocent who plead guilty just to take the pressure off. Well, what happened in Beatrice Six case is that all of them went to prison for a period of years. A number of years later, on post-conviction, they found some blood samples from the Beatrice police investigation of the case, and they did DNA analysis. And guess what? None of the six matched DNA. So what happened was those people were forced to resort to a federal district court action under the Civil Rights Act. And I, I want-- Senator Storer, I want you to realize that when we talk about bias on the part of county attorneys, those county attorneys are elected. And they may have a tendency to think that they have to get a conviction no matter what. I'm convinced that county attorney in Beatrice went after those people because he wanted to make a good name for himself. So I ask you to take that into consideration. There are instances in Nebraska, and that's a perfect one of where the prosecutor overreached and innocent people were harmed. Thank you.

BOSN: Thank you for your testimony. Any questions? Senator Storm.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

STORM: Thank you, Chair. I'm glad you brought this up, the Beatrice Six. I was looking it up, too. They were paid $28 million in the settlement. You realize that, don't you?

RICHARD SCHMELING: There, there was, but--

STORM: And Gage County raised their property taxes over 5 years to compensate [INAUDIBLE] it.

RICHARD SCHMELING: Right. And there was another case down in Richardson County. And I've, I've forgotten the name of the case, but there was a case down there, where the attorney's fees for defense counsel alone nearly bankrupt Richardson County.

STORM: Right.

RICHARD SCHMELING: So, yeah. This, this thing is a delicate balancing thing, and I'm not sure exactly where we balance it. But I'm just saying there may be a problem that needs to be addressed and I don't know how you fairly address the problem.

BOSN: I appreciate your perspective very much. Thank you for being here.

RICHARD SCHMELING: I'm, I'm glad to be able to throw that little complication into your deliberations.

BOSN: Thank you. Next proponent.

JASON WITMER: I will come up anyway, even though I've seen what I've seen. Thank you, Chair Bosn and committee. I'm Jason Whitmer, J-a-s-o-n W-i-t-- W-i-t-m-e-r, policy fellow at the ACLU, and I'm here in support of LB127. And I'll go into this and then I'll say something. Right now, when individuals are accused of crime they did not commit, whether that case is dismissed, they are not found-- they are found not guilty or the conviction is overturned, they are left to bear the full weight of the injustice on their own. Legal fees, shattered reputations, lost wages, jobs, and homes. Those are not theoretical damages. They are real, lasting harms by the Nebraskans-- they are real, lasting harms suffered by Nebraskans, due to errors in the system. This is not about malicious prosecution. That's a given. It's about accountability on both sides. LB127 addresses this without limiting prosecution-- prosecutor discretion. So I would like to think

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

that prosecutors don't weigh just money also when they make their decisions so they would proceed forward. I'd also like to think that we don't weigh money when we consider the lives that we-- and I believe we might hear another story-- when we consider innocence and we get these outcomes and their effect. I hear the, I hear the, the Bruning case. I mean, sorry. I was gonna bring up John Bruning, attorney general, who stepped up for the case of the Beatrice 5. And that's what we want, despite the consequences of financially, because 5 people weren't supposed to be there. Just like we know people in the system, feel free to look up Ernest Jackson, who somebody else, after he was convicted of [INAUDIBLE] be there, was tried, confessed to the shooting, and was acquitted of self-defense, which meant it was not a crime. And we still have Ernest Jackson in for jail for 20 years. It's phenomenal. So this case, again, it doesn't limit, it doesn't limit the prosecutor's discretion. It doesn't change how they charge. It doesn't, it doesn't have the chilling effect unless somebody is pressured by the weight. And I do hear the domestic violence what you're saying. But I will go to something I read a while ago, so I might get it wrong, but this is what it essentially says, paraphrasing: 10 guilty people should go free before 1 innocent person is incarcerated. That should be the ethics of all of us when we do what we do. Just like when I atone for what I've done. And somebody comes and asks me to justify myself who I've done harm to, which has happened. I don't go there to defend my reputation. I don't go there to worry about the consequences of me. I go there to listen and to respond and to look for healing. So I won't go into the damages because we see that there is not the, not the, the numbers, but who's going to make the trial had, the trial jury-- I mean, the trial counsel, judge, whatever-- has-- it's the judge-- I'm just getting bobbled-- has some discretion there in how they go about it. I get there's a broad thing here, but to shut this bill down, what about the citizen? That's what the Constitution essentially is. Each time we say an amendment, that's to defend us from a system. The Second Amendment is about if the government is out of control, a militia can come together. It might have to-- whatever they want to interpret after that. Every amendment has a defense of the citizen, and that includes the consequences that are suffered by somebody that went under a charge and has lost so much. You want to, you want to reform to mitigate? Bail reform. Most people are poor in this system, and that's why they can't get out of jail. And they lose their jobs, they lose

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

their house, they lose, et cetera. And I won't go no further, of course. So I--

BOSN: Any questions for this testifier? Seeing none, thank you for being here.

JASON WITMER: Thank you.

BOSN: Next proponent. Welcome.

ROSALIE ZLOMKE: Hi. My name is Rosalie Zlomke. R-o-s-a-l-i-e, last name Z-l-o-m-k-e. Thank you, members of the committee, for letting me speak. I am appreciative to be able to express my support for LB127. My family has personally experienced the injustice of wrongful criminal charges. In both business and government, government, auditors play a crucial role in safeguarding the public from unlawful practices. Similarly, medical professionals and institutions are bound by guidelines, with malpractice insurance providing perfect-- protection in the event of failure. These types of standards exist across various sectors of our society. This bill will encourage prosecutors in the state to exercise greater caution and restraint before pursuing criminal charges against individuals or entities. In our case, trial evidence revealed that the investigators spent fewer than 30 minutes interviewing a disgruntled ex-spouse. No other evidence was gathered or presented beyond the brief conversation, yet it formed the basis for the charges against my son. He was charged with 2 criminal offenses, including rape by his ex-wife. He was arrested at his teaching job, and the media coverage was, as you can imagine, relentless. A $200,000 bond was set with 10% being paid so he could be released. The school district placed him on administrative leave. Later that year, this ex-spouse also accused him of raping their teenage daughter, leading to another arrest and another $200,000 bond and an additional press. I-- the Board of Education placed him-- they dis-- dismissed him before trial because it had been so long. And again covered by the press. At the first trial, the jury returned a not guilty plea in under 5 minutes. After the trial, a juror commented that this was ridiculous and could have been done to any father or husband. The next year, after the daughter's deposition, the state dropped the remaining charges. Despite being cleared, online news articles continued to damage his career and reputation. He has suffered financial loss. In summary, although my son will not benefit from this, I believe this bill has the potential to prevent other

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

wrongfully accused individuals from experiencing the devastating consequences that many have already endured. Additionally, it may help prevent the filing of unjust criminal charges in the future. Thank you for your time.

BOSN: Questions for this testifier? Seeing none, thank you for being here.

PHILIP ZLOMKE: Good afternoon, afternoon, Chairman and members of this committee. My name is Philip Zlomke, spelled P-h-i-l-i-p Z-l-o-m-k-e, and I am the son that the previous woman just talked about. Obviously, I fervently support bill LB127. I'm an individual that this bill was meant to protect. In late 2021, in an attempt to gain favor in the courts for child custody, my ex-wife attempted to accuse me of some heinous crimes that I did not commit, that she had accused me of raping her and one of my children. It took both cases approximately 21 months to conclude. The case against my ex-wife ended with a female-heavy jury finding me not guilty of all counts levied against me in 2 minutes. As for the case in which I was accused of raping my own child, the state dropped the case in January 2024, 22 months after I was first arrested. Let me be very clear. The reason given to the public would that-- that it was for her mental health, for the dismissal of the case, when in fact the depositions given in January of 2024 was counter to her accusations. During those 22 months, because of the severity of the accusations? I was shunned, not just by my friends and community, even by some of my family, and I was shunned by employment, as well. My ability to be gainfully employed was made very complicated. While waiting for my opportunity to speak to my innocence, I had my teacher's contract terminated, removing my ability to bounce back, even after I was cleared of all charges. I was hired to be a substitute teacher by Hastings Public Schools. On my first day of subbing, I received a call from Hastings saying other arrangements had occurred and that my attendance was no longer required for that day. But when I was brought in to speak with the superintendent, I was alerted that they would no longer be allowing me to work or be employed by their district. Once again, that was after I was cleared of all charges. If it isn't obvious, my ability to find employment was complicated, to say the least. I've had to resort to donating my body for the experimentation of medicines, but I'm happy to say I did finally find a district to let me sub and continue my passion there. Levying heavy accusations alters the ability to pursue rights, liberties, and passions both during and after the cases. It also

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

greatly impacted not just one's ability to earn an income, but cost to defend oneself as well. This bill needs to be passed for 2 reasons. Prosecutors need skin in the game. There needs to be a heavier checks and balances before accusations are given. (2) The-- give individuals like me the ability to at least financially bounce back after our worlds have been torn apart. I support LB-- bill LB127, and I wish it was in place 2 years ago. And I earnestly am open to your questions.

BOSN: Questions for this testifier? Senator DeBoer.

DeBOER: Has your ex-wife or whoever it was that did the accusation-- was that your ex-wife?

PHILIP ZLOMKE: Yes, it was.

DeBOER: Has she been prosecuted for the false claims against you?

PHILIP ZLOMKE: No, she has not.

DeBOER: Interesting. Have you looked at any kind of civil case against her?

PHILIP ZLOMKE: I have not.

DeBOER: Because that might be an avenue just for you to explore.

PHILIP ZLOMKE: Yeah.

DeBOER: I'm sorry it all happened to you. Thank you for being here.

PHILIP ZLOMKE: You're welcome.

BOSN: Other questions for this testifier? Seeing none, thank you for being here. Next proponent.

SAM DOUBET: Hello, Committee. Thank you. My name is Sam Doubet, S-a-m D-o-u-b-e-t. It's hard to follow up such a compelling testimony. I'll try to make mine brief, as you guys have been here, and you have valuable time. Mine, mine's kind of a longer perspective. Life got really hard for me in 2008, with the bank crisis, having to drop out of college, not being able to pursue a future with that. But it got even harder around the time of 2011, when I moved home to help my family through a hard time. The place in question is Harlan County.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

They sued my father 3 times. They changed city ordinances to come after him and they just kept coming. You hear rumors, you hear people telling you that your dad's a crook and things like that. Sorry. You know, even though this happened more than 10 years ago, it's still hard to talk about, just, just the impact it has on your life, everything you lose. My father is a pastor, and he didn't feel like he should go back after the county or, or the city there in Alma, because he didn't-- for his faith, he didn't feel like that was something he should do. But again, some of the rumors that you hear, some of the things I implored my dad to pursue, we heard about-- you know, we talked to other people from other towns. A man in Lexington that we met with that has the same issue, a man from Orleans that had the same issue, who actually got sent to a mental health institute for 30 days, and another person in our town. And what would happen is-- and again, this is suggestive. I don't have any evidence. But these cities would come after people and they would use policies to fine them $500 a day until they would tear down their houses so they can sell the lots to their best friend, their cousin. And I, I guess, really quick, because I know I'm running out of time. I understand that as a prosecutor, you don't always know, and I think you bring up some great points. But my hope and vision is that this bill, whether it passes or not, that it brings a future where you can bring both ideas together and you can empower prosecutors, because then prosecutors know that if they come after somebody wrongfully, there is recourse. They don't have to have that on their conscience that maybe they shouldn't be coming after this person. They can say, hey, you know what? Maybe I did make a mistake, but I had to do with the best information that I had. But if they are wrongfully accused, at least they have this avenue. They have this path forward. And so that's, that's my hope. That's my reason for being a proponent. And that's my vision is that there is a future. And the last thing I'll say is I, I had to quit my job because of health reasons, and I got unemployment that helped with that. When you get sick, you hurt something or you have a workplace problem, there's workman's comp. And so I think that there is a future where we can have an avenue of help. Thank you.

BOSN: Thank you very much. Any questions for this testifier? Seeing none, thank you very much for being here and sharing your story.

SAM DOUBET: Thank you.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

BOSN: Next proponent. We'll move to opponents. Anyone here in opposition to LB127?

MARTY KLEIN: Thank you. Chairperson Bosn, members of the Judiciary Committee, my name is Marty Klein. I'm the county attorney in Grand Island, Hall County, Nebraska. M-a-r-t-y K-l-e-i-n, and I'm here in opposition to LB127, as its passage would have a chilling effect on the prosecutors across the state of Nebraska. It would also-- it's also written in such a way that it's very-- the terms are not defined well enough. There are some concerns about the, the definiteness of this bill. When you talk about damages-- I'm going to talk about that first. Who has to prove those damages? What's the evidentiary standard for the damages? Is it-- rules of evidence in the hearing, what are those? Is it beyond a reasonable doubt? What's the, what's the burden of proof, beyond a reasonable doubt? Is it a preponderance of the evidence? Who pays? We all talked about the county paying. The, the bill doesn't say who pays. It could be me that is asked to pay. It could be my deputy that is asked to pay. So I think it's-- the damages provision of the bill, should this bill pass, is very vague and leaves a, a lot of questions that it-- that would have to be fleshed out or decided by a court upon legal challenge. There are other things that prosecutors are required to consider as we bring prosecutions, and there are ways to be held accountable already. We have the Nebraska Rules of Professional Conduct, which I am, I have to adhere to or I could face coun-- the Nebraska Council for Discipline and I could lose my bar license. We've got federal civil rights litigation under 1983 for malicious prosecution, whether that results in a conviction or a dismissal or charges being filed when they shouldn't have been filed. In Nebraska, we do have the Wrongful Conviction Act under 29-4601, but that is for somebody who's been convicted and found to be wrongful. The, the grounds for this-- the-- are concerning to me, as well. What is the impact on victims of crimes? We've talked a lot about the impact on somebody who has been accused of a crime, but what's the impact on victims? I haven't heard much of that. We have crimes where we have a victim-- CAC, that's Child Advocacy Center interview done, where if you watch those interviews, those children, clearly something happened. And when we can put evidence around those things, we can charge somebody. But it doesn't always result in a conviction, because I'm not going to put a child on the stand to retraumatize that child if it's going to be worse for that child than going after the conviction of a sex-- somebody charged with a sexual assault crime. So

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

there are a number of, of reasons that we have here, where you don't-- where we rely on the prosecutor to make good decisions, to believe that we have a more likely than not chance to secure a conviction and uphold it upon appeal, by the way, are our obligations. And so I would urge that this committee not advance this bill beyond this point. I'm happy to take any questions the committee may have.

BOSN: Thank you. Questions for this testifier? Senator DeBoer.

DeBOER: So you heard that, you know, from my questions, it's pretty clear that I'm not a huge fan of this bill. But on the other hand, you know, we hear testimony of folks who went through years of litigate-- I mean, not litigation. It's def-- criminal litigation, I guess.

MARTY KLEIN: Sure.

DeBOER: And they end up innocent until proven guilty. So they end up as they started, innocent, and now they have this huge amount of money that's, you know, that they're paying off of legal fees or, you know, maybe they have job interruptions, et cetera, et cetera, et cetera, as we heard. What's the solution for that? Do you have any idea what the solution would be to make those folks whole?

MARTY KLEIN: I thought that was Spike's job.

DeBOER: Nope. I'm, I'm asking you now.

MARTY KLEIN: Fair. I, I don't mean to make light of this. I think that there are some things that can be done. I would urge the, the Legislature not to consider an unfunded mandate upon the counties. We have a-- we have this 46- 4-- 29-4601, which is the Wrongful Conviction Act that the state has a fund for, right?

DeBOER: Sure.

MARTY KLEIN: Maybe there could be something where a law is put in place, and the fund is established to pay for the legal fees of somebody whose case has been determined to have been out of a, a wrongful or malicious prosecution. But most of the prosecutions in my county-- almost all of the prosecutions in my county that I deal with that end up in dismissals have nothing to do with malicious prosecution. I wouldn't think that they would be subject to--

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: That's, that's the thing I'm thinking about is that--

MARTY KLEIN: --something like that.

DeBOER: --that you're-- so somebody, either I heard it or she mentioned it, one of the testifiers said something about malpractice insurance for doctors. So I was thinking about, like, some kind of prosecutorial malpractice insurance or something like that. But the problem is that would only get at those cases that were egregiously, you can't say that the prosecutor acted as a reasonable prosecutor in that situation, and that's not going to get at very many cases. So yes, that might be something if we created that, but there's still going to be a lot of folks who the prosecutor reasonably believes that they have a good case. It just turns out in the end that they don't, or the law is overturned, or something happens. You know, I'm thinking about all kinds of different situations that could happen. How do we, as a society, say we're going to do something for those folks who have been dragged through the legal system, to their damage, by us, the people, right, because it's-- the prosecutor is representing the people. So the people have done damages to individuals. How can we make them whole? Any I-- any idea at all?

MARTY KLEIN: But have we-- I'm going to resist that a little bit. But have we, have we done damage to those individuals?

DeBOER: Yeah. Because if they are innocent, then they are innocent. I mean, if they're not guilty, they're innocent. That's the basis of our law.

MARTY KLEIN: OK. But have we, through our process, done something wrong to them in the prosecution such that we should be held accountable to the legal bills that they've faced, if I'm making charging decisions based on evidence in front of me--

DeBOER: No. I'm--

MARTY KLEIN: --and, and it--

DeBOER: --I'm not saying we're doing wrongful.

MARTY KLEIN: OK.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: I'm saying we're doing damage, not, not necessarily wrongful damage. That's why I don't think that the, the malpractice would work, because that would only get a small number of cases. I'm saying we can do everything right and still damage individuals.

MARTY KLEIN: OK. I, I don't disagree with that premise.

DeBOER: And if we do everything right and still damage individuals, the people are sort of better situated to bear the burden of that than an individual that gets themselves caught up in the wrong end of things. Right?

MARTY KLEIN: True.

DeBOER: So--

MARTY KLEIN: I would assert that this bill doesn't get that.

DeBOER: I don't think it does. But is there any part of it-- because I-- Mr. Eickholt always points out that I will always say, is there any part of this that you like? Is there any part of this that could be fixed? I don't see it, but I'm asking you.

MARTY KLEIN: No, that's fair. Is there any part of this? I don't mind the concept that you're discussing, of having some sort of fund to reimburse attorney's fees under certain circumstances, but I, I don't, I don't know what that would look like. And I don't think the provisions of this bill-- it's-- this gets the conversation started, I think, but I don't think the provisions of this bill get us close to that.

DeBOER: OK. Thank you.

BOSN: Senator Storer.

STORER: Thank you, Chairman Bosn. And I, and I think you already addressed this in your opening. I just want to clarify. As I read the bill as well, it's-- it seems unclear who would pay. Is that-- I think you've said that in your opening in terms of is it the--

MARTY KLEIN: Sure.

STORER: --attorney? Is it the county? Is it the state?

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

MARTY KLEIN: Yes. It talks about damages that the court will have in the sec-- third page, (6), a defendant may-- upon the occurrence of the event described, basically upon a dismissal, the trial court shall hold a hearing to determine the amount of damages to be awarded. It never talks about by whom. Awarded by the prosecutor because he didn't get the conviction awarded by the county because they're who's responsible for the prosecutor? Awarded by the state, because the state's got a fund to do this? I, I don't believe this bill specifies who's going to pay those damages, should damages be awarded by the court.

STORER: OK. Thank you.

BOSN: Thank you for being here. Or did you have your hand up, Senator Rountree? No. OK. Sorry. Thank you for being here.

MARTY KLEIN: Thank you.

BOSN: Next opponent.

ELAINE MENZEL: Chair Bosn and members of the Judiciary Committee, for the record, my name is Elaine Menzel. I'm glad to-- spell my name first. E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials in opposition to this legislation. I feel that through the questioning of the senators and the prior testify-- or the testifier just before me, that a number of the issues that I had intended to raise and some additional ones I failed to-- or sift through initially have been addressed. But it for instance, in addition to impacting prosecutorial discretion negatively, it, it would erode sovereign immunity to a degree. This legislation would expand the potential liability to political subdivisions by providing damages to defendants in Nebraska whose criminal charges are dismissed or who are found not guilty. With that said, certainly don't want to be dismissive of the individuals who were proponents to the testimony, and we are empathetic to their situations. And as has been raised, this bill does not-- we concur that this bill does not address who would be responsible. However, it's likely that the counties would perhaps be so in the situation when they're the prosecutors, likewise, the municipalities and the state. I, I was involved in a government practice listserv that was discussing this legislation, and they did raise a couple of-- or at least one issue that has not been brought up today. And that got into the part that-- or an aspect that it might be

contrary to the hopes that plea bargains may occur and that it may become something the plea-- how do I want to say this-- it would discour-- discourage prosecution. But also, on the other side, it could discourage plea bargains [INAUDIBLE]. And for example, in some situations, for instance, an attorney described that she handles code enforcement cases and often agrees to continue a case in anticipation of dismissal so that the defendant can fix whatever the political subdivision needs them to do. In that instance, it's really a win-win situation: Compliance by the individual and the defendant-- or compliance for the municipality and the defendant avoids a conviction on the record [INAUDIBLE]. If a prosecutor has to worry about possible damages, they're likely to no longer be Inclined to offer this alternative. I'll leave it at that and just be open to questions if you happen to have any.

BOSN: Thank you. Questions for this testifier? Senator McKinney.

McKINNEY: Thank you. On that premise, but what would be the cost to the counties if prosecutors stop offering plea bargains?

ELAINE MENZEL: I think it gets into the issue of the ability to-- well, it would minimize the going to trial option.

McKINNEY: How?

ELAINE MENZEL: If they no longer go to-- well--

McKINNEY: I guess--

ELAINE MENZEL: I-- before I brought that issue up, I should have thought through it more. I apologize.

McKINNEY: Because if they're not offering plea bargains, that means they're going to trial, which means the courts are going to be filled up. So I guess I don't see the incentive not to offer plea bargains, because, because if you don't, then--

ELAINE MENZEL: Alternatively--

McKINNEY: --courtrooms will be filled--

ELAINE MENZEL: I, I apologize--

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

McKINNEY: --and backed up.

ELAINE MENZEL: --to interrupt.

McKINNEY: Yeah.

ELAINE MENZEL: Alternatively, they may choose to not proceed.

McKINNEY: I get-- I just-- I don't-- because, because I mean, like--

ELAINE MENZEL: I walked myself into an issue on this.

McKINNEY: You could just-- like, speedy trial issues. It, it would be if they, if they just stopped offering plea, plea bargains. But-- all right. Thank you.

ELAINE MENZEL: Like I said, I believe I walked myself into an issue that I maybe should have--

McKINNEY: Oh, you're all right.

BOSN: Any other questions for this testifier? Seeing none, thank you for being here.

ELAINE MENZEL: Thank you. And I do want to thank you for raising questions to the proponents and the introducer so that gets some of the issues on the record. Thank you.

BOSN: Next opponent.

BEN HOUCHIN: I was going to say good afternoon, but I think I'll say good evening on this one. So my name is Ben Houchin, B-e-n H-o-u-c-h-i-n. I'm the chief deputy of the Lancaster County Sheriff's Office, and I'm here to testify against LB127. I'm here for the Nebraska's Sheriffs Association and my office. A lot of the concerns have been mentioned that I was going to bring up. I am a little concerned on how law enforcement will take this, and especially with-- if it is going to be a big cost to taxpayers. I really don't want to see that law enforcement has to be able to work a case and before they make an arrest, they're worried more if they can prove the case than if it is on the probable cause, which is a Fourth Amendment-- in the Fourth Amendment and how we are supposed to do our jobs. I'm also extremely concerned that this is a pro-criminal law and not a

pro-victim. I do not believe this is coming and that it is intended to be that way, but it certainly is. It's already hard enough, and we've brought this up with domestic victims and sexual assault victims. I would hate to have them there and law enforcement and prosecutors talking to them, and they feel that they are not being believed because the prosecutor and the law enforcement officer are concerned about this law and this law alone. I also would like to think that supporting this bill also would support the bill that requires a defendant who is found guilty, and that their attorney would pay back the funds that it-- has been used to prosecute the defendant. There is so many costs, I don't think most people even understand, from traveling the defendant to court, the security aspects of it, the expert testimonies and all that that go along with proving it beyond a reasonable doubt. And they're not the only ones. And being a taxpayer myself, it does cost a lot. I've been in some big trials in my 31 years, and it is a huge deal, especially for smaller counties that don't have big funds. And I agree with you. I don't know if all counties would prosecute everything just because they may not have it. And it has cost some counties a lot of money to do what they needed to do. And I think it hurts public safety to a great deal, and I can't support anything that does that. Thank you.

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

McKINNEY: How does it hurt public safety?

BEN HOUCHIN: Because the prosecutors will not take cases to trial because they're scared about having to pay. It's just like what they said. You go to these domestic cases. In three weeks, they're back in love.

McKINNEY: I get the domestic cases.

BEN HOUCHIN: In sexual assault cases, I-- those are hard. I mean, those, those people that go through that, it's hard to get them to go. They don't want to do that again, you know, they don't want to relive it.

McKINNEY: But I guess my-- you've been here the whole time?

BEN HOUCHIN: Yes.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

McKINNEY: So what do we do about the situations where people have their names ran through the coals, and they're, like, wrongfully pro-- like, they're accused of something and they didn't do it. Like-- or, or they get convicted and, and found to be wrongfully convicted. Like, what do we do about those situations?

BEN HOUCHIN: Well, I think there's 2 different questions there. The first one there is maybe there's some not letting it be public information. I mean booking photos are public information. Anybody can get them and see what the individual was charged with. So, you know, we get asked and I do a lot of the press for our, our agency. And we get asked a lot of these questions by the media and, and do that, and we're supposed to be transparent and we're supposed to be able to give the information, but then it comes back and it does this. So I don't have a really good answer for you. Because, you know, there's a double-edged sword of how we, in my profession-- who, in the past, has been said, hey, you know, no comment. So you don't say anything, but then, oh, well, you're not being transparent, you know, what are you hiding? And it's just like-- so. And the wrongful conviction portion of it, I, I think that's a judicial system question that needs to be looked at. I don't have the expertise to be able to answer that on my, you know, portion of what I do in that system.

McKINNEY: All right. Thank you.

BEN HOUCHIN: You bet.

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

BEN HOUCHIN: You bet. Have a great night.

BOSN: Thanks. You too. Next opponent. Anyone else wishing to testify in opposition? Next, we'll move to neutral testifiers. Anyone here in the neutral capacity? All right. Well, while Senator McKeon comes back up here, I will note there were 14 proponent, 8 opponent, and 1 neutral comments submitted for the record. Welcome back.

McKEON: Well, I'm not going to read everything I had written down, so I've just got this closing that I had written down. According to the Gallup, American confidence in our judicial system and the courts dropped to a record low, 35% in 2024. Since 2020, confidence in U.S.

courts have been a sharp 24% decline. But looking at this topic, like I said, I'm willing to work with anyone on a-- any pract-- practical suggestions to improve the bill. We need accountability to restore in our-- our confidence in our courts. That is why LB127 is, is needed. We are, we are here for simple accountability within our legal system. Court ethics are supposed to be such that the state of Nebraska exercises the caution and restraint when making a prosecution decision. I'm asking for the committee's support to advance LB127, but with any amendments or if anything, this opens up more discussion to, to help with this topic, you know, because the situation is, is-- happens, and we just need to find a solution for it.

BOSN: Questions for Senator McKeon? Thank you for being here. That will conclude our hearing on LB127. Next up, LB271. Apparently, we have a numbers thing going, LB127, LB271. Next, we have LB720-- no, I'm kidding.

_____: Do you have 3:00 evenings here in the committee?

DeBOER: Yeah.

_____: No.

_____: No?

DeBOER: We have.

BOSN: 3:00 evenings?

STORER: I like her optimism.

DeBOER: It's happened once.

_____: Twice, maybe.

BOSN: Sure.

_____: Appreciate it.

_____: We got it in 20 minutes.

BOSN: While she's getting herself organized, can I see a show of hands how many individuals are testifying in some capacity on this bill? 1, 2, 3, 4, 5. Got it.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

STORER: All right. Ready? Good evening, Chairman Bosn, members of-- fellow members of the Judiciary Committee. Tanya Storer, T-a-n-y-a S-t-o-r-e-r. I represent District 43. I'm here this evening to introduce LB271, a bill designed to strengthen protections for railroad infrastructure, equipment, and personnel by establishing felony criminal penalties for interference with track infrastructure, railroad equipment, or rail employees engaged in the performance of their duties. Railroads play a critical role in Nebraska's economy and in our nation's transportation network. However, acts of interference, particularly those that are intentional or reckless, pose a significant safety risk to the public, the environment, and the railroad-- and railroad personnel. Existing laws do not fully address the range of actions that could endanger rail operations, leaving gaps in enforcement and accountability. In April of 2024, there was a train derailment outside of Lincoln, near Bennet. The federal government elected not to prosecute under their statute because the person who allegedly caused the derailment was a minor. Lancaster County charged the defendant with criminal mischief, a Class, a Class IV felony, because that was the only applicable statute. Attempting to cause a train accident or derailment should merit a greater penalty. LB271 addresses this issue by defining and penalizing interference with railroad infrastructure. Specifically, the bill criminalizes actions such as obstructing rail operations, tampering with railroad property, interfering with communication systems, or making terroristic threats. These offenses are classified as Class IIIA felonies. This legislation aligns with the priorities of protecting critical infrastructure and ensuring the safety of Nebraska communities. In developing this measure, we have engaged with key stakeholders, including law enforcement agencies, railroad operators, and safety advocates. Their input has been instrumental in shaping LB271, and I'm pleased to report that there is broad support for this effort. I have handed out an amendment that we-- is hot off the press that, that-- there will be some testifiers come behind me that can speak more specifically to the changes that we've made in that amendment. With that, I'm happy to answer any questions that you may have. But as I said, we, we do have some expert testimony coming behind me.

BOSN: Questions for Senator Storer? Seeing none, thank you.

STORER: Wow.

BOSN: I know. First proponent.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

RICHARD SCHMELING: Two different ones.

BOSN: Welcome.

RICHARD SCHMELING: Thank you. My name is Richard Schmeling, R-i-c-h-a-r-d S-c-h-m-e-l-i-n-g, and I'm here representing ProRail Nebraska. I am the District 1 representative for ProRail Nebraska. ProRail Nebraska primarily would like to see more passenger trains coming through Nebraska, but we're also interested in railroad safety. And of course, as Senator Holdcroft knows, why we have the Amtrak trains coming through Hastings at 4:00 in the morning, which is not real convenient. It would be a lot nicer if we get some daytime trains coming through town. We have the 2 Amtrak trains coming through the southern part of Nebraska. Those trains travel at 79 miles an hour. And I can guarantee you, if somebody tampers with the switches or the track or bridges or anything, if we have those trains go off the track, there's going to be loss of life and serious damage. In addition to the passenger trains, we also have a number of freight trains. We have large quantities of freight going across the state. Union Pacific is a major carrier; also, Burlington Northern Santa Fe. And those freight trains are carrying tank cars loaded with chemicals, with oil, with ethanol, and so on and so forth. We don't want those things to be going off the track. I, I think you've read about some disasters that have happened elsewhere in the United States. Fortunately, our railroads here in Nebraska maintain their tracks very well. They do a good job of keeping the trains on the tracks, and we just don't need this sort of thing happening. Now I'm giving you a couple of pictures of what happened down at Bennet. I hate to say it, but there was a young rail fan with a crazy idea. He wanted to get a spectacular picture of a train derailment. So he went and he cut through the padlock on the switch leading into the elevator track, and then was able to throw the switch and divert the train from the main line to the elevator track. Those side tracks are not designed for heavy trains and high speed. And of course, what happened is you'll see the results-- 2 engines and 4 cars of coal went off the track. One of the pictures shows what you have to go through to pick up that kind of a mess, and that's very expensive to the railroads when that sort of thing happens. There was probably some track damage that was also done. To me, compared to the other bills I'd been listening about, this one is a slam dunk. It needs to happen. I think there's no reason why we shouldn't pass the bill, and I strongly urge you to go ahead and pass LB271.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

BOSN: Thank you. Any questions for this testifier? Seeing none, thank you for being here. Next proponent. Welcome.

THOMAS McCASLIN: Thank you. Hello, Chairman Bosn and members of the committee. My name is Thomas McCaslin, spelled T-h-o-m-a-s M-c-C-a-s-l-i-n. I have been a police officer in Nebraska for 30 years. I served as a police officer and detective with the Omaha Police Department for 27 years. And for the past 3 years, I've been a special agent with the BNSF Railway Police Department. I am here today to speak in favor of LB271, which would clarify penalties for anyone who damages or tampers with railroad equipment or intentionally interferes with railroad operations. In April 2024, myself and other BNSF special agents investigated a switch tampering incident, incident in Bennet, Nebraska, where a rail switch was illegally moved to an incorrect position. This act caused the derailment of a fully loaded train delivering coal to a power plant in Nebraska City. The lives of the 2 train operators on board, several other people in their cars at a nearby crossing, and potentially the lives of many other people in the city of Bennet were endangered by this act. This intentional derailment caused more 100-- more than $300,000 in damage to railroad property and infrastructure. While a suspect was identified and arrested in this case and was charged with felony criminal mischief. I feel that the seriousness of this act, the potential loss of life or injury to the train crew and the citizens of Bennet, the physical damage caused, and the disruption of a delivery of coal needed for power generation was not properly addressed by that statute. During my law enforcement career, I've worked directly with the FBI and the U.S. Attorney's Office to investigate rail-tampering incidents. While, while there are federal statutes that apply to these incidents, it has been my experience that federal authorities typically have a rather narrow view of those statutes. Without an allegation of terrorism or a violation of national security, they will not investigate or prosecute the majority of those cases. It should also be noted that many other states have railroad-specific, railroad-specific criminal statutes that can be applied in these cases. I believe that by enacting LB271, this would close this gap in coverage, and then it encompasses all the potential offenses that could impact safe railroad operations in Nebraska. Railroads in this state are operated by Nebraskans who live and work in the communities we serve. We work hard to safely deliver critical resource-- resources such as grain, consumer goods, and coal. By clarifying the penalties for specific criminal acts against

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

railroad equipment, infrastructure, and employees, the passage of LB271 will give Nebraska law enforcement better tools needed to help keep our towns and cities safe. With that, I respectfully urge the committee to advance LB271 and I am happy to answer any questions you may have.

DeBOER: Are there questions from the committee? Senator Rountree.

ROUNTREE: Thank you so much, Vice Chair. Thank you, sir, for your testimony. And thank you for all your service and continued service. We're talking about the situation down in Bennet, and we talked about some of the federal laws that don't have the teeth that we really need. What other kind of criminal activities and opportunities have we had here in Nebraska, other than this Bennet crash?

THOMAS McCASLIN: I personally have investigated a derailment that was part of a series of rail-tampering incidents in, in Blair, Nebraska--

ROUNTREE: Blair?

THOMAS McCASLIN: --back in 2019. There were 3 incidents. We were able to identify and arrest the suspect in that case, as well. Was charged on a federal level, because it was, it was a series of cases rather than just the-- a one off. But there's that one, and there's been-- I also worked a rail incident in Omaha where someone had attempted to basically disrupt rail traffic by making it appear that there was some kind of item or some kind of blockage on the track. And so and until that can be investigated, they would have to go-- someone would have to physically go out and lay eyes on that section of track to make sure that, that there was no obstructions or vehicles or something like that, some kind of problem with the rail that could actually cause a derailment. So, they're not uncommon. We do have them and they do happen.

ROUNTREE: OK. So for the, for the one up in Blair, but the-- just the conviction and punishment, was that appropriate? Did you feel it was appropriate at a federal level or not strong enough for that particular series?

THOMAS McCASLIN: It, it-- as I recall, the, the party was sentenced to a year in federal penitentiary. In my opinion, that wasn't quite enough for the potential for what could have happened there. The, the

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

train that was actually derailed was carrying petroleum products right through the middle of Blair. If that had derailed and tipped over and, and caught fire, there could have been a large explosion and much damage and possibly loss of life.

ROUNTREE: OK. All right. Thank you.

BOSN: Any other questions? Senator Storm.

STORM: Thank you. Thank you for your testimony. So I'm trying to understand this about the roads. You have your own law enforcement for the railroad. Is that how it is?

THOMAS McCASLIN: The major railroads all have their own law enforcement officers.

STORM: So like in Bennet, you did the whole investigation, the railroad did, or did the sheriff-- did they help you with the investigation?

THOMAS McCASLIN: We were the primary agency on that. We received a lot of assistance from the Lancaster County Sheriff's Office, as well as Lincoln Police Department, in helping build the case.

STORM: Then you turn over that-- your evidence to the Lancaster Sheriff-- or the County Sheriff for prosecution? Is that--

THOMAS McCASLIN: Yes.

STORM: OK. That's all I had.

THOMAS McCASLIN: Thanks.

BOSN: Senator DeBoer.

DeBOER: Thank you. So the case in Bennet was a felony criminal mischief?

THOMAS McCASLIN: Yes.

DeBOER: What, what felony is that? Do you know?

THOMAS McCASLIN: It's a-- you mean the classification? It's a Class IV.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: A Class IV felony. And why did the feds not charge that case?

THOMAS McCASLIN: The suspected offender is a juvenile, and there's really no mechanism in the federal system for--

DeBOER: For charging a juvenile.

THOMAS McCASLIN: --for charging a juvenile. And they, they also had questions regarding if there was any kind of I would say like a terrorism intent. Was there any ideology behind this action? Was it intended to further a cause regarding some kind of ideology? And we had no evidence of that.

DeBOER: It was probably just a kid getting into trouble.

THOMAS McCASLIN: I-- it's still being litigated, so--

DeBOER: Oh, OK.

THOMAS McCASLIN: --so I can't speak directly--

DeBOER: Yeah. No. Fair.

THOMAS McCASLIN: --to everything that's going on, but--

DeBOER: So it's-- so you-- so he's charged with felony mischief, but we haven't, we haven't gotten to the result of that.

THOMAS McCASLIN: Correct.

DeBOER: OK. Have you seen the amendment for this-- or this bill would-- or the amendment would classify that based on the amount of damage which is caused. So pecuniary loss of $10,000 or more gets a Class IIIA, and if it's $1,500 to-- or 5 to 10 is a Class IV, and then below that it's misdemeanors based on different things.

THOMAS McCASLIN: Yes.

DeBOER: So does that-- actually, like in Blair, what was the cost of the damages? Do you recall? Like roughly?

THOMAS McCASLIN: As I recall, they were somewhere in the neighborhood of 6 or $8,000, but I-- it's been several years. I don't recall exactly.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

DeBOER: Yeah. So in that case, it would still be-- OK. There, it would be a Class IV, which would be the same as your criminal mischief Class IV. Right?

THOMAS McCASLIN: Yes.

DeBOER: So I'm not sure how this does anything different. Could we create an enhancement for causing a violation in-- of a greater amount? Would that get at the same sort of thing that we're trying to do? So if they-- felony mischief that is-- causes damage of $50,000 or more gets some kind of an enhancement or whatever it is like that--

THOMAS McCASLIN: Mm-hmm.

DeBOER: Could we do that instead of creating a different-- entire-- an entirely different crime?

THOMAS McCASLIN: I, I have to be honest with you. I'm not fully aware of, of all the factors that are weighed into that amendment. I believe we'll have follow-on witnesses that will be able to tell you more about that.

DeBOER: OK. Why did you feel that the criminal mischief statute is not-- you said it, it is inadequate. Why do you feel it's inadequate to address these issues?

THOMAS McCASLIN: Well, in my career, I've, I've investigated several incidences of, of criminal mischief. And-- like, an example. I know of one case where somebody broke out several storefront windows in, in a, in a shopping district. Each one of those window panes is, you know, 2 or $3,000. They're very expensive. They have to be safety glass and, you know, many different factors weigh into it so there's a lot of cost there. So the, the person responsible for that broke out all those windows, and they're charged with criminal mischief in excess of $5,000, which is the exact same crime that, that this party was charged with. But there's no potential danger for loss of life or half the town being leveled by an explosion or chemicals being released, anything like that in, in the, in the case of the-- of someone who is breaking out glass windows, as opposed to somebody who's derailing a, a fully loaded train. I just feel like the, the, the seriousness of this offense is not adequately represented by the-- by that charge.

DeBOER: So the case in Blair, you said that was a, a fuel truck?

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

THOMAS McCASLIN: There were-- it was a very long train. It was about a mile and a half long train. And it did have quite a number of--

DeBOER: Fuel cars.

THOMAS McCASLIN: --petroleum and propane tanks on it.

DeBOER: So in that case, you could argue that, that going through the city of Blair with those petroleum and fuel tanks and having that derail is a pretty big danger to the community.

THOMAS McCASLIN: Yes.

DeBOER: But that wouldn't bear itself out in the amount of damage if you said it was $6,000-8,000 and you still got a Class IV felony, that would still end up being a Class IV, just like the criminal mischief.

THOMAS McCASLIN: Correct. I understand what you're saying where, where, where the difference lies.

DeBOER: OK. Thank you.

THOMAS McCASLIN: Yeah.

BOSN: Other questions for this testifier? Seeing none, thank you for being here.

THOMAS McCASLIN: Thank you.

BOSN: Next proponent. Welcome.

JEFF DAVIS: Madam chair, members of the committee, Jeff Davis, J-e-f-f D-a-v-i-s, here on behalf of BNSF Railway in support of LB271. I don't want to restate Officer McCaslin's testimony. Yes, the young man accused of tampering with rail equipment and filming the derailment was charged with criminal mischief. But we don't believe that criminal mischief accurately describes the crime that was committed. $350,000 worth of damage is more than mere mischief. There weren't just 2 crew members at risk. Anyone near those tracks for a quarter or half a mile could have been hit by the derailing train, or by a piece of flying shrapnel from the derailment. Moreover, everyone was very lucky that the train was hauling coal and not hazardous material. BNSF and the other Class I railroads are the largest shippers of hazardous

materials in North America and the world. Products like ethanol, chlorine, sulfuric acid are just some of the chemicals we haul, so if someone comes on railroad property and they're attempting to cause a train derailment or assaulting a railroad employee in the performance of their duties, the consequences can be catastrophic and we believe the statutes ought to reflect that, something more than mere criminal mischief. You're going to hear that there's already a federal statute, possibly 2 that apply to these circumstances. Yes. That's true, but if we would have waited on the federal prosecutors in Bennet, it would have likely never happened. There are lots of instances where there are federal and state laws on the books for similar crimes, so having a state law on the books is not duplicative in that sense. You know, Mr. Eickholt has provided the sponsor with some very constructive feedback. And with regard to the committee amendment, you know, 3, 3 points. Nebraska has-- already has a law on the books regarding terror threats and false reporting, so that subs-- that (f) of Section 2 can and should come out. Section 28-201 of the existing statutes already covers the crime of attempt to commit any crime, so (g) is also redundant and can come out. And finally, they noted the bill should make a distinction with regard to the penalty regarding how much damage or loss was caused. I agree, and you know, we're willing to work on, on that language of the committee amendment. In conclusion, we're hoping for 2 things. One, we want to make sure that the actual crime of causing the train derailment or injuring a railroad worker while they're out there performing their duties accurate-- is accurately reflected in the statutes because of the potential consequences these actions have can be so catastrophic. It's got to be more than criminal mischief, and also that the penalty for the crime is proportionate to the conduct. To that extent, I'm happy to work with anyone and everyone to advance LB271. Thank you.

BOSN: Thank you. Questions for this testifier? Senator Storm.

STORM: Yeah. Thank you. So I'm looking through the comments. Nothing from UP. Are they-- do you know if they support this?

JEFF DAVIS: They're here and they support it. Yes. Just this is our bill because we had the derailment. And so--

STORM: So they support that?

JEFF DAVIS: --they're here and they support-- yes, sir.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

STORM: OK. Thanks.

BOSN: Other questions? Seeing none, thank you for being here. This is what happens after 6:00. The questions dies down a little bit. Maybe we should just start at 6:00. Next proponent. Any other proponents? All right. Opponents. Anyone here in opposition?

SPIKE EICKHOLT: Good evening, 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. Mr. Davis did mention that I've been-- I did email Senator Storer last week with our concerns on the bill, and I forwarded my e-mail to the lobbyist for Burlington Northern, and then he and I were in communication yesterday and this morning, early. You've got a copy of my testimony. First, it's our association's position that everything that this bill creates or provides for is already criminalized in some form in Nebraska already. And I think the example or the justification they give for this bill shows that. You had this derailment situation in Bennet with a juvenile, apparently wasn't terror-inspired or whatever. It was probably just something juveniles might do. The federal government opted not to charge under federal law because the child was a juvenile, but he was charged in state court with felony criminal mischief. In my opinion, that's not really justification for this sweeping of a bill. Having said that, if the committee is going to ask, we essentially had 4 suggestions, and I was emailing with Mr. Davis before, and it sounded like some of the things he might be agreeable to, but I just wanted to state our opposition clearly on the record. You can see the 4 points that I have in the committee. First, one suggestion we'd make is that strike subsection (e) of Section 2. Because if you look at that, it would make assaulting or causing injury, which as the committee probably knows, you assault somebody by causing bodily injury. It's not a type of assault. It would make that a IIIA felony, regardless of severity of injury, and that would make it automatically a felony assault in every circumstance, in every inst-- issue, regardless of, of intent or even actual injury. Second, is strike subsection (f) of Section 2. That would make a IIIA felony for any person who committed terroristic threats. We already have terroristic threats. It already is a IIIA felony. Saying it to a railperson or whatever, you threaten to commit a crime of violence against anybody, it's a felony. And I think that Mr. Davis may have been agreeable to that, I'm not sure. Subsection (g) of Section 2 provides for attempt. We already have an intent

statute, and I think he said he is agreeable to that. And then-- I have not seen the amendment, with respect to number 4, to have-- this is very similar to criminal mischief. If you look at the elements, this proposed crime and what we have, criminal mischief, and even the example they give for justification of the bill was charged as criminal mischief. We have it indexed on severity of offense, depending how much sort of damage or pecuniary loss was sustained. I haven't seen the amendment, but it sounds like it is responsive to that suggestion. I would-- I think it maybe goes a little bit more in penalties, so I would suggest it maybe match criminal mischief, because if it's not, I think somebody is going to be charged with criminal mischief and whatever this crime is entitled, tampering with railway equipment or something like that. And something tells me you probably get to $5,000 or $10,000 with some of those switches and so on, fairly easily. I'll answer any questions if anyone has any, but that's our opposition and suggested revisions.

BOSN: Thank you. Senator Hallstrom.

HALLSTROM: Have you seen the amendment?

SPIKE EICKHOLT: I have not. It was described to me, and I heard some of it, but I haven't seen it.

HALLSTROM: It, it looks like 2(f) and 2(g) are being proposed for elimination.

SPIKE EICKHOLT: OK. Well, that's good then. Well.

HALLSTROM: I'm glad I'm the bearer of good news for you.

SPIKE EICKHOLT: I couldn't tell if that was something that was actually in the amendment or not.

HALLSTROM: And then it seems to me, and the difference between a Class IV and a Class IIIA felony. Can you recite that off the top of your head?

SPIKE EICKHOLT: It's 0-2 years for a Class IV and 0-3 for a IIIA.

HALLSTROM: And so, other than 2(e), and I'll--

SPIKE EICKHOLT: Right.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

HALLSTROM: --leave that one to others. But it seems to me that if there's more damage involved, number one, going from a Class IV to a Class IIIA felony doesn't seem like a quantum leap, but it at least recognizes that there's a more severe penalty for the, the greater the damage that you do. Is, is that a fair assessment?

SPIKE EICKHOLT: It is. And there's not much distinction in penalty between a IIIA and a IV. But the crimes that are categorized as Class IVs are generally theft and property crimes. The IIIAs are your lower level sort of violent personal crimes. And that was done deliberately in 2015, with the 605 revisions. So that's the only reason, I think, that we don't have a criminal mischief now. But I agree it's not a great increase in penalty and perhaps, it would be something-- we didn't suggest it, but I, I appreciate the distinction between de minimis and actual cost for, for a level of penalty.

HALLSTROM: OK. Thank you.

BOSN: Other questions for this testifier? This is your favorite bill today, isn't it?

SPIKE EICKHOLT: I guess.

BOSN: Went the quickest, was my point. Thank you for being here. Next opponent. Anyone else in opposition? We'll move to neutral testifiers. Anyone here in the neutral capacity? The birthday boy. Do you want us to sing? That's not a gift, I assure you. Welcome.

ANDREW FOUST: Good afternoon, Chair Bosn and members of the Judiciary Committee. My name is Andrew Foust, A-n-d-r-e-w F-o-u-s-t. I'm the Nebraska legislative director for SMART Transportation Division, known as SMART-TD. We're a rail organization representing over 1,200 conductors and engineers across the state of Nebraska. Both of the people running that train in Bennet were my members. I want to say that. And, and thankfully, they were not hurt. I appreciate the opportunity to speak today in a neutral capacity regarding Senator Storer's bill, LB271. Our organization is here today to express our support for the intent of the bill. However, we would like to respectfully raise a few questions pertaining to the several sections of the bill that we believe warrant further discussion and clarification. One of the primary inquiries is whether the significant portion of the bill is federally preempted under Section 18, U.S. Code

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

1991, which pertains to entering trains to commit crimes, and-- or Title 18 U.S. Code 1992, which addresses terroristic attacks and other violence against railroad carriers and mass transportation systems on land, water, or through air. Current language, LB-- on-- in LB271, LB271, page 3, Section 2(e) of the bill states, assaults or injuries on any rail passenger, rail employee, or police officer of the railroad or any person within any railroad property. And then Section 3, a violation of this section is a Class IIIA felony. In addition, consideration is the classification of the class-- of the offense of a Class IIIA felony instead of a Class I misdemeanor, which is already state statute. If you commit an assault on a, on a individual, it's listed as a Class I misdemeanor, which is a standard assault in Nebraska according to 28-310. Another option might be to amend Statute 28-930, which pertains to assault of an officer and emergency responders, certain employees, or healthcare professionals in the second degree. This penalty-- the penalty includes section-- in Section 2(e), assaults on, or injuries of any police officer of the railroad. That could be amended to include them. We appreciate Senator Storer's concern for the safety of, of all Nebraska communities and railroad workers. While we believe LB271 is a well-intentioned bill, we do not see the need for redundancy between federal and state law. I would also like to add this bill does not address the, the fact that the Bennet situation and the, and the person that caused the derailment, it doesn't address the age of the vic-- or of the, the person doing it. So--

BOSN: You can finish.

ANDREW FOUST: Yeah, to wrap up, I would say the railroads had to go and get that-- the ability to try him as an adult, and this bill doesn't address that. So if, if this individual would have been, say, 12 years old and did that same thing, could they have tried him as an adult? I have no idea. I'm not a lawyer, but I think this bill lacks that clarification, too. So we [INAUDIBLE] this bill allows them to issue a Class IIIA felony, but then it-- you run into the problem of the age of the, the person doing the, the tampering, I guess, or terroristic threats, however they list it. So, I'll be able to answer any questions you might have.

BOSN: Questions? Senator Rountree.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

ROUNTREE: Thank you, Chairman Bosn. And thank you so much, Mr. Foust, for your testimony. Listening to all the things that you've run down and maybe some enhancements, some things that might be duplicative, have you talked with Senator Storer? Would you all be able to work together and get something that would be amicable?

ANDREW FOUST: Yeah. I'd be-- well, I've, I've spoken with Senator Storer. We didn't have a chance to actually dive into the bill.

ROUNTREE: OK.

ANDREW FOUST: We're-- she was on the floor, and we were just briefly talking. I told her that I'd be here as a neutral today, but I'd be willing to, I'd be willing to get together with the railroads and Senator Storer and, and come up with something that I believe-- or we believe that is a good, a good bill. I think this is a good bill. My question, too, is, is Nebraska isn't the only state where this is happening, right? So that's why I think it'd be better to go federally get-- and, and maybe enhance the, the bills or the laws that are already in place. Because the, the bills that I listed, one of them was written in 1948.

ROUNTREE: Wow.

ANDREW FOUST: So, I mean, a lot of things have changed since then. So.

ROUNTREE: All right. Thank you so much. I was kind of thinking about that movie, Super 8, where they just kind of-- the kids-- around 2011 movie, where they were filming some things, but a train crashed into the [INAUDIBLE]--

ANDREW FOUST: Yeah. Yeah.

ROUNTREE: --back there, so they-- thank you.

ANDREW FOUST: Yeah.

BOSN: I, I guess I-- maybe I didn't hear. Is one of the concerns that you have, you don't want the enhanced penalty for assault on a, on a worker on, on one of your--

ANDREW FOUST: I, I kind of-- I, I want it, but they have like, police listed, like a-- one of the testifiers is a-- an agent with BNSF. And

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

Union Pacific has them, CSX has them. They all have those agents. So if there's an assault on, on them, yeah, I would like that to-- but we could also include that in-- like amend the 28-930 with like first responders and stuff. We could amend that statute to include them.

BOSN: OK. So you don't oppose the enhanced protections. You just-- it's in a section that you think it would be better suited elsewhere.

ANDREW FOUST: Yeah. And then, and then that section includes a lot of people, a lot. You know, anybody on a railroad property, that's really broad, you know? BNSF own-- in Lincoln alone owns a lot of property. Right. So if you have somebody on West O assaulting someone, are they-- is that classified as a Class IIIA felony or is it a Class I misdemeanor?

BOSN: OK.

ANDREW FOUST: Because the bill states-- you know what I'm saying? The, the bill is-- it's bro-- that section is pretty broad.

BOSN: Sure. I, I guess I was just surprised that your, your association's position wouldn't be to support that. But I understand what you're saying is perhaps it's-- needs to be more narrowly tailored--

ANDREW FOUST: Yeah.

BOSN: --to actually cover employees only is your current position.

ANDREW FOUST: Yeah. And we also have assaults on Amtrak conductors and engineers. That's, that's happened before. We've had, you know, assaults on bus drivers. It's happening across the United States. I think that could be handled on a federal level, also. I think we could have good legislation that, that would cover that. I don't think that section of the bill is necessarily addressing the thing that happened in Bennet or the thing that happened in Blair, or that wasn't an assault. Right. So if the bill narrowed it down to specifically terroristic threats or tampering with railroad equipment, yes, I'm in full support of that. But I think, I think it would be better suited for all railroads to have the ability to try someone with a-- and, and get a class IIIA felony, you know, not just Nebraska. So.

*Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony

BOSN: OK. OK. Any other questions in light of that? Thank you for being here. Happy birthday.

ANDREW FOUST: Yep. Thank you. Yep. Thank you.

BOSN: Next neutral testifier. All right. Well, while Senator Storer is making her way up, I will note there were 3 proponent, 1 opponent, and no neutral comments submitted for the record. Welcome back.

STORER: Thank you. And thank you for everybody's patience. I'm happy to follow up with any, any other questions. But I think at the end of the day, you can see that there's been some intentional and productive discussions to reach a point where everybody can be happy with this. I don't really think we have any disagreement from any parties about the intent, which really is it? And we do, by the way, have a request in to the Attorney General's Office on the federal preemption issue. We just didn't get that back before the hearing today. This, this is-- these are not crimes that, that we can-- property damage to a railroad, I think, cannot be compared to property damage of my corrals at home or my front yard fence or other types of property. I think we can agree with that. This rises to a, to a much more serious level. And the issue of-- in this case-- and I handed out the article I know you haven't probably had time to look at that, but I can speak to some of the specifics of, of the case here, what the ind-- the young man-- it was a YouTube, he was trying to be an influencer, and he set up the camera. And, and, and it's very concerning that we're kind of coming to this point that these-- I'm going to call it violent crimes. It wasn't violence against another person intentionally, but it could have resulted in that-- are, are not being-- the penalties are not reflecting the seriousness of the crime. Luckily, no one was hurt or killed or there was no significant damage to the environment or the community in this case. But with that, I'm happy to answer any questions I do think-- I'm very confident that we're going to end up with a few more tweaks to this that make everybody pretty happy, and I hope that this community can support that, as well, and we could advance this to the floor.

BOSN: Thank you. Questions for Senator Storer? Thank you very much. That concludes our hearing on LB271 and our hearings for today. Travel safe, everyone.