

Judiciary Committee February 20, 2019

LATHROP: [00:00:02] Are we on? OK. Good afternoon. Welcome to the Judiciary Committee. My name is Steve Lathrop. I am from Omaha's Legislative District 12 and I'm Chair of the Judiciary Committee. We have a little-- some things. I always read this off at the beginning. I'm sure many of you have heard this before and if you're-- if it's your first time, then this will be for your benefit. On the table inside the doors when you came in, you'll find yellow testifier sheets. If you're planning on testifying today, please fill out one of the sheets and hand it to the page when you come up to testify. This helps us keep an accurate record of the hearing. There is also a white sheet on the table if you do not wish to testify but would like to record your position on the bill. Also, for future reference, if you're not testifying in person and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the day before the hearing. We begin testimony in this process with the introducer's opening statement. Following the opening, we will hear from proponents of the bill, then opponents, and finally, those testifying in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. We utilize an on-deck chair. That's the one up here to the left of the testifier's table. Please keep the on-deck chair filled with the next person to testify to keep the hearing moving along. If you have any handouts, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page will make some more for you. One other thing, when you testify, this is a big room and not-- not-- doesn't have great sound, so when you testify, if you would, make sure you're talking in-- in close enough so that your voice is amplified by the speakers. We'll begin. We will be using a light system. When you begin your testimony on the-- the light will turn green. That's this box up here. It's a three-minute timer. You get two minutes on the green, then the light will be yellow for one minute. And when it gets to red, please wrap up your last thought. And that's about making sure everybody has the opportunity to testify today and we keep things moving along. As a matter of

committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with their staff. At this time, I'd ask everyone to look at their cell phones and make sure they're in they off or silent mode. Also, verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause to have you excused from the hearing room. You may notice committee members coming and going. That has nothing to do with how they regard your bill or the bill being considered, but senators have other bills to introduce in other committees and other meetings to attend to. One last thing, we're holding our hearings in the Warner Chamber while our regular hearing room is being refinished. Please remember water bottles, soda cans, and cups are not permitted on the desks, and that's to avoid causing damage to the desks or leaving watermarks. And with that, let me start off by introducing members of the committee, or we'll have them introduce, and we'll start with my-- to my right, Senator Slama.

SLAMA: [00:03:45] Julie Slama, District 1, covering Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties.

MORFELD: [00:03:51] Adam Morfeld, District 46, northeast Lincoln.

BRANDT: [00:03:56] Tom Brandt, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

DeBOER: [00:04:02] Wendy DeBoer, I represent District 10 which is Bennington, the surrounding areas, and northwest Omaha.

LATHROP: [00:04:09] With that, welcome to all of you. We'll begin with LB240 and that brings us to Senator Hansen, a frequenter of the Judiciary Committee. Welcome once again.

M. HANSEN: [00:04:21] Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in Northeast Lincoln. I'm here today to introduce LB240, which would allow the Department of Health and Human Services to coordinate treatment for those who have been found incompetent by a judge at a place other than the Lincoln Regional Center, including providing outpatient treatment if the department thinks it's appropriate. Currently, there are 39 people who have been found incompetent to stand trial who are waiting for a bed at the Regional Center, and the average wait time for this group is now almost to five months. Current law requires that competency restoration must be done on an inpatient basis at the Regional Center program, even if they are otherwise eligible for bail and pose no risk to public safety. One possible solution, outlined in LB240, would allow a small number of those found incompetent to use outpatient treatment programs to restore competency. This would serve two purposes. One, it would free up beds for those suffering more severe mental health issues and shorten their wait time at a county jail; and two, it would ensure that those who are charged with less serious offenses but who are found incompetent are not serving months in pretrial detention in county jail waiting for a spot at the Regional Center. The outdated statutory requirement that those found incompetent be treated at "a state hospital for the mentally ill" was written at a time before many of the state regional centers were closed. It is simply time to update our system for treating those with mental health issues who have entered the criminal justice system. Warehousing people who haven't been convicted of a crime in county jails for months on ends is not the answer. Not only is the system unjust, but spending this time in county jails that don't have the resources to house people long-term mental health issues only serves to exacerbate their conditions and is a burden on the counties. While this bill will not-- itself not completely solve the problem, it is a step in the right direction to make sure that those coveted spots at the Regional Center are reserved for those who truly need to be treated at this type of facility. Giving DHHS the ability to provide this treatment outside the Regional Center will ultimately save money. Every day

a person is on the waiting list is another day they be kept from going to court. The quicker they reach competency, the-- the quicker they go to court and less money the states and county have to pay for them. And as the fiscal note states, using a less restrictive treatment setting is cheaper than requiring everyone to be checked in at the Regional Center regardless of their needs. I introduced a similar bill last year, LB1010, that required those ruled incompetent to be set to the least restrictive treatment center option that a judge deems appropriate for the situation, which many times would be outpatient treatment. This year, I decided to make it permissive so that DHHS would have the option to explore outpatient treatment for a very small number of patients where it is most appropriate. After last year's bill, an interim study by my office on the topic in September, and now with this bill, I'm trying to find a version that is amenable to all those involved to address this problem in a narrow, targeted way. Although DHHS declined to be a part of the interim study this past year, they did take the time to meet with us this week and express their technical concerns and have submitted a neutral letter to the committee. I'm open to working with them to develop some clarifying language, but I would like to note that this version of the bill was written with the intent of giving them decision-making power to develop any outpatient program they deem most appropriate and cost effective, which would include contracting with local mental health providers to provide outpatient treatment to those who qualify. I would like to thank all the stakeholders who have worked together over these many years to help with language in this bill. I know some of them are here to testify today. Many of them are here to testify today. With that, I'll end my opening and ask the committee to advance LB240.

LATHROP: [00:08:04] Can I ask, Senator Hansen, what happens to these people now?

M. HANSEN: [00:08:09] So what happens is kind of-- the functional process is, is if there's a motion that-- that a defendant in a criminal case is deemed incompetent, that could be made by the defense, the county attorney-- the prosecutor, or it can be made by the judge. They are evaluated

and-- and typically that, I believe, now happens at the county jail. And if they're evaluated and deemed not competent to stand trial, and that's a pretty low standard, that's you understand the judge is the decision maker, you understand the-- you know your defense attorney, you understand who the prosecutor is. If they fail to meet that center, by law. they have to be restored to competency at the Regional Center and we have--

LATHROP: [00:08:47] The waiting list there is forever, right?

M. HANSEN: [00:08:48] Yes.

LATHROP: [00:08:49] OK.

M. HANSEN: [00:08:50] About five months on average, and so--

LATHROP: [00:08:51] So what do we do-- what-- what's happening to these folks today because we don't have capacity at the Regional Center to do this the way the statute requires now?

M. HANSEN: [00:09:01] So two things happened. They can-- some of them do get bailed out. So we have this weird scenario where somebody gets bailed out of jail like any other defendant would, and then when their spot at the Regional Center comes up, they actually go-- they actually go get taken to the Regional Center, so they go from living at home to a secure mental health facility. Alternatively and much more common, they just wait at the county jail and often at times end up in restrictive housing or the mental-- or a health wing or some other thing if they have secure mental health--

LATHROP: [00:09:31] Is anybody doing anything about their-- restoring their competency while

they sit in the county jails?

M. HANSEN: [00:09:36] No.

LATHROP: [00:09:36] OK. So the bill basically is in response to the fact that we don't have capacity at the Regional Center.

M. HANSEN: [00:09:47] Basically, yes.

LATHROP: [00:09:48] All right. Senator Brandt.

BRANDT: [00:09:51] Thank you for the bill, Senator Hansen. I guess in looking at this, and I guess I should have looked at it a little earlier, there is a significant fiscal note attached to this.

M. HANSEN: [00:10:03] Um-hum.

BRANDT: [00:10:03] Can you explain to me why that is?

M. HANSEN: [00:10:06] Sure. So the fiscal note, basically the department, as they would structure this program, decided it would cost that much. They decided it would cost that much and they have decided, using this permissive language, that they want to hire about, I think, four-and-a-half full-time staff to-- to administer this program outside. It's a little interesting for me on a fiscal note concept because this is already an option the state-- it's already a requirement of Health and Human Services, and I was trying to give them a cost-effective, permissive, optional choice, so they are choosing to do it in kind of a-- in a very-- a way by hiring extra staff.

BRANDT: [00:10:49] All right. Thank you.

M. HANSEN: [00:10:50] Yeah, of course.

LATHROP: [00:10:50] One has to wonder whether they will be able to hire them, but the fiscal note is what it is, I guess.

M. HANSEN: [00:11:00] Yes.

LATHROP: [00:11:00] Thanks, Senator Hansen.

M. HANSEN: [00:11:02] Thank you.

LATHROP: [00:11:03] Appreciate you introducing the bill. First testifier, please. Good afternoon.

BRAD JOHNSON: [00:11:16] Good afternoon. My name is Brad Johnson, B-r-a-d- J-o-h-n-s-o-n. Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Brad Johnson. I'm the director of Lancaster County Department of Corrections. I'm here to testify on behalf of our department and the Lancaster County Board of Commissioners in favor of LB240. First, let me thank Senator Hansen and this committee for your interest in this area. I've been a member of this department for over 27 years. Much of my career has been spent working the front lines, interacting directly with our population. It is my professional experience that the percentage of mentally ill detainees compared to our overall population has significantly increased in the last 10 to 15 years. Furthermore, the severity of their illnesses has also increased. We recognized this trend during the planning phase of our current facility and designed it with a specialized housing area for those individuals who are not able to function in a general population area but can manage

in a smaller group with lower staff-to-detainee ratios. We also designed an infirmary area for those individuals who need much closer supervision by correctional staff, as well as medical and mental health professionals. In fact, Senator Hansen viewed both of these areas on a tour just over a year ago. My focus for today is to share with you our experiences with those individuals who have been found not competent to stand trial and ordered to the Lincoln Regional Center by the courts in an effort to restore their competency. I have dedicated my career to the corrections field and believe in our mission of serving the community through secure, legal, and compassionate adult detention. We are fulfilling the first two elements of our mission when it comes to this population and we provide the most compassionate care we can considering our facility design and environment. However, we are very limited in the level of therapeutic treatment options we can use during their incarceration. The most severe cases are housed in our infirmary area as all other less-restrictive options have been exhausted. We regularly care for individuals in this situation who do not understand where they are at or why they are in our custody. We have experienced individuals who believe we are pumping gas into their cell, placing poison in their food, or trying to kill them in some other way. It is my strong belief that these detainees should not be housed in a correctional facility any longer than is necessary. The current waiting periods are very unreasonable, in my opinion. During any given period, we have between 8 and 15 individuals housed at the Regional Center on a competency order. The averages I have provided are the waiting periods in days from the point the court ordered them transferred to the date they are accepted at the Regional Center. In November of 2017, the average waiting period was 68.9 days; February of 2018 was 61.5 days; May, 72.8 days; July, 87 days; and most recently, 99.9 days. It is worthy of note that as of December 31 we had 11 individuals housed in our facility who have been ordered to the Regional Center. On average, they had waited 94.6 days and counting. Based on staffing ratios, I am confident that the most severe cases who are housed in our infirmary cost at least twice, and likely three to four times, more per day than an individual in general population. That being said, I want to stress that the purpose of my testimony today is to communicate the ever-growing length of stay in our facility for those who

have been found incompetent and ordered to the Regional Center for treatment. These are unnecessary stays that are a hardship on the detainees and my staff. I understand this proposal will apply to a small number of individuals found to be incompetent. However, for-- however, it is my hope that such a proposal if implemented could take some of the pressure off of the Regional Center by removing those who pose a minimal risk and in turn open more bed space for those with the most acute conditions. This in turn could reduce the length of stay these individuals are spending in our jail. Thank you, and I'll answer any questions.

LATHROP: [00:16:05] I have one. So these-- these are folks that literally, literally, don't understand what a judge is, what a lawyer is, the job of the lawyer and the-- the process that they're about to go through in disposing of their criminal charges.

BRAD JOHNSON: [00:16:23] That's the--

LATHROP: [00:16:23] That's pretty much the standard, isn't it?

BRAD JOHNSON: [00:16:25] That's the definition of incompetence.

LATHROP: [00:16:26] And so I got to think that some of these people are behavior problems

BRAD JOHNSON: [00:16:31] Severe behavior problems, yes.

LATHROP: [00:16:33] And so tell us what-- what confinement is like at your facility for these people who are not getting the mental health they need or even-- yeah, no one's--

BRAD JOHNSON: [00:16:43] Well, it ranges, like, you know, the ones that maybe could, you

know, benefit from this program are in general pop, in our general population area, interacting with the correctional officer in that area. Then we have our special needs unit which is a much smaller, dormitory-style setting supervised by one of my correctional officers and we-- you know, our mental health staff go-- go down there and their stay is fairly close to normal. The most severe cases end up in our infirmary area, which is used for medical observation and suicide observation, behavior observation, and that is-- those are, you know, single cells where they are inside that cell pretty much, you know, 24 hours a day except for when we can persuade them or, you know, coax them into coming out to take a shower or if they got to go to court or something like that.

LATHROP: [00:17:42] Mr. Johnson, do you see these folks deteriorate while they're spending 100 days waiting for a-- an opening at the Lincoln Regional Center and you have them in a single cell for 24 hours a day?

BRAD JOHNSON: [00:17:54] That is very common, yes, sir.

LATHROP: [00:17:57] OK. Well, Senator DeBoer.

DeBOER: [00:18:01] Thank you for-- for testifying. What-- I'm trying to wrap my head around what kind of folks would be the lighter case that they could be, you know, sort of safely housed in these outpatient facilities. What-- what have you had folks come through that you think might fit within that, and can you kind of describe, because I think if someone fits the incompetency standard, they're-- they have pretty severe limitations.

BRAD JOHNSON: [00:18:38] I-- that is not always the case. I mean the ones that we're talking about are usually-- you know they have severe psychosis and really serious mental illness. This group of folks, you know, may be a little bit more behavioral-type behavior and just are having a

hard time with the concept of how the criminal justice system works, may be a little more compliant with medication and, you know, have the-- the support and the ability to get out of jail. Like, you know, like Senator Hansen said, some of them get out and are at home waiting for a Regional Center bed, so there's, you know, really no reason to bring them back into jail under custody at that point.

DeBOER: [00:19:24] Thank you.

LATHROP: [00:19:26] Senator Pansing Brooks

PANSING BROOKS: [00:19:28] Thank you for being here today, Mr. Johnson. So I-- I guess I'm wondering, can you explain to me, because I keep hearing the Regional Center is just packed, and so-- but it's only packed to the point that-- of 100 days that-- so-- because aren't most institutions trying to get people into the Regional Center, most correctional--

BRAD JOHNSON: [00:19:51] All-- all the county jails, that's their only option at this point.

PANSING BROOKS: [00:19:54] Yeah. So how do we-- how do you balance that all out? How do you know how long it's going to be? Is everyone getting 90 days and-- to 100 days? Is that the norm and can-- I mean, can it-- is that a constant norm so that we can understand? If that's how many days it is, then I guess every day we need 100 more beds, right, about?

BRAD JOHNSON: [00:20:21] Well, I think on average there's only-- there's-- I say "only," that's probably a bad word, but I'm thinking there's 30 to 40 folks on the waiting list statewide to get into the Regional Center. And that 100 days that I gave you is an average. The range for my facility when I looked at folks that's out there ranged from 26 days to 160 days.

PANSING BROOKS: [00:20:47] OK, because I guess I'm just trying to wrap my head around the fact that when we went to see the Regional Center, it-- I mean it looked like there was no hope of anybody ever getting into that place, so-- but there is some hope and we need to do more. Thank you very much.

LATHROP: [00:21:05] I see no other questions. Mr. Johnson, thank you for your testimony.

BRAD JOHNSON: [00:21:08] Thank you.

KIM ETHERTON: [00:21:18] Good afternoon.

LATHROP: [00:21:20] Welcome.

KIM ETHERTON: [00:21:22] Good afternoon, Senator Lathrop and members of Judiciary Committee. My name is Kim Etherton, K-i-m E-t-h-e-r-t-o-n. I'm a licensed mental health practitioner and the director of Lancaster County Community Corrections. I'd like to thank Senator Hansen for introducing LB240. I'm here today in support of LB240. In September 2018, I testified at the hearing on LR370 which was the interim study to review the issues arising from the lack of mental health treatment in our criminal justice system. LB240 addresses the issue of the limited inpatient hospital placements available for competency restoration which is a barrier directly related to underfunded mental health resources in the criminal justice system. This legislation will allow individuals who are out of jail on bond but waiting for competency restoration at the Lincoln Regional Center the opportunity for outpatient restoration without hospitalization. When an individual is cooperative and able to receive treatment in the community, it seems reasonable they do not require hospitalization. In fact, this process has been successfully practiced. My agency

employs mental health specialists who supervise and case manage pretrial and diversion clients who are-- who have serious mental illness. On several occasions we have worked with defendants who've bonded out of jail while waiting for a competency restoration bed. Ultimately, as the law stands, these individuals must go to the hospital for the competency decision to be made. However, in a recent case, this hospital stay was quite disruptive to the progress the individual was making in the community. While you consider this legislative change, I also ask you to consider the importance of funding resources-- resources at the level needed to care for this fragile population, specifically, who in the community will make the final restoration decision. Forensic psychiatry is a specialty. And our local provider is willing to work with this population, our respite beds and medication management services available at the level necessary to provide the care and support needed. They are not insurmountable issues but they should be considered. I'll take any questions. Thank you.

LATHROP: [00:23:36] Thank you. I don't see any questions, no, but thank you for being here again. Good afternoon.

ABBI ROMSHEK: [00:23:56] Good afternoon, Senator Lathrop. Members of the Judiciary Committee, my name is Abbi Romshek, A-b-b-i R-o-m-s-h-e-k, and--

LATHROP: [00:24:04] Can speak into that mike just a little bit more?

ABBI ROMSHEK: [00:24:07] Yes.

LATHROP: [00:24:07] I'm having trouble hearing you.

ABBI ROMSHEK: [00:24:09] Yes. I'm here testifying on behalf of the Nebraska Criminal

Defense Attorneys Association. I'm an attorney with the Douglas County Public Defender's Office. I've been there for the last two years. Prior to that, I worked for the Lancaster County Public Defender's Office for three years, and prior to that I worked for the Maricopa County Public Defender's Office in Phoenix, Arizona, for a year. Many of our clients suffer from mental illness and when they're found not competent, we cannot proceed with the case. So when a court finds them not competent and they wait in jail for the three or four months, there is nothing that we can do for that client, there is nothing that we can do in the court. And then when they go to restoration at the Regional Center, that can be a period of an additional month-- of additional months, and the review hearings are only every six months unless they're restored to competency sooner than that. What that means is that a client who is charged with a lesser felony or a misdemeanor that's facing a maximum of one year on a misdemeanor will potentially, if they're-- if they are on the waitlist for three to four months, served almost the entirety of the maximum sentence they can receive before they even start the restoration period. And then by the time they go through restoration, they will have served more time in custody, incarcerated, than the maximum sentence that they can receive under the law. I mentioned that I worked in Maricopa County because Maricopa County had an outpatient restoration program. In that program, people would have check-- essentially check-up hearings where they-- they would have a program that they would have to follow where they would meet with doctors, psychiatrists, therapists, and then every few months they would check in with the court to make sure that they were going through their restoration. The big concern are people who are living successfully in the community, as other testifiers have mentioned, such as people who may be developmentally disabled or people who may have memory problems from traumatic brain injuries. They may be found not competent because they don't understand what's going on. But if there's a substantial likelihood or probability that they could be competent within the foreseeable future, then they are ordered to go to the Regional Center. If they already had services in place in the community, they may lose their housing, they may lose any services that they have while they go to the Regional Center. I represented one client who was living successfully in the community,

went to the Regional Center, was ultimately found not restorable, but during that time spent more time in custody than she would have served had she been convicted of the charge. And by her being found not restorable means that she couldn't be-- that she couldn't-- the price-- the case couldn't proceed. She couldn't be convicted of the crime. So I guess I'm here in favor of LB240. Didn't mention that but that's obvious. And I would be happy to answer any questions about the outpatient restoration program.

LATHROP: [00:27:20] Can you-- I assume that the people that are the folks that we're talking about face a range of charges from misdemeanors up to felonies. Can you give us an idea, are most of these misdemeanors, are most of them felonies? Are-- are-- are these primarily people charged with very, very serious things, or are we talking about a lot of folks that are looking at county court kind of proceedings?

ABBI ROMSHEK: [00:27:44] That's going to depend. I would say primarily it's going to be people charged with serious misdemeanors or felonies that are going to be on these waitlists for restoration.

LATHROP: [00:28:04] How many of these people, do you suppose, if you can answer this question, and I know it's not scientific, but how many of these people you suppose got in trouble in the first place because of their mental illness?

ABBI ROMSHEK: [00:28:18] I would say a very significant amount of them.

LATHROP: [00:28:22] Yeah. Yeah. So because we don't have enough services available to them they get in trouble, then when they get in trouble, they sit in county jails for 100 days before they can get into the Regional Center, and they may spend more time than they could possibly get for the

offense that they've been charged with.

ABBI ROMSHEK: [00:28:40] Yes. And I would say it's longer than 100 days because they're going to be charged with the crime and then their attorney is going to meet with them, make a determination that they don't understand what's going on or the attorney believes they don't understand what's going on. They have to file a motion with the court, get the court to order an evaluation by a doctor, and then that evaluation has to occur. And then when that evaluation recommends to the court that they are not competent, at that point, if the court makes that finding, they will issue that order. And then the order goes to the Regional Center and they are placed on the list.

LATHROP: [00:29:15] As a public defender, do you go down to the Douglas County Corrections Center from time to time to talk to these people?

ABBI ROMSHEK: [00:29:21] Yes, on a regular basis.

LATHROP: [00:29:21] All right. So I assume-- we listened to Mr. Johnson talk about how some of the-- the more troubled-- troubled individuals, or the people with the most serious issues, sit in solitary cells by themselves for long stretches of time.

ABBI ROMSHEK: [00:29:39] Yes.

LATHROP: [00:29:39] You see them deteriorate?

ABBI ROMSHEK: [00:29:46] Yes, certainly.

LATHROP: [00:29:48] Like you go down and you're like, while I'm down here, it's-- I haven't talked to the guy in a month, let me see how he's doing, and he's worse?

ABBI ROMSHEK: [00:29:55] Yes, especially if somebody is receiving some services in the community and receiving some medication management and then they go into custody and they're not receiving the services that they had in the community, they certainly will deteriorate.

LATHROP: [00:30:07] OK. I don't see any other questions. Thank you for coming all the way down here and giving us your experience.

ABBI ROMSHEK: [00:30:25] You're welcome.

SEAN FLOWERDAY: [00:30:25] Thanks much.

LATHROP: [00:30:25] Good afternoon.

SEAN FLOWERDAY: [00:30:26] Good afternoon. Good afternoon, Chairman Lathrop and the members of the Judiciary Committee. My name is Sean Flowerday. That's S-e-a-n F-l-o-w-e-r-d-a-y. I'm a member of the Lancaster County Board of Commissioners and I'm here to testify on behalf of the Lancaster County Board in favor of LB240. LB240 has been identified by the Lancaster County Board of Commissioners as one of our top priorities this legislative session, and it's our belief that it could provide needed relief to an overcrowded correctional system. I speak to you today not just as a county commissioner, though, also as a former correctional officer and former correctional case manager. I spent more than three years serving on the maximum security mental health unit and sex offender unit for the Nebraska Department of Correctional Services. I can attest firsthand that attempting to manage mental health within a correctional setting is not a best practice

and places an undue burden on correctional staff who are ill equipped to manage individuals suffering with mental illness, as well as the taxpayer who is forced to foot the bill for the incarceration of individuals in need of treatment rather than punishment. As Brad Johnson spoke, as of December 31 in 2018, Lancaster County was holding 11 individuals. Understand, that's down from 33 in August. These 11 individuals had already waited a combined 1,041 days for a bed to open at the Lincoln Regional Center. As he said, that's an average of 94.6 days per person, which it is my understanding that is actually quite good compared to some other counties. I've heard of other counties going five to six months. Understand, these are not people who have been convicted of a crime. Rather, these individuals are pretrial. They are awaiting evaluation of competency. So that's 1,041 days of jail for people who have not been convicted of a crime. I urge you on behalf of Lancaster County taxpayers, our correctional staff, and these individuals who are suffering with mental illness and stuck in a correctional environment, to update this antiquated piece of legislation and allow for competency to be determined by qualified providers outside of the Lincoln Regional Center. One last thing I would just add. The-- the question of are these people deteriorating in that environment, I spent three-and-a-half-years of my life watching people with mental illness deteriorate inside of a locked box. I promise you, they're deteriorating. So I'd be happy to answer any questions.

LATHROP: [00:33:01] I don't see any, but thanks for being here.

SEAN FLOWERDAY: [00:33:03] Thank you very much.

SPIKE EICKHOLT: [00:33:16] Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB240. We want to thank Senator Hansen for introducing the bill. You've got a copy of my written testimony, so I'm not going to read from that. And many

of the prior testifiers have I think accurately described the issue. I just want to add a couple of things maybe so that everyone-- so the record is clear. If a person is charged with a crime, the defense attorney, the prosecutor, or even the court can order that that defendant be examined to make sure that person is competent to stand trial. That's not an insanity defense. It's basically just to make sure that person is able to mentally understand what's going on. The notion is, is that a person, and it's related to due process, a person has a right, if you will, to sort of know what's happening to him or her in the court system. You just can't have a mannequin sitting there next to you. As a defense attorney, you need to make sure this person understands what the judge is there for, what the prosecutor is there for, and that kind of thing. People can be not competent for a variety of reasons. Many times it's mental illness because they're in a state of psychosis and they just don't understand reality. Sometimes it can be because they are very low functioning and they are living in assisted living or they suffer from some sort of brain injury or something that attributes to memory loss or some similar developmental disability. And I've had people who've been found not competent in my practice in those kind of circumstances. And like Senator-- or Chairman Lathrop asked, they can be for a variety of things and many times, particularly for those people who suffer from mental illness, the crime that they are arrested for is-- is-- not symptomatic, but at least part of their mental illness. You know, I-- the typical crime is terroristic threats where someone is delusional, screaming in their apartment, a neighbor contacts them, they scream at the neighbor threatening to kill that person. That's terroristic threats. That's a felony. Another thing you'll see typically in competency matters is someone is arrested for a relatively minor misdemeanor, disturbing the peace, trespassing, something like that, but while they're in the jail they assault an inmate-- or they assault an inmate or a guard> And then they've had a felony assault on an officer and many times you'll have those people who are caught up in the system, directly or indirectly, from mental health issues. I think you know what Senator Hansen is trying to do. He's trying to essentially make options for Department of Health and Human Services to come up with something to free up the space at the Regional Centers. The Department of Health Human Services wrote a

letter and there's been some suggestion from some people involved that perhaps the jails could be provided with the authority to restore competency. I would caution-- we would caution the committee to not consider that. First, you've heard from other people, this is not-- the jails are not suited to treat the mentally ill. The problem that we are trying to address with this bill and others is to avoid the criminalization of people with mental illness, and that is simply embracing that problem. And more importantly, you've heard from a number of county officials that in many respects this is a state responsibility and that counties are already in a sort of a backward way picking up the cost for that, and we shouldn't create a system that would allow for that. So I would encourage the community to consider the proposal on LB240 and would answer any questions that you might have.

LATHROP: [00:36:34] I have one for you. So we just heard testimony some of these people may have an insanity defense, right?

SPIKE EICKHOLT: [00:36:44] They might.

LATHROP: [00:36:44] It requires intent and they are incompetent to stand trial. They may well be in a place where they couldn't formulate intent to commit a crime--

SPIKE EICKHOLT: [00:36:55] That's right.

LATHROP: [00:36:56] --and they have a complete defense. So the timeline looks like this. They get arrested. They get put in jail. They sit in jail and wait for a doctor to see them. The doctors sees them at-- after some motion in the-- in the courthouse, the doctors seem them, does an assessment and says this person needs some help to restore their competency. Then they wait 100 days in a jail facility for an opportunity to go to the Regional Center where they'll sit some-- some more--

SPIKE EICKHOLT: [00:37:25] That's right.

LATHROP: [00:37:25] --and-- and have-- presumably have their competency restored if it's not a permanent traumatic brain injury or just low IQ, right?

SPIKE EICKHOLT: [00:37:36] That's right.

LATHROP: [00:37:36] So at some point is this something that could subject the state to some liability for these folks that we're talking about?

SPIKE EICKHOLT: [00:37:46] You know, I think that the problem when you're charging somebody with a minor misdemeanor and they're held for a significant period of time in the jail and then held for a significant period of time at the Regional Center and then they come back to court and they're restored, what happens typically is they'll just plead to it and then they get time served. And many times in those cases you'll have people who were held long past any kind of actual time that they could have served if they had been competent and went to trial. And I think there's probably some issue of-- possibly of liability there. You're incarcerating people for a long time.

LATHROP: [00:38:16] What about just the idea that they're sitting for 100 days with no care--

SPIKE EICKHOLT: [00:38:19] That's [INAUDIBLE]

LATHROP: [00:38:19] --and in some cases in a-- in a room by themselves day in and day out for months?

SPIKE EICKHOLT: [00:38:24] If not-- if not the state, certainly the political subdivision. And the jails are not suited to treat these people. I think that's agreed upon.

LATHROP: [00:38:34] You don't see a constitutional issue?

SPIKE EICKHOLT: [00:38:36] I absolutely do, yeah, to due process and just conditions of confinement. Yeah, I see some constitutional issues there.

LATHROP: [00:38:44] All right. I see no other questions. Thanks for your testimony and answering my questions. Welcome.

JOE NIGRO: [00:38:59] Good afternoon. Senator Lathrop, members of the committee, I am Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of my office and the Nebraska State Bar Association in support of LB240. I want to thank Senator Hansen for introducing this bill. When any party has concerns that a defendant may be incompetent to stand trial, they can ask the court to order a competency evaluation. The court then has a psychiatrist or clinical psychologist evaluate the defendant. After the evaluation has been completed, the court decides whether the defendant is competent to stand trial. Until the defendant becomes competent, the proceedings are placed on hold. In addition to determining competency, the court must also determine if the defendant is-- if the defendant is incompetent, whether they are likely to become competent within the foreseeable future. If the defendant is found to be incompetent and is unlikely to become competent within the foreseeable future, then the prosecutor must dismiss the criminal charges but can seek a civil commitment. If the defendant is found to be incompetent and likely to become competent within the foreseeable future, then the defendant must go to Lincoln Regional Center and stay there until they've been restored to competency. For most of my career, defendants found incompetent were immediately taken to the Lincoln Regional Center. The combination of

reduction of inpatient beds and inadequate community services has led to people now waiting an average of 100 days for a bed at LRC. People are waiting in jail and people are waiting while out on bond. LB240 would allow courts to authorize restoration of competency to occur in an outpatient setting. Outpatient restoration isn't likely to be widely used, but it would help to reduce the wait time for a bed at LRC. When someone goes to LRC to be restored to competency, they will usually stay there for months. If it's OK to release someone without bond or on bond, why not let them be restored to competency on an outpatient basis and minimize the disruption to their lives? Outpatient restoration will help a little with reducing the number of people with mental health issues in the criminal justice system. The fiscal note on this bill makes no sense. In Lancaster County we're talking about 2-5 people a year; statewide, 15 people a year. It won't take \$900,000 a year to reimburse-- reimburse outpatient providers for 15 people. That's just totally unrealistic and I don't know why they would need to hire staff to do this restoration when there are community providers. The HHS letter to the committee talks about restoration in jail. This would be wrong. The state needs to take care of these people, not shirk their responsibility by allowing restoration in a correctional facility, and I would be adamantly opposed to that ever occurring. I chair the Supreme Court committee to establish mental health courts in Nebraska. These courts will also help reduce the large number of people with mental health issues in the system. I hope the Legislature will be willing to fund these courts. Ultimately the answer to dramatically reducing the large number of people with mental health issues caught up in the criminal justice system is to increase funding for both inpatient and outpatient mental health services. More funding for mental health services will save money in the criminal justice system and would be far more humane and effective. I urge you to support LB240 as an important step toward solving this problem. Thank you. Those are my remarks. I-- Senator Lathrop, you did ask a question about type of charges and I thought I could maybe help address that too. The type of charges where people are found incompetent to stand trial really run the gamut from minor misdemeanors to felonies. But I would say that for many of the years that I've practiced, we only probably saw competency issues coming up in more serious

felonies. And as a defense attorney, you have an ethical obligation to raise that issue if you don't think your client understands what's going on. But I can tell you from experience that there are times when you have people who had issues but if you thought you could get them through a plea on a minor charge and they're going to get a fine or small amount of time in jail, you would try to accomplish that. I think what's happened is the reduction in services has been so severe that we now see people on minor charges who are totally unable to function in the court system, and so we have no choice but to file competency. If they're in custody, then they sit in jail for months. But we've had people on minor misdemeanors who are out on-- a lot of times on a minor case, they may not have a bond or they've made bond, and they come back to court every 30 days, they show up for court, and-- and then eventually there's a bed at the Regional Center, so now they go to the Regional Center, but they do have a serious illness and they're going to be there for months. And this would deal with that population. It would provide for restoration for those people in the community and that would help to reduce the total number of people waiting for a bed at the Regional Center, which hopefully would reduce the time for people in the jail who are waiting to go. I think it's unlikely that a judge is going to release somebody from custody to be restored on an outpatient basis if they're so ill that they're incompetent. I think we're really talking about the people who are out of custody but will it-- it will help the people in custody. But if you really want to help, spend more money on mental health.

LATHROP: [00:44:07] On the front end.

JOE NIGRO: [00:44:08] Yes. And these people may not get in trouble and there'll be a bed for them if they do.

LATHROP: [00:44:14] OK. I don't see any questions. Thanks for your testimony, appreciate it.

JOE NIGRO: [00:44:17] You're welcome. Thank you.

LATHROP: [00:44:20] Anyone else here to speak? I didn't know if you were going to be a proponent or an opponent because you were--

JAMES SMITH: [00:44:26] Neutral.

LATHROP: [00:44:27] --sitting at the end of the aisle.

JAMES SMITH: [00:44:28] I'm neutral.

LATHROP: [00:44:29] Welcome.

JAMES SMITH: [00:44:29] Thank you. I'm James D Smith. I'm president of the Nebraska County Attorneys Association. I'm testifying on behalf of the association in a neutral capacity. Spelling my name, pretty obvious, J-a-m-e-s, last name S-m-i-t-h. The reason I'm testifying in a neutral capacity is because LB240 doesn't appear that it would make existing law any better or any worse. It also prohibits a stopgap option that judges should have for competency restoration in a secure facility that is actually available and it does not address the separate statute. There is a statute, Section 83-338 which sets out by legislation priorities for commitments when there is a lack of capacity in a state mental hospital. Under that statute judges' orders are number two in priority. They're not even number one in priority. Issues for a judge for competency restoration is mentally incompetent, and that's a very low standard, must have competency restored before the case can even proceed further. Once the judge finds a person is-- that low bar of isn't even competent to stand trial, I would submit you have now a public safety problem of an unstable defendant if they're not in a secure place during competency restoration. LB240 doesn't give judges all the options they need. This should be

about options. It does not give the judge the option of timely medication management to restore competency in a secure facility that's actually available. Competency restoration in most cases is going to, if a person is truly mentally incompetent to stand trial, it's usually an organic disorder, it's not behavioral, it's an organic disorder in which competency could be restored by medication and medication management. I don't disagree with anyone's description of the problem. But when they're in the county jail, they're not getting any competency restoration and I would agree totally. And I've hit the red light, if-- do-- proceed--

LATHROP: [00:46:57] It's a yellow. You got another--

JAMES SMITH: [00:46:59] Or yellow light. I'm color blind also, so--

LATHROP: [00:47:01] OK.

JAMES SMITH: [00:47:02] OK. But they-- they-- yeah, they will continue to deteriorate. But the-- the option that the department could not contract with healthcare providers to go into jail, to do medication management, to provide medication, at least they're in a secure place. And also the statute currently provides, when the competency restoration starts, it's the obligation of the state. So right now the counties are paying for it. If the department is responsible for the medication management, judge has the option of doing it in the county jail, state is paying for it, state is responsible, they're getting treatment, they're getting something, but this bill prohibits that option. And frankly that's-- that's the reason I'm testifying neutral because, I would submit, most judges are not going to take a mentally incompetent person, they've deemed him unstable, and put him out in an outpatient private facility, which isn't frankly going to take them. And the judge's options in most cases are simply they're going to wait and put them in the Regional Center. Regional Center's problem is it's licensed as a hospital. As a licensed hospital, it has a bed capacity limit. It can't just

take more and put them in there so it-- it has to have a waiting list. And even the legislation, a separate statute that I identified, recognizes lack of capacity and then sets priorities. But the main problem I see with this bill is it doesn't give the judge an option that should be there. If the judge doesn't want to choose it, fine. But it totally forbids an option that I would think a judge would welcome, should have. If I can have leeway to just give an anecdotal story, we managed in Nikko's case. I got involved in that when that turned into a problem to go to Judge Bataillon and say, we do have a state facility, it's a secure facility, we've got a capacity problem at the Regional Center, the Lincoln Correctional Center does have the mental health unit, let's take Nikko over there, we'll have the Regional Center staff be ordered to do the competency restoration there. It worked. But if-- if you can't have competency restoration in a secure facility where they already are, you've got the Regional Center waiting list problem.

LATHROP: [00:49:41] OK. Well, we find ourselves trying to find solutions to the fact that we don't have enough capacity in the Regional Center. And these are us-- our attempts legislatively to address a bigger and more fundamental problem. Just so the record reflects, you came up in a neutral capacity, right?

JAMES SMITH: [00:49:58] I did.

LATHROP: [00:49:58] OK. Let me just-- thank you. And I don't see any questions for you either. Was there anybody here that was here to testify in favor or opposed? OK. Anyone else in a neutral capacity? Thank you, Mr. Smith, for your testimony, by the way. No one else here to testify on this bill? Senator Hansen to close. We do have a few letters, from Will Spaulding with the Nebraska Psychological Association; Terry Werner with the National Association of Social Workers; and Larry Dix with the County Officials, and that's in support. And the Department of Health and Human Services sent a letter in neutral capacity. With that, Senator Hansen, you are good to close.

M. HANSEN: [00:50:56] Thank you. Thank you, Chairman Lathrop. Thank you, members of the committee. First let me begin again by thanking all the testifiers, especially those in Lancaster County, especially Director Johnson. I did get an opportunity to tour his facility and he's been a real advocate and-- and-- and I think he's correct in that these are people who do not belong in his facility. And he will take the best care of them he can, but he simply cannot provide the care he needs for a multitude of reasons. Being in the-- in the health wing and seeing people in-- in the rooms just waiting there, there was a garment I believe is a suicide smock, which is a clothing device that you-- prevents you from hanging yourself with it, and it essentially is a piece of-- looks-- I'm sure it's more high-tech than this, but it kind of looks like a piece of AstroTurf with shoulder pads. And those are what-- some of the individuals who are most severe and have the most severe needs are sitting in those conditions because that's what the county jail has to do to make sure that they don't commit suicide in their cell. And those are the people who should be in the Regional Center and which is why I want to try and divert some of the other ones away. Looking at the Department Health and Human Services' letter, they said about 15 percent of the people admitted to competency restoration had previously been released on bond, so about 15 percent of the wait list is at home until they go to the Regional Center. And if we trust them to be at home, we-- we should be able to trust them to go to an outpatient provider. And in many instances, I presume those are people who are lucky enough to have supportive family networks, there's a caretaker, whether formal or informal, you know, and can facilitate the process. Thinking about kind of the range of crimes, and this is kind of the reason you heard, is we had-- when we had the interim hearing in Judiciary last fall, we had an officer come in and he testified from-- it was a sheriff from, I want to say, one of the counties out west, I want to say Dawson, and he had somebody who was waiting on felony murder charges and had a competency issue and he was on the same waiting list that an individual from Lancaster County on loitering charges, and they're-- and they're on the same waiting list and they go in the order. And they were talking, from the smaller county's perspective,

from a place that only has 10 or 12 jail cell beds. They were putting him up front by the receptionist where the intake cell was because that was the only single-bed cell they had. And so they've got somebody who's on felony murder charges, you know, waiting 100 days in their small-town county jail to get to the Regional Center, in part because the system is all gummed up with a variety of people, including some people who don't have that severe. Senator DeBoer, to your point, you see the whole range of people of a variety of mental health and intellectual issues. And so you have, say, maybe the people who are more on the developmental disabilities, brain injury side, who aren't necessarily, you know, violent, they're not honestly having behavior issues; they just don't have the functioning level. And then you do see the people who are, I would say, I'm not sure if I'm using the medical term correct, but, you know, have delusions, psychosis, or hallucinating. And it's-- it's those individuals who are, you know, hallucinating and attacking jail staff we need to get to the Regional Center faster, and currently we can't because we're also having just people who are low functioning and would be fine being at home with, you know, a family member because they're on the same waitlist and it's first come, first serve. So that's the issue I'm trying to address. I thank the committee's time, thank the testifiers' time, be happy to work.

LATHROP: [00:54:23] Thank you, Senator Hansen. I don't see any other questions for you.

M. HANSEN: [00:54:27] Thank you.

LATHROP: [00:54:27] Appreciate that. That will bring us to LB510, Senator McCollister's bill regarding the Sex Offender Registration Act. How many people are here to testify on this bill? Looks like a couple, so if we can alert Senator Howard that--

_____: [00:54:48] Timoree is here, Timoree is here.

LATHROP: [00:54:48] OK. Very good. Senator McCollister, welcome back to the Judiciary Committee.

McCOLLISTER: [00:54:56] Good afternoon, Chairman Lathrop and members of the committee. I am John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. I'm here today to introduce LB510. The bill would provide that the Nebraska sex registry-- offender registry would not apply to people who are adjudicated as juvenile offenders outside the state. Nebraska law provides that juveniles are not required to register as adult sex offenders for crimes that they may be required to register if they were convicted as an adult. This has been the law for years. Nebraska senators have consistently decided that juveniles should not be placed on the sex offender registry if they were tried as juveniles. In some states, juveniles who are adjudicated or are convicted of crimes are-- as juveniles are required to register as sex offenders when they become adults. Given that situation, there is some question whether juveniles who were adjudicated in other states and required to register as sex offenders should have to register in this state. In August of 2017, the federal Eighth Court-- Circuit Court of Appeals ruled that juveniles who are adjudicated outside Nebraska but who moved into Nebraska would not be required to register as sex offenders. Before that reading-- ruling, juveniles who were adjudicated for offenses outside the state and then moved into Nebraska were being placed on the adult sex registry-- offender registry, while juveniles with similar cases who were adjudicated inside the state were not required to be included on the registry. After the 2017 ruling, the state treated the two situations equally. However, in July of 2018, the Nebraska Supreme Court said the opposite and ruled that the Eighth Circuit interpretation of Nebraska law was incorrect. Instead, the Supreme Court held that any person who moves to Nebraska and is required to register as a sex offender elsewhere must register as a sex-- sex offender here, even if they would not be required to register if adjudicated in Nebraska. The Supreme Court decision has saw-- caused some confusion and has required the Nebraska State Patrol, which is charged with maintaining the sex-- sex offender registry, to send out

notices to numbers of juveniles and adults who were adjudicated when-- when adults-- youth, and inform them they need now to register. The decision also creates an arbitrary two-track system in which juveniles who are adjudicated in the state need not register when they turn adults, but the people who move here must register. LB510 would offer legislative guidance to the Supreme Court by providing that those who move to Nebraska and who may be required to register as a sex offender in another state due to a juvenile adjudication would not be required to register in this state. I believe that children who are adjudicated as youth-- adjudicated as youth should not be required to carry this adjudication into adult-- adulthood. This is particularly true when dealing with the stigma and burden of having to register as a sex offender for years to come as adults. I believe that we should be consistent with regard to youth-- youth adjudicated in this state and those who move here from out of state. There is no logical distinction between the two categories of youth offenders. The two-tier system likely is difficult to administer for our state officials and is not consistent or sound policy. Either they should all register as adults or none should. I believe we should continue to not require juveniles to register as sex offenders if they were adjudicated as youth. I would be happy to answer any questions if I can.

LATHROP: [00:59:21] I think it's pretty clear what your intent is, and so I don't see any questions, but thanks.

McCOLLISTER: [00:59:25] Thank you.

LATHROP: [00:59:26] First testifier. Are you going to stick around to close?

McCOLLISTER: [00:59:31] I think I will not.

LATHROP: [00:59:33] OK. Oh, not?

McCOLLISTER: [00:59:33] Will not.

LATHROP: [00:59:33] OK. Good afternoon.

JOSHUA WEIR: [00:59:48] Good afternoon, Senator Lathrop. Members of the committee, thank you for presenting me with this opportunity. My name is Joshua Weir, J-o-s-h-u-a W-e-i-r, and I am testifying in favor of LB510 on behalf of the Nebraska Criminal Defense Attorneys Association. As mentioned by Senator McCollister, there was a case that went up to the Eighth Circuit two years ago. Mr. Ryan Post, who is going to testify after me, and I are the two attorneys that handled that case. Essentially, an 11-year-old child from the state of Minnesota, he was charged in the state of Minnesota in a juvenile court case and he was sent to live with his grandparents in the state of Nebraska through really no choice of his. His parents at the time were-- were not adequately providing him with the care that he needed. Anyway, he was sent to live with his grandparents in the state of Nebraska while his case was pending in juvenile court in Minnesota. Eventually, he was adjudicated delinquent, put on probation, given some counseling. And the state of Nebraska notified him, I believe he was about 12 or 13 at this time, that he would have to register as a sex offender, an adult register-- an adult offender on the Nebraska sex offender registry for life for this adjudication from the state of Minnesota. Now the reason why the state of Nebraska did that is because the state of Minnesota has a two-tiered registry. They have an adult sex offender registry and then they also have a juvenile registry. However, the juvenile registry is nonpublic and it's only made available to law enforcement, so in-- the state of Nebraska elected a number of years ago that we would not, and we forfeited federal funds in order to do so, the state of Nebraska does not register juveniles that are adjudicated of these sex offenses. If a juvenile commits an offense that's serious enough, that's aggravated enough, they can be tried in adult court, so there can still be juveniles on the sex offender registry. But these are the juveniles that are adjudicated in juvenile court with the

protections that-- that come with that, namely anonymity. All of their cases are sealed. They're given an opportunity to go on in life. At the time that the state of Nebraska elected not to set up a juvenile sex offender registry, Governor Heineman was quoted in The World-Herald as saying this carries serious and long-term consequences for juveniles. Senator Ashford at the time said that for the money we're losing, it's just not worth it. So the Eighth Circuit ruled on statutory interpretation grounds that a juvenile adjudication did not equal a conviction, therefore, Nebraska's law did not apply. However, the Eighth Circuit did note that-- they said: We believe the application of SORA and its public notification requirements to juveniles adjudicated delinquent in other jurisdictions but not in Nebraska raises serious constitutional concerns under the right to travel and equal protection of the laws. The Nebraska Supreme Court, last summer, they took a different interpretation of Nebraska law, disagreeing with the Eighth Circuit. However, they noted, we are only ruling on statutory interpretation grounds; we have not reached these constitutional issues. I see I've got a red light, if I-- if I could make a closing comment about pending legis--

LATHROP: [01:03:17] Quickly.

JOSHUA WEIR: [01:03:18] Yes. There is a lawsuit pending right now in front of Judge Kopf, and there is a temporary restraining order on constitutional grounds that this would be an unequal application of the law. That lawsuit is pending and we-- essentially the parties are waiting to see what this committee will do before going forward on that lawsuit. And with that, our-- if there are any questions, I'd be happy to answer them.

LATHROP: [01:03:45] So they're waiting on us instead of us waiting on them?

JOSHUA WEIR: [01:03:48] We-- there are some issues to be resolved between the parties and Judge Kopf may make a decision. But LB510 was made a part of the record and I can say that

Judge Kopf, I can't speak for him, but I can say that he is interested at least in what the-- the Legislature has to say on this issue and possibly resolve it.

LATHROP: [01:04:09] Senator Pansing Brooks

PANSING BROOKS: [01:04:12] Thank you. Could you-- thank you very much for coming, Mr. Weir. I-- I was wondering if you could explain the unequal application of law argument that you just briefly touched on.

JOSHUA WEIR: [01:04:24] OK. The state of Nebraska, if you are adjudicated delinquent of a sex offense in a court in the state of Nebraska, there--

PANSING BROOKS: [01:04:33] In juvenile court or in a--

JOSHUA WEIR: [01:04:36] In a juvenile court-- there is no sex offender registration for you. Now if an individual is adjudicated delinquent in a state such as Minnesota or Michigan or Alabama and they move to Nebraska, then we place them on the only registry we have, which is the adult registry. So we don't treat our own juveniles the same, but if you move here from another state and that state happens to have a nonpublic registry for juveniles, we treat you different. And I-- I like to say zero plus zero does not equal one. They're not on a registry in Minnesota, they're not on a registry in Nebraska, so why are we going to put them on an adult registry next to the worst of the worst?

PANSING BROOKS: [01:05:19] This is totally contrary to our efforts in juvenile law for the past four years and so I-- I really appreciate your bringing this and pointing this out. It is an equal protection issue, as well, and I really appreciate you clarifying this. Thank you, Mr. Weir.

LATHROP: [01:05:35] Senator Wayne has a question.

WAYNE: [01:05:36] I just have a-- I don't know. I'm playing devil's advocate. I agree with you on the-- on the principle. But don't we treat every juvenile who moves from a different state differently? I mean-- here's what I mean. If a person is in juvenile and they're adjudicated and for whatever reason they go to Arizona, for Canyon State, they're an outsider to-- the laws in Arizona. So where it becomes interesting is that you're adjudicated and you're in the juvenile system until you're 19 here, but down there you're considered an adult. So when they-- if they commit a crime down there, they're tried as an adult. Isn't that how our system is set up, though, that if you commit a crime in another state that's-- and however that crime is defined in that other state, when you come here, that still stays the same, that it shouldn't change?

JOSHUA WEIR: [01:06:29] You've gotten to the heart of the issue that we're dealing with in the lawsuit, meaning if an individual-- like, say, for example, which would be common for us in Omaha, an individual in Omaha crosses the river and they're subject to Iowa's laws, they go through the juvenile adjudication system in Iowa, and they return to Nebraska. I believe your question gets to the heart of it's-- it's not discriminated on the fact of their citizenship as-- as a member of the state of Nebraska. However, if that state has decided that this is not a serious enough offense that we're going to notify the public of it and the state of Nebraska has determined there is no situation under which a juvenile who's adjudicated, that we are going to put them on the Web site, so if you have two states that both unanimously decide this is not serious enough that we're going to notify the public of the threat of these individuals, it's my position that those two are similarly situated. And that's the thrust of the argument.

WAYNE: [01:07:28] But the logical step from your argument would apply to every-- every

criminal or adjudication act across the state, across the country. For example, in Michigan a felony is \$2,500; here, it's \$500. I mean it-- so they have --they would-- they would get a misdemeanor there, but they got-- they get a felony here, or vice versa. I mean, aren't we walking down a slippery slope?

JOSHUA WEIR: [01:07:50] The courts that have addressed this, looking at-- at particularly adult convictions, have weighed in and said, yeah, it's not for a court to decide, you know, compare Nebraska's law versus Michigan's law, that type of thing. And quite frankly, that-- that's one of the sticklers in this lawsuit is we can't have judges considering, you know, Louisiana's laws, Alabama's laws, and Nebraska's laws. But the key to this is you have two states. They deal with juveniles differently. All that the state of Minnesota did was create a list for law enforcement so they know who these individuals were, and then they don't notify the public. So if the state of Minnesota says this person is not too difficult, their-- their records are sealed, nobody can know who these people are, and that's how it's done in Nebraska, why would we then put them on an adult registry which we're not-- there are tiers in the adult registry. And because juveniles are not specifically provided, we put them on for life instead of a defined term because the Legislature has-- or the law doesn't explain to us how long an individual who has a juvenile adjudication is to be on the registry, so they're put on for-- for life.

WAYNE: [01:09:07] So, and I'm supporting this bill, let me clarify. I'm just-- I'd like to put some stuff on the record. So hypothetically in an adult situation, though, what if Minnesota law says you're only on the registry for five years but Nebraska says you're on there for ten or you're on for life? What happens then?

JOSHUA WEIR: [01:09:27] We don't have specific clarity from the law. We just have this position-- provision in 29-4003, subsection (a)(1) subsection (iv). And it just says if you have to

register in another state, then you don't have-- or then you have to register in the state of Nebraska. Then there is a separate subsection that-- that details the length of registration. And because it is under that reciprocal provision that doesn't fit within the specifics of the ten-year registration, the 25 or life, it's been my understanding, and maybe Mr. Post can clarify this, is that those juveniles, because it doesn't fit into one of those three, would be classified into the registration for life. But that is an issue that has-- that we don't have clarity from the courts primarily because it has either been under the Eighth Circuit or been under a temporary restraining order, so we don't have resolution of these questions.

WAYNE: [01:10:26] Thank you.

LATHROP: [01:10:27] I think that does it. Thank you for your testimony, appreciate it, Mr. Weir. Anyone else here as a proponent?

SPIKE EICKHOLT: [01:10:32] Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB510. We want to thank Senator McCollister for introducing the bill. I really can't, frankly, add much more than what Mr. Weir did with respect to the law regarding this issue. But I would point out that, as Senator Pansing Brooks just noted, this bill is consistent with what this committee has done this year and what this Legislature has done the last few years with respect to treating children differently if they are adjudicated as youth and not have them deal with the lifetime, potentially lifetime consequences as if they were adults. I would just like to remind the committee, if the-- if Mr. Weir didn't explain that, or he may, I may have missed it, that we're talking about youths who were adjudicated as juvenile offenders. In other words, whether it's this state or in other states, there's always the option to charge the more serious cases, or the older child, to try those people as adults. And if they're tried as adults and convicted in adult court, then they suffer the same

consequences as adults. We're talking about youth who are adjudicated in the juvenile court system in other states. I can't, like I said, add to what Mr. Weir stated with respect to the law on this issue. I would just tell the committee, for historical purposes, Senator Blood did a bill similar to this last year, actually before the Supreme Court ruled last summer, and I think she did it-- I don't know-- can't remember why she got interested in the issue, but it was really just to sort of ensure that the Eighth Circuit position was codified in statute. The committee didn't act on it because I think at the time the conclusion was, well, the Eighth Circuit's spoken, we're safe, we don't need to worry about it. And then last summer the Supreme Court ruled in State vs. Clemens that the Eighth Circuit's interpretation was not correct. So I would encourage the committee to act on this bill and advance it from committee.

LATHROP: [01:12:37] Very good. Thanks, Spike.

SPIKE EICKHOLT: [01:12:39] Thank you.

LATHROP: [01:12:40] Anyone else here to testify as a proponent? Anyone here in opposition?
Good afternoon.

RYAN POST: [01:13:04] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Ryan Post. I'm an-- oh, R-y-a-n P-o-s-t, and I'm an assistant attorney general with the Nebraska Attorney General's Office. The Attorney General opposes LB510. This bill would remove from the Nebraska Sex Offender Registry individuals who a judge in another jurisdiction has determined must register as a sex offender. This includes individuals who committed repeat, aggravated sexual offenses on children and individuals who were deemed by another jurisdiction as a high risk to reoffend. Under this bill, those individuals would no longer be subject to the registration requirements imposed on them when they enter the state of Nebraska. In

doing so, LB510 takes Nebraska further out of compliance with federal law. The federal Sex Offender Registration and Notification Act only applies to offenders 14 years of age or older who have committed specific aggravated sexual offenses. The Attorney General would support amending current Nebraska law to bring Nebraska into compliance with federal law. Finally, while we were unable to reach an agreement, I do want to thank Senator McCollister for discussing this bill with our office and a proposed amendment that we have drafted that was intended to bring Nebraska into compliance with federal law. I've handed out that proposed amendment for the committee today, and I am happy to answer any questions you may have.

LATHROP: [01:14:36] I see no questions. Thanks, Mr. Post.

RYAN POST: [01:14:38] Thank you.

LATHROP: [01:14:38] Anyone else here in opposition to LB510? Anyone here to testify in a neutral capacity? Seeing none, Senator McCollister to close. He waives closing. The record should reflect though that we have a letter from Juliet Summers from Voices for Children in support. And with that, we'll close our hearing on LB510, and that brings us to LB548 and Senator Howard.

HOWARD: [01:15:09] Good afternoon, colleagues. I ran up from an Executive Session in HHS where we were discussing scleral tattooing, so I'm very excited to talk to you about dog tethering now. All right. Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Senator Sara Howard and I represent District 9 in midtown Omaha. Hi. Today I'm here to talk to you-- oh, you know what, Laurie, H-o-w-a-r-d. You're welcome. I always forget to spell my own name. OK. Today I'm here to talk to you about a very sad subject that involves cruelty to animals. This bill, LB548, would make a person guilty of a Class I misdemeanor to leave an animal tethered or restrained in some way outside without shelter during inclement weather. This bill is a

reintroduction of a bill I did last year but due to the short session, ran out of time. This bill is slightly different than last year and does include an exemption for agricultural animals that was drafted as an amendment last year at the request of then-Senator John Kuehn. The subject most recently came to my attention during the 2017 hurricanes, most-- more specifically, hurricanes Harvey and Irma. Many people who were forced to flee would leave their pets tied to telephone poles and trees when they evacuated. These animals were left without food, water, or any type of care and had to fend for themselves, which was made more difficult because they could not seek shelter. While we don't deal with hurricanes in Nebraska, we do have tornadoes, thunderstorms, and extreme temperatures of heat and cold. When humans are entrusted with the care of animals, that includes looking out for their well-being. During Hurricane Irma in south Florida, the Palm Beach County Animal Care and Control Agency recovered roughly 40 dogs in the days before Irma made landfall in Florida. Some were tied up, others were in pens or in enclosed yards, unable to escape. A staffer who formerly worked for the Nebraska Legislature, who now lives in Arizona, was doing rescue work in Texas where she found a young dog who had been abandoned. This dog had been running through the streets for days with no food or water and was very hungry and dehydrated. Lucky for him, he ran into someone who didn't know she was in the market for a new best friend, and now Harvey is happily living in Arizona with his new owner Nicole. Not all of these animals are so lucky to be rescued. This law is important in our state, especially when we have high and low extreme temperatures. In the extreme cold, exposing a domestic animal may result in frostbite and animals may lose ears, toes, and even freeze to death. Many animals, because they are domesticated, even if genetically predisposed to extreme temperatures, are not able to handle them. I have passed out an article that shows that although we think no one would abandon a dog or another animal outside in the extreme cold, it does happen and, more often than not, has tragic consequences. If an animal is tied up, they aren't able to try and fend for themselves by finding shelter out of the extreme cold. By passing this bill, will-- we will be creating consequences for mistreating animals by leaving them at the mercy of the elements. So the defense attorneys have

come to us to-- and asked us to actually not make this a new criminal cause but actually amend this into our existing abuse and neglect statutes, which is the amendment, AM390. We just got it drafted today, so-- but I do actually think, upon reflection, that this is the most appropriate place for this issue is to add it to our already existing animal abuse and neglect statutes. And then alongside that, we would be able to have the penalty of not being able to keep a domestic animal for a certain number of years or something along those lines. So the AM is-- it replaces the entire bill, and I do absolutely support it, and I appreciate the defense attorneys for bringing that issue to us. I'm happy to try to answer any questions you may have.

LATHROP: [01:19:06] OK. Senator Brandt had one.

BRANDT: [01:19:10] Thank you, Senator Howard, for bringing this bill forward. I guess I've got-- the amendment supersedes the bill, is that right?

HOWARD: [01:19:19] Absolutely, yes.

BRANDT: [01:19:19] OK, so I've got a few questions here. On page 1, you have a severe weather event or a tornado warning.

HOWARD: [01:19:32] Um-hum.

BRANDT: [01:19:32] OK. And then that would qualify, a tornado warning would qualify as a severe weather event?

HOWARD: [01:19:36] Yes.

BRANDT: [01:19:37] OK. I live in a rural area and it seems like about every other day, there is a tornado warning somewhere, OK? And on the next page, 3, we've got climatic conditions creating rain, hail, sleet, snow, high winds, extremely high or low temperatures, or any combination thereof. Where I live, that's about every other day. OK? So the problem I've got with this bill is in the rural areas this-- this may be more tailored toward an urban setting. But in-- in the rural areas, if-- if I had a-- let's say a dog and a dog, you're telling me before, is not a farm animal, is that correct--

HOWARD: [01:20:24] No, it is not.

BRANDT: [01:20:24] --even though it's on my farm? And I live on the highway. In fact, you know where I live.

HOWARD: [01:20:30] Um-hum.

BRANDT: [01:20:31] If this dog is not tethered and goes out and gets hit on the highway, isn't that worse than having the dog tied up?

HOWARD: [01:20:42] Well, I think any instance where an animal's life is in danger is bad, so there's neither worse nor better in that scenario.

BRANDT: [01:20:50] Right. And I-- I guess I-- I'm looking at this from a rural perspective is that I raise livestock. A lot of my neighbors have dogs and cats and-- and-- and livestock and we-- we know how to take care of this-- these animals in severe weather because in the rural areas it's just such a common occurrence. You know, you provide shelter and water and-- and, you know, we don't want-- want our animals to be hurt in any way, shape, or form. And I think this is just really restrictive to people out in the rural areas. We view this much differently maybe than people in the

urban areas. And I guess I would just like to-- to point that out. And did you guys discuss this with anybody in the rural areas before you drafted this?

HOWARD: [01:21:37] Sure. So because this is actually a reintroduction, last year Senator Kuehn, whose district was south-central Nebraska, and he was a veterinarian, helped us draft language to address anything relating to an animal used for agriculture or considered agrarian. I'm happy to work with you to make modifications to this language to better reflect the realities of rural Nebraska.

BRANDT: [01:22:06] Um-hum, because in a lot of cases we have working dogs on cattle farms, for example, or livestock farms, and quite often they're considered an extension of the farm. Now you may not consider it a farm animal but we in farm country do consider them a farm animal.

HOWARD: [01:22:23] Um-hum.

BRANDT: [01:22:23] So anyway, thank you.

HOWARD: [01:22:24] Thank you.

LATHROP: [01:22:25] Senator Slama.

SLAMA: [01:22:29] Hi. And thank you, Senator Howard, for bringing this bill. Pets are something that's very close to my heart. I have some of the similar concerns to Senator Brandt, except from a rural perspective, I'm concerned about the wording leaves such pet animal "unsheltered or unattended." How would you define unattended in the statute?

HOWARD: [01:22:52] Help me see where that is at.

SLAMA: [01:22:54] That is on page 1, line 14.

HOWARD: [01:23:01] You know, my understanding is that unsheltered means they're not in shelter and unattended means that they're not with you.

SLAMA: [01:23:07] So they're not-- so say I-- this is a reality. I work 15 minutes-- town is 15 minutes away from my house. A severe weather event occurs, which I'm going to ask you a few questions on your definitions with that as well. Am I expected to drive home, let my outdoor dog in? I'm-- I'm just saying that on my end, just how it's worded, you're kind of setting up rural pet owners for an impossible situation in a severe weather event in which case they're working or they're in town and they can't make it back in time, because, I mean, outdoor pets are a pretty big reality of rural life.

HOWARD: [01:23:52] Absolutely. So-- and I'm to understand that your outdoor pet, there's nowhere for them to go, there's no barn, there's no shelter, there's no lean-to?

SLAMA: [01:24:02] No, they're just an outdoor-- like they have a dog house but they're still unattended, wouldn't you say?

HOWARD: [01:24:07] But a dog house would be considered shelter.

SLAMA: [01:24:09] Well, the statute says unsheltered or unattended.

HOWARD: [01:24:13] I would be happy to modify the statute.

SLAMA: [01:24:14] Thank you, because that's a concern just in the wording with me.

HOWARD: [01:24:20] Sure.

SLAMA: [01:24:20] I'm also concerned with the definition of a severe weather event. Kind of to echo what Senator Brandt touched on, that includes rain, hail, sleet, snow, high winds, extremely high or low temperatures, or any combination thereof. How would you define extremely high or extremely low temperatures?

HOWARD: [01:24:43] Well, gosh, I think extremely high or extremely low temperatures are probably more of a meteorological issue. I mean I-- I can certainly try to have a better definition of those in statute and be more prescribed in statute, absolutely.

SLAMA: [01:24:58] And then rain, how are we defining that? If it's drizzling, do we have to come back and let our dogs in?

HOWARD: [01:25:09] Well, I don't know if just rain is a-- is severe-- is a severe weather event.

SLAMA: [01:25:12] But that's not clarified in-- "Severe weather event means the existence of severe climactic conditions creating rain," so I'm not sure that it's quite clarified in the statute-- I mean the bill.

HOWARD: [01:25:26] Sure. And I'm happy to clarify that more.

SLAMA: [01:25:29] Thank you.

HOWARD: [01:25:30] Absolutely.

SLAMA: [01:25:30] And I just wanted to get those concerns on the record so that we can work on this because obviously pets are very near and dear to my heart and I support the idea of this bill. I just want to make sure we're doing it right and not putting our rural pet owners in a bad spot.

HOWARD: [01:25:44] Absolutely. I completely understand.

SLAMA: [01:25:48] Thank you.

HOWARD: [01:25:48] Thank you.

LATHROP: [01:25:48] OK. Senator Pansing Brooks.

PANSING BROOKS: [01:25:52] Thank you for coming, Ms. Howard. I was just--

HOWARD: [01:25:54] Senator Howard.

PANSING BROOKS: [01:25:55] Senator Howard, sorry. I'm sitting here, I'm looking up at your name, going-- yeah, Senator Howard. And I just-- I think that it's-- it's clear in regard to Senator Slama's questions. It says that-- to me it means that-- that if you look at lines 12 through 18 on page 1, it's-- it seems pretty clear that the issue is to restrain the-- the animal and then leave it either unsheltered or unattended, I mean, so you can-- you can-- you can-- as long as you have some sort of shelter, the animal can be--

HOWARD: [01:26:35] Tethered, yeah.

PANSING BROOKS: [01:26:36] Yeah, either restrained or unrestrained, because that is allowed in this, too, and then the same thing with unattended, so I don't think that that necessarily means you have to run home to--

HOWARD: [01:26:48] Right. If it's not tethered, you wouldn't have to run home.

PANSING BROOKS: [01:26:51] Yes. And if you have it in a-- in either a fenced area or you have it in an area, I think-- I mean it seems to me that your goal may be to make sure that they have an ability to get to shelter if necessary--

HOWARD: [01:27:03] Yeah, absolutely.

PANSING BROOKS: [01:27:05] -- and not to be-- not to have-- be in danger and have no place to run if-- if there is no shelter.

HOWARD: [01:27:12] Yes, that's absolutely it.

PANSING BROOKS: [01:27:15] So I think that that-- that part is-- is clear to me, but anyway-- and the other thing is that you have said on line 14 "unsheltered or unattended," so that is not both. If you'd placed "and" in there, then I think there would be a problem. But the fact that you are giving a choice, to me, is more clear to me. Thank you.

HOWARD: [01:27:36] Thank you.

LATHROP: [01:27:37] I think that's it, Senator.

HOWARD: [01:27:39] Thank you. I will waive closing.

LATHROP: [01:27:40] You're going to waive closing.

HOWARD: [01:27:41] Thank you.

LATHROP: [01:27:42] All right.

HOWARD: [01:27:42] All right.

LATHROP: [01:27:42] We'll listen to the first proponent. Welcome

MISTY CHRISTO: [01:27:51] Thank you, Chairman Lathrop. Can you hear me?

LATHROP: [01:27:55] Yes, I can. Thank you.

MISTY CHRISTO: [01:27:56] OK, great. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Misty Christo, that's M-i-s-t-y C-h-r-i-s-t-o. I'm an attorney, a board member for the Nebraska Rescue Council, and I volunteer as the small animal manager at Town and Country Humane Society in Papillion, Nebraska. Thank you for the opportunity to speak in support of LB548, and I also would like to thank Senator Howard for continued work to protect animals in Nebraska. Good tethering policies that prevent dogs from languishing on the end of a chain are not only beneficial to dogs, but they're also an effective reminder of what it takes to be a responsible pet owner. This bill is important-- is an important step in raising awareness of the issue

and moving towards policies and practices that protect the animals in our care. Twenty-three states and Washington, D.C., have already enacted laws to address tethering, each having its own provisions and standards of specific-- standards specific to those areas and regions. Similarly, LB548 is tailored to Nebraska, specifying that pets cannot be tied out during conditions and weather events common to Nebraska, including tornado warnings issued by the National Weather Service, severe rain, hail, sleet, snow, high winds, or extremely low or high temperatures, as well as mandatory and voluntary evacuation orders. So LB554 is a carefully considered and crafted bill that is clearly drafted and designed to actually solve the problem of Nebraska pets dying in disasters and dangerous weather. This bill benefits the whole state. It's enforceable and it creates mandates with which pet owners, subject to its provisions, can easily comply. Only those who choose to leave their pets restrained outdoors, unsheltered or unattended during extreme weather or disasters, will be penalized under this law. Unfortunately, current law offers no protections for chained animals during extreme weather and disasters. Extended exposure to brutally cold temperatures can result in frostbite and deadly hypothermia, and heat stroke is a common cause of death in dogs during our hot Nebraska summers. Cases of animals left outside in dangerous weather are some of the most reported incidents of animal cruelty, but the vagueness of current law makes it difficult for enforcement officers to take action before an animal is actually injured or dies from exposure. LB548 will change that by creating reasonable expectations for pet owners, and it will provide officers the ability to proactively prevent animals' suffering and legal trouble for citizens. And lastly, as a small animal manager for Town and Country Humane Society, I appreciate that the bill includes protections for all companion animals, including birds, rodents, and reptiles, and LB548 requires that pets in our state be attended and have shelter or have shelter during severe weather. This is a commonsense provision that everyone in Nebraska could get behind. Please support our shelter and rescue workers, our law enforcement officers, and pets in our communities by supporting Senator Howard and voting to advance this bill.

LATHROP: [01:30:59] Very good. Thank you for your testimony.

PANSING BROOKS: [01:31:03] I have [INAUDIBLE]

MISTY CHRISTO: [01:31:03] Thank you. Oh.

LATHROP: [01:31:04] Oh, I'm sorry. Hang on a second. Senator Pansing Brooks.

PANSING BROOKS: [01:31:07] I'm trying to skim through here-- thank you for coming. I'm trying to skim to see if there's a standard, like we have in here cruelly mistreat and cruelly neglect. So does this include reckless abandonment or reckless disregard of the animal's safety? I'm just trying to figure out the standard, the legal standard to be used.

MISTY CHRISTO: [01:31:32] That is a good question and I am not sure how to answer that.

PANSING BROOKS: [01:31:39] OK. Thank you. We'll hope to talk to Senator Howard about that.

MISTY CHRISTO: [01:31:43] OK.

PANSING BROOKS: [01:31:43] Thank you.

MISTY CHRISTO: [01:31:43] Thank you.

LATHROP: [01:31:45] I don't see any other questions. Thank you.

MISTY CHRISTO: [01:31:47] Thank you.

LATHROP: [01:31:54] Good afternoon.

JESSICA ELLIS: [01:31:57] Good afternoon. Members of the Judiciary Committee, my name is Jessica Ellis, spelled J-e-s-s-i-c-a E-l-l-i-s. I am the president of the Nebraska Rescue Council and owner of The Green Spot in Omaha. I would like to thank you for giving me this opportunity to express my support for LB548 which will provide proactive efforts to prevent tragedies before they occur. And I am grateful for this opportunity to share my thoughts with you. I would like to begin by commending Senator Howard for recognizing tethering during extreme conditions as a critical animal protection issue and for bringing this important piece of legislation forward. We have no statewide laws to protect tethered pets, but experts have long agreed that tethering is not conducive to the health and welfare of dogs. In fact, in June of '96, the U.S. Department of Agriculture issued a statement against tethering which reads: Our experience in enforcing the Animal Welfare Act has led us to conclude that continuous confinement of dogs by a tether is inhumane. A tether significantly restricts a dog's movement. A tether can also become tangled around or hooked on a dog's shelter structure or any other object, further restricting the dog's movement and potentially causing injury. While LB548 will not prohibit chaining or tethering in general, it will ensure that certain companion animals are not left to drown, burn, freeze or suffocate during extreme weather events and disasters. This is a statute that all Nebraskans can embrace and our police can enforce. Furthermore, programs that support underserved pet owners find that the vast majority of people care deeply about their pets and are generally doing the best they can for them. Some people tether their dogs either because they may not be familiar with behavior or training to know how to successfully live with their pet inside or they simply do not have the financial resources to employ another option. Therefore, efforts to improve confinement practices for dogs should not end with laws that punish violators. We hope that with the new spotlight being shone on this issue, our

communities will also consider complementary proactive approaches to prevent citizens from needing tethering as a form of confinement in the first place. The Nebraska Rescue Council is happy to provide more information about these types of approaches which are gaining momentum in a variety of U.S. communities. Additionally, the Nebraska Rescue Council officially offers the following to any pet owner struggling with a tethering issue. We will help you find affordable fencing, housing, training, or any other assistance that would help provide you and your pet with a better quality of life. Again, we thank Senator Howard for introducing LB548 to protect pets, educate owners, and provide law enforcement with an additional tool to prevent suffering in our communities. Please vote to advance this important bill. Thank you. And are there any questions I can answer?

LATHROP: [01:34:33] Thank you, Ms. Ellis. I do not see any questions for you today.

JESSICA ELLIS: [01:34:38] Thank you.

LATHROP: [01:34:39] But thank you for your testimony. Anyone else here to testify as a proponent on LB548? Anyone here in opposition? Anyone here in a neutral capacity? To be clear, you're here in a neutral capacity?

SPIKE EICKHOLT: [01:34:57] That's right.

LATHROP: [01:34:58] OK. Thank you.

SPIKE EICKHOLT: [01:35:01] Thank you, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in a neutral capacity to the bill as amended by the amendment that Senator Howard

distributed earlier. As Senator Howard indicated, we did approach her earlier this week, actually her and her-- and her staff to explain that our association initially opposed, took a position of opposing the bill. And it wasn't for anything that she necessarily wanted to do with the bill. Our reason for the opposition was it was our position that the current laws with respect to cruelty to animals and animal neglect already criminalized a lot of the things that she wanted to do with the bill. And as an association we just try to oppose efforts to further splinter or fracture or split the criminal code into differing offenses. So when we did meet with Senator Howard's office earlier, we suggested after hearing what she wanted to do with the bill that she simply amend the existing laws in 28-1008 and so on with respect to animal cruelty, and that's why we are neutral to the bill as amended. I don't mean-- need to belabor the point. To answer what Senator Pansing Brooks asked earlier, the terms "cruelly mistreat" and "cruelly neglect," those are defined in current law, and so by referencing those terms and putting those in these series of statutes, there's already a definition that the courts have at least interpreted somewhat. And as Senator Howard said earlier, the current animal neglect laws provide for courts with the discretion to, if a person is found guilty of a misdemeanor or a felony, animal cruelty, to strip that owner of that person's ability to own pet animals in the future. So in my opinion, that's probably something that she wanted to do with hearing what she wanted to do the bill-- introduce the bill for. So that's why we are in a neutral position to the bill as amended with AM390.

LATHROP: [01:36:59] Senator Pansing Brooks

PANSING BROOKS: [01:37:02] Thank you. Thank you for coming, Mr. Eickholt. So if you look at page 1, so the new definition of (b) is under abandonment, but I don't see that-- that it-- that cruelly mistreat is also-- I mean it's-- it talks about abandonment and then it goes on to say an animal-- defines what an animal is, then it says cruelly mistreat, but it doesn't say-- it doesn't refer back up to abandonment, necessarily.

SPIKE EICKHOLT: [01:37:35] It--

PANSING BROOKS: [01:37:36] So I don't see how those are really connected.

SPIKE EICKHOLT: [01:37:38] It doesn't because 28-1008 is the definitions of the following crimes. And if you look at, and it's not in the amendment that you have, but if you look at 28-1009, a person commits the crime of abandonment or cruel neglect by intentionally, knowingly, or recklessly abandoning or cruelly neglecting an animal. And so by changing the definitions, she sort of breathes broader meaning, if you will, to the existing crime of animal neglect.

PANSING BROOKS: [01:38:06] So I needed to look up 28-1009.

SPIKE EICKHOLT: [01:38:07] Yeah, that's right.

PANSING BROOKS: [01:38:09] It would have been better if I'd read that. OK. Thank you.

SPIKE EICKHOLT: [01:38:11] Thank you.

PANSING BROOKS: [01:38:13] I don't see any other questions. Thank you for your testimony, Mr. Eickholt. Anyone else here to testify in a neutral capacity? Seeing none, we have a letter of support from Jim Otto with the Nebraska Retail Federation, and Mr. Eickholt sent a letter in opposition and testified in a neutral capacity, given the amendment. And with that, we'll close the hearing on LB548 and that will take us to Senator Clements, who I saw here, and LB553. Welcome, Senator Clements.

CLEMENTS: [01:38:59] Thank you, Chairman Lathrop and members of the Judiciary Committee. I'm Senator Rob Clements, R-o-b C-l-e-m-e-n-t-s. I represent Legislative District 2 and I'm here to introduce LB553. LB553 provides that a tenant who seeks a reasonable accommodation for an assistance animal may be required by the landlord to provide written verification from a health service provider that (a) he or she is a person with a disability; (b) there is a disability-related need for the assistance animal; and (c) the assistance animal assists the person with a disability in managing his or her disability. Health service provider is defined in the bill as a physician, psychologist, or mental health practitioner licensed to practice in Nebraska under the Uniform Credentialing Act. I provided a handout from a Web site offering an instant support animal certificate. LB553 seeks to address the problem of people going on the Internet to pay for a verification letter stating that they need an emotional support animal when they don't suffer from a disability and they are purchasing the letter so they do not have to pay a pet deposit, pet rent, or pet fees. I've invited a constituent landlord here today to explain an experience they had with a tenant; however, I believe they're not able to make it due to the weather. There will also be some testifiers who can explain how this coordinates with federal law and discuss in more detail the Internet operations that provide verification letters for a fee. I will gladly work with the committee and other stakeholders to try to address any concerns they may have. I was given a list of states who have similar laws. I counted 21 states with similar laws and most of them are more strict than this bill. This has no criminal penalties. Some of them allow the landlord to assess a fee. This, this does not. Nearby states of Colorado, Kansas, Missouri, North Dakota, South Dakota, and Minnesota have similar legislation enacted. Thank you for consideration of LB553 and I will try to answer any questions you may have.

LATHROP: [01:41:44] Senator Clements, I don't see any just yet. Are you going to stay around to close on the bill?

CLEMENTS: [01:41:49] Yes.

LATHROP: [01:41:49] OK, very good. Thank you. Thank you for introducing LB553. We'll take the first proponent. Good afternoon.

GENE ECKEL: [01:42:04] Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Gene Eckel; that's G-e-n-e E-c-k-e-l, and I'm a board member for the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska. LB-- the purpose of LB553, as Senator Clements said, is to address the problem of people going on-line to pay for a verification letter stating that they need an emotional support animal when they don't suffer from a disability and they are purchasing the letter so they do not have to pay for a pet deposit, pet rent, pet fees, or any restriction on animals. LB553 only applies to the Fair Housing Act and does not reduce a person's right under the Fair-- federal Fair Housing Act or the Nebraska Fair Housing Act. It mirrors the guidelines set forth in the 2013 joint statement by the Department of Justice and HUD regarding service animals and assistance animals. And I believe you will hear from opponents today and those who have issued letters in opposition to this bill that it is not in compliance. In my handout you will see that 2013 joint statement. And as you will see, I've highlighted some language in there. You will notice that the language in LB553 does mirror what HUD guidelines have set forth. We strongly support the rights of disabled persons to seek reasonable accommodations. However, abuse of this accommodation is a serious problem for landlords and as well as the disability community to protect those who have a legitimate need and to ensure they are not overshadowed by many who are just looking to get around the restrictions for pets and those pet fees, pet deposits, and pet rents. In 2011 the National Service Animal Registry, which is a commercial enterprise that sells certificates, vests, and badges for helper animals signed up 2,400 emotional support animals. According to that company's Web site, that number of animals that it registered as of February 1 of this year is 191,896. Attached to my handout are some

examples of the Web sites that offer verification letters to buyers for an on-line fee. Due to the lack of guidance and clarification in federal law on the use of verification letters purchased on-line, states have been enacting laws to address the problems of misrepresentation of a pet as an assistance animal. As Senator Clements has indicated, there's 21 states that he's aware of. I believe there's 23. None have been challenged by HUD. And as far as I'm aware today, none of those states have had their HUD funding taken away. I will point out that Nebraska, under Nebraska Revised Statute 28-1313 already makes it a misdemeanor to misrepresent a guide dog, and that was enacted in 1977. Without clarity in this law, landlords are subject to costly legal challenges or possibly thousands of dollars in attorney's fees and settlements to dispute lawsuits by unscrupulous actors. So I would ask this committee to support LB553 in advance it to General File. This is a very confusing and complex area of law so I'd be happy to answer any questions that you may have.

LATHROP: [01:45:44] Senator Slama.

SLAMA: [01:45:44] Thank you for coming in and testifying today. I was wondering if you could clarify a point on the fiscal note. The NEOC has provided a fiscal note that indicates up to \$260,000 in federal funds under a U.S. house-- HUD work-share agreement are at risk of being lost. Can you just go into more detail than what the fiscal note gives us into what's going on there and why that is?

GENE ECKEL: [01:46:10] Well, I just saw the fiscal note before this hearing today and what I believe they're trying to say is if this bill is adopted, that HUD would restrict their-- their federal funds to enforce the Fair Housing Act. Again, out of the 23 states that have enacted more stringent laws, HUD has not challenged them and I'm not aware of any of those states having their federal funds taken away. I would add that unintentionally we failed to put in social worker as one of those people who can verify someone's disability. That was unintentional. That's what HUD guidelines

does allow and so we would be willing to add that into the statute. I'm not sure if that's what the fiscal note was referring to because it didn't include social worker. But again, I haven't-- not aware of any HUD funds being taken away from any of those other states.

SLAMA: [01:47:09] Yeah. No, I think it's the other way around possibly because it's an addition of revenue rather than those funds being taken away so I'm--

GENE ECKEL: [01:47:17] Yeah, I probably can't speak to that.

SLAMA: [01:47:20] Yeah, I'll-- I'll--

GENE ECKEL: [01:47:21] But I'd be willing to review it and answer any questions you have after this.

SLAMA: [01:47:23] Thank you. Please do.

LATHROP: [01:47:26] Senator Pansing Brooks.

PANSING BROOKS: [01:47:28] Thank you. Thank you for coming, Mister-- is it Eckel?

GENE ECKEL: [01:47:33] Correct.

PANSING BROOKS: [01:47:33] Thank you for coming. What I'm interested in-- what-- is this definition of disability pursuant to our statutes? Is that-- it seems like such a small definition of disability that I don't-- have we-- have we compared that to the definition of disability elsewhere in our statutes?

GENE ECKEL: [01:47:56] I'm not aware if it's in the statutes or in the Nebraska Fair Housing Act. The definition comes from the HUD guidelines in 2013.

PANSING BROOKS: [01:48:08] OK, because it seems like there would be more-- that the definition of disability would be more comprehensive than that. So I'm interested, number one, if that's consistent with our current statutes. Number two, I'm interested-- so what about-- I have a situation where I know of some young people out state who are going to school outside this-- this state and they-- to-- and they have-- they have some sort of-- they have applied to bring their dog because of the fact that they have some sort of disability, and I'm not sure what that all is, but they see doctors here in Nebraska. So they would have to go and get completely reseen, retested by somebody in this other state, happens to be Washington, D.C., if this law were similar, to be able to-- I mean if this is going to be consistent across-- I'm just doing it in reverse. Pretend somebody had gone to somebody in another state like Missouri and then they came to UNL to go to law-- to school here. Then they have been seen and gone through a lot of effort because some of these disabilities take a lot of-- of-- of oversight by either physicians or psychologists or psychiatrists, whatever it is. So they have to go and go through the whole process again here in Nebraska? Is there-- is there a way to clarify and show that this is a valid physician in the other state? Isn't there some way to not force a-- a-- a person to double up their contacts with physicians and the costs in order to comply with what's-- what should be allowed under these federal laws for disability service animals?

GENE ECKEL: [01:50:17] Sure. And that's a good question. Under the Fair Housing Act if-- if a landlord can't see that someone-- it's not readily apparent that they suffer from a disability and they want to make sure that the letter or prescription that was provided them is legitimate, they can go through the verification process which means they would reach out to that physician or a mental

health professional, a social worker, and ask them if they filled that form out, does the person actually suffer from a disability, and then ask whether or not that animal does assist them with that disability. So there is that verification process that would not prevent someone coming in from out of state from having their accommodation granted. And again, this-- this statute is only, or this legislation, is only to apply to people who want to go on-line, pay a fee. So if someone in that situation isn't going on-line and paying a fee for a verification letter, they actually have a physician that they may have an ongoing medical relationship with that can verify to the landlord that they do suffer from a disability.

PANSING BROOKS: [01:51:33] Thank you.

GENE ECKEL: [01:51:34] You're welcome.

LATHROP: [01:51:36] I got a few questions for you, Gene. You passed out some law, some federal law, and this would be regulations from the Department of Housing? Federal-- federal--

GENE ECKEL: [01:51:51] Correct.

LATHROP: [01:51:54] -- regulations? To start with, there are-- there are different kind-- there's service dogs that may help somebody who is in a wheelchair or visually impaired and those-- those animals actually perform some function for the owner, right?

GENE ECKEL: [01:52:08] Correct.

LATHROP: [01:52:08] And then we have emotional support animals which people need because it's basically to deal with anxiety or some-- some problem that they're having in the realm of the

psychological.

GENE ECKEL: [01:52:23] Correct.

LATHROP: [01:52:23] Right? So when we talked about the fiscal note, that we're at risk of losing \$260,000 if we don't do this correctly, do these, do these statutes offend the federal law but it's not being enforced, or is there a way to comply with federal law, pass a bill like this without offending the federal regulations you provided us with?

GENE ECKEL: [01:52:48] Well, I'm hoping I'm answering the question correctly. So there is the federal Fair Housing Act and the Nebraska Fair Housing Act. Nebraska mirrors what the federal is. HUD guidelines come out and they're-- they become the law. So whatever HUD says is what the law is, because the Fair Housing Act doesn't specifically discuss accommodation for emotional support animals or service animals. It's broad and-- and general. But then HUD comes out with these guidelines and that becomes the law at that point. I don't know if I answered your question or not but--

LATHROP: [01:53:20] You-- you're starting to. And so do bills like the one-- I couldn't tell from your testimony if bills like we're considering today offend the regulations that have come out of Washington, D.C., on this subject matter and they're not enforcing them or it's possible to enact legislation with limitations on where you get your certificate without offending the federal regulations?

GENE ECKEL: [01:53:50] I do not believe they offend the federal or Nebraska Fair Housing Act.

LATHROP: [01:53:54] So the-- so the-- the fiscal note that says we're at risk for losing \$260,000 a

year, that's how this bill was drafted and not the fact that we're introducing it in the first place?

GENE ECKEL: [01:54:10] Yeah, I would say that. But again I just want to clarify that even with this bill, let's say it was-- it was passed into law. It only applies to people going on-line. And as Senator Pansing Brooks indicated, you can come in with a letter and it would-- it would work because someone came in from a physician. So I think the way this-- this legislation has been drafted, it's not going to restrict anyone from getting their accommodation or saying you can't use a doctor. It's just saying you just can't go on-line. So I think this would be in compliance with the HUD guidelines and the federal act.

LATHROP: [01:54:46] OK. I want to ask another question about these emotional support animals and-- and to-- what-- what do you have to do to qualify to get one? So I'm sure a lot of people get a great deal of comfort from their pets. Right? And to that extent we bring them into our homes because they do provide some-- some level of emotional support to everyone. What's the standard? Or-- or is there a standard for if I'm a psychologist, a social worker, whoever is going to make the call, here in the state after this bill passes, what's the standard used to determine whether I deserve this certificate or not?

GENE ECKEL: [01:55:31] I don't think there is a standard, at least I'm not aware of one. I think psychologists might have one standard that they go by, a social worker might have another standard, a physician might have a completely different set. There is no one standard. All the person needs is to have someone who's a mental health professional or a physician, social worker, psychologist to send-- give them a prescription or whatever saying this person suffers from a disability and we believe this animal will provide them comfort and assist with their disability. That's all they need to do.

LATHROP: [01:56:06] OK. And just to be clear, there's two reasons why this is a problem for people that rent apartments or homes and one is that if they have a no-pet policy, you can get around it with one of these certificates.

GENE ECKEL: [01:56:20] That's correct.

LATHROP: [01:56:20] Is that right? And if I were to be renting a place and bringing my dog with me without one of these certificates, I'd probably have to pay a damage deposit

GENE ECKEL: [01:56:32] You-- a security deposit? Yeah, if-- if you didn't have one of those, correct.

LATHROP: [01:56:36] Yeah. So everybody that rents an apartment is going to put some security deposit down. It's generally higher if you're bringing a pet with you.

GENE ECKEL: [01:56:43] Yeah, you would have to have an additional security deposit that Nebraska already allows for.

LATHROP: [01:56:46] But-- but that cannot be required of somebody with one of these certificates.

GENE ECKEL: [01:56:52] That's correct.

LATHROP: [01:56:55] OK. So what you're telling us is this appears in some respect to be a scam, what we're looking at, this site on the Internet--

GENE ECKEL: [01:57:03] Correct.

LATHROP: [01:57:04] -- where you can get a certificate by paying them \$25 or something.

GENE ECKEL: [01:57:06] That's correct. And I can-- just to add on to that, if-- let's say-- I've seen this happen before where one tenant may be allergic to cats and the tenant next-door to them requests accommodation for their cat to be an emotional support animal. The landlord really can't do anything about it. And then you put the other tenant at risk of their allergies, whether or not it's going to be a serious medical problem for them. And it ended up-- it's also a problem when you have one of these letters from on-line provided to a landlord and the landlord wants to do the verification process and they can't get ahold of the doctor. So in that case, the landlord will just be cautious and go ahead and grant the accommodation because they're afraid that if they don't, even though they can't get ahold of these on-line people, that there's going to be a complaint lodged against them and then they have to defend against it.

LATHROP: [01:58:05] Do the federal-- these regulations that you provided us with today, do they tell us or give any guidance on what a physician, social worker, psychologist, or licensed mental health practitioner, what the criteria should be?

GENE ECKEL: [01:58:26] No.

LATHROP: [01:58:27] Are we free to set that or do we have to be general as paragraph (b) is that just says mental or physical impairment "that substantially limits one or more major life activities"?

GENE ECKEL: [01:58:40] The state can be more specific if it would like to.

LATHROP: [01:58:46] OK. I think that's all the questions I have and I don't see any other questions. Thank you for--

GENE ECKEL: [01:58:50] Thank you, Senator.

LATHROP: [01:58:51] -- courtesy. Good afternoon.

RYAN NORMAN: [01:59:05] Good afternoon, members of the Judiciary Committee. My name is Ryan Norman, it's R-y-a-n N-o-r-m-a-n, and I'm an attorney who represents rental properties and managers in Lincoln. LB553 is commonsense legislation that will greatly improve the relationship between property owners and tenants who legitimately need emotional support animals. My clients strongly support the right of disabled persons to seek reasonable accommodations. However, dealing with and being forced to approve fraudulent requests has soured the relationship between property owners and people who make-- who need emotional support animals when they're legitimate requests. Additionally, evaluating fake emotional support animal requests to determine who in fact has a real need distracts owners and operators from their primary purposes which is to provide housing. As you've already heard, a number of states, including surrounding states, have already passed similar or more stringent legislation, often even making it criminal in some cases. LB55-- or LB553 doesn't do that. It's a relatively noninvasive way for Nebraska to protect the rights of property owners and ensure fraudulent activity is not occurring while balancing a legitimate need for Nebraska residents with disabilities. I urge the committee on behalf of my clients to support LB553 and to advance the bill to General File. Before I take questions, I wanted to address a few of the questions that Mr. Eckel got, maybe provide a little more clarity. Senator Pansing Brooks, I think your question about an out-of-state resident moving into Nebraska, I think actually in the language of the bill, this only applies to a resident of Nebraska who's-- who's moving into an apartment or a unit here. So the language of the bill actually says it's made available to-- make a

dwelling available to a resident of this state, so somebody moving in from out of state actually isn't covered under this bill as it's currently drafted, if that makes sense. Senator Lathrop, one of the things that-- that you were discussing was how some of the problems with the current system, things like not having to pay pet deposits, another big thing, and I think this was what Senator Clements' constituent was going to talk about, was he had somebody come in, I believe, if I'm correct, that wanted to have a pit bull be their emotional support animal. Currently a lot of apartments have restrictions on size of animals. If you have an emotional support animal, you get-- you can get around that as well. So I mean, you know, you've got a 20-pound limit on a dog but somebody comes in and says their 80-pound pit bull is a-- is an emotional support animal, the apartment complex has to approve that. And under-- you know, the current way things are going, the people are just getting around that by getting these on-line-- you know, the things on-line and getting around it that way. So with that, I would ask that you support this bill and pass it to General File and I'll be happy to answer any other questions that you have.

LATHROP: [02:02:32] Senator Pansing Brooks.

PANSING BROOKS: [02:02:33] Thank you for coming in, Mr. Norman. I guess then so you're just-- you're not dealing with people from out of state? The-- the way that this legislation is drafted, it's not. Originally I think that our original draft of this bill would have. We got some push back on that very issue which I think is why it's drafted the way it is.

RYAN NORMAN: [02:02:58] So I don't know. I think it's interesting because it doesn't cover all people, so-- and I'm not sure that it's clear. Where-- where is it clear? I mean it does talk about the practitioner being a resident of the state but it doesn't really make clear to me that this doesn't apply to somebody moving in from out of state. Where would you say that that applies?

RYAN NORMAN: [02:03:26] So under section (2), "Any person who offers to rent or otherwise make available a dwelling to a resident of this state who is a person with a disability..."

PANSING BROOKS: [02:03:38] So it really does leave open anybody else.

RYAN NORMAN: [02:03:40] The way it's currently drafted, it does, meaning people moving in from out of state, yes. That--

PANSING BROOKS: [02:03:46] How-- how will you-- you are an attorney for rental properties. What will you recommend to your clients about people moving in from out of state?

RYAN NORMAN: [02:03:56] Well, I would recommend that they do the same type of background check that they do now. You know, if I could draft this legislation any way I wanted to, it would include out-of-state people, but obviously the concern that you bring up is legitimate. So, I mean, I would support, and I think my clients would support changing the legislation in some way to either make a-- make that more clear with out-of-state people and have a way for them to check with those people what their doctors-- whether those-- they have legitimate doctors and aren't just using these on-line services. That's the way I wish it was drafted or if we could get it passed that way, I'd be happy to have it drafted that way. But if-- if this passed, I would tell my-- my clients that-- that come up with people from out of state that they should just use what they're currently using in terms of the background information that they check now, meaning--

PANSING BROOKS: [02:05:04] Well, or not-- or not rent to people from out of state?

RYAN NORMAN: [02:05:05] Oh, no. I mean they-- I absolutely wouldn't tell my clients not to rent to somebody from out of state. [LAUGH]

PANSING BROOKS: [02:05:12] That would be good. But it just seems like by not covering them, that that will be the unintended consequence, that if there's no way to cover and to clarify what you're trying to do with Nebraska residents, why would anybody that is trying to be-- to rent to people, rent to anybody from out of state?

RYAN NORMAN: [02:05:36] Well, I mean, I think that--

PANSING BROOKS: [02:05:36] Just to rent but I mean--

RYAN NORMAN: [02:05:38] I mean they've got to make money so one of the--

PANSING BROOKS: [02:05:40] -- to cover your-- your-- your risk.

RYAN NORMAN: [02:05:43] Sure. And I understand the fear with that which is why I would be in support of changing the-- the draft a little bit to include out-of-state residents. I don't think that this-- this legislation is going to keep property owners from renting to out-of-state people because there's a lot of other benefits of renting to people outside of, you know, just this. But that's a legitimate concern.

PANSING BROOKS: [02:06:08] We do want to be welcoming to out-of-state people to come here.

RYAN NORMAN: [02:06:12] Absolutely.

PANSING BROOKS: [02:06:13] Thank you very much.

LATHROP: [02:06:14] Do these federal regulations providing any-- are we permitted to place a limitation on the kinds of animals that can serve as support animals?

RYAN NORMAN: [02:06:23] We aren't. Under the HUD guidelines, my understanding is that we can't-- that we can't-- at least in terms of my understanding of the HUD guidelines, no. And--

LATHROP: [02:06:37] So the pit bull, big snake, whatever people want to--

RYAN NORMAN: [02:06:41] Right.

LATHROP: [02:06:42] -- get comfort from or need comfort from.

RYAN NORMAN: [02:06:47] The HUD guidelines as they're drafted just aren't very clear and people like me at a national level have been pushing for clearer HUD guidelines for years and they keep pushing back the date and that they're going to do that. And in the meantime we've been left to fend for ourselves with things like this.

LATHROP: [02:07:07] I asked Mr. Eckel when he testified about the fiscal note that says we're at risk for losing \$260,000 a year if we pass this, is that because, if you know, are-- and my question to Mr. Eckel, since you're a lawyer in the field, I'll ask you. Does the federal-- do the federal regulations say we can't pass these bills but they're not enforcing that and they're still sending out the money to the states, or is there a problem somebody perceives with way this bill is drafted in relationship to these regulations?

RYAN NORMAN: [02:07:42] So we drafted this bill specifically to go along with what the HUD

guidelines say. So I don't think that's the issue. I think that the issue-- I-- like Mr. Eckel, I read that right before I came in, so I didn't get a good chance to look it over, but my understanding from my reading of it was that the big problem that they had on that was that, and I wrote it down here, was that social worker wasn't added in the legislation.

LATHROP: [02:08:13] Oh, OK.

RYAN NORMAN: [02:08:14] That was my understanding of the fiscal note and I could be wrong. Somebody else might testify to that but-- and-- and my understanding is that that was just an oversight on our part of not including social worker in the legislation.

LATHROP: [02:08:25] OK. They might have served us better by telling us what the deficiency was but--

RYAN NORMAN: [02:08:30] Correct.

LATHROP: [02:08:30] -- OK. I do not see any other questions for you. Thank you for your testimony.

RYAN NORMAN: [02:08:35] Thank you, Senator.

LATHROP: [02:08:37] Next supporter. Good afternoon.

JOHN CHATELAIN: [02:08:52] Good afternoon, Senator Lathrop and other members of the Judiciary Committee. My name is John Chatelain. I'm a private practice lawyer in Omaha. I work a lot with landlord-tenant issues and also serve as president of the Metro Omaha Property Owners

Association. And MOPOA affiliates with other groups in the state that are similar through the Statewide Property Owners Association. And I believe a lot of the comments by the other two gentlemen have been very good. I won't try to reiterate what they're saying. But our association does strongly support LB553. We get lots of complaints and concerns from our members about how to deal with this-- this conundrum of trying to satisfy the tenant's need without offending other tenants. And one particular issue is that property liability insurance doesn't cover certain breeds of animals or certain breeds of dogs, so the landlord really is at risk if-- if a certain breed of animal comes in that's not covered by the liability insurance and then it injures perhaps that small child living in the building and then the landlord has no coverage for that. So we are very concerned about this. We do strongly support the rights of the disabled persons, however, to seek reasonable accommodations, but I think the point is that they need to be reasonable accommodations. I think the question you asked about a snake or something, I think we have to keep in mind that it must be reasonable. A tenant couldn't bring in a bear, for instance, that might be clearly dangerous to other people. And the-- also the issue is that we have the Web sites that have popped up to provide false certificates on-line where the tenant never meets the professional. I don't know how they can be adequately diagnosed and cared for by someone that's not even a professional and someone that's not even met this individual. So I believe the language that I've seen in LB553 addresses that issue. We would have no objection to maybe an amendment to satisfy Senator Pansing Brooks's issue about someone that moves here. If they saw a professional person in the state of their residence and they moved here, it seems to me that perhaps that could be a reasonable amendment. But what we're concerned about is-- is the fake requests to-- to determine legitimacy and we'd like to address those. And I applaud Senator Clements for bringing this bill up here. A number of states have passed similar laws and we would like Nebraska to do so also.

LATHROP: [02:12:05] Very good. Thank you for your testimony today.

JOHN CHATELAIN: [02:12:07] Thanks. Any other questions?

LATHROP: [02:12:08] It doesn't-- it doesn't look like it.

JOHN CHATELAIN: [02:12:10] Thank you.

LATHROP: [02:12:10] Thank you. Next supporter. Good afternoon.

LYNN FISHER: [02:12:21] Thank you, Senator Lathrop and members of the committee. My name is Lynn Fisher, L-y-n-n F-i-s-h-e-r. I'm a landlord and investor in real estate here in Lincoln. I'm also on the board of the Real Estate Owners and Managers Association and represent them as well. We're in support of this-- of this bill. We fought for a long, long time to try and come up with a solution for this problem that we deal with on a continuous basis. Years and years ago, we-- we did allow pets and learned early on that it's a very expensive proposition and we decided as a business policy not to allow pets and it saved us tens and tens of thousands of dollars in reducing the damages that are caused by-- by pets. So that's been our policy. However, we have many, many people that are disabled that have emotional support animals or service animals and we're more than happy to grant them reasonable accommodation and we do so all the time. Unfortunately, there are people that are willing to be deceitful and, in order to get around the rules that we have, are willing to go out on-line and seek out a-- I guess we call them kind of emotional support animal letter mills. You'll see them from practically anywhere. We had one tenant that brought us a letter from a doctor in Hawaii-- no possible way that she ever saw or met that person. And so we denied her-- her request. It's just one of those things that, you know, we've dealt with. We actually had a fair housing complaint based on that, that denial, and we prevailed because we thought it was unreasonable for that person not to seek out, you know, help that came from an obvious qualified person here locally.

LATHROP: [02:14:24] OK.

LYNN FISHER: [02:14:24] She did that and now she has her animal and we're-- and we're happy to support her in that, but I think it was just a lesson learned from everybody's perspective that it needs to be real and we'll-- we'll be happy to accommodate anyone who actually has a true need. Be happy to answer any questions.

LATHROP: [02:14:43] I don't see any questions. Thank you for your testimony.

LYNN FISHER: [02:14:46] Thank you.

LATHROP: [02:14:48] Anyone else here in support of LB553? Anyone here in opposition to LB553?

BRAD MEURRENS: [02:15:12] Good afternoon, Senator Lathrop, members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I am the public policy director for Disability Rights Nebraska, the designated protection and advocacy organization for persons with disabilities in Nebraska. And I'm here in opposition to LB553 as it's currently written. Our opposition to the bill is not to say that we approve or endorse people trying to game the system. Rather, our opposition to the bill is threefold. First, it has problems with the definition of assistance animal, disability, and health service provider, which in turn creates further problems with implementation. Two, its implementation is problematic for several reasons. And three, the goals can be largely achieved through education and enforcement of existing federal law on a case-by-case basis rather than by blanket dismissal of a certain type of documentation. LB543 conflate-- or LB553 conflates the definitions of service animal and emotional support animal. Service animals are defined and regulated by the American with Disabilities Act, the ADA. They are only a trained

dog or a miniature horse. A cat by definition is not a service animal. The definition also specifically excludes emotional support animals from the definition of a service-- service animal. The Fair Housing Act, as we have said before, is the federal law that regulates emotional support animals. The problem with the definition of assistance animal in Section 1 is that given the distinct definitions in federal law and the stark differences in the treatment of service and emotional support animals, these two definitions and categories cannot be combined. Furthermore, the definition used in the bill is the same language that's in the-- the HUD document that I've handed out to you. However, it's used as an umbrella term to generically describe both service animals and support animals and is not intended to be a legal definition. The definition of disability, Senator Pansing Brooks, as you-- is not consistent with the federal definition of disability in the ADA. LB553 should rely on the definition of disability in the ADA and not create a new definition for this particular issue. Healthcare provider definition is insufficient. Psychiatrists, as well, can also prescribe or provide the documented basis for a service or-- or the emotional support animal. The ADA does not require a doctor's note, for lack of a better term, for a person with a disability to have a service animal. Since that is expressly what is called for in subsection (2) for an accommodation of an assistance animal, we're concerned that this may run afoul of the ADA's protocol for service animals. Subsection (2) is also suspect given the limits on questioning a person with a not-readily-apparent disability about his or her service animal. And I would also say that an implementation problem is I think that if you-- if the landlords were to call a doctor to ask if this person has a disability and what their disability is and do they-- that-- I would-- I would assume that that answer would go-- the question would go unanswered. You know, it relies on the psychic powers and research ability of landlords, like how do they know it's from the Internet? How do they know it's not legitimate? How does-- how do they know that this person does not have a disability? If-- and that's really an-- a set of intrusive questions that they're not supposed to ask. So with that, and if-- with that, I would be open to answer any questions that you may have on this bill. I don't see any questions but--

PANSING BROOKS: [02:19:01] I guess I have--

LATHROP: [02:19:01] Oh, I'm sorry, Senator Pansing Brooks.

PANSING BROOKS: [02:19:03] Hi. Thank you for coming, Mr. Meurrens. So did you work with Senator Clements on some of these issues?

BRAD MEURRENS: [02:19:11] We had received a very rough, rough, rough initial rough draft of proposed language many, many months ago. We had met with our legal staff, had reviewed the language and had said that-- and had sent feedback to the proponents at that time. But, no, we have not talked specifically with-- with Senator Clements, no.

PANSING BROOKS: [02:19:32] OK. I'm trying to look up what the definition-- how it differs, the definition of-- of a disability.

BRAD MEURRENS: [02:19:43] Yeah, I think the-- I think it's like-- for example, I think that there's a definition in Nebraska Statute 48-1102. It talks about having a disability affecting one or more activities of daily living or a history of having those types of disabilities. There's a-- the definition disability in the ADA is much more extensive than what's provided in this bill.

PANSING BROOKS: [02:20:10] So I can't-- I mean it seems to me that Senator Clements would be probably open to using the correct definitions. So if the definitional matters were dealt with and-- and it was more comprehensive in-- in the way it was drafted, what are the true sticking points then? I'm sorry, and you may have said that, but it seems like definitional things we can handle.

BRAD MEURENS: [02:20:39] Um-hum.

PANSING BROOKS: [02:20:39] So what is the-- what is the --what are the remaining issues then, and does it have to do with being an out-of-state person, but are there ways that that could be handled as well?

BRAD MEURENS: [02:20:52] Well, I think that's a good question. I think that you also have to look at section (2). I mean even if you-- even if you unbundled or, you know, unraveled the definitional problems, second thing is, you know, you'd have to go then and change subsequent sections in the bill where you would only have to make-- you'd have to make-- have language that said that you can only have those three components that are in section (2)-- section 1, sub (2)(a) through (c) would only apply to those individuals who are requesting an accommodation under an emotional support animal because those questions are not legitimate to ask a person who is getting a service animal under the ADA. Right? So I think you'd have to-- you'd have to not only make some of those definitional changes and unraveling those but then also would have to cascade into changing the language in subsequent sections that's premised on what that definition is. So like when later sections you talk about assistance animal, have to get a doctor's note, that would have to be changed. There's also, again, implementation issues, like how do they know this person is not disabled? How do they know that they'll let the-- let-- that the animal does not sufficiently deal with and manage their disability? How do they know it's not on the Internet? How do they-- you know, are they going to call doctors. And the doctor's not going to tell them the person has a disability. And I also think, you know-- you know, and the HUD document talks explicitly about how like when a person who's requesting this emotional support animal, is it a reasonable accommodation? The accommodation can be-- can be denied for like three main reasons. It's going to cause a fundamental change in cost-prohibitive for the person to-- the landlord to make a change, the animal is not house trained, it's not housebroken, it's not under control, right, or if the animal threatens or is

a-- or dangerous to other people or other animals in the area, that a combination can be denied. And that's why we say it's not about changing the law. It's about educating all the parties involved, landlords and individuals in and out of state who are-- have a disability or who would be requesting such an animal, because there's already provisions in the federal law under the Fair Housing Act and the ADA that cover things like, you know, if this-- if the animal is not behaving, they have the authority to make changes, either an additional accommodation like move that person to a different location within the complex if that's available, you can-- or you can up-- straight-up deny it. And I think the, you know, the H-- the HUD document is also good because it talks about how-- that it's incumbent upon the landlords to know the law and to be able to apply and enforce the existing law, not put the burden on an individual-- an individual who has to then prove over a-- you know, overcome a preponderance of the evidence or is-- or attitudinal skepticism about whether or not their document is legitimate.

MORFELD: [02:24:17] Mr. Chairman.

PANSING BROOKS: [02:24:17] OK, so if-- if this were-- if this bill were-- mirrored some of the federal language, would you feel better about it?

BRAD MEURENS: [02:24:28] I'd have to-- I'd have to see what that-- what that language would be--

PANSING BROOKS: [02:24:31] [INAUDIBLE]

BRAD MEURENS: [02:24:31] -- and how that would change the subsequent-- subsequent--

PANSING BROOKS: [02:24:35] What's your response to what is seen as scammers out there, how

to avoid, because that isn't good for the--

BRAD MEURRENS: [02:24:48] Yeah.

PANSING BROOKS: [02:24:48] -- for disabled people either to have scammers out there making up something about people who really do not have a disability.

BRAD MEURRENS: [02:24:54] I'm-- I agree. I agree. I don't--

PANSING BROOKS: [02:24:56] [INAUDIBLE] speak to that, please.

BRAD MEURRENS: [02:24:57] Sure. I think that-- well, I think it's-- it's the proverbial Gordian knot, right? I mean, how do we know that this is not a legitimate inquiry? How do we know that that person doesn't have, you know, chronic depression but doesn't display it? You know, I mean, we-- you know, I know individuals that have significant disabilities but you wouldn't be able to tell because they don't exhibit those problems, which means, you know, how do you tell that person that their disability is illegitimate? And I would also think that it would be worse to blanket deny someone their accommodation because you didn't like the form or you didn't like the name or you didn't like where their documentation came from, which-- which, by the way, you can't prove, right? So I think it's-- it is better to err on the side of caution than to err on-- and to-- and to examine the appropriateness of that service animal or the emotional support animal on a case-by-case, substantive evaluation. You know, is the animal out of control? Is the animal-- is the emotional support animal being brought out on a regular basis into areas of the complex that they are not supposed to go, because the Fair Housing Act allows that emotional support animal to stay in the domicile, not to go out to common areas where an-- where a service animal under the ADA would be allowed to go.

PANSING BROOKS: [02:26:27] Thank you, Mr. Meurrens.

BRAD MEURRENS: [02:26:28] Sure.

LATHROP: [02:26:32] Do you have-- OK, Senator Morfeld.

MORFELD: [02:26:33] Thanks for coming in today, Brad. And I'm still wrapping my head around what's currently in law and what's not, so I'll do some research after. I guess my concern is, is that, yeah, you can't make assumptions about anybody, but I think that there needs to be some kind of reasonable process by which an individual goes to somebody who's a professional of some sort and says that I have a-- I have an issue or a disability and I need to have a service animal, then that person who is actually certified, not just a random Web site or something like that. I mean, listen, I know what it's like to go on a random Web site. I became a reverend by paying 50 bucks and going on a random Web site. I think that there needs to be a little bit tighter of a process. And I understand that there are some guidelines and there's already some federal rules and regs. But I would encourage you to work with them to find a-- find a way because right now I think it's too broad and I think it's too much of the Wild West. And my concern is, is my step-grandfather, who passed away a while ago, he actually had a legitimate disability, not saying that there's other folks out there that aren't that are-- that are doing this, but he had a legitimate disability. He was in a wheelchair. He had a service animal. And one of the things that really frustrated him, and it kind of frustrated me, were folks who make up reasons to have service animals who don't-- who then delegitimize the seriousness of people with disabilities actually having a service animal, because it is a really serious thing for a lot of people, whether it's depression or whether, you know, it's my-- my grandfather has a physical disability. So I understand some of your concerns and where you're coming from. We've worked together before. I get that and I respect that. But I think that there has to be a little bit more

of a middle ground because right now I-- I feel like it's kind of the Wild West. And I also understand from a landlord perspective, because I-- I have a rental property, what it's like to have damage and-- and all that. You want to give people the benefit of the doubt, but I think this is something that's better discussed off the mike a little bit and sitting down. I would really encourage you to work with Senator Clements on this because if you don't work with Senator Clements, my inclination is to vote this out of committee and to have-- force a broader discussion. But it sounds like there's-- there could be some middle ground.

BRAD MEURRENS: [02:28:50] OK.

MORFELD: [02:28:50] Thank you.

LATHROP: [02:28:51] I see no other questions. Thanks for your testimony.

BRAD MEURRENS: [02:28:54] Sure.

LATHROP: [02:28:54] Anyone else here to testify in opposition to the bill? Good afternoon.

MARNA MUNN: [02:29:08] Good afternoon. OK. My name is Marna Munn, that's M-a-r-n-a M-u-n-n, and I'm the executive director of the Nebraska Equal Opportunity Commission and author of the notorious fiscal note. And so I'm here to testify-- though I understand the concerns raised today and I'm not unaware of them, I am here to testify in opposition to the bill. I'm going to start just really quickly hitting my broad general points and then we can unpack some of the more specifics. And if I run out of time, then I'll just take your questions as you have them. The bottom line is, this bill could jeopardize what's called substantial equivalency with the federal Fair Housing Act. The consequence-- the reason it could is because the language does not comport with federal

interpretation or guidance on this issue. The consequence is that it could cause HUD to cease its work-share agreement with the Nebraska Equal Opportunity Commission. And the bottom line and maybe the most important point I could make here is regardless of what you do with the language here in this state act, an individual who doesn't like it can file with HUD on the federal level and anything you pass with regard to limiting who provides that letter doesn't make any difference to the federal claim. And so that's the reason we seem to be so reliant on the interpretation that HUD has put forward, because anything else we do on the state level does not stay necessarily on the state level. An individual complainant with a claim could simply just go to HUD and have them review it and they are not bound by the language that you pass in this-- in this bill. But to go back through just quickly, as long as we maintain what's called a substantial equivalency, we can maintain these work-share agreements where essentially HUD pays us to do the investigation on Nebraska-based claims that could be dual filed. So rather than have two agencies, because there is substantial equivalency between the law, there is one investigation which is-- is done for administrative efficiency. I suppose the other thing is, is you could have two cases that a landlord is looking at one in the state under the state law and one under the federal law and then they're dealing with two different cases that they're-- where the result might be different but the burden may be doubled. I'm not going to go through what I had for specific concerns over definitions because I think we've hit most of those. We-- and as-- and to your point, Senator Pansing Brooks, we can probably adjust definitional issues. But what I would tell you is the only-- not the-- 2013 joint statement is not the only guidance that HUD put out. They also have a 2004 guidance and the 2013 does not remove the guidance they provide in 2004. And in fact, I know for a fact it's very specifically still in effect. And I'd like you to know that in that, the language says a doctor or other medical provider, a peer support group, a nonmedical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide the verification of the disability and the need for the emotional support animal or assistance animal under this language. And I think that the only other thing that I'd want to say is, to Senator Morfeld's point it would be nice if there was a process

that could help with all of this, there is. It's called the interactive process. And the law strongly, if not requires, strongly encourages the landlords and tenants engage in that process in order to figure out what is reasonable, which, like any reasonable thing, a standard under the law is a fact-based discussion. I can stop there and take your questions to finish that or answer any other questions that you have since I've-- my red light went.

LATHROP: [02:32:50] I'm going to ask a question--

MARNA MUNN: [02:32:53] Sure.

LATHROP: [02:32:54] -- if you don't mind and that is-- we had-- we had the how come-- how come the-- we got the fiscal note--

MARNA MUNN: [02:32:58] Yes.

LATHROP: [02:32:59] -- [INAUDIBLE] we were at risk. And what you're saying is, if we're going to do this, it has to mirror the federal regulations or we don't have--

MARNA MUNN: [02:33:11] Right. One of three things could happen and I can't predict for-- to you 100 percent what will happen. The HUD could determine that this takes us out of substantial equivalency with the Fair Federal Housing Act. And as a side note, I understand that it's been suggested today that so many other states have done this and it's not a problem. Well, I would say two things to that. Some of those laws are actually criminal laws and they're sort of extraneous to the Fair Housing Act. So HUD isn't going to necessarily punish the state for what's in the criminal code even if it sort of is given rise to under the Fair Housing Act. So those are not really good comparators. And the other thing is, is that it's not just theoretical. Though the law isn't-- it did

many other things, Missouri passed a law a year and a half ago, so some of this I'd need to know when the laws were passed. Sometimes it takes a while for the work-share agreement that exists to run out. And so I can't speak to the timing of the other laws that were being raised by the-- by the earlier testifies. But sometimes it takes a bit of time for the work-share agreement to run out. But, for example, Missouri a year and a half after passing a law that HUD deemed to take them out of substantial equivalency, they did, and their work-share agreement with Missouri and currently HUD handles all of the housing complaint there, you know, whoever comes to them out of the state of Missouri for the housing complaints from Missouri. It just changes the game hugely. But so one of three things could happen. HUD could decide the substantial equivalency is gone and, therefore, they don't refer any more cases and they handle the ones that come to us. Two, they could decide that anything dealing with a reasonable accommodation and/or a reasonable accommodation as it relates to a service or an assistance animal, they'll take those cases. And then the other thing is the functional equivalent could happen. People-- complainants will essentially figure out that they have more protections under the federal law and they'll just bypass us, which could amount to the same thing. So (a) and (c) lead to about a total loss and (b) leads to some partial loss that it's hard to actually predict.

LATHROP: [02:35:12] So let me ask you a couple of more specific questions.

MARNA MUNN: [02:35:16] Sure.

LATHROP: [02:35:16] If the goal of this bill is to-- to end the practice of getting on-line and from some anonymous person who will generate a letter for a fee and send it to the person in Nebraska who then takes it to the landlord, can we regulate without getting in trouble with these regulations? Can we regulate the source of the letter or whatever documentation there is relative [INAUDIBLE]

MARNA MUNN: [02:35:43] Darn it, I'm an attorney, and so I got a waffle here a little. I think that what you heard other testifiers say is probably the thing to keep in mind. Though HUD has been asked to-- they're aware of this problem, they're very aware of this problem, and yet they have not issued anything that limits or restricts the practice and-- and so because of that, I think that you could infer that to do so on this level is just not where HUD is at with this, which is why I think they reserve the right to handle this as a problem with substantial equivalency if they so choose, because they could further limit this if they wanted and they haven't done so, even when requested and even knowing about the problem. So I think that we walk a very dangerous line to do so on this level. And again, somebody can just go to the federal act and the language isn't there and then they don't have to deal with what we do on-- in this bill.

LATHROP: [02:36:43] So are you saying about all we can do on this subject is to come up with something that mirrors the federal regulations? They don't have a provision in there about not getting your certificate off the Internet and so if we put that into any bill that otherwise reflects the regulations from HUD, that we will be out of substantial equivalency.

MARNA MUNN: [02:37:05] I-- I believe so. I don't want to-- I can't speak for HUD fully. But what I could tell you is that they wouldn't want to presume that just because you got the certificate on-line, the person wasn't disabled and didn't need the animal. In terms of the point whether you can have a therapeutic relationship with somebody outside the state, I'm a state agency director and maybe I'm aware that the state EE-- EAP system, for example, maybe uses counselors out of the state. I mean I don't know if they're licensed here, but certainly I've heard of people on the phone dealing with issues in Minnesota. So it's not as if that can't be a legitimate relationship, and so it presumes that that can't be. What I can tell you is our agency has dealt with this exact kind of claim. We've had this as the basis for the assistance animal and where they've engaged-- landlord is engaged in an interactive process and has asked for more not necessarily evidence of the disability

but that they provide something that more substantiates the need for the animal by someone who's in a "position to know," which comports with that 2004 guidance, and the individual has not been able to produce anything other than a certificate from the Internet-- Internet, we have not found reasonable cause for discrimination to have occurred under the Fair Housing Act and that hasn't been challenged. I'm not trying to drum up business. I'm just saying.

LATHROP: [02:38:31] Not black and white, is what you're saying.

MARNA MUNN: [02:38:31] Correct. I mean and that's, you know, sort of inherently the problem with something based on a reasonable standard, right? It's so fact based it's hard to nail it down.

LATHROP: [02:38:46] Senator Pansing Brooks.

PANSING BROOKS: [02:38:48] Thank you for coming, Ms. Munn--

MARNA MUNN: [02:38:49] Yep.

PANSING BROOKS: [02:38:49] -- and for clarifying what's going on federally. So can you walk me through the process of filing federally with HUD that you talked about?

MARNA MUNN: [02:38:58] Sure. I mean I think that they have both an on-line-- they can simply go on-line. They've got an on-line filing system. We don't, in part because we have a state notary-- I mean a notary requirement that the feds don't have. So they are able to do an on-line complaint file or an inquiry and/or they can call them and they can kick off an investigation that way. Sometimes we work we-- we work with the EEOC, as well. Sometimes the feds have what you would call a pet project, not to be "punny" here, but they have a vested interest in certain subjects on the federal

level so they may take those cases automatically and choose to investigate. But generally they refer back to Nebraska the inquiries they get. So, for example, after the month-long shutdown, some people didn't get through but they sent us maybe 14 or 15 inquiries that had come through and that's just to us. They could also be sending them to Omaha, to the OHHRD organization, and Lincoln, LCHR, may have gotten additional ones, but we got 14 or 15 alone just after the month of shutdown of inquiries that went, that already go to HUD, and then they refer back to us under the work-share agreement.

PANSING BROOKS: [02:40:07] OK. So is this an informational process or an appeal process? What-- what is this process?

MARNA MUNN: [02:40:12] No, they can-- yeah, they can file a complaint of discrimination under-- well, with us, one of the five acts we enforce, but one of which is the fair-- the Nebraska Fair Housing Act.

PANSING BROOKS: [02:40:21] OK, sorry. I--

MARNA MUNN: [02:40:22] Yeah. Nope, it's just an original administrative process.

PANSING BROOKS: [02:40:28] OK. Thank you.

LATHROP: [02:40:28] So one more question--

MARNA MUNN: [02:40:29] Sure.

LATHROP: [02:40:30] -- kind of on the same lines. So if I'm a landlord and I have somebody that

rolls in and they have a cat and they-- they say I really need to have this cat here and I've got a note. What's-- what resources do landlords have to-- to answer these questions, because you're talking about two sets of regulations and a guidance or something, if I'm-- if I'm keeping up with you while you're testifying, and how's-- how's, you know, Joe the landlord know what they-- what they can ask, what they can't ask, what they can require--

MARNA MUNN: [02:41:07] Yeah.

LATHROP: [02:41:07] -- and when they're crossing the line into an area where they're going to get a complaint filed against them.

MARNA MUNN: [02:41:12] Yeah. I can answer with what's safest and then after that, you know, you get on shakier and shakier-- shakier ground. They-- again, the law would say that if the disability is obvious, then you can't really ask anything more with regard to the disability.

LATHROP: [02:41:30] So if they-- if they're obviously visually impaired?

MARNA MUNN: [02:41:34] Correct.

LATHROP: [02:41:36] OK.

MARNA MUNN: [02:41:36] That does not mean that you couldn't ask someone who has an obvious disability about the need for the emotional support animal under the Fair Housing Act, which is something that gets misunderstood, because if they have a service animal, that's one thing. But if they have an emotional support animal, court guidance has said that, you know, for each animal you have, you need a separate-- you can-- landlord can risk-- you know, so if you come in

with three cats, you need to have a separate letter or a representation that each of those cats is needed for emotional support and what it is they do, right, so one might-- they might do different things for you.

LATHROP: [02:42:11] I'm-- yeah.

MARNA MUNN: [02:42:12] Is that what you're-- I mean, I'm probably going on a--

LATHROP: [02:42:14] Well, is there a Web site people can go to that walks them--

MARNA MUNN: [02:42:17] Well, we have some guidance.

LATHROP: [02:42:18] [INAUDIBLE]

MARNA MUNN: [02:42:18] WE have our educational guidance. I think that you can go-- HUD has a sample letter. It's not-- you don't have to meet everything in it, but it's a good letter that someone could have filled out. They have that guidance out there. You know, we just continue-- to Director Meurrens' point, we try through education, which we've tried to amp up. I've spoken to two real estate associations in the last three months in Lincoln and in Gage County and we'd-- we're trying to be available to educate and be a resource for free and we can do it via Webex. We can reach all parts of the state and-- and we regularly are in Scottsbluff, you know, at their-- they have an annual meeting that we go to. So some of it's education through us which we provide for free and, you know, we do have people-- so this brings up a point I think I need to make. The other problem with this is if you pass it and someone complies with the language of this law, it may actually cause them to be up to violate federal law, right? The confusion it could create, they will think that the state law applies to them and that they're safe by asking the questions this says they

can or doing what it says they can. And then if it gets filed in the federal court, in the federal system, they could be-- I mean it could really create a problem. I'm not trying to be alarmist. These are all possibilities and not just-- ones that have been openly discussed in different forums, so.

LATHROP: [02:43:41] OK, well--

MARNA MUNN: [02:43:41] Yeah.

LATHROP: [02:43:43] Yeah. Senator Morfeld.

MORFELD: [02:43:46] So is another possibility is that we pass the law, it goes through the court system as we do in federalism, and that-- the court finds that it doesn't violate the rules, regs, the intent of the federal law? Is that a possibility too?

MARNA MUNN: [02:44:02] I'm trying to think how you get there. I mean, yeah, I guess somebody--

MORFELD: [02:44:05] Well, you--

MARNA MUNN: [02:44:05] Yeah, somebody with standing could bring it, yeah.

MORFELD: [02:44:07] -- could pass a law, it gets challenged.

MARNA MUNN: [02:44:09] Sure.

MORFELD: [02:44:09] Our-- we have an Attorney General [INAUDIBLE]

MARNA MUNN: [02:44:11] Absolutely.

MORFELD: [02:44:12] OK. Thank you.

MARNA MUNN: [02:44:12] Well, the Attorney General by law has to defend us but, yeah, yeah, I mean-- or they're supposed to. They can do what they want but they're--

MORFELD: [02:44:19] Well, it is the law.

MARNA MUNN: [02:44:20] Right.

MORFELD: [02:44:20] No, I--

MARNA MUNN: [02:44:21] Well, no, I mean, do you understand? If we're named in it, then--

MORFELD: [02:44:23] Yeah.

MARNA MUNN: [02:44:23] -- it starts there but I'm not trying to quibble about that.

MORFELD: [02:44:25] Absolutely. I know they're supposed to defend us too.

MARNA MUNN: [02:44:26] So they-- I don't speak for them. I used to-- I used to work there, but I don't speak for them.

MORFELD: [02:44:29] OK. Thank you very much. Appreciate it.

MARNA MUNN: [02:44:30] Yes.

LATHROP: [02:44:31] Thanks so much for your testimony. It's helpful, not discouraging.

MORFELD: [02:44:39] A little discouraging but helpful.

MARNA MUNN: [02:44:40] Well, just to his point, it is a little Wild, Wild West. I will tell you I think that there are court challenges that are helping contour what is reasonable. and that's where we're at in the process that I wouldn't-- I say this to the groups I educate. I think that there will be natural corrections or contours that come through those interpretations.

LATHROP: [02:44:58] So somebody is going to-- somebody eventually is going to take one of these letters and say this isn't good enough--

MARNA MUNN: [02:45:00] Yeah.

LATHROP: [02:45:01] -- and then we'll have a case.

MARNA MUNN: [02:45:02] And that is happening now. Those cases are in courts now.

LATHROP: [02:45:04] OK.

MARNA MUNN: [02:45:07] Thank you.

LATHROP: [02:45:07] I think that's it. Thank you once again. Anyone else here in a neutral

capacity? Seeing no one else, we have letters from the ACLU, Amy Miller, and the Nebraska Realtors in support; and in opposition, Jared Anderson, Teresa Perez, and Mindy Rush Chipman from Lincoln. With that, Senator Clements to close. After this, we're going to take a brief five- or ten-minute break if you [INAUDIBLE]

CLEMENTS: [02:45:43] Thank you, Senator Lathrop. I just wanted to talk about-- I did close my presentation saying I'd be willing to work with stakeholders to address-- address their concerns, and there are several of these that I have not worked with that are willing to. Regarding nonresidents, I certainly would be willing to add in language that nonresidents could use their non-Nebraska provider certificate, accommodate language for nonresidents. And the definitions, if the definition of assistance animal is too broad, if it needs to be just emotional support animal, I think that probably will be all right with the proponents. The definition of disability, fine with me to use Nebraska definition. Needing to add a psychiatrist as a provider that qualifies, would be willing to add the providers that would mirror federal law, not trying to deviate, but we are trying to help landlords with evident problems that they have had Thank you, Senator Chairman.

LATHROP: [02:47:05] I see no questions. Thank you for being here and for introducing LB553. Thank you.

CLEMENTS: [02:47:11] Thank you.

LATHROP: [02:47:12] With that, that'll close our hearing on LB553. As I said, we're going to take a five-minute break and we'll come back with Senator Wayne, two bills.

[02:56:36] [BREAK]

LATHROP: [02:56:42] Welcome back. We have two bills left. They are LB649 and LB659, both bills to be introduced by Senator Wayne. Since they deal with the same subject matter, we are going to combine those hearings, as is the wish of the introducer and with the full support of the entire committee. [LAUGHTER] Wish we could do this more often. And with that, Senator Wayne, you're open-- you're welcome to open on your two bills.

WAYNE: [02:57:17] Good afternoon, Chairman Lathrop and members of the Judiciary. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13 which is north Omaha and northeast Douglas County. Before I talk about the bill, I just want to give a very short, short history of how these bills came about and around hemp. So when I was getting elected, I met a couple people who actually had processing plants in other states and they wanted to do a processing plant not in Colorado but somewhere in Nebraska. And out of that, I was trying to recruit them to Omaha. No fees, exchange--it was just me talking. I-- I care about Omaha and at the time I was school board president. So when I got elected, the first thing I wanted to do was legalize hemp and out of that process, the first year, there was a lot of resistance. I didn't do a Judiciary bill. I just did a hemp bill. Then out of that, I could not get it Execed on, although I had the votes. The following year, we did the CBD, which is before us today, LB659, we did a decriminalization bill, and we did the hemp bill. Again, it was a short session. We just could not move them. The purpose of the CBD bill was that at a minimum, if I couldn't get hemp passed, I thought at least I can get CBD passed. The reason was at the time, last year, there were people being prosecuted in Washington County. It was Don Kleine's position, of Douglas County, that he has enough problems dealing with drugs that he doesn't need to concentrate on CBD, and I wanted to clarify it because stores every other week were putting them on and taking them off because they weren't sure what could happen. So the reason there were multiple bills over multiple years in different categories is because I was not sure if the Ag would ever get my original hemp bill out. It does seem this year it will get out and we will be able to vote on it, which will deal with all of these issues. But when I dropped these bills, I had

to make sure that I had avenues to solve some of the problems. So if I couldn't get the hemp bill out of Ag, I can at least get the CBD bill hopefully out of Judiciary and that can solve one part of the problem. So this has been a three-year effort and I'm happy to say the reason I can do a joint is that it seems like everything is moving in the right direction. As it relates to LB649, again, this was already approved by Senator Crawford and voted on before I got in here. The purpose of this bill was to continue CBD study because if the Ag Committee or others were still unsure of the benefit, I wanted to keep that going. So this is still an important bill because now what I want to do is make the University of Nebraska the research facility for hemp across the country. I think when they think of hemp and research, they just think of Nebraska and our-- and our wonderful facility. So that's why that bill is important, but I understand. I think as we move forward they could do it without legislation if everything works out in our other bills. This bill, in particular LB659, deals with CBD. There are some changes that are going to be-- we're going to have to make and I'm glad I still did this bill because there are some federal approved-- FDA-approved medical pills or drops or oils that are still Schedule V drugs. So I'm going to have to get an amendment. I've been working with the lobby on getting that amendment because those can only be prescribed through a pharmacist and through licensed practitioners. The reason why that's important and why that's different from our regular hemp bill or decriminalization of hemp, is because it doesn't start off from hemp. It starts off on the actual marijuana plant that derives down to a CBD oil. And because the origin of those, particular is one drug already approved and one on its last stage of its trials that will get approved by the FDA, because of the origin of those, they wouldn't meet the federal definition or our definition that we hope to pass this year of hemp. So LB659 will have to come out in some form, or at least some amendment language, to clarify the 10 percent CBD language--it doesn't necessarily have to be 10 percent, it could be less--and to clarify the concerns of the pharmacists and those pharmaceutical companies who have a patent around the marijuana derivative that still is CBD oil but because of the origin is a Schedule V drug. So I'm still working that out, but we will get there. As it relates to the fiscal note, Chairman Lathrop has a similar fiscal

note from our State Patrol. I am meeting with them. There is already a-- the university already has this type of machine. The issue the State Patrol has is the chain of custody for those who do criminal law of how do they test it there. But we're working on that, whether it's going to be a shared cost between the Department of Ag and State Patrol or some other way of getting that cost down, but we-- we have that meeting coming up in a week or two, so I will, by the time everything hits the floor, have that resolved. But with that, I think it's important to hear a different story. I know we heard a lot of stories on medical marijuana day. This is not what this is. You cannot get high off of CBD. You cannot get addicted to CBD. But there's individuals that I met through this process that has a very compelling story of why this is needed and why they should be able to buy it, because it fundamentally changed their life. And with that, I'll answer any questions and ask them to come up next.

LATHROP: [03:03:10] Senator Morfeld.

MORFELD: [03:03:12] Senator Wayne, thanks for bringing this bill today and addressing this issue. So I guess-- and I've been following the federal-- federal movement on this issue, then I've been following a little bit of the local movement on this issue, depending on the county, apparently. So is it-- is it your intent with this that CBD can be sold in Nebraska, both the-- oh, the hemp plant and then also the--I'm probably going to get this wrong--the sativa cannabis type of [INAUDIBLE]

WAYNE: [03:03:43] Correct. Correct. It would-- it would come from-- so they would have to meet it-- still have to meet the requirements of less than .03 percent of THC as defined by the federal government but-- and that's because you can't get high. So, yes, I'm trying to clearly define that CBD oils in this particular bill can be sold--

MORFELD: [03:04:04] OK.

WAYNE: [03:04:04] --and manufactured here in Omaha. So we've actually lost business in Nebraska that we have some high-quality testing facilities primarily because of all the research we do at the university, but they're private facilities where people actually wanted to test CBD, get certified, like what they're-- how much cannabinoids are actually in their product. And those companies had to say no because of our Attorney General's Opinion saying that CBD oil is actually illegal and a controlled substance. We've lost millions of dollars in this industry already just from the testing because there are independent labs here, who are the best of the best in the country, that can't let that fly in here to their labs.

MORFELD: [03:04:47] OK.

WAYNE: [03:04:49] So this would resolve that issue.

MORFELD: [03:04:50] Yeah and I-- and I-- I totally appreciate this bill. I guess my only concern is, is obviously you don't want perfect to become the enemy of good, but my concern is, is obviously this is too limited in nature. But I also understand what you're trying to do on a limited--

WAYNE: [03:05:06] So speaking of that, that CBD, the-- the definition in this bill is 10 percent CBD. As this industry evolves, 10 percent doesn't need to be there. It's the other .03 that needs to stay. But that at the time when we first did this three-- two years ago, that was the-- kind of the standard definition. But that has changed to say as long as there is no THC that can get you high, it's defined as CBD oil or CBD, so yes.

LATHROP: [03:05:32] Senator Brandt has a question too.

BRANDT: [03:05:36] Thank you, Senator Wayne, for bringing this bill. I guess my question is we've heard testimony on medicinal marijuana and if this bill were to pass in its form, do we-- and let's say we would pass medicinal. Do we have to adjust this for medicinal or it has no correlation to medicinal at all?

WAYNE: [03:05:59] Yeah. If you were to take any oil, pill, or the flower that contains more than the .03 delta THC, which is federally defined as hemp--if it's less than that it's hemp, if it's more than that it's marijuana--you would have to change the schedule, yes. And the reason my bill is so long literally is because we inserted one paragraph in the beginning and they had to go through and change all the numbers. So that's why it's-- it's not really that long of a bill. But, yeah, we would have to change that if we did medical.

BRANDT: [03:06:28] OK. But as it stands today, this just affects industrial hemp and we'll cross the bridge for medicinal when we get there.

WAYNE: [03:06:35] Correct.

BRANDT: [03:06:36] OK. Thank you.

LATHROP: [03:06:39] I see no other questions. Thank you.

WAYNE: [03:06:41] Thank you.

LATHROP: [03:06:42] Those who wish to testify can come forward. Good afternoon.

RICK ROHRS: [03:06:52] Senator Lathrop, members of the Judiciary Committee, I'm here on just

a personal note, so I-- my name is Rick Rohrs, R-i-c-k R-o-h-r-s. I was involved in natural health for 41 years here in Lincoln. I was a chiropractor. I retired due to my wife's orders a year and a half ago. But I've got a story I want to tell. January 11 of 2014, my wife-- we could have ice skated anywhere in Lincoln that day, but she fell on the ice and hit the back of her head and had a traumatic brain injury. She tried the medical model for a while, no success. We had her down to a holistic health center down in Arizona, did that protocol for six months, no results. Fast-forward to October of 2016, a friend of hers insisted-- and I'd never, being in natural health, I'd never heard of CBD oil, truthfully. Fast-forward to October of 2016, a friend of hers from Arizona talked her into taking some CBD oil before it was ever told-- said in Nebraska you can't have it. Nobody knew about it. She started taking it. Within two days, and this is a lady that never left the house, she was a social creature before, she became an introvert. I mean she just-- she went into depression, anxiety. I'll name-- name all the things that she had going, but within two days she said she felt better. Within two weeks, I noticed a significant change. Within six weeks, she had no symptoms that she had for those 2 years, 10 months prior to that. She made it to my sister's house for Thanksgiving that year. This is just within six weeks of her starting the substance. She decorated, had our house decorated for Christmas, had a family dinner at our house for Christmas. She didn't even go to family outings for those two and a-- 2 years, 10 months. Common symptoms of traumatic brain injuries, and this is just one thing, there's a whole gamut of things that CBD oil can take care of and you can study about it, but fatigue, headaches, visual disturbances, memory loss, poor attention/concentration, sleep disturbances, dizziness, loss of balance, irritability, emotional disturbances, depression, suicide thoughts, seizures, loss of smell/taste, sensitivity to lights and sounds, mood changes, loss of appetite, confused slowness of thinking, phobias, social agoraphobia, and panic attacks. She had everything that I just mentioned here but seizures. She's got everything back, all capacities, except she never got her smell and taste back. She had seasonal affective disorder for several years before the brain injury and she no longer has had that the last two years. Usually that affects a person when the-- the light, light in the-- gets-- days get shorter from about

November to March. She's had none of that. CBD, as Senator Wayne says, it has-- CBD oil has no psychoactive effects. Where the-- where she got her source is out of Arizona. She took three drops of oil under her tongue in the morning, three drops of oil under her tongue in the evening. You wouldn't think it would do diddly for a person's health. I couldn't believe what I was seeing. It would take-- that's 180 drops a month on a 30-day month. She-- the guy that we get this from said it would take 1,500 drops to-- for-- in a short span of time to have it show up on a drug test. So I've-- I've enclosed a letter from her that she sent to all her friends dated November 20 of 2016. She started six weeks before that on the oil. And it doesn't mention anything about the CBD oil in here, but just to show how-- how this stuff can really work. It was a miracle and it just-- I-- my time is up. Any questions?

LATHROP: [03:10:49] It's a great story.

RICK ROHRS: [03:10:50] Yeah.

LATHROP: [03:10:51] Senator Brandt.

RICK ROHRS: [03:10:53] Senator Brandt.

BRANDT: [03:10:54] Thank you for coming today, Mr. Rohrs. Is your wife still on the treatment?

RICK ROHRS: [03:10:59] Yes.

BRANDT: [03:11:00] So you-- this will probably be for the rest of her life then that she'll take these drugs?

RICK ROHRS: [03:11:04] It's been recommended, yes. Even her physician agrees what she's on.

BRANDT: [03:11:06] OK. I mean, have you tried to stop the treatment to see if that had any effect?

RICK ROHRS: [03:11:12] Have not.

BRANDT: [03:11:12] OK.

RICK ROHRS: [03:11:13] I mean she-- the way this stuff works, it hits receptor sites that they've-- that are in our nervous system and our organs. And, you know, she's-- she's doing so well she hates to even get pulled away from it now.

BRANDT: [03:11:26] Sure, I understand that. And then on the CBD oil itself, do you know if it came from industrial hemp or regular?

RICK ROHRS: [03:11:33] It comes from industrial hemp.

BRANDT: [03:11:34] OK.

RICK ROHRS: [03:11:34] And it was grown organically and cold processed, and those are two key points that-- that whether this committee or anybody has to insist, there's a lot of junk that's flooded the market out there that is not processed properly coming in from China and other places, so there's a problem.

BRANDT: [03:11:50] All right. Thank you.

RICK ROHRS: [03:11:52] Yes.

LATHROP: [03:11:55] OK.

RICK ROHRS: [03:11:55] OK.

LATHROP: [03:11:55] Thank you very much for your testimony. Next proponent. Good afternoon.

BILL HAWKINS: [03:12:14] Thank you, Senators. My name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s. I'm with the Nebraska Hemp Company. And I'll keep this brief, but as you heard from this last testimony, there are a lot of Nebraskans out there who are getting relief from this nonpsychoactive part of this plant and I appreciate you addressing it. I especially appreciate Senator Wayne and his staff who have tried repeatedly to get this in front of the committee. So I just talked to a couple business owners today, one of them who chose to continue selling this even with the threats from the Attorney General's Office, another couple business owners who are waiting for this to be legal so that they can take part in this business, and-- and they are respectful of the law, so they are not selling it. So I really appreciate you addressing this situation. We need to change the law. There are a lot of benefits from this plan and-- and studying the effects of it is something that we need to do. We've been restricted for 80-some years with this prohibition and the benefits are starting to come out. So as an herbalist, a full spectrum, the symbiosis of the whole plant is important in developing these medicines. And in agreeing with the last testimony, there is a lot of snake oil out there. And so having testing facilities and being able, as Nebraska farmers and businesspeople, to take part in this economic benefit, I would appreciate hurrying this along. So I thank you for your time. And we need to change this. Thank you.

LATHROP: [03:14:26] OK. I don't see any questions. Thanks, Mr. Hawkins.

BILL HAWKINS: [03:14:28] Thank you very much.

LATHROP: [03:14:30] Next proponent. Afternoon.

GREGORY LAUBY: [03:14:45] Good afternoon, Senator Lathrop, members of the committee. If I heard correctly, we're considering both LB649 and LB659.

LATHROP: [03:14:54] That's true.

GREGORY LAUBY: [03:14:54] Thank you. I would just like to comment on LB649. I note that there's no fiscal impact indicated in the fiscal note, and I think that's going to be a great relief not just on a budgetary matter but to some of the people that are glad to see that this program continue without having to drain the State Treasury but that it will be able to continue. On LB659, I certainly support-- support removing CBD from the controlled substances statute. Senator Wayne alluded to the fact that there is one FDA-approved drug now on the market and that is the drug frankly that was studied by the UNMC study that had really remarkable results in showing improvement amongst young children who had what had previously been considered incurable conditions of epilepsy. The difficulty or the downside of that is that the company estimated that the cost to a family per year was going to be \$32,500 to take care of one child. And speaking, and someone who is familiar with families that have children that experience that condition, they verified that that in fact is very close to what the actual cost is. So anything that we can do to increase competition, I think, is going to be very helpful down the road. I'm happy to hear that Senator Wayne is going to remove the requirement that it have more than 10 percent CBD in order to be considered a cannabidiol. I think that's a major improvement. I have passed out a copy of Section 28-432 from

the Nebraska Statutes, and it may have a bearing on the fiscal note that the State Patrol estimated would require testing equipment and another testing lab. As I read the statute, anyone who wants to claim that they're exempt from a violation of a controlled substance statute because what the substances is, is actually CBD, the burden to prove that would fall on them, at least for the initial establishment. And so that may diminish the idea that the State Patrol has to test every single substance that they seize. And what does have to be tested could probably be handled, much like DNA is now, by contracting it out to a qualified, established lab. So I support both bills wholeheartedly.

LATHROP: [03:17:45] Why don't you put your name in for the record.

GREGORY LAUBY: [03:17:47] Oh, I apologize, Senator. My name is Gregory C. Lauby, G-r-e-g-o-r-y, C. as in "Christian," L-a-u-b-y.

LATHROP: [03:18:02] OK. I think that's all. I don't see any questions but thank you for your testimony.

GREGORY LAUBY: [03:18:05] Thank you, Senator.

LATHROP: [03:18:16] Good afternoon.

SARAH LINDEN: [03:18:19] Hi. Good afternoon, Chairman and members of the Judiciary Committee. My name is Sarah Linden, S-a-r-a-h L-i-n-d-e-n, and I'm here to speak in support of LB659. I'm a local business owner. I own a chain of e-cigarette or vape stores in Nebraska and Iowa. And one of the reasons I wanted to share, and I'm very grateful to Senator Wayne for proposing this bill, is it is very confusing as a business owner whether or not this is legal or not

legal in the state of Nebraska. There are retailers like Fresh Thyme grocers and American Shaman and a ton of retailers in especially Lincoln and Omaha who have been selling CBD and nothing happens. I have not because I don't want my employees to be arrested, nor put them in any risk, but it's very confusing to me. I've called. I've talked to three captains at LPD. I know the district attorney for Douglas County has said he's not prosecuting these cases. It makes it extremely difficult. And I see this as a huge opportunity for both Nebraska and Nebraska's small businesses. CBD is projected to be a \$22 billion industry by 2022. Nebraska-- Nebraskans are already using CBD. They're either buying it illegally or they're buying it on-line or they're driving out of state to purchase it. Nebraska needs the revenue right now and legalizing CBD would create jobs, grow small businesses, and provide that tax revenue for the state. It also would provide a much more lucrative crop for Nebraska farmers, and I just passed out an article about--I'm not an expert but maybe you'll find it useful--about the possibilities of what CBD could provide farmers. Also, CBD is-- I know this has been said and I don't personally use CBD. I have many, many, many friends and customers who use CBD and I hear stories about how all the time, almost every single day, how medications that my friend took for restless leg syndrome didn't work but CBD works. And it's-- it can be used for insomnia, anxiety, inflammation, chronic pain, epilepsy, and it can even slow-- slow the progression of cancer. I mean the list just goes on and on and on. It's not addictive. It's not intoxicating. The side effects are minor compared to most pharmaceutical drugs. It's natural and it's easier on the body's organs than most medications. I just think this is a long time coming and it just needs to be legalized. I'm personally not concerned about the snake oil because every manufacturer creates-- provides a barcode on the product and you can scan it with your phone and you can see exactly what's in it. So there are products that are like a little more expensive that aren't even as effective, and then there's products that are actually more effective and cheaper. I know I'm out of time but there is one other thing. Oh, the THC in CBD makes it more effective. It helps like boost the cannabinoid oils in the product so that it is more effective. So I hope there isn't consideration of removing that .03 percent THC because that actually makes it full spectrum and makes it more

effective for people.

LATHROP: [03:22:25] OK. I don't see any questions. Thank you for your testimony.

SARAH LINDEN: [03:22:27] No problem. Thank you.

LATHROP: [03:22:31] Anyone else here to testify in support of either bill? Anyone here to testify in opposition? Anyone here in a neutral capacity? Seeing none, Senator Wayne to close. And as you make your way here, the record will reflect that I have-- on LB649 we have letters of support from Joni Cover with the pharmacists; April Jorgensen; and Donna Roller. And on LB659 we have letters from Deborah Levitov; Kelsey Wilson, Nebraska chapter of the Social Workers; Kathy Siefken from the Grocery Industry; Amy Miller from the ACLU; April Jorgensen; and Donna Roller. With that, Senator Wayne to close.

WAYNE: [03:23:24] I'm just here to answer any question if there is any.

LATHROP: [03:23:27] Any questions for Senator Wayne? I don't see any. That-- very good.

That'll close our hearings on LBs-- LB649 and LB659 and it'll end our hearings for the day. Thank you.