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LATHROP: [RECORDER MALFUNCTION] By the way, the fifth bill looks like it has a lot of people here to testify on. So in the interest of having an efficient process, the first four bills will be introduced by the four senators who have brought those bills to the committee. They have to do with improper relationships between either persons in authority or teachers and young people between 16 and 19. That's the thing that they all four have in common. Senator Lindstrom is going to be our first introducer, then Senator Halloran, Senator Quick, and then Senator Vargas. We're gonna have-- it's a little unusual, we're going to have all four of them introduce the bill and then they can stick around. Sometimes they have other hearings they have to get to, so they may or may not be here for the entire hearing. They'll each then be permitted to close if they choose to. Not everybody does that. Sometimes they have responsibilities in other committees, so I'm not telling you that they'll be here for-- all four of these senators will close on their various bills. We're gonna have a little bit of a different process. And I'll read that in just a moment. And we'll kind of do the usual things that we do. And for those of you that aren't familiar, I'll encourage you to listen to sort of the ground rules that I'll lay out here in just a moment. But I want to do this just for the sake of scheduling and for those that might need to get a hotel room tonight, depending on the number. [LAUGHTER] How many people are here on-- to testify on the first four bills? So what do we have? OK. How many people are here on the last bill, LB814? Put your hands up high if you can. OK. Because there are some people that haven't raised their hand yet. So how many people intend to testify on LB814? OK. OK. That helps. I appreciate your cooperation in that. It helps us organize our afternoon. So I think with that, Laurie, you can turn the system on. And I think we'll begin. Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12 in Omaha. And I am the Chair of the Judiciary Committee. On the table inside the doors, you will find testifier sheets. We are going to do things a little bit differently today since our first hearing will combine four similar subject bills. If you are testifying on any of those four bills, please fill out one of the pink special sign-in sheets.

WAYNE: It happens.

LATHROP: Everybody OK?

WAYNE: Yeah, we're OK. I know a good injury attorney. [LAUGHTER]

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LATHROP: Thank you. All right, let me go back. If you're testifying on any one of the four bills, this is unique to our process. We have a pink sign-in sheet. Please fill out one of the pink sign-in sheets. You will see on that sheet you have an opportunity to say, I'm here in for the first bill. You know, you might be against-- for the first bill, but against the second one. So be sure so that we keep an accurate record of those who are for and against the bills. Please fill out every bit of that pink sheet if you're going to testify on one of the four bills. If you are here to testify on LB814, fill out one of the regular yellow testifier sheets, hand your testifier sheet to the page when you come up to testify. If you do not wish to testify, but would like to record your position on a bill, there is also a white sign-in sheet on the table. For future reference if you're not going to testify in person and would like to submit a letter for the record, all committees have a deadline of 5:00 p.m. the last workday before the hearing. Keep in mind that you may submit a letter for the record or testify in person at a hearing, but not both. And only those who actually testify in person at a hearing will be listed on the committee's statement. We will begin testimony with the introducer's opening statement, followed by the proponents of the bill, then opponents. And finally, by anyone, anyone speaking in the neutral capacity and we will finish with a closing statement by the introducer if they wish to give one. We utilize an on-deck chair which is immediately behind the testifier table. Please keep the on-deck chair filled with the next person to testify to keep the hearing moving along. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have any handouts, please bring up twelve copies and give them to the page. If you do not have enough copies, the page will make more. If you are submitting testimony on someone's behalf, you may submit it for the record, but you will not be allowed to read it. Let me say that again. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read it. In other words, we want to know what you have to say. And if you're here to tell us about somebody else's experience or somebody else's position, you may submit that letter, but you won't be permitted to read it. We will be using a three-minute light system. This is my favorite part of this introduction. OK. When you begin your testimony, the light on the table will turn green. The light-- when the yellow light comes on it's your one-minute warning. And when the light comes red or turns red, we ask that you wrap up your final thought and stop. Please, because we have so many people tonight, don't abuse that. It makes it weird for me to have to interrupt you. If the light turns

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red, we'd like you to stop. 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 staff. At this time, I'd ask everyone to look at their cell phones and make sure they are in the silent mode. Also, verbal outbursts and applause are not permitted in the hearing room. Such behavior will be reason for you to be excused from the hearing room. And we have people here that will help you out. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill being heard. Senators have other bills to introduce or other committees or meetings to attend to. And with that, I'd like to have the members of the committees introduce themselves beginning with Senator DeBoer.

DeBOER: Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10, which is northwest Omaha and the city of Bennington.

BRANDT: Tom Brandt, Legislative District 32: Fillmore, Thayer, Jefferson, Saline, southwestern Lancaster County. And I'm headed to Revenue to introduce a bill.

PANSING BROOKS: Hi, I'm Senator Patty Pansing Brooks from Legislative District 28, right here in the heart of Lincoln.

MORFELD: Hello, everybody. My name's Adam Morfeld, District 46, northeast Lincoln.

SLAMA: Hi, everyone, Julie Slama, District 1: Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties in southeast Nebraska.

WAYNE: Justin Wayne, District 13, which is north Omaha and northeast Douglas County. And I will also be, when he comes back, heading to Revenue. I'm after him.

LATHROP: That's how they come and go. Assisting the committee today are Laurie Vollertsen, our committee clerk, who does a great job for us; and Josh Henningsen, one of our two legal counsel. Our committee pages today are Ashton Krebs and Hallett Moomey, both students at UNL. We appreciate their service to the committee. And with that, we will begin our hearing with the introduction of the first of four bills. Senator Lindstrom, welcome to the Judiciary Committee.

LINDSTROM: Thank you. Good afternoon, Chairman Lathrop and members of the committee. My name is Brett Lindstrom, B-r-e-t-t

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L-i-n-d-s-t-r-o-m, representing District 18 in northwest Omaha. Thank you for the opportunity to present LB766, which does three things to strengthen our sexual assault statutes and better protect Nebraska's children. First, the bill adds a provision that enhances the penalty of continued sexual assaults on children. Unfortunately, sexual assault on-- of children often escalates over a long period of time without immediate disclosure by the child victim. In these situations it is often difficult, if not impossible, to nail down with sufficient detail a particular number of incidences and particular dates to go with them. This proposal will give it an alternative to enhance the potential penalty to appropriately account for ongoing sexual abuse over a period of time, while still holding prosecutors to the burden of proving a requisite number of instances. Second, the bill adds a provision that criminalizes sexual assaults by authority figures. People in positions of authority over the children in our community are given significant power and influence over those minors. The parents of minors teach their children to trust and obey these authority figures. People who abuse that trust and authority should be held accountable for their actions of subjecting the minors that they hold such sway over to sexual contact or penetration. Finally, the bill changes the statute of limitations for failing to make a report of child abuse or neglect from 18 months from the offense to the later of that or the date such failure to report is first discovered by law enforcement. Law enforcement and prosecutors cannot possibly file charges for failing to report child abuse or neglect when they have no knowledge of that failure. The act of failing to report in and of itself, therefore lends the ability to hold people accountable for the failure to act. Unless the child victim goes to another source to disclose their abuse and that person chooses to report, law enforcement will have no other way to know that someone has failed to meet their mandatory reporting obligation. This issue was brought to my attention this summer when the Omaha World-Herald reported on a former Marian High School basketball coach was charged with first degree sexual assault of a player who was 14-years-old at the time. The victim, now 21, did not come forward until this past year. She claims school officials knew of the inappropriate relationship and sexual assault, but did not report it. Regardless of-- if that is true, the statute of limitations for such failure to report expired 18 months after such failure. So there is no ability to prosecute such failure now, even though the potential failure has only recently been revealed to law enforcement. LB766 would remedy that to allow prosecution for 18 months following the date in which law enforcement became aware of the failure to report. Thank you for your

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consideration of LB766. I'd be happy to answer any questions you may have.

LATHROP: Thank you, Senator Lindstrom. Any questions for Senator Lindstrom at this time? OK, I see none.

LINDSTROM: Thank you.

LATHROP: I understand you may or may not be here depending on your schedule. So--

LINDSTROM: I am going to Revenue to hear Senator Brandt and Senator Wayne's bills.

LATHROP: All right, fair enough. We need to there. Senator, that's LB766, and the next introduction will be LB991 from Senator Halloran. Senator Halloran, welcome to the Judiciary Committee.

HALLORAN: Thank you, Mr. Chairman, good afternoon. Good afternoon, members of the Judiciary Committee. For the record, my name is Senator Steve Halloran, S-t-e-v-e H-a-l-l-o-r-a-n, and I represent the 33rd Legislative District. I'm here today to introduce LB991 to the committee for your consideration. I intend to keep my remarks brief this afternoon to allow more time for individuals that will follow me. LB991 is a bill I felt compelled to bring forth to the Legislature. The impetus for this bill was brought to me by concerned constituents in my district. In Hastings, Nebraska last year, a number of inappropriate sexual incidences happened between a teacher and a student who he had influence over. Unfortunately, Hastings is not alone in this troubling issue. In January of this year, the Omaha World-Herald published the results of an investigation into the frequency of educator sexual misconduct in Nebraska. The paper found that on average, ten educators are caught each year engaging in inappropriately sexual communication or misconduct with students. Within the same article, it was noted that experts say that less than 10 percent of abuse is reported because of fear, guilt, or a misguided desire to protect the educator. If numbers are to be believed, that means there may be as many as 100 incidences of sexual misconduct each year in Nebraska. Clearly, this is an issue that must be addressed by the Legislature. LB991 specifically addresses a loophole in our Nebraska criminal code with regards to the protection of a vulnerable population, namely students between the ages of 16 to 19 years of age. In the Hastings instance, instance I mentioned earlier, the student was 16-years-old at the time of the sexual encounters. And, therefore,

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the teacher in question could not be charged with a crime of sexual assault according to the Adams County District Attorney's Office. Working with a local attorney to help craft the bill, LB991 seeks to close that 16 to 19 years of age loophole by modeling language currently in the statute. Statutes 28-322 through 28-322.05 address sexual contact of a protected individual where consent is not a defense. The crime is based upon the exploitation of a position of power and trust. LB991 makes it a Class II felony for any school official who knowingly solicits, coaxes, entices, or lures a school student at least 16 years of age and less than 19 years of age by means of an electronic communication device. A school official commits the offense of sexual assault of a student in the first degree, which is a Class 1C felony, if the school official engages in sexual penetration with a school student who is at least 16 years of age and less than 19 years of age. And such school official is 19 years of age or older. A school official commits the offense of sexual assault of a student in the second degree, which is Class 1D felony, if a school official engages in sexual contact with a school student who is at least 16 years of age and less than 19 years of age and such school official is 19 years of age or older. Furthermore, a school official shall be guilty of a Class II felony for knowingly soliciting, coaxing, enticing, or luring a school student at least 16 years of age and less than 19 years of age by means of electronic communication device. Upon drafting this bill, my office worked closely with the Revisor's Office to clarify the language within the bill and to make sure it was not in conflict with other current statutes. Additionally, I consulted with the Attorney General's Office and Adams County District Attorney's Office, neither office had any objections to the bill as drafted. I'm aware of the four other bills brought towards-- forward this session-- excuse me, by my fellow senators: Senator Lathrop's LB1080, Senator Lindstrom's LB766, Senator Vargas' LB1210, and Senator Quick's LB1048, which are also addressing the sexual misconduct through either physical or electronic contact by school officials towards students. I'm more than willing to work together with my fellow senators to create the strongest bill possible to protect our vulnerable students from such predatory activities of those that should be able to trust the most. Thank you for your time. While, I'd be willing to attempt to answer your questions, however, your questions may be better suited for those individuals who are following me.

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LATHROP: OK. I don't see any questions for you at this time, Senator. We appreciate you introducing your bill, LB991. And we will go then to, I think, Senator Quick is LB1048. Welcome, Senator Quick.

QUICK: Good afternoon, Chairman Lathrop, and members of the Judiciary Committee. My name is Dan Quick, D-a-n Q-u-i-c-k, and I represent District 35 in Grand Island. I'm here today to introduce, introduce LB1048. I want to start off by saying that I appreciate the conversation we're having today. I think it's important and I'm glad that we are having so many bills trying to address this serious issue. LB1048 is a result of conversations I've had with a family in my district, and it is my attempt at addressing, addressing perpetrators who try to manipulate our children by grooming them. This bill would do, would do two things: first, it would require that Child Protective Services under DHHS notify the Commissioner of Education if they are investigating a school employee for child abuse or neglect; second, second, it would create the, the offense of sexual assault by a school employee. The notification by CPS to the Commissioner of Education is important, and was, and was requested, requested by the Department of Education because it allows the Department of Education to start investigating potential cases of child abuse or neglect by a school employee earlier. Currently, these departments are not allowed to communicate about these reports. Teachers who suspect another school employee is behaving inappropriately with a student have to notify CPS, but that information isn't getting to investigators at the Department of Education. They have a limited investigative-- they have limited investigative resources already and are having more-- and, and having more knowledge and communication about these incidents would help the Department be proactive and potentially protect a student through monitoring the situation or taking action. The second part of this bill is my attempt to address-- at addressing the 16- to 19-year-old age gap where perpetrators of sexual crimes against students can use consent by the student as a defense, even though the student may have been groomed or otherwise manipulated. By creating the offense of sexual assault by a school employee when the perpetrator is a school employee, consent by the student is not a defense. This would also define grooming behavior as a pattern or practice or scheme of conduct to subject, to subject a student to sexual contact or sexual penetration and would criminalize this behavior. I know you will hear about the-- hear the details of, of several different bills this afternoon, but it's important to me and to my community that we are having these conversations and addressing these issues. We have to do something to address grooming in our

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schools. I want to thank the testifiers for their willingness to share their stories and advocate for change so this, so this doesn't happen to our families. With that, I would appreciate your support on this bill. And I'm happy to try to address any questions you might have.

LATHROP: OK. Senator DeBoer.

DeBOER: Senator Quick, thank you. I just-- I didn't notice in here, is there an age limit? So if you have like a 17-year-old grounds committee worker at the employee of the public school and there have a 18-year-old girlfriend who goes to school there. Is there a problem with that?

QUICK: I-- yeah, I'll have to look at that. I'll probably have to get back to you with an answer on that.

DeBOER: Would you be willing to add something like that? That's what I thought.

LATHROP: OK. I don't see any other questions. Thank you for being here today. And our fourth bill is LB1210. I believe that's Senator Vargas. Senator Vargas, welcome to the Judiciary Committee.

VARGAS: Thank you very much, Chairman Lathrop. Good afternoon, members of the Judiciary Committee. I'm gonna pass out an amendment. Good afternoon, my name is Tony Vargas, T-o-n-y V-a-r-g-a-s. Actually, we do have one more thing, if you want to pass it out, too. I have the pleasure representing District 7 in the communities of downtown and south Omaha here in the Nebraska Legislature. Two documents we're passing out: one is the editorial that's been referenced by many different people in the Omaha World-Herald; the other is an amendment that's just a clean copy amendment that just makes-- cleans up some of the-- we had some things that we just needed to make sure to clean up in the, in the bill. I have the pleasure representing District 7 in the communities of downtown and south Omaha and T-o-n-y V-a-r-g-a-s. LB1210 creates a new Class II felony offense of sexual exploitation of a student. LB1210 would prohibit school employees from engaging in sexual acts with current students or former students within one year of graduation or who have otherwise ceased enrollment in the past year. I introduce this bill at the request of Omaha Public Schools. And you all likely know that before that I was elected to the Nebraska Legislature, I represented the same neighborhoods in the Omaha Public School Board. I'm also a former teacher and education consultant, so advocating for kids and fighting for and protecting their right to a

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high quality education is very personal to me. LB1210 is consistent with those values. Part of protecting a student's constitutional right to education is ensuring that students are in a safe and secure learning environment, free of violence, and free to predatory behavior and sexual assault, abuse and general misconduct. Last year, this committee heard another bill that I introduced that was also passed, LB478, which provided that in civil actions arising from a sexual assault of a person under the age of 18 by an adult in a position of authority over the minor, consent is not a defense. I view LB1210 as a continuation of this bill and as a step further towards increasing protections for our kids. Similar to Senator Halloran, I know that all four of us have introduced bills in this area and have the same goal. I am more than happy to work with my colleagues to find a policy solution with the committee and other senators that will meet the underlying need-- problem that we're trying to solve. OPS will be here testifying in support of this bill. And I would like to thank them and Dr. Logan for, for being here. And I can talk-- and they can talk about why we believe LB1210 is the best approach to meeting these goals. The last thing that I want to mention-- and this is a little bit to the amendment drafted in LB1210, which you have in front of you, it's AM2531. We brought this-- and the reason is, again, the intent to clean up the bill when it was originally introduced. The amendment does not make any substantive changes to the bill, it just defines terms, time lines, and references to be more clear in alignment with states and rules and regs. With that, I'll close and I'll be happy to answer any questions.

LATHROP: Very good. I do not see any questions at this time, Senator Vargas.

VARGAS: Thank you very much.

LATHROP: Thank you. We will take proponents' testimony first. And if you can when you testify, if you could tell us-- you know, if you like one bill more than the next or if you have a problem with one bill, but you're here in support of another, that's useful for the record. Good afternoon.

LISA ALBERS: Good afternoon. Chairman Lathrop and members of the Judiciary Committee, my name is Lisa Albers, L-i-s-a A-l-b-e-r-s. I am here representing Grand Island Public Schools Board of Education and the Nebraska Association of School Boards in support of LB1048 and LB1210. Those are the two I'm supporting, but I have no, I have no problem with the other bills either if you would want to combine them.

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I handed out in addition to my testimony is a letter that my daughter wrote that-- this is her story, this is our family story. I would encourage you to read her letter as well. Having a legal safety net that schools, students, and parents can rely on when a teacher has groomed, manipulated and sexually exploited a student is vital in protecting the victims. LB1048 and LB1210 would do just that, protect the victims and ensure that there would be no future victims. These new laws would give the school systems the ability to take predatory teachers out of the classroom promptly. NDE did state that between 2015 and 2019 there were anywhere from 10 to 18 of these cases of predatory teachers reported annually. Here is an example of why these laws are important. Our daughter was groomed by a frequent substitute teacher at her high school. He asked her to babysit for his new baby, for his new baby at the beginning of her senior year. He confided in her, manipulated her, and gave her alcohol. The abuse by the teacher was discovered after I read text messages on her phone. This teacher manipulated her into being alone with him while he fed a friend's dog. It was at this friend's house that he had sex with her. This was less than two weeks after she graduated from high school. She was 17-years-old. He was twice her age, married, and with a child. Grand Island Public Schools responded swiftly after the incident was reported. The teacher was immediately told he would not be working at the district any longer. I was standing next to my daughter when the teacher called her just shortly after we had left the district administration building. He had been fired. He sent her a text message and asked, what have you done? Although this teacher could not teach in Grand Island Public Schools, he was teaching in neighboring smaller districts and working for DHHS as well. He had not been charged with a crime. We were told no crime was committed. The age of consent is 16 in Nebraska and our daughter was 17. Teachers are in a trusted position and should be held to a higher standard of conduct within the eyes of the law. These bills are a step in the right direction. Our daughter spent three hours with the State Patrol fairly recently to be sure all the legal bases had been covered. The state trooper said I believe everything you are telling me and there is nothing I can do. It took the Nebraska Department of Education almost two years to permanently revoke his teaching certificate in May of 2018. Had his behavior's been criminal, he would have not had the opportunity to continue to be in the life of vulnerable students. These new laws could have protected her. Our daughter has cut ties with many acquaintances in Nebraska. She has changed her phone number and deleted her social media accounts. The judgment she felt was overwhelming. She was a victim in this, but was judged and mistreated.

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If the perpetrator was arrested and charged, the victims would have validation. Currently, our daughter is receiving treatment for PTSD. Grooming, manipulation, and abuse require a long road of recovery. I encourage, I encourage you to move LB1048 and LB1210 to the floor and pass them swiftly as possible so no more-- so more students can be protected. Thank you for your time and I am happy to answer any questions.

LATHROP: Thank you, Miss Albers.

LISA ALBERS: Thank you.

LATHROP: We appreciate your concern and your testimony today. Thanks for being here.

LISA ALBERS: My pleasure.

LATHROP: Next proponent, please. Good afternoon.

CHERYL LOGAN: Good afternoon. Good afternoon, Senator Lathrop, members of the Judiciary Committee. I want to first of all, I'd like to thank Mr Vargas for bringing this bill on behalf of-- at the request of the Omaha Public Schools. Chairman Lathrop and members of the Judiciary Committee, thank you for the opportunity to speak with you today. My name is Dr. Cheryl Logan, C-h-e-r-y-l L-o-g-a-n, and I serve as a superintendent of Omaha Public Schools. As we educate our 54,000 young people to achieve success in life, the safety and well-being of our students is at the forefront of my-- in our minds each and every day. We are here in support of LB1210 for that very reason. We care so deeply about our students. The type of contact outlined in this bill between a student and a person in a position of authority should not be legally permissible simply because a young person is the age of consent. The purpose of this bill is to close what we believe to be a loophole in current law. LB1210 is targeted at conduct between the age of consent and the time students leave our care. We have policy and educational standards to remove a predator from the educational environment when a student is 16-, 17-, or 18-years-old. This bill provides the needed legal repercussions. It is also important to note that some of our highest need students stay with us until age 21. While some of them may be covered by the statutory definition of vulnerable adult, many of them are not. This bill would support them as well. Our goal is to create legal consequences for those who have been entrusted with caring for children who engage in inappropriate conduct with students regardless of their age. Simply put, these

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children are not able to consent. The emotional and psychological trauma from abuse may last for the rest of that individual's life. Self-blame, the struggle to trust adults, and depression stemming from abuse could not only derail the end of a student's educational career, but alter their personal and professional path forever. Although victims may go on to lead what appears to be normal lives, they are never the same. Some may become teachers. Some may become police officers. Some may even become superintendents. Conduct referenced in this bill between a young adult and a person in a position of authority happened across our country. We take it incredibly seriously. We appreciate Senator Vargas' work to align Nebraska law with other states addression-- addressing this critical window in a student's educational journey. I understand that there are a number of young people-- I'm sorry, addressing these critical issues of protections for our young people. We thank you for your consideration of LB1210 and hope that you will work with Senator Vargas to include in a bill package that advances to the floor. I am here to answer any questions you may have.

LATHROP: Very good. Thank you. Any questions for Dr. Logan? I see none. Thank you for being here today. The committee appreciates that.

MADDIE FENNELL: Thank you.

LATHROP: Good afternoon.

MADDIE FENNELL: Good afternoon, Senator Lathrop, thank you and to the members of the Judiciary Committee. My name is Maddie Fennell, M-a-d-d-i-e F as in Frank e-n-n-e-l-l, and I'm the executive director of the Nebraska State Education Association here to represent our 28,000 NSEA members in support of LB766, LB991, LB1048, and LB1201 [SIC]. We appreciate the efforts of the senators who are bringing these pieces of important legislation forward. Let me be crystal clear, as a parent, as an educator, and as the executive director of the largest teachers union in the state, NSEA, I want to state unequivocally that there is no acceptable reason that an educator in a Pk-12 school district should be in a sexual relationship with a student regardless of the age of the student. Currently, if a school employee engages in a sexual relationship with a student under the age of 16, they can be prosecuted by law enforcement. However, if the student is 16 or older, the consequences are limited to loss of job and teaching certificate. NSEA is in full support of strengthening the penalties for school employees who have been proven to have taken advantage of their position to coerce students into a sexual

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relationship, also called grooming, as well as those who are convicted of sexual contact or sexual penetration. We have reviewed all four bills and would note the following: we believe that the language of LB766 would provide more protection for young people by including a broader definition of authority figure. To that definition, we would replace principal and teacher in LB766 with the language of school employee in LB1048. It is important to include the language that student consent cannot be used as a defense. We know that young people are still maturing in their decision making and a student's consent does not negate the adult's responsibility to set firm boundaries. Grooming or coercion needs to be defined clearly and include language regarding a pattern or practice of ongoing conduct, not a one-time event that is intended to isolate a student and promote an inappropriate relationship. Delineating between grooming, sexual contact and penetration, and the escalating consequences for each is appropriate. It is crucial that the Department of Health and Human Services and the Nebraska Department of Education have the ability to share information on their investigations. NSEA supports the concepts in these bills because we believe they put the appropriate consequences in place for those who have been found to violate the trust placed in them by students, families, their colleagues, and their communities. We ask you to work collectively to advance a single bill to General File that will increase the protections for our students and the penalties for the perpetrators. Thank you.

LATHROP: Thank you very much, Miss Fennell. Any questions? I see none. Thank you.

MADDIE FENNELL: Thank you.

LATHROP: We appreciate you being here today. Good afternoon.

JACK MOLES: Good afternoon. Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Jack Moles, that's J-a-c-k M-o-l-e-s. I'm the executive director for the Nebraska Rural Community Schools Association. On behalf of NRCSA, I'd like to testify in support of LB1-- 1048 and LB1210 and also to express our support for LB766 and LB991. To explain my support for these bills, I'd like to tie together three incidents. The first involved the school I was at just a few years ago, parents of a student came to me to express their concern over an inappropriate relationship between their child and a teacher. They claimed the relationship was sexual in nature. We took the step to place the teacher on administrative leave while we looked into that claim. As part of my investigation, I was allowed to

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sit in on the law enforcement's interview with the student. Several times the deputy who was doing the questioning asked about the time of the school year when-- in which things had happened. For example, was cross country season still going, or did it happen around homecoming? After the student and parents had left, I asked the deputy why he kept asking questions centered around the time of the school year, and he said easy, if it had happened after the student's birthdate the teacher had not committed a crime because the student had just turned 16. I must have been pretty naive or just simply ill-informed, as I did not realize that there was not a violation of the law. The teacher could still lose the job, and teaching certificate due to the contact-- contract and professional practices violations, but would not have broken the law. A few months later, I happened to read about a teacher in western Iowa who is charged with two or three legal violations as a result of an inappropriate sexual relationship that he had with a female student. As I recall, the student was 17 years of age. Iowa had laws addressing a student-teacher sexual relationship. And then about a year later, I read of another incident in Nebraska in which a teacher was accused of a sexual relationship with a student. In the news story, it stated that part of the defense of the teacher was that the student was 16 and, thus, a law had not been violated. At that point, I believed Nebraska needed to do something to rectify this situation. I believe that LB1048 and LB1210 take the appropriate steps to take care of this issue. One thing that I would like to point out that was pointed out early in two of the bill's talks about age 19, I would recommend that you look at age 21 because we do have students who are ages 20 and 21. Most of them because of an IEP, individual educational plan. They are among our most vulnerable students. In closing, NRCSA does thank Senator Quick for introducing LB1048 and Senator Vargas for introducing LB1210. We're also appreciative of Senators Lindstrom and Halloran for their bills. Thank you.

LATHROP: Very good. Thank you, Mr. Moles. Any questions for the testifier? I see none.

JACK MOLES: Thank you.

LATHROP: Thanks for being here today in your support. Good afternoon.

BOB SULLIVAN: Thank you, Chairperson Lathrop and members of the committee, Judiciary Committee. My name is Bob Sullivan, B-o-b S-u-l-l-i-v-a-n. I live in Hastings, Nebraska, where I practice law, and I'm also a member of the Hastings Public School Board. I'm here today in support primarily of LB991, but also I encourage support of

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all the other bills that are part of this as well. I'm the one who urged Senator Halloran to bring LB991 to you and hopefully to the floor of the Legislature. I'm doing so not as a representative of the Hasting Public School Board, just this is my own personal belief. Therefore, my comments, they are solely my own. Educator sexual misconduct is behavior by an educator that is directed at a student and intended to sexually arouse or stimulate the educator or the child. This can range from behaviors such as severe as sexual intercourse or as little as innuendo. This is currently against the law of the student of course is under the age of 16. As Senator Halloran alluded, somewhere around 80 to 90 percent of these cases end up not getting reported ever to law enforcement. According to a recent investigative report in the Omaha World-Herald, the average age of a female victim of this type of misconduct in Nebraska is about 15-years-old, the average age for a male is about 16-years-old. Therefore, there are well over 18,000 students in Nebraska's high schools who have or will be victimized, but the act may not be considered a crime. In many cases of sexual misconduct by an educator with a victim over the age of 15, no criminal charges are currently being filed. If the misconduct is reported but the victim is 16 years or older, the matter may never even get past the local school district. It may never reach the Commissioner of Education and the media may never report about it. In some cases, the educator may simply move on to a new employer and victimize more students. Most sexual abuse of minors takes place in a residence and is frequently committed by a family member of the victim. I say this to point out that this isn't a school problem, this is a cultural problem. This is the way-- this is the culture that we live in today. But the second most common place for this type of behavior to occur, if you use logic and math, is likely within our schools. That's the largest pool of youth in our society. And the experts tell us that perpetrators tend to look for the largest pools of potential victims. By passing LB991, we are going to deter some. We are going to make it more difficult for others to find that large pool of kids. And the rest of them hopefully we'll be taking off the streets, putting into jails, and putting on sex offender registries, which will then certainly keep them from working in our educational system in the state of Nebraska. So with that, I'd answer any questions.

LATHROP: All right. Senator Pansing Brooks.

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PANSING BROOKS: Thank you very much for coming today. So did you help Senator Halloran draft this bill or--

BOB SULLIVAN: Did he mention that a local lawyer maybe helped him do that?

PANSING BROOKS: That's what I wondered.

BOB SULLIVAN: Yeah, I was the guy.

PANSING BROOKS: OK. Good. All right. So I just have a question, because we have a number of bills that are dealing with sentencing reform, and I presume you're aware of some of that. So this bill has 1C and 1D felony classifications, which does include mandatory minimums. So we have one bill that, that would, would allow prosecutors to choose whether it's a mandatory minimum or the same penalty just without the mandatory minimum allowing the judge to have discretion on how they charged-- which-- how they charged that child-- or person. So do you have a problem with that if that would change to that?

BOB SULLIVAN: I, I don't. The way that the reason that probably shows up in LB991 is because I was looking at the current statutes and basically following what the current law was and just adding this in because we currently make exceptions for inmates and wards of the state regardless of age. But we weren't protecting students and so I was trying to kind of mirror those statutes.

PANSING BROOKS: Right. So-- because we don't have mandatory minimums on 1B, and, and the penalties that are higher so we could allow judicial discretion in this case as well.

BOB SULLIVAN: Yeah, I wouldn't, I wouldn't have a problem with that personally.

PANSING BROOKS: OK. Thank you very much. Thank you for coming today.

BOB SULLIVAN: You bet. Thank you.

LATHROP: I don't see any other questions, Mr. Sullivan. Thanks for being here today and your testimony.

BOB SULLIVAN: All right. Thank you.

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LATHROP: We will take the next proponent.

TOM VENZOR: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Tom Venzor, T-o-m V-e-n-z-o-r. I'm the executive director of the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances, advances the Gospel of Life through engaging, educating, and empowering public officials, Catholic laity, and the general public. The NCC offers its support for these four legislative efforts to create criminal prohibitions and penalties for any school teacher or school employee who uses their position of trust and authority to manipulate children to engage in sexual misconduct. We also support additional avenues for communication between state and local government agencies to ensure that relevant agencies are notified about alleged child abuse and neglect. Catholic schools across Nebraska serve nearly 29,000 students across 115 schools. The Catholic Church takes responsibility for the safety of all children in our schools and programs. Every one of these children, like all children in our public schools and home schools, is precious in the sight of God and has inviolable human dignity. Each child deserves every safeguard and protection against any form of child abuse, most especially sexual abuse, which harms their physical, psychological, intellectual, spiritual, and moral well-being. While the Church across the world has had to reconcile with its past and the patterns of failure regarding child sexual abuse, we know that child sexual abuse can happen anywhere. It is a societal problem. And most saddening, it can and does happen in our school systems. These legislative bills along-- alongside of Senator Lathrop's LB1080 requiring certain minimum school policies about sexual conduct between school personnel and students or former students, which the NCC also supports, are an important step forward for creating safer environments for all children. Especially in light of sex abuse by clergy, including those who have ascended to some of the highest ranks of the Church's hierarchy, the Church has experienced a call by those within the Church and society generally for higher standards of care of youth and vulnerable adults. This includes higher standards for reporting and investigating claims of sexual abuse. As a response to this call, the Church has enacted numerous reforms over the last 20 years. These reforms, which are always ongoing, give us more confidence today that the Church is not only responding appropriately to claims of child sexual abuse, but they were also preventing child sexual abuse in the misconduct that leads up to these morally reprehensible actions. This same call for higher standards as it relates to school teachers and

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school employees is necessary and will make Nebraska a better place for every child to thrive in a caring and safe environment. We encourage the Judiciary Committee to advance some form of these various pieces of legislation and thank all those senators who have brought these important bills to protect our children. We would also offer the work and experience of our diocesan safe environment coordinators and victim assistance coordinators now and in the future as this Legislature seeks to establish stronger public policies to protect children and vulnerable youth from sexual abuse. Thank you for your time and consideration.

LATHROP: Tom, I don't see any questions today, but thanks for being here. We appreciate that message.

TOM VENZOR: Yeah, thank you.

LATHROP: Next proponent.

KYLE MCGOWAN: Good afternoon, Chairman Lathrop,--

LATHROP: Good afternoon.

KYLE MCGOWAN: --members of the committee. My name is Kyle McGowan, K-y-l-e M-c-G-o-w-a-n. And today I'm representing the Nebraska Council of School Administrators. We appreciate the efforts of multiple senators to address this incredibly inappropriate behavior by a few educators, albeit way too many incidences. Our parents and communities expect their children to not only be safe, but protected in particular by the educators that they entrust their children with every day. NCSA testified in support of LB1080 earlier, we're-- we have no oppositions to any of the four bills. I will mention LB1048 and LB1210, you've already heard very powerful testimony. A couple of things to note in LB1048 requires immediate notification to the Commissioner of Education. We think that's an important piece. LB1210 mentioned specifically that consent is not an allowable defense. We think that's particularly important. It also clarifies an important piece, it's not uncommon in schools for teachers to have a student assistant that might help in their free period. And in LB1210, it makes it clear that that student assistant is not considered a school official. So with that, we, we greatly support your efforts. All school personnel are in support of these efforts. So thank you very much.

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LATHROP: OK. Well, thanks for being here, Mr. McGowan. We appreciate your testimony. Good afternoon.

MOLLY KEANE: Good afternoon, Mr. Chairman and members of the Judiciary Committee. My name is Molly Keane, M-o-l-l-y K-e-a-n-e, and I'm a deputy county attorney in Douglas County, Nebraska. I'm here on behalf of the County Attorneys Association in support of LB766. I-- within the Douglas County Attorney's Office, I supervise a team of attorneys that prosecutes cases against-- involving child victims and sexual abuse. Over the past few years, we have prosecuted over 1,100 of these cases and the vast majority of those have involved sexual abuse of children. Unfortunately, over these years, we've also been unable to prosecute many situations of sexual abuse of minors at the hands of authority figures in our community because the actual sex acts didn't occur until those minors turned 16-years-old. LB766 would prohibit sexual assault of a minor by any authority figure, and that is why the County Attorneys Association is in support of that bill. Although, each of these bills is laudable and we appreciate all of them. Under our current statutory construction, there are three ways to prove first degree sexual assault. LB766 makes an alternate way, a fourth way, indicating that when the actor is an authority figure and the victim is under 19 years of age, the age of majority in our state, that would also qualify as a first degree sexual assault. Authority figure is defined in LB766 as an actor in a position of trust and authority over a victim and includes but is not limited to the victim's guardian or foster parent, temporary caretaker, coach, counselor, principal, teacher, or healthcare provider. This would include people in clergy, ministers, youth pastors, community education programs, or instructors. This is a necessary change to our laws given the unfortunate problem we frequently encounter where people we entrust with our children's care and supervision take advantage of their positions to prey upon our most prized and most vulnerable citizens. These are people we teach our children to trust, to respect, and to work to impress from the time they're toddlers. And oftentimes these perpetrators begin grooming these children before the age of 16, but wait until the actual age of 16 to perpetrate or commit actual sex acts on them. LB766 is important in that it does have a broader definition. It mirrors language in over 30 states that accept and have litigated that broader definition. It places the statutory language within proper context of our sexual assault statutes. The penalties associated with it mirror our existing sexual assault statutes, and it also contains the continuous sexual assault language and the changes to sexual or the statute of limitations for failure to

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report. For all of those reasons, we feel it is the most appropriate change and addition and would ask for your support and I would be happy to answer any questions at all. Thank you.

LATHROP: OK. I have some questions for you, if you don't mind.

MOLLY KEANE: OK. Yes.

LATHROP: And this came to us in the context of, of the teacher-student relationship and--

MOLLY KEANE: Right.

LATHROP: --LB766, as you as you testified to, is more broadly written to include individuals in a-- that are defined as an authority figure. I want to talk to you about that for a second,--

MOLLY KEANE: Yes.

LATHROP: --only because you-- on page 3, line 21 it says, "Authority figure means an actor in a position of trust and authority over a victim, and includes, but is not limited to, the victim's guardian or foster parent, temporary caretaker, coach, counselor, principal, teacher or health care provider." So when you put including, but not limited to you--

MOLLY KEANE: Yes.

LATHROP: --so let me, let me give you a hypothetical, which people in my office are probably tired of me using this one, but let's say that there is a young person who's 17-years-old working part-time at a Subway sandwich shop, OK? The perpetrator is somebody who's 21, who is a part-time college student-- we'll make him 20. I want to get the age as close as I can.

MOLLY KEANE: OK.

LATHROP: A 20-year-old working at the Subway shop and somebody has made him the assistant manager. Is that a person that you would expect to be a person or fall within the definition of a person of authority?

MOLLY KEANE: I think it would depend on the circumstances, how that relationship is maintained, how much authority that assistant manager has over their position, whether they could control whether they're fired or not. Different circumstances, it'd be very case specific. But

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I think if the concern is the closeness in age, there are ways to address that within the statutes if we wanted to put in some like Romeo and Juliet type language where the perpetrator had to be at least four years older than the victim for it to qualify.

LATHROP: I don't think it would be uncommon for people in that situation for the 20-year-old to, to have a party on Friday night and in comes the part-time high school kid that has a beer and, and then things--

MOLLY KEANE: Right.

LATHROP: --take a turn from there. I do have some concern about that, that language only because if we, if we talk about a caretaker, a temporary caretaker,--

MOLLY KEANE: Um-hum.

LATHROP: --is that one afternoon? Like that's not a grooming situation, or, or taking advantage necessarily. Do you follow me?

MOLLY KEANE: Yes. And I think it would be-- like I said, it would be very case specific. But a temporary caretaker, for example, is usually not going to be someone that's not known to that child. Most people aren't leaving their children with unknown individuals. It is someone they have a prior relationship with. It would depend on the circumstances of that relationship. The language talks about they have to be in a position of trust and authority over the victim. And I think that that language, coupled with the additional language, indicates that it has to be during the time of the offense. So if they've moved on, if they've, you know, it's someone they used to watch over and now they're they've reached the age of majority or close to it and they're close in age, different circumstances would have to be addressed individually and it would be very case by case.

LATHROP: Yeah, my concern is that the age of consent is 16. And if we're going to make an exception to that, which is what these bills are intended to do, that's pretty clear so people know where the line is, whether they're on one side of the line or the other.

MOLLY KEANE: Right. And hopefully people do understand that-- I mean, I can tell you those are listed in there because I have prosecuted or investigated every one of these relationships.

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LATHROP: That was gonna be my next question. Do you want to take a couple of seconds and talk to us about that?

MOLLY KEANE: Sure. Foster parents, for example, those are cases we see quite often. A person who is placed in-- a child's placed in this person's care, they are responsible for everything to do in-- really in place of the parent of these children. And they form this relationship with them, they groom them, which we've been hearing about this afternoon, they earn their trust, they earn their confidence. They often become the person that that child feels comfortable going to with their problems, with their concerns, and then they manipulate that relationship and turn it into something inappropriate, something sexual. Now we've had cases where that happens when they're 14-, 15-years-old and we can prosecute those cases and we do prosecute those cases. But then there's also the situation where they're building those relationships throughout the years of 14 and 15. The child turns 16 and they start to have sex with them. And there's nothing we can do about it. Even though the behavior is the same and a simple birthday has happened in the meantime, that doesn't change that child's maturity. It doesn't change their ability to make a good decision. It just is a number. And another interesting thing about the way our laws are set, are set up on this context, that foster parent could have sex with that 16-year-old. But if he videotaped it, that's a crime I can charge him with. I could charge him with a 1D felony for recording having sex with this child, but I can do nothing about him having sex with a child. A 15-year-old who's having a texting relationship with an adult, and they're talking about having sex, I can charge that adult with a 1C felony. But if that child turns 16-years-old and they have sex on their birth-- on that child's birthday, I can do nothing about it. It's just not consistent. It's not appropriate. It doesn't address the behaviors that we need to address. And teachers, while they are-- teachers who do this, I respect teachers, I love teachers, I come from a family of teachers. But teachers who manipulate their relationships, their authority, and get into relationships with these children should be held accountable, so should these other people, so should their coaches. A coach of a basketball team at a high school gets held responsible under every other one of these laws for having sex with a 16-year-old sophomore that's on their basketball team. But a coach of the YMCA team doesn't for the exact same behavior with the exact same student of the exact same age. It's not right. It's not equal protection. It's not right. That child, whether the YMCA basketball player or the high school basketball player deserves the same protection because they will have

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the same victimization, the same traumatization, and the same impact for the rest of their lives.

LATHROP: OK. That's all the questions I have. Thank you.

MOLLY KEANE: Thank you.

LATHROP: I don't see any other questions. Thanks for being here. We appreciate--

MOLLY KEANE: Thank you.

LATHROP: --hearing from somebody that's an expert on the topic. Good afternoon.

BRIAN HALSTEAD: Good afternoon, Senator Lathrop, members of the Judiciary Committee. For the record, my name is Brian, B-r-i-a-n, Halstead, H-a-l-s-t-e-a-d, with the Nebraska Department of Education. You all have received a letter from the Commissioner of Education on each of the bills before you. And I'll stop my statement there and take any questions you might have.

LATHROP: Maybe just one. At the Department of Ed, we had a conversation this summer about the necessity of communication between Child Protective Services and the Department of Education, right?

BRIAN HALSTEAD: Yes, correct.

LATHROP: That's in one of the bills. You feel like that's an important component of whatever we do or pass here today?

BRIAN HALSTEAD: We believe any of the bodies who might have information should be allowed to share it with others. So in this case, the current statute, as we understand it from the Department, does not allow the Department of Health and Human Services to tell the Commissioner of Education anything about a child abuse or neglect. We believe that barrier should be removed.

LATHROP: OK.

BRIAN HALSTEAD: We will tell DHHS anything we have at the Department of Education. We don't have that barrier. But the way the statutes currently written, they don't believe they can tell the Commissioner

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of Education anything. We support the sharing of the information among standing of the jurisdictions.

LATHROP: OK. Two more questions. One is the prevalence of this, you have people that make complaints. And to be clear, to be clear, it's a violation of their, of their ethics. And if you find that it's true on investigation, you investigate these complaints. Yes?

BRIAN HALSTEAD: Correct. Absolutely. It has been a violation of the ethical standards for educators going back to the 1980s.

LATHROP: OK. If--

BRIAN HALSTEAD: So it's a violation of the law this whole time, it just has not always been a crime for some of the incidents that arise from that.

LATHROP: So people who engage-- teachers that engage in the conduct we've heard described here today they will have their certificate pulled and they can't teach in Nebraska or anywhere else.

BRIAN HALSTEAD: That's correct.

LATHROP: Somebody brought up the prevalence of this happening in the state. You field how many complaints on average a year?

BRIAN HALSTEAD: It's been steadily increasing over the years. I would say right at the moment, if you're looking for an average, there's about 70 complaints per year. Looking at the numbers just over the last five years and trying to categorize this, about 20 percent of any of those complaints are gonna deal with an improper relationship between an educator and a student.

LATHROP: So somewhere as an average, somewhere between 12 and 15 a year?

BRANDT: That'd, that'd be a number. Yes, absolutely, Senator.

LATHROP: OK, thank you. Any other questions? I see none. Thank you for your testimony. Anyone else here to testify as a proponent for any one of the four bills introduced? Anyone here to testify in opposition?

SPIKE EICKHOLT: 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 Nebraska Criminal Defense

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Attorneys Association opposed to these bills. I want to say one thing clear, our position on these bills should not be considered one of justification or endorsing the highly inappropriate conduct between people in positions of trust, whether it was teachers or other school staff in abusing children. That's not what we're here for. And I, I hope that the people who are-- have been affected by this behavior recognize that. And if they don't, I understand. Our position is more fundamental for that. We really only have three choices, if you will, on these bills. We don't-- probably don't support them. I don't think it's fair to say that we're neutral on them. So we are opposed to all four. One point I want to make and that's something I made before earlier this year, and Miss Keane, probably made this point made better than I could, our criminal code, particularly our sexual offense statutes, are sort of convoluted and a mess. They're not necessarily predictable. She highlighted a situation that exists in current law, and that is if you text a child something sexual under-- a child under 15, that's more serious than actually having sex with that child, that doesn't make sense. This is going to add possibly another layer of that inconsistency and some sort of [INAUDIBLE] to our criminal code. Another reason we're concerned about this, if we do pass a law and I suspect the Legislature will, it's not gonna be possible to ever repeal it. It seems like it's impossible to ever modify a sentence in the future or a mod-- or even the crime itself so we're urging some caution. I'm gonna highlight a couple of issues we have with the individual bills. First, LB766, it does define the age of victim, and that's someone under 19, but it doesn't define the age of the authority figure. And I think that's important because what this seemingly these bills are trying to do is to create a new type of statutory rape where you have the difference between the age with the manipulator or the perpetrator and the victim. Additionally, on page 3, lines 21-25, Senator Lathrop already talked about the including, but not limited to. That expressly means-- and the courts interpret that to mean-- it means all of these categories listed in the bill and anything else. And that, that temporary caretaker is problematic as well, because we are talking about victims who are 16, 17, 18 years of age. I don't know if they have caretakers. And if they do, I don't know what those people are. We're not talking about special needs victims. We're talking about victims who are 16-, 17-, 18-years-old. On LB991, it does define sort of the victim, the age of the victim between 16 and 19. But the penalties are much more severe. The penalties for sexual assault, penetration, sexual contact are F1C and F1D. That's a little bit inconsistent with-- well, it is inconsistent with current law because it-- the statutory rape penalty now for

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having sex with someone who's-- the perpetrator's over 19, the victim's under 15 is a Class II felony, 1 to 50. This would make it more punitive to have sex with someone who's over 16 or over 15. LB1048, there is again no age for student. And I think one of the proponents testified earlier that there are students in the public schools who are over 19 or are certainly at the age of majority. And I think that the committee should look at actually defining that age. And finally, LB1210 also has, again, no age for the student and does have sort of the age for the perpetrator, 19 or older, but not for the victim itself. And there could be a situation where the victim is actually older than the perpetrator. And I don't think that's the intent of the bill. So I'm out of time. But if there's any questions, I'll answer them.

LATHROP: Any questions for Mr. Eickholt? Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming today, Mr. Eickholt. Which were the two that have the issue on student age?

SPIKE EICKHOLT: The LB1048 does not have an age for student. If you look at the definition of-- and I'll try to highlight it here very quickly. On page 4, lines 1-5, student just simply means a person who's enrolled in or attending a public, private school approved by Department of Education. And I think that someone said earlier-- and I know at LPS they do have for refugee students continuing education for people who are 19, 20, maybe even older than 20-years-old, or students who have IEP plans or, or special plans that I think someone said before and then the same sort of problem exists on Senator Vargas' bill. I don't have his amendment that he handed out, but on the original LB1210, it defines student, but it does not list an age for that student.

PANSING BROOKS: Thank you. That's what I wanted to know.

LATHROP: I don't see any other questions. Thanks for your testimony. Anyone else here to speak in opposition to any one of the four bills that have been introduced? Anyone here in a neutral capacity to testify on these bills? We will afford each of the senators an opportunity to close beginning with-- Senator Lindstrom, I think, has waived an opportunity to close. Senator Halloran, if you care to close, you're welcome to approach.

HALLORAN: This will be just shy of a waive. I think I want to, I want to thank all those that testified for LB991, LB766, LB1210, and

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LB1048. They all have merits. And I just want to reexpress my desire to work with the senators to pull something together because I think something needs to happen. These students, we talk about vulnerability on various issues with various classes of people, groups of people. Our students are the one that we really need to protect on this issue. And I would be more than happy to work with them. And with that, I would ask you, if you don't advance LB991 by itself, that you give us time to pull it together and/or work with the committee to do that.

LATHROP: We certainly will.

HALLORAN: OK.

LATHROP: Any questions for Senator Halloran? I don't see any. Thanks for being here.

HALLORAN: OK. Thanks.

LATHROP: Senator Quick.

QUICK: Thank you, Chairman Lathrop and committee members. I think from the testimony today, you can hear how important this issue is and, and how we need-- what we need to do to address it. I know the committee will do a good job of looking at all four of these bills in seeing what's the best, best path forward so we can address this issue. And with that, thank you for everything and I'll answer any questions if you have any.

LATHROP: All right. Senator Pansing Brooks.

PANSING BROOKS: Thank you for bringing this, Senator Quick. So you heard Mr. Eickholt's testimony. Would you be willing to delineate and be more specific on ages and what constitutes a student in case they do have--

QUICK: Yeah.

PANSING BROOKS: --some that are over the age of majority?

QUICK: I'm willing to work with and make this the best bill we can.

PANSING BROOKS: OK. Thank you very much.

QUICK: Yeah.

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LATHROP: I don't see any other questions. Thanks, Dan. And Senator Vargas, if you're still here. He appears from behind the post.

VARGAS: It's where I get to hide. Members of the committee, thank you. The only question-- well, the only thing I want to state is I'm looking forward to working with the senators on this bill. I know, Mr. Eickholt didn't get to see this amendment, but it does define 16 years of age or older. There is statute in Iowa that I think we could possibly even look at that specifically does it-- I think it does a little bit more in terms of defining school official so that we are just being really clear. But I want to thank you-- again, this is building off of a bill that I did last year. I'm one of the people in this committee that-- sorry, in this Legislature, I brought bills to you and some of which are about changing sentencing reform or trying to make some common sense ability to reduce our prison population. Not-- I've just wanted to state that I think this is sometimes a bill that is gonna be needed to then ensure that we are considering the safety of our children. And I will continue to support sentencing reform. But I think in this exception, there is something that we can do to make sure that children are safe in our schools and we are not allowing a loophole to exist in our statutes.

LATHROP: Very good. Any questions? Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thanks for bringing this bill, Senator Vargas. So I guess my understanding of what Mr. Eickholt was talking about was that there's no limitations, so it's 16 years of age or older. But you could have a 19-year-old student or you could have a student that is older--

VARGAS: Um-hum.

PANSING BROOKS: --like one's 19, and the other-- than the-- I don't know, I'm just trying to-- so if you'd be willing to work on that just to clarify that language and--

VARGAS: Yes.

PANSING BROOKS: --I think that's what we're-- what he was talking about.

VARGAS: Yes. I think Dr. Logan did also make a reference to we have students in Omaha Public Schools, for example, that are older than the age of 19 up to 21.

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PANSING BROOKS: Yes,--

VARGAS: That's very standard.

PANSING BROOKS: --refugee students and other, other students that have-- do IEP [INAUDIBLE].

VARGAS: So, yeah, we're happy to clarify that.

PANSING BROOKS: OK. Thank you very much.

LATHROP: Are those students that are older than 19 typically vulnerable adults in some other category, or are there some students who are 20 and 21 who wouldn't necessarily fall into the category of a vulnerable adult, if you know?

VARGAS: I don't.

LATHROP: OK.

VARGAS: But I can find out.

PANSING BROOKS: I-- can I just--

LATHROP: Um-hum.

PANSING BROOKS: I, I know that some are, as they said, refugees and people that have come here and are older because of where they are in, in school when they arrive, so. But there are a number that are vulnerable adults as well.

LATHROP: OK.

VARGAS: All, all--

PANSING BROOKS: Having served on, on Education.

VARGAS: Yeah. All I want to make sure is that students that are under our supervision within our schools, that we are looking at that population. So--

LATHROP: Very good.

VARGAS: Thank you very much.

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LATHROP: OK. Thank you, Senator Vargas. We do have letters of support, none in opposition or neutral. The letters in support are from Matt Blomstedt, Commissioner of the Department of Education; Ivy Svoboda, at the Nebraska Alliance of Child Advocacy Centers; Steve Hensel, Chief-- Police Chiefs Association of Nebraska; Lisa Lavene, Lana Temple-Plotz, Nebraska Children's Home Society. Terry Werner, National Association of Social Workers Nebraska Chapter; Mary Bahney, School Social Work Association of Nebraska; and David and Aileen Gruendel. With that, we will close our hearing on LB-- or the LB766, LB911 [SIC], LB1048, and LB1210. That will bring us to Senator Geist. We may give you just a couple of seconds to clear the room of the people who were here on the last bill before you open on. If you folks on the wall, want to take a second and grab a seat. Looks like there's some seats available. OK. If you can shut the door. Do we have a state trooper over there?

PANSING BROOKS: They're bringing more people in, so.

LATHROP: Do you want to find a seat? Can we shut the door if we have-- if we're done having people coming and going? So Senator Geist can--

PANSING BROOKS: They're still bringing people in.

LATHROP: Oh, are they?

PANSING BROOKS: They're still letting people in.

LATHROP: Oh, OK, never mind. We're gonna be a little bit, Senator Geist, while we allow--

GEIST: OK.

LATHROP: --more people. You're welcome to take a seat, though. What's that?

GEIST: I can sit in a comfortable chair.

LATHROP: You can sit in the comfy chair. OK, does that exhaust all the people that are trying to get in the room? OK. Before Senator Geist begins, can I see by a show of hands the number of people who are going to testify in support of this bill? Put your hands up real high so we can see. OK. And how many people are here to testify in opposition by a show of hands? OK. Perfect. Very good. Senator Geist, to you. Welcome to the Judiciary Committee,--

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GEIST: Thank you.

LATHROP: --and you are free to open on LB814.

GEIST: Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Suzanne Geist. That's S-u-z-a-n-n-e G-e-i-s-t. I represent District 25 and that is the east side of Lincoln and Lancaster County. Today, I'm introducing my priority bill, LB814, which would prohibit the dismemberment of a living baby during the second trimester of pregnancy. When I first learned about this bill, I didn't realize this procedure was actually legal. However, it is, and I still find it difficult to talk about. In this procedure, a doctor will actually tear off the arms and legs of a child piece by piece, until they either bleed to death, their spinal cord is broken, or their skull is crushed. Regardless of our individual opinions on abortion, I think we can agree that no living creature and certainly no human being should be subject to this barbaric act in the name of women's health. The purpose of my bill, LB814, is to protect living unborn children from having to endure the brutality of dismemberment. It's also to preserve the public trust in the medical profession as those who heal and make our bodies whole, protect the medical profession and society itself from becoming desensitized to the value of human life. LB814 does not remove access to abortion in Nebraska. It simply requires that this particular method is no longer practiced in our state. This practice is common in the second trimester nationwide, but it is uncommon in Nebraska. Thirty-two dismemberment abortions were performed in Nebraska in 2018, that's 1.5 percent of total abortions in our state and 18 percent of abortions in the second trimester. So obviously it's not denying access. I'll add that this is also not an indictment or a judgment of women. I know that that will be part of what people think I'm doing. That is not. I understand that there are difficult decisions that women make in situations like this. And this is not a commentary on the decisions that women make in situations like this. It is simply restricting this particular procedure. There will be others testifying after me of much more humane options than dismembering live babies. You will also hear and be able to read about the detrimental effects this procedure has on the attending surgical staff. A current abortionist has gone into great detail about the toll that performing dismemberment abortions took on his medical staff, including disturbing nightmares, strained personal relationships, and an obsessive need to talk about the procedure. Other abortionists have described the same psychological burdens on their staff. This practice truly has no place in modern

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medicine and should not be happening in our society. There will be so much more information coming behind me and all I ask is that you set aside your personal and preconceived ideas and listen to what their experience tells you. It's a story that's difficult to hear and it's even more difficult to tell, but it needs to be heard. Thank you for your time and I will take any questions you may have.

LATHROP: Senator Slama.

SLAMA: Hi, Senator Geist.

GEIST: Hello.

SLAMA: Thank you very much for bringing this bill. I had talked with you about a couple of questions beforehand and I just thought they were important enough that they needed to be in on the record because they were points of confusion for me when I was reading this bill. So there's other methods available if a woman is seeking a second trimester abortion, right, that isn't to dismember an abortion?

GEIST: There are. And actually in our state, those other methods are used more commonly. And there's a physician that's coming behind me that can detail those. I'd rather you get 100 percent medical information than secondhand from me. But, but, yes, there are.

SLAMA: Certainly. And this bill doesn't have any impact where if a woman doesn't have a complete miscarriage, the baby is dead. This doesn't limit our doctors in removing that corpse from the mother does it?

GEIST: No, and that's actually an excellent question and a point of confusion that some have. This does if, if an infant has died or a woman has had a miscarriage or if a physician causes the demise of the child, and that is what we'll go into greater detail behind me, then there is no prohibition of dismembering the infant. It's simply dismembering the infant when it's alive. That's what this bill would restrict. So thank you for asking that question so I can clarify that. It's a very important distinction to make.

SLAMA: Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for being here today. So I'm interested, what if the, what if the doctor feels that there's something that's

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way safer once this ban takes effect? What happens if there's-- if, if that method is actually the safest for the woman to use for the mother?

GEIST: You know, I, I would love to answer that. I'm gonna let the physician answer that, because I would like them to tell you their perspective of the safety issue rather than just my opinion. I think that will have much more scientific bearing than what, what I would say.

PANSING BROOKS: OK.

GEIST: OK.

LATHROP: I don't see any other questions,--

GEIST: OK.

LATHROP: --and I assume you will stick around to close?

GEIST: I will stick around.

LATHROP: OK. Very good.

GEIST: Yes. Thank you.

LATHROP: Thank you. We will take proponent testimony.

KATHI AULTMAN: Chairman Lathrop and committee members. My name is Dr. Kathi Aultman, K-a-t-h-i A-u-l-t-m-a-n.

LATHROP: Doctor,--

KATHI AULTMAN: Yes.

LATHROP: --I'm gonna ask you to talk just a little bit louder so everybody in the room can hear you.

KATHI AULTMAN: OK.

LATHROP: The sound isn't great in here, but thank you.

KATHI AULTMAN: I'm a retired, board-certified Ob/Gyn and a fellow of the American College of Obstetricians and Gynecologists with over 35 years of experience. I was a cofounder and codirector of the first rape treatment center in Jacksonville, Florida, and served as the

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medical director for Planned Parenthood of Northeast Florida. I performed first trimester suction D&C abortions and second trimester dismemberment abortions. I've also personally had an abortion. A dismemberment abortion or D&E is generally done between 13 to 24 weeks gestation when it becomes difficult to remove the baby's body with a suction curette alone. During a D&E, I would drain the amniotic fluid using a suction curette, bringing the baby into the lower portion of the uterus. I use a clamp to grasp whatever I could, usually an arm or a leg, and by pulling down and twisting I would tear it from the body and place it on a tray. Once I couldn't get anything else, I would open my clamp wider and grasp and crush the chest and then the head. I would-- I could tell when I had done this because the white substance, the brains, would leak out. Once her bleeding was under control and I had accounted for all the body parts, I would remove the instruments. Why does it matter whether the baby is alive or dead during this procedure? We already have a large body of evidence to support the fact that the fetus feels pain at 20 weeks gestation. However, the authors of a recent comprehensive review of the literature in 2020 concluded that the fetus may experience pain as early as 12 weeks gestation. This has moral implications for abortion procedures. Providing fetal analgesia is now the standard of care for fetal surgery. I support this bill because it prevents the infliction of needless pain and suffering on innocent human beings and preserves the integrity of the medical profession. A major benefit is that it will spare mothers the agony and guilt of knowing that their child was torn limb from limb while it was alive. The technology to cause fetal death prior to second trimester abortion is already standard practice in many abortion clinics for this very reason. This bill does not interfere with a woman's ability to have a D&E abortion because it only precludes doing this procedure on a live baby, which means they can still have a D&E procedure if this bill passes. When I was doing dismemberment abortions, I was totally focused on making this procedure as painless as possible for my patient, but I never considered the pain that the baby might be experiencing. I hope that you will have more compassion on these innocent human beings than I did and pass this bill. We regulate the way in which animals are killed to prevent this kind of cruelty. Certainly, we owe as much to our own offspring. And I would be happy to answer that question.

LATHROP: You'll have an opportunity I'm pretty sure, Doctor. Thank you for your testimony. Are there questions for Dr. Aultman? Senator Pansing Brooks.

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PANSING BROOKS: I think you do note that the-- thank you for coming today. And the American Congress of Ob/Gyn's has said that the D&E method results in the fewest complications for women going-- undergoing this procedure. So I guess that, that, number one is, what if there is something where the doctor determines that there's greater risk and you're saying that it's already available because why you can still use those?

KATHI AULTMAN: OK, this bill does not prevent the woman from having a D&E. She can still have a D&E. The physician just needs to cause fetal demise prior to starting the D&E. So there's no, no medical reason that the baby has to be alive at the time this procedure is done. Unless you're trying to get fresh fetal tissue for research or something, there's no reason the baby has to be alive.

PANSING BROOKS: So why, why did you not do that? Why-- you talked about how difficult this was for you. Why did you not-- I don't know how you say-- procured fetal demise? I'm sorry, I'm not a--

KATHI AULTMAN: At the, at the-- well, as I said, at the time, I was doing them, I mean, I really felt this was a woman's right. I got extra training to do this, this wasn't even part of my residency program. But-- and I didn't even think that the fetus might be having pain, so it really wasn't an issue back then. Thankfully, nowadays we do know that these fetuses have pain and there are ways to give them anesthesia when we do fetal surgery. That's standard of care now, and it's an easy procedure to cause fetal demise prior to doing this procedure. So none of you should have any qualms about passing this bill because it doesn't restrict abortion at all. This is really a humanitarian bill.

LATHROP: Senator DeBoer.

KATHI AULTMAN: Pardon?

LATHROP: Senator DeBoer has a question for you.

KATHI AULTMAN: Oh, sorry. Yes.

DeBOER: You kind of alluded to this, but I just would like you to tell me what changed your mind so you used to do it and now you don't or you don't feel it should be done. What changed your mind? How-- what changed your mind?

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KATHI AULTMAN: The first thing was that I had a baby, and I-- after having a baby-- I even did abortions while I was pregnant because I felt my baby was wanted, theirs was not. It was logical, no problem. After I had the baby, something happened in my mind and suddenly I saw them as little people who I could not justify killing them just because they weren't wanted. Then there was a series of things that I saw in my practice where-- that challenged my ideology because at that time I still believed in abortion. And this is not politically correct, but finally, what happened was someone gave me an article that compared abortion to the Holocaust. And I realized for the first time that I was a mass murderer. And the reason that I could do what I did was because just like the Nazis did not consider their victims as human beings, I did not consider the fetus as a human being. I saw it the same as a chick embryo that I dissected in college.

DeBOER: Can you tell me about-- now I must say, I am not a medical professional, so this may be a really ignorant question. Can you tell me about ectopic pregnancies and how they would fit within this?

KATHI AULTMAN: OK, well, removal of an ectopic pregnancy is not and has never been considered an abortion. In an ectopic pregnancy, the, the fetus im-- the pregnancy implants in the tube or somewhere else, in the--

DeBOER: Right.

KATHI AULTMAN: --abdominal cavity somewhere, and there's no way to save it. And it's, it's life-- it's a life threatening situation for the mother and the medical profession has never considered that as an abortion.

DeBOER: But the, but the fetus is often still alive when the ectopic pregnancy is discovered.

KATHI AULTMAN: Oftentimes not, because usually it's discovered because they're bleeding. They're-- it's also at a much earlier gestation. You're talking more like at six, seven weeks. You know, tiny, these are tiny, tiny fetuses.

DeBOER: Sure.

KATHI AULTMAN: Sometimes we have trouble finding them when we go into operate.

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DeBOER: So, so would the correct-- again, I don't know. Would the correct method for ending an ectopic pregnancy ever be this procedure, which we're talking about today?

KATHI AULTMAN: Oh, no, absolutely not. You couldn't, you couldn't do that procedure.

DeBOER: OK.

LATHROP: Senator Morfeld.

MORFELD: Thank you for coming today. I know this is a tough issue to talk about, but you're a professional on-- and you have the experience. So you said that you would still be able to lead it to the demise of the fetus and then be able to perform this type of procedure. Correct?

KATHI AULTMAN: Right, under your law.

MORFELD: OK.

KATHI AULTMAN: Yeah.

MORFELD: OK. So what are the procedures that you would lead to the demise of the fetus?

KATHI AULTMAN: OK.

MORFELD: Yeah, what, what, what, what are those procedures look like?

KATHI AULTMAN: There's, there's about three different, about three different ways. One would be injecting digoxin into the amniotic fluid or directly into the fetus. That's usually done a day or two prior to the procedure when the woman comes in to have her cervix dilated by the placement of laminaria which slowly dilates the cervix. The physician can also inject potassium chloride directly into the, into the heart of the fetus. And that's, that's more immediate, the digoxin needs more time to be effective. The potassium chloride acts within about a minute or so.

MORFELD: And is there--

KATHI AULTMAN: Oh, I'm sorry. The other thing is that you can cut the cord, let the baby bleed out.

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MORFELD: So-- OK. Thank you.

LATHROP: Senator Slama.

SLAMA: Thank you very much for testifying today. Just to piggyback off of Senator Morfeld's question, do you think there's any type of health benefits associated for the mother for causing the fetal demise ahead of the D&E procedure?

KATHI AULTMAN: Absolutely. Whether a woman knows at the time, if it's been explained to her what's gonna happen during the procedure or if-- even if that's whitewashed, but if she finds out later what happened to her baby, there's psychological consequences to that to know that you allowed a procedure on your baby that caused it to be torn limb from limb while it was alive. That's why in so many places, it's become standard to offer fetal demise prior to the abortion. And in some cases, the woman doesn't have a choice. The clinic does it because they don't want to risk having a baby come out intact and be alive and then run afoul of other laws. Excuse me. And it's, it's definitely helpful to the medical staff. You can imagine becoming a nurse because you want to help people and then get assigned to the OR where some doctor is doing the dismemberment abortion and you're watching this little tiny baby being torn limb from limb. That's one of the reasons there are people-- you know, one of the reasons people leave the abortion industry is when they've witnessed that kind of thing.

SLAMA: And did you see that kind of psychological impact with the D&Es happening while the fetus was still alive with the staff that you worked with?

KATHI AULTMAN: I did not. I wasn't aware of anything at that point. I was only focused on my patient and I wasn't, I wasn't in charge, I wasn't in charge of the clinic or anything where I was moonlighting or where I was doing them so I wasn't aware of that. I will say there is also some concern of taking young residents and exposing them to this kind of procedure and then come-- expecting them to go out and be compassionate in other instances, you know, in the care of their patients. I, I really think it, it hardens us. I don't know that you want us taking care of you after that experience.

SLAMA: All right. Thank you,

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LATHROP: Senator DeBoer.

DeBOER: Sorry, I have a couple more in light of some other things. So you say there's a couple of processes for fetal demise ahead of time. Are those dangerous for the mother?

KATHI AULTMAN: No more dangerous than-- probably less dangerous than an amniocentesis, which is done all the time. So that-- and the-- any abortionist should have the requisite skills to be able to do that procedure. In an amniocentesis, you have to be very careful because you don't want to stick that baby as you're-- you know, inserting this needle, needle into the abdomen. In this case, you don't care if the baby-- that's the intent is to kill the baby. So you don't have, have that same worry. But it is not a difficult procedure and a very small thing to do in order, in order to save a baby from having to undergo this kind of thing.

DeBOER: The reason I ask is because it seems that if it would kill the fetus, wouldn't it also be harmful to the mother, the same substance that's being injected? I mean--

KATHI AULTMAN: Well, when you think of it, the fetus is small compared to the mother. But when you're injecting something into the fetus, that's not going to directly go into the mother's bloodstream. So that the--

DeBOER: Could hit by accident, though?

KATHI AULTMAN: Well, you can imagine you have a baby floating,--

DeBOER: I can't.

KATHI AULTMAN: --floating in the center of this balloon full of water, OK, you're injecting something into the baby. You would have to really be off target and--

DeBOER: But doesn't it have-- I mean, it--

KATHI AULTMAN: --really be off target to--

DeBOER: --doesn't it have to go through the mother to get to the baby?

KATHI AULTMAN: Well, you're, you're putting the needle through the abdominal wall.

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DeBOER: Right.

KATHI AULTMAN: But then you're injecting the--

DeBOER: [INAUDIBLE].

KATHI AULTMAN: --you, you put that into the fetus and then you inject or you're just injecting the medication into the amniotic cavity and the prostaglandin abortions where they use the same, the same drug. I'm sorry, that's incorrect, this is not a prostaglandin. But digoxin is sometimes used to correct fetal tachycardia. You know, it's a drug that people take orally. The dosage is not enough to affect the mother and, and studies have shown that they have not shown harm to the mother.

DeBOER: OK. I just-- when you said that I was like, wait.

KATHI AULTMAN: Yeah.

LATHROP: Doctor, I don't see any more questions for you today, but thanks for being here.

KATHI AULTMAN: Thank you.

LATHROP: Next proponent. Good afternoon.

KRISTEN NEW: Good afternoon, Chairman Lathrop, members of the committee. My name is Kristen New, K-r-i-s-t-e-n N-e-w, and I am here today as an unlikely supporter of LB814. Unlikely, because I worked as a counselor for three years during college and graduate school at two different abortion clinics. I loved working with women facing an unexpected pregnancy. I believed that abortion helped women and that an abortion procedure was nothing more than removing a clump of tissue from a woman's uterus. These beliefs drastically changed once I observed a second trimester dismemberment abortion under ultrasound. My job as a counselor involved counseling women before, during, and after abortion. I was never able to accommodate the hours necessary to participate in second trimester abortions until I graduated. Once I graduated, however, my administrator asked for more of my time and for me to do second trimester abortion counseling. I happily agreed. I remember my first second trimester patient well. She was a quiet, beautiful, and kind young woman who was scared because she felt she had no choice other than abortion. Parenting or adoption felt too risky and overwhelming to her. On the second day of the abortion, I helped her get ready. I talked with her and provided emotional

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support. Once we got her set up on the table, I held her hand as she was sedated and quietly went to sleep. The doctor then proceeded with the abortion and I watched the ultrasound screen as he entered the uterus with small, narrow forceps. First, he grasped the baby's leg, but the baby pulled it out of the forceps. Then he went back in and he tried to hold onto the baby's arm. But again, the baby pulled it out of the forceps and curled into a fetal position with its back towards the forceps. I was horrified, nauseated, and ready to faint. Seeing my reaction, the doctor excused me from the room. I sat in the hallway, utterly sickened by what I had witnessed. I watched a preborn baby experience pain, attempt to fight for its life, and ultimately lose. After the abortion was complete, I went into the room where we processed the fetal tissue and asked to see the tray. The technician tried to persuade me not to, but I insisted. It was a little boy perfectly formed, but missing two arms and a leg. At that moment, I knew I couldn't do this anymore and left the abortion industry three months later. I want to be clear that LB814 does not limit a woman's access to abortion in our state. It prohibits a specific and barbaric procedure that has no place in a civilized society. As a former abortion clinic employee who has witnessed this procedure firsthand, as a woman, as a mother, and as a Nebraskan, I am asking you to support LB814. In Nebraska, I know we can do better for both women and preborn children. Thank you for your time.

LATHROP: Thank you, Miss New. Any questions? I don't see any questions for you. Thanks for being here today. Good afternoon.

MARION MINER: Good afternoon-- excuse me, Chairman Lathrop and members of the Judiciary Committee. My name is Marion Miner, M-a-r-i-o-n M-i-n-e-r, and I'm speaking on behalf of the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the gospel of life through educating, educating, engaging, educating, and empowering public officials, Catholic laity and the general public. I'm here to express the Conference's support for LB814. I'm gonna skip a little bit over the beginning-- you have my testimony. But I wanted to focus particularly on the constitutional aspects of the bill. So the abortion case law that binds us at this time tells us that a law must advance a legitimate state interest without imposing an undue burden otherwise known as a substantial obstacle to abortion access for women affected by the law. Senator Geist has laid out the state interest, the state interest and issue, so that brings us to the substantial obstacle question. As you may know, 12 states have passed a ban on

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dismemberment abortion; three of them are not enforcing them because they've stipulated not to before additional litigation plays out; one in Ohio has been partially upheld and partially enjoined; one in Oklahoma was fully upheld at the state district court level before the state Supreme Court temporarily enjoined it pending appeal; two in West Virginia and Mississippi are fully in effect since 2016 and have not been challenged; five in Alabama, Kansas, Arkansas, Indiana, and Texas have been enjoined. So what I want to talk to you about is what makes Nebraska different from the states where the bans have been enjoined. So *Whole Woman's Health v. Hellerstedt* Supreme Court case in 2016 and its progeny in the circuit courts, especially in the 8th Circuit, have made very clear that the undue burden question is highly fact specific. So in a facial challenge to an abortion statute, the threshold question is whether there is a substantial obstacle to abortion access for a large fraction of women to whom the restriction applies. And enjoining the law in Arkansas, the district court relied heavily on the fact that, quote, 100 percent of second trimester abortions in Arkansas are dismemberment abortions. In Nebraska, by a contrast, that number is 18 percent. And enjoining the law in Alabama, the 11th Circuit relied heavily on the fact that 99 percent of abortions after 15 weeks in Alabama are dismemberment abortions. In Nebraska, that is 37 percent. In Texas and Indiana, the district courts did not cite any state statistics, but relied heavily on the fact that nationwide up to 95 percent of abortions in the second trimester were by dismemberment. And in Nebraska, again, that number is 18 percent, 18 and 37 percent are not large fractions, according to the case law. And I've cited several cases below that you can check on with regard to that. Federal circuits that have applied the large fraction tests to facial challenges to abortion regulations have-- and this is a quote, only found a large fraction where practically all of the afflicted-- affected women would face a substantial obstacle. And even when we drill into the very smallest details, say the 16 to 18 week window-- I see I'm out of time. I'd love to tell you more about that if you have a moment, but if not you have my written testimony as well.

LATHROP: Yeah, we'll give you a chance, you'll probably have some questions. Senator Slama.

SLAMA: So could you just go into a little bit more detail, you outlined that there are several states where similar bills have been enjoined and questions about this bill's constitutionality have been raised. Could you just go into a little bit more detail as to how you

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think Nebraska is different from these other states where it has been enjoined?

MARION MINER: Yes. Thank you. So as I, as I began, you saw in Arkansas and Alabama, you had the numbers 100 percent and 99 percent applied, whereas in Nebraska that-- those numbers would be 18 and 37. But let's go then to, to the smallest window, 16 to 18 weeks-- even then, if you, if you look at the Nebraska statistical report of abortions for 2018, which is the latest numbers that we have. In 2018, there were 53 total, quote, D&X abortions. And those, those are abortions by the alternative method that Dr. Aultman was speaking of. So D&X refers to-- my understanding is that a D&X refers to an abortion method whereby the-- it's either partial-- so, so the, the child is actually extracted whole, intact after the abortion. And so that is gonna refer to either partial birth abortion, which is illegal under federal law, or it's gonna refer to another method whereby fetal demise is caused before the child is extracted from the womb. So since partial birth abortion is illegal, we're talking about the second category of cases. So in Nebraska, there were 53 of those total done in 2018. That's what the statistics say. However, in weeks 18 to 20, there are only 21 abortions total. So we know that they've been doing these D&X abortions prior to week 18. You go back to week 17, there were 6 more. So we know we were doing-- they were doing them prior to week 17. You go back to week 16, there are 24 additional. So now we're adding up to 51, but that's still 2 fewer than the 53 total D&X abortions done in the state during that time. So we know that they were doing them prior to week 16 as well. And that doesn't even account for the 32 dismemberment abortions that were done in the same time frame. So we know that that's happening even prior to 16 weeks in Nebraska. And that is really important for a constitutional analysis, because not only are those numbers with regard to the second trimester and post 15 weeks really small in Nebraska as compared to other states where they've been enjoined. But even going all the way back to 16 weeks and before we know that this procedure is being done. And if it's not safe, you wonder why it's being done. And it's more common than 32 dismemberment abortions that were done during the same time frame. And once you get earlier than 16 weeks, then you get into where suction curettage is used, which is by far much, much, much more common during that time frame up to 16 weeks. There were 766 of those done in 2018. So I hope that's helpful.

SLAMA: Yes, it does clear some things up in my mind. Thank you.

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LATHROP: Can I ask a question? This was handed out before,--

MARION MINER: Um-hum.

LATHROP: --and are the statistics that you've described in here somewhere?

MARION MINER: They are-- I mean-- so what I'm describing has been--

LATHROP: I'm looking through the index and I can't find it.

MARION MINER: I should have it in here, too.

LATHROP: Well, let, let me ask this question.

MARION MINER: Sure.

LATHROP: Do we know if it's only done in what percentage of cases? What's the percentage, 15?

MARION MINER: Total, 1.5 percent.

LATHROP: 1.5 percent. Do we know--

MARION MINER: In the second trimester, it's 18 percent.

LATHROP: OK, 18 percent--

MARION MINER: Yeah.

LATHROP: --in the second trimester. Do we know why it's done in 18 percent of the cases?

MARION MINER: I couldn't answer that question.

LATHROP: OK.

DeBOER: That was--

LATHROP: I can't tell if your hand's up or not.

DeBOER: My hand's up.

LATHROP: Yes, Senator DeBoer.

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DeBOER: So I'm kind of asking you the same question, but for one thing, I can't hear your voice for some reason--

MARION MINER: Oh, I'm sorry.

DeBOER: --this room is hard to hear and I'm having a real hard time hearing you. So I got that there were 18 percent of second trimester abortions are done using this procedure, correct?

MARION MINER: Correct, in Nebraska, in Nebraska.

DeBOER: OK, I got it [INAUDIBLE]. So-- and I, I also got that it's higher in other states. Is that right?

MARION MINER: Yes. So in contra-- by contrast, you had, for example, in Arkansas where they enjoined the law, they said it's 100 percent of second trimester abortions.

DeBOER: OK. So why is it so much lower as a percentage of Nebraska? And why are there any that are done this way in Nebraska if that clearly isn't the overwhelming way they're done? And why is it, then, that in some states there are a lot more? I mean, what's the difference? What's different?

MARION MINER: I couldn't, I couldn't tell you the answer to that, I'm not sure. If I--

DeBOER: I would really like to know the answer to that question. I hope someone can tell me the answer to that question.

MARION MINER: Perhaps-- I mean, perhaps-- my suggestion would be after, after the hearing, if you get a chance to maybe talk to Dr. Aultman, she might be able to give you more information about that. But I'm not sure why it's so much less common in Nebraska than it is in some other states.

DeBOER: OK.

LATHROP: I don't see any other questions. Thanks for your testimony.

MARION MINER: Yes. Thank you.

LATHROP: Next proponent. Good afternoon.

INGRID DURAN: Good afternoon. Thank you for having me here, Senator Lathrop and members of the Judiciary Committee. My name is Ingrid

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Duran, that's I-n-g-r-i-d D-u-r-a-n. I am the state legislative director for the National Right to Life Committee in Washington, D.C. And I appear today to support LB814 on behalf of the National Right to Life Committee and Nebraska Right to Life. I have been working in state legislation department for the last 25 years drafting legislation, drafting amendments, and helping pass protective-- effective protective for unborn children like the dismemberment act that we're discussing today. LB814 is a reasonable means of regulating abortion by prohibiting the dismemberment of living unborn children. This furthers the state's significant interests in protecting the potential life of the unborn child, and it does not place a substantial obstacle in the path of women seeking abortions in Nebraska. In light of the Gonzales v. Carhart decision, where the United States Supreme Court upheld the federal partial birth abortion ban, it is likely that the Supreme Court will equally uphold a barbaric ban on dismemberment abortions. The Gonzales decision justified banning a barbaric abortion method based on the government's interest in protecting the integrity and ethics of the medical profession, profession and also its interests in protecting the life of the unborn child. In Stenberg, after hearing Dr. Carhart's explanation of what a dismemberment abortion is, Justice Kennedy said, quote, The fetus, in many cases, dies just as a human adult or child would. It bleeds to death as it is torn limb from limb. And it's not just this Justice that found it appalling, there's also a negative emotional response in the medical profession for this type of procedure. It was evidenced in a study evaluating his own staff's reactions to dismemberment abortion by the Colorado abortionist Warren Hern, who was doing these types of abortion procedures. Currently, as Marion mentioned, there are 12 states that have passed the dismemberment ban. My department has-- we've been instrumental in helping all of those states pass those bans. It's in effect in Mississippi and West Virginia and partially in effect in Ohio. It's in litigation in nine states. However, it is still in the litigation process. I would like to remind everyone that even in the first go around, we did not win on the ban on partial birth abortion. So I don't think that just because it's a litigation, it necessarily means that it's a lost cause. Gonzales ultimately led to the United States Supreme Court to justify a law that protects unborn children from this type of procedure. Partial birth abortion, just like dismemberment, did not pose an undue burden since other methods are available. And we also do have studies that have demonstrated the safety and efficacy of using these alternate methods that cause fetal demise or that, or that cut the umbilical cord. Also, just because a procedure is commonly

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used in the second trimester doesn't mean that our society needs to embrace the callous nature of it if there are alternatives to that procedure. I also believe that we do have the votes currently in the Supreme Court that would uphold this issue. I urge you all to please vote for LB814. Thank you so much for your time.

LATHROP: I see no questions.

INGRID DURAN: OK.

LATHROP: Thanks for being here today. Welcome.

KAREN BOWLING: Welcome. Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. I am Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g, executive director of Nebraska Family Alliance. We represent a diverse statewide network of thousands of individuals, families, and faith leaders. Nebraska Family Alliance supports LB814, and we'd like to thank Senator Geist for making this her priority bill. This legislation highlights the brutal procedure of dismemberment abortion performed during 13 to 24 weeks of pregnancy on a live preborn. At this stage of development, a baby has a beating heart, fully developed arms and legs, and can swallow, yawn, hiccup, and even smile. According to Mayo Foundation for Medical Education and Research, human development in utero takes on a new meaning in the second trimester. A baby now has functioning organs, nerves, and muscles. Other gestational development in the Mayo research included: 13 weeks into pregnancy, bones are beginning to harden in the baby's skeleton, especially in the head; at 14 weeks, the baby's neck has become more defined and the lower limbs are well-developed; red blood cells are forming in the baby's spleen and their sex becomes apparent; a baby's head is erect at 17 weeks and his or her eyes can slowly move; the baby's limb movements are becoming coordinated and can be detected during ultrasound exams. Starting at 17 weeks, the baby is becoming more active in the amniotic sac, rolling and flipping; his or her heart is pumping about a hundred pints of blood each day. At 18 weeks, the babies ears begin to hear and the digestive system has started working. Preborn babies are not puzzles to be pieced back together after a dismemberment abortion. They are babies deserving of love and compassion. Dismembering a live preborn baby limb by limb shocks the conscious of Nebraskans and compels us to ask, why should our state laws sanction such a brutal, barbaric procedure? Are we extending compassion to the preborn child and mother? Members of the Judiciary Committee, once again, I'd like to thank Senator Geist for

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making this her priority bill and encourage you to advance LB814 that we may end this brutal procedure in Nebraska. Thank you for your time.

LATHROP: I do not see any questions. Thanks for being here.

KAREN BOWLING: Thank you, Senator Lathrop.

LATHROP: Are there any other proponents that wish to testify? Good afternoon.

BLAKE COLE: Good afternoon. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Blake Cole, B-l-a-k-e C-o-l-e. I'm speaking this afternoon on behalf of my wife Anna [PHONETIC], who's here today, and myself in support of LB814. We'd like to thank Senator Suzanne Geist, along with the many cosponsoring senators for introducing LB814. Thank you also to the Judiciary Committee for holding this hearing. Prior to reading LB814, I'm ashamed to say I did not fully grasp what the act of dismemberment abortion involved or that Nebraska law was allowing this to occur. After reading the definition of dismemberment abortion, I felt compelled to speak in person to this legislative committee in full support of LB814. Anna and I have been blessed to raise four awesome sons in Nebraska during our 38 years of marriage, now varying in ages from 20 to 32 years. However, we actually have five sons. Several decades ago, late in Anna's second pregnancy, we learned that our soon to be born son had inexplicably passed away in the womb. Anna delivered Justin [PHONETIC] whole, but deceased. While it was heartbreaking, we had the opportunity to see and hold our beautifully deceased-- beautiful but deceased son. Decades later, thinking of the possibility of Justin's wonderful body being cut and ripped into pieces during delivery in a similar way as described by dismemberment abortion is unbearable. As Christians, and I believe that the triune God of the Bible is the author and giver of life, and that the Bible clearly views humans as persons from conception onward. We also believe the proven science, which informs us that a new human being with unique characteristics and DNA is created at the time of conception. While we firmly believe in the sanctity of life and do not support any form of abortion, my reason for speaking to you today is to encourage your support for LB814, which would prevent dismemberment abortion only. We realize that some do not share our Christian faith and some deny the proven science regarding the life of the unborn child. My desire is to identify a belief or characteristic we all share that will allow you to honestly consider the value of this bill and why we should protect unborn children from dismemberment abortion.

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I believe the care-- that characteristic is simply our humanness. Anna and I recently had the opportunity to listen to a short speech given by the president of the college my youngest son attends. The president said that what the college hopes to accomplish more than any other goal is to simply help the students become better humans. This is the one commonality we all share. We are all humans and I'm sure we all strive to become better humans. Anna and I believe that dismemberment abortion as described in LB814 is tragic, barbaric, and inhuman. Thank you again, Senator Geist, for introducing LB814, making it your priority bill. We ask each of you on this committee and every one of our 49 senators to advance LB814, help make it law, and stop this barbaric act from occurring. Available statistics tell us that about 30 unborn children may suffer the fate of dismemberment abortion each year in Nebraska. But they are not statistics, they are 30 small, defenseless, innocent humans without a voice. You have the awesome opportunity and responsibility to be their voice and save their lives. Doing so will make you, and each of us, all Nebraskans better humans. Thank you for your time.

LATHROP: Thank you, Mr. Cole. Any questions for this testifier? I see none. Thanks for being here today, sir. Anyone else here to testify as a proponent of LB814? Good afternoon.

LEE TODD: Good afternoon.

LATHROP: I saw you just walked in. I just want to remind you, we're on a light system. Welcome.

LEE TODD: Thank you. My name is Lee Todd, L-e-e T-o-d-d. I live in Lincoln, Nebraska. I'm here to testify in favor of LB814. As much as it pains me to do so, I find it very-- I don't even have the words to describe how we're debating how to kill children and do it in, in a humane way, if that's even possible. My father once told me that if you would only follow what the adults do in your life, we set the example. Saying that to a child, the child is to look up to the adult and say that's the right thing to do. That's what makes sense. That's what is the biblical way, the moral way. And I wonder if we've brought in a group of children and brought them into this Legislature, and I think the roles would be reversed for a lot of us. It would be the children that would be setting the examples, the 7-year-olds, the 8-year-olds, the 9-year-olds. If we had to explain to them what we'd gotten ourselves into in this country, it would be the children who are saying to the adults, what are you talking about? What is happening? The technology of death to determine how we kill unborn

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babies. I grew up on a farm and a ranch. I know about cattle. I know about hogs. I know about rabbits. I know about chickens. All that stuff. Can you imagine any of us walking into a veterinarian and saying that dog's puppies, we don't want them anymore. Let's do a dismemberment abortion. Can you imagine putting that on Facebook? Can you imagine having a video of that ultrasound and showing that. The pushback of what would happen across the United States would be crazy. It would be off the charts, and yet we do this for children. When we look back as you as legislatures, and I apologize if, if what I'm saying, forgive me if-- but I'm not sure that everyone here is going to vote against this bill. It should-- or I'm sorry, is going to vote for this bill. It should happen. I can't see of any reason why it should not. And as much as it pains me to be here in support of a legislative bill 8114 [SIC] that figures out a safer way or a better way, an in-- a humane way to kill children, I'm here to do that because right now that's the only alternative. But the day will come when this hideous and dare I say barbaric practice that we practice not only in Nebraska but across the United States will end. Thank you for your time.

LATHROP: Thank you, Mr. Todd.

LEE TODD: You're welcome.

LATHROP: I do not see any questions for you today.

LEE TODD: Not a surprise.

LATHROP: Thanks for being here.

LEE TODD: You're welcome.

LATHROP: Anyone else here to testify as a proponent? Seeing no other proponents, we will-- if you guys don't mind opening up the, the on-deck, then we can have opponents come forward and occupy the on-deck circle. We're ready for you if you're prepared to testify. We're taking opponent testimony on LB814. Good afternoon.

JODY STEINAUER: Hello. Thank you for the opportunity to speak before the committee today. It's a special privilege to talk with you in my home state. I am Dr. Jody Steinauer, J-o-d-y S-t-e-i-n-a-u-e-r, and I am a professor of obstetrics and gynecology at the University of California in San Francisco. I provide clinical care, conduct research, and direct programs on reproductive health. My academic

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focus is on training medical students and residents to provide empathetic, patient-centered care, and I've trained learners and faculty in 28 U.S. medical schools, including the two here, both at Creighton and UNMC, and around the world as well. I'm also a fifth generation Nebraskan who grew up in Omaha. As a doctor, as a teacher, as an advocate for my patients, as a mother, and as a Nebraskan, I strongly oppose LB814. This bill is not about patient safety or about helping a physician provide quality medical care to a patient. It is a ban on a very safe method of abortion. If this bill became law, it would make it a crime for doctors like me to use our best medical judgment when treating our patients. It would prevent us from providing patient centered, evidence-based care. It would go against my medical oath to not be able to offer the safest possible method of abortion to my patients in the second trimester. For example, for a recent patient I cared for who came to my office with her husband to consult about ending her pregnancy at 17 weeks because of risk to her own health due, due to her medical illness and wanting to be there to take care of her children; or another patient I saw on the same day who was only 16-years-old and hadn't realized she was pregnant until after the first trimester because she had irregular periods. The people of Nebraska should be able to make decisions about their pregnancies with their doctor, not limited to care that is dictated by lawmakers. Every day I strive to provide compassionate, respectful care to my patients and to teach other providers to do the same. Every patient deserves that, no matter what care they are receiving. And I ask each of you to offer that same compassion and respect to all Nebraskans. I know that here in Nebraska, like many places, there are a range of positions on abortion. Yet, however, any of us personally feel patients should be able to make decisions about their healthcare without political interference. Every pregnancy is different, any doctor can tell you that. Doctors must be able to individualize our care for the woman sitting in front of us to support her, to make the decision right for her, and to provide her the safest possible care. Laws like LB814 only harm women. And I am not alone in my perspective, the American College of Obstetricians and Gynecologists also opposes bans like this one. I was raised by my mother and grandmothers here in Nebraska to advocate for women and their reproductive health. Future generations of women and families should be free to make the decisions that are best for their lives and circumstances so that families thrive and we build strong communities. So for these future generations of Nebraskans, please vote no on LB814. Thank you.

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LATHROP: Senator DeBoer.

DeBOER: OK. So I have a number of questions. The first is, do you know why Nebraska, Nebraska has a smaller percentage of these types of abortions as opposed to other states? Do you have any--

JODY STEINAUER: I don't know for sure. I can tell you I have some ideas of possibly why, nationally about 11 percent of all abortions happen after the first trimester. And as far as we know, according to the Centers for Disease Control, about 95 percent of abortions in the second trimester are done by D&E, by this method. So in Nebraska, I, I think that I know that in early-- the early part of the second trimester, you can actually do an abortion with suction. So I think that is-- explains part of it. I also, you know, the other methods of abortion in the second trimester are inductions of labor. I don't know if those are reported or collected here. So I think there might be some data that, that could be missing, but I'm not sure why. And every study that's been done shows that women, when given a choice of an induction or D&E choose-- are more likely to choose a D&E. So I'm not sure, I also worry a little bit about how many women are leaving the state to access care. It might be that they're getting care somewhere else.

DeBOER: So is this particular procedure ever necessary? I mean, that's the one that you have to go to?

JODY STEINAUER: Well, it's, it's truly the safest method. So it is recommended by the American College and by many of us, evidence base-- who practice evidence-based medicine. There is one specific circumstance where it is really necessary. And for that reason, I spend a lot of my time making sure that every Ob/Gyn resident learns how to do this procedure, and that is in the setting of an emergency. For example, a woman might be continuing her pregnancy with the plan to parent and have a tragedy like she might break her membranes in the second trimester for example, and become sick, get an infection, and then it becomes urgent to empty the uterus as fast as possible to save her life or she might start hemorrhaging. And so this is really-- I can't even tell you how important this procedure is, very critical. So we have to make sure that every Ob/Gyn is trained to do it and can offer it in that emergency. So that's a situation where this is really the only option. You know, the only other option in that situation is doing open surgery, a very early C-section, which at-- in this gestation would lead the woman to have what's called a classical C-section, which is an up and down incision, which would then

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complicate all of her future pregnancies. And so this is really the, the safest method in general, and especially in this emergency situation to protect women's future fertility. So my job as a physician is to work with the patient and support her to make the best decision for her and to provide the safest possible method for her so that when she's ready to be a mother, she can have a safe pregnancy.

DeBOER: And what about some of these methods they were talking about for fetal decease? I don't remember what they called that. What--

JODY STEINAUER: Yeah, I think that-- for to induce fetal demise.

DeBOER: Fetal demise.

JODY STEINAUER: Yeah. So there are techniques to induce fetal demise. You-- they all require-- well, they primarily require an injection. The previous physician talked about potassium chloride and digoxin. There have been a number of studies of those two methods of inducing demise. There has been one case of a woman who had a cardiac arrest after having an injection of potassium chloride in the fetal heart. There's also another case in that setting of a woman who had severe sepsis after the procedure. So they are not without risk. Digoxin does get into the maternal bloodstream. About 16 percent of women have signs of early dig-toxicity in [INAUDIBLE] series with vomiting. Didn't cause any cardiac arrhythmias, but they are risky. The woman has to endure an injection. The potassium injection can last a really long time before they've completed it. So it can be very uncomfortable for them. And there's been a placebo controlled trial of digoxin before the D&E procedure that showed it didn't make it any less complicated for the patient. And so, yes, some clinics do it mostly because of legal restrictions in their state, but not because there's any evidence that it helps women, makes the procedure safer. And in fact, I would argue exposes women to risk.

DeBOER: Another thing I've heard-- and so I would ask, tell me whether this is a rumor or there's truth to it or not. Somebody told me that these kinds of, these kinds of procedures or this method is done often on wanted pregnancies when they find out encephalitis or something is wrong with the, the baby. Can you tell me about that? Is that true?

JODY STEINAUER: Yeah. So if a woman is diagnosed with a pregnancy complication, something is-- she was planning to continue the pregnancy and found out there's no brain or there's some severe anomaly, and she's choosing to have an abortion. Often-- I mean, she

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goes through the same kind of care that all women having an abortion do. I would say the main thing that's different is often in that circumstance she can access-- she has a choice between a D&E or trying to induce her labor, usually on a labor and delivery unit. And the majority of women in the studies that have been done choose the D&E, but a small proportion would rather have an induction, an induction termination. So, so still the majority choose a D&E when they weigh all the, the risks and benefits, etcetera, and think about it with-- often with their partners, but some will choose to have an induction of labor termination. So we do-- certainly we do try to offer D&E to all patients who also plans to continue the pregnancy.

DeBOER: Do you have even like a ballpark idea of like what percentage of second trimester situations are because of people who are-- have found some medical diagnosis that has prompted them to--

JODY STEINAUER: Yeah, I think I can-- I'm happy to send you all of these articles. I believe that the largest study of women's reasons for having-- accessing abortion care in the second trimester, it was something on the order of 10 to 15 percent in that circumstance. Either something is going wrong with their pregnancy with the, with the fetus or with their own health. Most-- the most common reasons people delay-- women delay into the second trimester are not, not realizing they're pregnant. And that often is because of certain times in women's lives, we don't have regular periods like when we're teenagers and when we're perimenopausal. So I've seen women who are in their 40s who did-- who thought they were just not bleeding because they were getting close to menopause, for example. Also, women who struggle with obesity are more likely to have irregular periods. So that happens. And that, you know-- and some people just don't know much about their bodies to begin with, but it's-- they might not notice that they're pregnant. Then the second most common reason is not being able to access care. And that happens in the state of California with me. I mean, I've had patients who went to a local clinic in the Central Valley, which is our rural kind of flatland community in California. That's like four hours away from my clinic. They've gone to one clinic, oh, maybe they're 12 weeks along, but that clinic only goes to 10 weeks. They get referred to another clinic. And then by the time they get to me, they're 16 weeks pregnant. And so it's often access issues that make women delay into the later part of the second trimester.

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DeBOER: So you were here for the earlier part of this hearing when the proponents were testifying. I mean, some of what they were describing sounded pretty horrific. Is-- were they describing it wrong? Was-- I mean, is it as horrific as it sounded?

JODY STEINAUER: Well, you know, the most important thing to remember about D&E is it is the safest method so that you don't-- you dilate her cervix a little bit, you remove the pregnancy so that she, so that she can have a future pregnancy that's safe. So you know, and that, that is what a D&E is. And women, you know, we spend a great deal of time counseling women about it. They are-- they understand what's going on, they make the choice to proceed. We support their decision making. And it's the safest method recommended by the American College of Ob/Gyn and many other international organizations as well.

DeBOER: And this discussion of fetal pain, is that something that we know a lot about? I-- you know, this is not my field. I don't know, so tell me.

JODY STEINAUER: Yeah. I mean, I've, I've looked at the evidence really carefully. And my understanding of it is based on a paper that was coauthored by experts who were anatomy researchers and professors as well as neurologists. And in that summary, they found that there is no evidence at all of a possibility of feeling pain before 28 weeks because the nervous system is not completely complete. And so that's how I think about it, that's how I-- that's my understanding of the scientific evidence. So-- and, and there's not even evidence yet at 28, but that's the earliest possible they concluded. And I'm also happy to send you that article, too.

DeBOER: Yes, I would be interested in seeing that.

JODY STEINAUER: Yeah.

LATHROP: Anybody else have questions? Senator Morfeld.

MORFELD: Thank you, Senator Lathrop. Thank you for coming, Dr. Steinauer. So I, I think you answered my questions that Senator DeBoer asked, particularly with the different methods of leading to the fetal demise. So they listed-- I have my notes here somewhere, they listed three different methods. But all-- I just want to confirm, all have negative side effects on--

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JODY STEINAUER: Um-hum. Well, the injections definitely do. When we inject any medication into the fetus, it does circulate through the maternal system.

MORFELD: OK. And I guess-- so in your professional opinion would this bill then restrict, restrict the method of care most appropriate and safest?

JODY STEINAUER: I definitely-- yes, 100 percent, I believe that.

MORFELD: And so then what, what will women do if the bill passes?

JODY STEINAUER: Yeah. Well, I-- it makes me-- you know, I worry about women in Nebraska. You know, it's not common to have an abortion after the first trimester. But that proportion has stayed relatively stable over time. There's-- there are always going to be obstacles. There are going to be surprises and really shocking news that people get in pregnancy that will need them to access care. So I'm worried that either they-- probably most likely is that they then would have to access care outside of the state and then get-- it would further delay them so that they access a later-- an even later abortion. That's, that's my main concern.

MORFELD: OK. And then what will doctors, what will doctors have to do? I mean, what-- how does that impact the advice that a doctor would give to a--

JODY STEINAUER: Oh, it's, it's a horrible-- it's, it's horrible to counsel a patient and have built that rapport with her to support her decision making, but then not be able to offer her what is the soundest method, what's the most evidence-based. I think they would find it-- I think it would be very distressing.

MORFELD: Thank you.

JODY STEINAUER: Um-hum.

LATHROP: Senator Slama.

SLAMA: Thank you, Dr. Steinauer, for coming in to Nebraska to testify today. So just to be clear, fetal demise ahead of a D&E abortion is a common practice in a lot of cases. Is that accurate?

JODY STEINAUER: You know, I'm not sure that we know what proportion of clinics do it routinely. I don't think it's the majority. I don't know

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the number off the top have my head. I'm part of a large family planning community. And in fact, the Society of Family Planning, which is the guiding community, recommends against it, actually. And so I actually think it's not that common. As common as-- it's not the majority, I don't think.

SLAMA: So recommends against fetal demise?

JODY STEINAUER: Demise. Yeah, because there's evidence of risk.

SLAMA: What risks?

JODY STEINAUER: The risks I talked about, the case of cardiac arrest, the case of sepsis after potassium chloride. And then there's evidence that it gets into the woman's bloodstream, so of digoxin toxicity. So that's the-- there's risk to that. And there's risks of pain during the procedure for the woman. So that's the main problem with it. And there's no evidence that it in any way makes the procedure safer for the woman. So that's the main-- that's their grounds on which they make that recommendation.

SLAMA: So there's a risk of pain to the woman during the fetal demise procedure with the needle and everything?

JODY STEINAUER: Um-hum.

SLAMA: OK. It's interesting that that's the point of emphasis rather than the potential pain the fetus is experiencing when it's dismembered. So just a quick follow-up question. You practice medicine, you're a professor in California, right?

JODY STEINAUER: Yeah.

SLAMA: Do you make a habit of wearing your white jacket when you're not practicing medicine?

JODY STEINAUER: Usually not.

SLAMA: Great. That's all I have. Thank you.

JODY STEINAUER: Sure.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming today and--

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JODY STEINAUER: Sure.

PANSING BROOKS: --I'm pleased to have you wear whatever you would like to wear to the hearing. So I guess just a couple of things that I'm interested in. Have you looked at the bill? And maybe I need to ask this of other people who are opposing it. But as you read it, do you read that dismemberment abortion is still available if there is demise of a child?

JODY STEINAUER: You know, I didn't-- I'm-- I scanned the bill, but I'm not sure that I'm qualified to answer that question.

PANSING BROOKS: OK. I'll, I'll ask it of somebody else.

JODY STEINAUER: Yeah.

PANSING BROOKS: And do you know of any other legislation where, where we attempt to direct what's happening to men's bodies in the same way we're doing here?

JODY STEINAUER: No, I don't.

PANSING BROOKS: I don't either. So I guess, I guess my concern is about the harming of the health. I would be interested in the--

JODY STEINAUER: Yeah.

PANSING BROOKS: --article about, about fetal pain--

JODY STEINAUER: Um-hum.

PANSING BROOKS: because, of course, that's part of what everybody's arguing. And I understand what, what they're concerned about, but we also have concerns about what happens with a woman's body and what, what-- who is in control of that mother, that woman is in control of her body or whether or not the government is in control of her body, so. Thank you very much for coming today.

LATHROP: Doctor, I am curious about the percentages that we've heard. So my understanding is that only 11 percent of all abortions are done in the second trimester.

JODY STEINAUER: Um-hum.

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LATHROP: And apparently in Nebraska, only 18 percent of those done in the second trimester are this particular procedure. Do you know why that is?

JODY STEINAUER: I don't. I, I don't.

LATHROP: Is that-- is it more suitable or appropriate in some circumstances than in others?

JODY STEINAUER: Yeah.

LATHROP: Or is that perhaps one, one physician does it one way and the rest of them do it another way?

JODY STEINAUER: I think it's probably the latter. You know, I, I-- when we're-- when physicians are working with a patient, it's our job to facilitate her decision making for what's best for her. And yes, sometimes it can be limited. We might only offer one type of procedure over another. But ideally, we're supporting her to make the decision for what's right for her. And this method really, really is-- has been documented to be the safest.

LATHROP: OK.

JODY STEINAUER: So I worry people are leaving the state.

LATHROP: Those numbers just,--

JODY STEINAUER: Yeah, I'm not sure.

LATHROP: --those numbers just seem curious to me.

JODY STEINAUER: Yeah, maybe one-- someone behind me maybe might be able to answer it.

LATHROP: OK. I don't see any other questions. Thanks for being here.

JODY STEINAUER: Thanks. You're welcome.

LATHROP: Next testifier. Good afternoon. Welcome.

JON WOOD: Hello. Chairman Lathrop and members of the Judiciary Committee, I'm Jon Wood, J-o-n W-o-o-d, and I'm a medical student at the University Nebraska Medical Center from District 12 in Omaha. Appendectomy, gallbladder removal, wisdom tooth extraction, these are all dismemberment procedures. I believe that those who support this

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bill don't necessarily dislike dismemberment, per se, but what they typically oppose is the word that comes after. Now I'm not going to sit here and tell you why I believe that access to abortion as a component of comprehensive reproductive services should be legal, safe, and accessible. There are women's health and justice advocates far more qualified than myself who are prepared to do just that. What I'm here to do today is to ask you, would you like to be part of the solution to the brain drain and physician shortage in Nebraska or continue to exacerbate the problem? The medically underserved citizens of your state are ultimately the ones who will pay for your decision. As a medical student, I will be graduating into a career where I can go pretty much anywhere in the country and be guaranteed gainful employment. Still, I was born and raised in Nebraska and I would love to stay here to practice and build my future. However, every time this legislative body passes a bill that restricts clinicians from providing safe and effective medical procedures or that requires physicians to provide nonevidence-based information to our patients, what you're essentially saying to every scientist and clinician in the state is that your feelings outweigh our scientific background and clinical judgment. In other words, merely because you find the idea of dilation and extraction disturbing, we're the ones forced to either (a) provide a less safe alternative, or (b) not provide comprehensive reproductive services at all. Now you may be happy to see me go build my career in another state. After all, do you really want other loud-mouthed, pro-choice primary care physician sticking his nose out and making an argument every time someone gets a hankering to pass clinically intrusive, anti-science legislation. Maybe not. But with the current demograph-- demographic trends and shifting public sentiment, if you keep passing anti-evidence, intentionally inflammatory legislation like this, then your pool of timid, anti-choice physicians willing to be clinically handcuffed and legally dictated to will get awfully small, awfully quick. And you'll probably never appreciate that not wanting to be bullied by lawmakers into suboptimal clinical practice may be one reason why fewer and fewer conscientious and caring physicians are willing to come and/or stay to serve the amazing people of Nebraska. Thank you for your time and consideration and I'd be happy to answer any questions.

LATHROP: I don't see any questions. But thanks for being here. You are in your last year?

JON WOOD: I wish. I'm in my first year.

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LATHROP: First year. All right. OK, well, good luck with that.

JON WOOD: Thank you very much, Senator Lathrop.

TIFFANY JOEKEL: Chairperson Lathrop, Hi.

LATHROP: We'll have you speak up--

TIFFANY JOEKEL: Yep.

LATHROP: --so everybody can hear what you have to say.

TIFFANY JOEKEL: Sure. Chairperson Lathrop and members of the Judiciary Committee, my name is Tiffany Joekel, T-i-f-f-a-n-y J-o-e-k-e-l, and I'm here today to testify in opposition to LB814 on behalf of the Women's Fund of Omaha. I've also submitted written testimony from another Tiffany, Dr. Tiffany Somer-Shely. She's an Ob/Gyn who practices in Omaha and is a member of our board. It is also signed by ten other practicing Ob/Gyn's in Omaha as well. The Women's Fund of Omaha is in opposition to LB814 and it's in-- and its impact which will ban a method of abortion care. Fundamentally, we trust a woman to make healthcare decisions that are best for herself and her family, no matter how we each may personally feel about abortion. The decision about whether to keep or end a pregnancy is a deeply personal one. We can never know all the circumstances behind a women's decision. Everyone's situation is different and many times there are no simple answers. That is why it's critical a woman must be able to seek the consultation of highly trained medical professionals who can assess her individual health needs and make recommendations in their best medical judgment and in line with evidence-based standards of care. Doctors consider many factors before recommending a course of treatment, including patient preference, effectiveness, medical indications, potential complications, costs, logistics, and the desire to protect future fertility. I may be wrong, but I didn't hear many medical reasons that impacted a woman's health to deny the procedure that is described in LB814. Although it may be a limited number of procedures in the state, there-- those were still 32 instances in which, based upon medical professionals review of the situation, the woman's health, the pregnancy, they made that recommendation to pursue that course of care. And although it may not be the intent of this bill to ban abortion, functionally, that's what will have happened for those 32 patients, perhaps other procedures were not available and appropriate for them. I want to second or reiterate what Dr. Steinauer indicated that fetal demise is not within best clinical guidelines.

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The Society of Family Planning says, quote, current evidence does not support the use of induced fetal demise to improve the safety of D&E. We believe that everyone deserves the right to decide when and if-- when, if, and how to start a family. And we'd ask the Legislature to oppose legislation that would block women from getting the care that they need and that their doctors recommend. With that, I'd be happy to take any questions.

LATHROP: I don't see any questions,--

TIFFANY JOEKEL: Thank you.

LATHROP: --but thanks for being here today.

SCOUT RICHTERS: Good afternoon.

LATHROP: Good afternoon.

SCOUT RICHTERS: My name is Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s, here on behalf of ACLU of Nebraska. I'm circulating written testimony, but I'll just briefly summarize here. The decision about having a baby or having an abortion is a deeply personal, private decision that is best left to a patient, their family, and their doctor. LB814 criminalizes Nebraska doctors for using their best medical judgment, it puts patient health outcomes at risk, and undermines a fundamental constitutional right that has been recognized by decades of Supreme Court jurisprudence. For these reasons, the ACLU opposes LB814. As my written testimony summarizes, Nebraska already has a large number of unnecessary restrictions to access for people seeking abortion care. For example, we have biased counseling, waiting periods, minors needing parental consent or to go through the judicial bypass process. And I think that that's really important to note because that paints the picture of the real rationale behind LB814, which is not for health. It's not for patient well-being, but is really part of this concerted effort by anti-abortion politicians to really push this care out of reach. And that's also important to know because more Nebraskans support access to safe and legal abortion than those who don't. We have decades of Supreme Court jurisprudence where the central premise has not changed and has remained consistent, and that is the individual right to terminate a pregnancy previability is a fundamental right. States can't enact laws that place an undue burden or serve as a substantial obstacle to those seeking abortion care. And this is exactly what LB814 does. Other states have tried to ban this procedure and nearly all of those have been legally challenged. And of

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those that have been challenged, and in many cases that litigation is ongoing, but in all of those that have been challenged, these bans are not in effect, they've either been temporarily or permanently enjoined as being unconstitutional. As you've heard, medical organizations like ACOG oppose bans like LB814 because it is really an interference in the ability of providers to use their best medical judgment. This bill puts doctors in a situation where they may not be able to provide care that they would otherwise recommend out of fear of being criminally prosecuted. This bill hurts access to care. It can hurt patient health outcomes and it undermines a fundamental constitutional right that is really central to liberty and central to self-determination. And for all those reasons, we would urge the committee to indefinitely postpone LB814.

LATHROP: Senator DeBoer.

DeBOER: So earlier-- you've been here the whole time, too. Right?

SCOUT RICHTERS: Yes.

DeBOER: Because then I can just shorthand it. You heard the gentleman from the Catholic Conference discussing the differences between Nebraska's proposed bill here and some of those cases in other states. And he was arguing that, in fact, the two are very different and the constitutional concerns are eliminated with this bill. Is that-- can you talk to me about that?

SCOUT RICHTERS: Yeah, I don't believe that's the case. I know in the states where this hasn't been challenged, Mississippi and West Virginia, it's my understanding that this procedure is not done at all and that's why it wasn't challenged. Where we see here, this is at least some of the time the care that doctors recommend and that patients need.

DeBOER: OK. So of those cases where it's been enjoined, what are the-- what's the theory, the law theory for the enjoinderment?

SCOUT RICHTERS: Unconstitutional based on placing an undue burden on access to care, placing a substantial obstacle in the path of women seeking abortion care which has been recognized for decades as fundamental.

DeBOER: OK. Thanks.

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LATHROP: I got a question--

SCOUT RICHTERS: Yes.

LATHROP: --about these, these causes of action and making this a Class IV felony. We had some discussion and I guess I didn't know that that was part of this until you brought it up, and then I just looked at it real quick. And so this question's a little bit-- didn't have an opportunity to ask Mr. Miner and maybe I will later, but in the states that have passed this, do they include in the other-- the other states that have passed this. If you know, Miss Richters, does it make it a Class IV felony or any-- have a criminal sanction for a physician that performs this or give rise to a civil cause of action as this bill does?

SCOUT RICHTERS: I believe others are similarly situated to this and that they do those things. But I'd be happy to follow up and provide you which, which case or-- yeah, which cases involve those issues.

LATHROP: OK. Yeah, that'd be great. Senator DeBoer.

DeBOER: Sorry, I thought of another one.

SCOUT RICHTERS: Yeah.

DeBOER: There's also a piece here towards the end of this bill about the preserved for public disclosure. Basically, like there's, there's like the, the woman's-- I don't know. There's a bit where there's like a registry or a board of people that are looking at this. Do you guys have any-- anything to say about that piece of this bill? It struck me as very strange to have this Section 8 portion of the bill. There is a-- I guess, some-- whether there shall be anonymity of the woman upon whom an abortion has been performed or attempted shall be performed shall be preserved from if she does not give her consent. Do you guys have any opinion about any of that anonymity or nonanonymity in all of those things? I can talk to you about this later if--

SCOUT RICHTERS: Yeah,--

DeBOER: --because I--

SCOUT RICHTERS: --I probably want to look at that a little bit closer and follow up.

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DeBOER: OK. Yeah. And my question was not well-formed, so I'm sorry about that.

SCOUT RICHTERS: And no, I'd be happy to talk with you.

DeBOER: Yeah.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for being here, Miss Richters. I appreciate it.

SCOUT RICHTERS: You're welcome.

PANSING BROOKS: So earlier I asked, and I don't know if you're the person to ask, do you know whether or not-- because the doctor previously that was here earlier this morning or earlier today, I'm trying to find her name, Dr. Kathi Aultman said that basically you can have a D&E as long as there has been fetal demise. I do not get that in reading this bill. What do you think? I don't know if you discussed it.

SCOUT RICHTERS: It's my understanding that if there were fetal demise prior to the abortion, that it would be allowed under this bill. But I think that that's dangerous because we've heard of the health risks that are associated with demise. So I think we need to be careful anytime--

PANSING BROOKS: Well, I agree, but I don't see anywhere in the-- in here where it talked about that even in the least. So I, I just don't-- I, I just want to clarify for the record that I don't see that anywhere in my reading of this bill. So, so if people are acting as-- or insinuating that this type of medical procedure would be allowed if the baby-- if there was the fetal demise of the baby, I do not see this in this bill. So I'm willing to talk to anybody afterwards. But-- thank you.

SCOUT RICHTERS: Thank you.

LATHROP: Senator Slama.

SLAMA: I will correct the record here. There is a part, it's Section 2(4)(a) on page 2, line 22, Dismemberment abortion means an abortion in which, with the purpose of causing the death of an unborn child, a person purposefully dismembers the body of a living unborn child and

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extracts him or her one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors, or similar instruments. And then on the section double (ii) lowercase, "Dismemberment abortion does not include: The use of instruments or suction to remove the remains of an unborn child who has already died." So I think Senator Geist has made it quite clear that if the child is deceased prior to the D&E procedure that would not constitute a violation of this statute. Just wanted to clarify.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: I did see that. But again, it talks about the child being born and it's not-- or dead. It does not-- in my reading of this that include-- that is a child that is-- that has died in utero. I do not understand or read it to say if a medical professional has caused the demise of the child, him or herself, while the baby is alive in utero, that they are then not liable for this dismemberment abortion that is trying to be stopped here. So if that's what it is, then I think it certainly needs to be much more clear. So thank you.

LATHROP: I think that's it.

SCOUT RICHTERS: All right. Thank you.

LATHROP: Thank you for your testimony.

SCOUT RICHTERS: Thank you.

LATHROP: Anyone else here to testify in opposition to LB814? Are you exiting the room or you testifying?

_____: Exiting.

LATHROP: OK. I just-- I didn't want to move on to neutral testimony if you were coming to the table. Anyone here to testify in a neutral capacity on LB814?

JUDY KING: What, what bill did you say?

LATHROP: LB814.

PANSING BROOKS: Is she neutral?

LATHROP: Yeah, you're here in a neutral capacity or in opposition?

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JUDY KING: Neutral.

LATHROP: OK. Just want to be clear. All right. Did you fill out a testifier sheet?

JUDY KING: Yep.

LATHROP: Perfect.

JUDY KING: Thanks.

LATHROP: We'll hit the green light and we'll let you introduce yourself. Good afternoon.

JUDY KING: Hi, I'm Judy King and I'm in neutral capacity on this bill. J-u-d-y K-i-n-g. I'm with BONER Kill, and that stands for the Benevolent Order of Nebraskans for Erection Reversal. And then Keep It Limp for Life. It's a project of the prolifenebraska.com and we're trying to prevent irresponsible ejaculation. And I sat through these hearings last year on birth control abortions and having men talk about woman's periods. And when women were fertile and I blush to think my private parts were being discussed by so-called experts from the Catholic Church and Nebraska Conference or the Nebraska families, and I suddenly had an epiphany. I shouldn't be embarrassed to have my body talked about by the Church and a bunch of legislators. I believe that we're all created equal and because of equality then men must be included in this discussion, because we all know every single unwanted pregnancy is caused by men. Today, I am here to hold men, men accountable. We have recently heard of bills across the nation that are going to be holding men accountable for unwanted pregnancies like the one in Alabama. An Alabama legislature has proposed a new bill to put focus on men instead of it solely on women. It is proposed in, in the proposed bill, men have attained 50 years of age or older or had their third child would be required to have a vasectomy. In an interview, representative, Rhonda Hollis [SIC], who proposed the bill, said the vasectomy bill is help with the-- it is to help with the reproductive system. We can't put all responsibility on women. Men need to be responsible, too. And in the brochure, there are tips on how to prevent abortions. Tips like please don't ejaculate where there is a chance of fertilizing an egg. And that means in a woman's vagina. So we think that men should be responsible equally along with women. And since we are pro-life, we, we believe that even children that are on the border in cages should also be considered when Nebraska families or the Catholic Church has issues about having abortions

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because that we feel is pro-life, we don't want any-- anything to happen to the kids on the border. That's all I have to say. So do you have any questions? If you read the brochure, you probably-- look at our website. You'll find out what they stand for.

LATHROP: OK, we'll take a look at it.

JUDY KING: And--

LATHROP: Oh, I'm sorry.

JUDY KING: Well, I mean, if the Catholic Church who has hidden pedophiles for all these years are now-- they're playing all these games about these bills to try to get these bills to stop abortions. And if they were very serious about it, they can contact us, and we'll be glad to give them some information if they, if they don't understand how to stop abortions. That's all I have to say.

LATHROP: OK.

JUDY KING: Thank you.

LATHROP: I don't see any questions for you, Miss King, but thanks for being here today.

JUDY KING: Thank you.

LATHROP: That's a unique perspective. Anyone else here in a--

JUDY KING: [INAUDIBLE]

LATHROP: Anyone else here in the neutral capacity? Seeing none, Senator Geist, you may close. And as you approach, I'll just say for the record that we have 86 letters of support and 4-- pardon me, 16 letters in opposition.

GEIST: Thank you. And thank you, Committee. I, I do appreciate you listening. I appreciate your attentiveness, attentiveness and your questions. I'm just going to recap a couple of things. I know we've gone around the block a few times. So Senator DeBoer, I wanted to address the question that you have. I can't tell you definitively why physicians in Nebraska prefer one method over another. I would simply say it depends on the provider and what method they prefer. I could only make a guess, and that's not gonna help you. I would say that the physician who was behind me, not Dr. Aultman, but the other, Miss

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Steinauer, I believe, Dr. Steinauer did talk about some risks to the woman. She did quote a single risk and that-- the woman with cardiac arrest actually recovered from what I'm told. And abortion is risky. I mean, abortion itself is risky. So a woman who chooses abortion chooses a surgery, and it is risky. There's no way to sugar coat that. There have been many problems and many situations of risk with abortion. So none of this eliminates a risk. I will also say none of this eliminates a woman's ability to choose an abortion either. My bill simply gives humanity to that child so that it is not pulled apart while it's alive. And I don't think any of us in this room can fathom that that is humane. Therefore, I would ask that you would consider passing this bill. I think it's common sense. It's in Nebraska. We are looking in Nebraska alone. It is not a barrier to access. Obviously, 18 percent are performing. So the remaining percent, 82 percent are not. Eighty-two percent of the women in Nebraska can get a second trimester abortion with another method that is far more humane than a dismembering a living child. And with that, I would ask you to pass this bill out of committee and thank you for your time.

LATHROP: OK. Senator DeBoer's got a question for you.

GEIST: Yes.

DeBOER: I figured out the one that I was gonna ask--

GEIST: Yes.

DeBOER: --someone else so please--

GEIST: I hope I will be competent to answer.

DeBOER: --Section 8 of the bill,--

GEIST: Section-- I'm sorry,

DeBOER: --Section 8 of the bill, page 6.

GEIST: Oh, you're talking about going before the medical board.

DeBOER: Yeah, that's,--

GEIST: OK.

DeBOER: --that's kind of weird, right? Like, they're gonna determine--

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GEIST: Well, what this is, is--

DeBOER: Wait, let me--

GEIST: OK.

DeBOER: Sorry, just let me, let me get it out.

GEIST: OK.

DeBOER: It says, the court shall rule whether the anonymity of the woman upon whom the abortion has been performed or attempted to be performed shall be preserved from public disclosure. Why on earth is there somebody reviewing whether or not she should be anonymous?

GEIST: And I wish that I were an attorney, and there is a reason for finding that someone's name would have to be disclosed. It would not be disclosed for public knowledge. But that is not-- that's not my area, I wish-- that needs to be asked to an attorney behind me.

DeBOER: Well, it says, it says perform-- "shall be preserved from public disclosure." I feel like at the very least, that's-- something's got to be worked on there. OK. And my second--

GEIST: I'm sorry.

DeBOER: --question-- like that's just weird. OK, sorry. My second question is, you heard the doctor describe-- the, the second doctor--

GEIST: Dr. Steinauer.

DeBOER: Steinauer, thank you.

GEIST: Um-hum.

DeBOER: You heard her describe the emergency situations where, look, you know, there are situations where she says, we really need this procedure.

GEIST: Yes, and that is allowed in our bill.

DeBOER: OK, where is that allowed in your bill?

GEIST: It is on-- it shall be unlawful for any-- it is on page 4, 23 and 24. It's "an unborn child unless a dismemberment abortion is

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necessary due to a medical emergency as defined in subdivision (4) of section 23-- I'm sorry, 28-3,103."

DeBOER: OK. Well, I'll have to go look at that other statute.

GEIST: OK.

DeBOER: All right. Thanks.

GEIST: Well, it is, it is allowable in an emergency situation such as what was described.

DeBOER: Thanks for pointing it out.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. So Senator Geist, I was just trying to-- do you know the answer to whether or not what, what the doctor talked about before that--

GEIST: The fetal demise?

PANSING BROOKS: --she was, she was saying that you can have the, the baby basically die in utero at the hands of the medical provider and then that it would be allowed?

GEIST: Yes, because that is currently a procedure that's done that's allowed under law currently. And that this bill, the fetal demise can be done legally today. This bill on when-- on page 2, which says what dismemberment abortion means and then it, it continues and it says, dismemberment abortion does not include, and it says an abortion in which suction is used to dismember the body of an unborn child. Which that would be early, early abortion that is done when the fetus is able to fit through the suction material. And then in, in-- on the top of the next page, on line 1 or "The use of instruments," which is the dismemberment part of the abortion, "or suction to remove the remains of an unborn child who has already died." So it does not exclude an abortion of a child who has already died.

PANSING BROOKS: So comma, even at the hands of the medical provider in question.

GEIST: Which happens already. I mean, that, that type of fetal demise of abortion is already performed. So this law--

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PANSING BROOKS: I know, but this law is to change what is already being performed. So--

GEIST: It's--

PANSING BROOKS: --without that clarification in statute--

GEIST: But is only to outlaw that-- this particular type of abortion on a living baby. So if the baby has already died by whatever means, it doesn't apply.

PANSING BROOKS: That's good to get part of the record. And then the other thing is, I would agree with what-- or I don't know if she had a statement or an opinion on it but the--

GEIST: And that has been explained to me. And I'm sorry, it was a few weeks ago. And I just am not gonna be able to accurately give you what that means. I-- but--

PANSING BROOKS: What it means to have the court have the ability to decide whether it's going to be anonymous or not?

GEIST: Correct.

PANSING BROOKS: That is, that is about shaming women. It is about deciding that the only healthcare issue that ever can be public under HIPAA is pursuant to Nebraska law in order to shame women who have to go through this. So that is not a legal issue. It is not-- it is a shaming issue. And that part really riles me because that is--

GEIST: Well,--

PANSING BROOKS: --solely about hurting--

GEIST: --you know that that is not--

PANSING BROOKS: Your goal?

GEIST: Yes.

PANSING BROOKS: Then I would be happy to work with you, definitely to change that portion if this gets out of committee. So--

GEIST: Thank you.

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LATHROP: Senator Slama.

SLAMA: Hi, Senator Geist.

GEIST: Hello.

SLAMA: I'll be very brief. Just a couple of quick questions. So I mean, your goal with this bill is to ban dismemberment abortions on live fetuses in utero?

GEIST: Yes.

SLAMA: OK, just to have that be in the record. And I mean, do you see any issue within that little subsection "Dismemberment abortion does not include: The use of instruments or suction to remove the remains of an unborn child who has already died." Dead is dead, correct?

GEIST: Right. And it's important because, because the medical profession and women who have gone through miscarriage need to understand that we are-- this is very narrowly defined and that we are not infringing upon the medical profession when a child has already died.

SLAMA: And that death can happen with a fetal demise that happens before the D&E procedure or even just a miscarriage. Right?

GEIST: That's right.

SLAMA: OK. Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: I just-- I have one more. Sorry.

GEIST: Yes.

PANSING BROOKS: I think you probably have acknowledged that, that there are cases in other states right now.

GEIST: Um-hum.

PANSING BROOKS: So this will probably be tested as well in Nebraska. I think there's probably a good chance of it. So has there been discussion about the amount of money that is going to be spent by the state in defending this kind of law if it were passed?

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GEIST: Not by me. I, I do not know that. I, I will tell you, in my opinion, the way that we treat the most vulnerable is a test of our society. I just held my unborn granddaughter, who was 19-weeks-old.

PANSING BROOKS: I'm sorry.

GEIST: I'm speaking for those who have no voice. This-- in my opinion, this is the most immoral thing we can do as a society is not protect those who cannot speak for themselves. And that's why I brought this bill. I think that there is room for those of us who disagree on the issue of abortion to find an area of agreement, because these are people, we wouldn't do this in veterinary medicine. You heard that. We only do this to our own, and that's hard to fathom. So if this has to be tried in court-- I mean, we try property taxes and water law in court, but we don't want to try whether a 19-month-- or a 19-day or a 19-week-old child has the right to live. I think it's worthy of court. So, no, I haven't asked how much it costs, but I think it's worth it.

PANSING BROOKS: Thank you.

LATHROP: OK. Thank you, Senator Geist. I think that'll close our hearing on LB814. And that will be the end of our hearings for the day. See you back here tomorrow at the same time, same place.