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LATHROP [00:00:01] [RECORDER MALFUNCTION] have to wait for me to do my intro, Senator.

McDONNELL [00:00:04] I-- I will.

LATHROP [00:00:04] Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12 in-- that includes Ralston and parts of southwest Omaha. I chair this committee. On the table inside the doors you'll find yellow testifier sheets. If you are planning on testifying today, please fill one out and hand it to the page when you come up to testify. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. For future reference, if you're not testifying in person and would like to submit a letter for the official record. All committees have a deadline of 5:00 p.m. the last workday before the hearing. Keep in mind that if you-- keep in mind that you may submit a letter for the record or you may testify in person at a hearing but not both. And only those actually testifying in person at a hearing will be listed on the bill's committee statement. We will begin with testimony with the introducer's opening, followed by the proponents of the bill, then opponents, and finally by anyone speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We utilize on-deck chairs that are immediately behind the testifier's table. Please keep the on-deck chairs filled with the next persons 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-- please bring up at least 12 copies and give them to the page. If you don't have enough copies, the page can make more copies for you. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you won't be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. Yellow is your one-minute warning. And when the light turns red, we ask that you wrap up your final thought and then stop. As a matter of committee policy, I'd like to remind everyone the use of cell phones and other electronic devices in the hearing room during public hearings is not permitted. We do permit senators to use them to take notes and to 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. That kind of behavior will be cause for you to be excused from the hearing. You may notice committee members coming and going. That has nothing to do with how they regard the importance of your bill but, rather, senators may have bills to

introduce in other committees or have other meetings to attend to. We'll begin-- before we begin with Senator McDonnell, we'll have the committee members introduce themselves beginning with Senator Brandt.

BRANDT [00:03:01] Tom Brandt, Legislative District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

SLAMA [00:03:09] Julie Slama. District 1, Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties.

WAYNE [00:03:14] Justin Wayne, District 13, which is north Omaha and northeast Douglas County.

LATHROP [00:03:20] Assisting the committee today are Laur-- Laurie Vollertsen, our committee clerk, and Josh Henningsen, one of our two legal counsel. Our committee pages are Ashton Krebs and Lorenzo Catalano, both students at UNL. And with that, we'll begin our hearing with Senator McDonnell's LB913. Welcome, Senator.

McDONNELL [00:03:42] Thank you, Senator Lathrop and members of Judiciary Committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent LD5, south Omaha. I come before you today to present LB913, which seeks to update and modernize Nebraska's arson statutes. I introduced the legislation on behalf of Attorney General's-- Peterson's office in an effort to help facilitate and implement these changes. In a broad sense, LB913 includes updates, definitional terms used in Nebraska existing arson statutes, as well as additional provisions that will make Nebraska's arson-- arson statutes applicable in a greater number of intentionally set incendiary fire scenarios. The legislation also includes a penalty adjustment that was overlooked in previous sentencing reforms and allows for a sentencing enhancement under certain circumstances. More specifically, as outlined in my handout, LB913 eliminates the term and definition for "building" in section 28-50-- 501 and replaces it with the term "structure" in order to broaden the instances where Nebraska arson statutes are applicable. This broader definition is necessitated by the fact that human lives are being risked by fires set in locations that do not fit within the current and existing definition of building. This changes is-- is also made in Sections 28-520, first-degree criminal trespass, and 28-524, graffiti, as senate-- as sections are just as rel-- reliant on these terms. LB913 adds burns and causes to be burned to the list of acts prohibited in various sections in order to harmonize each with the prohibited acts listed in section 28-504. The bill also adds maintains a fire to the list of acts prohibited by all the

Nebraska existing arson statutes in order to hold persons criminally accountable for escalating a fire even though they did not set the fire. LB913 adds a definition for human skeletal remains and makes burning, setting fire to, or maintaining a fire to any structure punishable as arson in the first degree if the perpetrator did so, knowing that a person might be inside and regardless of whether they believe the person was alive or dead at the time. The bill also makes burning, setting fire to, and maintaining a fire to any structure, person, and human skeletal remains, or item of personal property punishable as arson in the first degree if the perpetrator did so in order to conceal the commission of a crime. Last, LB913 adds a definition for public safety officials and allows the full sentence for-- sentences on all arson offenses to be enhanced one penalty classification higher if the offense committed caused a public safety official to sustain injury-- serious bodily injury. It is reasonably foreseeable that a firefighter or first responder could be injured when you choose to set something ablaze or blow something up. Bill-- the bill also makes arson in the second degree a Class IIA felony as opposed to a Class III felony due to an oversight when LB605 was passed in 2015. During my time as a firefighter, I witnessed terrible accidents and horrible crimes as a result of fire. LB913 further address as intentional acts of arson by eliminating gaps and gray areas that currently exist within our laws. The handout you received further elaborates on the rationale and need for these suggested changes, and Assistant Attorney General Mike Guinan will be testifying on behalf of the Attorney General's Office to provide additional insight and perspective regarding this legislation. Thank you.

LATHROP [00:07:14] I don't see any questions. Are you going to stay to close?

McDONNELL [00:07:17] I'll-- I'll stick around but--

LATHROP [00:07:19] OK.

McDONNELL [00:07:19] --I might waive closing.

LATHROP [00:07:19] OK. Very good. Thank you, Senator McDonnell.

McDONNELL [00:07:21] Thank you.

LATHROP [00:07:22] We will take proponent testimony at this time. Good afternoon.

MIKE GUINAN [00:07:31] Good afternoon. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Mike, M-i-k-e G-u-i-n-a-n, and I'm a

criminal prosecutor with the Nebraska Attorney General's Office. I appear before you today on behalf of the Attorney-- on behalf of Attorney General Doug Peterson and the Nebraska Attorney General's Office, along with the Nebraska County Attorney Association, in support of LB913. On behalf of the Attorney General's Office, we proposed LB913 as a result of an experience in a murder trial we had one year ago in Cuming County. The basic version of the facts were as follows. Two men, a father and son, went out to the victim's country home late one evening. There, an argument broke out. After being insulted in his own home and in fear for his life, the victim came up with a knife, stabbing the father in the arm. At the same time, the son stabbed the victim in the back of the neck around 15 times, killing him. The next afternoon, the son went back to the victim's house and burned it to the ground. In addition to murder, we charged arson, first-degree arson, as our dead victim was still present in the house. At the end of the state's case, defense requested the court dismiss the arson count as there was, quote, no, quote unquote, person present in the house at the time the fire was started. Despite our arguments to the contrary and finding no assistance in Nebraska statutes, Nebraska case law, nor clear guidance in case law from outside the state, the court granted defense request and, instead, found that the state could proceed on second-degree arson. Ultimately, the son was convicted of second-degree arson. However, with the reduction from a Class I felony where he was facing 1-50 years, his conviction of Class III felony had him facing 0-4 years. This was the genesis for LB913, which proposes several changes to the present arson statutes. As Senator McDonnell just covered, primarily the-- the main ones are 28-501 to 505. As Senator McDonnell mentioned, the first and foremost, at least in my mind, would be raising that second-degree arson back up to a Class IIA felony. Prior to the 2015 legislative changes, first-degree arson was a Class II felony, 1-50, as it is today, and second-degree arson was a Class III felony at that time. One to 20 years would be what someone is facing. Raising those penalties up to a Class IIA would mean today somebody convicted of second-degree would arson be facing 0-20 years. A couple other comments on-- that Senator McDonnell covered some areas and a couple of other comments. In designating destruction of evidence by use of arson, whether contained in a structure or not, this bill would make destruction of evidence a significant felony offense under the arson provisions. Additionally, with regard to injuring a public safety official or a first responder, it is true that whether or not this provision is in the bill, those who suffer serious bodily injuries fighting fires are going to have lifelong consequences. From a stand-- a prosecution standpoint, though, we have proposed a sec-- statutory section with the belief that it is fitting that the applicable penalties the arsonist faces should increase when the fire he or she intentionally sets not only destroys property but also maims a public safety official. And with that, I would take any questions.

LATHROP [00:11:05] All right. I do not see any questions for you today, but thanks for being here.

MIKE GUINAN [00:11:08] Yep. Thank you.

LATHROP [00:11:17] How many people are going to testify on this bill or remain to be testifying? OK. Four. Can somebody alert Senator Kolowski? Good afternoon.

TERRY ZWIEBEL [00:11:28] Good afternoon, sir. Chairman Lathrop and members of the Judiciary Committee, my name is Terry Zwiebel, T-e-r-r-y Z-w-i-e-b-e-l. I'm the president of the Nebraska chapter of the International Association of Arson Investigators. I appear before you today on behalf of the inv--fire investigators that are a member of our chapter and members of the international association in support of LB913. The Nebraska chapter of the International Association of Arson Investigators supports this bill for the following reasons. This bill will make needed changes to how the crime of arson is prosecuted in regards to using fire to conceal another crime. Mr. Guinan spoke to the criminal case in Cuming County, the facts of which influenced our association to speak in support of this bill. Defining and adding the description of human skeletal remains to the statutes gives the ability to charge first-degree arson when this situation arises. This bill will return the penalties for second-degree arson from a felony II-- correction, felony III to a felony IIA. In the case mentioned before, the charge of second-degree arson carries a maximum sentence of four years in prison as the statute is written now. The added definition of a public safety official as a person in official capacity at fire scene to include firefighters, both career and volunteer, law enforcement personnel, EMS providers and fire investigators, thus allowing for the person or persons who start a fire and a public safety official is injured, severely injured, increase the chance-- the charge one step. This bill will help to protect public safety officials who are charged with a very dangerous jobs-- job that is made even more dangerous when a person who is trying to destroy evidence by their crime of fire-- by fire, usually by an aggressive means, that makes the job we do even more dangerous. There have been multiple fire departments in the state, as well as other agencies who have provided input into this as proponents of this bill. With that, on behalf of the Nebraska chapter of the International Association of Arson Investigators, I would like to ask this committee to advance LB913 to General File and would like to thank Senator McDonnell for introducing LB913. I'd like to thank the Judiciary Committee for your time in this matter. I would be happy to answer any questions that I am capable of answering at this time.

LATHROP [00:13:52] OK. I do not see any questions at this time. You must have been clear.

TERRY ZWIEBEL [00:13:56] Thank you.

LATHROP [00:13:57] Yeah. Thanks for being here.

JERRY STILMOCK [00:14:05] Thank you. Mr. Chair, members of the committee, my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association, in support of LB913, not to be redundant, simply to point out that with the definition of public safety official, it falls volunteer firefighters and volunteer EMS personnel. And because of the enhanced penalty if a public safety official would be seriously injured in responding or being involved in the fire, we are here in support and appreciate the committee's work in-- in advancing LB913, should that be the desire of the committee. Thank you.

LATHROP [00:14:53] Very good. Any questions for Mr. Stilmock? Senator Chambers.

CHAMBERS [00:14:58] The language that you're talking about, I believe, is on page 5 of the bill? I want to be sure where you are--

JERRY STILMOCK [00:15:05] Yeah, I-- I--

CHAMBERS [00:15:05] --about the injury to the fire official.

JERRY STILMOCK [00:15:08] Yes, sir.

CHAMBERS [00:15:09] Now--

JERRY STILMOCK [00:15:10] I'm looking, agreeing to your reference to--

CHAMBERS [00:15:13] Oh.

JERRY STILMOCK [00:15:13] --page 5, so I'm trying to find what you referenced there. The definitional part is at page 2.

CHAMBERS [00:15:20] Well, mine is-- I'm looking at the language on page 5.

JERRY STILMOCK [00:15:23] OK, I'll-- I'll join you there, sir.

CHAMBERS [00:15:26] OK, are you with me?

JERRY STILMOCK [00:15:27] Yes, sir.

CHAMBERS [00:15:28] And for the record, I'm going to read what I'm dealing with. But it's talking about other things, then it says ordinarily that action would be a Class IV felony, and this is the language: unless any public safety official suffers serious bodily injury due to a violation of this section, in which case a violation of this section is a class IIA felony.

JERRY STILMOCK [00:15:56] Yes, sir.

CHAMBERS [00:15:57] Now suppose the fire official is negligent. It's an absolute statement that would apply only to the one who's being charged with setting the fire, but it excuses a fire official from any liability or culpability. Say he's drunk when he comes and he-- he comes because somebody has set this fire. That's the underlying offense. And this public safety official suffers body-- serious bodily injury due to a violation of this section. The violation would be the person set the fire.

JERRY STILMOCK [00:16:40] Yes, sir.

CHAMBERS [00:16:41] If the fire official was drunk and fell into the fire and suffered serious bodily injury, then even though the fire official should be held accountable for his or her own conduct, the one who originally set the fire would have the penalty jumped up a classification, the way the language reads. Isn't that correct?

JERRY STILMOCK [00:17:01] I-- I understand your-- your statement in your follow-up question, and I agree with your statement, sir.

CHAMBERS [00:17:07] OK. And here's why I'm doing it--

JERRY STILMOCK [00:17:09] Yes, sir.

CHAMBERS [00:17:09] --not to attack what you're trying to do--

JERRY STILMOCK [00:17:11] No, right.

CHAMBERS [00:17:12] --but to me, language means what the words say. And the way I read it, no matter what the one who is injured has done, he could pick up a burning piece of wood and get burned by it, but that burning piece of wood came from the fire that is the original issue, and because he foolishly picked up a burning piece of wood, then the one who set the fire is guilty, I mean, gets it bumped up. Or, if he takes that burning piece of wood and burns somebody else with it, then all of this comes from a violation of the section, so the one who is injured can do anything he or she wants to.

JERRY STILMOCK [00:18:00] He--

CHAMBERS [00:18:00] And I'm not going to--

JERRY STILMOCK [00:18:03] Yeah-- no--

CHAMBERS [00:18:04] Go ahead.

JERRY STILMOCK [00:18:05] Well, if-- if I were faced with the issue that you've presented, I would jump in to the criminal jury instructions and I would bury myself in-- as a defense counsel, I would bury myself in what is a defense. You--

CHAMBERS [00:18:27] Well, before you get to all that, I'm looking at not what a defense lawyer would say. I'm looking at what the statutory language says. I don't think that would be constitutional here as written. But anyway, I just wanted that as a matter of record.

JERRY STILMOCK [00:18:46] OK, yeah.

CHAMBERS [00:18:46] And I might would find other problems, but I haven't had a chance to analyze it. But I only want to deal with what you have made reference to.

JERRY STILMOCK [00:18:53] Yes, sir.

CHAMBERS [00:18:54] And that's all I would have. Thank you.

JERRY STILMOCK [00:18:55] Yes, sir. You're welcome.

LATHROP [00:18:57] OK. Thank you, Senator Chambers and Mr. Stilmock.

JERRY STILMOCK [00:19:01] All right.

LATHROP [00:19:01] I don't see any other questions.

JERRY STILMOCK [00:19:02] Thank you, Senators.

LATHROP [00:19:03] Thank you. Anyone else here to testify as a proponent of LB913? Is anyone here in opposition?

SPIKE EICKHOLT [00:19:21] Good afternoon, Chair Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association, opposing the bill. We're opposed to the bill for two primary reasons. One, as I think the introducer and the proponents explained, this does increase penalties fairly significantly. I don't think it's accurate that this was an oversight with LB605 that these crimes were not adjusted. You know, I can't remember everything, but there was many discussions about which crimes should be included, excluded, and so on, and this was one that, for whatever reason, the Legislature did not include. But it does increase the penalties fairly significantly. But what the bill actually does is a little bit more problematic. If you look on page 2 of the bill, lines 12 through 15, it redefines the term "structure" for the arson and trespass statutes and, frankly, that's got more of an impact on the law that bothers us as it is right now. Right now, the level of arson depends in part on what is burned, if you will. If it's a building, it's pretty differently than maybe other real property, other buildings, or if it's a vehicle. The definition of structure lumps all of those buildings, vehicles, tents; even real property that is attached, and that's the term it uses, to the building, which presumably would be the yard, the front yard or the backyard, is considered a structure. And I don't think that makes good sense, I would submit, for legislative policy to-- obviously fires are dangerous. Setting fires is very dangerous activity, but it is more dangerous to do it to a building with people living in it than maybe an abandoned car or a vehicle somewhere or an empty building or something like that. And I think that the penalty structure should be-- recognize that distinction and not just be blurred together, as this bill does provide. The Attorney General testified earlier and explained that part of the reason they want this change is because of what happened in the Cuming County case. One thing that they didn't mention before is in the Cuming County case, the father and the son defendants were convicted of second-degree murder and each of them got about 40 to 60 years' imprisonment. They also failed to mention that they reduced-- the

state reduced the charges from first-degree murder to second-degree murder as part of a plea agreement. I'm not second guessing that. I'm just saying that it's not accurate, if you will, to recite the disposition of that case with some sort of deficiency in the statute with respect to the arson laws. So we would urge the committee not to advance the bill.

LATHROP [00:22:03] OK. Any questions for Mr. Eickholt? Senator Chambers.

CHAMBERS [00:22:09] I'm here-- I got here late, so I have to pick up as we go along. On page 2, where they're defining structure, language that was stricken talked about the structure being designed for the shelter of man, animals, or property. So with the language that they have now, it could be a dog house--

SPIKE EICKHOLT [00:22:36] Yeah.

CHAMBERS [00:22:36] --and that's arson. If you had goldfish in a bowl and you had a little enclosure with a roof and you set it afire, that's arson--

SPIKE EICKHOLT [00:22:49] I think that would be at least--

CHAMBERS [00:22:50] --based on the definition.

SPIKE EICKHOLT [00:22:51] I think under the definition, it would [INAUDIBLE]

CHAMBERS [00:22:54] OK. I just want a few things into the record. And if I had had a chance to read it more and listen to the earlier testimony, I might have other issues. But I only want to deal with what has been spoken to while I'm actually here, and that's all I have. Thank you.

LATHROP [00:23:09] I do not see any other questions. Thanks for being here today. Any other opponents to LB913? Anyone here in a neutral capacity? Seeing none, Senator McDonnell, would you care to close? Senator McDonnell is going to waive close. Before we close the record, however, I have letters of support from Scott Cordes, Nebraska Municipal Fire Chiefs Association; Steve Hensel, Police Chiefs Association of Nebraska; and Terry Zwiebel, International Association of Arson Investigators, who I think also testified. That will close our hearing on LB913 and bring us to LB1113 and Senator Kolowski. Good afternoon, Senator Kolowski. Welcome to the Judiciary Committee.

KOLOWSKI [00:24:13] Thank you, sir. Good afternoon. Chairman Lathrop and members of the committee, I'm Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i. I represent District 31 in southwest Omaha. The purpose of the LB1113 is to clarify the statute that the definition of obstructing a peace officer does not include the act of recording that officer in the line of duty, as long as the person doing the recording is in a public place and lawfully present in a private place. I'm introducing this bill on behalf of a constituent. That constituent is not able to be here to testify but tells me he sent written testimony. The intent of this bill is to include both audio and video recording, as long as the person is lawfully present at the location and is not interfering in the police action. There are accusations of videoing or recording a police officer that can't-- officer that-- excuse me. There are accusations that videoing or recording a police officer can be used to arrest a person. Those actions would not otherwise be unlawful. My staff touched base with the lobbyists of law enforcement associations and received no objection to this bill. However, the Lincoln Police Department feels the language needs some tightening up. I offer AM2658 to address their concerns. LB1113 has no fiscal impact. Thank you for your time, and I ask you for your support of LB1113. The difference over time is seen in the handhelds that so many of us have. You can see that compared-- I'll flashback just a second to my brother was a-- a state trooper in Illinois and during the 20 years that he served in that capacity, we saw a whole revolution of not having handhelds all the way to many people having one and many recordings being done of police actions that were being taken care of in a public situation. So those things have-- have impacted our-- our lives and our-- our-- our learnings over time, and I thought this would be a positive bill to bring forward because it is taking place in many places today as different law enforcement issues are handled. Thank you very much.

LATHROP [00:27:23] Very good. Any questions for Senator Kolowski? Senator Chambers.

CHAMBERS [00:27:26] Do you know whether somebody from the Lincoln Police Department is going to testify?

KOLOWSKI [00:27:30] I don't know, sir. They-- they may be here though.

CHAMBERS [00:27:35] OK. Well, I'll see if they do, but-- because I don't want to question you--

KOLOWSKI [00:27:38] Sure.

CHAMBERS [00:27:38] --about what they may have said. I don't have any questions of Senator-- Senator Kolowski.

LATHROP [00:27:44] OK. I don't see any other questions, Senator. Are you going to stay to close?

KOLOWSKI [00:27:48] I'll be here. Yes, sir.

LATHROP [00:27:49] Very good.

KOLOWSKI [00:27:51] Thank you.

LATHROP [00:27:51] How many people intend to testify on this bill, by a show of hands? OK. You can alert Senator Blood. Thank you.

KOLOWSKI [00:28:02] Yep.

LATHROP [00:28:03] Proponent testimony? Are you here in support of the bill?

CHENG ZHANG [00:28:07] Yes.

LATHROP [00:28:08] OK. You want to come up and have a seat, and we'll hear what you have to say. Good afternoon.

CHENG ZHANG [00:28:17] Good afternoon. Good afternoon, Mr. Chairman and the honorable member on the Judiciary Committee. My name is Cheng Zhang, for the record, C-h-e-n-g Z-h-a-n-g. I'm a second-year law student at UNL and am here to testify on behalf of ACLU-Nebraska in favor of LB1113. We'd first like to thank Senator Kolowski for introducing this legislation, assuring Nebraskans' First Amendment right to film police officers and increasing the state government's transparency and accountability. Videos can play a major role in improving police misconduct or the innocence of the accused. In 2016, thanks to a crucial video recorded by Mr. Johnson's neighbor, the ACLU of Nebraska was able to help Mr. Johnson to reach a-- reach a settlement with the Omaha Police Department after he was searched without warrant and suffered police brutality. There are overwhelming case-- cases recognize a general First Amendment right to record police performing their duties in public. In 2011, the U.S. Court of Appeals for the First Circuit found that filming or videotaping a government official engaged in their duty in a public place was protected by First Amendment. The

Third, Fifth, Ninth, Seventh, and Eleventh Circuits have similar rulings that protect people's right to record police officers in public. Two U.S. District Court in a circuit also ruled that person had the First Amendment-- Amendment right to record police activities in location where they have a right to be. Like other 37 states, Nebraska allows people to record a conversation to which they are party without informing the other parties. Further, California, Oregon, and Colorado has enact statutes to allow recording police officers. Especially, Colorado's statute give the public the right to recover civil damage when a police officer destroyed a recording device, LB1113 merely asks this legislation-- Legislature to provide much-needed clarity and to reaffirm-- reaffirm people's First Amendment right to record police officers. The passage of LB11-- LB1113 will increase our state government transparency and accountability. For those reasons, we ask the committee to advance the bill to the General File.

LATHROP [00:30:39] Very good. Any questions for this testifier? I see none, but thank you for being here today.

CHENG ZHANG [00:30:47] Thank you for having me.

LATHROP [00:30:47] Appreciate hearing from you. Anyone else here to testify as a proponent of LB1113? Anyone here in opposition? Anyone here in a neutral capacity? Seeing none, that will-- Senator Kolowski, you may close. He waives closing. We do have two letters of support, one from Kelly Keller, National Association of Social Workers-Nebraska Chapter, and secondly from J.D. Koerner, K-o-e-r-n-e-r. We also have a letter of opposition from the chief of police of the Lincoln Police Department. That's Jeff Bliemeister, and that's all the letters we have. That will close our hearing on LB1113--

CHAMBERS [00:31:35] Excuse me. Before you actually close it--

LATHROP [00:31:36] Yes, sir.

CHAMBERS [00:31:37] --I would-- I had a question or two to ask Senator Kolowski because he said he would close--

LATHROP [00:31:41] Oh.

CHAMBERS [00:31:42] --at first.

LATHROP [00:31:42] Then we'll have him come up and stand for questions. We won't make the Sergeant-of-Arms retrieve him, but we will ask him [INAUDIBLE]

KOLOWSKI [00:31:51] Senator--

CHAMBERS [00:31:56] Senator--

KOLOWSKI [00:31:57] Yes.

CHAMBERS [00:31:57] Senator Kolowski, to the best of your knowledge--

KOLOWSKI [00:31:59] Yes, sir.

CHAMBERS [00:32:00] --would a person have to be literate to be a member of the Omaha Police-- the Lincoln Police Department? And by that I meant able to read, and since we're talking about the English language, read the English language and understand the meaning of common words?

KOLOWSKI [00:32:15] Yes, sir. I would-- I would understand that to be a minimum competency.

CHAMBERS [00:32:20] Well, I'm going to read some language in the original bill, the original law: A person commits the offense of obstructing a police officer when-- by using or threatening to use violence. Photographing and recording is not threatening to use violence. It is just an activity where there not-- need not be any sound. "Force to take a picture" is not the use of force. It's not threatening to use force. Would you agree with that?

KOLOWSKI [00:32:57] Yes, sir.

CHAMBERS [00:32:58] Physical interference-- does recording sound or filming action involve physical force, interference?

KOLOWSKI [00:33:11] No, usually not.

CHAMBERS [00:33:14] Or obstacle-- if the person photographing or recording is not standing between the officer and his or her duty or interposing any object between the

officer and his or her duty, would a sound recording or a camera recording of the action constitute obstacle?

KOLOWSKI [00:33:50] I don't believe so.

CHAMBERS [00:33:51] Well, what in the world do we have this bill-- I understand why it's broad, but I think it would take somebody who's ignorant, stupid, illiterate to think that with the clear language of this law, the mere recording or photographing would fit under any of these words that define obstructing a peace officer. I haven't seen the amendment that is being offered for them. But rather than do that, could we just say, add at the end when we say-- (b)-- subdivision (b) is the ending so I can add mine: a police animal assisting a police officer acting pursuant to the police officer's official duty. That's the end of the existing law. If we just add the language "and we mean what we said above as these words are defined by the dictionary," and not make the Legislature look foolish by amending a statute which clearly says what it means just to accommodate some chief whose officers cannot read and understand English. But since I'm not looking at the amendment, could you-- unless it's in the book, can you bear with me while I read this? I'm going to read it for the record: The fact that a person takes a photograph or makes an audio or video recording of a police officer while the officer is in a public place or while the person taking the photograph or making the recording is in a place the person has the right to be, does not in and of itself constitute a violation of this section. The only difference I see is where it says while the officer is in a public place. Now, if the officer is in someone's home, which is not a public place, and is beating the stew out of somebody, then maybe it would be obstruction if you photograph that. The only thing I see that they added is while the officer is in a public place. I would not support the amendment. Wherever an officer is carrying out his or her duties and somebody films it or records it and does not do any of the things listed in the current law, that person should not be chargeable with obstruction. And if you have county attorneys who are so vicious and violative of their oath of office that they would charge a person with this, and if there's a judge so lacking in integrity, then we need to look at the competency of the charging county attorney and the judge who would convict somebody and of the officer who would make an arrest. This is placing the burden on a person engaging in conduct which is totally legal under the law right now, and the only language that's inserted is if the officer is in a public place, which would mean if the officer is not in a public place, if it's in somebody's house and there's a large plate-glass window of the room and the officer is in that house, which is not a public place, strangling somebody, raping a woman, slapping children around, if somebody photographed that, then they are obstructing the officer. And I guess the chief's attitude

is, if the officer is aware that you-- you're filming, he or she will stop doing what he or she is doing. So I will not support the amendment, and I want it clear in the record why I won't do it. And I want the chief to have on the record what I think of him, or whoever wrote this silliness or any county attorney who would prosecute somebody under the law as it stands now or a judge who would convict somebody. If those people exist now, I think they're unfit for the position that they hold. And that was the only question I wanted to ask you, because I don't see a difference otherwise between the existing law and what's offered, except that it shields an officer if he commits misconduct in a place that's not public. That's all I would have.

KOLOWSKI [00:39:10] And that's why we would welcome sitting down with any police force, any-- anytime in our-- in our communities to get additional viewpoints on this, because the technology has changed so radically in the last 20 years.

CHAMBERS [00:39:28] Thank you. That's all I have, Mr. Chairman.

LATHROP [00:39:31] OK, Senator Kolowski, thanks for being here. That will close our area on LB1113.

KOLOWSKI [00:39:36] Thank you.

LATHROP [00:39:37] That will bring us to LB742 and Senator Blood's first of two bills. Good afternoon, Senator Blood. Welcome.

BLOOD [00:40:00] Good afternoon, Chairperson Lathrop and to the entire Judiciary Committee. Thank you for the-- allowing me the opportunity to speak today about LB742. My name is Senator Carol Blood. It is spelled C-a-r-o-l B, as in "boy," -l-o-o-d, as in "dog," and I represent District 3, which includes western Bellevue and southeastern Papillion, Nebraska. Today's bill makes relatively small but very important changes to the existing code regarding offenses that relate to animal cruelty. To put it in brief, this bill will ultimately accomplish two things. The first thing it accomplishes is to allow courts to impose animal ownership restrictions on a person convicted of animal abuses. Secondly, it extends the time limits for county attorneys when they file for hearings in cases of animal impoundment. In order to address each of these changes individually, Class IV felonies under this provision will also be subject to Nebraska Revised Statutes 28-109-- 28-1019, excuse me, that I have handed out today for your perusal, which means that the sentencing court shall order such person not to own, possess, or reside with any animal for at least 5 years after the date of conviction, but such time restriction

shall not exceed 15 years. What this update does is harmonizes 28-1009 and 28-1019, which is needed after the Legislature passed and the Governor signed LB605 into law in 2015. This bill changed the penalties for animal cruelty and added the charge of a Class IIIA felony for cases involving torture, repeated beating, and mutiliza-- and mutili-- mutilizat-- mutilation--

LATHROP [00:41:52] Mutilizing.

BLOOD [00:41:52] --mutilizing, mutilation--

LATHROP [00:41:53] Mutilation.

BLOOD [00:41:53] --couldn't get that one out. 28-1019, the animal ownership restriction law, was never changed, so it does not match the new penalties enacted in 2015 for animal cruelty. This portion of LB742 does not change the intent of Nebraska State Statute 28-1019. Rather, it simply allows a judge to impose animal ownership restrictions to persons based on the updated crime classifications in Nebraska State Statute 28-1009, the animal cruelty statute, and allows the process to match the concerns of the original bill. The second goal of the legislation is to remove some of the burden of our county attorneys. Currently, county attorneys are given one week after seizure of an animal to file an application for a hearing regarding the future of said animal. This undue burden would be in part relieved by extending the deadline to ten days. I believe that time period will allow for county attorneys to have ample time to decide on a course of action while also making sure we are rescuing animals from harmful situations in good time. I'm happy to answer any questions, but we also have the Humane Society here who may have the answers you seek, including their testimony. Thank you for the opportunity to share the-- this item of legislation with your committee today.

LATHROP [00:43:09] Well, thank you, Senator Blood. Any questions for Senator Blood? I see none. Thank you for presenting LB742. We will take proponent testimony at this time. Good afternoon.

NANCY HINTZ [00:43:29] Good afternoon. My name is Nancy Hintz; spelling is N-a-n-c-y H-i-n-t-z, and I am the president and CEO of the Nebraska Humane Society. Our agency does provide animal control and animal cruelty investigative services for Omaha and surrounding areas. In the year 2019, we responded to over 34,000 animal-related calls and issued 126 citations for animal cruelty. LB742 addresses

needed changes to two current state statutes dealing with animal ownership restrictions and animal impoundment. First, in 2008, LB1055 passed by unanimous vote. The bill established Nebraska State Statute 28-1019 which allowed a judge to impose animal ownership restrictions of up to 15 years for individuals convicted of a Class IV animal cruelty charge and up to 5 years for the conviction of a Class I misdemeanor. In 2015, the Legislature passed LB605, which changed the penalties for animal cruelty and added the charge of a Class IIIA felony for cases involving torture, repeated beating, and mutilation. However, Nebraska State Statute 28-1019, which is the animal owner--ownership restriction law, was not changed, so it does not mirror the new penalties enacted in 2015 for animal cruelty. So the portion of this bill does not change the intent of Nebraska State Statute 28-1019. Rather, it simply allows a judge to impose the animal ownership restrictions to persons based on the updated crime classifications in Nebraska State Statute 28-1009, which is the animal cruelty statute. Second, in 2008, the Legislature unanimously passed LB360, which addresses impoundment of animals involved in a cruelty case. Based on that bill, current State Statute 28-1012.01 allows for lawful seizure of animals when a violation of animal cruel-- cruelty law occurs. The law sets out a procedure for a prosecutor to file an application with the court for a hearing to determine the disposition of animals, and also for the court to determine who incurs the cost of the care of the animals during the trial process. LB360 set out a seven-day time limit for a prosecutor to file for such a hearing, and that is the current law in the state statute. The Nebraska Humane Society has experienced firsthand and has been advised by several prosecutors that the seven-day window to file the paperwork with the courts is not sufficient time. Law enforcement and the Nebraska Humane Society investigators must prepare reports and forward them to prosecutors, who then prepare legal documents to file for disposition hearings. We are asking for the seven-day provision to be increased to ten days. We believe this will allow prosecutors additional time to file motions while, importantly, not overextending the time animals linger in shelter care waiting for their futures to be decided. Other than this, there are no other proposed changes to Nebraska State Statute 28-1012.01. Our sincere thanks to Senator Blood for introducing this bill and to you, committee members, for listening to my testimony and for your consideration of LB742, and I'm happy to answer any questions. Thank you.

LATHROP [00:47:05] Senator Chambers.

CHAMBERS [00:47:07] This document you gave us describes you as the president--

NANCY HINTZ [00:47:10] Yes.

CHAMBERS [00:47:11] --and CEO for the Nebraska Humane Society.

NANCY HINTZ [00:47:14] Yes, sir.

CHAMBERS [00:47:14] Does the Humane Society accept contributions?

NANCY HINTZ [00:47:17] Yes.

CHAMBERS [00:47:18] Are you authorized to accept contributions on behalf of the society?

NANCY HINTZ [00:47:21] Yes.

CHAMBERS [00:47:22] Could I have a clerk-- a--

PANSING BROOKS [00:47:28] Page?

CHAMBERS [00:47:28] --page? I want to make my contribution to the Humane Society.
[LAUGHTER]

NANCY HINTZ [00:47:33] Thank you, sir.

CHAMBERS [00:47:34] Talk is cheap. It takes money to buy land. [LAUGHTER]

NANCY HINTZ [00:47:37] Thank you.

CHAMBERS [00:47:39] OK.

NANCY HINTZ [00:47:39] Thank you so much.

LATHROP [00:47:41] That doesn't happen every day in here. [LAUGHTER]

NANCY HINTZ [00:47:46] Thank you, sir.

LATHROP [00:47:46] I don't see any other questions or contributions at this time.
[LAUGHTER]

NANCY HINTZ [00:47:50] Thank you.

LATHROP [00:47:51] But we'll look forward to sending checks.

NANCY HINTZ [00:47:52] OK. [LAUGH] Thank you.

LATHROP [00:47:53] Thank you for being here today.

NANCY HINTZ [00:47:55] Thank you.

LATHROP [00:47:56] Any other proponents of LB742? Anyone here to testify in opposition to LB742 or in the neutral capacity? Seeing none, you may close, Senator Blood. We do have three letters of support, one from Laura Priest, Dr. Marnee Jepson, and Joy Bartling from Scattered-- Scatter Joy Acres.

BLOOD [00:48:21] Animal Rescue. I-- I feel it's our job as policymakers to make sure that when policy has been made in the past, that perhaps something was left laying on the table that needed to be completed, that we need to pick that up and complete it. It's been several years since that bill was passed. It's time for us to correct the error, and it was an error. But more importantly, this is a noncontroversial piece of legislation that can easily be amended into other bills, as well as placed on the consent calendar bill agenda. So I'd ask that you please seriously consider kicking this bill out of committee and letting us try and get it passed this year so we can do what's best for the animals of Nebraska that are being treating-- treated inhumanely. And I appreciate your time today.

LATHROP [00:49:17] OK. I don't see any questions. Thank you.

BLOOD [00:49:20] It's my pleasure.

LATHROP [00:49:21] You do have the next bill up, so that will--

BLOOD [00:49:23] I do, so can I just stay seated?

LATHROP [00:49:24] You will stay seated and Oliver will hand you a new folder. That will close our hearing on LB742 and bring us to LB749, also a Senator Blood bill. Welcome once again.

BLOOD [00:49:40] Well, again, good afternoon to all. My name is Senator Carol Blood, spelled C-a-r-o-l B, as in "boy," -l-o-o-d, as in "dog." And again, I represent District 3, which is Western Bellevue and southeastern Papillion, Nebraska. I thank you for the opportunity to bring forward LB749, which is cited in the bill as Nebraska Anti-Terrorism Act. As we all know, the U.S. Department of Justice is usually the organization that brings terrorism-related charges, but 34 states and the District of Columbia have enacted laws that make committing acts of terrorism or providing support to terrorists state-level felonies. Now many of these laws were in response to the September 11 attacks. After that horrible day, 27 states passed antiterrorism legislation in 2002, but many states reacted so quickly that many of those bills defined terrorism actually quite vaguely. For example, Arkansas states that they outlaw terroristic acts, but they don't really define if the acts must be ideological-- ideologically-- I just can't pronounce words today-- ideologically motivated, which is a requirement under the federal terrorism law. There are additional examples that I found, but the point is to say that antiterrorism laws should not be reactionary to avoid bad policy. So after events like the Pulse nightclub massacre, the mass shooting at a black church in South Carolina and other similar events, I started researching what we could do in Nebraska to better define and penalize those involved with incidents such as these. So first of all, I found that Nebraska does not have an antiterrorism law. Although domestic terrorism is defined in the Patriot Act-- Patriot Act of 2001, there is no specific federal crime covering acts of terrorism inside the United States that are not connected to al-Qaeda, ISIS, or other officially designated international terror groups or their sympathizers. So to put that in perspective, the alleged El Paso shooter apparently acted out of his belief of a violent white supremacist ideology. That's domestic terrorism. Now, although his hate speech is protected under the U.S. Constitution, I believe we can create policies such as LB749 in ways that protects one's civil rights while still giving state authorities the tools they currently lack to help prevent this type of ideological-motivated violence. So according to the organizations that track these hate groups, there's been a 30 percent increase in U.S. hate groups over the past four years. At last count, that's 1,020 organized hate groups in the United States. From 2015 to 2017, the FBI reported a 17 percent jump in hate crimes, but that list is not complete because local law enforcement only reports hate crimes to the FBI on a voluntary basis. In Nebraska, there are at least 12 known statewide hate groups. These groups include, but are not limited to, the neo-Nazis, Christian Identity, anti-Muslims, racist skinheads, and more. And it seems like there's a lot of hate circulating around our state right now, but specifically in communities such as Lincoln, Fairbury, and Scottsbluff. So as you can see, the beer-- the beer-- the bill has clear definitions as to all areas this bill addresses, such as: critical infrastructure, which is in Section 4: designated foreign terrorist organizations in Section 5; destructive

devices in Section 6; firearms in Section 7; influencing government policy in Section 8; predicate offenses or acts in Section 10; military-type training in Section 9 ; terrorist activity in Section 11; material support and resources in Section 14; membership in foreign terrorist organizations in Section 15; intent in Section 16; imposition of the next higher penalty classification in Section 17; and intent to kill and cause bodily harm as it pertains to domestic terrorism in Section 18. So it is my hope that these changes in statute will help those who uphold our laws in Nebraska by confronting the domestic terrorism left of boom, allowing them to strategize, detect, disrupt, and hopefully dismantle our homegrown terrorists before violence occurs. This bill is part of existing criminal code and is subject to the definitions in Chapter 28, Section 109. So again, for clarification, international and domestic terrorism are both defined under federal law. And when it comes to international terrorism, the United States has provided federal statutes that allow for intervention and give investigators the tools they need to identify criminal behavior earlier in the timeline, with the intent of intercepting the subjects before their plan is brought to fruition. No such laws currently exist for domestic terrorism here in Nebraska. I'd like to see that change. I'd like to end by saying that there is nothing wrong with standing up and saying that we do not accept this type of violent terrorism in Nebraska. We cannot remain blind to these crimes based on things like racial inequality or racial dynamics. It's clear that history continues to repeat itself and we cannot continue to pretend otherwise. So with that said, I'd be happy to answer any questions but would like to point out that we do have letters of support, as well as, I think, individuals here to speak in support of the bill, and I'm guessing probably a few that oppose, that may very well answer your questions that you might be mulling over right now.

LATHROP [00:55:41] OK. Any questions for Senator Blood? Senator DeBoer.

DeBOER [00:55:46] Thank you, Senator Blood. I wanted to ask, under Section 14, it says, "terrorist entity means," and then subsection (i) a desig-- you know, this is (c)(i).

BLOOD [00:55:57] Can you give me the page number?

DeBOER [00:55:59] Seven.

BLOOD [00:55:59] Thank you. It'll be faster.

DeBOER [00:55:59] There we go. Page 7, line 23, it says, "A designated terrorist organization." Who does the designating?

BLOOD [00:56:08] So that's under the federal description. If you read the entire bill, we refer to what a terrorist is described as. It's already-- the Patriot Act already tells us who a terrorist is.

DeBOER [00:56:19] But does it designate the organizations that will count as the--

BLOOD [00:56:24] Yes, that's--

DeBOER [00:56:25] --because I was looking and I wasn't able to see that, that it was-- that-- that--

BLOOD [00:56:29] If you--

DeBOER [00:56:29] Do they have a list of organizations?

BLOOD [00:56:31] I believe you got a list. I think it's the FBI list-- list that I gave you of terrorist organizations here in Nebraska in your handouts.

DeBOER [00:56:40] You give me a list, I--

LATHROP [00:56:42] U.S. Code.

DeBOER [00:56:43] Is this it?

BLOOD [00:56:44] Yep.

_____ [00:56:44]

LATHROP [00:56:47] Oh.

BLOOD [00:56:47] So the FB--

DeBOER [00:56:47] And who decides that, the FBI?

BLOOD [00:56:48] The FBI. The list is on the [INAUDIBLE]

DeBOER [00:56:57] The FBI-- the FBI made this list?

BLOOD [00:57:00] Our law-- as I said in my introduction, local law enforcement reports from every state as to which state organizations they have active in their communities, and then the FBI and the Southern Poverty Law Center both keep a list. The unfortunate thing about the list is that it is not as complete as it should be because it is optional for law enforcement agencies to report.

DeBOER [00:57:25] But some of these-- I'm wondering if some of these, there would be disagreements about the list.

BLOOD [00:57:33] You know, I-- I---- I've-- I'm-- I don't belong to the FBI--

DeBOER [00:57:36] Yeah.

BLOOD [00:57:36] --and I don't work under the Patriot Act. I can only tell you what I know, and what I know is that this is the list that they maintain--

DeBOER [00:57:41] So this one is--

BLOOD [00:57:42] --and the list is utilized by law enforcement.

DeBOER [00:57:44] This one that you printed out came from what-- where did you put this out from?

BLOOD [00:57:48] All of our lists came from either the Southern Poverty Law Center or the FBI.

DeBOER [00:57:53] And do you know which this came from?

BLOOD [00:57:56] I'm pretty confident that's my FBI list.

DeBOER [00:57:58] OK. That's what I would like to know is just--

BLOOD [00:58:00] Yeah.

DeBOER [00:58:00] --if this is your FBI list or if this is from [INAUDIBLE]

BLOOD [00:58:02] I would say 99 percent sure that that came from my FBI source, so.

DeBOER [00:58:04] OK, if you can just let me know, that would-- that's what I want to know.

BLOOD [00:58:09] Because we-- we tried-- any-- any information that we wanted to bring forward, we wanted to make sure it came from a reliable source, and the most reliable source we have in the United States for hate groups is the FBI.

DeBOER [00:58:19] OK.

LATHROP [00:58:21] OK. I don't see any other questions. Thank you, Senator Blood. We will take proponent testimony at this time. Anyone here to testify on-- in support of LB749? If you don't mind, come on up. You're doing fine so far. Hand that yellow sheet to the page, if you will. Have a seat, make yourself comfortable, and start with your name and spell it for us, if you don't mind.

TERI HLAVA [00:58:54] Yes. My name is Terry Hlava, T-e-r-i H-l-a-v, as in "victor," -a.

LATHROP [00:59:06] OK.

TERI HLAVA [00:59:07] I did decide to go ahead and testify in support of this bill. I've been learning about this issue after I discovered a young woman that I know has now joined a movement of what she calls white advocates. She is from Nebraska, and I now-- I know that domestic terrorism is real in Nebraska and that it needs to be prepared for with very strong disincentives under the law. One would never guess that this woman would, in her own written words, be, quote, dedicated to securing the existence of our people and a future for white children, and we are going to fight this fight no matter what people say. We will do this even if the people we are trying to save hate us-- dot, dot, dot-- doing something about those who want to harm our people. And there were other comments as well. The group that she joined appears, from many articles online, to advocate and incite hate against people who happen to be Jews, blacks, and primarily other nonwhite people. It-- they address race, ethnicity, religion, and culture. A member of her group was a speaker at the infamous event in Charlottesville. Many of these groups are very tech savvy and they also conduct their hate online, if not primarily online. Groups now combine their efforts among like groups, as well as inciting individuals online. Nebraska is not exempt from these efforts and these groups. I have friends who have discovered children that are being exposed to these same kind of groups as they wander online, and these friends were able to

discover this and put a stop to it, but it was accidental that they discovered it. This young woman-- I think it might be important to just shine reflection-- she's in her late thirties. She's a rural Nebraska woman. She's savvy on in-line communication and most likely, my own opinion, the dark web. One would never suspect that this quiet, intelligent, monied, churched, rural Nebraskan, although she's not well educated and barely able to support herself, has chosen to spend her life now with others that espouse hate and superiority toward others of a different race, ethnicity, religion. This logically will end in producing fear, violence, suffering, and destruction of other fellow citizens and human beings, and that is-- that does fall under the definition of terrorism.

LATHROP [01:02:54] Ms. Hlava--

TERI HLAVA [01:02:55] My time is up?

LATHROP [01:02:57] Yeah.

TERI HLAVA [01:02:58] OK.

LATHROP [01:02:59] Yeah. I know you're-- this-- you're a first timer, right?

TERI HLAVA [01:03:01] Yes.

LATHROP [01:03:02] Yeah. So we do have a light system so that we can give everybody an opportunity.

TERI HLAVA [01:03:07] Oh, I'm sorry. Yeah, OK.

LATHROP [01:03:10] Yeah, that's the-- that's the lights where [INAUDIBLE]

TERI HLAVA [01:03:11] Oh, I'm finished.

LATHROP [01:03:12] No, that's fine. We're glad you came down today.

TERI HLAVA [01:03:14] Thank you.

LATHROP [01:03:14] We appreciate hearing from you. I don't see anybody with any questions, but thanks for being here.

TERI HLAVA [01:03:19] OK.

LATHROP [01:03:21] Anyone else here to testify in support of LB749? Anyone here to testify in opposition?

SPIKE EICKHOLT [01:03:35] Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association, opposed to the bill. I did visit with Senator Blood a couple of times earlier before today's hearing to explain that we would be opposing the bill. The bill is ambitious. I understand why Senator Blood wants to address this issue. It is an important issue. We're not trying to minimize that. But we are concerned with some of the probably intended and perhaps unintended consequences of the-- the bill. If you look at the first maybe five or six pages, they mention predicate offenses. Those are really-- a majority or a good number of our existing crimes already exist in law and what the-- what the bill does, it provides that if a person commits a predicate offense in the furtherance of a terrorist activity or some similar thing, then it's an enhanced crime. So one concern that we have is it just sort of across the board increases the penalties for a whole series of crimes that are already-- we've already pretty sufficiently punitive. But if you look on pages-- the bottom of page 6, page 7, an unintended consequence is it may actually lessen the penalty for some pretty serious crimes that I don't think that Senator Blood means-- intends to do, perhaps not the committee either. For instance, if a person commits-- a person commits the offense of terrorism-- and it's on page 6, lines 27-- if they commit a predicate offense in the furtherance of, and then it gives some examples, predicate offense includes murder, which is already a Class I felony. But this would presumably provide that if a person were commit murder with the in-- in furtherance of intimidating or coercing a civilian population, it would only be a Class II or a Class IB felony, which is lesser. I don't think that's the intent. But I think that sort of highlights perhaps another problem we have with the bill, and that is it's just very complex and somewhat confusing, at least to me, to decipher it. I would remind the body that we may-- we might not have an actual crime or crimes that address terrorism or antiterrorism. We do have a number of crimes that provide for enhanced penalties if a person commits a hate crime, really regardless of any kind of crime that's listed here and maybe some other ones too. If he-- if a person does that because they're motivated by the victim's race, gender, what have you, then that's bumped up one additional felony. Also, we already have existing crimes for the use of explosives or use of weapons to commit the underlying crimes that are mandatory minimums and are mandatory consecutive to the underlying felony that already exist, so we already have, we would argue, adequate penalties that address this

activity in some respects and perhaps similar than what the bill proposes. So for those reasons, we would urge the community not to advance the bill.

LATHROP [01:06:20] OK. Can I ask a question about these? So let's say that somebody commits-- assume-- well, you mentioned murder as a predicate offense. Under bills that get passed like this, could you be charged with murder and then charged with something under this for the very same homicide that just happened to be motivated by--

SPIKE EICKHOLT [01:06:45] I think you can. That's one argument that I-- or one point that I try to make is that sometimes when senators are considering adopting laws, they say, oh, well, it's already against the law, it's already permitted by law, what's the harm in just doing this again? There is a harm because you can have additional crimes or a singular act be charged with additional-- with multiple crimes. You might be able to make an argument that somehow you cannot be as a defendant because the crimes actually are overlapping or what they call lesser included crimes. If they have the same elements and if you look, I think, at the example of like the analogy of the Russian doll where you sort of have one within the other, you can argue perhaps that you have a crime of murder and then we have a lesser included crime, since there's a lesser penalty of murder in furtherance of terrorist activity. I don't know. The-- the language of the bill really doesn't track what we have in our current statutes.

LATHROP [01:07:37] Is that constitutional though? Can we make-- can we make, and now I'm going to use a hypothetical and not necessarily Senator Blood's bill, but murder and then murder on account of hate--

SPIKE EICKHOLT [01:07:52] I think you could.

LATHROP [01:07:52] --like where we make a separate crime based on the motivation? Then can you charge both and convict somebody at both? I see the AG is in the back shaking his head yes.

SPIKE EICKHOLT [01:08:02] I think you can. I mean, the first thing I'll make as a defense attorney is that you can't-- you put my guy in jeopardy twice. They'll say, the Legislature spoke and, Judge, they provided for an additional penalty for the type of behavior and we should be able to proceed.

LATHROP [01:08:14] Can you give them consecutive sentences for doing that?

SPIKE EICKHOLT [01:08:17] And that's another way the courts can resolve it. They can say, well, there's-- if a trial judge wants to be safe, they'll give concurrent sentences, right, because then I can-- then they can argue that there's no harm to my guy because he didn't do any additional time. But I think you can if it's not a-- if it's not-- if Jeopardy is not an issue, then you certainly can give consecutive sentences.

LATHROP [01:08:37] OK. Thanks for answering that. Any other questions for Mr. Eickholt? I don't see any. Thanks for being here today. Anyone else here to testify in opposition to LB749? Anyone here to testify in a neutral capacity? Seeing none, Senator Blood, you may close. And as you approach, I'll read into the record. We have letters of support from Rick Kubat with MUD; Jeff Buettner-- or Buettner, Central Nebraska Public Power and Irrigation District; Kirk Lavengood with Northern Natural Gas; and Neil Miller, the Buffalo County Sheriff. Senator Blood.

BLOOD [01:09:18] Thank you, Chairman Lathrop. I didn't come into this hearing thinking this was going to-- thinking this is going to be a simple bill, but I did come to this hearing with a little bit of help. I really do understand that some of these things are already illegal in Nebraska but through more indirect routes. So, example, putting poison in a reservoir would probably be attempted murder or murder, but the intent and why they're doing it is important. And I think the longer that we have our eyes closed to this problem here in Nebraska, as I think we saw last week, the more bold-- the more emboldened these people will become, and then I think we'll find ourselves doing knee jerk reactions like the 21 states that did it-- or 26 states that did it after September 11. So I really am trying to approach this in a holistic fashion. I'm not an attorney. I appreciate Spike. He's always really great about coming into my office. The one thing he didn't offer this time, though, was any amendments or resolutions to show me how to make this a better bill, because I'm definitely open to that, because I know the scope of the bill is-- is quite broad. But again, this bill came from a place of me being sick and tired of watching people hurt others because of their personal ideology. I do not want to fill up the prison system with more inmates. By the same token, we have prisons for a reason. And when somebody is walking into a church or a school or LGBTQ event and hurting, killing, burning the participants or the buildings that they-- they have their events in or vandalizing those places, they should be held accountable above and beyond because we as a moral citizenship have higher expectations of behavior. And I guess for me the question is, when are we going to put our foot down and really do something about it? And so do I know that this is a little excessive? Absolutely. But I'm also open to

amendments, suggestions, and changes. And at least this is a starting point. But we can't keep closing a blind eye to this.

LATHROP [01:11:55] OK. I don't see any other questions. We've read the letters for the record. That will close our hearing on LB749.

BLOOD [01:12:03] Thank you.

LATHROP [01:12:03] Thanks for being here.

BLOOD [01:12:04] Oh, Senator, I'm sorry. I forgot to answer Senator DeBoer's question. I'll do it really quickly. May I, please?

LATHROP [01:12:08] You may.

BLOOD [01:12:09] I know you closed the hearing. I apologize. Senator DeBoer, your answer: page 2, Section 5-- Section 219 of the Federal Immigration and Nationality Act, so it is in the bill. It refers to the part of the federal statute. You asked the question in reference to where we get the definitions.

DeBOER [01:12:29] But that doesn't have the list, right?

BLOOD [01:12:32] No, but that's-- that's what defines the list. We'll talk.

DeBOER [01:12:37] We'll talk.

BLOOD [01:12:37] All right.

LATHROP [01:12:37] OK. Thanks, Senator Blood. That will close our hearing on LB749 and bring us to LB792 and Senator Slama. Good afternoon.

SLAMA [01:13:03] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Julie Slama, J-u-l-i-e S-l-a-m-a, and I represent District 1 in southeast Nebraska. I'm here today to introduce LB792. LB792 was created in partnership with the Attorney General's Office and would allow for the combination or aggregation of cocaine, heroin, amphetamine, or methamphetamine amounts for two or more controlled substance violations that are attributable to a single plan or scheme and occur in approximately the same location over a period of time not to exceed 90 days. I

agreed to bring this bill because rural Nebraska still struggles with extensive abuse of methamphetamine. Cocaine and heroin were included within this bill to harmonize provisions along a series of statutes that have traditionally been handled together. Our current statutory framework is very strong in the state of Nebraska, with mandatory minimums in place for deals in excess of 10 grams. But many who get busted for dealing meth know how to play the system and keep their dealings just below the threshold of 10 grams per transaction to avoid a felony charge and a mandatory minimum. As such, habitual dealers of meth, but also of heroin and cocaine, often spend little to no time in jail and are soon back out on the streets. These small-time dealers are selling small quantities to our friends and neighbors, go to jail if they get caught, serve a very abbreviated sentence, if any at all, and come right back out to only revert back to what they know, and a money source that they came to rely on. LB792 would allow law enforcement an additional tool to crack down on these drug dealers by allowing them to use their undercover officers to buy from these small dealers on multiple occasions within a 90-day period. And those multiple occasions would count as one bust with aggregated amounts taking that dealer off the streets for a longer period of time with the hopes that they will be rehabilitated and not return to dealing once released. A short jail sentence for a single occurrence isn't long enough to rehabilitate or send a message that dealing these highly addictive drugs are unacceptable in civilized society. In closing, I'd like to note why I brought this bill. During my trips in my own district in the interim, constituents in several communities raised concerns about the extensive meth use in our small towns. In fact, several parents from one town, in particular, shared that they no longer allow their kids to walk to and from school or even to and from the local playground because they found used syringes on the sidewalks on the way there. Drug addiction is an ugly problem and it is up to each of us to fight against it. LB792 is another tool for our law enforcement to fight that fight. Thank you. And I will be happy to answer any questions you may have, but they're experts coming behind me. Thank you.

LATHROP [01:15:58] Senator Chambers.

CHAMBERS [01:16:00] Senator Slama and I don't agree on some things, but since it's gonna be so easy for me to make her happy today, I intend to do that by asking a question. You have already prioritized a resolution in place of a bill this session?

SLAMA [01:16:16] Yes.

CHAMBERS [01:16:16] There's no need for me to ask you questions then, that's my only question.

SLAMA [01:16:20] Thank you, Senator Chambers.

LATHROP [01:16:24] I see no other questions. Thank you, Senator.

SLAMA [01:16:28] Thank you.

LATHROP [01:16:28] Proponent testimony, please.

COREY O'BRIEN [01:16:28] Good afternoon--

LATHROP [01:16:28] Welcome. Yeah.

COREY O'BRIEN [01:16:39] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Corey, C-o-r-e-y, last name is O'Brien, O-'-B-r-i-e-n, and I appear here today on behalf of the Nebraska Attorney General's Office, as well as the Nebraska County Attorneys Association as a proponent of LB792. As Senator Slama indicated, she came back from the interim and she contacted our office talking about the problems that she encountered over the interim and she wanted to get more background information. So we got together on several occasions and had a lengthy conversation about what she experienced and what anecdotal stories she had. And unfortunately, those experiences that she had are very similar to what prosecutors in our office see, as well as the law enforcement officers that we work with, and the prosecutors in small town Nebraska. While nationwide we hear a lot about the opioid situation, to this point, Nebraska has not completely dodged a bullet, but we have not gotten hit as hard as a lot of other jurisdictions. However, our primary drug of choice continues to be methamphetamine. Particularly hard hit seems to be some of our rural areas in southeast Nebraska where Senator Slama, as well as Senator Brandt are from, places south of the interstate seem to be hit hardest of all per capita. Well, obviously meth has hit all corners of the state, for some reason they seem to have really taken hold south of the interstate in that southeast corner. Some of those towns and communities, they have bad names, bad reputations as a result of it. This was an idea that we talked about as a result of her experiences. It was manifested out of similar statutes in Iowa and Indiana. And essentially the point is, is that when we encounter drug dealers or cartel members that are selling large amounts of narcotics rather than charging them with multiple counts or referring their case to the federal government,

which can happen a lot of times in these instances, or charging them with a conspiracy, the idea is to aggregate the amount of narcotics that they have in their possession, similar to what we already allow for theft crimes in terms of the monetary amount. So it gives us additional options beyond a conspiracy or additional charges or consolidating cases for trial. Sometimes that's not necessarily possible because the facts of the case. So it was just another tool in the toolbox. Lastly, I would say, you know, part of our mission in the Attorney General's Office and my personal mission has always been to combat the war on drugs from multiple fronts, not with only just penalties, but also with rehab for those addicts that are out there. Senator Slama and I talked about that at length and how there is a genuine absence, especially in the areas that are hardest hit for the kind of treatment facilities and programs that are necessary to rehabilitate those people. But at the meantime there are a nefarious few drug dealers out there that we're trying to address in this bill that keep putting it into their hands. Thank you. I'd ask-- answer any questions you might have.

LATHROP [01:20:16] Senator Brandt.

BRANDT [01:20:17] Thank you, Chairman Lathrop. Thank you, Attorney General O'Brien, for appearing today.

COREY O'BRIEN [01:20:21] Yes, sir.

BRANDT [01:20:23] Would you clarify for me, why would we not want them to go to federal prison? Because then they'd be off our hands, wouldn't they?

COREY O'BRIEN [01:20:36] That-- that's a good question. I mean, honestly, there are, there are certain situations where the federal government has certain thresholds. There are certainly defense attorneys that are usually talking to us and saying, look, my client doesn't want to go do federal time on this. And so there are times where we don't refer to the federal government. Sometimes they may not rise to that threshold. Sometimes the federal government has other interests. There may be other co-defendants that are involved in the case that don't meet the federal thresholds. And so we have to keep all of them together so that from a strategic standpoint, you know, one doesn't say, well, it was all him, and we've got a problem there because they're in two separate courts. So there are some occasions where that's possible. I get what you're saying. You know, the inclination is, you know, we should send them all to federal court. But in some ways, I think that that's shirking our responsibility sometimes by sending them all to federal court.

BRANDT [01:21:38] And then the second question I've got is on the fiscal note, this is-- you know, I'm starting to see a trend here. The notes basically say this, this probably will increase the inmate population, but we don't know how much. And it just, just sort of ironic that a lot of other fiscal notes we get, they are not shy about putting a number in there, depending on what the bill is on, on something else. But I guess the question is, how much of an increase do you see this creating? And I know, nobody can predict the future, but I don't think it'll decrease anything.

COREY O'BRIEN [01:22:19] So, so let me-- you know, I've thought a lot about that. And, you know, one of the things is, currently we have the option-- let's say that a drug dealer over a 90-day period, part of the same design scheme or plan, gets picked up three separate times with 9 grams of cocaine or methamphetamine each time. So currently, you know, what's probably happened is he's being charged with three separate cases and the penalties are 1 to 50 for all three of those cases. So what can happen in those cases-- I'm sure Mr. Eickholt can tell you just as well, is, is that the judges can run those sentences consecutively or they can run them concurrently. If we're allowed to aggregate that, he's still looking at 50 years on the top, but he's also looking at potentially a mandatory minimum sentence. But rather than three counts, he's looking at just one count. So it's hard to say whether or not he would actually get as much or the same time, depending on whether or not it's three counts he pleads guilty to or it's just the one count if you're allowed to aggregate. So I can see why they're a little bit confused on whether or not this will have an impact in any way, shape, or form to the prison population. Frankly, in my opinion, it probably will cancel each other out, but there's a, there's a possibility that either way, plus or minus.

BRANDT [01:23:50] And I would take it Nebraska would not be unique, other states do this already?

COREY O'BRIEN [01:23:54] There's a few-- I mean, there's not a lot. You know, I, I don't know that I've researched every state, but the ones that I looked at-- and where this manifested it from-- manifested from was Iowa and Indiana--

BRANDT [01:24:10] OK.

COREY O'BRIEN [01:24:10] --so it's not complete-- completely unique to the United States. And the federal government, they allow for aggregation of the amounts of dope under their statutes.

BRANDT [01:24:24] All right. Thank you.

LATHROP [01:24:27] Senator Chambers.

CHAMBERS [01:24:29] Thank you. Mr. O'Brien--

COREY O'BRIEN [01:24:31] Yes, sir.

CHAMBERS [01:24:31] --have you ever come across an enhancement or aggregation law that you did not like?

COREY O'BRIEN [01:24:42] Have I ever come across an aggre-- yeah.

CHAMBERS [01:24:47] Now sometimes I can't figure out how things work, but if they're explained to me, then I'll understand. This could be a series of actions occurring over a period of 90 days.

COREY O'BRIEN [01:25:00] Yes. sir.

CHAMBERS [01:25:01] Is the person who is the perpetrator arrested each time one of these occurrences takes place?

COREY O'BRIEN [01:25:11] Theoretically, they don't have to be, no.

CHAMBERS [01:25:14] So you can know that this person did something that would constitute a crime, but you make no arrest.

COREY O'BRIEN [01:25:21] Correct.

CHAMBERS [01:25:22] Then how do you document beyond a reasonable doubt that that incident or event occurred when you took no action to establish when it occurred?

COREY O'BRIEN [01:25:33] Well, I do know that there is many situations, depending on the law enforcement agency involved, where they will be in an undercover capacity and they'll make several buys from the same drug dealer over and over again in order to get additional information about them. So they'll not arrest them immediately after the

delivery or deal for various reasons, but they will have had all of that documented. They will have it on video or audio of some type or another. So it is documented.

CHAMBERS [01:26:10] But the weight of it is not documented by way of video, is it?

COREY O'BRIEN [01:26:15] Well, usually that's booked into property and then sent to the state lab for weighing and testing.

CHAMBERS [01:26:23] So then what happens is that the illegal substance is confiscated but the person is not arrested.

COREY O'BRIEN [01:26:31] That does happen.

CHAMBERS [01:26:32] And if 91 days elapse, then you go back and charge the person with that first incident.

COREY O'BRIEN [01:26:41] You can charge them with that first incident, but I don't think you could aggregate if now he gets picked up on the 91st day.

CHAMBERS [01:26:46] Right. But there would be the delay of 90 days between-- now the person would have been arrested. Is that correct or not arrested?

COREY O'BRIEN [01:26:58] At some point, yes.

CHAMBERS [01:27:00] Well, let's say the person-- see I have to find out, I don't want a moving target. I want a discrete action taken against the person who is the perpetrator. If the first act by this person occurred January 1, would that person be arrested January 1 when the officer makes a contact and seizes the illegal substance? Would the person be placed under arrest?

COREY O'BRIEN [01:27:36] They could be, but they don't have to be under the way that the bill is written.

CHAMBERS [01:27:40] If the person is not arrested, how can you take from that person what you have seized?

COREY O'BRIEN [01:27:47] Well, usually it is delivered to a police officer in those situations.

CHAMBERS [01:27:53] But the perpetrator is still-- is allowed to run free.

COREY O'BRIEN [01:27:57] That does happen.

CHAMBERS [01:27:59] And if that perpetrator does not commit any other violation with the same substance in a 90-day period, then that person would be arrested for the first time, 90-- at least 91 days after the first act had occurred or the only act?

COREY O'BRIEN [01:28:23] Well, he could be, he could be arrested any time after that first offense on January 1, as long as it's within the three-year statute of limitations.

CHAMBERS [01:28:33] But he wouldn't be charged, or he would be charged?

COREY O'BRIEN [01:28:36] Well, he could be charged with that one incident of delivery that happened on January 1, but there's nothing to aggregate.

CHAMBERS [01:28:43] Well, let's say the person is arrested-- I want to get this in a manageable form so that if somebody reads the transcript, they'll know what we're talking about.

COREY O'BRIEN [01:28:52] Sure.

CHAMBERS [01:28:52] The act occurs January 1--

COREY O'BRIEN [01:28:56] Yes, sir.

CHAMBERS [01:28:58] --there's no question about the substance being illegal. I don't want to get into that.

COREY O'BRIEN [01:29:02] Sure.

CHAMBERS [01:29:02] It's an illegal substance, is that person placed under arrest at that point?

COREY O'BRIEN [01:29:10] Sometimes, yes, and sometimes, no.

CHAMBERS [01:29:14] If the person is arrested, I could understand that and I would go on one path. But if the person is not arrested, you hold onto or confiscate that illegal substance because it's illegal.

COREY O'BRIEN [01:29:28] Yes, sir.

CHAMBERS [01:29:29] And the person is allowed to go free without posting bond or being charged with anything.

COREY O'BRIEN [01:29:35] Not--

CHAMBERS [01:29:35] Is that correct?

COREY O'BRIEN [01:29:36] And that does happen, yes.

CHAMBERS [01:29:40] And the 91st day occurs--

COREY O'BRIEN [01:29:42] Um-hum.

CHAMBERS [01:29:44] --then you go back and based on the seizure 91 days prior, you then make an arrest.

COREY O'BRIEN [01:29:52] Yes.

CHAMBERS [01:29:55] If you wanted to, you could wait three years--

COREY O'BRIEN [01:29:59] Yes.

CHAMBERS [01:30:00] --after the seizure and then make an arrest.

COREY O'BRIEN [01:30:01] Yes.

CHAMBERS [01:30:03] But that would weaken the case, wouldn't it?

COREY O'BRIEN [01:30:05] Yes.

CHAMBERS [01:30:09] OK, now to try to put it in the context of what this bill intends to do, a seizure occurs January the 1st, then another one, February the 1st, then a third

one, however many days from that, but one day short of 90, then all of these would be put together and a single charge would be brought on the basis of the total amount of the substance seized. Suppose the judge refused to do it that way. Could you compel the judge to do it that way?

COREY O'BRIEN [01:30:49] No, I mean, I mean, I think that if I filed this charge and the judge-- there was a motion filed challenging the charge, they could bifurcate out the three charges in saying that it's improperly charged. For instance, maybe they find that it's not under the same plan, scheme, or design. They could do that, I think. I mean, I think there could be a challenge to the indictment or the information based upon that.

CHAMBERS [01:31:19] Is this tactic done for the purpose of efficient, effective law enforcement or strictly for the purpose of enhancing the punishment that the perpetrator would receive?

COREY O'BRIEN [01:31:40] Well, obviously, it's gonna enhance the punishment that they receive in order to reflect how big a drug dealer that they truly are, as opposed to an isolated charge that just reflects that they've delivered nine grams on one occasion. So that's the purpose is, yes, to enhance them to, to fully demonstrate how proficient and prolific of a drug dealer they are, as opposed to the one incident that happened on January 1 or February 1.

CHAMBERS [01:32:10] If we have a person who is targeted to make this scheme work, that person is going to have to be kept under some kind of surveillance. Isn't that true? Or you just hope by happenstance and coincidence a cop will catch him within that 90-day period? Is that person kept under surveillance?

COREY O'BRIEN [01:32:34] Not ordinarily, no. I can't think of any law enforcement officer or agency that's capable of keeping somebody under surveillance for that long.

CHAMBERS [01:32:43] Because that would be very expensive, time consuming, and may be counterproductive if the person did not commit another similar offense.

COREY O'BRIEN [01:32:51] Exactly.

CHAMBERS [01:32:51] How then does this in reality work? How do you wind up with the same fish biting three times, and by coincidence, lucky coincidence an officer is there to see each of the three times?

COREY O'BRIEN [01:33:07] I believe the majority of the cases we're gonna see aren't the cases where somebody is not immediately arrested. I think that the times that we're gonna use this would be a situation where somebody is arrested on January 1. They're charged with one count of possession with intent to distribute cocaine or methamphetamine. On February, they, they bond out of jail, on February 2, they get caught for another offense, on [INAUDIBLE] they bond out, and then on March 1, they're charged with a third offense. I think that's the majority of the times that you're gonna see this applied.

CHAMBERS [01:33:42] OK, I don't need to keep it going because I, I understand what's being done. But I'm not sure this constitutes effective law enforcement. I'm not sure it serves a deterrent function. And I'm not sure it doesn't show people in that community that if certain people commit this crime, he or she has an in with the police and they're not gonna be punished for it. And when they finally get punished three months later, it's because they decided to stop cooperating with the police. They stop snitching. And now they're gonna be punished because they wanted to get out of the net that was being spread. You all who are in law enforcement are not living in communities where these things happen. People in a community know who the drug dealers are. People in the community might complain against a drug dealer and the drug dealer is arrested, but he's back out on the street. Then he continues and they report him, he's arrested and he's out again. So then they get a community together and they say something. And on the 89th day, he's got to be arrested for the aggregation purpose. And he is arrested, and then these charges are brought, and then the community sees you all knew this man was a drug dealer. You caught him with the goods. You charge him and you let him go and sent him back out here to sell drugs to our children. And you want us to think the drug dealer is the bad person? We know what he's doing and we told you. You are sworn to uphold the law and protect public safety. And you're one of those kind of people who will go before the Legislature and say, our job is to protect the public and keep them safe. But you're releasing known caught drug dealers among us. I think this is one of the most pernicious bills that I've seen brought that fortunately it won't be prioritized. And I won't have to fight it because I won't be back next year, this ends my tenure in the Legislature. But I hope there's some people here who will look out for communities such as mine, where the police do corrupt things, they do corrupt individuals, and they do let snitches commit crimes that they know are being committed. So when you're working hand in glove with the criminal, you become worse than the criminal because you swore an oath to stop it. And you want to pass a law to encourage you to violate your oath. The arrest is not enough. If the person is let back out on the

street, and we know he was arrested, we watched him caught dead with the goods and he's back out. My son is caught with a joint and gets punished. But the drug dealer selling cocaine, methamphetamine is let out among us. And you protect us by snatching up somebody with a joint or a trace amount of marijuana in a car, and I'm supposed to think these cops are interested in our community. It's a sure sign of unequal enforcement of the law of racism on the part of the police. A deliberate intent to undermine our community and leave those out here who are doing the dirt and committing crimes. We are not deputized. We cannot make an arrest, but we can call attention of the police to the ones who are doing it. And the police actually catch him and let him go. I hope you understand what I'm saying. You don't even have to justify what you're doing or anything else, but I'm telling you why I think this is one of the most pernicious, one of the worst pieces of legislation, and only white people would bring it. But black people who are victimized, we're not all criminals. We don't approve of crimes. We cooperate with the police. Some of us have been killed for being informants. I don't mean paid informants, but telling on people and testifying against them. And then you let him back out. And that's all that I have. I want these things a matter of record. And I hope some of my white colleagues will understand why I am so offended at the police, at the prosecutors, and the others. It's not that I want those committing crimes to not be punished, I want those who are undermining our community and it's known to be taken off the street. Now here's where I wouldn't mind if a condition of this is that that person would be released only if he takes up residence in a white community, then it's white people's problem. And I bet you wouldn't have this. And that's all I have, Mr. President-- Mr. Chairman. I won't ask any more questions on this bill either.

LATHROP [01:38:51] That's-- no, that's OK, I have one myself. So if, if a person gets-- does this enough times to get a sufficient quantity involved if we aggregate it, then they could be subject to a mandatory minimum sentence.

COREY O'BRIEN [01:39:07] They could be.

LATHROP [01:39:07] Doesn't that encourage the police to send somebody back multiple times until they get to a point where they can subject the seller to a mandatory minimum? That's one way the bill could be used.

COREY O'BRIEN [01:39:25] That possibility does exist, and I would be against the use of the bill for that purpose.

LATHROP [01:39:31] I appreciate that. I have another question for you.

COREY O'BRIEN [01:39:34] And if we can--

LATHROP [01:39:34] If the idea is to get to the drug dealer and you catch him selling the first time, why not just get a search warrant and go through his car and his house and everything else and, and find all the drugs you need to get him to a mandatory minimum or to, to find a sufficient quantity?

COREY O'BRIEN [01:39:50] I wish it was always that easy. Just because somebody is a drug dealer, sells on the street corner or sells at a Walgreens, doesn't give us the authority to automatically say, well, he must keep that at his house. He must keep that in his car. Nine times out of--

LATHROP [01:40:07] That's not probable cause for--

COREY O'BRIEN [01:40:08] We don't--

LATHROP [01:40:08] -- if, if I'm-- if you catch me selling to Henningsen here--

COREY O'BRIEN [01:40:13] Yep.

LATHROP [01:40:13] --and we're standing on the corner of the street and he buys something from me in plain sight that isn't probable cause to go through my car and my house?

COREY O'BRIEN [01:40:21] It's not unless I have some reasonable basis to believe that there would be contraband at your house. Now is it reasonable to believe because you live at a particular location that you might have the drugs there? Yes. But nine times out of ten, that's probably not enough probable cause unless we had an officer that surveilled you going to the meet with legal counsel and they saw you stop nowhere else, they would probably have probable cause to search your car at that point in time. In terms of your house, they probably would have probable cause to search your house because it's reasonable to believe.

LATHROP [01:41:00] Well, you can go through their car anyway on some exigent circumstance that we got to--

COREY O'BRIEN [01:41:03] That's right, it's probably--

LATHROP [01:41:05] --we got to tow the car down to the--

COREY O'BRIEN [01:41:06] That's right, the car's probably an exigent circumstance, be it a search incident through arrest or an impound situation. But--

LATHROP [01:41:15] Inventory.

COREY O'BRIEN [01:41:15] That's right. But it doesn't necessarily-- you know, if, if somebody gets caught doing a drug deal at a Walgreens, it doesn't say that, you know, we've got probable cause to say that there's gonna be drugs at his house. There has to be some independent basis to establish that probable cause. Nine times out of ten, I hear what you're saying in terms of the cops using this, you know, to just let them out and continue their practice. I think that the way that Senator Slama and I looked at it, it was to deal with the people that just thumb their nose at the law. They get picked up, you know, on, on January 1, February 1, March 1, they get released on bond and they continue their, their activities. You know, if there's a way for us to, to stop, you know, any kind of underhanded use of this, certainly that would be something we're looking at. But--

LATHROP [01:42:04] But I appreciate what you're shooting for, but the reality is a, a member of law enforcement could send the same person in there three days in a row--

COREY O'BRIEN [01:42:13] True.

LATHROP [01:42:13] --and buy enough stuff from them that now they're subject to a mandatory minimum.

COREY O'BRIEN [01:42:17] True.

LATHROP [01:42:18] OK.

COREY O'BRIEN [01:42:19] And frankly, you know, they probably-- and just to be honest with you-- you know, again, we do have the option and it does happen a lot where they get sent to the federal system where they aggregate them, too. So not to say that the same thing or worse won't even happen to them in the federal system, I just wanted the record to be clear about that.

LATHROP [01:42:39] We don't have any control over that in this Judiciary Committee.

COREY O'BRIEN [01:42:41] I know we don't.

LATHROP [01:42:42] I know. OK. Thanks, Mr. O'Brien.

COREY O'BRIEN [01:42:43] I just wanted you to be aware that that was a possibility.

LATHROP [01:42:44] Senator Pansing Brooks.

PANSING BROOKS [01:42:46] Thank you. Thank you for coming. I guess I'm just concerned because it just feels like more of the same of attempting to have prosecutors stack it on. We've got the mandatory minimums. We've got the habitual criminal. You know, now we want to pull together misdemeanors to turn into a felony. Again, there's no attempt to try to help us with prison, prison overcrowding, sentencing reform. That's what my concern is, that that's just one more way to pile it on, on people that we aren't necessarily afraid of. I mean, if they're actually dealing big amounts and we have them, then let's get them. But if they're-- if they've got residue-- we've had-- I don't know where all the people are that usually speak about residue, but I, I don't know, it just-- this is just more of the same in my opinion.

COREY O'BRIEN [01:43:34] This bill would not apply to anybody with residue.

PANSING BROOKS [01:43:37] With what?

COREY O'BRIEN [01:43:38] This bill does not apply to anybody with a residue, this is for dealers only. Anybody that commits either possession with intent to distribute, delivery, or manufacturer of a controlled substance.

PANSING BROOKS [01:43:51] OK, it says a-- so a detectable amount of cocaine isn't residue? It's on page, page 5, top of the page, line 1--

COREY O'BRIEN [01:44:04] OK.

PANSING BROOKS [01:44:05] --2, lines 1 and 2.

COREY O'BRIEN [01:44:05] I'm, I'm sorry. I don't have that copy. I apologize. Page 5 line 2.

PANSING BROOKS [01:44:20] Page 5, lines 1 and 2.

COREY O'BRIEN [01:44:21] Lines 1 and 2, OK.

PANSING BROOKS [01:44:30] Page 5 at the top of the page.

COREY O'BRIEN [01:44:31] Page 5, line--

PANSING BROOKS [01:44:31] I don't know, maybe I don't have that right. Pardon me.

COREY O'BRIEN [01:44:45] "The quantity of cocaine or any mixture of substance containing a detectable amount of cocaine may be combined or aggregated for two or more violations of subsection (1) of this section." And subsection (1) of this section only applies to any person knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, deliver, or dispense.

PANSING BROOKS [01:45:06] So detectable amount would be more than residue?

COREY O'BRIEN [01:45:11] These are people that are dealing only, not possession.

PANSING BROOKS [01:45:13] OK.

COREY O'BRIEN [01:45:19] So an addict would not be applicable to this situation.

PANSING BROOKS [01:45:25] Can you always tell that?

COREY O'BRIEN [01:45:27] Yes, or else we can't charge you.

PANSING BROOKS [01:45:34] OK. But I still wish we could get more sentencing reform out of you guys. Thank you.

LATHROP [01:45:42] I think that's all we have on this one.

COREY O'BRIEN [01:45:44] Thank you, Senator. Thank you, Senators.

LATHROP [01:45:44] Thanks, Mr. O'Brien.

CHAMBERS [01:45:44] Excuse me, excuse me.

LATHROP [01:45:46] Oh, I'm sorry. Wait-- whoa, whoa, come back. I didn't see your hand, forgive me.

CHAMBERS [01:45:48] I know, I just put it up.

LATHROP [01:45:50] OK.

CHAMBERS [01:45:50] I got lost in the details, Mr. O'Brien--

COREY O'BRIEN [01:45:53] I'm sorry.

CHAMBERS [01:45:53] --because I was looking at a bigger issue. See, in our community kids can be misled. Their parents might work two jobs. They still don't make much money. They're poor. These kids get recruited and all that a drug dealer has to do over a period of time-- they pick me up and they let me go. Now you work with me, and if I can get out, if they catch you, I'll get you out, too. And the kid says, I can make money selling drugs. Not because he's a criminal or criminally inclined. Poor people do things that poor people do. Children can be misled and adults will mislead children. You all help the drug dealers recruit these kids by letting him seem like he's untouchable. And since he's untouchable, he can make the kid untouchable, too, and doesn't care if the kid gets caught. He'll exploit that kid and suck everything out of him that he can. And then the kid is messed up for life, kicked out of school, family's humiliated. He's a statistic. Our families become statistics. People like Senator Groene says, it's the parental, it's the responsibility of the parents. And then if I stand on the floor and mentioned these kind of things, he says law enforcement doesn't do that. You all have a bill to let you do it. Do you understand that I'm trying to achieve the salvation of my community. I'm not trying to save drug dealers or criminals. You all create an impossible situation for people like me. And I'm not the only one like me in my community. But only one of us can be in the Legislature at the time. And some people throw up their hands and say, who am I going to go to? I've gone to the cops. These drug dealers know that I told on them and now he's out and he doesn't have to do something to me. His friend can do something to me because they're watching him and they won't touch him. So he tells his friend bump Ernie off or rape his wife or harm his child. And you and Senator Slama, the holy conservatives, fighting crime are creating crime in my community. I could not contrive intentionally a better, more effective way to destroy a community than to do it with the help and complicity of law enforcement. The cops catch him because

we tell on him and then the cops let him go. Then the one who told on them winds up in an accident of some kind. And who else do you think is gonna work with the police? Because the police then are corrupt. This is why I say that for our community the police are our ISIS. They don't function as law enforcement people. They undermine our community. I'm wasting my time here, but I'm creating a record. I'm gonna get a transcript and I'm gonna make copies and distribute it in my community and let them see what I tried to do and let them know there's very little that a black person can do in dealing with white people who run everything, who own everything. They control the police. They control the courts. And they send drug dealers into our community because they want to make that drug dealer spend a little more time in prison. While along the way we have countless children harmed. We have families broken. We have a community that's dispirited, that's disheartened, that's disillusioned, that's discouraged. And then you wonder why not every one of us stands up and becomes a star of manhood and womanhood. Senator Slama has somebody who'll send her to an Ivy League school. A Governor who'll appoint her to the Legislature when she's not 25-years-old. No history of achievement of any kind. And then these are the kind of white people who create destructive programs in our community, because white people control everything and they can do it. You know why I wish this would happen in white communities, so they could see it. But I am not so heartless that I want to see white children suffer in order for a point to be made. What else is there for me to do? You all make me a liar in my community by the things you do. And when Senator Wayne had brought a bill to make it a stiffer crime to tamper with witnesses, telling somebody don't talk to the police. If you do that, then it's a higher crime. And I got the police to admit when they were there that they cannot protect a snitch. They cannot guarantee that person's safety. And you, Mr. O'Brien, sworn to uphold the law, are doing this. Senator Slama, who took an oath, is helping you do it. And I'm supposed to go on that floor every day around all these white people knowing what you all do to destroy my community. And then they have the nerve to get upset when I take a little time to try to explain. I'm not like those crazy people who came here Friday with an automatic rifle to intimidate people. I try to use words. I try to reason with unreasonable people. And I'll keep doing it as long as I'm in the Legislature. But they need to open their eyes and come to an understanding and realization. See, you all don't know how close I may be to snapping. I've been in public office-- I've been in the Legislature 46 years. But a total of 50, because in order to continue to serve the public who wanted me to, a learning community that I helped create wanted me to serve the first four years to help establish it. And I did. I didn't take four years off. I came right away from there back into this Legislature to beat my head against a wall for eight more years, eight years. And I come down here in session, out of session, good weather, bad weather, doing and trying to do

what others won't even touch. And it can be so easily destroyed. Now I'm not going to say that Senator Slama is an evil person, who with malice aforethought brought this, but that's what makes it harder. Evil people are not the ones doing this. The good people, the ones who mean well, are doing it. If the ones who mean well do this, what hope is there that I or anybody else has of trying to bring about a change through peaceful means? Now I would be justified if there ever is a justification to saying I cannot persuade them, but I can eliminate some of them. And by my example, show others that we may not be able to destroy all of them. We not may not be able to win, but we can make some of them understand that they are producing monsters. And a monster can be a very gracious person, one who is educated, one who can speak English well, but is treasuring up wrath against the day of wrath. You all need to pray to whatever God you believe in, that men and women like me don't decide to do what some of those white people that Senator Blood's bill was aimed against will not decide that there's only one way left. You wouldn't catch people like us going into a building, a church, or somewhere and shooting everybody down. And they see us and they kill us right away. That's waste. It would have to be done in a way as ingenious, as effective, as relentlessly as white people act in trying to destroy us as a people. You don't know what I am. You don't know what I'm capable of. You don't know how I may decide that the most meaningful thing I can do with my life is to give it literally. And you couldn't stop me if I chose to do it. But then you would want to blame somebody else. I'm trying to reason with you all. The Bible says, come, let us reason together. Who am I gonna reason with? Not you. Your job is to create programs that destroy my community. I can't reason with Senator Slama. She doesn't know anything. She doesn't believe the reality because she hasn't been in the world long enough or out of that rural environment long enough to know what happens in the real world. So when people like me who've experienced things, who made a record of achievement according to white people's laws as they set them up. One case is in court, made the police do a better job with using radar and all these other things that uplift a society. And still they don't listen. Still, they turn their back. But you're lucky with somebody like me who has not an ounce of religion. Because if I had it, I could persuade myself that God put me on this Earth for a purpose. And that purpose is to avenge his people of their adversary. And his people are black people. Jesus was described with hair like lamb's wool. The anthropologists are showing that Jesus was a dark-skinned person who looked more like me than you. And such being the case because I'm religious and I got some screws loose, my job is to be the punishing wrath of God. You've had white people who did that and they wrote about it. But I'll tell everybody here, unless I'm being deceitful, that is not the way I intend to leave here. And I'm not gonna go through something like this again while I'm in this Legislature. I'll do like I do on the floor. But it takes too much out of me. It

diminishes the respect that I want to have with myself, because I'm the one who tells black people white people are never going to change. Then why do I waste my time like this and everybody else's time? But I wasted as much as I will today. That's all that I have. And, Mr. O'Brien, you may not believe this, with everything I've said, I don't have anything personal against you or Senator Slama, and I wouldn't do anything hurtful to either one of you. But I couldn't say that if the Lord saw fit, that I would cry. That's trying to lighten the mood just a little bit without making it trivial. And that's all that I have.

LATHROP [01:59:08] OK.

COREY O'BRIEN [01:59:08] I do take donations, Senator. [LAUGHTER]

LATHROP [01:59:14] People can't resist having the last word. Thank you. Next proponent. Good afternoon.

LYNN GRAY [01:59:30] I have big shoes to fill here now. My name is Lynn Gray, L-y-n-n G-r-a-y. I live in Nebraska City. I am here to support LB792, and I hope you will remember my name and my journey. On November 6, 2019, my son Taylor OD'd on fentanyl. He had been sober. Profiteering: to make an unfair profit, illegally or black market. A female from Nebraska City who is well known by law enforcement mixed a toxic combination of meth and fentanyl and sold it to my son. There is proof of this transaction. She along with her boyfriend, were arrested four days after Taylor's death for meth and morphine. She made bail, and was arrested the same day for meth distribution. I want you to think about that for a moment. This repeated offender killed someone, goes right back to drug dealing, gets arrested not once, but twice in one week, and is now set free to continue making unfair and illegal profit, not to mention possible death of someone else. Several months back, this female's sister was involved in a heroin overdose, that person was lucky enough to survive. One overdose, one death in less than six months. Two repeating offenders and family members involved, all in the quaint town of Nebraska City; meth, heroin, and fentanyl. Addiction has no boundaries. Addiction does not recognize race, rich, poor, or age. Addiction rewires your brain. My son was diagnosed with severe bipolar 1 with psychotic tendencies. He admitted himself to the psych ward in October. However, insurance denied continuing him treatment. One month later, he died. Many addicts have underlying mental illness. My son hated himself for his addiction. No matter how hard he tried, it was more powerful. The stigma on addiction must change; families need help. This epidemic is real and it can come to you-- to your front door ready or not. It did mine. We must arrest the dealer, not the addict. The dealer is the one that is making the illegal profit. They

don't care what the outcome is. LB792 would make a habitual offender have more punishment. Additionally, Nebraska does not have a law to protect the person when they die from an overdose. Even when there is proof of where the source came from. Under 18, over 18, there should not be an age boundary. No one wakes up to say, I think I'll be an addict today. I hope I have left you with some insight of addiction from a real family, Taylor's battle, a family that fought and hoped, prayed and loved until the end, the devastation of this loss that we could not control. Thank you for your time. And I, I do want to say, if you know somebody that is struggling, don't leave them behind. They need your help, whatever kind of help that you can give them. Thank you.

LATHROP [02:02:51] Thank you, Ms. Gray. We appreciate your coming down here today to testify.

LYNN GRAY [02:02:56] Um-hum. Thank you.

LATHROP [02:02:59] Any other proponents of LB792? Anyone here in opposition?

SPIKE EICKHOLT [02:03:13] Thank you, 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 Attorneys Association opposed to LB792. I, I-- hopeful that Miss-- I hope that Miss Gray will not consider my testimony in opposition to this bill as, as somehow critical of anything that happened to her or unsympathetic. Many-- well, I just leave it at that. I thought maybe it would kind of help to illustrate-- I passed out three complaints, that's the initial charging document and three delivery cases that I have either-- that I have, two of them are pending that I represent the defendant on, one is actually closed, because I think that might best illustrate the impact of this bill and why we're opposed to it. First of all, in response to what Senator Pansing Brooks's said, to explain and kind of to correct the record of what Senator Slama said earlier, any delivery of any amount, any measurable amount, portion of a gram, less than a gram that can be sent to the lab and tested positive for heroin, cocaine, or methamphetamine is a Class II felony. It's 1 to 50. It's not a little bit of time in jail. It's 1 to 50. That's the starting point. If it's more than 10 grams, it goes up to a 1D felony. And this assumes, of course, that it's not in a school zone, and a couple of things that apply in Nebraska law. It goes to-- if it's 10 to 28 grams, it's a 1D mandatory minimum, 3 up to 50. If it's 28 to 140 grams or 1 ounce to 5 ounces, then it's a 1C felony, which is mandatory, 5 up to 50. And if it's more than 5 ounces, more than 140 grams, it's a 1B, 20 to life. The impact of this law, it will allow the prosecutors at their discretion to aggregate amounts to either on one or two or all accounts or all deliveries that they

have to get to the mandatory minimum level as the Chair of the committee indicated earlier. And I think Mr. O'Brien was candid when he acknowledged that's what something that law enforcement is going to do. What happens typically, and if you look at the charging documents that I gave you, you'll see how this works is that someone will get arrested for a simple possession charge, or maybe even delivery themselves. They'll begin to start working with the police. They'll work with an undercover officer to introduce the undercover officer to a buyer or a seller-- excuse me, of methamphetamine, for example. The undercover officer then repeatedly goes back and makes multiple purchases from that person. They deliberately wait before they arrest. And they do this in almost all cases. They wait. They do for a couple reasons. One, they want to make sure what they bought is actually a drug and they have to send it to the lab to be tested and that takes you a few weeks. Secondly, they want to protect the integrity of the undercover officer. A lot of these people who are selling, especially small amounts are addicted to drugs themselves. They don't know-- they're selling to people they don't know. Right? They're selling to people who don't consume the drugs with them. They also do it and they wait on the delay to make the arrest and the charge because they want to protect a person who initially cooperated, the snitch, so that when somebody is arrested, and if you look at the charging documents-- for instance, the top one, this is charged on November 2, 2018, but the first offense date is January 28. That's a relatively common lag time. You wait several months and you do it deliberately. So that when I see this guy in jail, he's reeling, I can't remember who I sold to in June, I don't know what's going on. I-- why am I even here? The penalties are significant as they exist right now. This will allow the prosecutors to arbitrarily enhance them. And that's part of the reason we oppose the bill-- or that is the reason we oppose the bill.

LATHROP [02:06:42] I will say this, Mr. Eickholt, I don't think Mr. O'Brien testified that they will. He said that they could--

SPIKE EICKHOLT [02:06:49] Right.

LATHROP [02:06:49] --and he wouldn't.

SPIKE EICKHOLT [02:06:51] OK.

LATHROP [02:06:52] I'm not-- there's a lot of law enforcement out there--

SPIKE EICKHOLT [02:06:54] Right.

LATHROP [02:06:54] --that might. But he didn't say that they will or that, or that he would. Just want to make that clarification to your testimony. Does anybody have any questions for Mr. Eickholt? I think the points been made.

PANSING BROOKS [02:07:06] I, I, I do.

LATHROP [02:07:07] Oh, I'm sorry. I didn't see that.

PANSING BROOKS [02:07:08] So sort of what you're, you're saying and according to sort of what I've said before, it's basically charging people for a crime that they haven't committed.

SPIKE EICKHOLT [02:07:20] Some respects, yeah, because--

PANSING BROOKS [02:07:21] In a way.

SPIKE EICKHOLT [02:07:22] Typically for the smaller-- a lot of the people-- and what this bill-- it conflates the big time dealers with these small guys who are sort of not what they're doing is not harmful, certainly as bad, but they're usually addicted themselves, and this is how they're getting by. And it usually is the same course of conduct because they're sort of just from place to place they meet their certain-- they meet their source or their deliverer or they're gonna sell it to the same place again and again. They usually sell what they call a "teener" or like an 8-ball. A "teener" is a 16th of an ounce, which is, if I remember right, it's like 1.75 grams. That's a very small amount, but it's enough for a couple of doses. And they usually sort of undersell that anyway. Right? So the cops have to weigh it and it's usually less than that, because that's just a common sort of feature of the illicit drug trade that people regularly get ripped off. And so what you're doing is by allowing these small people just get lumped in the same category as dealers that you're just-- it's just arbitrary and it's really not what-- I don't think is the goal to do. You want to probably target the bigger dealers and not just pick up these users and enhance for crimes that they didn't commit. They're not gonna have 10 or 28 grams in their [INAUDIBLE] because they'll never leave their house. They'll just lose it. They'll consume it all themselves.

PANSING BROOKS [02:08:39] Thank you.

LATHROP [02:08:39] Any other questions for Mr. Eickholt? I see none. Thanks for being here. Any other opponent testimony to LB792? Anyone here in a neutral

capacity? Seeing none, Senator Slama, you may close. We do have a letter of support from Steve Hensel, Police Chiefs Association of Nebraska.

SLAMA [02:09:01] I'd just like to very quickly thank the committee for their consideration of LB792, and thank the testifiers on both sides of this bill.

LATHROP [02:09:10] OK. That will close our hearing on LB792, and bring us to LB793, also a Senator Slama bill. Senator Slama, you may open.

SLAMA [02:09:21] Thank you. Good afternoon again, Chairman Lathrop. Members of the Judiciary Committee, my name is Julie Slama, J-u-l-i-e S-l-a-m-a, and I represent District 1 in southeast Nebraska. I am here today to introduce LB793, a bill introduced in consultation with the Attorney General's Office that pertains to public assistance fraud. As all of you know, Medicaid is a federal-state program that provides health coverage for those people who cannot afford it, such as those who are low income, the elderly, or disabled. Medicaid fraud happens when providers such as doctors, dentists, hospitals, and nursing homes, to name a few, misrepresent the services rendered on behalf of the patient to the state. Examples of provider fraud includes, but are not limited, to double billing, billing for services not rendered, misrepresenting allowable services in Medicaid billing. Investigating Medicaid fraud is done through the Medicaid Fraud and Patient Abuse Unit on the Attorney General's Office. Investigation and prosecuting Medicaid fraud cases can take some time due to the-- to the complexity of the cases. The state has two options when they are trying to pursue a conviction: file charges under the Medicaid fraud statutes or file charges under the theft statutes. Because the penalties for theft and Medicaid fraud do not mirror in statute, I bring to you today LB793. LB793 harmonizes penalties between theft in Chapter 28, Neb. Rev. Stat. 28-518, with Medicaid fraud in Chapter 68, Neb. Rev. Stat. 68-1017. The Medicaid fraud offense carries a five-year statute of limitations, as opposed to a three-year statute of limitations for theft. These limitations are not changed in LB793; however, the dollar thresholds were changed for theft in 2015 under LB605, but no corresponding change was made to the Medicaid fraud thresholds or penalties, so we do have a discrepancy in our statutes that I'm trying to address here. In LB793, we mirror the penalties and fines for Medicaid fraud with those for theft. In essence, this is a cleanup bill. We also make changes made in LB793 to apply to all past offenses that have not yet reached their statute of limitations, as was done in LB605, as well as current and future violations. A representative from the Attorney General's Office will be testifying today, with more expertise on the issues, who could answer any specific questions you may have.

However, I would be happy to do my best to answer any questions you may have for me. Thank you.

LATHROP [02:11:55] Any questions for Senator Slama? I see none. Thank you.

SLAMA [02:11:58] Thank you.

LATHROP [02:12:00] First proponent may come forward. Good afternoon.

MARK COLLINS [02:12:15] Good afternoon, Senator Lathrop. And, members of the committee, my name is Mark Collins, M-a-r-k C-o-l-l-i-n-s. I'm an assistant attorney general and director of the Medicaid Fraud and Patient Abuse Unit in the Nebraska Attorney General's Office, and I'm here on behalf of the Attorney General and on behalf of the Nebraska County Attorneys Association. Medicaid fraud control units are congressionally mandated law enforcement entities. There are two primary responsibilities. They're the investigation and the prosecution of fraud that is perpetrated by providers of Medicaid services and, secondly, the investigation and prosecution of resident abuse, neglect, and exploitation of residents in facilities that receive Medicaid funding. Our Medicaid Fraud Unit was created by the Legislature in 2004. It has both criminal and civil jurisdiction. And since it was created, it's opened nearly 2,200 files for investigation. We've obtained 120 criminal convictions, recovered nearly \$93 million in settlements and judgments in civil Medicaid fraud cases and we've obtained court orders for an additional \$16 million in criminal restitution. I'm here in support of LB793, which amends Nebraska Statute 68-1017. This is the primary criminal law that we use in prosecuting Medicaid service providers who defraud the state's Medicaid program, and the amendments that are-- that we're asking for to 68-1017 would comport with the theft provisions in LB605, which were passed by the Legislature in 2015, and would align that with-- the Medicaid fraud criminal penalties with the criminal penalties found for theft in Section 28-511. One of the helpful features that we have in 68-1017 is it has a five-year statute of limitation, rather than the three-year statute that is standard for most felony offenses. And it was back in 2010 that the Legislature extended that statute to five years, recognizing that Medicaid fraud cases take longer to detect and investigate because of their complexity. One of the drawbacks, though, that the statute has, that 68-1017 has, is that criminal penalties can be imposed because, as currently written, a fraud in any amount over \$1,500, whether it's \$1,501 or a million, is a Class IV felony which carries a maximum two years' imprisonment and a \$10,000 fine with probation being the presumptive sentence, and frauds of less than \$1,500 are misdemeanors. And defendants who are charged under Nebraska's theft

statutes face considerably higher penalties, \$5,000 or more is a Class IIA felony under our theft statute, \$1,500 to \$5,000 is a Class IV felony. So we are sometimes forced to make a choice whether we use our state's theft statutes, which can be used against an errant Medicaid service provider. That gives us a potential greater penalty, but we only have three years, instead of five, to find out about the crime, investigate it, complete our investigation, and get it charged. And what-- another thing that you have is you can see that there's a possibility that a fraud can be [INAUDIBLE] done over a period of five years with most of it done the first two years, and then we're faced with the choice of how long-- you know, whether we want to punish someone greater under a theft statute and get less money in restitution or have them face less of a charge-- less of a penalty and presumptive probation in order to get more restitution. We're seeking to harmonize that. I-- I've used up all my time. My apologies-- I apologize for that.

LATHROP [02:16:05] No, that's all right.

MARK COLLINS [02:16:05] And I'd be happy to answer any questions you might have.

LATHROP [02:16:09] I don't see any questions. I do have one for you though. When does the statute of limitations for a criminal fraud begin?

MARK COLLINS [02:16:16] Well--

LATHROP [02:16:16] Is it on discovery or is it on the-- when you commission the fraudulent act?

MARK COLLINS [02:16:21] Commission-- on commission.

LATHROP [02:16:22] OK. That's the only question I had today.

MARK COLLINS [02:16:25] Thank you, Mr. Chair.

LATHROP [02:16:26] I don't see any others. Thanks for being here, Mr. Collins. Any other proponents of LB793? Anyone to testify in opposition?

SPIKE EICKHOLT [02:16:43] Chairman Lathrop and members of the committee, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the-- the Nebraska Criminal Offense Attorneys Association, opposed to LB793. We're opposed to the bill for the reason that the Attorney General just explained that they want it, and that

is because it does increase penalties. I think an argument could be made that the distinction between this type of theft, people who are often poor, who are needy of public assistance, ought to be treated differently than other types of theft, theft from strangers, theft from stores, theft from businesses. I would tell you that as a practical matter, at least in Lancaster County, the county attorney will often simply charge somebody with regular felony theft to get the enhanced penalty if they do have a case involving employment benefit transfer or EBT-type fraud, electronic benefit card fraud or SNAP fraud or something like that. So this is somewhat troubling because, as the Chair asked earlier on a different bill, what's to stop the state from charging under Chapter 68 and under Chapter 28? Sometimes they charge under both if they can somehow split the dates of the offense, and I think since you're going to extend the statute limitations, you're going to provide for that possibility, and that will be seen as something the Legislature has authorized and the state will-- the prosecutors will do that. So there's a distinction now with how these fel-- theft felonies-- penalties are apportioned. I would submit that you should keep them that way. Particularly on Medicaid fraud, the dollar amount, it's relatively easy to get to a felony-level, Medicaid-type fraud. Not to say that this shouldn't be tolerated-- it certainly should be prosecuted and so on-- but you're just going to somehow blur the distinction between significant theft cases and cases involving Medi-- Medicaid or state benefit fraud. So for those reasons, we would oppose the bill.

LATHROP [02:18:50] Any questions for Mr. Eickholt? I was reading the bill-- I apologize. I see no questions today. Thanks for being here. Any other opponents to LB793? Anyone here in a neutral capacity? Seeing none, Senator Slama, you may close. We do have a letter of opposition from Dalton Meister, National Association of Social Workers-Nebraska Chapter.

SLAMA [02:19:19] I'll waive closing.

LATHROP [02:19:21] Senator Slama waives closing. That will close our hearing on LB793 and our hearings for today. Tomorrow-- you can go-- you can turn that off.