

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 15, 2025

ARCH: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the sixty-second day of the One Hundred Ninth Legislature, First Session. Our chaplain for today is Senator Dan Lonowski. Please rise.

LONOWSKI: Almighty God, by your power we move and have our being. Our dependence on you is total, not partial. Our need for your forgiveness is constant. Our gratitude for all your sufficient grace is profound and our love for you is deep. We are gathered here today to serve you and to conduct the affairs of our Legislature. Give us knowledge and give us strength to do your will. With a proper balance of eternal values and our present needs, may we accept our responsibilities and act with courage, considering the feelings of other people. Grant us a sense of justice and stewardship, both now and forever. Lord, we are called upon you to do your will. You have tasked, you have tasked us with leadership and with helping others to help you. Give us the strength to do so. And may we honor the sanctity of life, your precious creation, from conception to natural death. Now, please join me in the Lord's Prayer. Our Father, who art in heaven, hallowed be thy name; thy kingdom come; thy will be done; on earth as it is in heaven. Give us this day our daily bread. And forgive us our trespasses, as we forgive those who trespass against us. And lead us not into temptation; but deliver us from evil. For thine is the kingdom, the power and the glory, now and forever. Amen.

ARCH: Leading us in the Pledge this morning is Chief Petty Officer-- excuse me, Petty Officer R.G. Smith, Division A, Navy, from Bellevue, Nebraska, Senator Rick Holdcroft's district.

R.G. SMITH: Please join me in saying the Pledge of Allegiance. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

ARCH: Thank you. I call to order the sixty-second day of the One Hundred Ninth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: There's a quorum present, Mr. President.

ARCH: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections, sir.

ARCH: Thank you. Are there any messages, reports, or announcements?

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CLERK: There are, Mr President. Notice that items appearing on pages 1103 to 1105 of the Journal were received and filed with the Clerk of the Legislature prior to adjournment on Monday, April 14, 2025. Additionally, amendments to be printed from Senator Conrad, to LB632, Senator Spivey to LB632. That's all I have at this time.

ARCH: Senator Guereca would like to recognize Dr. Theresa Hatcher of Omaha, who is serving as our family physician of the day. Thank you for joining us today, Doctor. Senator Holdcroft would also rec-- rec-- like to recognize a special guest, guest. It's Virgie Smith, the spouse of Petty Officer Smith, who just led our pledge. Originally from the Philippines, now in Bellevue, and she is seated under the south balcony. Please rise, and welcome. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR109, LR110, LR111, LR112, LR113, LR114, and LR115. Mr. Clerk.

CLERK: Mr. President, next item on the agenda, General File, LB632. When the Legislature left the item yesterday, pending was the bill itself, as well as a motion from Senator Spivey to indefinitely postpone the bill, which had failed. Senator Spivey was in the process of reconsidering that vote with M0178.

ARCH: Senator Hansen, you are recognized for one-minute refresher on the bill.

HANSEN: Thank you, Mr. Speaker. Again, this is continuing the conversation we had yesterday, having to do with fetal remains after an elective abortion in a facility, and what's required of the facility after the abortion with those remains in a humane and public health consideration manner. So, in essence, that's what the bill does. It requires the facility to either cremate or bury them, the remains, after an elective abortion. Thank you.

ARCH: Senator Spivey, you're recognized for a one-minute refresher on your motion to indefinitely postpone.

SPIVEY: Thank you, Mr. President. Again, I oppose LB632 because it creates unnecessary burden on procedural abortion in the state and is a backdoor abortion ban. It would make patients name fetal tissue to have a cremation service. This would re-traumatize victims of incest and rape. It pushes a specific religious ideology and is unnecessary because abortion providers are already following the statute. At this time, Mr. President, I withdraw my motion to reconsider.

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ARCH: Without objection, so ordered. Mr. Clerk.

CLERK: Mr. President, LB632 on General File, introduced by Senator Hansen. It's a bill for an act relating to unborn children; requires the disposition of the remains of an aborted unborn child as prescribed. The bill was read for the first time on January 22 of this year and referred to the Health and Human Services Committee. That committee placed the bill on General File with committee amendments, Mr. President.

ARCH: Senator Hardin, to open on the committee amendment.

HARDIN: Thank you, Mr. President. Committee amendment, AM616 adds language to Section 1, subsection (3). Subsection (3) provides that it shall be unlawful for a healthcare facility at which an elective abortion has been performed to deposit or dispose of the remains of an aborted unborn child in a manner other than provided in this section. AM616 adds "and completed" to elective abortions performed in healthcare facilities. The Health and Human Services Committee advanced LB632 as amended by AM616 by a 5-1-1 vote. I would appreciate your green vote on AM616 to LB632. Thank you.

ARCH: Mr. Clerk, for a motion.

CLERK: Mr. President, Senator Spivey would move to bracket the bill until June 9, with MO89.

ARCH: Senator Spivey, you're recognized to open.

SPIVEY: Thank you, Mr. President. And good morning, folks watching at home, and colleagues. I motion and support bracketing LB632, because as we have had long conversation about this, the, the bill is unconstitutional. It creates an undue burden for procedural abortion in the state of Nebraska. It has impacts to people that have navigated rape and incest and domestic violence, as well as really goes against the, the voice of our second house of what they decided around reproductive access, specifically for abortion care through the ballot initiative. So again, I stand in opposition to LB632, and I'm moving to bracket this bill because it is unworkable for a number of reasons. First, LB632 is unconstitutional under the Nebraska Constitution, based on Initiative 434 that passed in November. As a reminder, there were 2 competing abortion ballot initiatives, and 434 is what passed. Article I-31 of the Nebraska Constitution, Section 1-31 of the constitution reads, except when a woman seeks an abortion necessitated by a medical emergency, or when the pregnancy results from sexual

assault or incest, unborn children shall be protected from abortion in the second and third trimesters. This constitutional amendment creates a right to abortion when it's necessitated by a medical emergency or when a pregnancy results from a sexual assault or incest. LB632 violates this article by making it impossible for victims of rape and incest to access abortion after 12 weeks. As a reminder, medication abortion is only approved by the FDA for use until 10 weeks of pregnancy. Anyone who qualifies for an exception to receive an abortion under Nebraska law later in pregnancy must receive a procedural abortion. This means victims of rape and incest and those with medical emergencies will be unable to receive an abortion in Nebraska, despite qualifying for the stated exemptions in law. As previously stated, this would also leave people who need or prefer a procedural abortion without options, basically a trap law that is a backdoor ban. This law would force patients seeking abortion care in Nebraska to have a medication abortion or get their care in another state. So we really need to talk about why someone might need or want a procedural abortion rather than a medication abortion. First, let's look at some of the situations when medication abortion cannot be used if the patient is within the recommended gestational age allowed for medication abortion. Some of these things I mentioned yesterday and will reiterate today, which include use of current blood thinners, long-term, high-dose steroid use for conditions like lupus, breast cancer, acute asthma, anemia, chronic adrenal failure, unexplained vaginal bleeding, history of bleeding disorders like hemophilia, and allergy to medications used. The list can go on, but my point is, is that anyone that is seeking an abortion that has any of these concerns may not be able to access abortion care in Nebraska if LB632 is passed, which is why I said that this is ultimately and inevitably a abortion ban. Another reason that a patient might want a procedural abortion rather than medication abortion is because they need the abortion completed in one day rather than multiple days at home. This could be someone that is not able to take additional time off of work or who has young children at home and they need to care for. This could also be someone that is a victim of domestic violence, making it potentially dangerous for them to complete their abortion at home. This also leads me to dig into some of the terms used in this bill like elective abortions. This was brought up yesterday in our conversation, and I want to re-highlight it again now. This term is not defined and there is nothing in the bill that provides guidance for how to distinguish between different reasons that someone might have an abortion. Right now, there is only one facility that provides procedural abortion in Nebraska, and that is Planned Parenthood. They see patients for a whole host of reasons, but there is no point in the

medical intake process where a box is checked to qualify the patient as having an elective or non-elective abortion. This distinction is completely made up and doesn't exist. What then qualifies as a non-elective abortion that wouldn't be subject to law? That question has not been answered and has been raised. Is it someone that has a medical condition that makes it dangerous and possibly life-threatening to carry a pregnancy to term? Is it someone who may lose their college sports scholarship if they remain pregnant, or someone experiencing a medical emergency during their pregnancy that should qualify for a legal exception, but the legal team at their OB-GYN's office will not authorize an abortion at that facility so that they, again, go to Planned Parenthood instead? Is it, is it the mom of two that cannot afford to care for her children she already has? How about someone that has received heartbreaking, fatal diagnosis for their fetus? These are very, very real situations that someone in Nebraska has been in when seeking an abortion just this year, and the list is not exhaustive. If this law was passed, many of these people will not be able to receive abortion care in Nebraska, no matter what the reason is. Both Senator Cavanaugh and I also talked about our personal experiences with fertility and pregnancy. So again, there's not one shoe that fits all or one experience that fits all, and this bill is limiting. I am sure that there will continue to be some arguments that this would not ban any kind of abortion and if a provider wants to comply with it, they can. So let's talk about why this would be so hard to comply with, as likely to be impossible. So in order to comply with cremation and burial requirements in Nebraska, a vendor would have to gather information that is not available in cases of abortions. And in fact, gathering that information would negate Section 1 (5) of the bill, LB632, which states that patients do not have to be notified because there is certain information that would have to be collected from the patient in order to comply with the cremation or burial requirements, which is in section 71-1377. For example, the law requires a name and also requires a certification that any person that has the right to control the disposal does not object. So this could not be anyone other than that actual patient. Requiring patients to provide this information is disrespectful and highly inappropriate, and it goes against the supposed intent of the bill introduced-- introducer. So as a reminder, when-- if you are a victim of rape or incest and you have the procedural abortion, this bill goes into effect, and there has to be a cremation, then that means that you are going to have to name the fetus through the traumatic experience of having been raped. So we are going to retraumatize people in order to complete this process. All of this would make it very difficult if not impossible to find local funeral

services provider that would be willing to take on this work. Then even if there was a vendor that would be willing to take this on, the cost of doing this would be exorbitant. I mentioned this yesterday that the cost for a cremation service can range between \$800 and some-odd dollars to \$1,300. So you're looking at upwards of a cost to that provider, which is Planned Parenthood, of at least, at minimum, a half a million dollars. We talk about, in this body, unfunded mandates, and what does it mean. There's not a fiscal note attached to this bill, but there are fiscal implications to the people that are impacted. We-- and I brought this up yesterday as an example with our scholarships, with the university. We have created the scholarship opportunity for folks that need the opportunity, but we did not appropriate any money. So the university is now in a position to have to honor these scholarships without any financial support in an environment where they are losing federal funding, the state is cutting them and not helping to support them, but are still required. So they're going to have to make a business decision around what to do. This is no different than any other agency. This abortion provider is going to have to make a decision around are they going to be able to continue to provide services if LB632 passes, which inevitably would create a space where they're not providing care, meaning that there was no procedural abortion access in Nebraska. All of this shows how absolutely unworkable this bill is. There is no genuine-- there is no intent that I can see in this bill that truly addresses the main concerns that were introduced yesterday. The abortion provider is already following what's in statute. They follow what other medical and, and other types of providers are doing around tissues, including pregnancy tissue, in a way, again, that creates environmental safety and has dignity. So at this time, colleagues, I encourage you to support the motion to bracket until June 9, and not support LB632. Thank you, Mr. President.

ARCH: Turning to the queue, Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. Good morning, colleagues. I do rise today in favor of the bracket motion and I think also in favor of the committee amendment, but still opposed to LB632. My understanding, from looking at the committee amendment, is that it does, I think, create certain protections and carve-outs, essentially, for the requirements or the burdens that I believe LB632 places on medical providers. And so I do appreciate that effort. But even with the amendment, I believe that LB632 represents something that we've talked about at great length, which is government inserting itself into various areas of our life where it doesn't need to be. I think one of

the biggest problems that I have with LB632, and I talked about this yesterday a little bit, but I want to touch on it again, is it seeks to, I guess, enshrine in statute a particular world view. And I thought this was an interesting conversation that started yesterday, where there was obviously a debate that I had with a number of you all, colleagues, about whether or not I thought the bill was written in a way that was appropriate, about whether or not I thought that the bill was constitutional insofar as how it treats different medical providers separate and apart from one another. But besides all of that, there is an objection that myself and others have to the overall intent of the bill. And I think that there's a lot of proponents of the bill who are acting like this is, I guess, a no-brainer, right? They're, they're saying, well, why would you not adopt LB632? It simply does a thing that just makes sense to everybody, let's move forward, what are your objections? But in talking with a bunch of friends of mine last night about this bill, who are not watching us every single day, and in talking with people that this bill affects, it's made even more clear to me that what LB632 does is it codifies a particular perspective on when life begins. And reasonable minds can disagree, and certainly, I think people have different personal beliefs when it comes to life. Certainly, different faith persuasions and faith journeys lead people to have different beliefs and understandings of life, and I think that that leads to some really deeply held views on this issue. And I was talking with my staff yesterday, about how this is one of the few issues where I feel like it's very difficult to have a debate where you can actually convince somebody to change their mind at a certain point, because it's such deeply held, genuinely held beliefs that lead to the opinions that we do have on abortion. But that being said, LB632 takes one of those perspectives, one of those beliefs, and it puts it into law. And the people who are dealing with these issues, abortion, medical care, reproductive health, they're making really, really tough decisions. And they're making what for some of them might be one of the most difficult decisions of their life. And for us, as the Legislature, to step in and to say that we think a certain perspective or life view should then be implemented in what happens afterwards, it can cause a lot of trauma, and it can cost a lot harm to the people who are undergoing these difficult times in their life or making these particularly serious decisions. And so that's why I started off the debate yesterday by, by saying this is a really serious bill and that this is a really important issue to myself and others, because I, I hear some of my colleagues talking about this issue like it's a no-- like it's a no-brainer. And in reality, I think that it has wide-reaching effects on the mental health and on the general, I

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guess, perspectives that people have when they go in to make these decisions. So colleagues, I say that just to, to highlight and underscore that by voting for LB632, you are putting into law a particular perspective that is not necessarily shared by everybody in the state of Nebraska. And in talking to my friends last night, they were frankly appalled that LB632 was being considered. They were offended that this Legislature was considering even putting this into the statute books. And they were also, frankly, a little bit surprised that this is what we were spending our time on, when all they've heard time and time again is, you know, the budget has a deficit, and we got to figure out property taxes, and we got to figure our revenue situation. They, they said that's really what you guys spent 4 hours in the afternoon debating? And I said, unfortunately, yes. But, here we are. We have a very short period of time left this morning. And I would encourage my colleagues to think hard about what the ramifications of supporting LB632 might be to the individuals--

ARCH: Time, Senator.

DUNGAN: --that we represent here in Nebraska. Thank you, Mr. President.

ARCH: Mr. Clerk, you have a motion on the desk.

CLERK: I do, Mr. President. Senator Hansen would move to invoke cloture pursuant to Rule 7, Section 10, with MO179.

ARCH: Senator Hansen, for what purpose do you rise?

HANSEN: Call of the house, regular order, please.

ARCH: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 33 ayes, 0 nays to place the house under call.

ARCH: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Dover, please return to the Chamber. The house is under call. Senator Dover, please return to the Chamber. The house is under call. All unexcused members are now present. Members, the first vote is the motion to invoke cloture. There has been a request for a roll call vote. Mr. Clerk.

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CLERK: Senator Andersen voting yes. Senator Arch voting yes. Senator Armendariz voting yes. Senator Ballard voting yes. Senator Bosn voting yes. Senator Bostar. Senator Brandt voting yes. Senator John Cavanaugh voting no. Senator Machaela Cavanaugh voting no. Senator Clements voting yes. Senator Clouse voting yes. Senator Conrad voting no. Senator DeBoer voting no. Senator DeKay voting yes. Senator Dorn voting yes. Senator Dover voting yes. Senator Dungan voting no. Senator Fredrickson voting no. Senator Guereca voting no. Senator Hallstrom voting yes. Senator Hansen voting yes. Senator Hardin voting yes. Senator Holdcroft voting yes. Senator Hughes voting yes. Senator Hunt voting no. Senator Ibach voting yes. Senator Jacobson voting yes. Senator Juarez voting no. Senator Kauth voting yes. Senator Lippincott voting yes. Senator Lonowski voting yes. Senator McKeon voting yes. Senator McKinney voting no. Senator Meyer voting yes. Senator Moser voting yes. Senator Murman voting yes. Senator Prokop voting no. Senator Quick not voting. Senator Raybould. Senator Riepe voting yes. Senator Rountree voting no. Senator Sanders voting yes. Senator Sorrentino voting yes. Senator Spivey voting no. Senator Storer voting yes. Senator Storm voting yes. Senator Strommen voting yes. Senator von Gillern voting yes. Senator Wordekemper voting yes. Vote is 33 ayes, 13 nays to invoke cloture, Mr. President.

ARCH: The motion to invoke closure is adopted. The next vote is the, is the bracket motion. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record.

CLERK: 14 ayes, 33 nays on the motion to bracket, Mr. President.

ARCH: The bracket motion is not successful. The next vote is the adoption of AM616 to LB632. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record.

CLERK: 46 ayes, 0 nays on adoption of the committee amendments, Mr. President.

ARCH: The amendment is adopted. The next vote is, is the advancement of LB632 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record.

CLERK: 34 ayes, 11 nays on advancement of the bill, Mr. President.

ARCH: The bill does advance. I raise the call. Mr. Clerk, for items.

CLERK: Thank you, Mr. President. One item, Senator Sanders, amendment to be printed from LB234. Next item on the agenda, Mr. President, General File, LB322, introduced by Senator Clouse. There's a priority

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motion from Senator DeBoer to indefinitely postpone LB322 pursuant to Rule 6, Section 3(f).

ARCH: Senator Clouse, you're recognized to open.

CLOUSE: Thank you, Mr. President. I bring before you LB322. This bill was brought to me by the Nebraska Pharmacists Association, Nebraska Hospital Association, and it's in reference to LB677, which was passed in 2012, which increased the penalties for assaulting healthcare professionals when they're performing their duties. And at that time, it was unclear why some professionals within the healthcare industry were included and some were not. This particular bill is bringing-- adding pharmacists to that list. Pharmacists are the most accessible and frequently visited healthcare team members in many countries and as such, are potentially more susceptible to violence than other healthcare professionals. In the United States, for instance, pharmacists and pharmacies are located within 5 miles of 90% of Americans. So LB322 would recognize that our pharmacy teams are in the front lines of healthcare. According to a 2023 meta-analysis published in the Journal of American Pharmacists Association, 39% of nearly 2,000 pharmacists included reported a violent event at work. The Occupational and Safety Administration, OSHA, healthcare settings are almost 4 times as likely to provide-- or as private industries to experience workplace violence. And the reason for this, as, as many can understand, I believe, pharmacy teams and pharmacists are-- have the heavy inventory of medicines-- medications, money, and just basically the frontline nature of community pharmacies. And so, we bring this bill just simply to add pharmacists to the list of those that are protected under LB677, and I would ask for the consideration of this bill. We also have an amendment, which brings in LB26, which is presented by Senator Ballard. And I think Senator Ballard will speak to that. Thank you. I, I yield my time to Senator Ballard.

ARCH: Senator Ballard, 8 minutes, 15.

BALLARD: Thank you, Mr. President. Thank you, Senator, Senator Clouse. I have LB26 included in the committee amendment, which will be on the board here, shortly. Current Nebraska statute includes increased penalties for assault on healthcare providers but limited the definitions to physicians and other healthcare practitioners. LB26, included in the Judiciary Committee amendment, expands the definition of healthcare providers to include an employee of a hospital or health clinic, recognizing the importance of safety and well-being of all healthcare professionals, like front desk staff, check patients and visitors, to med techs, and every other employee who works to keep the

hospital running 24 hours a day. While healthcare may-- while healthcare workers make up 10% of the national workforce, they experience 48% of the non-fatal injuries due to workplace violence. From the most recent data, for every 10,000 healthcare workers, 14 suffered injury to keep them from work at least a day. This is over 3 times the average injury, injury rate for all jobs combined. Nurses, doctors, and emergency responders are recent-- are certainly at the front lines of these assaults, but are not the only ones at risk. Hospital staff members are equally vulnerable to the growing threats of aggression and assault. Nearly 40% of Nebraska hospital reports that workplace violence are among their top 3 concerns. Nebraska hospitals reported on average 41.5 workplace violence incidents per hospital within the past 12 months. 34% of those incidents targeted non-licensed hospital staff, and these are just the incident reports. Hospital staff are trained to deescalate and how to handle patients with dementia or substance use disorders. There are, in hospitals, for very purpose providing, providing care for those, for those patients. For-- in those instance, we know that these cases go unreported. Here are some of the many stories of healthcare workers in Nebraska hospitals that reached out to us on this issue. A security officer-- a security officer was attacked, bitten multiple times, and punched and had his hair pulled out. My peers came to me to, to assist in [INAUDIBLE] afterwards were not able to remain in the field because he did not feel safe. Our healthcare teams need everyone to assist us in aggression situations. It's not only nurses that are hurt. Security guards, technicians are assaulted, just as much as I can't imagine doing my job without them. We are-- every hospital worker plays a role in keeping patients safe and ensuring that healthcare workers deliver it, deliver it efficiently. All hospital staff face the same risk of violence and deserve equal legal protection. Increased penalties signal that violence against any healthcare worker is not acceptable. We are a nation and a state of laws. Our laws help define who we are and what we value in our norms. Do we value a doctor over a medical assistant, a nurse over a security officer? --all the frontline providing care, to ensure that communities are cared for. All healthcare workers deserve to feel safe at work. They are dedicating themselves to caring for others, and we have a opportunity to stand with those healthcare workers. I stand in support of LB322 and ask for your green vote and on the committee amendment, as well. Thank you, Mr. President.

ARCH: Senator DeBoer, you are recognized to open on your motion.

DeBOER: Thank you, Mr. President. Good morning, colleagues. So today, I intend to filibuster this bill. I want to be very clear about that,

because I think it's important to understand what we're doing here, and I want to be clear about my intentions for doing that. But first, I would like to say that I am very proud to have this conversation with Senator Clouse, who is a good man. The people of Kearney should be congratulated on electing such an amazing first, mayor and now, senator. So I'm very glad to be having this conversation with him and with Senator Ballard, who I have served with, with-- for a couple of years. Senator Clouse sits behind me, so I've gotten to know him. They're both good people. And when we have discussions on the floor of this Legislature, we do so, in my opinion, because we're trying to get to the best answer for all Nebraskans. We're trying to get to the best solution. We're not always gonna be right, but this deliberative body has a better chance of doing it than any one of us individually. And so today, I will talk this whole day so that we can try to get to the best solution for everybody in the state of Nebraska. So I wanted to begin by saying that, and begin by saying I appreciate Senator Ballard and Senator Clouse for their participation in this conversation and for all of you who participate in this conversation. Next, I would like to say that the pharmacists and the ne-- and the non-credentialed or however we call it healthcare workers and people who may not be healthcare workers but work in a hospital, are important. Their work is valid, it is very important, it's needed, and all people in this state, all people deserve to be safe. This filibuster is not about any one individual or saying that any one individual does not deserve to be safe in their workplace. This filibuster is about all of us. It's about saying that we need to develop the best system so that all of us can be safe. Now-- I don't think in my 7 years I have ever led a filibuster on a bill that was not about school finance. I don't think I've ever done it. Maybe somebody will find one where I have, but I can't, I can't recall one. And I don't think I have, nor have I done this very often, because-- I know that because the lobby was shocked. I have heard from many, many folks, DeBoer has the filibuster motions? DeBoer has the filibuster amendments? And yes, shockingly, I do. I also know that you all think that this is very strange to see me filibustering, because so many of you have said you don't think I will or can take this 8 hours. So hopefully, I will and can, because that is my intention. I'm wearing my comfy shoes and my comfy dress. I have prepared to the best of my ability, and I know that there are others who will help me in this conversation with us today. Additionally, if I thought there was a fix to make this bill better, if I thought that it needed a tweak, if I thought it was a compromise, obviously you all know me, you're irritated by me in this way, in that I would always look for the fix. I would always look for the compromise, but I do not see one here. Now maybe in our-- the course of our discussion today

we'll discover one, but I do not see a solution to be fixed on here. And here are my main points, to sort of preface these for you, as the day begins. This law, I will argue over the course of this day, undermines our criminal justice system and continues to undermine it, making everyone in our state less safe. (2) This law has unintended consequences. But specifically, has unintended consequences for the developmental disability and the disability community, which I think there are quite a few others who are going to talk about during the course of this day, others who have more experience specifically in interacting with or perhaps having family members within those communities, who can speak to how this particular bill is going to contribute to problems and unintended consequences for those communities. (3) If we pass this bill, colleagues, I can guarantee you, because I've been here long enough to see it-- I am the senior member, the only senior class member of the Judiciary Committee, on which I have served for 7 years-- and I can tell you this will not be the end. We can make distinctions, we can make whatever kind of differences out of this bill that we want, but I promise you this will not be the end. We will continue to have more folks try to get protections for their specific groups. If we pass this bill, we're going to encourage more and more folks with good lobbyists to come and try and get their group to have what they perceive to be-- and I will discuss why I don't think it is-- a special protection. So everyone who has a high-paid, well-versed lobbyist has the ability to get protections for their group, and if you do not have that lobbyist, if you or your profession does not have the ability to come in here and do everything that it takes to hire somebody to get one of these exceptions, then I guess we just don't care about you. And that, that was actually-- I, I take that back. That was too strong. I fear we will not protect you in the same way without a lobbyist. And I don't want to sound too cynical. But I have just seen folks come in over the years. What we're talking about is assault and about making things as simple as a slap into a felony. We will not be able to stop this if we go any further on these felonies. Next, I will discuss the original intent of the original bill from 2012, LB677, which was passed originally by my mentor, Steve Lathrop, who was a senator here with many of you. I went back, because of course I did, and read the transcripts of the original hearing on LB677, and I will share some of that with you throughout the course of the day. But of particular note, I will say that in the original hearing on LB677, specifically, specifically, Senator Lathrop and, and others on the committee talked about how it was not the intent of the bill to cover pharmacists. Specifically, did not want to cover pharmacists. The original intent, Senator Lathrop's bill included the signage, and he specifically says

that pharmacists did not want to put up the signs and did not want to be included. So, more of that later. (5) This won't work. The purpose of this bill and these enhancements for assault is to try to, quote, protect, quote other groups of people, but the problem is it will not have the desired deterrent effect. And we can see that, both from the testimony within the bill itself this year and from the history of the previous bills. The underlying policy-- (6) the underlying policy purpose of this bill is not clear. Not just that we want to keep some people safe, that's clear. But the underlying purpose of why these and not others. This bill is both over- and under-broad for the policy that it wants to bring forward. So I'm going to discuss all of these things I have, the original intent of this bill from hearing transcripts, and why this is the opposite of what they intended, and why that matters, the nature of our assault laws in Nebraska, and--

ARCH: Time, Senator.

DeBOER: Thank you, Mr. President.

ARCH: Senator Hughes would like to recognize some special guests. They are 16 fourth grade students from Emmanuel Faith Lutheran in York, Nebraska. They are located in the north balcony. Students, please rise. Be welcomed by your Nebraska Legislature. Turning to the queue, John Cavanaugh-- Senator Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. Good morning, colleagues. I rise in support of the motion to indefinitely postpone and in opposition to LB322. And so I've been here for 5 years now. In that time, I have opposed every bill of this sort, which is to increase penalties for an offense against a specific class of person. So, I, I heard Senator Ballard's introduction and, and Senator Clouse. And I, I like Senator DeBoer, respect both Senator Clouse and Senator Ballard, and, and I understand the impetus. You know, Senator Ballard said, it's not right that anybody should be assaulted, and of course, that's true. I think that we, we should do everything we can to decrease the number of people who are being assaulted in every situation. We should do everything we can do to decrease domestic violence, we should do everything we should do-- can to decrease random violence, and we should certainly do everything we can to decrease violence against people who are providing essential services like medical care. Bills like this don't do that. That's really the problem. It increases the penalties after the fact. And the way to decrease violence is intervention early. So you all know, or most of you probably know that I was a public defender before I was elected. I have represented a number of people who have been charged with these offenses. And you

know, to a person, what happened in those cases was those people were mentally ill and then went through the process of a competency evaluation and restoration and those sorts of things. They committed these acts of violence not from a state of understanding what they were doing, which means that deterrence isn't going to have an impact there. And I have seen, in my years here, we continue to have conversations about our prison overcrowding. We're building a new prison. I don't remember the top line number off the top of my head, but I'll look it up, but the amount of money we are investing in expanding our capacity to incarcerate people. And we are doing that currently with the laws that we have, projections of where things are going. And in my time here, we have had different national expert organizations come in, and their suggestion to us was to find ways to decrease penalties and incarceration, not to increase them. And we have not taken those lessons. There was a big attempt my first year. That was, I believe, LB920, and that bill ended up not going anywhere, because the things that were the consensus items could not be-- make it through the Legislature. Consensus items were the items that were-- this national organization came in, talked to the Attorney General, the courts, law enforcement, the Governor, talked to defense attorneys, talked to mental health professionals, talked to everybody in the entire system. And they said, what are the 9 things we can all agree on? And everybody agreed on the 9 things. And then when it came to the Legislature, there were those in this Legislature that thought that those things were non-- nonstarters for them and couldn't agree to those. So then there was a whole long, protracted process here, about what were the things the Legislature could agree to of the consensus items. So-- but rest assured, increasing penalties was not one of them. And so, I will continue to oppose bills like this because they do not serve the-- their own intention. They only serve to incarcerate people after the fact. They only serve to make someone feel protected without protecting them, by which I mean-- I think somebody handed out a week ago, when this bill was originally up, a sign that says, you know, you can't assault people-- assaulting a healthcare professional may be punishable by a felony. That's what it says. I just-- I don't know if you all have that. But make-- giving people a false sense of security by putting up this sign that says, you'll be subject to a felony if you assault somebody. The people who are committing these assaults are not reading that sign and they're certainly not heeding what it means. So, again, we should, of course, strive to decrease the number of people being assaulted. We should strive to ensure that people feel safe in their jobs, but we shouldn't do it in a way that doesn't actually help or protect them. We should do it in a way that is getting the actual solution. And the real

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solution in this particular instance, I think, would be increased access to mental healthcare. So I can see I'm going to run out of time here, in a second. But again, I am in favor of the--

ARCH: Time, Senator.

J. CAVANAUGH: --indefinitely postpone and opposed to LB322. Thank you, Mr. President.

ARCH: Mr. Clerk, for items.

CLERK: Thank you, Mr. President. Your Committee on Revenue, chaired by Senator von Gillern, reports LB468 to General File, with committee amendments. Additionally, amendment to be printed from Senator Clements, to LB468. And notice that the Government Committee will have an executive session now, under the south balcony; Government Committee, now, under south balcony. That's all I have at this time.

ARCH: Returning to the queue, Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President, and colleagues. I do rise in favor of the indefinitely postpone motion by Senator DeBoer and opposed respectfully, to LB322 from Senator Clouse. I want to start by thanking Senator DeBoer for her leadership on this issue. I know that she served on the Judiciary Committee for quite some time, and I think that her opening with regards to this motion here paints a really good picture as to a number of the problems that we are encountering with this kind of legislation. I, myself, as similar as Senator John Cavanaugh, served as a public defender prior to coming into the Legislature, and so these kind of issues are not just very near and dear to that kind of work, but I do believe it provides something of a professional and personal insight into how the system works and what the actual ramifications are for pieces of legislation like LB322. I want to similarly start by saying I completely agree that we need to make sure that everybody is safe. Right. I think that we all in here agree that nobody deserves to be assaulted, and every individual who's working in a hospital or a healthcare facility or as a pharmacist or anywhere, frankly, deserves the dignity to not be assaulted and to be able to go to work every single day, knowing that they are protected and safe. But the problem, as I know has already been highlighted, is that LB322 doesn't provide that safety. LB322 simply seeks to enhance penalties after the fact, which has a number of sort of snowballing problems that can start down the line. I think it's important to situate this in the broader picture, though, of what we're dealing

with in the country, as it pertains to mass incarceration, and what it also-- how it pertains to Nebraska, as we deal with mass incarceration here. We are incredibly overcrowded in our prison system and in our jail system in both the country and in the state of Nebraska. When I talk to any of my colleagues in this room and we have a discussion about prisons or jails, every single person, every single person agrees that we are overcrowded. It was the impetus and the, the main reason that was given for building a new prison, which, as has been pointed out by Senator McKinney and others, time and time again, will immediately be full and overcrowded, and so everyone agrees it's a problem, but where we run into issues is having a discussion about how to alleviate that problem. And I will tell you now, colleagues, that the data does not support increasing penalties in a way that either keeps people safer nor does the data support the idea of increasing penalties in an effort to decrease the amount of people that are incarcerated. LB322 achieves the opposite goal of what its intention was, and it has the incredibly negative consequence of continuing to overcrowd our prisons and our jails. Generally speaking, in America, there are more Americans serving life sentences today than the total prison population was in 1970. In addition to that, 19% of the current prison population nationwide has already served at least 10 years. Here in Nebraska, we have an incarceration rate of 591 per 100,000 people. That means that we have a higher percentage of incarceration than almost any other democratic country on Earth. That stat, that data represents prison numbers. What is often not reported in a lot of these conversations about over-incarceration and the conversations that we have on the Legislature are the jail numbers. I represent northeast Lincoln. The Lancaster County Jail is at a breaking point. In my time that I served as a public defender, we saw the numbers increase steadily, in terms of incarceration in the Lancaster County Jail. And I see my light's on, so I plan on talking about this a little bit more in the future. We've seen those numbers go up and up and up. They went down a little bit during the pandemic, and then they immediately skyrocketed back up. There are people in the Lancaster County Jail that are being shipped out to other facilities because there's not room to house them here. The main cause for that are people being arrested and bonds being higher, because it's a more serious charge that is being charged. And frankly, it's longer sentences being implemented. Seeking to increase penalties does not achieve the goal of reducing crime. We need to be smart on crime. All it does is put more people behind bars without any hope for actual rehabilitation or any hope to actually fix the underlying problem. So colleagues, if our goal, which it should be, is community safety, we

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need to be doing everything we can to invest upstream in programs that actually--

ARCH: Time, Senator.

DUNGAN: --help community safety and don't simply lock people up. Thank you, Mr. President.

ARCH: Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I rise in support of the motion to indefinitely postpone LB322. I voted no on this bill coming out of committee, and I've been against bills like this since I've come to the Legislature, which probably comes to no surprise for a lot of people in this place. We had a similar bill in the past, dealing with bus drivers, and now we have healthcare workers and others. The issue with this is and the fundamental issue that I have with bills like this is nobody has yet to present any type of data that says increase-- increasing penalties decreases crime. Not one. And I bring this up because-- I'll talk about the nature of this bill in a little bit, but I bring it up because the United States of America and the state of Nebraska went on a crusade of mass incarceration, starting in the late '80s and the '90s, of increasing crime-- of increasing penalties, which filled jails. And still, since they did that, we still have bills today, trying to increase penalties to decrease crime. So please, where is the data that says increasing penalties decrease crime? Because this, this nation and this state mass incarcerated our prison populations, which are overcrowded today. Our state is overcrowded, one of the most overcrowded in, in the nation, and the new prison that's being built for overcrowding will be overcrowded day one, because of that. And then there's also data that shows an increase in penalties for gun, gun laws or gun convictions helped boost our prison population in like, 2011. I'll pull that article out and I'll print it out for y'all, too, if you don't believe me. So, where is the data that shows increasing penalties decreases crime? And no one will stand up here and say that we think people should be assaulted. But the honest truth is, assault is assault today. Anybody assaulting a healthcare worker or healthcare professional can be charged with a crime. That, that's what's being missed here. This enhancement, which it is, an enhancement, is going to do nothing but increase our jail and prison populations. And then the counties are going to say, we need more money, state. But oh, wait. We capped how much the, the counties can raise. So we put a cap on the counties, and we're going to fill the county jails. How's that going to work? Think about it. Then, the, the Department of "Punitive"

Services is going to come and say, hey, we need more money for overcrowding because our prisons are overcrowded. We need to expand. No, actually, they're not going to expand, because they have no plans to actually decommission NSP. I haven't seen one plan. So NSP is probably going to stay open, as well. So Lincoln is going to be the jail capital of Nebraska. You got, you got NSP, you got the RTC, you got the community corrections, and then you'll have the, the new prisons. So we'll just call Lincoln the jail-- the prison industrial complex of Nebraska, because that's what it's going to be. And bills like this help with that. And that's what you should think about. And you may not like what I say or disagree with what I say, but the truth is the truth. These bills do nothing but fill prisons and jails. And then, you're going to be mad that counties, your counties, are going to try to raise their budgets to pay for them. But I don't know how they're going to do that because you capped them, I think, last year or the year before. So, you put caps on counties and you're trying to pass bills like this. How does that work? Ask yourself that question in your head. This Legislature put caps on counties so they can't raise their budgets, I think, past 3% or something. But there's supposed to be, like, a public safety exception, and I don't know if expanding jails is in that public safety exception. So that's gonna be an interesting conversation when it comes about, if something like this passes. So that's all I'm thinking about here is that you really should think about this, because the cost to the state and the cost to the counties is going to expand. And you put a cap on the counties and you didn't think about it. And our prison is already overcrowded and will be--

ARCH: Time, Senator.

McKINNEY: Thank you.

ARCH: We have several guests we'd like to introduce at this time. Senator Brandt would like to recognize 38 students from the fourth grade from Wilber-Claytonia Elementary in Wilber, Nebraska. They are located in the north balcony. Students, if you would rise and be recognized by your le-- Legislature. Senator Kauth would also like to recognize some special guests. They are human resource professionals from across the state, across several organizations. They are also located in the, the north balcony. Please rise, be recognized by your Legislature. And Senators John and Machaela Cavanaugh would like to recognize some special guests. They are their cousins, Jerry Lucas and Joe Lucas from Colorado, and they are seated under the north balcony. Please rise. Returning to the queue, Senator Hallstrom, you're recognized to speak.

HALLSTROM: Thank you, Mr. Speaker, colleagues. I thought maybe this was a mini filibuster to stop me from getting to speak. I do rise in support of LB322 and in opposition to the motion to indefinitely postpone. Senator DeBoer started out by suggesting that this filibuster is for all of us. I'm not sure exactly what that means. I'll visit with her and find out what she meant. But what I do know is if the filibuster is successful, we're effectively turning our back on the healthcare providers and others who are placed in harm's way by the very nature of where they work and what they do. Senator DeBoer also suggested that only those who have effective and high-paid lobbyists would get the protections envisioned by this bill. I don't believe that to be the case. I've promoted the issue for 5 or 10 years, and it probably doesn't say too much for my talent level. But at any rate, I think it's not on who represents people, but whether or not there's virtue to the issues that we're trying to address here, which is to provide protections and safeguards to healthcare professionals. Senator McKinney raised the issue of where's the data. The issue is that healthcare providers are at risk. If that minimizes their willingness to continue to operate in that field as a healthcare provider, that's problematic for us. We have a nursing shortage. We have all kinds of shortages of healthcare professionals. We have pharmacy deserts and the like across the state, and looking for employees in this area all the time, and I think this is one small measure or one step that we can take. Willie Sutton, the infamous bank robber, was once asked, why do you rob banks? And his response was, because it's where the money is. I think we have a similar situation with pharmacists. The United States Department of Labor Occupational Safety and Health Administration, otherwise known as OSHA, has special programs dedicated directly to pharmacy workplace safety and workplace violence. And it's specifically noted that OSHA recognizes the increased risk that pharmacies and therefore pharmacy team members are at, due to the inventory of medications, money, and the frontline nature of community pharmacy. Statistics bear out. The Bureau of Labor, Labor Statistics: workplace violence occurs in healthcare settings almost 4 times as often as in the private industry, overall. And although those working in a hospital also may become victims of violence and thus, the need for Senator Ballard's LB26, pharmacists are at a higher risk, due to availability of drugs and money in the pharmacy area, which makes them possible robbery targets and prone to have assaults and other acts of violence imposed upon them. The Nebraska Pharmacists Association has numerous members who have reported assault occurrences. One pharmacy in Lincoln has established a practice of locking their front door after having some situations arise before they will let individuals into their store. So I think

all in all, we ought to be looking at adopting LB322 and the protections that it provides for our pharmacists and our other healthcare providers in hospital settings. My memory may not be crystal clear, but I know that when Senator Lathrop initially brought this legislation to provide protection for a limited number of healthcare providers that I had approached him personally at that time, expressing the interest of the pharmacist to be involved. They were not included in that legislation. I approached Senator McDonnell years later, when I think he had a bill to extend the protection to bus drivers. And so, the pharmacists, I believe, have been and continue to be, and irrespective, they are interested now in the provisions of LB322, and I would encourage the support of the bill and opposition to MO106. Thank you, Mr. Speaker.

ARCH: Senator Kauth, you're recognized to speak.

KAUTH: Thank you, Mr. President. A few things. First of all, we would reduce crime if people would stop committing crimes. That's the number one thing, some personal responsibility will keep people out of those prisons. I think it is incredibly important for everyone to understand that there were 3 individual senators who were approached about this type of issue. None of us talked. I had no idea Senator Ballard's bill had already gone up. I had no idea Senator Clouse had a bill. We all had people come to us and say, hey, this is a problem. The way the law was written in 2012 specifies professionals. That means anyone else who's not professionally licensed in healthcare is fair game. This has created an elitism. It is a 2-tier system, who is protected and who is not. And I'm going to read you the testimony of the woman who contacted me about this issue. She-- and we passed out some data last week and I can get it for you again. She and her colleagues tracked the number of assaults. And what they said is as soon as the patients realized-- and she works at the re-- worked at the regional mental health center, as soon the patients realized that they could get into more trouble for attacking a professional, they stopped attacking them and started attacking the techs. So this is Jessi Giebelhaus's testimony. My name is Jessi Giebelhaus. I was working as a mental health tech at the Lancaster County Crisis Center when I was attacked in November 2023 by a client, resulting in a TBI-- that's traumatic brain injury-- and neck issues, which have changed my life for me and my family as we have always known it. My injuries have affected every aspect of my life, left me with weakness to one side of my body and face, along with speech issues, along with other cognitive issues, daily pain, lots of sensory issues, still struggling to be able to work consistently, part-time, at my own business. The person who attacked me was stable on her medication, knew what she was doing,

planned the timing out, and had a long history of serious assaults on mental healthcare staff, as well as peers. Because I was a mental healthcare tech and not someone who completed a degree to be considered a licensed professional, this individual was written a misdemeanor assault ticket with the charges later being dismissed by the county attorney and the person who assaulted me having no consequences for her actions. If I would have been a licensed professional, the person would have faced felony charges. Jessi's injury didn't change based on her level of education. The person attacked her and hurt her badly. Back to Jessi's letter. I've worked in mental health and healthcare since 2007. I really enjoyed working with the clients we served and really took pride in being able to help the people I cared for. I dedicated my work days advocating for the clients, creating therapeutic activities to enjoy with the clients, and helping support each individual's client's needs. I loved my job, my coworkers, and the people we helped. All of that came to an end after being assaulted. The person who assaulted me was being housed at the Lancaster County Crisis Center for roughly 200 days, due to every place in the state of Nebraska refusing to take her, including Lincoln Regional Center. The person who assaulted me was stable on her meds, not psychotic, and 100% knew what she was doing. This same person who assaulted me has a long history of assaults on staff, peers, and people in the community, with numerous being unprovoked by the victims. She has been held accountable in the past on some charges for terroristic threats, for threatening to kill someone after stealing a car, and assaulting someone. The same person who assaulted me hospitalized at least 3 people with at least 2, not including me, resulting in head injuries after the same person hit them over the head with a chair because she got upset after a phone call. This woman who assaulted me was never held accountable for the damage she did to those victims or any other victim, with the system enabling this behavior by not holding people who severely hurt others on purpose accountable, because they have a diagnosis of mental illness, not to mention the cost of housing some of the people who intentionally hurt staff and target the more vulnerable clients in mental health hospitals. The laws can't continue to further enable violent, unacceptable behaviors and then wonder why places like the Regional Center can't keep staff. And there's such a high level of burnout that just continues the cycle of staff shortages and high turnover in staff that compromises the quality of care the patients received. I see my time is coming to an end. So I just want to state, a month ago, Jessi was hospitalized with a brain aneurysm from this assault. From November 2023, she is still dealing with this. Luckily, they caught it in time, but her life is irrevocably--

ARCH: Time, Senator.

KAUTH: --changed. Thank you.

ARCH: Senator Brandt, you're recognized to speak.

BRANDT: Thank you, Speaker Arch. Thank you, Senator Clouse, for bringing this bill. At this point in time, I'm-- I guess I would say I'm neutral. I'll be listening to the debate. I believe this is a very broad bill, and we need to establish what is the definition of a hospital employee. We already protect doctors and nurses. And the example that I've used is, are we going to protect janitors? If that, if that janitor is out-- is an employee of the hospital and is out mowing the ground and he gets assaulted, I believe the way the bill reads today is that he would get enhanced protections. Now I know they're trying to work on the definition of professionals, but where do you draw the line on that? And then, who's next? When I was on Judiciary Committee, we tried to do bus drivers. Senator McDonnell made that his mission. We got it to the floor. It did not pass the floor. Are we going to do cab drivers? Are we going to do teachers? Are we going to do state senators? There will always be a class of workers in the state. A horrific thing happens to somebody, and they're going to want some special protection. So if this is a problem, would it not be better to increase the penalty for all assaults across the board so we no longer have to distinguish doctors or nurses or bus drivers, so we can protect everybody in the state? Currently, there are no defined protections in the bill for mental incapacitation and developmental disabilities. If we can distinguish a pharmacist in the bill, we can distinguish mental incapacity in the bill. Would Senator Clouse be available for a question?

ARCH: Senator Clouse, will you yield?

CLOUSE: Yes, I will.

BRANDT: Senator Clouse, are you willing to amend the bill so that we can define mental incapacity and developmental disabilities?

CLOUSE: Yes, we would. In fact, I talked to Senator Ballard about that, with his amendment dealing with the-- those facilities, hospital medical facilities. And those that are suffering mentally-- mental illness or special needs, absolutely, we would be willing to make that amendment. And as Senator DeBoer mentioned, you know, it's trying to make the bill better. And if that does it, then we'll absolutely entertain that.

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BRANDT: All right. Thank you, Senator Clouse. Would Senator Bosn be available for a question?

ARCH: Senator Bosn, will you yield?

BOSN: Yes.

BRANDT: Senator Bosn, as a former practicing prosecuting attorney today, what is the definition of assault and felony assault?

BOSN: OK. So a misdemeanor assault is to knowingly or intentionally cause bodily injury. Those penalties-- and I don't have the statute, so I'm going off the cuff because I didn't know that's what you were going to ask, but-- are enhanced, based on the severity of the injury. So right now, a third-degree assault is to cause bodily injury to someone or to threaten with imminent bodily injury. And that charge is elevated if it results in serious bodily injury to an individual. So the example we were using was when someone is struck, if, if someone punches, if, if someone punches another person in the eye and they get a black eye, that's an assault. But if that results in a broken orbital bone in your eye because of that punch, it could rise to the level of a serious bodily injury, which would make it a felony.

BRANDT: But an assault then, under current law, would be a Class IV misdemeanor or a Class I misdemeanor?

BOSN: It's a Class I misdemeanor for a third-degree assault.

BRANDT: And then that's 12 months in jail, in the county jail?

BOSN: It's a penalty of up to a year of incarceration, up to a \$1,000 fine, or any combination thereof, plus restitution.

BRANDT: And in, in the discussion that we had, it's, it's kind of-- what was the outcome of the assault that determines the severity of the assault? Would that be a correct statement?

BOSN: Well, technically, yes. But I think when you say the outcome of the assault, I think what you really mean is the severity of the injuries resulting from the assault. Because in the example Senator Kauth gave, the individual was injured, charged with a-- an assault in the third degree, and it wasn't until months later that the injury was determined to be much more serious than initially thought was occurring.

BRANDT: But that could happen on any assault. What, what did you do 6 months down the road, after the individual's already been charged? There's nothing you can do under either scenario, is there?

BOSN: Well, I think in-- I, I want to make sure I'm not misunderstanding something. The individual in her example, the perpetrator of the assault was--

ARCH: Time, Senator.

BOSN: --charged immediately--

ARCH: Senator John Fredrickson would like to recognize some special guests. They are seated in the south balcony. This is LGBTQ Legislative Day of Out-- from OutNebraska. Members, please rise and be recognized by your Nebraska Legislature. Returning to the queue, Senator DeBoer, you're recognized to speak.

DeBOER: Thank you, Mr. President. Already, we're having really good discussion, I think, as we're trying to get through. I think Senator Brandt's point about the fact that 6 months later, an injury can manifest more seriously would be true, of course, regardless of what the profession of that person is, so I think his point is well taken. I want to kind of telescope the things that-- the areas of discussion that I think we're going to talk about-- or I'm going to talk about during the day today. One is that the original intent of this bill from the hearing transcripts, why this is kind of the opposite of that, and why that matters; the nature of our assault laws in Nebraska-- you've already heard some of that-- why this law doesn't fit, I don't think, within the nature of our assault laws in Nebraska; and also to point out or talk about the fact that when we hear from folks who are seeking these felonies enhancements, usually, the description of the, the assaults that they describe are already felonies; the nature of our penal structure and the change in the mid-17th century that moved us from an arbitrary, torture-spectacle penal system to a discipline system, and why bills like this one threaten to shake the delicate balance of that discipline system; how the hearing testimony itself spoke to a different desire than what we are doing with this bill, and how this bill won't get at the concerns and why it likely won't deter; the reasons this bill will not be the last of its kind, as you've already heard, what we could do instead-- I have some-- admittedly, somewhat nascent ideas that we could develop and some alternative proposals to discuss; and the seriousness of felonies in general. For some reason I think in this body, especially this year, we're starting to get away from understanding the

seriousness of a felony. And that seriousness goes beyond just what the time in jail could be in the distinction between a, a, a felony and a misdemeanor. And I think we recognize the seriousness of a felony, in that folks think that they are afforded additional protection if they get a felony, but we are not recognizing the felony as a serious, serious thing when we say we think that someone who slaps someone and does-- and creates bodily injury-- which our courts have said means any amount of pain that the jury has the ability to determine whether it is bodily injury, whether it serious bodily injury. We've had that for as little as a slap, we've had it in situations and it's been upheld when the victim themselves said I did not feel pain. And in those sorts of scenarios, which would be misdemeanor assaults without the enhancements, what we're saying is we want them to be felonies. So I want to talk about how serious a felony is, the side consequences of getting a felony, and that's not just for those of us paying the bill here with appropriations and as taxpayers, but for the individual themselves who's getting that felony and for society when we're handing out felonies. Next to the procedural structure, I had intend-- I thought 10 minutes was longer than it was apparently, so I intended to talk about this before. I hope folks will listen. I will endeavor to be interesting, perhaps entertaining, but most importantly, persuasive today. That is my goal. This should be a deliberative body. Senator Meyer asked me a few weeks ago what I'm most disappointed about in my 7 years of service. And this is it, that we do not listen and we harden our hearts. Senator Rountree and I talk about the Bible verse in Exodus that talks about Pharaoh's heart was hardened. Colleagues, I endeavor to keep my heart not hardened, to listen, to change my mind, to meet in the middle. And I ask you, do not harden your heart. Do not harden your heart. Please listen today. Please try. Thank you, Mr. President.

ARCH: Senator Ballard, you're recognized to speak.

BALLARD: Thank you, Mr. President. And I, I, I, too, appreciate the, the work of Senator DeBoer. I, I joined the Telecommunications and Transportation Committee with her and it's been a joy to work with her these, these first few months of, of this session. But I also sit on the Health and Human Services Committee, as well, and we talk about workforce shortages in the healthcare space. And is LB26 and LB322 going to be the silver bullet to addressing these workforce shortages? A lot of my colleagues have come up to the mic and said, no, this is not going to be, the silver bullet. But I think looking at the data that, that I have and making some points, I think this is going to help. For instance, I'll, I'll reinforce some of the, some of the comments in my opening. While healthcare workers make up 10, 10% of

the workforce, they experience 48% of the non-fatal injuries due to workplace violence. Workplace violence impacts both mental health, physical well-being. Healthcare workers who experience workplace violence may also experience suicidal and post-traumatic stress disorder, depression, anxiety, and burnout. The negative outcomes not only affect the healthcare workers, but also trickle down to patient safety and satisfaction. Nearly 40% of Nebraska hospitals report workplace violence-- 40% of Nebraska hospital workers report, report workplace-- place violence as their top 3 concerns. Workplace violence in hospitals is not limited to attacks on doctors and nurses. It expands to all staff that keep the hospital running. So current law prioritizes medical licensed professional, leaving support staff, medical assistants, service workers, administrative personnel vulnerable. They are, they are experiencing the same risks that doctors and nurses are. And I also want to talk a little bit about something Senator Brandt brought up about protecting vulnerable populations. I, too, had, had the same concerns. And this bill was not designed to punish individuals with developmental disabilities, dementia, autism, anything that would-- that have adverse effects, so I came to the conclusion that I was comfortable for 2 reasons. So first, that for the-- local prosecutors have discretion over the cases they bring. Healthcare workers are, are trained to de-escalate situations, and some of these cases are not reported. And also, I think Senator Bosn brought it up that the current law says intentionally, knowingly, or recklessly causing bodily injury. I think that would satisfy some of Senator Brandt's concerns of that knowingly or intentionally-- bodily injury. So with that, I had some, some, some pause with the-- with LB26, but it-- was satisfied with those, with those issues. But I would, I would, I would yield the remainder of my time to Senator DeBoer, if she would like it.

ARCH: Senator DeBoer, 2 minutes.

DeBOER: Thank you, Senator Ballard. I, I appreciate that very much. I-- the, the pages are going to be making copies and passing out, again, something that I passed out last week when I thought we were going to talk about that. So I'll-- when I see that you have it all, I will talk to you about that. Let's go back to LB677. Senator Lathrop introduced LB677 in 2012. He was trying to create an answer to concerns about what the, the committee at the time described as mean-spirited people and gang members affecting emergency rooms. The committee in that hearing discussed specifically the emergency settings. And Lathrop's main point was he did not intend originally to make his bill an enhancement, but at the time of the hearing, he wanted to make mandatory jail time for assault, and the signs. The

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signs were very important to him. That the signs that you see, and again, you'll get an example of this passed out to you in a minute, were sort of the key point as he described. Whenever anyone in the committee asked him a question about the specifics of what he wanted to do, he kept bringing up the signs, because he thought that that was a different way of doing things than things had been done in the past. We want to have signs put up in the hospital, so that people feel the importance of the area, the, the sort of sacredness, if you will, of the area. And he thought that those signs were--

ARCH: Time, Senator.

DeBOER: Thank you, Mr. President.

ARCH: Senator Guereca, you're recognized to speak.

GUERECA: Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraskans. To those of you here in person, welcome to your second house. This is, this is your house. I-- so my previous job, I worked for a healthcare workers union, so I definitely understand the intent behind LB322. And my main concern has to do with how this would impact those with developmental, developmental disabilities. So to that end, I want to read a letter from Edison McDonald, who's the executive director of the Arc of Nebraska, probably the premier developmental disability advocacy organization in the state, not that I'm picking preferences. Dear Senators, I am writing to express our deep concern regarding LB322, and in particular, committee amendment AM767. While we fully support efforts to protect healthcare workers and frontline staff, we believe this amendment, without clear definition of exemptions, could lead to unintended criminalization of Nebraskans with intellectual and developmental disabilities, autism, and mental health conditions. The proposed amendment adds, quote, healthcare professionals to the list of protected classes under Nebraska's assault statutes. However, it does so without defining the term or including necessary safeguards to protect individuals with disabilities whose behavior may be misunderstood or mischaracterized. As you consider this bill, I urge you to remember the lived realities of people with disabilities. Many individuals with IDD experience behavioral, sensory, and communication challenges that can result in involuntary or misinterpreted actions, particularly during moments of distress or crisis. These behaviors are often a function of disability, not criminal intent. A family member recently shared with us: Our son, Donny [PHONETIC], would have been prosecuted under this law. He doesn't understand his actions. The staff should not be allowed to file charges for the behaviors that they are trained and

contracted to manage. This story is not unique. Unfortunately, people with devel-- with disabilities already disproportionately face high rates of incarceration and discrimination within the justice system. Bills like LB322, especially with vague language like that found in AM767, only exacerbate this issue. Rather than increasing penalties, we urge the Legislature to take a step back and consider an interim study to ensure we can approach this thoughtful way that won't hurt people with intellectual or developmental disabilities. This will give us time to investigate more constructive approaches like modifying the Developmental Disability Court Order Custody Act. This statute was developed through years of collaborative stakeholder work and provides a more appropriate framework for addressing disability-related behavioral challenges. We acknowledge that more awareness and training are needed to fully implement this tool. It offers a nuanced and compassionate approach that protects both individuals with developmental-- with disabilities and the professionals who serve them. If you aren't already a positive, please at least consider an exemption to those who would meet the standards for the developmental disability defined under statute, Section 83-1205. The Arc of Nebraska stands ready to collaborate on policy options that ensure both safety and dignity. Please join us in opposing AM6-- AM767 to LB322 and pursuing thoughtful, inclusive solutions that reflect Nebraska's values. I was gonna yield the remainder of my time to Senator DeBoer, so I guess you could have 40 seconds or whatever's left.

ARCH: Senator DeBoer, 40 seconds.

DeBOER: Well, that's, that's strange. You're very good at knowing your time. So I was talking about-- I don't, I don't know what I can say in 40 seconds, but I was talking about how, in 2012, the committee, the Judiciary Committee was talking about LB677, and they were talking about that they wanted to provide a solution for emergency rooms. And the scope, of course, of the committee amendment that Senator Ballard has brought is much, much larger than just the emergency room. And I think that's something we need to pay attention to because the policy considerations around putting guardrails around an emergency room and somewhere else are quite different.

ARCH: Time, Senator. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. Good morning, colleagues. First, I'd like to thank my friend, Senator Clouse and Senator DeBoer, for setting a constructive tone on an important debate that we have before us today. And I wanted to provide just a little bit of framing to contextualize this measure, and then we'll have time at subsequent

turns on the mic to go deeper into some of the context that surrounds this measure. But I am a firm proponent of smart justice reform. And smart justice reform does not belong to any one point on the political spectrum. Rather, it's one of the few areas in our politics, even today, where you find consider-- a considerable amount of consensus and agreement amongst mem-- amongst people who sometimes hold very, very different points of, of view on key political issues. The right and the left have been able to come together to advance smart justice agendas and opportunities because it's a better way. Our sister states have done so under President Trump's first administration. We did so on the federal level and Nebraska stands in stark contrast to those efforts. When you adopt a smart justice approach that focuses on front-end reform, diversion, right-sizing sentences, problem-solving courts, treatment of root causes, when you look at investments for those who are incarcerated to increase access to effective programs and services, and then when you at back-end reforms in the criminal justice system to look at probation, parole, pardons, re-entry, and collateral consequences, by working together, people across the spectrum have been able to find a better way to advance our shared public safety goals. We all want our communities to be safe. We all want our neighbors to be safe. But the, the data is clear: Increasing penalties and creating new crimes does not advance our shared public safety goals. By focusing on smart justice reforms, that's how we keep our communities and our neighbors safer. That's how we save taxpayer dollars. That's we get better outcomes within the system. And Nebraska has had a severe and significant overcrowding problem for some time. If you go back to look at 2014 and 2015, this Legislature had the wisdom to invite in the Council of State Governments to look at justice reinvestment and to help create a roadmap to prevent building massive new prisons. Some, but not many, of those recommendations were subsequently adopted, and the problem continued to get worse. All 3 branches of government came together in 2021, 2022 to invite the CJI folks from the Department of Justice in to create a roadmap to help prevent the building of massive new prisons, and those recommendations were thwarted for political reasons. The facility experts have been clear, in the Dewberry Report and otherwise. Under Nebraska's current sentencing structures, it's build not one new massive prison, but two. We've already committed our state to fueling mass incarceration that fuels racial injustice and that is paid for by taxpayers, while starving our budget for investments in education and job training and infrastructure and economic development. So what we know is that the current sentencing structure already has us on a path to two new prisons we can't afford. And this measure and other measures quickly moving through the Legislature, felony-- a path to felonies on

protection orders, we advanced yesterday, criminalization in felonies of CBD that we have moving through the Legislature, felonies contained in LB330-- LB322, on this measure, the skimming measure we have up later today, more and more and more felonies stands outside of all policy recommendations that Nebraska has undertaken for years and years and years, and doesn't enhance our shared public safety goals. It increases the burden on taxpayers, and it makes us less safe. So--

ARCH: Time, Senator.

CONRAD: --we need-- thank you, Mr. President.

ARCH: Senator Dorn, you're recognized to speak.

DORN: Thank, thank you, Mr. Speaker. I've been trying to listen to the conversation today as best I can. Not sure yet 100% on how I'm going to vote on this bill or even the, the amendment. Maybe we'll get up later. We'll see. Been reached out to by several emails from, I call it, the developmental disabled people in, in my district. We have the Beatrice State Home. Excuse me. We also have Mosaic. And I guess I really need some clarification. I know Senator Bosn and Senator Brandt had some talk about that earlier. How is that group of people or how are we interpreting this in this bill? How are they interpreted? And I've heard several different comments out in the lobby, in the Rotunda, from different people and everything. And I've talked to Senator Bosn. And with that in mind, I would like to yield the rest of my time to Senator Bosn. And she's agreed to one more time, again, talk about the developmental disabled people and how they are, I call it, maybe exempt from this. So thank you.

ARCH: Senator Bosn, 3 minutes, 45.

BOSN: Thank you, Mr. President. And thank you, Senator Dorn. We have had some conversations regarding individuals with developmental disabilities. And colleagues, I will submit to you that part of the elements to prove any assault is that the individual acted knowingly and intentionally. And if you have an individual who has been diagnosed or is suffering from a developmental disability, those are not individuals who meet that requisite. And so there isn't a carve-out that needs to be explained for something that isn't on the table now. Think of it this way. Senator DeBoer and Senator Guereca talked about the bill that was passed over 10 years ago by Senator Lathrop that allowed for the enhancement on individuals who assault a healthcare professional, the doctors. Those doctors also work with individuals who are diagnosed with a developmental disability. He

didn't see a rash of charges on those individuals, because they still didn't have that intent or that ability to act knowingly when the bill was passed 10 years ago. You still have to act with knowledge and intent to commit the crime. And if you are someone who has been diagnosed with a developmental disability, you lack the capacity, the requisite capacity to act in that manner. I'm gonna use the rest of my time to talk a little bit about the thing I think is also lacking, that we've failed to recognize that there is the ability for prosecutorial discretion in all of these cases. Senator DeBoer got up, and while I respectfully-- I, I enjoy working with her, I respectfully disagree with her on this particular instance. She said, something as simple as a slap can now be turned into a felony. And I think that, one, ignores and trivializes victims' experiences, but two, it ignores the prosecutorial discretion. And prosecutors use that every day, day to day. We talked briefly about that when I was out answering questions for Senator Brandt. What may be originally thought of as an assault, and the individual, a week later, goes in and determines that they have a traumatic brain injury, the, the assault is no longer a third-degree assault. It could then be a felony. So we use that discretion every day and the circumstances change. I also heard comments about when victims get up and say, I didn't feel any pain, and we're now pushing forward with these, these charges. Colleagues, I want to tell you about a, a couple of examples where that's already happening, and that doesn't change with or without this bill. Victims can still get up and tell a jury they did not feel pain, because what may be pain to me may not be pain to Senator Riepe or vice versa. The jury is to decide whether a reasonable person in the shoes of that victim could be feeling pain. I've had victims who stood on the, on the stand and said that despite being punched in the face to the point where she lost her 2 front teeth, one of which was caught in her bra, she felt no pain. I disagreed with her. I didn't believe her, but she can still say it. So there is no actual ability to change whether or not someone gets up and says, I did or did not feel any pain. They do that already. The fact of the matter is that if you can't keep your hands to yourself-- I, I hate to go back to kindergarten. Everything I need to know I learned in kindergarten. Keep your hand to yourself. We wouldn't be in this situation, but we are. And as Senator Ballard has pointed out repeatedly, we have a workforce shortage, and we have an obligation to do whatever we can to keep people safe in their workplace. With that, I'll submit. Thank you, Mr. President.

ARCH: Senator Fredrickson, you're recognized to speak.

FREDRICKSON: Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraskans. I, too, share the appreciation that's been stated

by some of our colleagues about the debate that's been had on this. I think there's a lot to discuss, and I've actually had a couple of conversations with colleagues off the mic, to hear different perspectives on this, as well. I want to touch a little bit on some of-- I guess, some of the concerns that had been brought up for me, and I know this has been discussed a little bit, but I want to kind of get in a bit more of a nuanced conversation about this. So, you know, I, I think that-- you know, I spoke with Senator Hallstrom about this, and I think Senator Bosn's absolutely right. There are protections in place for folks who are living with disabilities and certainly, with folks who might have significant impairment in terms of mental health conditions. But I, I have a very specific concern as it relates to populations who might be living with a disability or a mental health condition that might not have as obvious of symptoms as, as others. So, you know, I think, I think there's a couple things to consider, is-- you know, one is that behaviors oftentimes stemming from folks with disabilities, especially folks who might present or read as higher functioning or might not even be clear that that person has a disability any given day, if you just observe this individual in their classroom or at their job-- sometimes these things are invisible. And sometimes, it's not always obvious if someone is susceptible to a-- some type of erratic behavior, for lack of a better word. And that doesn't occur until it actually happens. And so my worry is not so much about folks who have a clear diagnosis, who are clearly having a, a challenge that's secondary to a mental health condition or a disability, but rather the individual who-- and we see this in the classroom, too. Right? The individual who might be higher functioning with autism, or the individual who might have, you know, another condition that they're able to successfully integrate with their peers for 90% of the time, but there might be situations where they have that trigger or they are at capacity for whatever reason, that they do engage in-- they, they become dysregulated in, in, in behaviors that could be seen as violent. And so, that's my concern here. It's not so much the folks where, you know, there might be a clear case of active psychosis or command hallucinations or situations like that, but more of that nuanced area of someone who might present as higher functioning the majority of the time, but actually has a condition that might not even be diagnosed or might be under-diagnosed. You know, every behavior we engage in has a function. If it didn't have a function, it wouldn't exist. And so, my question for colleagues would be, how do we ensure that individuals who are not engaging in these behaviors with malicious intent who are not-- because, again, absolutely that should be penalized, you know, when there, when there is, when there's malintention. But I do have deep concern about

individuals who may read as or present as someone who might not have a condition or someone who might not have a disability, who actually does. And those individuals being penalized for these behaviors-- and this has happened throughout our history, recent history in our country, quite frequently. And we do know that individuals who fall into this specific category tend to be the ones that get the short end of the stick here, again, barring out folks who might have very severe or persistent conditions that are diagnosed, that are in treatment, that it's very clear that this is secondary to the disability or, or the mental health condition that they're, that they're living with, you know, the folks that are, are on the cusp of that, who might not carry that diagnosis, who might be showing up to the ER or at the pharmacy, and it's not necessarily known by the staff or the clinicians or the front desk that that individual is living with a condition that could impact how they respond. I'll also say that these environments can be highly stressful and can be highly dysregulating, es-- dysregulating, especially for an individual who might be sensitive and who might also have, frankly, going into the situation, a elevated level of distress, given what's bringing them there. So that, that niche area is my biggest concern. I'm gonna continue to have conversations with colleagues on and off the mic. I do think and hope that clinical judgment prevails for the most part, but I do wanna ensure that we don't have unintended consequences there. And I see I'm at time. Thank you, Mr. President.

ARCH: Senator Bosn would like to recognize some special guests. They are 37 fourth grade students from St. Michael's Elementary in Lincoln. They are located in the north balcony. Students, if you would rise and be welcomed by your Nebraska Legislature. Returning to the queue, Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. Colleagues, I rise again in favor of the IPP motion and opposed to LB322. I was intending to use most of my time on the mic to talk about deterrence theory, because I think it's really important to understand what the underlying issues are here, with regards to whether or not increased penalties even work to deter anybody, but I do feel the need to respond briefly to some of the things that Senator Bosn had pointed out when she was yielded time by Senator Dorn, both pulling from my real-world professional experience as well as my anecdotal experience in the courtrooms. First of all, I want to highlight that what we're talking about here is an enhancement to the different levels of assault. So there's first-degree assault, second-degree assault and third-degree assault. If you pull up pages 6 and I believe, 7, of the bill, it outlines the requisite mental state, which Senator Bosn was talking about, with regards to both

second-degree and third-degree assault. She's talked a lot, colleagues, about intentionally and knowingly and whether or not somebody who's developmentally disabled would be found to act intentionally or knowingly. But there's a third mental state that somebody can act in. It's called the mens rea, which is recklessly. The statute reads, if a person intentionally, knowingly, or recklessly causes bodily injury to a public safety officer. Now, that applies to both second-degree assault and third-degree assault. To give you an example, colleagues, a real-life example, there was a trial I watched one time where an individual was convicted of recklessly assaulting somebody else when he was having a verbal altercation with them and in his hand had a hat. That hat he was gesticulating with wildly, and the hat struck her in the face. And the glasses that she was wearing, which were broken, then turned and cut just a little cut on the side of her eye. That was the undisputed evidence at trial and the judge ultimately found that he had acted recklessly by swinging this hat around in a nature that ultimately was a disregard for the possibility of that happening. So I want to be very clear that individuals could be convicted of these charges when acting recklessly. Talking additionally, about the difference between developmentally disabled and mental health, colleagues, we have to be very clear that, A, we're talking about two different things; and B, there are people who are developmentally disabled that are charged with these assaults. I have represented one. I have seen many in the courts, individuals who live in group homes, who have been charged with an assault, who are developmentally disabled and wards of the state, and they had been brought to court. It was my obligation as their attorney to get them evaluated for competency, which I'm guessing we're gonna talk quite a bit about later, because it was my belief that they were not competent to stand trial. Now, ultimately in that circumstance, the evaluator found that that person was not competent and was not restorable, meaning they can't be made competent simply by taking medication. They were in and of themselves not competent, based on sort of unchangeable aspects of themselves. And the case was ultimately dismissed, but it was after appearing in court multiple times. It was after the police arrested that individual. That individual was jailed because of an action they did. So the idea that just because somebody's developmentally disabled, there's not going to be a charge filed is, in my opinion, incorrect. There may be circumstances where that's the decision that's made, but I am telling you, colleagues, I'm telling you at home, it happens. It happens a lot for somebody who is developmentally disabled, and there is a process with which then that person has to go in order to be deemed not competent and maybe not restoreable. So these charges do happen. So when we're talking about

the fact that they're exempted from the statute, that is simply incorrect. They will be charged. They are currently charged. And if this goes into effect, they could be charged with that enhancement which makes it the felony. In addition to that, there's a number of people who are mentally ill who are not develop-- developmentally disabled that this also affects. Those individuals are arrested, jailed, and if they're not competent to stand trial but a doctor determines that they could be restored to competency, meaning take medication to make them competent, they sit in jail for months waiting to go to the Regional Center. When they finally get there, they are given medication. Some are restored. Then they come back, and they have to then stand trial for the felony that they are then charged with. So there is no exemption for mental health and there is no exemption for the developmentally disabled. Those are the people that we're talking about who could be affected by this, who ultimately end up with felonies on their record, who then have to stand trial for that, months, if not a year down the line, after the process takes place. So I just wanna be very clear about that. There is no exemption in this statute. I will punch in again and talk a little bit more about deterrence theory, which I find interesting, but I just want to be very clear about the current status of that. An individual can act recklessly--

ARCH: Time, Senator.

DUNGAN: --and there is no exemption. Thank you, Mr. President.

ARCH: Senator Rountree, you're recognized to speak.

ROUNTREE: Good morning. Thank you, Mr. President, and thank you. Good morning, colleagues, and those that are watching online this morning. I just rise, again, in support of the IPP motion that is on the floor. I think I've been clear, as we've gone through all of our discussions in our Judiciary, dealing with these items, my concern for the developmental disabled community. And I've listened to all of the comments that have been made this morning, which I appreciate those. I've talked to Senator Bosn about those in committee. And I also talked to Senator Clouse this morning, just to express my concern. So Senator Clouse, thank you so much for the conversations that we've had on that here, and I understand the needs of our special needs community. And with that said, I won't repeat what everyone else has said, but I would like to yield the remain-- remainder of my time to Senator DeBoer.

ARCH: Senator DeBoer, 4 minutes, 10 seconds.

DeBOER: Thank you, Mr. President. So I will interrupt my regularly scheduled comments to talk about some of what we've been talking about here on the floor. I wanted to note for everyone that if you're talking about the intent-- so in every crime, you have to have the action and the intent, so the intent factor. With respect to assault in Nebraska, it is in-- general intent. So you don't have to intend the injury to be severe, you just have to intend to do the action which caused the injury. Therefore, you get the kind of situation which Senator Dungan described, where a hat, which hit glasses, which cut-- no one frankly, probably could have even predicted that. So the intent in that case, doesn't have to be the, the harm, but it has to be the action. And that is a question, like many things on this issue of assault, that's a question for the jury to decide, so-- or the fact finder, which could, I guess, in some circumstances, be a judge. But that is a question of fact, as is the question of bodily injury, what constitutes bodily injury, and serious bodily injury. So as we go through the various levels of assault, what is a serious bodily injury and what is bodily injury is decided by the trier of fact. So in Nebraska, it's also true that it is not necessary that the injury caused death, caused serious permanent disfigurement, or impairment of the function of any part of an organ of the body, but only that it involved a substantial risk of producing those. That's from *State v. Swigart*, which is a 1989 case, found at 20-- 233 Neb. 517. So, doesn't have to be that they actually caused the harm, but that they have caused a serious risk of producing the harm. The trier of fact is the one who determines-- can use their common knowledge to determine if the victim has suffered serious bodily injury. We don't have a list that the jury consults, where you check off serious versus non check off. It is a-- it's a question of fact. That is from *In Re Interest of Janet J.*, 12 Neb. App. 42. Recklessly, one of the potentials is that you can recklessly cause this. The requisite act or conduct involves the actor's conscious choice in a course of action involving a dangerous instrument which constitutes disregard of a substantial and unjustifiable risk to another and does not require the actor's intent to cause serious bodily injury to another. That-- from *State v. Hoffman*. The lack of pain, I was referring to that. That isn't something I just made up. Bodily injury may be inferred from the evidence that defendant intentionally struck the victim, even though the victim testified that the blow did not cause physical pain. That's from *State v. Waltrip*, which is found at 240 Neb. 888 or 484 N.W.2d 831. That's a 1992 case. And the slap that I was referring to is in a case called *State v. Melton*, at 239 Neb. 576, or 477 N.W.2d 154. That's a 1991 case. In that case, they found that a deputy sheriff

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counts as a peace officer. Sure. True. This is for this enhanced--
this is 28-931 [INAUDIBLE]--

ARCH: Time, Senator.

DeBOER: Thank you.

ARCH: Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I rise, still in support of the IPP motion and against LB322. Listening to some of the debate, you know, I'm hearing people describe things that already are felonies, which means this bill isn't needed. I passed around a sheet from the Crime Justice Institute. I know people don't like them, but they were invited into the state by then Governor Ricketts and the also former chair of the Judiciary Committee, Senator Lathrop. So-- and we all sat on the committee together and we came up with priorities to look at, and one of the things that came out of this report was, and I highlighted it, it says, sentence enhancements cost taxpayers significantly, yet provide minimal public safety benefit. Again. I'll say that again. Sentence enhancements cost taxpayers significantly, yet provide minimal public safety benefit. Since this is an enhancement, I thought that was needed to share and highlight. Also on this bill, this bill risks over-complicating the criminal code and may lead to inconsistent application or confusion among law enforcement and courts. Its overbroad definitions could lead to disproportionate charges for low-level incidents and infringe on due process rights due to a lack of clarity. Mandatory enhancements could disproportionately affect defendants. Without consideration of mitigating circumstances, this may contribute to longer prison terms and overcrowding. And we're already overcrowded, just to highlight that. Also, it has another problem. It creates equity and civil rights concerns, especially if charges are applied unevenly. So, you know, just thinking about some things. This also raises Fourth Amendment issues and potential HIPAA privacy concerns, especially when medical records are accessed without convictions. So, there's a lot of issues with this bill that people gloss over, just to get on the mic and fearmonger. You know, a lot of the situations that have been described couldn't be crimes because one situation, the individual was and, and probably still is an individual that deals with mental health issues. That's why it wasn't a crime. That was left out. And the potential negative impacts cannot be ignored. We will have increased incarceration rates, higher prosecutions and public defense burdens, criminalization of unintentional, unintentional conduct, and hostile workplace dynamics, which will lead to all of those things. So when you're considering

this bill and you're discussing this bill, I just want you to think about those things that the data already states. Sentence enhancements cost taxpayers significantly, yet provide minimal public safety benefit. You can ignore that, but the data is the data, no matter if you like it or not. And we already have an overcrowded system. Our state is building a new prison, because it's not a replacement until I see actual data and clear indication that NSP will not be used as a prison. Because I tried to get it demolished and people voted against that, not once, but two times, so voting for a bill to prob-- probably-- which will probably increase our prison population even further, which is already overcrowded, and it will provide minimal public safety benefits, doesn't make sense to me. So that is what it is, and I just wants-- I just wanted to highlight that. You know, it might feel good to pass this bill, but It will provide minimal public safety benefit, it will just overcrowd our jails and prisons, and it will cost taxpayers more dollars, and you already capped our counties, and the state will be paying more on prisons. And I hope you can tell the taxpayers that. Thank you.

ARCH: Senator Spivey, you're recognized to speak.

SPIVEY: Thank you, Mr. President. And I appreciate the dialogue this morning. I had to step out for a little bit to welcome and talk to a group, but otherwise, have been really sitting on the floor trying to stay tuned in. In general, I am against expanding and enhancing penalties, especially felony charges. And so as I sit now, I would be in support of the motion, MO106, to indefinitely postpone. But again, I'm trying to listen to both sides in the conversation that is happening today. One of the things I, I did want to uplift, and I appreciate Senator Conrad bringing this up, is around smart justice reform. As I have mentioned before on the mic, I am the former board chair of ACLU Nebraska, who does work around civil liberties, thinking about justice reform, sentence reform. And so, I had to resign from the board once I ran for office, because unlike common perception, they are not party affiliated and they will sue anybody. They'll sue this body, they will sue the district, they will sue the feds. Like, they sue everyone to hold people accountable. I think their tagline is like, see you in court. And so you cannot be in an elected position. So while I was a part of ACLU and the board, that was a lot of the work of the staff, around how you can think about smart justice reform in a way that honors accountability, right, with our current system, despite it being punitive, and then really invest in the preventative nature to ensure vibrant communities. And so I just wanted to like, underscore that point that if there is an opportunity and the intent of the bill is to create vibrant communities to get ahead of this,

that there are proven other strategies that would situate better than what is currently being proposed. The other comment that I wanted to address and kind of unpack is around our workforce shortage and that this bill would help to address that because it creates a, a better working culture, ideally, because folks feel safer. And so I am just unclear from the introducer or the folks that have been working on this, has-- is there a direct correlation that you have data around that you do not have the staffing inside of these facilities because they are navigating assaults? Usually, and what you see around work culture in, in our current climate for workforce shortage is paid FMLA or benefits, right? That is a way that you can attract talent, especially in a place like Nebraska that has low unemployment or training programs that allow for succession planning. So, if you're trying to get more pharmacists and we know that there's a gap in that field, what does it look like to introduce education at the high school level, move through the community college, folks are getting trained, they're certification, the things that they need for that role and are moving into that space. And also, like, higher pay, and so how are we paying people? That was the intention behind the minimum wage ballot initiative as a floor to what people need. And so those are the data points that are usually correlated with workforce shortage and how you can improve getting people into those positions. Not-- and I have not seen data on this, and so would be interested if the proponents of this bill have actual data around that, and the intention of why they are introducing it or supporting it. And then lastly, I think just, in general, we've had lots of conversations around our carceral system and what does it look like when people are system-impacted. And folks have talked about already how this could impact certain demographics, maybe folks that are navigating a mental health diagnosis or have a varying ability status. But I think, in general, when we look at what our taxpayer dollars go to in our carceral system, we don't want it to be punitive. We want to give people the resources to stay out of the system because, one, it costs more money and it does not create vibrant communities. And so I think that's really important to think about the consequences of this type of legislation, and how it will add to the mass incarceration and overcrowding, and just even the, the fees and fines that people would navigate if the legislation is expanded around these specific charges. Thank you, Mr. President.

ARCH: We have some special guests that I'd like to announce. Senator McKinney would like to recognize 22 fourth grade students from Holy Name School in Omaha. They are located in the north balcony. Students, if you would rise and be recognized by your Nebraska Legislature.

Senator Spivey would also like to recognize some special guests, members of I Be Black Girl, from Omaha. They are also located in the north balcony. Please rise. Be recognized by your Nebraska Legislature. Returning to the queue, Senator DeBoer, you're recognized. This is your last opportunity before your close.

DeBOER: Thank you, Mr. President. OK. So I was talking about specific cases where not only have things been charged, but they've gone up. That's why we have these opinions, is because they become precedential. That's not presidential, that's precedent-- so that they have the common law value of-- or the case law value of law behind them. They've been decided by one of the appellate courts, and then they have this standing as law in Nebraska. So I was discussing some of those. So when last we were talking, I was talking about State v. Melton, again at 239 Neb. 576, or 477 N.W.2d 154. This is a 1991 case in which a deputy sheriff was on duty and was slapped. Assault of a peace officer in the third degree is committed when an on-duty deputy sheriff is slapped and the deputy sheriff suffers physical pain. So this is the slap case I was talking about. For reference, this is from 28-931, which is assault on a police officer, an emergency responder, certain employees, or a healthcare professional in the third degree, and its penalty. The penalty for this slap case is a Class IIIA felony. That's the penalty for this class of assaults, a Class IIIA penalty. So I wasn't making that up. That came from a case. I know that Senator Bosn wasn't insinuating I was making it up, but I just wanted to clarify that I was not making that up. That came from a case. A Class IIIA felony-- by the way-- because I don't have these memorized. I know that perhaps Senator Dungan, Senator Bosn, and Senator John Cavanaugh, who work in this area, have these memorized. I do not. A Class IIIA felony is a maximum of 3 years imprisonment, 18 months post-relief supervision, or \$10,000 fine, or both. So 3 years imprisonment and 18 months post-release supervision, supervision, or \$10,000 or both; and the minimum would be none as to the imprisonment, so it could be 0, 0-3 is the prison term for this one, and 9 months post-release supervision. So the minimum is 9 months post-relief supervision if imprisonment is imposed. It's for a Class IIIA. So some of the other things that happen if you get a felony, it isn't just the jail time we're talking about here. If you get a felony, you have your voting rights taken away. That's a pretty big deal. When you go to get employment or housing in the state, people ask that question. You have difficulty for the rest of your life getting housing, if you're renting, getting a job. There are statutes on our books that say, if you have 3, you can be charged with the habitual criminal statute, and that is, we sort of have 2 versions of this right now. More on that

later this session-- but either a mandatory minimum of 3 years in prison or 10 years in prison, depending on the crime. This, I believe, since it's an assault, which is considered a violent crime, would be 10-year-- would be the 10-year one. So this is-- you're a third of the way to a mandatory minimum of 10 years. Now, Senator Bosn said that there is prosecutorial discretion. There absolutely is. And everybody in this body who's met Senator Bosn knows that she would absolutely be as careful as possible. She would be very careful not to charge anything over much. She would do her best because Senator Bosn is a very, very compassionate person. She's one of my favorite people in here, and she knows that. But it doesn't mean that in every circumstance, everyone is as compassionate as she is when they're a prosecutor, or that there aren't situations where that person is being forced into a decision, maybe from a superior, maybe from outside, maybe from the police officer who was slapped, who isn't just so mad that there isn't outside forces on it. Thank you, Mr. President.

ARCH: Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you Mr. President. I yield my time to Senator Spivey.

ARCH: Senator Spivey, 4 minutes, 55.

SPIVEY: Thank you, Mr. President. I wanted to take a point of privilege first, to say, as we have this conversation around incarceration and enhanced penalties, that it's actually Second Chance Month. And I do have an LR at my desk, if you all would like to sign onto it, so that then the Speaker could read across. This month is really about ensuring that people that are navigating re-entry are given a second chance. I know Senator Holcroft has his bill around that, as well. And so there's a movement nationally, as well as in Nebraska around ensuring that people can come back to community to be engaged, contributing members of their families and communities, and so I would appreciate if you would consider signing. Next, I am really excited that not only is Holy Name here, so-- a lot of my friends went to Holy Name. I did not go. But I love when young people are here watching us work-- but also, I Be Black Girl. And so, I have the privilege of serving as executive director of I Be Black Girl when I am not here at the Legislature. And I'm really glad that they are continuing to do work outside of me, around advocacy and having their voices heard. As the fourth black woman senator in the history of our body, to have black women here today, using their voice and perspective to advocate around policy that we know is important not only to our community but would benefit all folks if enacted, if we

were prioritized and centered, is so important. And so the work of I Be Black Girl is not just around reproductive rights, which someone alluded to the other day, but it's really the full spectrum of what does it mean to exist? What does it look like to think about economic opportunity and housing, to think about how I choose to be parent in the environment that I parent my children in, or if I choose never to have children and what does that look like for me? How do I actualize my full potential to be authentically in this society? And so I'm so thankful for the work that this organization does, that I get to, again, put on that hat when I am not here to support the impacts that we have had, and, and some of that work includes maternal health. And so we have a federal grant that is 5 years. It looks at addressing some of the things that we've talked about in this body, specifically around ensuring that people have access to one, maternal care, prenatal care, postpartum, what does it look like when folks are navigating postpartum mental health and supports there. And so through this new administration and fiscal environment, we are impacted and see that our funding at the federal level may not be the same. And so that would be about a third of our budget that are-- that is impacted. And so, again, I'm appreciative that I have the real-world experience to bring here as we talk about agency budgets, as we talk about a deficit, as we talk about the federal impacts to the state. But the organizations, everyday people that are on the front lines are still impacted, as well, and so I appreciate that I'm able to converge those two perspectives to hopefully be a better advocate and legislator here in our body. Thank you, Mr. President.

ARCH: Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. Good afternoon-- no. Good morning, still, colleagues. So again, I rise in support of the motion to indefinitely postpone and opposed to LB322. And as I was saying earlier, my opposition is that I, I don't think these bills serve-- actually achieve the goal, which is to decrease the number of people being assaulted in these situations. And I don't think that passing a bill, just checking the box and saying, we did it, is actually going to help the folks that we're trying to help, so I'm opposed to that. I'm also opposed to just the principle of further incarcerating and lengthening sentences as a solution. And you know, we've had conversations here about how to solve prison overcrowding. And I've brought bills that focus specifically on access to healthcare, and specifically, mental healthcare and drug and alcohol treatment, to make sure that folks are getting the care that they need. We-- when someone is incarcerated, we put a lot of effort into getting them programming and assistance. And then a lot of times when they come

out, they don't have that continued access and support. And so then, it's sometime down the road, they will have a event that happens in their life that causes them to lose their path again, and, and then they end up committing another crime. And so, one of my bills I've passed in the last couple of years was making sure that everybody, when they leave custody, gets signed up for Medicaid. They're already eligible. It didn't increase eligibility, just making sure they're signed up when they walk out the door, meaning that they can go get their next course of meds, they can get into a doctor's appointment, they get all of those-- continue on the progress that we have invested in. And that type of thing actually decreases recidivism and decreases the number of people who are victims of crime. Recidivism is a further commission of a crime, right? It means-- recidivism, recidivism means someone who's committed a crime commits another crime, so somebody who's gone through the system has already been caught, prosecuted, convicted, detained, incarcerated. We've invested resources in attempting to help them not re-offend when they get back out. And so my bill, which, I think, was LB921, if I remember right, was a bill that included the requirement that the department sign folks up for their already-eligible Medicaid when they leave. And so, that's been in place for about a year now, and the department was very excited to work on that to make sure that we're actually helping folks carry on that process and get the continued care they need, to decrease recidivism. The reason I'm talking about it is those are the types of things. It's slow. It's not particularly glamorous to make sure somebody gets their medical care, signing up, you know, the, the-- cutting red tape on paperwork to get access to services they're already entitled to, but it is meaningful and it does move the needle on decreasing crime. And I think, you know, Senator Kauth correctly pointed out is the way to decrease crime is to get people to stop committing crime. 100% agree with that. But our role here is not to just say, don't do it. We've already done that. We already have a law that says don't assault people, and people are doing it. We already have lots of laws telling people proscribing conduct, saying don't do this. And people still do it. And so, we have to find ways to actually get to the root cause of why people are, are committing these offenses. We need to find ways to eliminate the-- what leads people down that path. Because if the desired outcome is medical professionals and pharmacists not being assaulted, we need to understand why that's happening, and then we to need figure out what it is we can do, as policymakers, to decrease the likelihood that that's happening. And it is already a crime, and it's happening. So increasing the penalty, there's no real evidence to show that increasing the penalty from a Class I misdemeanor to a felony is, is

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actually going to decrease the likelihood someone's gonna be assaulted. So if our goal is to decrease the likelihood someone's being assaulted, this isn't the solution. A solution is probably mental health intervention, drug and alcohol intervention, because that is when-- when somebody's in mental health crisis, they are more likely to assault the medical professional who is attempting to help them, so that's what we should be focusing on. And those are real solutions that I think well-meaning people here are attempting to solve, but that's not what this gets to. So again, I'm in favor of the motion to indefinitely postpone. I'm opposed to LB322. I appreciate the conversation folks are engaging in here. Thank you, Mr. President.

ARCH: Senator Jacobson, you're recognized to speak.

JACOBSON: Question.

ARCH: The question has been called. Do I see 5 hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. There's been a request to place the house under call. Question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

ASSISTANT CLERK: 25 ayes, 0 nays to place the house under call, Mr. President.

ARCH: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house under call. Senators, please check in. The house is under call. Senators Hughes and Guereca, please return to the Chamber. The house is under call. Senator Guereca, please return to the Chamber. The house is under call. Senator Jacobson, Senator Guereca is still absent. Would you like to wait or proceed? The question before the body is shall debate cease? All those in favor vote aye; all those opposed-- been a request for a roll call. Mr. Clerk.

CLERK: Senator Andersen voting yes. Senator Arch voting yes. Senator Armendariz voting yes. Senator Ballard voting yes. Senator Bosn voting yes. Senator Bostar. Senator Brandt voting yes. Senator John Cavanaugh voting no. Senator Machaela Cavanaugh not voting. Senator Clements voting yes. Senator Clouse voting yes. Senator Conrad voting no. Senator DeBoer not voting. Senator DeKay voting yes. Senator Dorn voting yes. Senator Dover voting yes. Senator Dungan voting no. Senator Fredrickson voting-- not voting. Senator Guereca not voting.

Senator Hallstrom voting yes. Senator Hansen voting yes. Senator Hardin voting yes. Senator Holdcroft voting yes. Senator Hughes voting yes. Senator Hunt voting no. Senator Ibach voting yes. Senator Jacobson voting yes. Senator Juarez voting no. Senator Kauth voting yes. Senator Lippincott voting yes. Senator Lonowski voting yes. Senator McKeon voting yes. Senator McKinney voting no. Senator Meyer voting yes. Senator Moser voting yes. Senator Murman voting yes. Senator Prokop not voting. Senator Quick not voting. Senator Raybould. Senator Riepe voting yes. Senator Rountree voting no. Senator Sanders voting yes. Senator Sorrentino voting yes. Senator Spivey voting no. Senator Storer voting yes. Senator Storm voting yes. Senator Strommen voting yes. Senator von Gillern voting yes. Senator Wordekemper voting yes. Vote is 33 ayes, 8 nays to cease debate, Mr. President.

ARCH: Debate does cease. Senator DeBoer, you're recognized to close on your motion to indefinitely postpone.

DeBOER: Thank you, Mr. President. First, I would like to say thank you to the opposition of my motion to indefinitely postpone, as they allowed us to have, you know, a conversation this morning about this issue, and I very much appreciate that they did not immediately call the question but allowed us to have a conversation. So I'd like to start with saying thank you for that. I brought this motion to indefinitely postpone because I think the underlying measure is bad policy. That's it. That's why I did it. I think it's very bad policy. I think it's problematic for us writ large, not because I don't think that everyone envisioned by this bill should be protected. I think everyone should be protected. I think every one in the state should be protected, so that is not why I did it. I think I would like to lift up something that Senator John Cavanaugh said, and that is-- he asked the question, why are pharmacists, why are hospital workers getting assaulted, and what can we do to limit those assaults, to have fewer of them, to make sure they're, they're of less severity? And that the question I think this afternoon we're going to be talking about, in terms of shaping this law, if there's some way this measure can go through in a different shape, shaping this law and shaping our future laws and our assault laws, in general, into the most effective means for recognizing a problem. If there are assaults happening in our state, where are they happening, how are they happening, why are they happening? And that last why are they happening point is the most important. And then, how do we, as lawmakers, actually have an effect on whether or not they are happening? And the problem is that if you're trying to deter them from happening-- and I'll unpack this more later. If you're trying to deter them from happening, people have to know that there is an increased penalty. Other than the lawyers in

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this room-- I'm not calling on anyone-- but imagine, Senator Lippincott, Senator McKeon, Senator Storm-- well, he's on Judiciary, maybe-- Senator Hansen, OK, Senator Dorn, do you know what the difference between a first-degree and a second-degree and a third-degree assault is? Do you know what the difference is between a Class IIIA felony and a Class mis-- whatever Class misdemeanor? Do you know the difference in penalties? I will be very impressed if you do. And that same issue is going to affect every person in the state of Nebraska that we are trying to proscribe the behavior of with this and other bills. If we think that additional penalties on some people in our state for assaults, and actually only in some instances when they're in their capacity workforce, will lead to less assaults in the state, I think we have to have some way of communicating that, that is actually going to move the needle to individuals, I think we need to see what's causing the root of the problem, and I think we need to get at that. And this bill doesn't have that in it. Even the, the sign-- I passed out a sign. We'll talk more about that. That's not going up at the pharmacist's office. If that doesn't go up at the pharmacist's office-- we could put it up. We could put that up everywhere. We could put it up now. It is already true. It is already true that assault of a pharmacist or the janitor at a hospital is a serious crime. It is already true that it is punishable by up to a felony. That is already true. If we are trying to proscribe behavior, we can put this sign up right now, and any deterrent effect that this sign would have is already true under the law as it stands, without this bill. For that reason, I would ask you--

ARCH: Time, Senator.

DeBOER: --to vote for my indefinitely postpone measure. Thank you, Mr. President.

ARCH: Colleagues, the question before the body is the motion to indefinitely postpone. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record.

CLERK: 7 ayes, 34 nays on the motion to reconsider, Mr. President-- or excuse me, on the motion to indefinitely postpone.

ARCH: Motion is not successful. Mr. Clerk. I raise the call.

CLERK: Mr. President, Senator DeBoer would move to reconsider the vote taken on MO106.

ARCH: Senator DeBoer, you're recognized to open.

DeBOER: Thank you, Mr. President. Colleagues, this is one of those motions to reconsider which we are using to continue the discussion. I, of course, would like you all to consider your vote on my indefinitely postpone, unless you voted for the indefinitely postpone, then please don't reconsider. But if you voted against the indefinitely postpone, I would like to reconsider that, because I do not think this bill, LB322, and the committee amendment, which adds in Senator Ballard's bill, will do what we want them to do. They will not prevent the kinds of assaults we're seeing. In Judiciary, over these last 7 years, when folks come in and talk to us, when we hear the description of the assaults that folks are concerned about, they are already felony assaults, so there's some sort of disconnect. Getting a, a high-level misdemeanor is still serious, and I think we all should recognize the serious nature of a high-level misdemeanor, and do not think that that means that it's just nothing. If you slap someone in the face, is it a slap on the wrist to give them a high-level misdemeanor? So somewhere, I have the misdemeanor list. Nope, I don't. OK. Well, Senator Dungan, would you yield to a question?

ARCH: Senator Dungan, will you yield?

DUNGAN: Yes.

DeBOER: Senator Dungan, if you don't know this, I might ask Senator Cavanaugh, so he's on deck to know.

DUNGAN: It feels like a challenge.

DeBOER: OK. Senator Dungan, what is the highest level misdemeanor in Nebraska?

DUNGAN: Class I misdemeanor.

DeBOER: And what is the penalty for a Class I misdemeanor?

DUNGAN: Up to a year in jail, up to \$1,000 fine or some combination thereof. Probation would also be a possibility.

DeBOER: Is that a serious crime?

DUNGAN: Absolutely. I think a Class I misdemeanor is something that a lot of people would try to avoid, because spending a year in jail is very, very serious.

DeBOER: Yeah, OK. \$1,000 fine, I mean, that's kind of a lot of money.

DUNGAN: Yeah. A Class I misdemeanor includes things like third-degree assault, which is a lot of what we're talking about here, with the intentional knowing or reckless causing of bodily injury or the threat for imminent bodily injury. It also includes a domestic assault, which is a Class I misdemeanor. It can also include some higher-amount thefts. And so Class I misdemeanors are jury trial-eligible automatically. I've represented a number of people in jury trials on those. It's the most serious misdemeanor that we have in the state of Nebraska.

DeBOER: So, a misdemeanor is not a dismissable slap on the wrist, move on with your life, pretend it didn't happen kind of crime.

DUNGAN: Correct. So in Nebraska, we have levels of misdemeanors that range from Class V, I believe, which is the lowest-- I don't know exactly what falls into that, but I think it does exist. But generally, Class III, II, and I, with I being the highest, are part of that range. Class III misdemeanors count things like disturbing the peace, but that still carries with it up to 90 days in jail or up to a \$500 fine, I believe. Below misdemeanors are infractions. So when you're talking about something that doesn't carry a possibility of jail time and is simply punishable by a fine, that's when you start to talk about infractions, which I think is maybe more what people think about when they're thinking about a quote-unquote slap on the wrist or something like that. But misdemeanors are serious offenses. They can be jury trial-eligible. They can involve very serious offenses, including things like sec-- third-degree sexual assault and, and things like that. So misdemeanors are not dismissable, insofar as they're not just a small little slap on the wrist.

DeBOER: Thank you, Senator Dungan. So my point is, when we are thinking about the fact that we are moving from a misdemeanor, a high-level misdemeanor, which carries with it the possibility of jail time, to a felony, we're not moving from a slap on the wrist to a finally serious crime. We are moving from a very serious crime to a very, very serious, life-altering crime that is going to have all kinds of collateral consequences with it that will follow you for the rest of your life. The only way that it doesn't would be if you would get a pardon. And I don't know, I would imagine Senator Holdcroft-- he's not in here. But he attends the pardons hearings, and they don't pardon people very often. So we're talking about felonies, which are very serious crimes that have all of these collateral consequences with them, for things that may not be as serious of an assault. No one should get assaulted. Please hear me when I say that. But getting a misdemeanor assault is not nothing. Particularly, if there's some sort

of reason why folks who are the jury are looking at it and saying, oh, this is a very serious-- you get a conviction. Now when you're sentenced, maybe the judge says, this guy really did this with a lot of bad intent. There's a lot of circumstances around this. We're gonna throw them in jail for a year. That's serious. I know that because there's a lot of people in here who find listening to me talk for an hour to be very, very serious and difficult and punishment and painful. We, colleagues, spend 90 days in this Chamber, sometimes not even quite that, because we might have a day for vetoes at the end, so we might not even spend 90 days. And we get to go home at night. 90 days in jail-- even 90 days in jail is very serious. It's not something anybody wants to experience. So I would ask us to really think about what a felony is and what a high-level misdemeanor is, and think about whether or not what we want to do is basically make misdemeanors meaningless by saying they're not serious. If we want to deter, we can deter people with the threat of a year in jail, the threat of a year in jail or even 90 days, or 30 days, or 9 months on post-release supervision. Actually, I've heard from defense attorneys that their clients really don't like that post-release supervision. These are things which make people think twice. And if they do not, then we need to return to Senator Cavanaugh's question, why are these assaults happening and what can we really do to stop them? Because the deterrent effect, if they're still happening in hospitals-- and this is a point from the-- I think it was actually Senator Kauth's bill's hearing that I thought was really interesting, when the testifier said 70% of-- 30, 30% of the assaults in hospitals are happening to these people who are not already proscribed with these higher penalties, which means 70% of them are already within the felony penalties, are already with the enhanced penalties. 70% of the assaults are within those enhanced penalties. They don't seem to be working. They're not stopping assaults on those folks who are within the proscription, who are with the additional penalties. This doesn't seem to be the silver bullet, as Senator Ballard mentioned, not just for getting folks into the hospital workforce, but for preventing the assaults in the hospital workforce that this bill purports to try to stop. It isn't the silver bullet. So let's look for the silver bullet. Because you all know that you don't, other than what I've said here today and I have to use a cheat sheet. Senator Duggan was impressive with his knowledge of what the penalties are. But the average person, if you asked a non-lawyer or even a lawyer who's not a criminal lawyer in Nebraska, what's the penalty if I do this, people don't know. So adding additional penalties, unless maybe they knew someone once who got put away for that one thing and they had the wherewithal to think about, I think that one was more severe because of this particular

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group that has been "exceptionalized" for it, people don't walk through the world knowing that. It doesn't have the deterrent effect we want. What would, I will argue more after lunch, would be signs like this everywhere.

ARCH: Time, Senator.

DeBOER: Thank you, Mr. President.

ARCH: Senator Bosn, you're recognized to speak.

BOSN: Thank you, Mr. President. And colleagues, I appreciate the debate that we've had and certainly respect Senator DeBoer's position on this. But there's been a number of questions, both by Senator DeBoer and Senator John Cavanaugh, indicating that there is no deterring effect to these enhancements when they're passed. And don't take my word for it, take the word of one of the individuals who came in and took the time to testify in support of this bill. Her name was Jessi Giebelhaus. And among-- in her testimony, which is in the record: I was working at the Lincoln Regional Center as a tech in March 2012, when it became a felony to assault a healthcare worker in the line of duty, and I can remember staff and the patients talking about it at the time. All of us techs, along with patients, thought that techs were covered under the new law that passed. This is in 2012, 13 years ago. I can remember patients having second thoughts when they got upset with us, and even the patients reminding each other that it was now a felony to assault us. That's a deterrent right there, friends. And no one wanted to be charged with a felony. I remember the assaults stopped on staff briefly. Until everyone, staff and patients, came to realize mental health techs, technicians, were not covered under the new law. It was doctors and nurses only who were protected, and the techs-- these are her words-- were now fair game again. I have the stats in numbers from the Lincoln Regional Center, showing the number of assaults on staff by patients, from April 2010 to the present. In February 2012, before the law protecting healthcare workers was passed, there were 13 assaults on direct care staff. March is when LB677 was signed by the governor, and there were only 4 assaults on direct care staff. And what is even more amazing is in April 2012, one month after the law was passed, is the only month on record at the Lincoln Regional Center from April 2010 to the present day, where there were zero assaults on staff at the Lincoln Regional Center. Colleagues, these are examples showing the deterring effect that laws like this, that protections like this have. We also received testimony in support of this bill from the Nebraska Medicine. I can't remember the name of the individual that came in. I'm sure I have it

and I-- oh, Tammy Winterboer, President of the Nebraska-- of Nebraska Medicine and is accountable for both patient and colleague safety. They came in in support of this bill. And they have a great handout and perhaps I'll pass it around. But she concludes by saying, despite our efforts, the problem of workplace violence in healthcare continues to grow. Our dedicated healthcare workers who choose to pursue a profession to serve others are being unjustly punished. They strive to deliver serious medicine and extraordinary care to patients, yet arrive at work fearing for their own safety. Evidence shows that when healthcare providers feel safe, both patient experience and outcomes dramatically improve. For those reasons, colleagues, I ask that you oppose the motion to reconsider, oppose the motion to indefinitely postpone, support not only Senator Clouse's bill, but also Senator Ballard's bill so that we can improve the quality of healthcare in Nebraska. Thank you, Mr. President.

ARCH: Mr. Clerk, for items.

CLERK: Mr. President, new A bill, LB380A, introduced by Senator Fredrickson. It's a bill for an act relating to appropriations; appropriate funds to aid in the carrying out of the provisions of LB380. Additionally, new LR, LR118, introduced by Senator Strommen, and LR119, introduced by Senator Hardin. LR118 will be referred to the Executive Board. LR119 will be laid over. Notice that the Appropriations Committee will have an exec session at noon in room 1003, Appropriations, noon, 1003. And the Revenue Committee will meet an executive session at 2:00 in room 2102. Revenue, 2102, at 2:00 this afternoon. Priority motion, Senator Bosn would move to recess the body until 1:30 p.m.

ARCH: Colleagues, you've heard the motion to recess. All those in favor, say aye. Opposed, nay. We are in recess.

[RECESS]

ARCH: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: There's a quorum present, Mr. President.

ARCH: Thank you, Mr. Clerk. Do you have any items for the agenda?

CLERK: I do, Mr. President. Your Committee on Retirement-- Nebraska Retirement Systems, chaired by Senator Ballard, reports LB645 to

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General File with committee amendments. Additionally, notice that the Education Committee will have an executive session in Room 2022 at 2:30 today. Education exec session, 2022. And the Revenue Committee will have an exec session at 2:00 in Room 2102. Revenue, 2102, 2:00. That's all I have at this time, Mr. President.

ARCH: Thank you, Mr. Clerk. Let's proceed to the first item on this afternoon's agenda.

CLERK: Mr. President, pending when the Legislature left at the recess was General File, LB322. A motion from Senator DeBoer, MO106, to indefinitely postpone the bill had been defeated. A motion to reconsider that vote by Senator DeBoer, MO180, was pending.

ARCH: Turning to the queue. Senator Juarez, you are recognized to speak.

JUAREZ: Thank you very much. I will yield my time to Senator Cavanaugh. Thank you.

ARCH: Senator Cavanaugh, 4 minutes, 45.

M. CAVANAUGH: Thank you, Senator Juarez. Well, I yielded my time earlier to Senator Spivey, because she had I Be Black Girl up in the balcony, and she wanted a chance to talk about that. And so, I appreciate Senator Juarez yielding me her time because I'm way down in the queue. So, I don't know if he remembers or not, but I did tell Senator Clouse back at the start of session that I would gently be opposing LB322. I have seen many of these types of enhanced penalty bills over the years, and I have stood in opposition to them always. I think that if a penalty for assault should-- if the body thinks that we should have a higher penalty for assault, or typical-- or, a type of assault, then we should have that. It shouldn't be specific to who you are as, as the person being assaulted. Whether you're a rider on the bus or the bus driver, if somebody punches you in the face, the penalty should be the same, whether you are the, the passenger or the bus driver. If you're the patient or the doctor, you're sitting in the ER, if you're the nurse or the patient, or somebody's spouse, it should all be the same. So, if we think that penalties need to be higher for this type of assault, then it should just be-- the penalty should be higher. Carving out specific class of victims is something that I disagree with, and-- in addition to other things, but primarily I just disagree with carving out special class for victims. If you are a victim of a violent assault, you are a victim of a violent assault, and it should not matter what your job is. So, if the penalties aren't

high enough, let's have that conversation. I probably will still be opposed to increasing penalties because, generally speaking, I don't think that increasing penalties are going to result in decrease in assaults, but as I think many people have mentioned on the floor today, that a-- an increased penalty-- people aren't-- especially if they are mentally ill, are not thinking about, "well, I wonder what the penalties are if I do this." That's usually a hot-headed situation, so an increased penalty is not going to make a difference one way or the other. And interestingly, we were just discussing corrections in Appropriations, and the decommissioning of the facility, and talking about the feasibility of decommissioning the facility if the new facility that they're intending to build is not going to be big enough from day one to house the population because we keep doing things like this. We keep increasing penalties, increasing barriers for reentry, making it harder to get people out of the system, making it easier to put people in the system, and so, we're going to have two prisons as a result; we're going to have this new prison and the one that everybody's in right now. And we can't build our way out of it, but we can stop expanding felonies so that we aren't putting more people who need resources in prison. I don't think anybody should get punched in the face. I don't think a pharmacist should get punched in the face, I don't think a nurse or a doctor or a police officer, or just an average person sitting next to them on the bus should get punched in the face. But I also don't think that we need a felony conviction to add to our prison pop overcrowding when somebody has clearly needing resources and services to help them find out what led them to, to that decision, not a federal-- a, a, a felony, so. I see my light is almost on, and-- how much time do I have? I love asking that.

ARCH: 12 seconds.

M. CAVANAUGH: 12 seconds? Senator Moser last year made a, a, a comment about one minute, one minute being, like, a record of the Legislature. Thank you, Mr. President.

ARCH: Senator Hallstrom, you're recognized to speak.

HALLSTROM: Question.

ARCH: The question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

Transcript Prepared by Clerk of the Legislature Transcribers Office
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CLERK: 27 ayes, 0 nays to place the house under call.

ARCH: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senators Murman, Hardin, and Hansen, please return to the Chamber. The house is under call. Senator Murman, please return to the Chamber. The house is under call. Senator Hallstrom, we are missing Senator Murman. Would you like to proceed or wait? Colleagues, the question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. There was a vote open. Senator Hallstrom, will you accept call-ins?

CLERK: Senator Dover voting yes. Senator von Gillern voting yes. Senator Strommen voting yes. Senator Hughes voting yes. Senator Hardin voting yes.

ARCH: Record, Mr. Clerk.

CLERK: 25 ayes, 4 nays to cease debate, Mr. President.

ARCH: Debate does cease. Senator DeBoer, you're recognized to close on your reconsider motion.

DeBOER: Thank you, Mr. President. I actually wasn't quite expecting the call the question quite yet. We were talking about doing it in just a little bit. One of the things we're trying to do is have conversations and see if there is a way to make this bill better, and obviously that's kind of hard if I'm standing here talking to you all. So, here we are. I want to get back to something that we were talking about before the lunch break, which is about deterrence. And there's kind of a really big conversation we should have in this body in general about deterrence, so our time is not quote-unquote wasted by having this conversation. I think we should talk about this as a general premise. You've heard that one of the things that the CJI group found about Nebraska is that, while we are not disproportionately-- compared to other states like us-- incarcerating folks, we're incarcerating them for longer periods of time. And so, that's part of the reason we're in the situation that we are in now. Obviously, there are arguments to be made about whether we should have built prisons a long time ago, whatever. I'm not entering into those. I am saying that we do incarcerate folks into a longer period of time, and this particular bill is another one of those bills that would do that, that would make penalties more significant, more severe, for a large class of individuals, and I can't see the public policy in

making an individual who works at a hospital, in a kitchen, that never interacts with a patient or the public except to-- when they walk in and out of that kitchen, to make every assault on them a felony. I just-- I don't see the public policy. So, we have a very overbroad bill in this committee amendment that we're going to get to next, and I think we need to think about that. Because every time we do that, every time we have an overbroad expansion of penalties, that puts us in a situation where we are incarcerating people for longer, where folks are having their lives disrupted, but also where we, the taxpayers, are paying more for incarceration for longer periods of time. And the CJI report says we don't change our recidivism rates; we haven't done so by incarcerating people for long periods of time. So, we need to change something. In addition, with respect to deterrence, if what we are doing is attempting to make people not assault each other, first of all, why is it still happening to the folks who are within the protections of the original bill in 2012? The testimony by Tammy Winterboer, which-- Senator Bosn read part of her letter, and I have a different part of her letter-- 30 of those events-- a violent event, she says, occurred against one of our colleagues nearly every single day in 2024. She goes on to say approximately 30% of those events were against an individual not covered by the existing statute, the existing felony enhancement statute. So, 30% not covered, 70% covered. It's still happening. We're still having those assaults on those folks. This hasn't solved the problem. So, that suggests a number of things. If I'm being intellectually honest, it means, one, there may be some beneficial effect of this, but it certainly cannot be by itself. And number two, I would argue that it does not have that deterrent effect. The anecdotal information we heard from the other testifier, while very interesting, I think points to the original, like, right after you pass a bill deterrent that might happen, and that probably will. But we're talking long-term, when people forget about what we do here, when people go on with their lives and they're not thinking about what we've done to make exceptions and carves-outs, and I'm going to talk some more about this when I get back on the microphone because I see the end of this time is coming. But we really have to think about our whole structure is becoming longer sentences, and we're not seeing lower recidivism rates. This, this isn't the thing that's going to change things. We have to keep looking. And the policy reasons for doing this are not connected to what this bill does. Thank you, Mr. President.

ARCH: Colleagues, the question before the body is the motion to reconsider. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record.

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CLERK: 8 ayes, 33 nays on the motion to reconsider, Mr. President.

ARCH: The motion to reconsider is not successful. I raise the call.
Mr. Clerk.

CLERK: Mr. President, General File, LB322 introduced by Senator Clouse. It's a bill for an act relating to crimes and offenses; it amends Sections 84-941.01, Section 28-101, 28-115, 28-929, 28-929.01, 28-929.02, 28-930, 28-931, 28-934, 28-1351, 28-1354, and 29-2221; prohibits assault on a pharmacist; changes and eliminates provisions and penalties relating to offenses involving assault of an officer, emergency responder, certain employees, or a health care professional; defines and redefines terms; harmonizes provisions; repeals the original section; outright repeals Section 28-931.01. The bill was read for the first time on January 16 of this year and referred to the Judiciary Committee; that committee placed the bill on General File with committee amendments, Mr. President.

ARCH: Senator Dover would like to recognize some special guests. They're located in the north balcony. There are 34 fourth grade students, three teachers, 18 sponsors from Westside Elementary in Norfolk. Students, if you would please rise and be welcomed by your Nebraska Legislature. Senator Bosn, you are recognized to open on the committee amendment.

BOSN: Thank you, Mr. President. I had a really nice intro that outlined what we did here, and I can't find it given how long we've been going on this. But AM767 essentially incorporates Senator Ballard's LB26 into the original LB322, so it's a white copy amendment adding the assault on a health care worker into the enhanced penalty portion. So, I would ask for your green vote on AM67-- excuse me, AM767. Thank you.

ARCH: Mr. Clerk, for a motion.

CLERK: Mr. President, Senator DeBoer would move to bracket the bill until June 9.

ARCH: Senator DeBoer, you're recognized to open on your bracket motion.

DeBOER: Thank you, Mr. President. So, we're talking about deterrent effects. So, let's talk about our penal system in general, our system of justice in general. In the mid 17th century, there was a shift in the countries that we basic-- our framers basically were building our system on, in how a justice system worked. Prior to that time, you've

got a monarchical structure, and the way that it worked is you have spectacle and torture. You want to make an example of someone, you have a really bad, torturous event of them; the people are required to attend, you torture them, and hopefully that makes everybody stand in line. It's obviously a kind of an oversimplification, but if you follow the work of Michel Foucault, who is a French post-structuralist philosopher in the 20th century, he did a history in a book called "Discipline and Punish" of the French penal system, and he looks at this shift from the system under the monarchy of torture in a very, very public way to what he called a discipline system. The problem with torturing folks in a very public way is that the person who committed the crime, when they are in a lot of pain and they are being tortured-- particularly if the crime and the pain don't seem to match up-- really causes the public who are watching to feel sympathy for the person who committed that crime. Well, that doesn't work for you. That's not a way that you can enforce your goals very easily. So, in the 16th cen-- in the 17th century, one of the things that happened is that there was a move away from that very public beheading or whatever to a system of discipline. There was a philosopher named Bentham who wrote about what he called the ideal prison, the panopticon. What is the panopticon? So, Bentham imagines a prison in which you have a circular prison and you can see into all of the cells. And there's a guard tower in the middle, and the prisoners can't see where the guards are looking from inside of the guard tower. The idea is that in the panopticon, the prisoners will self-police. Because they don't know when the guard is looking at them, they will internalize that the guard could be surveilling them at any moment, and therefore they will discipline themselves into behavior that is expected of them from the guards. Foucault says that in a disciplined society-- which we live in-- we internalize that panopticon and imagine that we are always being surveilled by someone who might call us to task. Therefore, we self-discipline, self-police. And if you don't think that's true, ask yourself why when there's a car in the center of I-80 and you think it might be the police, you don't-- you slow down. If you're speeding a little bit-- maybe you don't do it because you don't speed, but you sure as heck have seen others do it. It is this idea of self-discipline that our entire system is based on, because we do not have enough police to be everywhere at every time watching every one of us. We have to self-discipline. When the system fails and we are no longer self-disciplining because we don't believe in the system, then we get big problems, there's more crime. And folks, I argue that we are heading in that direction, where our system of self-discipline is no longer going to work as well, and I think we're already seeing that. Why? If the folks who are called by the king to watch the

beheading see that the crime and the punishment are not proportional, they start to feel sorry for the person who committed the crime. If the people see that the crime is not proportional to the punishment, there is a lot of faith in the system that is lost. That happens now. There are parts of our state that I could go to where folks will say to you, it doesn't matter what I do, the cops are going to come get me. It doesn't what I do, they're going to punish me. If that is the situation, if you think it doesn't matter what I do, someone's going to come punish me, you don't self-police because there's no reason to. If it seems arbitrary, there's no reason to self-police. When we make arbitrary distinctions-- a pharmacist in a Target behind a counter is assaulted under this bill, it's a felony. Exact same assault to the 15-year-old stocking shelves, possibly getting sub-minimum wage, who is five feet away, it's just a misdemeanor. Just a misdemeanor, versus a felony. And when I say "just a misdemeanor," know that I take that seriously. But that's the kind of arbitrariness that we're building in. Now, folks who support Senator Ballard's bill would say, "well, if I'm licensed or unlicensed"-- I agree. That distinction of licensed versus unlicensed is part of the problem, but we don't solve that by making it a bigger problem. There is an arbitrary and capriciousness to this whole idea of extended penalties based on the job that you have, the occupation that you have. If it is just in an emergency room, at least I can say it's in an emergency room. That's a different kind of a situation; folks are confronted with very tense, life-altering situations. It's an emergency room. OK, I could maybe understand that. I could maybe understand that, as a person who was looking at a penalty enhancement and say that does make a difference. But if I'm looking at the kid who's stocking shelves versus the pharmacist, or the pharmacist who is credentialed under this bill versus the pharmacist's staff who is not, it's arbitrary. The problem is, if we fix this arbitrary line between credentialed/not credentialed in Senator Ballard's bill today, we're going to keep having this, we're going to move that line, it's going to continue to be arbitrary. We need to find a larger solution to the whole question of assault and making sure that misdemeanor assaults are prosecuted, that people are taking them seriously, and that we are not just relying on enhanced penalties to try to solve the problem. I think Senator Lathrop was right when he said we need to have these signs. I think we need to have signs everywhere. There is nowhere that this sign is not true, except maybe about the bodily fluid. But assaulting a health care profession-- or, you could say assaulting a teacher, you could say assaulting a legislator-- who is engaged in the performance of his or her official duties is a serious crime which may be punishable as a felony. That is already true. It is a serious crime to

assault a legislator. It may be punishable by a felony, depending on if it's felony assault or not. A lobbyist-- let me read it this way: assaulting a lobbyist who is engaged in the performance of his or her official duties is a serious crime, which may be punishable as a felony. That's true, too. A grocery store worker, an architect, all of those things are true.

ARCH: Time, Senator.

DeBOER: Thank you, Mr. President.

ARCH: Senator Murman would like to recognize some special guests: Kathy Murman, his wife, and Whitney Murman, his daughter, from Glenvil. They are located under the south balcony. Welcome. Senator John Cavanaugh would also like to recognize some guests from Leadership Omaha Class 47 and the Bay, and they are located in the north balcony. Please rise and be welcomed by your Nebraska Legislature. Returning to the queue, Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. Good afternoon, colleagues. Well, I appreciate and understand that there are talks underway to perhaps try and narrow or clarify or mitigate the application of this measure, particularly as amended by the committee amendment, which is a good step in the right direction. I concur with my friend Senator DeBoer that the underlying measure and committee amendments, while perhaps well-intentioned, are just poor public policy. And I want to, again, put this in context of a couple of key components. So today, according to the Nebraska Department of Corrections, here's the overall crowding for various facilities from our own Department of Corrections. So, CCL, Community Corrections Lincoln, 127% over capacity; CCO, Community Corrections Omaha, just shy of 200% of capacity; NCCW, 112% of capacity; NCYF for young offenders, 100%; NSP, 157%; OCC, 199%; RTC, 162%; Tecumseh, 106%; Work Ethic Camp, 191%; facility total, 144% of capacity. So, we know Nebraska has a massive new-- a massive, expensive new prison coming online in future years due to budgetary commitments to make that possible, which all stakeholders agree may help to reduce some overcrowding but will also be full almost immediately. And what we know based on years of study, from CSG to CJI to the Dewberry studies to the UNO studies to the LB50 Task Force studies, none of these ex-- expert working groups, whether comprised of national experts or local experts or a combination thereof, have said "create new crimes and enhance existing crimes if you want to address mass incarceration in Nebraska." None of them have said that. None of them have said that. Our sister states, including many red

states and the national government under President Trump, moved in a smart justice direction. There's no reason that Nebraska can't and shouldn't do that. And the modest but meaningful smart justice reforms we've seen in recent years through LB50-- there's measures before the Legislature this year by the chair of the Judiciary Committee and others to unwind that modest but meaningful reform. There's measures to attack the funding sources of veterans treatment courts that U.S. Senator Chuck Hagel and Tom Brewer and Senator Linehan helped to initiate in Nebraska very recently. And there's effort after effort after effort in the floor of the Legislature this year to enhance penalties and create new crimes, just like at the heart of this measure. Let's also not forget, when it comes to collateral consequences for criminal system involvement, they are significant. Voting rights, gun ownership, employment, education, housing, the list goes on and on. When we were working on the restoration of voting rights recently over the last biennium, I asked Legislative Research to put together an inventory of collateral consequences in Nebraska. They couldn't confirm that it was entirely comprehensive. Colleagues, they have 522 unique listings on an Excel spreadsheet. 522 collateral consequences that they could count on criminal justice system involvement, in addition to the period of incarceration, or fines, or probation, or parole, attendant to a criminal sentence. When's, when's it enough? And how do we move in the direction that is proven and paved--

ARCH: Time, Senator.

CONRAD: --by our sister states to pick a smarter, safer way? Thank you, Mr. President.

ARCH: Senator Dorn, you are recognized to speak.

DORN: Thank you, Mr. Speaker. Listened to Senator DeBoer on some of her closings today, and I, I believe, if I heard her right, they're visiting about, I call it, some discussions about maybe some other things on here or some adjustments, maybe, to some of this. Brought up earlier when I talked-- and Senator Bosn, I thought, did a good job with that. I was just out in the Rotunda again. My main concern on this is still, or has been, the developmental disabled and how they are, I call it, looked at. I've had some discussions with some people, and they, just as Senator Bosn has said, well, they, they are kind of, I call it, excluded, or they won't be charged, or different things like that. And I go in the lawyer world, and I apologize to some of our lawyers in here, but in the lawyer world, we probably have 99 out of 100 good lawyers, but we also have that one that, for whatever

reason, will sometimes take on a bill or a challenge or whatever, so. Some of the other things-- some of the other people have had some discussion, and I, I, I can't remember whether Senator Duncan [SIC] or who had discussion on, on, on this bill about-- probably Senator DeBoer-- about the felonies and the different levels of felonies and what you're charged with or not, and what you could be-- under this scenario, or underneath this bill, what you could, I call it, potentially be involved with or what might happen to you as a person that is now being charged with one of these things, and-- very interested in hearing those, because Senator DeBoer asked some of us if we knew what felony I or felony II or all those things meant. I had no idea, and I'm not even sure I could Google it. But Senator Duncan [SIC] did a pretty good job of explaining that, so that was a good part of the conversation this morning. I, I do support the bill, LB322. I heard from numerous pharmacy people that this is an issue, that they are one of the industries in this, I call it, our medical or our-- that type of field that has the most likelihood of being what I call assaulted. I have no idea-- well, I have some ideas of why or why they wouldn't be. But that-- I think we need to also make sure that we, as a legislative body, we do some things to protect some of these, but we also need to make sure we do things that-- we just don't, I call it, willy-nilly go about doing things, that we have those discussions. And I thank everybody involved in this today, and I will yield the rest of my time.

ARCH: Senator Hunt, you're recognized to speak. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President, and good afternoon, colleagues. I rise today in favor of the motion to bracket, and opposed to AM767 as well as LB322. So, I appreciate, again, that we continue to have this discussion about how this bill works, what the intended benefits are, what the consequences are. And I think that it's important that we continue to be aware of what the unintended consequences of these bills are. So, just to go back and I guess address maybe two main points that I want to talk about this time on the mic. One of those is what Senator Dorn was just speaking about, which is the unintended consequence-- or maybe intended consequence, but I assume it's unintended-- of the impact that bills like this have on both the developmental disability community as well as folks experiencing a mental health crisis. So, I know we've talked a lot about the DD community, but there are folks as well who are suffering from legitimate and deeply problematic mental health issues who experience episodes, for example, when they're in an emergency room or when they are seeing a medical practitioner, and it can lead, sometimes, to

these charges. And I guess I would respectfully push back on the idea that has been, I guess, put forward multiple times that folks in the DD community are exempted from this in any capacity. I spoke the last time I'm on-- I was on the mic about a personal example of an individual that I represented who was developmentally disabled, intellectually disabled, and lived in a group home. I've had conversations multiple times off the mic about that case with some people, and I think that it's, it's important to note as well that that is not a standalone incident; that, in my time of practicing law over the last 10-plus years in Lancaster County, I have seen countless individuals involved in the criminal justice system who, technically speaking, are low-IQ, maybe they fall into that intellectual disability range, the developmental disability range, who are charged with offenses. So, the idea that they are not charged is simply not true. I know there's been some conversation about whether or not we could potentially exempt those individuals, but I want to make something very, very clear: any language that would seek to make that person prove in court that they are in fact intellectually disabled or developmentally disabled does not preclude them from being arrested, spending time in jail-- which can go on for months-- and then ultimately, maybe have their trial six months to a year down the line, at which point in time it would be their responsibility to prove that they are maybe falling into whatever definition of developmental disability or intellectual disability is being used, and it's up to a jury to decide if that's true or not. So, none of that solves the problem of these people that we're talking about getting wrapped up into the justice system-- and, and-- which is exactly what Senator Dorn has said he has a concern with. And I, I think-- I-- we need to be very clear-eyed that increasing the penalties is going to lead to more people being incarcerated for longer periods of time, and ultimately leading to the overcrowding that we are seeing. So, there's been a long conversation, I guess secondly, about incarceration and mass incarceration as a whole, both in the state of Nebraska and in the country. And I think oftentimes, what's get-- what gets left out of that conversation are local jails. I spoke briefly earlier, about the Lancaster County Jail being relatively full. My understanding is that the Lancaster County Jail is currently on a trajectory to be almost completely full, if not overcrowded, by sometime this summer. Without going into the specific numbers that I have in front of me, just because it can get a little bit confusing, the Lancaster County Jail is already housing 23 females out in Washington County, and that's likely to grow to 30 or more this summer, because there simply isn't the capacity for them at the Lancaster County Jail. In addition to that, the rest of the beds are now getting to be full, the

dormitories are getting to be full, and it appears that the number one cause for the increase in the jail numbers are people being held longer pre-trial with higher bonds, or its sentences being increased. And so, the increase in the sentences-- which is what this bill seeks to do, ultimately-- or the increase in the severity of the charge are leading to direct and impactful overcrowding. And I think that's really important, because if we want to talk about property tax relief, if we wanna talk about the benefit to the taxpayer, it costs upwards of \$115 to \$130 a day to incarcerate a person in the county jail. And so, the more that we increase these crimes or increase these charges, the more we're going to see people being charged with higher bonds, and we're going to see people sitting in the Lancaster County Jail for longer.

ARCH: Time, Senator.

DUNGAN: This also has an effect on competency, which I'll speak about next time. Thank you, Mr. President.

ARCH: Senator Rountree, you're recognized to speak. Senator Machaela Cavanaugh, you're recognized to speak. Excuse me. Senator Rountree, you are first recognized.

ROUNTREE: Thank you so much, Mr. Speaker, and sorry for being out of place. We're still yet collaborating all over the floor, listening to all of the conversation that is going on concerning this particular bill. And at this time, I would like to yield my time to Senator DeBoer.

ARCH: Senator DeBoer, 4 minutes, 25.

DeBOER: Thank you, Mr. President. Thank you, Senator Rountree. So, I do want to mention something that I thought was interesting. My staff has been taking calls, as you might imagine today, from folks who are interested in this bill. Apparently, we haven't had that many, but there have been some, and those have generally been folks who have been assaulted by a police officer, I guess, is kind of the general tenor. But there was one that called, and there was a gal who called who was a frontline healthcare worker who had been assaulted, and she said that she supported my position on the bill, which is to say that it's a-- not a good idea policy-wise to do. She said that the issue with these assaults, in her perception, is that there are not enough staff in some of these facilities, in some these clinics, et cetera, to handle the situation when someone comes in and is agitated or is going through a mental health care crisis, or something of that

nature. So, her argument-- and I'm getting this, of course, through my staff, so, you know, kind of playing a little bit of telephone. But from my understanding, her argument was that paying folks more-- she said that when they get paid more, you actually have enough folks to staff these clinics and hospitals, et cetera. So, if you were to pay folks more, and if they were staffed better, then there would be enough folks in these situations when an assault might present itself to be able to stave off the assault. So, that was her opinion, and I thought that was a, an interesting opinion of someone in that position. And that brings me to another point that I've been wanting to make and haven't yet made today that I forgot to make, which is that, you know, these arbitrary lines which have been drawn and which we are here trying to continue to draw between folks about who you can assault and it's a felony, and who you assault and it's a misdemeanor for the same, the same action, the same injury-- those kinds of distinctions are having an effect on morale. This is something I've been hearing for years, maybe because I'm on the Judiciary Committee. I've heard this from folks, that what the main-- not the main, but the-- what seems to be the kind of real beef or problem or concern, or-- I can't come up with the correct word-- is that folks feel like if you say it's a felony to hit you but it's a misdemeanor to hit me, that makes me think I'm less important. And when that's accompanied by the folks who are credentialed, the folks who are licensed having additional pay and additional benefits of other types within a hospital setting, and then the folks who do not-- don't have that pay, don't the additional benefits, they feel like they're less than, and this is one example to them of that. So, there's a kind of a respect issue that is kind of irrespective of the assault. So, by providing better pay, by having better ways of, of sort of respecting folks who play a role-- and, and frankly, all of those folks are so important, and I hope that they feel that. I hope that after the pandemic, everyone in-- from top to bottom, including the janitors, including the guy who, who mows the lawn, feels like they're valuable members. We-- but that link does not translate over to if you get slapped, it's a felony. Because that's not the whole point of this assault enhancement. So, there should be more respect for those folks. What they do is hard, it's good, it is important. There should be more respect for those folks. But that is not the same thing as saying everyone--

ARCH: Time, Senator.

DeBOER: --is a felony. Thank you, Mr. President.

ARCH: Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. I'd like to yield my time to Senator Dungan.

ARCH: Senator Dungan, 4:55.

DUNGAN: Thank you, Senator Cavanaugh, and thank you, Mr. President. So colleagues, when I just earlier spoke, I talked about how the developmental disabilities population is harmed by this and certainly not exempted. I wanted to focus a little bit more, though, as I started to get into on the mic, about the mental health population, or folks who are experiencing severe mental health issues, and the effect that that has not just on the jail overcrowding but on how they are ultimately lumped in with these kind of offenses as well. So, as we all know, the, the kind of folks that we're talking about here are folks that maybe are dealing with extreme mental health outbursts or issues, and maybe you're in, like, the emergency room and something were to happen with an individual who's not currently covered as a healthcare professional. That's what the amendment seeks to address. The process and procedure for this, colleagues-- if somebody's charged, let's say, with an assault, and they then get arrested and go to jail, then they meet with an attorney-- whether that's their own attorney they hire or maybe a public defender is appointed to them-- and, in meeting with that attorney, the attorney makes the determination that they believe the individual that we're talking about, the defendant, has competency problems. And competency is a very specific legal definition, which I'm not going to get into in great detail. But essentially, it encompasses the issues where somebody is unable, due to whatever problem, to appreciate, maybe, the charges against them, maybe they don't understand the legal process, don't understand what's going on in terms of their case, and is unable to effectively assist in the case going forward, meaning they can't talk to their attorney, they can talk to the judge, they don't know who the people are, maybe for a mental health reason or something like that. So once competency is implicated, then you file a motion to have a doctor determine whether that person is competent or not. And that doctor has to additionally make the determination, is that individual-- if they are not competent, is that individual able to be restored to competency? Meaning, can they, through medication or some other sort of treatment, be brought back to understanding those things? Or, are they not restorable? Meaning, are they unable to ultimately be brought back to understand the charges against them, or the process? In the event that that person is in jail and they have that competency evaluation-- so, let's say in the circumstance of somebody who is schizoaffective and maybe they're unable to comprehend their case or the charges against them due to a mental health issue, they may be

deemed not competent but restoreable, which means they then go to the Regional Center. The wait list currently, I believe, at least according to the stats that I have-- the December 2024 statistics for the Lancaster County Jail said the average wait time for how long somebody sits in jail waiting to get a bed at the Regional Center, it was upwards of 51 days. That's the average time. So, some are shorter, but certainly, some are longer. That's almost two months that they're sitting in there, not receiving any kind of care or treatment other than what the jail is able to provide at a very baseline level, but they're not getting that assistance from the Regional Center. Once they get to the Regional Center, they're then provided medication or treatment, at which point in time the doctor re-evaluates them to see if they're in fact restored to competency, or if they need additional treatment or medication. The reason I lay all that out is, at the end of all of that, if they are ultimately found to be competent, they're brought back to competency, they then get shipped back to the jail and they stand trial, where they have to answer for the charges that have been charged. So, in the circumstance that we're talking about, it would be enhanced-- an enhanced assault to a felony for this incident that happened during a mental health episode where they were perhaps not competent. All of this results in people sitting in jail and taking up space in the jail at the taxpayer dollar for a long period of time. There is a system in place to deal with this, but it is not quick, it is not necessarily efficient, and it certainly doesn't exempt anybody from these charges. And myself and others in this body have represented those people and seen the harms that come about to society as a whole when those folks are not provided actual rehabilitation. And so, ultimately, colleagues, what I'm trying to highlight is what we're talking about here is simply increasing punishment without actually helping address any of the underlying issues that the folks that we're talking about deal with, whether it's mental health problems or substance use disorder, and we're not actually addressing any of those problems which create a safer community. So if, in fact, we, as a body, do care about community safety-- which, again, I think is paramount-- we need to make sure that we're funding and properly providing things like housing, things like mental health care, things like substance abuse treatment, which actually help protect society as a whole and fix those underlying problems. Thank you, Mr. President.

DORN: Thank you, Senator Duncan [SIC]. Senator John Cavanaugh, you're recognized to speak next.

J. CAVANAUGH: Thank you, Mr. President. Good afternoon, colleagues. So, I rise in support of the bracket motion, and I guess I don't know

where I'm at on AM767 yet, but opposed to LB322. And I, actually-- well, I've talked about this a few times and my reasons for my opposition, but one of the reasons for my opposition is tied into that today is April 15, which is, everybody I think knows, Tax Day. One of my colleagues told me they haven't filed their taxes yet, so if you haven't, get out there and do it. But I would expect to hear something from our constituents about the missing year. I pulled up the Nebraska Examiner article from September 8, 2024, a missing year, no income tax credits for Nebraskans to offset school property taxes paid in 2024. So, I bring that up, obviously, because today is Tax Day where folks are filing their taxes, and some people, when they file their income taxes this, this year, up and until today on time, will discover that they are no longer getting an income tax credit for their property taxes paid because LB34 from the special session shifted that to an ongoing tax-- property tax reduction on your property tax bill. And I'm-- I think it's relevant to this in the sense that we talk about pri-- what our priorities are. We have a cash shortage or we, you know, have a, a deficit, and then the other Senator Cavanaugh says something that it's, it's a manufactured deficit because of the way we're choosing to spend money. And during the special session, I brought a bill specifically to take the funding from the Perkins County Canal and apply that to cover the missing year that was-- would have been-- would have happened as a result of front-loading LB1107, which is what we called it at that point in time. And so, it was a known factor; I brought the bill as an option for a funding mechanism. I know that one bill had the front-loading in it; obviously, LB34 ultimately had the front-loading in it, and I remember Senator Day had a bill that had the front-loading in it. And so, I brought that bill as an option to pay for the front-loading of LB1107 going forward. And I did-- I have a recollection that Senator McKinney also brought a bill to take the money from the new prison construction fund and use that for front-loading of LB1107, or for property tax relief. And so, it's a known-- it was a known problem. Those chickens have come home to roost now. Everybody-- every Nebraskan who didn't prepay their property taxes in 2023, was unable to claim the credit that extra-- that year early, did not get the credit this year and now is getting it on their monthly, but did not get a property tax credit for property taxes paid in 2024. They're getting it going forward. And again, the reason I point this out is we have made certain policy decisions in this state, including obligating huge amounts of money to the Perkins Canal, we've made policy decisions to obligate money to build a new prison because of the prison overcrowding that we are experiencing in our current penitentiary system under our current penalties. And of course, we all know that building the new prison, we

will still have a system that is overcrowded, even with the new prison. And of course, we were promised when we allocated the funds to build the new prison initially that we would decommission the old penitentiary. We are now have heard that that is not going to be the plan, we will not decommission the old penitentiary, so we will just continue to operate this expansive carceral system. And one of the reasons is we are not doing enough to decrease the number of people, and the duration of stay, and the return of incarcerated individuals once they finish their sentence, go back into society, and making sure that they do not reoffend. And so, these are policy decisions that we make; they lead to huge costs, which then prevent us from giving these tax cuts that we know our citizens want. I think our citizens would rather pay less in taxes and have less crime and fewer people incarcerated. I think that's a simple thing. I think we can all agree that those are things people would want. But what that means is rather than taking the shortcut answer of increasing penalties, it requires a more thoughtful approach of finding underlying causes, investing in early intervention, investing in diversion, investing in problem-solving for people, housing stability, drug and alcohol treatment, mental health supports, all of those things that help people get out of the criminal justice system. So, I'm out of time, but I support the-- or, I'm opposed to LB33-- LB322. Thank you, Mr. President.

DORN: Thank you, Senator John Cavanaugh. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. Rise still-- well, I rise in support of the bracket motion and also in opposition of LB322. I did bring a bill in the special session to reduce the prison population for property tax relief, and to, you know, early, early parole discharge and those type of things. And I brought the bill because we could save a lot of money, a lot of taxpayer dollars, if we reduced our prison population. And I think that's something we need to discuss, mainly because bills like this will add to an overcrowded system. And that's not something to look over because we're currently in a budget deficit, and if we're in a budget deficit and we're going to pass bills that are going to increase that population, and we know the forecast, one, is saying that the prison-- the-- it's not a replacement, so I won't say that-- the new prison will be overcrowded day one, and there's projections that say the deficit might be worse by 2028 as far as the fiscal, the fiscal health of our state. We should factor all these things in, and that's why I brought the bill. But on this [INAUDIBLE] bill, as I stated before, one, it will increase incarceration rates. Felony reclassifications will likely

result in longer sentences, especially for third-degree or bodily fluid assaults. This will disproportionately affect individuals in jails. Two, high prosec-- higher prosecution and public defense burden. More felony charges mean increased court time, jury trials, and pressure on public defenders and prosecutors. Who's going to pay for this? Remember, we-- well, I didn't, I didn't-- I don't-- I didn't support that, but there was a cap put on counties, and I don't think court costs fall in the public safety exception. It might do. Maybe it got cleared up, but I'm not sure if it does. And building more prisons, I don't know that-- I don't know if that falls in the public safety exception, either. I thought that was just for police. So, who's going to pay for the increased jail costs if the counties are-- county jails are filled up? No, you know what's going to happen? They're all going to get sent to the state prisons, which are overcrowded. And who's going to pay for that? The taxpayers. And remember, there's reports and data that says sentence enhancements cost taxpayers significantly yet provide minimal-- again, minimal public safety benefits. I'll repeat it again in case people didn't hear me or were ignoring me. Sentence enhancements cost taxpayers-- if you're listening, taxpayers-- it costs taxpayers significantly, yet provide minimal public safety benefit. So, it will feel good for some people to pass this bill, but in reality, the benefit won't be there because it won't. A lot of these people in these situations are already dealing with severe mental illness sometimes, or some type of case of, like, mental crisis or trauma. So, one, they might not even fall under the, the categories that this bill is attempting to catch, and two, we're just going to fill our jails up and our prisons with more individuals with mental health and, and, and trauma. And because they're overcrowded, they won't get programming, because that's what's happening now. There's a severe lack of programming. Although they get some, it's not as much as it should, but the problem, the problem is the overcrowding problem and the staffing crisis. So, that's the issue. Because Tecumseh is still under, I believe, a overcrowding crisis or something of the such; I'll get the correct verbiage for that. But what I'm trying to say is we should not pass bills like this. It's very simple, and seems logical that we would vote something like this down. But we're in 2025, and seems like everything is up for debate. Thank you.

DORN: Thank you, Senator McKinney. Senator Juarez, you're recognized to speak. Senator DeBoer, you're recognized to speak.

DeBOER: Thank you, Mr. President. So, I want to talk about one of the cases that I had mentioned on the microphone earlier today; this is State v. Melton. So, for background, before we had the enhancement

statute that we do now on certain health care workers, there was one on police-- peace officers, I believe it was called. So, the same situation which later got expanded to be for healthcare workers was originally just for peace officers, police. So, this is the case State v. Melton, 477 N.W.2d 154 from 1991. It's also found at 239 Neb. 576. So, in that case, Melton was, quote, unconvinced that the evidence supporting the jury's finding that he is guilty of violating Nebraska Revised Statute 28-931(1), assault on a peace officer in a third degree. Donald Melton appealed that conviction. For that felony, the defendant was sentenced to 18 months in prison-- imprisonment, the sentence to run consecutively to the sentences imposed upon Melton on other charges-- he had damaged some property, as well. We affirmed the defendant's conviction on the assault charge. So, the story is-- and it's kind of a wild one-- around 6:30 p.m.-- this is from the case-- January 6, 1990, a police officer and a deputy sheriff, while investigating a stolen trunk-- truck report, observed Melton underneath a truck located in close proximity to a tire store in Geneva, Nebraska. So, he was underneath the truck. The vehicle under which Melton was seen matched the description of the reportedly-stolen truck. As the officers approached Melton, he began walking away from them. I don't know how he got out from under the truck and got up, but at that time, the defendant told Geneva police officer James Gewacke that he was going home. Upon the officer's request, Melton accompanied Gewacke to the sheriff's office. Melton was not placed under arrest. The two law enforcement officers testified that they merely wanted to talk to the defendant about the stolen truck. Inside the sheriff's office, Melton began to take off his jacket. As he was doing this, Deputy Sheriff William Hogue, who had gone to the sheriff's office and was standing behind the defendant, observed that Melton was wearing a type of kitchen paring knife on his belt. Hogue reached forward and asked the defendant for the knife. Melton spun around. With an open hand, the defendant slapped Deputy Hogue on the right side of his face. The force of the blow knocked the eyeglasses Hogue was wearing 10 to 12 feet across the room. So, it was not a light slap; it was a real slap. The defendant then slapped Hogue a second time, again on the right side of the deputy's face. When Melton attempted to strike Hogue a third time, the defendant caught a portable radio microphone attached to Hogue's lapel jacket. So, he got caught in the microphone that was attached to the lapel. Hogue testified that, following the first blow, he felt pain and numbness in his right cheek. Following the presentation of the state's case in chief, the defendant moved for a directed verdict, claiming that no evidence had been presented showing that Deputy Hogue had been acting in his official capacity when he was struck, and there was no evidence that Deputy Hogue

sustained bodily injury. When the motion was overruled, the defendant rested. After the jury was instructed, the case was submitted to it. The jury returned a verdict finding Melton guilty of assault on a peace officer, third degree. On appeal, Melton does not assign error or discuss whether Deputy Hogue was acting in his official capacity as a peace officer when he was struck by the defendant. To be, to be considered by the Supreme Court, an error must be assigned and discussed in the brief, so they don't consider that. In this court, the defendant claims only that the trial court erred in submitting the assault on a peace officer in the third degree charge to the jury. Melton argues that there was insufficient evidence that the Deputy Hogue suffered bodily injury as a result of the defendant's conduct, and that, thus, the evidence was insufficient to convict him. Section 28-931 provides in part a pert-- person commits the offense of assault on an officer--

DORN: That's time.

DeBOER: --in the third degree-- thank you, Mr. President.

DORN: Thank you, Senator DeBoer. Senator Duncan [SIC], you're recognized to speak.

DUNGAN: Thank you, Mr. President. Good afternoon, again, colleagues, those who are still remaining in the room. I understand there's a lot going on. I think we have some exec sessions happening right now, and I think some people are taking care of some other work. But there's about 10, 10 senators, maybe 11 in the room right now, so I just-- I always think it's interesting. I was talking with some folks over the lunch hour about how they came and they were up in the balcony watching us, and they were surprised by how many side conversations are happening, and how few people are, are here in the room sometimes. And I was a little surprised, too, when I came in, but I understand people have work to do. But I just-- I think this is an important conversation to have, so I hope our colleagues are still listening, even if they're in their offices getting work done. I wanted to highlight this time, I guess part of my issue with this bill is simply that I don't think it achieves the goal that it seeks to fix, right? So, the idea-- I think we've talked about it a little bit already today, but the idea of this bill is if we increase the penalties, it's going to result in less of these offenses happening, thereby creating a safer work environment for the individuals covered by the underlying bill and the amendment. I understand there were some individuals that came and testified at the hearing about some of their experiences, and certainly, I think personal experiences are helpful in hearing about

how these things work and what the side effects and the ramifications are, but I also think that we need to make sure we're making decisions based on data and not simply legislating off of anecdote. I understand that people may feel safer with an increased penalty, but if we're going to actually be smart in the way that we approach these problems-- which, again, are real problems-- I think we have to make sure we're doing so in a manner that actually has a, an effect. So, we talk a lot about deterrence. I, I wanted to briefly dive into this idea of deterrence theory. So, there's obviously different penological goals, which means reasons for punishment, right? You have punitive goals, which is just pure punishment, retribution, revenge, things like that; you have rehabilitation as a penological goal, which means we're going to try to help to make somebody better, or fix the issues that led to the problem; you have incapacitation, which is we're literally going to stop you from doing the thing that you did because we want to help society; and then, you have deterrence, and that is we're going to create a penalty or have this punishment deter you from committing that crime, either in the future or at all. My understanding is this comes from sort of a long-held theory of deterrence that was originated back, I think, in the 1700s that talked about whether or not people would commit a crime or not commit a crime based on, as Senator DeBoer pointed out, the likely punishments, and that we live in a civilized society. This received kind of an update with regards to how the theory is thought about, back in the 1960s when an economist-- not a criminologist, but an economist-- named Gary Becker published something called "Crime and Punishment: An Economic Approach," wherein he talked about we as a society having particular traits specifically as rational actors that will lead to us not making certain decisions if we believe there will be certain consequences. And he identifies in there a number of different factors that play into whether or not a deterrent is actually effective. Now, what we talk about here and what I think a lot of people think about when they think of deterrence theory is the severity of the punishment; how severe is the punishment? And if we make that more severe, it's going to lead to less people wanting to commit the crime. I think that that shows a misunderstanding of what deterrence theory even really gets at. And I'm not saying that we all necessarily have to believe in deterrence, deterrence theory, because there are certainly problems with it, right? Deterrence theory, at its heart, assumes that we are rational actors and that we are making decisions based on what is right and what is wrong. Take, for example though, a lot of the circumstances that we're discussing here, which is we're talking about people who are undergoing mental health episodes, substance use disorder issues. So, the idea that somebody's able to make a rational

decision is not always true. But if you assume that we are rational actors and that rational actors are the ones who are making these decisions, there are actually three individual sort of arms that you can look at with deterrence. One is severity, but the others are celerity, the speed with which the punishment happens; and then the third-- which I think is most important, which I'll probably talk about here again because I'm running short on time-- is certainty. Severity, celerity, and certainty. How certain are you that you're going to actually get caught? And what a lot of the data has shown is increasing the severity, the, the amount of the punishment, does not have a deterrent effect. The only maybe minimal demonstrative deterrent effect that we see comes from somebody believing they're going to get caught. And this bill does nothing to change that; it simply increases the severity, which I think means it does not have a true--

DORN: Time.

DUNGAN: --deterrent effect. Thank you, Mr. President.

DORN: Thank you, Senator Duncan [SIC]. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. I rise in support of bracketing the motion to June 9, 2025. So, we've heard this before, we'll hear it again, that this is not a deterrent. I, I was remiss. I, I must apologize to my colleagues who are former hospital administrators that I should have included hospital administrators under the category of people who should not be punched in the face, at least not today. No, nobody should be punched in the face. So, I-- my, my dear friend and colleague, Senator Riepe and Speaker Arch are both former hospital administrators, and I, I just feel awful that I would have indicated to either one of them that I thought that that would be acceptable. So, for the permanent record, hospital administrators should not be punched in the face. Well, yeah. You know. I guess you can do a case-to-case basis, but I-- I'm-- I tend to just err on the side of don't punch people in the face. That's my general rule, and so far, it's served me pretty well in life. So, there you go. I, I, I, I know Senator Clouse knows that I am not in support of his bill. I'm not in support of enhanced penalties. I want to see judicial reform; I want to see sentencing reform; I want to see our prison population go down and investments in community corrections; I want us to look at the study that we had done in 2021-2022, I think it was, with CJI; I want us look at what Texas has done, and they've saved, saved billions of dollars in their judicial reform, and I know we can do it. I don't

think that enhanced penalties are the way to do it, and I think that the population that this is going to impact the greatest are going to be vulnerable populations of people who are mentally ill or developmentally disabled, and that's a huge concern for me. And we already over-incarcerate mentally ill individuals. And so, adding an enhanced penalty that's going to primarily ensnare mentally ill individuals, I think it is not the direction that we should be going in with our judicial system. I would much rather see something like Senator Holdcroft has a bill on-- I think it's paroles. I've asked around about bills that are going to help with our correctional overcrowding, and I was told that Senator Holdcroft has a bill that is most likely to do something to help impact lowering our prison population this year. We have passed bills in the past that were then vetoed. We did a whole, like I said, CJI study with Senator Lathrop and Senator Geist that we then had late night-- I would-- arguments, debate, differences of opinions. It was spirited. It was very spirited. But ultimately, we haven't done sentencing reform. And Senator Holdcroft, I hope you know I gave you a shout-out on your bill. So-- but we haven't done serious, deliberative sentencing reform. And we should, especially if we want to be a good steward of taxpayer dollars. We should be spending less on our corrections system. Not only should we be spending less, but I had a bill this year that would require all incarcerated individuals be paid minimum wage for the jobs that they do, and it had a very large fiscal note, and it just shows how much revenue we're taking out of the workforce and how much income tax we're taking out the workforce. So, I remain in opposition, and I support MO107. I actually haven't looked at AM767, so I might do that now, before I have another turn on the microphone. How much time do I have left? 22. I heard-- I-- for the record, he said 22 seconds. OK, well, that's probably pretty much it. I was going to ask Senator Dungan, or "Dugan" to yield to a question, but maybe I'll do that one time when I give him more heads up. Thank you, Mr. President.

DORN: Thank you, Senator Machaela Cavanaugh. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. Well, so again, I rise in support of the bracket motion and opposed to underlying LB322 for a number of reasons, including that I think it does not actually solve the problem it seeks to solve. And I think a lot of those points have been made. And I, the last time on the mic, mentioned that today is April 15, Tax Day, which is-- meaning that everybody should, if you haven't filed your taxes yet, get out and file them. All the, the pages up here, you guys probably get a refund, so make sure you file

them. You get some cash back, I imagine. It's always the best time of year, when you were a young person and you got money back and didn't have to pay more. Gets real when you get older and you didn't do enough withholding. But anyway. So, a lot of Nebraskans used to file on their taxes, and they would get money back because of the LB1107 fund, and we changed it during the special session to front-load it. And when we did that, we didn't make sure that everybody still got their 2024 tax credit. Some people did, if you prepay your taxes in the previous year and then claim them-- if you claimed them on your 2024 income tax, you got your 2024 property tax credit. Not everybody does that; most everybody doesn't do that, so there were a lot of Nebraskans in the last several months who probably discovered that their taxes-- they either got smaller refunds or owed more money than they expected because they didn't get the tax credit, but they're getting it going forward. And I said that I brought a bill to help pay for it, because it was a known problem during the special session because it was a known problem during the regular session before that. And so, I brought a bill to shift the funds from the canal to help cover that. And, as Senator McKinney pointed out, he didn't bring a bill to defund the prison, he brought a deal to decrease the population to save us money. And so, those-- that's-- well, the reason I'm bringing it up is that two things are tied. As we increase penalties, we increase the duration of incarceration, the number of people incarcerated, and we end up paying for it through our taxes at the state level, our property taxes at the-- for the county jails, and those things. And the other thing I wanted to talk about is the Auditor's report from yesterday. I know all the press covered it yesterday. I hope folks here have had a chance to take a look at that, or at least the press coverage where the Auditor said, one, that we have at least 100-- or, \$1.5 billion in liability for approved Imagine Act projects. We have somewhere around the-- in the neighborhood of \$650 million in uncollected or disputed taxes that are owed to the state, and there are a, a large number of these projects that are not subjected to an audit, meaning-- so the Imagine Act requires, you know, certain benchmarks be made in terms of jobs created and investment and things like that. And the audit would be where the Department of Revenue checks to make sure those benchmarks are actually being made before they give those tax credit incentives. And so, we have this huge liability. Again, I think he says it's a minimum \$1.5 billion in the next couple years, which I heard-- I think in the paper, Senator Clements said he thinks that the, the Forecasting Board takes that into account. But I would again say it's an estimated minimum \$1.5 billion, which-- I don't know how you take into account something that's, you know, shifting like that. But there's all of

this money out there. We're going to have conversations going forward on how to pay for the things we have, the ongoing obligations, including this expanded prison, carceral system. And we're talking about raising-- my colleague in front of me here has a couple bills to raise taxes on small businesses, on pop and candy, and on things to help free up some money for more property tax relief. And, of course, before we start raising taxes on working Nebraskans, we should make sure that we are collecting the taxes we are already owed, that everybody should pay their fair share, and that the cor-- these corporations that are getting these massive tax breaks are actually providing the, the return on that investment that we are expecting. We should be auditing them to make sure; we should not be giving these tax credits before we make sure and confirm that they have providing that sort of investment. So, I think that we can all agree that those are types of things that Nebraskans would like us to do. But again, if we're increasing penalties, we're increasing incarceration. We have to pay for that, and that's another place we can save money by incarcerating fewer people. And LB322 just increases the number of people we incarcerate; it does not actually help us solve the problem of why someone is, is committing these offenses. And so, I'm opposed to LB322 because it-- though it has a laudable goal of decreasing assaults, I don't think it achieves that goal. So, I'm opposed to LB322, I'm in favor of the bracket motion. Thank you, Mr. President.

DORN: Time. Thank you, Senator John Cavanaugh. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I rise in support of the bracket motion. And I, I actually rise with frustration, and I apologize if I come off wrong on this. I'm going through LB322 and also LB26, and I don't see a fiscal note. I don't see a request to the Nebraska "Department of Punitive Services" for a fiscal impact. I think that is wrong. I think for bills that increase penalties, there should be a fiscal request about potential impact on the Department of Correctional Services. So, if this bill moves forward, I hope we can see a request to the Department of Correct-- "Department of Punitive Services" about potential fiscal impact on the department. I think we, as senators, deserve to see that. So, if this bill moves forward, we should see, on the updated fiscal note, fiscal impact for the Nebraska "Department of Punitive Services." I think that is fair because there will be fiscal impact, and for us not to be able to see it, especially with a bill that is increasing penalties, we-- I don't think that's fair. Because people could stand up and say "oh, we're just passing a bill and it's not going to have any impact," and technically, they could say they're right because, according to the fiscal note, there

is no fiscal note. But I would guarantee if there was a request to the "Department of Punitive Services" or our county jails, they would tell you there would be a substantial fiscal, fiscal impact. And for, for that fiscal impact not to be shown on LB322 or LB26, I think that is unfair to senators and unfair to this debate. So, if this bill does move forward, I expect to see a fiscal statement from the Nebraska "Department of Punitive Services" and our county jails, all 93 counties. I think that is fair and that is not an unreasonable request. But also, you know, I received an email from a retired licensed mental health practitioner, and, and he pointed out something. He, he states, exactly how many of those patients who assaulted a Lincoln Regional Center employee are actually charged? The county attorney generally refuses to file due to the patient in the mental health facility will simply say they are not guilty by reason of mental illness or defect. So, the people that these bills are targeting can't be charged in the first place, and that's what we've been trying to point out. This bill does nothing but make, make people feel good that they passed something. It's not going to help anybody. All it's going to do is increase penalties, charge people dealing with mental health situations with felonies, send them to county jails. Then county jails, especially in, in rural Nebraska, are going to say, "We don't have the capacity to deal with these individuals," so they're going to send them to state penitentiaries that are already overcrowded and understaffed. So, that is an increased cost to taxpayers that we're not discussing, and that's why I think we should see a fiscal impact for these bills. So, if this bill moves forward, we should see a request from our Fiscal Office to the Nebraska "Department of Punitive Services" and our county jails-- all 93 counties-- about the potential fiscal impact on them if bills like this pass, because there will be a fiscal impact, and there's no way in the world that they can write and say that they won't see any fiscal impact. They will probably say we can't determine it, but there will probably be an increase. At least let us see that. But for us not to be able to see that, I think that is wrong and unfair to this debate, because there will be an increased cost to taxpayers and counties that you have capped, for example. And I don't think increa-- building more jails and prisons fits in-- well, building more jails fits into the public safety exception in that cap. Maybe I'm wrong, but I don't think building more jails fits into that. So, it is what it is. I just think if this bill moves forward, we should see the fiscal impact on our state penitentiaries and our jails, because I don't see it, and it definitely will be an increase in costs. Thank you.

ARCH: Senator Rountree, you're recognized to speak.

ROUNTREE: Good afternoon, Mr. President, and thank you so much. And good afternoon, colleagues. As we have continued discussion today, we are in a deep discussion about deterrence. In all of our military time, we talk about strength through deterrence, and I'm just still listening to see how enhancement of penalties gives us great strength through deterrence. So, with that time, I want to yield my time to Senator Dungan to continue on deterrence. Thank you, sir.

ARCH: Senator Dungan, 4 minutes, 30.

DUNGAN: Thank you, Mr. President, and thank you, Senator Roundtree. Appreciate that. I, I do kind of nerd out about this a little bit, so it's fun to talk about sort of these academic ideas as they pertain to crime and punishment and why we do what we do, because I think it's important that we as senators base our decisions in some sort of foundation. And we can't just do what makes us feel good; I think we have to do things that actually work. And so, that's, that's why I think talking about deterrence is so important. So earlier, I spoke about the three sort of arms or the three prongs of deterrence theory, which, generally, are certainty-- meaning the likelihood of being caught-- celerity, which is the speed of the consequence. A punishment imposed immediately after an offense, for example, is more effective than one that is imposed a year later, and we see this in all sorts of problem-solving courts. You want an immediate consequence for it to have that mental connection. And then finally, severity, which is the amount, the cost of the actual penalty. So, when we talk about whether or not we deter somebody from committing a crime or doing an action because of an increased penalty, we're focusing almost entirely on the severity arm of the three prongs of deterrence. And I did a little bit of research about this, actually, knowing this bill was going to be coming up, and it's, it's given some pretty interesting analysis. So, for a long time, back from, I think, the original sort of early 1700s, or development of the deterrence theory, it was thought that severity was the most important of those prongs, that severity was what people cared about. But there are certain issues that have arisen with that. We didn't get really good data and sort of, like, actual studies done about whether or not deterrence and the severity of the punishment were, were linked until about the 1960s. And what we saw-- originally, I think, were, were some people who thought that they saw some good data showing that increased punishments actually decreased the likelihood to commit a crime. But when they looked closer at that data, they realized they were only focusing on homicides. So, murders were the only thing they were looking at. When they actually zoomed

out and began to look at whether or not increased penalties had a deterrent effect on other kinds of crimes, both violent and nonviolent, they found that it not only did not deter people from committing the crime, but in certain circumstances, for some reason, it actually had an opposite effect where the increased penalties, they were able to see an increase in people committing some of those crimes. So, that led to an ongoing, I guess, discussion in academia over whether or not the severity actually mattered, and people began to dive deeper into why that was the case. And so, there's a couple of reasons-- some of which I've already touched on, and I want to briefly talk about them again-- that the severity does not necessarily have a causal relationship with deterrence. One of those that I touched on already is we're assuming rational actors are making these decisions. And I say that not as a positive or negative connotation, but a rational actor meaning somebody who is able, in that moment, to comprehend or make a decision. And in a lot of the circumstances that we're talking about here today, but also with, frankly, crimes across the board, we're not talking about people who are making a rational decision based off of should I or shouldn't I do this? What are the consequences? There are any number of instances of mental health issues, substance use issues, so-called crimes of passion that get talked about a lot. In addition to that, there are subjective beliefs about the severity of a crime that don't always line up with the sentence. So, just because we change the sentence in here, it does not change, in an individual's mind, what they perceive the severity of that crime to be, meaning there's no actual causal relationship between those two things. And then finally-- and I'm going to talk about this probably more on the mic next time-- people who serve longer sentences, meaning folks who have been sentenced to long terms of incarceration, tend to not be deterred from higher sentences. So, for example, we've seen that when people go into custody for long periods of time in the prison, it actually increases their likelihood to recidivate and to commit new crimes instead of having that rehabilitative or deterrent effect. And there's a number of reasons for that, but the reason I'm harping on this, colleagues, is what we're talking about here today is simply increasing the severity of an offense and doing that in a way that makes us feel--

ARCH: Time, Senator.

DUNGAN: --like we're making an impact, when in reality, I don't think the data supports that. Thank you, Mr. President.

ARCH: Senator DeBoer, you're recognized to speak.

DeBOER: Thank you, Mr. President. I, a long time ago, was reading this case, State v. Melton, because I think it's really instructive, about the police officer who was slapped very, very seriously. In fact, it was a double slap. He was really slapped, slapped enough that his glasses were knocked off of him. And then, he was slapped a second time. And he was given 18 months imprisonment under the enhancement statute, the same one that we're considering adding the pharmacists and every hospital worker to today. And Section 28-931-- which is what we're talking about-- provides in part, "a person commits the offense of assault on an officer-- in the third degree"-- now we're adding pharmacists and others-- "if he or she intentionally, knowingly, or recklessly causes bodily injury to a peace officer"-- this is the court quoting this-- "while such officer-- is engaged in-- performance of his or her official duties." Deputy Sheriff is a peace officer, physical pain is bodily injury as defined by Nebraska Revised Statute. Hogue-- that's the victim-- testified he suffered physical pain of a-- as a result of Melton slapping the deputy's right cheek. The blow was forceful that it knocked the glasses Hogue was wearing. From Deputy Hogue's testimony, the jury could find beyond a reasonable doubt that Melton caused bod-- bodily injury to the deputy. Melton's assignment of error is without merit. So, the court upholds the conviction of a guy who slapped someone. He really slapped him; I'm not going to argue against that. He slapped him. There was no long-term bodily damage to the guy, and he's got a felony where he goes to prison for 18 months for that. And that's what we're kind of talking about here, right? This would make all assaults on the folks that we're trying to cover within this statute-- the additional folks, the pharmacists, the groundskeeper at the hospital, the kitchen staff at the hospital, as well as the people who are working with patients in the hospital-- this would make that a felony. Automatically guaranteed, lowest you can get is a felony; you can't get below a felony for assaulting these folks. And the problem that I have is the kind of arbitrary nature. Because I could be standing next to Senator Lippincott, who just walked in and so therefore got used in my hypothetical-- so, I could be standing next to Senator Lippincott in a hospital. If Senator Lippincott is employed by the hospital-- he's-- maybe he's a-- would you like to be an accountant? He's an accountant, and he's there on official accounting business auditing the books somewhere, and he gets slapped and I get slapped; it's a felony for hitting him, and it's not if I'm not employed by the hospital. And this is the kind of arbitrary nature that we want to work against. Because when the people of this state see the arbitrariness in our criminal code and they say, my goodness, a felony for a slap? That seems disproportional. I don't understand the policy reason behind that. Then you have the failure of

the system to self-govern, to self-police, because folks faced with arbitrary rules say, throw up my hands, I can't do anything. And nobody knows all the rules that we make here. So if the rules we make are so nuanced that standing next to somebody, one gets slapped, gets a felony; the other gets slapped, isn't a felony-- people can't make heads or tails of it, and it starts to undermine the whole system. And that's why I think this matters. I think this matters because we have to support our system. So, it doesn't take much to get a felony if we do these enhancement statutes. The very basic assault, the, the-- no one should have a basic assault, no one should get slapped. But also, is a felony, which-- 18 months in prison, losing your voting rights, can't get a job, can't get an apartment, 95,000 other things that Senator Conrad alluded to. Should that be what happens? Especially if the question of whether it is a deterrent effect long-run-- maybe short-run, there's a deterrent effect, but the long-term nature of the deterrent effect is unclear, at very best unclear, should we be entering into a situation where we have that much arbitrariness in our statutes? Thank you, Mr. President.

ARCH: Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. Colleagues, good afternoon again. I stand yet again in favor of the bracket motion, and opposed to AM767, as well as LB322. I was just speaking, just a moment ago, on the mic about deterrence effect and what problems we run into when we're talking about whether or not an increased penalty actually leads to somebody being deterred from committing a crime in the future. And where I left off was a discussion of whether or not incarceration actually serves as a deterrent effect, or if it has the opposite effect and actually increases the likelihood that somebody is going to re-offend. So, this conversation is entirely situated in community safety. And when we talk to any of the colleagues in here, we talk a lot about how we want to make sure that when folks are released from custody, they do so in a manner that they have been rehabilitated or at least received the care and the aid that they need to fix some of the underlying issues, or to have the supervision that is necessary to make sure that they're going to not commit offenses moving forward. And so, if in fact community safety is paramount, we want to make sure that we're reducing recidivism. We want less offenses when people get out of custody, whether it's jail or prison. Studies have been done at great length that have demonstrated that time in custody, any time in custody, but specifically longer sentences in custody have the effect of increasing recidivism or the likelihood to offend again in the future. These studies go back as, as early as 1958, where there are studies that have been done that show pris-- folks, people who are

incarcerated, who have an average of 30 months of a sentence have a higher recidivism rate than those who served with sentences with an average length of 12.9 months. So, 30 months, for context, obviously, it's about a year-and-a-half. And what that demonstrates is that, across the board, when we have increased penalties and we try to get people to stay in custody longer, as this bill contemplates-- this bill contemplates expanding who can be charged with a felony that can serve up to three years in prison-- the longer they serve in custody, the more likely they are to reoffend or to recidivate once they leave. Now, there's a number of reasons for this. There's, there's studies that have been done, there's theories out there, and I think all of them have some merit. Obviously, there's no single answer, there's no single solution. Some theorists and folks who have written about this have said that when people go into custody, and in prison in particular, maybe they are around other individuals where they're able to learn new activities or to learn new ways to commit offenses. And certainly, somebody who is incarcerated for a long period of time, who doesn't have a long background of familiarity with the criminal justice system is going to be exposed to a number of other things while they're in custody. And we've seen this happen time and time again, especially with youthful offenders, where somebody who maybe is incarcerated gets taken under the wing of individuals and maybe led astray or brought to something that is going to be more problematic moving forward. There's other theorists and analysts who have talked about this, and there's data to support that people who go into custody for long periods of time, who are incarcerated for those longer sentences, like we're talking about here-- they simply hold more resentment towards society upon being released; there's anger, there's frustration. I received a book recently in the mail that actually speaks about the trauma and the, the PTSD, essentially, that is encountered by individuals who are incarcerated, especially for longer periods of time, that goes untreated because those individuals have to consistently live in this state of fear that they exist in 100% of the time. And when you're released from custody, there's this ongoing resentment and there's this ongoing anger, and there's this ongoing belief that it's going to be more difficult for you to reintegrate into society. And then finally, there's also the general theory and belief and data that supports when you're released from custody, life is unkind to you because we've created a system that makes it incredibly difficult for people to reintegrate. Imagine getting out of custody and not having a place to stay, a driver's license, a car, a bus pass, a job, or maybe even a social security card with your number on it so you can start applying for some of those things. So, the longer that people spend in custody, the more

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these issues are exacerbated. And what this bill seeks to do is increase penalties with a deterrent, I guess, as the core goal. And none of the data supports that a simple increase in the penalty is going to achieve that outcome. So colleagues, I, I say again, AM767 and LB322, I think, have a laudable purpose, which is--

DORN: That is time.

DUNGAN: --to protect employees [MALFUNCTION]

DORN: Thank you, Senator Duncan [SIC]. Senator Fredrickson, you're recognized to speak.

FREDRICKSON: Thank you, Mr. President. I will yield my time to Senator "Dugan"-- Dungan. Excuse me.

DORN: Senator Duncan [SIC], you're yielded 4:45.

DUNGAN: Thank you, Senator "Friedrieckson." I appreciate that. So, what I was saying, too, colleagues, is these bills, I think, again, have a laudable purpose. They have a laudable goal, which is to protect individuals when they're at work, doing what I think is, is frontline work that we all know is important. But it doesn't achieve the deterrent effect that we want it to have. Now, there are some other parts of deterrent theory that I think have a little more merit, according to the studies that have been done. And these are some of the, I guess, academic analysis that have done that pertain to the speed with which a particular punishment comes after an offense; that's that celerity we talked about. And there's also some merit to the certainty, which is the fear of being caught, or the fear of apprehension. Now granted, those are things that are a little bit more difficult to address in the Legislature because it's harder for us to necessarily change those things, but those are solutions to a problem that I think can be fixed on the ground level. And I, I think that doing what we're doing with LB322 and AM766-- AM767 simply fail to achieve our goal. One other thing I wanted to touch on as well, which I think Senator McKinney highlighted very well in his comments-- and he's made these comments multiple times-- is the cost to society with these bills. And that's not the cost as in sort of the, you know, metaphorical "does it harm us, does it not?" I certainly think there's an argument to be made that it does when we seek to lock up those among us who simply need help or assistance, such as the DD population or the mental health population. But I'm talking about the actual cost, the monetary expense to the state when we seek to incarcerate people for a longer period of time. We talk a lot about the jail-- I'm

sorry, the prison. We talk about the state prison in here. And again, Senator McKinney's been a fantastic leader, talking about the expenses to the state, both in the construction of a new prison, but also on the day-to-day cost of having people housed at the Department of Correctional Services who are currently unable to access even all of the baseline services that they need. But what sometimes gets lost in the wash with these conversations is the cost to the counties. Right? We hear day in and day out, time and time again, that property tax is one of the most important issues that we need to tackle, and I agree with that. My priority bill this year deals with the homestead exemption and disabled veterans, because I genuinely believe and have talked to constituents that we need to do something about property taxes; targeted property tax relief. But when we talk about spending, and when we talk about counties tightening their belt or reining in what they do or don't spend money on, it seems like these issues fall through the cracks. The reason that I've been sitting here highlighting the data that I have from the Lancaster County Department of Corrections, as of the most recent data that I got from February of 2025, is that they are completely packed to the gills. They are overcrowded. They're literally sending individuals to other counties to be housed because they don't have the room. That's not free; that costs money to the taxpayer. And the more that we have people in these beds, and the more we have that we people going through the system, it costs each and every one of us here in Lancaster County or Douglas or Sarpy or Cherry or wherever you're from-- it costs you more money. And so, if the question is, how can we spend our money smartly? How can we invest our finances in a way that actually results in achieving safer communities but doing so in a way that is economically efficient, we need to be looking towards other programs, things like upstream investments in mental health care-- not cutting our budget as it pertains to the regions, not cutting our budget as it pertains to mental health programming, not cutting our budget as it pertains to substance use disorder treatment. All of these things lead to the ultimate goal of safer communities and less incarceration. But what we're doing is we've just turned on the money hose, and we're trying so hard to just fund the jails who are already overcrowded instead of addressing the problem. So, my concern is that AM767 and LB322 seek to further crowd the jails, clog the court system, and create an ongoing issue that we're not addressing at its root cause. So colleagues, I would encourage you to vote no on both of those, or simply vote green on MO107, which is Senator DeBoer's bracket motion. Thank you, Mr. President.

DORN: Thank you, Senator Duncan [SIC]. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. I was wondering if Senator "Dungeon" would yield to a question. Would Senator "Dungeon" yield to a question?

DORN: Senator Duncan [SIC], will you yield a question?

DUNGAN: Yes.

M. CAVANAUGH: Duncan. Do you like doughnuts? That wasn't my question, but do you?

DUNGAN: I do, yes. Dunkin Doughnuts, in particular.

M. CAVANAUGH: Oh, great. I have, actually, Hurts Donuts in my district. That's a good one. My question, however, was about affirmative defense. Can you explain to me what that actually means, as it pertains to this bill?

DUNGAN: Yeah. So, to put it simply, the criminal justice system currently-- the burden to prove that somebody's guilty for a crime falls entirely on the state. Right? That's just the way that our criminal justice system is established for time immemorial. It is up to the state to prove each and every element of an offense in order for an individual to be found guilty of that particular offense. So, for example, you know, in an, in an assault, they have to prove that somebody intentionally, knowingly, or recklessly caused a bodily injury, for example, to somebody. An affirmative defense is a defense that is written into statute where, if the state meets their burden and they prove beyond a reasonable doubt, essentially, that the individual is guilty of all of the essential elements of a crime, the burden then shifts-- so it flips over to the defendant, and it's the defendant's job to then proactively put on evidence in order to argue whatever the particular elements of the affirmative defense are. A good example of this is self-defense. Right? So, in a self-defense case, self- defense is an affirmative defense, meaning the state first has to prove that an assault happened. And then, if they meet all of the essential elements of an assault, if you're alleging self-defense as an affirmative defense, the burden shifts over the-- to the defendant, where they have to proactively prove evidence that they, in fact, were doing so as self- defense, and there's certain elements they have to meet. The burden then shifts back over to the state, and the state has to then essentially refute those things, as well. And

so, the, the affirmative defense is not an exemption. The affirmative defense does not mean that a person is not charged with an offense. It simply means that if that case makes its way to trial, which can take months, if not years, the individual that's charged with a crime is allowed the opportunity to argue that the affirmative defense applies to them, and then ultimately, it's up to the judge or the jury to decide if that's even the case. So, it's an opportunity to argue your side of the case. It-- and it has to be specifically written into statute.

M. CAVANAUGH: And does this bill contain affirmative defense?

DUNGAN: In its current iteration, no. There is no affirmative defense that's being talked about or allowed at this point. I know there's been some discussions about whether or not a creation of an affirmative defense would protect members of the developmental disabilities community if they were allowed to have the affirmative defense to argue, "Hey, I'm DD, this doesn't apply to me." But what that fails to do is fix any of the problems of them getting charged in the first place,--

M. CAVANAUGH: Right.

DUNGAN: --having to go to jail, having to wait six months to a year to a year-and-a-half for a trial, and then it not even being a sure thing if that's actually going to prevail.

M. CAVANAUGH: OK. Thank you. That-- helpful. I'm not an attorney, so I always appreciate when attorneys are willing to answer questions in here. Although, just commenting on yesterday's comments, you don't have to be an attorney to be a good legislator; you can be an attorney and be a good legislator, and you can not be an attorney and be a good legislator. You could have worked for the IRS and be a good legislator. I say that on Tax Day and as a shout out to our dear colleague, Senator Juarez, who used to work for the IRS. Is this like a busman's holiday for you, Senator Juarez? OK. Well, I'm almost out of time. I think-- was that my third time? Yeah, I'm getting head shakes from the pages. Yes, it was. OK. Well, then you won't hear from me again until the next motion. But with that, I'm just going to-- yeah, I'll yield my time. Thank you.

DORN: Thank you, Senator Machaela Cavanaugh. Senator John Cavanaugh, you're recognized to speak. And Senator Machaela Cavanaugh, that was your third time.

J. CAVANAUGH: Thank you, Mr. President. OK, so I was talking about the expenses of the carceral system. I was talking about how, when we make choices to increase duration of incarceration, that we have to pay for it, and that we have a whole lot of things that we want to shift money to. And one of the points I made last time was, as we're talking about our priorities and where we want to fund things that, before we start looking at increasing taxes on working people and small businesses, that we should ensure that we are collecting all of the taxes that are owed to the state and that we're not giving away incentives that are not owed, meaning that we should ensure that we are actually performing the audits of incentive-receiving entities before we give them the tax credits that we think they're owed, but we don't know unless we confirm that. So, I think those are bare minimums before we start talking about increasing taxes on folks. But before we talk about increasing taxes on folks, we should probably try and figure out if we can save money some places. And one of the places that we shouldn't spend money is on incarcerating people that we don't need to incarcerate, and incarcerating people that doesn't serve a broader goal. And I think Senator Dungan's done a really nice job of talking about what the goals of incarceration and punishment are, and obviously, rehabilitation is a big part of that. But Senator McKinney hit on this, about-- we should take into account these changes that we make in the law in terms of their cost. And we try to capture them; you know, we have fiscal notes that they send out to the counties and the cities and things, and, and they send us back things in-- with the notes that say no reason to object or to com-- you know, to contradict. And we've all had the experience where we get a fiscal note from, we'll say DHHS, that says the-- you know, this plan will take 77 FTEs for something that requires maybe one person half day. And so, we all have that problem. So, I brought a bill-- I looked it up; Senator McKinney inspired me to look up my bill-- LB713 that I filed in 2023, which was a bill in an attempt to answer some of these questions. So, what it would have done is created a study to figure out the-- let's see, it would, it would say develop-- this shall include but not be-- not-- but not be limited to development of a correctional forecasting tool with the ability to monitor trends and forecast future correctional population. The tool will be utilized by the committee to project the impact of proposed changes to sentencing, programming, community supervision, or other aspects of criminal justice system, including assisting in the development of fiscal notes for proposed legislation. So, I was-- Senator McKinney, I, I appreciate the inspiration to look down memory lane. I do remember that I had this thought back then, and thought, well, we should look-- when we increase penalties, we should look and see what the cost is.

But we should also have the ability, when we make some sort of change, to say, "What is the savings in this going to be?" And they are hard to, to quantify. Like I talked about earlier, my bill that requires the department to sign everybody up for Medicaid that they're already eligible for, but to make sure that they fill out the paperwork before they walk out the door. And fairly minimal cost for that, but the impact will be great over time because of the number of folks who leave custody who then have their access to medical care, access to their, their meds, mental health meds and things, and access to getting treatment, and then that helps them land on their feet with stability to continue their progress. And so, we will see people being more successful when they return to society and less likely to re-offend, less likely to come back into the system, and so there'll be less cost overall. So, the downstream savings are probably a little ways down the road-- not in a fiscal biennium, but they will be real when they actually happen. But they're hard to quantify, and we, we should get our arms around the savings by doing things the right way, but we should also get our arms around the cost by doing the things the, the wrong way, which-- I think the wrong is increasing the penalty without the real justification, and it's serving the intention of decreasing the number of assaults. So I, again, am opposed to LB322; I'm in support of the bracket motion, and I will-- was this my third time, Mr. President? That was my third time? All right. Well, I guess you'll have to wait to hear from me again. Thank you, Mr. President.

DORN: Thank you, Senator John Cavanaugh, and that was your third time. Senator McKinney, you're recognized to speak, and this is your third time.

McKINNEY: Thank you. Mmm-- talking a lot today. Very productive. But again, I rise in support of the bracket motion in opposition of LB322. Again, I'll state for those who wasn't in here, maybe was in exec session, the data and reports clearly state sentence enhancements cost taxpayers significantly, yet provide minimal public safety benefits. I'll repeat it again in case you ignored me: sentence enhancements cost taxpayers significantly, yet provide minimal public safety benefit. So, I would like the explanation of, hey, citizens, we're going to increase penalties on people and it's going to cost you a lot of money, and we're not going to have a lot of impact. I, I want that to be presented because that's what's going to happen. You know, it'll feel good that more people are included and they'll-- I guess, according to them, some of them will say they-- they'll feel good. But in just practicality, it's not going to do a lot. Not to sound harsh about that. All we're going to do is increase our incarceration rates,

create higher burdens for public defenders and prosecutors. We're going to criminalize unintentional conduct, we're going to create hostile workplace dynamics, and we're not going to save any money. The state, which is in a deficit currently-- well, I, well, I guess-- I don't even-- somebody did tell me earlier this session that we're not actually going broke because we have a billion dollars in cash reserves somewhere, or more than a billion. So, maybe I should stop saying we're going broke because according to some people, depending on who you talk to, we have billions of dollars stashed away. So, maybe I'm wrong. But according to the forecast, we're in a deficit, and we have to figure it out. And I don't think you figure it out, especially this year, trying to increase penalties. I sit on the Sentencing Task-- Sentencing Reform Task Force, and we didn't move on anything. We didn't make any recommendations about sentencing reform because, according to the task force, we wanted to take more time to dig deeper into the data and kind of figure out what actually needs to happen, as far as sentencing in the state and our laws, because they're clearly out-of-whack. More people are serving long, long sentences, which means people are not getting out of prison. And I'm all for, you know, finding ways to-- smart, smart ways to allow people to re-enter society, contrary to popular belief. So, if people want to do that, I'm all for it. But I don't think we should be increasing penalties, especially on the most vulnerable. A lot of people who are in these health care facilities are dealing with some of the worst experiences of their lives, or going through traumatic situations. But things happen, and-- not to say they should happen, because no one should be assaulted: not a doctor, not a nurse, not a staff member, nobody. It shouldn't happen, but things happen. But we also have to allow for context in the conversation that some people deal with mental illness, for example, especially people at the Lincoln Regional Center. So, when you decide-- whenever we take a vote on this bill, I want you to think about, one, the impact of filling our jails and prisons up with more individuals who deal with mental illness, two, the cost to your counties who have been capped-- our counties are capped-- the costs to the state, and overall, the cost to taxpayers. And we're always talking about property tax relief and making sure we're smart about the taxpayer dollar. I don't hear none of that discussion on bills like this. And I'm hopeful, if this does move forward-- I hope it doesn't-- that we see fiscal notes from the Nebraska "Department of Punitive Services" and all 93 counties about the potential impact of these enhancements. Thank you.

DORN: Thank you, Senator McKinney. Senator DeBoer, you're recognized to speak.

DeBOER: Thank you, Mr. President. Good afternoon again, colleagues. I wanted to tell you, amongst other things, about another lovely constituent call that we've had. My staff sent up this text to me. Had another constituent call and say they have a career of working in group homes, both adult and juvenile; has worked around populations with frequent mental health concerns, and agrees with your position that the protections don't need to be expanded. She wanted to add her voice to your position. So, thank you to that constituent. I don't have their name, but appreciate the calls that we're getting that way from folks who work in these jobs, talking about the fact that these added extension of these felony enhancements is not, is not something that they're looking for themselves. Doesn't mean their whole group, but at least these are people who are doing the job. So, I want to reiterate now, at this point-- because it's been kind of a long time since we've talked about it-- one of the main things that we're talking about here is that this is a ball of snow that's rolling down a hill, and we got to figure out, where do we stop it? Literally, it's snowballing. It started with police officers, and it got bigger and bigger and bigger, and the Judiciary Committee heard bills to enhance penalties for assault to automatic felonies for every hospital worker; you've heard that, that's in the Judiciary Committee amendment; that's AM767, which I'm opposing; for the pharmacists, which is what Senator Clouse has brought here; for referees at children's sports games; in the past, we've heard bus drivers. The list is going to keep going on and on. It-- let me give you this example. In Transportation and Telecommunications-- there are several of you who serve on that committee with me but are not on Judiciary. For folks on that committee, you know that license plate day is a day where we're like, oh great, more license plates. This year we didn't have very many, but over the course of my time here, every year, the committee says we shouldn't add new license plates; there's too many already, we have so many different license plates in Nebraska, we shouldn't add more. And every year, somebody brings a license plate bill, and every year, it sails through. And why? Because individual, without being weighed against the entirety, if you see someone and they say, I want a license plate that says "Be safe around water for kids," you're not going to say no to that. Somebody who comes in and says-- and this is a real story about how we got a license plate-- that their child drowned in a swimming pool, and they wanted to help other kids with awareness and safety around swimming pools, we're going to give them a license plate. That makes sense. You get 40 or 50 people in cute little Czech vests, or-- I don't know what they're specifically called, but traditional Czech clothing, come into our TNT committee, and they say we would like a Czech heritage license plate, and you're

not going to say no to that. And this is where we're at. We're at a place with this enhancement of penalties to automatic felonies for assault where any group comes in, they can make their argument. And, you know, that's a problem because we can't-- we're creating these arbitrary lines. And, and perhaps Senator Hallstrom was right to call me out on my sort of heavy-handed explanation about lobbyists. But, like, if you have the wherewithal to come down here and get your exception, you might get your exception, and then we just have this tattered weave of who is and is not included within these enhanced penalties for assault. We ought to be taking a holistic approach and saying, "What's the problem? How do we get a solution to the problem?" And I want to talk more about that-- I see that my time is, of course, getting-- I can't believe how short five minutes has become today. Somebody is, somebody is speeding up time. But I want to talk about what solutions we might have because I think that's where we need to go next, is talk about-- this does not-- this is not going to be the solution. But what is the solution? So, I'll--

ARCH: Time, Senator.

DeBOER: --talk about that on my next time. Thank you, Mr. President.

ARCH: Senator Hunt, you're recognized to speak.

HUNT: Thank you, Mr. President. Colleagues, I rise today opposed to LB322. I don't agree with making more-- you know, making things that are already illegal and already have pretty significant penalties more illegal. And I also question, you know, where does it end? It's-- it reminds me a little bit of a bill that we often get through Government Committee where different groups of people, like teachers, like law enforcement officers, like healthcare providers, bring these bills to say that they can, you know, remove their addresses from public records and stuff like that for their safety. And then, it's just more and more and groups of people coming in saying, I want to be able to remove my address too for public safety. So, it comes to a point where it's like, OK, why don't we just remove everybody's address because everybody wants to be included in this? And this reminds me of that same exact problem where, you know-- what group of people is it going to be more illegal to hit than other groups of people? And I just think that what we have is fine, the status quo is good with me, actually, and it's also good with my constituents and the majority of people who have reached out to my office. But colleagues, I rise to use some of my time here to raise an issue that I intended to raise yesterday before we adjourned. I was next in the queue, and we didn't get to complete debate last night. But I wanted to raise an issue, not

just to the people of Nebraska but to all of us in this body who took an oath to uphold the Constitution and to uphold the concepts of liberty, justice, and the rule of law that are, you know, within that sacred document. Kilmar Abrego Garcia is a Maryland man who is a legal resident of the United States, who was detained by immigration officials and mistakenly deported to El Salvador despite an order from the Supreme Court that he remain in the United States-- despite a court order that he remained in the United States. And Trump Justice Department attorneys themselves conceded that he was removed to El Salvador because of an administrative error. Our, our administration themselves say that he should not have been sent to El Salvador, disappeared from his wife who's a citizen, disappeared from his children, his child who's a citizen. Admittedly, the Justice Department says we should not have sent him, that was a mistake. On April 10, just a couple days ago, the Supreme Court ordered unanimously, with no dissent at all, that the Trump administration must take steps to facilitate Abrego Garcia's release from custody in El Salvador. The Supreme Court also said the government must ensure that his case is, quote, handled as if-- handled as it would have been had he not been improperly sent to El Salvador. So basically, the Supreme Court's saying unanimously that you got to get this man back, and you have to handle his case with due process, just as you would any other person in the United States of America. Yesterday morning, what finally kind of activated me and motivated me to speak on this, as I have about previous instances of this happening in this, this Trump administration-- yesterday morning, the president of El Salvador or went to the White House to publicly refuse to release Kilmar Abrego Garcia, a man that the United States Supreme Court has ordered to be returned. Let me say that again, clearly. The United [INAUDIBLE]-- Supreme Court issued a ruling; a foreign head of state is openly defying it; and a legal U.S. resident remains in limbo, his rights violated, his life disrupted because of political gamesmanship and fearmongering. In the meeting at the White House yesterday morning, which has been widely shared and widely-- you know, the videos and, and interviews from that with press-- it was basically a press conference in the White House with the president of El Salvador. One reporter asked, you mentioned that you're-- to, to Trump-- you mentioned that you are open to deporting individuals that aren't foreign aliens. Does that include U.S. citizens? And Trump answered, if they're criminals, yeah, that includes them. I'm all for it. Colleagues, your President said on TV that he was open to deporting U.S. citizens. Where does this end? Where do we get to a point where members of Congress and the U. S. Senate and the Justice Department finally say enough? We're going to go down to El Salvador and get this

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man. We are going to grind the operation of government to a halt until we stop these illegal deportations and disappearances. We are at a dangerous, dangerous moment in U.S. history, where the President of United States is threatening to send U.S. citizens to be imprisoned by a foreign nation, and the foreign nation is saying it won't respect our U.S. courts, and it--

ARCH: Time, Senator.

HUNT: --won't release people that it's holding? Thank you, Mr. President.

ARCH: Mr. Clerk, for items.

ASSISTANT CLERK: Thank you, Mr. President. Enrollment and Review Committee reports LB78 to Final Reading, as well as LB295, both having amendments. The committee on-- the Executive Board, chaired by Senator Hansen, reports LR19CA to General File; also reports LR40 for further consideration. LR169A by Senator Brandt; that will be laid over. Government and Military Veterans Affairs Committee gives public notice for a hearing. Senator Lippincott has LR120, LR122, both of those-- excuse me, LR120, LR121, and LR122; those will be laid over. Senator Jacobson's printing amendments to LB474; Senator McKinney to LB288; Senator Clouse to LB258; Senator Bostar to LB468. And the Judiciary Committee will hold an executive session under the south balcony at 4 p.m. Judiciary Committee under the south balcony at 4 p.m. That's all I have, Mr. President.

ARCH: Returning to the queue. Senator Quick, you're recognized to speak.

QUICK: Thank you, Mr. President, and I'll yield the remainder, remainder of my time to Senator DeBoer.

ARCH: Senator DeBoer, 4 minutes, 55.

DeBOER: Thank you very much, Senator Quick. Thank you, Mr. President. So, I promised to talk about what should we do. Couple of things. In the very, very, very, very pragmatic category, what shall we do at this moment in this particular instance, colleagues? I have a suggestion for a way out of this, for the moment. My suggestion is vote down the committee amendment, just do Senator Clouse's bill on pharmacists. I will stand down. I'm not going to vote for it, but I think that is not dispositive of what will happen today. But I will stand down from my filibuster, we'll just do the pharmacists this time. I will ask Senator Clouse, along with Senator Ballard, along

with Senator Kauth who had a similar bill, to work on an LR with me this summer; a legislative resolution for an interim study to look at our assault statutes and their enhancements writ large, and figure out if we can find a way to reduce the arbitrariness and to narrowly tailor what we're trying to do with those statutes to the public policy interests that we all agree are what we are trying to do, and work with me on those things. Of course, anyone else who would like to work with me on these things as well. That's the, like, very, very pragmatic, in-the-moment, "what should we do?" things. So, I would ask that you vote down AM767, which is the committee amendment with Senator Ballard's bill, and use your conscience on LB322, on the pharmacist bill. That would be my ask, I guess, and-- and there we go. But, slightly less pragmatic: what should we do in terms of how we should, as a state, think about our assaults that are happening? One, I think we need to invest in mental health, behavioral health, all of those things that we all know we need to do, because those are situations that are causing these problems. So, I think we need to invest in those areas, I think we need to work on them. That's a big issue; we're not going to solve it in one day, but when we make a dent on that issue, we're going to make an actual dent on these problems. So, that's another thing. Then, another thing is staffing. Some of you who've been in the Legislature for a while, remember in the good old days-- actually, they were the bad old days, in this case-- of the first 4 years of my service, we talked about the staffing emergency in our corrections system a lot. You may recall, we talked about that-- I think it can best be characterized as "ad nauseam." And now, we don't talk about it like that. And you may be asking yourself why, if you do not serve on the Judiciary Committee. And that is because we paid our correctional workers more money, so we got more correctional workers, and our staffing emergency became much, much less of an emergency, and we no longer have people working double shifts. And you know what the collateral consequence of that was? And I really wish I had the citation, but maybe somebody will find it for me. Assaults on staff at the correctional facilities went down. So, think about that: you got more staff, you paid them better, and assaults went down. Why? Because you had more people who could handle the situation because they were not doing mandatory double-overtime four days a week. Can you imagine what kind of a mood you would be in if you were doing mandatory double-overtime four days a week? The slightest little thing, of course, would sort of ruffle your feathers, and you can see how that escalates to an assault. So, we need to staff a lot of places better, and we do that by making sure that folks who are doing the front-line work are getting paid a lot better. That gets people to work. So, those are just the very beginning. My light is on, so-- those were

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just the very beginning ideas I have on how to really address the root causes of this problem. Thank you, Mr. President.

ARCH: Senator Juarez, you're recognized to speak.

JUAREZ: Thank you very much. I will yield my time to Senator DeBoer.

ARCH: 4 minutes, 45, Senator DeBoer.

DeBOER: Thank you, Mr. President. And thank you, Senator Juarez. They're over there execing in Judiciary. I've looked at what they're execing on. For the record, Laurie, I'm all yeses. OK. Yeah, that was an unorthodox way to exec, but here we are. So, what is the public policy we're trying to advance here? And the public policy, I think, is protection, right? But it is protection-- I think what we're trying to get to is where everyone is protected, right? I don't think we're to pick and choose, and say, well, we want to protect Senator Juarez, but Senator Lippincott is a little shady, so no to him; yes to Senator Hunt; Senator Wordekemper, no, we're not going to protect him. Senator Worderkemper was feeling a little left out that I didn't include him earlier, so I had to include him in this hypothetical. We don't want to pick winners and losers. You hear that all the time on this floor, but that is literally exactly what we're doing here when we're saying if you find yourself so lucky as to be someone who assaults a grocery store worker and you don't do serious bodily damage, misdemeanor. But if you find yourself so unlucky as to someone who assaults someone who is serving you food in a cafeteria that happens to be located in a hospital, now it's a felony. Literally that. If I go to a grocery store and I assault someone who is behind the counter at their little-- you know, at Hy-Vee or whatever they have, the little-- I eat there, at their deli counter or whatever, and you get self-serve drinks and it's a, it's a nice-- they have a nice little place. If I assault someone there, not a felony, exact same action, exact same injury, but instead, that cafeteria is located, instead of being in a grocery store, in a hospital; now it's a felony. And what comes with a felony? You heard Senator Conrad earlier, you heard me, you heard Senator Dungan-- or, is it "Dugan" or "Dungeon," or whatever his name is, and you've also heard Senator John Cavanaugh today. The collateral consequences of felonies are real, and they are severe. So, winners and losers, also on the other side of things. If we are truly convinced that there is some sort of deterrent effect that is going to shift the amount of work that happens-- or that shift the number of assaults that happens if only we create felonies as an automatic assault charge, then we are picking the people that we want to have be deterred from being assaulted. We're saying, it's OK to assault

Senator Arch, but it's not OK to assault-- I mean, that-- it doesn't make sense. No one should be assaulted and we should not be picking winners and losers. I forgot before, when I was talking about solutions, another big giant solution, and what I think may possibly explain the original deterrent effect in that short run for those hospital workers is the sign that Senator Lathrop required in law to be put up in a hospital. That sign-- you might have seen them if you've been in a hospital. Unfortunately, this session, I have been. And it-- in, in law, in statute, we say what the sign should say. It says, "Warning: assaulting a health care professional who is engaged in the performance of his or her official duties, including striking a healthcare professional with any bodily fluid, is a serious crime which may be punishable as a felony." Take out the bodily fluid part. I've said this before, let's put those signs in places where we think there are vulnerable people working. Let's put those signs in the buses. It's true. It's whether we pass this bill or not in a hospital about every single worker in a hospital. If the signs are working, let's put the signs out. And which do you think is more likely to work as a deterrent: a sign where people actually see it, your everyday person sees it, or something that we do in the statute books that nobody knows about? The deterrent effect is because of the sign. That's my argument. I don't have any data to prove it; nobody did any studies on that, but the sign is the thing that people are getting communicated with, and it's already true. Thank you, Mr. President.

ARCH: Senator Hunt, you're recognized to speak.

HUNT: Thank you, Mr. President. Colleagues, I'll complete my thoughts that I was sharing on my previous time about Kilmar Abrego Garcia. We're at a very dangerous time in history, where the President of the United States yesterday was on TV, saying that if people are criminals, which, we've already seen that anybody could be a criminal to him, because he's already deported people who have not been accused of crimes, who have not been accused of crimes in any country-- have been disappeared to El Salvadorian prisons. But we are at a time when the President is on TV saying if someone is a criminal, to him, that they could be deported, that he's fine with that. He said that yesterday. And yeah, sometimes he says bombastic things. Sometimes he says things that he changes his mind on, like he did, you know, flip-flop, flip flop on the, on the tariffs in the last month. But this is a very grave thing to say, that he would deport U.S. citizens to a foreign adversary because he perceives them to be criminals. Kilmar Abrego Garcia has never been charged with terrorism. He has never been convicted of terrorism, and yet here he is being treated as if he has by the leaders of two different nations on a global stage.

This is a man with no convictions, no charges, and no due process being smeared in front of the whole world in a press conference in the White House, used as a political pawn between governments. This should raise the alarm for every single one of us, regardless of your party, regardless of your ideology, and regardless of your views on immigrations because this is about human rights and due process and the promise of freedom in our country, and how willing we are to let a government go this far when they decide that someone's rights just don't matter. How is it possible that an American administration with the full weight of the federal government and the Supreme Court order in hand is not only allowing this treatment of a human being but remaining silent in the face of it? How are we, as public servants, not shouting this from the rooftops? Would Cory Booker, who just did a 25-hour filibuster against no bill, to block no policy, to achieve no outcome except looking really nice to raise money for a possible presidential run-- where is he getting on a plane going down there to get this man, this innocent man from what's basically been reported as a death camp in El Salvador? Sent down there with no due process rights. This is what people need to be doing in leadership right now. The entire premise of American justice is that we do not selectively apply rights. The foundation of our legal system is equal protection under the law, and we don't get to uphold constitutional rights only when it suits us, and we don't get to ignore them when they challenge our perspective. Because if rights only count when we like them, when they're easy, then they're not rights at all; they're just privileges, and that's not justice. And I'll be honest with you, this whole situation, situation makes me feel helpless. And Nebraskans, too, our constituents, too, they reach out to me all the time because, you know, I think I'm, I'm very visible on social media and on a lot of platforms that our constituents are already occupying. And they ask me, what is it we can do? What can we do? What can we do? And this has been the refrain, you know, for almost the last seven years of my time in public service, is people reaching out desperately saying "What can we do?" But I've never seen the alarm raised so urgently as it is now. If the federal government can ignore a direct order from the Supreme Court, if there are no consequences when constitutional rights are violated, then what hope do ordinary people have? What's the answer? I saw one U.S. Senator-- I'm going to pull it up here because I saved it. He said-- because I want to tell you the name of him. He's from Maryland, I want to say. OK, he said-- it's Chris Van Hollen-- he said: I've been clear. If the president from El Salvador doesn't want to meet here in D.C., then I intend to go to El Salvador this week to check on Kilmar Abrego Garcia's condition and discuss his release. Kilmar was illegally abducted and deported by the Trump

administration. He must be brought home now. I believe that a massive congressional delegation should join him with international human rights lawyers. The moment absolutely requires this. We have to meet the moment with the urgency that it requires, and that's the level that we're at right now. What's happening is illegal, but we've seen that just because it's illegal doesn't stop them--

ARCH: Time, Senator.

HUNT: --from doing the thing anyway. Thank you, Mr. President.

ARCH: Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President, and good afternoon, colleagues. I rise in support of the bracket motion, and thank Senator DeBoer for her leadership in helping to provide a platform for dialogue about a lot of key issues in criminal justice and criminal justice reform that we, we haven't really had a chance to have a deeper conversation about for, for some time. But I, I, I haven't heard proponents of these measures provide any clarity during the course of this debate about what the ultimate goal and plan is. We know Nebraska is presently in a budget deficit. We know mass incarceration and the State Department of Corrections' budget is growing at a pace that far outpaces what we're spending on education, far outpaces what we're spending on health care, far outpaces on what we're spending on infrastructure. And if we-- we've had study after study after study after study that says you need to make a host of reforms to get a better value for taxpayers, to have a better set of outcomes that actually help keep communities and neighbors safe, you need better access to programs and services so that the 90% of people that serve a period of incarceration, when they return to our communities, they come home more productive with cycles of criminality addressed and hopefully broken. We, we know what to do, but we refuse to do it, and my questions to proponents is this: what is your plan? We have one new prison that is being built. When it opens, we'll still be-- the projections show we'll still be-- we'll still have a system that's over 1,300 Nebraskans beyond existing capacity, even with the new prison. There's been-- with the exception, perhaps, of maybe Senator McKinney's priority bill, which is meant to do some prevention work-- there's been little to no effort to try and address prison overcrowding. And in fact, the clear message emanating from the Judiciary Committee with this measure and others is that we're actually going to exacerbate it, we're actually going to make it worse; we're going to increase penalties, we're going to enhance penalties, we're going to create new crimes. All of that is moving in the wrong direction, and it stands in sharp contrast to what our

sister states are doing and what's happening on the federal level as well, where our sister states and the federal government, under the leadership of President-- then-President Trump, in his first term, actually stopped the pace of, of mass incarceration and, and took modest steps backwards to right-size sentences, to have better access to programs and services, and to have better reentry support to help keep recidivism down and keep people safe. In Nebraska, we're headed in the wrong direction, and LB322 is just the most recent example thereof, and I haven't heard any members of the Judiciary Committee that have talked in support of this measure say what their plan is. The modest but meaningful criminal justice reform that Senator Wayne was able to move through the Legislature in the last biennium is currently under challenge in the courts, at the Supreme Court, by our Attorney General, who helped to negotiate said package of reforms, by the way, then turned around and sued the Legislature over it. But what is the plan? You're adding increased access to felonies for protection order violations yesterday, you've got a host of felonies here, you have a host new felonies in the next bill on the agenda, and then you have a bunch of new felonies coming down the pikes in regard to CBD and Delta-8 and whatever else. What is your plan to address the budget deficit, to address prison spending, to ensure that we're not building two or three new prisons? Nebraskans are not more criminally-minded than our sister states. It's time that--

ARCH: Time, Senator.

CONRAD: --we learned the clear example to chart a better, smarter way.

ARCH: Senator Guereca, you're recognized to speak.

GUERECA: Thank you, Mr. President. I yield my time to Senator Dungan.

ARCH: Senator Dungan, 4:55.

DUNGAN: Thank you, Mr. President, and thank you, Senator Guereca. So, one of the conversations that I was just having with some colleagues off the mic about this actually is a great segue from what Senator Conrad was just talking about, which is we've been sitting here all day talking about the issues with LB322 and AM767, so of course the question-- I guess, then, the next logical question is, what's the solution? What is the answer to the problem? And a colleague of mine walked up and said they've been listening and, and we've been having this debate, and they actually are understanding that LB322 and the underlying policy of increasing penalties actually may not accomplish the end goal of trying to decrease crime, specifically violent crime,

as it pertains to these individuals. But again, that begs the question, what do we do? I think that it's obviously not a silver-bullet solution. If it was a silver-bullet solution, we would propose that, it would pass 49-0, and we would fix the problem. But it's instead, sort of a, a web of things that we need to do and to create in order to, I think, better address a number of the concerns that are leading up to some of these instances happening. Everybody in this Legislature seems concerned and, and worried about folks with mental health issues and substance use disorder, and especially has been highlighted here today the developmental disabilities community not getting wrapped up in these increased penalties. But what we need to do in an effort to then reduce the amount of instances where people are having episodes or, you know, they're, they're acting out based on some of these things that are affecting them, we need to provide support. Right? We need to provide some ability for these folks to have an avenue to get the help that they need. Now again, that's not easy. I'm not saying, oh, we just need to open up one more clinic where we can address mental health needs, or we need to address-- open up one more short-term residential facility to address substance use disorder, but it takes concerted intention and effort focused on these problems, not just by individuals in the community. Our law enforcement, especially here in Lincoln, does a fantastic job of the community-based policing where they go into the communities, and I see them at events in northeast Lincoln, where I represent, talking to people in the community. And not just the city council and the county boards enacting policies that support people who need these assistances, but it-- it's us, in the Legislature. We have to have fidelity to the idea that we need to help those among us who are most vulnerable if we actually are going to lift everybody up and continue to work towards a goal of having healthier people in Nebraska and safer communities. But what we see instead is a desire to cut a budget that is already anemic when it counts to-- when it goes towards behavioral health issues. We have a budget that already, as of the last biennium that I was here, is reducing its support to behavioral health services like the regions, that is reducing its support to issues like substance use disorder. What we need to be doing is finding ways to better support the community with upstream investments that saves us money on the back end by providing, for example, money from the state to ensure that there's crisis response teams, to make sure we have folks going out in the community with law enforcement who are trained in how to de-escalate and, and actually address some of these underlying problems. Find ways as a state to support people going into hospitals or behavioral health facilities and continuing to work on some of that de-escalation. We need more staffing. That's what

Senator DeBoer has talked about at, at great length, is we need more people. But you can't have the staffing if you don't have the funding, and you oftentimes can't have the funding if, we as a state, are choosing to completely cut off funding or, in many circumstances, greatly reduce funding to these areas that need it. So, to simultaneously say we need to fix this problem with LB322 and AM767 by increasing penalties and then, out of the other side of our mouth, say we need to cut funding to the services that actually seek to address the underlying problems, we are being either disingenuous or we are self-sabotaging and neither one of those things are what I think we want to do. So colleagues, I absolutely think there are solutions. There are keys towards better finding these avenues to help the people that we are purporting to help, but simply increasing the penalties does not do that. My heart goes out to the people that are working these frontline jobs and are in some circumstances that are scary and oftentimes dangerous. They're doing the tough work, and we owe it to them to support them by making sure they have the funding they need.

ARCH: Time, Senator.

DUNGAN: Thank you, Mr. President.

ARCH: Senator Hunt, you're recognized. This is your third opportunity.

HUNT: Thank you, Mr. President. I want to continue my thoughts about anyone who says they believe in the Constitution, human rights, due process, needs to get on a plane to El Salvador and bring Kilmar Abrego Garcia home now who's in the federal government, whether that's the Justice Department, the Supreme Court, Congress-- they need to use their resources as leaders immediately and rise to the level that the situation demands, and go get that man. To say nothing of all these students at Columbia University who have been incarcerated for, for similar things, for not breaking any law, not accused of anything. What's happening is illegal. What's happened is illegal, yes. But I think one of the most important lessons for every person to learn in life is that rules and laws are all made up. They're all just made up, and they're only enforceable if the people in power decide that they are. And that's what this has to do with LB322, at the end of the day. We decide, we make up what the law is, who it applies to, who it doesn't apply to, and how we're going to enforce it, and if we're going to enforce it. In the case of Kilmar Abrego Garcia and other students who have been incarcerated for protesting, illegality alone, we've seen, doesn't stop people in power, even with the full power of the U.S. Supreme Court coming down and saying "bring this man home," the Trump administration isn't doing it. How is that not a

constitutional crisis? That's exactly what that means. Saying, well, it's illegal, how can they do that, that doesn't stop the people in power from breaking the law. What stops them is consequences, accountability. And that only exists when a majority of the people in power are willing to stand up, enforce the law, and defend the ideals that we claim to care about. But we don't have that right now. We don't live in that world right now in the United States. We have a system where the law exists on paper but not in practice; where the most powerful people bend the law to their benefit and nothing happens to them. There's no consequences or accountability, because too many people in leadership are afraid to stand up to them, afraid to be bold, afraid to act without permission. Anybody in Congress who says they believe in the Constitution, in human rights, in due process for every American, whether you're a legal permanent resident like this man or a U.S. citizen, as President Trump has threatened yesterday to deport U. S. citizens, needs to get on a plane and go get this man. And I'm sure some of you are wondering, why bring this up here? This is Nebraska. This doesn't have anything to do with this bill. But here's the truth: what happens at the federal level echoes at the state level. When political leaders in Congress, in the executive branch, in the White House can ignore a Supreme Court ruling without any consequences, when they can criminalize someone without a trial, when they can deport someone without even charging them-- who's here legally-- when they silence the people who speak up and exercise their First Amendment rights to protest, then every state, every town, and every voter should be asking "Who's next? Who's protecting me?" Let me tell you, nobody. Nobody. We've passed laws that target people based on their identities. We've filed bills that take rights away from people under the guise of protecting them, under protecting kids, protecting somebody. And we've watched political rhetoric drift from disagreement to outright demonization, and the rhetoric around Kilmar Abrego Garcia is no different. When world leaders casually toss around terms like "terrorist" with no evidence, no trial, no charges, no accountability, they are doing something more than smearing a single man, a man with a wife, a man with a job, a man with kids, they're setting a precedent. And the precedent they're setting is that you can lose everything; you can lose your life, you can lose everything you have not because of what you've done, not because of your actions, but because of who we say you are, because somebody with power, more power than you, decided that you are expendable. And that's not democracy; that's authoritarianism dressed up in a suit, a Brioni suit with a collar gap that don't fit you. We can't let our understanding of justice stop at the state line, because if we don't learn to recognize creeping injustice when it emerges, we, in Nebraska, will be powerless

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when it shows up to our own doors. We should all be able to agree on this. No government, ours or any other one, should be allowed to detain somebody indefinitely, smear them publicly, and refuse a Supreme Court order simply because of politics.

ARCH: Time, Senator.

HUNT: Thank you, Mr. President.

ARCH: Senator Quick, you're recognized to speak.

QUICK: Mr. Pre-- thank you, Mr. President. I yield my time to Senator Dungan.

ARCH: Senator Dungan, 4:55.

DUNGAN: Thank you, Mr. President, and thank you, Senator Quick. So, to continue on the conversation of what we do, what are the-- what is the avenue forward? I think that's oftentimes what people ask. OK, what are, what are the next steps to actually make some substantive change in Nebraska? I've only been here for three sessions, but I know prior to my time in the Legislature, as Senator McKinney and others have talked about, there are a number of organizations or groups that were brought in to do an objective analysis of the state of Nebraska and say with pretty intense specificity what are things that we could change, or what are the things that could modify statute-wise to decrease our prison overcrowding and to create a more, I think, fair system that still keeps us in a safe community but does not result in over or mass incarceration? I think Senator Lathrop and many others were leaders in that, and I know that unfortunately, a lot of those recommendations never made it across the finish line, which is frustrating because we, as a state, pay and ask these objective individuals to come in and, and give us advice and give us, I guess, specific action items for us to act on. And instead, we say, thanks, but no thanks. We don't really want to enact those. And so, we can always go back and look at that. We can look at the actual information that is catered specifically to the state of Nebraska for items moving forward. In addition to that, there are plans. There are outlines that you can find pretty readily available by organizations that are well-respected, that are non-partisan, that are-- that include membership across a wide array of stakeholders. One of those that I've been looking at here over the last day or two is the Council on Criminal Justice, CCJ-- CCJ. CCJ obviously has a lot of partners and advisors, including Crime and Justice Institutes-- which is CJI, which has done work here in Nebraska, Arizona State University, a number of

other academic organizations like Georgia State, and if you go look at some of the things they've recommended, they actually have a plan, a 10-point plan, essentially, which is how we can, overall in cities, seek to reduce violent crimes. And I, I found it very illuminating, so I wanted to talk about some of those here today because I do think it provides us with specific steps forward that we can take in order to achieve the goals that I think LB322 and AM767 seek to achieve. First of all, you got to set a clear goal. You have to commit to saving lives by stopping violence. And I think that here in the state of Nebraska, certainly in this body, we have committed to that goal; I think we all agree that reducing violence is key. Two, you have to identify the key people and the places driving the violence. So, this gets back into the conversation about data and where we can actually identify these issues happening. Because if we're making decisions not based on data, and if we're not focusing our efforts where these, I guess, issues are most prevalent, then certainly we are not doing a service to ourselves as a Legislature because we're wasting our time and effort and spinning our wheels. Three, you have to create a citywide-- this is for cities in particular-- a citywide plan for engaging key people and places. I would venture to say that here, as a state, there should be more of a statewide plan, some sort of committee plan, maybe, from the Judiciary or others of who we can engage and places that we can engage with those key stakeholders to bring them to the table. We have some of those conversations during the interim, but what I would like to see is maybe something more specific, where we have an identifiable list of those stakeholders that we think should be engaged, across the entire spectrum. Four-- and this one that I want to focus on a little bit-- is engaging key people with empathy and accountability. We have to make sure that we're engaging those that we're talking to about this issue in a way that is empathetic. And that sounds a little touchy-feely, I know, for some of the people in this body. I understand that. But if we are talking to those who are most affected by violent crime, be it the victims or the survivors of that crime, or the individuals who have been convicted or charged, if you don't approach this topic with a willingness to listen and understand, to walk a mile in somebody else's shoes, then it's going to be difficult to address the problem. If we do this sort of top-down-- we're going to tell you what to fix and we're going to tell you how to do this-- but we're not listening to the stakeholders and those most affected by the crimes, then we cannot be effective in achieving our goal of reducing violent crime. Five, you have to address key locations in-- using place-based policing and investment. I think I'm about to run out of time here, but if anybody else would like to yield me time, I'm happy to continue

talking about these potential solutions. But five essentially says you have to be policing where it matters, which goes towards that deterrence--

ARCH: Time, Senator.

DUNGAN: --theory of apprehension. Thank you, Mr. President.

ARCH: Senator Conrad, you're recognized to speak. This is your third opportunity.

CONRAD: Thank you, Mr. President. Good afternoon, colleagues. This is a perfect dovetail to my friend, Senator Dungan. I think in terms of solution, the solution, again, is pretty clear when you look at the research and what-- when you look at what has happened in other states and on the federal level. And the good news is-- the bad news is Nebraska has a significant overcrowding problem in our prisons, and it's the most expensive, least effective way to deal with societal challenges, building new prisons and investing in mass incarceration. However, the good news is, because our prison population is generally smaller than many of our sister states, when you start to institute smart justice reforms at each stage of the system, you-- modest reforms, modest change-- a few people here and there can actually make a huge difference in a small system. I had the opportunity to talk about that with then-director Scott Frakes quite a bit when I was leading a civil rights organization in Nebraska that worked a lot on human rights issues related to prison overcrowding. And so, when you look at the solutions, there's not one singular silver bullet, but there's a lot of proven solutions that need to work together. So, the first end is front-end reform, where you make sure that you're not unnecessarily sending folks to lengthy jail or prison sentences that aren't a true public safety threat. So, you're talking about getting the sentences right, which this measure goes in the wrong direction of by creating-- you know, it goes against the, the proven data which shows don't create new crimes, don't enhance sentences for existing crimes, and right-size and evolve and modernize and update your existing sentencing structure, which every report has told us to do. You invest in things like problem-solving courts, veterans courts, DUI courts, drug treatment courts, mental health courts, young adult courts. Each and every one of those options and opportunities are a better value for the taxpayer and have better outcome for the individual and society as a whole, but it does take resources to get the capacity up to where they need. Senator Quick actually has a great bill in this year to utilize opioid settlement funds to expand problem-solving courts; that's a front-end solution. Looking at

opportunities to expand diversion, looking at opportunities to expand prevention. And everybody knows one of the best anti-poverty tools in the world and best anti-recidivism tools in the world is a good job. You actually support people with decent wages and decent benefits, and that helps to ensure smoother, more effective reentry; that helps to ensure people don't end up in the criminal justice system. Those kinds of front-end reforms are critical. Then, you pair that with the appropriate investments for the period of incarceration, and that includes access to drug treatment, behavioral health services, mental health care, GED programs, job training programs, so that when people come out of prison-- which well over 90% of people do, they return to our communities-- they don't come out sicker and more helpless and more hopeless. They come out having paid their debt to society and having an opportunity to reengage in society and be productive. And then, on the back end, you have things like Senator Rountree's measure in regards to access to food, you have job training programs, you have reentry supports. And every single thing that we can do with those proven solutions at each point in the continuum help to keep costs down, get better outcomes for society-- they keep us safer-- and they get better outcomes for the individual who are in those systems and make it less likely that they reoffend. But we're not seeing that same sort of muscular response to smart justice alternatives that are--

ARCH: Time, Senator.

CONRAD: --proven and viable as we are to a continued double-down of policy that extends mass incarceration in Nebraska like this measure. Thank you, Mr. President.

ARCH: Senator Fredrickson, you're recognized to speak.

FREDRICKSON: Thank you, Mr. President. I yield my time to Senator Dungan.

ARCH: Senator Dungan, 4:55.

DUNGAN: Thank you, Mr. President and Senator Fredrickson. I just wanted to continue through those 10 points that CCJ had-- excuse me-- had put forward as potential solutions as a path forward, which I know sound a little broad, but I think that if you actually put in place these 10 tenets, it puts us in a much better position to actually be focusing on the things that we need to be focusing on instead of just increasing criminal penalties and hoping it fixes the problem. We know, again, I-- it bears repeating-- statistically speaking, this does nothing except exacerbate problems that already exist, except put

more people in custody, put more people in prison for longer periods of times, which then increases recidivism, which is reoffending. So, I, I-- I've talked about that ad nauseam today. But then, again, the question is, how do we move forward? Number six on this list of tenets to put in place is to place responsibility for violence reduction efforts at the top. That's a simple way of essentially saying those in power need to focus on violence reduction, because if the ones in charge aren't focusing on that, then it's not going to have the trickle-down effects of actually sort of permeating the rest of the ideas and concepts that they put forward. This is especially applicable at the city level, which is what I think this plan originally was talking about, and certainly has application elsewhere. But if a mayor's office, for example, does not have the goal of reducing violent crime and other sort of stakeholders in the community do, you're never going to be able to put in place policies that actually change that without putting that focus by the top. Similarly, in law enforcement, if the goal is to reduce violent crime-- which certainly, I believe it is amongst a lot of law enforcement-- you have to have those efforts, those units, those reduction units that go out into the community and have those conversations placed near the proverbial top when it comes to the chief or whoever else is in charge of the law enforcement, to make sure that those goals are being met. Seven-- and this is one that I think bears a little bit more attention than maybe some of the others, even. They're all important, but this one is emphasize healing with trauma-informed approaches. Emphasize healing with trauma-informed approaches. Simply increasing penalties and not addressing the underlying problems, which oftentimes are based on trauma; be it acute trauma that somebody's experiencing due to a mental health illness-- maybe it's an acute trauma due to substance use disorder, or maybe it's a larger trauma based on a lived experience, where somebody has lived their entire life in a state of flux and has never known comfort the way that many of us in this body has. If we don't emphasize trauma-based care, we are not going to reduce the amount of violent crime either at large in our community, nor are we going to address it in a more micro-focused level in the instances that we're talking about here with LB322 or AM767. De-escalation often is vital in ensuring that when you're having law enforcement contact with an individual suffering a mental health episode, you want to make sure that you can get them deescalated to a place where there isn't a violent contact that happens. I know the Lincoln Police Department has recently partnered with CenterPointe here in town to ensure that there are crisis response teams of individuals with mental health training and specific abilities to address these acute issues. And the goal, obviously, is to reduce the

amount of officer-related incidents where the officer is placed at risk or the individual they're responding to is placed at risk. Those are incredibly dangerous situations. But when you focus on trauma, when you focus on dealing with mental health, when you focus on the underlying problems, you seek to actually address the issue, and it reduces violence. The last three, which I'll try to get through quickly as I have about a minute left, is to invest in anti-violent workforce development, set aside funding for new stakeholders, and commit to continuous improvement based on data. Colleagues, those three can essentially be lumped together if I could be so bold as to paraphrase and say, fund it, and make sure it's based on real information. We need to be focusing as a state to make sure the upstream investments that we know work are properly funded in order to better address a lot of the underlying issues that lead to violent crime, and we have to be willing to base these ideas on data. We have to be willing to take a good, hard look at the information before us and not legislate based on what's easy, but to make decisions based on what's hard sometimes, which often takes a lot of diving into the data, diving into the information.

ARCH: Time, Senator.

DUNGAN: Thank you, Mr. President.

ARCH: Senator Storer would like to recognize a special guest: Bree Demontigny from Cherry County, member-- a board member of the Nebraska Farm Bureau Federation. She is located under the north balcony. Welcome. Turning to the queue, Senator Rountree, you're recognized. This is your third opportunity.

ROUNTREE: Thank you, Mr. Speaker, and I would like to yield my time to Senator DeBoer. Thank you, sir.

ARCH: Senator DeBoer, 4 minutes, 50.

DeBOER: Thank you, Mr. President. So, a number of people have asked me about the theory of filibusters, which I just would like to briefly address at the beginning here. Somebody asked me, why do we have the filibuster be 8 hours? And technically, that's the Speaker's call, so I can't answer for him. But I will say that, when I was a freshman, we had them be 3 hours on General File, and then you had to show a card that showed that you had enough to overcome the filibuster, and then you could get scheduled for your second 3 hours; it was a six rule-- 6-hour rule. And the, the problem with that system was that in many cases, 3 hours wasn't enough to talk about a complex bill, so things

were inadvertently filibustered under that rule. But additionally, then, things that were intentionally filibustered-- and it was pretty easy to do, 3 hours is really not that long-- those intentional filibusters of 3 hours would end up, then, in a situation that folks could not support a bill, but their, their constituents didn't know that. And there were many, many, many instances where a bill would come up for 3 hours and then a controversial bill would just disappear, and no one would know why or who was the reason that it didn't get supported. So, that system didn't work very well. Initially, my understanding is, when closure was initially put together, it was 12 hours on General File; now it's 8. So, why is it this long period of time that you need to have for a filibuster? Senator Lonowski just-- Lonowski, sorry-- just corrected me when I said, it needs to be painful. It needs to be difficult. And 8 hours is not super simple. It's-- you know, it takes some work to prepare, it takes some to think about ahead of time. It's not super simple. So, you know, the reason for the length of time is one, to make it difficult, and, and two, if you, if you, you know, continue to do it, it's going to take a lot of time, and that's going to have consequences for the session. If it happens once or twice, that's a little different. So, the length of time-- those would be my understanding of the reasons for the length of the time, is so that something is not accidentally filibustered, and also so that it is a difficult thing to do-- to filibuster. If you had a rule where it was just every 3 hours or even 4 hours, things would be inadvertently filibustered when they were complex, and things would be filibustered just by virtue of the fact that it was easy. So, we want to make that difficult. I will tell you this is not something that I would like to repeat every day. This is entirely more speaking on the microphone than I enjoy doing. OK, back to the, the piece at hand here. So, when we're thinking through things that might help this bill or improve it or, in fact, the underlying concept of a, an assault enhancement to a felony, one of the things that I have been saying is putting those signs in more places, but I think it, it goes a little further than that; you should probably also have those signs in Spanish. I have an amendment for this bill that would do that, would put those signs in Spanish as well, because I think that that would help to-- if what we're really after is deterrence, I think that would help to make sure that everyone in the community could read the sign and would know what we're warning against. So, signs in more places. I think we also need to think about focusing who-- I mean, I've said this 17 different ways, but I want to make sure I say it in a way that, that is concise and makes sense, and that is we need to focus who is the subject of these enhancements. So, we need make sure it's someone who interacts

with the public or patients in emergency situations, in emergent situations, in high-tense situations, just narrow in general who constitutes a person who needs to have that protection so that we can balance the interest of providing increased protection for certain folks like police officers with the need to make sure that we are having a rational basis, having a, a clear understanding behind why we're adding those protections in some instances and other instances. So, narrowly limit the number of folks-- in this particular case before us today, I think what we really need to do here is just vote down AM767, the Judiciary amendment, which is a white copy amendment that includes both Clouse's bill, LB322, and also Ballard's bill. Thank you, Mr. President.

ARCH: Senator Guereca, you're recognized to speak.

GUERECA: Thank you, thank you, Mr. President. I yield my time to Senator "Dugan".

ARCH: Senator "Dugan," 4 minutes, 50 seconds.

DUNGAN: Thank you, Mr. President and Senator Guereca. So, when I was speaking last time, we were talking about the necessity of the funding in order to make these things happen. And I think the question that I then get often is what exactly are we trying to fund, right? We, we hear a lot about, OK, you know, you throw money at the problem, but that's only so much. I think that in this circumstance, there is a necessity to ensure that we have enough people employed in the right fields in order to help the individuals we're talking about. So, as I mentioned, here in Lincoln, the Lincoln Police Department has done, I think, a fantastic job partnering with CenterPointe in an effort to ensure that they have these crisis response teams, right, where you are able to show up, and in the event that somebody is having a mental health episode, there's somebody with you who is properly trained in order to try to de-escalate the situation, which results in not just more safety to the individual that you're responding to, but certainly a safer experience for the officer, which is very important, and then also generally a safer experience for the community when they're trying to deescalate that kind of situation, especially if it involves weapons of any sort. The problem is-- and I was talking with another senator about this earlier-- that is such a particularized job that we need to make sure we are doing everything we can as a state to encourage individuals to go into that work, and once they go into the work of being, for example, a social worker or a mental health professional, to specifically want to work in that field. Because this is incredibly difficult work, and much like law enforcement, it's a

really hard job that oftentimes is very thankless, where you're up at all hours of the day, you're responding sometimes to calls in the middle of the night. And so, if you're talking about a mental health crisis response team, they need to be folks who are well-equipped in order to respond to these incidences whenever they occur, wherever they occur, and be able to meet people where they're at. That's why that trauma-based care is so important to make sure that people have that training so when they do respond to these situations, they're able to address them in an appropriate manner. Funding more folks going into that field of work is vital. I know that we have a shortage of a lot of different industries or professions here in Nebraska, but one that we hear about all the time is a shortage of mental health professionals. And using, for example, some of the boons that we've gotten over the last five or so years, like the ARPA; I know there's been the Beacon Program started by the, I believe, UNMC, where they've worked to try to funnel more people into jobs and into the mental health profession, which has been incredibly successful. So, finding ways to continue that kind of program has a direct effect on what we're talking about here with LB322 and AM767. How do we make communities safer? We provide response teams that can actually address the underlying issues in an effort to reduce the amount of harm being caused. Similarly, there are programs all over Lincoln, I believe also in Omaha and other parts of the state, that do community street outreach where there are people who are literally paid too little to go out into the community and talk to people who are unhoused, to talk to people who are living on the street, to interact with the folks that we sometimes walk right past in downtown Lincoln and don't even talk to, and say, "What can I do to help you?" Maybe not big-picture, maybe not fix everything, but "What do you need right now?" And oftentimes, individuals who have nothing are the ones who have the hardest time addressing mental health issues, substance abuse problems, what have you, which lead to the problems that we're talking about here. If somebody's having a mental health episode and they show up in an emergency room, we got to find ways to prevent that ahead of time. Because if we don't stop that from even starting, people are in danger, the community could be in danger. So, we need to find ways to make sure we're funding these programs. It's not amorphous; there are specific programs that we can be bringing bills to try to fund. Now, I know we're in a really tricky fiscal situation, but what I tell every single constituent that talks to me about the budget process this year is it's not that we're out of money, it's that we have to prioritize. And the question is what do we prioritize? How do we prioritize our funds in a way that achieves the goal that LB322 seeks to do, which is to have a safer community in a way that does not cost us more money as

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a state by locking people up and throwing away the key without providing actual services. And so, colleagues, I do encourage you to think good and hard about your vote on AM767 and LB322.

ARCH: Time, Senator.

DUNGAN: Thank you, Mr. President.

ARCH: Senator Juarez, you're recognized to speak.

JUAREZ: Thank you. Senator Dungan, would you yield to some questions, please?

ARCH: Senator Dungan, will you yield?

DUNGAN: Yes.

JUAREZ: OK, so I've been listening to everyone all day today discuss this bill, and I just-- I'm trying to understand, as far as with our, our folks in the medical field, which, you know, includes my daughter, OK? And I have a lot of concern about, you know, making the right choice, because of course-- because she is in the medical field. I know many others who are. Her friends, right? And I feel that-- I'm, I'm very concerned about the decision that I am going to be making on this bill. Now, don't you feel that if someone is arrested, you know, because there is a clash with someone in the field, that as an attorney, you're going to take into consideration, you know, you know, what really happened? Was it, was it just a slap? You know, did they get attacked with an instrument? Was a-- broken bones happen? I mean, when you're presenting a case-- and I'm asking you this obviously from your legal background-- don't you think that you're not necessarily going to be bringing felonies against the people who do something like this? I mean, aren't you going to try, on behalf of someone who gets in trouble, to try the best to see if they could get probation, not, not being a felony? Or is there really not that kind of latitude against patients who, who may injure someone in the medical field? Could you answer that question for me?

DUNGAN: Absolutely. And I think that what you're talking about here is a couple of different subjects, right? So, one of the questions is what is the ultimate charge that is brought by the prosecutor when an offense has happened, right? So, like, let's say, for example, an assault on a nurse. So, the prosecutor gets the citation, the police report or the, the ticket that's written by the police, and they determine, based on the facts that are contained in that police report, what they're going to charge with, right? They don't have the

background of that person, they don't have the history, necessarily, the-- maybe all the details, at that juncture, of the mental health or things like that. But if the essential elements of the crime are there, which would be, for example, intentionally or knowingly or recklessly hitting or striking and causing bodily injury to a doctor, then they may charge that Class IIIA felony. The question of what the penalty is going to be is up to a judge down the road, if that person is ultimately convicted. And so, I can tell you, both from personal experience and speaking to others who have been in this field, that there are people who are charged with very serious felonies-- like assault on an officer, which is a 0-3-- where the initial charging is done without a full knowledge-- not because they're ignoring it, but because they simply don't have it-- of that person's mental health issues or substance use issues. And then, it is up to the defense counsel to try to share that information, for example, with the prosecutor. Or, if that person is convicted, it's up to defense counsel to convince maybe a judge as to why, like you said, they should utilize probation instead of prison. But the problem is none of that matters or goes into the charging. The charge that initially gets charged of that person is based on the elements that are presented in the police report. So, let me give you a good example of this, and I know we're running out of time. I, one time, represented a gentleman who was charged with a felony theft-- because it was his third offense theft-- because he stole a can of soup and a pair of socks from a Walgreens. And he ultimately got 6 months in jail for stealing a can of soup and a pair of socks from Walgreens. And there's a little bit more nuance to that that I'll get into if we talk about it a little more later, but my point is, when we increase the penalties, it opens the possibility for those to be utilized. All of the facts that you've talked about-- which are very important, and we have to take those into consideration-- may come up during the pendency of the trial, but when the initial charge is dropped or given to the person, not all that information is known. So certainly, individuals struggling with issues like mental health or substance abuse, you try to make that known down the road, but they could end up with a Class IIIA felony, facing up to three years in prison, if all of the essential elements are met.

JUAREZ: OK. Thank you.

ARCH: Time, Senator. Senator Quick, you're recognized to speak. This is your third opportunity.

QUICK: Thank you, Mr. President. I'll yield my time to Senator Dungan.

ARCH: Senator Dungan, 4 minutes, 56.

DUNGAN: Thank you, Mr. President. I do appreciate Senator Juarez's questions, because I think what they get to is the ultimate struggle that we have with this bill, which is we all have individuals in our-- certainly in our constituencies and in our communities that this affects. We all probably have relationships or friends out there that this affects, and we want to make sure that we're doing right by those people because it's our job-- I think one of our core jobs, as a Legislature and as an institution, to keep our communities safe. I've said that time and time again, and it's not a platitude; it's true. I think community safety is one of the most, I guess, important roles that a legislature or government in general serves for its people. But the question is, how do we do it effectively? I've had this conversation, actually, with a couple of my friends. So, one of my, my best friends, who I am in a pretty constant group chat with and have been texting with throughout the day today, is a nurse. And she got her nursing degree, and she started actually working as a nurse during the pandemic. She worked overnight in a COVID ward at the height of the early pandemic, which is one of the most intense jobs I think you can probably have, especially coming out the gate as a nurse. And we've talked about this issue, and I hear from her and from others who are in the medical field the concerns about what happens in these circumstances where somebody is, is assaulted. And, and that's why I started today off-- Senator DeBoer talked about it, I talked about it, a number of people talked about it insofar as we get the problem; nobody is saying that this isn't an issue. And when I talk to my friends in the medical field-- or any of the other fields, law enforcement as well-- about sort of the problems surrounding this, we all understand the issue, which is we want to make sure that these folks who are putting their lives on the line and doing some of the hardest frontline work that you can possibly do are protected and they're kept safe. But that's what, I guess, gets us to the second question here, which is, does this bill do that? This bill certainly punishes people who maybe commit that offense; it, it broadens the scope of what the current charges focus on. And so, it certainly, I think, seeks to increase penalties. But does it keep them safer? Does it actually protect those individuals? And I've talked to a number of medical professionals who have said that they understand this doesn't do that, and I have talked to a number of medical professionals who don't think that LB322 or AM767, the AM, puts them in a more safe position than they were in before. And so, to Senator Juarez, I completely understand your hesitations. We want to make sure that these folks are absolutely kept safe. But that's what I've been

talking about the last two times I was on the mic. If we're going to do that, I think we have to be willing to invest in a more robust amount of services to help people who are struggling through mental health issues, to help people who have substance use disorder, who are oftentimes the ones that these bills or these laws affect the most. In addition to that, I would argue that the current justice system is in place, and, and the-- it's not like we're creating a new crime. If somebody commits an assault, they can still be charged with an assault, which is a Class I misdemeanor which is punishable by up to a year in jail, which is not at all insignificant. If, to your point, Senator Juarez, somebody's attacked with a weapon, any kind of-- any instrument, a dangerous instrument-- let's say somebody picks up a pair of scissors in an emergency room and comes at somebody else with that, no matter if they're employed as a nurse or a doctor or not, that is a Class IIA felony, it's a second degree assault, which is punishable by up to 20 years in prison. So, the current system is structured in such a way where there are penalties; there are, I guess, these guardrails in place. And if our ultimate goal is to continue to try to broaden the scope of who we're protecting, I think it's going to be essential that we look at other avenues like mental health treatment, and specifically funding more of the community outreach and the behavioral health care, in an effort to address these individuals that are oftentimes the ones charged with these crimes rather than increasing the penalty. And believe me, if the data supported the opposite, I think this would be a different conversation. But consistently, time and time again, we have seen from the '50s, '60s, all the way to today, studies that have been done, small and large, show that increased penalties and increased penalties alone, which is what this bill and this AM do, does not deter somebody from committing an offense.

ARCH: Time, Senator.

DUNGAN: Thank you, Mr. President.

ARCH: Mr. Clerk, for items.

CLERK: Mr. President, your Committee on Government, Military and Veterans Affairs reports LB69, LB419, LB434, LB660, LB663 to General File, all of which having committee amendments. Finally, Mr. President, a priority motion. Senator Wordekemper would move to adjourn the body until Wednesday, April 16 at 9:00 a.m.

ARCH: Colleagues, you've heard the motion to adjourn. All those in favor, say aye. Opposed, nay. We are adjourned.

