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BOSN: All right. Good afternoon, and welcome to the Judiciary Committee. I am Senator Carolyn Bosn from Lincoln. I represent District 25 and serve as the chair of this committee. The committee will take up bills in the order posted. This public hearing is your opportunity to be part of the legislative process and express your position on the proposed legislation. If you're planning to testify today, please fill out one of the green testifier sheets on the table at the back of the room. Print clearly and fill it out completely. And when it is your turn to come forward to testify, give your testifier sheet to the page or the committee clerk. If you do not wish to testify, but would like to indicate your position on a bill, there are also yellow sign-in sheets on the back table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone telling us your first and last name and spelling them to ensure we get an accurate record. We will begin each hearing today with the introducer's opening, followed by proponents, then opponents, and finally neutral testifiers. We will finish with a closing statement by the introducer if they wish to give one. We are using a 3-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have 1 minute remaining, and the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members, as you may notice, may be coming and going during the hearings, this has nothing to do with the importance of the bills, it's just part of the process as senators have bills to introduce in other committees. A few final items to facilitate today's hearing. If you have handouts, please bring up 12 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room and will be cause for you to be asked to leave. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. You may submit a position comment for the record or testify in person, but not both. I will now have the

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Judiciary Committee March 12, 2025

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committee members with us today introduce themselves starting on my left-- to my left, to my left.

HALLSTROM: Bob Hallstrom, Legislative District 1, representing Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties in southeast Nebraska. Welcome.

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

HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

DeBOER: Good afternoon, everyone. Hello, my name is Wendy DeBoer. I represent District 10 in beautiful northwest Omaha.

McKINNEY: Good afternoon. Terrell McKinney, District 11, north Omaha.

BOSN: Also assisting the committee today to my left is our legal counsel Tim Young, and to my far right is our committee Laurie Vollertsen. Our pages for today, I'll have them introduce themselves.

ALBERTO DONIS: Alberto Donis. I'm in my first year at UNL.

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

BOSN: Thank you. With that, we will begin today's hearing with LB511 and Senator Holdcroft. Welcome.

HOLDCROFT: Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. My name is Senator Rick Holdcroft, spelled R-i-c-k H-o-l-d-c-r-o-f-t, and I represent Legislative District 36, which includes west and south Sarpy County. I am here today to discuss LB511. This bill makes retroactive the requirement to register as a sex offender if you are convicted of sex trafficking in Nebraska. It also requires that those who are convicted of soliciting sex in Nebraska or profiting from sex trafficking in the state also be required to register as sex offenders. Additionally, it creates a STOP type program for first-time solicitors of prostitution and seeks to fund additional law enforcement resources, programs that educate citizens on the dangers of pornography and prostitution to society, while also promoting the positive outcomes of children being raised in environments that are both physically and emotionally healthy.

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Dateline Omaha: January 6, 2025, Omaha police arrest 6 after report of theft leads to sex trafficking bust. Omaha television station WOWT reported that investigators with the Omaha Police Department and the U.S. Department of Homeland Security located and arrested 6 suspects over the course of 2 days. Omaha police responded to a reported theft at the AmericInn Hotel on Monday, January 6. While investigating the theft, authorities found what were believed to be 2 juvenile victims of sex trafficking. All of the suspects were booked on at least one count of sex trafficking of a minor. Two of the suspects were also booked on one count each of first degree sexual assault of a minor, with additional charges filed for possession of child pornography and flight to avoid arrest. Human trafficking and specifically sex trafficking are happening in our state. As you can see from the handouts, there have, there have been 27 convictions for human trafficking since Nebraska's human trafficking statute went into effect in 2006. The second page of the handout shows that human trafficking investigations have taken place throughout the state, and not just in urban centers. LB1086 from 2006 says that no person shall knowingly suspect or attempt to subject another person to forced labor or services. Sex trafficking was included in this law. Senator Julie Slama introduced LB204 in 2022. This bill was amended into LB1246, which was passed and then signed into law by Governor Ricketts in April of that year. It went into effect on January 1, 2023. The law states the Sex Offender Registration Act applies to any person who on or after January 1, 2023, is found guilty of human trafficking. LB511 simply makes Senator Slama's bill retroactive to the effective date of LB1086, which was July 14, 2006. Additionally, beginning in January 1, 2026, any person convicted of soliciting sex or anyone convicted of benefiting from or participating in a venture involving sex trafficking will also be required to register as a sex offender. LB511 will be partially administered by the Nebraska State Patrol as the current sex offender registry is. This bill appropriates \$25,000 to fund efforts to locate and notify convicted sex offenders who will be affected by this bill. They have assured us that this will not create an undue, undue burden on them. LB511 appropriates \$100,000 to the Nebraska Commission on Law Enforcement and Criminal Justice. They are charged with developing a program to distribute grants to, to Nebraska law enforcement agencies to help defray the additional enforcement costs necessitated by the changes to statute we are making with this bill. Grants under this section may be used for expenses relating to the enforcement of prostitution, commercial sexual exploitation, and

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sex trafficking, sex trafficking offense laws, including, but not limited to, hiring and training law enforcement officers and other law enforcement agency employees, and providing and conducting educational outreach programs relating to such offenses. LB511 provides \$25,000 for the Department of Health and Human Services to conduct education and awareness campaigns that promote marital fidelity and, and harmony, preparation for home ownership, work and life balance, the arrival of children, healthy parenting and child rearing, financial literacy, and anger management. The Department of Health and Human Services is also being asked to create an educational campaign highlighting the damages caused to health relationships by pornography, the inherent dangers of prostitution, and the logical negative outcomes from sexual activities outside of a committed relationship. An additional \$25,000 is being appropriated to DHHS for this campaign. LB511 changes the offense of solicitation to commercial sexual exploitation. One key feature of this bill is the STOP type program for first-time solicitors of, of nonminor prostitution, similar to the FOPP program in San Francisco, featured in one of the handouts you received. While not a diversion program under LB511, first-time offenders would be required to, to pay a fine and take an, take an education and awareness class. Upon completion of the prescribed components, a first-time conviction of commercial sexual exploitation could be set aside and not appear on the solicitor's record. A second or subsequent offense would be-- would require registration as a sex offender. I would like to draw your specific attention to the online testimony provided by George Welch from the Nebraska Attorney General's Office, as well as Rebekah Allick, star player for the Nebraska volleyball team. Copies of which were provided to you in the handouts. Chairwoman Bosn and members of the Judiciary Committee, thank you for giving your attention to LB511. Much of this bill was heard last year as LB1156. Unfortunately, it was heard on the last day of scheduled hearings and did not have a chance to advance. It has been made abundantly clear to me that the only way to reduce sex trafficking in our state is to go after those who are soliciting sex and benefiting from trafficking, and send the message: Not in my state. I would appreciate it if the committee would give this bill careful consideration, and then advance it to the full Legislature for debate. And I would be happy to answer any questions you might have. Thank you, Chairwoman Bosn.

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BOSN: Thank you. Are there questions for Senator Holdcroft from the committee? Seeing none,--

HOLDCROFT: I'll be here for close.

BOSN: --thank you, sir.

HOLDCROFT: I'll be here for the whole Judiciary.

BOSN: You're the last bill, so I count on that. Before we get started with proponents, can I see a show of hands, how many individuals wish to testify in any capacity on LB511? 1, 2, 3, 4, 5, 6, 7, 8. All right. Thank you. We'll start with proponents. Anyone wishing to testify in support of LB511? Good afternoon and welcome.

PAMELA MOCK: Hi. Members of the committee, thank you for the opportunity to testify today in support of LB511. My name is Pamela Mock, and I serve as the Street Outreach Specialist for I've Got a Name, a Lincoln-based nonprofit dedicated to protecting and restoring the lives of women and girls who are victims of sex trafficking and at risk of exploitation. I'm here today not just as an advocate, but as someone who has sat with survivors, listened to their stories, and walked alongside them as they fought to rebuild their lives from ground up. I have looked into the eyes of countless women and girls who have been bought and sold throughout our state, each carrying a story of unimaginable pain. Yet in those same eyes, I have also witnessed resilience. I have seen how three simple words, I believe you, can begin to restore dignity and hope. But belief alone is not enough, LB511 reinforces that belief with action. It tells survivors that their voices matter, that those who exploited them will be held accountable, and that Nebraska will no longer turn a blind eye to the demand that fuels this injustice. Our street outreach team, consisting of myself and Megan Cook here with me, our Street Outreach Director, had over 1,000 total personal visits with clients in 2024. Even more striking, 45% of those we worked with last year were under the age of 18. We cannot continue to allow this to happen in our state. LB511 is critical because it targets the root cause of the problem, the demand. Too often, sex buyers walk away with minimal consequences, while victims are left to carry the weight of their trauma for a lifetime. This bill changes that. By requiring registration under the Sex Offender Registration Act and imposing stronger legal repercussions, LB511 makes one thing clear, Nebraska will not tolerate exploitation.

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We are proud of our close partnership with law enforcement, who are equally as committed to combat-- combating sex trafficking in our state. LB511 provides crucial funding for law enforcement agencies to ensure they have the resources needed to effectively investigate trafficking cases. Unfortunately, many of the women we encounter fear law enforcement, but when officers are properly trained and equipped, they can be a vital part of a survivor's journey to healing. As I've Got A Name, we know that prevention is just as vital as intervention. Every day I meet Nebraskans who had no idea sex trafficking exists in this country or even in the state. Simply put, if people don't understand the problem, they can't be a part of the solution. LB511 strengthens awareness efforts through DHHS, ensuring that more Nebraskans recognize the signs, understand the reality, and know how to take action against it. The fight to end sex trafficking in Nebraska requires all of us here today: service providers, lawmakers, law enforcement officers, nonprofit partners, and community members alike working together to protect those who are most vulnerable. LB511 is a crucial step in that direction. On behalf of the women and girls we serve, I urge you to support LB511 and take a stand against the demand that fuels this injustice. Thank you for your time and commitment to this matter.

BOSN: Thank you.

PAMELA MOCK: Um-hum.

BOSN: Any questions for this testifier? Senator Storer.

STORER: Thank you, Chairman Bosn. And thank you for what you do. Can you just-- I just want to make sure, how many, how many individuals in a given year did you say that you work with?

PAMELA MOCK: I don't-- I didn't have that stat. I had 1,000 personal visits. But I can tell you, like in a month's time, we work with about 30 girls and women.

STORER: And how do you-- just out of curiosity, are those individuals that come to you, are they-- sort of are you intervening?

PAMELA MOCK: We get referrals through our website, but we also get referrals from other nonprofits here in, in Lincoln: law enforcement, Voices of Hope, different resources like that.

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STORER: So your organization helps to get them out of their situation or is this once they are, once they are out, you're helping with, you know, restoration?

PAMELA MOCK: Most of the time it's when they've decided to leave that, that lifestyle already or we also do prevention with youth that are running away, that are-- been sexually abused and things like that.

STORER: And in terms of the current-- I mean, this increases penalties, right?

PAMELA MOCK: Um-hum.

STORER: Do you-- help me understand, you know, what you think is really going to be the, the most impactful portion of this bill to make a difference to really thwart and reduce those traffickers from practicing, so to speak, here in Nebraska.

PAMELA MOCK: Well, I think we know that there, there isn't a lot that's, like, put on the people that are the, the demand side of things. So anything is better than nothing. So I'm, I'm saying this bill is actually making that effort and going forward in that direction and so that's what we agree with, so.

STORER: Thank you so much.

PAMELA MOCK: Thank you.

BOSN: Any other questions for this testifier? Thank you for being here and for the work that you do.

PAMELA MOCK: Thank you.

BOSN: Thank you. Next proponent? Welcome.

JEANNE REIGLE: Good afternoon, Chair Bosn and the Judiciary Committee. I am Jeanne Reigle, J-e-a-n-n-e R-e-i-g-l-e, testifying in support of LB511 on behalf of the Nebraska Republican Party. We believe a multipronged approach is needed to combat this modern day slavery. This approach could include prevention through education, providing protection for vulnerable individuals, especially minors and undocumented migrants, providing resources for survivors, harsher penalties for traffickers, and adequately funding our State Patrol and

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National Guard in this regard. Senator Holdcroft's bill addresses several of these components, and we applaud his efforts in strengthening existing Nebraska legislation and ending this evil against our vulnerable. We also applaud the Attorney General's Office for the work and successes since creating the Nebraska Human Trafficking Task Force in 2007. Thank you.

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

JEANNE REIGLE: You're welcome.

BOSN: Next proponent? Any other proponents? We'll move on to opponents. Anyone here in opposition to LB511?

SPIKE EICKHOLT: Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to LB511. You've got a copy of my testimony, so I'm just going to kind of summarize the points where we have concerns and where we are opposed. This is a similar version to the bill that Senator Holdcroft introduced last year, and we oppose that as well. One provision of the bill is the retroactive application of the Sex Offender Registration Act or SORA. That probably is not an ex post facto issue, but it's simply our position that it is fundamentally unfair. You are imposing, in many respects, a lifetime requirement to register as a sex offender after a case has been adjudicated, after a sentence has been imposed, and perhaps even after a sentence has been completed. And we just feel that's unfair to do that to people. On another part of the bill that we have an issue with is the SORA requirement for this new crime of commercial sexual exploitation. The argument for this is that it's a deterrence, that it's punishment, that it is to send a message to punish somebody. But that is not the purpose of SORA, the purpose of SORA and the reason that it can be applied after the fact is because it's supposed to serve a utility or a value to the public to let people know who is dangerous and who is not. It's almost like a call-before-you-dig-type service. That's the way the course of reason that it's a community notification. I have argued against expanding the SORA registration requirement of other crimes because, at this point, it's our position that everyone that's convicted of a crime that people don't like that has a sexual nature to it has to register. In other words, the value of the SORA is not being met. Everyone's on

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it and this is going to add another crime to it that, in our opinion, does not necessarily tell the public who's at risk and who's not. And, finally, I understand what Senator Holdcroft is trying to do with this bill to provide for sort of a first offense option to take a STOP class. We're not aware of any sort of STOP class like this that's describing the bill that exists. And, frankly, our membership does not encourage that one would even work. As a practical matter, diversion-type programs are not even available now for some things like batterers' intervention, cognitive thinking. Those things are short in demand already, and I don't know of any kind of program that would meet the requirements of this bill or who would even offer it. I understand there's some money to appropriate to provide for that, but we're just not optimistic it's going to happen. But if you look at the bill on page 39, line 27, I don't think that this even allows for that first time not having to register, because the bill requires everyone convicted under this new crime has to register under the SORA. So I don't even think that the bill meets what Senator Holdcroft is intending to do. And, finally, on page 51, Section 22 is kind of a component of the bill that's not necessarily of interest to our association, but it's sort of odd and misplaced, and I don't really know that it belongs in a substantive criminal law. And you have my statement, but I'll answer any questions if you have any.

BOSN: Are there questions from the committee? Senator Storer.

STORER: Thank you, Chairman Bosn. And thank you, Spike. I guess I, I just, if I understood you correctly, that you argued that the sex offender registration is really for the purpose of letting people in the community know that there is someone potentially dangerous to children in that community.

SPIKE EICKHOLT: Right.

STORER: So you're suggesting that an individual who has solicited sex from an underage person is not dangerous?

SPIKE EICKHOLT: Not necessarily. The, the more general point I was making is that everyone's convicted of everything from revenge porn, to statutory rape, to actual crimes against children has to register. And this is going to add that crime that Senator Slama passed a number of years ago, or that was already a crime, the general crime of

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trafficking, which is not just minors, but also adults to a registration requirement after the fact.

STORER: But if, but if I'm in a community and there is an individual who has been charged, served their time, and, and, and they have literally sold-- bought or sold human beings for a purpose, is that not dangerous?

SPIKE EICKHOLT: It might be. I'm not saying that it's not. What I'm saying is that that person is on the same registry, the same list, the same level of public notification as the person who had a girlfriend who was 15 years old or who sent some rude photos of a consensual adult relationship after a breakup.

STORER: And how would, how would the crimes of solicitation of sex, buying or selling be less concerning for someone in a community than those that you just mentioned?

SPIKE EICKHOLT: You're making my point right there, respectfully, Senator, that those are the people that you have on the registration themselves. And now you're adding-- not you, necessarily-- but now policymakers are adding everyone. And the argument for is because it's a type of punishment, they should know better. We're going to deter them from doing this again. And I was just making a commentary and a position argument that that is defeating the purpose of the SORA itself.

STORER: But for those who have committed the crime of child pornography,--

SPIKE EICKHOLT: Right.

STORER: --that's after the fact. We don't put their name on before they did it. We put it on after they did it. So I don't understand. I mean, I'm not sure I'm understanding your argument that in this specific case it is considered a punishment, not an awareness for those that would be living in the same community.

SPIKE EICKHOLT: No, I understand that. I don't-- well, I think the argument for putting someone who solicits a prostitution type act from an adult because it's not registrable now, the argument for that is because it is going to be a deterrent to them.

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STORER: And an, and an awareness for those that would be living in the community.

SPIKE EICKHOLT: That's right. But I don't know--

STORER: Just like those others that are required to register.

SPIKE EICKHOLT: That's right.

STORER: Right. Thank you.

BOSN: Senator DeBoer.

DeBOER: Thank you. So I think what you're arguing is that the more widespread we made the-- make the SORO--

SPIKE EICKHOLT: SORA.

DeBOER: --SORA, the less effective it is at its purpose because people get desensitized to it. Is that the argument that you're making?

SPIKE EICKHOLT: I think so. And maybe I didn't make it as clearly as at least one senator, I'm assuming to make it. It used to be there was three levels of sort of risk, and there was a relatively narrow group of people. Arguably the type of people that Senator Storer was asking about would have to register. In 2009, we did away with the three levels, now everyone's on the top level. Every year we keep adding more and more crimes, some sexual, and some are even not sexual in nature. There's about 15 crimes that are not even necessarily sexual that have to register. And at this point, if you look up, you enter your zip code, you can see sort of people in your neighborhood and it says the crime. And that's really about it. I don't even think it says length of sentence or maybe even date of conviction, necessarily.

DeBOER: OK. So you're saying basically we're getting all these folks on here, we're not being discriminate with who we're applying the SORA to, and so as a result, it's not as informative to the public because the public doesn't know. If you had the three layers, you would have a sense of the sort of severity or something,--

SPIKE EICKHOLT: Right.

DeBOER: --but you don't have that.

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SPIKE EICKHOLT: Right.

DeBOER: OK. And then you also were arguing about the adding it after the fact. So now when are-- when is the SORA requirements added? Is it at sentencing or--

SPIKE EICKHOLT: That's right. It's at sentencing. The judge sort of advises the person. There are some cases where the judge can make the discretionary finding that they have to register. Many of, but almost for most of the convictions, most of the crimes, if you're convicted of the crime, you have to register for at least 25 years or life, unless it's a misdemeanor, then it's 15 years. And that's sort of-- it's imposed at the time of sentencing, but it's almost like the court is just sort of advising you of what the law requires.

DeBOER: So if you were to add a crime after the sentencing is done, there's almost a-- the judge doesn't have that as part of the understanding of what's happening when they're making the sentence and so although it is technically not punitive per our court, the judge might want to have that information at the time. And so adding one later is sort of-- that's sort of the difficulty is that your-- the judge doesn't have the information that this crime that has just happened, and that he sentenced someone to, later, 5 years later, we decide now that's a registry offense and so that he doesn't have that. Is that, is that kind of it?

SPIKE EICKHOLT: That's right. When the Legislature adopted it originally back in January, the original date was January 1, 1997, and it applied to everyone who was sentenced after that date or who was then serving a sentence somewhere. Right? So if you're in prison still or in jail, then you're sort of told somehow, either by your parole officer or probation officer, or somebody said, by the way, you have to register when you get out. It's a registration requirement that is triggered when you complete your sentence. That's when you start having to register.

DeBOER: When you get off papers, then you have to or--

SPIKE EICKHOLT: No, you have to do it when you're sort of released from custody.

DeBOER: OK, when you were released from custody. OK.

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BOSN: Senator Storer.

STORER: Thank you. So would there be a recommendation to making adjustments for when and at what time individuals register?

SPIKE EICKHOLT: As far as which crimes and that sort of thing?

STORER: Right.

SPIKE EICKHOLT: Well, I've brought-- I've had some senators introduce bills over the past and they've all been-- they've not had a lot of success.

STORER: And, generally, what, what's your suggestion on those other-- or to this-- specifically to this, what would your recommendation be to, to alleviate the concern about someone who's already been convicted and the judge didn't have that information?

SPIKE EICKHOLT: I just don't think it's fair to impose it after the fact at all. I don't think that--

STORER: How would you impose it before the fact? You can't impose something on someone who hasn't yet--

SPIKE EICKHOLT: Well, I think that--

STORER: You're talking about after the fact, like if someone's been convicted,--

SPIKE EICKHOLT: Right.

STORER: --and they've been sentenced, so would-- I don't want to put words in your mouth, but if I'm understanding your opposition, then you would be OK with this only applying to people starting on the day this law is signed, moving forward in their conviction?

SPIKE EICKHOLT: For offenses that are committed after that date-- I mean, we still have objections to adding the crimes to the SORA list, just as I said before, without some sort of consideration as what we have there now. But that would make it less offensive, at least from a due process standpoint, to have it be prospective only, to have it apply to people who are convicted for this crime on or after the date the law goes into effect. You know, many of these people who were

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convicted of these crimes that aren't registered negotiated with that. That was a deliberate decision that they made to not have a trial or to work a plea out. It was probably a deliberate decision that was made between the prosecution and the defense, and it was certainly something the court didn't consider when they imposed whatever sentence they did.

STORER: But if this is not punitive, and shouldn't be punitive only for the public safety, then theoretically those two things aren't connected anyway.

SPIKE EICKHOLT: That's exactly right. That's why I acknowledge early on in my written testimony, I don't think it's ex post facto. I don't think it's prohibited punishment after the fact. I think the courts have rejected that argument that it is. I'll concede that point.

STORER: So if it's not punitive, then, then there should be no issue with someone being required to register who's already been convicted of this crime if it's just meant for public safety.

SPIKE EICKHOLT: If it's just-- I'll concede that at least the case law doesn't help an ex post facto argument. But there might be a due process fundamental fairness argument that you can make. I don't think it's fair just from a-- from an elected official interaction to the public for the Legislature to pass something as consequential as the Sex Offender Registration Act on the people who were arguably, affirmatively told by somebody they wouldn't have to register.

STORER: So then you don't think this was-- this-- I'm struggling because I feel like there's, there's an argument trying to made on two sides of this, and it can't be both ways. If it's, if it's meant to be a deterrent, the argument would be, well, theoretically, people that were-- committed the crime and have been convicted maybe wouldn't have did it if they knew they were going to have to register. But, yet, I'm hearing that it, it's also not supposed to be punitive. Do you see what, what I'm trying to--

SPIKE EICKHOLT: I see what--

STORER: --to explain is, it, it, it can't necessarily be-- well, for me, at the end of the day, I think the general intent here is that it

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is for the safety of those who are living in a community to know who's living in their community.

SPIKE EICKHOLT: I understand. If I could respond, Senator? In my opinion, I think it is punitive to have to register. The courts have rejected that argument. I'm not arguing both sides. I'm conceding what the cases in the courts have said. I'm being candid and direct with this committee in stating what the state of the law is. I may disagree with it, and I wish it was different, but it's not. So I will concede if the Legislature thought it was appropriate, you could probably require people to register after the fact of their conviction. I don't think that's a good idea, and I don't think our association thinks it's a good idea. That's all. And I understand it seems to be duplicitous, but it's not meant to be.

STORER: Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: I hope I understood this correctly, but if you can give a concrete example. I think you indicated that a defendant might have pled to this, this offense--

SPIKE EICKHOLT: Right.

HALLSTROM: --without-- or as part of the benefit of the bargain was I'm not going to be-- I'm not going to have to register.

SPIKE EICKHOLT: Right.

HALLSTROM: What other offense would they have committed that would have been reduced to this nonregisterable offense?

SPIKE EICKHOLT: It could have been a completely unrelated crime. Possession of a controlled substance, for instance, that was obtained if it was an undercover, say it was an undercover prostitution sting or something like that. They could have dismissed the felony possession if they pled to the misdemeanor solicitation of prostitution.

HALLSTROM: And are you aware of any actual cases where that--

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SPIKE EICKHOLT: I can remember one specifically, actually, here in the near south years ago when I was in the public defender's office where my guy got caught in a sting, my client got caught in a sting and had drugs on him.

HALLSTROM: OK. Thank you.

BOSN: Other questions for Mr. Eickholt? Thank you for being here. Next opponent? Any other opponents? Now we'll move on to neutral testifiers.

JEANIE MEZGER: [INAUDIBLE]

BOSN: That's a fair, that's a fair reason. Welcome.

JEANIE MEZGER: Thank you. My name is Jeanie Mezger, J-e-a-n-i-e Me-z-g-e-r, and I advocate for people listed on the sex offense registry and for their families. For over 10 years, I've been moderating support meetings for people affected by the registry. The people I've met come home from prison to work hard, to live good lives, and to provide for their families, even when the stigma of the registry makes it difficult for them to find housing and jobs. I've also met some for whom the hopelessness was way too much and they ended their own lives. You won't be surprised to hear me say that adding more people to the registry is a bad idea. It will result in more people having a hard time finding jobs and housing, more families that break under the stigma of the registry, and more children growing up in homes that neighbors shun. This would damage whole communities. Nebraska's registry grew 6.5% over 2024, and 14% since '22. At the end of 2024, 75-- 7,528 people were listed. Changing the name of the crime from solicitation of prostitution to commercial sexual exploitation implies that all solicitation is exploitation. If that's what the name change means, it would follow that there would be no arrests or convictions of the person being solicited, though I'm pretty sure that the sellers will continue to be arrested and convicted. When the penalty for the buyer is greater than the penalty for the seller, the power imbalance makes work more dangerous for the sellers. This line of work is already dangerous because our current laws drive, drive the activity underground. The threat of ending up on the registry will drive it further underground, increasing the risk of violence for the sellers. Is that what is intended? Requiring DHHS to conduct annual education and awareness campaigns that promote all the lovely things

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that the senator listed earlier sounds dreamy if we all agree on what ideas to promote. But we don't all agree, as we've seen in legislative hearings and classrooms and libraries over the last few years. LB511 says the Legislature recognizes the inherent harm to society, marriages, and families that's caused by the use of porn, the use of porn, and the solicitation of prostitution. Families who have food in the pantry because someone in the family is a prostitute might disagree that solicitation of prostitution is inherently harmful. One of the values that ought to be promoted is respect for people who make choices we don't approve of. We don't have to like their choices, but we ought to respect the person and the calculations that went into that choice. Changing the laws to make it more dangerous to earn money through prostitution is a terrible way to love our neighbor. Thank you.

BOSN: Questions for this testifier? Thank you. Next opponent? She was opponent. Now, we'll move to neutral testifiers. Anyone here in the neutral capacity?

GENE KLEIN: Good afternoon, Chair-- Chairperson Bosn and members of the Judiciary Committee. My name is Gene Klein, G-e-n-e K-l-e-i-n. I'm the CEO of Project Harmony, one of the seven child advocacy centers across the state of Nebraska. And I'm testifying in a neutral position on LB511 on behalf of the Nebraska Alliance of Child Advocacy Centers. In 2023, these seven centers assisted over 9,000 children across the state of Nebraska who reported victims of child abuse and neglect. The Nebraska Alliance members provide trauma-informed services to children and families, including forensic interviews, medical exams, advocacy, mental health care to children who are reporting child abuse, neglect, and sex trafficking. The commercial sale of sexual abuse typically involves three parties. The victims, in our case at Project Harmony, are vulnerable children and teens who are make-- who are being manipulated, tricked, and coerced into sexual abuse with adults, the buyer, the actual person who is sexually assaulting the victim and the trafficker. The organizer or the seller of abuse. In the last 5 years, Project Harmony has launched an improved response to this crime in partnership with the Omaha Police Department, Homeland Security, the Douglas County Attorney's Office, and the U.S. Attorney's Office, as well as the Attorney General's Office. We are seeing good progress in our collective response to youth being trafficked, seeing many more trafficked-- trafficking suspects be charged with long federal sentences. However, there is much more work to do. When we talk to the

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victims, the teenagers, many of these children are confused. They don't immediately come forward with an allegation of abuse or assault because they've been manipulated into thinking this is what normal teens should experience. They are also conflicted about their trafficker, as typically this is the person who was protecting them, meeting some of their basic needs and providing access to money, drugs, or alcohol. So when the trafficker is the suspect-- is the subject of law enforcement response, the children are typically torn and confused. However, they're very clear about the disdain for the person who directly sexually assaulted them, the buyer, and they want justice for the-- for this abuse. Today, while not perfect, the legal definitions and response to the trafficker is much improved. Where there is weakness and accountability is around the buyer. It is very rare that a buyer will be ticketed or even charged for the solicitation of sex when an adult victim is involved, it's a misdemeanor and the fine is the equivalent of a speeding ticket. I'm not clear on what the full legal consequences should be, so that is my only hesitation on this bill. Perhaps, that is a place for more conversation. I'd like to say thank you, Senator Holdcroft, for bringing this issue forward, especially the additional funds for law enforcement who desperately need that help with these investigations. And I'd be happy to answer any questions.

BOSN: Thank you. Questions for this testifier? Can I just-- trying to summarize if I can understand the neutral position--

GENE KLEIN: Yes.

BOSN: --given what I think I heard, it comes down to the perpetrator of the abuse and what level of accounta-- yes, you want them accountable, but what that level of accountability should be is where you're not taking a neutral position.

GENE KLEIN: I feel like that's not my space. My space is to let you know these kids want that person held accountable. I don't know to what that degree needs to be. Other experts that know a lot better than I do could help with that, but there needs to be more accountability for the person who actually purchased the sex or sexually assaulted the child or the victim.

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BOSN: Thank you. I appreciate that clarification and thank you for the work you do. Any other questions in light of that, I guess? Thanks for being here. Next neutral testifier? Welcome.

MELANIE KIRK: Thank you. Good afternoon, Chairperson Bosn, members of the Judiciary Committee. My name is Melanie Kirk, M-e-l-a-n-i-e K-i-r-k. I'm the Legal Director of the Nebraska Coalition to End Sexual and Domestic Violence and I'm testifying in a neutral capacity on LB511. We appreciate Senator Holdcroft for his dedication to the cause of ending sex trafficking. We support the intent behind LB511, particularly its focus on the goal of holding sex traffickers accountable and providing resources for law enforcement and public awareness efforts. We also want to express our gratitude to Senator Holdcroft for his willingness to hear and address our concerns regarding potential impact of the sex offender registry on individuals who have been victimized by trafficking. Initially, we were concerned that the bill's provisions might inadvertently lead to sex workers, many of whom are victims of trafficking, being charged with solicitation and subsequently placed on a sex offender registry. This could have devastating consequences, making it exceedingly difficult for them to escape their traffickers, seek safe housing, and rebuild their lives. However, after engaging in discussions with Senator Holdcroft, we are pleased that the language has been adjusted to clarify that it should only apply to those who purchase sex rather than those who may be engaging in commercial sex. This reflects the reality that many sex workers are engaging in commercial sex due to coercion, exploitation, and lack of alternatives. While we appreciate these changes, we remain neutral on LB511 because the statistics have not shown that sex offender registries are a significant deterrent for crimes and because of the potential harm to victims. We acknowledge the importance of addressing trafficking through legal and systemic measures, and we support efforts that center survivors' safety, autonomy, and ability to seek justice without unintended harmful consequences. We thank the committee for considering these perspectives and for ensuring that policies aimed at combating trafficking do not inadvertently harm those that they are intended to protect. Thank you for your time. I'm happy to answer any questions.

BOSN: Thank you. Questions for this testifier? Seeing none, thanks for being here. Next neutral testifier? Welcome.

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SCOTT SMITH: Hello. My name is Scott Smith, S-c-o-t-t S-m-i-t-h. I'm here as a 3L from the Nebraska College of Law, and I am testifying in a neutral capacity because I don't take a position on the verbiage of the, of the bill itself. However, I would like to see an amendment to the bill. I've emailed Senator Holdcroft's office, and I've not heard back. Senators, Nebraska Sex Offender Registry is in immediate danger of being struck down in court. If we do not act, we'll lose the ability to track and monitor sex offenders in Nebraska. Not because the Legislature intended it, but because we failed to act in time. I'm proposing adding two sentences to the sex offender laws by doing an amendment, an addendum to LB511. Let me explain. Last fall, I spent the entire semester at law school analyzing the legal risk Nebraska faces after State v. Clausen. The ruling eventually dropped in January 2025. It makes one thing clear, if the Legislature does not explicitly clarify its intent, courts will strike down laws that create constitutional issues. In that case, a sex offender conviction was overturned by the Nebraska Supreme Court of registry violation charges because of the laws in Nebraska, though they created an absurd result, were plainly written. Right now, Nebraska's registry creates an irrebuttable presumption, meaning every single person placed on the registry is automatically deemed a high risk, with no process to challenge that determination. It is well established law from the U.S. Supreme Court and courts across the country that an irrebuttable presumption is de facto unconstitutional, because when a law inhibits a person's protected liberty interest like speech or movement, that person has grounds to challenge under the due process clause of the United States and Nebraska Constitutions. The Nebraska Supreme Court in Clausen made it clear if the Legislature is not explicit, they will not save this law for us. Pennsylvania just faced the same issue in Commonwealth v. Torsilieri in May 2024, where their Supreme Court nearly struck down their registry by a 5-4 vote. Nebraska may not be so lucky if we do not-- if we do nothing, sex offenders will challenge other registry-- their registry under the 14th amendment of the U.S. Constitution and Article I, Section 13 of the Nebraska Constitution. And the courts will be forced to choose between declaring it unconstitutional or creating their own legal standard to determine if a person is a high risk to re-offend. There's a simple fix, we must clear that-- we must make clear that all judicial challenges to registry status follow the same process already established under Nebraska Law 43-2933. If we do not, Nebraska will face a massive legal challenge and we will lose the registry. My proposed two-sentence

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language is at the top of the memo I have submitted to the committee. You have two choices, either you can act now or hand this decision over to the courts where a single lawsuit could dismantle the entire registry. This is not exaggeration, this is the reality of constitutional law. If we do not act, Nebraska will become the next state like Michigan where the registry is ruled unconstitutional. I urge you to act now before it's too late.

BOSN: Thank you. Questions for this testifier? This is informative. Thank you.

SCOTT SMITH: Thank you.

BOSN: Appreciate it.

SCOTT SMITH: OK.

BOSN: Any other neutral testifiers? Welcome.

ALLYSA SMITH: Thank you. I'm here today to testify--

BOSN: Could you state and spell your name?

ALLYSA SMITH: Oh, my name. Yes, I'm sorry. Name is Allysa, A-l-l-y-s-a, Smith, S-m-i-t-h. I'm here today, not just as a concerned citizen, but also as a parent. Like so many of you, I want to know that our laws are protecting our children and our communities. That's why the amendment that Scott is proposing is so important to me. It ensures that Nebraska's registry remains strong and effective in the face of legal challenges. The registry is only as strong as the laws that support it. The recent Clausen case exposed a serious flaw in our state's registry laws, and the court made it clear that they will not fix poorly written laws, even if it means an absurd result like striking down the registry. No one has to guess what happens next. Pennsylvania was one vote away from losing its registry, and Nebraska could be next if we fail to act. This isn't a hypothetical problem, it's a real and immediate threat. The moment a legal challenge is filed, the courts can ask, did the Legislature intend to create this irrebuttable presumption of risk? If the answer is yes, then we lose. If the answer is no, the courts will be forced to create their own system without legislative oversight. It's a classic case of heads, sex offender wins, tails, the Legislature loses. And that means Nebraska families lose, too. The amendment is a simple, commonsense

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fix. It doesn't weaken the registry. It doesn't create a loophole for offenders. In fact, it closes a loophole and reinforces existing law to ensure that those who pose a risk are monitored appropriately. If you vote against this amendment or fail to act, you're making a choice. A choice to potentially let sex offenders slip through the cracks. A choice to let the courts, rather than our elected representatives decide the future of Nebraska's registry. As a parent and a member of the community, I'm asking you to make the right choice and pass this amendment. Thank you.

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

ALLYSA SMITH: Thanks.

BOSN: Next neutral testifier? All right. Well, while Senator Holdcroft makes his way up, I will make note there were seven proponent, four opponent, and two neutral comments submitted for the record. Welcome back.

HOLDCROFT: Thank you, Chairman Bosn. Let me tell you where this came from originally, and it really started with Project Harmony. And if you haven't had the chance to go out to Project Harmony and tour it, I highly recommend you, you take the opportunity. It is a, it's a-- well organized and, and run facility with Omaha Police Department embedded who are tracking essentially these, these trafficked individuals. I mean, they, they really do have a pretty good handle on what's going on. And they have there with them nonprofits who are available to try and take these victims off the streets and get them back into a normal life. And at the same time they're prosecuting, you know, the, the pimps. But here's the problem, there's always a deputy pimp. There's always somebody who's there for when the pimp goes-- gets, gets arrested and, and sentenced and goes to prison to step up and take over. And there are always going to be victims. There are always going to be young women who are vulnerable and get trapped into this, this life. And so we have to do more to, to taper or get rid of the demand, to, to attack the demand side. So I was talking to the police officers at Project Harmony, and I asked them, what can we do in the Legislature to try and, and do that, and their response, their response straight-out was, have convicted johns be on the registry. And think about that, think about, you know, right now, if you, if you come to the College World Series and, and you go out and solicit for

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sex and they catch you, you may not even get a ticket. If they do prosecute you, it'll be a misdemeanor and maybe \$1,000 fine. OK? And then you can go back home and who cares? I mean, it was \$1,000. I mean, they probably can afford it. But imagine, though, that now your name is going to be on a registry that your family and your neighbors see. Imagine the deterrent value of that. So that is kind of the reason behind this bill. You know, the retroactive piece of it, you know, to leverage off of what, what Senator Julie Slama did, you know, we could revisit that. That, that's not a key portion. Really, what we're focused on is going forward, and we think that the right way to go forward is to require these individuals to, to be registered in the sex, sex registry. And, and, and to the, the, the gentleman who sent us the email about the, the concern about the SORA, we did send that over to the AG's Office, and I'm happy to forward their response to us. But it came from a lawyer, you know, and it's-- you could sum it up probably in two sentences, but he sent us three paragraphs, so I'll just read the first couple of things. It has to do with State v. Clausen, State v. Clausen did not create a new due process framework to challenge SORA. The case dealt with the interpretation of what constituted temporary domicile for purposes of the three-day SORA registration requirement. The court determined that the state did not meet its evidentiary burden of establishing that the defendant resided in Washington County, and it goes on. And, again, I'm sure Senator Bosn and Senator DeBoer would just really, and maybe Senator Halloran [SIC], would just really love this, but we did respond to the neutral testifier's concerns about that and determined that we didn't need to make changes to the proposed bill. So with that, I am happy to answer any questions.

BOSN: Are there questions from the nonlawyers who can do it with more brevity than the chair and vice chair? Senator Storm.

STORM: Yeah, I'm not a lawyer. Thank you. I stepped out a little bit, so I might have missed, but are there other states who have done this to where-- did I miss out on this? Do you know?

HOLDCROFT: Well, I think there are other states. Well, you know, that's a good question. I don't have the answer for that. I can-- we can certainly find out. I think it's a logical step. I wouldn't know why other states would not do that.

STORM: OK. All right. Thank you.

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BOSN: Senator McKinney.

McKINNEY: Thank you, Chair Bosn. Thank you, Senator Holdcroft. I guess the one thing I'm thinking about, and Spike kind of brought it up that we don't have, like, a tiered system. And the only reason I'm thinking about this is because when I, when I think of the sex registry, I think of somebody that did something to a kid or raped somebody or just because, I don't know, I just wish because, oh, I just think if we had a better system, a better system of identification on that registry, not, not to say the, the registry should be better, like it's, it's a horrible thing. I just think when I think of the registry, I just think-- like the-- my automatic thought is somebody did something horrible to a kid, and these people could do something horrible to a kid. I just-- I don't know how to say it, but I know other states might have like a better-- I think other states do. But just have you ever considered that?

HOLDCROFT: Well, I would, I'm, I'm just going with what we have in Nebraska and try and leverage that. I, I don't disagree with you. It would be nice to have kind of a, a tiered system of these are-- these, these sex offenders are worse than these sex offenders. But, I mean, there are sex offenders on the registry who just, you know, looked at child porn on their, their computer. And, and that's how they ended up on the, on the, on the sex registry. So there are, there are some lower crimes and I don't know-- you know, I've never-- to be honest, I've never looked on the sex registry, so I couldn't even tell you how it's organized. But it's something that we have in the state of Nebraska, and something that we could, could use to try and provide another deterrent to the sex trafficking.

McKINNEY: All right. Thank you.

BOSN: Other-- Senator Storer.

STORER: Thank you, Chairman Bosn. I'm the nonlawyer with brevity.

HOLDCROFT: Much appreciate it.

STORER: I, I mean, I'm-- Senator Hallstrom, do you think that--

HOLDCROFT: I'm Senator Holdcroft, by the way. Senator Hallstrom-- Senator, do you want us to get Senator Hallstrom?

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STORER: --do you think that, do you think that an individual that pays for sex, whomever they pay, pays for sex with an underage, an individual or child is less abhorrent than someone who doesn't pay for the sex they have with an underage child?

HOLDCROFT: Well, that's a, that's a-- well, I know-- yes, I, I think paying for it is probably worse than-- that would be, essentially, rape. It would still be a sexual charge, correct? But they are-- you know, I have to think about that. I, I-- they're both equally abhorrent to me. And, and, and I think they should in both cases be prosecuted and, and be on the sex registry.

STORER: Thank you. And, and I think that's the intent of your-- of what you're doing here. And as I listen to some of the, the concerns about tiered systems and is, is incest or, or raping a minor worse or in, in a different category than paying to have sex with that minor, of which I would still consider a form of rape. However, whether money is exchanged or not exchanged, though, I, I think your intent here is to sort of put them all in the same category there for the registration. Am I-- but I don't want to put words in your mouth, but is that really what you're--

HOLDCROFT: Well, it's still-- it's, it's focused on, on sex trafficking. So--

STORER: So we're adding that to those who need to register. We're adding that to those who have had sex with a child who didn't pay for it.

HOLDCROFT: Well, they would be prosecuted. I, I expect they would be prosecuted and on the sex registry anyway. So, yeah, we're adding that. But it would, it would be then you'd, you'd add an adult sex trafficking to that. So it's not-- you'd be adding that additional-- those additional folks to this bill to be on the sex registry. Right now, they would not be. The, the, the, the perpetrator who has sex with a minor is, is-- has committed a crime and will be prosecuted to the crime and will be on the sex registry. The person who pays for sex from an adult, not a minor, then currently they'd pay the fine, but they would not be on the sex registry. This would put them on the sex registry.

STORER: Thank you.

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BOSN: Senator McKinney.

McKINNEY: Thank you. And I wasn't diminishing the, the raping of a child. What I was trying to say is there's-- people end up on the registry for different reasons, and some are more severe than others. Raping a child is raping a child, and I would say that's the worst thing you could do. And no matter if you pay for it or don't pay for it, it's horrible. But there are other things that get you on the registry that aren't as bad as raping a child. And I think when you put everybody in the same category, you're not define-- you're, you're, you're not raising that rape of a child to the level that it should be. And that's how I feel. Thank you.

HOLDCROFT: I agree with you on that. But, again, back to my-- the point being this is all we got right now.

McKINNEY: Yeah. No, I understand.

HOLDCROFT: So this is what we're going to use for this particular bill.

McKINNEY: Thank you.

BOSN: Thank you, Senator Holdcroft.

HOLDCROFT: Thank you Chair-- Chairwoman Bosn. Appreciate it.

BOSN: That will conclude LB511. Next up is LB578 with Senator Cavanaugh.

M. CAVANAUGH: Hello.

BOSN: Hello and welcome.

M. CAVANAUGH: Good afternoon, Chairwoman Bosn, members of the Judiciary Committee. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h. I am privileged to represent District 6 in west central Omaha, and I am here to introduce LB578 regarding inmate wages. LB578 would require incarcerated individuals employed by a city, county, the Department of Corrections, or any other person to receive equal pay equal to or greater than the minimum wage, as outlined in the wage and hour act. The bill also requires the Department of Corrections to operate by OSHA standards, even though it

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is otherwise exempt from those standards. This bill gives the Jail Standards Board and Department of Corrections the authority to promulgate rules, regulations on wages and working conditions. Wages would be deposited into an account for the inmate. After paying restitution orders, the inmate can withdraw the funds according to their needs. Upon the inmate's release, the department will transfer any remaining funds to the inmate. The Department of Corrections would be responsible for a report to the Legislature regarding the restitution pay. So I'd like to discuss the fiscal note, and it's quite large. Ambitious, some might say. So the cost according to NDCS, paying incarcerated individuals minimum wage would cost the state an estimated \$113.5 million, plus \$8.7 million in employer tax liabilities, \$11,466 to transition to hourly wages, which I will come back to in a moment, and \$263,270 for a new banking module for depositing accounts, and \$151,154 for an accounting position, plus my bill strikes the paying for room and board. So, so it would be an additional \$1.7 million annually for room and board deductions. I want to go back to the hourly piece of that. So they currently are, are working so I'm not sure why transitioning to hourly wages would cost anything since they, I would believe, are currently receiving hourly wages. Maybe I'm wrong. Maybe we'll hear from somebody. They also currently receive this money into some form of an account. So I'm not sure what the new banking module, but, again, look forward to hearing about that one and the accounting position. They all-- they do currently pay incarcerated individuals for work. They just pay them very poorly. So going a little bit more into the fiscal note, those were just the highlights I put into my remarks. There's also the counties which they have let me know that they are going to come in opposed. Appreciate that. I, I mean, when I saw that they have approximately 332,000 hours per year and they pay \$697,000 in wages, which means, you know, roughly a little bit more than \$2 an hour. I was like, yeah, paying minimum wage is going to cost you a lot. Paying what we make an hour, which is \$5.27, is more than what they are paying currently. So, yes, that is going to cost. What I hope we can hear today is, first of all, more than just this is how we've always done it. Because that's not really a good reason to pay people who are incarcerated slave wages, unless we actually think that they are slaves. People who are incarcerated have families. They have responsibilities. They-- we are taking wage earners out of the home when they are incarcerated. Yes, they are paying for something that they did, but that doesn't mean that every aspect of their life should

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be taken into account. And so having them do work seems like we should-- if we want to build dignity in those that are incarcerated, that we should be building dignity by paying them a dignified wage. Additionally, the Department of Corrections enters into contracts with private companies. There is a company that contracts with NDCS, and they do pay over \$13 an hour for those contracts. However, there are other contracts that do not pay that amount, and I have always found it to be very confusing to me why we would enter into contracts with companies that pay to \$1, \$2 an hour to incarcerated individuals, and then those same individuals who are doing these contracts are released will not be hired by those companies because they are a felon. Doesn't make any sense. So if we want to build our workforce, if we want to help with reentry, this bill is a great starting point of building up an economic solid footing for individuals who are incarcerated, allowing them to give money back to their own families to help support them and to, you know, have dignity in the work that they're doing. So there you go.

BOSN: Questions for Senator Cavanaugh? Senator Storer, followed by Senator Storm.

STORER: Thank you, Chairman Bosn. And thank you, Senator Cavanaugh. This one is an interesting thought process and a very large fiscal note. And I'm new to some of the-- new to the Judiciary Committee and to the Legislature. So we've heard some bills specifically that, that ask, as I understand already, if someone is convicted they have-- and they're paying child support, they have the opportunity to ask for a reduction in what they are-- what they owe in child support.

M. CAVANAUGH: I mean, I, I-- I'll-- I'm not positive of that, but that's, that actually is more harmful to the child.

STORER: I actually agree with you.

M. CAVANAUGH: So, so that's unfortunate.

STORER: So I understand that that's currently the case, they have the opportunity to appeal that--

M. CAVANAUGH: Sure.

STORER: --and have that reduced because they're not earning--

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M. CAVANAUGH: Because they're not being paid. Yes.

STORER: Right. So would it-- and maybe this is not a fair question for you. I'm not trying to put you on the spot, but, I mean, just in the context of everything sort of has a-- for every action, there's a reaction. Right?

STORER: Sure.

M. CAVANAUGH: If, if we were to pass something like this that they had the ability-- the inmate had the ability to earn sort of a more theoretically living wage, we could argue what the living wage is,--

M. CAVANAUGH: Right.

STORER: --but then should those provisions be retracted if, if they-- if-- because the argument for that, as I understand it, is they're not able to earn the money to really actually pay if, if they don't have a savings or some other--

M. CAVANAUGH: I don't know that--

STORER: --revenue outside of their incarceration?

M. CAVANAUGH: I don't know that it would make sense for that to be retracted necessarily. But, obviously, if they're making more money than the amount that they would be-- that their reduction would be, would be-- the reduction would be reduced or perhaps eliminated. They might make enough money that they don't qualify for a reduction while they're incarcerated. So I, I think, you know, some people might not qualify for some of the work programs. So eliminating that reduction entirely might not be workable. But I imagine that there's already guardrails in place for what the wages are that they're earning while they're incarcerated, so that they would still have to pay based on their income while they're incarcerated. So I would be hesitant without knowing more about it to say yes. I think that I would be more interested in looking at, obviously, if they're getting paid minimum wage, then they should be paying the child support based on the income that they're receiving,

STORER: Right. And then I guess, just as I look at the fiscal note, so this is-- the general understanding is there may be companies that can come in and employ them.

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M. CAVANAUGH: Yes.

STORER: Otherwise, the opportunities for employment that are doing work for the state or-- and I don't know if counties actually--

M. CAVANAUGH: They do-- they have something.

STORER: OK. But then those-- that would be coming out of the county's budget. I mean, that would be an increased cost to the county.

M. CAVANAUGH: Yes, yes it would, which is why they're going to come in opposed.

STORER: And all fairness, county commissioner, 8 years, we also oversaw the jail and the jail budget and it was-- the jail budgets are very-- that is a, that is a net-- that is a negative. And you're never going to be in the, in the black in terms of profitable.

M. CAVANAUGH: Right.

STORER: And it's not meant to be profitable. But it is, it is a cost to the taxpayer. So if an inmate was allowed the opportunity to make more money while incarcerated, would it be fair that somehow they are helping pay back the cost of their incarceration that is already a cost to the taxpayer?

M. CAVANAUGH: I mean, I would argue that-- not that I'm arguing that it's wrong to be-- if you're incarcerated, like it is a forced situation and you don't get any say in what your meals are, when you shower, when-- what your bed is, you don't get anything that you get outside and so you're being--

STORER: It's not the Hilton, that's correct.

M. CAVANAUGH: Yes. And I'm not arguing that it should be, but I, I'm not sure that putting people into a forced living situation-- I mean, that we should also force them to pay for that situation. They do have to pay restitution if that's court ordered, and they do have to pay child support. And I would imagine that if this actually were to happen, that there would be some financial literacy courses that went around that helped people build up, you know, their income or their savings, so that when they leave, they're set up to be thriving citizens. I mean, currently, some people will leave and they'll have

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no money, and then we give them \$100 and that's basically it. And so doing something like this in my mind will, ultimately, yield better outcomes for those who are doing reentry. And it will also, ultimately, cost the state less money in the long run if we are building up financial literacy and ensuring that people who are having sort of dignity and pride in their work. And, ideally, if we have these contracts with other companies, that part of those contracts can be almost an apprenticeship into working for them when they are no longer incarcerated. So kind of a workforce pipeline program. I think there's a lot of smarter things we can be doing around the-- our incarcerated individuals in their workforce. But I'm, I'm-- when you think about some of the really abhorrent situations like at-- oh, which one-- Tecumseh, York, you know, like, like undrinkable water and no air conditioning or no heat, like asking people to pay for these, like basically subhuman conditions seems unreasonable to me.

STORER: And I, and I apologize. I'm not aware of the, the conditions that you've described, but this one's tough because there's, there's a cost to the taxpayer, theoretically, on either end, on the front end under this situation. Well, there already is Just the cost of incarceration is costing the taxpayer.

M. CAVANAUGH: Right.

STORER: And, and then there's sort of that moving target which, which has, has some statistics, obviously, but there's also some-- I don't want to say ideology with the that's not the right word I'm looking for. But in terms of the cost of, of reintegrating into society and what--

M. CAVANAUGH: I'm getting my calculator out if I can figure out how to work my phone. So let's just assume that we paid \$113 million in wages, and what is our income tax rate? 7%?

BOSN: Ish.

M. CAVANAUGH: Ish. So, so it'd be \$7.9 million in income tax revenue that we would be getting from incarcerated individuals if we were to pay the minimum wage that we're not currently getting, which is a lot more than the \$1.7 million.

STORER: It's already taxpayers' money though. I don't know if--

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M. CAVANAUGH: No, not if it's contracts with public employers.

STORER: Right. That would be--

M. CAVANAUGH: Outside companies, then it's actually money that we're very much leaving on the table.

STORER: But this doesn't really specify-- I mean, it's--

M. CAVANAUGH: It does not. No, I mean it would be any job that they do,--

STORER: Right.

M. CAVANAUGH: --they would be paid minimum wage. But we also have a manufactured cost of what it is to incarcerate individuals by the fact that we have them doing work for the state, and they aren't paid a livable wage. I mean, our license plates should cost more than they do because they're made by Cornhusker Industries. Our office furniture should cost more. Our-- the, the uniforms that-- and anybody who wears a state uniform of any type, whether it's an incarcerated individual or any other field that's made at Cornhusker Industries-- like, we have a manufactured cost of government--

STORER: Right.

M. CAVANAUGH: --because we are not paying these individuals a real living wage.

STORER: I guess that's, that's specific. I would agree that if they were employed by someone outside-- able to earn a wage from a business outside of--

M. CAVANAUGH: Right.

STORER: --that was not a state job. But if we are increasing the, the cost, the state is going to pay them more. I mean, it's kind of robbing Peter to pay Paul in the big picture.

M. CAVANAUGH: So, so I would add that the statute that this opens up, as far as I'm aware, there is nowhere in statute that says that we can pay them as little as we do. It says that the pay can be set by the-- Corrections. It does not say that it can be-- my bill explicitly says

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that it cannot be below the minimum wage, but nowhere does it say currently that it can. So I would say that we are ripe for a class action lawsuit personally, and I'm shocked that we haven't had one that we've been paying people who are incarcerated these low wages and nobody has ever sued us over it because it's technically illegal.

STORER: Do you know what other states, states [INAUDIBLE]?

M. CAVANAUGH: I think other states, probably they do different. Every state does something different.

STORER: I mean, are there other states that don't have a mandatory minimum wage?

M. CAVANAUGH: For incarcerated individuals? Oh, I'm, I'm sure there are. I don't know what their statutes say, but ours specifically does not protect us from paying them below minimum wage.

STORER: Right. Thank you.

M. CAVANAUGH: Yeah.

BOSN: Senator Storm.

STORM: Thank you, Chair Bosn. Thank you, Senator Cavanaugh. Do incarcerated people, are they forced to work?

M. CAVANAUGH: You know, I don't actually know what the program is, whether they're required to work or not. I don't know enough about that.

STORM: So I think they probably have a choice to work or not work because they're not being forced to do this.

M. CAVANAUGH: I, I mean, yeah, that's possible.

STORM: Right. So if they want to lay in their bunk all day and watch TV or their iPad, they could do that, or they could go out and work. And I would assume that's a privilege to go out and work for some of them to get out of the cell and do that to some degree. And then they're getting their room and board and health care paid for by the taxpayers, which cost a tremendous amount. And also there's, there's just a tremendous amount of cost that goes into incarcerating people.

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But that's-- you know, when you commit a crime, that's-- you have to be in a situation like that. So I just-- those are kind of my thoughts on it. Thank you.

M. CAVANAUGH: Sure.

BOSN: Senator McKinney.

McKINNEY: Thank you. Thank you, Senator Cavanaugh. Are incarcerated individuals slaves?

M. CAVANAUGH: I would say that, that they meet the definition. Yes.

McKINNEY: Yeah, because of our horrible 13th Amendment. But even so, should us in the United States, in the state of Nebraska, we admonish other nations like China for slave shops and sweatshops and things like that. Should we be-- you know, although they're incarcerated, should we be, should we be doing things like that?

M. CAVANAUGH: Well, if I could collaborate the two points of view in my response. No, we should not. If, if incarcerated individuals do have the choice to work or not work, we would be in a heck of a tough spot as a state if they decided not to. So if that is an option available to them, none of this would exist because they could strike and not do any work, and not build any furniture, and not do any of the services that they currently do. You could go to the governor's mansion and not be served lunch. They could strike. So I assume that they probably don't have like a lot of flexibility in deciding whether or not they're going to work, which would lead to if you are paid slave wages and you are in subhuman living conditions, subhuman working conditions, you don't have to abide by OSHA and you have no choice, then, yes, you are a slave. So I would say that we are actively in the business of slavery.

McKINNEY: Thank you.

M. CAVANAUGH: Yeah.

BOSN: I just have a few clarification questions.

M. CAVANAUGH: Yeah.

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BOSN: I mean, I, I can't argue with any of the comments that the committee members have made, and I think I probably largely agree with some of your frustrations over what's going on. Have you toured the facilities and gone and seen Cornhusker State Industries or TEK Industries?

M. CAVANAUGH: I have at, at the York facility.

BOSN: OK.

M. CAVANAUGH: I have not been to Tecumseh, unfortunately. It's just something-- it's on my to-do list. But you know how to-do lists are.

BOSN: Yep. Nope. And I'm--

M. CAVANAUGH: But-- yes--

BOSN: --I'm not coming at this from a position--

M. CAVANAUGH: Yeah. No. Yeah.

BOSN: --of judging you for it. Mostly just because some of the committee members, Senator McKinney and I sit on a sentencing reformation-- reimagining sentencing committee, and one of the things we did over the interim was specifically looking at these issues and the opportunities for employment for some of the individuals who are incarcerated and ways we can improve it. And right now, I believe TEK Industries pays \$17.23 an hour and then does hire those individuals when they are released from incarceration.

M. CAVANAUGH: Yes, TEK Industries is the model that we should be following.

BOSN: And so one of the things that we discussed in our committee was ways to expand opportunities like TEK Industries, but I don't say that as a criticism directly to Cornhusker State Industries, because I think what Cornhusker State Industries is doing is providing state things to keep our [INAUDIBLE] costs down.

M. CAVANAUGH: Yes.

BOSN: Which I think is-- I hate to just say pooh-pooh that and say we're not being respectful to the inmates because I think a lot of

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them actually do value the opportunity to have the privileges that go with having a job. There are certain privileges when you--

M. CAVANAUGH: Right.

BOSN: --meet with the inmates who are working in those places, seniority and opportunities. But to expand hourly rates, while still honoring the fact that Cornhusker Industries has to pay rent, so they actually pay rent to the state of Nebraska to go out there. There are considerable costs that go with having inmates go to those facilities. They have to have extra correctional officers to ensure safety of other inmates and, and individuals who are working there. And so I don't-- and I don't think you are intending to do that, but I think we have to also keep those added costs in mind as the taxpayer. But I-- my hope is with the new facility, as frustrated as some are that we're building a new facility, that there's going to be a doubling of the space that goes for work. And so to the extent that this proceeds or doesn't proceed, I think it might be worth entertaining sort of an interim study or some sort of interim discussion about ensuring that we do have space for places like TEK, because they could expand at the new facility so that we can provide-- you weren't here, but we heard a bill last week or 2 weeks ago talking about reducing child support payments because inmates don't have any ability to pay when they make \$2.17 an hour.

M. CAVANAUGH: Right.

BOSN: And so, you know, I met with an individual there who works at TEK and worked really hard to get there, and he pays for his child to go to Creighton Prep. That's where all of his income goes, just so that he can contribute to his child's education. And I think that's laudable and certainly worthy of consideration for other individuals who might not get that same opportunity, so.

M. CAVANAUGH: Yeah. Well, and that's part of why I think financial literacy, it would be really important component and should be a component for people who are incarcerated. I like financial literacy, would have made better choices for my work income. But, but, yes, I under-- I do understand. I understand that if this actually were to happen, that this would raise the cost to the state, but it also would have payoffs as well in the child support payments and creating stability for those individuals when they are no longer incarcerated,

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setting them up so that they don't need other social safety nets like SNAP and rental assistance and things like that, giving them that ability. And also there is dignity in work, but it's hard to feel dignified in work when you aren't being compensated for it. And the fact that the state receives all of these services.

BOSN: You mean like us?

M. CAVANAUGH: Yes, yes, I do mean like us. I mean, we do, we have-- there's a constitutional amendment because we don't feel-- I mean, really respected because we're paid so little and it isn't, it is not respectful. And we do have a choice to do something else. But I, I'm not, like, "Pollyannic" of the fact that people who are in these facilities are in there for a reason, but they still have families. They still-- we still are oftentimes incarcerating the primary wage earner and they still have children and, and those, those children have needs. And if we want to break the cycle of systemic poverty and systemic incarceration, generational incarceration, we have to start doing things differently. And we have to invest in things differently and investing in people and giving them that dignity and grace to help them get themselves out of this, instead of really forcing them to be in poverty by paying them subwages and, and then taking those wages. I mean, they pay-- they get paid \$2 an hour, and somehow we accumulate \$1.7 million from their wages. That's not great, that does not sit well with me. But I-- like whatever I said, \$7 million in a taxable income, that's fantastic. But we have a manufactured cost of government as a result of this. All of the things that Cornhusker Industries provides to us as a government is manufactured lower. And our license plates, those are paid through-- for by fees. We could be charging more for our license plates, and that money could go to pay the people who are making them a livable wage. But we, collectively, as a society, benefit from not the government, individual citizens benefit from paying them \$2 an hour because we get a cheaper license plate. And that, to me, doesn't seem right.

BOSN: Senator Storer and Senator Storm-- followed by Senator Storm. Excuse me.

STORER: Thank you, Chairman Bosn. This is-- I appreciate this conversation. I mean, it challenges, you know, my thinking to some extent, but I, I guess here's where I'm struggling, is when the whole judicial system and, you know, criminal-- the whole criminal justice

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system is intended-- my belief and understanding has always been that when someone is convicted and sentenced that is, in essence, they're paying their debt to society. It is actually a debt to society that they committed, whatever the crime is, that had a negative impact on whether it was one person or a community or in general it was, it, it was a debt to society. And so I, I am struggling with believing that their services that then return back a benefit to society are imbalanced in a way that's part of repaying your debt to society. And I, and I do understand that, you know, families-- because I agree, you know, we had the conversation about an individual that was the noncustodial parent paying child support with the reduction, which is a-- the reality is you're not making the money that you would have probably been making if you were not incarcerated. So there's just those, those financial realities. But, you know, yeah, my heart instantly goes to the child, you know, the needs don't change, you know, whether mom or dad are incarcerated or not. But I guess I just feel like it's worth, it's worth consideration in this whole thought process that, you know, one, one's debt to society, it's all part of that ultimate penalty. And I don't know that there's-- and none of us are suggesting there's an actual dollar amount to put on that debt to society.

M. CAVANAUGH: Sure.

STORER: But, but why we have various sentencing, you know, crimes with, with various opportunities for sentencing. Right? It's an attempt to make, make the debt to society-- I'm going to keep using that word because it really is, but-- reflect, you know, the, the crime and, and how that was perceived to have impacted one, either an individual or a community or, or society as a whole. So I, I guess that's more of a comment, not a question. But thank you for listening, hearing me out.

BOSN: Senator Storm.

STORM: Thank you, Chair. Thank you. A couple of things here. I'm all for private sector investing in this, and the private sector will if they see a benefit to that. And if you take someone that's incarcerated and they've shown that their behavior is well enough that they can get out of incarceration to work at a place and maybe go back then, and they're a good employee, the private sector will pay them more and give them opportunity and, and hire them when they get out,

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you know. What I have trouble with is the taxpayers paying more money. And like Senator Storer said, when you, when you commit a crime, there's a debt to society and part of that debt is being incarcerated. But, also, maybe you're going to make license plates at a lower rate so taxpayers can pay less money. So that's, that's part of the process. And there is a huge expense to incarcerate people. But there's a reason, you know, that that's part of the, part of the process. But I do think that if the private sector can work with, with the prisons to help give job opportunities, I think that's great. Because I think work is very important for self-worth, people have to work to have self-worth, and I think that's very important.

M. CAVANAUGH: And I agree, people-- self-worth is-- working is there's dignity and worth.

STORM: Absolutely.

M. CAVANAUGH: Yeah.

BOSN: Thank you. Oh, Senator McKinney. Sorry.

McKINNEY: What's the fiscal note on this bill?

M. CAVANAUGH: Oh. Well, I didn't quite--

McKINNEY: Just estimate.

M. CAVANAUGH: It's-- so-- I don't know, like, \$200 million if I were to round up a bit. I don't know. It's, it's a lot.

McKINNEY: Still cheaper than a prison, right?

M. CAVANAUGH: It is cheaper than a prison. Actually, it looks like it's, like, \$106 million is the Department of Corrections piece of it. So \$106 million this year. \$112 million next year. And so then I would say-- but this doesn't account for the increase in income tax, so then I would say, like, \$-7 million of income tax. And then you think about the prison that we're building, we just in the preliminary budget, I, I was not supportive of it, but we allocated \$180 million, another, another \$180 million for the prison.

McKINNEY: On top of the 240.

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M. CAVANAUGH: Yes.

McKINNEY: So we could build--

M. CAVANAUGH: So we haven't built anything.

McKINNEY: Well, yeah, we haven't.

M. CAVANAUGH: But we've moved dirt.

McKINNEY: So paying people is cheaper than building. Thank you.

M. CAVANAUGH: Yeah.

BOSN: Thank you.

M. CAVANAUGH: Yes.

BOSN: Are you staying to close?

M. CAVANAUGH: I-- unfortunately, I actually have to get home for my kids, so--

BOSN: Perfect. No problem.

M. CAVANAUGH: --I apologize, but I will be listening on the drive to Omaha. Thank you so much for the conversation you all. I really appreciate it.

BOSN: Can I see a show of hands how many individuals are testifying in some capacity on LB578? 1,2,3,4,5. Got it. Thank you. First proponent, anyone here to testify in support? Welcome.

JASMINE HARRIS: I always fall into this chair.

DeBOER: Hello.

JASMINE HARRIS: Senator-- Chair Bosn and senators of the Judiciary Committee, my name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s, and I am here representing RISE as their Policy Director, and we are in support of LB578. Didn't have a prepared written testimony just because I saw the fiscal note, I was like, well, this is probably going nowhere, but I want to thank Senator Cavanaugh for introducing it because it's on the principle of how we treat our people who are

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incarcerated. When we're talking about folks who are incarcerated, and it's been mentioned, slave labor, indentured servitude, they're not even making \$2 an hour. It's less than \$2 per day. So I want that to-- make sure you have that information for that. And then it does also depend on the job because if they have a job in the shop than it is higher, they do get pay per hour. When we talk about folks being able to make a, a minimum, at least minimum wage while they're incarcerated, it's impact on the families. It provides a source of income. And when they don't make that income, it is a strain on the family. I always talk about the family does the time with the person who is incarcerated. So when you're trying to stay connected, we know that connection is a big thing for people who are incarcerated to help them through that rehabilitative process. So when you have to pay to make calls, when you have to pay for the stamp, when you have to pay to send an email, all of that begins to add up. And so people do not have the money to do that, so they lose the connection. And if they're depending on their family who is still in poverty, it's very limited in how they can support their family member while they're incarcerated. It was mentioned that folks will have these jobs while they're on the inside and can't get that same job when they get out. And that is true, we've seen that time again. You can have a skill, you can have-- it can be the same company and you cannot get that job when you get out. I wasn't able to stay a couple weeks ago for the bill about child support and debt. I want to clear that up. Right now, someone who is out on the streets paying child support can ask for a modification in that payment if they lose the amount of money that they're currently making. So when people go inside and they're making \$2 an hour or \$2 a day, less than \$2 a day, they can ask for that modification because there's no way that they can stay at it. If we change this law, they can and they will be able to keep up with those payments. Man, the time just goes by so fast. I want to talk about-- when we're talking about paying debt to society, the sentence and going into the prison is the debt to society. It has nothing to do with the money, per se, for that taxpayer. Also, they have to pay for that person to be in there to pay the debt to society. The job of the prison is for rehabilitation. It is a correctional facility. So when we're setting up programs and things like where you can actually get skilled and get paid for to do it, it should, it should reflect what rehabilitation actually stands for. And, today, I really wanted to tee up for you all someone who's going to come behind me, who has a personal story to tell in this realm. She took our emerging advocates

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training this past session, and I think she'll really let you in on how this has impacted her and her family.

BOSN: Thank you. Any questions for Ms. Harris? Thank you for being here.

JASMINE HARRIS: Thank you.

BOSN: Next proponent? You've been teed up. Welcome.

CAMRYN MOON: Yes, thank you. And thank you for taking your time. My name is Camryn Moon, C-a-m-r-y-n M-o-o-n, and I'm here in support of LB578. In the fall of my junior year of high school, my father was sentenced to 14 years in prison. My father was the breadwinner of my family, and this upheaval brought my family significant financial strain. At one point, my mother came dangerously close to losing our home, and I almost had to live with a family, a family friend to finish high school. I worked two part-time jobs while maintaining full-time student status, and my days were a delicate balance of attending classes, working every day of the week, and dedicating late nights to completing homework my senior year of high school. I was lucky to be awarded an [INAUDIBLE] scholarship to the University of Nebraska-Lincoln and pursue my dream of becoming a civil rights lawyer. I'm sitting before you here today as a daughter who has lost her father to incarceration. I bring the perspective of a daughter who has battled to defend her father's dignity in the face of structural obstacles and a life-- and being a lifeline to someone society has cast off. My father earns \$1.86 a day, which is barely enough to cover the most basic hygiene needs or cover-cost of a single phone call. These wages are not only unjust, but make it impossible for him to contribute to our family-- a family's financial needs, leaving my mother and I to pick up the pieces. The wages of incarcerated workers are so low that families like mine rely on SNAP and Medicaid just to survive. But even with this assistance, families like mine continue to struggle. Research shows that the average wage for incarcerated workers nationwide ranges from just a few pennies to a few dollars per hour, but Nebraska is on the lower end of that spectrum. If Nebraska raised the wage to even half the minimum wage, it would lessen the burden on taxpayers, reduce generational poverty, and allow families like mine to achieve greater financial stability. Raising wages for incarcerated workers is not just a matter of fairness, it's a matter of dignity. These individuals are not faceless numbers. They are

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mothers, fathers, husbands and wives. And when we compensate their labor fairly, we are not only helping their families survive, but also set up the stage for successful reintegration. Passing LB578 is not just the right thing to do. It's the smart thing to do. Thank you. And I hope that you, you advance this bill. Thank you.

BOSN: Thank you. Very nice job. Any questions for this testifier?

STORM: Yeah.

BOSN: Senator Storer followed by Senator Storm.

STORER: Thank you. Just kind of like you today, I guess. Thank you very much for coming. I'm just curious, where-- have you graduated now? Are you--

CAMRYN MOON: I'm a junior at UNL, so I'm in the process of taking the LSAT and starting to look at colleges, law colleges. Yeah.

STORER: Congratulations.

CAMRYN MOON: Thank you.

BOSN: That was your question. All right. Very nice job testifying. And thank you for sharing your story.

CAMRYN MOON: Thank you.

BOSN: Next proponent? Welcome.

JASON WITMER: Thank you, Chair Bosn and members of the Judiciary Committee. My name is Jason Witmer, J-a-s-o-n W-i-t-m-e-r, and I'm here on behalf of the ACLU in support of LB578. 95% of those incarcerated will one day return to the communities. We all have a stake in their success. LB578 takes that in consideration. Research shows that individuals that become incarcerated often have lower levels of education and employment compared to the general population. We know meaningful education and employment reduces recidivism rates. Nebraska has made strides in providing meaningful education opportunities inside the correctional facilities. But meaningful employment requires, and it cannot exist without a minimum standard, which is minimum wage. Currently, incarcerated individuals work essential jobs in our, in our facilities, and as something was

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referred to earlier, if they were to stop working, kitchen would stop, laundry would stop, essential things would stop. The prison would have a problem. Not saying that should happen, but I'm saying the upkeep of prison running is also by those who are incarcerated. So not paying them minimum wage, paying them practically pennies on the dollar is not a practice that fosters rehabilitation. Instead, it reinforces the cycles of poverty and recidivism. Furthermore, as we've heard, the collateral consequences of incarceration are often overlooked, such as a child growing up without adequate financial contributions to their, their support, single parents working tirelessly-- tirelessly to meet-- to make ends meet, and victims struggling with trauma and economic loss. LB578 ensures that incarcerated individuals earn wages that allow them to meet their financial obligations: child support, paying restitution to victims, saving so that when they get out, instead of struggling financially, they can start putting things together and be successful. One might argue the cost of implementing this policy is too high. However, it promotes prosocial behavior inside the correctional facilities, making facilities safer. It reduces recidivism, making the community safer. Improves post-release employment rates, creating stability, and lowers reliance on public assistance upon release. Public safety is best served by policies that help individuals reintegrate, rather than setting them up for failure on release. So with this, we ask this committee to advance LB578 to General File. I'll take any questions if you have them.

BOSN: Thank you. Questions? Senator McKinney.

McKINNEY: Thank you. And thank you, Jason. So how does somebody get a job inside?

JASON WITMER: Oh, it's a-- so a TEK job are the ones you was referring to are a struggle and a long line because people do want to work--

STORM: Sure.

JASON WITMER: --because they're incarcerated and have nothing else to do with their lives. However, if you don't work, there could be consequences. So they also want to work because consequences could mean you're locked in your cell more, which is not good for mental health. So a job-- them jobs require employment. You can have minor misconduct reports, which means I have extra clothing in my cell, an extra pair of socks. I don't know if they took that out because I have

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been out for about 8, 9 years. I will say that's about half \$1 million in savings of me not sitting for these past 10 years in prison. But, yeah, so it, it takes application, you can get assignment on being in the-- being on a cell block in the unit, them are usually-- you guys are talking about \$2, did the price go up a dollar? I guess you can't answer questions, but \$1.26 a day was the-- a, a common price when I last heard it.

McKINNEY: How many hours would you work?

JASON WITMER: Except for a few minor positions, like sometimes somebody just wants to come out their cell, they'll come and mop and clean, and that might be an hour or 2, but it could be 8 hours in the kitchen.

McKINNEY: OK. Thank you.

BOSN: Senator Storm.

STORM: Thank you. So do you know how much does it cost to incarcerate someone per year? Do you have that number?

JASON WITMER: Yeah, Chief Justice Funke just gave that number out, \$41,000 a year.

STORM: OK. I was figuring about \$33,000, just doing quick [INAUDIBLE].

JASON WITMER: That's about the average. That's not-- that's just saying we're averaging out 41, it could be--

STORM: So that's, you know, 90 to 100, 110 bucks a day per person.

JASON WITMER: Yeah, but \$41,000 salary is not minimum wage.

STORM: Right. I'm just saying what it costs the state or the county for food, housing, health care, there's expense to have to take care of people inside of the prison. It's cost-- it's a cost.

JASON WITMER: You are correct. You are correct. There is expense, but crime has gone on-- down in this state, and I don't have that data right in front of me, for about a decade and we showed that our incarceration has gone up. So at some point, we have overly chosen to overly prosecute and raise, raise penalties to the point that we are

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in competition to have the most incarcerated system in the country. And I don't think Nebraska wants to be on top of that list. So we are actually--

STORM: I agree on that. Do you know what the average--

JASON WITMER: Yeah, so I think we need to look into reform and, again, consider best practices.

STORM: I would agree if we can do that.

JASON WITMER: Thank you.

STORM: But you know what the average we pay in the nation states for hourly wage? This might be a little bit-- \$1.41. So that's-- you take every state in the nation, that's what they're paying.

JASON WITMER: Right, but--

STORM: So you're asking the state of Nebraska-- or this bill is asking us to go up to \$13.15 or \$13.50 an hour, and the average is \$1.41, so.

JASON WITMER: With all due respect, Senator, this system was made off of slavery. That's why we have the 13th Amendment still include slavery in it and per views in that, we are not interested in paying people a survivable wage, and it's showing we're kind of not interested in them being successful because we can't get people who get salaries of \$200,000 a year, such as the director, \$200,000 a year in a system that's costing all of the rest of us, because I am also a taxpayer, a lot of money, so.

STORM: Right. And so--

JASON WITMER: It is debatable on how this goes about. I understand where you're coming from.

STORM: Well, why are people in prison?

JASON WITMER: They committed harm and the prison-- incarceration is the punishment.

STORM: Well, I mean, if you commit a crime, like we were saying earlier, there's a debt to society. We can't allow people to commit

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crimes and just say be on your way. Go that way, there's no place for you.

JASON WITMER: That is true.

STORM: So we have to have prisons.

JASON WITMER: Well--

STORM: You think-- you don't think we need prisons?

JASON WITMER: In the '70s, we only had like 700,000 people in the prisons. How did we get to a couple million is-- would be the question I would rhetorically propose.

STORM: Do you think we need prisons?

JASON WITMER: I think we built ourselves up to, to a point that we think we need prisons, to the point we think we do and we don't. Because all the data that's backing something says we're over incarceration. We got too-- we, we should think about how we do sentencing reform. It's too much. We got sentences-- I mean, we got crimes on top of crimes on top of crimes, meaning we can narrow down these crimes and still be able to prosecute the same people.

STORM: So if a person commits murder,--

JASON WITMER: Right.

STORM: --they need to go somewhere, right? To a prison. Correct?

JASON WITMER: But not for life, which is costing us millions and millions.

STORM: But we have to have a place to, to house those people that commit crimes.

JASON WITMER: I agree to a certain extent.

STORM: We can, we can debate all day long on what extent, but we have to have a place. And it costs money to do that for the taxpayers.

JASON WITMER: But somebody-- well, I would say that we, we incarcerate people for drug abuse. We can, we can spend a fraction of that money

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for a higher level of treatment. And I get-- I think the problem is, this is my speculation, because this is also something we struggle with inside. We don't come inside and start thinking-- looking at the next guy and thinking, well, now that I'm in here, you're a better person to me. We got to get over the concept of what's the best practices, and the best practices is human practices, treating people like human beings and not throw away.

STORM: I totally agree with that.

JASON WITMER: And I do agree it costs us a lot of money and we just need to think of something different than incarceration. This is an idea based on minimum standards of treating a person like a person with some kickback. You have an idea, I might not agree with it to an extent, but how can some of that contribute to the cost?

STORM: One other question, I know we got-- and so when you're on the inside, because you've been there and I appreciate that, you can give us--

JASON WITMER: I'm very open--

STORM: --perspective that I don't have and no one else has here. So those higher paying jobs, like, what, what did you say Neltech, Tech Net or what, what was the work or what was that?

JASON WITMER: Senator Bosn said the TEK.

STORM: So how do you get-- are there just a few positions open for that when you're on the inside or is it--

JASON WITMER: Yeah, there's--

STORM: --very, very selective, you have to--

JASON WITMER: And often people get there and they're there for a long term. And I wouldn't--

STORM: Right.

JASON WITMER: --exclude that because sometimes people get there and they might have, like, 50 years or life. I think they should be able

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to get there and hold that position as long as possible. Don't get me wrong on that.

STORM: In my view, is the private sector. If there is a place, the private sector will grab people that-- and get them-- and pay them way more money than \$1.40 an hour. If they're, if they're contribute to that company and then they'll hire them if they're-- if it works. So I'm all for the private sector helping out. What I'm not for is the taxpayers paying, you know, a huge amount of money for people who are incarcerated paying a debt to society. So thank, thank you.

JASON WITMER: Thank you for the discussion.

STORER: All right. I do have one, because I do appreciate--

BOSN: Senator Storer.

STORER: I did not wait for you. I apologize. Do appreciate your perspective because you do bring a very unique perspective to any of these conversations. But can you just really briefly, and I don't want to get-- spend too much more time on this, but why don't we have-- in your opinion, why don't we have more private companies working with the prison systems and offering similar opportunities? Is there some barrier there that-- what-- to me that does seem to be-- to make a lot of sense. Right?

JASON WITMER: I, I just sighed because I, I feel it's a tricky question because, one, we don't want our private companies coming in as slave owners and undercut because they don't just use the, use the people who are incarcerated by paying them next to nothing, but the people out in society, they're, they're doing that to them too. That's-- I believe that's why the Civil War was fought because you can't compete with an economy where you under-- you undercut everybody else that's not practicing this. So let's say this place pays \$30 on the street and they realize they can pay \$15 if we go into prison.

STORER: So I feel like I'm missing something, the, the tech company that is employing some of the inmates now is paying a dollar or something a day?

JASON WITMER: I don't know what they're paying on the outside. I'm saying it's a tricky question to the point that we don't want a whole

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bunch of private companies just saying we want the, the labor out of prisons. What we want is to balance it out.

STORER: And not interrupt you, but that's not at all what I'm suggesting.

JASON WITMER: No, I'm not saying that's what you're suggesting, I'm saying that's what it could lead to.

STORER: What I'm suggesting is this does appear to be-- everything I've heard is that these jobs with the-- and what is the name of the company?

JASON WITMER: TEK. TEK.

STORER: We're just going to call it the tech company. I don't think that's quite the right name, but that these are desired jobs. The inmates want--

JASON WITMER: They are.

STORER: --these jobs, which tells me that-- I don't know, and I'm sure we can find out what they're paying, I would guess it's a acceptable wage for inmates to want to have that job, to be sort of--

JASON WITMER: Yes.

STORER: --lined up for that job. So my question is, really, are you aware of any reason that we don't have-- that maybe we're not fostering more of those opportunities for companies to come in and offer reasonable living wage jobs to inmates that earn the privilege to have them? I mean, is there-- and, and maybe you don't have the answer to it. But I-- that model seems to make a lot of sense to me.

JASON WITMER: Yeah, I was going to say I'd be speculating. I'd say the interim, as was suggested, is a great idea. And I would just add that, like there are jobs that people are getting paid-- a few like working the roads that are getting paid next to nothing, that there are examples of why is this not a minimum wage job? But a study on why they haven't expanded is a great idea. Minimum wage, I absolutely agree with it, I get the struggle, the struggle with that, that you got, but that's why our system is so unbalanced in the first place is

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we have to be uncomfortable when we think about doing the right thing in a system that's been embedded all our lives, pretty much.

BOSN: In the interest of time, I'll just really quickly say one of the things that Senator DeBoer and I talked about doing was trying to arrange a tour for this new committee to go and see some of these facilities. It is TEK, it's T-E-K. TEK is the name of the company that's there. The other one is CSI, Cornhusker State Industries. They could probably do a really good job of answering a lot of these questions. And so I'm going to make that available over the interim.

JASON WITMER: That'd be good.

BOSN: We're going to, we're going to take a class trip.

JASON WITMER: You should also look into York's water.

BOSN: Thank you.

JASON WITMER: The York prison. It's not good. Thank you.

BOSN: All right. Next proponent?

SCOTT SMITH: Hello. Scott Smith, S-c-o-t-t S-m-i-t-h. I just wanted to address Senator Storm's question from earlier regarding if there was a requirement to work in prison. I think Senator McKinney kind of addressed it, but I just want to put this out there really quick. Under-- in the Nebraska, Nebraska Department of Correctional Services handbook, under offenses, a 1f work stoppage, work strike is a-- it's a Class 1f which is only behind escape, possession or manufacture of dangerous contraband, assault, mutinous actions, and murder. So if you choose not to work when you go for parole, you have a Class 1 write-up on your, on your record and, and that's it. Thank you.

BOSN: Thank you. Any questions for this testifier?

SCOTT SMITH: Any questions?

BOSN: Seeing none, thank you for being here.

SCOTT SMITH: Thanks.

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BOSN: Next proponent? All right. Any opponents? Anyone here in opposition to LB578?

ELAINE MENZEL: Good afternoon, Chair Bosn-- excuse me-- and members of the Judiciary Committee. For the record, my name is Elaine Menzel. That's E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials in opposition to LB578. It will come as no surprise to you, particularly given that Senator Cavanaugh previewed the fact that we would be testifying. We are, not surprisingly, testifying in opposition due to the fact that this would be another unfunded mandate. We've had a theme of that on other legislation that's been brought before your committee. I won't expand upon that a great deal because you've had the discussions and dialogue before. The only other thing I will bring up, this is strictly a technical thing in Section 1(1)(a), with respect to the definition of administrator in the case of a county jail. It's not always the sheriff. And so in the event you were to do something, just a recommendation that you perhaps look to Section 47-105.01 that says it's sheriff or jail administrator. So that's just a brief example. In the event you were to engage in an interim study or further discussions related to this issue, we would be glad to participate and lend additional information if desired. With that, I will open it up to questions if you happen to have any.

BOSN: Questions for this testifier? Senator McKinney.

McKINNEY: Thank you. Thank you for your testimony. You're in opposition, so my question is, do you believe they're slaves?

ELAINE MENZEL: I believe there are unfortunate circumstances. I would say no.

McKINNEY: So if they're not slaves, what do you think they should be paid?

ELAINE MENZEL: It does say in Section 29-2414-- excuse me, I need to try to reference that-- this, this is the statute that pertains to allowing county boards-- profitable manner is what is stated in statute for purposes of counties being able to employ inmates. With respect to that, I don't have a definition of what that would be.

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McKINNEY: It allows county boards to employ incarcerated people in a profitable manner?

ELAINE MENZEL: That's how it's stated in the statute. Yes.

McKINNEY: That sounds very horrible. So I guess you heard the conversation today and I know some people think people should pay their debt to society and the taxpayer shouldn't pay it. But I would argue that if a family loses a father and the father goes to jail, and the father-- and the family ends up on Medicaid and SNAP, the taxpayers are paying. So you could make that argument all you want, but the taxpayers are paying. And, and I'm just curious, a profitable manner, what, what does the counties believe is a profitable manner?

ELAINE MENZEL: I must admit, I've not analyzed or I haven't opined on that word to know what-- or actually that statute in great detail until sitting back there to see based upon the question as to what the authority for employing individuals was in the jail setting.

McKINNEY: What is the average pay of counties in the state of Nebraska?

ELAINE MENZEL: The fiscal note indicated that this legislation, based upon a survey response from 11 counties, which is not anywhere near the [INAUDIBLE] was going to be roughly an increase of \$3.9 million. I believe that the senator, Senator Cavanaugh, I believe she testified it was two dollars and some cents, but I don't recall that specifically. I did not calculate it on-- based on those counties alone. And, of course, that's not going to reflect all of them.

McKINNEY: And my last thing, I remember when the minimum wage went up, I believe it was in Lancaster, I think the Lancaster County Jail Director, or I forget, he raised the pay based off the change in minimum wage because-- and I'm trying to find the article, but I remember it happened, he said they weren't slaves. So has any, any other county considered that?

ELAINE MENZEL: I, I suspect the answer is yes, but I cannot definitively say that.

McKINNEY: All right. Thank you.

ELAINE MENZEL: Thank you.

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

ELAINE MENZEL: Thank you.

BOSN: Yes. Next opponent? Any neutral testifiers? All right. I will note for the record, there were 13 proponent, 12 opponent, and 1 neutral comments submitted for the record. And that will conclude our hearing for LB578. Next up, we have LB159 with Senator Guereca. Welcome.

GUERECA: Thank you, Madam Chairwoman. Good to be back. It's been a while. Good afternoon, Chairwoman Bosn and members of the Judiciary Committee. My name is Dunixi Guereca, that's D-u-n-i-x-i G-u-e-r-e-c-a, and I represent District 7, which includes the communities of downtown and south Omaha. I'm here today before you to introduce LB159. Current Nebraska statute Section 29-2260 directs that courts are to consider certain statutory factors when imposing sentences on a person who has been found guilty of a crime. The listed factors and statutes are not exhaustive, but they do provide some directive for courts to consider when determining an appropriate sentence after weighing aggravating and mitigating factors. Some of these considerations, while not controlling the discretion of the court, are to be given weight in favor of withholding a sentence of imprisonment. LB159 will provide that courts are to consider a defendant's status as a current or prior survivor of sexual trafficking or domestic violence or abuse, as these terms are defined by Nebraska law as a mitigating factor when deciding what sentence to impose. As I stated earlier, these statutory factors are not the only factor that a court can consider when determining a sentence. And in theory, courts are now able to consider a defendant's past history of trauma. Some studies show that up to 90% of women in prison experienced trauma. Other samples of incarcerated women show that between half and three-quarters report experience of sexual violence. More than 70% of women incarcerated in prisons and jails report prior experience of intimate partner violence, victimization, ranging from threats and intimidation to physical or sexual assault. Passage of this bill will not require courts to impose a lesser sentence that they would otherwise impose in any case, but the passage of this bill would be a clear expression of a legislative intent that courts at least consider whether a person being sentencing-- being sentenced has a history of being abused by an intimate partner or as, or as a survivor of sexual trafficking. There will be testifiers following me

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who can speak more to the necessity and purpose of the bill. I urge the committee's favorable consideration of the bill and will now answer any questions you have.

BOSN: Thank you. Questions for Senator Guereca? We're going to let you off easy. Are you staying to close?

GUERECA: I will.

BOSN: Awesome. Can I see a show of hands how many individuals are testifying in some capacity on this bill? 1, 2, 3. Perfect. Thank you. First proponent? Welcome back.

MELANIE KIRK: Thank you. Good afternoon, committee and Chairperson Bosn, members of Judiciary Committee. My name is Melanie Kirk, M-e-l-a-n-i-e K-i-r-k, and I'm the Legal Director of the Nebraska Coalition to End Sexual and Domestic Violence. I'm testifying today in strong support of LB159, which would allow courts to consider a defendant's experience as a victim of abuse or of human trafficking when determining the appropriate sentence. Survivors of abuse and trafficking often face extraordinary circumstances that can lead them into the criminal legal system. Research and lived experience tell us that many of these individuals, particularly women and children who were convicted of offenses, had been coerced, threatened, or manipulated into criminal activity by their abusers or traffickers. Victims of domestic violence may be forced to commit crimes under duress, such as financial fraud, drug possession, or even acts of violence in order to survive. Similarly, trafficking victims are frequently compelled into illegal activities such as prostitution, drug distribution, or theft under the control of their trafficker. These individuals should not be treated the same as the offenders who act with free will and intent. Nebraska's current sentencing laws do not adequately account for the impact of trauma, coercion, or abuse on a defendant's actions. Judges have often limited discretion to consider a defendant's history as a victim of imposing a sentence, leading to unjust outcomes that fail to recognize the full context of the crime. This bill provides courts the additional guidance and how they should weigh the individual's experience as a victim of abuse or trafficking as a mitigating factor during sentencing. It does not absolve accountability, but it ensures that punishment is proportionate and takes into account the reality that many individuals convicted of crimes have themselves been victimized. Recognizing a

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defendant's status as a victim does not mean disregarding public safety, it means ensuring that the justice system responds with fairness and compassion. This bill aligns with, aligns with trauma-informed principles and supports rehabilitation by allowing judges to consider the extent to which a defendant's abuse or trafficking influence their criminal conduct-- conduct, whether the defendant acted under coercion or duress, and the defendant's likelihood of recidivism in light of their victimization and access to support services. By allowing for more nuanced sentencing, this legislation helps break a cycle of victimization and incarceration. Survivors should not be further punished by a system that fails to recognize the ways in which their trauma has shaped their actions. Other states have taken steps to implement similar reforms, acknowledging that a one-size-fits-all sentencing approach does not serve justice. Nebraska is always-- is already a recognized leader because of our set-aside statutes for survivors of sex trafficking. Now, Nebraska has the opportunity to lead again in recognizing the complexities of abuse and trafficking, and ensuring that survivors are not unfairly condemned for their actions stemming from their victimization, thus allowing for trauma-informed approach which keeps victims out of prisons and in positions with which they can get support within their communities. LB159 is a critical step towards a more just and compassionate legal system, one that acknowledges the realities of abuse and trafficking, provides the courts with the discretion necessary to impose fair and appropriate sentences. I urge the committee to advance this bill and ensure that Nebraska's justice system does not further penalize victims for the harm that they have incurred. I ask-- thank you for your time and consideration. I'm happy to answer any questions.

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

ERIN FEICHTINGER: Probably recovering from that embarrassment. Chair Bosn, members of the Judiciary Committee, my name is Erin Feichtinger, E-r-i-n F-e-i-c-h-t-i-n-g-e-r, and I'm the policy director for the Women's Fund of Omaha. We also offer our support for LB159. As Ms. Kirk pointed out, this legislation represents a recognition of the impact that complex trauma from sexual abuse and trafficking can have on a person's life and recognizing-- recognizes that harsh sentencing may serve to actually exacerbate that trauma. Extensive research has attempted to understand the complexity of the trauma that comes from

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human trafficking, and shown that this trauma can mean that victims and survivors do not acknowledge their victimization to others, especially authorities. Additionally, as a result of that complex trauma, trafficking victims may themselves help to support their traffickers, which we heard in previous bills. Many adult victims report either first being trafficked as children or having a history of childhood abuse prior to their first trafficking experience. This research has also consistently shown that people who were sexually victimized as children are at a higher risk for committing crimes than are people who did not suffer sexual abuse. For example, people who were abused as children were more likely to be later charged with property crimes and drug-related offenses as juveniles than those who were not. Childhood victimization has been said to be itself a risk factor for incarceration, with one study finding that one-third of victimized children in a sample population were incarcerated by 24 years old, representing an incarceration rate double that of their nonabused counterparts. Women are overrepresented in the data on the prevalence of childhood victimization, and the percentage of incarcerated women who have experienced child sexual abuse is similarly high, with some studies putting that number at above 70% as Senator Guereca pointed out. When it comes to intimate partner violence, extensive research has consistently demonstrated the direct and indirect pathways to incarceration as a result of that trauma. Women use violence in a direct response to her experience of violence or abuse to protect herself or others or to fight back, often after not receiving adequate protection when they did try to seek help through the courts. Women are also coerced into criminal activity by an abusive partner or take blame for a crime that they didn't commit. Directing courts to consider the history and presence of abuse will not solve the problem of intimate partner violence or sexual abuse or trafficking, but it is an important step toward our state's ability to recognize and address the complex trauma associated with that abuse and help us to avoid further exacerbating that harm. And we would ask this committee to advance LB159. And I'm happy to answer any questions to the best of my ability.

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

JASON WITMER: Thank you, Chair Bosn and committee. My name is Jason Witmer, J-a-s-o-n W-i-t-m-e-r. I'm here on behalf of the ACLU in support of LB159. Decades of research have shown direct connection

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between trauma and crime, significantly when someone grows up experiencing violence, abuse, and neglect. One evidence-based tool, which I'm handing out for you to see, I'm not an expert on it, but I do-- it's the ACE study-- I do suggest-- I put the test with it. I think you should make copies of it, take it home, do it. Do it with your family, do it with your friends and see what they come out to be. The evidence-based tool is the ACE study which stands for Adverse Childhood Experience. One of the-- which is the handout I gave you. People who have high ACE scores are more likely to act impulsive, struggle emotionally, turn to drugs and alcohol to cope, become involved in the criminal legal system. Childhood trauma can leave someone with a lifetime impact. However, trauma is no easier to cope with than when you become an adult and it occurs. Many people facing criminal sentences are survivors of abuse and sex trafficking. As we have heard, been forced into situations, manipulated into situations, or turned to drug and alcohol to forget the pain, and then they end up in the, the legal system, which is what brings us here to LB159 that recognizes the human experience that's, that is far more complicated than the picture that one's negative actions may show. LB159 recognizes this isn't about excuses, it's about understanding why some people end up in the legal system in the first place. Without addressing the root cause, incarceration alone pushes an individual further into the, into the cycle of trauma and recidivism. LB159 allows the judge to see a complete picture, not just the crime that led to it. What it doesn't do is take away or limit the judge's power. LB159 simply gives the judge the ability to consider trauma and the past victimization as a sentencing factor, just like they already consider mental health in a person's other background factors. Accountability is not taken out of the question. By passing LB159, we're giving judges the tool to make fair and effective sentences, the sentencing decisions that reduce recidivism and help people get their lives back on track. And with that, we would ask this committee to advance LB159.

BOSN: Thank you. Questions for this testifier? Thank you for being here.

JASON WITMER: Thank you.

BOSN: Next proponent?

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***SHANNON CORYELL:** I support this bill because it takes everything into consideration. Things are not always black and white.

BOSN: Anyone here in opposition? Any opponents to LB159? Neutral testifiers? Anyone here in the neutral capacity? Great. While Senator Guereca is making his way back, I will note there were 26 proponent comments submitted, 1 opponent, and no neutral comments submitted for the record. Welcome back.

GUERECA: Thank you, Madam Chairwoman. You know, you heard from the testifiers, these women and these people that experience sex trafficking, domestic violence, it affects them and leads to trauma. And all, all we're saying is sending a message from this Legislature that, that does affect people and ask our judge to take that into consideration when doing their sentencing. I'll take any questions.

BOSN: Senator Storer.

STORER: Thank you, Chairman Bosn. Thank you, Senator Guereca. And I just want to really-- we're not limiting the judge's current ability to sentence.

GUERECA: Correct.

STORER: We're just adding another condition-- it's probably not the right word-- that they can take into consideration when determining that, right?

GUERECA: Correct.

STORER: Do you mind me asking who asked you to bring the bill?

GUERECA: I can't remember which group brought it to me, but I'll get you the answer.

STORER: I just-- I appreciate this perspective. Thank you.

GUERECA: Yeah. Thanks.

BOSN: Any other-- Senator Roundtree followed by Senator McKinney. Oh, Senator McKinney followed by Senator Rountree.

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McKINNEY: Oh, no, I was just sitting here, and I actually just took this test. It's interesting. I got six.

GUERECA: I haven't seen the test, so I'll have to, I'll have to go and take it.

McKINNEY: Yeah. It's interesting. Thank you.

GUERECA: Yep.

ROUNTREE: Thank you, Chairwoman Bosn. And, Senator Guereca, I-- actually, I had an opportunity to read down through the comments. I think it's a great bill, but I'm noticing comments in here on behalf of the Brain Injury Association of Nebraska. When I first read these comments, I couldn't understand why the Brain Injury Association was testifying and coming in and weighing in on this. But as I read deeper on these talking about the victimization, brain injuries, a lot of beating around the head, traumatic brain injury due to their victimization, repeated blows, strangulation, or other forms of physical violence. And these things run a whole lot deeper than what we may think on the surface, very deep. And sometimes they are on a trail that is kind of hard to turn from. So I am-- I really do support just considering where they've been and where they are and taking those into the consideration when we look at sentencing or situations that we have so I just appreciate the bill.

GUERECA: Great. Thank you.

BOSN: Thank you. Thank you for being here.

GUERECA: Thank you, all.

BOSN: That will conclude our hearing on LB159. And next up, our very own Senator DeBoer on LB103.

DeBOER: Good afternoon, Chair Bosn and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent District 10 in beautiful northwest Omaha. I appear today to introduce LB103. LB103 strengthens Nebraska's commitment to protecting survivors of sexual violence in our legal system. It is well established that our current rape shield law, found in Nebraska Revised Statute 27-412, was enacted to serve two purposes: to prevent the use of irrelevant and prejudicial evidence about a sexual assault

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victim's past involving third parties and to protect against the retrauma-- retraumatization of victims through grueling questioning and cross-examination about their past sexual behavior or sexual predisposition. Current case law defines the term sexual behavior as specific instances of conduct and sexual predisposition as more generalized evidence in the form of opinion or reputation testimony, commonly referred to as character evidence. That's from State v. Lavalleur, 28 [SIC] Nebraska 102. I don't know how to say the second name. However, neither of those definitions explicitly encompasses prior sexual assaults. So past sexual behavior, sexual predisposition, but it doesn't specifically mention sexual assaults. Our Supreme Court has specified that this statute is not meant to prevent criminal defendants from presenting relevant evidence, so it's not meant to prevent criminal defendants from presenting relevant evidence, but to deprive them, the criminal defense attorneys-- criminal defendants, from the opportunity to harass and humiliate sexual assault victims and divert the attention of the jury with irrelevant matters. So the point of the, the rape shield statute is not to deprive anyone of having any evidence, but to provide them-- deprive them of the opportunity to harass and humiliate sexual assault victims and divert the attention of the jury with irrelevant matters. That's from State v. Lavalleur. However, ambiguity-- ambiguities remain in the law that have led to unnecessary and invasive questioning of victims, both in court and during pretrial proceedings. LB103 clarifies that evidence of any other sexual assault a victim may have experienced is not admissible in a civil, civil, or criminal case involving sexual misconduct unless it falls under the existing, narrowly defined exceptions. The heartbreaking reality for many survivors of sexual violence is that they experience this kind of assault by multiple perpetrators throughout their lifetime. By way of an example, if a survivor is sexually assaulted at age 5 by her grandfather and then again at age 15 by her stepfather, she should not have to face intrusive questioning about the abuse from her grandfather in a court case that only involves her stepfather. LB103 makes it clear that previous sexual assaults are included in the types of evidence to which the rape shield statute applies. The bill also ensures that survivors cannot be subjected to questioning in depositions or pretrial hearings about matters that the rape shield law already deems inadmissible. The current statute is silent as to whether this law applies during pretrial proceedings or only at trial. The silence leaves the door open for inconsistent rulings from judges across the

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state, and survivors are the ones to bear that burden. Other states have similarly taken steps to solidify these protections for victims at all stages of the legal process. For example, New Hampshire has used the case law to hold that the protections of their rape shield statute apply to depositions and trials equally. That's in State v. Miscal out of New Hampshire. Vermont has provided this protection to survivors in the form of a statute specifically stating the question-- that questions regarding rape shield evidence shall not be permitted during criminal cases. The absence of such clearly defined language threatens to undermine the very heart of what we, as Nebraskans, sought to protect when the rape shield law was first enacted. This legislation reaffirms a simple but crucial principle. A survivor's past should not be used against them to undermine, undermine their credibility or shift blame. It upholds the fairness and integrity of our judicial system, while ensuring that the victims are treated with dignity and respect. I urge your support for LB103 to strengthen these protections and make Nebraska's justice system more just for survivors of sexual violence. You may notice today that I am bringing this bill with the assistance of the county attorneys, which is not always the case with me and I just wanted to note that I do think this bill is narrowly tailored. If there is some part of the bill that, that I haven't thought of or that others have not brought to me that needs to be tailored to make sure that, that all fairness is in place for defendants and things like that, I'm happy to talk to those folks. But I believe this bill is narrowly tailored, that it gets to the, the situation we're trying to help here, and that it is consistent with our previous rape shield law. And to find-- to, to not put this in place would be inconsistent with the history of our rape shield laws and the reasoning we had for it. Thank you. I'll answer any questions.

BOSN: Thank you. Senator Hallstrom.

HALLSTROM: Just isn't one other objective of the rape shield law to not allow a line of questioning or the raising of issues that might deter one from either coming forward at all or are continuing with resolve to carry forward to trial, which could happen at the deposition stage?

DeBOER: Yeah, I think that's part of the not harassing part of it is that-- yeah, what you're going to have happen if you don't have these laws in place is you're going to find the already reluctant victims-- because, frankly, this is an area of the law that people don't want to

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testify as the victim. They're embarrassed, they're scared, they're traumatized. They're all the things that they are just like other victims. But I don't know, there's, there's something here. And so it is to help make sure that we can get convictions of these wrongdoers--

HALLSTROM: Thank you.

DeBOER: --when they do the wrong thing in a fair and just way.

BOSN: Thank you. Next-- first proponent? Excuse me. Sorry. Good afternoon.

DARA DELEHANT: Good afternoon. My name is Dara Delehant, D-a-r-a D-e-l-e-h-a-n-t. I'm a Deputy County Attorney with the Douglas County Attorney's Office. I am testifying on behalf of the Nebraska County Attorneys Association in support of this bill. As a prosecutor, I am part of a unit specializing in sexual assaults. While we prosecute cases with both the child and adult victims, the majority of cases that we prosecute involve child victims. Nebraska's rape shield statute is a cornerstone of litigating sexual assault cases. LB103 helps to clarify some of the existing language in that statute, and strengthens protections for victims throughout the legal process. Many of the victims that we work with, including children, have tragically endured sexual abuse by more than one perpetrator. Once a victim has been abused once, they're often more vulnerable to abuse by others. I've had cases where a 10-year-old victim has had three separate perpetrators, each of whom has been prosecuted. The existing language in the rape shield statute prohibits evidence that a victim engaged in other sexual behavior or evidence of the victim's sexual predisposition. While those two terms have been defined by case law, neither definition nor the plain language of the statute clearly encompasses previous sexual assaults that a victim has been subjected to. The simple fact that a victim has suffered previous abuse by a different perpetrator should not require the victim to continue reliving prior trauma as part of a case involving a subsequent assault. Individual defense attorneys may assume that prior sexual assaults by other perpetrators are already covered by the rape shield statute. But my experience and the experience of my entire unit in practice is that that is not the case. The amended language in LB103 proposes or clarifies any existing confusion or discrepancies to make clear that the rape shield statute applies to previous consensual sexual activity and previous assaults. In a majority of the cases that

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my unit files, a defense attorney will file a motion to take the victim's deposition. A deposition is a discovery tool used by attorneys during the pretrial portion of a case where they are allowed to ask questions of witnesses for the opposing party while that person is under oath. In sexual assault cases, depositions are extremely common. However, there's often disagreement between prosecutors and defense attorneys about whether the rape shield statute applies during depositions. When such disagreement arises, we turn to the judge assigned to the case. But depending on which judge the case is assigned to, the ruling may be different. Some judges are even inconsistent from case to case. This lack of uniformity creates confusion for attorneys and victims. LB103 makes it clear that the rape shield statute does apply during the pretrial portion of a case. The entire purpose of the rape shield statute is to ensure that victims are not humiliated or harassed about their past during the litigation of a case. If victims knew they would be opening themselves up to questioning about every past sexual assault that they reported a later assault, that would have a chilling effect and deter reporting of sexual assaults making it impossible to hold sexual predators accountable. By the time a case gets to my office, there's been an investigation that includes multiple police reports, a recorded interview with the victim. There are often DHHS reports. All of these avenues provide ample information to defense attorneys to represent their clients. There's no need to subject victims to additional questioning about prior assaults or consensual sexual activity, for what often amounts to a fishing expedition. I would urge your support for LB103 to help clarify the existing law and strengthen protections for victims of sexual violence.

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

McKINNEY: Thank you. Thank you for your testimony. What has been the rulings of the judges that are saying it applies and it doesn't apply? What, what has been, like, the stated differences in those, like, rulings or opinions?

DARA DELEHANT: So in Douglas County, we have 18 district court judges. And it really does depend on which judge you have assigned to a case. There are some judges that will say, yes, the defense attorney can go ahead and ask the questions that apply to either the previous consensual sexual activity or related to a previous sexual assault. Other judges will say, no, I don't think that that is relevant in any

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way. You cannot ask those questions. Some judges will-- I've had one case where a child had two previous perpetrators before the one that was being prosecuted, and the judge said you can ask about one of those previous perpetrators, but not the other. So it really depends on the facts. It depends on the judge. So there's a lot of inconsistency, which makes it difficult for us as the prosecutors to be able to prepare the victim to say, hey, these are questions you might be asked about. And it just-- it provides a lot of inconsistency for the attorneys, but also the, the victims to come in and not know what they're subjecting themselves to.

McKINNEY: All right. Thank you.

DARA DELEHANT: Yes.

BOSN: I just have procedural questions.

DARA DELEHANT: Sure.

BOSN: So you're in a deposition, are you saying that before you start the deposition, you don't even know the answer to whether or not they have to answer the question?

DARA DELEHANT: Yes. I mean, most of the time.

BOSN: What's going to happen? You're going to say objection during the deposition, and because it's a deposition, they answer, the harm has already been done, and then you file a motion. So I'm, I'm procedurally--

DARA DELEHANT: Sure. So procedurally if there is a question that is posed that we, as the prosecutors, believe violates the rape shield law, we will object. And at that point we can say we would like to certify this question. And so the victim does not answer at that time. If the judge is available, if we know that the judge is, you know, in their chambers nearby, the defense attorney and I can walk over to the courthouse and talk to the judge right then and say can you please give us your ruling, where the judge will say, yes, have the victim answer or, no, the victim doesn't need to answer. We can walk back and continue the deposition. Or if the judge is not available or we don't want to interrupt it for however long it would take to do that, we can just certify the question, continue with the deposition without having that answer, then later we would go talk to the judge and know that if

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the judge says, yes, the victim needs to answer that question, we would have to bring the victim back, have them answer, and then that would complete the deposition.

BOSN: OK, that makes more sense. Tell me how this bill relates to false allegations in, in sexual assaults.

DARA DELEHANT: Sure. So this bill is completely separate from false allegations. This bill is talking about prior sexual assaults that actually happened or prior consensual sexual activity that actually happened. False allegations of sexual assault are things that did not happen. And that's something that the Nebraska Supreme Court has already addressed in a case that's called State v. Swindle. It was a 2018 case, and the Supreme Court has said that in that case, well, in all cases about false allegations, the rape shield statute does not apply because there was, there was no sexual activity. So this framework does not apply there because there's no sexual activity with a false allegation. And in State v. Swindle, the Nebraska Supreme Court set up a framework that defense attorneys have to go through to be able to, I guess, show that there was a false allegation. The first step is show that a prior accusation was made. Then they have to show that the accusation was false. Then they have to show that the prior accusation is more probative than prejudicial. So that is something that is entirely separate. But what we are trying to address with this bill is something that actually did happen where the rape shield statute does apply.

BOSN: OK. So this is instances where it's either been found true and you were able to proceed criminally or where it's been found true but you weren't able to proceed criminally, but that there's no allegation that an individual made this up or that it was consensual.

DARA DELEHANT: So this would be for cases that we are currently prosecuting. So by the time a case gets to our office, if we choose to proceed with the prosecution, there's been an investigation and law enforcement has decided there is enough evidence that they think there's probable cause to make an arrest. They forward that to us. We decide, yes, we also believe that there is enough to file this case. And then we proceed-- we file the charges and then we move forward with the case. So it hasn't, during the prosecution stage, necessarily been found true. But it is for cases where there's been already this full investigation. So there's plenty of material that has already

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been produced, such as police reports. There's a recorded interview with the victim. There's-- if it's a child, it's usually a forensic interview, which is both audio and video recorded. With adult victims, it's usually an audio and video recorded interview as well. Sometimes it's just audio. There are DHHS reports if it's a child a lot of the time, sometimes we have medical reports, sometimes we have therapy reports. So when we get a case, that's sort of the state of the investigation as a whole. And then we decide, yes, we're going to file this and proceed with it.

BOSN: Any other questions in light of my questions? Senator McKinney. Sorry.

McKINNEY: Yeah. Thank you. So if, if not a false allegation, but let's say you went forward with a case previously and somebody was acquitted, and then an individual becomes a victim again.

DARA DELEHANT: Sure.

McKINNEY: Would that be-- does that fall under the rape victim's [INAUDIBLE]?

DARA DELEHANT: So just to make sure that I'm following. So if somebody had previously reported--

McKINNEY: Yeah.

DARA DELEHANT: --a sexual assault that was prosecuted and the perpetrator there was found not guilty.

McKINNEY: Right.

DARA DELEHANT: OK. I mean, that's something that I think still would not fall within this because, well, first of all, just because someone is acquitted doesn't mean that it didn't happen. That means that a jury--

McKINNEY: I'm not arguing.

DARA DELEHANT: Sure.

McKINNEY: I'm just asking if.

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DARA DELEHANT: Even under that scenario, I don't think that this would apply because the first step under the, the Swindle framework is that an accusation was made. Any time that there is even a concern of a false accusation, the accusation was made to someone. So in the scenario that you're talking about, there is actually a full prosecution. So there, there were police reports that allowed that prosecution to go forward. So any of that information could be retrieved through requesting those police reports, through requesting that interview that the victim had done so none of that necessarily rises to the level of that one being false and relevant to this prosecution. But that's something that if the defense attorney has reason to believe, hey, I think that you have made a previous allegation and it's false, that's something that they can explore through those avenues. They don't need to be able to ask this victim about it, because this victim really is going to be the least relevant information about did you previously lie about this? They have plenty of other avenues that they can pursue to find out information about the previous allegation about that sexual assault.

McKINNEY: All right. Thank you.

DARA DELEHANT: Yeah.

BOSN: Thank you for being here.

DARA DELEHANT: OK. Thank you.

BOSN: Next proponent? Welcome.

COLLEEN BRAZIL: Good afternoon, Chairperson Bosn and members of the Judiciary Committee. My name is Colleen Brazil, C-o-l-l-e-e-n B-r-a-z-i-l. I am the Vice President of Children's Services with Project Harmony, the child advocacy center in Omaha. I have been a forensic interviewer for the last 26 years, interviewing over 9,000 children. Child advocacy centers emphasize the coordination of investigation and intervention services by bringing together professionals and agencies to create a child-focused approach to child abuse cases. Child advocacy center forensic interviewers conduct interviewer-- interviews for investigators as part of their investigation gathering information in a developmentally appropriate, neutral, and legally sound manner. The research is clear that when children are a victim of sexual abuse, they are more vulnerable to

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additional abuse. Approximately 50% of sexual abuse victims report some form of additional interpersonal victimization. Children abused prior to the age of 12 are particularly vulnerable to further sexual assault and violent revictimization. Exploring previously investigated accounts of sexual abuse is not a trauma-informed approach for children within a forensic interview or throughout the judicial process. This only adds to the child's trauma. It can adversely affect the child's mental health. Over the past 3 decades, child advocacy centers have been at the forefront of efforts to improve and define the way victims are interviewed and to create a research-based methodology for forensic interviewing techniques. These methods are based in extensive research showing the best ways to interview children to increase their accuracy and produce sound evidence. There is considerable agreement among, among experts regarding best practices in the field. The research is clear that many children do not disclose child sexual abuse immediately for a variety of reasons. Often, children are abused by individuals known to them and close to the family. Nondisclosure rates for children who have been victims of sexual abuse have been shown to be about 72%. This is a dramatic number of children delaying disclosure of sexual abuse. Some of the dynamics which adversely affect disclosure include shame, fear, embarrassment, and the close relationship with the perpetrator. Child advocacy centers were developed to minimize the number of times a child would have to talk about traumatic experiences to reduce trauma. Child advocacy centers record forensic interviewer-- interviews to provide investigators with a neutral, nonleading and trauma-informed history from the child regarding the allegations. Recording makes the interview process transparent so that all parties know exactly how the child was questioned. Interviewers are specially trained to fully explore the allegations and the child's experience. We would like to thank Senator DeBoer for bringing forth this legislation that will help to support a process that is fair to a child, a process that ensures the truth is shared, and that one that prevents additional trauma on the child. Limiting the ability to subject a child victim to a discovery deposition that addresses past sexual abuse is a practical and commonsense way to minimize trauma. Therefore, on behalf of Project Harmony, the Nebraska Alliance of Child Advocacy Centers across the state, I ask that you support the passage of LB103. Thank you for your time and consideration. I'm happy to answer any questions.

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BOSN: Thank you. Questions? Senator Storm.

STORM: Thank you, Chair Bosn. Thank you for your testimony. I have one question. I'm not a lawyer so this is just-- why would a defense attorney want to go back and-- asking about a-- child about prior-- what, what's the rationale behind that?

COLLEEN BRAZIL: I think there's various trial strategies. I'm not an attorney either. I'm a social worker, but I think there's various strategies around trying to possibly put some doubt in the juror's mind about what the child, the history that the child is giving. I think sometimes it's meant to confuse a child. Children are not adults in the way they process and think about things and the criminal justice process and the court is a scary place for children. And so for them to understand all of the questions and strategy is very difficult.

STORM: So is that standard practice for defense attorneys to go back and-- does it happen frequently or not very often or--

COLLEEN BRAZIL: I am not an attorney and someone may be better poised to answer that. I've certainly been asked about children's prior history of sexual abuse when I have testified.

STORM: OK. Thank you.

BOSN: Senator Rountree.

ROUNTREE: Thank you so much, Chairwoman Bosn. And thank you so much for your testimony. I just wanted to say thank you for the opportunity to come out and tour Project Harmony and also get down to the weeds of the basis of your testimony today and the assurance that we can normally have in that type of forensic testimony and all that's done for moving forward in that type of case. So thank you for the work that you do, just want to say I appreciate it.

BOSN: Thank you. Any other questions for this testifier? Thank you for being here and for the work that you do. Have a great day. Next proponent? Hello.

ELIZABETH McQUEEN: Hi. Good afternoon, Senator Bosn and members of the Judiciary Committee. My name is Elizabeth McQueen, E-l-i-z-a-b-e-t-h M-c-Q-u-e-e-n. I am the Victim Assistance Unit Manager at the Lincoln

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Police Department, and I am testifying in support of this bill. I have worked in the criminal justice field for about 20 years, and have developed expertise in sexual assault for the past 15. I have assisted and stood by survivors through every part of the process, and watched as they have had to make painful decisions about reporting, having, having a SANE exam performed, participating in the criminal justice process, dealing with the aftermath of the crime, and the results of that process. Regardless of the outcome, no two are ever the same. The criminal justice process can be extremely difficult for survivors. They're asked to describe and relive the most-- the worst, most invasive moments of their lives, often in front of strangers. They're asked to provide details and often struggle to piece them together due to trauma or simply the passage of time. I have worked with victims of all ages who do not want to report or participate in the investigation, as they feel the process is so traumatizing. I have witnessed survivors before depositions when told they could be asked questions that would not otherwise be allowed in trial, who become terrified, overwhelmed, and did not want to continue the process. I have witnessed a survivor become highly emotional in the middle of a deposition, where a defense attorney spent over an hour bombarding her with questions completely unrelated to the crime. In the hallway during the break she said, I expected it to be bad, but never this bad. As you can imagine, she was terrified to testify after that deposition. I've worked with survivors who experienced sexual assault at the hands of, at the hands of intimate partners. And upon learning there could be questioned about unrelated matters became terrified of possible retaliation by the same partner. In another case, information shared during a deposition was later posted online by that perpetrator. It's difficult to imagine how the victim must have felt seeing such intimate information posted for the world to see. I have also seen cases where information presented in a pretrial hearing or deposition resulted in stalking, violent retaliation, witness tampering, or ongoing threats from the perpetrator or others. LB103 is a well-intended bill ensuring victims cannot be questioned during a pretrial hearing or deposition regarding any matters, any matters rendered inadmissible under the rape shield law, including other sexual behavior or, or prior sexual assaults. We can only imagine how difficult it is for any sexual assault survivor to not only experience the initial incident, but then agree to provide intimate details and relive the event again. LB103 is a step in the right direction aimed at preventing future trauma to the victim by not forcing them to

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provide details regarding incidents that, in the end, are inadmissible in court. Thank you for allowing me to testify today. I would be happy to answer any questions you may have.

BOSN: Thank you. Are there questions for this testifier? It was very good to see you again.

ELIZABETH McQUEEN: Yes.

BOSN: Thanks for all the work you do. Next proponent? Welcome back.

MELANIE KIRK: Thank you. Good afternoon, Judiciary again. My name is Melanie Kirk, M-e-l-a-n-i-e K-i-r-k, the Legal Director of the Nebraska Coalition to End Sexual and Domestic Violence. On behalf of the Coalition, our statewide programs and the survivors we serve, I'm testifying in strong support of LB103. Extending the protections of Nebraska's rape shield law prior-- to prior accusations to sexual assault, and prohibiting the use during pretrial proceedings. Nebraska's rape shield law was enacted to prevent the unjust and prejudicial practice of introducing a survivor's prior sexual history to discredit their testimony. The law reflects a fundamental principle that a victim's past sexual behavior has no bearing on whether or not they were assaulted. However, our current statute does not explicitly extend this protection to prior accusations of sexual assault, leaving a dangerous loophole that allows attorneys to retraumatize victims, shift focus away from the accused, and deter survivors from coming forward. There's a common misconception that a recanted accusation of sexual assault means that the rape never happened. In reality, many things can lead to the recantation of accusations, including trauma or drug or alcohol induced memory impairment, fear of reliving the assault in testimony, fear they will not be believed or that they will be blamed for the assault, fear of being arrested if the survivor feels that reporting the assault would require disclosure of their own unlawful activity, fear of authority figures due to an immigration status, to protect the perpetrator or to protect those whom the perpetrator has threatened to harm if the survivor reports or continues with the report and litigation, cultural or religious beliefs that might leave a survivor feeling that they are to blame, or worry what others will view them as if they were to be-- know that they had been assaulted. Additionally, many victims of sexual assault are revictimized at some point. A 2017 analysis of 80 different studies found the average prevalence rate for sexual revictimization

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is 47.9%, which is nearly half of all victims. Given this, it's imperative to provide survivors with the same protections, regardless of whether their credibility is being attacked on past sexual behavior or their prior report of victimization. In addition to clarifying that prior accusations of sexual assault cannot be used to discredit a victim, this bill prohibits the introduction of rape shield protected evidence in pretrial proceedings. Currently, defense attorneys may attempt to use motions and hearings as a way to introduce irrelevant and inflammatory evidence that would not be permitted at trial. Even when the judge ultimately excludes such evidence, the damage is done, the survivor is retraumatized and their credibility is publicly challenged before a jury is even selected. By restricting the use of evidence in pretrial proceedings, the bill reinforces the core intent of rape shield rules: to prevent the unnecessary humiliation, to prevent-- focus proceedings on the conduct of the accused, and to encourage survivors to seek justice without fear of public character assassination. Opponents of rape shield laws will argue that excluding certain evidence infringes on a defendant's right to a fair trial. But this bill does not prohibit relevant admissible evidence from being presented if it meets the established exceptions under Nebraska law. Instead, it ensures that evidence used in sexual assault cases is relevant and not merely an attempt to discredit a victim based on unrelated prejudicial claims. This approach balances the rights of both parties and maintains the integrity of the judicial process. LB103 represents a necessary measured step to close gaps in Nebraska's rape shield protections. It affirms that survivors should not be put on trial for coming forward, ensures pretrial proceedings are not weaponized against them, and aligns our legal system with the best practices in handling sexual assault cases. I urge the committee to advance this bill and send a clear message that Nebraska stands with survivors in the pursuit of justice.

BOSN: Thank you. Questions for this testifier? Thank you for being here. Next proponent? Opponents? Anyone here in opposition?

SARAH NEWELL: Good afternoon, Chairman Bosn, members of the committee. My name is Sarah Newell, S-a-r-a-h N-e-w-e-l-l. I'm here testifying in opposition to LB103 on behalf of the Criminal Defense Attorneys Association, of which I am a past president, and also on behalf of the Lancaster County Public Defender's Office, where I am employed. Senator Holdcroft, I wrote-- I gave you two pages of, of legal reasoning, and I'll try to summarize it as briefly as I can.

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HOLDCROFT: Please.

SARAH NEWELL: The general idea here is that we disagree that the bill as drafted does not-- or excludes false accusations. The concern that we have relates to the Swindle case, which is cited in the, the memo or the testimony I'm providing. The situation here is that rape shield allows-- it basically prevents defense attorneys from, I'm going to say slut shaming, for lack of a better way of saying it. Basically, saying you can't talk about a person's-- an alleged victim's prior sexual conduct to say that they acted in, in conformity with that behavior here and therefore-- like the idea that you can't-- just because you consented to one person doesn't mean you consent to all. But it does allow that evidence to come in for certain specific reasons. One, source evidence, if there is another person that may have caused the injuries or left deposited DNA, things like that. You can also introduce evidence that relates to consensual relationship patterns between this particular defendant and this particular victim. For example, they've been dating. They had-- they like rough sex, things like that, those kind of dynamics. I know it's uncomfortable to talk about these things in a public setting. This is my job so I'm a little bit more used to it. But that's another example. The third is a giant catchall that, that almost everything falls under. Not, not all evidence, but the things that we care about, which is the things-- evidence that are materially relevant and that the constitution requires. Basically, a criminal defense or a criminal defendant has a constitutional right to confront their accusers, and they have a right to a fair trial and due process. That means that we have, as defense attorneys, we have to explore some of these things. I never go into a deposition with the intent to, to traumatize someone, or with the intent to just ask them a bunch of random questions about their prior sexual behavior. The Swindle case basically says that you can only admit-- basically, you have to go through a very specific hearing process to explain to the, the jury or to the judge why this evidence should be allowed. And first, you have to establish that an accusation was made that the accusation was false, and that the information that comes out of that accusation is more prejudicial than-- or more probative than prejudicial, which means it's more relevant than it is unnecessarily prejudicial. The general idea here is that there is already a structure in place that limits what we can do. And the big problem here is that if you don't allow us to go into these things in depositions, then we have no way of learning about this behavior. We

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are not present during the child advocacy center interviews. We are not present during the interviews of the, you know, of the alleged victim with law enforcement as long-- or as the prosecutor can be. So we have to come into this situation after the fact. And, candidly, if I may just finish the sentence, candidly, that the state fights us even in trying to access those police records about prior accusations. So how can we establish that something is false if we don't even know that it happened? So that's the chicken or the egg situation. I didn't--

BOSN: Were you done?

SARAH NEWELL: What's that?

BOSN: I, I understand you were answering questions, so if you're not done, you can continue. Otherwise, I'll let people ask questions.

SARAH NEWELL: If there's any questions, otherwise there's, like, maybe one other point I'd like to touch on, but.

BOSN: Go for it. You're fine.

SARAH NEWELL: OK. Again, the real problem here is that it's a, it's a chicken or an egg situation. Under Nebraska law, you have a broader right as a defendant to discovery, which is the process of gathering information, you know, working up the case, the stuff that helps us figure out what the issues are, what is our defense going to be, you know, those kind of issues. So we have a broader right to find out things, but only certain things are admissible. So only certain things come in at trial. The problem is that there's a lot of, a lot of the rape shield information may not be admissible at trial, but I don't know if it's relevant unless I ask those questions. So our perspective would be, and we have other testifiers that will illustrate this in more detail, but it's-- from our perspective, it is less traumatizing if you let us ask these questions in a deposition when there isn't, you know, it's not 12 people. There's not a public, you know, a public hearing that everyone can go to so that we can explore those, those things to figure out if they are relevant. We can do the pushback, back and forth with the prosecutors about whether the sort of-- you know, whether the questions are certified. Part of the reason why you get inconsistent rulings is because these are very fact-specific analysis. It's not going to be, you know what-- whether an accusation

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is false and whether it is relevant, even if it is false, differs depending on the case. For example, I had a sex assault trial a week-- well, 2 weeks ago. The person was then-- ended up being found not guilty. The alleged victim had made multiple prior allegations against other people, but this was a statutory rape case. So I-- the, the law says that I can explore certain things to evaluate her credibility if-- so that if her, her testimony evolves at trial, if she starts to lie and try to make it sound different than it was, then I can go into those things. But otherwise, with statutory rape, the only question is the age difference. You can't consent. So in that situation, the judge said, no, that evidence isn't admissible. I could ask limited questions in the deposition to figure out if it was something that I would eventually get to go into. But once we identified that it was not something that was going to be relevant, the judge said no more. So I mean, that's why you're going to get different outcomes, because in a statutory rape case where the issue is what is the age difference? And only do I get to go into her credibility in limited circumstances, that's going to be different than if it's same-age peers, they're at a party, the person has maybe made similar allegations against other people in similar circumstances. So that's, that's part of why it's difficult to, to come up with a specific hard and fast rule.

BOSN: Senator Hallstrom.

HALLSTROM: Does the certification process not provide ample protection?

SARAH NEWELL: You mean discovery process?

HALLSTROM: Yes.

SARAH NEWELL: So the discovery process allows us to have--

HALLSTROM: Certification of the question.

SARAH NEWELL: Oh, certifying question.

HALLSTROM: Yes.

SARAH NEWELL: Typically, that is-- that's enough to get it in front of the judge, and the judge will decide. There is going to be some cases that are very clear that I don't get to go into-- you know, for

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example, with a, an 8-year-old victim, it's hard to understand how-- like, an 8-year-old victim is probably-- that consent is not an issue. Right? So in that situation, the only issue that could maybe come up as to whether she has been a victim of a prior situation is, is there a chance that there is another perpetrator? Because sometimes what happens is these kids confuse the perpetrator, that they have been perpetrated by someone. But it's a question of, is it my, you know, is it my client or is it, you know, their cousin or their uncle or their dad, you know, so in those situations we're trying to identify, are there specific characteristics about my client that are different than the uncle so that we know that it's my client versus the uncle? So I mean--

HALLSTROM: But wouldn't that be a step removed from the prior, somebody different that was involved in a prior assault?

SARAH NEWELL: So I'm trying to think of a good way of explaining it. There are some times when, you know, a child may say that they were sexually assaulted, and they will give very specific details that they would not know if, if they, you know, unless they had experienced it. In that situation, you know, I, I don't really have much of an argument that, you know, even though there's a custody dispute, mom is trying to coach this kid to say this. So in that situation, I'm trying to evaluate, OK, is it possible that my client isn't the person that actually sexually assaulted this child, but it was her, her brother or her uncle or something, you know what I mean?

HALLSTROM: But isn't that-- again, isn't that a step removed from a prior assault in bringing in evidence or questioning regarding a prior assault, has nothing to do with whether your client or somebody else did the current act?

SARAH NEWELL: But how am I going to know that she's been sexually assaulted before if I don't ask her?

HALLSTROM: And that's why I ask the question whether or not getting the question certified allows the judge to determine if that's the type of question that you can ask? And I don't know the answer to that.

SARAH NEWELL: In theory, it is. I mean, what we need to do then is ask a series of questions. The prosecutor needs to then certify each

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question. Then we take it to the judge and we say, hey, Judge, this is, this is why I'm asking these questions. This is why it's relevant. This is the issue I'm trying to get at. I'm not trying to just unduly traumatize this child. I'm trying to suss out if there is actual relevance.

HALLSTROM: Well, and I'll just comment. I, I admire the fact that you don't go in with the intent to traumatize, but if the result is traumatizing the victim, then I've got some concerns and want to make sure this fleshes out properly.

SARAH NEWELL: And I understand that. I mean, again, I don't know any criminal defense attorney who goes in with the intent to, to traumatize a child. I mean-- but we do have-- I mean, our, our, our clients do have a, a constitutional right to confront their accusers. And in order to effect that right, I have to know enough information to be able to ask those questions and effectively cross-examine. And same thing with a fair trial, so.

HALLSTROM: Thank you.

SARAH NEWELL: Yeah.

BOSN: Other questions? I guess, for clarification, for those who maybe don't work in the spaces you or I previously did, part of the frustration with you want the police reports so that you don't have to ask the victim. But then the flip side of that is you-- defense attorneys routinely say, if I have it, I'm under an obligation to provide it to my client. And then when the copies of a previous sexual assault get provided to a client, and you were here for the testimony, and then they get screenshot and shared on Facebook, and the victim-- her previous sexual assault is now blasted all over Facebook, no one would argue that's not revictimizing a victim. I don't think you would either, but I don't know how we fix that. I just-- I think the goal here is to try to as narrowly tailor, and I, I think that's even what Senator DeBoer used as her example, how we can protect victims while still providing for those things through police reports, through previous depositions, she listed a bunch of things, but I think that's, probably you would agree, a tough position to put a defense attorney in and say, oh, I can't share these discovery pieces with you. Any thoughts on that?

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SARAH NEWELL: Yeah. So what, what, what Lancaster County has been doing lately, and what I've seen across the state regularly is to have any-- I mean, these kind of things can be subject to a protective order so that the court can say, I will allow this, but this will be, you know, the deposition will be only-- will be subject to protective order so that the client can only view it in the presence of their attorney. They don't get a copy. I mean, some of the other testifiers will talk about, in Douglas County, they don't let you have copies of the police reports. And it's a big source of contention between defendants and, and their attorneys. The federal system, they don't allow you to give copies of the discovery to the client. So there's ways that we can address those issues so that, that people aren't engaging in witness tampering and, and, you know, trying the case in, in the media.

BOSN: I guess, I still also-- I, I mean, and I haven't had a chance to fully digest all of this. If I'm understanding your opposition to this, it's because of the false allegations' issue under the Swindle ruling. More so than that you want to be able to ask about those. It's what if they were falsely made and you want to establish that pattern of falsely making those allegations.

SARAH NEWELL: I think there's two parts. One, is I don't read the language under subsection (1)(a) as being limited to the false allegations or to excluding false allegations. When we talk about-- you know, if we're at a place where we-- I mean, how do I prove that an allegation was false if, if we can't even agree that an acquittal means that the allegation was false? So I mean, part of the difficulty is that I have to ask and I have to be able to explore, to some extent, the facts of the allegation in order to be able to prove up whether it's truth or falsity. Does that make sense? But then I think separately and apart, I think that we have real concerns about not being able to at least discuss these things in, in a deposition, in a discovery deposition.

BOSN: You would agree that-- I mean, a prior false-- a, a prior unsubstantiated report of sexual assault doesn't always indicate dishonesty in existing sexual assault.

SARAH NEWELL: Certainly.

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BOSN: OK. I mean, I guess-- so you're, you're-- you would-- if she amended this to include something that also provided for requirements under Swindle under subsection (1)(a) in terms of the false allegations-- I mean, have you explored that or has anybody that we're about to hear from that you know of?

SARAH NEWELL: I, I can't speak for our organization.

BOSN: OK.

SARAH NEWELL: But I, I-- for my discussion with our other testifiers and with our lobbyist, I believe that Swindle is our primary concern, but the concern about being able to at least explore things to a limited extent in depositions, it's just really, really hard for us to-- it's hard to know what you don't know. I mean, it comes down to that chicken or the egg thing. What is admissible is different than what is discoverable, but kind of like with Brady evidence, I, I, I don't know what I don't know and so I have to at least be able to ask some basic questions with, you know, under the, the guidance and restrictions of the court system in order to, to flush out those issues. Because the flip side of it is if we, if we don't allow it in a deposition, then I have to ask for the first time, oftentimes at trial and especially with, with the Swindle situation, if I'm-- if I need to prove that it's false, I'm probably going to have to do some separate investigation. And so in order to do that, I need a, a period of time. And if we're set for trial and I'm finding out about this accusation for the first time at trial, I don't-- I mean, I'm going to have to ask to continue the trial or ask to-- ask for a mistrial in order to, to go follow through with that investigation, which doesn't seem to benefit anyone either, because then you're putting that, that, that victim through two trial testimonies in front of 12 jurors in a public forum. So at least the deposition setting is more, more private and more comforting, less, less traumatizing.

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

SARAH NEWELL: Thank you.

BOSN: Next opponent?

JESSICA WEST: Good afternoon, Chairman Bosn. Special thank you to my Senator Holdcroft, I live in Sarpy County. Thank you for your service

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and everyone here's time. My name is Jessica West, and I appear as a member of the Nebraska State Criminal Defense Association. I have been a licensed attorney in the Douglas County Public Defender's Office for over 14 years. I am here to speak in opposition of LB103. I provided you with written comment. Primarily what I want the committee here to understand are two things: first, depositions are private. That is very different from the rape shield law and the requirements of-- for the state statute 27-412, which requires a public hearing. The second thing that I want the committee to take away here is that depositions are discovery mechanisms. To go to the points and the questions that Chairwoman Bosn and Senator Hallstrom asked really regarding the certification question, depositions are private settings. We have a conference room table. The alleged victim has a victim advocate present and the county attorney is present, I'm present. There's usually a-- there's a court reporter present. They are closed to the public, they are closed to the media. My client is not present during those depositions. So there's no direct confrontation between the alleged victim and the defendant who she's accusing. And so asking questions about prior sexual conduct, including sexual assaults, is it occurs in a very private setting. If we were to certify the question, we would then have to take the deposition and the line of question out of the private setting and into a public setting. We'd have to involve the judge. It's possible, then, that we would have-- that would trigger a public hearing that is accessible to the media, to the general public, that my client would have a right to be present at and then the alleged victim would then be subject to direct, direct as well as cross-examination in the courtroom setting. To me, I gave an example in my written testimony just asking some basic questions, going to Ms. Kirk's example about sometimes recanting is not the same as that it didn't happen. And so when I'm able to ask, hey, there's an unfounded report here, what happened with that? Why did that not go any further? And if the witness is able to give me a reasonable explanation, I may make the decision that I don't want to bring that out at trial, that it's not relevant to my defense, that this isn't necessary to trigger a very public hearing. So I would urge the committee to understand that the concerns that you have are not addressed by this, this bill, especially that subsection (5), and ask you to not advance it. Thank you. I'd answer any questions that you have.

BOSN: Questions from the committee? Senator Storm.

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STORM: Thank you. So if this doesn't answer our concerns, how would you say we answer these concerns then?

JESSICA WEST: Yeah, somebody with-- who gets paid more than me should probably answer that question. But I think some of the protective orders that you were talking about regarding the police reports, as my colleague mentioned, Douglas County has a policy where we do not share our police reports with the clients in the case until after the case is closed and then, then they have access to their file. However, in a situation where there's police reports about a prior accusation or a prior allegation requesting that the county attorney provide us that discovery and then having it be issued under a protective order allows me to never have to provide that to my client unless, of course, we go through a Swindle hearing, which is already the established method to get into those matters in a public trial. And so I think that that would be one of the steps that more addresses the concerns that, that the committee has. Depositions are just such an important part of understanding what material is relevant at trial, and also what isn't relevant at trial. And it allows us to, to talk about those issues in a more private setting so that we can have further litigation if necessary or not, you know, because it may not be-- it may not have anything to do with the present case, but we don't know that until we ask those questions.

STORM: OK. Thank you.

JESSICA WEST: Of course.

BOSN: I just-- I have to push back because somebody has to, telling a victim that because it's in a room with a table and the defendant isn't present, that it's private is probably offensive to the victim. I mean, can you see how that would be probably a very disputed degree of privacy for that individual?

JESSICA WEST: I, I understand your point. I think what I am trying to say is that it is more private.

BOSN: OK.

JESSICA WEST: What-- and all of the proponents said, have been advocating for is-- for us to just not get into this line of questioning, but the constitution requires a confrontation. There is

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no matter that is going to prevent a defense attorney from pursuing a relevant line of investigation. And so then the question becomes, what is the safest, most respectful way to do that? And I do not think that this-- I think what this bill unfortunately does would push more of these issues to a public hearing rather than resolving in a deposition which is more private than a public hearing.

BOSN: And I can appreciate that clarification, but, I mean, having worked with a number of victims, they would probably take significant issue with saying that that's a-- I mean when you're asking someone to discuss something that was extremely traumatizing, very personal, they felt violated, and you describe it as, well, this is-- you know, it's going to be way worse when we talk about it in the courtroom, it is hard for them to, to wrap their head around. I mean, one of the testifiers before you talked about, and I actually think I know what case she's referring to, a victim who was, I'm going to say, berated for an hour and left saying I knew it was going to be bad, but I had no idea would be this bad. I mean, do you agree that an hour of questioning about a prior sexual assault is not private? I mean, is there a time frame that goes with privacy, or is it just whether you're in the room and there's the public-- this is a public hearing, right, but there's, there's a difference between having 13 individuals hearing this evidence and having to still discuss something very personal for an entire hour. Do you agree?

JESSICA WEST: Yes. I think that, that's exactly the point that I'm getting at if we're talking about trying to respect the privacy of the victim. Obviously, those questions are going to be asked and all I'm-- the point that I'm trying to make and, and pointing out that depositions are more private than a 412 hearing, because the other part that you have to understand, as well as when you file a 412 motion, it requires you to list specifics, specific allegations, specific dates and times, that then has to get filed and becomes part of the public record. So if at every-- I see an entry on a criminal record, it shows that there is a sexual assault that's unfounded, I have to file a formal motion and have a public hearing when the alternative is to say, hey, what happened here? And the person gives me a very reasonable explanation about what happened, and that I never have to pursue that line of questioning ever again with her. To me, I think that, that extreme outlier situation, which has never been in my experience in 14 years of practicing the law as a public defender is not a reason to then prohibit deposition lines of question in every

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single case, because I think that the, the backswing to that is more harmful to the alleged victims. And it certainly hamstring the ability of defense attorneys on behalf of their clients to pursue relevant and available defenses for them.

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

JESSICA WEST: Thank you.

BOSN: Next opponent?

APRIL O'LOUGHLIN: Good afternoon, Senator Bosn, members of the committee. My name is April O'Loughlin. I am the Chief Deputy of the Sarpy County Public Defender's Office. I am also a member of the Nebraska State Criminal Defense Attorneys Association. I have been a attorney for 26 years. I was a prosecutor for 7 years. I have been a public defender now for 15 years. For the last 7 years, I've been exclusively assigned to major cases. And those major cases deal solely with homicide, child sexual assault, and sexual assault cases. For the past 7 years, that's been the sole focus of my caseload. My esteemed colleagues have educated you about the specific protections afforded sexual assault victims under Nebraska Revised Statute 27-412, which is the rape shield. The protections mandated under 27-412 for reported victims of sexual assault are necessary and unyielding. As Ms. West and Ms. Newell told you, the protections are put in place to assure that the court serves as a gatekeeper of this information to protect the privacy and dignity of victims, and that is unyielding. However, as my colleagues have also discussed, LB103, as currently drafted, presents several practical problems if, if implemented. I'm here today not only to speak, speak in opposition of this bill, but, but to provide an example of how the questioning of an alleged victim concerning prior sexual behavior in a controlled, and I'll use the word private deposition setting, can protect the privacy of the victim while serving the interests of justice. I recently had a case where a 19-year-old was charged with first degree sexual assault involving his 17-year-old ex-girlfriend. The charge, a Class II felony, was punishable by 1 to 50 years of incarceration and mandated registration as a sexual offender for a minimum of 15 years, possibly 25 years or a lifetime registration. During my case, I learned from other individuals, not law enforcement, that the 17-year-old had made similar sexual allegations and facts of sexual assault against a

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previous ex-boyfriend a year prior to my case. The information was not elicited from law enforcement, nor was I present during her initial interview with law enforcement, nor were these allegations or this questioning ever pursued by law enforcement. I was able to tactfully question her about the prior incident in a deposition setting with only myself, the prosecutor, a court reporter, and a victim advocate present. Without having the ability to depose this victim, I am not certain that I would have been able-- I would have been given any other avenue to obtain this relevant information. However, and I think this is important for the committee to know, just because I obtained this information does not mean that I automatically get to use the information during my case. Under Nebraska law 27-412, I am still required to file the motion with the court to reference and use this information in my case. The court as the gatekeeper, determines whether the information is relevant and even if relevant, whether my client's constitutional right to a fair trial would have been violated if the information were excluded. In this case, and I think this is important for the committee to, to, to hear, during the first 27-412 hearing, I was able to offer only the victim's deposition in lieu of having her testify in open court about the similar prior sexual allegations. The only parties present during this deposition were myself, the prosecutor, and during the hearing, excuse me, with the court reporter and the judge. Had I not been able to offer this deposition testimony, the victim would have been subjected to a full evidentiary hearing by myself and the state. May I continue?

BOSN: You may finish. Yes.

APRIL O'LOUGHLIN: And she would have been subjected to cross-examination. The court granted my motion, but did give me limited and-- limitations and only permitted me to reference the single prior allegations in my case. However, just prior to trial, I learned that this same 17-year-old had also made another allegation of sexual assault on another individual after I had taken her deposition. The secondary allegation was not pursued by law enforcement, nor was it investigated in any way. The court granted me a second deposition, but also limited me only to discussing the new allegations, which were same or similar to what my client was charged with. During the second deposition, I questioned the victim with only-- again, with only a court reporter, a prosecutor, and a victim advocate present. I filed a second motion under 27-412 under the rape shield, seeking to bring in just this new information. At the hearing, I again only offered her

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deposition testimony in support of my motion. The court again granted my motion, and at this-- and the victim again did not have to testify and be subjected to cross-examination in open court. And, ultimately, as a result of these two hearings, the case was dismissed against my client. This case seems like an extreme example, but I can tell you the same or similar cases in my experience and in the experience of my colleagues, happen every day across the state. This case had the correct final result, but it cost my client a year and a half of his life, 2 years of college, and came at a significant psychological and mental health cost to him. Without the ability to depose the 17-year-old in this case regarding her prior allegations, I am not sure that the result would have been the same at trial. I do know what I can say is, regardless of the outcome, that a 17-year-old girl would have had to discuss very difficult topics in open court at an evidentiary hearing or at trial. This is in contravention to the foundation of what Nebraska's rape shield 27-412 seeks to avoid, and is not in the best interest of victims, taxpayers, and the criminal justice system. And just as a side note, I would also note that Sarpy County does not share police reports, does not share depositions with our client. We will read them, they're not permitted to have them. They are not present during a deposition and we make every attempt to, to protect the interests of victims during a deposition process. With that, I, I urge you not to advance this bill and I'm available for any questions that you may have.

BOSN: Questions for Ms.-- actually, can you spell your first and last name?

APRIL O'LOUGHLIN: Sure. I apologize.

BOSN: That's all right.

APRIL O'LOUGHLIN: April, A-p-r-i-l, O'Loughlin, O-'-L-o-u-g-h-l-i-n.

BOSN: Now, are there any questions for this testifier? Senator McKinney.

McKINNEY: Thank you. And thank you. Can it, can it also work both ways, too, where you could find out in that deposition that your client is lying and it benefits the victim?

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APRIL O'LOUGHLIN: Yes, and I can, and I can address some of the prior questions in terms of children because I have the-- again, the, the singular focus of my practice has been sexual assaults and those have included-- the majority of cases involving children. And when you are questioning children even concerning prior allegations, that is a very, very narrow window. And what I think that the difficulty with LB103, as it's currently written, assumes that we will not get into this evidence at all, and that's incorrect. Under 27-412, it's my obligation as the defense attorney to file this motion. And the burden is mine, which means that I have to put on the evidence. And if that means that I have to put a victim on the stand to question them regarding these allegations and subject them to cross-examination in open court with my client present, then that's my burden to do that. So the deposition process allows that same or similar information to occur in a different setting. And if it's not relevant, then it's not coming in in court, and that is the purpose of 27-412. So I think that the difficulty that we're assuming then is if LB103, as drafted, the, the defense attorneys are not going to be able to get into this information at all. And that's incorrect, 27-412 mandates that we have to get into the information. And the judge then ferrets out whether that information comes in at trial. So one way or another, this information is going to come out. It's just in the manner in which it does. And I think to protect the interests of victims and to protect their privacy, their safety, and any revictimization that has to occur in a deposition setting and not in open court.

McKINNEY: Thank you.

BOSN: Senator Roundtree.

ROUNTREE: Thank you so much, Chairwoman Bosn. Thank you for the testimony today. So my question would be, how do we work with Senator DeBoer with the bill to get it so it's a bill that's amicable for what the intent is, but also meet your need?

APRIL O'LOUGHLIN: Right. And I, and I think, I think-- I appreciate your question. I think that's the problem with LB103, as it's currently drafted, is it's making the assumption that this information is not coming out at all. It's coming out through the vessel that 27-412 mandates that we have to pursue. So I don't want to speak for the association, but I can say that the bill currently as written is overly broad. Prior sexual allegations is overly broad. 27-412 narrows

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that focus and allows the court to, to mandate what comes in and what doesn't. It's very specific. But, again, as in my case, none of the allegations were investigated. They were same-- the court found that they were same or similar in manner, and that they would have come in under 27-412. So I would have been forced to ask that victim twice, both at a 27-412 hearing, in the presence of my client, in the presence of other parties in open court at that hearing on two separate 27-412 hearings, and then again at trial. That, to me, would have revictimized her, what was clearly issues that she was dealing with. And so, ultimately, the case was dismissed because she made three prior allegations, all in the same or similar manner within a year of each other. Had, had I had to rely on law enforcement-- and, again, they do a fabulous job, but none of those allegations were investigated. The court had a full hearing to determine that they were all same or similar in manner and that they were coming in, and I would, I would have not have wanted to put that victim through that in open court.

ROUNTREE: All right. Thank you.

BOSN: I have a question. OK. So you're saying that this is still going to be able to be adduced at a hearing.

APRIL O'LOUGHLIN: Yes.

BOSN: And my read of it is, is that this is saying if it meets 412 and wouldn't be adduced at a-- for any purpose, then it's not able to be asked at a deposition. And you're saying, no, you-- you're still going to be able to ask about it at a 412 hearing. Am I understanding you correctly or am I misreading something? Would that be possible?

APRIL O'LOUGHLIN: That is correct. And if I can provide an example for you? In, in, in my case, I observed-- I learned information from other individuals, not law enforcement, about the prior allegation. I would have been obligated as a defense attorney on that case to file a 27-412 motion. We would have had a full hearing. I would have presented evidence of the individuals indicating what information they had. I then would have subpoenaed the victim to the stand and cross-examined her regarding those allegations. So 27-412 does not preclude me from calling the victim to the stand. In fact, as Ms. West outlined, it almost forces me then, at that point in time, to call the victim to the stand to cross-examine about prior testimony that I have

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just elicited regarding prior allegations. And I think that's the very purpose of what we're trying to get away from under 27-412.

BOSN: OK. Any other questions? Thank you for being here. Next opponent? Any neutral testifiers? All right, while Senator DeBoer is making her way back up, I will note there were 22 proponent, 1 proponent, and no neutral comments submitted for the record.

DeBOER: So it sounds like what we're really talking about is a concern about false allegations. And I would ask us, just in the interest of the fact that this is a public hearing, to acknowledge that the percentage of allegations which are false is very, very small. Just because this is a public hearing, I would like to acknowledge that. That doesn't mean that we shouldn't have some kind of mechanism to deal with that. But from the testimony, it may sound like this is-- there's a rash of false allegations, and those will still be the vast minority of cases. So I found it interesting in the last example that the last testifier gave that she knew of the incidents. She had knowledge of the incident. She did not get that knowledge of the incident through a deposition. So she had some other means of getting the information in the first place. And there are many means of getting that information. You can read the police report, you can watch recorded interviews, you can interview other witnesses. It sounds like maybe that is what happened in one of those cases. You can subpoena medical records, access criminal records. You know, there are many ways you can get information about those things. Now, I understand the point of the opponents when they said, if you are in a situation where you find out at the last minute about a potential prior false allegation what you do. I suspect that that's the case now, as well, is that you would still have to deal with the time crunch. So I'm not entirely sure how this bill changes that, but I'm happy to work with them on that. My understanding is from talking to quite a few folks who work in these areas, that the one-- the woman who had 1 hour of questioning about a pretty traumatic incident was not an outlier, that this is not just happening in one case and we're trying to find a solution for it, but that there are quite a few instances of this sort of thing happening. Regardless of whether that's the case, we want to make sure that the law is set up so that there are protections for both sides. I also think that there was some discussion about figuring out who harmed a child, whether it's this person or that person, I think Senator Hallstrom pointed out that that would not be within the scope of this bill, because that's about the

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current case and trying to find the correct person in the current case. We-- the privacy of the deposition, especially because if the deposition is used at all in a pretrial hearing and anything like that with our court reporter rules now, unless those are specifically sealed, they'll become part of the public record, right? So the modernization of the court reports, all exhibits offered during the course of a trial, or any pretrial hearings that were not sealed by the court are available electronically through JUSTICE. So they are not as private now because of that issue. Here's what I think we can do, and I don't know how to make this work yet, but I think if there is a reasonable belief or something that there is some kind of concern about a prior allegation, then we could maybe figure out a way to handle that where the judge gets to review that, and then there can be deposition evidence about that. But probably we need to have some kind of-- and I don't know how that works and-- but we should not as a matter of course, just be asking folks about these things in an attempt to, frankly, bully people, which I know none of the people here would do, but I'm sure there's someone somewhere who would. So I'll work on it and I'll let you know. Any questions, I'm happy to answer.

BOSN: Questions for Senator DeBoer? Thank you very much. That will conclude our hearing on LB103. Next up is LB606. What did you do?

STORER: You scared everybody off, Senator Holdcroft.

HOLDCROFT: You know when you ask how many people are going to testify,--

BOSN: How many individuals are here to testify regarding LB606?

HOLDCROFT: --well, you should also ask how many of them are lawyers, because that really sets the amount of time for the next bill.

BOSN: Do you want to present or not?

HOLDCROFT: Good afternoon-- oh, I'm sorry, good evening, Chairwoman Bosn and members of the Judiciary Committee. My name is Senator Rick Holdcroft, spelled R-i-c-k H-o-l-d-c-r-o-f-t, and I represent Legislative District 36, which includes west and south Sarpy County. I am here today to introduce LB606. This is a cleanup bill that eliminates references to obsolete positions within the Division of

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Parole. This bill would also change the metric used for declaring an overcrowding emergency within Nebraska's Department of Correctional Services facility from design capacity to operational capacity. LB631 was passed in 2024 thanks to Senator McKinney, and shifted the Division of Parole Supervision to the oversight in the Nebraska Department of Correctional Services. LB606 formally eliminates the Division of Parole Supervision and the Director of Supervision Services, who was formerly responsible for the oversight of the Division of Parole Supervision. LB606 also shifts the responsibilities formerly assigned to the Director of Supervision and Services to the Director of Correctional Services. The Division of Parole Supervision is now under the Department of Correctional Services and has been renamed Community Supervision Services. The current Director of Supervision and Services position will be eliminated if this bill passes. The position has been renamed the Assistant Deputy Director of Community Supervision and Services, and is currently under the supervision of the Director of Correctional Services. LB606 essentially transfers the supervision of the Division of Parole and all responsibility to the Director of Correctional Services. LB606 also shifts the basis of and over-- also shifts the basis of an overcrowding emergency for the Department of Correctional Services. With the passing of this bill, an overcrowding emergency for NDCS would shift from the basis of design capacity of correctional facilities to operational capacity of correctional facilities. This shift grants the authority of the Director of Correctional Services in declaring an overcrowding emergency within the department-- the Nebraska Department of Correctional Services. While we know that prisons in Nebraska are currently overcrowded, and the Department of Correctional Services continues to work diligently to address the issue of overcrowding, this gives the Director of Correctional Services the ability to be flexible in declaring an overcrowding emergency. Thank you, Chairwoman Bosn and members of the Judiciary Committee for your attention. I am happy to answer any questions you might have, but the testifiers after me will be able to answer them in better detail. Thank you.

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

HOLDCROFT: I'll be here for closing.

BOSN: Excellent. First proponent? Anyone here to testify in support? Good afternoon and welcome.

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DIANE SABATKA-RINE: Good afternoon, Chair Bosn and members of the Judiciary Committee. My name is Diane Sabatka-Rine, D-i-a-n-e S-a-b-a-t-k-a-R-i-n-e, and I am the assistant director of the Nebraska Department of Correctional Services. I am here to testify in support of LB606. LB606 is, in part, a cleanup bill resulting from the passage of LB631 in the previous legislative session. One of the key elements of LB631 was to shift oversight of the Division of Parole from the Board of Parole to the Nebraska Department of Correctional Services. LB606 eliminates the Division of Parole as a separate entity within statute, with the oversight and responsibilities of this division administered by NDCS. LB606 would also change the metric used for the declaration of an overcrowded emergency, from design capacity to operational capacity. Design capacity is based solely on the original physical design of the facility. Operational capacity encompasses operational changes to the original physical design that allow each facility to accommodate increased population levels. Moving to operational capacity would provide the NDCS Director a better metric for signifying a true overcrowding emergency based on housing expansions and access to services and programs that have changed since each of the facilities were designed. NDCS recognizes that some facilities are currently overcrowded, but the department has been able to safely operate and provide services and programming to incarcerated individuals through numerous operational changes. Additionally, the progress made to reduce staff vacancies and increase staff retention has improved our ability to maintain consistent facility operations. With community supervision under the control of NDCS, there have been-- there has been a renewed focus on ensuring greater continuity of services from incarceration to the community, which includes prioritizing the delivery of programming and reentry support to incarcerated individuals. Not only does NDCS prepare people for their parole hearings, it also provides the level of supervision needed to ensure individuals do not return to custody due to technical violations. Thank you for the opportunity to testify and I will be happy to answer any questions.

BOSN: Senator McKinney.

McKINNEY: Thank you. And thank you. How has the transition been?

DIANE SABATKA-RINE: The transition with, with parole--

McKINNEY: Parole, yeah.

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DIANE SABATKA-RINE: --supervision now community supervision services coming? There has not been any major hiccups. I mean, as you know the history, the division was previously under the Department of Corrections. So, you know, we are still working out policies to incorporate all of community supervision services into agency policy. There will be-- I mean, the transition continues. We're not done yet.

McKINNEY: OK. I'm looking on your website and I'm seeing with the design capacity, a handful of facilities are overcrowded, but looking at operational capacity, Community Corrections-Omaha would still be overcrowded, OCC would be overcrowded and WEC would. What is your plan to address that?

DIANE SABATKA-RINE: So, again, we work to control the controllables that we have. So we don't control the number of people that are sentenced to serve time with the department. The one piece that we certainly want to influence right now are the individuals that, that are on parole. We want to work really hard to keep them on parole and reduce technical violators from coming back into the system. And so that's one of our key focuses. And certainly we want to continue to prepare people for their parole, that they are ready at their earliest opportunity to transition back to the community.

McKINNEY: OK. And what is your current progress with the new prison?

DIANE SABATKA-RINE: So we have done groundwork at the new prison, but we have not started any actual construction yet. And I think Director Jeffreys is prepared to testify specific to that on Friday in front of the Appropriations Committee.

McKINNEY: OK. Thank you.

DIANE SABATKA-RINE: Um-hum.

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

DIANE SABATKA-RINE: Thank you.

BOSN: Next proponent? We'll move to opponents. Anyone here in opposition to LB606? Neutral testifiers? All right, Senator Holdcroft, while you're making your way up, there was one proponent, one

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opponent, and no neutral comments submitted for the record. Welcome back.

HOLDCROFT: And just for the record, we're here because of Senator McKinney's LB631.

BOSN: That will be noted for the record.

HOLDCROFT: Very good. I did actually vote for it, though, so it's probably my fault, too. No, I'd say primarily a, a cleanup bill, just I think the transition is going well. And, and I think we're-- you know, we just got to make a few changes on titles and, and continue on the process. So I'm happy to answer any questions.

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

HOLDCROFT: Thank you, Chairwoman Bosn.

BOSN: You're welcome.

LAURIE VOLLERTSEN: I assume you closed the hearing, didn't you?

BOSN: Yes, yes. Sorry.