

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 14, 2025

BOSN: All right, everyone, good afternoon and welcome to the Judiciary Committee. I'm Senator Carolyn Bosn from Lincoln. I represent District 25 and serve as the chair of this committee. We are going to take up bills in the order posted. This is a public hearing and 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 back table. Print clearly and fill it out completely. When it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are 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 both to ensure we get an accurate record. We're beginning today with the introducer's opening, followed by proponents, then opponents, and finally anyone wishing to speak in the neutral capacity. 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 we begin your testimony, the light on the table will be green. When the light turns yellow, 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 will be coming and going during the hearing, but this has nothing to do with the importance of the bills, it's just part of the process as senators have other bills to introduce in other committees. If you do have handouts or copies of your testimony, 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 and will be cause for you to be asked to leave the hearing. Committee procedures for all committees state the 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 committee members with us today introduce themselves starting to my left.

HALLSTROM: Thank you. Bob Hallstrom, Legislative District 1, southeast Nebraska counties of Otoe, Johnson, Pawnee, Richardson, and Nemaha.

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

STORER: Good afternoon. Senator Tanya Storer. I represent District 43, 11 counties in north central Nebraska: Dawes, Sheridan, Cherry, Brown, Rock, Keya Paha, Boyd, Garfield, Loup, Blaine, and Custer.

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

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

BOSN: Thank you. Also assisting the committee today, to my left is our legal counsel, Tim Young. And to my far right is our committee clerk, Laurie Vollertsen. If our pages today would please introduce themselves.

AYDEN TOPPING: My name is Ayden. I'm a second-year student at UNL.

ALBERTO DONIS: I'm Alberto Donis. I'm a student at UNL.

EMMA JONES: I'm Emma, I'm Emma and I am a junior at UNL.

BOSN: Thank you. And with that, we will begin today's hearing with LB44. Senator McKinney. Welcome.

McKINNEY: Thank you. Good afternoon, Chair-- Chairwoman Bosn and members of the Judiciary Committee. My name is Terrell McKinney, T-e-r-r-e-l-l M-c-K-i-n-n-e-y. I represent District 11 in the Legislature which is in north Omaha. Today, I'm here to discuss LB44, a measure that ensures fairness in Nebraska's postconviction relief process. Our justice system is built on the principle of fairness, due process, and the belief that people, especially young people, can change. LB44 will uphold these values by allowing young individuals convicted as minors to seek postconviction release after they-- up until, until they reach the age of 21. This change is not, is not just necessary, it's a matter of justice. Under current law, the clock for postconviction release starts ticking the moment of conviction is final, often giving young incarcerated individuals only a short window to challenge the fairness of their trial or sentence. But the reality is that many teenagers simply don't have the knowledge and resources or legal support to understand and exercise their rights within this limited time frame. We are talking about individuals who were minors at the time of their conviction, young people who may have lacked the maturity to fully grasp the legal process, and whose ability to advocate for themselves was limited. This bill recognizes that, that reality and extends the deadline giving them a fair chance to seek

justice once they reach an age where they are more capable of understanding their legal options. This is no question that-- there is no question that young people in the justice system are vulnerable. Studies show that adolescent brains are still developing, particularly in areas related to impulse control and decision-making and understanding long-term consequences. This is why courts, including the U.S. Supreme Court, have repeatedly, repeatedly ruled that juveniles should not be treated as adults. Yet, our current postconviction system does not take these realities into account. A teenager may not recognize that their rights were violated at trial, or that new evidence could change their case. By the time that they do, it may be too late. LB44 fixes this by ensuring that young incarcerated individuals have a 1-year period, period of limitation to file a verified motion for postconviction relief, a change that aligns with what we know about adolescent development and the challenges these individuals face. This bill does not open the floodgates to illicit postconviction motions, it simply provides a fair opportunity for those who were minors at the time of their conviction to seek justice within a reasonable time frame. It does not guarantee them a new trial or a different outcome, it only assures that they have a meaningful chance to present their claims. And let's be clear, if a person's rights were not violated and the conviction was fair, then the courts will uphold their sentence. But if someone was wrongfully convicted, had ineffective legal representation, or has new evidence that can prove their innocence, they deserve the opportunity to be heard. LB44 is not about being soft on crime. It's about being fair and justice. We should never let procedural deadlines stand in the way of correcting an injustice. This bill will simply ensure that young people who are convicted as minors have a fair shot at challenging their convictions in the facts and legal violations that come to light. I brought this bill because going inside the prisons, I've had talks with many people who were convicted as young individuals, and a recurrent theme was when they were in NCYS, NCYS specific-- NCYF, specifically, they really did-- when they were trying to file their motions, they were filing them incorrectly because they didn't have the proper supports to even file those motions. They lacked law library. They could send kites or kites over to OCC, but that is not really effective either. And these young people are filing these motions with really little to no help. And this is just giving them an opportunity to just maybe, over time, be able to get some help or learn more to, to assist themselves throughout that process. Especially if we're going to start convicting young individuals at a younger age, I believe we should start taking this into account, especially because if, if they're not getting the legal assistance

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inside, because this is a problem that I've, I've heard from multiple people that have went to NCYF, is that there is a lack of legal help with law library and those type of things. So when they're filing these motions, they're filing them incorrectly because they don't know what they're doing and there's nobody there to really assist them. And that's why I brought this bill. So thank you.

BOSN: Questions from the committee? Senator Hallstrom.

HALLSTROM: Senator McKinney, last evening we, we talked about younger children, unfortunately as young as age 11 and 12, committing violent crimes and felonies, and on the civil, and on the civil side, we have a thing that's referred to as statute of repose. And it sets a deadline for bringing actions because memories fade, witnesses disappear. If we've got youth as young as 11 years old and giving them a 10-year time period to do this, my concern would be that-- I guess it's not necessarily my concern, my question to you would be, are you concerned at all about the fact that 10 years can elapse and you may have the ability to, to bring actions within that extended time period, but someone on the other side who would have been a witness or someone that would need to be involved in the process may be gone, their memories may have faded, and so forth?

McKINNEY: I think that's a, that's a fair question. I, I guess my, my, my response to that is that if especially if we send an 11-year-old to prison and there is a lack of legal support, I think that time-- I would argue that I understand that, but an 11-year-old, it's going to be almost-- I would, I would argue, who's going to help that 11-year-old file that postconviction relief inside? Especially for, like, let's use the example of the young lady that came here to testify who was isolated, who's going to help her? She was 15, but still in the same breath, like, who's going to help? That, that, that's what I'm thinking about.

HALLSTROM: OK.

McKINNEY: I understand what you're saying.

HALLSTROM: And let me make it perfectly clear, I hope we never have that situation where an 11-year-old is, is sent to prison. So thank you.

McKINNEY: Thank you.

BOSN: I don't want to rehash yesterday, but the bill yesterday addressed 12-year-olds, not 11-year-olds.

McKINNEY: Yeah.

BOSN: But I guess, to his point, would you entertain a discussion that provided for extending it a certain number of years, or until the 21st birthday, whichever is sooner? So in the event of a 13-year-old, it would be an expansion of 3 to 5 years or-- I'm just throwing out a number, and then you don't have quite that concern of a delay and loss of witnesses for the 21st birthday, so that if you have a 17-year-old--

McKINNEY: Yeah, yeah, I get what you're saying. Yeah, yeah, I would. I'm open to it.

BOSN: OK.

McKINNEY: Yep. Thank you.

BOSN: Any other questions? Thank you.

McKINNEY: No problem.

BOSN: All right. First proponent? Good afternoon.

SPIKE EICKHOLT: Good afternoon. 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 support of the bill. And we want to thank Senator McKinney for introducing it. Many of our members do, do postconviction actions. There's a process where if somebody files a postconviction motion, a court can appoint an attorney to represent them if the court finds there's merit to it. What this bill does, if you look at the bill itself, a postconviction is not a direct appeal, it's a, it's a, it's a unique thing in the law, basically. You can only bring a postconviction motion once you've been found guilty of something, you've been sentenced and your appeal is final and you are in custody. So these are people who are generally in prison. And you want to argue that there was something that happened either during your trial, your lawyer was ineffective somehow or evidence was not adduced that should have been produced, or there's been a change in the law somewhere that impacts your constitutional right and, therefore, threatens the legality and constitutionality of your imprisonment. You can bring a postconviction motion in the trial court where you were tried and found guilty. You've got a year to do that based on certain dates. That's a hard year. It's similar to a statute of limitations if anything. If you don't file it within a year, one day, and there's a case that has one day, you're done and you can't bring it at all. And

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the year is measured on a couple of different factors: one, when your conviction is final on appeal. That's when the clock starts running. Another ground, and you can see them, is if you do a petition for cert to the U.S. Supreme Court. And it's a year from when the U.S. Supreme Court denies it or grants it and affirms your conviction. And another ground is if a constitutional right that you're claiming is recognized by the U.S. Supreme Court. And, incidentally, this is what was used for all the people post Miller v. Alabama. Shakur and the others will go back into court because the U.S. Supreme Court recognized that juveniles can't be sentenced to life if they're under 18. And this opened the door for them to bring these motions. What this will do, it will add a third or maybe a fourth or fifth ground, and that is to allow for someone who can bring a motion within 1 year of when they turn 21. And as Senator McKinney explained, I heard anecdotal information from my members and other people who are inside that the-- you have to bring these motions yourself. You're not entitled to a lawyer. So a lot of times they're handwritten or typed up. They've got some forms in the prison libraries, but they're never very good. And whatever is available for the inmates at the NCYF facility, frankly, is just less than what's at the prison system, which is even less, frankly, than any kind of law firm anywhere. So a lot of these inmates, unfortunately, they're there when they're young and they're found guilty at 17 and 18, by the time they get moved to an adult prison and they get some familiarity with the law, the year is already gone and they can't even get into court, even if they have a meritorious argument or not. And this opens that door. And I would submit that it's a relatively small door, but it gives an opportunity for some people, at least, a cert to claim in court and be heard by a judge. And we would encourage the committee to advance the bill.

BOSN: Thank you. Questions for Mr. Eickholt? Senator Hallstrom.

HALLSTROM: Just one clarification. They're not entitled to a lawyer, but if they can afford one, they can have their own?

SPIKE EICKHOLT: Yeah, if you can get someone on the outside to hire a lawyer for you, then you can do it, which enhances your, your chances. And some of my members do do that service.

HALLSTROM: OK. Thank you.

BOSN: Thank you.

SPIKE EICKHOLT: Yeah.

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BOSN: Next proponent? Good afternoon and welcome.

WEBB BANCROFT: Good afternoon. Webb Bancroft, W-e-b-b B-a-n-c-r-o-f-t. Bancroft Law Office. I am certainly in favor of Senator McKinney's bill. I've represented juveniles both in juvenile court and as adults. And without going through all the timelines that are involved, that even adults have trouble and attorneys have trouble following, the influence that certain people can have over juveniles when they're in the system, including well-intended parents or siblings, or a variety of people can actually influence whether a juvenile decides or thinks they may have an argument that should be addressed and should be reviewed by the trial court to determine whether or not some relief should be given. Certainly those kinds of things, and when we're talking, I hate to say the words, 12-year-olds, 13-year-olds being incarcerated, but with children, that development is certainly recognized, evidence-based, and the influence that people can have on children in decision-making and knowing what they can do or should do. By expanding it from the 21st birthday from 1 year, it gives them time to grow in, to access other adults, other people within the system that may be able to give them better advice in regards to things that might have happened during the course of their case that would be legitimately subject to relief. And as Mr. Eickholt identified, it has to go before the trial court. The trial court will make that determination. But giving them that opportunity certainly seems worth it. So I'd ask the committee to pass this bill.

BOSN: Thank you. Sorry about that. Any questions for Mr. Bancroft? Seeing none, thank you for being here. Next proponent? Welcome.

JASON WITMER: Hi. Good afternoon, Chair Bosn and Judiciary Committee. I am Jason Witmer, J-a-s-o-n W-i-t-m-e-r. I'm here on behalf of the ACLU in support of LB44. Well, first I would just say for the nonlawyers, imagine getting a full degree for-- to defend your life in 1 year, let alone being a child trying to do it. That's some context. The right to due process is fundamental enough to our legal system, guaranteed that every person given a meaningful opportunity to be heard. However, Nebraska's current postconviction relief laws impose a 1-year deadline that does not account for the realities young people face after a conviction. Many, many individuals under 21, especially going into the system, that stats show, don't even have their high school degree, don't even have a, a GED, lack the knowledge, they lack the resources or legal guidance to properly challenge potential constitutional violations within the short window. LB44 corrects this by ensuring that young people who were convicted before turning 21 are not deprived of their constitutional right to due process simply

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because they were not capable of effectively navigating the system. LB44 does not weaken the finality of the sentence, it simply aligns Nebraska law with fundamental constitutional principles. With that, we ask that the committee advance LB44 to General File. Look at that, green light.

BOSN: Thank you. I would never yell at you. Any questions for Mr. Witmer? Thank you for being here.

JASON WITMER: Thank you.

BOSN: Next proponent? We'll move to opponents. Anyone here in opposition to LB44? Any neutral testifiers on LB44? Did Senator McKinney have to step away? OK. I will-- sorry?

_____: He's not going to close.

BOSN: He's not closing. OK. All right. Sorry. I will note for the record then, that there were two proponents, one opponent, and no neutral comments submitted for the record. And that will conclude LB44. Next up, we will have LB155 with Senator Hardin. And while we're waiting for Senator Hardin, can I just see a show of hands of how many individuals wish to testify in some capacity on LB155, pro, against, neutral? 1, 2, 3, 4, 5, 6, 7, 8, 9, I'll count the person 10, 11, 12, 13, 14. All right. I see about 14 hands. Is he on his way?

LAURIE VOLLERTSEN: Yes.

BOSN: OK. Welcome.

HARDIN: Hi, there. That one. Thank you, Chairwoman Bosn. And good afternoon, fellow senators, of the Judiciary Committee. I'm Senator Brian Hardin. For the record, that is B-r-i-a-n H-a-r-d-i-n, and I represent the Banner, Kimball, and Scotts Bluff Counties of the 48th Legislative District in western Nebraska. I'm here to introduce LB155, which amends Nebraska Revised Statute 28-1409 to include a motor vehicle into the list of places in which you have the right to defend yourself. Currently, Nebraskans have a duty to retreat before using force in the act of self-defense, except when in your home or place of work. But why should this Second Amendment right end the moment you step into your vehicle? The ability to protect yourself and your loved ones should not depend on location. It should depend on the immediate danger you face. Adding your vehicle to the list of places where you have the right to defense-- self-defense is a logical next step in making Nebraska a safer place to live, and making Nebraska a more friendly state to those who support the Second Amendment. This is

about giving Nebraskans a fighting chance if they are cornered, threatened, or attacked in their own vehicle. The data speaks for itself. In 2023, Lincoln alone reported 950 auto thefts, double the number of 2019. While Nebraska specific carjacking data is limited, these figures paint a clear picture. Criminals are targeting vehicles at an alarming rate. And unlike stolen property, a carjacking often comes with the threat of physical harm or death to the victim. In these situations, retreat is not always an option. 38 other states are considered stand-your-ground states, 30 of those are by state statute, 8 by case law. Looking to our neighbors: Iowa, Kansas, Missouri, South Dakota, and Wyoming all have stand-your-ground laws in statute. And Colorado, even dark blue Colorado, is a stand-your-ground state established in case law. We're just one of 12 states that do not allow our citizens to defend themselves, wherever they have the legal right to be. It's time to correct that imbalance and bring Nebraska closer to being in line with the vast majority of the country. Opposition will say that this is dangerous and that it is just another excuse to shoot someone. Some may ask, why should you be able to use force in self-defense when you can just drive away? Well, if it takes just one trip down 9th Street here in Lincoln to see exactly why just driving away isn't always an option. You cannot just drive away when there is traffic surrounding your vehicle, and you certainly cannot do it safely when your vehicle is surrounded. When an attacker is armed, when seconds matter, a law-abiding citizen should not be forced to gamble with their life. The opposition will also tell you this is a license to kill. And with its passage, there will be 10 deaths a day and there will be blood in the streets. This is simply not true. And there's evidence of that or, rather, there's absolutely no evidence to support the opposition's claims. We heard the same arguments in 2023 with Senator Brewer's LB77. Nebraska has been a constitutional carry state for 18 months, and we still have yet for there to be a single reported incident of so much as a kerfuffle or a scuffle because of a Nebraskan who was carrying a firearm as allowed by LB77. The fear-driven prediction simply did not happen. At its core, LB155 is about ensuring Nebraskans are not forced to choose between breaking the law or protecting their lives. It aligns with our constitutional rights, reflects the reality of modern crime trends, and follows the lead of the vast majority of states that trust their citizens to act responsibly in the face of danger. I urge this committee to advance LB155, ensuring that no Nebraskan is left defenseless simply because they're in their vehicle. Thank you and I welcome questions.

BOSN: Questions for Senator Hardin? Are you staying to close?

HARDIN: Sure. Especially since I have the next bill.

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BOSN: Oh, I forgot about that. Yes. That, that would be more efficient. Yes. All right. We will start with proponents. Anyone here to testify in support of LB155?

PATRICIA HARROLD: Good afternoon, committee members. My name is Patricia Harrold, P-a-t-r-i-c-i-a H-a-r-r-o-l-d. I am the President of the Nebraska Firearms Owners Association, 26,000 Nebraskans strong. I'm also State Director of Women for Gun Rights, which is a national nonprofit advocating for education in order to make our community safer. I stand in support of this bill, and I would like to particularly emphasize some areas of interest with regards to self-defense law that I think will be very important in advance of the opponent's testimony. Within Nebraska self-defense statutes, there are some key terms and case law has supported the evaluation of those terms. First and foremost, when it comes to self-defense, your actions must be reasonable for the circumstances. And any judicial [INAUDIBLE] hearing, if you act in a way that is unreasonable, you may lose your right to claim self-defense, which removes the provisions of justifiable use of force. For force to be justified, you must be facing an immediate threat. That immediate threat is well defined. It is not facing someone who is across the street who has no means of getting to you. That person has not only meaning to communicate intent, but ability and opportunity. In order for you to use lethal force, you must be facing a threat that is not only immediate, but also jeopardizes your life, jeopardizes your bodily functions in the sense that it has to be a disabling or debilitating injury that you would face if you weren't to defend yourself, or you must be facing rape and/or kidnapping. So those four conditions must be met, including the immediacy for use of force up into including lethal force to be allowed. This bill simply presents the opportunity for individuals like myself and others, law-abiding citizens, to not to have to navigate the microseconds of time to determine whether or not it would be feasible to escape with 100% safety. When you look at the duty to retreat language, that is a component. If I endanger myself by attempting to retreat, I am not obligated to do so. So the duty to retreat statute is actually fairly clear insofar as the limitations that it provides, but also the opportunities it provides for you to lawfully defend yourself. Thank you so much for having me here today, and I'm happy to answer any questions.

BOSN: Thank you. Any questions?

PATRICIA HARROLD: Thank you very much.

BOSN: Thank you for being here. Next proponent? Good afternoon.

JOSEPHINE LITWINOWICZ: Good afternoon, Senator Bosn. I'm going to call you Senator Bosn or Bosn. That way I don't-- I get your name right and, and how you doing all of you guys? You know, all y'all where I come from. Anyway, I support this bill. I'm telling you, if somebody comes at me and with, with, with, with-- I don't-- I'm in a chair. I want to-- I, I, I don't use a gun because I'd use it on myself. But I want a taser and I'm going to shoot them twice, and it's probably going to-- I'm going to say, hey, if I can, you know, and, and, you know, but I don't have time. There's-- I'm street smart and I know better. I used to renovate old and historic-type houses and sometimes-- New Orleans is unique, where you could have a crack house next to a doctor's house. And so anyway, anyway, because the, the real-- one of the problems is like, for example, I was at a bar here around the corner a couple hundred feet away, and, and I had been-- I usually go there for about a week or two in the spring and fall and, you know, and, and-- I'm having MS trouble today so I might need to speak a little longer. So, so I was going for that week between the hours of, like, 1 and 4 or 5. I'd have a, you know, I'd sip a guinness because it's draft and, you know, every 45 minutes and then I have a short ride home. Well, one time, you know, it was the night before the first game, Nebraska game, you had western Nebraska and all that-- those people and-- coming in. It was busy in front of the-- there's only a narrow sidewalk and I was in a little like patio, sort of on the street, you know? And then after I finished my first beer that night, I happened to go at 6:00. I never go that late, and had the audacity to do that the night before a game. And, and, and so, yeah, I had, I had my first beer and then this woman said-- and then that barmaid came out and she says, well, I'm going-- you have to leave. And she answered the question. I said, why? Because you made sexualizing comments to the staff. And then she said, and I quote, we caught you jerking off here 3 years ago. So the problem is, if I leave at that point, I got trespassing and I, I, I got some disturbing the peace and because I, I said "F you" as loud as I could to that woman after she said the second thing twice. And then she-- I have reg-- I have people in my building that are regulars. It's packed. If I leave, I'm guilty. And that's dangerous to me. And so I didn't leave. I made them give me a citation or I was going to get arrested. And so, you know, that's coming up and, and, and I have to fight back. And that was targeted. OK? And, again, another targeting incident was-- this is important. Another targeting incident was with-- oh, yeah, where I live. I was targeted there because I had to move to another building while they replaced the elevator. And when I moved back, the moving company damaged--

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BOSN: Josephine, that is your time. So I'm going to have to have you stop there just for a second. Can I have you, for the record, since you forgot to state and spell your first and last name.

JOSEPHINE LITWINOWICZ: Can I have a little bit-- can I finish this?

BOSN: Let's have you state and spell your first and last name, and then we'll see if there's any questions.

JOSEPHINE LITWINOWICZ: OK. My name is Josephine Litwinowicz, J-o-s-e-p-h-i-n-e L-i-t-w-i-n-o-w-i-c-z. I'm gonna go, I guess, respectfully.

BOSN: Well, let's see if there's any questions, OK?

JOSEPHINE LITWINOWICZ: OK.

BOSN: So just hold on. Are there any questions from the committee? OK. I would like to ask you a question, if you could just finish your final thought.

JOSEPHINE LITWINOWICZ: Oh, thank you. And, and so the, the-- yeah, and, and, and so I-- they damaged my subwoofer. And it's a good one because sometimes I have to spend 22 hours in bed. You know, I, I only come out for an hour in the morning and night. And so anyway-- and, and they broke a table. And so, you know, since the moving company or the Concorde, the management-- sorry, I didn't mean to say the name, since they paid for the mover, right, and then-- so anyway, the thing is, is that I got mad because they wanted to compensate me \$18, \$18. And so I, I said-- I, I, I, I went for a while without getting mad. And then I started dropping f-bombs like crazy and not-- I didn't call him a name. \$18. And the next day I get an eviction notice. I got 60 days. And I'll tell you, I'm only leaving my apartment in a body bag. I swear you'll hear about it.

BOSN: All right. Thank you very much for your testimony. Thank you for being here.

JOSEPHINE LITWINOWICZ: Thank you.

BOSN: Next proponent? Anyone else here in support of LB155? Good afternoon.

ROBERT KLOTZ: Afternoon. Robert Klotz, K-l-o-t-z, from Lincoln. Two stories. A young mother offered no resistance and was thrown down her stairs by an intruder while her small child watched from the couch. It

was very sad. A lawyer walking home gave two robbers everything, only to be stabbed to death. Witnesses heard him screaming. Why? I gave you everything. If you do not resist, you have a 25% chance of being injured or killed. Think about that. Doing nothing can end your life. The \$64,000 question is, should I run? Should I fight? Should I submit? Retreating can kill you. Defending can kill you. Submitting can kill you. You have to know the totality of the situation in order to know what to do. And then it's a crapshoot decision made under duress. If the law says I must first retreat, it assumes it knows my situation, which only God could ever know. I may have only a small window of opportunity to defend myself, and hesitating to retreat, may close that window, and I could die. If I am raped by an evil person trying to rob me, carjack me or whatever, and I determined it was in my best interest not to retreat, I can still be financially raped by a prosecutor who hauls me into court, demanding I explain myself for not retreating. But if I can't speak well, then the victim goes to prison and the predator may go free on a technicality. Laws are supposed to defend the innocent, not protect the guilty. Demanding I retreat may be more dangerous for me. I am old, I could easily hurt myself trying to retreat by stumbling and falling in the excitement. I am an adult. I know how to make adult decisions. Let me decide if I should retreat, if I should fight, or if I should submit. And, yes, I have, unfortunately, had to make such decisions. It's my life. Don't be a helicopter mom. I am there, you don't know the totality of the situation, don't penalize me, penalize the evil person. I did not ask for the dangerous encounter. He did. Laws are supposed to protect the innocent, not the guilty. Vote yes for LB155.

BOSN: Thank you. Any questions for this testifier? Thank you for being here. Next proponent? Good afternoon.

MICHELLE ZAHN: Good afternoon. My name is Michelle Zahn, M-i-c-h-e-l-l-e Z-a-h-n. I am a board member of the Nebraska Firearms Owners Association, and I am also a self-defense instructor. I'd like you to imagine I'm coming home from work really late, it's dark out, and I stop at a stoplight. I am waiting for the green light. Suddenly my door is opened and I am being threatened with my life or-- to get out. I fear for my life. Do I have to think can I legally get out of this car safely and save my life and escape or can I rather use those precious seconds to just defend myself? Acts of self-defense takes seconds. Nationwide, there are over 500,000 to 1 million self-defense situations that involve a firearm in self-defense. And that is a statistic from the CDC. And a majority of those no shots are fired. This is a commonsense situation and is it already within self-defense

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law? Please let's choose to better protect women and their children.
And thank you for your time.

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

MICHELLE ZAHN: Thank you.

BOSN: Next proponent? Good afternoon.

ALLIE BUSH: Good afternoon. My name is Allie Bush, A-l-l-i-e B-u-s-h. I represent the grassroots group Nebraskans Against Government Overreach. We've officially reached over 8,000 members so that's very exciting. With that said, we absolutely support LB155. We ask you all to do the same. I'm going to share a, a story of my own, though. Just a few years ago-- well, I guess it would be 6 years ago now. I was in the truck with my ex-husband and my infant son, and a road-raging lunatic on the road was upset that he had gotten passed, and we did not do anything aggressive. He was generally just upset that he'd been passed, and he ended up veering his car in front of us, blocking us from getting away from him, got out of his vehicle and shot at us. Point blank, right there. You can actually still go find the news article. It happened in front of Menards in Omaha off 204th near Dodge. And when I called 911 to report it, we were encouraged to let him just drive away. Hope that he did not continue retaliation and allow him to just drive away. Who knows what other dangers he presented to others that day. Unfortunately, the crazy part is we found out later this was a repeat offender. The officers in the area knew exactly who he was just based on the description of his vehicle. My family was in imminent danger and we were not supposed to defend ourselves. My husband at the time expressed out loud when I was on 911, I'm going to hit his car and knock him off the road so he can't keep going. And they said, no, sir, you can't do that. That, that would-- you cannot do that. You have to just let him drive away. And so I know a lot of the opponents will come up and say, oh, people with guns are going to be shooting each other down. We weren't armed that day. The goal is not to be able to shoot somebody. It's simply that, why did we have to try to get away from somebody who shot and let them just drive away from us? That, to me, is, is quite bizarre. And to the former testifier's point, our laws are to protect the innocent. And in many respects, the stand-- the expansion to stand-your-ground laws would be protecting the innocent. Our laws are supposed to prevent crime. And so I would ask that you guys support this and move it forward.

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

ALLIE BUSH: Absolutely. Thank you.

BOSN: Next proponent? Anyone else in support of LB155?

JOE GOEBEL: My name is Joe Goebel. I'm from Burt County, Nebraska.

BOSN: Could you spell your first and last name? Joe I know how to spell, but the last name, maybe.

JOE GOEBEL: G-o-e-b-e-l. I am absolutely for LB155. The one good thing we already have on the, on the books for not having a duty to retreat is your home and your workplace. So I drive a truck for a living, and just 2 months ago, I had an irate driver cut me off. I was at work, so I didn't have a duty to retreat. He thought I ran a stop sign, which I did not. I attempted to go around him. He cut me off again and proceeded to get out of his vehicle. And I don't know, I've seen many people try to back their vehicle, just a vehicle, try to do that with a 70-foot semi. They want to say that gun owners are going to just be angry and want to shoot people. I'm at work, I am armed, and I backed that truck almost a quarter mile down the road. As this irate felon, I found out after the fact, chased me down the road because he thought I ran a stop sign. There's a very good example of gun owners that are very responsible. I had every right to defend myself. I was at work, but I was in a vehicle. So this would actually protect me even more so that I have a right to defend myself when I have a known felon trying to attack me in my vehicle. That is just one of my personal stories that just happened in the last couple months. I also grew up in south Omaha. I have a scar that runs around the backside of my head. I would like to know how many people have been jumped by three or four people at one time, or shot at or grazed? I'm still here. One of the reasons I would actually be neutral on Senator McKinney's bill is because in those situations, we go to court. There's a reason why we call them court pretenders, because they're the lowest paid guy to represent you. And when you don't have the money, and you don't have the ability to defend yourself, you need every bit of help that you can get. So not only on that bill, but on this one, this gives us the ability to defend ourselves. I've been in those situations more than once. I'm still here. I made the right choices. But I want my family, my daughters, my wife, my female friends especially to have that ability to defend themselves in those vehicles. I'm 6 foot 2, 220 pounds. If I had bad intentions, there's a lot of females that could not stop me, including my wife. I want her to have that ability to equalize and be

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able to meet me head-on, or somebody that is built like me. So please definitely vote this out of committee. And I'm totally for LB155. Thank you.

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

JOE GOEBEL: Thank you.

BOSN: Next proponent? Any other proponents?

JOHN ROSS: Good afternoon, Chairwoman Bosn and fellow committee members. My name is John, J-o-h-n, Ross, R-o-s-s. I am a law-abiding citizen that now can carry permitless. And let's just say I'm in a parking lot in the summertime, window rolled down, someone tries to carjack my vehicle. Am I supposed to crawl across the center console to get away from them? And let's add one thing else, two of my grandchildren are in the backseat. I'm going to do anything and everything I can to protect them. So I, I think we absolutely need to advance this bill so that the castle doctrine applies when you're in your home. I can think of another instance. You're in a vehicle with your friend and a couple of his friends and one of those friends get into it with you. They're threatening me. We're going down the interstate 90 miles an hour, what am I supposed to do, open a door and jump out? I don't think I should have to think 1 second, because if you think 1 second sometimes, it's your life. I should be able to use whatever means of force that I feel justified to protect myself. You've got most of the articles here about what self-defense-- and I'm not going to go through any of that. And with that, I will end my testimony.

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

JOHN ROSS: Thank you.

BOSN: Next proponent? Long time no see.

SCOTT THOMAS: I'm back again. Good morning, Judiciary Committee. We still in the morning or we afternoon now?

BOSN: Close.

SCOTT THOMAS: My name is Scott Thomas, S-c-o-t-t T-h-o-m-a-s, for Village In Progress Nebraska and U.S. Institute of Diplomacy and Human Rights. We're testifying, we're testifying as proponents for your

human right to self-defense because the duty to retreat sounds too much like the duty to get shot in the back. And I understand that this is like in the context of a vehicle, but you don't have a duty to hope and pray that the government will come to your rescue. You don't have a duty to rely on the government for your self-preservation. We saw that in Minneapolis. We saw it with Kyle Rittenhouse. We saw it with Daniel Penny. We saw it with Donald Trump. You can't always rely on the government. And I don't know if anybody's ever tried to call an office in the government to try to get clarification on a law, like you want to call a court, you want to call the sheriff's office, and you want to ask them how something would play out in a specific condition, and you want to give a hypothetical scenario and you want them to weigh in or give you-- basically, what you're asking for is legal advice, and that's what you'll be told. I can't give you legal advice, sir. I can't give you legal advice. So you got to have clarification. You got to have distinction in the law that allows people to act forthrightly. We heard somebody else testify and say, I want to be safe. I want to be protected. I want to be able to secure my own physical safety, and I want to be in compliance with the law. You know? The Bible tells us to submit to the authorities that all authority is ordained by God, and we're given authority by God to civil governance. So you might want to be in compliance with the law and at the same time keep yourself and your family safe so we support this. And I have ample time to get any questions from the senators that they might have.

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

SCOTT THOMAS: Thank you very much.

BOSN: Next proponent? Welcome.

TRAVIS COUTURE-LOVELADY: Thank you, Madam Chair. My name is Travis Couture-Lovelady. That's T-r-a-v-i-s C-o-u-t-u-r-e-L-o-v-e-l-a-d-y. There goes most of my time. Members of the committee, thank you for your, for your time. I am the State Director for the National Rifle Association. I want to express our support of LB155 on behalf of the NRA and our members in Nebraska. Our motor vehicles often serve as extensions of our homes, and that's what this bill intends to do, is extend the castle doctrine beyond the home to your vehicle. As someone who travels on the road for work quite a bit because as I handle the region, I probably spend more time this time of year in my home or in my car than I do in my home. So I can, I can relate to this. When individuals face imminent threats while in their vehicles, they should have the unequivocal right to defend themselves without the obligation

to retreat. LB155 recognizes this fundamental right and ensures that our laws align with the principles of self-defense. By passing this bill, you would affirm your commitment to the safety and protection of all Nebraskans. We acknowledge that in critical moments of danger, the ability to act decisively without hesitation can be the difference between life and death. LB155 empowers your citizens to protect themselves and their loved ones when confronted with immediate threats within their vehicles. And I'll just tell you a personal story. When I was a young staffer for my U.S. senator in Kansas, first job was doing-- right out of college was doing political campaign work, and we were doing door to door in Kansas City, Kansas, and in broad daylight, middle of the, middle of the day, we were at an intersection, a guy walked-- a young guy walked up to the, to the window of our car, had his hand in his pocket and tapped on the window so my, my friend cracked the window a little bit and said, can I help you, sir? He goes, get out of the car. And go, no, I don't think so. Can I help you, sir? Just get out of the car. My friend reached under the seat, pointed right up to the guy, and he ran away. Well, what would have happened if we wouldn't have had the ability to, to do that, if we would have been forced to try and retreat in that situation? I think you shouldn't have to. I think you should be able to defend yourselves in those kinds of situations. And I believe this is a good policy, a good step for the state of Nebraska. I think we should, in the future, look towards full stand your ground for getting rid of the duty to retreat regardless of where you are, but extending the castle doctrine to your vehicles is a good first step, and I appreciate your consideration. I appreciate Senator Hardin bringing this up, so. Be happy to stand for questions.

BOSN: Thank you. Any questions of this testifier? Senator Storm.

STORM: Thank you, Chair Bosn. Thank you for your testimony. So nationwide, are you seeing more states moving towards the Second Amendment and giving citizens more rights such as this?

TRAVIS COUTURE-LOVELADY: Thank you for the question. It certainly, most definitely, yes. As Senator Hardin stated, there's only a handful of states left where they don't have some stand your ground getting rid of duty to retreat. But beyond that, you know, we passed permitless carry a few years ago. Over half of the states now have the ability to carry a concealed firearm in public without, without a permit. We have almost all but a handful of states where a Nebraskan can get a permit and travel across the entire country and defend themselves, so it certainly is a, a movement, and we have not seen a massive increase, Wild West style fears come to, come to pass from

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this. It's-- things are, things are going quite well, as we have trusted our citizens across the country to be able to defend themselves even more.

STORM: One more question. Why do you think states are doing that? What's your opinion why they're doing that?

TRAVIS COUTURE-LOVELADY: Well, that's a good, it's a good question. I'm a former member of the Kansas house, and I, I remember having that debate when we talked about constitutional carry. And at that point there was only five states that had it. And people ask, well, why should we do this? Why should we do this? Well, it's a-- the year prior, we passed being able to have a vehicle or a gun in your vehicle to defend yourself. And I said, well, that didn't lead to the end of the world. So let's, let's try this. Let's trust our citizens. Go a step further. And I think as other states have, have gone to this over time, and we've looked at the data and seen that it, it was a good policy, that there's become trust across the states and said, OK, well, we can do that too. And we should do that. We should trust our citizens. We should allow them to defend themselves. And so I think it is, you know, states are laboratories of democracy, innovation. So I think as states have looked at it and watched it and seen what works or what doesn't work, they decided to go that direction. So I think it is positive momentum for self-defense across the country.

STORM: Thanks.

TRAVIS COUTURE-LOVELADY: Thank you.

BOSN: Thank you for being here.

TRAVIS COUTURE-LOVELADY: Thank you. Appreciate it.

BOSN: Yes. Next proponent? Any other proponents? Last call. All right. Now, we'll move to opponents. Anyone here in opposition to LB155? Good afternoon.

CIPRIANNA ENGEL: Hello. My name is Ciprianna Engel, C-i-p-r-i-a-n-n-a, last name E-n-g-e-l, and I'm here as a volunteer with Moms Demand Action. Chairwoman Bosn, members of the Judiciary Committee, thank you for allowing me to testify today. My name is Ciprianna Engel, and I'm a mother of two young children from Omaha. I've lived in Nebraska most of my life, with much of that being in the small town of Aurora. I proudly served for 10 years in the Nebraska Air National Guard, where I trained and qualified on shooting the M4 and the M9. I'm in front of you today in opposition to LB155 because I know that guns should be

handled safely and only used when absolutely necessary. I do not want to see my family, my neighbors, my fellow Nebraskans at any greater risk of gun violence by weakening our existing laws. I am strongly opposed to LB155 because of the harmful impacts it will have across our communities in Nebraska. Let us all be clear about the current Nebraska self-defense laws, you can already defend yourself and others from immediate danger. Current Nebraska statute states that the use of deadly force is justifiable when, quote, the actor believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping, or sexual intercourse compelled by force of threat, end quote. What this bill actually seeks to change is removing any responsibility to attempt to remove oneself from the situation before resorting to deadly force. It allows an individual to shoot first based on a perceived threat without any duty to safely retreat. If one cannot safely retreat, current law already allows an individual to use force. In particular, the language of the bill applies to motor vehicles, in which an individual can attempt to drive away from the situation. By removing any responsibility to attempt to drive away, this bill would allow situations to become more dangerous than necessary, which will inevitably result in more loss of life. We know that the gun lobby wants us to all feel constant fear for our lives, and they want to sell us the solution. More guns. What the gun lobby fails to address is that weaker gun laws lead to more gun deaths. Specifically, when we look at other states that have enacted similar shoot first laws, data shows that they are associated with an additional 700 homicides in the U.S. per year. Not only do shoot first laws lead to an increase in gun homicides, research shows that they do nothing to prevent violent crime. Additionally, these laws disproportionately impact people of color because they are based on perceived threats, which can be skewed by racism and personal biases. I am against LB155 because I care about my fellow Nebraskans, and I do want us to feel safe. This law does the opposite by escalating to deadly situations that could have been avoided. I urge members of the Judiciary Committee to please vote no on this dangerous and unnecessary bill. Thank you for your consideration.

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

CIPRIANNA ENGEL: Thank you.

BOSN: Next opponent?

PATRICK CONDON: Good afternoon, Chair Bosn and members of the Judiciary Committee. My name is Patrick Condon, P-a-t-r-i-c-k

C-o-n-d-o-n. I am the Lancaster County Attorney, here on behalf of my office and also on behalf of the Nebraska County Attorneys Association in opposition of this bill. The-- myself and the Association, we believe that this is a solution looking for a problem. And it could have many unintended consequences and why I and the Nebraska County Attorneys Association oppose this bill. And I guess that's the question I would have for Senator Hardin is what are we trying to-- what, what is the problem that we were trying to solve? The last testifier did mention the statutes, and she read one, one of the statutes. I, I would read or direct your attention to another. That's 28-1409(4)(b), which says: The use of deadly force shall not be justified under sections unless the actor believes that such force is necessary to protect himself against death or serious bodily harm, kidnapping, sexual assault-- intercourse compelled threat or force. That was what the last testifier said. If you go and read (b), it says: The actor knows that they can avoid the necessity of using such force with complete safety by retreating and surrendering the possession of a thing to a person asserting that. You have to have complete safety, know that you have complete safety in retreating to, to not use deadly force. One of the-- in my time as, as a county attorney, I had a-- I had prosecution of a case where I had the defendant and the victim had been involved in kind of an ongoing dispute over a series of, oh, probably 6 to 9 months. And during that time, the victim, who was an older gentleman, had shown up at a place where the younger defendant was and showed a gun to him and didn't threaten him, just showed a gun, and made known that he had a gun. About 2 months later, they were driving down the streets of Lincoln, and the young defendant saw the older gentleman who had said he had a gun and showed him the gun in his car. So he pulls up alongside of him, stops. He says the guy was reaching for a gun, so he shot him with his gun. Who's the initial aggressor? Who's the initial aggressor in that? What duty-- what is the duty to retreat? If the individual could drive forward, if the-- in this case, the defendant believed that he was threatened and could drive forward, could he-- should he leave or should we just start shooting? You know, people talk about, you know, things, not having a duty to retreat in a confined areas in the streets of Lincoln. You could also be firing into very congested areas. So you're firing into-- and, and, and these individuals, a lot of them, a lot of gun owners are very good shots. But you're, as people have said, you're in a high-stress situation and you start firing a gun out your car door or car window, you're apt to hit somebody you don't intend to hit, intend to hit. I think that there are the use of self-defense in all cases are fact specific. There are number of cases where here in Lancaster County we have not charged

individuals because we believe they were acting in self-defense. I think that this bill does not solve any of the problems that, that they think they, they solve. I think it causes more. And I'd be open to any questions.

BOSN: Thank you. Senator DeBoer.

DeBOER: Thank you. Thank you for being here. So can we talk about current law, the way the current law is before this bill would even be passed? With respect to self-defense, can you be wrong about whether or not you're in imminent danger?

PATRICK CONDON: Yes.

DeBOER: So I could think I was in imminent danger. I could think you're pulling a gun. You, in fact, have a squirt gun. I'm not in actual imminent danger and I would still be able to use deadly force to defend myself.

PATRICK CONDON: Based on a reasonableness. Even, even if you were wrong and you're reasonable, if, if, if a jury could say that, yes, you were reasonable in acting that way, then, yes, you could still use self-defense.

DeBOER: And with respect to the duty to retreat. If I'm in a car and somebody said, do I have to climb over the center console in order to retreat? If there's a man standing with a gun pointed at me, do I have to climb over the center console to retreat?

PATRICK CONDON: No. I think that's the portion of the statute where you can say, I did not feel I could retreat in complete safety so, therefore, I had to use deadly force.

DeBOER: So if I happen to be an older person, so I don't-- I'm not as nimble as I once was and I want to retreat, but I'm worried about whether I can retreat because I'm not as nimble as I once was and I'm stressed and I might fall, could I use self-defense there?

PATRICK CONDON: Yes, I think you could. I think that, I think that's an argument you could make. And, and, again, you have to believe that you can retreat in complete safety. If you do not feel you can retreat in complete safety, you can use deadly force.

DeBOER: So you heard a lot of the proponent testifiers, a lot of the instances which they described, in which there was someone that they thought might be threatening them and they were concerned about their

way to retreat. If they're concerned about their way to retreat, then they cannot retreat in complete safety or they don't have the position.

PATRICK CONDON: And, again, it goes-- at a trial, it would come down to reasonableness. What is the reasonableness of that, of that determination? And that's the other thing. And, and, you know, the laws are written in such a way that that is something that the prosecutor would have to show that they, that they did not believe or that they were-- it, it's very difficult because we're basically proving a negative. We have to prove that they did not act in self-defense.

DeBOER: OK. So now let's turn to what would happen if this law were in place. How would you, as a prosecutor, determine in the situation you described where there are two people and one shot the other, and you don't know whether the other person had a gun, or at least the person who shot doesn't know whether he had a gun or not, but some reason to suspect that. How do you determine who's the first aggressor?

PATRICK CONDON: That is one of my concerns with this, with this bill is who is the first aggressor? Is it, is it the first aggressor who-- the defendant who, who pulled up alongside and stopped alongside the vehicle or is it the first aggressor or the individual, the victim in that case who had shown a gun earlier, although never threatened to use it but had shown a gun earlier to, to our defendant? Who, who is the first aggressor there? And that's one of the things that I'm, I'm concerned about. And what do we mean by retreat? Does retreat mean getting out of the car or does retreat just mean driving away? I don't know, and that's-- those are some of the concerns that I have with, with this, with this bill.

DeBOER: Do you think that this would make, this bill would make the job for law enforcement and, and county attorneys, prosecutors more difficult in terms of adjudicating questions of self-defense?

PATRICK CONDON: You know, whenever-- and, again, I think that the, that the law, as it stands now, is, is workable in the situations that the individuals have brought up here. By changing this, would it make a difference? I, I don't think it would. I think it's still there. But what would make a difference is now you have other things that we have to-- we have to figure out what they mean. What does it mean to retreat, a duty to retreat? What does it mean to be the initial aggressor? Those are things that, then-- that now we have to get more case law and have cases go through the system and try to figure out

was that-- were we correct when we decided this, this person was the initial aggressor or does the court see something different as the initial aggressor?

DeBOER: It sounds like it's Senator Holdcroft's favorite thing, more lawyers talking about what the, what the, what the law is once we introduce this into the system.

PATRICK CONDON: There is some of that. Yes.

DeBOER: All right. Thank you very much.

BOSN: Any other questions for this testifier? Senator Hallstrom.

HALLSTROM: Another lawyer. I haven't staked out a position on this bill, I'm just interested if, if you hesitate in your analysis of whether you're in imminent danger, are there not significant consequences to guessing wrong?

PATRICK CONDON: There definitely could be. Yeah.

HALLSTROM: Thank you.

BOSN: Thank you very much for being here.

PATRICK CONDON: Thank you.

BOSN: Next opponent? Anyone else in opposition? You two on the same side. Welcome back.

WEBB BANCROFT: Again, good afternoon. Webb Bancroft, W-e-b-b B-a-n-c-r-o-f-t. Bancroft Law Office. I join Mr. Condon and other opponents to this bill. The law provides for virtually every situation that's been anecdotally described self defense. I was a defense attorney for many years, and those would be absolutely the kinds of facts that a judge would give an instruction on, even if it were charged, which very often probably would have been screened out before a charge would even be filed such as this. We have, again, no training for people with firearms that is required at this point in time. I have been trained. I do have a carry concealed permit. I participated in the shooting exercises to get that permit. What we're asking people to do is if you can retreat safely, do it. The unintended consequences that are going to come from people, if it is firearms that are involved, is there are going to be innocent people that are going to be hit. There, there is evidence out there regarding people, even trained police officers who under the stress of the moment or under

duress, innocent people have been hit. That is an inevitable consequence. Talking about momentary decisions and would slightly hesitating cost you in some way? And, and I think Mr. Condon answered truthfully, perhaps, and, and it could. But by the same token, really, every anecdote that we've had today, it, it wasn't momentary. It wasn't something that you were reacting to immediately. What we have seen is the proliferation of people having firearms, and we don't even require people to store them in some secure fashion in their cars. They're being taken out of glove boxes, out of unlocked cars. They're ending up in the hands of people who do commit crimes with them. And if people think that they can drive around and have a road rage incident and be able to use their firearm, that'll happen more. Talk about the initial aggressor in a road rage-- and, and I've heard people say we were cut off, we didn't do this. Every instance that I dealt with in my legal practice, which is over 40 years, it's somebody saying, no, they were the initial aggressor. It wasn't they cut me off. Then they pulled up and they sped up and they pulled over here, and they end up next to each other at a stop sign, and one of them flashes a firearm. Now, if I'm in the car and they pull up and flash a firearm and I can turn to the right and drive away, that's what I'm doing. And that's what I hope people would do, not say, well, this is the time they flash a gun, they were the initial aggressor, and exchanged fire across crowded streets. Senator Hardin talked about, well, on 9th Street, when you go down, you know how crowded that is. You're blocked in. You can't escape. You can't escape safely. So it doesn't really apply. So I would ask you not to pass this out of this committee, it's going to cause unnecessary carnage. There is already protections in the law.

BOSN: Thank you. Any questions for this testifier? Did you take your class from Schneider [PHONETIC]?

WEBB BANCROFT: I did it all.

BOSN: Oh, Senator Storer.

STORER: Thank you, Chairman Bosn. I guess, I-- can, can you just clarify with me? I've, I've heard it now said two, maybe three times about the concern of unintentionally harming someone else beyond who-- beyond the aggressor of your threat. Wouldn't that be a risk even under the current law?

WEBB BANCROFT: Well, under the current law, there's a duty to retreat. So the belief, I think--

STORER: Unless you--

WEBB BANCROFT: If you can do so safely.

STORER: Right, but unless you feel-- I mean--

WEBB BANCROFT: Unless you can't retreat safely.

STORER: So in that case, if you were-- if you felt like you had no ability to retreat and you defended yourself with your firearm, wouldn't you still have that risk of unintentionally hurting someone beyond the target?

WEBB BANCROFT: Yes, yes, clearly. What we're talking about is expanding those instances. So if we have a narrow field here that when someone can't retreat safely without risk of injuries, serious injury or death, they engage in self-defense, somebody could be injured. If there is no duty to retreat, then those instances where firearms are going to be discharged at each other, those number of incidents are going to increase, inevitably, that's what the bill does. They're asking to give us the right to exchange without a duty to retreat. So, yes, it could happen now, but it would happen in a more limited fashion-- more limited instances, not fashion, more limited instances.

STORER: Isn't it-- and I understand that, OK, potentially maybe there would be an increase, but most people in that moment-- I'm just finding it hard to imagine that, you know, if you think you can get away, usually people's instinct is to get away. But to take away any doubt in the law that you do have the right to defend yourself-- I mean, is there, is there-- what I'm hearing is you, you have a real concern that all of a sudden we're going to have ultimately what's not being said, but I feel like is being inferred is an abuse of this if this were to become law, that this would be abused from the standpoint that people would start shooting not for self-defense, but just claiming self-defense. But, really, it wasn't self-defense. I mean, the law still makes it clear that you have to be in a position of defending yourself, right?

WEBB BANCROFT: Well, I think if you read this law and make sense out of who is the initial aggressor and who's not the initial aggressor, and, again, when we're talking about vehicles, I think probably most of us would agree it involves road rage kinds of things. There was a confusion between a rise in car thefts, so then people somehow tried to say, well, that's carjacking. And they're not, they're not the same thing at all. But if you say to someone you have a duty to retreat if

you can do so safely, and that duty isn't there, then when you have road rage incidents-- and, again, I have to struggle to think of people that may drive around with firearms sitting on their seat next to them when they're in Lincoln, Nebraska, or Lancaster County. And, again, they can do it. I can't tell them not to do it, but it scares me to think about this momentary situation that arises, that someone would have a firearm that accessible and be able to start engaging in firearm discharge with somebody in the community. But I think clearly the worry is that people will think that I don't-- I'm in my car just like my house, and there's reasons in the history of the castle doctrine and who is in your house and what you're protecting, there's a history to it now saying that we're just extending it. And, and even the prior testifier talked about, well, this is a step, this is a step down the road to where we want to be able to, in any time, engage without that duty to retreat. Yes, we're saying that it's a danger to-- we, we talk about community safety, this is not going to make our community safe. This is going to put innocent people at risk, because people who are so angry that they will, for example, chase each other down the road. And actually coming to the Capitol today, I saw several of these drivers. They get so angry over you changed lanes, you got in front of me. I was trying to pass. People like that, that will chase each other down, may not have the best judgment in the world, and we want to have people that have those situations with the responsibility if I can get out of here, if I can turn here a block early, and I'm not going to catch up to you at the stoplight, and if we're both carrying firearms, somehow feel you were the aggressor, no, you were the aggressor, or leave it to Mr. Condon's office or similar offices that have to try to figure that out. If we can cut down on those kinds of incidents, the community is safer, the public is safer, and people, legitimate people still have the right to protect themselves.

STORER: And not interrupt, [INAUDIBLE], you're assuming, then, that individuals that exhibit road rage would automatically-- the assumption is if they have-- I won't words in your mouth, but, but I, but I'm seeing a connection that if they, if they have road rage, then the assumption is they would take it a step further and all be carrying a gun in their front seat.

WEBB BANCROFT: Well, we've heard several anecdotes today that talked about encounters with vehicles and, again, didn't use a firearm or didn't have a firearm with them. I think the presumption being here with this bill is that you can carry a firearm with you, as we know the law allows, and you can use it, and you don't have to have a duty to retreat. I'm not trying to say everybody who is driving is carrying a firearm, but the risk becomes and it extends, as you can tell from

the bill, to passengers who might be in the vehicle to people who would have the right to defend third parties, if you can defend yourself or this third party. So I think that's what this bill is talking about. So I, I think the bill, again, that's what it anticipates. Here's what I'm saying why we oppose it or why I oppose it, and what the problems will be and the unintended consequences to our community if that passes.

STORER: I'm going to ask one more question to help me understand some of, some of your-- the root of your opposition.

WEBB BANCROFT: I'll try.

STORER: So the third party, for example, under the current law, what would-- tell me what would happen if, you know, I'm mom and I'm driving and I've got a 5-year-old in the backseat, and somebody comes-- and, and at a stoplight and attempts to extract my 5-year-old from the backseat. Under current law, do I have the right to defend my child?

WEBB BANCROFT: Absolutely. Absolutely.

STORER: If it's not-- I mean--

WEBB BANCROFT: Absolutely.

STORER: --with-- if with deadly force?

WEBB BANCROFT: If necessary if somebody-- it's one of the exceptions, a prior testifier was talking about kidnapping, sexual assault, those kind of things, you absolutely have the right to defend your child. A 5-year-old, 14-year-old, 20-year-old, you have the right to defend yourself and you have the right to defend others.

STORER: So the only difference between third party as written in this law and current law is the obligation to retreat.

WEBB BANCROFT: If you can do so safe-- again, safely. You see this person approaching your car, and you're at a place where I don't know why they're coming to the back of my car and I'm getting out of here. That's what we would hope and would want you-- well, I would want you to be able to do as long as you could do it safely. Certainly, what wouldn't want to happen is somebody be approaching the back of your car, you would be able to do that. And before they get to the back of the car, you perceive it as somebody coming as a threat to your child, but really they're coming up to tell you, hey, did you know when you

filled up your gas tank, your gas tank was open and you left, left the gas tank cap sitting outside the car and your door is open? So it's that duty to retreat and reasonableness of what you do that we're trying to avoid this bill that would allow people to, within their car, not have the responsibility of trying to get duty to retreat when you can do so safely.

STORER: Thank you.

BOSN: And just to follow up, page 5, Section 3, outlines sort of that duty to or that right to protect or defend yourself is always available towards a third person, pretty clearly. But it doesn't even have to be someone that's related to you. So in those examples, should the need be that you have to protect a third person who is unrelated to you, it's still available.

WEBB BANCROFT: Absolutely. Absolutely. The law provides for that.

BOSN: Any other questions in light of that? Senator DeBoer.

DeBOER: So in a situation where Senator Bosn and I are walking along the street and I have a gun, she doesn't, someone comes up and starts threatening poor Senator Bosn, even though I could safely retreat because they're not threatening me, in order to defend Senator Bosn, who I am not related to, I could defend her with deadly force if I thought she was in imminent threat of danger?

WEBB BANCROFT: Of, of grave bodily injury, injury, being assaulted, kidnapped, all of those things. The, the same force that you could use to defend yourself, you can use to defend--

DeBOER: Even if I could retreat, but the fact that she couldn't retreat would mean that I don't have to leave her.

WEBB BANCROFT: Correct.

DeBOER: I don't have to leave her on the street to die.

WEBB BANCROFT: And wouldn't want you to, wouldn't want you to. Yes, you can.

DeBOER: Thank you.

BOSN: Senator Rountree.

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ROUNTREE: Thank you so much, Chairwoman Bosn. And thank you so much for your testimony. And this is, this is really good. One of my rights that I'm protecting or working with the law enforcement, their life may be in jeopardy. And I come upon a law enforcement officer or a public officer struggling with someone and their life is almost in danger, what, what, what are my authorizations in that time?

WEBB BANCROFT: Well, I want to make sure if I understand your example, you come across someone, law enforcement or somebody like that who's being assaulted and, potentially, gravely injured, you can--

ROUNTREE: Potentially. Um-hum.

WEBB BANCROFT: --you can protect that person. You can offer aid and defense to that person.

ROUNTREE: Yeah, I was just trying to make sure I understood it. On page 4, 25, number (iii), it says: A public officer justified in using force in the performance of the officer's duties or a person justified in using force in assisting the officer or a person justified in using force in making an arrest or preventing an escape shall not be obliged to desist from efforts to perform such duty, effect such arrest, or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed. So if there was a situation there and you were there and that person is going to do, could perhaps take that life, but I'm involved here, am I authorized to use deadly force if that's what it takes to put down a perpetrator?

WEBB BANCROFT: Yeah, if, if the reasonable use of force is necessary for the situation with which you find yourself, you can assist others. You can assist and should assist and protect citizens, law enforcement officers.

ROUNTREE: Yeah, the situation I see in the totality of the bill is going to be the perception of and that's really what it comes down to, is how do I perceive it. And as a larger size black man, I've seen things like the door is open, gas cap, light is out in the back. And I, as a good citizen, I may want to approach and say, hey, did you know your tail light is out? But coming to approach, you see it clam up just like that and I stop immediately, back all the way up.

WEBB BANCROFT: Well, I think that that-- and I'm a larger man and I'm, I'm aware of my size. And I know that sometimes size can be intimidating--

ROUNTREE: Absolutely.

WEBB BANCROFT: --and misunderstood. But it really focuses on the reasonableness of the decisions you're making. And that's why I try to at least show an exam-- counter that somebody kidnapped-- trying to kidnap my child, as opposed to somebody coming up because they saw-- oh, your lights-- do you know your back light is out? Do you know this problem? And that's the kinds of situations where we want that duty to retreat when you can do so safely embedded in the law. It helps the community.

ROUNTREE: Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: And based on that example, that it's reasonable under the circumstances?

WEBB BANCROFT: Yes.

HALLSTROM: Thank you.

BOSN: Thank you for being here.

WEBB BANCROFT: Yes.

BOSN: Next opponent? Anyone else in opposition? Last call. Oh, sorry.

JULIA MARBLE: We're just trying to decide who should go. My name is Julia Marble, J-u-l-i-a M-a-r-b-l-e. It'd be way cooler if it was marvel, but. Chair Bosn and members of the committee, thank you for allowing me to present this testimony in opposition of LB155. I am speaking to you today as a mom of two young daughters and as a Moms Demand activist. I oppose this bill because there is no evidence that laws like this will actually keep all of Nebraskans safer while there is a great risk at making my most vulnerable neighbors less safe. In Nebraska, we believe in the right to defend oneself from a deadly situation. As discussed, we have traditional self-defense laws already in place that protect victims when they are in an impossible life or death situation. This proposed bill does not make all Nebraskans safer from violence. In fact, the evidence is more than clear to say that shoot first laws do the opposite, case after case, where stand your ground was invoked to justify rage and hate, and an emboldened fear where the consequence was a loss of life. In fact, these laws are linked to increased homicide rates equaling 700 additional gun-related deaths per year and a 55% increase in justifiable firearm homicide

rates. Laws like this make it easier for someone to shoot first and justify their choice because the other person is dead. In Nebraska, we are responsible gun owners and we care about the dignity of human life. We do not want laws in our state that have been associated with more violence, more burden on taxpayers, to cover the increased cost associated with higher crime, and no evidence that they will actually keep any of us safer. Proponents of this law say there's no evidence to suggest that stand-your-ground laws increase gun violence, but it's just simply not true. The RAND Corporation assessed the effect of 13 different gun policies in America, and there was strong evidence to suggest that stand-your-ground laws increase the rates of homicides. Not one of these studies shows that laws decrease violence in any way. This law will extend our current self-defense law, which does not require a duty to retreat in one's home to include our vehicles. Before we do this, we must think of the cases where stand your ground has already been invoked to justify deadly force. We must think of the Houston case, where an unarmed Muslim man was shot and killed outside his car in front of his wife on their way to their place of worship. I think of my own dear friends who left everything they knew behind when they were forced to flee Afghanistan as refugees. Will a law like this put them at greater risk of violence? We must think of the Florida case where an unarmed minor was shot and killed outside his car for playing his music too loud. I think of my own children and their friends growing up and getting cars. Will a law like this put our teens at greater risk of gun violence? Even if that answer is only maybe, I believe that we should do everything in our power to promote gun safety in Nebraska. Road rage is, yes, a serious issue and one that needs to be addressed. Adding a deadly firearm to the mix is certainly not the answer we are looking for. This is not the solution. I ask you to consider my testimony and vote no on this dangerous bill. Thank you again for the opportunity to testify and I'm happy to answer any questions.

BOSN: Thank you. Questions for this testifier? Seeing none, thank you for being here. Any other opponents? Good afternoon.

ADAM SALEH: Good afternoon, Chair Bosn. How are you?

BOSN: Good. Thank you.

ADAM SALEH: OK. My preferred name Adam is spelled A-d-a-m. My legal first name is spelled Y-m-a-n, and Saleh, my last name is spelled S-a-l-e-h. I would like to start off by saying to Chair Bosn and members of this committee, thank you for allowing me to present my opinion in opposition to LB155. My name is Adam Saleh, and I'm

speaking to you today as a concerned student, minor, citizen, and student volunteer of Moms Demand Action. I oppose LB155 because this would make Nebraska's already unsafe gun laws even more dangerous for everybody, especially teenagers like myself by allowing a person to use lethal force near an automobile when retreating should be considered the first option. This law would allow someone to open fire near an automobile and claim self-defense, even if it's unnecessary to use lethal force. Stand-your-ground laws would also put people of color at risk for hate fueled violence. An example of this is Jordan Davis, the deceased son of Lucy McBath, who was senselessly murdered in his car by a man who then claimed self-defense using the stand-your-ground law in Jacksonville, Florida, at the time. This deeply concerns me because the deceased victim and I are nearly the same age, and I'm also one of the only members of Generation Z, also known as the school shooting generation in this conference room. Nobody in the Senate Chamber can imagine what it's like leaving the house and going to school every day, let alone in my car, not knowing if I will be shot to death or someone I care for will be a victim of something similar. This senseless violence is unacceptable and preventable. All of the armed people in Nebraska who have homicidal ideations will look at this bill and think to themselves, all I have to do is claim self-defense and I'll be able to get away with murder. It's normal for teens to fear car collisions, but teenagers shouldn't be afraid to drive due to fear of being shot at a gas station or road rage turned murder. There are statistics that show that stand-your-ground laws increase as much as 700 gun homicides each year, and in the existing self-defense law, the duty to retreat only qualifies if there is a safe and clear alternative. The only studies that say that stand-your-ground laws do not increase violent crime are nonexistent and often prove contrary. LB155 would protect those with a criminal record and create increased risk for women who are victims and survivors of domestic abuse, even though laws that prohibit domestic abusers from acquiring guns would do immensely more to protect women. My life and the lives of my peers depend on you. We need your support in order to let my generation succeed and thrive, not be slain and slaughtered. I ask that you consider my testimony and vote no on this life-threatening bill. Thank you for the opportunity to testify. I'm happy to answer any questions that you may have for me.

BOSN: Thank you. Nice job testifying. Any questions for Adam? Thank you for being here.

ADAM SALEH: Thank you very much.

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BOSN: Yeah. Any other opponents? Good afternoon.

AMANDA FESER: Good afternoon. Amanda Feser, A-m-a-n-d-a F-e-s-e-r. Chair Bosn and the members of the committee, thank you for allowing me to speak today in opposition of LB155. I'm speaking to you today as a mother, as a citizen, and as a Moms Demand Action activist. I oppose this bill because I feel strongly it will make our communities less safe, encourages escalations of violence and, according to research, does nothing to deter overall crime. Research shows that shoot first laws are linked to an increase in homicide rates, and that these laws resulted in 700 additional gun deaths every year in the United States, which we have all stated. States with weak gun laws, especially with these shoot first laws on the books, have higher rates of gun deaths. That's just how it is. In shoot first or stand-your-ground states, homicides, in which white shooters kill black victims, are deemed justifiable five times more frequently than when the situation is reversed. At the state level, shoot first laws have been associated with considerable, considerable increases in gun deaths, including unintentional deaths. 6 to 7% more gun deaths occurred in suburban counties, and 8% more gun deaths occurred in urban counties in states that adopted these shoot first laws. Because shoot first legislation leads to an increase in the number of gun deaths and injuries, these laws add to the financial toll of firearm violence in the states that pass them. Each gun homicide, for example, cost taxpayers on average over \$600,000, covering expenses related to police response, criminal justice, and health care. And I believe very strongly it's a misrepresentation that these shoot first laws make women more safe from abusers. In reality, laws that prohibit domestic abusers from possessing guns would far-- do far more to protect women. So I just ask you to please vote no on LB155. And thanks for your time.

BOSN: Thank you for your testimony.

AMANDA FESER: Thank you.

BOSN: Any questions of this witness-- testifier? Sorry, I do that a lot.

AMANDA FESER: Thank you.

BOSN: Thank you for being here. Next opponent? All right, neutral testifiers? All right, while Senator Hardin is making his way up, I will note there were 35 proponent comments, 39 opponent comments, and no neutral comments submitted for the record. Welcome back.

HARDIN: Thank you. Well, I, I thank everyone for coming out on a lovely afternoon. County Attorney Condon asked a vital question, which was, what are we trying to solve? And I would answer that question by saying we're, we're seeking to align Nebraska law with the majority of states who have already-- who already have these laws. And I see the challenge as one of subjectivity. One has-- when has one done enough in his or her duty to retreat? Do we have a law in place now that makes innocent people more vulnerable to prosecution? Did they do enough to retreat? And one of the challenges with that in the real world, I think, I've served as a police chaplain in a major city, I've served as a prison chaplain, and life happens really fast sometimes, and it's difficult in those contexts to be able to say I need to stop and think through all of my options and my ability and my duty to retreat. Where does that subjectivity take us? And I think that's at the heart of this bill. And that's why 38 states have already said you know what, let's remove that vulnerability. These are not shoot first laws. Stand your ground in your car does not turn you into 007. You do not have a license to kill. Reasonableness was brought up. I think so. And I think the reasonableness is something that we have to wrestle with whether you're for stand your ground or not. The belief is that the duty to retreat creates less gun violence. Some would say the duty to retreat prioritizes the rights of the criminal over the rights of the law-abiding citizen. The opposite view is that stand your ground in a car would embolden someone to seek violence. And I think both of those extremes are inaccurate. Duty to retreat laws, it could be said chill the Good Samaritan who might or would step in and is afraid to do that because they fear for their own well-being and wonder if, in fact, they'll get in trouble. So I don't think that it's-- it is interesting and necessary to a degree to talk about specifics. And we can come up with anecdotal notions all day long. At its heart, I really do think this is about this question of when have I done enough in my duty to retreat? And I think that's a subjective thing. That's really why the 38 states that are ahead of us in this have sold it. They wanted to get rid of that platform of subjectivity. And that's what I would ask you to wrestle with as a committee in the context of your car. Thank you.

BOSN: Thank you, Senator Hardin. Any questions from the committee? Thank you very much. That will conclude LB155. And next up also Senator Hardin, LB539.

HARDIN: Thanks.

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BOSN: Can I see a show of hands how many individuals are here to testify in some capacity on LB539? 1, 2, 3, 4. All right. This gives us an idea of when to tell Senator Dungan. Go ahead.

HARDIN: Thank you, Chairwoman Bosn and good afternoon, fellow senators of the Judiciary Committee. I'm Senator Brian Hardin, and for the record, that's B-r-i-a-n H-a-r-d-i-n, and I represent the Banner, Kimball and Scotts Bluff Counties of the 48th Legislative District in western Nebraska. I'm here to introduce LB539, which seeks to amend Nebraska law to remove the requirement of the Nebraska State Patrol to implement their own instant criminal history record check system for firearm purchases. Current law would require the State Patrol to develop and maintain their own system once 85% of the Nebraska arrest and conviction records have been completed. 2024 data shows that we are 80%, at 80% completion and nearing the point of having to implement this system. Nebraska currently uses the federal instant background check system, and implementing our own system would be redundant and very costly. Not passing LB539 will cost the state millions of dollars. It's important to remember LB539 does nothing with the requirement to get a handgun purchase permit from the local sheriff. I cannot stress this enough, this does not remove the purchase permit from Nebraska law. This simply saves the Nebraska State Patrol from having to implement a system that already exists federally. This is a redundancy. Like with many bills introduced this year, after LB539 was introduced we identified an additional issue to address. That's in a white copy amendment that I can-- if I can get some help. Help. Thanks. We identified an additional issue in this amendment that you will get brought from the Department of Health and Human Services and the changes in Section 2 of the bill, beginning at the top of page 3 in this white copy you're getting now. The Department of Health and Human Services has had difficulty receiving the necessary information from the courts for the reports they are statutorily required to provide to the Legislature. So this addition gives DHHS the clear statutory authority to request this information from the courts. This concludes my opening statement. Here with me today is an expert from the Nebraska State Patrol who is best equipped to answer all of your big and technical questions. However, if you have any soft Nerf balls, I have my Nerf bat, bat and will swing it.

BOSN: Questions for Senator Hardin? Thank you very much. First proponent? Welcome.

KELSEY REMMERS: Committee Chair Bosn and members of the Judiciary Committee, my name is Kelsey Remmers, K-e-l-s-e-y R-e-m-m-e-r-s, and I'm the NICS Program Manager with the Criminal Identification Division

of the Nebraska State Patrol. I'm here today on behalf of the Nebraska State Patrol to testify in support of LB539. The FBI's National Instant Criminal Background Check System, or NICS, was established as a result of the Brady Act, which required the creation of a national name check system for firearm background check purposes. After the passing of the Brady Act, the FBI provided options to each state to determine how they wanted to handle their state's firearm background checks. Nebraska became a partial point-of-contact state, meaning the state conducts our handgun checks while the FBI conducts our state's long gun checks. Nebraska further opted to utilize ATF-qualified alternate permits for our state's handgun checks, which may act in lieu of a NICS background check at the time of a handgun purchase. The statutes being repealed in LB539 require the Nebraska State Patrol to develop an instant criminal history record check system to facilitate background checks on handgun purchasers when buying a handgun from a federal firearms licensee once our automated arrest and conviction records reach 85% completion. FBI statistics from September 2024 indicate 80% of our arrest and conviction records are complete. An instant criminal background check system already exists at the FBI level known as the NICS. Developing a duplicative system in Nebraska would be unnecessary and require millions of dollars in state funding. Due to Nebraska's current partial point-of-contact status, the mechanism already exists for federal firearm licensees to utilize NICS to run background checks for long gun purchases. Therefore, there is no need to implement a redundant system in Nebraska for handgun purchases. In closing, the Nebraska State Patrol supports the change and elimination of these provisions relating to handgun purchase requirements because it would be expensive for Nebraska to implement a duplicative system that has already been developed and is actively maintained by the FBI. We appreciate the opportunity to testify before you today and will be happy to answer any questions.

BOSN: Thank you. Questions for this testifier? Senator DeBoer.

DeBOER: Why did they set this up this way, originally?

KELSEY REMMERS: It was the '90s. I think--

DeBOER: Well, that, that-- no need to go further.

KELSEY REMMERS: Well, I would point you to one of the statutes that we're totally repealing, and that's 69-2409. It says: It is the intent-- this was passed in 1991-- it is the intent of the Legislature that the Nebraska State Patrol implement an expedited program of updating Nebraska's automated criminal history files to be utilized

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for, among other law enforcement purposes, an instant criminal history record check on handgun purchasers when buying a handgun from a licensed importer, manufacturer, or dealer so that such instant criminal history record check may be implemented as soon as possible on or after January 1 of 1995. OK? So this-- they were expecting this to be implemented around 1995. The FBI system was implemented in 1998. So it's just my assumption that I think maybe we thought we were going to be ahead of the game. Well, fast forward 20 years later, that didn't happen.

DeBOER: Got it. Thank you.

BOSN: Any other questions? Thank you for being here.

KELSEY REMMERS: Thank you very much.

BOSN: Yes. Next proponent? Any other proponents? Welcome back.

PATRICIA HARROLD: Thank you. This chair [INAUDIBLE].

BOSN: I know, very squeaky, so. Yep.

PATRICIA HARROLD: Patricia Harrold, P-a-t-r-i-c-i-a H-a-r-r-o-l-d, President of the Nebraska Firearms Owners Association, and I happen to work for a small public range and conduct firearm transactions routinely. And while Nebraska is cutting edge in many ways, the facilitation of transactions through the firearm purchase certificate makes it easy. The ability to do so with a concealed handgun permit also makes it easy, from the perspective that we have clear, convincing evidence that the person has passed all the requirements to possess that firearm so we can feel comfortable in that transaction, that they've passed the NICS background checks. When we sell long guns, the NICS background check is just as effective, whether we're doing it over the phone or in the current modern age, online, which is quite expeditious. And the Nebraska State Patrol has a lot of work to do running even the concealed handgun permit program. That's a part of their responsibilities. We find that while we were trying to be cutting edge in the early '90s, our research also completely supports her position, the previous testifier. It was an attempt to become cutting edge in handgun oversight in the purchasing and making sure prohibited people did not possess handguns is no longer needed because we have a nice new and consistently modified and advanced system via NICS, so we support this bill. Thank you very much.

BOSN: Awesome. Thank you. Any other-- well, let's see if there's any questions.

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PATRICIA HARROLD: Oh, I won't sit down, though, again.

BOSN: You're good. Next proponent? Welcome back.

ALLIE BUSH: Thank you. Hi, guys. Allie Bush, A-l-l-i-e B-u-s-h, representing Nebraskans Against Government Overreach, the grassroots group. Ditto what Patricia said. I was actually going to say almost exactly the same thing. I worked at a gun range for a short while, a couple of years. It was an absolute blast. I made a lot of NICS checks calls, and it was really a, a very smooth system. I can tell you, yes, every once in a while, a customer was irritated because they would have to wait for us to get the call back. But for the most part, it's a great system. And, and so we support this change. We really don't need a duplicative system in place. And so ditto on the testimony prior to mine.

BOSN: Perfect. Any questions? Senator Rountree.

ROUNTREE: Thank you so much, Chairwoman Bosn. And thank you for your testimony.

ALLIE BUSH: Absolutely.

ROUNTREE: You said customers would get upset sometimes. How long between the call, the call out and they get a call back?

ALLIE BUSH: At, at most, there were a couple times where it would be a few hours so they'd have to, you know, leave for 4 hours and we'd be calling them back, hey, your check came back, you're good, you can come pick up your firearm. We were-- the range I worked at was in north Omaha and, and people were really good about it. Like I said, they would get a little irritated or frustrated with having to wait, but it was never more than a few hours.

ROUNTREE: That's good.

ALLIE BUSH: Yeah.

ROUNTREE: All right. Thank you so much.

ALLIE BUSH: Absolutely.

BOSN: Any other questions? Thank you very much.

ALLIE BUSH: Thank you.

BOSN: Yes. Next proponent? Any other proponents? Welcome back.

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SCOTT THOMAS: Scott Thomas, S-c-o-t-t T-h-o-m-a-s, Village In Progress and U.S. Institute of Diplomacy and Human Rights. And we support this bill because duplicitous mechanisms in government waste tax money and violates Article XXVIII of the 1948 Universal Declaration of Human Rights, and Nebraskans have a right to self-defense under the Second Amendment of the 1787 Constitution of the United States of America. Any questions from the senators?

BOSN: Questions for this testifier?

SCOTT THOMAS: You have a good day.

BOSN: Thank you for being here.

SCOTT THOMAS: Thank you.

BOSN: Any other proponents? Welcome back.

JOSEPHINE LITWINOWICZ: Welcome back, Senator Bosn, Bosn. I called Senator Brewer Colonel Kilimanjaro. Anyway, my name is Josephine Litwinowicz, J-o-s-e-p-h-i-n-e L-i-t-w-i-n-o-w-i-c-z. I support whichever's quicker. You know, they have to have that information immediately. I'm misunderstanding that we're talking about, you know, police officers making a stop and, and having the [INAUDIBLE]. Is that what we're-- no? Well, anyway, I guess I blew that one. Anyway, it happens sometimes. But I just wanted to say this is a motor vehicle, like I can get a DUI and so that, that-- I, I don't often reach-- say the conclusion. And so when I was in that bar, if I were to leave, you know, with all that crowd, I could, then-- you know, I'm instantly guilty and I live right there and then I could be, I could be violently-- I could be subject to violence, you know? So targeting like that and I live in, you know, in a, in a busy area and I, I don't want that. And so I feel important enough to, to say it again. I mean-- I don't know, I, I think something-- I think I'll get it some time, but-- and I want to mention President Trump because it makes me sick. I'm absolutely sick, physically ill. Please, please get together and do something. Please. I would have come up just for that. Yeah. Thanks.

BOSN: Thank you.

JOSEPHINE LITWINOWICZ: Have a good one. You know, I, I, I work on a street corner where there was a shooting, and I was working two houses down, and, you know, I didn't have a problem most of the time because I was 6 foot 4 with a 36 inch waist, weighing 251 pounds, a little mini version of Kelsey [PHONETIC], but not much. And-- but I was a

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half second slower in the 40 and that might be 10 minutes. That might as-- you might as well just call it a day. Anyway, I just thought I'd end with that and Trump and have a good--

BOSN: Next proponent? We'll move on to opponents. Anyone here in opposition to LB539? Neutral testifiers? All right, while Senator Hardin is making his way up, I will note for the record, there were 24 proponent comments submitted, 9 opponent comments submitted, and no neutral comments. Welcome back.

HARDIN: Thanks. I did chat with the State Patrol and just said, do you all have a sense financially of what this could save or what would it cost us and, in fact, if we have to install our own system once they hit the 85%, they're at 80% now? And it's an estimate on their part, but they estimated it at, at least \$2 million to build this. So we essentially punt and let the feds do it. It saves we the people some money, so. Bless you.

BOSN: I know. Sorry, it's allergy season. I didn't mean to interrupt, though.

HARDIN: Not at all.

BOSN: All right. Questions for Senator Hardin? Thank you very much.

HARDIN: Thanks.

BOSN: That will conclude LB539 and, Senator Dungan, perfect timing. We wouldn't have skipped you.

DUNGAN: [INAUDIBLE]

BOSN: All right. I think you can get started now, whenever you're ready.

DUNGAN: I'm just double-checking something real quick. OK. Good afternoon, Chairperson Bosn, members of the Judiciary Committee. My name is George Dungan, G-e-o-r-g-e D-u-n-g-a-n, and I am here today to present to you LB448. LB448 is a bill that strengthens Nebraska's commitment to justice by ensuring that individuals who have been wrongfully convicted have a fair and meaningful opportunity to challenge their convictions. We often talk about the importance of fairness in the legal justice system, about making sure that every person accused of a crime receives due process and a fair trial. But fairness does not stop at conviction. Our justice system must also have safeguards to correct wrongful convictions when they occur. If we

fail to do so, we not only deny justice to the innocent, but also undermine public trust in our courts and the rule of law itself. LB448 makes critical updates to Nebraska's postconviction relief process, ensuring that individuals who have been wrongfully convicted or unfairly tried are not left without a legal avenue to seek justice. Deviate from my comments for 2 seconds just to say this bill is about ensuring that innocent people have an opportunity to be heard in court. It's addressing something called postconviction relief. For those who are unfamiliar with the entire system, I'll admit I'm not a postconviction relief expert, there are people coming up after me who are, but to summarize it, when a person has their trial, there is what's called the appellate process after that, that's where an individual is allowed to appeal their case to the Court of Appeals, the Nebraska Supreme Court, and then potentially the U.S. Supreme Court after that. Once the appeals have been exhausted, there is then the opportunity for what's called postconviction relief, where individuals can have their cases heard at the state or the federal level to address things such as constitutional violations that occurred, attorneys not doing their job correctly, which is called ineffective assistance of counsel or other various things that come up. Postconviction relief, as it currently stands in the state of Nebraska, is almost impossible to access. You're going to hear from individuals after me who have practiced in other states, working with the Innocence Project, again, representing people who have been wrongfully convicted, who upon coming to Nebraska and reading our case law, so what the courts have said how this should work, have said that this is almost impossible for folks to have a meaningful opportunity to have their court or their day in court. My bill seeks to address a number of issues. I won't go into all the details of it, and I'll allow people after me to go into some of those details, but primarily it seeks to address a few various concerns. One of those is people who are actually innocent and having an opportunity for what's called gateway innocence to have their day before the court. Gateway innocence is a concept that came up, was sort of outlined in a case called Schlup. And our Nebraska Supreme Court has essentially said that in order for gateway innocence to be heard in Nebraska, the Legislature has to act. There are people who have had their case brought before the Nebraska Supreme Court, and the court has said that they are unable to analyze their cases through the Schlup analysis by virtue of the fact that we, the Legislature, don't allow it. What that means is they're individuals who have a meaningful right of action or have documented reasons to have their case reheard, but our court's hands are tied. This piece of legislation seeks to allow the courts to at least hear those cases to determine whether or not those

individuals can actually prove their gateway innocence or have their day in court based on that. Additional to that, this law seeks to address the ongoing evolution of science. So as we all know, there are certain aspects of science that have been utilized in securing convictions for individuals. That science, as it evolves over time, can sometimes change in its credibility or be outright debunked as time goes on. A couple of good examples of this are the polygraph tests that we often think about when it comes to convictions, where somebody gets hooked up to a lie detector to see if they're lying or not. In adult court, polygraph tests are no longer acceptable because they have been found to be unreliable. Other examples that exist like this are arson science, they're trying to determine whether or not buildings have been burned down. Arson science has evolved over time, and people have found that the prior convictions based on arson science had been debunked. Another example of that is bite marks, and I'm sure people coming up after me can talk more about that. But these are all examples of when science over a period of time has evolved and, ultimately, been found to be not a credible foundation for a conviction. This bill seeks to address that by saying that if the science upon which your conviction was based has now been essentially debunked, a judge may, it's not obligatory, but a judge may offer you essentially a new day in court to have your case looked at again. In addition to that, this law also addresses what's called manifest injustice. So currently, right now, under postconviction relief, you have 1 year to file your postconviction relief claims from the time that your appellate case is done, 1 year. And we're talking about individuals who are oftentimes not represented by attorneys. We're talking about individuals who are incarcerated and don't have access to maybe the same kind of information that somebody on the outside may have. And you have 1 year to file these claims of postconviction relief. And if you don't do it, you've waived it forever. The opportunity to allow somebody to have their case heard before a judge after that 1 year bar, in the event that there has been manifest injustice, is meant to address the claims that, essentially, it is so clear on its face that somebody is innocent that it would be a manifest injustice to not allow them to have their day in court. And then, finally, this bill also addresses the concept of ineffective assistance of counsel. Currently, if you represent an individual on the trial level and the appellate level, you have to claim ineffective assistance of counsel, meaning that the trial counsel was ineffective during that appeals process in order to preserve or save the issue for the postconviction relief process as well. If you fail to claim ineffective assistance of counsel, that is waived for the postconviction process, and that presents a huge problem in

circumstances where an individual's attorney fails to claim ineffective assistance of counsel on behalf of their client during the appeals process, thereby waiving that claim into perpetuity. So this bill seeks to address a number of problems that currently exist with postconviction relief. Again, I'm not an expert in the actual processes for which this exists, so I would encourage you to ask questions of those who come up after me who are. You're also going to hear from an individual named Ricky, who is a real-life exoneree. And I would encourage you to listen to his story and ask him questions about what his experience was like, because I believe he spent about 23 years in prison for a crime that he did not commit, and he was exonerated in 2019 through-- over a decade's worth of effort. Had Mr. Kidd been here in Nebraska, his case would not have been overturned and he would still be in prison here today. So please, I encourage you to ask them questions, listen to their story. But with that, I'm happy to answer any questions you might have at this time.

DeBOER: Are there questions for Senator Dungan? Senator Rountree.

ROUNTREE: Thank you so much, Vice Chair. And thank you, Senator Dungan, for bringing this bill. I'm sure we're going to hear behind you, but as we have looked at who is incarcerated in our system now if this bill is implemented, how many people do you think would be able to benefit? And then how many do you think we have already, their time has expired and they may not be able to benefit because of expiration of [INAUDIBLE]?

DUNGAN: Well, I, I, I will tell you that estimates currently right now nationwide, show that anywhere between 1 to 4% of incarcerated individuals are innocent. And that's based on exoneration data from all across the country. And so those are folks who have been convicted of a crime that they actually did not commit. What that comes out to in the state of Nebraska is anywhere between 2 to 300 people would likely be statistically exonerated in the event that they had a meaningful opportunity to have their cases heard. As you said, though, a number of them have already had that statute of limitations essentially run where that 1 year has already expired. So there is no longer any meaningful opportunity for them to have their case heard or other bars, such as the lack of claiming ineffective assistance of counsel like I've already talked about, prevent them from raising that issue moving forward. So I don't have an exact number because we're just not sure. I will tell you that it is, it is a non-zero number. And there are certainly individuals who are incarcerated right now who are actually innocent, that this bill seeks to provide some assistance to.

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ROUNTREE: All right. Thank you so much. I appreciate it.

BOSN: Thank you. I assume you're saying to close?

DUNGAN: I will. Yes. Thank you.

BOSN: Thank you. First proponent? Welcome.

ELIZABETH COLE: Thank you. Good afternoon, Chairperson Bosn and the Judiciary Committee. I am so grateful to be here. My name is Elizabeth Cole, E-l-i-z-a-b-e-t-h C-o-l-e, and I am the Director of the Nebraska Innocence Clinic at the University of Nebraska College of Law. I should qualify this by saying that the opinions that I am presenting today are not based on my employer, the university, or the College of Law, but based on my own experience being a postconviction attorney and also a trial attorney before that, and my experience coming to Nebraska and getting into the weeds on the law here. I'm here in support today because very soon my students, some of whom are in the room behind me, and I will have some tough conversations coming up with some prospective clients, tough conversations about how we can investigate their cases. But depending on what we find, we may not actually be able to litigate and we might not have a chance of being successful. This is not necessarily a new conversation for me. This is a conversation that defense attorneys have all the time with clients. You have to explain that you're only the mouthpiece for them and that you don't make the decisions. But this one is different in that I have to explain to my clients that it's the law here that is going to impact whether or not they can be successful, or whether or not we can bring a claim to court at all. And that is unique. The process here is bifurcated, the statute of limitations is strict, the claims are limited and very narrowly tailored, and the law doesn't allow the court to consider scientific and technological advancements as you just heard Senator Dungan discuss. There are three statistics that really exemplify how difficult the law is here. One, Senator Dungan referred to, which is that studies estimate that approximately 4% or so of incarcerated people in the country are innocent. Taking Nebraska's numbers, which NDCS says is about 5,580 people currently. That means that we're looking at 223 innocent people incarcerated right now. And Nebraska, when you look at the National Registry for Exonerations, which is a registry that tracks all of the exonerations around the country, they've only had 9 exonerations since 1979. We're ranked 39th in the country for that. And all of the states who are ranked after us have had exonerations since then, most of which have happened in the last 5 years. We have not had one since 2009. So the long and the short of it is that wrongful convictions happen. We know

that based on the national trend, we know that based on shifts in science, on ineffective assistance of counsel, on things we've discovered that we didn't know at the time we were trying these cases. But exonerations don't happen here. So wrongful convictions happen, but exonerations don't. The amendments that Senator Dungan has proposed will allow for innocent people not to overturn their cases, not to walk out of prison, but just to be able to file the full story, the comprehensive explanation of what could have gone wrong for a judge to consider. It doesn't even require a hearing. It's just an opportunity for those who have not been able to be heard by the system to be heard now. So I ask that you support this bill. Thank you for your time and I'm happy to take any questions.

BOSN: Thank you. Questions for this testifier? Senator DeBoer.

DeBOER: So I don't know anything about postconviction relief. And I will state that right up front. So how, how are we different? Like, simplify it for me. How are we different from other states in terms of there's an act-- I get the statute of limitations, but what other limitations are there that make us different than other states?

ELIZABETH COLE: So we're a bifurcated system here and excuse--

DeBOER: What does that mean?

ELIZABETH COLE: Yeah. Excuse the paper by the way. We're a bifurcated system, which means that we have multiple statutes that create different avenues for wrongfully convicted folks to be able to pursue claims in court. That is unusual. Usually it is one statute. In Texas, it's called a state habeas, and it covers everything. Here, we've split it. So you have to file different motions for different things. So one is the postconviction statute that covers constitutional claims, that would be your ineffective assistance of counsel claim and any suppressed evidence claims, due process violations, things like that, would all fall under the postconviction statute. Then we have a statute that's for a motion for a new trial. That includes newly discovered evidence. So if you have newly discovered evidence, it cannot be brought under a postconviction motion unless it falls within one of those constitutional claims. And it doesn't always. The postconviction statute, as it stands, does not account for shifts in forensic science unless it falls within something that could have been known at the time of trial. And as we know, science has advanced such that that's not necessarily the case. Attorneys could not have known at the time of trial. And as Senator Dungan mentioned, arson is a great example of this. There's also a great example in hair

microscopy, which was just hair comparison analysis that even the FBI about a decade ago discounted and said we should not have been doing this in cases. They've been doing it for decades. And so to be able to undo that, you have to bring it under a motion for a new trial here. The statute of limitations is different in every one of these statutes for the motion for a new trial. It's a 5-year statute of limitations. At most, it can be as short as 10 days, and it often doesn't account for newly discovered evidence in a sense that you have to hit an extremely high burden of proof to show that you can overcome that procedural default. For the postconviction statute, as Senator Dungan mentioned, there's a 1-year statute of limitations, which means that if something changes in your case or you discover that your counsel was ineffective after that 1-year statute of limitations has run, you can't raise it. It is exceptionally hard to raise it. And so this is what we're talking about when we talk about that bifurcated system. There is--

DeBOER: So the bill-- so right now current law, bifurcated system, sounds like trifurcated or--

ELIZABETH COLE: It is, essentially, trifurcated. There's an extra common law statute that I tend not to explain because it is a-- it's a statute of last resort. Absolute last resort.

DeBOER: OK, so does LB448 fix this bifurcated system and make it streamlined?

ELIZABETH COLE: It doesn't exactly correct and streamline the system. It does make it a little bit easier to bring everything in one motion. And as Senator McKinney mentioned in his bill, I think it's LB44 or LB48-- excuse me for not remembering the number, but earlier he mentioned that people who are incarcerated at this point in their cases do not have a right to counsel. And so they are doing this often on their own. You can imagine how much research and lack of opportunity there is to be able to put together one motion, let alone multiple motions and multiple statutes, and understanding how they cross-reference and how you can file what and when you can file what and should they overlap? Can a judge consider them all together? All of that is really confusing.

DeBOER: So this bill makes it less complicated how?

ELIZABETH COLE: It makes it less complicated because it centralizes a few things. So number one, you have the opportunity to raise ineffective assistance of counsel claims that you did not previously

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raise on direct appeal. Right now, Nebraska law says that if you don't raise it on direct appeal, you waive it. This would open an opportunity for new discoveries.

_____: For the interest of time, [INAUDIBLE].

_____: [FIRE ALARM]

DUNGAN: Sometimes it turns off. Yep, sometimes it turns off, like, right away.

DeBOER: Holy cow, that scared me, though.

ELIZABETH COLE: It scared me, too.

DeBOER: I don't have any idea what we were saying before. I jumped out of my skin.

DUNGAN: It simplifies it how?

ELIZABETH COLE: Yes, I think I was talking about ineffective assistance. So it creates this opportunity for people who have just discovered that their counsel may have been ineffective in some way to raise this without having to have waived it unintentionally on direct appeal. The other thing it does is it allows for forensic science, new and shifted forensic science to be included in a postconviction motion, rather than a separate motion altogether. It means that a judge who has to read these will be able to more easily see the whole picture, instead of trying to find motion after motion after motion, or missing a piece, because that motion has gone somewhere else and this-- and so forth. The other thing it does is it allows actually innocent people who may not have any other avenues, which is often the case, to be able to raise a claim of actual innocence, to be able to say I am factually and 100% innocent. And this is how. That's what this does. The Supreme Court has-- excuse me, the Supreme Court here in Nebraska has reviewed this a number of times and has been-- and has written into Opinions that it is up to the Legislature to create the actual innocence claim.

DeBOER: OK, so if I'm in prison and I say I'm actually innocent, I'm probably not in the minority. There's probably a lot of people who say I'm actually innocent in prison. So if-- there's probably more than three, peanut gallery.

ELIZABETH COLE: I agree with you. I think that there are--

DeBOER: So how does this not create a rash of folks saying that they're actually innocent?

ELIZABETH COLE: It's not just about saying that you're actually innocent, you have to show evidence to back this up. This bill is not designed to let everyone who can fill out a form and say, check the box of actual innocence, that they can walk out of prison. Right? This is a longer process than that. It takes years. You have to be able to show why you are claiming that, as with everything that you claim on direct appeal and in postconviction work. You always have to be able to back up what you are saying. This is not something that is going to open the floodgates to litigation or to motions. Judges will not be overrun by getting just one-page I am actually innocent claims. You have to be able to explain why, you have to show your work. And so all this does is create an opportunity for actually innocent people to show why they are actually innocent. We don't have that yet. We don't have it here. And so this is the opportunity to do that. It doesn't create anything that will allow people who aren't already making that claim to make that claim. But it does allow those who actually are innocent an avenue forward in a court system that, right now, has patently said they cannot look at that.

DeBOER: OK. Thank you.

BOSN: Other questions? I know you want to. No? OK. All right. Thank you very much for being here.

ELIZABETH COLE: Thank you so much.

BOSN: Yes. Next proponent? Any other proponents? Good afternoon.

RICKY KIDD: Good afternoon, everyone. I appreciate the opportunity to be here today before this Judiciary Committee to share a little bit about my story and the importance of LB448. My name is Ricky Kidd, R-i-c-k-y K-i-d-d. I'm a former client of the Midwest Innocence Project, an organization that is a not-for-profit organization that fights on behalf of those who not just say that they are innocent, but they have mechanisms themselves to prove and support those claims of actual innocence. The organization is a part of a 5-state region, which is Kansas, Missouri, Arkansas, Iowa, and, of course, Nebraska. I spent 23 years wrongfully convicted in the state of Missouri before being exonerated in 2019, only been home a short 5 years. But had I been convicted in the state of Nebraska, I would not have the opportunity to be before you sharing my important story on why LB448 should have an opportunity to advance forward. In the first instance,

I lost all my 20s, all my 30s, and half my 40s because of the mistake that took place. And, and while we do bolster having a really great system, a lot of states across the country as well as Nebraska have a, a high success rate. There is opportunities where mistakes happen and the courts, ultimately, get it wrong. The goal is to be able to find a pathway for those rare occasions. They're rare. They're-- it's, it's not a groundswell. It is not a-- it actually isn't a floodgate. And I share with you from a personal experience and a professional experience, I actually had the opportunity to work for the Midwest Innocence Project once I came home and that actually isn't the case. There is not-- the idea is that there's a floodgate, but it isn't because you can't-- yeah, yes, everybody says that they're innocent, but that's not-- our criminal legal system doesn't work that way. You actually have to file something that smell-- that passes the smell test, of course. And then the courts, the courts will take serious consideration. They always take serious consideration in determining quite early on whether this is a frivolous claim or whether there is some sort of merits to it. It took me 23 years to finally win back my deserved freedom, and a part of that was because of the courts, the courts taking certain measures and being sure that the facts were accurate and that the legal standing matched the facts. It, it was not an easy task in the state of Missouri, but at the end of the day, that mechanism did exist where I was able to regain my deserved freedom. A 107-page order resulted in-- after a 4-day hearing declaring me innocent at a very, very high level without question or doubt. Those are the type of individuals we see that come across the news or that we-- when we open our newspaper. These are not the individuals who's walking around the recreational yard, who's in the law library saying I'm innocent. These are individuals from which innocence projects are private law firms from around the country, some who consider to be experts in this field 30, 40 years of work doing this, understanding who's innocent and who's not innocent. In Missouri, 41,000 inmates are in prison. In the last 35 years, only 55 individuals have come home, have been exonerated. That's how careful the courts have been. But only given the fact that they have a mechanism to free those bonafide cases of actual innocence. It's just a small number, only 55 in the last 35 years have individuals been able to get through that gateway and that pathway to make their way back to the deserved freedom. In Nebraska, we have-- or you all have 5,500 inmates, advancing LB448 would offer the possibility for relief for those few, for those few who may very well be actually innocent. Nobody is suggesting for release, which I've heard, and I've been around that Nebraska has a wrongful conviction issue and there's going to be a floodgate. But Nebraska may very well have innocent individuals, as many believe, who

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need this pathway to be able to at least prove their innocence. It's not a-- this isn't a monopoly, this isn't a get-out-of-jail-free card,--

BOSN: Mr. Kidd,--

RICKY KIDD: --it's just a pathway to prove their innocence.

BOSN: --I just-- give me just a second. Your red light is on and I-- so I-- that is your time.

RICKY KIDD: Oh, I'm sorry.

BOSN: That's OK, that's OK.

RICKY KIDD: I was done. Sorry about that.

BOSN: I need to ask you to finish. So go ahead.

RICKY KIDD: Yeah, I'm, I'm sorry.

BOSN: No, no, you're OK.

RICKY KIDD: That was it. That was it. I, I was just going to say that I pray that you all see this bill as a reasonable approach to correcting a mistake when our, our criminal legal system occasionally get it wrong. Thank you.

BOSN: Yes. Senator DeBoer.

DeBOER: Thank you. So how did you prove your act-- what's-- what are examples of that proof? How did you prove your actual, actual innocence?

RICKY KIDD: Yeah, well, in my, my case, the real killer had came forward and testified about the two individuals who actually committed the crime with him. It was corroborated and substantiated with other case evidence and facts, including police report, independent witnesses. We also had a situation where the prosecutor had committed a Brady violation, where the real killers in the early days had went to her office to participate in a deposition. They came a little bit shy of confessing, but instead of turning those depositions over or even inviting us to-- we never even knew those depositions had even taken place. Instead of inviting us or turning that evidence over, she buried it. So all along, the individual who finally came forward, again, it was substantiated by evidence, sworn depositions by the real

killers, that they all three were together, that I were not with them, and that I was in no way involved. So those are some small examples. The state witness, Richard Harris, who had came forward to say that it was I who had committed the crimes, he was incentivized during the trial process to not go back to prison. He was given \$4,000, \$6,000 to be put up somewhere to pay his rent, all under the guise that he was scared. And this was witness protection. He was actually running a con on the system, if you will. Richard Harris came forward in the 9th hour, April of 2019, during that 4-day hearing, and admitted, he admitted that he had lied and that I was not responsible for the commission of the crime. So those are some examples of how the evidence came out. And because of the mechanism, the judge had the opportunity to do the right thing.

DeBOER: Thank you.

BOSN: Other questions for Mr. Kidd? Senator Rountree.

ROUNTREE: Thank you so much, ma'am, and, Mr. Kidd. So, apparently, you were professing your innocence, probably, from the day you went in.

RICKY KIDD: I absolutely was. Yes, sir.

ROUNTREE: OK, so-- and did you do, like, library research? You know, we talked--

RICKY KIDD: I did. Yes, sir.

ROUNTREE: And-- OK, so through that research then, so the Innocence Project picked up on you?

RICKY KIDD: Yes. It took 10 years--

ROUNTREE: 10 years.

ROUNTREE: --for the Innocence Project to-- for-- because it's not really believed. Right?

ROUNTREE: Right.

RICKY KIDD: It, it, it took them 10 years for me to fall on their radar. And it took 2.5 years for them to fine tooth-- go through my case with a fine tooth comb, and only then decide that we will represent you going forward.

ROUNTREE: OK.

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RICKY KIDD: Had that not been the case, had the evidence not been there, they would have not been able to take my case.

ROUNTREE: All right. Thank you so much.

RICKY KIDD: Yeah, you're so welcome.

BOSN: Other questions for this testifier? I want to thank you for being here and sharing your story.

RICKY KIDD: Thank you.

BOSN: I speak for everyone and I wish you the best.

RICKY KIDD: Yes. Thank you so much for having me.

BOSN: Yeah. Next proponent?

JASON WITMER: Thank you, Chair Bosn and Judiciary Committee for allowing me to be here. My name is Jason Witmer, J-a-s-o-n W-i-t-m-e-r. I'm here on behalf of the ACLU of Nebraska in support of LB448. The 2023 National Registry of Exoneration reported-- report recorded 153 exonerations in 1 year alone, 2023, and a total of 3,478 since 1989. These numbers represent more than statistical trends. They are people. They are people who had lives, family, and they lost that time due to the system's failures. The existing postconviction process in Nebraska is simply inadequate for claims of innocence. It prioritizes finality, you know, the end-- just affirming the sentence over the truth. So the current law does not allow courts to consider actual innocence as a stand-alone claim, meaning even when new and compelling evidence emerges, procedural borrow-- sorry-- procedural barriers can prevent justice from being served. I don't know why I feel nervous every time I come before you guys and I repeatedly come before you guys, so it causes-- anyways. LB448 ensures that wrongful convictions can be revisited based on new evidence, including DNA, forensic advancements, third-party confessions, and previously undisclosed exculpatory evidence. This bill also includes modernized science and how things have changed, as was explained by the introducer. LB448 does not create frivolous appeal, rather it has-- it sets a high bar for innocence claims, requiring clear and convincing evidence that would likely have led to a different outcome at trial. We, as the ACLU, would like you to consider advancing this. I, as Jason Witmer, would also like to point out, you heard the last testifier, I won't have to say the name again, but we have a case of somebody who was in and was convicted and his codefendant-- he, he said he wasn't there, I wasn't there, I was at home. They convicted

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him. His codefendant then went to trial. The codefendant confessed to doing the shooting. The codefendant did not be a witness in this case because he had his own murder case, all of them were youth, confessed to doing the shooting, stated it was self-defense, the court heard him, the jury heard him and acquitted him. Which means it was self-defense, not a murder. And he even stated that he was alone. However, 25 years later, we still have the first person in, in our system right here in Nebraska because the legal language of the court said this individual could not use that statement, a statement that had everything on the line when the person said it, meaning that person's whole life was on the line when he got up there and confessed. Nothing can validate it more than that. So, hopefully, because I'm not a lawyer, this could address that. Is one life worth us advancing a bill? I think it is.

BOSN: That's your time. Let's see if there's any questions. Are there any questions from the committee? Were you finished or did you have a thought?

JASON WITMER: No, I am finished.

BOSN: OK.

JASON WITMER: We can easily look that case up. I appreciate you all listening and I sincerely ask that you advance this bill.

BOSN: Thank you. Thank you--

JASON WITMER: Thank you.

BOSN: --for being here. Next proponent? Any other proponents? Welcome.

NICHOLAS MARTI: Thank you. Good afternoon, Chairperson, Senators. My name is Nicholas Marti, N-i-c-h-o-l-a-s M-a-r-t-i. I am a student at the College of Law and I am a student in the Innocence Clinic. However, the comments that I'll make today are my own personal comments and they are in no way reflective of any position of the Innocence Clinic, the College of Law, or the University of Nebraska. Innocent people do not belong in prison. This is an improper restraint on liberty, and an improper restraint on liberty against one is an improper restraint against all. Criminal defendants who are prosecuted on behalf of the state because the crime is an act against the state. Similarly, when the state improperly restrains the liberty of an individual, it is an act against the people. This is manifest injustice. We impose high evidentiary standards and entitle criminal defendants to a presumption of innocence because we value liberty so

highly. The right to due process of law ensures fairness and the opportunity to be heard. The Supreme Court of the United States has recognized that processes do, even through a procedural or time bar, to incarcerated individuals who can present a colorable claim of innocence. In *State v. Lotter* and *State v. Hessler*, our state Supreme Court has said that gateways through procedural or time bars are policy issues and should be addressed by the Legislature first. LB448 addresses this policy need. During my studies, I've read about innocent people who have served time and even face death for crimes they did not commit. I do not mean that there was a technicality where a criminal element was inadequately proven, but cases where the defendant was actually innocent of the crime they were found to have committed. The point is that mistakes happen. And the judiciary's interest in finality does not outweigh an innocent person's interest in liberty. Postconviction litigants contending actual innocence deserve the opportunity to be heard on the merits in Nebraska. LB448 provides the policy statement missing in *Lotter*. Any time barrier or procedural bar may be excused by the court to prevent manifest injustice when the prisoner makes a colorable claim of actual innocence. Under the proposed amendment, the court maintains discretion but is supplied with the Legislature's express policy statement in law. Jurisdictions that enable a more discerning look at convictions tend to find more innocent people, more innocent incarcerated people. The Unicameral should not presume that our justice system is so flawless that there is not one innocent person sitting in a Nebraska prison right now. Innocents do not belong in prison, but we know that they can end up there. LB448 should advance so an innocent prisoner's claim can always have a gateway to a hearing in court. Thank you.

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

NICHOLAS MARTI: Thank you.

BOSN: Next proponent? Any other proponents? Welcome.

SPIKE EICKHOLT: Thank you. 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 support of this bill and we want to thank Senator Dungan for introducing this. I'm not going to repeat what other people have said. My written testimony does sort of overlap some of the testimony you heard. But this bill is important not just to sort of provide for a provision in the postconviction act to allow for claims of actual

innocence, but it does resolve some of the procedural logistical difficulties in even filing a postconviction action even if you're within the first year that you do so. And I kind of want to explain what our court has done, and that's mostly addressed on page 4, lines 27 through 29, and talks in terms of actual innocence, but it's more important relating to claims of ineffective assistance of counsel. Our courts-- our Supreme Court has over the last 5 or 6 years has developed the standard when it comes to preserving postconviction claims. If you-- if a defendant has a person who represents them at trial or a trial counsel and they are found guilty either after a plea or after a trial, many times the court will appoint a different lawyer or the person will have a different lawyer on appeal. For instance, if Senator Dungan represents somebody at trial, that person is found guilty, the court appoints me, I represent that person on appeal. I'm the appellate counsel. I'm appealing what happened right or wrong or what happened wrong at the trial level. I also have an obligation and a responsibility to allege and argue any kind of claims of ineffective assistance of counsel that I thought Senator Dungan did. I can only argue what's in the record, and what's in the record is basically the transcript at trial and the things that were said and done in the courtroom, and that I can see that were filed, and was told to me by my-- our defendant-- by my client. I have to raise that on direct appeal. If I don't do that or if I don't argue something, then any kind of claim they might have, they cannot raise later on in a postconviction because they have waived it. That's the standard our court has developed. If you have a different lawyer on appeal, appellate counsel must raise all claims of ineffective assistance and postconviction arguments, otherwise, you'll never be able to argue them. Many times, as a appellate counsel, I don't know. For instance, a typical or not typical thing, but if you don't-- if you have an alibi defense, you have to give a written notice 30 days before that trial, and you have to-- if you don't do that, then you can't raise an alibi defense. So if I'm representing somebody and trial counsel did not even give an alibi notice and didn't even offer an alibi defense, that's ineffective. But I don't know what the alibi was. I don't know what the alibi witnesses would say. That's not in the record. And that's the kind of thing that we have to argue. It's very frustrating to sort of file a case, and that's some of what, what Ms. Cole represented earlier that procedure is very difficult to even bring a postconviction claim. And that's one thing this bill does resolve. And that's something that's developed recently in our Supreme Court on a series of cases that's decided that and, in our opinion, really, really defeats the purpose of the original bill to allow for an

opportunity postconviction to raise a claim of ineffective assistance of counsel.

BOSN: Thank you. Questions for Mr. Eickholt? Senator DeBoer.

DeBOER: So you talk fast, I don't always follow it.

SPIKE EICKHOLT: I try to. No, I understand. Thanks.

DeBOER: You say things that are above my head, so let me ask you this.

SPIKE EICKHOLT: Sure.

DeBOER: The appellate process, the original appellate process you're talking about, you can only make claims based on the law, right?

SPIKE EICKHOLT: Yes. You can only make claims based on the law always. But I can only make claims that what the trial court did wrong or what happened wrong at the trial court.

DeBOER: So I guess what I'm saying is, is the, the postconviction the place where you can say they got the facts wrong?

SPIKE EICKHOLT: Not where they got the facts wrong. What you can say is that facts weren't adduced at my trial, and that's wrong because it violates my constitutional right and questions the integrity of my conviction.

DeBOER: OK. Nope, still not following. All right.

SPIKE EICKHOLT: OK.

DeBOER: We'll move on. So I, I mean, I sort of get that that's how ineffective assistance of counsel works. But what I don't understand is right now if George represents-- Senator Dungan represents them in the trial court,--

SPIKE EICKHOLT: Right.

DeBOER: --you represent them on appeal, you don't bring up ineffective assistance of counsel--

SPIKE EICKHOLT: I do, and I have to.

DeBOER: Right. But let's say you don't, then they can't get postconviction relief about that.

SPIKE EICKHOLT: That's exactly right.

DeBOER: OK. This says you can get postconviction relief if you discovered that you had ineffective assistance of counsel.

SPIKE EICKHOLT: Right. And if you fail to allege your argument on direct appeal, you're not barred from alleging it on a postconviction action after your appeal is convicted.

DeBOER: So let me push back for a second.

SPIKE EICKHOLT: Sure.

DeBOER: Wouldn't we want to have the appellate court adjudicating inefficient-- ineffective assistance of counsel in the appellate court rather than in a postconviction setting?

SPIKE EICKHOLT: Yes, that's exactly right. And that's the logic that the court, I think, has sort of followed. And there is some value in that argument, because if you are innocent or should have been found not guilty, then you want to raise it on direct appeal because you want to raise it as soon as possible time. The problem is on direct appeal, I can't supplement the trial record on my way up to the court. In other words, if trial counsel didn't make an offer of proof or if trial counsel didn't call witnesses they should have called, I can't just sort of write in narrative fashion--

DeBOER: Present additional facts.

SPIKE EICKHOLT: --this is what-- here, I'm stapling what I would say the exhibit with the evidence would have shown. I can only argue what's on appeal. And if I can only half argue--

DeBOER: How is that different in post-- postconviction relief?

SPIKE EICKHOLT: The way it works--

DeBOER: Can I staple it in postconviction relief?

SPIKE EICKHOLT: Possibly, not really, but what the problem with that, with that case laws now is that I sort of half raise it and the court says, well, evidence is sufficient, even if what you say is accurate, that's not enough, that's harmless error. I can't supplement it or bolster a renewed claim in a postconviction claim because it's already been resolved. Collateral estoppel bars it from being done. There is a way that you can supplement the record in a postconviction, and the

postconviction processes explicitly allows for that. And if you look on pages 5 and 6, that's Section 29-3004, which sort of follows the other statutes. And that is, if somebody files a postconviction action and the judge, and they're usually doing it without a lawyer, and the judge sees there's something to this, there's some merit to what they're saying, I-- and one good thing about the postconviction action, I just want to say, whoever drafted it was really clever, because you file these things in the trial judge that heard that case. That's a very strong motivation for the judge to follow the law and not be abbreviated, and not just wing it, because the last thing that judge wants to do is hear this thing come back in 3 or 4 years, right, with a new trial at the end of it all. So they get the law right and they get the facts right. So that's-- this is a really effective piece of legislation just for that ground. But anyway, so if that person files something, the judge says, I remember this. I understand this, there's something to it. I'm going to appoint a lawyer. Then I can supplement the record and pursue a claim. One good thing about this bill in Section 6 on pages 5 and 6, it allows for a discovery process to save some time. Because the way it works now is if I'm the postconviction lawyer and I am able to get-- I'm appointed to go after the trial counsel, George Dungan, and to see what his strategy was, if he had any, for trial, I just don't sort of-- I can't just come to court and we just visit with the judge. I've got to produce evidence to show my claim, because at this point I've only got a hearing. The judge hasn't done anything. He's not going to give me a new trial. They are not going to necessarily, you know, vacate any conviction. They're just hearing this evidence. And it's done kind of piecemeal on how I might get the court to allow me to take Dungan's deposition. I might be able to get the court to allow Dungan and maybe a witness's deposition. One good thing about this bill is it allows for me, if the court wants to, after they appoint a lawyer, to allow me to have access to the prosecutor's file and to the trial counsel's file so that I can actually look at the evidence to see what was there and supplement whatever kind of claim the, the defendant might have.

DeBOER: Thank you.

BOSN: Any other questions? I have a few, if not. So I guess one of the concerns that I have is the-- is page 6, the first part where it does provide for the making available all the files to the individual who's incarcerated. I mean, we don't have to stretch our imaginations too far to see some potential problems that, that may arise from that. Do you have, do you have a fix for that?

SPIKE EICKHOLT: Well, I understand, it is discretionary with the court, and perhaps the court could or maybe language could provide it to allow the court to sort of enter a protective order, or maybe even reference the actual discovery statutes that allow for protective orders now somehow. But you remember when we talked about something earlier this week, you know, the defendants, a lot of times they never had the police reports themselves. The person who is in prison. They never had it at trial, they never got it, certainly don't have it now when they're doing postconviction claims. So a court of postconviction counsel doesn't easily get access to those either.

BOSN: I'm less concerned about the counsel having that--

SPIKE EICKHOLT: Than the inmate.

BOSN: --I mean, yeah, you've got snitches.

SPIKE EICKHOLT: Right. Yeah. Yeah. Absolutely.

BOSN: I mean, there's all kinds of potential addresses, information that-- I mean, I, I think there's probably a solution to that, but I guess would just raise that as a flag of further--

SPIKE EICKHOLT: Yeah, it does say to the prisoner.

BOSN: Yeah.

SPIKE EICKHOLT: [INAUDIBLE]. So I, I suppose that makes some sense, particularly-- yeah, I, I see what you're saying. I think because they use the term prisoner throughout the statute, but.

BOSN: Yeah, it's consistent. But it does--

SPIKE EICKHOLT: I appreciate that.

BOSN: --say may. So you're not wrong. I guess I can see that but I, I don't know how else they would really be providing the inmate the opportunity to fix the problem if they don't. But if they do, we create a whole separate--

SPIKE EICKHOLT: Right.

BOSN: OK. Any other questions? Thank you for being here. Next proponent? Any other proponents? We'll move to opponents. Any opponents? Good afternoon.

SANDRA ALLEN: Good afternoon, Chairman Bosn, members of the Judiciary. My name is Sandra Allen, S-a-n-d-r-a A-l-l-e-n. I am the Acting Criminal Bureau Chief of the Nebraska Attorney General's Office, and I appear before you today to-- in opposition to LB448. I'm going to kind of go in reverse order of what my notes were. I want to first talk about what Chairman Bosn was just talking about, which was about turning over case files to the, to the defendant. The issue that-- the other additional issue that we have with that is it states the entire case file of the prosecution. The entire case file may include work product that's not discoverable so that is one of the issues that we have with the language of that particular part of the bill. Going to the issue with the language about the postconviction and not preserving your argument, your claims appeal, and then they're-- you're precluded from bringing them in a postconviction. What hasn't been mentioned is the fact that if you have a different attorney on the appeal than you did during trial and they don't preserve those claims for postconviction, in the postconviction action, the attorney can say that the appellate attorney was ineffective. So there's still a means in order to argue why that claim wasn't brought. And they have the right to bring it in a postconviction if that is determined to be ineffective for that attorney that did the appellate case, if I'm making sense. So there's still a way in which that can be addressed. The other issue with that in Mr. Spike-- in Mr. Eickholt's example, when he was talking about, for instance, you have a case where there was an alibi and the trial attorney did not do an offer of proof. So long as the appellate attorney who's handling the appeal knows that there was--

BOSN: Sorry.

SANDRA ALLEN: --an alibi, and there was no offer of proof, I don't know that he needs to necessarily have every fact set out on that in order to say he was ineffective for doing an offer of proof. I don't think he has to say this is what the offer of proof was, he was ineffective for doing that. And then that would preserve that for postconviction. So I think there are circumstances that, that can still be argued. So we oppose that part of the bill for that reason. The reason that was put into place was to stop successive, successive postconvictions. That's why that 1 year statute of limitations was put in place. That's why you have to do it then so you can't continue to have successive postconviction arguments. And, and that's a valid reason to have that. I now want to talk about the meat, the meat of LB448, which is the innocence, actual innocence claim as was addressed in the prior testimony. I think it was referred to as there's a bifurcated system now. There are actually 7 different ways that you

can attack a collateral attack on a criminal conviction. The postconviction act itself, that does have a 1 year statute of limitations. If you look at case law, the case law is replete with postconviction, actual innocence claims, that has been addressed in postconviction in Nebraska case law. The next one is motion for a new trial, which is that would be-- that and the post and the DNA Act-- Testing Act are the two avenues that are most likely what you would use to file your actual innocence claim. Under the motion for, under the motion for new trial, one of the ways you can bring that motion is newly discovered evidence that's material to the defense, which could not have been discovered with reasonable due diligence at the time of trial. Newly discovered exculpatory DNA or similar forensic testing evidence obtained under the DNA Testing Act. And if you look at the language of the proposed legislation, exculpatory DNA is one of the things that could bring-- that could be evidence of the, the actual innocence, alternate suspects, impeachment of state's witnesses, all of those would be newly discovered evidence. And that is how they currently bring those types of claims in our statute. So there's a way for them to do that. And--

BOSN: Just, just a second. Since your red light is on,--

SANDRA ALLEN: Oh, I didn't realize it was time.

BOSN: --I'm going to call your time and then I'm going to offer to give you more time just so we have it in the record.

SANDRA ALLEN: Thank you. I appreciate that.

BOSN: Yes. Go ahead and finish up.

SANDRA ALLEN: The other ways are, like I said, are the DNA Testing Act. We have the writ of error coram nobis, which is a common law way. We have motion to withdraw a guilty plea. We have state habeas corpus, and we have federal habeas corpus. And federal habeas corpus actually has-- provides for actual innocence claims in, in that avenue as well. So there's multiple ways in which to do that. The motion for a new trial has a 5-year statute of limitations. However, there is language in there that it says: There is no limitation in situations where the newly discovered evidence could not have been discovered through reasonable diligence and produced at trial, and such evidence is so substantial that a different end result may have occurred. So while there's a 5-year statute of limitations on general motions for a new trial, if this is newly discovered evidence that could not have been discovered with reasonable diligence there's no statute of limitations

that could be brought at any point in time. The last thing I want to, want to say is maybe I misunderstood or misheard the prior testimony when it-- there was mention made that the Supreme Court in Nebraska has said, and maybe I got this wrong, that they couldn't consider an actual innocence unless the Legislature passed something. That is not accurate if that's what the testimony was. In *State v. Dubray*, a 2016 case, the court-- Nebraska Supreme Court actually said: A claim of actual innocence may be sufficient allegation of constitutional violation under the Nebraska Postconviction Act, the threshold to entitle-- excuse me, a prisoner to an evidentiary hearing on such a postconviction claim is extraordinarily high. Such a petitioner must make a strong demonstration of actual innocence because of a fair trial and conviction, and the presumption of innocence vanishes. The Court of Appeals in 2024 looked at the merits of actual innocence claim in a case called *State v. Abram*. So they have been addressing these actual innocence claims and the necessity to have it actually in the postconviction statute in order to be considered is, is not an accurate statement. With that, I will answer any questions that you may have.

BOSN: Thank you. Any questions? Senator DeBoer.

DeBOER: So let me see if I got this right. You're saying that if the appellate court-- if the appellate attorney did not raise ineffective assistance of counsel, then the postconviction attorney can raise that the appellate attorney--

SANDRA ALLEN: Was ineffective.

DeBOER: --ineffectively assisted because they didn't assert ineffective assistance of the trial court.

SANDRA ALLEN: Exactly. You got it.

DeBOER: OK. Well, that's a bit convoluted. I mean, that seems like the court is going to be pretty reluctant to say, not only was this guy stupid, but this guy was also stupid.

SANDRA ALLEN: It depends. And it depends on what the ineffectiveness is. You know, sometimes it might be ineffective, but it's not something that's going to change the outcome of the trial. You know what I mean? It just-- it's always fact specific on that. You'd be surprised, sometimes attorneys will fall on the sword and say, yeah, I was ineffective. I just had a postconviction where an attorney tried to do that. So it just depends.

DeBOER: OK. In his introduction, Senator Dungan talked about scientific changes. You drew our attention to newly discovered information, but I think Senator Dungan was making the case in his introduction that scientific changes aren't so much newly discovered. Is there a mechanism within the postconviction relief statutes for changes in the science that was relied upon to support the conviction?

SANDRA ALLEN: So I, I don't know if I have the exact answer to that. I don't know if you could do it under a newly discovered. But the other mechanism, and I don't know if I haven't gone through them all in my testimony. I, I, I talked about the, the error-- the writ-- the, the error coram nobis, it's a common law way-- manner in which to bring a collateral attack. And, and in that-- and there's a case Carlsen v. State, a writ of coram nobis is never used when the statutes provide a remedy, it's only available when there is no other remedy for a wrong. So this would be if there's no other remedy because of this wrongful conviction, because of new, new, you know, scientific evidence.

DeBOER: Coram--

SANDRA ALLEN: I think you could use it under-- its writ of coram-- it's a writ of error coram, c-o-r-a-m n-o-b-i-s. It-- the, the, the case goes on to say it is consequently very limited in scope. Its purpose is not and never was to permit a defendant retry his case again and again. Coram nobis does not lie to bring into the record facts known to the petitioner before a judgment, in certain cases provides corrective judicial process that constitutes-- that constitution guarantee shall not be denied. So I think that that would be a mechanism in order to bring something like that, if it wouldn't work under a motion for a new trial because of newly discovered scientific evidence.

DeBOER: Do you do a lot of this postconviction work?

SANDRA ALLEN: Not, not a lot.

DeBOER: OK. Have you ever-- I've never heard of this coram nobis, that means nothing. And you've heard of it?

SANDRA ALLEN: I learned about it 2 days ago.

DeBOER: So, so it's a pretty--

SANDRA ALLEN: It's, it's an old-- it's common law, it's from years, it's from years, and years ago.

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Judiciary Committee March 14, 2025

DeBOER: Yes. OK. Yeah, common law.

SANDRA ALLEN: But it's still valid in the state of Nebraska, and there's case law that talks about that. There was a-- yeah, there's a--

DeBOER: But, but that part, does the-- you represent the county attorneys?

SANDRA ALLEN: Well, I'm here on behalf of the Attorney General's Office.

DeBOER: Oh, OK. Sorry.

SANDRA ALLEN: You're fine.

DeBOER: So does the Attorney General's Office object to having a mechanism for if science has changed-- we heard arson, some of these situations-- if science is changed, we're going to create something where you don't have to go back to the common law, but you have a statutory remedy?

SANDRA ALLEN: You know, you could-- just, just to make sure the statute was clear, you could add under the motion for a new trial, the mother clause, you know, you have the newly discovered exculpatory DNA or similar forensic testing. You could add newly discovered scientific-- you know, we could add some sort of language in there.

DeBOER: Scientific evo--

SANDRA ALLEN: Yeah.

DeBOER: --wordsmith something about scientific evolution. Yeah. OK. I can't do it right now because after that siren went off, I've basically not been myself since. OK. I think that's-- and then you said that-- OK, so I'm trying to get to the bottom of this. There's a little bit of a he said, she said about whether or not the Supreme Court asked us to look at the issue of actual innocence, and I'm hearing that maybe the case that you cited might have been overturned. Is that possible?

SANDRA ALLEN: No. No. The one I cited?

DeBOER: OK, well, I don't know.

SANDRA ALLEN: No.

DeBOER: --what was yours, State v.--

SANDRA ALLEN: State-- State v. Dubray.

DeBOER: Dubray?

SANDRA ALLEN: State v. DeJong was another one that our office prosecuted for first degree murder. They considered the merits of actual innocence in that one as well.

DeBOER: OK. I can look at those.

SANDRA ALLEN: And the most recent one was a Court of Appeals case from 2024. And that was State v. Abram, A-b-r-a-m.

DeBOER: OK. Thank you.

SANDRA ALLEN: You're welcome.

BOSN: Other questions for this testifier? Always good to see you.

SANDRA ALLEN: Thank you. You too.

BOSN: Yeah, thanks. Next opponent? Neutral testifiers? While Senator Dungan is making his way back up, I will note there were 13 proponent, 1 opponent, and no neutral comments submitted for the record. Welcome back, Senator Dungan.

DUNGAN: Thank you, Chair Bosn and the members of the committee. I know that I'm the only thing standing between you and being done for the day. So I will try to be brief, but I do want to say a couple of things about this before we wrap up. The thunder outside is very dramatic, which I think is actually very fitting for this hearing. This is incredibly serious, and I brought this bill before in different iterations. And it's very rare that you have a bill that you can bring that actually can change lives. It sounds dramatic. I don't mean to be overly dramatic, but it's true. I know we all have bills that are important to us, but there are some bills more so than others that can provide opportunities for actual, meaningful change. Ricky Kidd, I think, did a fantastic job of explaining to you the human side of this. And yesterday I had a lunch and learn, I know some people were able to make it, where Mr. Kidd was speaking about his experience of his 23 years in prison for a crime he didn't commit. And one of the things that he talked about that I thought was particularly compelling was the hope that he continued to have while he was in there and but for his hope that there would be a meaningful opportunity to have his

day in court and to have his case reviewed, he would not have been able to continue on. He talked also about the courage that it took to continue to tell his story. He told stories about sending out hundreds of letters at a time, begging for someone to pay attention to his case. I don't know about you all, but I get letters weekly from the prison. I get communication from the prison on a regular basis of people begging us to pay attention to their case, and it's hard sometimes because we see such an onslaught of that. But I hear story after story after story from people here in Nebraska who aren't saying they just want to get off scot free, who aren't saying just let me out willy-nilly, but are saying I just want an opportunity to have my day in court. And what I think that between Mr. Kidd and Ms. Cole and Mr. Eickholt and many others who have testified, what they highlighted for us here today is that our system simply doesn't contemplate the opportunity to have these cases heard again. I absolutely appreciate the testimony from the Attorney General, I think they are correct that we do have a system in place that does address some postconviction concerns, but I do believe that we have a system that fails to allow individuals to make other claims past certain time bars and past certain statutes of limitations. I want to address just a couple of specific comments that were brought up, I think, during the hearing. Part of the reason that this actual innocence is so important is that our courts in *State v. Lotter*, and that's the case that I think Mr. Eickholt passed out here for you, specifically says that we decline the invitation to import a Sawyer-type actual innocence claim into our post-- state postconviction jurisprudence. *Lotter* may be able to assert such a claim in federal habeas proceedings, but if a Sawyer-type actual innocence exception to Nebraska is procedural and time bars is to be recognized, it will be a policy decision made by the Legislature, not the courts. That was a case from 2022. So there is absolutely an issue that we need to address. Without getting into the specifics of the difference between a Sawyer claim of innocence and the other claims of actual innocence that are contemplated, my understanding is that what we're essentially talking about here claims of actual innocence outside of the time procedures and time bars. So if you're past that 1-year postconviction statute of limitations, the opportunity to present your case is effectively prevented. I also want to talk a little bit about the ineffective assistance of counsel, while there is an opportunity, and I think, Senator DeBoer, you did a good job of hitting the nail on the head about kind of explaining what that looks like on postconviction, there is an opportunity for ineffective assistance claims against appellate counsel. The problem comes when that appellate counsel also did not know things that were later discovered. An example of this is a real-life example of an

individual that's currently incarcerated who has a very compelling story that his trial lawyer was given a plea deal prior to jury trial, a plea deal that he could have accepted and not spent the rest of his life in prison. That trial attorney did not tell him about that plea offer because he decided to go to jury trial anyway. You have an ethical obligation as an attorney to convey any and all plea offers to your client, even if you think they might deny it. But he didn't tell his client about that, went to jury trial instead, got convicted, is now spending, I believe, a life sentence or an effective life sentence in Nebraska State Penitentiary. The appellate counsel I don't believe knew that. So the appellate counsel could not claim that trial counsel was ineffective because they didn't have that information. Later it comes out through a number of ethical complaints about that trial attorney, who I believe was eventually disbarred for mishandling of money and lying to other clients that this happened. He's barred from bringing that up on postconviction relief because he didn't claim it on his appellate level. So I understand the need for some procedural guidelines, and I understand the need to not have appeal after appeal after appeal. But these are real cases, and these are things that happen. And providing the opportunity to have your day in court is important. I do not think this will open the floodgates, as we often hear as a complaint. I will tell you, if you go ask any judge how often they receive motions for new trial or motions on postconviction relief on a daily basis that they simply deny because it's out of their time period, they'll all say that happens all the time. The people that are going to make these claims are already making them because they don't have any other options. They're just simply being denied by the courts because, oh, I'm sorry, we're out of the statute of limitations. What this does is it permits the judge the opportunity to grant that day in court if certain hurdles are jumped and if certain hoops are jumped through and if certain evidence is presented. I think Ms. Cole did a very good job of outlining, this doesn't mean every single person who applies for this will get it. The judge is still the gatekeeper, and it's only upon that colorable case of actual innocence, meaning you have the facts to back it up like Mr. Kidd did, that you're going to be able to actually have your case heard on this postconviction relief, which, again, doesn't mean it's going to be granted. It just means you get the chance to be heard. I would love to talk more about this with you all. Again, I know it's kind of late in the day. There are differences in the case law between what is newly discovered evidence and what is new evidence. Our court differentiates those two, newly discovered evidence means, means evidence that would have been available to you at trial had you have actually could have done it, you could have found it. New evidence means it wasn't

available at trial. Our statutes talk about newly discovered evidence and have specifically differentiated those two. That's where it gets confusing when you start talking about new scientific evidence, things that weren't available at trial that's not newly discovered. That's new. So there's a lot of wrinkles here. And this really, really, really does matter. It's very technical. I said I'm not an expert in postconviction, which is why it's difficult for me sometimes to get into the nitty-gritty. But I'm more than happy to connect the folks on this committee with the experts and continue to talk about these problems. I brought this bill before, but we have to do something about it sooner than later. These people are waiting and they're sending letters to us, and they're reaching out to us about what we're going to do to at least provide the opportunity to have their day in court. And I think it's incumbent upon us to do something for them. So with that, I really appreciate your attention on a Friday afternoon, and I'm happy to answer any questions you might have.

BOSN: Questions for Senator Dungan? I guess, I just have a couple.

DUNGAN: Yes.

BOSN: And I think there were three incredibly important, so that's noted now.

DUNGAN: You know my verbal crutch.

BOSN: I do. Page 6, you heard some of the questions I had for Spike about my--

DUNGAN: Sure.

BOSN: --concerns there. Are you open to working on that?

DUNGAN: 100%. That language came from talking with some practitioners who do postconviction relief work. And, essentially, it's that-- on postconviction, there is currently no right to discovery, really, and it makes it very difficult to do the job. And so this is trying to provide-- if we're going to have a meaningful postconviction process, we want to make sure that an attorney who's working with somebody on postconviction has access to some of that discovery to make sure they can actually look through the case. Right now, it's a little bit squishy. And, again, without knowing all the details, I can't give you all of that. But practitioners who do only postconviction relief work had worked with us in coming up with some of that language to just give them the opportunity to see that, completely happy to reference current discovery statutes or other various guardrails we might need.

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I just want to make sure that if the postconviction process is going to work, people have to have access to that sort of, quote unquote, discovery. So happy to work on language to make that more meaningful or helpful.

BOSN: Thank you. Any questions in light of that question? Happy Friday. Thank you for being here.

DUNGAN: Thank you all so much. Have a good weekend.

BOSN: That will conclude our hearing for LB448 and our hearings for today. Have a good weekend, everyone.