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Position Letter from:  
Lars Trautman, Senior Fellow, Criminal Justice & Civil Liberties, R Street Institute

In SUPPORT of L 151, AN ACT relating to criminal procedure; to adopt the Prosecutorial Transparency Act, and to provide severability.

February 3, 2021

Judiciary Committee

My name is Lars Trautman, and I am a senior fellow for Criminal Justice and Civil Liberties policy at the R Street Institute, which is a nonprofit, nonpartisan, public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, specifically including prosecutorial reform, which is why L 151 is of particular interest to us.

A combination of broad authority and discretion grants prosecutors the ability to determine either outright or apply incredible influence over almost every decision in the criminal justice process. Prosecutors have the capacity to alter people's lives and restrict their liberty in truly extraordinary ways. Yet, a community typically has little insight into how its prosecutors are wielding this power; internal policies are rarely available to the public and even basic information about decisions and outcomes is scarce. It can be hard for voters to assess whether prosecutors are using their authority responsibly and sparingly, and equally as difficult to hold them accountable when they are not. Measures such as L 151 that increase transparency are key to bolstering public trust in prosecutors and ensuring that the administration of justice is fair, efficient and equitable.

However, greater data collection is not just a win for those seeking to impose accountability on prosecutors externally. Prosecutors too could use it to improve prosecution. Usually, the lack of public data on prosecutors' actions reflects a lack of internal data, with prosecutors effectively flying blind in terms of how their policies are affecting real-world outcomes. The kind of information this bill seeks to generate would provide prosecutors with a wealth of new data with which they could assess the efficacy of existing policies, identify points of leverage to improve those policies and outcomes, and more consistently secure justice across cases. In short, they could pursue evidence-based policies like never before, to the mutual benefit of prosecutors, defendants and the community at large.

Yet, if this bill creates an unfunded mandate with limited state support for prosecutors, it will struggle to reach this lofty potential. The data collection envisioned by this legislation may appear simple enough, and in any given case may not be especially burdensome, but in the aggregate, this will require significant prosecutorial time. Likewise, most prosecutors' offices lack the resources and expertise on

their own to achieve the data analysis gains cited above. As such, new data collection requirements ought to be accompanied by additional funding for prosecutors to fulfill these obligations as well as state-level technical and other support to facilitate their use of the resulting data.

For these reasons, we support L151 and the continuing efforts of this committee to bring about meaningful changes to how prosecutors operate in Nebraska.

Very Respectfully,

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