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Judiciary Committee  
February 21, 2008

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[LB1054 LB1076 LB1077 LB1078 LB1084 LB1097]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 21, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1084, LB1077, LB1076, LB1054, LB1097, and LB1078. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None. []

SENATOR ASHFORD: Okay. Let's get started, everyone. Good afternoon. Thanks for coming. Before we get started, my name is Brad Ashford. I represent District 20 and I am the Chair of the Judiciary Committee; the Vice Chair, Steve Lathrop from Omaha, is to my right. Senator Amanda McGill from Lincoln; Senator Vickie McDonald from Saint Paul; Senator Pete Pirsch from Omaha; and Senator DiAnna Schimek from Lincoln; and Senator Chambers is also here. LaMont Rainey is my...our legal counsel, and Jonathan Bradford is the clerk of the committee. The first bill...we have a light system. Most all of you have been here before, I see some haven't. If you, when you come up to testify, after you sign in at the table, the second table behind here, we ask you to follow the light system, which is a blue light, yellow light, red light system. Yellow would indicate that there's 30 seconds left in your 3-minute time, and red, we'd ask you to sum up and complete your testimony. The first bill we have, let's see, six bills today. Speaker Flood is first up, LB1084. Good afternoon. []

SENATOR FLOOD: Good afternoon, Chairman Ashford, members of the committee. My name is Mike Flood, F-l-o-o-d, and I represent District 19. I'm here today to introduce LB1084. This bill would add DHHS employees providing behavioral health services to the list of those folks that are protected by our assault on an officer statutes. Individuals who engage in conduct prohibited by these sections are subject to a felony charge. Last year when I introduced a similar bill, LB138, I told you about an incident at the Norfolk Regional Center that happened in March of 2006. An employee of the NRC, Regina Seamann, was brutally attacked by a patient. She was beaten so badly that she does not remember much of the event. She was broken, bloodied and bruised and, to this day, still suffers from chronic pain and PTSD. Meanwhile, her attacker is back on the streets, we think, but nobody seems to know where for sure. This man, a sex offender who was at the NRC for mental health treatment, was charged with a misdemeanor for his actions that March. He was sentenced to one year in prison and was out after five months. My intent with LB1084 is to help ensure that those in the department's care are held accountable for their conduct. The employees of the department, who provide a great service to their patients and to the people of Nebraska, deserve as much. Scot Adams, director of the Division of Behavioral Health, is also here and will provide more details about this bill. With that, thank you for your attention and consideration of LB1084. I would answer any questions that you have. [LB1084]

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SENATOR ASHFORD: Any questions of Speaker Flood? Thank you. [LB1084]

SENATOR FLOOD: Thank you. May I be excused? [LB1084]

SENATOR ASHFORD: Well,...yes. (Laugh) [LB1084]

SENATOR FLOOD: And I waive my closing. [LB1084]

SENATOR ASHFORD: Okay. Thank you. Scot. [LB1084]

SCOT ADAMS: (Exhibit 1) Thank you. Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Scot Adams, S-c-o-t A-d-a-m-s, director of Division of Behavioral Health, Department of Health and Human Services. I would like to thank Senator Flood for introducing LB1084. I am here today to testify in support of this bill. LB1084 changes the offense of first-, second-, and third-degree assault on an officer by including employees of the Department of Health and Human Services who provide mental health and substance abuse treatment services. Purpose of this bill is to establish parity for workers in the 24-hour facilities operated by the Behavioral Health Division of the Nebraska Department of Health and Human Services with workers of similar job classification, duties, and function within the state Department of Correctional Services. Sections 28-929 through 28-931 in the Nebraska statutes specifically provide that an assault on a correctional officer is a Class II, III, or IIIA felony. No such provision exists for direct care workers in the mental health system. Many of the people treated at the regional centers have been incarcerated in the correctional system. In fact, currently there are three individuals at the Tecumseh State Correctional Institution who are being held at the Lincoln Regional Center for restoration to competency, and who are moved to Tecumseh once competency was restored. These individuals are at the highest level of confinement and security at Tecumseh. Mental health workers at the regional centers are just as at risk as correctional officers when working with some of the individuals who are incarcerated, as well. During 2007, there were 81 unprovoked assaults on direct care staff at the Lincoln Regional Center, and there were 79 unprovoked assaults on staff at the Norfolk Regional Center. Approximately 13 percent of these assaults inflicted enough injuries serious enough to require a physician or emergency medical care for lacerations, contusions or broken bones. Admittedly, one incident at the Lincoln Regional Center during '07 resulted in the death of one of the psychiatrists. That person was found competent to stand trial. Individuals who engage in assaultive behaviors on staff are, for the most part, people with personality disorders and antisocial behaviors. It is expected that by increasing the consequence of an assault to felony status, the number of assaults at the regional center will decline and safety at the regional centers will improve. Thank you for your attention. I'd be happy to respond to questions. [LB1084]

SENATOR ASHFORD: Any questions of Scot? Scot, just one question. [LB1084]

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SCOT ADAMS: Yes, sir. [LB1084]

SENATOR ASHFORD: How many employees providing behavioral mental health, how many employees are there? [LB1084]

SCOT ADAMS: In the Division of Behavioral Health we have around 950 employees throughout the three regional centers and with the community-based services. [LB1084]

SENATOR ASHFORD: Is "employee" too broad, or are we dealing with individuals who... [LB1084]

SCOT ADAMS: You know, I am mostly... [LB1084]

SENATOR ASHFORD: ...who are dealing with people who are being cared for? I just don't know if... [LB1084]

SCOT ADAMS: You know, I am, of course, most concerned with the folks who work specifically in the regional centers because they are the ones with day-to-day contact in a situation that not always but can be from time to time a dangerous job. [LB1084]

SENATOR ASHFORD: Right. No, I get that part. I just was wondering if "employees" is...is broad, but we use "employee" for Department of Correctional Services as well, I guess. [LB1084]

SCOT ADAMS: Yes, sir. [LB1084]

SENATOR ASHFORD: Any other questions of Scot? Thank you. [LB1084]

SCOT ADAMS: Thank you very much. [LB1084]

SENATOR ASHFORD: Good job. Any other witnesses...testifiers on LB1084? Opponents? Proponents? Opponents. I'm sorry, I should have been more clear. Just wanted to see if people were listening back there. [LB1084]

NANCY PETERSON: Good afternoon. I am Nancy Peterson, P-e-t-e-r-s-o-n. I'm speaking today as the president of the Nebraska Criminal Defense Attorneys Association in opposition of LB1084. It is the position of the Nebraska Criminal Defense Attorneys Association that the statutes, as they exist in Nebraska, adequately protect the employees of the Health and Human Services organizations that are looking for additional protection under this particular statute. As the law exists now, if there were to be an assault on an employee of HHS at a regional center or anywhere else, that employee could be protected under the existing assault statutes. What they are trying to

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accomplish with this statute is to place Health and Human Services' employees on an equal level as police officers, probation officers, and correctional officers, people that we have acknowledged are invested with a greater amount of responsibility and trust by the citizenry and, therefore, worthy of enhanced protection under assault statutes. Employees of the Department of Health and Human Services are not vested with the responsibilities that police officers, probation officers and correctional officers are and are, therefore, not worthy of the types of protections that they are seeking under LB1084. Additionally, the breadth of LB1084 encompasses a variety of employees that simply do not qualify for the enhanced protections that they are seeking. LB1084 references Nebraska Revised Statute 71-804 and would protect people administering behavioral health services to include, but not limited to, individuals providing consumer-based services, support services, inpatient/outpatient services, residential and nonresidential services, and a broad variety of employees that simply do not require this protection. So we would ask that you consider that existing statutes cover assault, they make assaults felonies in appropriate cases, and that the employees of the Health and Human Services Department do not require the enhanced protection requested. Any questions? [LB1084]

SENATOR ASHFORD: Any questions? Senator Schimek. [LB1084]

SENATOR SCHIMEK: Yes, thank you. Ms. Peterson, how would you feel if the bill were more narrowly crafted so that it did refer most definitely to the people who are working in the 24-hour facilities where there are some very serious safety concerns? [LB1084]

NANCY PETERSON: Again, I believe that the statutes, as they exist, would adequately protect those people. My understanding, from having conversations in the hall, are that county attorneys are not prosecuting cases where there are assaults at regional centers in some locations. It's a choice that's made by the county attorney whether or not to prosecute. This statute would not change that. They could still elect to prosecute under the existing statutes or not. I still believe that the protections that exist are sufficient and that we do not need to broaden them. [LB1084]

SENATOR SCHIMEK: Well, I can see your point about this may be broader than intended. For instance, I'm not sure, I think some of the places like the veterans' homes and other... [LB1084]

NANCY PETERSON: Inpatient/outpatient treatment places, yeah. [LB1084]

SENATOR SCHIMEK: Right, those kinds of things. But I am concerned about the safety of those employees at the regional centers,... [LB1084]

NANCY PETERSON: And... [LB1084]

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SENATOR SCHIMEK: ...for a variety of reasons. And so this bill does have some appeal to me. [LB1084]

NANCY PETERSON: And I certainly understand that, but I would encourage you to consider...I know that the death of Dr. Martin last year, although tragic, nothing that this bill proposes would have enhanced any penalties against the individual charged there. Dr. Martin and all of the employees there are still protected by the existing statutes for assault and for murder. To the extent that individuals are competent and that they are responsible at the time they commit their crimes, they can still be prosecuted if the county attorney elects to under the existing statutes. Any other questions? [LB1084]

SENATOR ASHFORD: No, thank you, Nancy. [LB1084]

NANCY PETERSON: Thank you, Senator. [LB1084]

SENATOR ASHFORD: No, I'm sorry. Senator Pirsch. Nancy? [LB1084]

SENATOR PIRSCH: That's okay. Thanks. [LB1084]

SENATOR ASHFORD: Okay. Any other opponents? Neutral testifiers? Okay. I think Speaker Flood waives, so we'll go to the next bill. Senator Rogert, LB1077. [LB1084]

SENATOR ROGERT: (Exhibits 4 and 5) Well, hello again. Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Senator Kent Rogert, representing the 16th Legislative District, and I'm here today to introduce to you LB1077, a bill that would require the collection of DNA samples for arrestees of certain crimes in Nebraska. Currently, the law requires that a DNA sample be collected, either the choice of a cheek swab or a blood draw, for those persons convicted of certain crimes enumerated in statute, including felony sex offenses and other specified offenses, such as murder in the first and second degree, manslaughter, stalking, burglary or robbery. We've added these crimes to the list as well: assault in the first degree, assault in the second degree, use of a deadly weapon to commit a felony, and any violation relating to explosives. More importantly, we have struck the term "convicted" in the current statutory language regarding the requirement for DNA testing and inserted "arrested" in its place. Instead of requiring that DNA samples be collected for convicted felons for these enumerated crimes that is currently is in law, we are requiring in its place that DNA samples be collected from those arrested for those enumerated crimes, in addition to inserting those that I named earlier. Our intention is to provide comparison evidence in the state DNA database in between that time that a person is arrested and convicted, in order to provide a comparison sample for other crimes he or she may have already committed before the arrest and during the time in between the arrest and possible conviction. However, it is important to note that the arrested person is not convicted of the crime, the DNA record is expunged from the

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database, as is now required by law for those persons exonerated. All 50 states require that convicted sex offenders provide a DNA sample and 44 states require the collection of DNA samples for all convicted felons. There are 11 states that require a DNA sample for certain or some arrestees, and they include Arizona, Alaska, California, Kansas, Louisiana, Minnesota, New Mexico, North Dakota, Tennessee, Texas, and Virginia. We've modeled our legislation with that of New Mexico, which passed arrestee legislation in 2006 for certain violent felonies, which is where the story really begins for this piece of legislation. Ms. Jayann Sepich, who I have been in contact with over the past year, is the mother of young Katie Sepich, a 22-year-old graduate student from New Mexico State University who was raped, strangled, set on fire, and brutally murdered in August of 2003. The skin and blood found under her fingernails left a DNA profile of the assailant which was sent to the national DNA database system called CODIS, which is in sync with all the state DNA databases. However, most state laws do not provide...did not at that time provide for a DNA sample upon arrest, much to the shock and dismay of Katie's parents. In November of 2003, a certain man named Gabriel Avila was arrested on aggravated burglary charges while breaking into a home of two women, brandishing a knife. He was convicted for this crime in March 2004, but upon release on bond and before sentencing he disappeared until authorities were able to recapture him in August of 2005. And at this point, he was finally incarcerated and a DNA sample was collected. The result was a positive match to Katie's murderer on December of 2006, however, being three years after the murder. Had a DNA sample been taken upon his arrest in November of 2003, before the aggravated burglary, a match could have been made immediately to Katie's case, which would have saved on investigation costs of nearly \$250,000 and provided the much needed closure that the Sepich family had been desperately seeking as a result of their daughter's death. During those three years, the activities of Gabriel Avila remains unaccounted for. However, in May of 2007, he pled guilty to the rape and murder of Katie Sepich and is now serving a 69-year sentence without parole. There are many cases such as this and many stories to be told, however, in this instance Katie's parents set out to convince the Legislature in New Mexico and other states to bring in the value and the benefits of DNA arrestee testing for violent crimes, based upon their experience with and without such a system. The bill was signed into law in March 2006, and went into effect January of last year. I'd like to close with just a few points in favor of DNA testing. DNA samples do not provide a profile of a person's weight, color of eyes, medical history, gender or race. They do not even have a person's name or Social Security number attached to the profile, rather, a unique identifying number that is used for comparison purposes only. State laboratories are not equipped nor do they have the resources or training to conduct a DNA test for anything beyond its specific purpose and, for that reason, the sample does not reveal any genetic health information. In addition, our state law prohibits abuse and it is very limited as to even law enforcement access to the database. DNA samples can save time and money on investigations and, at the same time, provide immediate assurances on innocence. There are cases in Arkansas, New Jersey, Oregon, and West Virginia that show how exonerations can result from early DNA testing during the

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time periods required to be incarcerated before the actual trial. In short, forensic DNA testing frees the innocent, solves crimes faster, prevents crimes, purges racial bias from the criminal justice system, and does not penalize any person except those persons who are guilty of a crime. With that, I'd be happy to answer any questions, and I have a copy of a statement from Ms. Sepich, who wasn't able to fly up today, but I want to pass that around. And then I also have an amendment that you may consider that closes a possible loophole for those that have already been convicted. [LB1077]

SENATOR ASHFORD: Any questions? Senator Chambers. [LB1077]

SENATOR CHAMBERS: Senator Rogert, are you going to prioritize this bill? [LB1077]

SENATOR ROGERT: I have not decided. [LB1077]

SENATOR CHAMBERS: Thank you. That's all I had. [LB1077]

SENATOR ROGERT: Uh-huh. [LB1077]

SENATOR ASHFORD: Thank you. Kent, do you intend to close? [LB1077]

SENATOR ROGERT: Yeah, I got the next bill, so I'll be here. [LB1077]

SENATOR ASHFORD: Right. You do. Proponents of LB1077? Opponents? Neutral? That's the first time we've had that happen, in my experience. I'm sure in Senator Chambers' experience that's not the first time. [LB1077]

JERRY SOUCIE: (Exhibits 2 and 3) Good morning, Senator Ashford, members of the committee. My name is Jerry Soucie, S-o-u-c-i-e. I'm an attorney with the Commission on Public Advocacy. I speak here today neutral to the bill. The...when Senator Brashear was here we used to have neutral opposed and neutral in favor, and I'm probably neutral highly skeptical of this bill. I provided to the committee a couple of articles I've written on DNA, provide some background of what you can and cannot do with DNA, and let me tell you the points that I don't have any dispute with, and that is, is that a legal matter, there's a difference between what you would call privacy and anonymity. Privacy would be trying to find out what your bank records were, what your sexual history was, who your children were, what sort of medical conditions that you have. Some of that information can be gotten through DNA. Particularly, say, your medical history could be abused by an insurance company, for example, in terms of determining your health rate. That's not what is at issue here. I do not personally have an objection to a bill that would prevent someone from being able to remain anonymous through a DNA testing bill. What this bill does is targets a certain group of individuals who have merely been arrested. I think you have to be concerned about the situation involving pretext arrests. I know certainly in Douglas County, when they were doing the dragnet in

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connection with a suspected rapist, they were going after certain employees. I mean, there's absolutely nothing to prevent the police from just arresting a bunch of people, picking them up; says, we have to have your DNA; oh, wait a minute, we're not going to file charges. You go home. They test all those samples. They end up getting the results against 10, 20, 30 individuals. Nobody is charged and then the burden is on that particular individual to go in and somehow, after the DNA has been collected from 20 people, after 19 of them have been exonerated or maybe all 20, to have that information removed from the DNA database. I have difficulty with that. Second thing that you have is there is a provision by which, if you are a specific individual, they can get this information anyway, and that's under the identifying physical characteristics act. And I've had a case in which that became very important where they went after trying to get someone who happened to be in jail on a forgery. They took her DNA and were using it in a homicide investigation and they really didn't have probable cause to do that. And again, speaking in the neutral position, I really would have no problem if the DNA bill were to cover everyone, if it covered state senators, law enforcement officers, anybody who applied for a job. If it was treated the same as fingerprints, I think that that would certainly avoid some of the problems that...where you're targeting a certain class of individuals. With that, if anyone has any questions, I'd be happy to answer them. [LB1077]

SENATOR ASHFORD: Any questions of Jerry? Seeing none, thank you, Jerry. [LB1077]

JERRY SOUCIE: Fine. Thank you. [LB1077]

SENATOR ASHFORD: Any other neutral testimony? Senator Rogert. Senator Rogert waives. Senator Rogert, LB1076. [LB1077]

SENATOR ROBERT: We must have wore you guys out last night. You're too quiet. [LB1076]

SENATOR ASHFORD: Well, we're glad to see you. [LB1076]

SENATOR ROBERT: Yeah. LB1076 is a simple bill. I'm just going to, for my opening, I'm just going to read it. It says: In cases of emergency, disaster, or civil defense, no additional restrictions on the lawful possession, transfer, sale, transport, storage, display, or use of firearms and ammunition shall be imposed upon an individual by this state or any political subdivision. The idea behind this bill comes from the horrible disaster that was Hurricane Katrina in the New Orleans area in 2005. When folks were left without power, without transportation, without means of moving around in a city that was nearly lawless, folks were forced and required, basically, to protect themselves in their homes with their, you know, with the possibility of using their firearms for those type of protections. It became unclear, and law enforcement thought it necessary to



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confiscate weapons from individuals who were trying to protect their homes and their businesses. This, of course, left them unable to protect their families, their businesses, and their houses from further damage or looting or crimes that were going on at that time. This basically clarifies a question in anybody's mind of whether, in case of an emergency such as, for our area, it could be a flood, an ice storm with no power, a major...a tornado that levels a town, to that extent, where folks that legally own these firearms--this has nothing to do with carrying a concealed weapon where you shouldn't be able to or anything like that--it's just legally possessed firearms, that law enforcement can't take them upon a declaration of an emergency. I'll take any questions. [LB1076]

SENATOR ASHFORD: Any questions of Senator Rogert? Has this occurred? Katrina is the... [LB1076]

SENATOR ROGERT: That's the main one. I believe there were some... [LB1076]

SENATOR ASHFORD: ...the big issue here? [LB1076]

SENATOR ROGERT: Yeah. There were some issues, and this may get touched upon behind me, but the town in Kansas last year that was destroyed, or Oklahoma, wherever it was, that town that was destroyed by the tornado, there were some folks that, when they weren't in the town, the law enforcement officials went through and confiscated any weapons they had found, locked them in a trailer, which I don't have a problem with for safe keeping, but then the folks who owned them weren't able to get them back. [LB1076]

SENATOR ASHFORD: Well, and just so I understand, I mean they would force entry or how would they...what was the point? [LB1076]

SENATOR ROGERT: Well, in cases like Katrina or in this tornado destroyed town, there's nobody there. [LB1076]

SENATOR ASHFORD: So they go into a... [LB1076]

SENATOR ROGERT: Yeah, they could have. They could have. Or they could go...they could force entry. If you're standing there on your porch with a gun, they'd say, we're going to take that. [LB1076]

SENATOR ASHFORD: Unoccupied because they were deserted, basically. [LB1076]

SENATOR ROGERT: Possibly, yeah. [LB1076]

SENATOR ASHFORD: Or temporarily deserted or... [LB1076]

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SENATOR ROBERT: Uh-huh. [LB1076]

SENATOR ASHFORD: And people would come back and their firearms were gone. [LB1076]

SENATOR ROBERT: In that, in the Midwestern case, yeah. I think in the Hurricane Katrina case, they were taken directly from their person. [LB1076]

SENATOR ASHFORD: And someone will talk about that. I mean they had no...they had a right to own the gun and... [LB1076]

SENATOR ROBERT: Yes. Yeah, they were legal. It's just like me standing in front of my business with a shotgun trying to keep you from breaking in because the law isn't there, and they come and take it. [LB1076]

SENATOR ASHFORD: Okay. Thanks, Kent. [LB1076]

SENATOR ROBERT: Uh-huh. [LB1076]

SENATOR ASHFORD: How many proponents do we have of this? Okay, come on up. Well, first you have to sign. Have you signed in yet? Now we know who you are. (Laugh) And that was not a caustic remark, either. [LB1076]

JORDAN AUSTIN: Good afternoon, Mr. Chairman, members of the committee. My name is Jordan Austin, A-u-s-t-i-n. I'm a registered lobbyist, speaking on behalf of the National Rifle Association. I'm here to speak in support of LB1076 and I would like to elaborate on some points the senator just made. He was correct, Katrina was not an isolated incident. This did go on in the town of Greensburg, Kansas. I have spoken to several townspeople there and this was brought to our attention directly after the incident happened. After the tornado, people kind of tried to repair their lives and, you know, find out what possessions they had left. And they were kicked out of town for three days and during that time law enforcement from across the state came in and their initial intent was to search for more dead bodies within the wreckage, and they stumbled across some firearms in the streets that had been scattered about. And at that point they secured those, wrote down the addresses of where those firearms were found, and then they started going house to house, rounding up firearms. At this point, they were going through closets, dressers, going into basements. Some of the townspeople had gathered their firearms and put them in secured places, and when they returned to town three days later they were all missing. Most of them were put in this big trailer. Several legislators have gone down there to verify some of the claims we'd heard and they saw the trailer. And I guess it was about a week and a half, maybe two weeks before the firearms were ever returned. We communicated to them, when the confiscations were brought to our attention, that they were in violation of federal law and at that point, when

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they realized they were illegally possessing these firearms and keeping the townspeople from having them returned to them, they started handing back the firearms, but not all of them were returned, as recently I discovered that they...many people there still do not have their firearms returned. They got some of them back but not all of them, including ones they had secured on their property ahead of time. There's legislation pending in Kansas right now to, you know, secure that and make sure that will never happen again. This legislation also has passed in 24 other states and is pending in several more. The federal bill passed with overwhelming support in 2006, with a vote of 322 to 99 in the House, and a Senate vote of 84 to 16, and all the members of the Nebraska delegation supported this at the federal level. I would encourage this committee to support this bill and I'd be happy to answer any questions you might have. [LB1076]

SENATOR ASHFORD: Any questions of Jordan? Yes, Senator Lathrop. [LB1076]

SENATOR LATHROP: I do. This is pretty simple in that it's one sentence long, but it says the state and political subdivisions, in cases of emergency, disaster, civil defense, can impose any additional restrictions on the lawful possession. And what you've described is going house to house. That additional restriction sounds like legislation. [LB1076]

JORDAN AUSTIN: It would include... [LB1076]

SENATOR LATHROP: Are you talking about legislation or are you talking about going door to door or house to house, after people have left their homes, and collecting weapons? [LB1076]

JORDAN AUSTIN: Well, that would be what we term as an illegal confiscation. They were just going through houses and rounding up the firearms on their own. [LB1076]

SENATOR LATHROP: Okay. [LB1076]

JORDAN AUSTIN: And so that would be a restriction on the legal possession. [LB1076]

SENATOR LATHROP: I'm just trying to understand what the...what you're getting at here. You're not directing this bill at political subdivisions or the state of Nebraska's ability to regulate guns in a disaster but, rather, trying to prevent law enforcement or anybody acting under the color of law to go in to a person's house when they're not there, following an emergency, and taking their weapon. Is that the case? [LB1076]

JORDAN AUSTIN: Yes. What we are trying to do with this, and I feel this bill is accomplishing that, is to prevent, you know, anybody operating under law, legally possessing these firearms, cannot have them taken away or any additional restrictions

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imposed upon them. So I think... [LB1076]

SENATOR LATHROP: What I'm getting at is... [LB1076]

JORDAN AUSTIN: Okay. I'm sorry. [LB1076]

SENATOR LATHROP: ...when you use the term "additional restrictions," are you talking about taking a gun from somebody or are you talking about somebody legislating? [LB1076]

JORDAN AUSTIN: We're talking about taking a gun from someone... [LB1076]

SENATOR LATHROP: Okay. [LB1076]

JORDAN AUSTIN: ...and legislating it, passing any additional...by saying...as what happened in New Orleans, they issued a statement saying no one will be armed, we are going to disarm anyone, only law enforcement will have firearms. And Mayor Nagin issued that public statement and then law enforcement systematically went by and disarmed everyone. [LB1076]

SENATOR LATHROP: Okay, so now you're talking about like the mayor having an order or the sheriff... [LB1076]

JORDAN AUSTIN: Yes. [LB1076]

SENATOR LATHROP: ...or the chief of police saying no one can have a handgun or no one can carry a firearm following a tornado. [LB1076]

JORDAN AUSTIN: Yes. [LB1076]

SENATOR LATHROP: That's what you're looking at? [LB1076]

JORDAN AUSTIN: Yes. [LB1076]

SENATOR LATHROP: What you've described, however, is a situation where, in going door to door looking for bodies, at least initially, law enforcement began to pick up weapons that they found and, as they continued to go door to door they began to search in places not where they'd find bodies but where they'd find handguns. [LB1076]

JORDAN AUSTIN: Yes. [LB1076]

SENATOR LATHROP: Dresser drawers. [LB1076]

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JORDAN AUSTIN: Exactly, yes. [LB1076]

SENATOR LATHROP: Now these homes that they took these guns from were places that were abandoned or at least temporarily abandoned by the owners? [LB1076]

JORDAN AUSTIN: Yes, they were... [LB1076]

SENATOR LATHROP: They had to get out of the flood waters. [LB1076]

JORDAN AUSTIN: Yes, the residents were forced out of town by law enforcement and the mayor. [LB1076]

SENATOR LATHROP: So by picking up the handguns, the police, one could argue, picked up the handguns before a looter could come into the house and get the same handgun and use it for whatever purpose. [LB1076]

JORDAN AUSTIN: Arguably, yes, but only...as small of a town as it was, there was no looting going on, as far as we knew. The only people in the town were law enforcement at that time. I think the town is a total of about two miles across and wide. [LB1076]

SENATOR LATHROP: But if we pass this, it would prevent law enforcement, and we'll take a...let's take a town like Lincoln, pretty good size, if a tornado hit Lincoln and people were required to leave, or a flood, people were required to leave and folks were now looting homes, and the police go into each house looking for dead bodies or whatever, this wouldn't let them get handguns, rifles, things that they might find in those homes ahead of looters. [LB1076]

JORDAN AUSTIN: Well, I believe they didn't have...why would they want to go confiscate the guns from the houses? I mean if they... [LB1076]

SENATOR LATHROP: Apparently they were doing it down in New Orleans, which is what I understand your testimony to be. [LB1076]

JORDAN AUSTIN: Yeah, they were. They were disarming people physically by going and just taking their firearms from them in person, not just going...they weren't...they were going into houses and taking firearms from individuals. [LB1076]

SENATOR LATHROP: Okay. So now it's not about taking them from people's dresser drawers, but taking them off of an individual after there's been an emergency. [LB1076]

JORDAN AUSTIN: Well, each situation was different. Like I said, in New Orleans they were disarming people, and after Greensburg they were...the town was abandoned so they were just going house to house and round up the firearms and then would not

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return them. You know, when people went back to claim their firearms, they would not give them back to them and gave them no justification for why they were confiscated or why they weren't being returned. [LB1076]

SENATOR LATHROP: But when you were giving us this example and giving us this narrative, I think you said the confiscation violated federal law. [LB1076]

JORDAN AUSTIN: Yes. [LB1076]

SENATOR LATHROP: It did. [LB1076]

JORDAN AUSTIN: Yes. [LB1076]

SENATOR LATHROP: So we have a federal law in place already that would make the confiscation of handguns, firearms of whatever type, illegal under the same circumstances? [LB1076]

JORDAN AUSTIN: The federal law is a little bit broader. It includes any employee of the United States, so it's kind of broad in the sense that it would, I think, only include federal employees or federal law enforcement agencies. I think this bill is tailored more narrowly so it just includes the state and any local political subdivision. [LB1076]

SENATOR LATHROP: Well, you were the one that gave us the example and said that, as they were confiscating these weapons, they were violating federal law. Were these federal marshals that were doing this or were they state or city employees? [LB1076]

JORDAN AUSTIN: They were...it was law enforcement throughout the state of Kansas. They would be state employees. [LB1076]

SENATOR LATHROP: Okay. So they weren't violating federal law or they were? [LB1076]

JORDAN AUSTIN: I believe they were and we felt they were. [LB1076]

SENATOR LATHROP: Okay. So then the federal law apparently, in your opinion, applied even to the state law enforcement that was confiscating handguns. [LB1076]

JORDAN AUSTIN: I think in a sense it would, but I think this legislation is important to the state. I think we need this more narrowly focused to prevent any such situation from happening here. And if it's more specific, I think it would be more beneficial to the citizens here. [LB1076]

SENATOR LATHROP: Okay. That's all I had. Thank you. [LB1076]

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SENATOR ASHFORD: Jordan, do you know if this has happened, any evidence of this ever happening in Nebraska? Hallam was destroyed by a tornado. Did law enforcement come through and confiscate firearms in that case? [LB1076]

JORDAN AUSTIN: Not to my knowledge, no. [LB1076]

SENATOR ASHFORD: What do you mean by civil defense? If someone is engaged in civil defense, what does that mean? Does that...what does that mean? [LB1076]

JORDAN AUSTIN: I believe that would pertain to defense of one's self and one's property. [LB1076]

SENATOR ASHFORD: Civil defense implies a larger, broader kind of a confrontation, doesn't it? [LB1076]

JORDAN AUSTIN: Um... [LB1076]

SENATOR ASHFORD: I mean, if defense of self, I understand that point, but we just say defense of self. [LB1076]

JORDAN AUSTIN: I mean, I think civil defense would qualify as any...let's see, we have emergency disaster civil defense. [LB1076]

SENATOR ASHFORD: Is that a civil defense event, like a tornado? Is that what you're getting at? [LB1076]

JORDAN AUSTIN: I don't believe that would count as a tornado. I think that would be maybe a... [LB1076]

SENATOR ASHFORD: A takeover by some foreign government,... [LB1076]

JORDAN AUSTIN: Yeah, I think that's what would apply. Maybe if different groups maybe, you know, local... [LB1076]

SENATOR ASHFORD: ...invasion from Mexico or... [LB1076]

JORDAN AUSTIN: ...maybe if there was some kind of a race riot that went on like back in the sixties, maybe that it would apply to a situation like that where different rival groups are attacking each other. [LB1076]

SENATOR ASHFORD: So let's take a race riot, for example, or let's take some kind of a civil disorder in Omaha with immigrant groups versus other groups. Who...what is

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that...what would that mean in a case like that? What roles would law enforcement be able to have if there is a case of civil disobedience occurring in south Omaha, for example? [LB1076]

JORDAN AUSTIN: Well, I believe individuals who are in violation of law, they would not be allowed to be in possession of firearms. This only pertains to law-abiding, lawful possession. [LB1076]

SENATOR ASHFORD: Who determines who's law abiding, I mean if you have a confrontation? So if you have a confrontation between two racial groups, the implication would be that neither of those groups would be law abiding or one would and one wouldn't, or how do you make that determination? [LB1076]

JORDAN AUSTIN: I believe that would be the determination of law enforcement. They have to use judgment in a situation like that. If they see two groups in an open action against each other, as far as shooting each other on the street, you know, that would be a determination of law enforcement to find out who was in defense, who was in the attack situation. I think that would be the determination of law enforcement. [LB1076]

SENATOR ASHFORD: But theoretically, if law enforcement made the determination that, let's say, a group of outsiders that were determined to be causing the civil disorder, they could be disarmed but not the other, the people who were defending their homes. That's sort of the idea. [LB1076]

JORDAN AUSTIN: Yes. [LB1076]

SENATOR ASHFORD: So usually when we look at statutes like this or any kind of a criminal statute that borders on criminal statute, we try to address wrongs that are occurring in our community, and I just don't know if there's a wrong that's being committed in our community that rises to this level. And I... [LB1076]

JORDAN AUSTIN: Well, I think this is a chance to pass a preventative measure. Lots of times legislation tends to be reactionary to situations that have happened, and in a sense that's what the federal bill was and that's what, you know, several other states are doing. In Kansas we are running this legislation as well and that is reactionary to what happened in Greensburg. But as far as the other states, 24 that have passed it, it's more preventative, to prevent this situation from ever occurring. [LB1076]

SENATOR ASHFORD: Did this all kind of happen in one year or two years or...? [LB1076]

JORDAN AUSTIN: This passed the federal level in '06. The hurricane was, I believe, in '05, and this has been going on since '06 at the state level. [LB1076]



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SENATOR ASHFORD: So there are national...your organization has drafted legislation?  
[LB1076]

JORDAN AUSTIN: It was House Bill 5013 that passed in 2006. [LB1076]

SENATOR ASHFORD: So this is sort of a national effort by the NRA. Would that be a fair comment? [LB1076]

JORDAN AUSTIN: Yes. [LB1076]

SENATOR ASHFORD: Okay. That's all I have. Thanks. [LB1076]

JORDAN AUSTIN: Thank you. [LB1076]

SENATOR ASHFORD: Good afternoon. [LB1076]

BUD CALLAHAN: Good afternoon. [LB1076]

SENATOR ASHFORD: Welcome back. [LB1076]

BUD CALLAHAN: Thank you. Bud Callahan, C-a-l-l-a-h-a-n. I'm in support of LB1076 because I believe it is a preemptive bill. And to answer your question, sir, that's one of the reasons we need something like this, so it clearly defines for the small communities and so on out, because there, as you are well aware, there's more to the state than what's just east of Seward, Nebraska. When we go out west, this bill would also impact people out there. And on a very simple level, let's suppose that we do have a disaster, tornado or something, in which the local sheriff declares an emergency and I, as a rancher, am going about the sad, heartbreaking task of having to put down some damaged animals, some injured animals, and since he has declared an emergency he would have a right to take away this simple .22 rifle that I would be carrying to do this. Likewise, I could not protect the livestock and swan from predators or whatever that might be out there. So I mean these bills are a lot more broad reaching than this. And as Senator Ashford said, taking it back to the larger cities, for example, as soon as you do something that either causes someone to be feel threatened or even fire a firearm in the cities of Lincoln or Omaha, you're in violation and at that point your gun certainly is susceptible to be taken from you. And in the case of where weapons are found, I think it's only prudent that they be picked up by anyone and the place and serial number and so on be logged and then the instruments would be secured. I think that behooves any of us, whether we find it alongside the roadway or wherever, that that be taken care of. So I have no further, other than I strongly support this and I think it would clarify and make it very clear in the state that this...where the smaller communities and so on stand, that we're all on the same page. [LB1076]

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SENATOR LATHROP: Okay. [LB1076]

BUD CALLAHAN: Any questions? [LB1076]

SENATOR LATHROP: Anybody have any questions for Mr. Callahan? Seeing none, thanks for coming down again. [LB1076]

BUD CALLAHAN: Thank you. [LB1076]

SENATOR LATHROP: Good to see you. Are there any other proponents of LB1076? (See also Exhibit 18.) Is there anyone here in opposition to LB1076? Seeing none, Senator Rogert, would you like to close? [LB1076]

SENATOR ROBERT: I just was taking some notes there as you were questioning Mr. Austin. I think maybe to answer your question a little bit, it addresses both things you were asking about, as far as going into a house or taking it off a person. And I don't think that if a law enforcement official took it out of somebody's house to prevent it from being stolen, put it in a trailer until somebody claimed it, that wouldn't be in any violation of this law because basically they're protecting them at that point from getting stolen, as long as they said, when you come up with your driver's license, say this is where I live, those are my guns, can I have them, no problem. I also don't think that this weakens any of the state's legislation we have now, and it's not aimed at stopping a body such as ours from creating more firearm legislation. I think maybe if you look on line 2 of the bill, right after "additional" maybe the word "temporary" could be thrown in there and that would maybe clearly define a little bit more of what we're looking to do. It's to stop a mayor for saying for the next three weeks we're going to get all the weapons. The chief of police in New Orleans, after the disaster of the hurricane, basically announced to the public, we're going to have all the guns and we're going to enforce the law. And of course, they got all the guns from the people who were in defense and then they weren't able to enforce the law, so then there were more problems and more crimes that happened. You know, Senator Ashford asked about, if there was a racial skew or a riot or something like that, how do you decide who is in offense and who is in defense, and that is kind of where you have to decide about the law-breaking possibilities that are going on. It's pretty easy to go get the weapons from those who are just standing there defending, but you're never going to get the weapons from those who are looting or offending with a weapon, and that is against the law. To stand in defense with a weapon is not against the law, but to commit a crime or take offense with one is. So I hope maybe that kind of clears up what our intents are with this. And if the language needs to be cleared up, we can certainly work with you. [LB1076]

SENATOR LATHROP: Okay. Any questions for Senator Rogert? Seeing none, thanks, Kent. [LB1076]

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SENATOR ROBERT: Thank you. [LB1076]

SENATOR LATHROP: That will conclude our hearing on LB1076. LB1054 and Senator Karpisek will be next. Senator, good to have you back. [LB1076]

SENATOR KARPISEK: Oh, well, it's great to be back. Are you ready, Senators? [LB1054]

SENATOR LATHROP: We are. You may proceed. [LB1054]

SENATOR KARPISEK: Okay. Thank you, Acting Chair, Vice Chair Lathrop. My name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I represent the 32nd Legislative District. I'm introducing LB1054 today, which would create the offense of unlawful sexual intercourse. The reason I'm introducing this bill today is something that happened in my district. A 19-year-old male had sex with a 15-year-old female. There are other factors that wed into this case. I feel the lawyer didn't...his lawyer didn't do a very good job, but he ended up getting five to ten years in jail. I was hoping to have an interim study last year and when the case came up about using rape and the other word in court, Senator Ashford elected to do that instead of this interim study. But I did work with Senator Ashford and his staff over the interim and we came up with LB1054. Since I have introduced it, I have found out that there are problems with the bill and a few people have brought it up and I am looking forward to working with them and the committee to straighten out any potential problems that are in the bill. There is no intent on my part to make a forced rape less punishment than it is right now. That is not at all what I'm trying to do. My intent on this bill is to try to make some age factors in nonforced sexual intercourse, which we would normally say statutory rape. The victim cannot consent because they are not 16, age of consent. And that's as far as I've got written so now I've got to just go off of what I'm trying to do. We put in, if there would be a difference of four years between the actor and the victim it would be changed to a Class I misdemeanor. And again, these are...I can't say consensual relationships because the victim isn't old enough and that's why we still want a penalty but trying to make it not as harsh. If the victim was six years younger than the actor, it would be a Class III felony, and over six years it would be a Class II felony, which is what the current penalty is right now, is a Class II felony. So what I'm trying to get at in this bill is that if a 19-year-old and a 15-year-old have sex, it's really the same punishment as a 60-year-old and a 15-year-old, or a 14-year-old or 13. So that's what I'm trying to get at in this, especially I guess the Romeo and Juliette type of relationship. Also, in LB1054 there would be a positive defense where if you...the actor had thought that the victim was 16 and would have had every reason to think that the victim was 16 years old, that that could help in their case. Again, I think that there should be some lines drawn here on different ages between the actor and the victim. Again, I realize that there may be some issues that have come up that are not intended at all. And again, I would just like to work with the

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committee and the people that have brought the problems and try to hammer something out if the committee would so desire. And with that, I will take any questions. [LB1054]

SENATOR LATHROP: Thanks, Senator Karpisek. Senator Chambers. [LB1054]

SENATOR CHAMBERS: Senator Karpisek, are you going to prioritize this bill? [LB1054]

SENATOR KARPISEK: No, Senator, I am not. [LB1054]

SENATOR CHAMBERS: Okay. I don't have any questions. Thank you. [LB1054]

SENATOR KARPISEK: Thank you. [LB1054]

SENATOR LATHROP: Seeing no other questions, thank you. [LB1054]

SENATOR KARPISEK: Thank you. [LB1054]

SENATOR LATHROP: Proponents of LB1054. Proponents? How about opponents of LB1054? Okay. [LB1054]

MARY LARSEN: (Exhibits 7 and 8) Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Mary Larsen, L-a-r-s-e-n, and I am the community affairs director at YWCA Omaha. In the 29 years that I've worked at YWCA, I've seen many positive statutory changes in Nebraska law addressing the definition of sexual assault, child victims, corroboration, in addition of a rape shield law. These changes have benefited victims of sexual assault. YWCA Omaha strongly opposes LB1054 because it moves the state of Nebraska back in time, prior to 1974 when the rape statutes governing Nebraska originated in the 1890s. As a member of the Governor's Task Force on Sexual Assault in 1985, and the Attorney General's Task Force on Sexual Assault in 2005, I have firsthand seen the concern and interest on the part of public officials in regard to the issue of sexual assault. Their efforts to address best practices, educate Nebraska citizens, and enhance legislation were forward thinking. At the same time that statute changes have occurred, educational programs were reaching students in schools, law enforcement agencies created specialized units, prosecutors were specifically trained, and hospitals offered specialized nurses to conduct the examination. Yet even with the communities becoming more sensitive to victims' needs, the number of sexual assaults being reported to law enforcement does not reflect the extent of the crime. This was a major concern of the Attorney General's Task Force. Any plan to develop adequate statewide efforts is hampered when the scope of the problem of sexual assault is unknown. Difficulties in obtaining estimates of rape stem from the fact that many rape victims are reluctant to disclose their rape experiences to other people. In one major national study, victims reported rapes to police in only 16 percent of the cases. In Nebraska, rape crisis centers hear from at least twice as many

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victims as law enforcement. It is also true that not all women or children who are raped seek services from rape crisis centers or other support agencies. The major changes in the proposed legislation could have unintended consequences in that even fewer victims will report their assaults since the proposed legislation treats specific sexual assaults as inconsequential through its change in definition and punishment. Several years ago, YWCA established a Sexual Assault Advisory Committee and the legislative subcommittee has reviewed some of the statutes, and they're very interested in making some possible changes to the statutory rape law. Those possible changes would broaden protection for young people. Changes in Nebraska laws have been a continuous refining of statutes with the clear intention to hold rapists accountable. The penalties set forth in the current statutes address the serious nature of sexual assault and the intense impact on a victim. LB1054 abandons common sense by creating the offense of "unwanted sexual intercourse," language that is repugnant to any individual who has been victimized. It also allows in some circumstances for penetration of a victim under 16 to be categorized as a misdemeanor, which is shameful. The changes in LB1054 provide for less protection for young Nebraskans and sets the Nebraska sexual assault legislation back a century. I urge the committee not to advance LB1054 from committee. Thank you. [LB1054]

SENATOR LATHROP: Thank you. Are there any questions for Ms. Larsen? Seeing none, thank you. Next proponent. [LB1054]

HEIDI WILKE: Good afternoon. My name is Heidi Wilke, W-i-l-k-e. Thank you for your time today and for considering my remarks concerning LB1054. As a survivor of kidnapping and rape in 2002, I have been blessed to be involved with various aspects of rape and sexual assault from an advocate's perspective in both survivor treatment and legislative reform. While I believe the intention of Senator Karpisek's introduction of LB1054 is well intended, I fear the consequences of unintended results. As a society, we have unwittingly minimized the impact of words related to rape, effectively rendering the word "rape" banned in a recent Lincoln trial. Our Nebraska statute refers to sexual assault dozens of times in its definitions of various degrees of sexual assault. Nowhere to be found in our statute is the word "rape." Yet, I assure you on January 30, 2002, I was raped and my rapist is serving decades in prison for his crimes. Had we been compelled to charge my rapist with the crime of unlawful sexual intercourse, as defined in the language introduced by Senator Karpisek's LB1054, one can only imagine the challenges this would present. At a time when statistics suggest that one of four women will be raped on campuses this year and one in eight in the general population, we need not give those that prey on women in our society the convenience of hiding behind words and phrases which diminish the horrific, dignity-stealing crimes they commit. I ask that you not forward this bill at this time. Thank you. [LB1054]

SENATOR LATHROP: Thanks, Heidi. Are there any questions for Ms. Wilke? Seeing none, thank you. [LB1054]

JACKIE THIELEN: My name is Jackie Thielen, T-h-i-e-l-e-n. I'm a nurse practitioner in Omaha, Nebraska. The emergency department in which I work provides care for a large number of adolescent and adult patients from Douglas and surrounding counties who seek care and evidence collection related to a chief complaint of sexual assault. It is my belief that LB1054 would make the work of the healthcare provider more difficult and could negatively impact patient outcomes in two areas, including care provision and evidence collection. Healthcare providers are guided by best practice protocols. In the case of sexual assault, the national government and numerous scientific publications offer best practice criteria for evidence collection and healthcare for patients whose chief complaint is sexual assault. The literature is virtually silent in regards to the term "unlawful sexual intercourse," a term introduced by this legislation. It would be rare today for any person to present to an emergency department following consensual intercourse for treatment. What is the provider to do if that very thing were to occur, as may result if the term "unlawful sexual intercourse" is adopted. Given the confusion and uncertainty regarding the term, care provision could very well be increasingly varied as providers attempt to make sense of the term and where their patient fits within this ever increasing medical/legal confusion of sexual assault. The potential for undertreatment of some and possibly invasive overtreatment of others is a very real concern. In regards to the evidence collection, Nebraska state statutes address the sexual assault evidence collection kit and even assigns financial responsibility for services rendered in this regard. It is silent in the case of unlawful sexual intercourse. In fact, the kit used for evidence collection is labeled sexual assault evidence collection kit. Should this kit be used for alleged unlawful sexual intercourse? Imagine the healthcare provider's confusion on a busy shift when they must quickly make that determination. If, as a result, time-sensitive evidence is not collected, the evidence needed by the patient and possibly the accused will be lost forever. And if collected but not warranted, imagine the invasiveness, embarrassment, emotional stress, and costs needlessly incurred. Current Nebraska state statute assigns fiscal responsibility for cases of sexual assault to the investigating agency but again is silent in regards to unlawful sexual intercourse. This means the cost of the exam and evidence collection could be shifted to the well-intentioned care provider institution or, even more sadly, to the patient or family. Given the uncertain impact of this bill, it is my belief that it should not go forward. Thank you. [LB1054]

SENATOR LATHROP: Thank you very much. Are there any questions? Doesn't look like it. Thank you. [LB1054]

MARC DELMAN: (Exhibit 9) Members of the committee, my name is Marc Delman and I'm the deputy county attorney for Sarpy County, Nebraska. I have actively been engaged in the practice of law for over 28 years, both as a prosecutor and criminal defense attorney. In the years of my practice, I have represented both victims and defendants in hundreds of sexual assault cases and I have been called upon as an

expert to speak on this topic both across the state of Nebraska and in many national venues. I am one of the contributors to the current Nebraska laws on child sexual assault, incest, rape shield, as well as the section on obscene material. While this is a topic that is not easy to embrace, I appear before you today as someone who is able to shed light on the most humane and appropriate manner to handle these sensitive and intimate crimes. At the outset, I must impress upon you that LB1054 is a poorly constructed solution to these heinous offenses. Dr. Charles Warren, professor of psychology at Case-Western University, found in his study of adolescent sexual behavior that by the time American teenagers have reached the age of 16, 50 percent of them will have had sexual intercourse, and over half of those occasions will have been with an older partner, older than 16. This figure translates into a staggering number of statutory rape cases. This high incidence poses a serious burden for the criminal justice system as it means that there are at least 5 million cases of statutory rape every year that could be prosecuted. Although the desire to seek justice is paramount, the reality of handling this huge number of cases is unattainable. Due to the predicament, coupled with the inadequacies of the current statutes by which such crimes are charged, the criminal justice system has had no choice but to allow some of these cases to fall through the cracks. Furthermore, there are considerable risks inherent in adolescent sexual conduct, and a myriad of ways in which minors, because of their inexperience, are vulnerable to exploitation and coercion in their sexual interactions. It is because of this that many states, by the mid-1990s, began vigorous enforcement of statutory rape laws. Therefore, while it is of paramount importance for the Judiciary Committee to reexamine Nebraska's statutory rape laws, the bill you have before you does nothing to accomplish the necessary reform and, in fact, if enacted, would do irreparable harm to all victims of sexual assault. There are three glaring errors in the construction of this bill and they are as follows. First of all, this bill as written...as it is written uses the term "unlawful sexual intercourse" to describe an instance of sexual assault. The term "sexual intercourse" should be reserved for the act which occurs between consensual adults, and adding the word "unlawful" does not convey the concept of violence that is the key attribute of sexual assault. Using this term gives legitimacy to the act, but sexual assault is rape. Further, the idea of creating a statute that would recognize a sexual assault as a misdemeanor is reprehensible. Sexual assault is a violation of a human being, and the difference in age between the perpetrator and the victim should be irrelevant. Such behavior should be prosecuted as a felony. Lastly, as written, the bill allows the affirmative defense for the perpetrator, if by a preponderance of the evidence it can be shown that the perpetrator thought that the victim was 16 years of age or older. The burden of proof in a criminal case is beyond a reasonable doubt, which is a significant burden for the prosecution to prove. By allowing the defense to merely show preponderance as an option for criminal offense, it will make it virtually impossible to bring these perpetrators to justice. It will be impossible to effectively prosecute these odious crimes without proper, well-thought-out legislation. [LB1054]

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SENATOR ASHFORD: Marc. Marc, sorry. Just go ahead and sum up, just because I have to keep everybody on course here. [LB1054]

MARC DELMAN: Certainly. What I'm asking this committee to do is propose an interim study to table this bill and let us really get to the root of the problem. Any questions? [LB1054]

SENATOR ASHFORD: Any questions of Marc? Thanks, Marc. [LB1054]

STEPHANIE SHEARER: Good afternoon, members of the committee. My name is Stephanie Shearer and I am a deputy Douglas County attorney. I also serve as a member of the Sexual Assault Advisory Committee at the YWCA and I am here today in opposition of this bill on behalf of the Douglas County Attorney's Office. I just want to touch on something that Mr. Delman just mentioned, which is the affirmative defense that this bill establishes as it's proposed. A preponderance of the evidence is a civil burden. There is no place for that burden in a criminal prosecution. Other concerns that arise from this is that there's no other affirmative defense in our statute that places a separate standard of proof on a defendant, for example, affirmative defenses for false imprisonment, carrying a concealed weapon, resisting arrest, etcetera. They don't place a burden of proof on the defendant. There's a question of constitutionality here when you're shifting the burden from the prosecution to the defendant. The law requires that the burden does not shift to the defendant and this bill, as it's proposed, appears to do that. Practically speaking, this affirmative defense opens up Nebraska to many dangers and enables predators. For example, if there was an Internet predator who was having a conversation with a young girl, 12, 13, in Nebraska and she, on the Internet, indicated that she was 16 years old, and if that person did then go and have some sexual contact with this individual, an affirmative defense, preponderance of the evidence, all this individual would have to do would be bring in a copy of an e-mail and say, look, she told me she was 16, so this is excused. I think this affirmative defense seriously threatens the children of Nebraska. These statutes are meant to protect our children and this would put our children at risk. One other very brief thing I would like to mention is that in the proposed amendments relating to this statute, Nebraska Revised Statute 28-321 is not amended. That's commonly referred to as the rape shield act. It specifically refers to victims of sexual assault, providing those victims protection. It does not refer to or have any language regarding unlawful sexual intercourse. Like Mr. Delman's request, at this time the request is to table this bill to do further study. Thank you. Any questions? Thank you. [LB1054]

SENATOR ASHFORD: Well, it doesn't really need...and then your opinion would be that it doesn't need any real study. I mean the way the law is now is... [LB1054]

STEPHANIE SHEARER: There are incidents that occur, for example, when a 15-year-old and an 18-year-old have consensual sex, that there's... [LB1054]



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SENATOR ASHFORD: Okay. So there is some room for... [LB1054]

STEPHANIE SHEARER: ...obviously there is some question. [LB1054]

SENATOR ASHFORD: Okay. [LB1054]

STEPHANIE SHEARER: And, however, I don't believe that this law addresses that particular issue. [LB1054]

SENATOR ASHFORD: Okay. So there may...there are issues, but not as addressed here. Okay. [LB1054]

STEPHANIE SHEARER: Yes. [LB1054]

SENATOR ASHFORD: Thank you. [LB1054]

STEPHANIE SHEARER: Thank you. [LB1054]

SENATOR ASHFORD: Next opponent. [LB1054]

MAUREEN GALLAGHER: (Exhibit 10) Good afternoon. I'm Maureen Gallagher, G-a-l-l-a-g-h-e-r. I'm the Sexual Violence Program coordinator of the Nebraska Domestic Violence Sexual Assault Coalition. Our coalition represents the 19 programs across the state that provide crisis intervention services to victims of sexual assault. I'm here today on behalf of the coalition and the network of programs to oppose LB1054. It is estimated that one in three females and one in six males will be sexually abused before they reach their 18th birthdays, and in 2005 in Nebraska, more than 12 percent of high school girls reported that they were forced to have sex in the past year. It is estimated that only one in five sexual assaults are ever reported to law enforcement. Victims of sexual assault do not tell because they fear not being believed, fear a nonsympathetic justice system, and fear they are to blame. LB1054 will further impede victims' already limited access to services, support, and justice. LB1054 moves this section of existing law, 28-319, section (1)(c), which states that when an actor is 19 or older and the victim is at least 12 but less than 16, the actor is guilty of sexual assault in the first degree, over to the new statute we're talking about called unlawful sexual intercourse. Under Nebraska law, children under 16 cannot give informed sexual consent. Age parameters in sexual assault statutes set a standard around minimum age of consent to protect youth from being coerced into sexual relationships with adults when they are not developmentally ready. We have laws around what age one can drive, vote, purchase cigarettes and alcohol. These laws protect children and do not leave it to their choice. A 19-year-old has more power than someone under 16. A 15-year-old is typically a freshman in high school, a 19-year-old typically the age to be a

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freshman in college. A 15-year-old may be interested in the social status and opportunities associated with an older partner. Adults, however, have the responsibility to follow the law and make appropriate legal choices about their behavior, including with whom they have sex. A 19-year-old is more likely than a 15-year-old to have a car, to have money, a job, more sexual experience, be trusted by adults, have access to alcohol and drugs. Adults with this power can groom, coerce, and manipulate children into a sexual relationship by giving them attention, promising to take care of them, telling them I can't stop now, I love you, you're so sexy for your age, your parents like me so they won't mind, you have to stay, I have a car and you can't drive. Sexual assault is a source of severe trauma and the most common cause of posttraumatic stress disorder in women. It is one of the most emotionally and physically intrusive traumatic events made worse by the burden of victim-blaming myths that permeate society. A sexual relationship between a child and an adult, even without physical force, will have adverse effects. Victims may suffer emotionally as they are forced to keep the secret, be coerced into protecting the perpetrator, or become pregnant or contract an STD or STI which can be physically traumatic. LB1054 serves to protect adult perpetrators and weaken consequences, rather than protect and provide justice for young victims of sexual assault, coercion and exploitation. The coalition opposes LB1054 and urges that it not be passed out of the committee. There any questions? [LB1054]

SENATOR ASHFORD: Any questions? Seeing none, thanks. Other opponents? How many other opponents do we have here? All right. Good afternoon. [LB1054]

TIM HOEFT: Members of the committee, my name is Tim Hoeft. I'm the Phelps County Attorney, my last name spelled H-o-e-f-t. I'm from Holdrege, Nebraska. I'm here on behalf of the Nebraska County Attorneys Association to express our opposition to LB1054. I know time is a valuable commodity so, rather than be redundant, a lot of the reasons that the County Attorneys Association chose to oppose the bill were already expressed by Ms. Shearer and Mr. Delman and...but our primary concern was with the affirmative defense. We don't believe that the evidentiary standard is adequate. In addition, we believe that the affirmative offense (sic), as it's written, applies to anybody that engages in sexual contact or sexual intercourse with someone under the age of 16, and I think that opens a whole Pandora's box, further victimizes the victim as they have to rebut the fact that they didn't appear 16 on the day of the event, they didn't represent themselves to be 16 on the day of the event. And so we have some concerns with that affirmative defense. In addition, we believe that this issue was debated at length when the first-degree sexual assault bill was initially passed and we believe that at that time the Legislature determined 16 to be the age at which one could consent to sexual acts, and we don't think that things have changed enough to warrant reducing that age or minimizing the act of sexual intercourse with someone under the age of 16 based on the reasonable belief that someone thought they were 16 at the time that they engaged in the conduct. As an association, we would be willing to be involved in any interim studies

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or any attempts to rewrite the bill so that...it's our goal as prosecutors to make sure that we have good law that comes out of the Legislature and not something that's going to create a greater burden on the judicial system. Are there any questions? [LB1054]

SENATOR ASHFORD: Any questions? Thank you. [LB1054]

TIM HOEFT: Thank you for your time. [LB1054]

SENATOR ASHFORD: Make sure to sign a sign-in sheet, too, before you... [LB1054]

TIM HOEFT: I did. I did. [LB1054]

SENATOR ASHFORD: Oh, you did. [LB1054]

TIM HOEFT: Yes. [LB1054]

SENATOR ASHFORD: Okay. Sorry. (See also Exhibit 17.) Any neutral testifiers? Okay. Senator Pahls. [LB1054]

SENATOR KARPISEK: Can I close, Senator? [LB1054]

SENATOR ASHFORD: Oh, you're here. I didn't see you. Usually you're way in the back. [LB1054]

SENATOR KARPISEK: Thank you, committee members, and I also want to thank the people that came to oppose the bill and their willingness to work with us. Again, my intent was never to do anything to lessen the crime of a forced sexual relationship. If I had my way, I would strengthen that quite a bit, but Senator Chambers is trying to do away with one of those things that could happen to people. I'm (laugh) it upsets me greatly though. [LB1054]

SENATOR ASHFORD: What would that be, Senator Karpisek? [LB1054]

SENATOR KARPISEK: I don't know. (Laughter) I don't know what that one is, but it does upset me and I apologize for anything that I brought up that made people really have to go through their experience again. But I do appreciate their testimony and, as they said, there are some problems in this law and I think that we do need to look at them. And I appreciate your time. [LB1054]

SENATOR ASHFORD: Thank you. And you've prioritized another one of our bills. [LB1054]

SENATOR KARPISEK: Yes, I have. [LB1054]

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SENATOR ASHFORD: Or your bill that came out of our committee, so... [LB1054]

SENATOR KARPISEK: Yes. [LB1054]

SENATOR ASHFORD: Okay, great. Thank you, Senator. [LB1054]

SENATOR KARPISEK: Thank you. [LB1054]

SENATOR ASHFORD: Senator Pahls. LB1097. [LB1097]

SENATOR PAHLS: (Exhibit 11) Good afternoon. My name is Rich Pahls, P-a-h-l-s. I represent District 31, in Omaha, Nebraska. LB1097 allows federal law enforcement agencies to use undercover license plates and undercover driver's license. What I'm going to hand out is a sheet. I would refer you to Side A and then Side B. Side A, I'll just read a couple until it comes around to you. These are the plates that are currently allowed in the state of Nebraska: Games and Parks, the Brand Committee, the State Fire Marshal, Department of Revenue, communicable disease control, Department of Agriculture, Department of Insurance Fraud. That is...those are currently allowed. On the back side, or the B Side, are the divisions of...that I'm trying to have us take a look at or investigate today. As the bill states, the application is made to the Department of Motor Vehicles. Any agency that utilizes this tool must pay all the fees normally required for plates or licenses, and the records at the DMV are kept confidential. We believe that we need to allow fed tags to deal with things such as fraud, extortion, drug dealers, terrorists, gun runners, sexual predators and the like. Just to let you know, a number of states do have this already available to them, including Iowa and Missouri. And we do have a couple of proponents, I think, who will be able to identify the need. [LB1097]

SENATOR ASHFORD: Oh, I'm sorry. Oh, what happened? [LB1097]

SENATOR PAHLS: No, really, I'm finished. I've stopped, I've stopped. [LB1097]

SENATOR ASHFORD: Oh, you're stopped? Oh, you've stopped? (Laugh) Okay, seemed like it was mid-breath there for a moment. But I was just...didn't know. [LB1097]

SENATOR PAHLS: Yeah, that's how I do it at times. [LB1097]

SENATOR ASHFORD: Okay, very well. Any questions of Senator Pahls? Senator Schimek. I was taken aback for a moment, I'm sorry. [LB1097]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Senator Pahls, do you know why that Nebraska doesn't allow federal agencies to use these? [LB1097]

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SENATOR PAHLS: Well, I think this bill has been brought forth several times. And I've read the testimony and, right, I've read the testimony and I understand. [LB1097]

SENATOR SCHIMEK: No, okay. I just wanted to know if you knew? [LB1097]

SENATOR PAHLS: Yes, I do. I know that and I have talked to the Senator. I think the last time it was brought, 2005, by Baker, Senator Baker. I read the testimony. I understand the questions, and I'm sure those questions are still the same. And by reading the testimony I don't...do not know if they were answered fully. But I hope that this time, with a couple of proponents of this, they would be better able to answer some of the issues. [LB1097]

SENATOR SCHIMEK: May I ask, is my memory correct, are we the only state that doesn't allow this? [LB1097]

SENATOR PAHLS: No. No, I'm sorry. [LB1097]

SENATOR SCHIMEK: Okay. No, you didn't say that we were. I just was... [LB1097]

SENATOR PAHLS: Iowa and Missouri, they are two states around us, and they're probably...I don't have the exact number in front of me, but maybe one of my proponents...I think that there's at least a dozen or more. I cannot tell you the exact... [LB1097]

SENATOR SCHIMEK: I'm thinking of something else. And again, it was because of Senator Chambers that we didn't do it and we're the only state left that hasn't. (Laugh) And I don't remember what it was, Senator Chambers, but... [LB1097]

SENATOR PAHLS: We are not the only state. [LB1097]

SENATOR SCHIMEK: ...I was confusing it with this. Okay. [LB1097]

SENATOR PAHLS: No, no, there are a number of states. [LB1097]

SENATOR SCHIMEK: Okay, thank you. [LB1097]

SENATOR PAHLS: And the reason I... [LB1097]

SENATOR ASHFORD: In fact, there's a trend moving the other way, isn't there, Senator Pahls? (Laughter) No, I'm kidding. [LB1097]

SENATOR PAHLS: But on Side A is what Nebraska is right now, and Side B is the agencies that would be affected by this. [LB1097]

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SENATOR ASHFORD: Any other questions of Senator Pahls? Thanks, Rich. [LB1097]

SENATOR PAHLS: Thank you. [LB1097]

SENATOR ASHFORD: Do you wish to stick around or... [LB1097]

SENATOR PAHLS: I will stick around. [LB1097]

SENATOR ASHFORD: Okay. [LB1097]

SENATOR PAHLS: Either that, or go to Exec Session on my other bill. [LB1097]

SENATOR ASHFORD: Yeah, well, it's probably better here. (Laughter) First proponent. Yes, sir. [LB1097]

EDWARD REINHOLD: Mr. Ashford, members of the committee, my name is Edward Reinhold, R-e-i-n-h-o-l-d, and I am the assistant special agent in charge for the FBI for the Omaha Division. The Omaha Division covers both Nebraska and the state of Iowa. As such, I am responsible for all criminal and cyber investigations conducted by the FBI in Iowa and Nebraska. Furthermore, I am responsible for the administrative functions of the FBI for the Omaha Division to include the issuance and use of all undercover identification and registration of FBI's automotive fleet. I would like to thank the committee for allowing me to speak on behalf of the FBI concerning LB1097, introduced by Senator Pahls. The FBI believes that passage of LB1097 would significantly enhance the FBI's ability to conduct proactive investigations across all program areas to include terrorism, public corruption, and drug investigations. Furthermore, the ability of the FBI to register its vehicles utilizing undercover registrations would greatly enhance the safety of our employees. The FBI currently has 60...approximately 60 agents working throughout the state of Nebraska. Of those, 50 percent would or could utilize undercover driver licenses. Should this bill pass, the FBI would register all of its vehicles covertly. Currently, the FBI in the Omaha Division, and in particular in the state of Nebraska, has an ongoing terrorism investigation in a small community. Our investigation is currently being hampered by the fact that our agents cannot register in hotel rooms, cannot drive vehicles that are not registered under our own names, thereby putting both our agents and the investigation in jeopardy. Last month the FBI's Gang Task Force, located in Omaha, identified an out-of-state cocaine trafficker using a hotel in Omaha to cook kilogram quantities of crack cocaine for subsequent distribution throughout north Omaha. The trafficker specifically selected a hotel where they could rely on a dirty hotel employee to detect law enforcement. The FBI could not get a room at the hotel because the agents would have had to utilize their true names. The use of an undercover ID would have enabled the FBI to obtain a room in the vicinity of the bad guy's room in order to closely monitor the illegal activity. The FBI's number one criminal

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priority is the investigation and subsequent prosecution of corrupt public officials. These investigations frequently involve allegation of corrupt law enforcement officers. Should the target of one of these investigations become suspicious, they could easily run the tag of a vehicle and, without an undercover license plate, determine that the vehicle is registered to the FBI. Throughout my 20-plus year career with the FBI, I have been involved in numerous investigations where the subject was able to obtain registration information concerning our vehicles. Since those vehicles were registered covertly, the investigations were not compromised. In summary, the FBI strongly supports the passage of LB1097 for the reasons I delineated above--agent safety and the ability to enhance our investigations. Again, thank you for your time. [LB1097]

SENATOR ASHFORD: Thank you, sir. Any questions? Senator Chambers. [LB1097]

SENATOR CHAMBERS: Can you tell me your name again, please? [LB1097]

EDWARD REINHOLD: Yes, sir. It's Edward Reinhold. [LB1097]

SENATOR CHAMBERS: What happened to a person named Cavanaugh? I thought there was... [LB1097]

EDWARD REINHOLD: Mr. Cavanaugh is currently in Dallas at a conference. [LB1097]

SENATOR CHAMBERS: And what is his title? I thought he was the chief special agent in charge. [LB1097]

EDWARD REINHOLD: He is, he's the special agent in charge, and I am the assistant special agent in charge. [LB1097]

SENATOR CHAMBERS: Oh, you're the assistant. [LB1097]

EDWARD REINHOLD: Yes, sir. [LB1097]

SENATOR CHAMBERS: Okay, I thought maybe he'd gotten dumped quickly because he hadn't been very responsive. I'm concerned about the ready and easy accessibility of guns in north Omaha by subteens. And I've sent information to the FBI; I've made public statements about the FBI's nonresponse. And it seems to me if, in a city the size of Omaha, which is not large, there are some bad people but they're not highly sophisticated as in large cities, and the FBI and the Omaha Police, ATF, and the U.S. Attorney providing, I guess, coordination, cannot find the source of these guns, seems to me to reflect very negatively on the FBI. Now if these young people can find the source of these guns, why cannot the FBI? That's my question to you. [LB1097]

EDWARD REINHOLD: Okay. Well, I would argue the point that we are not being

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successful. And I would point to the investigation that recently concluded, has not been completely prosecuted yet, and that is the investigation into the MS-13 Gang, located in south Omaha. The FBI, and with our law enforcement partners, have been successful in that investigation and have, as a result of it, arrested in excess of 55 individuals involved in gang activity. [LB1097]

SENATOR CHAMBERS: But, Mr. Reinhold, a lot of those people were arrested for being illegal immigrants, too, weren't they? [LB1097]

EDWARD REINHOLD: A portion of them were because the FBI and other law enforcement was unable to determine any direct contact as far as purchase of drugs, use of a weapon, those types of things. But those individuals were in this country illegally and were subsequently deported. [LB1097]

SENATOR CHAMBERS: Right. And if a person doesn't read the paper carefully, like I do, you get the impression that all these were gang members. But I think, from what I read, the majority of the people arrested were more connected with being here illegally. But laying that aside, there was a relatively small amount of drugs confiscated. Isn't that true? [LB1097]

EDWARD REINHOLD: Correct. [LB1097]

SENATOR CHAMBERS: What was the amount? Because you'd remember. [LB1097]

EDWARD REINHOLD: Actually, I do not remember the exact amount. [LB1097]

SENATOR CHAMBERS: But it was a small amount. [LB1097]

EDWARD REINHOLD: Correct. [LB1097]

SENATOR CHAMBERS: And some of the locals have larger amounts of drugs than this supposedly deadly international gang had confiscated from them. Isn't that true? [LB1097]

EDWARD REINHOLD: I'm not quite understanding the question. [LB1097]

SENATOR CHAMBERS: The amount of drugs confiscated from these people, they are supposed to be a dangerous international gang. Isn't that true? [LB1097]

EDWARD REINHOLD: That is correct, they are. [LB1097]

SENATOR CHAMBERS: And the amount of drugs confiscated from them was less than the amount often picked up from people who are local, homegrown drug dealers,



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runners, or users. Isn't that true? [LB1097]

EDWARD REINHOLD: That's correct. [LB1097]

SENATOR CHAMBERS: And the amount of money was not large either, was it? [LB1097]

EDWARD REINHOLD: No, it was not. [LB1097]

SENATOR CHAMBERS: So a lot of people in Omaha didn't even know this dangerous gang was in our midst. Now none of them was accused of having perpetrated a homicide in Omaha or Nebraska. Isn't that true? [LB1097]

EDWARD REINHOLD: No, that's not correct. [LB1097]

SENATOR CHAMBERS: Okay. So some were arrested for homicide? [LB1097]

EDWARD REINHOLD: Correct. [LB1097]

SENATOR CHAMBERS: How many? [LB1097]

EDWARD REINHOLD: It's two to three, I'm not sure of the exact number. [LB1097]

SENATOR CHAMBERS: Okay. That was undertaken because of a national directive that went out, to go after this group, rather than the local FBI agents determining that this group was there and operational and they ought to do something about it. Isn't that true? [LB1097]

EDWARD REINHOLD: No, that's not correct. [LB1097]

SENATOR CHAMBERS: Okay. Tell me why they went after them in Omaha? [LB1097]

EDWARD REINHOLD: The FBI, through our use of confidential sources, was able to identify Omaha in particular as a core city for MS-13, a core city, indicating that they have a significant presence in this community, as such, with direct ties...significant connection to this community, plus direct ties back to El Salvador to the leadership of the MS-13. [LB1097]

SENATOR CHAMBERS: And that investigation had been going on for about 13 months when the arrests were made. Isn't that true? [LB1097]

EDWARD REINHOLD: That's correct. [LB1097]

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SENATOR CHAMBERS: Okay. And I'm not an FBI agent, as far as you know, am I?  
[LB1097]

EDWARD REINHOLD: No, sir. [LB1097]

SENATOR CHAMBERS: But I've followed what the FBI has done fairly closely and accurately in this instance, correct? [LB1097]

EDWARD REINHOLD: Yes, sir. [LB1097]

SENATOR CHAMBERS: Why is it that young people continue to get these guns in Omaha...wait a minute, let me back up. What were the initials of this group? [LB1097]

EDWARD REINHOLD: MS. [LB1097]

SENATOR CHAMBERS: MS-13. [LB1097]

EDWARD REINHOLD: MS-13, yes, sir. [LB1097]

SENATOR CHAMBERS: MS-13 were not determined to be the ones supplying guns to these subteen black youths in north Omaha, were they? [LB1097]

EDWARD REINHOLD: No, sir. That is a...north Omaha and south Omaha have pretty much divided themselves into two separate nationally recognized gangs. [LB1097]

SENATOR CHAMBERS: Well, the guns are still a problem in my community. But I'm not going to belabor that. I just want people to know that I will say to the FBI agent what I've been saying to this committee, what I've said on the floor, what I've said on my program, what I've said in a column that I write, and I'm very disappointed in the FBI in that regard. I was hoping Mr. Cavanaugh would be here. But they often will send somebody to take the heat, and that's why they have assistants. That's their job. Now you had mentioned something about the FBI wanting to be able to act proactively rather than waiting until something happens, maybe somebody files a complaint...(RECORDER MALFUNCTION--SOME TESTIMONY LOST) ...become aware of the fact that a problem is there festering, percolating, and needs to be addressed and they will act proactively. That's what I'm presuming the term "proactive" means. [LB1097]

EDWARD REINHOLD: By passage of this bill it would allow the FBI and other federal law enforcement to respond...respond is probably not the correct word... [LB1097]

SENATOR CHAMBERS: That's all right. [LB1097]

EDWARD REINHOLD: ...to be proactive in our investigation and able to introduce

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undercover employees, officers, agents into situations more readily than we can now. [LB1097]

SENATOR CHAMBERS: I have seen...I have read of instances and I have seen on television instances where the FBI investigated police misconduct without a citizen having to compile a list of complaints, sign a petition, and have an organized demonstration before getting that accomplished. But in Omaha it seems we cannot get the FBI to look at the number police assaults, police killings. And I have filed complaints with the Justice Department and before you came...how long have you been in Omaha? [LB1097]

EDWARD REINHOLD: I got here at the end of June. [LB1097]

SENATOR CHAMBERS: Okay, so it would have been long before you even got here. They show no interest whatsoever. Would that be because they have to work so closely with the police and they, therefore, look the other way? [LB1097]

EDWARD REINHOLD: No, sir. And I would contest your assertion that the FBI does not investigate police brutality in Omaha. The FBI, the Omaha Division, with the majority of our civil rights investigations being conducted within Omaha, run anywhere between 80 to 100 civil rights investigations yearly. [LB1097]

SENATOR CHAMBERS: But nobody in Omaha knows about them, correct? [LB1097]

EDWARD REINHOLD: Well, sir, we don't make it a point of publicizing our investigations when they do not result in any type of action against a law enforcement officer. We, the FBI, will conduct an investigation into allegations of civil rights, whether it's brought to us by a citizen or it is something we have picked up on our own. We will actively investigate that, conduct that investigation, submit that...the results of our investigation to the U.S. Department of Justice in Washington. Washington will make the determination whether or not there is enough evidence to pursue prosecution. We do not publicize the fact that we are conducting these investigations for several reasons. A significant number of the allegations brought to the FBI are determined to be without merit, and it would not be proper for the FBI to besmirch the name of a good officer because someone has a personal vendetta against them or felt that they were treated unfairly, when in fact they may not have been. [LB1097]

SENATOR CHAMBERS: So, Mr. Reinhold, you could tell me that you had conducted 5,000 investigations of law enforcement in Omaha in the last year and I wouldn't have any way of knowing that not to be the case, would I? [LB1097]

EDWARD REINHOLD: That's correct. [LB1097]

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SENATOR CHAMBERS: Okay. So the FBI is always in a position to say, we've been doing something, whether they have or not. I said they're in a position to say that. [LB1097]

EDWARD REINHOLD: Not completely, sir, because there is oversight of the FBI through the Department of Justice and other entities within the federal government which ensure that the FBI is not fabricating information that we would disseminate, and particularly the information that I'm providing to you today. [LB1097]

SENATOR CHAMBERS: Okay. If you...if you're interested, you can probably obtain even more of my file that the FBI compiled on me down through the years, and from my research, I am the only person that J. Edgar Hoover ever directed FBI agents not to have a confrontation with, because I would embarrass the bureau. Now you can find that in my reports. It's there. And it was happening at the time that John F. Kennedy was shaking because of what Hoover had on him, Robert F. Kennedy, the Attorney General, and numerous high ranking officials. And not one of them held that exalted status that I was accorded by the Director, J. Edgar Hoover--leave him alone. I wasn't even in the Legislature then. And that was when I wore a younger man's clothes. So I've had dealings with the FBI. A couple more things: A sergeant, a black female sergeant, who had been stationed at Ft. Omaha, and whose unit was moved to Council Bluffs, had at her work station a noose fashioned and hung by an enlisted person and a captain in the Reserves. She went to the FBI before she came to me. And the FBI told her they were not going to do anything. That's what sent her to me. And I had articles where Mr. Mukasey, who was head of the Justice Department, said they take these complaints seriously and they investigate them and the FBI does. But the FBI turned her away. They turned her away; she came to me. So I began to correspond with some federal officials. And the other day I got a letter from the U.S. Justice Department saying they do take these things seriously. And Mr. Bush, who is the President, had made some comments a few days before I got that letter, and I had remarked that his comments were very reflective of language that I had used in a complaint to him about this incident, to which he did not respond ever. But the language was very similar. Then when I got this letter from the Justice Department, they reference my letter and the language and said that they are monitoring and that the FBI is involved. But the FBI told this young woman, no. So I'm going to have to contact Mr. Mukasey and tell him that he and the FBI are not...they got their wires crossed, because somebody is not telling the truth. And if he thinks the FBI is monitoring, I want to let him know that's not so. This is something you may not be aware of, so I'll ask you a general question first. Isn't it true that there is developing a closer and closer relationship between the FBI and the U.S. Attorney's Office and local law enforcement? And many things that used to be done by local law enforcement are now involving the FBI? In other words, the local police, to me, seem to be in the process of being made an adjunct to the federal government, which has no federal law enforcement agency as such. So local cops are being pressed into the service of the federal government and serving as quasi federal law enforcement

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agencies without being deputized or labeled in that fashion. I'm being blunt. Isn't there developing a closer and closer relationship with the FBI getting more and more involved in local criminal investigations than had been the case formerly? Or have you not been here long enough to be aware of that? [LB1097]

EDWARD REINHOLD: Well, having been in the FBI for 20 years, I understand exactly what you're saying. And I would state that the FBI is becoming less involved in local law enforcement actions. There was a time, and it was not that long ago, that the FBI was heavily involved in fugitives, bank robberies, crimes that occur in a local community. Since September 11, obviously, the FBI's mission has shifted significantly from one of basically a primary law enforcement agency to one of more of an intelligence gathering agency. Our mission, our number one priority is obviously to prevent any future attacks on this country by terrorists. As such, we have been bringing in local, state, and county law enforcement officials into our joint terrorism task forces, into our gang task forces, into various task forces that we have been able to establish. Those task forces allow the FBI and local law enforcement to multiply our forces. In this time of diminishing budgets between the federal government and local governments, it is incumbent upon federal law enforcement and other agencies involved to work together in order to address the most serious crime problems that we can. As such, I have...the Omaha Division, the FBI does not have anyone pressed into service. These agencies voluntarily provide their officers to us. They continue to pay their officers. We do deputize those officers as Deputy U.S. Marshals in order to assist us in our federal investigations. If I could just address the issue concerning the sergeant that was transferred from Omaha over to Council Bluffs, the FBI is working that investigation. You have been misinformed by someone. We were not...we have an open and active investigation in that matter. I cannot discuss the details of that investigation at this point because again it is an active and ongoing investigation. [LB1097]

SENATOR CHAMBERS: But you can tell me when it started. [LB1097]

EDWARD REINHOLD: It started as soon as we were notified of the incident, sir. [LB1097]

SENATOR CHAMBERS: It started when? [LB1097]

EDWARD REINHOLD: As soon as we were notified of the incident. [LB1097]

SENATOR CHAMBERS: Well, no, because she was told by the agent, the FBI is not going to... [LB1097]

EDWARD REINHOLD: Well, sir, I don't know what she told you. All I can tell you is that we have an active investigation and have had an active investigation since shortly after the incident occurred. [LB1097]

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SENATOR CHAMBERS: Okay. Let me tell you how you can check a bit further. She knew a person, she came from Mississippi and knew an FBI agent and told her, told that agent, she told the agent that Omaha said they're not going to do anything. That agent said, I'm going to contact them because they're wrong in saying that. Now you can check what I'm saying to see whether what I'm saying is true or not. And I'm saying it here. It will be recorded. But there's another aspect that I want to bring to you as far as the federal and the locals. There was a change made in the Nebraska Constitution some years ago saying that ill-gotten drug items of value, whether money, vehicles or whatever, would be forfeited; 50 percent of the proceeds would go to the schools in Nebraska, the Public School Fund, and others of it could be used to purchase vehicles to be used in undercover drug activity. And then when they were disposed of something would happen to the money. Well, the current Chief Justice of the Nebraska Supreme Court was the U.S. Attorney. He, along with other federal people, decided they had a way to circumvent the Nebraska Constitution, which he now has sworn to uphold. And they said what we will do--and again you can check to see if I'm telling the truth or not--when there is to be a forfeiture, we will let the feds forfeit it, and we will keep 10 percent of it; then we'll give you the remainder of it, and it circumvents the law in Nebraska because you are not responsible for the forfeiture, and none of that money goes to the schools in Nebraska. And that is a matter of fact. Now when I see federal agents helping to circumvent the Nebraska Constitution, I should not be asked to benefit those federal agencies in the way we're being requested to do here today, because these license plates will not just go to the FBI. There will be the Secret Service, the Treasury, the IRS, the Corps of Engineers, and in fact every federal agency operating in the state of Nebraska. They would all be eligible, wouldn't they? [LB1097]

EDWARD REINHOLD: The way the bill is written, yes, sir, they would. But again, it's incumbent upon the state of Nebraska and I believe the bill addresses this, as to who would qualify for...which agency and which participants of that agency would qualify for either undercover driver's license or a undercover license plate. [LB1097]

SENATOR CHAMBERS: Well, they know that Nebraska officials are pushovers because I'm the only one who will dare raise the issue about the circumvention of the constitution by the U.S. Attorney. But here's what I want to ask you. If this bill is not passed, as it probably won't be, I don't see how it can hurt you because you are conducting investigations now. You have local law enforcement agencies willing to help you, and they can get undercover license plates, can't they? [LB1097]

EDWARD REINHOLD: They can, but that does not help us. [LB1097]

SENATOR CHAMBERS: But you can drive their cars, can't you? [LB1097]

EDWARD REINHOLD: No, sir, we cannot. [LB1097]

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SENATOR CHAMBERS: You cannot. Why can... [LB1097]

EDWARD REINHOLD: Civil liability would preclude us from utilizing their vehicles. [LB1097]

SENATOR CHAMBERS: And you... [LB1097]

EDWARD REINHOLD: In the same sense, it would preclude them from utilizing our vehicles. [LB1097]

SENATOR CHAMBERS: Because of liability. [LB1097]

EDWARD REINHOLD: Absolutely. [LB1097]

SENATOR CHAMBERS: But the two agencies could agree to do that, if they chose to, but they are afraid of the liability and that's what stops them. [LB1097]

EDWARD REINHOLD: Well, yes, sir. I mean the FBI does not want to be held liable for a wrecked caused by an Omaha police officer if he were not within the scope of his employment at the time of the accident, just the same as the state of Nebraska would not want to be held liable for an accident caused by myself if I were not within the scope of my employment but I were utilizing a state vehicle. [LB1097]

SENATOR CHAMBERS: So now if you are investigating Ernie "bin Laden," in Omaha and you're about to put the grabs on me, and for fear of having to pay the cost of a wrecked car, you...the investigation doesn't go forward. In other words, you need the use of a vehicle, but because you fear to have to pay the cost of a wrecked car, you're not going to go forward with that investigation. [LB1097]

EDWARD REINHOLD: No, sir, I would move forward with the investigation, but the investigation would not move forward as quickly as it could possibly move forward. And I'd point out the example that I gave at the beginning of my statement of the current terrorism investigation that we have ongoing in a small community. And the fact that the FBI shows up with vehicles registered to the FBI, and we show up with vehicles that have a county designation indicating that we are out of Omaha pretty much makes us stick out in that community. [LB1097]

SENATOR CHAMBERS: Well, you do anyway, because when I walked in here I knew you were the FBI man, (laughter) because I could look at you. [LB1097]

EDWARD REINHOLD: Well, we probably do. Not everybody looks like me, though. As far as circumventing...the issue you brought up as far as circumventing the Nebraska

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Constitution concerning forfeiture, the FBI, along with other federal agencies, has a policy nationwide, and it's not just in the state of Nebraska, sir, where we will what we call adopt a forfeiture from a local agency. And the purpose of that is not to circumvent the Constitution of the State of Nebraska. The purpose of that is it's more cost-effective for those agencies to come to the FBI or to the federal government and allow us to process the forfeiture through federal court as opposed to through the state courts. It allows them not to have to utilize the manpower that is required to process these forfeitures. The FBI or the federal government does retain 10 percent of that, and that is for administrative costs. That is the cost it takes us to process those claims for the state agencies. The purpose is not to circumvent the Constitution of Nebraska or any constitution of any state. The purpose is simply a financial decision, most likely a financial decision by those local agencies in order to process a forfeiture at less expense to them. [LB1097]

SENATOR CHAMBERS: But the effect of it is that they can now not have to turn that money over or any part of it to the state. Are you aware of that? [LB1097]

EDWARD REINHOLD: Yes, sir, I am aware of that, yes, sir. [LB1097]

SENATOR CHAMBERS: So the effect is the circumvention of that constitutional provision. Whether intentional or not, that's the effect of it... [LB1097]

EDWARD REINHOLD: Well, I would disagree only in the sense, sir, that the Nebraska Constitution allows for a forfeiture within the state of Nebraska through their system. It does not include forfeiture in the federal system. So the...although the effect is that the state of Nebraska is not receiving for their schools the amount of monies that you so desire, it does not...it is not designed to circumvent your constitution. [LB1097]

SENATOR CHAMBERS: But the locals could effectuate the forfeiture, couldn't they, because they wouldn't be involved if the forfeiture took place outside of Nebraska. [LB1097]

EDWARD REINHOLD: Correct. [LB1097]

SENATOR CHAMBERS: And they wouldn't have to come to the federal government to do this, if the feds had confiscated and effectuated the forfeiture. The locals are involved. The last thing I'm going to bring up, then I'm going to stop, because my colleagues think that I lie on the police, they think I lie on the FBI, but they're listening, I hope, and learning something, I hope. They think I say these things only here and behind my hand because I'm afraid to put it out there, but I've made it as public as I can. I was instrumental in getting a law passed that said that no person who is in various forms of custody--a prisoner in a jail, the...on parole, on probation, and various other statuses where they are under the jurisdiction of a law enforcement agency--cannot be



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used as undercover snitches. So what the State Patrol would do, would get the FBI to use the person in that status as a snitch, because the state law does not reach the federal officials, and they know it. And that's why they wanted the FBI to use the snitch. And I can't call the case right now, but I can get it for you if you want the documentation. The federal government and the State Patrol were working on a drug case. And when the matter went to court it was shown that the person who served as the snitch was in a status which the state law would not have allowed, and the provision I put in the law to prevent that from being done is that no evidence obtained through the activity of this snitch could be used in any proceeding whatsoever. So that particular provision of law was invoked. And it was pointed out by the State Patrol and the state of Nebraska that this snitch was working under the auspices of the federal government. What was shown was that microphones, money--and I may not be getting all of the items exactly correct but to give an example--had come...some had come from the federal government, but there was so much involvement with the State Patrol and by the State Patrol that it brought into play that law that I'm speaking of. And nothing that the snitch provided could be used. Now the federal government knows about that law. They knew about it when they asked...when they were asked by the State Patrol to make this snitch a federal snitch and thereby circumvent the state law. So I've got concrete cases where the state law was circumvented with the help of the federal government, the constitution has been circumvented with the help of the federal government. And you can tell me, and I'm going to take your word for it, that the way they circumvent was not the intent that's in effect. But because courts know in other settings how legislatures, other federal officials, and state officials can say we did not actually intend this particular provision to be discriminatory. The court said, okay, we'll look at it like this. It's discriminatory on its face, or it's discriminatory in its effect. And that way you don't have to deal with all this stuff of, well, yeah, it does that, but we didn't intend it, therefore since we didn't intend it, it cannot come into play. If it has a discriminatory effect or impact then it's all the same. So from where I sit the money is not going to the schools. The money is coming into the hands of law enforcement people. If they indeed are sworn to protect and serve, and they swear to uphold the constitution, they should not be part of a stratagem designed to circumvent the constitution and to deprive the public schools of that money. Now I'm the only one in the state of Nebraska who knows that? Maybe so, maybe not. But I'm the only one who will talk about it. And as a public official, I feel it's my job. And I want to make something clear to you, Mr. Reinhold. I'm not holding you or trying to make it appear that I'm holding you responsible and accountable for the things that I'm criticizing. You haven't even been here that long. But even if you had, I read a lot of history. Sometimes military people do things and those things are not appropriate. And culpability is not placed on that lower ranking person because he or she was only carrying out orders. So if Mr. Cavanaugh were here I would be taking a different approach from the one I am now. I'm being gentle and restrained here. But if he were the one who was here I don't know that I would have been this kind and gentle. But you have been, in my opinion, very forthright. I don't think you've been evasive. And had the FBI and the federal people conducted themselves in a way that I think is more in

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compliance with the laws and the constitution of this state my view might be different. If they took an interest in the way that police assault and violate the rights of citizens, I would feel differently. If I didn't have to draw it out of you in the way that I did by pointing out that I got a letter from the U.S. Justice Department telling me that the FBI is involved in this sergeant's case, I'd feel differently. They could have told that woman, we take this seriously and we're going to look into it. But she was told categorically, we're not going to do anything. And that's what brought her straight to me. She had no place to turn. And maybe you can let Mr. Cavanaugh be aware that everybody...not everybody in Omaha thinks that the FBI is behaving as it should. And I promise you this bill is not going anywhere, partly because Senator Pahls won't prioritize a bill like this. And at this stage in the session it's not likely to go anywhere. But you might be able to find somebody who will try to make it an amendment to another bill. And if he's willing to do it, then it might have a chance to get on the floor. But I'll kill it... [LB1097]

SENATOR SCHIMEK: Why are you looking at me, Senator Chambers? (Laugh)  
[LB1097]

SENATOR CHAMBERS: No, I'm not looking at you. I'm not looking at you. I'll kill it deader than a doornail. But that's all that I have. And I thank you. And the next person to testify won't go through all of this because I don't want to chew the same cud twice or plow the same ground twice. [LB1097]

EDWARD REINHOLD: I'm sure he will appreciate that, sir. (Laughter) [LB1097]

SENATOR ASHFORD: Just a second, though. [LB1097]

EDWARD REINHOLD: Yes. [LB1097]

SENATOR ASHFORD: Any questions of Agent Reinhold? Actually, I have one.  
[LB1097]

EDWARD REINHOLD: Yes, sir. [LB1097]

SENATOR ASHFORD: In immigration...investigations of illegal immigration into the state of Nebraska, is...if you are here without...in an undocumented state, you've come here from some other place, is that a violation of criminal statute? [LB1097]

EDWARD REINHOLD: Yes, sir. [LB1097]

SENATOR ASHFORD: What criminal statute is violated if you are residing in Omaha, for example, and you have no documentation to be here? [LB1097]

EDWARD REINHOLD: Assuming that you're here in this country illegally,... [LB1097]

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SENATOR ASHFORD: Correct, or you came...or I don't know how you came in, but you're here, you don't...you overstayed your...whatever it is, you're undocumented now in the state of Nebraska. [LB1097]

EDWARD REINHOLD: To be completely honest with you, sir, the FBI does not investigate immigration violations. That's... [LB1097]

SENATOR ASHFORD: Is that the Immigration and Naturalization? [LB1097]

EDWARD REINHOLD: ...which is ICE. [LB1097]

SENATOR ASHFORD: ICE, okay. [LB1097]

EDWARD REINHOLD: Yes, Immigration, Customs Enforcement, they conduct those investigations. Now that's not to say that during the course of an investigation if we determine, through one of our investigations, that someone is in this country illegally, we can also take action to arrest that individual based on the immigration violation. [LB1097]

SENATOR ASHFORD: How many ICE...well,... [LB1097]

EDWARD REINHOLD: I don't know how many ICE agents are here, sir. [LB1097]

SENATOR ASHFORD: Okay. Do they work...is your office and the ICE office in close proximity? [LB1097]

EDWARD REINHOLD: No, sir. The ICE office is located out near the airport. Our office is over at 108th. [LB1097]

SENATOR ASHFORD: Okay. Do you know, if you don't know that's fine, but the FBI or ICE utilizes local law enforcement for enforcement of violation of immigration laws in any way? [LB1097]

EDWARD REINHOLD: As far as I know they do not. But I could not speak for them. I know we do not use them for that purpose. [LB1097]

SENATOR ASHFORD: Okay. But there's no...this deputization of local law enforcement is primarily involved in drug-related cases, is that correct, or gun... [LB1097]

EDWARD REINHOLD: No, sir. It could be a variety of reasons. [LB1097]

SENATOR ASHFORD: Task force related. [LB1097]

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EDWARD REINHOLD: Our task force officers, we deputize them under Title XVIII and Title XXI. Title XVIII would be criminal, Title XXI would be the drug offenses, and we bring them in, in order to assist us on our gang investigations. We also bring in officers for our Joint Terrorism Task Force and they are deputized under Title XVIII only, because we don't really expect a drug investigation out of a terrorism investigation. [LB1097]

SENATOR ASHFORD: And in a terrorism investigation then you would bring them in under a different federal statute? [LB1097]

EDWARD REINHOLD: Right, they're brought in under Title XVIII at that point, which is a Criminal Code. [LB1097]

SENATOR ASHFORD: And they are deputized and they work under your authority? [LB1097]

EDWARD REINHOLD: Correct. And deputizations of federal officers are case specific. Once the case is done, the deputization is no longer effective. We can also, obviously, renew it and change it if another investigation is launched. [LB1097]

SENATOR ASHFORD: Okay. Do you...is it...do you know of any other jurisdictions where it is...where in the case of a violation of immigration law that federal authorities have deputized local law enforcement, or do you... [LB1097]

EDWARD REINHOLD: No, sir, I'm not aware of that,... [LB1097]

SENATOR ASHFORD: Okay. [LB1097]

EDWARD REINHOLD: ...not at all. [LB1097]

SENATOR ASHFORD: Okay. [LB1097]

EDWARD REINHOLD: And I would like to make one clarifying point. At our last undercover committee meeting, for lack of a better term, undercover coordinators meeting, which represents every one of our field offices, Nebraska is the only state that's not...that does not allow federal agencies to get undercover licenses or IDs. [LB1097]

SENATOR ASHFORD: What? [LB1097]

EDWARD REINHOLD: Nebraska is the only state that does not allow it. [LB1097]

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SENATOR ASHFORD: Oh, okay, okay. Just as an aside. (Laugh) [LB1097]

EDWARD REINHOLD: Just as an aside. (Laughter) [LB1097]

SENATOR LATHROP: Yeah. (Laugh) As long as we're on the bill... [LB1097]

SENATOR ASHFORD: Right, as long as it's...that is somewhat relevant to the bill, so I don't think that's out of order for you to bring that up. But, Senator Pedersen, do you have a... [LB1097]

SENATOR PEDERSEN: Thank you, Senator Ashford. And this is not relevant to the bill either, but it is some information that I could use on another issue. Are you pretty well aware of what's going on with the gang activity in the Omaha area? [LB1097]

EDWARD REINHOLD: Yes, sir. [LB1097]

SENATOR PEDERSEN: On a scale of 1 to 10, with 10 being very sophisticated gang, to 1 being not as sophisticated, and sophistication to me means being organized leadership and that, where is Omaha...where would you put Omaha? [LB1097]

EDWARD REINHOLD: That depends on which gang we're talking about. If we're talking about the MS-13, I would put them as...up in the 7 to 8 range. They were very sophisticated, had a very good hierarchy and had direct reporting back to the leadership in El Salvador. If you're talking about the Bloods or the Crips, it's more of a less organized; I'd probably put them around a 4 or a 5 as far as sophistication at this point. They don't seem to have as many ties back to LA and the larger cities where you see that problem. [LB1097]

SENATOR PEDERSEN: Thank you. [LB1097]

SENATOR ASHFORD: Yes, Senator Chambers. Senator Schimek had a question before you. I'm sorry. [LB1097]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. I'd like to follow up on a question that the Chair asked you and that was about whether being in this country illegally is a criminal violation or not. And I'm not sure you got to complete your answer, but it was always my understanding that it was not a criminal violation. That it's a, I don't know, a civil violation to be undocumented. [LB1097]

EDWARD REINHOLD: A civil action would infer that we could sue them for being in this country illegally. Criminally we can charge them with being in this country illegally. It is a violation of U.S. law. Reentry into this country would be an aggravated charge at that point, which is also...which then becomes a felony, which would...could... [LB1097]

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SENATOR SCHIMEK: Go ahead. [LB1097]

EDWARD REINHOLD: ...which could put these individuals in...incarcerated prior to them being deported. Typically, and I'm probably speaking out of turn because I don't work for ICE, but having worked with them for a number of years on the Mexican border I understand how they operate to some degree. Typically, if an individual is picked up or arrested for being in this country illegally, they can do what is known as a voluntary return. Basically, within 24 hours the Immigration Service will remove them and place them back in the country of origin. If they make reentry, then that's an aggravated situation, at which point they would go before either an administrative judge, which the INS...IRS...I keep wanting to say INS, ICE has administrative judges which handle all the immigration violations, or it can go before U.S. district court, depending on the circumstances. [LB1097]

SENATOR SCHIMEK: Well, is there a penalty connected with being in the country illegally? [LB1097]

EDWARD REINHOLD: There is, but I don't know what the penalty would be. A lot would depend on the circumstances that they are arrested under. Typically, the penalty is going to be deportation, but if they're in here...if it's an aggravated, meaning having done reentry into this country, then they would be looking at some type of prison term. [LB1097]

SENATOR SCHIMEK: Well, I thank you for the information. It conflicts with everything that I had read or thought I understood, so... [LB1097]

EDWARD REINHOLD: You are probably better served talking to someone from ICE as opposed to me. Again, my experience is just a personal experience, having worked on the Mexican border for ten years. But it could be...you could very well be correct and I may be speaking out of turn on that. [LB1097]

SENATOR SCHIMEK: Well, maybe we shouldn't be asking you these questions. But thank you anyway for your response. [LB1097]

SENATOR ASHFORD: Yes. [LB1097]

SENATOR CHAMBERS: I want to make a correction. In the same way that Roger Clemens said, somebody misremembered something, I misasserted something. I said there is no national law enforcement agency...I meant to say no national police force. And I think that is accurate, because the FBI would be considered a law enforcement agency. So I want to correct what I said by indicating what I meant to say. That's all. I wanted that in the record. [LB1097]

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SENATOR ASHFORD: I want to follow up with Senator Schimek's point, because I think this is very topical that some of the things that we're dealing with in our state, I mean, federal officials are equipped to deal with immigration violations. Isn't that correct? I mean ICE officials are trained to do this kind of work, isn't that correct? [LB1097]

EDWARD REINHOLD: Correct. [LB1097]

SENATOR ASHFORD: And when you were working on the Mexican border were you engaged as an FBI agent at that time? [LB1097]

EDWARD REINHOLD: Yes, sir, I was. [LB1097]

SENATOR ASHFORD: And were you working with other federal agencies, including INS or ICE or whatever? [LB1097]

EDWARD REINHOLD: Yes, sir, I worked at that time it was for INS and also the Border Patrol. [LB1097]

SENATOR ASHFORD: Okay. But in any event, were you...did you work with local law enforcement in those investigations or not? I mean was that... [LB1097]

EDWARD REINHOLD: If the investigation was strictly an immigration violation, the FBI would not be involved and local law enforcement was not either. The only time I would see local law enforcement on immigration enforcement type situations was where they would be there strictly to support, not unlike if we were to do a search warrant in Omaha. We typically contact OPD and have a marked unit with us. People recognize that. The bad guys recognize the fact that there's a police car sitting out front. They may not necessarily recognize...we want to make sure that they know...first, we want to make sure the bad guys knows we're law enforcement; secondly and more importantly, we want to make sure that local law enforcement knows that we're law enforcement, so when they get the 911 call, they know it's the FBI conducting a search warrant or an arrest warrant or whatever the situation may be. [LB1097]

SENATOR ASHFORD: So they work conjunctive with you now. I mean they're not...there's no real obstacle to them working with you. [LB1097]

EDWARD REINHOLD: As far as... [LB1097]

SENATOR ASHFORD: Making that sort of arrest or search. [LB1097]

EDWARD REINHOLD: No, not at all because we are executing our federal warrant, not unlike there are times when we will support the local...if there's a state warrant and if

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there's a federal nexus or a federal interest then we will become...we could become involved in their arrests or search warrants as well. [LB1097]

SENATOR ASHFORD: I'm done. I really appreciate your testimony. [LB1097]

EDWARD REINHOLD: Sure. [LB1097]

SENATOR ASHFORD: Extremely interesting. Thank you. Yes, Senator McDonald. [LB1097]

SENATOR McDONALD: Sorry about this. This is probably unrelated to the bill. You were talking about the gang activity. The gang that you talked with El Salvador, ... [LB1097]

EDWARD REINHOLD: Yes, ma'am. [LB1097]

SENATOR McDONALD: ...tell me the relationship with them, and are they natives of that country, or is this drug trafficking, or tell me what the relationship is with El Salvador. [LB1097]

EDWARD REINHOLD: Well, for a little bit of history, MS-13 is what the FBI and federal law enforcement now consider the most violent street gang in the world. They came to this country from El Salvador. Most of them have been involved in obviously illegal activity in El Salvador and were driven from that country at one point, a significant number of them, not unlike when Castro opened up the prisons in Cuba and let everybody come here. We had a similar situation with El Salvador. They migrated here and moved into various communities. Through intimidation and violence they took over most of the...what would...most of the drug trafficking in certain areas in certain communities. Also, they are extremely ruthless. They will...anyone who they believe is involved in providing information to law enforcement, they will execute them. They have very violent tendencies and they have a very violent way of basically beat into the gang. They moved to, primarily, they originally moved to Los Angeles and then have spread throughout the country, Omaha being one of the locations where they come. They had...we think we did a pretty good job of disrupting their organization here. And we were able to show direct ties back to El Salvador. In particular, if someone was to...if someone was an informer against the gang, the gang here, the leadership here, would contact the leadership in El Salvador and ask for direction as to what they should do about that individual. They would also put them in contact with individuals who were bringing illegal drugs into this community and they would set the price. El Salvador ran everything as far as...and then you have what were called local shot callers here, which were basically individuals who were the leadership locally here, and they would report directly back to El Salvador. And I want to make clear, since we're not talking about the bill any longer and we're talking about gang activity, Omaha is not the only community in



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Nebraska which is experiencing a gang insurgence. We see it out in western Nebraska as well. We see it in the immigrant populations who have been here multigenerational, we're seeing their children becoming involved in gang activity. So it is not just Omaha that is affected. We have some pretty significant gang investigations ongoing right now out in western Nebraska as well. So I don't want to give the impression and Omaha and Lincoln are the only places where we have any gang activity. The smaller communities are easily overrun by the gangs. Law enforcement is easily outmanned and outgunned in these small communities. And the FBI and other federal law enforcement are providing support to those agencies in these ongoing investigations. We see that federal prosecution of these individuals is...they typically get a more significant sentence. The punishments are greatly enhanced under the federal, like, RICO charges and those type of charges that we can put against them, where the locals just aren't equipped to pursue those investigations. [LB1097]

SENATOR McDONALD: Thank you. [LB1097]

EDWARD REINHOLD: And again, our undercover licenses and plates would be very helpful in those situations. (Laughter) [LB1097]

SENATOR ASHFORD: Yes, Senator Chambers. [LB1097]

SENATOR CHAMBERS: I'll make a deal. I'll make a deal with you. Now if there was an organization of people who appear to be very respectable, but they were really involved in child pornography throughout the country, would the FBI look at that, or would that be considered a local issue? [LB1097]

EDWARD REINHOLD: That would be an FBI, FBI could easily investigate that, and we do on a regular basis. [LB1097]

SENATOR CHAMBERS: Suppose there were an organization and many of the members committed sexual assaults and sexual abuse against children. Would the FBI look at that organization? [LB1097]

EDWARD REINHOLD: Yes, sir. What you are talking about is no different than any other criminal organization. If there is a criminal organization involved in those type of events, then the FBI would have jurisdiction to investigate. [LB1097]

SENATOR CHAMBERS: What would it take to make the FBI feel an organization is criminal, if that kind of... [LB1097]

EDWARD REINHOLD: Well, first off we need somebody to come forward and discuss that with us. [LB1097]

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SENATOR CHAMBERS: Well, if I come and discuss things that have been happening in the Catholic Church, could I get the FBI to investigate that? Because, frankly, I haven't seen any organization...I read a lot of history. I read all kinds of things. And my colleagues, going by some of the rhymes I write, will wonder exactly what I do read. But I don't believe La Cosa Nostra or the Mafia could have such widespread child abuse in its organization without the FBI looking at it. But they would clean it up themselves. Is it the fact that it's in the Catholic Church? I'm keeping track of that dioceses that are going broke because they're having to sell off property to pay off some of these judgments, they're making deals with prosecutors so that these priests will not be prosecuted and their names won't have to appear on sexual predator lists. And they're getting all of that consideration. But to me, those who occupy a position of trust should be treated more harshly than otherwise. There are people who will turn their children over to these predators and the hierarchy will know that the person is a predator, because he was sent there from another diocese. And they will send these guys to different dioceses around the country knowing that they are predators, and they commit their predation in these new parishes. But everybody, other than me, and some people nationally will talk about it, even some people in the church, with such widespread child abuse, and I just read the other day where one of the priests doing it was found to be HIV positive. They are exempt. The FBI is not looking at them. Why wouldn't they? Is it because it's a church? Well, let's say that it was MS-13 doing the same thing, would that be another thing that would make the FBI look at them because they are corrupting these children and committing sexual acts against them? What would it take to make a church be seen for what it is when you look at the conduct? And this goes all the way to Rome. Joseph Ratzinger, before he became Benedict the XVI, had these complaints. They even had an operation that would train men to be priests specifically for America. And when the scandals broke forth some of these men, middle aged, talked about the kind of sexual abuse that was going on there to some of them, so the church hierarchy knew. And in what might be called the profane world, the secular world, if the corporate officials know what their agents are doing, then the activity of the agent becomes the activity of the corporation, and the corporation as such can be held accountable. But not the church. I'm not going to have you answer that because I don't want to get you in trouble. [LB1097]

EDWARD REINHOLD: I appreciate that. [LB1097]

SENATOR CHAMBERS: Okay. And that's all that I have. [LB1097]

SENATOR ASHFORD: Is that it? [LB1097]

SENATOR CHAMBERS: That's it. (Laughter) [LB1097]

SENATOR PIRSCH: I'm just kidding, I don't...(laughter) [LB1097]

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EDWARD REINHOLD: You're about one of the only ones that hasn't asked, so feel free. [LB1097]

SENATOR ASHFORD: Thank you. [LB1097]

EDWARD REINHOLD: Thank you. [LB1097]

SENATOR ASHFORD: Anybody else wish to talk about this bill? Okay. [LB1097]

TIMOTHY KASUN: Thank you, Senator Ashford. Thank you, senators, for listening. And thank you, Senator Pahls, for sponsoring the bill. My name is Tim Kasun, spelled K-a-s-u-n, and I'm the legislative affairs officer for FLEOA, Chapter 65. It literally stands for Federal Law Enforcement Officer Association and Chapter 65 is Nebraska/Iowa. And basically, it's like the FOP for the federal government, and something that started back in the late 1970s and stuff. So I'm not here representing my agency, because I am a federal agent with the U.S. Treasury Department, but anything I speak on our behalf has nothing to do with my agency but it has to do with the association. Our association consists of FBI, Secret Service, ATF, DEA, ICE formerly known as Customs, INS, Office of Inspector General, and so on and so forth. We have roughly about 65 members and...I think 65-70 members in the state of Nebraska; we have about another 60-70 members in the state of Iowa, which would encompass our chapter; worldwide we have 26,000. So we actually have some people that are at U.S. Embassies and they belong to our association. And let me just kind of touch upon a few things with regards to why we deem that this bill is extremely important. And there's actually two things I think it's very important for. One would be for the safety of people, citizens of the state of Nebraska. The other one would be agent safety. And a lot of people don't realize that the federal government...let me kind of address some of the issues that Senator Chambers kind of brought up with regards to the police force and stuff, so everybody can understand kind of like how the federal government works, because when I graduated from the University of Nebraska-Omaha I had no idea this organization where I work for even existed, which is U.S. Treasury, IRS Criminal Investigation. I learned after the fact. But the federal government, there's a classification, and it's a GS1811, and that's defined as a criminal investigator, special agent. And we get paid the same and we just have different departments that we actually work for: obviously, the FBI, which is the Justice Department; I work in the Treasury Department; there's Homeland Security, which is ICE. GS1811 is a special agent. We're all the same. The only difference is we all have different federal jurisdiction. So as to say is there a police force, if you lump sum everybody as a classification, then we would be, it's just that we have different jurisdiction, federal jurisdiction. And that being said, what happens is there are federal crimes that the state and local law enforcement would never get involved in; for example, like income tax would be one, another one that I know they were talking about with regard to forfeitures. There's the money laundering, I know I'm...that's one of the jurisdictions I have. And there's a lot of money laundering that I do

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not believe the state actually handles. So there's forfeitures that we actually conduct or we'll take from the state because the state doesn't have any jurisdiction in that. So sometimes we'll adopt those. And another thing is with regards to being a federal agent there's a lot of people here, and this is kind of like personal to me, because actually I know Dwite Pedersen from growing up, because I grew up in Elkhorn. And a lot of us actually had to move out of state, and I actually had to move out of state for eight years, worked in Chicago for eight years before I was allowed to transfer back here to Nebraska. And I know several other federal agents do the same thing. But... [LB1097]

SENATOR ASHFORD: You can finish up. [LB1097]

TIMOTHY KASUN: Okay. That being said, is...so some of us actually kind of take it a little personal with regards to growing up here and stuff, thinking that, you know, law enforcement is here to help the citizens of the great state of Nebraska. And then when we get back here sometimes we don't have the tools we need to actually operate and conduct investigations for the public safety and our safety. [LB1097]

SENATOR ASHFORD: Thank you, Tim. Any questions? Would...Senator Chambers. [LB1097]

SENATOR CHAMBERS: What kind of kid was Dwite when he was growing up? Was he a pretty good kid? [LB1097]

TIMOTHY KASUN: Well, actually,...well, it's actually at St. Patrick's Church, since you talked about the Catholics, (laughter) but anyhow, I was an altar boy and he was working at the thing. (Laughter) [LB1097]

SENATOR CHAMBERS: He was? [LB1097]

TIMOTHY KASUN: No, I was. [LB1097]

SENATOR CHAMBERS: (Laugh) Oh, okay. [LB1097]

DWITE PEDERSEN: And I trained him to be an altar boy. (Laughter) [LB1097]

TIMOTHY KASUN: Yeah, he trained me. And then he actually convinced my brother to be a priest. Now he's in Schuyler. [LB1097]

SENATOR CHAMBERS: Okay. Thank you. [LB1097]

SENATOR PEDERSEN: My first altar boy is a priest. [LB1097]

SENATOR ASHFORD: This is a novel we're writing here at this hearing. How many ICE

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officers are there in... [LB1097]

TIMOTHY KASUN: There's roughly, my understanding is roughly...there's under 40, I want to say 30 to 35 ICE agents that actually work here, federal agents that actually work in the state of Nebraska. And we'll say there's just under 200, and that would include all federal agencies. [LB1097]

SENATOR ASHFORD: Two hundred ICE or Home... [LB1097]

TIMOTHY KASUN: No, that would be 200, and that would be all, that would be Secret Service. My agency, there's seven, that actually covers the whole state of Nebraska. I think the FBI has the most, around 80, 80-plus agents or so. Correct me, if I'm wrong. But... [LB1097]

SENATOR ASHFORD: But there are around 6... [LB1097]

TIMOTHY KASUN: Right. And there's some other agencies that may only have...I think Secret Service may have maybe 7, DEA may have like 14, ATF has probably about 10 agents with regards to that. [LB1097]

SENATOR ASHFORD: Has that number changed? Well, let's...I mean, do you know? I mean, has there been an increase in ICE? [LB1097]

TIMOTHY KASUN: With regards to ICE, and actually I have a brother who works for ICE in the...he's not a special agent, but he's an Immigration Enforcement Agent. And he's the one that actually works down at the airport. And they used to be green guys, now they're blue guys. They're the ones that will go out if there's a violation, and then what they'll...they'll normally do is they'll look at the situation, determine what the situation is. And then usually, my understanding, from talking to my brother, is if there's not a criminal violation they're not going to arrest them. Then usually what they'll do is they'll arrest them and then their court, and they're actually setting up court now, they're going to have an immigration court down there. And...but with regard to the special... [LB1097]

SENATOR ASHFORD: And that's federal, though. [LB1097]

TIMOTHY KASUN: Right, that's federal. Because there's different factions of the federal government. And that's what I'm trying to communicate, that there's just so many branches with regards to that. But with regards to talking about the 1811s that are the special agents, and they actually deal a lot in kiddie porn. I know... [LB1097]

SENATOR ASHFORD: But I'm just trying to understand in the immigration area, they're going to have an immigration court set up... [LB1097]

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TIMOTHY KASUN: My understanding, they're in the process of doing that. [LB1097]

SENATOR ASHFORD: At the airport or near the airport? [LB1097]

TIMOTHY KASUN: Well, at their facility by the airport. [LB1097]

SENATOR ASHFORD: Okay. And their full-time job is to work in the area of immigration. [LB1097]

TIMOTHY KASUN: Correct, their enforce of immigration. [LB1097]

SENATOR ASHFORD: And they're trained to do that. [LB1097]

TIMOTHY KASUN: Yes. [LB1097]

SENATOR ASHFORD: And many of them have been trained to...or many of them have done this work in other parts of the country as well? [LB1097]

TIMOTHY KASUN: Yes, some have. [LB1097]

SENATOR ASHFORD: Okay. That's all I have. [LB1097]

SENATOR CHAMBERS: I have a confession to make, since we're in the church realm. When I was younger, I was very...I was considered to be religious. And I really believed those things at one time, probably the way Dwite used to believe things also. And in the church I attended, when somebody got religion or came to Jesus, they called that being saved. It was a summer night, dark velvet blue sky, bright silvery moon, gentle breezes moving the trees. [LB1097]

SENATOR SCHIMEK: (Laugh) There's the novel. [LB1097]

SENATOR CHAMBERS: And my brother--he was grown, he lived someplace else--he came by. I persuaded him to get saved. And it's something that I can never forgive myself for having done. And he became a minister, which he is until this day. So the irony is that he got into church because of me, and then when he got in (laugh) I got out. And I felt that it was a fair exchange. And some people say, well, the church got the better of the deal. (Laughter) He's a good man. [LB1097]

TIMOTHY KASUN: Well, I think you're a good man, too, Senator Chambers. [LB1097]

SENATOR CHAMBERS: Thank you very much. [LB1097]

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TIMOTHY KASUN: We kind of disagree. I'm trying to get you on my side now. [LB1097]

SENATOR CHAMBERS: I know. (Laughter) [LB1097]

SENATOR ASHFORD: There's always time, I guess. Thanks, Tim. No, no, no. [LB1097]

SENATOR CHAMBERS: But let me give him the good news. I won't be here next year and I'm sure you all will be able to prevail then. And I'm not saying that as a joke, because I'm the reason they don't exist in Nebraska and I'm the reason Nebraska is the only state that does not have these plates. But I assure you, you'll be able to get them next year. [LB1097]

TIMOTHY KASUN: Well, I wish we could get them this year. I was actually in a couple of operations where you talked about, you know, the license plates and stuff. And that is true, where there were warrants that we went on, actually they were ICE warrants. And we met, and it was a small community in Nebraska. And they basically said, well, everybody is going to know who you are. I got out-of-state plates on my government vehicle as we speak. And so everybody knows, once all of a sudden you go into certain areas, and all of a sudden all you do is you see these out-of-state plates. I mean, who's it going to be? I mean, it's been going on for a while, so they kind of know. They actually...in the briefing, they actually mentioned that. The other thing was I actually had an undercover operation, which was my operation, and we had an undercover agent that actually came in, and she came in from another part; obviously couldn't get any driver's license in the state of Nebraska. And they actually had, you know, out-of-state license. They came in and I remember being on the cover team. And they're...they go into the meeting area and stuff and they requested ID. And so they were requesting ID, and they go, you're out of state. They go, what brings you up here? And it was in the Omaha area. And she goes, well, they say that...you know, it's her brother or sister, that, you know, they're up here and stuff. Well, what happens is they kept going back to that. And then they started asking, well, where do you live now? What's the address? Where is this? And I remember the other agent right beside me, he goes, this isn't good, this isn't good, they're going to find out. And they're afraid that that undercover agent is going to get hurt. We're just probably less than 30 seconds away of going in there and extracting the undercover agent. So you ask, does it effect? Yeah, it does effect. So, you know, and that's my personal experience. [LB1097]

SENATOR CHAMBERS: Well, look, if the FBI is not averse to using snitches in a way to circumvent the state law, why doesn't the federal government get Congress to authorize the federal government to issue false, fake, or whatever they want to call it, license...driver's licenses so that these agents can have them to flash? [LB1097]

TIMOTHY KASUN: Well, one reason is because, you know, and I'm not an attorney, but my understanding is that the federal government goes and they look at the laws. And if

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there's a state law and there's a federal law, if there's a conflict, and then usually the federal law will supersede. And obviously, you know, a big thing obviously would be like in the fifties in Alabama, where they went, they had segregation. And then all of a sudden the federal government said, no, you can't have that. And, well, there was conflict. The federal government, you know, prevailed, thank God. But... [LB1097]

SENATOR CHAMBERS: Oh, you mean they were supposed to end segregation because of federal laws? When did that happen? [LB1097]

TIMOTHY KASUN: But what I'm saying...but my point, basically, is that with regards to, you know, the laws there is no driver's license provision in federal law. So, basically, what happens then is we adopt the state law. So we're adopting your law in order, you know, not to be able to get them. That's why we're here, we're hoping that you will do it. [LB1097]

SENATOR CHAMBERS: But Congress could do that, though, couldn't they? If they say that... [LB1097]

TIMOTHY KASUN: Well,... [LB1097]

SENATOR CHAMBERS: They could say...they could get my reports. You don't have to do it now because I won't be here anymore. You could say, look, this is an FBI investigative report and they got that fella that the director didn't want... [LB1097]

TIMOTHY KASUN: Right, I understand. I understand where you're coming from. [LB1097]

SENATOR CHAMBERS: ...so we need you to help us. [LB1097]

TIMOTHY KASUN: But the only people we have in the state would be, you know, Chuck Hagel, Ben Nelson, Lee Terry, and so on. I mean, you know, we don't have... [LB1097]

SENATOR CHAMBERS: They would agree with you,... [LB1097]

TIMOTHY KASUN: Right, okay. [LB1097]

SENATOR CHAMBERS: ...because some of them have dealt with me, too. (Laugh) [LB1097]

TIMOTHY KASUN: And then what are we going to do with the rest of the country? The rest of the country doesn't care. [LB1097]

SENATOR CHAMBERS: Right. [LB1097]



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TIMOTHY KASUN: Right. But I care. I care, I'm from here, I care. (Laugh) [LB1097]

SENATOR CHAMBERS: Okay. (Laugh) That's all that I have. Thanks a lot. [LB1097]

TIMOTHY KASUN: Thanks. [LB1097]

SENATOR ASHFORD: Okay, thanks, Tim. [LB1097]

SENATOR PEDERSEN: Thanks, Tim. [LB1097]

TIMOTHY KASUN: Thank you. [LB1097]

SENATOR PEDERSEN: Good job. [LB1097]

SENATOR ASHFORD: Senator Pahls, I don't know if you're...if anybody else wants to testify on this bill. (See also Exhibit 16.) I don't think so. You waive, great. Thank you. All right, moving on, Senator Pirsch, LB1078. [LB1097]

SENATOR PIRSCH: Thank you very...you ready? [LB1078]

SENATOR ASHFORD: Yes. I'm sorry, Senator Pirsch. [LB1078]

SENATOR PIRSCH: (Exhibits 12, 13, and 14) Okay. Thank you very much, Chairman Ashford, members of the Judiciary Committee. I'm State Senator Pete Pirsch, representing the 4th District, also the sponsor of LB1078. LB1078, I think probably useful to structure it this way. I'll talk a little bit about the bill as it's currently written. There is a very small amendment that I've...I think has been passed around already, and talk about that amendment secondly. And then there's also a letter that was passed around from the Department of Health and Human Services in which they propose an amendment. I view that as a very friendly amendment. It's a small one as well. There is no currently...there's no written manifestation of that proposal as of yet, but I will draw one up and introduce it to the committee at a later date. First then, getting back to the heart of my bill as it's written, LB1078 provides for the clerks of the district courts to deliver a copy of any name change order to the Department of Health and Human Services and the Nebraska State Patrol to update the child abuse central register with respect to the Department of Health and Human Services, and the central registry for sex offenders with regard to the Nebraska State Patrol. With respect to the amendment that the Department of Health and Human Services, via the letter, suggests, there is a third registry, an elder abuse registry, and I have no objection adding that language to the bill, and the Department of Health and Human Services, again, administers that registry. The underlying, I guess, harm or...that this bill seeks to cure is that some people who are required to register for these three...two registries and, with the

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amendment, third registry can simply change their name to avoid, easily avoid, registering. And so this bill seeks to make sure that that possibility doesn't exist for avoiding what the law, the spirit of the law, wants to impose on them--the duty to register for convictions by requiring, at the point in time that they have their name changed, the clerk of the district court to inform the appropriate registry custodian of the name change. And so, unfortunately, some people can simply change their name and, therefore, easily not have to register. Is this going to be a great burden on the system? No. There are, when I inquired about it, maybe 30 or 40-some name changes per month statewide. And in response to my question with that, the Clerk of the District Court, Douglas County, indicated that he has about 50 name changes per year, so it's...you know, we're talking about 4 per month. And the clerks of the district court, through NACO, do not oppose this measure. You know, it's not a high volume, but it is important when this happens because of the possible harm. With respect to the amendment that you have received that is in written form before you, that makes explicitly clear that the clerk of the district courts can communicate the name changes to the appropriate registries via electronic format. And so look forward to any questions and I do anticipate there's a number of people testifying here today, and so I appreciate your time. [LB1078]

SENATOR LATHROP: Thanks, Pete. Are there any questions? [LB1078]

SENATOR CHAMBERS: One. What becomes of all this information that DHS is going to have? Because there are some people who have the same name as others, how are they going to know, when they see this name... [LB1078]

SENATOR PIRSCH: Yeah. [LB1078]

SENATOR CHAMBERS: ...which may be the same as a sex offender, but it's not that person? [LB1078]

SENATOR PIRSCH: Right. Good question. [LB1078]

SENATOR CHAMBERS: What happens? [LB1078]

SENATOR PIRSCH: Yeah, excellent question. I asked about that. On the petition for the name change, which is going to be relegated to the registry, it will be crosschecked, versus very...other specific information that's on the name change petition, so that would preclude the possibility of, say, a John Brown or a Tim Smith, common names and information inadvertently...because that happens quite a bit that there are, when you're dealing with databases, common names or more common names. And so I'd invite you to also ask that question with respect to those who testify after me. [LB1078]

SENATOR CHAMBERS: That's all I had. Thank you. [LB1078]

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SENATOR PIRSCH: Sure. [LB1078]

SENATOR LATHROP: Any other questions? Seeing none, thank you. The first proponent of LB1078. [LB1078]

TIM HOEFT: (Exhibit 15) Senator Lathrop, members of the committee, again, my name is Tim Hoeft. I'm the Phelps County Attorney from Holdrege, Nebraska. I'm here on behalf of the Nebraska County Attorneys Association and we are here in support of LB1078. This issue first came to light about a year and a half ago. I had a case in my district wherein an individual was seeking to change his name, from the State Penitentiary, and he had been sentenced there on a charge of felony child abuse. As I reviewed his application for name change, I realized that there was no requirement that he report that name change to the central registry, and the central registry is managed by the Department of Health and Human Services and that's how we track persons who have been prosecuted for and convicted for child abuse charges. Once he changed his name, there was no reporting requirement to the central registry that his name had been changed, and there was no agency that was reporting those name changes. We simply saw a person is required to publish their intentions of or their request for a name change in the local paper for three consecutive weeks prior to their hearing. We noticed that notice of name change and looked into it. My concern became here is an individual who has been convicted of felony child abuse who, with a name change, could avoid detection and, in essence, pass a background check and receive a license to open a day care. And then we realized that, as I had another incidence within the same 12 months where an individual from within the Penitentiary who was a convicted sex offender changed his name, moved back to the community where we had convicted him from, reported to the sheriff, but then moved to Hastings, Nebraska, where he never changed his sex offender registry, never reported in to the local sheriff in Adams County. And then eventually was arrested for violation of the Sex Offender Registry Act but not until he had enrolled in college there and had misinterpreted or misrepresented who he was, what his age was, and became an active student at a local college there, and he was a predator. And so my concern was that we had no reporting requirements of these name changes to these registries where we try to track these individuals. I thought it was a serious public safety issue to protect the vulnerable citizens, those being the children, the elderly and the abused. And so I felt like it warranted some attention. I brought it to the attention of the County Attorneys Association and Senator Pirsch agreed to introduce the bill because he, too, felt it was an important issue. And it's really a public safety issue and it simply asks the district court clerks to convey to those registries that these individuals have changed their names. [LB1078]

SENATOR LATHROP: Very good. Senator Chambers. [LB1078]

SENATOR CHAMBERS: How long had this person been out before he was arrested for

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violation of not registering? [LB1078]

TIM HOEFT: I can't say exactly how long, but I want to say approximately 18 months. [LB1078]

SENATOR CHAMBERS: But he wasn't arrested for having reoffended, had he...was he? [LB1078]

TIM HOEFT: No, he was not. He was arrested for failing to comply with the registry. [LB1078]

SENATOR CHAMBERS: Well, why don't you just require people to make that...give that notification when they change their name and if they don't that's an offense? [LB1078]

TIM HOEFT: There already is a requirement for persons required to register under the Sex Offender Registry Act to report that name change. My concern with that is we're putting the burden on the offender when it's something that could easily be done by the clerk of the district court, which might be a much more reliable source or a more reliable means of reporting those name changes. [LB1078]

SENATOR CHAMBERS: But when you do this, it's similar to, the way I look at it, to requiring everybody, who comes to buy something at a store to get their...or comes into the courthouse for any reason, to get fingerprinted because they might have committed a crime and we want to check them out. In other words, you are creating a system here that will implicate far more innocent people than the other way. [LB1078]

TIM HOEFT: Well,... [LB1078]

SENATOR CHAMBERS: And you don't mind putting innocent people through this, as a prosecutor, because they do it all the time. They bring bills to us like that. [LB1078]

TIM HOEFT: It's no extra burden on the individual seeking the name change, and when their name...when the name is conveyed to the registries, if their name is not present on that registry, I presume that the information will be disposed of. [LB1078]

SENATOR CHAMBERS: So then if I am going to get a driver's license, I'm not supposed to be upset if they're going to send the name of everybody who applies for a driver's license to the FBI or some federal agency to see if that person is wanted, or a terrorist. Because if I'm not a terrorist, I shouldn't care. Isn't that what you're more or less saying, that if I'm not a sex offender then I shouldn't mind my name being sent to this place to see if maybe I am one? Isn't that what you're saying, I shouldn't mind, if I'm not really a sex offender, having my name put through this system? I think that's what I hear you saying. [LB1078]

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TIM HOEFT: And I guess I think you're misinterpreting what I'm saying, but I... [LB1078]

SENATOR CHAMBERS: Well, what are you saying then? If you know that the person is a sex offender then you don't have to send every name of every person who gets a name change. [LB1078]

TIM HOEFT: The problem that occurs is that in the larger jurisdictions, when they publish that legal notice, for instance, in The Daily Record, and the senators from Omaha are familiar with The Daily Record and the number of legal publications that are in that document, there's a great chance that that person's application might slip through as an oversight. Maybe no one from the Douglas County Attorney's Office pays attention to those things, and then someone has effected a name change and they have, in essence, circumvented the system and they've alleviated detection under the central registry because they've changed their name. [LB1078]

SENATOR CHAMBERS: Let me ask you this. Are you requiring the clerks to notify anybody who comes in for a name change that your name is going to be sent to HHS to see if you should be on the sex offender registry? [LB1078]

TIM HOEFT: I don't believe that's contained in the bill, but I certainly have no objections to that notification being given to individuals. [LB1078]

SENATOR CHAMBERS: And then if I come to get my name changed and I see that I'd say, what's the matter with you? You think I'm a sex offender? Are you doing this because I'm a black man? They'd say, we do it for everybody. I'd say, I don't think you do. And you create another bone of contention because as a prosecutor you want to be able to spread a dragnet. Let me ask you this and then I'm not going to continue on this. These kind of bills just rub me the wrong way. I've heard people say, why do you mind the police stopping you and looking through your car if you haven't done anything wrong? They told these black men who were in that dragnet for DNA, if you haven't committed the rape, why do you care? And then I asked them, why don't you want the cops to stop you on the street and go through your pockets? If you don't have a gun or anything contraband, why don't you want them going through your pockets? Why don't you want them going through your wife's purse? Why don't you want them coming through your house and looking in your drawers if you don't have anything to hide? As one Supreme Court judge has said, in America, people have the right to be left alone. Everything cannot be done to placate law enforcement, and on this committee we see it all the time. Cops need this, they want that, and I'm not of a mind to do that. I'm just one person but I haven't really been persuaded and I think you ought to at least be aware of that. And I don't have any more questions. I've expressed my concerns about the bill. [LB1078]

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SENATOR ASHFORD: Okay. Any other questions? Thank you. Any other proponents? Opponents? Neutral? Done. [LB1078]

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Disposition of Bills:

LB1054 - Held in committee.  
LB1076 - Held in committee.  
LB1077 - Held in committee.  
LB1078 - Held in committee.  
LB1084 - Held in committee.  
LB1097 - Held in committee.

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Chairperson

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Committee Clerk