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Judiciary Committee
March 19, 2009

[LB38 LB39 LB145 LB258 LB383]

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 19, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB38, LB39, LB145, LB258, and LB383. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None.
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SENATOR LATHROP: Welcome to the Judiciary Committee. My name is Steve Lathrop, the state senator from District 12, and I am going to start us out this afternoon as we wait for Senator Ashford, who is the Chair, but otherwise tied up right now. Today we have it looks like five different bills that we're going to hear. The order in which we'll hear those bills is posted outside. We'll start out with LB38, then LB39 to be introduced by Senator Flood's legal counsel. Just a couple of rules that we'd ask you to observe. Because we take up five bills at a time, they are subject matter that people often want to testify, we have employed years ago and continue to employ, the light system. The light system, for those of you that don't argue in front of the Supreme Court, green means you can talk and that will last for about two minutes and then you'll get a yellow light which means you ought to be wrapping it up. And when you get to the red light, we'll ask you to finish whatever sentence you're in the middle of. Okay? If you don't, then I may have to interrupt you, and it always makes me feel like I'm being rude when I do that. When we hear a couple of things, when you step up here, everybody has to sign in the sign-in sheet, fill out a form. We'll ask you to say your name and spell your last name so that we get a good record of it. No cell phones going off. If you have them, put them on vibrate or turn them off. And sign-in sheets, three minutes, I think that's it. We'll start with Matt Boever from Senator Flood's office to introduce LB38. Mr. Boever. []

MATT BOEVER: Good afternoon, Vice Chair Lathrop and members of the Judiciary Committee. My name is Matt Boever, that's spelled B-o-e-v-e-r. I'm legal counsel in Speaker Mike Flood's office. Senator Flood represents Legislative District 19 and could not be here today as he's out attending a legislative meeting in Washington, D.C. LB38 would add DHHS employees providing behavioral health services to the list of those folks who are protected by Nebraska's assault on an officer statutes. Individuals who engage in conduct prohibited by these sections would thus be subject to a felony charge. In the last two years, Senator Flood has introduced similar bills. During his introductory testimony concerning LB138 in 2007 and again with LB1084 last year, he described an incident at the Norfolk Regional Center that happened in March 2006. An employee of the NRC, Regina Seamann, who is able to be here today, 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 she still suffers from the attack. Her attacker, a sex offender, was at the NRC for mental health treatment, was charged with a misdemeanor for his actions that March. He was sentenced to one

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year in prison and was out after five months. Senator Flood's intent with LB38 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 Behavioral Health Division of DHHS is also here and he will provide more information concerning LB38. With that, thank you for your consideration, and I'd be happy to try and answer any questions that you may have. [LB38]

SENATOR LATHROP: Any questions for Mr. Boever? I do have a question if I can. Is this just for people...a protection for people who are jailhouse workers, mental health institution workers? [LB38]

MATT BOEVER: Right and... [LB38]

SENATOR LATHROP: I thought you started out by saying it protects HHS employees. [LB38]

MATT BOEVER: That's right, as well as I think there's language in here that would protect other patients or inmates. [LB38]

SENATOR LATHROP: But it's for confinement situations, not if an HHS employee gets beat up on a front porch, that's not part of this. [LB38]

MATT BOEVER: Right, right. [LB38]

SENATOR LATHROP: Okay, got it. Thank you. Any other questions? Thank you, Mr. Boever. We'll look for you on LB39 or to close. [LB38]

MATT BOEVER: Thank you. [LB38]

SENATOR LATHROP: Scot, welcome to the committee. [LB38]

SCOT ADAMS: (Exhibit 1) Thank you. It's good to be here again. Good afternoon, Senator Lathrop and other members of the Judiciary Committee. I'm happy to be here. My name is Scot Adams, S-c-o-t A-d-a-m-s, and I have the honor and privilege of serving as the director of the Division of Behavioral Health for the Department of Health and Human Services. We'd like to thank Senator Flood for introducing this legislation on behalf of the department, and I'm here today to testify in support of LB38. This proposed amendment will establish parity for staff in the 24-hour facilities operated by the Department of Health and Human Services with workers holding similar job classifications, duties, and functions as within the state Department of Correctional Services. It will provide county attorneys the encouragement to file felony charges against an adult or juvenile, processing them through the adult criminal system, who

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commits an assault, terroristic threat, kidnaps, or falsely imprisons DHHS staff during the course of performing their duties within these facilities, to answer your question. Many of the individuals being treated at the regional centers have been incarcerated in the correctional services system. For example, in 2008 there were three individuals from Tecumseh State Correctional facility who were being held at the Lincoln Regional Center for restoration to competency. Once competency was restored, they were moved back to the Tecumseh Correctional facility. These individuals were at the highest level of confinement at Tecumseh, and yet the regional center employees had direct contact with them, worked with them while they were housed and being treated at the regional center. The employees of the regional center are at equal risk for serious injury as the correctional staff are at the Tecumseh Correctional facility. During 2007, there were 81 unprovoked assaults on direct care staff at the Lincoln Regional Center and 79 unprovoked assaults on staff at the Norfolk Regional Center. Approximately 13 percent of these assaults resulted in serious injury to include lacerations, contusions, and broken bones which required physician or emergency care. One such assault at the Lincoln Regional Center resulted in the death of a psychiatrist, and that person was later convicted of the crime after being found competent to stand trial. It should be noted that adult regional centers now serve more sex offenders than persons with mental illness. And I would turn your attention to the chart attached to my testimony. One county attorney has refused to file charges on the basis that he believes a person at a regional center cannot be responsible for his actions. This is almost never true because during the course of treatment the person regains capacity to distinguish right from wrong. Some choose violence as a means of lashing out, and we seek simply equal use of the law across the state. In 2008, 47 unprovoked assaults have happened to staff; 11 of these resulting in injuries and loss of time from work. A law is needed to help protect our employees in addition to significant efforts we have also made. I will conclude by simply saying that my testimony also includes support for this law and the changes for the youth rehabilitation and treatment centers at Kearney and Geneva. Those are under, of course, Director Todd Landry's control, but we are combining testimony today. I will be happy to respond to questions you may have. [LB38]

SENATOR LATHROP: All right, thanks, Scot. Any questions? Senator Lautenbaugh, you're recognized. [LB38]

SENATOR LAUTENBAUGH: Thank you, Senator Lathrop. So what you're saying is basically this just adds the same protection to HHS employees that jail workers, probation officers already enjoy regarding the offense of assaulting them. [LB38]

SCOT ADAMS: Yes, sir. [LB38]

SENATOR LAUTENBAUGH: Okay, seems very straightforward. Thank you. [LB38]

SCOT ADAMS: It is very straightforward. Thank you, sir. [LB38]

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SENATOR LATHROP: Senator Coash. [LB38]

SENATOR COASH: Thank you, Senator Lathrop. Scot, thanks for your testimony. I understand what this bill is trying to accomplish. The folks who are receiving treatment in these regional centers obviously are receiving treatment for a mental health need. Correct? [LB38]

SCOT ADAMS: Generally speaking, I think that is true. At the Lincoln Regional Center in particular, but it should be noted that even with Lincoln the majority of folks being treated are now sex offenders coming out of the correctional system more so than mental health, but I don't want to minimize that. Certainly Lincoln, in particular, is a significant resource to the state for treatment of mental illness. [LB38]

SENATOR COASH: Okay. [LB38]

SCOT ADAMS: We've got both is my point. [LB38]

SENATOR COASH: Okay. Do you think that a law such as this, given that the people who are being treated have mental illness, is going to sink in and really...it seems to be...the intent of this bill seems to be to say to the inmate or the clients or inmates at these regional centers that there are consequences for your actions. And the consequences are you can be charged with a felony for committing this kind of a crime. Given the fact that many of the folks who are there have mental illness, do you think it will have the deterrent effect that this bill seems to intend? [LB38]

SCOT ADAMS: Sir, I do believe that it will have a helpful effect. We noticed a dramatic decrease in the amount of violent activity and threats of violent activity after at Norfolk, in particular, where the sheriff and county attorney do and are active in helping to prosecute certain activities. We noticed a dramatic improvement in behavior, if you will, of all the units. It is something that is an educational process. We are not about trying to criminalize mental illness. That is not our point. We certainly know that our work can be dangerous work in that many times people are not at a point where they understand right from wrong, are able to comprehend their situation. That's not what we're about though. We are about those situations where people consciously, actively, and, if you will, lie in wait for an assault and plan and premeditate that. [LB38]

SENATOR COASH: Sure. I mean that conscious and active planning, we saw that here less than a year ago in Lincoln. I guess my concern is that not everybody who this law might apply to may be acting in a conscious, active way and then we may be, in effect, criminalizing their mental illness because of how this law may be applied and so. [LB38]

SCOT ADAMS: I think there's potential for that. I agree with what you're saying. I can

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assure you that of the numbers and statistics that I reported to you that the vast majority of those were from folks who knew what they were doing. [LB38]

SENATOR COASH: Okay. Thank you. [LB38]

SENATOR LATHROP: I've got a couple of questions. [LB38]

SCOT ADAMS: Yes, sir. [LB38]

SENATOR LATHROP: You gave us statistics in 2007 there were 81 unprovoked attacks on staff at the Lincoln Regional Center and 79 at the Norfolk Regional Center. How many of those people were prosecuted under any law? [LB38]

SCOT ADAMS: The answer would be almost none. I don't have the exact number. [LB38]

SENATOR LATHROP: And so here's I guess maybe going back to Senator Coash's question, if we have laws that say this is against the law or it's an assault at some perhaps misdemeanor level, and we've had 160 of those attacks in 2007 and we didn't prosecute anybody, what's going to...what is it about enhancing the penalty that's going to mean that we're going to provide any more protection for the workers? [LB38]

SCOT ADAMS: I think there are two things that come into play here. One is the encouragement for law enforcement to participate at a general level, including all systems. We've had reluctance from Lancaster County to be able to follow through on this. And so that simply hasn't happened. We've had great participation from Madison County, both sheriff and county attorney, and we've had more success in prosecuting folks there. People have gone and been convicted, come back as reasonable and appropriate at the time, but it has made a difference in terms of the overall atmosphere and we think effective in terms of facing consequences for actions. [LB38]

SENATOR LATHROP: And here's my answer to that response. We have statistically an equal number of assaults occurring up at Norfolk as we do Lincoln. And so does that suggest that all of this doesn't matter? [LB38]

SCOT ADAMS: No. I think it will matter because I think it will add the weight of that across the state and the uniformity and clarify the intention of the Unicameral with regard to this issue. [LB38]

SENATOR LATHROP: Okay. My next question then is if someone who is in a regional center, either Lincoln or Norfolk, for example, commits an assault on one of the workers there and, believe me, I don't want them doing that... [LB38]

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SCOT ADAMS: Um-hum, nobody does. [LB38]

SENATOR LATHROP: ...and I'm in favor of stopping it, whatever we can do to stop it, if they stop it, what happens? If they get convicted of this, are we going to take them out of a regional center and then incarcerate them in a penitentiary with a mental illness? [LB38]

SCOT ADAMS: You know, that would be within the scope and judgment of law, current law, the nature of the offense, and, of course, the judge involved in things and the latitude involved with that. In some cases, it may be sufficient to sort of help gather attention. At least in the last two years, at least one of those persons was a woman who did go to York. [LB38]

SENATOR LATHROP: Yeah, but I'm wondering, though, if a person needs mental health treatment for sex offender, for being whatever lands them in one of our regional centers, shouldn't we have them finish their treatment before they go do their time? And shouldn't a bill that's going to make these kinds of things criminal first require that they complete their care so we don't send somebody who is psychotic over to the penitentiary where they'll get no care or perhaps not the same level of care or the care they need, they sit there and spend whatever sentence they would get with no care and then go back to the regional center, if it isn't too late, and provide them with the balance of their care? [LB38]

SCOT ADAMS: Well, a couple of thoughts. Again, I would turn your attention in particular to the increasing number of sex offenders in the system. And many of these folks are there as a result of 1199 recently affirmed by the Supreme Court. These are not happy campers who come to us. And so they're... [LB38]

SENATOR LATHROP: But if I look at your statistics, that's true with Norfolk Regional Center which is where they end up, but it's not true with Lincoln Regional Center, is it, and we have an equal number of assaults? [LB38]

SCOT ADAMS: Well, we also have phases 2 and 3 of the sex offender treatment program for the state at the Lincoln Regional Center so it's inclusive of that population there as well. But your point is correct. There are more mentally ill persons at Lincoln than there are sex offenders, but it's a significant population. [LB38]

SENATOR LATHROP: Okay. Thanks. [LB38]

SCOT ADAMS: Thank you, sir. [LB38]

SENATOR ASHFORD: Thanks, Scott. Let me just ask how many testifiers do we have on LB38? How many proponents and how many opponents? How many proponents?

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Okay. Fair enough. Next proponent. [LB38]

MIKE MARVIN: (Exhibit 2) Good afternoon, Chairman Ashford, members of the committee. My name is Mike Marvin, M-a-r-v-i-n. I'm executive director of the Nebraska Association of Public Employees Local 61 affiliated with the American Federation of State, County, and Municipal Employees. We'd like to thank Senator Flood for bringing this bill forward again. Many of Senator Flood's constituents have suffered assaults at the hands of patients at the Norfolk Regional Center, several very severe. You will hear from one of them today. Unfortunately, only the severe cases are ever made public, such as the murder of Dr. Martin at the Lincoln Regional Center, while many other assaults do occur. It is a regular topic of discussion at the Lincoln Regional Center's leadership meetings. And I will not dwell long on this issue, as there are several others in the room here today to testify on this. One thing I would like to touch on, though, is the reaction of the Department of Health and Human Services to the assaults on staff. I have distributed to you the results of a grievance hearing held by the Department of Administrative Services on staff members being assaulted. In addition for having to be on guard for assaults from the patients, staff has to worry about management reaction to such assaults. This is the case of Harry Malone. Mr. Malone is out here today. I'm not sure if he is going to testify. But to be brief, Mr. Malone was attacked by a patient at LRC. The entire incident took between six to ten seconds before it was under control. During that time, Harry was punched nine times and grabbed by the throat. His life was in danger. Harry was subsequently fired for performing an illegal takedown on the patient. The entire incident is on tape, and I would urge the committee to look at that tape from DHHS. Not only were there no charges brought against that patient, the employee was terminated for defending himself by simply subduing the patient. At no time did Harry ever strike the patient. He simply tried to defend himself and control the situation. The department, as usual, has chosen not to abide by the DAS decision which ordered Harry be reinstated and has moved the case to the personnel board. I would urge the committee to move LB38 to the floor. You need to start protecting your employees. We would also love to see a clear message sent to the management of DHHS that they need to start supporting their employees. Thank you. I'd be happy to answer any questions. [LB38]

SENATOR ASHFORD: Any questions of Mike? Seeing none, thank you. [LB38]

MIKE MARVIN: Thank you. [LB38]

SENATOR ASHFORD: Don. [LB38]

DON KLEINE: Good afternoon, Senators. Thank you for allowing me to be here today. My name is Don Kleine, K-l-e-i-n-e. I am the Douglas County Attorney, and I'm here on behalf of the Nebraska County Attorneys Association in support of LB38. Very briefly, that's why I'm here. We feel it's important to put the workers from DHHS in the same

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capacity as a probation officer, an employee of Correctional Services, in these sorts of assault situations. I think you're well aware of historically some things that have happened, either at the youth center, correctional facilities or the treatment facilities. And we think that these folks ought to be included when we're talking about assaults on officers that are participating or somehow involved with people who are in these facilities. I'll be happy to answer any questions. [LB38]

SENATOR ASHFORD: Thanks, Don. Next proponent. Good afternoon. [LB38]

REGINA SEAMANN: (Exhibit 3) Hi. I have some handouts along with some pictures. [LB38]

SENATOR ASHFORD: We'll get it, we'll get it done here. [LB38]

REGINA SEAMANN: The official records will have the colored pictures and you guys will receive black and white pictures. Hi. My name is Regina Seamann, R-e-g-i-n-a S-e-a-m-a-n-n. On March 3, 2006, I was working as an RN on 3 west at Norfolk Regional Center on the 3:00 to 11:00 shift. One of the patients, Lavern Scott, was caught smoking in his room. The consequences for this violation is to have their door locked from early morning till 9 p.m. If there is a valid reason for them to get into their room, they may. At about 5:15, part of our staff was downstairs with some of the patients for supper. Two of our staff was helping a patient in the bathroom. One staff was watching a patient who was in restraints. That left his tech, me, and another tech who was on desk duty in the office. Lavern asked his tech if he could go to his room. She and I agreed to let him go. They went to his room, he got his Bible out of his room, and returned to the day hall. Placing the Bible on the table, he immediately came up to the office window and asked if either one of us would let him in his room. I was sitting in the corner with the computer in front of me, the wall behind me and the cabinet beside me. I started to remind him of the door lock policy, and all I had been able to say was, now look, and Lavern started shouting, Why are you always picking on me...grrrr...I knew he was going to attack me. I do not remember very much of the assault. He came into the office, threw the tech aside, and when I regained consciousness, I was holding my lip together where it had been cut all the way through. My right eye was swelled shut, and I had a huge hematoma above my eye. I was bleeding from my face, my lip in two areas, and the back of my head. I had bruises and finger marks on my face, neck, and chest. Two months later I had huge bruises on my hips. I was off work for ten months and then tried to return to work. I worked nine months; the last three months the doctors kept telling me that I could not continue working. So after nine months the doctors wrote an order that I could no longer have any contact with any patients. I am diagnosed with PTSD, which is posttraumatic stress disorder. I get paranoid and scared to be around people. I isolate. I don't want to be around anyone. I continue to have nightmares and flashbacks. I also have a lot of nerve and muscle damage to my head, neck, hands, and back. Two of my teeth where he was slugging me has been broken off

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and one of them glued back on, as I got an abscess and cellulitis and had to have oral surgery to have the roots removed. I have physical therapy, chiropractor, acupuncture, counseling, I see a psychiatrist and pain doctors, and my regular doctors weekly or monthly. The doctors have told me I will never be able to go to work again due to the injuries I have received. I testified at the trial, and the judge was very angry and said that it should have been a felony. And Lavern knew that he was not even charged with a felony because of the current law situation. Mr. Scott has been in prison for sexual assault of a child, burglary, and some other assaults which I could not remember. But he has at least three felonies, and my case was charged as a misdemeanor. The reason Mr. Scott got away with this crime was due to the fact that he was diagnosed with mental illness, and according to the law he is protected and could not be charged as someone without it. Mr. Scott was not psychotic. He is an antisocial who did not get his way. When this happens, he lets his anger take over and he will do whatever it takes to get his way, just as I'm sure he did in his past crime. There are many assaults on staff at the regional center, and the patients know they will probably not be charged due to the fact that they have a mental illness. I had been assaulted by a patient in 2002, and the county attorney would not even charge him with anything. Again, he was not psychotic, just an antisocial who was angry. No one goes to work to get assaulted, but this is what happens at the regional center and at the facilities, and the patients know that they will not get charged as severely or not get charged at all. I just ask you to please pass this bill. [LB38]

SENATOR LATHROP: Thank you, Ms. Seamann. Are there any questions? Senator Coash. [LB38]

SENATOR COASH: Thank you, Senator Lathrop. Ms. Seamann, thank you for sharing your story. I know what you went through is hard to share, and I want to thank you for coming all the way down here and sharing that. I know why you support this bill. I know why you support it. So I just want to ask you a question if you can answer it, just as somebody who works in the field of...you're a nurse, you work in this field. And I understand always that hindsight is 20/20. [LB38]

REGINA SEAMANN: Right. [LB38]

SENATOR COASH: With that in mind, given your situation, if this law would have been in place, do you believe Mr. Scott would have behaved in the same way? [LB38]

REGINA SEAMANN: No. I believe that because he's been in and out of prison and is an antisocial that it was probably very well planned according to the time that he did it. There was very little staff on the unit. And I think that a lot of these crimes are preplanned. [LB38]

SENATOR COASH: So do you think had this law been in place at the time of the crime

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against you, he would have done something different or do you think the same thing would have happened? [LB38]

REGINA SEAMANN: I don't think that he probably would have had it planned as, you know, he might have done something, but I don't think it would have been as severe because he would have known the consequences were more. When the judge asked him, do you know how lucky you are? And he just very "narcissistically" says, yes. And when he asked to speak afterwards, instead of saying, like normally you would, I'm sorry for this, all he did was say, well, I was in the regional center because I was doing drugs and alcohol and, you know, just trying to cover up himself. There was no remorse whatsoever. [LB38]

SENATOR COASH: Okay. Thank you again for coming down. [LB38]

SENATOR LATHROP: Thank you, Ms. Seamann. Any other questions from any members? Seeing none, we do appreciate you coming down. And I know it was a hard story to tell, but we needed to hear it. [LB38]

REGINA SEAMANN: Thank you. [LB38]

SENATOR LATHROP: Any other proponents? [LB38]

TONY NOBLE: (Exhibit 4) Hi, folks. Thanks for hearing this. My name is Tony Noble, N-o-b-l-e. I work as a security specialist in the forensics building, Building 5 at the Lincoln Regional Center. I am here to recount assaults that took place in mid October of '06. Two of us techs were following the doctor's written orders to escort an agitated patient back to his room. Another patient jumped my coworker, trying to break his hold and push him away saying, let him go, let him the f_ _ _ (expletive deleted) go. I grabbed the assaulting patient around the shoulders from behind. He pivoted around and under me, lifted me up by my legs, and slammed me to the floor. The side of my face hit the floor with kind of a whiplash effect. The patients began taking turns hitting me, basically one in front and one behind me. I was hit in the head five times and on the shoulders with a two-fisted strike. I was knocked down four times. Finally, one of the patients wrapped me up on the floor and lay on top of me and staff finally came and pulled him off, staff from other wards came and pulled him off. My coworker, who was attacked also, reports that he was hit in the head about ten times. A few days later, another patient gouged my face with his long fingernails, causing blood to run down my face. Between the black eye from the first assault and the gouges from the second, I resorted to using concealing makeup before visiting my dad in the hospital. I was glad that he couldn't see too well. These two patients did conspire to intimidate and assault staff. They were cocky, and they frequently said, you can't do anything to me. They would feint punches and jump out from behind corners to scare staff. It would have made a big difference if it had been possible to file felony assault charges against them.

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If you have any questions, I'd be happy to answer. [LB38]

SENATOR ASHFORD: Any questions? Thank you. Thank you. Next testifier. [LB38]

RHONDA CHUBBUCK: Good afternoon. [LB38]

SENATOR ASHFORD: Good afternoon. [LB38]

RHONDA CHUBBUCK: (Exhibit 5) My name is Rhonda Chubbuck, C-h-u-b-b-u-c-k. I'm here to support LB38. I work as a security specialist in Building 5, which is the forensics building, at the Lincoln Regional Center. I'm here on my own time to tell you about an attack that took place on February 14 of this year. An aggressive patient tackled me and bashed my head into a chair, then tore my glasses off and broke them, and during the struggle he bit me. Afterwards, he said, I hope she is really hurt. Regional Center managers said that they would stand behind me if I decided to press charges, but that would have done no good because in Lancaster County assault cases from the regional center do not get prosecuted. So I did not pursue it. The attack frightened my family and now they worry about whether I am safe at work. They knew that I could be in danger at work and that I could get hurt. But knowing that it could happen didn't make it any easier for them when I was in the emergency room. If this patient had attacked a police officer or prison guard, he could be charged with a felony assault. Would you please extend the same protection to me and my coworkers. If you have any questions, I would be happy to answer them. [LB38]

SENATOR ASHFORD: Thank you, Rhonda. Any questions? Yes, Senator Council. [LB38]

SENATOR COUNCIL: Yes. Thank you, Ms. Chubbuck, for testifying. I just have a question. I'm not familiar with the actual building setup at the Lincoln Regional Center, but both you and Mr. Noble testified that you are security specialists in Building 5. [LB38]

RHONDA CHUBBUCK: Correct. [LB38]

SENATOR COUNCIL: Are there certain types of patients assigned to Building 5 as opposed to other buildings on the regional center campus? [LB38]

RHONDA CHUBBUCK: Building 5 is the forensics building. It's an all-male population. And it's...we've got three units of sex offenders and three units of psychiatric patients, and most of them have had court trouble. [LB38]

SENATOR COUNCIL: Thank you. [LB38]

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SENATOR ASHFORD: Thank you, Senator Council. Thank you, Rhonda. Next testifier, proponent testifier, please. [LB38]

ROBERT SCHULTE: (Exhibit 6) Good afternoon, Senators. My name is Robert Schulte, S-c-h-u-l-t-e. I work at YRTC at Kearney. I reported to work on October 5, 2008, at 9:45 p.m. I was assigned to the Lincoln-Washington living unit along with Jerry Moulton. From 10:00 to 11:00, there had been about seven youth that went to the one bathroom, which is very unusual at that time. Officer of the day Robinson was called about 11:10 p.m. We explained to him what was happening. There was unrest in the northwest corner of the dormitory. He said to keep your watch on the situation and report back to him. Jerry went out to check the room at 11:30 as we're supposed to check it every half hour. As he walked by the bed, he was struck in the face just below the temple on the left side. He yelled out that he had been struck and to notify the OD. I notified Robinson by radio and Jackson came up and struck me on the top of the head just left of the center with a cue ball in a sock. We were able to proceed back to the office and lock the door. Robinson came up and opened the door at which time he was confronted by eight to ten youth. He directed that the police should be called and they responded to the call. There were ten police officers that responded, and they proceeded to take control of the situation. Jackson hit Officer Ohri when he was trying to gain control. Jerry and I were taken to Good Samaritan Hospital where Jerry was diagnosed with two broken bones to the side of his eye. I had a concussion and received eight to ten stitches in my scalp. We were released. I returned to work ten days later. Later we found out that about 25 of the youth from among the three groups within the Washington unit knew of the plan. It was a person from one of the other groups that brought the cue ball up and hid it in the bathroom. So I guess I was wanting to say this was a premeditated situation. Is there any other questions? [LB38]

SENATOR ASHFORD: I don't see any, but thank you for coming down. [LB38]

ROBERT SCHULTE: You're welcome. Good afternoon. [LB38]

SENATOR ASHFORD: Next proponent. [LB38]

JERRY MOULTON: Senators, I'm Jerry Moulton, M-o-u-l-t-o-n. I'm the other half of what he just read. I got hit in the side of the head with a cue ball in a sock, broke three bones in the side of my head, and that's about all. If you've got any questions, that's all I've got to say. [LB38]

SENATOR ASHFORD: Seeing no questions, thanks for coming down. [LB38]

JERRY MOULTON: Okay, thank you. [LB38]

HARRY MALONE: Hello, Senator Ashford, committee members. My name is Harry

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Malone, M-a-l-o-n-e. In about July of last year a patient had taken a chair to his room and that is not allowed because they could stand on it, hang themselves, use it as a weapon against another patient or other staff. I was alone at the time at my end of the hall. I went there, asked him to give me the chair back. He looked at me, I've known him for a year and a half, got along fine, went to get the chair, instead he turned around, looked at me, put his fists up, he weighs about 40 pounds more than I do, he was a semiprofessional boxer, and he came rushing out of the room at me. As he was coming out, I told him, Ron, don't do it. Sometimes he'll take a hard cue and won't do it. Instead he came thrashing out at me, pinned me, hit me nine times in the head and other parts of my body. I was starting to lose consciousness or feeling dizzy so I ended up grabbing him and we tumbled to the ground where I held him. He also had his hands around my throat and was choking me. And the nurse had to tear his hands off my neck. So I do believe that this LB38 would be an excellent law that will give protection to staff people. I am also at S5 in forensics. That's where I work. Do you have any questions of me? [LB38]

SENATOR ASHFORD: Any questions? Seeing none, thank you, sir. [LB38]

HARRY MALONE: Thank you. [LB38]

SENATOR ASHFORD: Next proponent. Opponent? How many opponent testifiers do we have? One, okay. Come on over. [LB38]

BRAD MEURRENS: (Exhibit 7) Good afternoon, Chairman Ashford and members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I'm the public policy specialist and registered lobbyist for Nebraska Advocacy Services, Incorporated, the Center for Disability Rights, Law and Advocacy. We are opposed to LB38 on both philosophical and practical grounds. First, it is not our intent to deny that injuries can and do happen to departmental staff or to trivialize these injuries. However, we believe that LB38's prescription to prosecute persons with mental illness for assaulting departmental employees providing treatment is a misguided approach that does not address the root causes of such behavior and poses significant disadvantages to an already vulnerable population. LB38's extension of the offense of assault on an officer to employees of Department of Health and Human Services who work in treatment facilities is extremely problematic. Analogizing departmental staff with police officers is faulty. Peace officers and treatment staff have sharply distinct roles, responsibilities, training, and social-institutional expectations. Moreover, the situations that treatment staff and peace officers face are different--peace officers have little control over the environment where violent incidents may arise. Within the treatment and institutional setting, conditions are more controlled and secure. If not, then that is more a reflection of inadequate organizational policy design and implementation. We should be examining the underlying causes in context of assaults causing bodily injury to staff, not just ramping up the penalties. Often assaultive behavior is a manifestation

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of the very mental illness or disorder for which the individual is being treated. To punish individuals for behavior arising out of their psychiatric condition contradicts the premise of treatment. While extending heightened status to the department employees mentioned in LB38 might boost staff morale, empowerment, and control over an environment which staff perceives is out of control, these are strong indicators of rather systemic and facility failures which the department and the Legislature should investigate, not problems inherent in individuals with severe emotional or mental conditions. The approach to the problem of staff assaults as proposed in LB38 ensures increased contact with the criminal justice system for persons with psychiatric disabilities, which has been identified as both an inadequate and inappropriate system for mental health treatment. In closing, we appreciate the importance of ensuring that staff working in treatment facilities do not incur bodily injuries but do not see LB38 as an optimal mechanism to do so. We urge the committee to indefinitely postpone LB38 and that the department find a more appropriate way to address this issue. We would be happy to work with the department and the Legislature to develop an alternative mechanism. This concludes my testimony this afternoon. I'd be happy to answer any questions that you may have. [LB38]

SENATOR ASHFORD: Thanks, Brad. Any questions for Brad? Thank you. Seeing...Senator Lathrop. [LB38]

SENATOR LATHROP: Can I just maybe make one point. And I appreciate the work of NAS in helping those individuals with developmental disabilities, and we worked on a lot of those issues at BSDC. Your point, and I think it's well made, is that if you're providing active treatment as you should for people with developmental disabilities, they will not engage in or are less likely to engage in patient-to-patient assaults as well as patient-to-care provider assaults. Right? [LB38]

BRAD MEURRENS: Yes. [LB38]

SENATOR LATHROP: And that's really one of the findings of the Department of Justice when they looked to the Beatrice State Developmental Center is that a lot of the problems that these people are causing and the difficulties they're having is because they're not getting active treatment which they are obliged to provide. [LB38]

BRAD MEURRENS: Yes. [LB38]

SENATOR LATHROP: In the case of folks who are not there with developmental disabilities, people who don't have a right to the active treatment, however, the people that are providing care are not necessarily in that same relationship. Would you agree? [LB38]

BRAD MEURRENS: There would be a difference. If they're not there... [LB38]

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SENATOR LATHROP: Yeah. And I appreciate your concern about the DD patient who isn't getting the active treatment. We know that when they're not they're going to start hitting people or one another or even themselves. But for these people that are providing care and treatment of the mentally ill and the sexual assailants, whatever the proper terminology is, they don't have the same situation as the DD patient. [LB38]

BRAD MEURRENS: No. [LB38]

SENATOR LATHROP: Okay, thanks. [LB38]

SENATOR ASHFORD: Yes. Senator Coash. [LB38]

SENATOR COASH: Thank you, Senator Ashford. Brad, I just...I want to make sure I get something from you clear. These folks here that testified that were injured, was it their fault? I mean in your opinion do you see something that they did that caused these injuries? Or you seem to be pointing more to a systemic thing so I wanted to make sure you had a chance to clarify. [LB38]

BRAD MEURRENS: Well, I think if you look in the literature, you know, a lot of times some of these incidents arise out of inappropriate restraints, illegal restraints, or the application of restraints, which is in itself a physical act. I don't know if we can say that as a blanket statement that everyone that gets assaulted at a regional center it's their fault. You know, I think there are different levels of blame to be assessed or causality. It could be a systematic failure in terms of, you know, authorizing illegal restraints or really physically demanding restraints and seclusions. It could be that the individual, you know, had it out for them. I mean there's a variety of different issues. But I think the main message is we shouldn't use a machete where a scalpel should be used. We need to look at the underlying root causes of the problems that are arising and attack the root problems. Our position is that just ramping up the penalties won't be an effective mechanism to deter these individuals. [LB38]

SENATOR COASH: Well, I guess what I'm hearing from the testimony is, and I work in the mental health field so I understand that many times these attacks can be a manifestation of the mental illness. But the testimony we're hearing from prior to you says that many of these attacks are conscious, played-out acts of violence, the same that you or I might. And what they're saying is the understanding of I have some real consequences, real consequences to this behavior will prevent that behavior. Do you agree with that? [LB38]

BRAD MEURRENS: I can't agree with that 100 percent, no. [LB38]

SENATOR COASH: You don't agree. [LB38]

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BRAD MEURRENS: I don't agree with it 100 percent, no. I mean there may be some individuals who might make the connection between not doing this behavior and not suffering a felony assault charge, right, but there may be those individuals who don't. So I don't know if we can say that with 100 percent certainty that if you make this penalty now a felony no more assaults will occur. I don't know if we can really make that blanket statement is what I'm saying. [LB38]

SENATOR COASH: I would tend to agree with you there, but do you think there's a way to make this bill address that, to try to address these are conscious acts and conscious acts have real consequences, manifestations of mental illness or developmental disability have different? Do you think we can do that? [LB38]

BRAD MEURRENS: Oh, I think there's always a way to make a bill better or to rework it so that you can address the root causes. I just don't think that, you know, ramping up the penalty is the end-all, be-all, 100 percent solution to the problem. I mean it may be we may need to look at, you know, we may need to look at the punishments for these assaults. But I don't think that we can just say, well, here's the, you know, increase the penalty and all of a sudden it just disappears. I don't think that's going to happen. [LB38]

SENATOR COASH: Fair enough. Thank you, Brad. [LB38]

SENATOR LATHROP: Maybe I could follow up with just one question or two, Brad. [LB38]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB38]

SENATOR LATHROP: Your involvement in Nebraska Advocacy Services works for the folks who have developmental disabilities. [LB38]

BRAD MEURRENS: We work for persons of all disabilities, developmental disabilities, psychiatric disabilities, physical, so it's not just the developmental disability side. We have... [LB38]

SENATOR LATHROP: But for people who can appreciate the seriousness, the consequences of their act, then increasing penalties is certainly appropriate if it will result in some deterrent effect. [LB38]

BRAD MEURRENS: Yeah, I think there may be some validity to that, yeah. [LB38]

SENATOR LATHROP: Okay. And for the sexual offender, his problem isn't that he doesn't appreciate the seriousness or that he isn't getting active treatment, he's just maybe acting out and additional penalties might deter, as much as penalties do, further

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assaults. [LB38]

BRAD MEURRENS: Well, like I said, I don't think we can make with a blanket statement like, you know, all of a sudden that now that there is real consequences all of these individuals will, you know, will no longer engage in assaultive behavior. [LB38]

SENATOR LATHROP: Maybe...I guess I want to clarify the point you're making and that is you come in here after having done good work at Beatrice State Developmental Center understanding what happens to people with developmental disabilities such as the folks at BSDC who aren't provided active treatment and don't think it would be appropriate for a bill like this to apply to people who deserve and require active treatment but aren't getting it. [LB38]

BRAD MEURRENS: Yeah, if they need active treatment, they need to get it. [LB38]

SENATOR LATHROP: And that would be different than the sexual offenders who are in the Norfolk Regional Center and decide to assault somebody. [LB38]

BRAD MEURRENS: Well, I think if it's a conscientious decision that throws a different variable in there, yes, you're right. [LB38]

SENATOR LATHROP: Okay, good. That's all I have and thank you. Thanks for your work at NAS too. [LB38]

BRAD MEURRENS: You're welcome. [LB38]

SENATOR ASHFORD: Thank you. Thanks, Brad. Matt, are you going to close? Where is Matt? [LB38]

MATT BOEVER: No thanks, Chairman. [LB38]

SENATOR ASHFORD: (See also Exhibit 23) Okay. Let's move on to LB39. [LB39]

MATT BOEVER: Good afternoon, Chairman Ashford and members of the Judiciary Committee. Again, my name is Matt Boever, that's B-o-e-v-e-r, I'm the legal counsel in Speaker Mike Flood's office. Senator Flood represents District 19 and could not be here today as he's out at a legislative meeting in Washington, D.C. LB39 would amend Nebraska's existing rules of evidence and adopt new rules of evidence concerning sexual offenses. In short, these changes would allow the admission of relevant and probative other crimes evidence in sex offense cases. In drafting LB39 Senator Flood is grateful for the support and assistance that Douglas County attorney, Don Kleine, chief deputy attorney, Brenda Beadle, and Creighton law professor, Collin Mangrum, have provided. In addition to Brenda and Don and others, Professor Mangrum is here today

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as a proponent. And in all of their testimony they will more fully explain LB39. Professor Mangrum has written a book on Nebraska evidence and is the author of numerous articles on evidence, constitutional law, and church and state issues. Also, Dr. Mario Scalora couldn't be here today because he's sick, but he's a member of the UNL Psychology Department and is a nationally recognized expert who collaborates and consults with local, state and federal law enforcement on threat assessment research. Regarding sexual offending in particular Dr. Scalora has extensively researched the risk factors related to sexual recidivism, including prior behavior. And I understand that he will be submitting a letter in lieu of his testimony. Why should Nebraska follow the trend in other jurisdictions and liberalize the admission of other crimes in sex offense cases? Several reasons were summarized in the preamble to another state's statute. Quote, sexual offenses are a matter of grave statewide concern. These frequently occurring offenses are aggressive and assaultive violations of the well-being, privacy, and security of the victims and result in serious and long-lasting harm to individuals in society. These offenses often are not reported or are reported long after the offense for many reasons and usually occur under circumstances in which there are no witnesses, except for the accused and the victim. And because of this and frequent delays in reporting there is often no evidence, except for the conflicting testimony. Moreover, there is frequently a reluctance on the part of others to believe that the offenses occurred. With that, thank you for your consideration of LB39. I'd be happy to try to answer any questions the committee may have at this point. [LB39]

SENATOR ASHFORD: Thanks, Matt. Seeing none, we'll go to the testifiers. How many proponents do we have on this bill? Okay. Let's start with proponents. [LB39]

BRENDA BEADLE: Good afternoon, senators. My name is Brenda Beadle, and that's spelled B-e-a-d-l-e. I'm the chief deputy of the Douglas County Attorney's Office and have been an attorney since 1993. I'm also a member of the board of directors of the County Attorney's Association and I am here on behalf of the County Attorney's Association in support of LB39. Firstly, I want to thank Speaker Flood and Matt Boever for introducing this bill. I also want to thank Professor Mangrum, from Creighton Law School, for taking his valuable time to collaborate with us on LB39. And thanks also to Dr. Mario Scalora for meeting with us and providing his statement today. LB39 proposes legislation that would permit the use of evidence of other crimes of sexual assaults in current sexual assault cases that are charged, essentially, mirroring federal law which has been in place for over ten years. Although Nebraska Rule 404(a) generally excludes evidence of similar acts when offered to prove the propensity of the defendant to commit an act charged, LB39 creates an exception for such offers in cases involving sexual assaults or child molestation. These types of crime have independent significance. There is a psychological component or a propensity to commit these kinds of crimes. These are often repetitive pattern behaviors. Sexual assaults and child molestation cases are obviously very unique and they're certainly distinguishable from other nonsexual crimes. We can't say the same...we can't say that it's necessarily true

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for other types of crimes, such as drug cases, burglaries, robberies. Those are not necessarily acts for which someone would have a propensity to commit again. However, we know that sexual predators are different. That's why we take steps to have them register as a sex offender. They have to report their addresses to the authorities and to the public. And why do we have them do that? So that we can monitor them because we know what their propensity is. We have sex offenders or predators live a certain number of feet away from schools and/or parks. And why do we do that? Because we need to take the temptation away from them because they have the propensity to reoffend. And just as we saw in the news last week, the Supreme Court upheld the law allowing sex offenders to be committed for treatment after their release from prison. And why do we do that? Because we know the risks and the propensities and the nature of predators. Many states have adopted language similar or identical to the federal rules 413 to 415, and specifically states in the East Circuit--Arkansas, Iowa, Missouri--have adopted the federal rules as well as our neighboring state of Colorado. As we stated earlier, sexual assaults usually occur under circumstances in which there are no witnesses except the accused and the victim. And oftentimes there's no evidence other than the conflicting testimony. There's no question that there's a reluctance on the part of others, specifically jurors, to believe that the offense occurred, not only because it's a child versus an adult, for instance, but because of the often deviant and disgusting nature of the assault. People have a really hard time believing that this kind of thing can happen but it does happen. And we see unbelievable acts, most often these cases are based on the word of a vulnerable, innocent child. And this is the type of other evidence that the juries should get to hear. These types of crimes do have independent relevance and our state is in need of a change in 27-404, which will eliminate the confusion and provide for more consistency in sexual assault cases. I'd be happy to entertain any questions. [LB39]

SENATOR ASHFORD: Any questions of Brenda? I do, just quickly. The type of evidence that you're referring to would be...it could be documentary evidence, it could be testimony of another...of a child. [LB39]

BRENDA BEADLE: Of a previous crime of sexual assault. [LB39]

SENATOR ASHFORD: Right, it could be testimony by a child who was molested in a prior offense? [LB39]

BRENDA BEADLE: Absolutely, yes. [LB39]

SENATOR ASHFORD: So it would most likely be that, not documentary evidence... [LB39]

BRENDA BEADLE: Right. [LB39]

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SENATOR ASHFORD: ...or it wouldn't be a summary of a case, that kind of thing. [LB39]

BRENDA BEADLE: No. [LB39]

SENATOR ASHFORD: There wouldn't be hear...or... [LB39]

BRENDA BEADLE: It would be the actual other evidence charged. So for instance, if there was somebody charged currently with sexually assaulting a six year old and we found that there was another previous charge of...or previous crime of the same kind of thing, six year old being sexually assaulted by this individual, that testimony would be able to come into... [LB39]

SENATOR ASHFORD: And there would be the testimony of an officer or some other person that was involved or an investigator or... [LB39]

BRENDA BEADLE: Or oftentimes the victim. [LB39]

SENATOR ASHFORD: Okay. And that evidence is now inadmissible, except to show propensity but not to show... [LB39]

BRENDA BEADLE: There is an opportunity, if you can plug it into a certain, I guess, category, such as motive, opportunity, intent. [LB39]

SENATOR ASHFORD: Okay. [LB39]

BRENDA BEADLE: And we just really have a hard time, in Nebraska and across the state, we've conferred with other county attorneys. And it's very difficult to get judges consistently to agree on what... [LB39]

SENATOR ASHFORD: To allow it in. [LB39]

BRENDA BEADLE: Yes. [LB39]

SENATOR ASHFORD: Okay. And as to what value it has. [LB39]

BRENDA BEADLE: Yes. [LB39]

SENATOR ASHFORD: Saying it's not clear what value now, it's inconsistent. [LB39]

BRENDA BEADLE: That's exactly right. [LB39]

SENATOR ASHFORD: Okay. Yes, Senator Lathrop. [LB39]

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SENATOR LATHROP: I do want to ask a general question. In here we're going to make an exception for the testimony or for a statement made by a child who's available for cross-examination. And this is my question. You've been involved in a lot of prosecutions, sexual assaults that involve children? [LB39]

BRENDA BEADLE: Yes. [LB39]

SENATOR LATHROP: And before they ever get to the courtroom they might have been interviewed by first mom and dad or a guardian. Then they might be interviewed by a child protective, some kind of a social worker, a police officer, a county attorney and counselors. They might have had several interviews before they ever get to the courtroom. [LB39]

BRENDA BEADLE: That's true. [LB39]

SENATOR LATHROP: And they will have varying degrees of confidence in their statement depending upon where in the process one has spoken to them. [LB39]

BRENDA BEADLE: Sure. [LB39]

SENATOR LATHROP: That's all I got. [LB39]

BRENDA BEADLE: Okay. [LB39]

SENATOR ASHFORD: Where are you going? (Laugh) No, just kidding. [LB39]

BRENDA BEADLE: I'm sure it's getting setup for something later, huh. [LB39]

SENATOR ASHFORD: Senator Council. I was waiting for the third question but... [LB39]

SENATOR LATHROP: I'll get to that. (Laughter) [LB39]

SENATOR COUNCIL: Good afternoon, Ms. Beadle. It's my understanding, reviewing LB39, it's basically intended to mirror the Federal Rules of Evidence. But there seems to be a disconnect particularly with regard to Section 2 of LB39 where clearly the intent here is where Rule 404 generally excludes evidence of prior bad acts. This is intended to supersede it. But it doesn't provide any of the safeguards that are ordinarily considered in connection with introduction of evidence of prior bad acts. That the evidence is reliable, that it's trustworthy, and the burden of proof here is different. And in fact, the burden of proof is changed as well on page 6 rather than requiring the prosecution to prove by clear and convincing evidence, it's just evidence sufficient to

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support a finding by the jury. [LB39]

BRENDA BEADLE: That's true. [LB39]

SENATOR COUNCIL: What is the rationale for lowering the burden of proof? And in a way not requiring that a process that assures that this evidence of...and that's just it, it's commission of another offense, it's not conviction of another offense, it's commission. [LB39]

BRENDA BEADLE: Right. [LB39]

SENATOR COUNCIL: So here we're lowering the standard... [LB39]

BRENDA BEADLE: Um-hum. [LB39]

SENATOR COUNCIL: ...for allowing admissibility. And, I guess, I appreciate the concern about sexual offenders. But, I mean, we're creating a whole different category and basically changing the rules of evidence and placing a lower burden of proof on the prosecution in order to use this kind of evidence. I mean why...I mean, I don't have a problem with using that. But use it consistent with the safeguards that are reflected in the Federal Rules of Evidence if we're going to model the federal rules. [LB39]

BRENDA BEADLE: Sure. And the federal rules do have that same burden as the sufficiency or threshold. The federal law, the federal statutes actually have a lower burden than the state does right now. And in mirroring that we would be lowering it because ours is different. Our burden is on the state, wherein we're asking that it be on the defense if they're going to raise it. And we should automatically get those kinds of...because of the nature of these types of offenses, that's what we're arguing is that we should be able to get these kinds of offenses in. Now there should still be safeguards and there are still safeguards in place. I think it's just more implied as opposed to maybe written but 403 is in place. And I think even in LB39 it indicates that that doesn't take away any of the other statutes or any of the other rules of evidence, such as 403. So you still will weigh the probative... [LB39]

SENATOR COUNCIL: Well, okay. Direct me to where you're seeing that. See, let me give you an example. On page 2, under Section 1, we talk about, you know, the following evidence is not evidence under Section 1 (1). Then in a criminal case the following evidence is admissible "if otherwise admissible under these rules." When we get to Section 2, you know, we don't have that "if otherwise admissible under these rules." And if you were to follow the "otherwise admissible under these rules," and maybe I'll leave it to the expert because I don't profess to be an expert on evidence. Some knowledge is dangerous. But otherwise admissible, my understanding of the intent of the federal rules is that in order for this to be otherwise admissible you had to

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provide that process where you ensure trustworthiness and reliability of the commission of the prior offense. [LB39]

BRENDA BEADLE: Um-hum. Well, even...and I guess I'll answer one of your earlier questions or statements that it doesn't even have to be a conviction. And it doesn't even today as we stand, it doesn't have to be a conviction of other evidence acts. We have cases in the past where they can be uncharged, they can be acts after the offense. They don't have to be convictions because, as we all know, oftentimes these kind of cases go unreported. And so they don't have to be convictions even today. But... [LB39]

SENATOR COUNCIL: But there has to be some measure, there has to be some method of determining the trustworthiness and reliability of the evidence establishing the, quote, commission. [LB39]

BRENDA BEADLE: Yes. And that is left up to the judge to do. And the judge still has that ability to weigh the probative value, whether the probative value outweighs the prejudicial effect. And then we also have the safeguard of a jury because they're told that they can give this...weigh this as deemed relevant. [LB39]

SENATOR COUNCIL: Okay. But prior to this proposed legislation, the policy was, if you look on page 6, "clear...if the prosecution proves to the court by clear and convincing evidence." [LB39]

BRENDA BEADLE: Correct. [LB39]

SENATOR COUNCIL: And so what...we're lowering that standard. [LB39]

BRENDA BEADLE: Yes, we are to sufficiency, sufficient evidence to support a finding, which is what the federal system does and has done for over ten years. [LB39]

SENATOR COUNCIL: I will reserve the remainder of my questions. [LB39]

SENATOR ASHFORD: Okay, thanks. [LB39]

BRENDA BEADLE: Thank you. [LB39]

SENATOR ASHFORD: Thanks, Brenda. Next proponent. [LB39]

RICHARD MANGRUM: My name is Richard Collin Mangrum. Last name M-a-n-g-r-u-m, Mangrum. I...for the last 30 years I've been studying, teaching and writing on evidence in Nebraska. The first time I've ever appeared in front of this...and asking for or suggesting that the Nebraska rules should be amended. Mostly I am writing about what happens and describing it. I'll tell you why I care about this rule specifically. I care about

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the least protected people in the world. And one of the people who are least protected for me are small children. And this statute or rule would allow for attacking a pernicious problem that, I believe, has gone not totally unchecked but were not sufficiently addressed. And I'm going to answer a couple of your questions here. But let me just give one quote. And this is from a U.S. Supreme Court case, 2008 Supreme Court case, Kennedy v. Louisiana, which they held unconstitutional, the death penalty, as applied to children. Here's, under the dissent: "It's been estimated that as many as 40 percent of 7- to 13-year-old sexual assault victims are considered seriously disturbed. Psychological problems include sudden school failure, unprovoked crying, disassociation, depression, insomnia, sleep disturbances, nightmares, feelings of guilt, inferiority, and self-destructive." It goes on and goes on. That's the reason why I'm here is because I think there is a serious social problem. Now the evidentiary issues. And that's what I do and so I'd be happy to answer any questions you have, Senator Ashford. Your first question was, what kind of evidence comes in? It's not just testimony. All the regular rules of evidence would apply including, for example, you would be able to get in a conviction record. That would not be testimony, that would be under a hearsay exception for public records and also a record, so you could get in. [LB39]

SENATOR ASHFORD: But I caught myself when I asked that question. [LB39]

RICHARD MANGRUM: Okay. Secondly, the...a separate, Senator Lathrop, very good question. Separate from this bill, this bill is verbatim, the federal rules, except for references to Nebraska's statutes, except with regard to a separate provision dealing with in court testimony. That has really...that's a court...that's a different problem. One of the problems that, and I'm going to run out of time here very quickly. But one of the problems that we would address because of a case called Crawford v. Washington, confrontation is how do we get testimony in for children. This is a way to allow children to...the old rule, where testimony came in through healthcare providers and social workers without violating the confrontation clause where the children are available for cross-examination. And their statements come in under old, regular hearsay exception, which was...happened on a regular basis until Crawford. Now, Ms. Council, Senator Council, you have very good questions. Your question is right on target with a lot of the things that came up when this was first passed. But let me talk about the burden of proof first. [LB39]

SENATOR ASHFORD: Go ahead, go ahead, Mr. Mangrum. [LB39]

RICHARD MANGRUM: Okay. There is a U.S. Supreme Court case, U.S. v. Huddleston. There was a question about what the burden of proof should be with regard to prior bad acts. And the U.S. Supreme Court, in a case called U.S. v. Huddleston, established the burden of proof that is incorporated into the statute. That is a lesser burden, no question about it. It will make it easier to prove these things, no question about it. And I wouldn't hide that fact and that's one reason why it's important to do it. Let me just address one

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thing implicit that you're concerned about and this came up in all the legislative hearings when this was enacted in front of Congress. And that is what about the defendants? You know, they're sometimes least protected people as well. What about the defendants? There is a 15-day...there's a notice and a hearing that comes before it. Now in all the cases that have been decided in the last 14 years when this has been enacted, this statute has been enacted at a congressional level, they have what is called a hearing, like a motion in limine. And at that time a 403 balancing analysis is addressed. And I would...if you feel...it's an insightful thing, for example, if you're looking at on page 4 of the bill in that paragraph that says, "this rule shall not be construed to limit the admission or consideration of evidence, any other rule," if you want to amend that to reference 403 specifically, that has been read in. All the courts have looked at it, every single circuit court said if you don't a 403 hearing then you have a due process consideration problem. And I think there's nothing wrong with writing it in to make that clear. That's not in the federal bill. But it has been read into the federal rule by due process considerations. [LB39]

SENATOR COUNCIL: Okay. And that was the...and I probably didn't articulate it well. But that was the concern that I had about my recollection of the legislative history of the changes at the federal level on the rules of evidence was that hearing component continued, although it wasn't specifically stated. [LB39]

RICHARD MANGRUM: Yes. [LB39]

SENATOR COUNCIL: My concern is if it's not specifically stated here, there may be some misunderstanding as to whether or not that burden still has to be met. [LB39]

RICHARD MANGRUM: And I think that's a very legitimate concern. And I would say you could...it would be appropriate to write that in. Whether it's written in or not, if they...if the courts applied without writing that in, I would agree that it's unconstitutional. I talk to defense attorneys and prosecutors every day, that's what I do. I answer the phone with attorneys every day. And I'm not just talking to prosecutors. I'm not an advocate for prosecutors. This is a social problem. I think 403 has to be a part of that bill. And whether you write it in or not, the courts, if they try to avoid that, it would be held unconstitutional and I'd be one of the people arguing against it. [LB39]

SENATOR COUNCIL: Okay. But if we write it in there's no question. Then it's... [LB39]

RICHARD MANGRUM: And I think that's a good suggestion. [LB39]

SENATOR COUNCIL: ...then it's constitutional on its face. [LB39]

RICHARD MANGRUM: I think that's a good suggestion. Without that in there it would be unconstitutional. However, the bill as written at the federal court did not have it in. I don't

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think it hurts anything to write it in because it doesn't change anything. [LB39]

SENATOR COUNCIL: Thank you. [LB39]

RICHARD MANGRUM: Senator Lathrop. [LB39]

SENATOR LATHROP: Sure. The problem with...the difference is that we have this bill without the comments that follow the federal rules. And the federal rules, they recognize that the court has a gatekeeping function, which is to have a hearing in advance to determine and weigh not just whether it would satisfy a jury, but actually have a hearing to determine whether or not it passes the 403 test, which is the probative value outweighs the...and that gets us to, and I think you would agree, we have to ensure in that gatekeeping type of hearing, one, that its probative value outweighs the prejudice, whatever that might be. The second thing, there has to be some similarity between the events, right? [LB39]

RICHARD MANGRUM: Exactly. [LB39]

SENATOR LATHROP: So if one is accused of some sexual assault on a 40-year-old person and he's being tried for sexual assault of an 8-year-old person. That's only...that's not probative because it doesn't tell us whether he's more likely have committed this type of an act with an 8-year-old. [LB39]

RICHARD MANGRUM: No question. In fact, you know, I study this, that's what I do. I'm kind of an evidence geek. But across the country, what you could do as part of the legislative history or you could write it into the statute if you would prefer. [LB39]

SENATOR LATHROP: I think we'll have to because we don't have the comments that the federal rules do. And the federal rules do have comments that suggest that the court has a gatekeeping function and that a hearing needs to be held. [LB39]

RICHARD MANGRUM: And I think that's...the paragraph before that talks about notice at a pretrial hearing. I think a pretrial hearing is necessary. And, by the way, in that pretrial hearing what the courts have done for the last 14...at the federal court level, is gone down these very same questions that you're asking. And they'll be...and it's the same type of arguments that come up under 404(2), it's the same type of arguments and the same type of considerations. But this would make a difference in the sense that the hearing would address those issues. But the presumption is it would come in rather than conversely under 404(2), the tendency is to exclude it. This will increase more evidence. [LB39]

SENATOR LATHROP: And let's talk about that gate...that role of the court as a gatekeeper. [LB39]

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RICHARD MANGRUM: Yeah. [LB39]

SENATOR LATHROP: Because that's not uncommon, courts do it all the time with evidence. For those of us that do that kind of work, we understand that. The standard now is that if a jury would be satisfied or could be persuaded, we have a preponderance standard, don't we? [LB39]

RICHARD MANGRUM: No, not a preponderance standard. [LB39]

SENATOR LATHROP: Which is more likely than not. What do you think the standard is? [LB39]

RICHARD MANGRUM: Are you talking about the existing law or the law in this particular statute? [LB39]

SENATOR LATHROP: As proposed. [LB39]

RICHARD MANGRUM: As proposed is the exact standard that's at the U.S. Supreme Court level and the federal courts and that's a threshold finding. There are three...there are several burden levels. One is threshold, one is preponderance, one is clear and convincing evidence, and beyond a reasonable doubt. [LB39]

SENATOR LATHROP: Right. [LB39]

RICHARD MANGRUM: At the federal level from the beginning of the enactment of the federal rules, in 1975, the federal rules have followed a threshold standard for getting in prior bad acts. That's been reinforced by the case...U.S. Supreme Court case, Huddleston. That's been the standard from the beginning for all prior bad acts, not just for 413 through 415 acts. And that's what this bill incorporates. That would change Nebraska rules. [LB39]

SENATOR LATHROP: Well, and I'm wondering if it isn't something...if a court is to, and I will take the district court up in Douglas County and Douglas County Attorney's Office wants to get into or talk about a prior bad act, so what's our district court going to do? Tell me about it and make sure that it sounds like it's similar? Do they listen to the child testify if it involves another child or another victim? Is that...what do you...what's your expectation with respect to that hearing? Are we just going to drop a police report from something that happened six years ago and say it looks pretty close, judge, let's try both of them, but only...here's my concern, here's my concern, and I've talked to the county attorney about... [LB39]

RICHARD MANGRUM: Right. [LB39]

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SENATOR LATHROP: ...this idea of adding a gang charge to everything we do so that we get to spend two days talking about somebody's gang affiliation, so that by the time we're done with the trial everybody is ready to convict him of being a gang member and anything else that's on the indictment. Here we got to make sure that the other bad act is something that actually happened, right? So that we don't just let them talk about something that was gruesome and awful but they're not charging them with it. [LB39]

RICHARD MANGRUM: Your questions are exactly what's been going on for the last 14 years at these hearings, these 403 hearings over these things. And they consider, and at that hearing part of what they discuss, number one, there's a number of factors that would weigh as to whether this comes in or not. Number one, is the degree of confidence that the prior bad act occurred. If we have a prior conviction record, then that's not the problem. All right? Then they go through other factors, other considerations. If there is not a prior conviction, now you have a factual question as to whether or not the prior bad act occurred. In order to establish that prior bad act, you're going to have to have admissible evidence. You can't use a police report, that would be hearsay, it would be testimonial. So that wouldn't be sufficient to introduce that type of testimony. You got to have something that admissible. Normally it's going to be either the conviction record or it's going to be the firsthand testimony of a victim who says I was there, this happened to me. [LB39]

SENATOR LATHROP: And that's going to happen at the hearing when the court is performing the gatekeeper function. [LB39]

RICHARD MANGRUM: That's what should happen. And that's what has happened in all the other federal cases. [LB39]

SENATOR LATHROP: I'm going to make a suggestion. And I appreciate, having gone to your seminars, that we've adopted most of the federal rules. But that doesn't mean we necessarily wholesale adopt all the comments that follow. [LB39]

RICHARD MANGRUM: I agree. [LB39]

SENATOR LATHROP: And so Nebraska doesn't have the benefit of those comments when we look at this, although they oftentimes look at the federal rules. It might be helpful if we articulate in our rule what that gatekeeper function looks like and what the court can weigh in deciding whether to let it in. [LB39]

RICHARD MANGRUM: And I think that's not a bad idea. And I'd be even happy to send you a draft. [LB39]

SENATOR LATHROP: That would be useful. [LB39]

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RICHARD MANGRUM: And I can send you a draft that has footnotes to cases and arguments and all other cases just to make the point that this is not just a free-for-all. That if there's a prior bad act allegation it comes in no matter what. [LB39]

SENATOR LATHROP: And I will...I can't speak for the entire committee. But what I can say is we do have concern about sexual assailants. We've spent the last three days talking about them. And certainly providing the county attorney with what they need to get convictions in the right instance is important. But we want to make sure that we're not doing it by running over somebody who's charged with it. [LB39]

RICHARD MANGRUM: Due process rights are important to me. And I...what I would be willing to do, whether you want to use it or not, I'd be willing to send you essentially a bench memo giving the types of criteria that are looked at, at the federal court level, that have been looked at in the 14 years. You can either put it as part of the legislative history, if you want to add it to the draft of the bill, whatever the case may be. All of that should be there. And if it's not there I'd be in here testifying that there's something wrong with the bill. [LB39]

SENATOR LATHROP: Right. And, I think, what will be helpful if you give us a memo that's great, so that you articulate what we're looking at. But if we have an amendment to this so that the court knows what the gatekeeping function and what they're weighing and what the sufficiency or where the threshold is for allowing it in. Otherwise, what we're going to do is generate years of appeals... [LB39]

RICHARD MANGRUM: Yeah, I think that's fair and... [LB39]

SENATOR LATHROP: ...while the defense lawyers argue over this. [LB39]

RICHARD MANGRUM: ...and I'm willing to...I mean, it's a little presumptuous of me to suggest I would do that or, I mean, that I would amend this particular bill. But what I'd be willing to do is draft an amendment, and in the drafted amendment give you cases and history of the federal courts that would allow you to see that the words are not just being pulled out of the air. [LB39]

SENATOR LATHROP: And we can make that part of the history and that does help. I want to now talk to you about the other piece of this bill, which is found on page 7. It is the statement by a child who is the alleged victim of sexual abuse. [LB39]

RICHARD MANGRUM: Yes. [LB39]

SENATOR LATHROP: And so the people who are nonlawyers and haven't studied evidence, generally, we don't allow hearsay in, except where we specifically provide for

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an exception. That would... [LB39]

RICHARD MANGRUM: Excuse me, the last said? [LB39]

SENATOR LATHROP: We don't allow hearsay into a trial, except where we specifically provide for an exception. [LB39]

RICHARD MANGRUM: Well, I'd even go one step further than that. After Crawford v. Washington, and the confrontation clause, we used to allow in testimony of child victims, especially through healthcare providers and through other people, excited utterance exceptions, a number of exceptions. The U.S. Supreme Court changed that dramatically in Crawford v. Washington, which excluded testimonial statements, even if they fit the hearsay exception. So in the case of a child victim, prior to Crawford, if a child was sexually assaulted and they went, you know, bawling, screaming, traumatized, they went to the doctor, whatever the case may be, those statements came in, well accepted hearsay exception, no confrontation problem. The U.S. Supreme Court changed that in Crawford v. Washington, and they say that if it's testimonial then you have to call the child in or the person in, you can't...it's not just dealing with children issues. Now one of the consequences of that, unintended consequences perhaps, is abuse victims, both children and adults, oftentimes, let's say, there's a sexual abuse, domestic violence. Women oftentimes will say it's happening, when it's happening, but another week later they're not testifying because it's their spouse, it's the boyfriend, and they go through lots of different reasons why they won't testify. With children we have a special problem because there's the trauma of, you know, just having to testify. We had the case up in... [LB39]

SENATOR ASHFORD: Mr. Mangrum, I'm going to...we're going to need to... [LB39]

RICHARD MANGRUM: Yeah, I'm sorry. [LB39]

SENATOR LATHROP: Yeah, well, I do have questions about this. But... [LB39]

SENATOR ASHFORD: Yeah. No, go ahead with the specific questions. [LB39]

SENATOR LATHROP: ...I appreciate your explanation because it's illustrated a point. And here's... [LB39]

RICHARD MANGRUM: That's...that's... [LB39]

SENATOR LATHROP: ...the point I want to make. Even if we change this rule, it won't change whatever the constitutional requirements are. [LB39]

RICHARD MANGRUM: No, in fact, that's there for that reason. [LB39]

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SENATOR LATHROP: All we're doing is saying it can come in. Now here's the... [LB39]

RICHARD MANGRUM: Well, subject to hearsay exceptions, sure. [LB39]

SENATOR LATHROP: ...it then becomes an exception to hearsay. [LB39]

RICHARD MANGRUM: Right. [LB39]

SENATOR LATHROP: And here's the concern I had and what I spoke to Ms. Beadle about and that is, kids will give their account several times before they ever get to the courthouse. [LB39]

RICHARD MANGRUM: Right. [LB39]

SENATOR LATHROP: And they, by the time they get to the courthouse, may say it never happened. Right? [LB39]

RICHARD MANGRUM: Right. [LB39]

SENATOR LATHROP: So they, in the first instance, may give their account to a police officer or the third instance. And it may be shaky, they may be uncertain of themselves. But what we would do if we allow for this section is to allow a police officer to come in and recite what they were told by the person without a jury getting a sense of whether it was said with confidence, with uncertainty, and the defendant's only remedy is to call the child themselves, right? [LB39]

RICHARD MANGRUM: No, I don't think that's an accurate description of that. To begin with, this would go back to pre-Crawford days, where first of all you have to have a hearsay exception. What you just described... [LB39]

SENATOR LATHROP: But this becomes the exception to hearsay. [LB39]

RICHARD MANGRUM: No, that's not an exception. [LB39]

SENATOR LATHROP: Well, it says it's not hearsay. [LB39]

RICHARD MANGRUM: Yeah. [LB39]

SENATOR LATHROP: So... [LB39]

RICHARD MANGRUM: In other words, let's say you have an excited utterance or statement for a medical diagnosis as a treatment. [LB39]

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SENATOR LATHROP: Right. [LB39]

RICHARD MANGRUM: But that is testimonial. If the child is in the courtroom and you can cross-examine that child, that deals with the testimonial problem. You still have to get...you still have to satisfy your hearsay exception so either excited utterance or a statement for a medical diagnosis or treatment. [LB39]

SENATOR LATHROP: Let me ask you this, what's the point of this rule if the child is in the courtroom? [LB39]

RICHARD MANGRUM: The point is that it allows the child to not be forced every single time to take the stand and give testimony. They're available for cross-examination by the defendant, but it is a traumatic experience, as you probably well know, putting a child on the stand and forcing them to give testimony about a sexual assault. [LB39]

SENATOR LATHROP: The whole sexual assault thing is bad. The whole sexual assault thing is bad. And I appreciate that making them testify, them or any other victim of a sexual assault to make them testify is bad. Here's my concern. If the first person that talks about it says, I interviewed the child and she told me that her uncle George sexually assaulted her at the birthday party. Okay? Now she may have told that to the cop with a great deal of uncertainty while she cried, may have been coached through it. And then ultimately there is that statement that's been refined by the testifying officer to an associate. Okay? Then what we're supposed...the defendant is supposed to do is to call, that's where the cross-examination comes from. They actually have to call that child, don't they? [LB39]

RICHARD MANGRUM: Well, they don't have to. They could cross-examine the police officer with regard to the issues you're talking about. [LB39]

SENATOR LATHROP: About the certainty and things like that. But whether the...okay. But they still... [LB39]

RICHARD MANGRUM: It's going back to pre-Crawford is what it's doing. Prior to Crawford that happened, not so much police officers, but it could be a police officer. [LB39]

SENATOR LATHROP: It could be...and these are good people... [LB39]

RICHARD MANGRUM: As long as it's excited utterance. [LB39]

SENATOR LATHROP: These are good people trying to do the right thing. I don't quarrel with that. But I'm just...my concern is as we approach sexual assaults, particularly of

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children, it's important to change the laws so that the prosecutors have the tools. But we got to make sure that we're not convicting people that don't have it coming to them. [LB39]

RICHARD MANGRUM: I agree 100 percent. [LB39]

SENATOR LATHROP: And I'm just not...I'm not confident that if somebody comes in and says, I talked to the child, she told me it was uncle George at the birthday party, and then the police officer says, yep, she's confident, she was, I talked to her. It was, you know, he says whatever he's going to say or she. They leave the stand and then the child, who maybe six months down the road, may have pressure from the family, I mean there's a lot of things that enter into it between the statement that you get to utter under this rule and the time the child ever steps to the stand. [LB39]

RICHARD MANGRUM: You have a legitimate concern. My only comment to that is, in many of these sexual abuse cases, especially when they're involving a family, there is yes, no, I did it, it did happen, didn't, over and over. And part of the whole trial is... [LB39]

SENATOR LATHROP: It is. [LB39]

RICHARD MANGRUM: ...under what circumstance are they telling the truth. That's what the case is about. That doesn't change this. Hearsay still applies, constitutional restrictions still apply. What this changes is only up-front the child doesn't have to give the direct examination. They can be impeached. You can introduce the inconsistent statements even without the child on the stand. [LB39]

SENATOR LATHROP: What about, and now I'm going to the rule of availability, and maybe...what if...does availability contemplate that the child will be responsive to the questions? [LB39]

RICHARD MANGRUM: Oh, that's a very good question. [LB39]

SENATOR LATHROP: What if the child sits up there and says, I'm not answering a question. [LB39]

RICHARD MANGRUM: That's a very good question. [LB39]

SENATOR LATHROP: Is the child available under this new rule or not? [LB39]

RICHARD MANGRUM: Yes, they would be available. And there's...there's... [LB39]

SENATOR LATHROP: They would be unavailable? [LB39]

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RICHARD MANGRUM: They would be satisfied that they're giving the testimony. There's a case, U.S. v. Owen, a U.S. Supreme Court case, not on... [LB39]

SENATOR LATHROP: So in effect, while they may be available, as in they're in the county and we can subpoena the 7-year-old. [LB39]

RICHARD MANGRUM: Right. [LB39]

SENATOR LATHROP: And the 7-year-old gets up on the witness stand and crosses their arms and won't answer a question. [LB39]

RICHARD MANGRUM: That's a legitimate question and I think that's a fair question. There is a Supreme Court case, U.S. v. Owen, that says that satisfies availability. But it's a legitimate concern, I agree with that. There's no question this is separate. This issue and this issue is a separate issue... [LB39]

SENATOR LATHROP: From one we spoke (inaudible). [LB39]

RICHARD MANGRUM: What we talked about. [LB39]

SENATOR LATHROP: I understand. [LB39]

RICHARD MANGRUM: And that is not in the federal rules, so that's unique. [LB39]

SENATOR LATHROP: Okay. [LB39]

RICHARD MANGRUM: It's not unique, other states have done it, but it's not in the federal rules. [LB39]

SENATOR LATHROP: Okay. [LB39]

RICHARD MANGRUM: And the concerns you express are legitimate concerns. All I am suggesting is the only thing you're doing here is changing. Those same questions come up even if the child is there to give testimony about prior statements, about sincerity, about whether they've given... [LB39]

SENATOR LATHROP: I'm sure that's true. But at least they have to give their account before... [LB39]

RICHARD MANGRUM: This is a different rule. This is separate from the other rules dealing with rape, assault rules. [LB39]

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SENATOR LATHROP: Okay, thank you, Professor. [LB39]

RICHARD MANGRUM: And I should... [LB39]

SENATOR ASHFORD: That's all right. We're going to move on. [LB39]

RICHARD MANGRUM: Okay. [LB39]

SENATOR ASHFORD: How many other proponents? Don and...we're just going to finish with Don and then move to the opponents. How many opponents do we have? All right, we have three opponents, because we're running out of time. Go ahead, Don. [LB39]

DON KLEINE: (Exhibits 8 and 9) Thank you, Chairperson, Senator Ashford. Again, my name is Don Kleine, K-l-e-i-n-e. I'm the Douglas County attorney. I'm here in support of LB39 which adopts the Federal Rules of Evidence with regard to prior sexual assaults. Again just...I'll briefly summarize that the jurors are still going to make a determination here about what weight to give evidence and credibility to give the person that testifies. The constitutional safeguards that apply to all our trials, all our work would still apply. I wanted to make sure that from a housekeeping standpoint I gave the page Dr. Scalora's letter. Dr. Scalora certainly has some foundation and expertise in this area. And his letter in support of LB39 I wanted to make sure was a part of the record. I also have copies of the Federal Rules of Evidence themselves that I'd like to have passed out to the committee. Some of the questions you had regarding these prior statements, most of the time now the way we handle it, at least in Douglas County is Project Harmony is going to do one interview of the child. That interview is going to be videotaped, so there would be a videotape available to anybody to see as far as that statement that's made by the child and that one forensic interview that's done to prevent those several interviews that occur, which is a tremendous thing to have with these child advocacy centers and Project Harmony. But I'd like to briefly mention some of the cases that I'm sure you've heard of that apply, you know, to what we're talking about here. One of them would be Asa Canter, a case that I tried in 1998. Asa had raped his half-sister when she was seven years old. He had raped and been convicted of raping his two daughters, who were six and seven years old. And then after he got out of the penitentiary for those, raped Naomi Lily (phonetic), a little nine-year-old girl and positionally asphyxiated her after he vaginally and anally raped her and threw her out back in the alley behind 33rd Street, obviously again, something that would portray the kind of evidence that we would like to be allowed here. David Burdette, another case that I prosecuted, a serial rapist who raped the women in Omaha Magazine years ago and then came out of the penitentiary and was going down and raping women whose husbands had just been...had been in the obituary column, had just died. In those cases obviously it was very relevant his prior convictions of sexual assault to women with regards to the current case that I tried. And the latest case would be Roy Ellis. In Roy

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Ellis, the case of the murder of Amber Harris, evidence of Mr. Ellis' prior convictions of his two stepdaughters, who were 12-year-olds at the time he impregnated them, was very relevant evidence with regard to Amber Harris. And with regard to the children coming forward, you know, even though these were prior convictions of Mr. Ellis on the Roy Ellis case, it was very difficult, very difficult for these girls who were 12 at the time that they were sexually assaulted to have to go through this again in a courtroom. But certainly they were called to testify in the Roy Ellis case about his prior contacts, what had happened to them, and the fact that he was convicted didn't come in but certainly the testimony did and the factors of that case. And our Supreme Court in the Carter case, in other cases has said sexual assault evidence, prior sexual assault evidence, has independent relevance because of the nature of these kind of cases. We're not talking about robberies or burglaries or theft cases. We're talking about sexual assaults of women and children here and that's why I think this legislation is so important. I'll be happy to answer any questions. [LB39]

SENATOR ASHFORD: Thank you, Don. Yes, Senator Council. [LB39]

SENATOR COUNCIL: Yes, Mr. Kleine, referring to the examples that you've given, though, following up on the conversation with Professor Mangrum, applying the 403(b) due process safeguards, you'd still have been able to get in all of those instances of prior convictions. [LB39]

DON KLEINE: I wouldn't be able to or would? [LB39]

SENATOR COUNCIL: You would be able to. [LB39]

DON KLEINE: I would hope I would. I'm not so sure of that. I think there's been a lot of confusion about the law in its current state and I hear that from county attorneys all around the state of Nebraska, so I'm not so sure. That's why I think this legislation is so important. And I know that in Douglas County defense attorneys there do a great job and I guarantee you that in every one of these cases there would be a motion in limine filed and there would be a pretrial hearing with regard to the admissibility of this evidence, and we'd have hearings before the court to make sure that the constitutional safeguards that are in place would factor in to the court's decision allowing these kinds of evidence prior to the jury even hearing it. [LB39]

SENATOR COUNCIL: Okay. So would you or would you not be supportive of outlining in this legislation what Professor Mangrum has so graciously agreed to provide for the committee, is an amendment that sets out what those safeguards are? [LB39]

DON KLEINE: Oh, no, that's...I think it's a great idea and that's why... [LB39]

SENATOR COUNCIL: Okay. [LB39]

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DON KLEINE: ...we've asked Professor Mangrum to be here... [LB39]

SENATOR COUNCIL: Okay. [LB39]

DON KLEINE: ...because he can handle those kinds of questions. Would be very helpful to us to put those kinds of things in any statute that we pass. [LB39]

SENATOR COUNCIL: Okay. [LB39]

DON KLEINE: So thank you. [LB39]

SENATOR ASHFORD: Thanks, Don. [LB39]

DON KLEINE: Sure. [LB39]

SENATOR ASHFORD: Let's go to the opponents. Jim. [LB39]

JAMES MOWBRAY: Senator Ashford, members of the committee, my name is Jim Mowbray, M-o-w-b-r-a-y, chief counsel for the Nebraska Commission on Public Advocacy. I'm testifying in opposition to LB39. I'm going to focus on primarily the issue about hearing and also the issue about the burden of proof. There are a couple other people who will talk here about the hearsay issue. First of all, I'd like to point out that the Criminal Defense Attorney Association would be opposed to LB39 in total. But, having said that, I realize--and I've heard what the testimony from the proponents is--is that's a policy decision for the Legislature to make and that's whether or not in sexual assault cases, as Professor Mangrum testified to and I believe Dr. Scalora would have indicated in his letter, as that these are unique and the history of the offender is relevant to prove that they have offended again, and I understand that. So my main focus here is to make sure that if the Legislature decides that this evidence...in other words, you're creating a new rule that says we're superseding, that rule is going to supersede 404(b), if you're going to do that, which is a policy decision, that that evidence is reliable and trustworthy. That's all really what we want to make sure. We don't care, for example, if the hearing is in camera. For example, I just heard Don Kleine mention how, again, traumatic sometimes for these victims to have to come back and retestify again about something. I don't have any problem with that. What I want to make clear and I've heard, I think, people agreeing that it's important to have a hearing, it's important that the rules of evidence apply, and it's important that the evidence that, if it in fact did occur, that it is reliable and trustworthy. I do have a problem with the issue of lowering the burden of proof. Now I realize what Professor Mangrum testified to, that that threshold is what the U.S. Supreme Court held in Huddleston v. United States. I want to point out, though, that case was passed in 1988 and that was on a 404(b) issue. It wasn't on this rule that we're looking at right now, in other words, the Federal Rule 413. That isn't what

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Huddleston was about. It was just what is the burden of proof on prior bad acts and uncharged misconduct? And they said it's the threshold. In 1993, when Nebraska passed 404(3), we knew what the rule was and we knew that the burden was the threshold under Huddleston v. United States, and in Nebraska they decided, before the state can use other...prior bad acts and uncharged misconduct, they have to prove it through a hearing by clear and convincing evidence. And so when they amend that statute 404(3), as they're doing in LB39, what they're doing is not only for sexual assault testimony or evidence of sexual assault, lowering the standard. They're lowering it on all 404 evidence and I don't think that's right. And I think when the Legislature passed that in 1993, it was Senator Hall's bill, he prioritized the bill, the Nebraska Legislature, at least in 1993, thought that if you're going to use a person's propensity to convict them of a current case then it better be clear and convincing, not beyond a reasonable doubt but better than preponderance and certainly better than the threshold question. And so that's where we're opposed to changing the burden of proof. [LB39]

SENATOR ASHFORD: Thanks, Jim. Any questions of Jim? Thank you. Thank you. Next opponent. And we're going to keep moving along because we have a large group here, I know, that's been here for quite awhile and we can also talk to all of you gentlemen about the details of this as we go along too. So thanks. Go ahead, Mr. Creager. [LB39]

ROBERT CREAGER: Senator Ashford, members of the committee, my name is Bob Creager, C-r-e-a-g-e-r. I'm an attorney here in Lincoln. I'm president of the Nebraska Criminal Defense Attorneys Association. Like to take a few minutes to talk about the hearsay exception that Senator Lathrop talked about. Let me make it clear that I'm also confused about why we're changing the identification testimony, which doesn't...that's in the earlier section which doesn't have anything to do with sexual assaults that I can see. Any trial lawyer that's dealt with in court, out of court prior consistent identification, that's a very complicated area of the law. I've not heard anybody discuss why we're doing that. But on the sexual assault, let me make it clear there are hearsay statements which can't come in. If they're offered for the truth of the matter asserted, then there are exceptions to the hearsay rule in which the evidence may come in, depending upon the court ruling whether it's admissible or not or the foundation is there. This changes the definition of hearsay to say these prior statements of the child victim come in directly for the truth of the matter asserted without the declarant being present to testify. Now Professor Mangrum talked about Crawford, but I can't understand how he doesn't conclude that Crawford actually precludes this amendment because Crawford says a statement to a law enforcement officer, which was the hypothetical Senator Lathrop used, is by definition a testimonial statement which is not admissible under any circumstances if the witness is available to testify. Has nothing to do with cross-examination. This provision, on its face, is unconstitutional under the Crawford decision. There's just no escaping that. And I understand, I think he said a couple of times, well, we're going back to pre-Crawford days, you can't go back to pre-Crawford

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days. The current state of the law is that a person must be in court to face the accuser. That's what the Sixth Amendment confrontation clause says. The rule that said, but hearsay could come in, has been abrogated. That rule is gone. All you have to do, and legal counsel can read Crawford and give it to you, it just basically breaks testimony down into two types of testimony: reliable hearsay that may have come in for other reasons, but testimonial hearsay, statements to police officers, social workers, never comes in, period. So I can't for the life of me figure out how this section could be constitutional under Crawford. It sounded to me like they were trying to get around Crawford but I think that's dangerous and, for the reasons that Senator Lathrop and others have suggested in their hypotheticals, we don't charge people based upon what the child witness said to the uncle...or about the uncle at a party to a police officer five years ago. And those of us that lived through the McMartin Preschool cases in the late eighties and early nineties know all about the problems of child witnesses talking to social workers or law enforcement people and how those statements can be influenced and effective and are basically unreliable. So I would caution the committee to look very carefully at how you could change the definition of hearsay to allow essentially the hypothetical expressed here today without violating Crawford. [LB39]

SENATOR ASHFORD: Okay. [LB39]

ROBERT CREAGER: Thank you. [LB39]

SENATOR ASHFORD: Thank you. Next opponent. [LB39]

ROBERT HAYS: Good afternoon, Senator Ashford, members of the committee. My name is Robert Hays, H-a-y-s, and I'm the Lancaster County Public Defender. The two primary concerns I had are with respect to the change in the 404 evidence and the child hearsay portion. Sections 2 and Section 4 deal with prior sexual assaults and I would take issue with what Professor Mangrum said with respect to the effect of the bill because the bill makes evidence of any prior sexual assault, per se, admissible in any sexual assault. Now under 404, as it currently stands, county attorneys frequently get in evidence of other prior sexual assaults, whether they've been convicted of that act or not convicted of that act. Under 404 they have to show independent relevance because the whole purpose of 404 is to prevent the state from putting on evidence of uncharged misconduct for the specific purpose of showing that this is a bad person who's going to act in conformity with their bad character. And what we do by this amendment is we say except in sex cases. In sex cases you can put on evidence just to show that this is a bad person. Now the reason we don't allow prior bad acts is not because it's irrelevant but because it is so prejudicial, because of the risk that if the jury hears what other activity this person may have been involved in, in the past, they're going to convict the person because of...they know that this is a bad person rather than based on the evidence that was presented at the trial. With respect to the child's statement, the prior child's statement, it's classic hearsay and the only purpose I can see in making this

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amendment, if it's going to include a provision that the child must be available to testify at the trial on cross-examination, is to allow the county attorney to put on whatever their best statement is from this child in whatever form they can get it in, and then put the defendant in the position of having to call that child as a witness so that the defendant can attack the alleged victim. Now the defendant is supposed to be presumed innocent, and that's true in sex cases as well as burglary cases and assault cases and arson cases, and what we're doing here is setting up a separate standard for people who are presumptively innocent based on what they've been charged with. And for those reasons, I oppose the bill. Are there any questions? Thank you. [LB39]

SENATOR ASHFORD: Good. Thanks. Next opponent. Oh, how about...any other opponents? Neutral? Neutral. [LB39]

SHAWN RENNER: Good afternoon, Senator Ashford, members of the committee. I'm Shawn Renner. I represent Media of Nebraska, Inc. That's a nonprofit corporation comprised of Nebraska's print and broadcast news media. The news media, as a matter of policy, opposes legislation which calls for closed court hearings and sealed court records. We've been in contact with Senator Flood and have made the concerns known to him. He's indicated the willingness on his part to work with us in coming up with an amendment that would address those concerns. That's why I'm testifying neutrally today, to advise the committee that that amendment is in the works. [LB39]

SENATOR ASHFORD: Thanks, Shawn. [LB39]

SHAWN RENNER: Thank you. [LB39]

SENATOR ASHFORD: Matt. [LB39]

MATT BOEVER: Yeah, just real quick, Chairman and Judiciary Committee. That's right, Senator Flood is committed to working with...and making whatever changes the committee feels are necessary. And also Professor Mangrum...if a party, in answer to Mr. Creager's kind of contention, if a party is in court and subject to cross-exam, he or she is available and so that's why there's not the Crawford problem. I guess there's a Supreme... [LB39]

SENATOR ASHFORD: I think...I think, Matt, let me just say this. I mean, this is a complex issue and I think what needs to happen in the next...if this is a matter of great importance, we need to get everybody on both sides of this issue thinking about this fairly quickly. And I think Senator Lathrop and Senator Council have raised some significant issues and I think we need to...I mean if we're...if this is something that needs to...that the Speaker would like to move or ask us to consider moving, we need to put a lot of work into it quickly, and including Senator Lathrop and Senator Council. Because I don't...I mean we're...at least this committee is at a point where we can't rewrite these

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bills ourselves. I mean we're going to need...we're going to need input. And it's been good testimony on both sides, don't get me wrong, but I mean I think if there are areas of concern, let's see if we can get...bring them to us rather than have us rewrite them (laugh) because we're running out of steam. So thank you, though. [LB39]

MATT BOEVER: Yeah. I understand. Thanks. [LB39]

SENATOR ASHFORD: (See also Exhibit 24) With that...and I'm not critical. I just...but if you're...if it's that big a deal, let's get working on it. Okay. And, you know, confer with Senator Lathrop and Senator Council...thank you very much, and Counsel...and our legal counsel. Thanks, Matt, very much. Let's go on to Senator Avery, who I saw pop in here. He's here. He's popping from behind the column. Okay, LB145, prohibit firearms in schools, colleges, and universities. Don't we do that already? [LB39 LB145]

SENATOR AVERY: (Exhibit 10) There's a little bit of a problem. Thank you, Mr. Chair. My name is Bill Avery, spelled A-v-e-r-y. I represent District 28. I am here to talk to you about LB145 that clarifies the definition of school in existing law, particularly in the concealed Handgun Permit Act of 2006. LB145 was prompted by a troubling incident that occurred last year on the UNL campus. Two students carried rifles across campus openly on their way to a student group meeting for discussion on the National Rifle Association's activities with the intent of getting attention--and it did get attention. Students were alarmed to see these weapons in full view. Faculty were alarmed and the police were called. The students were ultimately charged with disturbing the peace and unlawful possession of a firearm on school grounds. The charges were eventually dismissed by the Lancaster County Court based on the interpretation of the word "school." They argued that the word was inadequately defined in statute, and that is what I am trying to correct here with this bill. The Attorney General ruled in 2006, as well, that the statute school doesn't include universities unless the intent is clearly indicated. The statute in question did not contain a clear indication of the term "school" and it was ruled that it did not include colleges and universities. So this bill defines school as "a public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school...a community college, a public or private college, a junior college, a university, or any other educational institution." There will probably be testimony later on that will ask you to strike those last words, "any other educational institution," and I do not presently have an objection to that. When this body passed the concealed carry legislation in 2006, most people believe and I believe that it was the intent of the Legislature to include colleges and universities in that definition of schools. I want to emphasize that this bill does not affect provisions in statute today which allow for active or reserve National Guard members, ROTC members, peace officers, or authorized law enforcement members to carry firearms on campus. Furthermore, firearms may be possessed by persons receiving instruction by the immediate supervision of an adult instructor, and firearms contained in a private vehicle of a nonstudent adult permit holder which are not loaded and properly

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stored as defined in statute. I don't have to remind this committee of the atrocities that have occurred on college campuses involving guns. You may recall that we had an incident at UNL just a few years ago in which a student appeared in a classroom with a gun, a loaded gun that misfired, and a very unfortunate incident was avoided by sheer luck. I would also like to remind the committee that the University of Nebraska, and I believe other campuses, the letter that you have there from Stan Carpenter indicates that the state colleges now have policies on guns. The University of Nebraska currently has a policy restricting firearms and other weapons on campus. What this bill does is merely tighten up the language in existing law to ensure the university and colleges the authority to enforce the rules without running afoul of the current law. I would ask you to advance this to General File and I will take any questions you might have. [LB145]

SENATOR ASHFORD: Thank you, Senator Avery. Any questions? It's good to see you here. Yes, Senator Christensen. [LB145]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Senator, if you have concerns about guns and stuff suspended on campus, shouldn't teachers be allowed to carry? Wouldn't that be a good thing? [LB145]

SENATOR AVERY: I would say no to that, Senator Christensen, but I can tell you of a personal incident that happened to me when I wish I had had a concealed weapon. A student appeared at my office, a disgruntled student over a grade, and threatened to blow my head off. That was a terroristic threat and a felony. I said, why don't you stay right here for a minute; I've got to make a phone call. He was actually armed. He had bought that gun at an auction or a gun show just the day before. Now why he had it on campus I don't know. I got on the phone and called the campus police. He took off, of course. I'll talk to you about the resolution of that some other time. But no, I don't think that faculty ought to be packing heat in the classroom. [LB145]

SENATOR CHRISTENSEN: See, I like packing heat. (Laughter) [LB145]

SENATOR ASHFORD: All right. Well, moving right along. (Laughter) Thanks, Senator Avery, and are you going to hang out or...? Senator Coash, has a question for you though. [LB145]

SENATOR COASH: Thank you, Chairman. Thanks, Senator Avery. You confirmed what I thought was true as a previous student at the university which was there's already a policy in the student handbook that says if you are a student here you're not going to carry, and I see the letter from the State College System saying, hey, we think that's best for our school as well. And then so it seems like most of them have done that, and you mentioned this just tightens it up. Do we want to just leave it up to the schools to say this is what's best for us? [LB145]

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SENATOR AVERY: Well, the schools thought they had that authority already. And the court interpretation was that the language was not specific enough and the intent of the Legislature was not clear in existing statute, and this bill would make that intent clear. [LB145]

SENATOR COASH: Okay. Thank you. [LB145]

SENATOR ASHFORD: Thanks, Senator Avery. Are you going to...? [LB145]

SENATOR AVERY: Thank you. I will probably not stay because I've got another meeting. [LB145]

SENATOR ASHFORD: Okay. Well, you're welcome to, if you want. [LB145]

SENATOR AVERY: Thank you. [LB145]

SENATOR ASHFORD: How about proponents? Do we have some proponents of this bill? How many proponents do we have? Okay, come on up. We don't want to be redundant, though, on the proponent side. [LB145]

OWEN YARDLEY: Thank you, Senators. My name is Owen Yardley, O-w-e-n Y-a-r-d-l-e-y. I'm the chief of police at the University of Nebraska-Lincoln. I'm here on behalf of the university as a supporter for the legislation. I'd like to thank Senator Avery for his work on this. As he mentioned, we were essentially the test case for the previous law and which we were unsuccessful in getting prosecution for. The university, the concerns we have with this is the university is generally, and most universities or colleges, are relatively open environments with a lot of people being able to come in from off campus, as well. Offices and facilities, rooms, including residence hall rooms, are generally open, which is the areas where firearms are most likely to be stored on campus. Students, not to particularly address one group, but students, which makes up the predominant population on campus, for most studies are under a lot of stress from various means. Mental health issues are on an increase. And traditionally on college campuses, there's also a high risk...a high level of high-risk drinking, binge drinking on campus. And the mixture of the firearms, mental health issues and firearms, we feel would not be in the best interest of the university. There was one...in reviewing the law, there is...or in the legislation there was one area that we may have some concern with, and that is that the university has an athletic team, shooting team, and an interpretation may be that they would be excluded from this, so we would like to consider further review of that issue. [LB145]

SENATOR ASHFORD: Good point. Thanks. Any questions? Thank you. Tip. [LB145]

THOMAS O'NEILL: Senator Ashford, members of the Judiciary Committee, I'm Tip

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O'Neill. I'm president of the Association of Independent Colleges and Universities of Nebraska, 14 privately controlled nonprofit colleges. We support this legislation because we believe it clarifies current law. I'd be happy to answer any questions you might have. [LB145]

SENATOR ASHFORD: Seeing none, thanks, Tip. [LB145]

THOMAS O'NEILL: Thank you. [LB145]

DENNIS BAACK: Senator Ashford and members of the Judiciary Committee, for the record my name is Dennis Baack, B-a-a-c-k. I'm the executive director of the Nebraska Community College Association here to testify in support of LB145. And we do have policies in place on all of our campuses too, but we think that this, after that recent court case, we need to have this cleared up in state statute that says it very clearly that they can't have firearms on school property, on community college property. And we would also be in support of striking that last little phrase that says "and any other educational institution." As I stated to the lobbyist for the National Rifle Association, I said, well, you know, this could be really bad for you because you couldn't bring guns to your hunter safety class. So, you know, that could be problematic. And I think that the definition is broad enough that it covers all of the educational institutions that we're interested in. [LB145]

SENATOR ASHFORD: Certainly ironic, I would guess. [LB145]

DENNIS BAACK: Certainly. [LB145]

SENATOR ASHFORD: Thanks, Dennis. Any questions? Seeing none, thanks. Other proponents? Opponents? [LB145]

CHRIS ZEEB: (Exhibit 11) Good afternoon, Senators. Thank you for your time today. My name is Chris Zeeb, Z-e-e-b, here representing the Nebraska Firearms Owners Association. We are opposing LB145. A couple of things I want to address as Senator Avery said. First, he's using the case of the students who carried rifles on the university campus, and then he's dragging concealed handgun permit holders into this bill. It was not concealed handgun permit holders who had nothing...it had nothing to do with the concealed handgun permit holders, that case. Also I can say with 100 percent confidence that that individual who threatened Senator Avery was not a concealed handgun permit holder. I'd like to point out January 2006 there was a--and you won't hear this in the news, by the way--January 2006 there was in the Virginia legislature there was a bill to allow faculty and staff of colleges to carry--who had concealed carry permits--to carry on campus. That bill died in committee. On January 31, Virginia Tech spokesman--that was January 31, 2006--a Virginia Tech spokesman was quoted in the paper as saying this: I'm sure the university community is appreciative of the general

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assembly's actions, because that will help parents, students, faculty, and visitors feel safe on our campus. That safe feeling worked real well for those 32 people on April 16, 2007, didn't it? There's a 2009 January Texas House of Representatives report on college safety I'd be happy to e-mail to any of you. I didn't want to kill several trees printing it. Basically they are recommending that the way to improve college safety is allow concealed carry permit holders to carry on college campuses. LB145 does nothing but punish law-abiding citizens. These people who are coming onto campuses to shoot are not obeying the signs or the laws, okay? You're punishing people who are law-abiding citizens. I would add that maybe we should ban golf clubs, baseball bats, and motor vehicles on the college campuses, too, because a lot of deaths occur with those inanimate objects. There's a couple other things. There's a Game and Parks office located on the university property which is used as a check-in station for hunters. Does that mean that the hunters have to leave their deer rifle at home when they go to check their deer in? Something to think about there. LB145 is a bad bill. It should not go forward. It should be changed to say colleges and universities cannot regulate firearms with law-abiding concealed carry permit holders. That's what the bill ought to say. And if you have any questions I'd be happy to answer them. [LB145]

SENATOR ASHFORD: Any questions of this witness? Seeing none, thank you. Any other opponents? Neutral? [LB145]

RON JENSEN: Senator Ashford, members of the Judiciary Committee, my name is Ron Jensen. I'm a registered lobbyist appearing before you this afternoon on behalf of the National Rifle Association. We are neutral on LB145 with the removal of the term that's been referenced here previously. We think that's so vague as to be meaningless, if not invite mischief. Appreciate Senator Avery's flexibility on the matter and with that change we're neutral on the bill. If there are any questions I'll be happy to try to answer them. [LB145]

SENATOR ASHFORD: I think it's pretty clear, Ron. Thank you. Any other neutral testifiers? Senator Avery has left so that concludes the hearing and we'll go to LB258, Senator Harms. How many testifiers do we have on LB258? How many proponents and how many opponents? Let's do the proponents first. Okay, we're going to go to 4:15 on the proponent side so kind of organize your testimony that way if you would. But we won't start until Senator Harms shows up, so if he doesn't show up for five minutes it will be 4:20. Senator Harms, you're up. Good afternoon. [LB145]

SENATOR HARMS: Thank you. Sorry I'm late. [LB258]

SENATOR ASHFORD: Just about ten seconds is all you were. [LB258]

SENATOR HARMS: (Exhibit 12) Okay. Well, that's better than the rest of the day like I've been. I do have some material to hand out. [LB258]

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SENATOR ASHFORD: Go ahead. You're up. Senator Harms, welcome. [LB258]

SENATOR HARMS: Okay. Thank you. My name is John, J-o-h-n, N. Harms, H-a-r-m-s. I represent the 48th Legislative District, and Senator Ashford, thank you for giving me the opportunity to visit with you about LB258. I appreciate coming forward to discuss this bill with you. Senator Ashford, there's states all across the nation that are struggling with what to do with underage drinking, and the majority of the states have adopted the philosophy: you use as a teenager, and you're underage, you lose. And the use-and-lose has been coined to basically to describe laws that authorize driving driver's license action to be removed against persons who have been found drinking that are underage, or possessing alcohol beverages. So what it really means is if you drink, as a teenager, and you're caught, you'll lose your permit potentially or you'll lose your license--better than your life. What we have found is that young persons across the country are not very likely to be jailed or otherwise substantially sanctioned for the use of alcohol and for some drug use abuse. So what states have done, they have struggled throughout the nation to find a solution to sanction and to deter teenagers from drinking. The driver's license removal and denying of licensure as a sanction is found to be very useful for many teenagers. And Senator Ashford, I spent the last two years talking to judges, county attorneys, law enforcement people, alcohol counselors...drug and counselors on more than on occasion, parents and teenagers. And to my amazement and what they have said to me, if you really want to get a handle on this issue of underage drinking and alcohol in Nebraska, address the issue of a license and the use of the automobiles. What's really sad is that there's a tragic health and a social and an economic problem resulting from the use of alcohol by youth. Underage drinking causes a casual factor and a host of serious problems, including homicide, suicide, traumatic injury, drowning, burns, violent and property crimes, high-risk sex, fetal alcohol syndrome, alcohol poisoning. When you get through with all this, then you have to address the issue of a teenager with treatment of alcohol abuse and dependence. Underage drinking costs this great state about \$450 million annually. This cost includes medical care; this cost includes work loss; pain and suffering associated with underage drinking. If you want to break it down to youth, it actually translates into \$2,430 per year for each youth in this great state. If you want to look at it differently, we rank tenth in the nation as highest among 50 states for the cost of per-youth underage drinking. Young people who begin drinking at the age of 15 are four times more likely to develop alcohol dependence, and 2.5 times more likely to become abusers of alcohol than those who began drinking at the age of 21. What I found amazing as I started to study this issue is there is a tremendous relationship between alcohol and adolescent brain development. There has been a lot of research that's been done on this particular concern, and it's quite clear that the brain undergoes a phenomenal amount of development during the teen years; in fact, up to 25 years old. And what I call, Senator Ashford, a major remodeling of the frontal lobes takes place in your teen years, and that simply means that the frontal lobes deal with things like planning; they deal with pain attention; they

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deal with making decisions and controlling the urge to do some things wrong. That's where it's all controlled. And what they found, the changes in the frontal lobes also are influenced by experiences. So the teenagers who start experiencing the alcohol process and you start drinking, that begins to alter the actual brain functioning and the brain usage of our teenagers. Because of the changes that occur in brains during the teenage years of using drugs and alcohol, they found there's quite a bit of difference between what happens to an adult and what happens to a teenager. They're differently. It appears that alcohol produces bigger impairments in learning and more widespread brain damage during the adolescent years. Because the frontal lobes are not fully functioning during adolescent years, alcohol takes an easier path to disrupt what happens to these kids. It disrupts the pathway that they're going to walk. It disrupts what's going to occur in their lives. In fact, it slowly starts to destroy them. Researchers have reported that several studies where they have studied teenagers that have done heavy drinking during the teen years, they found that it leads to long-lasting memory impairment, both long- and short-term, reasoning, and attention. Senator Ashford, what I'd like to do is just to share very quickly just a little data. I've given you some material that you can look at on your own. Just what you wanted to do in your off time and do a little reading. But sometimes a picture is better than 100 words, but you can look at it yourself. I just want to bring to your attention, I think, some statistics that I think are alarming and that I have concerns about this great state and alcohol usage of teenagers. First, we all need to understand alcohol is the most common used substance among high school students in Nebraska. What the judges have told me at home, that's in Scottsbluff, Nebraska, is that it's the gateway to all other use of drugs, and that what happens to teenagers is that once they start on the alcohol, they move from alcohol to marijuana, and now the dealers are lacing marijuana with crystal meth, which is the highest of the most sophisticated meth that you can make, and also cocaine. So now what's happened they've gone from the alcohol to the marijuana and now it's becoming a lot more serious in regard to that issue. Nationally, the regular use of alcohol is documented to be 14 years of age, and I use the term regular because that means two or three times a week. And we know in Nebraska we have data that shows that it starts as low as 9 and 10 and maybe even younger. So let's look quickly at the Nebraska data. Nebraska ranks ninth in the nation for teenage binge drinking; it ranks second in the nation for teens driving after drinking. Nebraska ranks second in the nation in the number of teens riding with a driver that has been drinking. Eight young persons die each year in Nebraska because of alcohol use. To look at it differently, we rank seventh in the nation of youth young fatalities. Thirty-one states have license suspension/revocation. I'd like for you to look at this chart just for a minute if you would for me. This pretty much spells out really what the issue is in this great state. You look around us, 31 other states already have dealt with this. It's mandatory. They don't give the judges any options. There are a few that are discretionary and there are some that are both mandatory and discretionary. Take a look at Nebraska, where they rank, where they look. That's what our issue is. It's the fact that we do not have a public policy that addresses the issue of teenage drinking, and that's why it will continue to grow; that's

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why we'll continue to have problems; that's why at the back end of this whole issue it is going to continue to cost us more money. It's better to make the decision up-front and start to resolve the issue rather than to allow this to occur. And what I say is that this bill, maybe it's not a perfect bill and it may have procedural errors, but we can deal with all those. What it starts is to have the dialogue that I think is extremely important about a change in public policy in young teenagers and the use of alcohol. If we don't start to address the issue, I will tell you in the future we will be sorry and the costs are staggering. And everyday we watch kids who lose the ability to think properly, destroy their minds. When you become, as you know, an alcoholic as a teenager, I will tell you that it's a battle for the rest of your life. I mean, you just...very difficult. And so here's what this bill does. It's broken down into actually three segments. From a person who is of the age of 16-21 years of age, the first offense is a Class III misdemeanor; minimum 60-90 days your license is impounded and you are required to attend an alcohol education class or classes, and they're listed in the bill and I won't go over those. The second offense is still a Class III misdemeanor, six months license impounded, and we start to ratchet this up and you've got between 90, at a minimum, or to 40 hours of community services. And again, we start addressing the issue requiring them to deal with educational classes. The third offense is a Class II misdemeanor, and by the time you get to probably a Class II you're probably on your way to being an alcoholic. One year license impoundment, 60 days community service, and that's where you go for an alcohol evaluation. That's where they have to go through and submit to alcohol assessment by a licensed alcohol and drug counselor. And the fourth, if you get that far, which is a lot of...would be...is going to be controversial, two years license impoundment, minimum of 5 days in jail, up to 15 days in jail, and again you go through the evaluation. For a person who is under the second segment of this bill, for a person who is under 16 years of age and their operator's license, their operator's permit, they're similar. First offense, Class III misdemeanor, you've got six months and you go through the alcohol education classes. The second offense, it's another six months, impounded or delayed. Again, you go through the alcohol classes. And the third, it's a year and that's when we start the assessment again through a counselor, and beginning to say, you know what, we have a much more serious issue here. We need to address the issue with you. And the third segment of this bill boils down to persons who are 16 years...under 16 years of age who have no operator's license. And basically you go through the same thing. I mean, the offenses are dealt with, the license are impounded, you're going to go to classes or a class. You are then going to end up with some counseling and we delay how long you can get your permit; you delay your permit. That's basically what this bill does. And I will tell you that, Senator Ashford, it's modeled after other states. So I would be happy to answer any questions you have and I'm sure there are other people who might want to testify. [LB258]

SENATOR ASHFORD: They've been very patient back here, not through your...but through the whole day, sitting back there, and being very quiet and so I'm sure they have... [LB258]

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SENATOR HARMS: Well, maybe we're going to stir it up a little bit here, eh? [LB258]

SENATOR ASHFORD: They have a lot to say, I'm certain, so. Any questions of Senator Harms? Thanks for your thorough description of the bill, Senator Harms. [LB258]

SENATOR HARMS: Well, thank you, and I'd be...I'd like to have the pleasure of closing if I may. [LB258]

SENATOR ASHFORD: We're going to go to 4:35 so there is 45 minutes or so. Let's go with the proponents. And I'd like to hear from some of the young people in the back, not...I want to hear from you, too, but let's make sure that people in the back who've been here all day get an opportunity to testify, so thank you. [LB258]

HOBERT RUPE: Thank you, Chairman Ashford. My name is Hobie Rupe; that's H-o-b-i-e, Rupe, R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. And I'd like to take this opportunity to express the commission's support for this bill. As you're aware, it's been part of our legislative letter for about the last eight years. The commission looks at combating underage drinking as a multifaceted approach, and if you would think of it simply, there are supply and then there's consumers, in this case illegal consumers. Minors get their alcohol from a lot of sources, some from a friend, some from a family, and unfortunately some from licensed retailers in the state of Nebraska. The commission thinks that we're doing a pretty good job about when we catch those individuals, they're suffering a penalty. As you're aware, not only is the clerk who's sold to the minor facing a Class I misdemeanor in the criminal case, but the licensee itself is subject to an administrative citation in front of the commission. And just for a first offense, they're looking at a 10- to 14-day suspension of their license, which translates to a \$1,000 to a \$1,400 fine, and it goes up progressively from there. So the commission would like to...although we don't regulate the underage drinking, we think that this...or from other than from licensees, we think this is a multifaceted approach. We hear from, a lot of times, from licensees who, in front of us, are walking out after receiving, say it's their second offense with a 2-day mandatory and a 3-day suspension which translates to a \$3,000 fine, well, how come the kid that bought from me got \$75 and you're closing me down for a couple of days and putting an impact on my business? Well, we have to say, well, that's not under our purview but you are, so that's where we're looking at; don't sell to kids. So we think this is a broad support that sort of looks at the other side of this issue which is the minors obtaining alcohol. And so I'd be happy to answer any questions that the committee might have. [LB258]

SENATOR ASHFORD: Thanks, Hobie. Yes, Senator Christensen. [LB258]

SENATOR CHRISTENSEN: Senator Ashford, thank you. Hobie. I threw the idea over

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here at Colby, or Senator Coash, that if you really want to get at this, if you made the parents have to go through the alcohol training and the public service or the community service, wouldn't that stiffen this a bunch? [LB258]

HOBERT RUPE: Well, perhaps. I mean, we see, a lot of times, where the...at least when we're dealing on the retailer, you know, the retailer himself might not have known his clerk was breaking the law and doing it, but after he's the one who has to pay up the multi-thousand-dollar fines, he is the one who is changing his habits, training his change...his training processes and what he's doing. So the commission, at least from its punishment of licensees, looks at how do we get the person who makes the decisions and sets the policies for that store, how do we get them to be in compliance? So if your argument is maybe we should make the people who set the policy for the minors, I say we can't really disagree with that because that's what we do to the retailers. [LB258]

SENATOR CHRISTENSEN: Well, I think that would have a large impact because the parents can have a lot more influence if they're under the gun too. [LB258]

HOBERT RUPE: Yeah, I'm...one time I was asked what would have happened if you had been 16 and caught drinking, and I said, well, besides the ass-whipping my dad would have gave me, losing my car for probably a year would have been the second most thing I was afraid of. [LB258]

SENATOR CHRISTENSEN: That's right. Exactly. Thank you. [LB258]

SENATOR ASHFORD: Thanks, Hobie. What we're going to do...what we're going to do now is the young people that are sitting in the front row, let's start...are you all going to testify? Let's start on the left here and we'll go down the line, so. I don't know your name but I will soon, so why don't you come up here and we'll go down the line of the people in the front row there. [LB258]

ALLYSON BENNETT: (Exhibit 13) Thank you for allowing me to be here today. My name is Allyson, A-l-l-y-s-o-n, Bennett, B-e-n-n-e-t-t, and I'm a senior at Nebraska City High School and I am supportive of this bill. Today, teenagers look at getting a minor in possession as a badge of honor. They see it as just being inducted into an elite social club and something to be proud of. Sadly enough, parents of these students think it's a rite of passage to adulthood. When I think of things that bring pride to my friends and family, I immediately think honor roll, National Honor Society, lettering in a sport or an academic letter, things that every student should be proud of. Unfortunately, today's youth seek peer approval through drugs and alcohol. They climb into a vehicle and think it's a game to get home safe without getting caught. If they do, they just won the game this time. I personally have been invited to parties and I have chosen my path to be one of self-pride and not self-destruction, not to mention my parents would kill me. Nearly 30

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years ago the legal drinking age was raised to 21, so this shows that in the past 30 years the drinking habits of teenagers in the state of Nebraska has increased and will keep on increasing without this legislation. Anyone under the age of 21 is not legal to drink, just as someone under the age of 16 isn't allowed to drive. It's about time Nebraska started to see how serious of an issue this has become and will continue to grow. Giving youth the option to get their first MIP taken off their record by taking a diversion class doesn't teach them anything. They know they sit in a class for eight hours and contemplate their next party and how they can avoid getting caught again. I believe that the diversion class can be a positive program for some, yet from personal experience from my classmates is that it is a joke. The Centers for Disease Control reports approximately 83,000 underage youth in Nebraska drink each year. How would revoking a youth's driver's license teach them to be more responsible? We will only find out by the passage of this bill. We all know there are consequences to our bad behavior as our parents and teachers have taught us throughout our life. It's about time for underage drinkers to deal with more serious repercussions of their behavior for receiving an MIP, and taking away a driver's license is just the way to get their attention. Everyone today needs a car. Whether you're in high school or college, a car has become a necessity. Some may say that taking away a student's driver's license isn't right because they need their car to get around. If a student needs to get from here to there and they are an underage drinker, there is only one thing to do--the smart choice would be not to drink. If we polled all underage drinkers and they were given a choice to drive and have that freedom or to drink and walk around, which would they choose? I leave you with that exact question because with the passing of this bill you won't get a choice; one will be dealt to you. Thank you. [LB258]

SENATOR ASHFORD: Thanks, Allyson. Are you senior at Nebraska City High School? [LB258]

ALLYSON BENNETT: Yes. High School. [LB258]

SENATOR ASHFORD: Good. Where are you going to go college next year? [LB258]

ALLYSON BENNETT: Peru State. [LB258]

SENATOR ASHFORD: Good for you. Any questions of Allyson? [LB258]

SENATOR COUNCIL: Right down the road. [LB258]

ALLYSON BENNETT: (Laugh) Not very far. Thank you. [LB258]

SENATOR ASHFORD: Thank you. You did a great job. Next person seated in the front row. And when the yellow light goes on that means you have a minute left, so you don't have to...it's not seconds. You have a whole minute, so take your time. [LB258]

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BENJAMIN RICE: (Exhibits 14 and 15) Thank you for being here today, Senators. My name is Benjamin Rice. I am a senior at...or a junior, sorry...at Nebraska City High School. I'm here on behalf of Partners for Otoe County and myself as a concerned high school student. As Senator Harms mentioned, underage drinking costs the state of Nebraska \$447 million a year. Nearly \$200 million of that can be linked to underage drinking and driving. Did you also know that traffic accidents are the leading cause of death for teenagers? Half of those accidents involve alcohol. Most teens feel that getting a DUI or an MIP is a rite of passage; it's something that is easily joked about and often idolized and thought of as a trophy. Drinking and driving, especially underage, is becoming a huge problem in our society today. I live in Otoe County where in 2007, according to the Nebraska Crime Commission, there were 205 DUIs issued in a county of about 16,000 people. In the entire state of Nebraska there were 13,280 DUIs issued in 2007. Nearly 40 percent of those were under the age of 21. These numbers are startling in our state of near 1.8 million. This is out of control and action must be taken. A vehicle is a teenager's lifeblood. It is often seen as a necessity. I know I think it's a definite necessity. And if the suspension of their license were a likely consequence, then teenagers would take drinking more seriously. When the consequences are finally serious, people will think more thoroughly before they take foolish decisions. The reason I feel so passionately about this bill is because this last summer I lost one of my best friends in an alcohol-related car crash. He was ten days from his sixteenth birthday. It could have been prevented. This legislation will save lives and promote the health and general welfare of all the citizens of the state of Nebraska. Please support this important piece of legislation. [LB258]

SENATOR ASHFORD: Thank you. Any questions? Thanks for coming to the Capitol. Next testifier. [LB258]

LAUREN CANTRELL: (Exhibit 16) Good afternoon. My name is Lauren, L-a-u-r-e-n, Cantrell, C-a-n-t-r-e-l-l. I'm 16 years old and am a sophomore at Grand Island Central Catholic. I am very honored to be able to speak to you today. I'm here to talk to you about LB258: use and lose in Nebraska. LB258 is a bill that needs to be approved and advanced to the General File. The use-and-lose bill is a bill that will suspend or revoke any driving privileges from any teen caught purchasing alcohol, caught with alcohol, or caught under the consumption of alcoholic beverages. This bill will be very beneficial to the state of Nebraska because it will keep all drivers in the state of Nebraska safe from any danger or harm from teen drivers under the influence of alcohol, which happens to be a major problem in Nebraska today. In 2007, 7 percent of all licensed drivers were teenagers, but were involved in 16 percent of crashes where alcohol was a factor. Growing up in Fullerton, Nebraska, I grew up around a lot of kids and teens drinking. The upsetting part about all of this was seeing that no one actually cared and most of the kids could get away with it. In a small town, in addition to drinking underage, many kids and teens had either farm permits or school permits which allowed younger kids

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and teens to drive legally. Then there were even some that drove illegally. This put many kids, teens, and even adults in danger. This bill could prevent this danger and keep everyone safe. Being a teen in today's society, I see what alcohol can do to people and what it does to affect the minds of teens. I've had friends who have thrown their lives away by drinking carelessly and not caring what happens to them. Underage drinking is a common factor in serious problems relating to suicide, homicide, high risk sex, alcohol poisoning, and need for treatment from alcohol abuse. Having already seen some of these things happen to a few of my friends, I would hate to see these things happen to anyone else. I believe that LB258 would help prevent these tragedies from happening, along with keeping everyone safe while driving. I believe that this bill, LB258, would be very effective in Nebraska. Lots of things needs to be changed in our communities, and if no one else is going to do it then I will, which is why I challenge you to accept this bill and advance it to the General File. Thank you for your time and thank you, Senator Harms, for introducing this bill. [LB258]

SENATOR ASHFORD: Thank you, Lauren. Thanks for coming. Next proponent. [LB258]

KATHERINE COLE: (Exhibit 17) Good afternoon. My name is Katherine, K-a-t-h-e-r-i-n-e, Cole, C-o-l-e. I am 14 years old and a sophomore at Lutheran High Northeast in Norfolk. I come before you today to share with you some of the effects alcohol abuse has had on my peers and how this legislation will be a deterrent in helping decreasing underage drinking. Throughout my time as a high school student, I have seen many lives changed and some destroyed because of underage drinking. Effects that I have personally seen range from truancy to poor grades to even teen pregnancy. Whether it be personal injury or the destruction of other's lives, the result of underage drinking is never positive. As you have heard, some of the statistics concerning underage alcohol use are staggering. Just a few of the examples are that 17 percent of youth drove after drinking; and that out of all the alcohol sold in Nebraska in 2005 over 21 percent of it was consumed by minors. Forty-two percent of Nebraska youth are currently in use of alcohol. What is this alcohol use doing to the youth of Nebraska? The effects are even worse than the costs. Youth who started drinking before age 15 are four times more likely to develop alcohol dependence and 2.5 times more likely to become abusers of alcohol than those who began drinking at age 21. In 2004, over 1,000 youth ages 12-20 years old were admitted for alcohol treatment in Nebraska. This accounted for 9 percent of all treatment admissions for alcohol abuse in the state. I have told you about the costs and the effects of underage drinking. Now let me tell you why I think LB258 can help discourage this travesty from happening in our state. I believe this will be a deterrent for underage drinking because for most teenagers getting a license is a milestone and a privilege. Teenagers value the independence they derive from having a driver's license and would be less likely to drink knowing that this privilege could be easily taken away if they were caught drinking. Out of the 50 states, 11 states including Nebraska, do not have any use-and-lose laws. I think if LB258 is

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passed and put into practice, the costs of underage drinking, both monetary and otherwise, would be reduced greatly. I would like to thank Senator Harms for introducing this bill and I'd also like to thank you all for hearing my comments today. [LB258]

SENATOR ASHFORD: Thank you, and I...before we go on, you know, I just want to...Sally, would you stand up for a second? Sally Gordon. Sally is 100 years old this year. [LB258]

SALLY GORDON: Not yet. (Laughter) [LB258]

SENATOR ASHFORD: This year. [LB258]

SENATOR MCGILL: Next week. [LB258]

SENATOR ASHFORD: This year, and I just...(applause). And I think what's great with all the young people here is what service to the state means is epitomized by Sally and her family and her commitment to the state of Nebraska. So thank you for all you do, Sally, for your 100 years of service. That's amazing. Next. [LB258]

EMMA BARTEK: (Exhibit 18) Hi. My name is Emma Bartek. I'm a sophomore at Wahoo High School. And walking in the halls at school on Monday morning you tend to hear some interesting things. A common topic of conversation is about who had the big party, who was there, and if the party was busted. Then you hear who got MIPed. To teenagers, this is funny and entertaining because the vast majority of these kids get in little trouble. With the new bill, LB258, things would change for the kids who receive these MIPs. It might not be so funny anymore. When I first heard about this new bill I was very excited. I was glad to hear something more was going to be done to help combat underage drinking. There should be more repercussions for teenagers who choose to drink. Teenagers love to drive; I love to drive. It gives most a sense of freedom, but by drinking they'd be putting their freedom in jeopardy. So for most if there was a chance that they would get their license taken away because of drinking, they would think twice about drinking for sure and they would think even harder before they get in a car and drink. LB258 would be a very powerful deterrent. After all, driving is a privilege, not a right. In 2007, 56 teenagers between the ages of 15-19 were killed in car crashes in Nebraska. Out of those 56, 19 were alcohol-related. This number is way too high, in general, but the number of deaths that involved alcohol should be way less or nonexistent. LB258, over time, could help curb this rate. It could help save lives. With this bill teens would suffer more consequences when they drink and when they drink and drive. Having lost their license to a prior MIP, teenagers will first of all not be driving and maybe they will think twice before drinking at all. And for those who have not received an MIP, this new bill would be a great deterrent when deciding if they should drink or not. In order to help save lives, this bill needs to be passed. You have a chance to help influence lives of teens. My friends and I are just as affected by all this underage

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drinking. It is hard to deal with all the time. It seems to be more accepted for teenagers, but that needs to stop now. Sometimes teenagers need to know there will be more repercussions for their underage drinking even if their parents don't punish them. I am sick of kids just laughing off their MIPs like it's not a big deal. It is a big deal. On Monday mornings to come I hope there's a different talk in the halls. Maybe the talk could be how there are no big parties or how they don't have a license because of the poor decision they made. So I respectfully ask you all that you pass LB258. It could help save teenagers' lives. And thank you, Senator Harms, for introducing this bill. [LB258]

SENATOR ASHFORD: Thank you, Emma, for coming down. Thank you. Next proponent. [LB258]

KATIE KANGAS: Good afternoon. [LB258]

SENATOR ASHFORD: Good afternoon. [LB258]

KATIE KANGAS: (Exhibit 19) Hello, Senators. My name is Katie Kangas, K-a-t-i-e K-a-n-g-a-s, and I'm here representing myself and on behalf of my youth group, Project Extra Mile. I'd like to thank Senator Harms for introducing this great bill. When I first read over it, I was almost unsure of whether or not I agreed with the bill. I thought that all the kids across the state of Nebraska who drink would be greatly affected by this bill. They would lose their license, and when you're 16 years old that little plastic card with the slightly unattractive picture of yourself means freedom. It means you don't have to be seen having your parents drop you off. It means a lot to a teenager. That is why, after thinking about the use-and-lose bill, I know that it would be an ingenious law. When you were younger and gotten into trouble, did your parents ever take anything away that you valued? Did they ground you or take some or your privileges away? Most teenagers that I know have, surprisingly, gotten into trouble before, and any one of these kids that you talk to will tell you that having privileges such as our cell phone or Internet access taken away greatly affected them and made them think twice about getting into trouble again. And just like having a cell phone or Internet access, driving is a privilege. It's not a right. Everyone has to pass a test, meet certain medical standards, and be responsible enough to drive. If they don't meet those requirements, their privilege of driving is taken away. And if having privileges taken away is something that makes teenagers think twice about exhibiting bad or risky behavior, it almost goes without saying that teens who drink and are caught should have serious privileges taken away, and any teenager's most valued privilege is possibly the right to drive. If Nebraska's youth knew that something they valued extremely could be taken away, there would be many more teens who wouldn't drink for fear of losing their privilege to drive. If there's no consequence that is taken seriously, the same mistakes will be made over and over, and if those mistakes keep growing not only will the cost to our state keep growing but the danger to citizens and the property of our state will grow as well. In 2007, 16 percent of all alcohol-related crashes were by teenagers. That's a

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percentage I think we can all agree should be at zero. It's also a well-known fact that teenagers are not very experienced drivers in the first place. Fewer years of driving means less practice for all the young people. And while most teens are cautious drivers, they might not have as good of judgment as someone who's been driving for longer. So what happens then when you throw alcohol into the mix? The same teen who was a cautious driver no longer has their good judgment riding in the passenger seat. In more ways than one, the car that they are driving becomes a lethal weapon. If use and lose becomes a law, hopefully all teen drivers will keep their good judgment with them and leave the alcohol behind. Senators, today I ask you to approve this bill and move it on to General File, not just for yourselves but for your children, your grandchildren, your friends and your neighbors. I ask you to pass this bill along to General File to benefit our whole state of Nebraska. [LB258]

SENATOR ASHFORD: Very well said, Katie. Where are you from? [LB258]

KATIE KANGAS: I'm 16 years old and I go to Millard North High School. [LB258]

SENATOR ASHFORD: Millard North. [LB258]

SENATOR MCGILL: Ooh, that's my alma mater. [LB258]

SENATOR ASHFORD: That's where Senator McGill went. So there's something in the water there somewhere. [LB258]

SENATOR MCGILL: You could be a senator too. (Laugh) [LB258]

SENATOR ASHFORD: Katie, thank you. That was very well said. Now we're going to move to a few adults. It's boring, but... [LB258]

SANDRA KOSCH: (Exhibit 20) Good afternoon. My name is Sandra K. Kosch, S-a-n-d-r-a K. K-o-s-c-h. I'm from Shelby, Nebraska. Today I want to speak to you from my heart as Whitney's mom, and explain how \$20, or about, has changed our world. I speak of the events of May 19-20, 2006, the first day of summer for the children in our community. Whitney and her girlfriend asked that they go to a friend's house. I drove the girls there. Their parents were home. Yet, in another community, a 17-year-old boy was planning his night. He would use his \$20 to somehow possess a case of beer. The girls watched movies. Others stopped by. One was that boy, to see my daughter's friend. It was 10:40 when my child said that she had an 11 p.m. curfew. The boy offered to give her a ride home. The friend's mom gave permission. Both girls were in the boy's car as he drove eight blocks to our home, but he did not turn into our driveway. At the intersection past our home, just seven-tenths of a mile two other cars and the car that my child was in, they met. They stopped and they talked. What we will wonder always is, why were the three cars there? Something happened, I know it in my heart that

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somehow, some way, that \$20 purchase of beer came into play. Then the car that my Whitney was in pulled out in front of an oncoming vehicle. Collision. Whitney was ejected. The boy, her friend, got out of the car without a scratch. Whitney was found, her injuries were so obvious. A 911 call was made. One child knelt beside my child and never left her side. The other children circled her but they backed away. They gathered at the boy's car. They removed the case of beer, throwing cans of beer as far as they could. They thought the beer was out of sight and no one would know about it. We arrived at the scene. The fire chief was calling, move your cars; let your lights shine on the cornfield; we do not want the helicopter to come into contact with the power lines. Whitney was flown to Lincoln. Our whole family was notified. We arrived, our priest was there. Nothing could have prepared us for what we saw. Whitney, our beloved child, she tried to stay with us. She was too injured. She went on to become a donor. Months later, in the depths of our sorrow, our county attorney asked us to come to his office. We read the sheriff's report. We noticed one statement from the boy. The statement said this: The officer asked whose beer is it, where did it come from, and the boy said it's mine; the beer belongs to me; it was in the back of my car. Will the boy be charged with minor in possession? I wrote letters to the judge. The probation officer called. He said you were not to worry, Mrs. Kosch, that beer was not for that night; it was for the next weekend. I did not understand. The boy was still 17 next week as he was that day. We went to the courthouse for many months. The boy was charged with motor vehicle homicide, failure to yield. He was evaluated the next month. He agreed to the charges. The following month a motion was made for minor in possession. This time the boy disagreed. His lawyer made a motion to suppress. Perhaps that crash had not been investigated as an accident only and was not as a crime. The judge tried to schedule another court date, but the boy's lawyer said his schedule was too busy. My husband and I wondered if the scheduling was a conflict because the boy was on the school's football team and they were in the state's playoffs. After the football playoffs, the boy and his lawyer came to the court. The boy agreed with the charges of MIP. His lawyer made a motion to dismiss. My child Whitney was not drinking. In her innocence, she trusted a young man to give her a ride home, eight blocks in a town of 600. Instead of riding home safely, she paid the ultimate price with her life for the 17-year-old boy's crime, his \$20 case of beer, his minor in possession. We miss our child more than I can even begin to tell you. You may think that this account of what has happened to us is just a fluke; it will never happen again. But I tell you it will. How many other children will have unfinished lives? How many families will be forced to live shattered dreams? How many other stories will you never ever hear? Please do what you can. Help to protect our precious young children. Let young people know that they do face consequences for their own actions. Support the changes in the minor in possession law. Thank you. [LB258]

SENATOR ASHFORD: Thanks, Sandra. [LB258]

SANDRA KOSCH: Are there any questions? [LB258]

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SENATOR ASHFORD: I don't believe so, but thank you for sharing. [LB258]

DEREK WEIMER: Thank you, Senator Ashford and the other committee members. My name is Derek Weimer. I'm the county attorney in Scotts Bluff County, and I'm proud to say that Dr. Harms, Senator Harms is one of my constituents, as I am one of his. He and I had the good fortune of being elected in the same cycle, him to his position and me to mine. And one of the issues that I dealt with in private practice, I'm having flashbacks to these young people that are here today, because they are speaking very eloquently and very accurately as to what I've seen, both in private practice and in my time as the chief law enforcement officer in my county. I represented kids their age when Scotts Bluff County was operating what was referred to back then as the MIP task force, and I will never forget kids, these kids' age, coming to my office with the newspaper in hand to say, hey look, my name is in the paper, and they were proud. Not because they rushed for 100 yards on Friday night against Scottsbluff High School, not because they got a 1 at speech contest, but because they got an MIP. And as a dad, much less as a lawyer, that struck me as, well, ridiculous. I don't...I can't think of a different word than that. I know what would have happened in my house had I come home and proudly announced that I had received that. When I became the county attorney, one of the things that I started to do that my predecessors had not was to keep track of statistics. It occurred to me, and just to give you a frame of reference, in my office we will prosecute 400-500 felonies, around 3,500 misdemeanors in a calendar year, and I read all of those reports that come through the office because I think it's important for me to know what's happening in my own community. And the statistics, to me, that first year I was in office, were startling. In Scotts Bluff County, in 2007, we charged minor in possession of alcohol 453 times. That's one and a half a day. Now we came down a little bit in 2008 to a paltry 379. It's crazy. I had my staff break down some of these numbers just to give you an idea of why I'm in support of Senator Harms' efforts here in the context of the structure of the changes that he's suggesting: the enhancement for multiple offenses. If you were to break down in a five-year period of time Scotts Bluff County filed 1,619 MIPs between 2004 and 2008. The total number of those charges that could be attributed to repeat offenders, meaning people who have more than one, are 977--66 percent roughly, of the people that are in my county. And I apologize if I'm out of time. I can wrap up quick. My point is simply we had 176 people who had received more than two...or two or more...excuse me, 176 people who had two offenses; 68 who had three; 21 with four. Our current record holder is a 20-year-old who has 16--one, six--16 MIPs. Senator Christensen, you asked a question of one of the original...one of the first people about attaching consequences to parents. I will tell you that I litigate MIPs much more than I litigate virtually any other charge in my office, with the exception of, of course, the higher level felony offenses. And do you know who I get the biggest fights from? It's not these kids. It's their moms and dads who come up to me and say, you were 18 once; I was 18 once. And do you know what my answer is? I don't care. I don't care. [LB258]

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SENATOR ASHFORD: Thanks, Derek. [LB258]

DEREK WEIMER: Yes, sir. [LB258]

SENATOR ASHFORD: No, no, no. [LB258]

DEREK WEIMER: I'm sorry. [LB258]

SENATOR ASHFORD: There may be a question. [LB258]

DEREK WEIMER: I apologize. Yes. [LB258]

SENATOR ASHFORD: There may be a question. Senator Council, first, and then maybe Senator Coash has a question. [LB258]

DEREK WEIMER: Yes, ma'am. [LB258]

SENATOR COUNCIL: Yes, Mr. Weimer. Thanks for your testimony. [LB258]

DEREK WEIMER: Yes. [LB258]

SENATOR COUNCIL: Just looking at the enhancements and how prosecutions are handled in your county, let's just take the example of the first offense, the youngster is 17, first offense MIP. The person is guilty of a Class III misdemeanor under the law, the proposed legislation. Their license or permit would be impounded for 60-90 days and they'd be required to attend an alcohol education class. Now under such circumstances when you have this kind of impoundment, ordinarily that person would be on probation for the period of the impoundment, as well, correct? [LB258]

DEREK WEIMER: That's...it's...I've seen it done both ways. Our county court judges have taken the numbers that I've shared with you and they're trying to more aggressively handle it because it seems out of line to them, as well. So I have seen it handled where our courts have impounded license. For example, on an .02 violation, they impound the license without putting the young person on probation. I've also seen people who have been placed on probation have their license impounded. So I'm not trying to be cute with you. I've seen it happen both ways. [LB258]

SENATOR COUNCIL: Okay, because the reason I'm asking the question, what happens in the event of while...during this impoundment period, the juvenile either drives or has another MIP? Now, it says second offense MIP, the person is guilty of a third misdemeanor, but that assumes that they've completed their sentence under the first offense. What happens...what would you foresee happening in the event that the

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youngster either was caught driving during the period of impoundment or being in possession again? [LB258]

DEREK WEIMER: I would suspect that our judges--and I can't speak for any other county attorneys or county judges, and I'm not trying to speak on behalf of our county judges--I suspect that our county judges would take that...they probably would place the juvenile or the adult, the young adult, on probation and administer these sanctions through a probation order and then look at a revocation of that probation on the basis of the new charge. That would be what I suspect would happen. I understand that that's not clear in the law. And I would...I would suspect that...I know what our judges do in terms of the new enhancements, for example, for the possession of less than an ounce of marijuana, or as all of you would be aware of on the DUI statutes, we have now on the possession of less than an ounce of marijuana charges we have a sentencing and enhancement hearing where it's up to the prosecutors to be able to show a proper prior conviction in order to enhance the penalties. So I would assume that our judges would read this statute similarly to the DUI statute and the possession of less than an ounce of marijuana statute, and require my office to provide proof of a lawful prior conviction. [LB258]

SENATOR COUNCIL: Okay, because that's what is disconcerting to me. [LB258]

DEREK WEIMER: Yeah. [LB258]

SENATOR COUNCIL: I guess I've got the image of the individual in Lexington who, despite the loss of his driver's license, continues to drive, and recognize...wanting to know whether or not if during the course of an impoundment a youth is caught driving, are they subject to our standard driving while under suspension consequences? Or are we just looking at a simple violation of their...? That's what the... [LB258]

DEREK WEIMER: My belief would be--and again I think that you get into the issue of defining an impoundment versus a suspension or a revocation, and I know we have lawyers up on the panel this afternoon, and all of you know the way those words work. An impoundment, to me and the way I know our judges would handle it, is they would have that young person come to court on sentencing day with their license in hand, and our judges would physically take the license from them. And then they would keep it at the courthouse until that 60- or 90-day period of time, whatever time frame you're dealing with, runs and then that young person would have to come to...would have to take the demonstrable step of coming to the courthouse to pick up their license. Frankly, I think they do that in those circumstances to eliminate the need of having to go through the rigmarole of getting it back from the Department of Motor Vehicles. . [LB258]

SENATOR COUNCIL: Okay. What I'm just saying is what the consequences are. [LB258]

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DEREK WEIMER: Sure. [LB258]

SENATOR COUNCIL: Because we're talking about these consequences just for being a minor in possession. I think that there ought to...a corresponding discussion, if you continue to drive. And from what I'm hearing from the young people who testified, you know, what's more important to the youngster is their ability to drive. And if driving is something that is paramount in their mind, I'm concerned about what happens when you impound their license under this legislation and then they're caught driving again. I think we need to be clear about what happens then. Do they just get a citation for driving without a driver's license or are they subject to the consequences of violating a probation which could result in whatever the minimum jail sentence is for a Class III misdemeanor. I just think people need to be...I think we need to be discussing that along with the discussion of the consequences for just being a minor in possession. [LB258]

DEREK WEIMER: And just to be clear just so we're all dealing above board here, driving under suspension is a problem in my county too. I mean, you take... [LB258]

SENATOR COUNCIL: That's what I assumed. [LB258]

DEREK WEIMER: You take driver's licenses away from people all the time and they're out driving anyway. [LB258]

SENATOR COUNCIL: And that's what I assumed. If you're going to take them away from the juveniles, they're going to be driving anyways. [LB258]

DEREK WEIMER: Yep. And we have a...I pulled those numbers too just to compare, the DUI numbers in Scotts Bluff County. In that same period of time we had 1,619 MIPs; in that same period of time 1,525 drunk driving cases. So it isn't just the young people that are dealing poorly and making bad decisions when it comes to alcohol. I can speak, as well, in the context of...and I know I wasn't the only one whose heart was breaking as the mom was talking earlier. I've had the misfortune...part of the reason I'm as passionate about this particular issue as I am, in the short period of time I've been the county attorney I've had to go and see the parents of a 14- and an 18-year-old girl, and say I'm very sorry, Mom and Dad, but...and if I never have to do that again in my life I'll be a very, very happy man. [LB258]

SENATOR ASHFORD: Thanks, Derek. Senator Coash, do you have any...? [LB258]

SENATOR COASH: Yes, just real quickly. Thank you, Chairman. Mr. Weimer, this is a pretty big hammer. [LB258]

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DEREK WEIMER: Yep. [LB258]

SENATOR COASH: What's our hammer...I mean, what's the size of our hammer now? I mean, what...as a prosecutor, what can you...what's at your disposal as it stands now? [LB258]

DEREK WEIMER: Five hundred dollar fine and 90 days in jail. Now ask me how often I get that. [LB258]

SENATOR COASH: How often do you get that? [LB258]

DEREK WEIMER: Not very often. The guy who has the 16 MIPs, I begged--I begged--begged the judge to put him in jail; begged him to. Seven days. Sixteen MIPs. He got 7 in eight weeks. Now you're a committed drunk to get 7 in eight weeks. So as a Class III misdemeanor, right now, the punishment, the maximum is 90 days in jail and a \$500 fine. I, on a first offense with one of our judges we will always get a \$300 fine; with the other judge we will always get \$200. On a second offense with one of our judges we will get a \$500 fine; third offense, he's going to start putting them in jail for at least three days, and I've seen him put people in jail up to 60. [LB258]

SENATOR COASH: And that's not working? I mean... [LB258]

DEREK WEIMER: To me, they are addressing it. I think our judges are proactive but I...and I'm not trying to toot my own horn; there are five other lawyers in my office. I think we have taken a real hard stand on underage drinking in my office at my direction, in part, and our judges are on board with that. But I know, from talking with other prosecutors in other parts of the state, that it's a routine \$50 fine. It used to be, in Scottsbluff, it didn't matter how many times you've been in there, it was \$100 whether it was your first or your fifteenth. It didn't matter--100 bucks. [LB258]

SENATOR COASH: And that's not a lot to kids... [LB258]

DEREK WEIMER: Here, I'll tell you what, in addition to bringing the newspaper in to proudly pronounce that they got their MIP, I have never--I represented dozens of kids on MIP cases when I was in private practice. Do you know how many of them I actually watched write the check for the fine? Not a single one of them. I watched a lot of parents write checks but I never saw the kid write a check. [LB258]

SENATOR COASH: Thank you. [LB258]

SENATOR ASHFORD: Okay. Senator Rogert. [LB258]

DEREK WEIMER: Sorry. [LB258]

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SENATOR ASHFORD: Thanks, Derek. [LB258]

DEREK WEIMER: Yes, sir. [LB258]

SENATOR ASHFORD: We're going to have one more, maybe two more max, and then go to the opponents. So we'll do two more proponents and then we'll go to the opponents. Are you an opponent? Proponent? Well, we're just going to do two, these two right here, and... [LB258]

DANIEL NOBLE: (Exhibit 21) Good afternoon. I'm Dr. Dan Noble and I'm here representing the Nebraska Medical Association as well as our Alcohol Use by Minors Task Force. We started meeting back in 2007 as a result of a resolution in the Nebraska House of Delegates. This is an issue--it's nice to follow Mr. Weimer, an attorney, who discussed the legal side. I'd like to talk to you a little bit about the medical side of this. I started looking at this when I was working as the Deputy Chief Medical Officer with Joann Schaefer at HHS, and I...there's been some very interesting things that have changed since the time I was in med school. In med school, they thought that the brain was fully mature at the age of 10 or 12. That's no longer felt to be true. The brain is felt to be a developing plastic structure up into the age of 20-25. Now alcohol is a toxic substance that affects the brain, most specifically two areas: the prefrontal cortex which affects judgment--we all know when people drink too much they lose their judgment; but also it affects memory and learning. And so in an adolescent individual, you can have pretty dramatic changes in their ability for memory and learning, but also with judgment. And the trouble is, those changes are permanent in an underage binge drinker. And so not only do you put yourself at risk for injury and death and everything else, you're also changing maybe the outcome of your life with respect to changing what you're actually going to be able to achieve in life. So when we looked at this we felt that you need to do something to have a consequence for kids, and you've heard people testify about the fact that taking away a driver's license is a good way to get the attention of a 16- or 18-year-old. And, you know, it was interesting to see that those MIPs almost directly mirrored the DUIs, because when you start drinking in an underage fashion you're four times more likely to become an alcoholic, and probably those same kids that are getting the MIPs are going to end up having trouble with alcohol. And in fact there's 3 million to 4 million underage alcoholics. Now the other studies show if you don't start drinking until 21 you're almost certainly never going to have a major problem with alcohol or drugs. So I think it behooves us to have some penalties in place to get kids to a point where they think, you know I don't really want to do that. You know, if they don't want to do it just because they don't want to lose their license, that's fine, just as long as we can keep them from starting to drink and engage in risky behaviors. Because the long-term damages are really important. I mean, the fact that six kids a day, underage, die because of alcohol use, that's just unacceptable. That means in four years we've lost more kids, underage kids, than we've lost our servicemen in Iraq and Afghanistan and

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just in four years. So this should be a front-page issue and I really do appreciate Senator Ashford's leadership on this in getting this out in front. There are other states that are doing this. There are other states that actually have more severe penalties, go from 3-6 months on a first offense. But, to me, this is kind of like the situation when smoking was first...they were saying the medical effects, you know you had doctors promoting cigarettes in the '50s. But when they finally found out, gee, this is categorically associated with lung cancer, we started making some progress. Now that it's been categorically associated with altering brain development--and what parent wants their kid, because they're 18 and they drank, well, they might have achieved more in life had they not drunk when they were younger. So I think we at least need to encourage them not to drink until their brain is fully developed because the consequences are pretty dramatic on functional MRIs. [LB258]

SENATOR ASHFORD: Dan, thank you, and that's very important testimony. Let me...any questions of Dr. Noble? Thanks. Let me ask, are there any opponents to this bill in the room? We'll go to quarter of five but we really need to proceed, so I know we have one more person in the front, I think, that...or maybe not but. Yeah, Jim, if you want to sign in or if you want to indicate your position. Go ahead, Diane. [LB258]

DIANE RIIBE: (Exhibit 22) Diane Riibe with Project Extra Mile; R-i-i-b-e. Just to clarify a couple of points if we could make it quick and simple, kids are just disproportionately involved in alcohol-involved incidents, and so the harms that you've heard are all extremely accurate. And thank you to Senator Harms; he's done a great job in leading in this area. Thank you, Senator Ashford, for hearing the bill. I would say that when we look at the loss of driving privileges, we're looking at a deterrent. That's what we're hoping for. And there's two types: general and specific. When you look at Mr. Weimer's examples, you're looking at hopefully deterring someone specifically; much more difficult. You're looking, as the kids were talking about, deterring them generally, so the larger population. The research that's out there--remember, 31 states actually have currently a use-and-lose bill or use-and-lose law. Those are mandatory. Ten other states are discretionary bills or laws. So Nebraska is kind of at the end of that row. So the research that we know out there, and this is the critical piece for, I guess, Senator Council, we know that those who have their license taken as a result of use-and-lose are less likely to have further traffic violations in the future. That's just top in terms of what we see from the results. In addition to that, they are also the least likely to be driving under that suspended license. That's the important piece. When we talk about DUI offenders and their driving under suspension, we know that they do continue to drive but they drive much more carefully. We're never going to stop them from driving, but remember, those who are on use-and-lose suspension, they are the least likely to be driving under that suspended license, so that's probably important to just keep in mind. So thank you, Senator. [LB258]

SENATOR ASHFORD: Well, thank you, Diane. We'll take another proponent; keep

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going for a few more...Marty, do you have some comments on this? We'll wrap up with Marty, I think. [LB258]

MARTY CONBOY: Good afternoon. Marty Conboy, city prosecutor; C-o-n-b-o-y. And just a few comments. First of all, there was a question asked about the effect of a suspended license or an impounded license. Section 60-4,108 says, "It shall be unlawful for any person to operate a motor vehicle during any period that he or she is subject to a court order not to operate a motor vehicle." So it is a crime. It's a Class III misdemeanor and it would be a separate offense, so this does create that. It would not require a reinstatement, so if a kid loses their license administratively through the court they would not have to be reinstated; they'd just have to turn in the physical license. Just a couple other questions that were answered, and I will tell you that this is one of Senator Christensen's questions and one that frustrates me all the time: How do you reach the parents in a case like this? And a lot of them don't have engaged parents, or if they are they're counterproductive. Nothing is more telling than having to have a parent go pick the kid up at high school every day for about 60 days, and that definitely gets their attention in a very negative way. I know you've heard the statistics about how we're doing in Nebraska, and if this was any other arena of competition with other states we'd be firing the coach and there would be all kinds of hand-wringing. We're not doing very well. We're not going to stop underage drinking. I think the question here is we don't want punish kids. I see kids go to jail for this every day. We prosecute probably about 2,500 kids a year in Douglas County and a lot of them go to diversion, a lot of them go to juvenile court, but in the end the repeat offenders do go to jail. There's some judges that will tell you, after two you're going to jail. I'd rather see a kid suspended, not go to jail, stay in school, have to suffer some consequence and personally suffer the consequence. Not a fine that mom and dad pays but something that they actually have to endure themselves. And this would apply to probably about half of those, roughly about 1,300 or 1,400 as first offenders. They can get probation and avoid that so it wouldn't necessarily have to apply. But with that I'll answer any questions anybody might have. [LB258]

SENATOR ASHFORD: Marty, I do appreciate your consistent testimony over the years on helping kids and preventing them from repeat offending. That's certainly been a theme that you've had for as long as I've known you which unfortunately is awhile. [LB258]

MARTY CONBOY: Big numbers, but yeah, it's a... [LB258]

SENATOR ASHFORD: Becoming big numbers. So thanks, Marty, very much. Senator Harms. Do we have any neutral testifiers? I'm sorry. [LB258]

SENATOR HARMS: Senator Ashford, thank you very much. I know what long afternoons are like and I know how tired you can get from all the testimony. But I told

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you when I finished my discussion of the bill that this would be the platform for discussion and I think we saw that today. Senator Coash said this was a pretty big hammer. One thing I learned a long time ago: It's easier to negotiate down than it is to negotiate up. So a lot of the legislation I introduce is always strong because I know that we're going to want to make some adjustments to that and maybe you'll end up where you want to be. [LB258]

SENATOR ASHFORD: But is it you're...just on that issue, it's not a priority bill so it's your idea that we would work on this in the summer and then next year it would be a priority of somebody's. [LB258]

SENATOR HARMS: Yes, it will be my priority bill next year, and what I wanted to do was bring it here and have the discussion so we could see what the issues are. But I think Senator Council brought out some great ideas and those are issues we need to address. I think there's some other procedural things that we're aware of. I'd like to work on that with anyone in this room that has the knowledge, that's an attorney, or anyone that could help us make this into a model law, and then come back. [LB258]

SENATOR ASHFORD: Yeah. Well, I think it's worth...I think it's absolutely worth working on over the summer and hopefully we can do something. [LB258]

SENATOR HARMS: Yeah. And I'd be very happy to do that and I'm open...I'm very flexible on this. I just think that somewhere we have to address the issue of the public policy. And whatever we decide... [LB258]

SENATOR ASHFORD: Well, it's like your comments on violence the other day on the floor, with kids, with young people, and it just touches you. [LB258]

SENATOR HARMS: It all ties together. [LB258]

SENATOR ASHFORD: It touches you. [LB258]

SENATOR HARMS: Yeah, it does. [LB258]

SENATOR ASHFORD: And we...I don't know, you know, but I...it was an excellent testimony by everyone. I like the fact that everyone was kind of in together on this, which is really a good deal. [LB258]

SENATOR HARMS: I would have to tell you, I didn't orchestrate the kids. They showed up on their own. [LB258]

SENATOR ASHFORD: No, they didn't seem very orchestrated to me, Senator Harms. (Laughter) [LB258]

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SENATOR HARMS: They did pretty well, so...they're talking from their hearts. So I would be willing to work with anyone and I don't expect it to be a priority bill but it will be next year. [LB258]

SENATOR ASHFORD: Well, next year comes pretty quickly so... [LB258]

SENATOR HARMS: I know, so thank you very much. Appreciate it. [LB258]

SENATOR ASHFORD: (See also Exhibits 25, 26, 27, and 29) Thank you, and thank you all, everyone, for coming and...Senator Pahls just arrived. You know how to clear a house, Senator Pahls. (Laugh) Senator Pahls is up here on...well, I don't even know the number. [LB258]

SENATOR PAHLS: LB383. [LB383]

SENATOR ASHFORD: LB383, right. [LB383]

SENATOR PAHLS: Yes. And I've been listening to the testimony of the previous bill, and, you know, my heart goes out to some of those individuals. As I take a look at LB383, it deals with drug...in some schools they do deal with alcohol in the same concept but I'm just going to give just a couple of minutes on this bill so we can see what we want to do. This bill is an example of an idea that came from a constituent who contacted me over the interim. It is based on the similar idea that was adopted in New Mexico legislation a couple years ago. Similar legislation is pending in at least seven other states. The idea started from a national student organization called Students for Sensible Drug Policy. The organization works with college campuses on drug policies. Through the Web site I discovered at least two campuses in Nebraska have similar policies regarding this concept: UNL--theirs basically deals with alcohol; but Hastings College deals with alcohol and drugs. Across the United States are around 90 campuses that have...that are taking a look at this, what I call this Good Samaritan. Under these policies the schools will not discipline a student for possession of an illegal substance if the student sought medical assistance for an overdose for himself or another student. The policies at those schools refer only to the school discipline. These policies do not have any effect on law enforcement or prosecutors. Now LB383 provides immunity from prosecution for drug possession if the evidence for drug possession was gained as a result of a 911 emergency call for medical assistance related to an overdose. The bill does not provide immunity from manufacturing, distributing, selling, dispensing, or delivering illegal substances. This is not a, what I call a get out of jail free card for being a drug pusher. This is if you have a friend of yours or yourself need medical help and you seek that, you would be free of prosecution. It's basically that simple. [LB383]

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SENATOR ASHFORD: Senator Council. [LB383]

SENATOR COUNCIL: Just a quick couple of questions, Senator Pahls. Thank you for attempting to address this issue because I personally have had experiences with individuals who have had to have medical assistance and, before the drug overdose, and then were charged with possession. Now...and there have been concerns expressed by opponents of the legislation who are concerned that it will serve as a get out of jail free card for, quote, drug dealers. Now this is my understanding of the intent of the legislation, is to deal with simple possession, I mean possession, not possession with intent to deliver or manufacturing or delivering. So in a situation where user A is experiencing an overdose, user B is there with them, calls the police. Now if user B is in possession of enough drugs to rise to the level of establishing intent to deliver, this would not immunize that person from prosecution. [LB383]

SENATOR PAHLS: No, it would not. [LB383]

SENATOR COUNCIL: But what it would do though is the fact that they contacted medical assistance would be a mitigating factor in their drug case. That's what the intent is. [LB383]

SENATOR PAHLS: Right. Yes, the intent is if for that person who has overdosed to save that person's life. Now if I can be...the law enforcement officer has the first...you know, if they say this is not true, this person was actually distributing the drug, then I could be prosecuted. If it appears that I am the person who is manufacturing, distributing, or whatever, I could be prosecuted. [LB383]

SENATOR COUNCIL: Or possession with intent to deliver. [LB383]

SENATOR PAHLS: Yes, right. [LB383]

SENATOR COUNCIL: I mean, because that's ordinarily. But in order to rise to intent to deliver, there has to be a substantial quantity. [LB383]

SENATOR PAHLS: Right. Yes. [LB383]

SENATOR COUNCIL: Okay. [LB383]

SENATOR PAHLS: Yes. [LB383]

SENATOR LATHROP: Thank you. I see no other questions. Do you want to stick around to close? [LB383]

SENATOR PAHLS: I may be the closer. [LB383]

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SENATOR LATHROP: You may be the only...just as long as you don't testify in opposition. The first proponent. Anyone here to testify in favor of the bill? [LB383]

_____: I don't really care to speak actually. I agree with it though. [LB383]

SENATOR MCGILL: She just wants to sign her name into the record. [LB383]

SENATOR LATHROP: Oh, okay. Anybody here that wants to testify in opposition to the bill? Senator Pahls, do you care to...? [LB383]

SENATOR PAHLS: I waive. [LB383]

SENATOR LATHROP: (See also Exhibit 28) Okay. He waives. All right, that will close our hearing. [LB383]

SENATOR MCGILL: Oh, well hey. I love it when that happens. (Laugh) [LB383]

SENATOR LATHROP: Thank you. You are welcome to sign a sheet and indicate your position relative to the bill, and we will include that in the record. With that I think we'll close our hearings for today. Everyone else is free to go home. [LB383]

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Disposition of Bills:

LB38 - Held in committee.

LB39 - Placed on General File with amendments.

LB145 - Placed on General File with amendments.

LB258 - Held in committee.

LB383 - Held in committee.

Chairperson

Committee Clerk