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Judiciary Committee
January 27, 2012

[LB730 LB840 LB881 LB948]

The Committee on Judiciary met at 1:30 p.m. on Friday, January 27, 2012, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB948, LB730, LB881, and LB840. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Scott Lautenbaugh; and Amanda McGill. Senators absent: Burke Harr; and Tyson Larson.

SENATOR ASHFORD: Welcome, Senator Lambert. Are you up first? You are, LB948.

SENATOR LAMBERT: Yes.

SENATOR ASHFORD: You are, LB948. Come on up.

SENATOR LAMBERT: Are you ready to start? Okay.

SENATOR ASHFORD: We're all ready to start. So welcome everyone to the committee. We're here to have four bills today: LB948, Senator Lambert's bill, is first; then Senator Mello, LB730; Senator Coash, LB881; and Senator Council, LB840. So let's get started. Those of you who have not been here before, and I don't see too many who haven't, we have a light system that provides for three-minute...comments for three minutes and the yellow light will come on when we'd ask you to summarize your comments at that point, except for Senator Lambert who has 45 minutes to introduce his bill. But seriously, no, the senator obviously is not required to go to three minutes. But, Senator Lambert, welcome. Is this your first...this is your first trip, isn't it? Or is it your...

SENATOR LAMBERT: First time in front of you.

SENATOR ASHFORD: Yes.

SENATOR LAMBERT: Been in front of a couple of others.

SENATOR ASHFORD: Okay.

SENATOR LAMBERT: (Exhibit 1) But thank you and good afternoon, Chairman Ashford and members of the Judiciary Committee. I am Paul Lambert, L-a-m-b-e-r-t. I represent the 2nd Legislative District, and I'm here today to introduce LB948. LB948 would add electronic communications device to Section 28-1310 as an additional way in which a person could commit the offense of intimidation with intent to terrify, intimidate, threaten, harass, annoy, or offend. County attorneys in my legislative district have recently had cases involving intimidation that occurred when acquaintances sent threatening text messages. This intimidation did not seem to qualify under the felony statute for terroristic threats or the misdemeanor statute for stalking. It was felt instead of

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amending...that by amending the intimidation by telephone call statute to reflect modern means of communication would be the best way to continue the recent commitment of this committee and of the Legislature to keep Nebraska's laws up to date. LB948 would also change the penalty for the offense of intimidation in Section 28-1310 from a Class III to a Class I misdemeanor. This change was recommended by one of the county attorneys who weighed in with suggestions during the drafting of the bill. For the record, I have a letter of support from the Cass County Attorney and also letters that I have presented that I think have been distributed to you. I would be happy to answer any questions if I can. However, a representative from Nebraska County Attorneys Association will follow me to explain more fully the need for changes in this proposal for LB948. [LB948]

SENATOR ASHFORD: Good job, Paul. [LB948]

SENATOR LAMBERT: Thank you. [LB948]

SENATOR ASHFORD: Let me ask you do you think this text messaging is going to catch on? (Laughter) [LB948]

SENATOR LAMBERT: You never know. You just never know, you know. I want us to be... [LB948]

SENATOR ASHFORD: I mean it could be just a, you know, here again gone tomorrow type deal. [LB948]

SENATOR LAMBERT: I want us prepared if it does (laugh). [LB948]

SENATOR ASHFORD: Fair enough. Yes, Senator Council. [LB948]

SENATOR COUNCIL: Yes. And thank you, Senator Lambert. I want you to feel welcome to the Judiciary Committee. [LB948]

SENATOR LAMBERT: Thank you. I do. [LB948]

SENATOR COUNCIL: So I'm going to ask a question. On page 2, under (1)(a), now I know that section of the statute was specifically designed to address people who were making anonymous telephone calls. [LB948]

SENATOR LAMBERT: Um-hum. [LB948]

SENATOR COUNCIL: Okay. Now text messaging is really kind of hard to do anonymously, and the definition of electronic communication device is broad enough to capture my desktop computer. Okay? Under (2)(a), not only does it have to be

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anonymous, but it has to disturb the peace, quiet, and right of privacy of any person. Do you think that that would...that someone could be prosecuted under that if, say, they sent me a message on my e-mail and, you know, and you can phony up an e-mail address so it's anonymous... [LB948]

SENATOR LAMBERT: Um-hum. [LB948]

SENATOR COUNCIL: But does it really disturb the peace, quiet, and right of privacy? I mean the question I'm asking is do you need...and maybe the county attorneys can...because I think the original intent was, you know, back in the days when telephones actually rung, rang, rung, made noise (laugh). But mine is on vibrate right now, so if it goes off it won't disturb my peace, quiet, and right of privacy. But I'm just concerned about the ability to prosecute under that when I get something anonymous over my desktop or my laptop. And the only way I see it is I actually go onto my laptop or go onto my desktop. [LB948]

SENATOR LAMBERT: Um-hum. [LB948]

SENATOR COUNCIL: So maybe you might want to look at that... [LB948]

SENATOR LAMBERT: Sure. [LB948]

SENATOR COUNCIL: ...to see if there's a better way to bring that in because I know originally it was designed because you could...and I don't even know as you can make an anonymous phone call anymore. You know, everybody's number comes up on my phone. I may not know who they are but I can nine times out of ten get back to them. But I certainly appreciate the intent of the bill, support the intent of the bill. [LB948]

SENATOR LAMBERT: Good. Thank you. [LB948]

SENATOR COUNCIL: I wish we could find out...find ways to keep these 800 people from getting your cell phone number (laugh). [LB948]

SENATOR ASHFORD: Yeah, that's what I was going to say. I mean... [LB948]

SENATOR LAMBERT: (Laugh) Yeah, need to add that to it. [LB948]

SENATOR COUNCIL: Because I'm trying to look in here to see if there's a... [LB948]

SENATOR ASHFORD: Well, you've got annoy. I mean that's annoying to get the... [LB948]

SENATOR COUNCIL: Yeah, that's annoying. Is it anonymous? Yeah, if I don't know the

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800 number, but I mean I'm trying to find out a way to get to those guys too. Thank you. Oh, no, no. And then I want to ask so you'll be put on notice, I'm going to ask the county attorney proponent my only concern was when we increase penalties we increase cost. You know, when you go from a Class III to a Class I, you're increasing costs and whether or not the, you know, the counties are prepared to absorb the costs associated with increasing this penalty in the balance of things. [LB948]

SENATOR LAMBERT: Um-hum. [LB948]

SENATOR COUNCIL: So that's all I have, Mr. Chair. [LB948]

SENATOR ASHFORD: Thanks, Senator Council. Thanks, Paul. [LB948]

SENATOR LAMBERT: Thank you, sir. [LB948]

SENATOR ASHFORD: Thanks for your concise introduction. [LB948]

SENATOR LAMBERT: Thank you. [LB948]

SENATOR ASHFORD: All right. Proponents. Mr. Partsch. [LB948]

DAVID PARTSCH: Chairman Ashford, good afternoon, Judiciary Committee. My name is David Partsch, P-a-r-t-s-c-h. [LB948]

SENATOR ASHFORD: Oh, sorry, Colby. I'm sorry, did you...did I...oh, I'm sorry. Go ahead. [LB948]

DAVID PARTSCH: That's all right. [LB948]

SENATOR ASHFORD: LaMont is talking to me here in one ear and I...go ahead. I'm sorry. [LB948]

DAVID PARTSCH: I'm here as the Otoe County Attorney, and also I am here representing the Nebraska County Attorneys Association in support of Senator Lambert's bill. Our goal is basically to bring this statute up to date to reflect the current means of communication that is ongoing with a large segment of our population, especially with the younger crowd and the text messaging. Now this came to my attention initially from my deputy county attorney, Tim Noerrlinger, who handles much of our misdemeanor cases, and he had mentioned that we had several cases over just the past year specifically involving text messaging and threats being made by text message. Our office had generally taken the stance that we were filing those as disturbing the peace type cases. But again, the facts didn't necessarily fit that statute as well as it would the intimidation by telephone call if that statute was just brought up to

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date. So that was our main goal here. And communication with county attorneys throughout the state reflected that obviously this is a problem statewide. I would mention that Omaha has addressed the problem through their local ordinances. They have an ordinance, 2062, which is telephone harassment which they have previously updated as well to include a broader definition including e-mail and text messaging, etcetera. So they file their cases under their city ordinance, but again it's a statewide problem and I think needs a statewide solution. [LB948]

SENATOR ASHFORD: Thanks, David. Yeah, Senator Coash and Senator Council. [LB948]

SENATOR COASH: Thank you, Chairman Ashford. I want to ask you about the Omaha ordinance... [LB948]

DAVID PARTSCH: Yes. [LB948]

SENATOR COASH: ...that they updated. Did they make that a Class I misdemeanor as well? [LB948]

DAVID PARTSCH: No, I don't believe so. I actually don't have the penalty clause provision in here. I have a copy of their ordinance. I'm not sure what the penalty is on their particular ordinance. [LB948]

SENATOR COASH: Okay. [LB948]

DAVID PARTSCH: The penalty provision, I guess what I would address on that perspective is disturbing the peace is a Class III misdemeanor. A terroristic threat is a Class IV felony. So that's a big jump from a Class III misdemeanor to a Class IV felony. Most of these cases we don't want to file as a felony case, even if we could. But to have another penalty range somewhere in the middle to address appropriate cases. Still if we have a...you know, the prosecutors would still have discretion obviously if the facts do fall under both definitions. We could still file a disturbing the peace case as a Class III misdemeanor if it wasn't as serious a case as another. [LB948]

SENATOR COASH: Okay. I have come to realize on this committee we have to approach increasing penalties with caution because of the cost. I mean, you can get a year in jail now. I mean, if this bill were to go through, somebody could sit in jail for a year. That would be the maximum, of course, but it might be a big deal for...you know, and the judges will take all that into account and... [LB948]

DAVID PARTSCH: Yeah, again there would be no minimum. [LB948]

SENATOR COASH: ...the prosecutors are going to charge appropriately I hope, but

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that's a big deal, a year in jail. We ought to look at that carefully. Thank you. [LB948]

DAVID PARTSCH: It is. Thank you. [LB948]

SENATOR ASHFORD: Yes, Senator Council. [LB948]

SENATOR COUNCIL: Thank you and thank you, Mr. Partsch. You know I respect your legal opinion. And for those of you who don't know, Mr. Partsch used to provide me with his legal opinion... [LB948]

DAVID PARTSCH: Thank you. [LB948]

SENATOR COUNCIL: ...and was my legal counsel. But I do have a concern, number one, about the increase in the penalty. And particularly if I direct your attention to page 2, line 19, "Contacts another by telephone or electronic communication device and intentionally fails to disengage the connection." [LB948]

DAVID PARTSCH: Again, Senator Council, I think that's another well taken point that the statute as was originally drafted was geared toward the telephone calls. And so is there going to be a circumstance, is there a circumstance that an electronic communication device could connect with another and not disengage a connection? I can't foresee that right now, but I don't know how technology is going to change either. So it would still apply to those telephone calls, just as the prior law did. I think the best way to approach the amendment to the statute is any reference to the telephone should be changed to reference electronic communication device. [LB948]

SENATOR COUNCIL: Yeah. And, well...and it's...the way I read...although it's an or, an or, an or and written that way that it stands alone, I just don't believe that the intent was there that if you intentionally fail to disengage the connection. So I call you and it starts out as a, you know, reasonable, respectable telephone conversation and then you make me mad. And then you want to stop the conversation and I don't, and I haven't threatened you or made any lewd or lascivious statements, but I just don't hang up because I'm not through letting you have it. And back in the old days if I didn't hang up, you couldn't use your phone again. But today if I hang up and you don't, we for all intents and purposed are disengaged. So I'm just saying, I mean I know we're trying to address... [LB948]

DAVID PARTSCH: I think either...yeah. [LB948]

SENATOR COUNCIL: ...the technology advances, but I would suggest that that one probably needs to be eliminated. Because if we're going to talk about technology today, technology today is not like it was in the old days if you didn't hang up, you kept the line open forever, and that person couldn't make another phone call. And I'm also

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concerned that people like me who regularly pocket dial people may, you know, I mistakenly pocket dial somebody who really gets upset that I pocket dial them, I don't want to risk being charged with a Class III misdemeanor. So if you're going to be talking about technology updates, let's make all of the changes in here that take into account technology updates, and that phone call will disengage itself after a while, not like in the old days. [LB948]

DAVID PARTSCH: I think you're right that any party could unilaterally terminate the phone call and disengage their connection, so I think that's a valid point. [LB948]

SENATOR COUNCIL: Right, right. Okay, thank you. [LB948]

SENATOR ASHFORD: Thanks, David. [LB948]

DAVID PARTSCH: Thank you. [LB948]

LEE POLIKOV: (Exhibit 2) Mr. Chairman, members of Judiciary, my name is Lee Polikov, P-o-l-i-k-o-v. I'm the Sarpy County Attorney. I prepared a letter, a rather short letter, and I've submitted it. I'd certainly be glad to answer any questions. I'm representing, of course, Sarpy County and in some sense other prosecutors who have to make these decisions all the time. I will say that the issue of...and I wanted to make sure that...I wanted to appear today to make sure that people just didn't think this was a housekeeping measure and then that maybe we didn't care too much about it. But I think it's important legislation and partly because of what, Senator Council, you brought up and Senator Coash as well. And I think Mr. Partsch covered it pretty well. Believe it or not, county attorneys don't look to overcharge. It creates problems and our job is to seek a just result and that wouldn't be a way of seeking a just result. So we need that room in between the disturbing the peace and a felony charge. And some of these threats are very serious. The victims take it very seriously and it causes them real disturbances amongst victims and...but it still doesn't rise to the level of a felony. So the system working together with a Class I we allow the courts to decide what the proper punishment would be. And I think we know pretty much by record that it's very seldom at the top end. That takes good judges and good county attorneys and good defense bar working together. So I'd be glad to answer any questions. [LB948]

SENATOR ASHFORD: Senator Council. [LB948]

SENATOR COUNCIL: And thank you, Mr. Polikov. [LB948]

LEE POLIKOV: Sure. [LB948]

SENATOR COUNCIL: Would you have any objection if, in attempting to accomplish the result that you and other county attorneys are seeking, to rather than this blanket add

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electronic communication device throughout but to add it in those places where it makes sense to add it? Like the point I just made about disengaging. [LB948]

LEE POLIKOV: Sure. [LB948]

SENATOR COUNCIL: Okay. [LB948]

LEE POLIKOV: Honestly, it never...I didn't look at it that way. [LB948]

SENATOR COUNCIL: Okay. I think... [LB948]

LEE POLIKOV: And I think a lot of our statutes are written 30 or 40 years ago technology...and technology is changing. And I suspect we have other statutes that would assist us if someone were interfering with someone else's devices or stopping their communication. [LB948]

SENATOR COUNCIL: Right. [LB948]

LEE POLIKOV: And I'd also add and I shouldn't do this on the record, but I think isn't there a restriction...Senator Coash, you asked about municipal ordinances, I'm not sure it can rise to the level of a Class I, can they, if...? [LB948]

SENATOR COUNCIL: I don't think so. [LB948]

SENATOR ASHFORD: I think they can go up to a year, can't they? [LB948]

LEE POLIKOV: Maybe, and different cities have. [LB948]

SENATOR ASHFORD: I think...yeah. [LB948]

LEE POLIKOV: I've looked at other things, they might have something else. I think in the less than the metropolitan it might only be a Class III. [LB948]

SENATOR ASHFORD: Right. [LB948]

LEE POLIKOV: But just...that's up for discussion and no problem. [LB948]

SENATOR COUNCIL: Okay. I thank you. [LB948]

SENATOR ASHFORD: Thanks, Lee. [LB948]

LEE POLIKOV: You bet. Thank you. [LB948]

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SENATOR ASHFORD: Yes, sir. Any other proponents? Any opponents? Neutral? Paul? See you. Have a good weekend. Good job, everybody. Senator Lautenbaugh shows up and there we go, lickety-split. Okay. Senator Mello is not here. Come on up. He wanted to be out of here by 2:00. That's what he told me. Why don't...there he is.

SENATOR MELLO: That was relatively quick.

SENATOR ASHFORD: Welcome.

SENATOR MELLO: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. The problem of wage theft, when employers either fail to pay their workers the full amount of wages to which they're entitled or fail to pay them at all, is a growing nationwide problem. A 2009 study by the National Employment Law Project found of nearly 4,500 low-wage workers surveyed, more than two-thirds experienced at least one pay-related violation in their previous work week, including a quarter of workers who are paid less than minimum wage and three-quarters who were not paid overtime wages owed to them. While the overwhelming majority of employers play by the rules, the current economic downturn has left many Nebraskans potentially susceptible to the unscrupulous practices of businesses who take advantage of employees happy to receive any wages at all. LB730 would amend Nebraska's current theft of services statute to allow wage theft cases to be criminally prosecuted. Use of the state's criminal code to address wage theft, a strategy that has been successfully employed in the state of Texas, will give victims of wage theft in Nebraska a quicker path to recoup the hard-earned wages which they are already entitled to. The bill also clarifies the criminal intent necessary to commit theft of services so that there would only be an offense if the actions by the perpetrator were taken intentionally or knowingly. As with employee misclassification, if left unchecked wage theft can result in a race to the bottom where unscrupulous businesses drive down wages, disadvantaging those employers and contractors who continue to play by the rules. When workers are cheated out of their wages, state and local tax revenues suffer as well. And while my office was unable to find comparable numbers for Nebraska, in 2010 it was estimated that \$427 million in revenue is lost each year due to wage theft in the state of New York alone. Current options available to victims of wage theft are limited. Employees whose wages are not paid within 30 days of their regularly scheduled pay date can file a civil suit under the Wage Payment and Collection Act. While the act does not...while the act does award attorney fees to an employee who brings a successful claim, many low-wage workers may be unable to afford initial representation or wait for their claim to work its way through the court system. Using existing enforcement of wage and hour violations at the federal and state level can be equally difficult for workers to address wage theft. On the federal level, the U.S. Department of Labor has just over 1,000 investigators nationwide to enforce federal wage, child labor, and other laws, meaning that the average employer has just a .001 percent chance of being investigated by the

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U.S. Department of Labor's Wage and Hour Division. Currently, the Nebraska Department of Labor has five labor law investigators responsible for the enforcement of multiple labor laws. Prior to budget cuts, the department actually had only three inspectors that were exclusively dedicated to wage and hour complaints. Given the difficulty of addressing wage theft through our existing statutes, the threat of criminal charges for wage theft could be a significant deterrent against employers who take advantage of Nebraska workers. LB1139 (sic) is an important tool to help address what continues to be a growing problem in our state, and I'd urge the committee to advance the bill. Thank you for your time, and I'd be happy to answer any questions you may have. [LB730]

SENATOR COUNCIL: Question. [LB730]

SENATOR ASHFORD: Senator Council. [LB730]

SENATOR COUNCIL: Thank you very much, Senator Mello. And as you were...stated in your opening, it's surprising how many times last year people came to me and said they went to go to report to work that day and the company was gone. And I directed them to Wage and Hour. And while there is a remedy there, if we're dealing with insolvent people and who knew at some point in time that their insolvency was going to prevent them from paying but, nevertheless, received the services, the worker is left without a remedy. And that's what I want to be sure I understand. In the language that deals with the intent, as I read this and as I understand it, hypothetically I employ people and pay them on a weekly basis, and on Friday they get paid for their hours from Monday through Friday. So in order to be prosecuted under this, some time during that week I had to know that I wasn't going to be able to pay them and yet I allowed them to continue to perform, to provide services. Is that the way it's intended to operate? [LB730]

SENATOR MELLO: That is the intention, Senator Council. We wanted to make sure we clarified in existing statute that "intentionally" and "knowingly" component, which in certain cases an employer may have problems with payroll in the sense of misplacing someone's payroll or their hours for their time sheet for the week or have problems producing the paycheck because of mechanical errors with an iPad, a computer, whatever it may be. Technologically, they're not able to produce the paycheck because of operational issues. That's why we included the "intentionally" and "knowingly," because it was not their intention, so to speak, in instances like that. Your hypothetical instance, though, would be they are asking...they full well know in advance they will not be paying the employee for the service or labor rendered, yet they continue to have them perform the labor and service. That would be, without being an attorney or a judge, I think that would provide a claim for someone under the adoption of LB1139 (sic) to be able to file a criminal complaint to say that they knowingly and intentionally misled me and knew that they weren't going to be able to pay me. [LB730]

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SENATOR COUNCIL: Okay. Because that's the concern I have, because small businesses oftentimes have situations where the bookkeeper they used didn't get the checks... [LB730]

SENATOR MELLO: Uh-huh. [LB730]

SENATOR COUNCIL: ...printed in time, and I don't want those employers to be subject to any criminal prosecution and, I mean, those are mere mistakes. [LB730]

SENATOR MELLO: And neither do we and that added language was specifically to try to address that concern that we thought would be...would exist. [LB730]

SENATOR COUNCIL: That they were intentionally and knowingly attempting to obtain services without paying for them. [LB730]

SENATOR MELLO: Yes. [LB730]

SENATOR COUNCIL: Okay. Okay, thank you. [LB730]

SENATOR ASHFORD: Thank you, Senator Council. Thanks, Heath. [LB730]

SENATOR MELLO: Thank you. [LB730]

SENATOR LATHROP: Can I ask a question? [LB730]

SENATOR ASHFORD: Sure. [LB730]

SENATOR LATHROP: Heath, Senator Mello, I'm looking at this and wondering about the guy that goes through bankruptcy. I know that's not your intent to get somebody but as I'm looking at this, the intentional part and the knowing part seems to be obtaining the services. But what if I knowingly and intentionally hire you and then I run into a cash flow problem and I go through bankruptcy? [LB730]

SENATOR MELLO: I think... [LB730]

SENATOR LATHROP: Where's the protection for the guy whose business fails but he's not the guy trying to get some service, intending to not pay? [LB730]

SENATOR MELLO: I think, Senator Lathrop, the underlying focus still is that a complaint would need to be filed by the person who provided the service or labor ultimately. If they filed the complaint with law enforcement, saying that they felt that they...the wage theft occurred and that they knowingly or intentionally or knowingly did

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this or feel that's the case, there would be an investigation. And if the business was found to be...go through bankruptcy and it was a legitimate bankruptcy where there was...they didn't intentionally or knowingly decide to, I think, employ people or utilize services knowing they weren't ever going to pay them, an investigation would work itself out to show that...to record a law that that was not the case. The underlying issue still remains, is that there were services rendered that ultimately were not paid for by the...I think, as Senator Council mentioned, that intentionally and knowingly component really provides, I think, a breakdown or I think it would separate frivolous complaints, because you really have to be able to intentionally show that. [LB730]

SENATOR LATHROP: And maybe it's a drafting thing, because intentionally and knowing is obtaining the services, right, which everybody that obtains a service does that knowingly and intentionally. I don't know that that adds anything. It's doing it with the intent to not...knowing that you don't intend to pay them. [LB730]

SENATOR MELLO: Correct. [LB730]

SENATOR LATHROP: Because if...not to make this go on too long on a Friday afternoon, but it strikes me that if a person who is experiencing a cash flow problem says, you know what, I'm going to pay the bank note and my employees aren't getting paid, they've just intentionally not paid them. They're in bankruptcy court. I get what you're driving at. Maybe we need to work on some language. [LB730]

SENATOR MELLO: Um-hum. I think the underlying reality, this is another...this is an alternative mechanism that's what already currently in statute that they could go through that same process that you...the hypotheticals you just listed. The employee, so to speak, could go through the existing Department of Labor, if that was the issue, and try to collect the wages owed for those services. This is an alternative mechanism for those who might not want to go through and hire an attorney and go through the longer legal route that they know would exist, depending upon the amount of wages or services that are owed. I mean I think the underlying issue still is lower wage workers aren't going to...will more than unlikely get representation to deal with a \$200 back payment in wage, so to speak. [LB730]

SENATOR LATHROP: But this is a criminal deal. [LB730]

SENATOR MELLO: Yes, because it provides law enforcement then to be able to investigate a criminal matter in the sense of trying to stop wage theft from occurring if an unscrupulous employer is doing exactly that. [LB730]

SENATOR LATHROP: Okay. [LB730]

SENATOR ASHFORD: Yeah. And, yeah, and there is no extinguishment of that

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obligation in bankruptcy. [LB730]

SENATOR MELLO: No. [LB730]

SENATOR ASHFORD: I mean once you...once a criminal complaint is filed, you're...it's a criminal complaint, you know? Senator Lautenbaugh. [LB730]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, Senator Mello. And this isn't much of a question, more it will end in a question I mean. As is often the case, I share Senator Lathrop's concerns. Would you obviously be willing to work with us on this to clarify it a tad? [LB730]

SENATOR MELLO: Of course, as always. I'm always willing to work with the committee and Committee Counsel to clarify any aspects in language. [LB730]

SENATOR ASHFORD: Because I think there are triple damages, aren't there, for a... [LB730]

SENATOR LATHROP: There are. [LB730]

SENATOR COUNCIL: Yeah, but if you don't have any money, you don't get anything. [LB730]

SENATOR ASHFORD: No, no, I understand that, but... [LB730]

SENATOR LATHROP: As soon as you go into bankruptcy, there's a stay and you can't sue. [LB730]

SENATOR ASHFORD: Right. Right. [LB730]

SENATOR LATHROP: And so now we have a criminal proceeding that... [LB730]

SENATOR ASHFORD: Right, on top of a bankruptcy. Thanks, Heath. [LB730]

SENATOR MELLO: Thank you. [LB730]

SENATOR ASHFORD: Have a good weekend. Well, you're not probably staying around. [LB730]

SENATOR LATHROP: Are you staying to close? Can we look forward to that? (Laughter) [LB730]

SENATOR MELLO: Yes. Oh, I might. I probably would close. [LB730]

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SENATOR COUNCIL: What was this 2:00 think I heard? [LB730]

SENATOR ASHFORD: Yeah, all morning and the afternoon. [LB730]

SENATOR COUNCIL: Yeah, and we have to be done by 2:00. [LB730]

KEN MASS: Senator Ashford, members of the committee, my name is Ken Mass, that's K-e-n M-a-s-s, representing the Nebraska AFL-CIO and here today in support of LB730. Although it's called about wage theft, we call it a prompt pay. When I perform somebody, I'm hired by somebody to do a job or service, I expect prompt pay. I expect to be paid for it unless there's a provision made out to over a term of time or whatever it may be. And our employers that are represented by collective bargaining agreements, we basically don't have a problem with this. It's the good old boys that do their job. They pay their workers' comp, they pay their unemployment. They're not on the list of misclassification by their employers and that kind of thing. It's the guy, the people out there that are misclassifying their employees, are not paying unemployment, not paying workers' comp, and not paying by the right rules that are probably in jeopardy here. So we are in support of LB730, and if there is an amendment worked out, I'm sure we will support it then too. Thank you. [LB730]

SENATOR ASHFORD: Thank you. Seeing none, good, thanks. [LB730]

KEN MASS: You're welcome. [LB730]

SENATOR ASHFORD: Next proponent, in favor of the bill. Yeah. Afternoon. [LB730]

KEVIN HILTON: Good afternoon. Thank you, Senator Ashford. Thank you, committee members, for the opportunity. My name is Kevin Hilton, H-i-l-t-o-n. I'm employed by the carpenters' union here in Omaha and in Lincoln. We speak in favor of this bill, and I think the gentleman before me made some good points and similar points that we would make. But we did a little bit of research. It's a little bit difficult in the construction industry to find some very clear-cut statistical information regarding this issue, but we did find some studies that have been done specifically with low-wage workers in four major cities. I believe it was in 2010. What they found and estimated was that low-wage workers annually lost somewhere around \$2,600 a year to wage theft. When you figure that to what their average salary would be, defined by low wage, about a \$20,000 annual salary would be that definition. That would leave them with then 13 percent of their capacity or their earning capacity reduced by theft. Now if we talk about that in terms of construction, where it's much more difficult to actually get this information because the work is...or work sites are temporary, mobile, and transient, you're looking at employers that can reduce, in a competitive-bid environment, a bid up to 13 percent if they happen to practice in these kind of dealings. We've found that to be true. In fact, on

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a majority of work sites where workers are not covered under a collective bargaining agreement you will find somebody that somewhere along the line has experienced some sort of wage theft, so it's very concerning in our industry. The integrity of our industry is affected by this, and so we're very much in support of it. I think what this bill does to rectify the situation is just as Senator Mello pointed out--a deterrent to those who would do that because of a quicker enforcement of the law and also closes some of the loopholes that are presented within our work environment that make it somewhat attractive to that kind of practice, and that would be that mobility of work site, temporary jobs, doesn't afford the opportunity for a somewhat understaffed Labor Department to enforce those regulations and also cuts through some possibilities of hiding behind trade names, different trade names or changing trade names. So again, we're in support of it. Thank you. [LB730]

SENATOR ASHFORD: Thanks, Kevin. Thanks for your comments. Next testifier in favor of the bill. [LB730]

ABBIE KRETZ: (Exhibit 3) Good afternoon, senators. My name is Abbie Kretz, A-b-b-i-e K-r-e-t-z. I work as an organizer with the Heartland Workers Center in Omaha, Nebraska. Two years ago I met a woman named Camile. She worked as a waitress at a local restaurant in Omaha. She had worked there for two years but the previous five months she had not been paid. However, the employer tried to pay her--here's \$100, here's \$200--to kind of tide her by, let things go, but that didn't deny the fact that she is still owed \$2,000. After meeting, talking with Camile and then negotiating with her employer, we were able to make a payment plan in which after five months she'd receive her payment back. Unfortunately, that doesn't happen in all cases. There are cases where we have been able to negotiate. There are other times we have referred them to the Department of Labor of Nebraska or the Wage and Hour Division, but because these unscrupulous employers will deny the fact that they haven't paid or just avoid the phone calls or the law, these workers do not end up getting paid. This is, like I said, this is not an isolated case. In 2011, of the 128 workers' issues that we dealt with, over a third of those were for wage theft itself. This happens in construction, like we heard from the carpenters' union, restaurants, cleaning, with secretaries, both large and small companies. And just as Senator Mello said, you know, this is affecting the good employers who actually obey the laws and pay their employees properly but also takes away from the communities that could really benefit from these tax...from the tax money. Thanks. [LB730]

SENATOR ASHFORD: Thank you. [LB730]

ABBIE KRETZ: All right. Thank you. [LB730]

SENATOR ASHFORD: Good comments. Thanks. Next proponent. Opponents? Neutral? Heath waives. All right. Oh, wait. Neutral? [LB730]

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ANDREW SHELDEN: I guess. [LB730]

SENATOR ASHFORD: Okay. (Laughter) LB881? Oh, no, it's the other one, LB730. Okay, go ahead. Sorry. [LB730]

ANDREW SHELDEN: Thank you, Senator Ashford, members of the Judiciary Committee. [LB730]

SENATOR ASHFORD: I think we do have to define one way or the other. Are you neutral or are you against the bill? [LB730]

ANDREW SHELDEN: I'm going to go with neutral. [LB730]

SENATOR ASHFORD: Okay. [LB730]

ANDREW SHELDEN: My name is Andrew Shelden, A-n-d-r-e-w S-h-e-l-d-e-n, and I'm going to go with neutral because...and maybe, obviously, I'm not an attorney, I don't understand all the legal stuff, but I guess my concern with the way it's written now is it doesn't seem to limit it to just wages. And I guess my concern is that if someone then...like for instance this summer I had work done to cut some trees down in my yard and I didn't immediately pay the guy that did it, while I consulted with an attorney, because he damaged my house while he did it. I guess the way I read the statute, that would make that illegal because I intentionally received the service but then refused to pay for it. And I guess I don't think that should be criminal, that I should be charged with a crime for not paying upon demand because I'm consulting with an attorney. I mean I agree with the theory behind the bill or the intent of the bill, but I think it has some concerns and that would be why I'd be neutral. [LB730]

SENATOR ASHFORD: I think you're right. I think it clearly includes that. [LB730]

SENATOR LATHROP: So do I. [LB730]

SENATOR ASHFORD: The way it's written, it includes that situation, which is not something we want to criminalize, I wouldn't think. But we're going to work with Senator Mello on it, but you bring up a great point, so... [LB730]

SENATOR LATHROP: It's a perfect example. [LB730]

SENATOR ASHFORD: Yes, it is. [LB730]

ANDREW SHELDEN: Thank you. [LB730]

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SENATOR ASHFORD: Thanks a lot. (See also Exhibit 4) Okay. Heath, do you...going once, going twice. [LB730]

SENATOR LATHROP: Come on up here and close. Come on up here and close, Mello. [LB730]

SENATOR ASHFORD: Come on, Heath, close, man. That's all right. Thank you very much. Okay, let's...Senator Coash is next. LB881. [LB730]

SENATOR COASH: Thank you, Chairman Ashford, members of the committee. My name is Colby Coash, C-o-l-b-y C-o-a-s-h, and I represent District 27 here in Lincoln, here to introduce LB881. The purpose of this bill is pretty straightforward. It is simply to clarify existing statutory duties with respect to which governmental agency is responsible for paying medical expenses necessitated by injuries suffered during the course of an apprehension or arrest. It amends Section 47-702, which provides the arresting agency is responsible for the costs of medical care to treat injuries or wounds suffered by the detainee during the course of apprehension or arrest. In all other cases, the correctional facility is responsible for the cost of providing medical care to its inmates. LB881 simply clarifies these responsibilities by emphasizing that the apprehending or arresting agency is chargeable for the costs of the medical services related to the injuries or wounds caused during the course of an apprehension or arrest and not the agency responsible for operation of the institution or facility in which the recipient of the services is lodged. This came out of a couple of things that have happened or this came to my attention by Lancaster County. They felt that some additional clarity in the law would be appropriate. Again, if the arresting agency hurt somebody during arrest, they should pay for it. And then once they get into the detention facility, they should pay for medical costs. So I'll close with that. [LB881]

SENATOR ASHFORD: Yeah, interesting. Interesting question. Yeah, Senator Council. [LB881]

SENATOR COUNCIL: Thank you. And thank you, Senator Coash. Does this, probably more often than not, boil down to which pocket out of the same big pocket does this come from? I mean, for example, the Lancaster County Sheriff arrests me and I'm detained in the Lancaster County detention facility. Lancaster County Sheriff may have to pay for it but it's still coming out of Lancaster County. [LB881]

SENATOR COASH: I would agree with you that it's still Lancaster County's money, but each one of those entities has their own budget that they have to worry about. And I think, at least in the case of Lancaster County, our sheriffs don't want to hurt anybody, and if they do they want to be responsible for that. And if they're not...if somebody is injured and they weren't responsible for it, they don't want that affecting their budget, so... [LB881]

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SENATOR COUNCIL: So if the Lancaster...if a Lincoln police officer arrests someone and they're injured somehow during the arrest, where are those people detained? [LB881]

SENATOR COASH: City jail. [LB881]

SENATOR COUNCIL: Okay. Do they ever go to the Lancaster County correctional center? [LB881]

SENATOR COASH: They can go there too. [LB881]

SENATOR COUNCIL: Okay. So if they...if the Lincoln police arrest them and they put them in the Lincoln jail, then it's an internal budget fight. [LB881]

SENATOR COASH: Yeah. Yes, it is. [LB881]

SENATOR COUNCIL: See, I'm just trying to figure out how big the problem is from governmental entity to governmental entity as opposed to a fight within a governmental entity... [LB881]

SENATOR COASH: Yeah. Well, I think... [LB881]

SENATOR COUNCIL: ...and can't they resolve that. [LB881]

SENATOR COASH: Well, I think our corrections director from Lancaster County is going to follow me and I think he can give some examples of where they've had this happen and what's necessitated the request for this bill. [LB881]

SENATOR COUNCIL: Okay. [LB881]

SENATOR ASHFORD: Very well. Thanks, Senator Coash. First proponent. [LB881]

MICHAEL THURBER: (Exhibit 5) Hopefully I can answer some of those you ask. First of all, thank you very much for having us. We appreciate this, Chairman Ashford, for allowing us to testify. We appreciate Senator Coash for introducing this clarity bill, and it's trying to make it a little clearer in the statute regarding that medical services provided individuals when they come inside a correctional facility is clear. And those issues are that we provide medical care and it is our responsibility. As the director of the Lancaster County Department of Corrections, we care for individuals that are lodged. Those come by many other entities, from Lincoln police, State Patrol, U.S. Marshal, many other individuals other than just the sheriff's department. But this language just clarifies, during the course of apprehension, the apprehending agency, so I believe that the

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senator was trying to just clarify that a little bit clearer that before they're lodged who's the responsible party or responsible agency that must pay for those care, for that medical care. Sometimes it becomes points of contention between somebody that is, well, I help apprehend, somebody else actually brings them to the facility. They just want to make sure that there is some type of a line drawn so those medical cares are paid for. So usually it's a medical institution or hospital, a clinic that is seeking that payment and we pay. We pay a great deal for the care and should be because they are in our custody. So we feel that this would be clear for all county facilities and jails throughout the state of Nebraska, not just Lancaster County. [LB881]

SENATOR ASHFORD: Thanks, Michael. Senator Council. [LB881]

SENATOR COUNCIL: Yeah, and thank you, but doesn't it really contemplate a situation where during the apprehension there's an injury and the suspect is taken directly to some medical facility as opposed to a situation where a person is apprehended, may have been injured during the apprehension but isn't taken directly to a medical facility, is taken to your facility where they begin to complain of pain or...associated with the injury? [LB881]

MICHAEL THURBER: Sure. [LB881]

SENATOR COUNCIL: I mean how does that work? [LB881]

MICHAEL THURBER: Well, you bring up a good point and it isn't addressed in this language change, but usually you will find that there's a screening at most booking intake areas. And so if someone is coming in and there's absolutely a complaint that there's an injury or a broken limb, that it's obvious there's someone in great pain, many times a lodging facility will say to the officer, you need to get them medically evaluated. So we find that that's not as great of an issue but one that sometimes becomes a point of contention. They're like, well, I'm here to bring them to jail; you need to take care of them. They have yet to be lodged into our facility. So the issue is them being checked out. I think that's...the first part is making sure that they can...that they're fit for confinement so they could be able to stay in jail in that first critical 48 hours, 24 hours, so law enforcement agencies have to take care of that. And so your answer to your question is that you take them directly to the hospital, they'll have to take care of that responsibility, or that they have insurance or they have some type of care, that that's billed just like anyone that would have some type of medical coverage. [LB881]

SENATOR COUNCIL: Okay. So but once they're lodged into your facility... [LB881]

MICHAEL THURBER: If it's not during the course of apprehension and we can show that someone has another medical condition, diabetes, some type of...high blood pressure, yes, I pay and care for that individual because that's my charge. That's

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something I have to take care of. And every jail does that as well. It's when there's somebody that's come in and during that apprehension, we've had individuals in a foot chase. They've ran through a fence. They have some, you know, cuts, bruises, contusions. You know, usually it's a spinal or a head injury that sometimes may take a little bit of while to develop. But those are the things you're just trying to spell out under this bill and this law that law enforcement have complied with. This just clarifies it even further. [LB881]

SENATOR COUNCIL: Okay. And I appreciate what the intent is,... [LB881]

MICHAEL THURBER: Yeah. [LB881]

SENATOR COUNCIL: ...don't get me wrong. [LB881]

MICHAEL THURBER: Sure. [LB881]

SENATOR COUNCIL: But my concern is are we creating more fights than we're resolving, because you book someone in, you lock someone into your facility... [LB881]

MICHAEL THURBER: Sure. [LB881]

SENATOR COUNCIL: ...and they start complaining about some injury and during the course of saying what's the matter with you, they say, well, you know, I hit my head when I was trying to run under that low-hanging branch when I was trying to escape the police. [LB881]

MICHAEL THURBER: Sure. [LB881]

SENATOR COUNCIL: Okay? And so you take that person to the medical facility, assuming they can't be treated within your facility, and I know most of the... [LB881]

MICHAEL THURBER: Correct. [LB881]

SENATOR COUNCIL: ...county correctional facilities have, but you have to take them to a medical facility. [LB881]

MICHAEL THURBER: Right. [LB881]

SENATOR COUNCIL: How is that medical facility then to determine who gets the bill? [LB881]

MICHAEL THURBER: My example, too, Senator, would be we'll get them treated. They're going to get seen. The bill more than likely will come to us. We will make a

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determination, talk to that agency or pay the bill. And we've not had as great a problem with that, since this law has been enacted, but it's one that we would make a determination. And, yes, there is discussion about what low-hanging branch. But we have that discussion and I believe most agencies say, okay, we remember the apprehension, we remember the report, and they'll take care of that bill. But again, the service is given, we do have discussions professionally with each other and those are always interesting discussions but one that we pose the question, you know, like this didn't happen after they were lodged; it's something that happened before. And other times we will pay if we cannot determine if it happened prior to incarceration. [LB881]

SENATOR ASHFORD: Thanks, Michael. Thanks for your comments. [LB881]

MICHAEL THURBER: Okay. [LB881]

SENATOR ASHFORD: Any other witnesses on this, proponents? [LB881]

JON EDWARDS: (Exhibit 6) Good afternoon, Chairman Ashford, members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I'm here today representing Nebraska Association of County Officials and Nebraska Sheriffs' Association in support of this bill. And certainly you've heard the reasons here for the bill and we support the attempt to try to clarify this situation. So I'll conclude my testimony with that. [LB881]

SENATOR ASHFORD: Okay. Thanks, Jon. [LB881]

SENATOR COUNCIL: Jon, I... [LB881]

SENATOR ASHFORD: Yes, Senator Council. [LB881]

SENATOR COUNCIL: Jon, why can't these county officials figure this out themselves? [LB881]

JON EDWARDS: Isn't that something? I know there's always an issue, isn't there? [LB881]

SENATOR COUNCIL: (Laugh) I mean... [LB881]

JON EDWARDS: And I think, Senator Council, I think most of the time it's...there's really not an issue. I think it's in the tough cases that Lancaster County is trying to find some more definitive language that they can fall back on to try to provide more clarity to these issues. [LB881]

SENATOR COUNCIL: Okay. [LB881]

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SENATOR ASHFORD: Good. Thanks, Jon. [LB881]

JON EDWARDS: Thank you. [LB881]

SENATOR ASHFORD: Any other proponents? [LB881]

ANDREW SHELDEN: I wasn't going to but I'll throw in my two cents on this one as well,... [LB881]

SENATOR ASHFORD: All right. [LB881]

ANDREW SHELDEN: ...although I don't have the bill number because I wasn't going to talk on this one. [LB881]

SENATOR COASH: LB881. [LB881]

SENATOR COUNCIL: LB881. [LB881]

SENATOR ASHFORD: LB881. [LB881]

ANDREW SHELDEN: Again, my name is Andrew Shelden, S-h-e-l-d-e-n. Having worked for both small-town police departments and sheriffs' offices and corrections agencies, I guess I understand why this is a problem, because working for small-town police departments we would often arrest somebody but because of manpower or call volume issues the sheriff's office would transport them. Especially when dealing with like juveniles that weren't housed in our county and they may have been hurt but you may not have known it because before, by the time...or up until when they left our custody they were still on such an adrenaline high that it didn't hurt yet or something like that, you didn't know they might need medical attention. And they get to the detention center and they say, oh, they need his fitness for confinement. Well, sheriff's office didn't arrest them. They're not the ones involved with them getting hurt. The county shouldn't have to pay for it, but they're the ones the hospital is going to send the bill to because they are the ones bringing him there. So I think this helps clarify that. My only concern would be like we had a kid a while back. He was in Midwest Transportation's custody. He was a juvenile that had been arrested by OJS on a detainer and tried to escape and assaulted the driver. Well, the Lincoln Police Department arrested him. They were the arresting agency, but the kid was hurt. But they were the arresting agency but they had absolutely nothing to do with the injuries to the kid. So then again you go back to what happens there, because he was technically still in the custody of Health and Human Services. They were just having him transported by Midwest. So who gets that bill, I guess would be my concern there. But I think this is a good bill because the other agencies who don't have...who aren't involved with making an arrest,

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like when I worked in a county that didn't have a jail, if you get police departments in those counties, they may not do the transport to a jail. The sheriff's office may do that as well. And the sheriff's office there or the county shouldn't get stuck with the bill when they had nothing to do with the injuries, and then it does come from different pots. Thank you. [LB881]

SENATOR ASHFORD: Yeah. That's helpful. Thank you. Thanks a lot. Any other comments? Testifiers on this bill? Senator Coash? Senator Coash waives. Senator Council, LB840. [LB881]

SENATOR COUNCIL: (Exhibit 7) Mr. Chairman, members of the committee, I appear before you to introduce LB840. I'm Brenda Council, last name spelled C-o-u-n-c-i-l. I'm the senator representing the 11th Legislative District. And I'm going to begin by saying that you could, you, members of the committee, could ask me the very same question I just asked Mr. Edwards about why do we need this legislation, can't it just be worked out. Well, I'm introducing this legislation because, despite the attempts to work this issue out, it was not worked out. And what the situation is, is the handling of confidential mail to and from inmates. My office receives a great deal of correspondence from inmates. I would venture to say I probably receive more inmate communication than any other senator in this body and, as a consequence, we communicate regularly with inmates. And under existing Nebraska jail standards and under existing federal or national standards, mail to and from legal counsel, mail to and from a court, mail to and from public officials like senators is considered legal mail, confidential mail that cannot be opened outside the presence of the inmate. It can be opened in the presence of the inmate for purposes of inspecting for contraband. It cannot be opened in the presence of the inmate for purposes of reading the contents. So certainly it can't be opened outside the presence of the inmate, because there is the risk that the mail would be read, violating attorney-client privilege or the privilege associated with communicating with public officials, and public officials includes the Ombudsman's Office, the state senators, so on. Well, when we receive complaints from inmates, we try to work in collaboration with our Ombudsman's Office and, as is customary, we referred this matter to the Ombudsman's Office to conduct an investigation, and the investigation revealed that, yes, at Nebraska correctional facilities that the mail clerk was opening legal mail outside the presence of the inmates. And my understanding was that when addressed regarding that issue, the position of the Corrections Department was that they were going to continue that practice. Now mind you, they had previously complied with what jail standards require, and that is if you're going to open legal mail for purposes of determining whether it contains contraband, you can only do that in the presence of the inmate. And that used to be the practice. For whatever reason, that practice changed. When it was presented to the Corrections Department that the change in practice was unacceptable and contrary to national and local jail standards, their position was that they needed to continue this contrary practice. In the face of that it appeared necessary to me, to provide the kind of privacy and particularly the privilege

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associated with these communications, I introduced LB840. And LB840 is merely the codification of Nebraska jail standards and the adult correctional institutions standards for handling inmate mail. I'll answer any questions. [LB840]

SENATOR ASHFORD: Yes, Senator Coash. [LB840]

SENATOR COASH: Thank you, Chairman. Senator Council, and maybe somebody from Corrections can answer this if you don't have the answer, is it your understanding that this was a practice that was changed for all correctional facilities or are we talking about one particular correctional facility that...? [LB840]

SENATOR COUNCIL: Now and I can't answer that. I don't know if it's just one correctional facility but we were getting a lot... [LB840]

SENATOR COASH: I have three in my district so... [LB840]

SENATOR COUNCIL: ...we were getting a lot of complaints and... [LB840]

SENATOR COASH: Okay. Are you getting complaints from inmates at various correctional facilities or just one in particular? [LB840]

SENATOR COUNCIL: Senator, I can't answer that. [LB840]

SENATOR COASH: Okay. We'll let...we'll let... [LB840]

SENATOR COUNCIL: And maybe... [LB840]

SENATOR COASH: ...Corrections folks answer. [LB840]

SENATOR COUNCIL: ...Corrections or...and I have distributed to you a letter dated December 15 of last year that the Ombudsman's Office, I trust that all the members of the Judiciary Committee received it because that's who it was addressed to, outlining what the situation is. And I also need to place on the record a concern that was expressed by the mother of an inmate who had been subjected to the opening of their mail, and she had a concern that the bill requires that the mail clearly reflect that it's legal mail by having it stamped on it or written on it. And she said before, under the prior practice, she didn't need to do that so the bill requires a little more. Well, we added that because the bill provides for criminal penalties for violating this right to receive privileged mail. [LB840]

SENATOR ASHFORD: Okay. Thanks, Brenda. Marshall. [LB840]

MARSHALL LUX: (Exhibit 8) Good afternoon, Senators. My name is Marshall Lux,

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M-a-r-s-h-a-l-l L-u-x. I'm the Ombudsman for the state of Nebraska and I'm here to testify in support of LB840. The problem that this bill addresses is perfectly explained by Senator Council, and I want to thank Senator Council for introducing this bill. I think it's already working. The basic standard of practice in the corrections profession is exactly what Senator Council said it was. It has to do with the fact that privileged mail, incoming privileged mail in particular, is supposed to be not opened in the facility mailroom but is supposed to be brought unopened to the inmate and then opened in the inmate's presence and to have the envelope searched at that stage. As Senator Council indicated, there were a number of instances where that wasn't happening. I think it was mostly at Tecumseh but there were probably some other facilities where that happened as well. The document that I've had distributed to you today is a memorandum from Director Houston. It was dated, I believe, on the 12th of January and it is...it addresses this issue, and I think to a large extent it resolves the problem. But there, I think, are two issues remaining that we need to be concerned about. That is, one, the obvious issue whether you want to pass LB840 and put this practice into statute as opposed to leaving it in regulation in the hands of the department. And then the second question has to do with correspondence that comes from judges and courts, because I'm not so sure that the department has resolved that question yet in their own minds as to whether they're going to treat letters from judges and courts as being still in the privileged category. It has been in the past. Judges and court correspondence is included in the ACA standards. It's included in the jail standards, the Nebraska jail standards, so my feeling is that correspondence from courts should be included in the privileged class, but, as I say, I think that's an issue that has not been resolved. Be happy to answer any questions. [LB840]

SENATOR ASHFORD: Any questions of Marshall? Senator Council. [LB840]

SENATOR COUNCIL: And thank you, Marshall, because the letter of January 12 speaks only to mail from attorneys. [LB840]

MARSHALL LUX: Yes. [LB840]

SENATOR COUNCIL: Yeah, and I appreciate that Nebraska jail standards don't necessarily...that the Department of Corrections is... [LB840]

MARSHALL LUX: Yes. [LB840]

SENATOR COUNCIL: ...governed by ACI. [LB840]

MARSHALL LUX: ACA, yes. [LB840]

SENATOR COUNCIL: ACA. [LB840]

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MARSHALL LUX: Uh-huh. [LB840]

SENATOR COUNCIL: But it's my understanding that, notwithstanding that, the policy and the practice at the Nebraska Department of Corrections has been more consistent or has been indeed in fact consistent with Jail Standards Board, Chapter 9. [LB840]

MARSHALL LUX: Yes, that's right. The past practice, as I believe you described it, and that has been they have done it that way as long as I can remember until recently... [LB840]

SENATOR COUNCIL: Okay. [LB840]

MARSHALL LUX: ...in some places. [LB840]

SENATOR COUNCIL: And under that, just for my colleagues' benefit, inmates shall be allowed to send sealed confidential mail to a specified class of persons or organizations, to include, at a minimum, their legal counsel, courts, government officials, members of the confining authority of the board. Confidential mail received from this specified class may be opened only in the presence of the inmate. And what, if you look at Director Houston's memo, it indicates that the only mail that's going to be considered privileged mail would be mail from an attorney. Where my concern is, particularly in view of the fact that so many inmates contact government officials, so many inmates contact the Ombudsman's Office because that's the procedure that we've employed, and now to say, well, if you communicate with the Ombudsman's Office or if you communicate with a state senator, that's not considered a privilege communication and we can open it and we can read it, I have serious problems with. And I'm just going to state it for the record, if all the Department of Corrections is prepared to do is what's reflected in January 12 memo, then I'm going to aggressively urge my colleagues to pass LB840. Thank you. I don't have anything else. [LB840]

SENATOR ASHFORD: Thanks, Marshall. I think that's it. Thanks for your comments. [LB840]

MARSHALL LUX: Thank you. [LB840]

SENATOR ASHFORD: Next, next testifier, next proponent I guess. [LB840]

THOMAS STRIGENZ: Good afternoon. Thomas P. Strigenz, Sarpy County Public Defender, S-t-r-i-g-e-n-z, appearing on behalf of the Nebraska Criminal Defense Attorneys Association. We want the committee to strongly...we strongly are proponents of this bill. About two, three months ago, we started receiving numerous phone calls where our clients were getting their mail opened, and that we feel this bill very well drafted and that it will solve the problems that we had. I will tell this committee that there

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was a little...some concerns about how the Department of Corrections is where our clients were calling us from, not so many from other facilities, but the conflicting information our body was getting about what was considered legal mail and we were told that, for example, my specific envelope said Sarpy County Public Defender's Office. We were told that that wasn't considered legal mail unless it had a name of an attorney on the envelope. I will tell this body that, you know, putting legal mail on the envelope might be, you know, it might be a problem for some judges. They may not want to do that kind of stuff. But the bill as written, we strongly encourage this bill to move forward. And if there's any questions, I would be happy to answer those. [LB840]

SENATOR ASHFORD: Any questions of Tom? Thanks, Tom. Next proponent. Any opponents? [LB840]

LAUREL MARSH: I'm just slow. I'm coming forward as a proponent. [LB840]

SENATOR COUNCIL: I was getting ready to say... [LB840]

SENATOR ASHFORD: Oh, proponent, okay. (Laughter) Just trying to think, wow. [LB840]

SENATOR COUNCIL: Well, I was like, wow. [LB840]

SENATOR LATHROP: Trust us, we did not expect you to be an opponent. [LB840]

LAUREL MARSH: You might have expected me to be slow though. [LB840]

SENATOR ASHFORD: You've switched sides. [LB840]

SENATOR LAUTENBAUGH: We'll take you. [LB840]

SENATOR ASHFORD: Yeah. [LB840]

LAUREL MARSH: (Exhibit 9) Good afternoon. My name is Laurel Marsh, spelled M-a-r-s-h, and I'm here today on behalf of ACLU Nebraska in support of LB840 that would protect legal mail in prisons. I'm not going to read the entire letter that we have distributed, but we support LB840 as a protection of the confidential attorney-client relationship that is guaranteed by the constitution. We've listed several specific instances of complaints received by ACLU Nebraska, and though I'm not an attorney, I can tell you that the attorneys with whom I work consider this to be a very real and continuing frustration. We've also tried to outline several of the court cases that speak to this issue and the results that we believe support our position that it is a constitutionally protected right of prisoners and others to have their mail and their discussions among and between...of their legal situations with their attorneys to be held confidential. If there

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are questions, I will try my best to answer them or to get you answers, but ACLU Nebraska is in strong support of LB840. [LB840]

SENATOR ASHFORD: Thank you, Laurel. Senator Council. [LB840]

SENATOR COUNCIL: Yes, thank you, Laurel. And being in support of LB840, you know it extends beyond attorneys in terms of what is considered legal mail. [LB840]

LAUREL MARSH: Correct. [LB840]

SENATOR COUNCIL: And I guess I'd be interested, without reading your comments, your position. I guess let me give you the example. Oftentimes the inmates who write my office don't have legal counsel and they're presenting, many times, legal issues. We'll refer them to the Ombudsman's Office or public advocacy, you know, someone to address them. But nevertheless, they are stating a legal issue in many instances, and in a lot of instances they're not strictly legal issues. But I guess your thoughts on the existing practice under Nebraska jail standards that communication between an inmate and a government official fits within the category of privileged mail. [LB840]

LAUREL MARSH: I would be pleased to try to do some additional work to give you specific information on that. I can tell you that I was surprised to learn that your communication as a senator was not in all circumstances privileged. I had made an assumption that perhaps is incorrect. [LB840]

SENATOR COUNCIL: Thank you. [LB840]

SENATOR ASHFORD: Thanks, Laurel. Any other proponents of this bill? Opponents? [LB840]

ANDREW SHELDEN: (Exhibit 10) Thanks, Senator Ashford. Again, my name is Andrew Shelden, S-h-e-l-d-e-n. I don't know if I'll get through all this or not, but I'm here to testify against LB840 as currently written. I've dedicated my adult life to public service in one form or another. I've worked as a case worker for the Department of Correctional Services and as a juvenile detention officer for Lancaster County in my current position, but my testimony reflects only my opinions and not to those other agencies. My first problem with LB840 is in section (4), which states legal mail shall be inspected only in the presence of an inmate. I find this problematic due to the undue burden this would place on detention facility staff conducting searches. Some inmates, especially in the state prison system, have huge amounts of legal mail material in their cells. For logistical and safety reasons, it is sometimes not possible or unwise to have the inmate present while searching their cell. However, given current wording of this bill, if passed it would be illegal to inspect an inmate's legal mail without them present. This presents huge safety concerns as it makes searching cells impossible without the inmate

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present. This is problematic because an inmate could be hiding weapons inside an envelope marked legal mail and staff could not inspect that envelope for contraband without being in violation of state law. This standard would increase the danger to both other inmates and facility staff. Section (4) continues: Legal mail shall not be read by an employee of a detention facility without a search warrant. I find this problematic as well. This bill denies an inmate the ability to consent to staff member...to a staff member reading their legal mail. Allowing staff to read mail could be helpful to them for many reasons. I have been asked many times, especially working with juveniles, for help understanding court documents or other papers sent to them by their attorney or others. With this bill, I would not be able to offer them assistance in understanding their papers, despite their desire for assistance. When asked for assistance, I always inform the inmate I'm not an attorney and cannot offer legal advice but I may be able to help them understand the judicial process or the meaning of words on their paper. This can be especially important from juveniles who get anxious when they get new paperwork they don't understand and can go days without being able to contact or make contact with their attorney or caseworker. I also have a problem with section (6) that says any employee of a detention facility who reads or opens legal mail shall be guilty of a Class II misdemeanor. While I don't think the mailroom should be opening mail, again, you come back to the problem of if you can't open legal mail how can you do a search. Someone could have a big manila envelope full of stuff and, yes, it may be all papers but they might be hiding a shank they made in there as well. And because it's legal mail, under this you couldn't open it and find out. I also guess I have a problem with the prescription that an employee will be terminated for this. While I don't necessarily argue that's a bad thing, I think it's problematic because it doesn't take into account places that are covered by civil service, merit commission, or a union contract. It eliminates the possibility of progressive discipline and could then create greater financial burdens on political subdivisions who then had to defend the violation of the union contract for getting fired according to state law. [LB840]

SENATOR ASHFORD: Thanks, Andrew. Yes, Senator Council. [LB840]

SENATOR COUNCIL: More comment than question, and I appreciate it, Mr. Sheldon. I don't disagree with you on the latter case and, in fact, I've had conversations with representatives of the county officials about the need to address that section of the bill with regard to immediate termination, but the intent was to place some force behind this practice. Secondly, if there's any impression that the bill, when we talk about search warrant, that's when the...and we'll make it clear, is that's when the inmate is not present. And with regard to search of a cell, I would have grave objections if during a search of a cell, which is for purposes of contraband, that correction officials are reading legal mail. The whole point of opening the mail in the presence is so...and I appreciate and respect and want the facility to be able to intercept contraband, but once that mail is opened and it's been inspected in the presence of the inmate, that should end the issue about legal mail and contraband. Again, and maybe I need to do some more in depth as

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to what goes on in a cell search with regard to legal mail, but I don't want there to be any confusion that the intent of this bill is if legal mail is going out that the only way the institution can open that is in the presence of the inmate and they have an interest, and not to be denied, in making sure that contraband is not going out and making sure that contraband is not coming in. But that's where it ends. Reading that mail is of no interest or concern, particularly if it's from their legal counsel or a government official, and that's what this bill is designed to address. So I don't know if the Mr. Partsch is here for the county in terms of that termination issue, but that's been brought to my attention and it will be addressed in an amendment. If there's anything in there that gives the impression that a cell can't be searched without a search warrant and the intent of the search is to read legal mail, I mean I have to figure out a way to do that because searching for contraband and reading someone's legal correspondence are two totally separate and distinct issues. And if an inmate wants to disclose what's in their legal mail, that was not the intent to deprive. It was just the process of how the mail is received and how the mail is sent, and that's consistent with current Nebraska jail standards. [LB840]

ANDREW SHELDEN: And if I may comment on that? [LB840]

SENATOR COUNCIL: Yes, you may. [LB840]

ANDREW SHELDEN: And I guess I wouldn't argue for reading an inmate's legal mail during a cell search. I don't think that's appropriate. It shouldn't be done. I guess my concern is more things like now we'll get a lot of people who will get interview transcripts or somebody who might get a bill of exceptions that comes in a big old white envelope that reseals. And we've had a lot of residents not necessarily...most of it so far hasn't been dangerous things but it still has sticky on the envelope so they'll close it back up to hide things in there. And while I wouldn't argue that we should be able to or want to read that mail, I guess that's my problem with that, is it still says read or inspect instead of just being able to, yeah, I think I should be able to flip through the pages or turn the envelope upside down and make sure nothing falls out of it where, at least my reading of this statute, that wouldn't be allowed at this point. [LB840]

SENATOR COUNCIL: Now the way... [LB840]

ANDREW SHELDEN: Or this bill. [LB840]

SENATOR COUNCIL: ...the way the bill is written that they can inspect in the presence, and that inspection can take the form of shaking every page and dumping the envelope, but they can't read the mail. So...and the interesting thing is that prior to whatever caused the change in the practice, that's how it was done. And it was changed without any, in my opinion, any clear explanation of what necessitated the change. And with regard to, you know, keeping an envelope that can be resealed, simple solution, take

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the envelope. I'm concerned about the content so...and again, I appreciate your...because you did raise a couple of valid points that we'll look at. If it's not clear when a search warrant is required, we'll make it clear. [LB840]

SENATOR ASHFORD: Thanks, Andrew. [LB840]

ANDREW SHELDEN: Thank you. [LB840]

SENATOR ASHFORD: Any other opponents I guess? How many other testifiers do we have on this bill? Just a couple. Okay. [LB840]

BOB HOUSTON: (Exhibit 11) Okay. All right. Good afternoon, Chairman Ashford. Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Bob Houston, H-o-u-s-t-o-n. I'm the director of the Nebraska Department of Correctional Services. I'm here today in opposition to LB840. In the interest of time, I will summarize the written testimony you have before you. This bill seeks to define legal mail for inmates confined to a department facility and to enforce criminal and personnel sanctions on department employees who open legal mail outside the presence of an inmate. Title 68 of the Administrative Code, Chapter 3, specifically addresses inmate mail and defines privileged mail much the same as LB840. LB840 also includes courts and court staff in the list of those whose mail is to be treated as legal mail. Chapter 3 lists only letters from judges, not the courts or court staff, because what transpires in the court is public knowledge. Chapter 3 allows outgoing privileged mail to be sealed by the inmate and is, therefore, not examined by DCS staff prior to mailing, and is so stamped on the outside of the envelope. Chapter 3 indicates that incoming privileged mail is opened only in the presence of an inmate in a search for contraband. In the course of the search, the mail is closely inspected, for example, the letterhead matches the envelope. The actual contents of the letter or documents is not read. LB840 would also require the inmate to be present when legal documents are searched for contraband, during a cell search for example. This could present a security concern as often cell searches are conducted outside the presence of the inmate. Finally, LB840 provides that any staff member who opens legal mail outside the presence of inmate is guilty of a Class II misdemeanor and summarily discharged from his or her employment. This ignores state and federal law, case law, and state personnel rules requiring progressive discipline and due process, and seeks to criminalize mistakes made by state employees. Our department facilities' mailrooms open more than 900,000 pieces of mail annually, with more than 32,000 of those being privileged mail. I have a meeting scheduled on February 1 with the Court Administrator, the assistant Attorney General, the Ombudsman's Office, our legal department, other NDCS staff to determine if there are changes necessary to Title 68, Chapter 3. If necessary, revisions will be made in accordance with the Administrative Procedures Act. Mainly what distinguishes this bill from current practice is it imposes criminal penalties and personnel actions on state employees. I believe this litigation is unnecessary. Be pleased to answer any questions

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you may have. [LB840]

SENATOR ASHFORD: Senator Coash. [LB840]

SENATOR COASH: Thank you, Chairman Ashford. Bob, as I've kind of listened to the testimony, and I got the same letter from the Ombudsman's Office that we all did on this committee, it seems like at some point Corrections' practice changed, that things were marching down the track in the process of opening inmate mail that was from senators or courts or lawyers, it was always opened in front of the inmates and that was no problem. Then all of a sudden, something happened somewhere and it changed that got the Ombudsman's Office involved. And I'm just wondering if you could comment, was there a...can you pinpoint to...did you send a memo and said, okay, we're going to do things a little different from this point for this reason? [LB840]

BOB HOUSTON: Well, therefore, the meeting that we're going to have on February 1, and we're involving the courts in that. So we'll have the people there that can answer that question. The memo that was referred to was, as I went through the rule book, make certain that each practice was adhered to, the only place that we could find, and we wanted to fix it right away, had to do with requiring on the commercial print the name of the law firm and the attorney. Well, looking at our own Chapter 3, it says one or the other, so we go, well, we've got to stop that. And I think that was part of the change and Mr. Lux referred to that. So that's why I put out the memo right away. And as I indicated in my testimony, if there's other changes that need to be made, we'll make them. [LB840]

SENATOR COASH: Okay. But you can't...I mean there wasn't...I've been here four years now. We would have heard if this would have changed. I would have heard it three years ago. So it seems to me just, you know, if I take a step back, that at some point Department of Corrections just made a decision to do things a little bit differently, maybe around November of last year, and I just...if you can tell me where that may have come from. [LB840]

BOB HOUSTON: Yeah, it...that I'll find out. [LB840]

SENATOR COASH: Okay. [LB840]

BOB HOUSTON: I think that...I think that maybe the mail from the courts that was not from the judge, if that is opened that might have upset some inmates, but I don't have anything here, and that's why we're having the meeting February 1 because Mr. Lux and his staff are going to bring out examples of what the inmates have complained about. [LB840]

SENATOR COASH: Okay. Look forward to hearing the results of that meeting. [LB840]

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SENATOR ASHFORD: Yes, Senator Council. [LB840]

SENATOR COUNCIL: Thank you. And, Mr. Houston, I appreciate the fact that there's a meeting upcoming. I appreciate the fact that a memo was sent out on January 12. What I don't appreciate is the fact that the memo was sent out on January 12 and these issues were brought to the attention of the Department of Corrections months ago, and Department of Corrections officials, their attorney in particular, basically gave us a thumb of the nose and said, we're going to do what we're going to do. And what you stated is correct. Chapter 3 currently governs the situation. Chapter 3 has historically been interpreted to include federal and state officials, a broad definition of federal and state official. A clerk of a court is a state official, and it's my understanding that that's how that term has been broadly interpreted and applied, and it gets back to Senator Coash's question. What happened that all of a sudden there is such a concern at the Department of Corrections about mail coming from court clerks or court administrators that instead of determining a way that it could be...continued to be handled as it has been handled, one of the statements I got was, uh, you know, this is the mail clerk; you know, the mail clerk is opening them and that's, you know, that's that and we're not going to change it because the mail clerk is opening them. And that's no response, that's no reason. And I'd be very curious to know what was it about mail from court clerks or court administrators or the Saline County Court without a judge's name on it that led to a departure from a practice that's been in place for decades. [LB840]

BOB HOUSTON: Well, when I became familiar with this was the letter from Marshall Lux, and Marshall could tell you what the date of that letter, it was just a few weeks ago, three weeks ago or so. And I immediately called Marshall Lux and says, you know, I got your letter, we're going to get after it, and that's when we started arranging the meeting. But that's when I became aware that there were changes. And so that's what prompted me to call Marshall Lux right away, to go through rule 3 and say, okay, let's sit down, let's go through rule 3, line by line, make sure we're following everything in here. And that's when I talked to George Green; he says, no, we're requiring the attorney's name as well. And I says, well, we can't do that; rule 3 doesn't say that. And that's when I issued the memo, immediately after that discovery. So if there's issues beyond that, that's why we're having members from the court, we're bringing in the Attorney General's Office. If we got off track, we're going to get on track. But that's when it was brought to my attention. [LB840]

SENATOR COUNCIL: Well, hopefully you'll get on track. [LB840]

BOB HOUSTON: Yes. [LB840]

SENATOR COUNCIL: Otherwise, I'm going to press LB840. [LB840]

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BOB HOUSTON: Well, what I want to do, if I could take a moment to explain things a little bit further, and that is I think if you take rule 3 there and go beyond the privileged mail and get to what's marked page 11, I'll read that for you, 010.10, and this has to do with any mail that comes inside the correctional facility, and 010.10 says, "Incoming mail may be read only when there is clear and convincing evidence that such mail constitutes a threat to the security, safety, or good order of the facility." The examinations that we have in front of the inmate are far more thorough than the ones we have in the mailroom. The mailroom staff are pay grade 6. These are the people who would be criminalized under this. They're two pay grades lower than a correction officer. They come to us and go through our training. They've never worked with the inmates. They don't know the inmates. They have no interest in violating anybody's rights. They have 900,000 pieces of mail that they go through and they sort out of that 32,000, but inadvertently they're going to open a letter. And the staff have gone in and apologized to the inmates (inaudible), and the vast majority of the mistakes never come across your desk or the Ombudsman's Office. We go in and apologize to them if there is something that was inadvertently opened. In the document that was put in front of you from the American Civil Liberties Union, they talked about hostile eyes in that testimony. There's no hostile eyes. We really, I mean, it's not that we...we care about everything we do, but the correspondence between a staff and an inmate is nothing of our concern. I've been in the department going on 38 years and I have yet...and I was a prison warden for 11 years, manned the Department of Corrections in Douglas County. I've yet to have some inmate have some legitimate statement or evidence or anything or an attorney to show that somehow correspondence between them and their attorney through the mail was somehow violated, discussed, made humor of, and that's over a third of a century. I just haven't seen it. And I think that the inmates, when they're locked up, they obviously are very suspicious of their keepers, as well they should be, you know. And the people that watch us should be concerned with us, and I appreciate that because it helps us because we do have sole control of the inmate. Well, when you're in that type of situation, in a dependent situation, you're going to be very suspicious. There's no hostile eyes. There's no interest by a pay grade 6 person to violate anybody's rights. [LB840]

SENATOR COUNCIL: Yeah. Well, you know, I appreciate that that's the professed culture of the institution, and I don't disagree with you that people who are incarcerated have their suspicions. I can only speak from the experiences in my office with the number of complaints I receive. And in reading page 11, just in a...incoming mail may be read only where...when there is clear and convincing evidence that such mail constitutes a threat to the security, safety, or good order of the facility, and I assume that the envelope contains markings of a terroristic threat group or something because how can you determine whether it constitutes a threat to security if it's not read? Okay. Now I can imagine, I mean don't get me wrong, I mean if there are stamps and emblems on the outside of it that indicate that this gang affiliation or terroristic group affiliation and it's obvious from the outside from the envelope, that's one thing. But in

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terms of reading inmate mail, particularly when it's coming from government offices, government officials, and their legal counsel, I think that that's where the tightest procedures need to be in place. [LB840]

BOB HOUSTON: Well, you know, we don't read it. I mean we don't have no interest in reading it. And like I said, the search that we do in front of the inmate is more thorough than what's done in the mailroom by a pay grade 6 person. And when they open it up to search for contraband, we're not concerned about the contents of the letter. If we see on there...and I opened up hundreds of these during my years with the...in the inmate's presence and so forth. I look to see that this is from Nelson Law Attorney, attorney at law. I open it up, I see that the stationery it's on is Nelson Law Attorney; thank you very much, have a good day, and that was the end of it, sign right here. What our concern is, as I think it was voiced earlier, is that the inmates will use their legal mail because they do it now, even without this law, to harbor contraband. When I was deputy warden of the penitentiary in '92, there was an envelope that was sealed in a segregated cell to the courts, addressed to the courts, and you could feel it, because tobacco is not allowed, that he has tobacco in there. So I made the mistake of sending it to the court already sealed and didn't open it up. I was admonished by that court, saying, you know, if you feel like there's contraband in there open it up. But what this law does, as was testified to earlier, is I go in to search a cell, and we do a thousand searches a day of some sort, whether they be shakedown searches, strip searches, or searches of inmate rooms, is that they would take a legal envelope and stick contraband in there, whether it be marijuana or whatever it might be, a shank, a blade or whatever it might be. And you have to call the inmate back when you open up that envelope. We're not looking to read that letter. We could care less what that inmate is corresponding with. In fact, the ability of inmates to bring litigation against us it really goes to our favor because what happens is the inmate has an outlet. And if he thinks he's been wronged in some way, he has an outlet. And for him to have that outlet and be supported or not supported, he becomes a better inmate citizen to us. And so we really don't have any interest in violating any inmate's privileged mail by reading it. [LB840]

SENATOR ASHFORD: Why don't we...I mean we're going to have this meeting on the 1st and we can... [LB840]

SENATOR COASH: I assume you'll follow up with us. [LB840]

SENATOR ASHFORD: ...won't take any action. [LB840]

BOB HOUSTON: I'm sorry? [LB840]

SENATOR COASH: I assume you'll follow up with us after your meeting on... [LB840]

BOB HOUSTON: I'd be happy to. [LB840]

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SENATOR COASH: ...how things went or changes. [LB840]

BOB HOUSTON: I'd be happy to. [LB840]

SENATOR ASHFORD: What we might do, Bob, and I think what we will do is have you come in during an Exec Session and report back on what you've come up with in the next couple weeks. [LB840]

BOB HOUSTON: Yes. Would you mind if I bring Mr. Marshall with me? [LB840]

SENATOR COUNCIL: Oh, absolutely. [LB840]

SENATOR ASHFORD: No, I don't mind. We'll bring you both in and... [LB840]

BOB HOUSTON: I'll bring him with me. [LB840]

SENATOR COUNCIL: That's mandatory. [LB840]

BOB HOUSTON: Okay. Thank you, Senator. [LB840]

SENATOR ASHFORD: And we'll spend some good quality time on this. [LB840]

BOB HOUSTON: Okay. Thank you. [LB840]

SENATOR COUNCIL: I think Mr. Partsch wants to speak. [LB840]

SENATOR ASHFORD: Okay. Thanks, Brenda. Yeah, David, do you have... [LB840]

DAVID PARTSCH: Just briefly, in a neutral capacity. Again, my name is David... [LB840]

SENATOR ASHFORD: Are there any other opponents, just for the record? No, it doesn't...okay, go ahead. [LB840]

DAVID PARTSCH: Okay. Again, thank you, Senator Chairman and Senator Ashford, members of the council, David Partsch, P-a-r-t-s-c-h, representing Nebraska County Attorneys Association. We are neutral on the position on this bill. I want to commend Senator Council for bringing an important issue to the table here. I think as an association we also think that privacy and privilege are important issues to the inmates and want to support that as much as we can. A couple items: I'm glad to hear it sounds like there will be some action at least being taken as a result of this bill being brought forward. And a couple concerns that our association had with the bill again I think have

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been addressed, with the discharge provision obviously being a concern. The other thing is just criminalizing this. And I know it needs some teeth if you're going to bring it. I do want to just point out that the county jails throughout the state are subject to the jail standards and take that obligation very seriously. And I know at least our jail in Otoe County is even more stringent than the standards require. They don't even read mail if it's from HHS or pretty much any other legal entity. If it's a business at all, they just don't really have any interest in reading those. I would point out also if there are amendments to the bill at some point, I would also like, Senator Council, if you would take a look at the provision. The last provision of the bill makes it a Class II misdemeanor also to send mail to an inmate falsely identified as legal mail. I think that should also apply to the inmate, if they're falsely identifying legal mail, and I think that might take care of some of these issues where contraband is being harbored inside the legal mail. That would also criminalize that on the defendant's or inmate's behalf if they're trying to send out falsely marked legal mail or storing it in their cell. Any questions? [LB840]

SENATOR COUNCIL: Just a quick comment. [LB840]

SENATOR ASHFORD: Yes, ma'am. [LB840]

SENATOR COUNCIL: And thank you, Mr. Partsch. And just by way of your point about the criminalization of opening the legal mail, that my staff conducted research on and we looked at other states, and in fact other states criminalize the opening of inmate legal mail and that's why it's in the bill. [LB840]

DAVID PARTSCH: Okay. I know there are some... [LB840]

SENATOR COUNCIL: But believe me, I didn't create that. Yeah. [LB840]

DAVID PARTSCH: Thank you. I know there are mistakes made, for example, especially in a smaller county. We're talking...we've been talking a lot about these larger facilities, but in a small county all of the mail is coming in to the secretary at the sheriff's office. Our public defenders also have private law practices. They're sending mail to the sheriff for legal service, things of that nature. So those secretaries are opening letters from defense attorneys all the time that are addressed to the sheriff. Occasionally, they'll open an inmate's by mistake and, again, they take it to the inmate and apologize at that time. But mistakes are made and I think that the discharge provision in there is a little concerning. Hopefully the county attorneys would have their discretion still with whether a criminal charge is filed or not. But with that, any other questions? [LB840]

SENATOR ASHFORD: I don't see any. Thanks, David. [LB840]

DAVID PARTSCH: Thank you. [LB840]

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SENATOR ASHFORD: Any other testifiers? Senator Council, do you...okay, Senator Council waives. That ends the hearing. We're going to just have a short Exec Session I think. [LB840]