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Judiciary Committee  
February 07, 2013

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[LB115 LB246 LB267 LB313 LB350 LB403]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 7, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB403, LB313, LB350, LB267, LB115, and LB246. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Amanda McGill; and Les Seiler. Senators absent: Al Davis.

SENATOR ASHFORD: Good afternoon, everyone. Let's get started. My colleagues will be coming in as we do the introduction. Senator Seiler has the first bill, LB403: Prohibit retail sale of novelty lighters. Senator McGill is here, so...the Vice Vice Chair. The friendly confines of the Judiciary Committee. Senator Seiler, would you go ahead and begin.

SENATOR SEILER: (Exhibit 1) Mr. Chairman, members of the Judiciary Committee, I bring LB403 to this committee for a hearing. It is a bill that would prohibit and criminalize the sale and distribution of toylike novelty lighters. When I first got this bill given to me and asked to present it, I thought it was kind of a "novelty," if I may play on words. But after I got into it and after I saw what kind of a toy can be...I have a 3-year-old grandson who loves John Deeres. In fact, he could name just about every piece of equipment in the John Deere sales directory and tell you what it does. But if he grabbed this particular lighter and clicked it, catch on fire, then it comes into play to another group that I have a lot of close connections with, and that's called the Shriners Hospital for Crippled and Burned Children. I was potentate of the Shrine in 1982 and had the pleasure of visiting the children's hospitals and seeing the victims of burns. We worked very...as a Shrine, we worked very closely with the hospital here in Lincoln that specializes in burns. And to have this type of a novelty be so deadly and so tempting for children to grab, I think it deserves a look by our Legislature about prohibiting them; currently 15 other states have adopted this legislation. And I believe that's a fair introduction of the bill. There are witnesses here to testify further on this. And so I'll just wait. [LB403]

SENATOR ASHFORD: Senator Seiler... [LB403]

SENATOR SEILER: Oh, excuse me. [LB403]

SENATOR MCGILL: Just real quick. [LB403]

SENATOR ASHFORD: ...Senator McGill has a question. [LB403]

SENATOR MCGILL: Just a quick question. So is that other model legislation where you get the specific list of things? [LB403]

SENATOR SEILER: Right. [LB403]

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SENATOR MCGILL: Because I know it's very specific, and I'm, like, oh, man, what else could we maybe be missing? But... [LB403]

SENATOR SEILER: Right. [LB403]

SENATOR MCGILL: ...that's... [LB403]

SENATOR SEILER: That's the model... [LB403]

SENATOR MCGILL: ...what everybody else feels has been good? Okay. [LB403]

SENATOR ASHFORD: Thanks, Les. [LB403]

SENATOR SEILER: Okay. [LB403]

SENATOR ASHFORD: Those in favor of the bill, will you come up. How many are in favor of the bill? How about opposed? Okay. All right. Good afternoon. [LB403]

RHONDA CERNY: Good afternoon. I'm Rhonda Cerny, C-e-r-n-y, the last name. I am a member of the Linwood Volunteer Fire Department, have been a member of that for 23 years. I'm here today on behalf of the Nebraska State Volunteer Firefighters Association, where I play a very active role in the fire prevention program. That is where our main concern on these novelty lighters has concentrated at. We're always very proactive with fire prevention, trying to stop fires from happening, and we like this to be something practiced 24 hours a day, 365 days of the year. We, I'm sure you're aware, have stressed over and over and over the importance of not letting lighters and matches into the hands of children. And we'll continue to do that. But when these lighters are starting to come in this shape, of little toys...and I have, I realize, you know, I'm not going to pass out any kind of samples, but I have with me a whole bag that is a large, almost like a child's play bag full of examples of these novelty lighters. You're talking little animals that look like zoo animals; you're talking little purses that match the Barbie purse, items that you have no idea that they would actually not be a toy. And we're trying to get these out of circulation. The European countries are outlawing them, so we're going to have tons of them available that are always just going to be intimidating to the children to try and use. And, like I said, we want to be proactive; we want to stop this before it's a problem. I can't come before you with actual statistics of the novelty lighters in particular in Nebraska, but we don't want to have those statistics. I don't want to be able to come up here and say, we've lost the lives of a family or the life of a child or the injuries to children because these were in their hands. So this is the reason we would like to see this pursued. I would encourage you on next Tuesday morning to come to the Nebraska State Volunteer Firefighters breakfast that we host, where we will have all of the lighters displayed in case you would like more information about them or

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to see what we do have available. They will be there for you to see. Are there any questions that I can entertain at this time? [LB403]

SENATOR ASHFORD: Any questions of Rhonda? I don't see any. Thank you, Rhonda, and... [LB403]

RHONDA CERNY: Thank you for having me. [LB403]

SENATOR ASHFORD: ...thank you for all your service with the volunteer firefighters association. Jerry. [LB403]

JERRY STILMOCK: (Exhibit 2) Mr. Chairman, members of the committee, my name is Jerry Stilmock, J-e-r-r-y Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association. Ms. Cerny said it. As I rehearsed...thought about what I was going to say this afternoon to you, what's the first things that I remembered growing up as a child: Don't cross the street without being crossed, and don't play with matches, or a lighter. The problem is, is we're talking about attractive nuisance. These things are...you know what? How about another cliché? If it looks like a duck, walks like a duck, smells like a duck...you know what? These look like toys; they act like toys. They're not toys. They're devastating to our children. And, you know, we've attempted this measure before, but we believe it's important, if I may. I don't have statistics on these hazardous novelty lighters in Nebraska, but what the page is distributing to you are the recent facts from the Nebraska State Fire Marshal's Office of the categories of juvenile using a lighter or matches and causing damages to...injuries to people, fatalities, and then property damage. And you can see in 2010, '11, and '12 the number of fires, respectively, reading left to right. Get you acclimated as the page is distributed: in 2010, 29 fires; 2011, 20; 2012, 10. And unfortunately in the 2010 year, where there were 29 fires started by matches or lighters, there were 2 fatalities. This measure would carry a Class IV misdemeanor: no imprisonment, a maximum of \$500 fine, minimum of \$100 fine. It doesn't look like a knife, okay? We're not going to outlaw knives. We're not going to outlaw bottle openers that, you know, like the way we grew up, with the can openers with the sharp point. All these things that are dangerous to children that don't recognize...people don't recognize these things. And on behalf of my clients I'd ask you to advance LB403. It's not big government, it's not overstepping; it's trying to protect before something happens. And we'd certainly appreciate your support. Thank you. [LB403]

SENATOR ASHFORD: Jerry, do these people, or the manufacturers of these products, do they have sales tax exemptions, do you know? [LB403]

JERRY STILMOCK: Not to my knowledge, sir. Maybe just the component parts, sir. Not exempted. [LB403]

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SENATOR ASHFORD: All right. Thank you, Jerry. [LB403]

JERRY STILMOCK: It was model legislation. [LB403]

SENATOR ASHFORD: Okay. [LB403]

JERRY STILMOCK: It did come in with those other items. And there was a request from... [LB403]

SENATOR ASHFORD: We've had this bill... [LB403]

JERRY STILMOCK: We have. [LB403]

SENATOR ASHFORD: ...a number of times. [LB403]

JERRY STILMOCK: Yeah. Yeah. [LB403]

SENATOR ASHFORD: And, you know, it's certainly worthy of looking at, so thank you very much. [LB403]

JERRY STILMOCK: I appreciate that, Senators. Thank you. And thank you, Senator Seiler. [LB403]

SENATOR ASHFORD: Any opponents? I think there might have been another proponent. How about opponents? Kathy? Kathy, are you an opponent? [LB403]

KATHY SIEFKEN: I'm an opponent. [LB403]

SENATOR ASHFORD: Okay. [LB403]

KATHY SIEFKEN: We're all friends here. Chairman Ashford and members of the Judiciary Committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association as their lobbyist and their executive director, here in opposition to LB403. Every time this bill comes before the Judiciary Committee we come in and we oppose it. And the reason we do that is because when you pick and choose what kind of specific items to ban, it is what--and I know people don't like this term--but it is a slippery slope; where does it stop? These are products that are purchased normally by adults. And I would contend that if you want to keep these out of the hands of children, that would be a parental role; that if you buy one of these, you are responsible for where it is stored and how it is kept. And for those reasons we don't think that government needs to get involved in the selling of individual items. If you have any questions, I'd be happy to try to answer. [LB403]

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SENATOR ASHFORD: Seeing none, thanks, Kathy. [LB403]

KATHY SIEFKEN: Thank you. [LB403]

SENATOR ASHFORD: Any other opponents? Neutral? Senator Seiler, do you wish to...? [LB403]

SENATOR SEILER: Just to take a second to close. I think that the bill does go to prohibitive conduct and hazardous novelty lighters. And when you sit and look at a child whose skin is just like leather because it's been burned over all of its body, this becomes pretty important. So with that I'll close. [LB403]

SENATOR ASHFORD: It is important. Thank you. Yeah, thanks. All right. The next bill, Senator Christensen, I believe, LB313. [LB313]

SENATOR CHRISTENSEN: Thank you, Chairman and members of the Judiciary Committee. I'm Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District, and I'm here to introduce LB313. LB313 provides the Nebraska Department of Correctional Services the ability to ensure that the most appropriate inmates are placed in the Work Ethic Camp, WEC, in McCook, and also ensure that the facility is utilized to its fullest extent. Currently the courts, the Nebraska Board of Parole, and the Director of Correctional Services may make placements at WEC. This bill would provide that only the Director of Correctional Services may make such placements. Inmates convicted of capital offenses or of a crime under 28-319 to 28-321 would remain ineligible for such placements. Thank you for consideration of LB313. [LB313]

SENATOR ASHFORD: Thank you, Mark. Yes, Senator Coash. [LB313]

SENATOR COASH: Thank you, Senator Ashford. Senator Christensen, there's obviously a reason you're bringing this bill. Do you feel that there's been some inappropriate placements to the Work Ethic Camp made by the court? I mean, are we...we're removing a couple of entities that can place...I mean, are we trying to solve a problem that you're seeing, that the wrong kind of people are being sent to the camp? [LB313]

SENATOR CHRISTENSEN: I think the question will be answered following me. I did visit with the department about that because my concern was, will we pull out too many, because what's changed this direction was LB83 in 2007 by Senator Synowiecki, and that's when we had very low numbers. Now we're at 186 the day he was in my room, with a maximum of 200 possible. And I don't know that there's been a problem, but I think there's been some concern more of certain ones might be better off in community-based services. But there will be people following me to address that.

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[LB313]

SENATOR COASH: Okay. [LB313]

SENATOR CHRISTENSEN: I was asked by the department to bring this. [LB313]

SENATOR COASH: Okay. Thank you. [LB313]

SENATOR ASHFORD: Thank you, Mark. Let's start with the proponents of LB313. Bob. [LB313]

BOB HOUSTON: (Exhibit 3) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Bob Houston, H-o-u-s-t-o-n. I'm director of the Nebraska Department of Correctional Services. I'm here today to speak in support of LB313, which would...and I'd like to thank Senator Christensen for introducing it. The Work Ethic Camp was formed in 1997 to house felony offenders as a condition of sentence of intensive supervision by probation. In 2005, LB83 allowed for the placement of inmates as a transition phase prior to release on parole. Then in 2009, LB274 allowed for placement of inmates as assigned by the director of Correctional Services. The Work Ethic Camp--and you'll see that on the chart below--has been underutilized by the courts for years, with the use decreasing significantly since last summer. Removing probationers from the Work Ethic Camp would ensure that the department could fully utilize the beds for inmates who would benefit from the program provided utilizing skilled reentry. LB313 would allow the director of Corrections to determine the appropriateness for all inmates placed at the Work Ethic Camp based on the validated classification system used for placement in all department facilities. Institutional and community risk and programming needs are determined through the classification system and other screening tools, respectively. And I will certainly respond to any questions that you may have. I'll draw attention to the chart as indicated and... [LB313]

SENATOR ASHFORD: Senator Coash. [LB313]

SENATOR COASH: Thank you, Chairman Ashford. [LB313]

BOB HOUSTON: Um-hum. [LB313]

SENATOR COASH: Director, are we trying to increase utilization of the Work Ethic Camp or decrease it? Are we...by giving you sole authority, which is what this bill does, is your goal to see utilization increase? Or are you seeing too much, so you want to have the power to close the door and keep more inmates from coming there? [LB313]

BOB HOUSTON: No, this is to increase the usage of it. And it, really, on page 5 of the existing bill, it indicates that: It is the intent of the Legislature that the incarceration camp

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serve to reduce prison overcrowding and to make prison bed space available for violent offenders. In other words: to make certain that we have the bed space for the violent offenders in the prisons. The program will remain intact; it's a six-month program. The Work Ethic Camp for years was underutilized until we had LB83 passed and then the subsequent legislation. And, actually, we think that we can increase it further. We find it is a very, very valuable program to us that has intensive treatment and lays a good baseline for people to then move on to our community centers and out on to parole. So... [LB313]

SENATOR COASH: So this bill removes...it removes the courts, and it removes...is that all, Senator Christensen, just the...? [LB313]

BOB HOUSTON: Right. [LB313]

SENATOR COASH: Well, it removes the courts. The question I asked Senator Christensen... [LB313]

BOB HOUSTON: Um-hum. [LB313]

SENATOR COASH: ...was, have you seen problems where the courts are making placements, you know, they're...I assume as part of sentencing they're saying, you're going to do this time and you're going to do some of it out in McCook. Are you seeing inmates that the courts are sending there that you feel are inappropriate or just less appropriate than other inmates? [LB313]

BOB HOUSTON: No. We have not had a problem in that respect. The usage has been low. Right now we have 12 out of 100 beds that we make available to the courts. Only 12 of them are filled at this point, and it's always been low. We wouldn't even be having this discussion had we not gotten LB83 and the subsequent bill introduced, because they could just...in the history of the camp, it's just never been filled. [LB313]

SENATOR COASH: Right. [LB313]

BOB HOUSTON: It's always been underutilized by the courts. And now, as you can see, it's down to 12 percent of the available beds. And so what the advantage of us having the placement there is what I testified to, the classification system that we have. Plus, it gives us consistency. Our department is crowded. We are increasing the number of people on parole. And this program is extremely valuable as we prepare people for reentry because of the program intensity that we have. And so the program would stay intact as it is; it's just that it would give us more space as we become more crowded. [LB313]

SENATOR COASH: Are you able now, under the current law, to move inmates? If you

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have an inmate at NSP and, say, you know, this guy is a good candidate for McCook, do you have the latitude right now to move that? [LB313]

BOB HOUSTON: Yes. Absolutely. And that's what we've been doing since 2005 and '07. [LB313]

SENATOR COASH: Okay. [LB313]

BOB HOUSTON: Yes. [LB313]

SENATOR COASH: Okay, I'm still a little confused on how our numbers are down and limiting the number of people who can send people to the Work Ethic Camp makes the situation better. [LB313]

BOB HOUSTON: I think what it does is it shifts over all beds to the department, and so the people we receive both at the front end and towards the end of their sentence... [LB313]

SENATOR COASH: Okay. [LB313]

BOB HOUSTON: ...are very good candidates to go through the program. [LB313]

SENATOR COASH: So you're holding beds for the courts that aren't using them, is that what you're saying? [LB313]

BOB HOUSTON: No. We're...any bed that the courts are not using, we're using. The count there, I believe, as of yesterday was 146. So we're 46 percent beyond that capacity. From when the camp first opened, it was underutilized by probation. And then we got the law passed to allow inmates there. Since the passing of that second law, we've been able to keep that above its rated capacity while maintaining the integrity of the program. Nebraska has one of the lowest recidivism rates in the country. So it's worked very effectively for our inmates to go through there as part of a lot of things we do towards reentry. But, no, there's not beds sitting there empty. We're actually creating more beds so that we can have more opportunities. And again, it's limited to six months. And so that stays intact. The other aspects of the law, as far as who we place out there, that's stays intact. It's just that the utilization comes over to the department. [LB313]

SENATOR COASH: Okay. Thank you. [LB313]

BOB HOUSTON: Um-hum. [LB313]

SENATOR ASHFORD: Yes, Senator Seiler. [LB313]

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SENATOR SEILER: Thank you, Mr. Chairman. I just had one question. Maybe I wrote it down wrong; I thought your maximum was 200 inmates. [LB313]

BOB HOUSTON: If we doubled everything, we could have 200 out there. [LB313]

SENATOR SEILER: But that's not what you've got. You're licensed for how many? [LB313]

BOB HOUSTON: Well, it's not a licensing. We do go through national accreditation; it's nationally accredited. Our rated capacity... [LB313]

SENATOR SEILER: That's... [LB313]

BOB HOUSTON: ...in other words the architectural drawing, is 100. [LB313]

SENATOR SEILER: Okay. [LB313]

BOB HOUSTON: But like all of our facilities, we go beyond the rated capacity, so... [LB313]

SENATOR SEILER: Okay. [LB313]

BOB HOUSTON: Um-hum. And we are considering going up above that 146, but we would have to add a few more staff positions out there to maintain the integrity of the programs that we have. [LB313]

SENATOR ASHFORD: Bob, we're 146 percent of capacity in the overall system, correct? [LB313]

BOB HOUSTON: Um-hum, it's right in there. [LB313]

SENATOR ASHFORD: I mean, that's...where does it become extremely problematic? [LB313]

BOB HOUSTON: As far as... [LB313]

SENATOR ASHFORD: Capacity. [LB313]

BOB HOUSTON: Well, yesterday we surpassed 500 at our Diagnostic and Evaluation Center, which was built for 165. So we're facing difficulty with our capacity. We're able to keep the prisons safe, because...at high-security facilities, with the exception of DEC, and that's a short-term stay. [LB313]

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SENATOR ASHFORD: That's entry... [LB313]

BOB HOUSTON: Right. [LB313]

SENATOR ASHFORD: So... [LB313]

BOB HOUSTON: Yes, the first few months of... [LB313]

SENATOR ASHFORD: Yeah. [LB313]

BOB HOUSTON: ...couple, three months of their incarceration. [LB313]

SENATOR ASHFORD: And is it still correct that 80 percent of the inmates are...will spend less than three years in the...? [LB313]

BOB HOUSTON: Yes. Yes. The average...about 80-or-so percent of every male inmate that comes in... [LB313]

SENATOR ASHFORD: Right. [LB313]

BOB HOUSTON: ...will be out within 36 months. And 90 percent of the females we receive will be out in 36 months. [LB313]

SENATOR ASHFORD: And also the county jails, certainly my experience...but the Douglas County corrections facility is at what capacity, do you know? [LB313]

BOB HOUSTON: I'm not...I... [LB313]

SENATOR ASHFORD: Okay. You know, we spent a lot of time on juvenile issues and we're going to be spending a lot this year, but this is becoming a significant crisis for you, almost, is it not? I mean... [LB313]

BOB HOUSTON: Yes. [LB313]

SENATOR ASHFORD: ...we can't run at 146... [LB313]

BOB HOUSTON: It's becoming more difficult. It's... [LB313]

SENATOR ASHFORD: And you... [LB313]

BOB HOUSTON: I think we offer probably the country's best incarceration experience, but you get to a point where no matter how good... [LB313]

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SENATOR ASHFORD: But you don't have any control over that... [LB313]

BOB HOUSTON: Yeah. [LB313]

SENATOR ASHFORD: ...so I'm not questioning the experience of being in your institutions; I'm sure they're fine. But I think you're being asked to do something that may be near unto impossible. And I...we have community corrections; we have diversion; we have drug courts. Mark (phonetic) was involved in the drug court in Douglas County, setting that up. I...we incarcerate more individuals than any country in the world, including Iran. [LB313]

BOB HOUSTON: Um-hum. [LB313]

SENATOR ASHFORD: I know we've got other bills to talk about today, but at some time during this session we're going to have to address this... [LB313]

BOB HOUSTON: Yes. [LB313]

SENATOR ASHFORD: ...and not just from a budgetary standpoint, but just from a... [LB313]

BOB HOUSTON: Yes. [LB313]

SENATOR ASHFORD: ...the ability for you to effectively...especially get these inmates ready...well, the classes they need, the rehabilitation services they need, psychiatric/mental health services they need...and your recidivism is low, compared to other institutions around the country. I mean, I have to applaud that, because it's quite frankly unbelievable that you've been able to maintain that recidivism rate. But let me just ask this, and then I won't put you on the spot, but if--maybe to set the stage for further discussions--if you were to give me two or three...one, two, three things that you would recommend to the policymakers regarding this issue of overcapacity, what would you come up with? [LB313]

BOB HOUSTON: Well, I think a lot of it stretches outside the department, but, in general, the way to address crowding in any prison system is to address things at the front end, the back end, and the in-process. At the front end it would be who comes to prison, of course. The in-process that we work on and that is how do we direct our treatment programs to the people who need it, and get it done in a timely fashion. And then also we've moved programs from the prisons out into reentry, to our parole offices. We have programs that have moved out there that now, instead of completing that before you go on parole, you can complete it after. So that's the in-process. And then at the back end would be discretionary decisions that are made as far as releasing are concerned. Some of the solutions are things that we're working on now. Other solutions

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might be to look at sentencing practices and also releasing practices. [LB313]

SENATOR ASHFORD: Bob, if you did not have the ability...if you did not have good time within the system for offenders...let's say you take a class of offenders that have committed some sort of violent crime and you were not able to provide any good time to them. Have you done an analysis of how many new prisons we would need to build in the state of Nebraska? [LB313]

BOB HOUSTON: Well, to start out, if you get a sentence of four to ten years, for example, you're able to parole off half the minimum, which would be two years. And your discharge is...your sentence expiration is half of the maximum, so you do 50 percent of your maximum term for sentence expiration. And then the Parole Board has discretion from that two years, in this case, to the five years. The simple math would be that if we took away good time, it would double the prison population immediately, because instead of day-for-day good time, you would do the full effect of that sentence. Now... [LB313]

SENATOR ASHFORD: So that would be what number? You'd be at what...what would be your...? [LB313]

BOB HOUSTON: We... [LB313]

SENATOR ASHFORD: You'd go from 4,600 to 9,200 inmates? [LB313]

BOB HOUSTON: Yes. Yes. Exactly. [LB313]

SENATOR ASHFORD: And how many new prisons would you need to build to effectively incarcerate those individuals? [LB313]

BOB HOUSTON: Our prisons average probably about...if you look at the rated capacity, they average 600 or 700; so you just divide that amount by 600 or 700, and that would tell you how many facilities, unless you build a large facility, so... [LB313]

SENATOR ASHFORD: Thanks, Bob. [LB313]

BOB HOUSTON: You bet. Thanks. [LB313]

SENATOR ASHFORD: Yes, Senator Chambers. [LB313]

SENATOR CHAMBERS: Mr. Director, tell me something about this so-called modified lockdown that's going on now. How long do the men stay locked up a day? [LB313]

BOB HOUSTON: Thank you, Senator. We have went to modified yards at four facilities:

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at our youth facility, at the Lincoln correctional center, at the State Penitentiary, and at Tecumseh. The...and we've been--you may be aware--we've been working with the Ombudsman's Office the last couple months, and we have another meeting coming up in March. What we're doing is, is looking at what that minimum out-of-cell time is. Right now it looks like that it's about six to six and a half hours out of cell. And that would be the minimum time a person would be out of cell. [LB313]

SENATOR CHAMBERS: Sixty-six and a half hours... [LB313]

BOB HOUSTON: Per day. [LB313]

SENATOR CHAMBERS: ...out of what, per day? There aren't that many hours in a day. [LB313]

BOB HOUSTON: No. [LB313]

SENATOR CHAMBERS: Sixty-six hours? [LB313]

BOB HOUSTON: Six and a half. [LB313]

SENATOR CHAMBERS: Oh. [LB313]

BOB HOUSTON: I'm sorry, six and a half hours. [LB313]

SENATOR CHAMBERS: And the rest of the time they're locked up. [LB313]

BOB HOUSTON: They would be in their cells. Now that's the minimum. That's for... [LB313]

SENATOR CHAMBERS: Before you imposed that, how much time were they out of cell per day? [LB313]

BOB HOUSTON: Well, they would...they could...the yards were open after breakfast in the morning, so they had a couple, three hours in the morning; some time in the afternoon; and then during the summer hours they'd had some evening time. And...but in maximum-security prisons after, you know, when it becomes dark, then they have to either be in the gymnasium or in their cell or their club activities or their treatment programs. Most of... [LB313]

SENATOR CHAMBERS: Do they still have the club activities and treatment programs going on? [LB313]

BOB HOUSTON: Yes. [LB313]

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SENATOR CHAMBERS: So how many hours out of cell...what's the difference between what was and what is now, in terms of the number of hours? [LB313]

BOB HOUSTON: Well, for...all the inmates are affected by the modified yards. The inmates that work in the industries or have jobs that keep them out of their cell all day, their yard time or their opportunity to go to the yard time has been decreased. The...but many of the inmates are out all day long for their job, school, and those types of things. The inmates that would be in their cell more often are inmates that have jobs that they can complete... [LB313]

SENATOR CHAMBERS: Well, let's say yard time: how much time did they spend in the...how much yard time was available...let me back up. Is this so-called modified lockdown different from what it was before this lockdown was put in place? [LB313]

BOB HOUSTON: Yes. [LB313]

SENATOR CHAMBERS: Now, before the lockdown was put in place, how much yard time did the men have per day? [LB313]

BOB HOUSTON: Well, if you didn't have a job, if an inmate didn't have a job to report to, they could go out after breakfast in the morning and then they could stay out until they went back into their housing units before lunch, and then they would be out after lunch until about 3:30-4:00-ish. The schedules vary just a little bit between the facilities. And then during the summer hours they could be out in the evening. Now they're in a scheduled yard, and so they would be scheduled out in their yard for an hour... [LB313]

SENATOR CHAMBERS: Well, because I can't count that fast, how much difference is there in the number of hours they are in the yard now from the number of hours they had in the yard before you imposed this system? [LB313]

BOB HOUSTON: I can get you an exact figure, but for purposes of discussion I would say probably three hours in the morning, three hours in the afternoon: six. So instead of six hours out, not counting the evening, they would have one hour for that. Now they also have an hour to go to the gymnasium, and they also have time to go to the day rooms, to club activities. So they wouldn't always be on the yard during those hours, but those... [LB313]

SENATOR CHAMBERS: Well, let me ask you this. Do they have less time in the yard now than they had before? [LB313]

BOB HOUSTON: Yes. [LB313]

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SENATOR CHAMBERS: And, well, I'll talk to you more when it's just you and me, because I don't think I'm getting straight answers, just being frank. Now why did you impose this system? [LB313]

BOB HOUSTON: We had...we had different situations happen, each institution. We did not put a blanket policy in where we closed...or closed...or went to modified yards. Each facility had an escalating amount of occurrences that were happening. One of the first facilities that we put on modified was the Lincoln correctional center, and there we had a series of assaults, inmate-on-inmate assaults. We also had a serious stabbing of one of our staff members, along with other assaults of staff members. And so... [LB313]

SENATOR CHAMBERS: And you couldn't deal with the individuals who were involved, you had to put a blanket system on everybody. Let me ask you this: Do you have fewer staff members and employees than you need and that's why...part of the reason for implementing this lockdown? [LB313]

BOB HOUSTON: Senator, we have, at each institution we have what's called our minimum staffing. So the penitentiary has minimum staffing, Tecumseh, and so forth. One hundred percent of those positions have to be filled at the beginning of each shift. So if we have fewer staff members, with budget cutbacks and so forth, we have other people that work overtime to fill in any gaps that we have. [LB313]

SENATOR CHAMBERS: So you have enough staff, you're telling me. [LB313]

BOB HOUSTON: We have enough staff for the job at hand. [LB313]

SENATOR CHAMBERS: And when people work overtime, that doesn't...because they're working overtime, it doesn't have any impact on how the prisoners are treated, is that what you're telling me? That makes no difference? [LB313]

BOB HOUSTON: We...we try to make certain that we don't work people so many hours that there's an adverse effect in that regard. [LB313]

SENATOR CHAMBERS: Okay, well, I've said enough to let you know some concerns that I have, because, as the Chairman pointed out, there will be time to talk about some of these other issues. But on this particular bill that I will acknowledge I haven't examined as carefully as I want to, is the main thing that you want to take from the courts certain powers and invest them, or rest them, place them, in the director? [LB313]

BOB HOUSTON: That is correct. [LB313]

SENATOR CHAMBERS: And you told my colleagues in response to some questions

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that your desire is to put more people in the work camp than the courts will do under the statute as it exists now. Is that correct? [LB313]

BOB HOUSTON: Yes. And that's what we've done historically as well. [LB313]

SENATOR CHAMBERS: And that's all I will ask you at this point. Thank you. [LB313]

BOB HOUSTON: Thank you, Senator. [LB313]

SENATOR ASHFORD: Thanks, Bob. [LB313]

SENATOR LATHROP: Can I ask one question? [LB313]

SENATOR ASHFORD: Yes. [LB313]

SENATOR LATHROP: And I apologize for coming in late, Bob. I was over introducing a bill in the Health Committee. This is about McCook? [LB313]

BOB HOUSTON: Yes. [LB313]

SENATOR LATHROP: The capacity there is 100, and we have 185 guys there right now? [LB313]

BOB HOUSTON: Right now we have 146 beds filled, right at that number. And in order for us to go up to 200 inmates, we would have to add a few more staff members out there. [LB313]

SENATOR LATHROP: But the capacity of the McCook camp was originally 100. [LB313]

BOB HOUSTON: 100. [LB313]

SENATOR LATHROP: And we're at 150? [LB313]

BOB HOUSTON: Yes... [LB313]

SENATOR LATHROP: Is that...? [LB313]

BOB HOUSTON: ...right at that number. [LB313]

SENATOR LATHROP: Right in there. Will the effect of this bill be that...what are we doing to make sure the people that are going out there are not just going out there to be locked up, like they might be at the penitentiary if that place wasn't full, and that they're

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actually people who are amenable to some form of rehabilitation, in other words, it's a work camp and not another prison? [LB313]

BOB HOUSTON: Well, we have several programs out there. If you like, I can brief you on those. [LB313]

SENATOR LATHROP: I'm just wondering, the change in the criteria, which is what we're doing here, right? [LB313]

BOB HOUSTON: Well, what we're doing... [LB313]

SENATOR LATHROP: We're eliminating some standards for who goes and who doesn't? [LB313]

BOB HOUSTON: Well, right now, from the courts we have 12 probationers out there. And what this does...that's only 12 percent of its capacity. What this bill does is, is that all the individuals will come from the Department of Correctional Services. The program stays intact; the length of time that they're out there stays intact; and the array of programs that we have stays the same and will increase if we increase the number of inmates that we have going out there. [LB313]

SENATOR LATHROP: Okay. I'll ask the question differently. This bill will not have the effect of simply turning this into an annex of the Nebraska State Penitentiary in Lincoln. [LB313]

BOB HOUSTON: No. Its mission will continue. [LB313]

SENATOR LATHROP: It will still be a work camp, and the people will be out there learning a skill... [LB313]

BOB HOUSTON: Yes. [LB313]

SENATOR LATHROP: ...and improving their chances of success upon release. [LB313]

BOB HOUSTON: Absolutely. [LB313]

SENATOR LATHROP: Okay. [LB313]

BOB HOUSTON: Thank you. [LB313]

SENATOR LATHROP: Thank you. [LB313]

BOB HOUSTON: Um-hum. [LB313]

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SENATOR ASHFORD: Thanks, Bob. [LB313]

BOB HOUSTON: Okay. [LB313]

SENATOR ASHFORD: Do we have any other proponents of this measure? How about opponents? [LB313]

KATIE ZULKOSKI: Good afternoon, Senator Ashford, members of the Judiciary Committee. It's Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying from the Nebraska State Bar Association in opposition to LB313. As many of you know, our bar association committee is made up of 40...our legislation committee is made up of 40 attorneys and judges. And when we reviewed this legislation, the judges on our committee were concerned that we were removing one of the options that they have. And we have talked to the department, and we have talked with Senator Christensen, and we understand their intent with this bill, and we have committed to them that we will continue to review the issues that are presented here. But as the bill is currently written and as the judges on our committee read the bill, this is limiting the options of what those judges are able to do. [LB313]

SENATOR ASHFORD: Thank you, Katie. Do we have any questions of Katie? Seeing none, thank you. Any other opponents? Neutral? [LB313]

DEBORAH MINARDI: (Exhibit 4) Good afternoon, Senator and members of the committee. My name is Deborah Minardi, M-i-n-a-r-d-i, and I'm the deputy probation administrator and employed by the Nebraska Supreme Court. I testify today regarding LB313 in a neutral capacity, with the intention of providing some additional information and to discuss the need for increased sentencing alternatives to prison. As Director Houston discussed, in 1997 the Legislature acknowledged the need for additional sentencing alternatives to reduce the prison overcrowding. The alternative, the Work Ethic Camp, was not a prison but rather a camp intended to provide the courts with an opportunity to sentence nonviolent offenders with specific, targeted needs to a brief intervention...period of confinement with specialized programming to address those needs. Prison beds would then be available for the more violent offender. Felony offenders sentenced to the Work Ethic Camp by the district courts are considered probationers. The probationers receive vocational training, behavioral management, education, substance abuse counseling. These programs are determined to increase the offender's ability to lead a law-abiding and productive life. In the early years of the camp, offenders experienced successful completion of programming and completion of probation following discharge, therefore reducing the reliance on a more costly long-term prison stay. Probationers successfully completing the Work Ethic program were released back into the community under the intensive supervision of a probation officer. In recent years, the increases of prison overcrowding has necessitated

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increasing the population at the Work Ethic Camp with both inmates and parolees. Now probationers, inmates, and soon-to-be parolees are mixed. While the Legislature attempted to solve the problem of prison overcrowding by creating the Work Ethic Camp in 1997 and also the work around the Community Corrections Act in 2003, commitment to statewide implementation of pre-prison sentencing alternatives has been slow. We ask the Legislature, if the Work Ethic Camp is removed as an option for probationers and other limited sentencing alternatives sit at capacity, what are the courts to consider? Current data indicates that pre-prison programs like the specialized substance abuse program combined with access to reporting centers have successfully deterred 235 felony offenders, saving prison beds at a cost of over \$6 million. These same offenders remain crime-free as we speak. Unfortunately, as the Chief Justice mentioned in his State of the Judiciary speech to the Legislature this year, this program and other programs are at capacity and not available statewide. In conclusion, consistent with evidence-based practice, targeted interventions combined with intensive supervision, these kind of alternatives work. Probation believes interventions incorporated into the SSAS program and reporting centers are producing data confirming that by increasing front-end sentencing alternatives offered to the court, offenders may not be required to enter into the costly prison system at all. They can become productive citizens in their community, and the potential for rehabilitation is significantly improved, which not only improves community safety but tax dollars. [LB313]

SENATOR ASHFORD: Deb, I'm going to ask you to sum up. Thanks. [LB313]

DEBORAH MINARDI: We remain concerned that LB313 reduces the already limited sentencing alternatives and does not provide for the ongoing need in this state. I thank you for your time and would be happy to answer any questions. [LB313]

SENATOR ASHFORD: Yes, Senator Coash. [LB313]

SENATOR COASH: Thank you, Senator Ashford. Ms. Minardi, did you say this was neutral testimony? [LB313]

DEBORAH MINARDI: Yes. [LB313]

SENATOR COASH: I disagree. [LB313]

SENATOR ASHFORD: (Laugh) Take it back, Deb, right now. [LB313]

SENATOR COASH: You can be on record saying you're neutral, but you remain concerned about LB313. That sounds, you are opposed to it. I mean, I'll let you comment on that. It's just...I get...it didn't sound neutral. It sounded oppositional. [LB313]

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DEBORAH MINARDI: We recognize that the Work Ethic Camp has not been utilized to capacity, and as such we felt it necessary to testify in a neutral capacity. [LB313]

SENATOR COASH: Okay, so you...so this is how you got there, you said: we think there's good things about increasing utilization; we remain concerned. You put those two together, you get neutral? Okay. I get it. Thank you. [LB313]

SENATOR ASHFORD: Isn't this something that gets worked out between you and Bob? I mean, what's the issue, Deb? [LB313]

DEBORAH MINARDI: Well, we have talked at length with the Department of Corrections. [LB313]

SENATOR ASHFORD: Well, I'm sure you...because you do all the time. And I'm just trying to understand. I mean, the problem we have here is we have a lack of capacity in the system. And I understand judges wanting to have more options on the probation side, but we're getting longer and longer sentences imposed, and judges impose those sentences. So who...where's the rub here? [LB313]

DEBORAH MINARDI: Well, as it applies to the Work Ethic Camp, as I mentioned, in the early years of the camp it worked very effectively, and there were numerous probationers who were successful at the Work Ethic Camp even though it did not ever reach capacity. When the inmates and pre-parolee individuals started entering the camp, those outcomes started to change. Therefore you saw a reduction in utilization by the courts. [LB313]

SENATOR ASHFORD: Sounds to me like the system is at capacity all the way around. We don't have enough reporting centers...or we don't have enough capacity in the day reporting centers. And you'd agree with that, right? And we're at capacity in the prison...I mean, this is a very significant problem, it seems to me. And, you know, we have lots of significant problems in here, but this seems like a big one. And I don't know, sitting here, what to do about it. But I do know that Bob, I mean, we have...with you and your experience and Bob and his experience, when you come to me and say--us, in this committee--and say, we're in...this is tough, this is not a good situation, and when you...and whether you're neutral or not...I think Senator Coash is right; I think it sort of was a little bit...tended towards the opposition side. But it seems to me...but that's fine...but it does seem...it...I mean, we have a lot to deal with this session, as you know, with the juvenile...with all the crises we have to deal with there. But I think here, this is a severe problem. And at some time during the session we're going to have to get some solutions to this. I know there's a deficit appropriation in the Appropriations Committee. And I don't know about that; that's their job. But this is a big deal. So I don't know what to say, except we're going to have to address it this year somehow. [LB313]

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DEBORAH MINARDI: Oh, we think it's a big deal too, and that's one of the reasons... [LB313]

SENATOR ASHFORD: Well, I know you think it's a big deal, but I think where the committee...you do this every day, and you do a good job, and I acknowledge that, without any question; so does Bob. But you're being forced into policies because of capacity...or changes in policies, both in the operations side...I mean, when you're at 146 percent of capacity in the prison system, you're more likely to have offenders engaged in violent activity on premises. I mean, that's very...you're going to get more people engaged in activity that results in a violent result. And you have a Work Ethic Camp that was designed for something, is now something else, mainly driven by capacity issues. I mean, we're going to have to build another prison, is what it boils down to, unless something changes. [LB313]

DEBORAH MINARDI: I'd like to give another example as well, if I could. And I'm going to use, actually, an example from Senator Coash when you talked about the child welfare system. At one point in time I remember reading where you said: When you put a good kid with a bad kid, you get kind of an adverse effect. That's essentially what we started to experience when we had to mix populations. [LB313]

SENATOR ASHFORD: Well, that's the problem, and... [LB313]

DEBORAH MINARDI: But we also recognize the fact that that was a necessary evil, given the prison overcrowding problem. [LB313]

SENATOR ASHFORD: Right. But, I mean, we're...and I think that's well stated. But we also have the same thing in the juvenile system. We're putting gang members with offenders that are just a step above status offenders. And we put them in a dorm and expect them to coexist in any kind of rational way. I mean, I think--and then I'll stop--but it's our responsibility in this committee to make policy decisions that are...sometimes they're not as crisis driven as this one. But I think this has now bubbled up to the point where we as a committee...and, of course, as a committee we'll have to discuss it; it's not just me. But, I mean, at some point this session, soon, we're going to have to address what is...it sounds to me like we have to build another prison, and another prison is \$100 million. So we'd better plan for another prison, is what I'm thinking. I mean, I can't come to any other conclusion, other than we have to build another facility. Anyway, Senator Seiler. [LB313]

SENATOR SEILER: As I read this...and I want your opinion. I assume you've read the bill completely through. You're taking the courts back out of the system. Have we violated, then, the constitutional problems with the courts' power being shifted to the executive branch? Because right now you have a probationer that wants to go off

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probation; you agree; you go back to the original sentencing judge, isn't that correct? If this court or any part of the system put this person at McCook, and they want to take him, one, back out of the system or release him, if we pass this bill they don't have to go to the court, is that right? [LB313]

DEBORAH MINARDI: Well, the court would no longer have an option to directly sentence someone to the Work Ethic Camp. They would have to sentence him to prison, and then the Department of Corrections would determine whether or not they would be appropriate for the Work Ethic Camp. [LB313]

SENATOR SEILER: Okay. [LB313]

DEBORAH MINARDI: So the sentencing alternative for the court is removed. [LB313]

SENATOR SEILER: So you don't have to get permission of the court to send them to work camp. [LB313]

DEBORAH MINARDI: The court would have no role. They couldn't make that determination even if they wanted to. [LB313]

SENATOR SEILER: But yet I think criminal law from the git-go has always said the court keeps jurisdiction over those people in prison and probation until they've satisfied their debt to society. [LB313]

DEBORAH MINARDI: Not as it applies to prison, from my understanding. [LB313]

SENATOR SEILER: Okay. Thank you. [LB313]

SENATOR ASHFORD: Thanks for your candid answers, Deb. [LB313]

SENATOR LATHROP: You know, I think there's a... [LB313]

SENATOR ASHFORD: Senator Lathrop. [LB313]

SENATOR LATHROP: I think that Senator Seiler is maybe trying to make a different point. And that is, if we pass this and Bob is in charge of these guys but Judge Derr in Omaha sentenced him to work camp, do they have to take that guy back, or can Bob send him back to...if he doesn't like his performance, can Bob take him to the Lincoln penitentiary because he's not performing out in McCook? Or do we have to take him back to Judge Derr and have him resentenced? [LB313]

DEBORAH MINARDI: Judge Derr would no longer be able to sentence him to the Work Ethic Camp. [LB313]

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SENATOR LATHROP: What happens to him, because this is sort of a unintended-consequence question, I think, which is, if a judge has sentenced somebody to work camp in McCook--he's one of the 146 out there, he's supposed to be learning something out there--and he misbehaves, and now... [LB313]

DEBORAH MINARDI: He comes back... [LB313]

SENATOR LATHROP: ...he's under the charge not of...he didn't go there...he went there because a judge sentenced him there, does corrections currently have the ability to pull him out of McCook and take him to the Lincoln penitentiary if he doesn't do what he's supposed to do out there? [LB313]

DEBORAH MINARDI: No. [LB313]

SENATOR LATHROP: What happens after we pass this, because now he's completely under the charge of corrections and not the judge that sentenced him? [LB313]

DEBORAH MINARDI: Correct. [LB313]

SENATOR LATHROP: Okay. Well, then you see the dilemma created by it. Okay, well, it's something that we're going to have to address if this is the direction we want to go in, because what happens to the guy that was sentenced before this passes, to work camp? That's all I have. [LB313]

SENATOR ASHFORD: I mean, yeah, and thanks, Deb. But we have a vehicle now, in this bill, to address prison overcrowding. And I'm...just as a notice to everybody in the administration and...I think we're going to have to seriously consider building a new prison, this year. So I think we ought to indicate to the Appropriations Committee that we do not have enough capacity. We're either going to have to start releasing people, which does not seem to be working...when we went through our budget process and we were looking, potentially, at getting to 125 percent of capacity and we're going the other way, I just think that everyone ought to be on notice that, at least from my perspective, I think we're putting these people at risk and we're putting the public at risk, because when they come out, they're not getting the kind of adequate treatment that can be provided with less of a capacity problem. So I'm just...I'm one senator saying I think we're going to have to build a new prison. And I think this bill may have to be the vehicle to do that. So thank you. Senator Chambers. [LB313]

SENATOR CHAMBERS: I'm one who says there will be no more prison building in Nebraska. I stopped them from building the number of cells that they wanted to build before. They wanted to put some Quonset huts out at Tecumseh and other places, and I stopped that. There will be no more prison building. The idea is if you build them they'll

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fill them. And these prisons wind up in these little white communities where they're there because the people want jobs, but they don't want the people who are sentenced to work in that town. If you talk about shutting one of these institutions down, the first thing you hear is all the jobs that the people in this city have. And I've raised those issues on the floor, and I'll raise them again, not only when they're trying to build but with reference to all of these things. You send these...a prison, a lockup, should be near the community where most of the inmates will come from, so that they have that support, family, friends, and so forth. When you put them in these way out-of-the-way places, they're done for political reasons. And these white people out there have very negative attitudes toward the people who are put in those prisons. When those white people become the guards, they're abusive; they write phony disciplinary reports and they're upheld. And by the prison system and administration upholding these bogus write-ups, it causes men and women to lose good time, spend more time in prison than they should have, and that contributes to the overcrowding. Much is being done by the prison administration to create this overcrowding. And now that I'm back in the Legislature, some things are going to be different, or some of the things they do are going to be a lot more difficult to be done, and there's going to be some accountability. But building a prison is not one of the alternatives. Senator Ashford has two years. I've got a maximum of eight, and I'm going to see that some changes occur. And when the law says that there is a certain policy of the state, it's not going to be undermined by the director of corrections, by the Governor, by deputy wardens, by corrections officers, as they call them, or guards, or anybody else. And if I have to spend as much time in the prison as the inmates, they're going to see me a lot. And if they can give me a rational justification of what they're doing, I will not say stop doing it. But when you just put this blanket kind of thing in place...you've got old men out there; they're in cells where there is mold. Some of them are not getting the treatment that geriatric patients ought to get. And it seems to me that we would be hearing from the director of corrections about the problems created. When you get these humongous sentences, people are there while they're very old and there's no way for them to get out. Or because there are going to be things done by the director--he's responsible, although he may not personally know it--that contribute to these problems, then he's the one that I think has to be held accountable. And I'm saying that because he's here; I'm not going to say it behind his back. And I want everybody connected with that system to know what my attitude is, and it's not a very favorable one now. And it goes all the way up to the Governor's office. The Governor hires people; the Governor sits on the Board of Pardons; and the Governor can try to load up the Parole Board with people from the Department of Corrections. But there are going to be floor fights on that kind of stuff now. And when you put corrections people on the Board of Parole and their attitude is one of punishment and they still have debts that they owe to the director of corrections and other people in that department, that doesn't pass the smell test. And the issue has not been raised. And when I discuss it with people who are not in the Legislature or government and I say how many people from corrections are on the Board of Parole, they say: How did that happen? I say: Well, it happened; and if you don't believe me,

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check it. And there's a person who's coming up for approval before this committee--and the committee might routinely approve of these appointments--he's a corrections person; I'm not going to approve it. I told the Governor's chief of staff. I'm sure the director has been told that. And the director might be trying to get support from various senators, and maybe he'll get enough to get the person on the Parole Board. But I'm going to keep them under the public spotlight, because I have a platform on the floor of that Legislature, and there are people who watch what we do, they listen to what we say, and they will ask questions. And I used you as a sounding board because you happen to be the person here. But Senator Ashford mentioned the building of a prison, so I had to join the issue at the point where he made it. But I don't have any questions of you. And I'm apologetic of having done this. But I'm appreciative of the fact that you were here. And whatever you said done inspired Senator Ashford to give me the opportunity...overall, I have a positive attitude about the way things are going so far. Thank you. [LB313]

SENATOR ASHFORD: Thank you, Deb. Do we have any more neutral testifiers? Anybody want to take a stab at it? Okay. Let's see, Mark, do you...Mark...Senator Christensen waives. So we go to LB267, Senator Murante. I'm sorry, LB350, excuse me. [LB313]

SENATOR MURANTE: Thank you, Chairman Ashford, members of the Judiciary Committee. My name is John Murante, spelled M-u-r-a-n-t-e, and I represent Legislative District 49 in the Nebraska Legislature, which consists of Gretna, Chalco, and northwest Sarpy County. I'm here today to introduce LB350. LB350 proposes to add two members to the Nebraska Police Standards Advisory Council. The Police Standards Advisory Council, or PSAC, was established to oversee the operation of the Nebraska Law Enforcement Training Center and ensure policies and procedures related to law enforcement training are carried out. The council acts in all matters related to law enforcement training and the training center with the exception of budgetary and personnel matters. The council establishes and enforces minimum qualification and training standards for law enforcement officers, as well as assessing current and future law enforcement needs related to standards and training. PSAC is currently comprised of seven members. As required by statute, membership includes two county sheriffs, two police chiefs, a Lincoln or Omaha police department representative, a Nebraska State Patrol representative, and a member of the public at large. In addition to the seven appointed members, a Crime Commission member and a special agent in charge of the Omaha FBI office serve as ex officio members. LB350 proposes to add two members to the council who are officers ranked as sergeant or below. This addition will result in a more diverse perspective for the council. I believe the addition of rank-and-file officers will add a diversity of opinion to the council and that such diversity of opinion is beneficial to everyone who is impacted by the council. There are testifiers to follow who have firsthand experience with the Police Standards Advisory Council and who can attest to the benefit that will come from the addition of rank-and-file officers to the

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council. I encourage the Judiciary Committee to advance LB350 to the floor. And thank you, Chairman Ashford. [LB350]

SENATOR ASHFORD: Thanks, John. Any questions? Don't see any. Thank you. [LB350]

SENATOR MURANTE: I'm desperately needed in the Government Committee, so I will waive closing. [LB350]

SENATOR ASHFORD: Okay. I have to come watch; it must be exciting. All right, how about proponents. [LB350]

STEVE GRABOWSKI: (Exhibit 5) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Steve Grabowski, G-r-a-b-o-w-s-k-i. I am currently the past president of the Nebraska Fraternal Order of Police, and I represent over 2,700 police officers, deputy sheriffs, corrections officers, and game wardens from Sidney to Dakota City and from Scottsbluff to Omaha. I've been a Nebraska law enforcement officer for 38 years. Currently I am a lieutenant for the Sarpy County Sheriff's Office. I'm also a member of the Police Officers Association of Nebraska and the Nebraska Sheriff's Association. Senators, despite what you may have heard or possibly will hear, there's no hidden or secret agenda to this piece of legislation. If passed, LB350 would simply allow the Governor to appoint two members from law enforcement with a rank of sergeant or below to the Police Standards Advisory Council. The reason for the rank of sergeant or below is that these are the officers that are working, patrolling, and having direct contact with Nebraska citizens. The appointment of two working street officers will be a valuable asset to the PSAC. Who better to advise what type of training needs and methods are worthwhile than the law enforcement officers that work with Nebraska citizens on a daily basis. At times where it's easy for law enforcement administrators, myself included, to sit in an ivory tower and read studies and statistics about the best training methods, when all we really need to do is ask or to talk with the street-level officers and get their input on what types of training they feel they need and what are the best methods to deliver that training. You also may hear some grumblings and rumors about having two street-level law enforcement officers on PSAC because, no matter what, they will always vote against a decertification action. Senators, I will ask you, if you have one among you who has violated the law or has committed ethics violations, I know, in order to make the citizens of Nebraska able to still trust the Unicameral, you would want to ensure that that senator will be dealt with quickly and fairly, and if that means impeaching the senator, then so be it. Senators, I know I speak for Nebraska's law enforcement officers when I say we do not want a bad apple in the barrel, but if one is discovered, we want to get rid of that bad apple and make sure the apple does not reappear in law enforcement anywhere in United States. Again, Senators, I want to assure you there's no hidden agenda on LB350. It is a simple piece of legislation that will allow street-level law enforcement officers to have an active voice

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in making Nebraska's police officers the best and most professional officers they can possibly be and to have a voice in keeping the confidence of Nebraska's citizens' safety and welfare first and foremost in their daily duties. Thank you. And I'll stand for any questions, if you have any. [LB350]

SENATOR ASHFORD: Do you have any questions? Senator Chambers. [LB350]

SENATOR CHAMBERS: Lieutenant Grabowski, you and I have worked in the past on some issues. [LB350]

STEVE GRABOWSKI: Yes, sir. [LB350]

SENATOR CHAMBERS: I saw a video, other people saw it, and some in law enforcement, where a man was dog-piled by four to six Omaha police officers at the same time. He was punched, he was kicked, he was Tasered. And the Omaha police union said that nothing was wrong; they said that's what they're taught to do, and there was no excessive force. Now I know what I saw; others know what they saw, and they know what the Omaha police union said. So I'll tell you, I don't trust these people that you say ought to be there. That's so that it's clear what my view is. Now let's go to what they're supposed to bring to this council. Am I to understand that the people who are on the council now have not had law enforcement experience that would have brought them in contact with dealing with the citizens of the state? [LB350]

STEVE GRABOWSKI: They would have at one time, Senator, but a current contact or, like, a daily basis with the citizenry I don't think...and, again, I'll use my experience. I've been one for 38 years, but I currently am a lieutenant in the Investigations Division, and I just don't have the contact with what needs to be done out on the street and the methods that the street officers have... [LB350]

SENATOR CHAMBERS: What would be different? [LB350]

STEVE GRABOWSKI: Different in what, sir? [LB350]

SENATOR CHAMBERS: From the way these people's experience equipped them to do the work they did and what's needed now to do what they do. So let me ask it a different way. What are cops doing now that they weren't doing then? [LB350]

STEVE GRABOWSKI: I...I think the attitudes are changing; this is what I've seen. I think the attitudes towards people are changing. I think the...the methods that we use in law enforcement are changing. And I...and I know for me to try to convince you of that, it's not going to work. But I do...I...I believe they've changed. The main reason I got into law enforcement 38 years ago was I personally was treated not very well by a police officer. And I got into it by saying, I'm not going to do that to people. And I'm hoping that if I can

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change it to one person in my entire career, then I...then I've done what I set out to do.  
[LB350]

SENATOR CHAMBERS: Well, my community has experienced much worse treatment at the hands of the police, and that's why they will not serve as snitches, because they're name is released by the police if the person doesn't agree to continue. And they have actually, contrary to what they say, picked up members who were supposed to be members of a gang and dropped them off in the territory of another gang. That has happened. I know people who are called gang members; I know people who acknowledge they're gang members; and I know this has happened. I get calls from people who have been brutalized by the police, women, and I've had photographs. The police department never does anything to correct that. The only thing I could do was get the charges, the bogus charges that these cops brought against these women after they had beaten them. Now I did file a complaint with the State Patrol because of a trooper who gave an interview with the World-Herald about what he was doing in Omaha, in my community. He'd see a car and he'd wonder if there might be a license plate missing or that doesn't go to that car. So he talks about how fast he jetted off, and the reporter says he was thrown back against the seat while the cop careens down the street. And then if he catches up to the car and nothing is wrong with the license plate, then that's all right, he doesn't worry about that. And then he mentioned, the reporter did, how this guy stopped people and would subject them, in public, to law enforcement contact and find out that nothing had been done. And it was a joke. So going by what this guy had said to the reporter and what the reporter had observed, I filed a complaint. And he was disciplined by the State Patrol. That doesn't happen in Omaha when a person is beaten. So I want you to tell me specifically what this sergeant knows that these we'll call them upper-level professionals don't know about law enforcement. And if they don't know it, shouldn't they be removed from that council? [LB350]

STEVE GRABOWSKI: I wouldn't...I don't know, necessarily, that they should be removed from that council, but I know that the valuable input from someone who's dealing with it on a day-to-day basis. An example would be, your involvement with the Legislature is probably more so now and you're better informed now about what goes on in the Legislature because you're here and you're part of it and you're dealing with these members. The same way with those people that would be on the board, I feel, would be dealing with the citizens on a day-to-day basis and be able to pass that...that information back to that Police Standards Advisory Council and use it that way. [LB350]

SENATOR CHAMBERS: I'm not going to argue with you, but I disagree. The two situations are different. [LB350]

STEVE GRABOWSKI: And I don't want to be argumentative either, Senator. I'm just...I'm just saying that's what I would... [LB350]

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SENATOR CHAMBERS: Being in the Legislature... [LB350]

STEVE GRABOWSKI: ...I would assume, just being... [LB350]

SENATOR CHAMBERS: Being in the Legislature is different from being a cop. To be a cop, you take training; you are trained in law enforcement...that you don't have to have any training to be in the Legislature. There are standards imposed that officers are supposed to comply with. [LB350]

STEVE GRABOWSKI: Yes, sir. [LB350]

SENATOR CHAMBERS: If they don't, they're not...they're not brought to book, so to speak. And internal investigations are like Jesse James investigating Frank James; cops laugh about it. There are people who have been down...and the only reason I can talk about Omaha, because that's what I know about. I have sent people to file complaints, and the internal affairs investigator will lie and say: Well, Senator Chambers and I have a good relationship, and he's not going to believe anything you say; he'll go by what I say. And these officers do things like that. And they think it's funny. And we don't because we're the victims. But I will listen to the rest of the testimony, and maybe somebody can persuade me, whereas you didn't. And I'm going after you...not after you, but dealing with you in this fashion because you know, the way I worked with you on an issue, that law enforcement people want it to turn out a certain way, and it did because I worked with you... [LB350]

STEVE GRABOWSKI: Yes. [LB350]

SENATOR CHAMBERS: ...and we got that done. [LB350]

STEVE GRABOWSKI: Yes, sir; we did. [LB350]

SENATOR CHAMBERS: So I'm not just anti-law enforcement. But I'm very concerned about how badly people in my community are treated. [LB350]

STEVE GRABOWSKI: I understand, Senator. I understand your concerns about this. [LB350]

SENATOR CHAMBERS: And I don't believe one of those cops would vote to decertify a cop, no matter what he did, because after seeing what that video showed...and it tells us that if this video, which people saw and had the same reaction, is not enough to establish misconduct, then certainly if the man who was victimized like that filed a complaint, it's not going to work. The camera lied, the police say, in that situation because it showed the cop wrong...the cops, obviously. But if they have something on a camera that seems to support what they did, then the camera is gospel true. And it's

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just something that I cannot see the way you see it, in terms of what this bill is saying, that if you put somebody from sergeant or below...how long can a person be in the position of sergeant? [LB350]

STEVE GRABOWSKI: As long as they choose to be on the department. They don't have to choose to be promoted. The same thing as sergeant or below; they can choose to be a police officer, a deputy as long as they want. They're not forced, at least... [LB350]

SENATOR CHAMBERS: Okay. [LB350]

STEVE GRABOWSKI: ...that I know... [LB350]

SENATOR CHAMBERS: I agree. [LB350]

STEVE GRABOWSKI: ...they're not forced to be advanced. [LB350]

SENATOR CHAMBERS: I wanted you to make that for the record, not me say it. And they don't do the work of a patrol officer. [LB350]

STEVE GRABOWSKI: A sergeant? [LB350]

SENATOR CHAMBERS: They don't...a sergeant doesn't do the work of a patrol officer. [LB350]

STEVE GRABOWSKI: In smaller departments, Senator, yes, they do. I'm not referring strictly to Sarpy County or, say, Omaha or larger departments. But smaller departments, yes, they do that. A sergeant would...they probably have the same street duties, but they have a little more supervisory duty too. So, again... [LB350]

SENATOR CHAMBERS: Well, what about Omaha? [LB350]

STEVE GRABOWSKI: I won't speak directly to Omaha; I'm not that familiar with how their sergeants work. [LB350]

SENATOR CHAMBERS: What about Sarpy County then? [LB350]

STEVE GRABOWSKI: Sarpy County, the sergeants still do the patrol work, but their...their main function is supervisory, as opposed to doing the call to call to call. [LB350]

SENATOR CHAMBERS: So, then, the sergeant rides around in a patrol car patrolling the neighborhood, just like a patrol person; that he has a beat, the sergeant does.

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[LB350]

STEVE GRABOWSKI: He doesn't necessarily have a beat or a district; he patrols the...his...the county. He's...he's at the county in large; in Sarpy County, he's that way. [LB350]

SENATOR CHAMBERS: Now is he doing that to enforce the law in the way that a patrol officer would do? Or is he doing that to observe how the patrol officers behave? [LB350]

STEVE GRABOWSKI: No, his main function is to patrol the county and to keep the county safe, not to watch the other officers. [LB350]

SENATOR CHAMBERS: That's all that I have. Thank you. [LB350]

STEVE GRABOWSKI: All right, thank you. [LB350]

SENATOR ASHFORD: Thank you. Thanks. That's...I don't see any questions, so...any other proponents? Opponents? Neutral? Okay. So I think we have a...Senator Murante waived, so we now go to Senator Chambers, who'll be introducing LB267. [LB350]

SENATOR CHAMBERS: (Exhibits 6-9) Mr. Chairman, members of the committee, I am here to present a bill, and I'm very exercised over the way this bill which I'm presenting to you was removed from the statute when it was the statute. It had been on the books since 1978; there was one amendment in 1988 to bring more categories of persons within its purview. And as soon as I left the Legislature, Senator...former Senator Mike Friend brought what some people call an omnibus bill--I call in an "ominous" bill--which undercut a number of things I had gotten into the law which law enforcement dared not try to get out when I was here. So by way of a repealer clause, which members of the Judiciary Committee, where the bill was heard, didn't catch, where officials who deal with probationers and parolees did not catch. And the bill was passed with that repealer clause, and the language was stricken. And the language of the bill that is being looked at by you, in that green copy, is the exact language that was in the bill when it was stricken. Law enforcement wanted to be able to use people in these vulnerable positions as snitches. The bill came into being because the State Patrol had been using people...they even hired a guy and used lies, he carried a pistol, he had done all types of things. He entrapped people when it came to drugs, committing other crimes. So they finally wound up firing him. But then we found out that the penitentiary and county jails were allowing inmates to be taken out of custody and used to encourage people to commit crimes. One that was established beyond a doubt had to do with the robbery of a filling station in Lincoln. The guy from jail persuaded this person to go with him to commit the robbery. And you know there are inducements for people to do this. So I'm going to read my statement of intent so it's in the record. Then any questions that you have I will respond to. LB267 prohibits the use of inmates, persons on parole, probation,

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or work release from acting as undercover agents or employees of law enforcement and suppresses any evidence obtained in violation of its provisions. On that score, if you read that bill, you will see that it prohibits them from working for an agency of the state, law enforcement, or of any political subdivision. The police organization who said if you read it carefully you'll see that it would prevent people who are in this category from working for schools and so forth. Well, if you read it correctly, you'll see it's talking about law enforcement agencies under the state, which is the State Patrol, and law enforcement under political subdivisions, which would be the county and the city. That's the way the language has always been written; that's the way it has always been interpreted. There are cases that the Nebraska Supreme Court had handed down on this statute. So the police people don't read well. They want to get these vulnerable people and pressure them into being snitches. And they even tried to find a stratagem to circumvent the law by involving federal cops who--they call them the FBI--who would go along with them, and said: Now, this law will stop us at the state level from doing this, but it doesn't control the federal official, law enforcement, so you work with us on this. The Nebraska Supreme Court, in language that was restrained, pointed out how that was not going to work and explained in that case that I cited--and you can read it for yourself--that the involvement of the federal people was more or less perfunctory, that the contact with the federal people was by the state and local cops; they wanted to get the federal people in to circumvent the law. But the Supreme Court was not going to allow the spirit or the letter of the law to be violated in that fashion, and it invoked the exclusionary provision of that law and said the evidence that was procured in this way, since it violated the law, cannot be used. And the charges against that particular defendant were dismissed. But I'll continue reading, and this is not that long. The language of LB267 is identical to that of former Section 29-2262.01, which was repealed by way of a repealer clause in LB63 of 2009, a bulky, 59-page hodgepodge bill dealing with nearly three dozen miscellaneous statutes. No mention of Section 29-2262.01 was made during the Judiciary Committee hearing or floor debate. Parole Chair Esther Casmer responded to a letter I addressed to her and Probation Administrator Ellen Brokovsky, a copy attached--and I made it available to all of you all--regarding the repeal. In her letter, a copy of which I made available to all of you all, she acknowledged "that LB63 was not read in its entirety" and that the repealer clause was "not discovered." She stated further, "Since receiving your letter, the opinions of the Board of Parole and the Department of Correctional Services have been shared, and a course of action to prevent parolees from being utilized in the manner of what they seek will be thwarted." In other words, the Department of Corrections and the parole administration knew that these people should not be used as snitches. And despite the fact that Senator Friend with others...and, by the way, that bill was used to create a job for him which the Governor gave to him. And you want to talk about something questionable in terms of ethics, that's worse than using a phone call to call your sweetie pie, even if you've got four of them. But that's what they did. And they did it with reference to other legislation. So these various entities had to establish policies to carry out the role and function of that bill, which Senator Friend, the Attorney General, and all of these

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supposed lovers of the law took away so cops could have an easy time of forcing these vulnerable people into this kind of nefarious work. Also attached is a copy of my 1978 statement of intent on LB695, the initial version of this section, presenting supportive opinions of Parole Board Chairman John Greenholtz, Parole Administrator Larry Tewes, District Judge John Whitehead from Columbus, and State Patrol Superintendent Karthaus. My opening paragraph provided the rationale for the proposal. "LB695 grows out of information obtained during a interim study by the State Patrol Study Committee. It is not good policy or practice to use persons who are under state 'jurisdiction,' 'custody,' or 'supervision' as undercover agents. Their vulnerable status renders them susceptible to improper pressures from law enforcement 'supervisors.'" In 2003 the Nebraska Supreme Court in State v. Rathjen, 266 Nebraska 62, spoke of, quote, obvious public policy reasons, unquote, justifying the statute--this is what the Nebraska Supreme Court said--not that it cripples law enforcement, not that it renders cops unable to do their job. Quote: In construing Section 29-2262.01, it is rather obvious that the Legislature, for a number of public policy reasons, did not want inmates, probationers, or parolees acting as undercover agents in any capacity for state or local law enforcement agencies. The issues of institutional control, public safety, and evidentiary reliability were so important that the Legislature determined that any violation of Section 29-2262.01 would result in the suppression of evidence from a tainted undercover source. As stated in my letter to Parole Board Chair Casmer, quote: The radical policy change discussed herein should not occur through the casual process of a repealer clause in a lengthy bill, unquote. The language of this former section should be reinstated. And having read the Police Officers' Association letter, they mentioned some silliness: they indicated that an ex-con pressured a runaway female...or a female juvenile on probation into prostitution, and the only way they felt they could do anything was to get some kind of phone call between her and this person who did it; since they couldn't do that call, they couldn't prosecute the...they couldn't get evidence. Now, if they were going to have this young person call the ex-con, was he going to say whatever they wanted him to say and not be aware that this is a contrived call? This is not the way we talk on the telephone. But anyway, that's what the police want senators to believe. The next one, a juvenile runaway on probation was sexually assaulted, but no physical evidence was able to be gathered. The law prevented a call with the suspect, which ended the investigation. So I sexually assaulted a young woman; they're going to have her call me, and I'm the suspect. What am I going to say to her in a phone call that they can use as evidence? This is silly. And if that's the way they conduct investigations of sexual assault, you can see why they don't make any arrests, why they don't have any successful prosecutions. But if you ask them what their success rate, it would be different, and they'd say, well, sure, we have ways...we're trained officers; we're professionals; we know how to deal with a sexual assault other than by saying, we're going to have a phone call. What the law allows now is the case to be presented to the court on the testimony of the victim without corroboration. That doesn't mean conviction. Before that, a judge-created rule in Nebraska said that you could not even bring the charge if it was not corroborated by a witness or something

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else. Some of us got a law passed that did away with the requirement of corroboration. You shouldn't have to do that to make the complaint. But the judge-created rule said that. I've touched on several things so that whoever wants to testify against the bill can be prepared to counteract the things that I've said. And we'll see what we'll see. And you'll find that original statute that was repealed. And the statute books that you have, the reissue of 2008, and you can look at some of the interpretations in cases decided by the Nebraska Supreme Court and draw your own conclusion as to whether this bill, if it became law, hurts law enforcement or if it would add some integrity and credibility; rather than saying that this person was on probation, and if you don't work with us we're going to get your probation violated, because just like we want you to snitch, we've got snitches, and they'll say that you did this and that. Same thing with parole, work release, people locked up. The most recent incident that was brought to my attention, and I'm going to talk to the head of the State Patrol about it, at the penitentiary they put a guy in another person's cell from whom they wanted to get information about a crime. And, from the description, it's one that happened in Omaha; they couldn't find a body. And he is to be in that cell until he gets that information. And if he doesn't get the information, then they're going to make it hard for him; the prison officials are going to make it hard for him, and he'd then be the jailhouse snitch. This guy confessed to me. But this inmate didn't go for it. He complained to the corrections officials. Well, they're the one who put him in there. He wrote a letter to the State Patrol. And I want to give them enough time to see what they will do with it, and then I'm going to contact them myself. And I know this happens because there were people who told me about it, but they were not willing to go public. When they talked to me, they told me, don't tell anybody, because it would be very hard on them, but they wanted me to know what happens in the institution. The reason I give credibility to what this man said is because he still is in their clutches; they can still fabricate charges against him and do other things. So if you have any questions you want to ask me about this legislation that I'm proposing and why I think it ought to be reinstated, I will answer forthrightly and not take as long to answer your question as I did to present my case here. I wish Senator Ashford had stayed here. [LB267]

SENATOR LATHROP: I do have a question for you. [LB267]

SENATOR CHAMBERS: Yes. [LB267]

SENATOR LATHROP: Your bill would prohibit them from acting as an undercover agent or employee. And the question is, at what point in a process does a person act as an undercover agent or employee? And here's my hypothetical. If a guy is sitting in jail and his cellmate says, you know, I killed this gal in Valley, Nebraska, in 2010; is that person who hears that now become someone acting as an undercover agent, or does the law enforcement have to dispatch the person to do something before they...before this bill takes effect? [LB267]

SENATOR CHAMBERS: What the Supreme Court said in a couple of decisions, that in

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order for the exclusionary rule to work, the information must be obtained while the informant is both, one, in jail or in one of these capacities and acting as an undercover agent. So if it's just somebody sitting in jail and hears this, that person is not an undercover agent... [LB267]

SENATOR LATHROP: Okay. [LB267]

SENATOR CHAMBERS: ...has not been dispatched to do that... [LB267]

SENATOR LATHROP: So it requires some agreement between law enforcement and this person... [LB267]

SENATOR CHAMBERS: Right. [LB267]

SENATOR LATHROP: ...beforehand. [LB267]

SENATOR CHAMBERS: Because--and I'm not trying to be facetious--it's possible that somebody in jail could just be a good citizen, in addition to having committed a crime, and wants to do something to help see that the law is enforced. But those would be fact questions to be determined... [LB267]

SENATOR LATHROP: Okay. [LB267]

SENATOR CHAMBERS: ...at trial. And if the court determined that some kind of relationship between that person who got the information and the evidence would make that person an undercover agent, then the court would make that determination. But I believe it would take more than a person simply being a parolee giving information voluntarily without being in cahoots with law enforcement. [LB267]

SENATOR LATHROP: It requires the being in cahoots in advance of securing whatever... [LB267]

SENATOR CHAMBERS: Right. Both of those... [LB267]

SENATOR LATHROP: ...information they had. Okay. [LB267]

SENATOR CHAMBERS: ...conditions have to be met. [LB267]

SENATOR LATHROP: Okay. [LB267]

SENATOR CHAMBERS: Oh, and the reason employment was utilized, the State Patrol and some of these other entities had actually had some of these people on the payroll; so a person might say, well, they were employees, not undercover agents. So we

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wanted to cover everything. And we did have this interim study where all these law enforcement people and everybody else could participate and contribute, and it resulted in the statute. And Mr. Greenholtz had indicated that there were inmates that had been used, and parolees, and it wasn't the right thing to do, and it wouldn't bother them to have a law like this. None of the people who are quoted--the chairman of the Parole Board, the parole administrator, the superintendent of the State Patrol--none of them said that a law like this would hurt their law enforcement efforts. [LB267]

SENATOR ASHFORD: Thank you, Senator Chambers. [LB267]

SENATOR CHAMBERS: You're going to thank me? You didn't hear what I...oh, you're thanking me for being through. [LB267]

SENATOR ASHFORD: I was watching you down in my office. [LB267]

SENATOR CHAMBERS: Oh, okay. [LB267]

SENATOR ASHFORD: I needed to get an M&M. [LB267]

SENATOR CHAMBERS: Okay. [LB267]

SENATOR ASHFORD: Didn't have lunch. All right. Do we have proponents? Jerry? [LB267]

JERRY SOUCIE: (Exhibit 10) Mr. Chairman, members of the committee, my name is Jerry Soucie, S-o-u-c-i-e. I appear here today on behalf of the Nebraska Criminal Defense Attorneys Association. I share the comments of Senator Chambers. To give you a little background, how this works in the real world, there are essentially, I think, two levels of if you want to call them "victims" when this practice is done by law enforcement. One is the actual probationer or parolee, because a condition of that individual's parole or probation will require that, number one, he or she not associate with criminals and, number two, that he or she not engage in unlawful or criminal conduct. In the case of a probationer, that's a court order; in the case of a parole, it's an order of the Board of Parole. The way the practice works now is that law enforcement, a member of the executive branch, is able to circumvent what the judge has ordered or circumvent what has been ordered by the Parole Board in order to get that individual to associate with known felons and, number two, to engage in criminal conduct. And so, whether or not that individual is a parolee or a probationer, he or she is not engaged in conduct which is leading to his rehabilitation and reentry into society upon the completion of his parole or probation. This is incredibly, incredibly bad public policy. The second part of what happens in this, and this is far more common and I think far more abusive, is that someone who gets arrested will be held in jail on a \$100,000 bond, say it's a drug case; they will then be given the option of making X number of buys in order

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to get their charges reduced. Well, when this statute was in effect, that didn't work so well; so you would have this backdoor deal. And lawyers, myself and others, have been involved in these, and they're incredibly slimy, but your client's bond will be reduced to a PR bond on the condition that he make five buys. And that doesn't solve crime. What that does is exacerbate crime. I strongly support this bill. I may have testified on it before. Now, one of the individuals you forgot was a guy name Merrell Schoenrock, who was one of my clients. And he was a well-known informant down in southeast Nebraska. I end up seeing him on a different side of the case. And he would take his own son, with State Patrol supervision, on drug buys, his own son, who was, I don't know, at that time 6 or 7 years old. That son was killed north of Lincoln here a month or so ago. And I can't imagine that that kid growing up going on buys under State Patrol supervision was a positive influence on him and may not have contributed to the fact that he got killed in a drug buy gone bad up in north Lincoln. This is a good bill. We need it back in the books. It never should have been repealed. Any questions? Thank you. [LB267]

SENATOR ASHFORD: Any questions? Sorry. Senator Seiler. I'm sorry. Senator Seiler. [LB267]

SENATOR SEILER: Thank you, Mr. Chairman. There was one part left out of here that used to drive me crazy as a defense counsel: it was an associate that was charged but not sentenced. And he'd testify as to the complete circumstances, but then the county attorney would say: Have you been promised anything? Oh, no, not a thing. And then he'd get probation. And my client would go to prison. [LB267]

JERRY SOUCIE: Yeah. I've never had that happen, Senator. (Laughter) But you're right. I mean, when you have...you have the codefendant/informant. Now, the other thing that we didn't get into is when you have...the way this bill is written is very narrow. I mean, it's limited to that prior relationship. But the second thing that happens is the inmate in jail who then comes forward and says, for a deal, I'll tell you that that guy told me he did it, while they're in jail. It's a different situation; it ought to be addressed. But it's not in this bill. [LB267]

SENATOR SEILER: Yeah. [LB267]

SENATOR ASHFORD: Senator Chambers, when was this law initially...? [LB267]

SENATOR CHAMBERS: 1978. [LB267]

SENATOR ASHFORD: Okay. [LB267]

JERRY SOUCIE: Was that the original version? [LB267]

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SENATOR CHAMBERS: Uh-huh. [LB267]

JERRY SOUCIE: Wasn't there a second version that came up later? [LB267]

SENATOR CHAMBERS: And then there was an addition made in 1988. [LB267]

JERRY SOUCIE: Yes. [LB267]

SENATOR ASHFORD: Right, I was here when the addition was made. [LB267]

SENATOR CHAMBERS: And... [LB267]

SENATOR ASHFORD: Yeah. [LB267]

SENATOR CHAMBERS: ...and just so...a little background. When the bill first was offered, as I stated, there had been an interim study; then additional information was developed showing that they were finding ways around it, so additional categories of persons had to be included. And it was so effective in achieving its goal, by the suppression of all the evidence obtained in that fashion, that, the director of corrections at that time was Harold Clarke, he asked me would I work with him to get a bill to create a crime called sexual abuse of an inmate. And he wanted it to apply from the director of corrections right on down, because what guards and others would do, whether you're a probation officer, any role you played in that system, a consensual relationship would not save them, because they could bring pressure to bear and make the offers. So the law said that an inmate cannot give legal consent. So all you have to do is find the sexual activity between these various officials and the inmate, and the crime was committed. And the director wanted that, then some sheriffs did, because certain activities were going on that they couldn't do anything about because the allegation always was, well, it was consensual. So there are bad things that people in law enforcement do. Laws have to be crafted, and they have to be crafted in a way that they cannot be easily circumvented. But as I stated earlier, they were trying to circumvent this by involving federal people to get the person who was prohibited under state law from acting to do the thing and say that the feds were the ones who were involved. [LB267]

SENATOR ASHFORD: I don't see any other questions. Thanks, Jerry. [LB267]

JERRY SOUCIE: Thank you. [LB267]

SENATOR ASHFORD: Other proponents for the bill? Opponents? Mark. [LB267]

MARK YOUNG: Good afternoon, Chairman Ashford and members of the committee. My name is Mark Young. I'm the Hall County Attorney from Grand Island, and I'm here on

behalf of the Nebraska County Attorneys Association in opposition to this bill. Most of my career was spent when this bill was in effect. So I've worked under both systems. The reality faced is that oftentimes the only way to get into criminal enterprises is through people they trust. And one of the ironies of this bill is it creates a class of bulletproof people for criminals to associate with and use, because they can be assured they're not going to be able to be used by law enforcement. A concern I have with the wording is...and I can't tell you that this has happened anyplace, but the language of the bill is, nobody on probation can be used, period. A lot of people get probationed to the court for relatively minor offenses like traffic tickets, you know, to save points on their license. And so if I got a traffic ticket in Douglas County but I was working as an informant in Hall County, that would...if I got probation in the court to save the three points on my license, because I have a heavy foot, you know, I would no longer be able to work as a CI, and everything I'd done would be thrown out. Senator, I can't address some of the cases you talked about because I don't know the facts, but let me give you a situation that we had. We had a situation where an inmate in jail was contacted by a woman who wanted to have her husband killed. And really all we had to go on to start with was the fact that she had contacted this inmate. At that point there was not, you know, the bill wasn't...the bill wouldn't have prevented that information from being used, but we couldn't do anything else to further that investigation. Now luckily in that case she did end up contacting another guy who was not in the system, and we were able to, you know, go ahead and make recorded phone calls to get the information put together, do the exchange to prove her intent. I would ask you to consider the fact that the federal government, other states do not appear to have a similar provision like this in their legislation. And the place where, really, this can be addressed is through the truth-finding function of the trial or the court system, because the fact that somebody is on probation, parole, work release, whatever, is something that can, in fact, be brought up as impeachment testimony or in cross-examination. Thank you. I'd be happy to answer any questions you might have. [LB267]

SENATOR ASHFORD: Senator Chambers. [LB267]

SENATOR CHAMBERS: Mr. Young, do you find it incredible or unbelievable that law enforcement would put pressure on people in those vulnerable statuses to get them to snitch when they are not of a mind to do so? You don't think that is likely to happen? [LB267]

MARK YOUNG: I don't...do I believe that could happen, Senator? Certainly. [LB267]

SENATOR CHAMBERS: But you don't think that it happens, you don't think the vulnerable status is used to impress people into snitching when ordinarily they wouldn't do so? [LB267]

MARK YOUNG: Where I come from, I've never had that happen. That's all I can tell you.

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I can't tell you about anyplace else, Senator. [LB267]

SENATOR CHAMBERS: So you're speaking strictly from your limited experience in Hall County. [LB267]

MARK YOUNG: Well, my 30 years in Hall County, but limited geographically. When I was a defense attorney for a number of years, Senator, I actually worked in a number of counties but primarily in central Nebraska, and I never had it come up there. [LB267]

SENATOR CHAMBERS: Well, while you were county attorney and this law was on the books, how many cases could you not get evidence sufficient to prosecute because of this law and but for the law you would have been able to prosecute those cases? [LB267]

MARK YOUNG: Senator, that's a good question, and it's about impossible to answer, and here's why. Here's why. If we can't go investigate something because our only way in is a prohibited person, we just didn't, you know, law enforcement just didn't go do it... [LB267]

SENATOR CHAMBERS: But, Mr. Young... [LB267]

MARK YOUNG: ...so I can't tell you how many of those there were, you know. [LB267]

SENATOR CHAMBERS: Mr. Young, I've not been in law enforcement, but, believe it or not, I have dealt with people from the Justice Department; chiefs of police in Omaha were not afraid to work with me; public safety directors...and those were people between the chief and the mayor and was over the chief. And we cooperated on doing things that would handle problems in my community. So I know that law enforcement has more than one avenue they can pursue to make a case. They have never had a situation where the only way they could get evidence was through a snitch working under cover. That's the easy way. And when I would talk to the chief about people in my community who were snitches, he told me, and he probably was overstating it, that if an officer says that the only way he can break this case or get evidence is through a snitch, he shouldn't be a cop. In other words, when they take their training, they are shown how you go about gathering evidence. The snitch is the easy way. And because these problems were cropping up and people were being entrapped by these snitches, who had to produce a number of queries to get the deal, so they would entrap people; sometimes their own friends persuade them to commit crimes so that the buy could be made, and in some cases a burglary would be committed to get themselves out from under heat...the pressure. And you can disbelieve this if you want to, but this is what was happening. And there were other ways than that easy, cheap way to get evidence, if they needed it. I know you saw what this guy Kofoed had been doing in planting evidence. If the persons that he planted the evidence on had committed the crimes,

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then he should have been able, through good police work, to get some evidence. He even found blood in a dumpster--many months and two or three rainy seasons and a winter had passed since the time the blood would have been put there--and he came there and he found usable blood, and it happened to have matched that of somebody who was going to be considered a perpetrator. And as fantastic as that sounds, that's what he was doing. Now you probably don't believe that law enforcement people engage in such practices. And you probably don't even believe Kofoed was guilty, even though a court found him guilty, do you? [LB267]

MARK YOUNG: Senator, there are no perfect people, and there are no perfect institutions. There are always going to be, in every group, persons who will take liberties and make mistakes and violate laws. If you're asking me, do I think if law enforcement will, on very rare occasions, do that? I would have to say, of course. [LB267]

SENATOR CHAMBERS: And if you read the literature, you know the occasions are not so rare. But I don't want to try to get you to say what it is not in your mind to say. But this is a question I will ask you: Is the bulk of your cases based on evidence procured through snitches? Is that how most of your cases are built? [LB267]

MARK YOUNG: You know, if you want to talk about the 4,000 or 5,000 cases we do every year in Grand Island, no. But there are certain types of cases where the answer would be yes: drug cases; we did a murder trial a couple years ago where we did have...well, no, that was actually...would not be under this bill. But, you know, there are certain types of cases oftentimes...sometimes theft rings are often...are also ones where we use undercover evidence. [LB267]

SENATOR CHAMBERS: Okay. You made clear that, you know, the types of cases. Now you may not want to answer this: Do they have people representing the County Attorneys Association on a rotating basis? And here's why I ask that. Why wouldn't they get the Douglas County Attorney to come here, where many of the cases that I'm familiar with--he could address and say whether they're happening or not--instead of sending somebody from Grand Island, who could easily say, well, we don't have that out there. [LB267]

MARK YOUNG: Senator, I think he will be here on other bills. I was the person who actually volunteered to come in and testify on this bill. [LB267]

SENATOR CHAMBERS: Or you drew the short straw. [LB267]

MARK YOUNG: We could say that... [LB267]

SENATOR CHAMBERS: Okay. [LB267]

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MARK YOUNG: ...and I almost started my introduction with that, Senator. [LB267]

SENATOR CHAMBERS: And that's all I have. Thank you... [LB267]

MARK YOUNG: Thank you. [LB267]

SENATOR CHAMBERS: ...Mr. Young. [LB267]

SENATOR ASHFORD: Thank you, Mark. I don't see any other questions. [LB267]

MARK YOUNG: Thank you. [LB267]

SENATOR ASHFORD: Thanks for coming. Other proponents (sic)? Deputy Chief. [LB267]

GREG GONZALEZ: Good afternoon, members, Judiciary Committee. My name is Greg Gonzalez, assistant chief of the Omaha Police Department, and have a few comments in regard to the bill today. I've had the fortune to work narcotics and homicide for about nine years of my career, so I'll be able to answer some of those questions for Mr. Chambers. First of all, we can appreciate, I know I can for transparency reasons, to have a robust policy, for one, while we're working with confidential sources, I'll call them. We certainly don't want individuals to be pressured and be vulnerable to improper pressures from law enforcement in general. Unfortunately there's not a standardized system in the state of Nebraska for working with confidential sources. I will add, we do, in my opinion, have a robust policy that we established and updated last year when Chief Hayes was here. Senior management assisted in that policy revision. And basically, in a nutshell, it established additional guidelines to work with informants. And there are guidelines for not only the officers that the sources must meet, and there has to be some command oversight while we work with them, before that individual's information is even deemed reliable, which is important today. As far as the jailhouse informants, that's a whole other issue that in my opinion I've never had to work with. Worked in homicide and narcotics. I never used anyone's information as a jailhouse source. I wanted to get that out up-front. As we do battle crime in our cities, we all know, I believe it does hinder officers' and detectives' ability to solve crime, at times, if we have individuals that will only want to come forward and provide information to law enforcement, and they can't because they are on probation, parole, and work release. I will add, as a narcotics officer I've never had...and this was current back then, and it does stifle some individuals, primarily, like was mentioned before, on probation. You can be on probation for minor in possession of alcohol. Parole, work release, we never...never did it anyway. Now if the case met a federal threshold, like had been mentioned numerous times today, it didn't matter. On the state side, you either waited or you didn't take the case. That's how it was with me. So I just wanted to...I'm here to take any questions. Certainly not a proponent. And we are opposed to LB267 for those

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reasons. Thank you for your time, and I'll answer any questions. [LB267]

SENATOR ASHFORD: Senator Chambers. [LB267]

SENATOR CHAMBERS: Chief, when that...were you in narcotics in 2009? [LB267]

GREG GONZALEZ: I was in narcotics, sir, from...I was a supervisor. But I was not in there in 2009; I was in there from, let's say, about 1998 till about 2007-ish, but... [LB267]

SENATOR CHAMBERS: Okay, during that time, this language I'm talking about was on the books. [LB267]

GREG GONZALEZ: That's correct. [LB267]

SENATOR CHAMBERS: Were you violating the law and using people who were on probation, parole, or work release... [LB267]

GREG GONZALEZ: As far as... [LB267]

SENATOR CHAMBERS: ...as snitches? [LB267]

GREG GONZALEZ: On state cases, sir? No. However, like was mentioned today, if an individual was on probation, parole, or work release and it met the criteria for a federal case, that was under the cooperation of the United States Attorney's office, and that was authorized under that... [LB267]

SENATOR CHAMBERS: And the reason you wanted the federal people to handle it was to circumvent the state law, isn't that true? [LB267]

GREG GONZALEZ: No. [LB267]

SENATOR CHAMBERS: Then why did you go to the federal people? [LB267]

GREG GONZALEZ: I'm using the example to say that when there was an occasion that they were, because we run their background, that I primarily worked in the federal venue, because the threshold for the quantity of narcotics is...we worked larger cases, where it didn't even matter for state cases. In other words, if I had a methamphetamine case for 50 grams or more, it was a federal case. And we worked larger cases, so it was rare that I'd be in state court. [LB267]

SENATOR CHAMBERS: Well, there were cases that went before the Nebraska Supreme Court where the federal people were approached to see if they would help circumvent this law. So here's the question I will ask you. [LB267]

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GREG GONZALEZ: Okay. [LB267]

SENATOR CHAMBERS: Do you believe that there were...or you...I've got to rephrase the question. Do you believe that there are law enforcement people who wanted the federal people involved so that they could circumvent this law and use people who are on parole, probation, or work release, or even inmates? [LB267]

GREG GONZALEZ: Sir, I can't speak for those individuals. [LB267]

SENATOR CHAMBERS: Okay, so... [LB267]

GREG GONZALEZ: For me, personally, I can speak for. [LB267]

SENATOR CHAMBERS: ...okay, if you don't know, you don't know. [LB267]

GREG GONZALEZ: I don't. [LB267]

SENATOR CHAMBERS: Now, how many cases that you did not turn over to the federal people were you not able to get evidence on because you weren't allowed to use snitches who were in these vulnerable positions? [LB267]

GREG GONZALEZ: I would say on the state level, me personally, there were probably over 200 cases that I can think of that I could not work with someone on the state court. And it always isn't because of subsequent to an arrest. It's because maybe people call voluntarily, and then when you run their record, you can't work with them because they are on probation, parole, or work release. So in that case, me personally, over 100, easy, that I just couldn't work with... [LB267]

SENATOR CHAMBERS: But it... [LB267]

GREG GONZALEZ: ...even if I wanted to. [LB267]

SENATOR CHAMBERS: ...but it wasn't because of this law, from what you're saying. [LB267]

GREG GONZALEZ: No... [LB267]

SENATOR CHAMBERS: The person was so lacking in credibility, you didn't want to use the person. [LB267]

GREG GONZALEZ: If...if it was a state case, when an individual called, for instance, the narcotics office and wanted to work with law enforcement for whatever reason, whether

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they wanted to have...whether they were facing charges or wanted a monetary gain, if they couldn't meet the threshold, like you said, and if it wasn't an ongoing, long-term investigation, we just didn't work with them, period. [LB267]

SENATOR CHAMBERS: Was any deal that you ever were involved in based on a person getting so many buys in exchange for either charges being reduced or dropped? [LB267]

GREG GONZALEZ: Part of those negotiations, as you know, yes, go through cooperation, and they're vetted through...whether the U.S. Attorney's office; and we, as police officers, speaking for Omaha, we don't make promises and make those commitments, because it has to go through that venue. [LB267]

SENATOR CHAMBERS: Are you aware of any cases where a person wanted to quit snitching because things were getting hot and that person was told: You're not going to be allowed, because if you quit, we're either going to reinstate these charges or we're going to put the word on the street that you're a snitch. [LB267]

GREG GONZALEZ: For me personally, no, sir. [LB267]

SENATOR CHAMBERS: Not you doing it personally. Do you know of cases like that? [LB267]

GREG GONZALEZ: There...there...you always hear things out there, but... [LB267]

SENATOR CHAMBERS: You don't, in other words... [LB267]

GREG GONZALEZ: ...I don't believe everything I hear. [LB267]

SENATOR CHAMBERS: ...you don't believe that happened. [LB267]

GREG GONZALEZ: Quite possible it happened. [LB267]

SENATOR CHAMBERS: Are you aware of different departments helping each other, like if I catch somebody who is on drugs and I tell him that if you'll help me catch this guy who's committing burglaries, I'll talk to the narcotics people and they'll give you a break. [LB267]

GREG GONZALEZ: Does that happen? Yes, it does happen. And I'll tell you, that's exactly why we updated our policy, because today the officers on the street, the newer officers, have to be with an experienced detective and they have to go through a training process to kind of vet it out, if you will, to train them, one, because we don't want officers on the street making promises that they're not authorized to maintain, so...

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[LB267]

SENATOR CHAMBERS: Now I know I'm not liked by people in the Omaha police division... [LB267]

GREG GONZALEZ: I wouldn't say that. [LB267]

SENATOR CHAMBERS: Well, I'm hated, then, okay, I was understating it. I know I'm hated. But I don't know of any of them who have accused me of being a liar, where I make up things. They say that I'm too hard on them, that I encourage people not to cooperate with the police, but not that I lie on police, because that would be too easy to dispel. So here's what...here's what I'm getting to, or trying to get to, with you. Can you accept as true the fact that I know what goes on in my community, in the upper world and in the underworld? [LB267]

GREG GONZALEZ: I can, yes, appreciate that you know. [LB267]

SENATOR CHAMBERS: Okay. And I'm aware of things that happen to people at the hands of the police and the deals that are made or offered. And there are people who have had situations such as I've described here briefly, and I tell the person, don't do it and tell the cop you talked to me; and if anything happens to you, I've already talked to the county attorney. And some, I don't know if they carried that message back or not, but there are people terrified and they're more afraid of the cops than they are of a criminal, because not only can the cop find a way to kill him on the street, he can find a way to put him in jail using the law. And I think the county attorneys and the city prosecutors go along with this. The purpose of this legislation is to reduce the situations in which that can occur, by setting out specifically identified categories of persons who are in vulnerable positions. And where the law--and I gave this information to my colleagues, so I didn't go through it during my testimony--where probation is concerned, and parole, the statute specifically prohibits these people from doing what the police have them doing. And the rationale is that when you associate or consort with these types of people in those kind of situations, you're not likely to become a gainfully employed or law-abiding citizen. But then when law enforcement can force these people, coerce or entice them, into this world that they were part of, that is violating the law. So they then have no respect for the law, because the law is making me violate the law; so I'll violate the law for the cop this time, but the next time I'm going to do it for myself; I have to encourage this guy to go with me to commit a burglary, and they got us both, but they prosecuted him; next burglary I commit is going to be for me. They encourage people. When you live in a community like I do where people are unemployed...they've even gone to school and can't get jobs in keeping with their ability; other people want to work, but they don't have transportation to get them to places out in west Omaha or northwest or southwest where jobs might be available. So if they can't make it, they're going to take it. And when the law makes it easy for them by saying, if

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you work with us on this, we'll pay you--and, naturally, there are no receipts written, no checks written, but money exchanges hands--and when we have young guys who can purchase guns, and they don't work--not the guns, I wish they didn't--and these young guys know where to get these guns but the police can't figure out where the guns are coming from, it makes me bitter. You have been straightforward. I think you have to hedge some of your answers, not you're not telling the truth, but I understand your situation. And maybe at some point you and I could have a conversation where it's just you and me and we'd find a way to cooperate, because I think you'd be straightforward. And if you have to look at me like you'd look at a snitch and say, well, he's a bad actor but maybe there's something he can offer that will help both of us get to what we want...and that's to stop crimes from being committed and, in my community, the killing. This will be my last question. Just for documentation, are you aware of anyplace in the city during your time on the police division where as many young people were killing young people as happens in my community? That's where it's going on. And that was a question, and you answered. Oh, you nodded your head, you do agree that that kind of killing is going on in my community, and I'm acknowledging it. What we feel is when these young guys get these guns--and they're at a level of the kind that the cops carry, they're not put together with duct tape, these are high-powered, modern guns that these young guys get--and if the police can't figure where the guns are coming from, why don't they hire some of these young guys and deputize them, because in a city the size of Omaha, there's no reason for all these guns to be in our community, in the hands of guys in their early teens. And the cops can't figure it out? I've contacted the FBI, they can't do anything; even Homeland Security, they can't do anything. The elected federal officials, Senate, House, they don't even acknowledge. The mayor, the Governor, the head of the State Patrol, the chief of police, nobody even acknowledges it. So who am I to work with? That's a rhetorical question. So you see the problem that I have. But getting back to this bill, I think it's essential, because during the time that it was on the books and you were working in narcotics, I don't think it stopped you from doing an effective job that you were supposed to do and required to do. And you probably didn't expect something like this. But I have to take advantage of an opportunity when it presents itself. And I don't think you and I would have had an exchange if this bill hadn't been here and if you hadn't come to testify on it. And when you go back, you tell those guys who are waiting to say: Boy, I bet he lit into you, didn't he? You can say that when you deal with a man, like a man, then it's like Kipling. And then I'm going to let you go. [LB267]

GREG GONZALEZ: All right. [LB267]

SENATOR CHAMBERS: "Oh, east is east, and west is west, and never the twain shall meet, till earth and sky stand presently at God's great judgment seat; but there is neither east nor west, border, nor breed, nor birth, when two strong men stand face to face, though they come from the ends of the earth." There need be no borders between us. And at some other time we'll have another conversation. [LB267]

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GREG GONZALEZ: Good enough. Take you up on that. [LB267]

SENATOR CHAMBERS: And that's all that I have. [LB267]

SENATOR ASHFORD: Thanks, Greg, very much. [LB267]

GREG GONZALEZ: Yep, thank you. [LB267]

SENATOR ASHFORD: Do we have any other opponents to this bill? Neutral? Senator Chambers. [LB267]

SENATOR CHAMBERS: I don't need to close. [LB267]

SENATOR ASHFORD: (See also Exhibit 11) Okay. Go to LB115, Senator Lautenbaugh. Have we called...? Okay. Which bill are you on, Mandy? This one? Okay. [LB267 LB115]

SENATOR LATHROP: Hey, Brad, what happened up here?

SENATOR MCGILL: What did you do?

SENATOR LATHROP: Somebody told me Hadley took a fall, tripped on some cords today.

SENATOR ASHFORD: Yeah, I got so engaged in the tax debate that I fell on the...no. I was going for a swim, and I knocked into the...the edge of the little locker when I was...because I didn't have my glasses.

SENATOR MCGILL: Oh-oh-oh-oh.

SENATOR ASHFORD: It hurt.

SENATOR LATHROP: You and Hadley have both had an injury today.

SENATOR ASHFORD: Oh, is he injured too?

SENATOR LATHROP: Well, he went down and fell.

SENATOR MCGILL: Are you serious?

SENATOR ASHFORD: He went down?

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SENATOR MCGILL: In the hearing room?

SENATOR LATHROP: Tripped on some cords.

SENATOR MCGILL: Oh, man.

SENATOR LATHROP: I don't know that he's hurt, but he...

SENATOR ASHFORD: Senator Lautenbaugh. [LB115]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. As Rudyard Kipling said, I did not expect him to waive closing, so I apologize for being a little behind here. [LB115]

SENATOR ASHFORD: That was a heck of a quote, too. Great book and... [LB115]

SENATOR LAUTENBAUGH: Yeah, I can't replicate it, so I'll just read this, then. [LB115]

SENATOR ASHFORD: Yeah. [LB115]

SENATOR LATHROP: Hopefully, it's not a recipe for dinner, whatever it is. [LB115]

SENATOR LAUTENBAUGH: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h. I represent District 18, here to introduce LB115, legislation that brings Nebraska's manslaughter statute, Section 28-305, into conformity with two Nebraska Supreme Court decisions by separating manslaughter into two distinct offenses. Current law does not provide separate penalties for intentionally taking someone's life and unintentionally causing the death of another. Under this bill, voluntary manslaughter is committed if a person intentionally causes the death of another in a sudden quarrel upon legally sufficient provocation. Voluntary manslaughter would be a Class II felony carrying a possible penalty of 1 to 50 years in prison. Under LB115, a person commits involuntary manslaughter if he or she causes the death of another unintentionally while in the commission of an unlawful act. Involuntary manslaughter mirrors the existing penalty for manslaughter, a Class III felony, which is punishable by 1 to 20 years in prison and/or a \$25,000 fine. LB115 also incorporates the Supreme Court's definition of "sudden quarrel" and "legally sufficient provocation" from State v. Smith and State v. Smith, two different decisions. The bill lays a strong statutory groundwork for prosecutors and gives juries a more straightforward definition when considering manslaughter cases. LB115 further addresses an issue raised by the Nebraska Supreme Court again in State v. Smith repealing Section 29-2027, which currently requires that trial courts instruct juries in murder cases to consider first-degree murder, second-degree murder, and manslaughter regardless of the evidence or the level of murder offense charged. This

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always sounds like a cop-out when I say it, but a representative of the Attorney General's office is here and will be happy to answer more-specific questions. I will take a shot as well, if you'd like. And I thank you for your time and your consideration.  
[LB115]

SENATOR ASHFORD: This has been something we've had before, I think, isn't it, John? Or maybe not. It's new? [LB115]

SENATOR MCGILL: I had something sort of about... [LB115]

SENATOR ASHFORD: Yeah. [LB115]

SENATOR MCGILL: ...this in the past. [LB115]

SENATOR LAUTENBAUGH: This is my first go at it. [LB115]

SENATOR ASHFORD: Any questions of Scott? Seeing none, thank you. Do you wish to waive or...? [LB115]

SENATOR LAUTENBAUGH: I'll stay and see where it goes. [LB115]

SENATOR ASHFORD: All right, good. John. [LB115]

JOHN FREUDENBERG: Good afternoon. My name is John Freudenberg, F-r-e-u-d-e-n-b-e-r-g. I'm the Criminal Bureau chief of the Nebraska Attorney General's Office. I'm here today to testify in support of LB115. Our office thanks Senator Lautenbaugh for bringing it. LB115 codifies the Nebraska Supreme Court's rulings in two recent cases. In late 2011 a court ruling of State v. Ronald Smith reviewed the two ways a violation of Nebraska's manslaughter statute occurs. In doing so, the court ruled that voluntary and involuntary manslaughter were legally distinct matters. The court went on to provide specific language to help understand what constitutes voluntary manslaughter. The court established that a voluntary manslaughter violation occurs when a person intentionally causes the death of another in a sudden quarrel upon legally sufficient provocation. The court also provided a definition of "sudden quarrel" and "legally sufficient provocation." The court further restates and refines its positions in the case of State v. William Smith from last year. In this case the court specifically states that voluntary manslaughter is not a lesser-included offense of second-degree murder. Pursuant to the elements test established by State v. Williams in 1993, LB115 increases the penalty for voluntary manslaughter to a Class II felony. This corrects a punishment injustice in our criminal statutes. Currently, if a person has a manslaughter-relevant sudden quarrel with another and kills that person, he or she is guilty of a Class III felony punishable by 1 to 20 years. However, if that person doesn't die and only suffers serious bodily injuries, the actor is guilty of a Class II felony

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punishable by 1 to 50 years. An intentional killing should not be punished to a lesser degree than assaultive behavior. The language and punishment level for involuntary manslaughter remains unchanged, as found in Section 3. Finally, this bill repeals Section 29-2027 because it requires a jury instruction on lesser degrees of homicide at trial. The William Smith case has made such mandatory instruction on voluntary manslaughter improper; this requirement may well violate due process because a defendant can now be convicted of an offense for which he or she was never charged. This becomes a problem when the uncharged offense is not a lesser-included offense of the offense that was actually charged. LB115 does not legislatively overturn the two Smith rulings; it simply codifies them. The thrust of this bill is contained in Sections 2, 3, and 13; the remaining sections simply change manslaughter references in other statutes to reflect the new crimes of voluntary and involuntary manslaughter. I'd be happy to discuss any questions anyone may have. Thank you. [LB115]

SENATOR ASHFORD: It essentially divides the offenses, correct? [LB115]

JOHN FREUDENBERG: Yes, it does. [LB115]

SENATOR ASHFORD: Statutorily. Was this the situation when Dave Lanphier was on the Supreme Court and he was... [LB115]

SENATOR LATHROP: That was second-degree murder that was... [LB115]

SENATOR ASHFORD: Was it? [LB115]

SENATOR LATHROP: ...the problem in that case. [LB115]

SENATOR ASHFORD: It wasn't manslaughter? [LB115]

SENATOR LATHROP: I think there was an element that was missing. [LB115]

SENATOR ASHFORD: Yeah. I mean, somehow they were statutorily obligated to rule a certain way and...anyway, okay, any...? [LB115]

JOHN FREUDENBERG: These types of issues have been going... [LB115]

SENATOR ASHFORD: Right. [LB115]

JOHN FREUDENBERG: ...in front of the courts for quite some time. [LB115]

SENATOR ASHFORD: Right. [LB115]

JOHN FREUDENBERG: This isn't anything new. [LB115]

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SENATOR ASHFORD: Right. Okay, thanks, John. Any questions of John? Seeing none, thank you. Next proponent. [LB115]

BRUCE PRENDA: Good afternoon, Chairman Ashford and members of the committee. My name is Bruce Prenda; it's P-r-e-n-d-a. I'm a Deputy Lancaster County Attorney, and I'm appearing in support of LB115. And my appearance is on behalf of the Nebraska County Attorneys Association. Be happy to answer any questions. I don't have anything additional to add to what Mr. Freudenberg said. [LB115]

SENATOR ASHFORD: That's it? [LB115]

BRUCE PRENDA: That is it. [LB115]

SENATOR ASHFORD: Okay. Well, that's good. All right, any... [LB115]

BRUCE PRENDA: Unlike Mr. Young, I was handed the short straw and not... [LB115]

SENATOR ASHFORD: Okay. [LB115]

BRUCE PRENDA: ...given an opportunity to draw it, so... [LB115]

SENATOR ASHFORD: You didn't even have a chance to pull a... [LB115]

BRUCE PRENDA: Right. Right. [LB115]

SENATOR ASHFORD: ...short straw? Okay. Well, thank you. [LB115]

BRUCE PRENDA: All right. [LB115]

SENATOR ASHFORD: All right, any other proponents? Opponents? [LB115]

JERRY SOUCIE: (Exhibit 12) Mr. Chairman, members of the committee, my name is Jerry Soucie, S-o-u-c-i-e. I appear here today on behalf of the Nebraska Criminal Defense Attorneys Association. I'm the guy that started this. I was the attorney for both Will Smith and Ron Smith. In the materials I've handed you, and with all due respect to my friend John Freudenberg, I think he's glossing over the situation as it currently exists under the law. In, I believe, 2009, there was a bill that Senator McGill had that addressed what was essentially all of the issues that I had identified in the homicide bill that ought to have been addressed statutorily. We had a meeting at that time. I believe Mr. Freudenberg was there; I know Doug Warner was there, Bob Creager of the Nebraska Criminal Defense Attorneys; I believe Senator Lathrop was there as well. And we were trying to work it out at that time; we thought we had a deal. And when we left,

the County Attorney's Office basically said they weren't going to be a party to it and effectively killed the bill. Now, what we have now is a situation where there really is not a problem with the Nebraska manslaughter statute. The way that we address this problem that started with the malice line of cases was to not deal with it as statutory elements but to deal with it as a jury instruction problem. And I believe that that was a correct interpretation. If you read the materials I handed out to you, I discuss Senator McGill's bill back in 2009, but I've included the section of the brief that addresses the law and the distinction between manslaughter where it is on "sudden quarrel" and manslaughter where it is on "unlawful act." And the situation is, is it is now very fact-specific. When you have a fact-specific case where you have evidence of a sudden quarrel, then it is on the part of the judge to instruct the jury on that. It's not an element of the offense. And that's what Mr. Freudenberg glosses over. So what I'm saying is that unless you're going to do a comprehensive addressing of all of the homicide statutes, if it ain't broke, don't try and fix it. If you try and take the approach that they're suggesting, you're going to create problems with the situation involving second-degree murder, and it was not inconsistent with what the old court did on malice, in terms of the relationship between first degree, second degree, and manslaughter. It was one way of doing it; it was just the wrong way of doing it. What the current court has done is said malice isn't a part of second-degree murder. But, by a consequence, you then have to recognize that intentional killing can be a part of manslaughter. But it is an intent that is mitigated by the existence of provocation or a sudden...in this case, a sudden quarrel. So what I'm telling you is, it ain't broke. But if you're going to go at it, you're going to have to do the whole thing from top to bottom. And you should not be trying to do that on the floor of the Legislature with amendment, amendment, amendment, because that will be a defense lawyer's dream. Thank you. Any questions? [LB115]

SENATOR ASHFORD: Any questions of Jerry? I don't see any. Thanks, Jerry. [LB115]

JERRY SOUCIE: Thank you. [LB115]

SENATOR ASHFORD: Next opponent. [LB115]

MANDY GRUHLKEY: Mr. Chairman, gentlemen and ladies of the committee, my name is Mandy Gruhlkey, and I am here to testify in opposition of LB115 on behalf of the Sarpy County Public Defender's Office as well as a member of the Nebraska Criminal Defense Attorneys Association. As you have heard, LB115 splits our current definition of "manslaughter" into two separate divisions of manslaughter: voluntary and involuntary. By way of historical context, as the previous speaker did shed some light on this issue...was attempted during the legislative session of 2009, through LB518. It was actually introduced by Senator McGill. There was a lot of discussion and debate at that time with the County Attorneys Association, the NCDAA, and Senator McGill's legislative aide Abigail Martyr. In 2009 it was the desire of the criminal defense attorneys to make a division of manslaughter into voluntary and involuntary, specifically

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to include an intent element for voluntary manslaughter and to define "unlawful acts" for involuntary manslaughter. At that time it was decided by the parties that "unlawful acts" should be for any Class IIIA misdemeanors or greater. I think specifically the language stated that unlawful acts shall mean any felony or Class I, II, III, or IIIA misdemeanors. We think any new definition of "manslaughter" should include a definition of "unlawful acts" if it moves forward, but that the unlawful acts should be defined as Class II misdemeanors or greater. The reason for this is that if this is included, the manslaughter statute would not conflict with the motor vehicle homicide statute at 28-306. That statute has different classes of penalties based upon the act that the driver who causes the death of another unintentionally while driving a car. If the defendant is reckless or willful reckless driving, which is a Class III misdemeanor, and causes a death, it is a Class IIIA felony. If the defendant is drunken driving and causes a death, it is a Class III felony, except that if the defendant has a prior drunken driving conviction it is then a Class II felony. Additionally, we oppose LB115 for the following reasons. First of all, we feel that LB115 is vague and confusing specifically regarding the legally sufficient provocation. As it's written, is a legally sufficient provocation an ordinary reasonable person standard or a defendant personal standard? Also, regarding the time of provocation, what is the limit? Does the provocation have to occur with the eyes and ears of the defendant, or is it enough that the defendant learn about it at a later date? And lastly, can words alone be sufficient provocation, or does there actually have to be a physical act? Although we agree that there should be a difference in voluntary manslaughter and involuntary manslaughter, we disagree with the penalties. It does look as if manslaughter has already...always been a Class III misdemeanor, but LB115 wants to increase voluntary manslaughter to a Class II. I'll stop there since I'm out of time. Thank you. [LB115]

SENATOR ASHFORD: Thank you, Mandy. Do we have any questions of Mandy? I think it's good. [LB115]

MANDY GRUHLKEY: Thank you. [LB115]

SENATOR ASHFORD: Thank you. Any other opponents? Neutral? Senator Lautenbaugh. [LB115]

SENATOR LAUTENBAUGH: Well, thank you, Chairman Ashford and members of the committee. I'll be honest, I did not remember Senator McGill's bill on this same topic, and it appears I'm not alone. [LB115]

SENATOR MCGILL: I'm so memorable, usually. [LB115]

SENATOR LAUTENBAUGH: But that said...and I understand that, you know, what's the old saying? One attorney in a town goes broke, but two attorneys in town get wealthy. We're going to have different opinions. And as is always the case, we do need to address something here, I believe, and I'm happy to work with the committee, and

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anyone else for that matter, to try to come up with something that accomplishes the important goal I think this bill has. [LB115]

SENATOR ASHFORD: Thanks, Scott, very much. Good, thank you. All right. Okay. Tyson. Senator Larson, LB246. [LB115]

SENATOR LARSON: First time back and he's already walking out. [LB246]

SENATOR ASHFORD: No, no. Just thought I'd...in case it takes awhile, I want to get my coat. [LB246]

SENATOR LATHROP: And I've got somewhere I have to be on this thing. No, I'd really like to stay (laughter). [LB246]

SENATOR MCGILL: He actually did say he had a 4:00... [LB246]

SENATOR LATHROP: Yeah, I have to go testify. [LB246]

SENATOR MCGILL: ...earlier, so... [LB246]

SENATOR LARSON: (Exhibits 13 and 14) Members of the Judiciary Committee, I am Senator Tyson, T-y-s-o-n, Larson, L-a-r-s-o-n. I'm here today representing the 40th District, from O'Neill. And I would like to introduce LB246. LB246 creates an inmate copay program. An inmate who is housed in either a county jail or a state correctional facility will be charged a \$10 copay for every non-emergency self-initiated visit to a healthcare provider. The \$10 copay will be deducted from any existing balance in the inmate's personal account. An inmate will not be denied healthcare if he or she does not have the sufficient funds available to pay the copay. However, the bill does require that 50 percent of the funds deposited into an inmate's account are to be withheld until the copay has been paid in full. LB246 makes several exceptions for situations where inmates would not have to pay the copay. Inmates would not have to pay \$10 for any kind of emergency care, any kind of mental health or substance-abuse treatment, in any situation of staff-initiated care, or for any treatment of chronic illness, among other exceptions. I would also like to offer an amendment to the committee's consideration to include treatment for injuries covered under the Nebraska Workers' Compensation Act to the list of exceptions in this bill. The idea for this bill was brought to me by a county sheriff in my district. He explained to me how expensive it is for counties to provide medical services to inmates housed in county jails. He said it is especially frustrating when inmates abuse the medical services available to them. Often inmates who are bored will use a trip to the doctor to fill time even if there is nothing medically wrong with the inmate. The sheriff also mentioned the inmates will visit the doctor thinking it will help them get out of jail early. It is these kinds of unnecessary healthcare visits that this bill is attempting to deter. In 2012 Nebraska spent \$19.1 million on inmate medical care.

There was an average daily inmate population of about 4,600 inmates housed in the state's correctional facilities. When you do the math, that means the state spent about \$11 per day to provide medical care to its entire inmate population. Additionally, with an aging inmate population, the cost of inmate medical care will undoubtedly increase. Counties also spend significant amounts of money each year to provide medical services to their inmates. Douglas County alone spent \$41 million on inmate medical care throughout the 2010-2011 fiscal year. Lancaster County spent over \$2 million on its inmate medical services, while the counties like Sarpy and Madison spent well over \$55,000. This bill can help relieve the state and counties of part of their growing expenses relating to inmate medical care. At least 38 other states and the federal government have seen the benefits of instituting an inmate copay program. In 2000, the federal government passed the Federal Prisoner Health Care Copayment Act, and inmates housed in federal correctional facilities are charged a \$2 copay for self-initiated nonemergency medical care. Nebraska neighbors including Iowa, Kansas, South Dakota, and Colorado have inmate copay programs. Right now 3 of the 38 states with copayment programs charge a \$10 copay, with most states charging anywhere between \$5 and \$10. Texas requires inmates to pay \$100 per year for medical services. In 2005 Kansas made \$269,000 from charging inmates a \$2 copay. Florida's correctional facilities brought in over \$480,000 with a \$5 copay. Additionally in states that have instituted a copay program, the abuse of the number of sick-call visits made by the inmates was reduced by as much as 76 percent. You are likely to hear opposition testimony today that will bring up the constitutionality of this bill. This bill is constitutionally sound. Federal courts have consistently held that charging inmates for medical care is constitutional and that any deterrent effect created by these programs do not violate the Eighth Amendment or the Fourteenth Amendment due process clause. In 2012 the Department of Justice issued a letter to the Piedmont Regional Jail in Virginia commenting on its inmate copay program. The Department of Justice stated that copayment policies can rise to the level of constitutional violation only when prisoners are denied access to necessary healthcare due to their inability to pay. LB246, the laws found in 38 states, and the federal inmate copay statute do not deny inmates access to healthcare due to their inability to pay. In fact, the bill ensures that they receive that care and are not unduly punished in situations when medical care is necessary. LB246 extends to Nebraska the same advantages given to other states who have instituted this type of program. In a world of rising healthcare costs, this bill can give at least some assistance to the state and counties that are providing expensive medical services to inmates. Looking at the fiscal note attached to this bill, you can see that both counties and states will see some relief for their inmate medical expenses and will be able to generate revenue to help offset those costs. If you or I were to go to the doctor right now, it would be difficult to walk out of the doctor's door without paying something out of our own pocket; it makes sense to require inmates who can afford to pay some of their medical costs to do so as well. Thank you, and I'd attempt to answer any questions that the committee may have. [LB246]

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SENATOR ASHFORD: Any questions of Tyson...Senator Larson? No, I see none. Thank you. It was very comprehensive. Proponents of this bill. [LB246]

SENATOR LARSON: Also, I gave you a letter from the Douglas County Commissioners... [LB246]

SENATOR ASHFORD: Yep. [LB246]

SENATOR LARSON: ...I think. [LB246]

SENATOR ASHFORD: Okay. [LB246]

SENATOR SEILER: Excuse me, I have one question. Is there a correlation that works with the Obama healthcare act, with this? Will they be covered then? [LB246]

SENATOR LARSON: With the Affordable Care Act? [LB246]

SENATOR SEILER: Right. [LB246]

SENATOR LARSON: Will they...covered under Medicaid, or what do you mean? Will they be...? [LB246]

SENATOR SEILER: Will the prisoners as they come in be covered under the federal law? Do you know? [LB246]

SENATOR LARSON: I don't know. Obviously, the Affordable Care Act requires that all individuals... [LB246]

SENATOR SEILER: Be covered. [LB246]

SENATOR LARSON: ...well, buy their own health insurance. [LB246]

SENATOR SEILER: Right. [LB246]

SENATOR LARSON: So the question is whether or not it'll force...I don't know how the federal law... [LB246]

SENATOR SEILER: Okay. [LB246]

SENATOR LARSON: ...reads in terms of whether it's going to force inmates to purchase their own medical care coverage or be processed a fine, because I know if you don't buy your own health insurance you're given a fine, so... [LB246]

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SENATOR SEILER: Thank you. [LB246]

SENATOR LARSON: Appreciate it. Thanks. [LB246]

SENATOR CHAMBERS: I have a question. [LB246]

SENATOR ASHFORD: Yes. [LB246]

SENATOR CHAMBERS: Senator Larson, I was outside. Believe it or not, I was in a high-level discussion with a high-level representative of the law enforcement constabulary. Who gave you this...who brought...who gave you this bill to bring? [LB246]

SENATOR LARSON: A sheriff in my district. [LB246]

SENATOR CHAMBERS: From what county? [LB246]

SENATOR LARSON: Holt. [LB246]

SENATOR CHAMBERS: Holt County? Is he trained in insurance, do you know? [LB246]

SENATOR LARSON: Um... [LB246]

SENATOR CHAMBERS: Is he going to testify? [LB246]

SENATOR LARSON: He's here. I don't know if he'll testify or not. [LB246]

SENATOR CHAMBERS: Okay, well, I won't ask you the questions then. [LB246]

SENATOR LARSON: I cannot...I cannot...I cannot answer... [LB246]

SENATOR CHAMBERS: He... [LB246]

SENATOR LARSON: ...whether or not he plans to testify or not. [LB246]

SENATOR CHAMBERS: When you... [LB246]

SENATOR LARSON: That will be his decision as a citizen. [LB246]

SENATOR CHAMBERS: When you...when you reviewed this bill, what was your initial reaction to it, your honest reaction? [LB246]

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SENATOR LARSON: I'm not sure what you're asking for. My honest reaction in terms of what I thought this bill... [LB246]

SENATOR CHAMBERS: Okay, then, what was your dishonest reaction? [LB246]

SENATOR LARSON: ...what I thought this bill... [LB246]

SENATOR CHAMBERS: Did you think it was a good bill? [LB246]

SENATOR LARSON: I thought the idea was a fundamentally sound one, as 38 other states have instituted this legislation, as well as the federal government. [LB246]

SENATOR CHAMBERS: When you put the word "fundamentally sound," you mean you weren't convinced that it's completely sound, were you? [LB246]

SENATOR LARSON: No, I said it's fundamentally sound. [LB246]

SENATOR CHAMBERS: And 38 other states wouldn't prove that it's right, would it? [LB246]

SENATOR LARSON: And the federal government. [LB246]

SENATOR CHAMBERS: And that would prove it's right, to you. [LB246]

SENATOR LARSON: Yes. [LB246]

SENATOR CHAMBERS: I don't have any more questions of this witness. [LB246]

SENATOR MCGILL: (Laugh) [LB246]

SENATOR CHAMBERS: Thank you. [LB246]

SENATOR ASHFORD: Thank you, Senator Larson. Do we have any proponents for this bill, anybody that's for it? Sheriff. [LB246]

BEN MATCHETT: Good afternoon, Mr. Chairman, members of the committee. My name is Ben Matchett, B-e-n M-a-t-c-h-e-t-t, and I am the sheriff of Holt County. I'm a constituent of Senator Larson's, and I believe Senator Larson has pretty much summed up my concerns when I contacted him months ago. I'm here to answer any questions that you might have. [LB246]

SENATOR CHAMBERS: Sheriff...oh, go ahead. [LB246]

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SENATOR ASHFORD: No... [LB246]

SENATOR CHAMBERS: Go ahead. [LB246]

SENATOR ASHFORD: ...wait a second. Let me see, who... [LB246]

SENATOR COASH: Are you the Chair? [LB246]

SENATOR ASHFORD: Senator Coash. Well, I know...I didn't know if...I didn't see you. [LB246]

SENATOR COASH: Thank you, Senator Ashford. [LB246]

SENATOR ASHFORD: Once in a while I need to be reminded of that. But go ahead, Senator Coash. [LB246]

SENATOR COASH: Thank you, Senator Ashford. Thank you, Sheriff, for being here. Where does your...what is your prediction on the use of access of medical care by inmates in your county if this bill were enacted? What do you think will happen with regard to inmates' access...or are you hoping will happen, I guess would be another question. [LB246]

BEN MATCHETT: What I hope will happen is that there won't be a misuse of the medical care system that we have at this time. There are some inmates, not all of them, but some that do abuse the system. There are times that they'll ask to go to a clinic or see a doctor with an ailment, only for the doctor to tell me there's nothing wrong with this individual. And I've taken prisoners back three, four, and five times, and I've been told that. And I'll continue to take them back, as long as they say they need medical care. But when I have a doctor that's telling me they don't believe there's anything wrong with this individual, it's frustrating. And it's also costly. [LB246]

SENATOR COASH: Do...the inmates in Holt County...obviously it's different than a state penitentiary inmate, very...I'm mean, you're...you're only...what's the...you don't have a prisoner there for a real length of time, do you? [LB246]

BEN MATCHETT: The longest we've had an inmate there was 520 days awaiting trial. [LB246]

SENATOR COASH: So you're...a little over a year. But that's probably... [LB246]

BEN MATCHETT: Usually less than a year. [LB246]

SENATOR COASH: ...on the long end. Less than a year? Do the...I know that the

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inmates in the state penitentiary have some opportunity to earn money. Do the inmates at a county jail have that same opportunity? [LB246]

BEN MATCHETT: No, they do not. [LB246]

SENATOR COASH: Okay, so they're at the...your prisoners are at the...as far as their resources, whatever they can get from family or friends... [LB246]

BEN MATCHETT: Whatever they may have or what the family would, you know, assist them with, yes. [LB246]

SENATOR COASH: Okay. Okay. I think that's it. Thank you. [LB246]

SENATOR ASHFORD: Senator Chambers. [LB246]

SENATOR CHAMBERS: Sheriff, how long have you been a sheriff? [LB246]

BEN MATCHETT: For seven years. [LB246]

SENATOR CHAMBERS: And you're elected. [LB246]

BEN MATCHETT: Yes, I am. [LB246]

SENATOR CHAMBERS: And you're paid a salary. [LB246]

BEN MATCHETT: Yes. [LB246]

SENATOR CHAMBERS: And you know what the salary is when you run for the office. [LB246]

BEN MATCHETT: Yes, indeed. [LB246]

SENATOR CHAMBERS: What are you doing that you are not paid to do? [LB246]

BEN MATCHETT: Could you...? [LB246]

SENATOR CHAMBERS: Is everything that you do a part of your duties for which you're compensated? [LB246]

BEN MATCHETT: Yes. [LB246]

SENATOR CHAMBERS: Then if you drive a prisoner here or there, you're paid to do that, aren't you? [LB246]

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BEN MATCHETT: Yes, I am. [LB246]

SENATOR CHAMBERS: Well, if you are just doing what your job requires, why should we do something...like, to me, this is not a good idea. I thought Senator Tyson did it on his...Senator Larson did it on his own. [LB246]

BEN MATCHETT: May I respond to that? [LB246]

SENATOR CHAMBERS: Yes. [LB246]

BEN MATCHETT: Okay. My concern is...is for my constituents, the taxpayers. If we have several trips to a doctor where I am told there is nothing wrong with this individual, I'm concerned about the medical bills. That's my concern. And I am a steward of the tax dollar. [LB246]

SENATOR CHAMBERS: Sheriff, is there anyplace where the duties of a sheriff are laid out? [LB246]

BEN MATCHETT: By state statute, yes. [LB246]

SENATOR CHAMBERS: Can I find where you are to be looking out for the taxpayers, is that in there? So that anything you think is going to cost the taxpayers what they shouldn't, you take care of that; is that what a sheriff is supposed to do? [LB246]

BEN MATCHETT: I think that's a matter of stewardship. I don't think that I should handle money haphazardly or not care about expenses. [LB246]

SENATOR CHAMBERS: Well, what...who are you to judge whether or not somebody needs to go get medical attention? Can you look at me and tell whether I've got leukemia? [LB246]

BEN MATCHETT: No, I leave that up to the doctors. [LB246]

SENATOR CHAMBERS: So...and you took the person to the doctor... [LB246]

BEN MATCHETT: Yes. [LB246]

SENATOR CHAMBERS: ...as you're supposed to do. [LB246]

BEN MATCHETT: Yes. And that's what I do. [LB246]

SENATOR CHAMBERS: That terminates your duty, doesn't it? [LB246]

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BEN MATCHETT: Yes. [LB246]

SENATOR CHAMBERS: And then you get mad because the doctor said there's nothing wrong with him. [LB246]

BEN MATCHETT: I don't get mad, Senator Chambers... [LB246]

SENATOR CHAMBERS: You get irritated. [LB246]

BEN MATCHETT: ...I'm just concerned. [LB246]

SENATOR CHAMBERS: You're annoyed. [LB246]

BEN MATCHETT: Not even...not even, really, irritated; I'm just concerned about the budget. I have to stay within budget, and that is required by law. I have to stay within my budget. [LB246]

SENATOR CHAMBERS: But you... [LB246]

BEN MATCHETT: My supervisors are not happy if I go over budget. [LB246]

SENATOR CHAMBERS: I don't care whether they're happy or not; you're not there to...you're not the...you're not the candy man who makes everybody... [LB246]

BEN MATCHETT: Oh, no. [LB246]

SENATOR CHAMBERS: ...smile. You've got to be tough, and you've got to do your job... [LB246]

BEN MATCHETT: Yes. [LB246]

SENATOR CHAMBERS: ...that you swore to do... [LB246]

BEN MATCHETT: Yes, indeed. [LB246]

SENATOR CHAMBERS: ...and you're not going to please everybody. But one responsibility that you have is to make sure that the health needs of those prisoners are met. [LB246]

BEN MATCHETT: Yes. [LB246]

SENATOR CHAMBERS: And it's for you to do just as you've been doing. You've been

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doing your job. [LB246]

BEN MATCHETT: Yes. [LB246]

SENATOR CHAMBERS: When somebody comes to you with a medical complaint, you don't try to diagnose the case. You take the person to the one who can do it. Now, has the doctor told you: I'm tired of you bringing these malingerers to me, don't bring any more to me; has the doctor told you that? [LB246]

BEN MATCHETT: I don't think any doctor would say that. [LB246]

SENATOR CHAMBERS: So you concluded this on your own, that you save the taxpayers money if you can find a way to keep these guys from saying they need to go to the doctor. [LB246]

BEN MATCHETT: No, what I'm saying, Senator, is that I've doctors tell me there's nothing wrong with individuals that I bring back on a continual basis. That's what I'm saying. [LB246]

SENATOR CHAMBERS: Have you ever heard of a doctor misdiagnosing and not catching something which is there and is a medical condition, but a doctor misses it? [LB246]

BEN MATCHETT: Oh, I'm sure that can happen, yes. [LB246]

SENATOR CHAMBERS: Have you heard it stated that a person, if it's a situation where you have questions and you're going to be the one seeking the medical care--and you can pay for it, you're not an inmate--get a second opinion? Have you heard that stated? [LB246]

BEN MATCHETT: Yes. [LB246]

SENATOR CHAMBERS: That means that even doctors know that sometimes a doctor can make a mistake. [LB246]

BEN MATCHETT: Yes, indeed. And we've taken inmates to a second doctor at times too. [LB246]

SENATOR CHAMBERS: Okay. [LB246]

BEN MATCHETT: So... [LB246]

SENATOR CHAMBERS: Now you, in being a good steward, think that the way this bill

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is drafted is the way for you to be a good steward; obviously, or you wouldn't have done it, right? [LB246]

BEN MATCHETT: Yes, I agree with the bill. [LB246]

SENATOR CHAMBERS: Now suppose the bill doesn't go anywhere, what will you do? [LB246]

BEN MATCHETT: We'll continue to do what we're doing. [LB246]

SENATOR CHAMBERS: And I commend you. [LB246]

BEN MATCHETT: If it doesn't go anywhere, we'll continue to provide the medical treatment that we're providing at this time. [LB246]

SENATOR CHAMBERS: I commend you for that, Sheriff. You're a man of compassion and good will, and I believe that. [LB246]

BEN MATCHETT: Yeah. [LB246]

SENATOR CHAMBERS: So when this bill dies, then you'll continue doing what you're to do. (Laughter) [LB246]

BEN MATCHETT: Well... [LB246]

SENATOR CHAMBERS: And Senator Larson next time will say, well, I'm not sure if this is a good bill. But he's young; he'll catch on in time. That's all I have. Thank you. [LB246]

SENATOR ASHFORD: Thanks, Sheriff. Thanks for what you do. Yeah, Senator Christensen; then Senator Coash, I guess. I've got to start... [LB246]

SENATOR CHRISTENSEN: (Laugh) Thanks, Sheriff. [LB246]

SENATOR COASH: We're over here. [LB246]

SENATOR CHRISTENSEN: Thank you, Sheriff. I agree with you that when things are free, people abuse them. I don't know if this is a perfect approach, but at the same time I think it's a discussion that we need to have; and I thank you for bringing it, because that's part of the public process and what we do. And regardless whether it passes or doesn't pass, it's just kind of like there's a couple bills that a lot of people in the state of Nebraska like to see die that had a hearing last night and again today, but it's still bringing up great discussion. And I want to just thank you for bringing it in, because I've

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stated in other committees before I don't think there should ever be a insurance policy or whatever with zero copay because people overuse that. And so I know the approach you're going at. What I don't know, and Senator Coash had part of it, if they have funds available and things that way. And that's why I think it's a good discussion, and I appreciate you... [LB246]

BEN MATCHETT: Thank you. [LB246]

SENATOR CHRISTENSEN: ...bringing it forward. [LB246]

SENATOR ASHFORD: Senator Coash. [LB246]

SENATOR COASH: Thank you, Senator. I remember the question I wanted to ask you, Sheriff. Under the current law, do you have any latitude when it comes to making a decision whether or not you'll take an inmate to see the doctor, or...well, do you have any latitude? [LB246]

BEN MATCHETT: Well, we're to provide their basic medical needs and care. And if a person comes to me or sends out a request that they need to see a doctor, we honor that request, and we take them to a clinic. If it's an emergency, they go to the emergency room. We honor that. [LB246]

SENATOR COASH: So if you have a situation where you get an inmate who makes a request, you take them to the doctor, the doctor says, can't see anything wrong; they make the request the next day, same request, same doctor, same response... [LB246]

BEN MATCHETT: We've been through that, yes. [LB246]

SENATOR COASH: Okay. [LB246]

BEN MATCHETT: Yeah. [LB246]

SENATOR COASH: And you have no power under your current ability to say, all right, time out. [LB246]

BEN MATCHETT: We don't. [LB246]

SENATOR COASH: You just keep...from your perspective, are you concerned about a liability issue? I guess my question is: Do you do it because you have to, or do you do it because you think it's better to take the person to the doctor and not risk the liability that, oh, gosh, the guy had a heart attack and that happened to be the day after I refused him after four times of taking him? [LB246]

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BEN MATCHETT: I think liability is a big issue when it comes to that. And, plus, you know, I would feel horrible if a person did say, the next day or the day after...say, for example, they're having chest pains, and I say, well, you've been down that road before, we're not going to go there; and they die and have a heart attack. So, I mean, I think part of it is the liability, and the other part is just, you know, I guess, doing the right thing and having the compassion, but... [LB246]

SENATOR COASH: Is it...I mean, Senator Larson's bill addresses inmates, but we have whole different sections of law that address law enforcement and what you're required to do. So...and you may not know this--I don't--but is there a part in the law that says you have to take an inmate every time? [LB246]

BEN MATCHETT: By jail standards, there is. [LB246]

SENATOR COASH: Okay. So... [LB246]

BEN MATCHETT: I mean, if an inmate requests medical attention, you need to get medical attention for them. [LB246]

SENATOR COASH: Okay, so you're bound by not necessarily statute but by... [LB246]

BEN MATCHETT: By jail standards, too... [LB246]

SENATOR COASH: ...jail standards that... [LB246]

BEN MATCHETT: ...yes. [LB246]

SENATOR COASH: A request is made, you've got to honor that... [LB246]

BEN MATCHETT: Yes. [LB246]

SENATOR COASH: ...request, no matter your...your feelings. [LB246]

BEN MATCHETT: Yes. [LB246]

SENATOR COASH: Okay. All right. I understand. Thank you. [LB246]

SENATOR ASHFORD: Thank you...Senator Chambers. [LB246]

SENATOR CHAMBERS: Sheriff, if a case seems to be too complex or difficult, you can take them to a state facility like the Diagnostic and Evaluation Center, can't you? [LB246]

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BEN MATCHETT: And we have before. I mean, you know, there's an... [LB246]

SENATOR CHAMBERS: So there is a way... [LB246]

BEN MATCHETT: There's an added expense with that. [LB246]

SENATOR CHAMBERS: And what is the expense, the gas mileage? [LB246]

BEN MATCHETT: Well, that's an expense, but it's \$88 a day to house them. Plus, you have to pay all the medical. It's not like the medical goes away just because they're at D&E. [LB246]

SENATOR CHAMBERS: So you pay... [LB246]

BEN MATCHETT: You have to pay that. [LB246]

SENATOR CHAMBERS: So you pay it to the state. [LB246]

BEN MATCHETT: Yeah. Yeah, we would pay it to D&E. [LB246]

SENATOR CHAMBERS: And do you pay the same rate to the state that you pay to this doctor that you would take them to, the private doctor? [LB246]

BEN MATCHETT: I think it's about the same rate. I would have to check on that to be sure. [LB246]

SENATOR CHAMBERS: But the one thing I want to be sure of, and I think you made it crystal clear to everybody, you will continue to take people for medical treatment who need it... [LB246]

BEN MATCHETT: I will not... [LB246]

SENATOR CHAMBERS: ...or who say they need it. [LB246]

BEN MATCHETT: I will not deny anyone medical treatment. [LB246]

SENATOR CHAMBERS: Okay. I think I've got the solution. Just tell these people, don't get sick; just say...(laughter)...just say, no, I won't get sick. [LB246]

BEN MATCHETT: I wish I could. (Laugh) [LB246]

SENATOR CHAMBERS: That's all that I have. [LB246]

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BEN MATCHETT: Thank you. [LB246]

SENATOR ASHFORD: Thanks, Sheriff. [LB246]

BEN MATCHETT: Thank you. [LB246]

SENATOR ASHFORD: Do we have any other proponents? Opponents? Neutral? Opponents. Do we have anyone else here? Okay. [LB246]

AMY MILLER: (Exhibit 16) Good afternoon. My name is Amy Miller; it's A-m-y M-i-l-l-e-r. And I'm with ACLU Nebraska. I previously had my testimony distributed; because my previous hearing ended, I was able to come over. The ACLU has very serious concerns about the failed experiment that has already happened in states that have required inmates to do medical copay. And I'm here just to outline the fact that you have the experience. And I provided you with the citation to...the Massachusetts legislature commissioned a study as to whether or not this was working and not only found out that this is transferring costs. When the inmates lose the money they have on the books, that means they don't have the money to get their driver's license or to pay their child support or to take care of the family members that are waiting on the outside. And you're simply shifting the costs back to innocent family members on the outside, who end up on the public benefit system as a result. Further, there is a serious cost of administering and implementing these programs. You're going to have to have a separate system set up of accounting, someone who is in charge of dunning the individuals who have solicited pay. And it does not turn out, in Massachusetts at least, that this has turned out to be a cost-effective...it's actually been neutral or a minus. Finally, I asked some of my ACLU colleagues across the country, by our LISTSERV, whether or not they'd had any experiences in their own states. And on the last page of the written testimony there's an example, and I realize now I forgot to put which states. There's two examples, one from Pennsylvania, an inmate who was serving only 90 days. He doesn't want to have to pay out the short dollar amount in order to visit the doctor, but he had a history of mental illness, and he thought, I'm fine, I'm fine, which a lot of people with mental illness do think. Because he started to decompensate because he wasn't getting his prescription medication because he had a disincentive--he did not want to have to pay that cost out himself--he began to experience a deepening of his mental health problem. He attacked his roommate, which put his roommate into the hospital with serious problems and put three guards in the hospital on minor injuries. The second incident is from New York, where the ACLU represented a man who was experiencing a cough but just did not want to have to dip into his little bit of money; he wanted to send Christmas cards home to the family. So he went untreated. It turns out it's TB, and every single person who had contact with him, in fact, was exposed. It creates a public health risk when we don't take care of inmates and if we make a higher burden that makes it difficult for them to access medical care. It's our obligation when they're in our facilities; the Eighth Amendment requires that we take care of them. This

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is bad public policy and may be unconstitutional. [LB246]

SENATOR ASHFORD: Senator Christensen. [LB246]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you for coming in. Have you ever known people that hate to go to the doctor? [LB246]

AMY MILLER: Yes. [LB246]

SENATOR CHRISTENSEN: And I think we have the opposite case, those that just love to go, whether it be attention, whether it be get out of jail, whether it be the other circumstance. And I guess I don't know how you handle it, I'll be very honest. And so I don't know that you could pull a case and say just because there was a copay somebody refused to go; because I know individuals that are extremely wealthy--I mean, they could buy the hospital--that refuse to go to a doctor till they're extremely bad, same as I know people that tend to overuse. And I'm sure that's a situation we're dealing with here. And that's why I said I can believe that there is abuse and I can believe that there is people that refuse to use it. And I don't know what to do. [LB246]

AMY MILLER: It is interesting, because I think regardless of whether we start charging copays you're going to continue to have the people that are on both ends of that spectrum. And I realize it's not the subject matter here, but I have to tell you that my office is dealing with the opposite problem: inmates who are begging for medical care on serious medical needs, who are not getting it. I have, usually at least once a month out of all of those, I sift through the people who say, ouchy, my back hurts, I'd really like some painkillers, and the people who are looking just for attention. And when I sift through those, I end up with...last month I was on the phone with York County Jail, where they had a man who was a diagnosed schizophrenic who had been without his medication for seven days. I call. They immediately give him his pills and give me a story about, well, it was just a holdup on the tray. That man had started to hear voices telling him to hurt himself and others. The month prior, I was on the phone with a county jail far out west, I'm sorry I can't remember the name, where it was a diabetic who had not received insulin for two months prior to calling my office. We're not just dealing with people at the two extremes you're talking about; we're also talking about inmates who are asking for bare, lifesaving medication that they're not getting in some correctional facilities. Adding an additional layer of, "And now we want you to pay"...I'm not seeing these facilities, in many places, fulfilling their obligations as it is, and I'm not thrilled about also now giving them an opportunity to charge people, when they are not always providing that care. [LB246]

SENATOR CHRISTENSEN: In this bill, though, they do exempt emergencies and mental health, correct? [LB246]

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AMY MILLER: That's true. [LB246]

SENATOR CHRISTENSEN: And so I...you know, again, I'll be honest, I don't know how you handle it, because I feel like there's...you could have a undue burden on those that don't have the cash, and I know that there are people that just love to get to go for a ride, or you just...they want to go talk to somebody; because I know I have doctors tell me that they have patients that come in and pay the fee just because they're lonely and want to talk. And so...and it's something we deal with in all of society, and I would assume it's no different in the jails. And that's why I say I...not saying this is good or bad, I just don't know how to handle it. [LB246]

SENATOR ASHFORD: Well, that's...yeah, I think that's just a statement, not a question, Amy. [LB246]

AMY MILLER: I'm happy to take that as a statement. [LB246]

SENATOR ASHFORD: Okay. Senator. [LB246]

SENATOR CHAMBERS: I just want to take this opportunity to express a new sense of awe I have for Senator Christensen, who knows people wealthy enough to buy a hospital; and he conducts himself as an ordinary poor fellow like I do. So for that I have great respect for you, because I don't know any people that rich. And if I did, I'd probably be acting a little more uppity than I do. (Laughter) [LB246]

SENATOR ASHFORD: Okay, thank you, Amy. [LB246]

AMY MILLER: Thank you. [LB246]

SENATOR ASHFORD: Any neutral? Any...do you wish to close, Senator Larson? Okay. That ends the hearing. (See also Exhibit 15) [LB246]