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Judiciary Committee
March 04, 2015

[LB268 LB294 LB354 LB459]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 4, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB354, LB294, LB459, and LB268. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: It is the bewitching hour, so we're going to open. Welcome to the Judiciary Committee. I am Les Seiler. I'm Chairman and I'm from Hastings, which District 33 includes Adams County and all of Hall County except Grand Island. On my far right is Senator Matt Williams from Gothenburg; Senator Adam Morfeld will be next to him; Senator Bob Krist from Omaha; Senator Ernie Chambers will be next to him. Our legal counsel is Diane Amdor. On my far left is Dr. Laura Ebke from Crete; Senator Patty Pansing Brooks from Lincoln; Senator Colby Coash from Lincoln; and committee clerk Oliver VanDervoort. We have...our pages are Drew and Jonathan. And we will be following the script as it's been printed and advertised. The...if you are going to be testifying, make sure you've got the blue document filled out. Hand it to the clerk when you come up...not clerk, excuse me, page when you come up. And any of your written materials, hand to the page and they'll distribute them. We run the clock in this and we run it the same as everybody. You each get three minutes. You'll get a green light, a yellow light. Yellow light means you got one minute to close. When the red light comes on, I will stop you. If you're...if one of the senators decides he wants to hear the rest of your testimony he will...they will ask you to continue. That's up to them. If you are here and you don't want to testify but you want to place your vote for a certain side on any of the bills, sign up outside. And that will be made part of the record so you will be shown as being here and either for or against or neutral depending on how you signed up. When you come up to...testifiers, when you come up, pull yourself up to the table. Speak into the mike because the mike is not for amplification, but it is for the translators (sic). And the transmitted into the mike is being picked up and a transcript will be made of your testimony. So don't be afraid to speak right up so that our transcribers can get a better line on it. Silence your cell phones and I'll do the same. Okay. We're going to start out with LB354. Senator, you may present your bill. In case you folks don't know, this is Senator John McCollister from Omaha. [LB354]

SENATOR MCCOLLISTER: (Exhibit 1) I'll repeat it as well. Good afternoon, Chairman Seiler and members of the committee. I'm John McCollister, J-o-h-n M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. I'm here today to introduce LB354. Before I begin, I want to acknowledge the fine work that was done on this bill during the 2014 interim by Senator Kate Bolz and her staff. In January, Senator Bolz asked me if I'd be willing to carry this important piece of legislation. I was honored to be asked and I am pleased to appear before you today to offer a bill that would benefit crime victims in our state in several important ways.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

LB354 would amend the Nebraska Crime Victim's Reparations Act in the following changes...with the following changes. The bill would add a third public member to the Crime Victim's Reparations Committee. Under current law there are two public members: one who represents business and one who represents charitable organizations. The new public member would represent crime victims and would be required to have training and work experience with issues that affect crime victims of...victims of crime. In Section 2, LB354 would repeal obsolete language that dates back to the year in which the public members were first appointed. In Section 3, the bill would add language to eliminate the need for a victim to have his or her claim application notarized. This would repeal a requirement that is now in Title 80 of the Nebraska Administrative Code. In Section 4, the bill would increase the maximum compensation award from \$10,000 to \$25,000. A compensation award would provide up to \$10,000 for funeral expenses, \$20,000 for medical expenses, or \$5,000 for related costs, such as lost wages. However, the claim total would still be required to not exceed \$25,000. As you consider these proposed changes, I will call your attention to two documents in your packet of handout materials. The first is an Omaha World-Herald article from June 17, 2014, which describes our state as the stingiest when it comes to compensating crime victims. The second is titled "Basic Program Information." It reports state-by-state maximum payments to crime victims and supports the news media report. The compensation award changes proposed in LB354 would improve our ability to help crime victims in Nebraska. In Section 5, LB354 would add a new provision to protect the privacy of crime victims. Currently, the administrative rule adopted by the Crime Commission in Title 80 of the Administrative Code protects the privacy of crime victims unless their information is open to the public under other Nebraska laws. On June 11, 2014, the Nebraska Supreme Court amended its rule concerning electronic access to court records by eliminating the protection of information about crime victims. The Supreme Court's rule would allow for that protection unless it is required by statute to remain otherwise. Therefore, the enactment of this provision in LB354 would make it clear that a crime victim's information is to be kept confidential. Earlier today a concern was raised by the Administrative Office of the Courts regarding the implementation of the privacy protection in this section of the bill. Intent would be to require the victim to identify the specific information to be protected. It was also mentioned that the individual in question might be identified in a separate and possibly related court action, such as a divorce or a protection order. It might be necessary to provide the concurrent policy...privacy protection for all instances in which the victim's identity information might be available. It's my plan to address these issues in amendment language to be prepared and offered to this committee for its consideration. I'd be happy to answer any questions at this time. [LB354]

SENATOR SEILER: Any questions? Seeing none, thank you. [LB354]

SENATOR McCOLLISTER: Thank you. [LB354]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SEILER: Are you going to stay for closing? [LB354]

SENATOR McCOLLISTER: Yes, sir. [LB354]

SENATOR SEILER: Okay. First proponent, first person in favor of the bill. [LB354]

TONI JENSEN: (Exhibit 2) Good afternoon, Senator Seiler and members of the committee. My name is Toni Jensen, T-o-n-i J-e-n-s-e-n, and I'm here on behalf of the Nebraska Coalition for Victims of Crime to testify in support of LB354. LB354 provides a variety of relief and support for Nebraska's crime victims. First is that of privacy. There is a lot of victim-specific information that is collected by our court system in the investigation and prosecution stages of a case which is then transferred to the court record. And as a result of a recent change to a Supreme Court rule, this information may be made available to the public. This information may include contact information, such as phone, e-mail address, or physical address of their home or employer. In the wrong hands, this information can be used to further victimize that individual or potentially intimidate them so they are less likely to participate in the criminal justice process against their perpetrator. The protection of this information as proposed in LB354 will provide a necessary and important relief for victims of crime. Next, the bill addresses several changes to the crime victim's reparations fund. This program helps to fund financial assistance to victims who have physical injury or death-related costs as a result of a criminal act. The current maximum payment for a victim's related expenses is \$10,000, compared to the national average of \$25,000. For some victims of crime, medical bills and related out-of-pocket costs can be upwards to \$15,000-25,000 easily. Additionally, funeral costs are reaching a national average of \$10,000 all on their own. The increases proposed in LB354 will go a long way to support the financial security of Nebraska's crime victims. LB354 also proposes adding someone with specific training and relevant work experience around the needs of crime victims to the committee that reviews these claims. We feel that this is a necessary step forward to ensure that a victim's voice is most accurately heard. Recently I spoke with a crime victim who submitted a claim for review after her ex-boyfriend assaulted her. While she submitted a claim for close to the \$10,000 limit, she was only successful in receiving around \$3,000 in compensation, which did not compare to the total of over \$25,000 in medical costs she incurred. The processes for reviewing CVR claims, while somewhat determined by statute, are primarily determined by the committee. The perspective of someone who is trained in working with victims is necessary to improve the internal workings of this committee. This survivor's experience can be characterized as retraumatizing, triggering, and lengthy, to say the least. She submitted her claims after her medical costs reached close to the current \$10,000 limit. However, she did not receive her partial payment for these costs until almost a year later. This payment did not take into account any late fees or interest fees that she incurred in that year's time frame. Additionally, she was denied payment for some medical-related expenses because those working with CVR did not feel that the expenses, which included medications prescribed by her doctor for anxiety she was

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

experiencing during the criminal justice process, were related to the criminal act. She felt unsupported and condescended through a process that often loses sight of the person behind the claim. That's all I have. I'll answer any questions. [LB354]

SENATOR SEILER: Any questions? Seeing none, thank you very much. Next proponent. [LB354]

ROBERT SANFORD: (Exhibit 3) Good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d. I am the legal director for the Nebraska Coalition to End Sexual and Domestic Violence and I am here today to express the coalition's support for LB354. "If you build it, they will come"--an often-quoted line from Field of Dreams that defines LB354. During more than ten years of employment with the coalition I have had many conversations with victims and victim advocates regarding victim compensation in Nebraska. Positive stories about this assistance rarely reach me and one individual recently relayed this message from a survivor to me: The crime victim's reparations fund is part of a broken system that perpetuates victim suffering. The survivor went on to describe what this particular individual sees as a broken system, including a lack of resources for victims. This person's perspective is echoed in responses I received from victim advocates across Nebraska last month. An advocate from western Nebraska wrote that their program provides the application forms to victims but also indicated that many victims do not complete the form. In addition to a lack of funding, the advocate noted two additional issues victims identify. The first is the amount of proof that must be given during the application process. The second is the requirement in Nebraska Revised Statute 81-1821, not addressed by this bill, that the crime must be reported to law enforcement within three days. Many victims of domestic and sexual violence are not able to immediately report crime committed against them by an intimate partner because of safety concerns. Two advocates from the southern part of the state indicated that they have seen a few victims apply for compensation, though this is often not the case and they are not aware of anyone that has, in fact, received the full amount requested. One of the two noted that some of their clients are still waiting for a response. The other advocate did note that they have worked with victims who have received partial funding and this funding was usually for physical items. However, most victims they work with do not receive compensation for ongoing medical bills or lost wages, often being told funding is not available. This theme continues in the metropolitan areas where an advocate noted that it was rare for...that any applicant they worked with was awarded any compensation and noted the recurring belief that this is because of a lack of funding. The advocate stated that it was traumatizing for survivors to apply only to be denied. She indicated that since funds are currently available she is encouraging victims to apply for compensation. These examples are the same stories I have heard from victim advocates for more than ten years. Victims apply and get denied and many believe it is because there is a lack of funding. Discouraged by the stories of others before them, many just do not apply. I would encourage you to advance LB354 to General File. Thank you. [LB354]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SEILER: Thank you. Any questions? Seeing none, thank you for your testimony.
Next proponent. [LB354]

RHONDA ROLLES: (Exhibit 4) Good afternoon, Senator Seiler and the members of the Judiciary Committee. My name is Rhonda Rolles, R-h-o-n-d-a R-o-l-l-e-s. I am the director of the Omaha/Douglas County Victim Assistance Unit and I am here today to testify in support of LB354. I have been working with crime victims of Douglas County for over 14 years and I have personally assisted many victims with filing crime victim's reparations forms. Any changes that takes barriers away from...and safeguards victim safety and privacy is a needed change. Raising the maximum amount per claim can go a long way to help an innocent victim of crime. As we know, the cost of health care is rising and insurance does not cover 100 percent of these costs. And if you have no insurance, the cost can be overwhelming, not to mention family members who are left to bury a loved one who had no life insurance. When you have people who are living paycheck to paycheck, an added burden of making a medical payment can really jeopardize the well-being of that victim and their family. I recently worked with a single mother of two who lost her oldest child to murder. Not only does this mother have to grieve her tremendous loss, she now has to find a way to pay for a funeral and also keep up with everyday bills and provide for her youngest child. I have also worked with victims that were doing the right thing and ended up paying a high price for standing up for what is right. These victims are not profiting from getting compensation. Compensation is to provide help to ease the burden of the cost that they are now strapped with. As a crime victim making a report about your victimization, you are not thinking about where all your personal information will...could wind up. The section protecting victims' privacy allows victims an element of protection that they may not even be aware that is needed. Being a victim or a witness in some cases can put that victim or witness in danger. Word travels fast in the community and having the victim or witness information readily available through the court documents only adds to that danger. And lastly I would like to address the issue about adding a victim representative to the committee. This is something that has been needed for a long time. I hear from victims that they are no longer eligible for compensation because they missed the deadline to file. Now I know that there has to be guidelines and limitations on when you can file a claim, but I also know that, working with victims every day, that the victims don't all fit into the same box. I have recently spoke with a victim of sexual assault that occurred three years prior. As a victim dealing with the emotional elements of being sexually assaulted, filing for compensation was not on the top of her to-do list. Having someone on the committee that can add insight as to what a crime victim goes through would add some perspective. Even if someone on the committee has been a victim themselves, everyone processes things differently and having someone with experience working with many victims would help shape the CVR to be more victim friendly and help eliminate revictimizations of the victims who apply. Thank you for your valuable time this afternoon, and I can answer any questions you may have. [LB354]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB354]

RHONDA ROLLES: Thank you. [LB354]

SENATOR SEILER: Next proponent. Next proponent, in favor of this bill. Opponent. I don't see anybody scrambling...oh, here comes one. [LB354]

SHAWN RENNER: One scramble, Senator. [LB354]

SENATOR SEILER: One scramble, okay. [LB354]

SHAWN RENNER: And probably not technically opponent testimony either, as I'll try to make clear. My name is Shawn, S-h-a-w-n, Renner, R-e-n-n-e-r. I'm a lawyer with the Cline Williams law firm here in Lincoln, and I appear today on behalf of Media of Nebraska, Inc. Media of Nebraska is an umbrella organization that represents the First Amendment interests of the state's press and broadcast news media. Media of Nebraska has no position and nothing to say about any of the reparations provisions of this bill. Our concern is solely with Section 5. That's the last provision of the bill. And the concern is actually quite a bit narrower than the provision is itself. All the testimony you just heard was related to crime victims and the impact that the judicial system has on them. And frankly, my clients don't have any opposition to anything that was said about any of that. The concern comes in the way that Section 5 might be applied, and it's not very clear from the bill itself. And I wanted to point out a couple of things for the committee's consideration. First of all, Section 5 applies to both victims and witnesses of crime and it's really the witnesses that creates some problems for my client. What the bill says is with regard to those folks they have a right to have any personal identifying information, other than the victim's or witness's name, not be disclosed in any court documents, including electronic court documents, that may be available to the public. It's probably easiest for me to try to describe our concerns by giving you a hypothetical that is, with the exception of the murder, I guess, pretty common I think in Nebraska and most states. A is a meth dealer; B is a friend of the meth dealer; C is a meth addict that is looking for a fix. B takes C to A's apartment and the next day the police find C's body in a field someplace. A murder has occurred. The police find information that leads them back to A and B through some way or another, and the police go to the district attorney, county attorney and say, we would like to search the apartments of both A and B because we believe there may be evidence of a crime to be found. In order to do that, they file an affidavit that says here's our basis, our probable cause for having the search warrants issued. At that point, a judge issues the warrants, the police go out, they execute the search warrants. They find whatever they find. At that point, both A and B are at least potential witnesses in this criminal prosecution. Someone has died. They were the last two to see the victim. Let's assume that a week later B goes to the prosecution and says, okay, I'll tell you I was involved in it but, in order

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

for me to cooperate, I'd like for you to guarantee me that I won't be charged with first-degree murder and be subject to the death penalty. The prosecutor agrees. B is given immunity. At that point, B is clearly a witness to a crime and A probably isn't at that point because at that point A can't be required to testify against him or herself. Once those search warrants are executed, our statutes require that the warrant, the affidavit, the return, that is the document that says here's what I went out and did when I was a police officer, and the inventory, which is all the evidence that is found during the search, becomes a public record under Nebraska law. And those are filed with the court and that's done for obvious and good purposes. How does this bill operate in that context? In that context, does it mean that those materials are no longer a public record? Does it mean that once B has copped a plea and has become a witness and A can no longer be a witness, that the search warrant with regard to A's search is a public record but not with regard to B's search? Is it the situation that the clerk of the district court simply goes in with a magic marker and simply crosses out any identifying information from any of those otherwise public documents? This bill doesn't answer any of those questions, and I noticed that Senator McCollister said he was going to work on some amendments that will at least address some of that with the Administrative Office of the Courts. I will hopefully...I will ask to be, Senator McCollister, ask to be part of that discussion because it may be that my concerns can be satisfied there. But this bill doesn't answer any of those questions. [LB354]

SENATOR SEILER: Okay. Any questions? Yes, Senator Krist. [LB354]

SENATOR KRIST: Just very simple. Did you talk to Senator McCollister before you came in and talked to us? [LB354]

SHAWN RENNER: I did not. [LB354]

SENATOR KRIST: That would be a good thing to do. [LB354]

SHAWN RENNER: Understand. [LB354]

SENATOR KRIST: Thank you. [LB354]

SENATOR SEILER: Any further questions? Thank you for coming and testifying. [LB354]

SHAWN RENNER: Thank you. [LB354]

SENATOR SEILER: Anybody else in opposition? Anybody in the neutral? [LB354]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

DARRELL FISHER: Good afternoon, Senator Seiler, members of the Judiciary Committee. My name is Darrell Fisher. That's F-i-s-h-e-r. And I am the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice. I am here today to testify in the neutral capacity on LB354. The Nebraska Crime Commission administers the crime victim's reparations program and I am the hearing officer for the claims we receive from victims. Nebraska's crime victim's reparations program was established in 1978. All states and the District of Columbia have similar programs. The CVR program pays uninsured medical bills or funeral costs for innocent victims of violent crime and other expenses for innocent victims of violent crime, like job retraining, counseling, rehabilitation, crime scene cleanup, etcetera. Other costs would include recovery of lost wages. CVR is the payer of last resort and only pays if health insurance is not adequate to pay all the medical bills related to the crime. The maximum amount allowed per claim is \$10,000. Victims are a neglected part of the criminal justice system. They provide evidence and testimony which allows law enforcement to apprehend and prosecute the criminal. Restorative justice begins with healing the victim and the CVR program, in a small but important way, can alleviate some of the financial burdens suffered by crime victims. Innocent victims who suffer physical injuries as a result of crime are eligible. Property losses are not covered. Victims of the following crimes are currently eligible: homicide; sexual assault; felony assault; child abuse; robbery; domestic violence; arson; DUI; and kidnapping. The CVR program is funded with a mixture of General Funds, cash funds from the Department of Corrections, cash funds from court costs, and federal funds. The federal funds are received using a formula based on 60 percent of General and cash fund expenses. For example, if a state expends \$100,000 in nonfederal funds, it will receive a federal award of \$60,000. We expended a total of \$224,494 for aid to crime victims in FY '13-14 and our current appropriation is \$276,700 for FY '14-15. Thank you. And I would be glad to try to answer any questions you may have. [LB354]

SENATOR SEILER: Seeing none, thank you very much. [LB354]

DARRELL FISHER: Thank you, sir. [LB354]

SENATOR SEILER: Any further in the neutral? Seeing none, you may close. [LB354]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. First I'd like to acknowledge the great work that Darrell Fisher does at the commission. He's done an extraordinary job for the state. And secondly, I'd like to acknowledge the...give my thanks to my fellow testifiers. Lastly, I'd like to acknowledge the fine work of Senator Pete Pirsch on behalf of the crime victims in Nebraska. Senator Pirsch's LB510 in 2010 provided important sources of cash for the Victim's Compensation Fund. I'd like to direct the committee's attention to two documents I provided when I opened this bill. The first document summarizes the history of the General Fund appropriations for the crime victim's reparations program. The document shows that the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

program's appropriations rose and fell with changes in the state budget; however, the drastic reductions that occurred in fiscal 2002, 2003, never have been reversed. As you can see, the General Fund appropriation has remained unchanged at \$20,000 for 13 years. As I mentioned, the additional sources of cash provided from LB510 made a big difference in the resources available. The second document reports the General Fund, cash fund, and the federal match expenditures from the crime victim's reparations fund, 1995-2014. As you can see, the federal 60 percent match is an important component of our ability to help victims. Finally, I want to report that during discussions about introduction of LB354 I learned that limited and unpredictable funding in the past has led to a decision not to accept or pay any future claims stemming from misdemeanor assaults. This revelation led to a conversation with Senator Bolz and to discussion with the Appropriations Committee about funding...about future funding for the crime victim's reparations program. It is my understanding that there are ongoing discussions about securing more stable resources for the fund. I also understand, if new resources are made available, the commission and the committee may renew the practice of accepting misdemeanor assault claims. All through this possible funding increase it's not in...although this possible funding increase is not included in LB354, I feel it's important for this committee to know about the very real possibility. Thank you very much. [LB354]

SENATOR SEILER: (Exhibit 5) Any further questions? Thank you very much. We will include all of the written records and any of the signature people out in the hallway as part of this record. Senator Scheer, you may open LB294. [LB354]

SENATOR SCHEER: (Exhibits 1 and 2) Thank you, Chairman Seiler and committee members of the Judiciary Committee. My name is Jim Scheer, S-c-h-e-e-r, and I am representing the 19th District in the Legislature. I appear before you today to introduce LB294, designed to improve our state's effectiveness in combating human trafficking. I'll deviate from my comments. I would first and foremost like to say this wasn't even on my radar three years ago before I was elected to this Senate. That only became to my knowledge based on Senator McGill's work the previous two years in the Legislature and without that I probably wouldn't be here today. I, like many people, watched 60 Minutes or 20/20 and saw what happens in other parts of the United States and the world but never thought it would happen necessarily in Nebraska. But it is and it does and so I'm trying to work and improve the process that was began by Senator McGill. LB294 is a result of a collaborative effort among local, state, and federal law enforcement, local and federal prosecutors, victim advocates, service providers, various task forces, such as the Governor's task force on human trafficking, Omaha Child Exploitation Task Force, and many of whom that might follow me on this bill. As those who follow me will testify, human trafficking is not an issue that is foreign to Nebraska. It's a market-driven, criminal enterprise that treats the most vulnerable as lucrative commodities. The concept of LB294 is more to adequately address human trafficking by targeting its business model and, to that end, LB294 would address recruitment of trafficking victims by pimps by increasing penalties of pandering; it would target

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

the consumer of sex trafficking by increasing penalties for solicitation of prostitution; it heightens the penalty on keeping a house of prostitution; and affords greater ability to subpoena elicit marketers of sex trafficking, like Backpage. LB294 is really designed to diminish the profitability and increase the risk of engaging in this criminal enterprise, therefore, it provides for a forfeiture provision that is solely intended to provide for care, treatment, and services for trafficking victims and a new Victim Assistance Fund. Lastly, LB294 provides an opportunity for victims to seek civil remedy against their traffickers by creating the Human Trafficking Victim Civil Remedy Act. I have introduced the bill to fundamentally...because I am concerned the absence of strict message as intolerance for the human traffic in our state only encourages the future growth of this deplorable enterprise. I would note that also part of the increase in the penalties is a reflection that Nebraska unfortunately has some of the least penalties. Although we increased them not too long ago, they still are far behind most of the surrounding states. And so it would be my hope that we don't make a safe haven for Nebraska compared to other states in our surrounding area. The experts who will testify after me today are most able to address most of the technical questions you may have. And I would respectfully request the advancement of LB294 to the General File. I do have a couple handouts to try to help with this process. First one gives you a breakdown of the surrounding states as far as the penalties. The second one is a breakdown of the bill itself that gives you exactly where we're changing whatever we are changing so that you know more explicitly where it's at. And I guess that's it. Thank you. [LB294]

SENATOR SEILER: Senator Krist. [LB294]

SENATOR KRIST: Thank you. Thank you for bringing this, Senator Scheer. My concern is that from my reading this bill it appears that in Section 17, in a number of different places, it's going to recriminalize a prostitution charge for a juvenile who is caught up in the ring. Is that your intent? [LB294]

SENATOR SCHEER: Yes, it is and I'll explain why. As it is now, those youth are put into Health and Human Services. They're getting lost. They're not getting the treatment or the services that they require. By criminalizing it, it now remains in the juvenile court system. This court system I think is better able to address the needs of the services and the conditions that these young people need to rehabilitate their lives. I don't think it helps...I think we...going back to base, what we're really talking probably in most cases is a 12- to perhaps a 17-year-old young female or male that most probably is a runaway. And so if we leave it where it's at, what's happening predominantly is they will be placed in a foster home. These kids are runaways. Within two or three or four days, they're going to take off and run and they're either going to run to another pimp that they already know of if theirs is still incarcerated or they may take off to a different town to try to hook up with somebody else because that's the lifestyle they know. We need to be able to help these youths. When they're no longer a minor, those are sealed records so it's not

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

going to haunt them for the rest of their life. But I really think the juvenile court system is better adequately prepared to service these young folks than our Health and Human Services. That's the bottom line. [LB294]

SENATOR KRIST: Okay, well, I guess you mentioned Senator McGill. If she were dead, she'd roll over in her grave right now because we went through great lengths to try to decriminalize this activity and get people the help that they needed. And in some cases, they're not necessarily runaways. They're people who are doing this against their will, are coerced to do it against their will. So just for the record, that's pretty much a show-stopper for me in this particular section. I think--my opinion--the way to deal with this is to make sure that they are getting the services that they need without recriminalizing, which is what we're doing, we're reversing course and sending them back to the juvenile court system. So just wanted to...I have to...I didn't want to short-sheet the effort. I would have made the comment to some of your testifiers, but I have to introduce in another committee and I want to make sure I got that on the record before I have to leave. [LB294]

SENATOR SCHEER: I can appreciate that, Senator Krist, and if that's the show-stopper, perhaps there's some way we can work around that. I think it's just important to try to improve the system that we have. [LB294]

SENATOR KRIST: Okay, thank you, Senator. [LB294]

SENATOR SCHEER: Thank you. [LB294]

SENATOR SEILER: Any further questions? I have one. [LB294]

SENATOR SCHEER: Yes. [LB294]

SENATOR SEILER: On...in Section 3, line, oh, I think it's 16, you talk about a civil action and you come down and say, "may recover his or her actual damages," and then you put in some language that's kind of strange in civil law, "which are deemed to be a minimum of one hundred fifty thousand." Well, if she or he or whoever has just a scratch, they get \$150,000? [LB294]

SENATOR SCHEER: I don't think that's the intent. That would probably need to be corrected, yep. [LB294]

SENATOR SEILER: Take a look at that. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SCHEER: I certainly will. [LB294]

SENATOR SEILER: I think the way it's worded, you can't get anything less than \$150,000. [LB294]

SENATOR SCHEER: Well, it's certainly not the intent. [LB294]

SENATOR SEILER: Okay. [LB294]

SENATOR SCHEER: I appreciate your catching that. [LB294]

SENATOR SEILER: Any further questions? Thank you very much. [LB294]

SENATOR SCHEER: Thank you. [LB294]

SENATOR SEILER: Go ahead. [LB294]

JOHN FREUDENBERG: (Exhibit 3) Good afternoon. My name is John Freudenberg, F-r-e-u-d-e-n-b-e-r-g. I appear today as the Attorney General Office's criminal bureau chief and on behalf of the human trafficking task force created by the Legislature through LB1145 in 2012. I testify today in support of LB294. Earlier this year, the human trafficking task force unanimously adopted a number of findings or recommendations. This bill incorporates the recommendations, strengthens enforcement measures in the same manner as LB605 addresses the recommendations made by the legislative-created committee. I have submitted a letter setting forth the task force's findings and recommendations and ask that it may be part of this record. As the task force concluded, human trafficking is a criminal enterprise subject to business principles such as supply, demand, profitability, and risk management. Section 10 addresses the demand principle by raising the penalty of those...on those soliciting trafficking victims and mandating a treatment program if probation is imposed. Section 11 and 12 attacks supply and logistics by raising penalties for those who coerce or entice victims into trafficking and those who maintain places used for such business. All three provisions raise risk factors for traffickers. Section 13 specifically addresses labor and sex trafficking by clarifying classifications of punishments. The bill also establishes a civil remedy for trafficking victims to discourage wrongfully obtained proceeds and empower victims. Further, this bill forces traffickers to help fund badly needed treatment programs for their victims by establishing a forfeiture provision from which all proceeds are used for victim services. Sections 6, 7, 8, 14, 15, 26, and 27 all deal with investigation and prosecution issues such as allowing the discreet service of investigative process on entities doing business with Nebraska, like Backpage and Craigslist. They can...those

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

individuals...those organizations are using...are used for recruitment and advertisement of solicitation for the traffickers. As in all modern business, social media is an ever-growing tool in trafficking enterprises. The bill also expands the use of prior out-of-state incidents of sexual assault and subsequent sexual assault prosecutions to address the transient nature of this criminal enterprise. Finally, a major component of this bill is the return of the juvenile court delinquency jurisdiction, the matter that you were speaking of previously. Currently, juvenile courts don't have the adequate ability to enforce treatment orders for the juveniles that restrain their liberty during the rehabilitation process. We're asking them to do the job with one hand tied behind their back. The nature of these situations do not lend themselves to successful adult voluntary treatment programs. The only current placement options the courts have for these untreated juveniles are either back in their original homes or into an inadequately prepared foster home. The court needs its full discretion returned to deal with these situations. Other practicing professionals are here today and they will testify about those situations in greater detail. In closing, it's very important to remember that labor and sex trafficking victims are almost entirely from the at-risk groups of our society. Runaways, mentally ill, homeless, undocumented immigrants, and other groups of vulnerable people are the ones that are targeted. And I see my red light came on, so I guess I'll stop there and see if there's any questions. [LB294]

SENATOR SEILER: Do you have anything further to... [LB294]

JOHN FREUDENBERG: I do, just a few more seconds of it, actually. [LB294]

SENATOR SEILER: Go ahead. [LB294]

JOHN FREUDENBERG: These people have very little protection from this type of secretive and hidden exploitation. They are being forced to do things such as commit sex acts for money, manufacture pornography, work as indentured servants, laborers, exotic dancers, or in massage parlors. We must act to raise the traffickers' level of risk, limit their supply of potential victims, decrease the demand for their exploitative product, and ultimately reduce the profitability of these criminal enterprises to a point where Nebraska is a bad place for human traffickers to conduct these type of businesses. Thank you. And I'd be happy to answer any questions that you might have. [LB294]

SENATOR SEILER: Senator Krist. [LB294]

SENATOR KRIST: So in all cases you believe it's better to criminalize the person who has been kidnapped and forced to do what they need to do to survive on the street? [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

JOHN FREUDENBERG: This is not criminalization by any means. There are two systems in Nebraska. There is the criminal system and there is no juvenile prostitution criminalized. It specifically says there's no criminalization of this. There is...juvenile delinquency and juvenile status offenses is the separate side of it. We have experts who will testify after me about specific instances where it applies. What we're asking is to replace this back under delinquency instead of leaving it as a status offense. If you put it back under delinquency, then the court has the full gambit of everything to choose from how to deal with the situation. As we have it now, they do not have any ability for any kind of detention or any way to help that...help force a person who has been mentally coerced by these traffickers, basically brainwashed--they love them, they've got them hooked on drugs, all these different situations. Those are the people you're missing how we have it here. There's nothing to address them. There is no authority for the court to force them to do anything. So that group gets put in a foster home, so there's an untreated, unrehabilitated child prostitute put in an unprepared foster home. [LB294]

SENATOR KRIST: Okay. In your scenario, you're right. In my scenario, there is Boys Town, there's treatment therapies, there are other things where we have an option to put them in. In your scenario, the next thing that's going to happen, they're going to end up in YRTC-Geneva. [LB294]

JOHN FREUDENBERG: Senator, in my scenario the judge has the full gambit. [LB294]

SENATOR KRIST: Exactly. [LB294]

JOHN FREUDENBERG: He can do anything. [LB294]

SENATOR KRIST: Exactly. [LB294]

JOHN FREUDENBERG: All I'm saying is give him the power back to do it instead of making him fight with one hand tied behind his back. [LB294]

SENATOR KRIST: Well, I understand your point. [LB294]

JOHN FREUDENBERG: He does not have any ability... [LB294]

SENATOR KRIST: Excuse me. [LB294]

JOHN FREUDENBERG: He does not have any ability... [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR KRIST: I understand your point, but we went through... [LB294]

JOHN FREUDENBERG: I was just trying to answer the question, Senator, I'm sorry. [LB294]

SENATOR KRIST: No, I think you're going on. [LB294]

SENATOR SEILER: No. [LB294]

SENATOR KRIST: I'm saying we made the point the last few years to try to decriminalize and to provide treatment, not get them into the juvenile court system where they can be expanded into the juvenile court system further and further and further and there was no end to it. And that was the case studies we looked at when we made those decisions a couple years ago. So I appreciate your input. I...that's the answer I expected. I appreciate it's on the record. [LB294]

JOHN FREUDENBERG: We have no intention to try to overpunish children. We are all in the same boat. We want the best thing for them. [LB294]

SENATOR KRIST: Thank you for your answer. [LB294]

JOHN FREUDENBERG: And there's a group that is not being affected with the way the law is now and there will be others to testify it later. [LB294]

SENATOR SEILER: Ladies and gentlemen, what I was trying to stop was they were both talking at the same time. I'm sure there's a transcriber sitting behind this microphone going crazy trying to get both testimonies, so one speak at a time. We'll let you all speak. Any other questions? Yes, Senator Coash. [LB294]

SENATOR COASH: Thank you, Chairman Seiler. I think I'm tracking the back-and-forth you've had with Senator Krist. Under the current law, can a judge order treatment for a juvenile who is caught up in this? [LB294]

JOHN FREUDENBERG: They can order treatment. I am going to let you know there's someone coming behind me, a juvenile court prosecutor from Douglas County who knows this matter better than I. [LB294]

SENATOR COASH: Okay. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

JOHN FREUDENBERG: So I'll...if I misspeak, I'm hoping she corrects me. My understanding, they can order treatment, there's just no way to mandate it to happen. [LB294]

SENATOR COASH: Okay. They can order it but they can't mandate it? [LB294]

JOHN FREUDENBERG: If the person refuses to do it or runs away or anything of that matter, there is no detention or any other iron fist inside the velvet glove to encourage it to happen. [LB294]

SENATOR COASH: Okay. And that's what you're attempting...that's what that part of the bill that Senator Krist was talking about, that's your...that's the bill's attempt at giving some teeth to the judge, giving some power to the judge to be able to make sure that happens. Is that correct? [LB294]

JOHN FREUDENBERG: Absolutely. And we trust our judges. The judges are going to do what they think is best in the juvenile's interest. If they don't believe the subsequent steps are necessary, they won't be taken. [LB294]

SENATOR COASH: What would...what kind of crime under...we're going from a status offense to a... [LB294]

JOHN FREUDENBERG: They call it delinquency. [LB294]

SENATOR COASH: To a delinquency? So what becomes the crime that is used to give that judge that grab? What would be the crime? [LB294]

JOHN FREUDENBERG: Under the statute there is a creation of a special provision which, if you were eligible to be prosecuted for prostitution in the adult court, the provision says you are not allowed to be...do that. You cannot be prosecuted in the adult court as a juvenile for prostitution. But if you would have fell under that, now you have...the juvenile court has jurisdiction over your matter. [LB294]

SENATOR COASH: Okay. Did...is the Attorney General's Office...do they...do you have a representative on the human trafficking task force? [LB294]

JOHN FREUDENBERG: I am the representative. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR COASH: You are the representative. [LB294]

JOHN FREUDENBERG: That's correct. [LB294]

SENATOR COASH: So was this part fleshed out pretty good within that task force's meetings? Because, I mean, I remember, as Senator Krist does, a lot of discussion about not wanting to criminalize victims. So I just wanted to get on record, did that part of this bill get talked about and fleshed out within the task force? [LB294]

JOHN FREUDENBERG: It did. What we had was we had presenters and practitioners who came in and told us the horror stories of what's going on right now with the way the system is since it's been changed. [LB294]

SENATOR COASH: Okay. [LB294]

JOHN FREUDENBERG: And two of those individuals are here today. [LB294]

SENATOR COASH: Okay. I'll defer to them. I'll tee that up for them. Thank you, Mr. Chairman. [LB294]

SENATOR SEILER: Any further questions? Senator Williams. [LB294]

SENATOR WILLIAMS: Thank you, Senator Seiler. One quick question, and I bring this up because of the introducer's statement originally. Would you say that there is more of this activity going on in Nebraska because our penalties are lower than Iowa? [LB294]

JOHN FREUDENBERG: I think, to be fair, it is hard to gauge how much is actually going on. That is a significant portion of what the human trafficking task force is doing is to understand the degree that this is going on. It's a hidden and secretive crime where usually the victims will not come forward and, you know, sell out their abusers and, as such, I cannot tell you if we have more or less in the surrounding states. [LB294]

SENATOR WILLIAMS: Okay. [LB294]

JOHN FREUDENBERG: I mean there may be people who have access to that information on states, but I am not aware of it. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR WILLIAMS: Thank you. [LB294]

SENATOR SEILER: Senator Morfeld. [LB294]

SENATOR MORFELD: Do you have to go soon? [LB294]

SENATOR KRIST: No, go ahead. [LB294]

SENATOR MORFELD: Okay. So just trying to wrap my head around this a little bit. So with...if we instead change this back in this legislation to a 3(a) or a 3(b) status offense, you're saying that the treatment that is necessary for the minor to get, it wouldn't be available? [LB294]

JOHN FREUDENBERG: I'm not saying it would not be available. I am saying there is no way to mandate them to do it. [LB294]

SENATOR MORFELD: Okay. And so what you're trying to do is then get them into the juvenile court system. What resources are currently available in the juvenile court system that aren't available... [LB294]

JOHN FREUDENBERG: Well, you have detention available and juvenile detention available as to his encouragement. Also, that juvenile detention is...can be done immediately, which is very important when you're trying to separate a psychological connection between a trafficker and the abused traffic victim. If you cannot separate that, then it's going to be very difficult. And we do not know who the trafficker is normally when the person is caught for committing the prostitution offense. [LB294]

SENATOR MORFELD: Okay, now that they're in detention...I notice that there's no fiscal note for this or anything like that. Now that they're in detention, are the resources available for them and the programs available for them in detention? Because what we're seeing in the corrections systems as it is, for adults at least, there are not the programmatic resources necessary once people are incarcerated. [LB294]

JOHN FREUDENBERG: This is not closed-off detention. [LB294]

SENATOR MORFELD: Okay. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

JOHN FREUDENBERG: These people can be transported to the exact same services they would have received if they were not in detention. [LB294]

SENATOR MORFELD: Okay. So the difference is, is that there's an easier mechanism for them to be forced into those services and then also detached from potential... [LB294]

JOHN FREUDENBERG: If you...if a judge runs into someone who is refusing treatment, this gives them an option to deal with that situation. The judge is not required to do this, by any means. They have the full gambit to handle everything. They don't have to detain at all. If they come here and say, wow, this person ran away from mom or dad and they're sitting right there and they...she wants to go back, they can go back right now. But if they come back and say, if you put me back in there I'm out tonight, well, then they have the ability to say, okay, well, we have to find a safe place for this person to be tonight. [LB294]

SENATOR MORFELD: Okay. And so based on your experience with this, is it more of a...is it more of the issue that you're trying to detach them from the potential pimp and abuser or is it more of the youth is refusing to receive the services that they need in order to move forward? [LB294]

JOHN FREUDENBERG: I would say it's both and the reason I say that is because, well... [LB294]

SENATOR MORFELD: It's both equally? [LB294]

JOHN FREUDENBERG: I can't say equally... [LB294]

SENATOR MORFELD: Yeah. [LB294]

JOHN FREUDENBERG: ...because every situation is individualized. There's going to be situations where they don't have to do this at all and that is fine and... [LB294]

SENATOR MORFELD: But either way, under this law we'd be criminalizing it. [LB294]

JOHN FREUDENBERG: No, it's not criminalizing. This is juvenile court adjudication that's sealed upon their turning of certain age by acts of this Legislature. [LB294]

SENATOR MORFELD: Okay. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

JOHN FREUDENBERG: So this...there is no criminalization of this, by any means. This is just giving the judge more authority to do it. [LB294]

SENATOR MORFELD: Okay. [LB294]

JOHN FREUDENBERG: And if they...this committee wants to work with it and change so the court has that authority under a 3(b), under a status offense, that's fine. It's all semantics. I don't care what you call it. We just have to give the court the authority to handle these tough situations. [LB294]

SENATOR MORFELD: Thank you. [LB294]

SENATOR SEILER: Senator Krist. [LB294]

SENATOR KRIST: I spent the last two or three years with the Juvenile Detention Alternative Initiative which is trying to keep kids out of detention, and you want to put kids in detention, rather than finding another solution, to allow them to get the treatment that they want. [LB294]

JOHN FREUDENBERG: I do not... [LB294]

SENATOR KRIST: I just want to make... [LB294]

JOHN FREUDENBERG: Sorry. [LB294]

SENATOR KRIST: I just want to make this sure, that you understand it's a hot button for me, obviously, okay? And every time we take a kid and we automatically put them in the juvenile justice system, the probation...there is no fiscal note in here. This probation fiscal note is going to have to be considered. So it just doesn't make any sense. We just came from a point of...whether you call it criminalization or not, you're going to pull the kid out of the situation, the child out of the situation, and you're going to put them in the juvenile court system without trying anything else. And that's going to be the first line of defense; that's going to be the first thing that we do. We're right back to where we were two to three years ago. [LB294]

JOHN FREUDENBERG: May I respond? [LB294]

SENATOR KRIST: Go. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

JOHN FREUDENBERG: I do not want to put any child in detention to begin with. What I want is I want to give the court, who we're going to trust to review all situations here, the power to do what's needed for these kids. [LB294]

SENATOR KRIST: Okay. [LB294]

JOHN FREUDENBERG: We...I have no power to put anyone in detention. The court will be the one who decides. [LB294]

SENATOR KRIST: If I follow that line of reasoning, and you just told me that the juvenile court system is not criminalization yet you want to put them in detention or give the court the opportunity to put them in detention, that is the criminal justice system for the child. We're going to lock them up. We're going to put them in detention. And all I'm saying is that there may be another possibility here. I mean, just because it's not black and white, okay, I believe that if a child is caught in a situation like this and they are offered the right kind of treatment or put in the right kind of treatment, the way we're currently doing it, I just favor that over sticking them back in juvenile court again. [LB294]

JOHN FREUDENBERG: My response to that is that you're ignoring the hard-core cases and we're going to lose them because of it. [LB294]

SENATOR KRIST: All right. Thanks. [LB294]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB294]

JOHN FREUDENBERG: Thank you. [LB294]

SENATOR SEILER: Next proponent. [LB294]

NICOLE BRUNDO: Good afternoon. My name is Nicole Brundo. I'm a deputy Douglas County attorney assigned to the juvenile division. I'm a proponent of LB294. I think I would like to start off answering some of the questions that were asked earlier. Two years ago, when the law was in its present state, at that time most juveniles being cited with prostitution were 16 or 17 years old and they were ticketed and they were taken through the adult system. They were criminalized, in my opinion. With the statute changes over the last couple of years, we went from that and skipped over a delinquency filing in juvenile court, where it is not criminalization but it is rehabilitation, and we went all the way over to the child welfare system. So what is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

occurring...and I'm speaking to the approximate four cases that are the cases that came through Douglas County Juvenile Court since the law change. When we file under... [LB294]

SENATOR SEILER: Excuse me, ma'am. [LB294]

NICOLE BRUNDO: Yes. [LB294]

SENATOR SEILER: Did you say four cases? [LB294]

NICOLE BRUNDO: Yes. [LB294]

SENATOR SEILER: Thank you. [LB294]

NICOLE BRUNDO: Yes, of juveniles who were...would have otherwise before the law been ticketed for prostitution and been prosecuted in adult court who were instead placed into CPS's custody and, pursuant to the law, our office had to file what's called an abuse, neglect, or dependency against the parent. So these filings are, again, against the parent. The juvenile never comes to court. They are considered at risk by the nature of having their parent be their parent. Those are the cases that we went forward on. The responsibility therein lied with Child Protective Services, and in Douglas County with Nebraska Families Collaborative, to provide the services, the assessments. I don't believe they were equipped to do that. Of the four, I know two for sure left the jurisdiction. One had run away before the 48 hours had even expired for us to get a pleading on file, making it difficult for us to even allege that they were living or to be found in Douglas County. There is one that received appropriate services and we did that through a status docket where she came before the court. She was not, in my opinion, not thrown in detention and locked up because the juvenile detention center is a temporary placement for juveniles who are a danger to self or others or flight risk and she fit in that category. That was temporary until applications could be made to a specific facility for sexually exploited juveniles and this juvenile received the treatment necessary and I do believe is rehabilitated. We were not able to do that for the other ones who were...pursuant to the new law we went forward on what we call a 3(a), which is a child welfare proceeding. Slight confusion in the prior testimony about the 3(a)'s--I'm sorry. [LB294]

SENATOR SEILER: Your red light is on. Do you have any further testimony? [LB294]

NICOLE BRUNDO: I would like to explain a 3a is the statute 43-247(3)(a) which is considered a child welfare pleading. It is against the parent. A 3(b) is a status. A delinquency could be a 43-427(1) or (2). Possibly, Senator, when you suggested not ending up at Kearney or Geneva,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

one possible idea would be the status route wherein you could not be committed to Kearney or Geneva. But the issue with that would be the temporary detention would be eliminated and in order to get treatment some of them are going to need to be temporarily detained at a youth detention facility to line up the applications from those places. [LB294]

SENATOR SEILER: Yes, Senator Krist. [LB294]

SENATOR KRIST: So just to follow up real quick, you did succeed in getting somebody treatment given the law that's currently in place. You did succeed with... [LB294]

NICOLE BRUNDO: No, we had to file...what...it...we almost circumvented it, Senator. Because of the runaway history, we were able to legitimately file a petition against her as opposed to...and the other circumstances. And typically now, under the new law, we would only be able to file it against the parent. So I have to honestly answer no. [LB294]

SENATOR KRIST: Okay. There has to be a way to do this without sticking these kids in the juvenile justice system because you're not...there's no guarantee that they're not going to end up at Geneva or, for that matter, Kearney, depending upon what kind of sexual relationships are going on. I just... [LB294]

NICOLE BRUNDO: I respectfully do understand and that is true. It would be...and that's true for anyone with a delinquency in juvenile court. But the whole premise of juvenile court is rehabilitation and finding a placement and services prior to that last stop. [LB294]

SENATOR KRIST: But, Nicole,... [LB294]

NICOLE BRUNDO: Yes. [LB294]

SENATOR KRIST: ...I mean, tell Judge Crnkovich that. Okay? I mean I'm looking at the worst-case scenario. We put this back into place and they go into Crnkovich's court, they're going to Geneva, they're going to go to YRTC-Kearney. There's nobody that's going to tell that judge not to do what the law enables her to do. That's my fear. There has to be a way to get these kids treatment without recriminalizing it, using that term loosely. [LB294]

NICOLE BRUNDO: I understand, right. [LB294]

SENATOR KRIST: Okay, thank you. I appreciate it. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SEILER: Senator Coash. [LB294]

SENATOR COASH: Thank you, Senator Seiler. I want to just talk a little bit or ask you some questions about the context and environment of the treatment that we've been discussing... [LB294]

NICOLE BRUNDO: Yes. [LB294]

SENATOR COASH: ...because I don't know if it's clear, at least in my mind. The treatment that the victims...your...that you've worked with, the treatment that they've received, was it community based or was it treatment that they could only receive by virtue of their detainment? [LB294]

NICOLE BRUNDO: It doesn't only have to be by virtue of their detainment, at all. There are certain...it's always case by case. I'm very careful to always say that. There are certain cases where they would be gone--they would flee--before we could get them that service, and so on those occasions detention may be necessary. But there could be community-based services. My...the placement that the one particular juvenile I'm speaking about was not in Nebraska. It was a specific placement for sexually exploited juveniles that was in the best interest in this particular case. [LB294]

SENATOR COASH: Right. Okay, so I'm just...I just...I think there's some confusion. I'm sad that Senator Krist had to leave, but...because I think there's a perception out there or...and I want you to correct it if it's incorrect, that the only way to get treatment, the kind of treatment that these victims would need, is by detaining them and that's not the case. Is that... [LB294]

NICOLE BRUNDO: Right, that's not the case. [LB294]

SENATOR COASH: That's correct. So you're not...this bill isn't asking for the only way we can get treatment is by detaining them. [LB294]

NICOLE BRUNDO: Correct. [LB294]

SENATOR COASH: Okay. I think that's where... [LB294]

NICOLE BRUNDO: Right. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR COASH: ...there's some confusion here. What this bill is trying to say is there is treatment available in the community and in order for the juvenile to...in order for the judge to say, you have to go, this is part of your rehabilitation, you have to comply and you need to go and get this treatment, the only way we can do that is through the 3(b), filing them as a 3(b) case, right? [LB294]

NICOLE BRUNDO: Or a delinquency, the delinquency really. [LB294]

SENATOR COASH: A delinquency case, right? [LB294]

NICOLE BRUNDO: Yes. [LB294]

SENATOR COASH: Because if they're...if not, these victims, a lot of times they'll bail, won't they? [LB294]

NICOLE BRUNDO: Yes. [LB294]

SENATOR COASH: They'll run back to the pimps, right? I mean sometimes the psychological hold on... [LB294]

NICOLE BRUNDO: To be honest with you, one ran away back to her hometown where she was enrolled in college. That's why I say... [LB294]

SENATOR COASH: Well, that would tell me that juvenile didn't need treatment. I mean... [LB294]

NICOLE BRUNDO: But that's why it's case by case, depending on...there are different levels of victimization and depending on where on that spectrum each particular juvenile falls should determine which type of pleading is filed. So I do not want to mislead anyone into thinking that we would file a delinquency across the board. It's very... [LB294]

SENATOR COASH: It's...if you... [LB294]

NICOLE BRUNDO: Does that make sense? [LB294]

SENATOR COASH: Yeah, it's if it's needed. And I'll just end with this: I understand...I'm much more clear through this discussion on what this bill does. I understand it and I can support it on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

its face. But I really am with Senator Krist here that I don't think Judge Crnkovich would follow this at all and I think she would send every single person to juvenile detention and that makes me nervous. So I hate to throw the baby out with the bathwater here, and I know we can't amend her court out of this bill, but that's my (laughter)...that's frankly my...that's a concern of mine. So I just want that on the record. You don't have to respond if you don't want to. [LB294]

NICOLE BRUNDO: Okay. [LB294]

SENATOR SEILER: Ma'am, I have one question. [LB294]

NICOLE BRUNDO: Yes. [LB294]

SENATOR SEILER: On a number of hearings we've had in different settings, we've heard that you've had to refer people out of this state. [LB294]

NICOLE BRUNDO: Yes. [LB294]

SENATOR SEILER: And is...describe that facility that you're referring them to. [LB294]

NICOLE BRUNDO: I have not personally been there. I have reviewed their materials. [LB294]

SENATOR SEILER: But what do they provide? [LB294]

NICOLE BRUNDO: They...a specialized program for juveniles both male and female that have been sexually exploited. [LB294]

SENATOR SEILER: Okay. [LB294]

NICOLE BRUNDO: That's the best way that I could describe it to you. [LB294]

SENATOR SEILER: The next question I have is, do we have a volume large enough for us to be building such a facility? [LB294]

NICOLE BRUNDO: All...the only... [LB294]

SENATOR SEILER: I see a lot of nodding heads in the background. [LB294]

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Transcriber's Office

Judiciary Committee
March 04, 2015

NICOLE BRUNDO: Yeah, and so the only thing I could say that would be factual is that over the course of an approximate 12-month period of time, being 2014, that approximately four juveniles were in the act of engaging in prostitution and at that time and moment would have been ticketed for it but for the new law were placed into protective custody pursuant to the law. That's what I can speak to. [LB294]

SENATOR SEILER: Okay, that's fine. We have certain people that have been assigned to looking at institutions. [LB294]

NICOLE BRUNDO: Okay. [LB294]

SENATOR SEILER: So I just wanted to bring that out. Any further questions? Yes, Senator Chambers. [LB294]

SENATOR CHAMBERS: When these children are sent out of state, are they sent against their will or the will of their parents or guardian? [LB294]

NICOLE BRUNDO: It would be akin, Senator, to any other delinquency in juvenile court wherein, after the allegation was proven true by a preponderance of the evidence, the court then obtained jurisdiction and that was their disposition akin to adult sentencing that they ordered. So I would have to look back at each of the four--well, we only had the one that kind of went through the juvenile justice part--to see if they were in agreement or not. But it is possible, in all honesty, that on some cases in juvenile court that the judges do order dispositional orders that are not always agreed to by the juvenile and/or their parent. [LB294]

SENATOR CHAMBERS: Are you aware that under the constitution somebody convicted of a crime in Nebraska cannot be sent to another state, transported to another state to serve? [LB294]

NICOLE BRUNDO: I am but this is different because it's...under the law it's not even an arrest when a juvenile is cited by police. It is not a crime. It's a delinquency. It is a finding of true. It is a disposition. It is not a conviction. And as stated earlier, the record can and will be sealed if the juvenile successfully completes the disposition of the court. This is why we have juvenile court across the country. [LB294]

SENATOR CHAMBERS: Now... [LB294]

NICOLE BRUNDO: It is for rehabilitation of young people. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR CHAMBERS: Back to my original question,... [LB294]

NICOLE BRUNDO: Yes. [LB294]

SENATOR CHAMBERS: ...are these transportings to another state voluntary on the part of the parents or the guardian or the child? [LB294]

NICOLE BRUNDO: The arrangements for the out-of-state placements, and there's been much emphasis on keeping young people within the state, but when they are ordered out of the state, those arrangements are made either by probation or by HHS/NFC. [LB294]

SENATOR CHAMBERS: And that could be prevented by statute, couldn't it? Well, yeah, we can prevent that from happening. [LB294]

NICOLE BRUNDO: I understand. [LB294]

SENATOR CHAMBERS: And if we prevented it from happening, what would happen? [LB294]

NICOLE BRUNDO: We would need to rely on our state to have the services that are currently not available within our state that judges are finding themselves ordering out-of-home placements to meet the needs of our people, of our juveniles of Nebraska. [LB294]

SENATOR CHAMBERS: Has that effort ever been undertaken? [LB294]

NICOLE BRUNDO: I think it's been discussed for many years and that there is...there are very many people in the juvenile justice/child welfare system who would like to see all of the Nebraska juveniles' needs be met within the state of Nebraska, yes, sir. [LB294]

SENATOR CHAMBERS: If this bill were not passed into law, what difference would it make? [LB294]

NICOLE BRUNDO: The legislative bill that's in front of you today? [LB294]

SENATOR CHAMBERS: This bill right here, if it were not enacted into law. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

NICOLE BRUNDO: We would continue to not be able to, in my opinion, effectively provide the exact, specific services for this population of youth. Again, because their parents are coming to court, the action is against the parent. It's just a very...a child welfare case is very different than a rehabilitative delinquency case against the young person. [LB294]

SENATOR CHAMBERS: These decisions, to me, as I've listened to everything, and I haven't asked questions, I'm picturing in my mind a checkerboard and all the people running the system are playing with the checkers and the checkers are the children and the families. [LB294]

NICOLE BRUNDO: I understand. [LB294]

SENATOR CHAMBERS: And I'm not satisfied with what is being done and I don't like the notion of criminalizing where there is not criminalization now, so I would look at this whole thing with a jaundiced eye. And I have been listening to what I heard and I'm not convinced, just so that my silence doesn't indicate consent... [LB294]

NICOLE BRUNDO: Okay. [LB294]

SENATOR CHAMBERS: ...with everything that's being presented here. And that's all I would have, Mr. Chairman. [LB294]

SENATOR SEILER: Anyone else? Thank you for your testimonies. [LB294]

NICOLE BRUNDO: Thank you. [LB294]

SENATOR SEILER: Next proponent. [LB294]

WEYSAN DUN: Mr. Chairman, members of the Legislature, I'm here today to offer my support for LB294. I am Weysan Dun. I served for 30 years as a special agent of the FBI and I retired from the FBI in 2012 as the special agent in charge of the FBI for all of Nebraska and Iowa. [LB294]

SENATOR SEILER: Sir, would you spell...pronounce and spell your name for the record. [LB294]

WEYSAN DUN: Certainly. Weysan is W-e-y-s-a-n. Dun is D-u-n. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SEILER: Thank you. [LB294]

WEYSAN DUN: You're welcome. [LB294]

SENATOR SEILER: Go ahead. [LB294]

WEYSAN DUN: As I was saying, I retired in 2012 as the special agent in charge of the FBI for all of Nebraska and Iowa, and I currently serve on the Nebraska Governor's task force on human trafficking. I would like to point out that in my opinion the human trafficking problem is very real, it is serious, and it exists here in Nebraska. Human trafficking is vastly underreported because its victims are almost always under coercion and are often completely dependent on the criminals who victimize them for even the most basic necessities of life. I was the special agent in charge of the FBI when it established its Innocence Lost task force in Nebraska. That task force was established in 2010 specifically to combat the sexual trafficking of children and minors. The fact that this task force continues to be very active to this day, five years after it was initiated, and has had a continually increasing caseload I think supports the fact that human trafficking is a crime problem that exists here in Nebraska. Nebraska has already taken some meaningful steps to address this crime problem but more needs to be done. LB294 contains numerous provisions that would enhance the ability of law enforcement agencies in Nebraska to address the crime problem. And while I support all the provisions of LB294, I would like to highlight a few that I consider most important. First of all, the increase of penalties for both the perpetrators of the crime, as well as for those who are consumers, will serve as not only a more effective deterrent but potentially allow law enforcement added leverage to gain cooperation against organized criminal enterprises who are engaged in this activity. Finally, as has already been discussed, LB294 also fixes the unintended consequence created by previous legislation whereas law enforcement is now unable to adjudicate minor children in juvenile court for engaging in prostitution. This is an unintended consequence but it has resulted literally in minors who are released and immediately return to their pimps despite whatever efforts the system may take to try to seek treatment or rehabilitation for them. And finally, the creation of civil penalty for forfeiture of assets derived from human trafficking I think further assists law enforcement by tackling the profit motive of the criminals and more specifically by directing those assets to victims' assistance funding to assist the victims. I'd be happy to answer any questions you have at this time. [LB294]

SENATOR SEILER: Senator Williams. [LB294]

SENATOR WILLIAMS: Thank you, Senator Seiler. One quick question, Mr. Dun. Thank you for being here. And you mentioned that you were in Iowa and Nebraska and I asked the question

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

earlier about the penalty situation in Iowa versus the penalty situation in Nebraska. Do you have any comments on that? [LB294]

WEYSAN DUN: Yes, sir, Senator Williams. While I cannot give you specific numbers, I can tell you that there is a perception in some circles that because the penalties here in Nebraska heretofore are not as severe, that it is easier to operate on this side of the river. Again, that's only a perception. I can't back that up with any specific numbers. [LB294]

SENATOR WILLIAMS: Thank you. [LB294]

SENATOR SEILER: Senator Chambers. [LB294]

SENATOR CHAMBERS: When did you say you retired? [LB294]

WEYSAN DUN: Two-thousand twelve, sir. [LB294]

SENATOR CHAMBERS: Was your office located in Iowa or Nebraska? [LB294]

WEYSAN DUN: My office was located in Omaha. [LB294]

SENATOR CHAMBERS: Omaha. [LB294]

WEYSAN DUN: But we covered all of Iowa and all of Nebraska with a number of satellite offices, as well. [LB294]

SENATOR CHAMBERS: If somebody had written a letter to the agent in charge, you would be the person to whom that would have been directed, or would there be somebody else who screens mail? [LB294]

WEYSAN DUN: Both, but when I was the special agent in charge I made sure any letters directed to me were brought to my attention. [LB294]

SENATOR CHAMBERS: So if I wrote a letter and never got an acknowledgment, it would mean that you didn't think it was worthy of an acknowledgment? "If"--this is all hypothetical. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

WEYSAN DUN: Potentially, sir, that could be one interpretation. I do recall receiving letters from you and they did not request a specific response, to my recollection, but I did enjoy reading all of your letters, sir. [LB294]

SENATOR CHAMBERS: So you felt that if I sent a letter to you it was for your enjoyment? [LB294]

WEYSAN DUN: Well, the one that I recall most recently, prior to my retirement, was one where you specifically were just offering some thoughts and, at least to my recollection, did not request a response. Any time a response was requested, I can assure you, I would have replied. Now maybe something fell through the cracks, but the ones that I personally saw I ensured we replied where a response was requested. [LB294]

SENATOR CHAMBERS: So if an official writes a letter to the agent in charge, there should be a request that a response be given? [LB294]

WEYSAN DUN: That would be the clearest way to do it, sir, because so many items of correspondence are received that it would be very difficult to try to respond to every single piece of correspondence that comes into the office. [LB294]

SENATOR CHAMBERS: Here's what I'm getting at. Is that the protocol followed by the FBI in Nebraska, the special agents who are in Nebraska, that unless an official specifically requests a response or reply, none is given? [LB294]

WEYSAN DUN: I wouldn't say that's the protocol, sir. Every letter is addressed on a case-by-case basis and where a response is warranted one is given. [LB294]

SENATOR CHAMBERS: Many times a person formulates an opinion about a bureaucracy and the bureaucrats therein based on how much regard they seem to have for officials or even members of the public, and I don't recall reading anything in any publications or articles pertaining to the FBI and how it operates that unless a specific request is made for a response there will be none. So I'm just letting you know that and you don't even have to respond to that because I'm not asking in this case for a response. I'm just putting something on the record. That's all I have. Thank you. [LB294]

WEYSAN DUN: Well, thank you, sir. And I didn't say that the protocol was that you have to request a response. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR CHAMBERS: Well, you don't have to respond. See, when I wrote something that was serious, you didn't respond because it wasn't requested. Now I'm telling you I'm not looking for a response from you in this instance. Thank you. [LB294]

WEYSAN DUN: Thank you, sir. [LB294]

SENATOR SEILER: Further questions? Sir, I have one. [LB294]

WEYSAN DUN: Yes, sir. [LB294]

SENATOR SEILER: When you arrested people under the trafficking laws, what did you do with the juveniles? Take your...because I don't think the feds have a juvenile system, do you? [LB294]

WEYSAN DUN: As a general practice, the federal law enforcement does not prosecute juveniles. I believe somebody else scheduled to testify today is a former federal prosecutor and probably would be able to give you more accurate testimony in that regard. [LB294]

SENATOR SEILER: Okay. The other thing, you were acting when you said they forfeited some of their assets, money and property that was acquired through this human trafficking. That was under a federal law, wasn't it? [LB294]

WEYSAN DUN: No, I was referring to the fact that LB294 includes that provision. [LB294]

SENATOR SEILER: It does. [LB294]

WEYSAN DUN: And that provision is always beneficial to law enforcement efforts because most crimes of this nature are motivated strictly by the profits. [LB294]

SENATOR SEILER: But back in 2012 I don't think Nebraska had this statute, did it? [LB294]

WEYSAN DUN: No, it did not, sir. [LB294]

SENATOR SEILER: So you used a federal law to...or were you just saying this is a good law? [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

WEYSAN DUN: I was just saying that this is a good law. [LB294]

SENATOR SEILER: Okay, that's what I wanted to clarify. Thank you. Any other questions? Seeing none, thank you very much for your testimony. [LB294]

WEYSAN DUN: You're welcome. [LB294]

SENATOR SEILER: Next proponent. [LB294]

AMBER SCHLOTE: Good afternoon. My name is Amber Schlote. I am a detective with the Omaha Police Department. I've been with the department for ten years and I am currently assigned to the vice unit. Prior to that, I was assigned to the child victim unit where I worked crimes against children. I also am a task force officer with the Omaha Child Exploitation Task Force. The task force was formerly known as the Innocence Lost task force and was started officially in the Omaha metro area in 2010. From 2011 to the present, the Omaha Police Department has been a part of 567 prostitution arrests. That includes clients and prostitutes themselves. That does not include arrests made outside of the Omaha area. We often assist Council Bluffs or Lincoln with their vice operations as well. Of those...out of those numbers, over 20 juveniles have been recovered participating in this or as a part of trafficking operations. Between 2010 and the present, the task force has been responsible for at least 29 federal trafficking indictments. At this time there are only three that we're awaiting convictions on that have been indicted. The others were all convicted. In the last 44 working days of the year, so since January 1, the 44 days that my unit has worked we've made 25 arrests, 3 prostitution arrests within the last week in Lincoln, and in the last week I can tell you that I've received reports for two separate juveniles suspected of being trafficked that we are following up on at this time. The National Center for Missing and Exploited Children estimates that one in six endangered runaways reported to them are likely victims of sex trafficking and, of those, an estimated 68 percent were in the care of social services or foster care when they ran. There's been a lot of discussion about the bill that was passed in 2013 stating that juveniles could no longer be arrested for prostitution. The pros to that legislation was that it no longer labeled these victims as delinquents. The cons to that legislation, there was no follow-through. There's nothing in the legislation to say that certain services are required to be provided for these juveniles. They often suffer from severe mental issues such as depression, anxiety, and PTSD. That's my red light. Sorry about that. [LB294]

SENATOR SEILER: Do you have anything further you'd like to...I think, Senator Williams, did you have a motion? [LB294]

SENATOR WILLIAMS: Yes. I'd like you to go ahead with your testimony. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

AMBER SCHLOTE: Yes, sir, thank you. Like I said, there was no follow-through with the legislation. We were not able to provide specific services to this particular population. Those services are not available in the state of Nebraska. Anecdotally, I can tell you that I've had victims come to me after receiving treatment, therapy, and say, you know what, I felt like I was educating the therapist because they had absolutely no idea what I have gone through, they don't know anything about the dynamics of a human trafficking situation. There's been discussion about detention, as well. My view on that is that since the legislation passed, every child that we have placed in foster care in the system has run within 24-48 hours. Detaining the child, not necessarily as a criminal but having a window of, say, even 48 hours, gives law enforcement and victim services time to interview the child, find out what services they need, assess that situation, and make sure that those services are available or that they can be obtained. The bill also allowed for the easier recruitment of these minors. It's easier to recruit a child when that child knows that there are no repercussions for the activities that they are a part of. It's a very glamorized business. In 2013, the American Center for Law and Justice and Shared Hope International issued a report card for Nebraska after analyzing its actions and legislation in regard to trafficking. We got a D, and one of the major factors for that rating was the fact that services and housing specifically designed to meet the needs of this population are not statutorily mandated, so we don't have these services. I can tell you that we've heard from several of the minors that we've come into contact with in the last five years. The ones that have been sent out of state to facilities that are specifically for this population have said that was the best thing that could ever happen to them because they knew if they stayed in their comfort zone they would be right back in it because that's the life they know, those are the people that they know and the situation that they found themselves in. There was discussion about whether or not parents, family members are okay with this. A lot of these kids don't have family members that care. It is the court system that is acting in their best interest. There was also discussion about money. Money is the main driver of this business. It is the second fastest-growing criminal enterprise behind drug trafficking, and that is according to the Department of Justice. In an Urban Institute study published in 2014, it was estimated based on the study of eight different cities that pimps made anywhere from \$650,000 to \$1.6 million per year. It is an extremely lucrative business. You can sell a girl, you can sell a boy, you can sell a woman or a man thousands of times. They can make you enormous amounts of money because that commodity, unlike drugs where when you sell drugs one time it's sold, you have to go get more to replace it, it's not the same in this situation. These girls can be sold over and over and over again. Are there any questions that I can answer? [LB294]

SENATOR SEILER: Senator Morfeld. [LB294]

SENATOR MORFELD: Thank you for coming to talk about...it seems to me like what's missing here though in this legislation is any substantive services. So my concern is that we give the power to detain or the court the power to detain and they're detained and there's no substantive services that are geared towards these youth facing a very specific issue. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

AMBER SCHLOTE: I agree with you. [LB294]

SENATOR MORFELD: So that's my concern, is putting them in the system and then having some bad actors. And there are some judges here that we've heard about that are bound to just... [LB294]

AMBER SCHLOTE: Yes. [LB294]

SENATOR MORFELD: ...book them and send them off to a detention facility that doesn't have any services. And so I'm having a hard time supporting, and I'm saying this more to them than you, I'm having a hard time supporting this legislation without people coming here and asking and putting their weight and their support behind substantive services, so. [LB294]

AMBER SCHLOTE: I agree with you. [LB294]

SENATOR MORFELD: But I appreciate your testimony. It really helped to shed light into some of the on-the-ground realities. [LB294]

AMBER SCHLOTE: If I could comment? [LB294]

SENATOR MORFELD: Please do. [LB294]

AMBER SCHLOTE: I agree with what you're saying. There are no substantive services available for this population. It is something that needs to be addressed and needs to be looked at. Nebraska is substantially behind several other states in the area in the...in what they're doing to combat this issue. I would say that one of the options that could be looked at is maybe taking advantage of these facilities that are available across the country and having the state look at mandating juveniles get sent to these. I know that there's a facility in Colorado, I believe it's called Southern Peaks, that part of their facility is specifically for sexually exploited children. And they've actually had juveniles from Nebraska sent there and I believe the way it worked was that the state paid for that. [LB294]

SENATOR SEILER: Okay, would you... [LB294]

SENATOR MORFELD: Okay. And just for the record, by saying I'm having a hard time supporting this, I don't mean all of the bill, I mean in particular Section...I believe it's Section 17. But thank you. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SEILER: I have just two things. One, would you--and it'll teach Senator Coash not to leave the room (laughter)--would you send, if you're familiar with those type of homes, would you send it to Senator Coash, the names and addresses? [LB294]

AMBER SCHLOTE: Yes, sir. [LB294]

SENATOR SEILER: And the last is you put down when you signed in that you were neutral. You didn't sound neutral. [LB294]

AMBER SCHLOTE: I understand that but... [LB294]

SENATOR SEILER: You're a proponent? [LB294]

AMBER SCHLOTE: In my position as a police officer I cannot have an opinion either way. It's my job to enforce the law, whatever the law is. [LB294]

SENATOR SEILER: Okay, we thought maybe you just made a mistake. [LB294]

AMBER SCHLOTE: No. My (laughter)...my presence here is to let you know that the issue exists. It is a... [LB294]

SENATOR SEILER: Thank you very much. You did a good job. [LB294]

AMBER SCHLOTE: ...supply-and-demand business and there is a huge demand. So thank you. [LB294]

SENATOR SEILER: Thank you. Next proponent. [LB294]

TORI MOSER: (Exhibit 4) Good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Tori Moser. That's spelled T-o-r-i M-o-s-e-r. Former U.S. Attorney General Alberto Gonzales once said: Human trafficking is a violation of the human body, mind, and spirit; for this vile practice to be taking place in a country that the world looks to as a beacon of freedom is a terrible irony and an utter tragedy. I come before you today on behalf of my fellow abolitionists of I AM For Freedom. We are a grass-roots, faith-based, nonprofit organization based in Norfolk. We are a group of doctors, nurses, educators, stay-at-home moms, students, and social services providers who are passionate about ending modern-day slavery. When I first started with the group three years ago, my idea of modern slavery was child slaves

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

in the cocoa fields of Ivory Coast and of the women and children sewing clothes and shoes in sweatshops. I had no idea that trafficking happened in America, much less right here in my home state. But the more I researched, the more stories I found. I knew I had to get involved in some way. I was not going to let this happen in my state and it is my humble honor to be sitting here before you today in support of LB294. The stories I've heard and read about are absolutely heartbreaking and simply rip at the very core of the morals and values I was raised upon, morals and values our state prides itself on, stories of family members selling their youngsters, runaway and foster youth lured into the game just to survive, sex-trafficking rings invading our state during the College World Series or Husker football games or setting up shop at the numerous truck stops along I-80. And I wish there was more time to address and talk about the social media, the Internet, and [backpage.com](http:// backpage.com) that happens 365 days per year. Collecting data on the extent of trafficking in Nebraska is a difficult but important component for the prevention and rescue efforts. But does it really matter if the number is 1 or 10 or 100 or 1,000? How many need to be victimized before we as a state start to take notice and implement the laws and services these victims need and the punishments the perpetrators deserve? I've watched over the past several years as Nebraska has fallen farther behind in the Protected Innocence Challenge, a study of state laws done by the legal experts at Shared Hope International. The reports are available on-line. Nebraska currently ranks 35th and has not shown progress in...that the neighboring states such as Wyoming, Iowa, Kansas, and Colorado have during these past three years. We would like to thank Attorney General Doug Peterson and Senator Jim Scheer for their work on this legislation. We trust their expertise, experience, knowledge of the law, and their study of this issue in creating the much-needed statutes. Human trafficking is a huge, complex issue that many areas of society...and there's my red light. I have like two sentences left if that would be okay. [LB294]

SENATOR SEILER: Okay, go ahead. [LB294]

TORI MOSER: Thank you. Human trafficking is a huge, complex issue that many areas of society need to become involved with if we are to put an end to this tragic crime on humanity. In a recent documentary called [A Path Appears](#), the founder of a restoration program in Nashville said, it takes a lot of failed systems and communities to get them out there--referring, of course, to the victims--and that's why it takes communities to get them back. And today you, Senators, are a vital part of that community and we implore you to please advance LB294. [LB294]

SENATOR SEILER: Thank you. Any questions? Seeing none, thank you for your testimony. [LB294]

TORI MOSER: Thank you. [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SEILER: I should clarify. When I asked that addresses be sent to Senator Coash, he is in charge of institutions for our Judiciary Committee. It just wasn't because he left. (Laughter) [LB294]

DR. LINDA BURKLE: Good afternoon, gentlemen. My name is Dr. Linda Burkle. I am...oversee social services for the Salvation Army, Nebraska, Iowa, and South Dakota. I also serve on this Governor's task force on human trafficking. I'm here today without any written testimony but just to provide some of my personal experiences working this field for a number of decades now. My first foray into professional work was in corrections in juvenile court. In fact, I was studying to become an attorney in that area. I worked as a guardian ad litem, a probation officer, and I was also a representative of the state youth authority which...and in that capacity I had care, custody, and control of 50 adolescents. At that point, human trafficking was not a term that anyone was familiar with. I worked with child prostitutes, and that was a good term compared to many that they were called. I worked with many runaways. I worked with kids that had also committed homicide. As a state youth representative, I had the power to issue all-points bulletins, habeas corpus, I had the full gamut of the law on my behalf to make sure these children were in safe, secure settings. I'm coming to support this law having had that experience and then most recently as a provider of services. One of the services we provide is Wellspring. We work primarily with adults who are seeking to escape a lifestyle of prostitution. We do not do emergency services with that program. It's long term. Some of the people we've worked with we have developed relationships that last over the years. There are huge gaps though in the service area. The reason why I support this is because what I found working with 11-year-olds that had a six-month-old baby on their hip, working with women that are...young girls, I should say, that are 17 that are out working the streets and turning tricks because their boyfriend and they have decided that this is the quickest way to earn money so they can get married and have their dream home. There is...trauma bonding is a powerful, powerful element of this. We cannot dispute that. Is that my light? I've got...okay. [LB294]

SENATOR SEILER: You've got a minute left. [LB294]

DR. LINDA BURKLE: Okay, and I would just say that I support this, having worked with the courts, working with these young people, as well as working with our Wellspring program. We serve about 70-80 percent of people a year. Most all of them have histories of human trafficking; however, when they come to us often they have been able to dissociate because of repeated arrests and because they're just getting worn out. And so we've had two juveniles referred to us. It's a voluntary program. Neither one of them have been interested. They indicate they were very happy with the way they were living because, again, this...the trauma bonding is so powerful. This person controls...every breath that you take you thank them for. And so I can't underestimate...overestimate the power. And that's why I agree with all the testimony that's been given. You need a way to separate them. Yes, you could say it's criminalizing. I do not see it that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

way. I consider it a term of endearment. And I'm speaking for somebody that worked in corrections, that spent a lot of time pulling kids out of jail, putting them in jail, riding around with law enforcement, as well as a service provider and practitioner. One more thing I would make a note of, the Salvation Army also operates a residential program in Chicago. I've been there. It's very good. It's specifically for young people, teens and young adults, that have been trafficked and they can stay there for up to two, three years or longer, which is necessary to really break through of this. [LB294]

SENATOR SEILER: Thank you very much. Any questions? Seeing none, thank you very much for your testimony. Next proponent. [LB294]

RACHEL POINTER: My name is Rachel Pointer, R-a-c-h-e-l P-o-i-n-t-e-r. I'm here on behalf of Free the People Movement, a volunteer organization that works in counter-trafficking across the state of Nebraska. Every year human traffickers generate billions of dollars in profits by victimizing millions of people around the world and here in the United States. While human trafficking is a worldwide, multibillion-dollar issue, it is one that is also happening right here in Nebraska, and I think that that has been pretty much established. In establishing connections across the state, Free the People Movement and our volunteers have learned a lot about human trafficking in the state of Nebraska, but I want to start at a personal level. As a child, I myself was trafficked in Omaha from the age of 6 to 16. I was taken from my home most nights of the week and sold to the highest bidder for almost ten years. Threats against my family, drugs, and alcohol kept me from coming forward for years and I still suffer the long-term effects that trafficking had on me to this day. I've also encountered several other individuals who were likely trafficked during my professional career. Two stories in particular stick out for me. About five years ago, I worked with a young woman who was 15 at the time who had been labeled as a runaway. This young woman disclosed that when she was eight years old she was removed from her parents' home and the foster father in her first placement had sold her to his friends in exchange for promotions at his job. When no one believed her, she ran. She spent three years of her life between placements and living on the street and during that time was sold time and time again. I last heard from her about a year-and-a-half ago and she is actually in a corrections facility in another state because she never received any kind of treatment for what happened to her. About two years ago I worked with a family from southern Sudan. The mother had been forced to marry a man and brought with her two minor children to the U.S., as refugees. She had two children with this man and endured countless beatings and rapes before realizing that she had the freedom to leave him. She moved from St. Louis, Missouri, and stopped here in Omaha...well, in Omaha, where she encountered CPS. That man is now being investigated for suspicion of bringing refugees over for the purpose of trafficking them. As most of you are aware, in the past few years human trafficking has gained media attention across the nation and Nebraska has not avoided being part of that news. Due to the complex and sensitive nature of this issue, there are still a lot of unknowns when it comes to the level of trafficking that occurs in

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Transcriber's Office

Judiciary Committee
March 04, 2015

Nebraska but what we do know for sure is that human trafficking is happening in Nebraska. And while it's only been recently gaining media attention, human trafficking has been occurring in Nebraska for many years. LB294 would provide necessary changes in legal language that would allow for harsher penalties for traffickers and johns, those who purchase traffic victims, and would provide victims and survivors more options. [LB294]

SENATOR SEILER: Ma'am. [LB294]

RACHEL POINTER: Yes. [LB294]

SENATOR SEILER: Your red light is on. [LB294]

RACHEL POINTER: Oh, sorry, I apologize. [LB294]

SENATOR SEILER: Not a problem. Any questions? Yes, Senator Morfeld. [LB294]

SENATOR MORFELD: Thank you, Chairman. And I missed just a little part of...bit of your testimony while I got up here. So what services are currently available for victims of human trafficking here in Nebraska? And I think I already know the answer to this, but I want to build the record on that. [LB294]

RACHEL POINTER: The specific services that are available to victims and survivors here in Nebraska are very, very limited. At this point in time we have no services that follow best-practices models that we could have access to from other states, so at this time, none. [LB294]

SENATOR MORFELD: And what states do you think are good models for us to look at? [LB294]

RACHEL POINTER: There are a few different states, Colorado being one that's being studied more in depth at least by our organization at this point in time. They've done a lot of comprehensive research and they have been kind of...well, they've been spearheading a lot of different things. And then Iowa has also a bunch of programs that are kind of in the works. As a country, we're a little bit behind the times. [LB294]

SENATOR MORFELD: Okay. [LB294]

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Transcriber's Office

Judiciary Committee
March 04, 2015

RACHEL POINTER: There are some states that are making some good headway and actually, off the top of my head, and I didn't put that in my report, I don't remember besides Colorado and Iowa, but I can definitely get those...that information for you. [LB294]

SENATOR MORFELD: Okay, yeah, that would be fantastic. And I guess, because the Attorney General's Office can't come back up now, again, you know, I would just say this, that it's very easy for us to criminalize things and in some instances, perhaps, we do need to have tougher criminal penalties. What I'd like to start seeing from the Attorney General's Office, and he was just in office so maybe we can start out on the right foot, and from the county attorneys is the tough part as...including the tough part, as well, which is providing services that go to the root of the problems and the victims because, again, it's easy for us to criminalize things and be tougher on crime in that sense. It's a lot tougher for us to make the sale that we need to go to the root of this problem, the substance of this problem, which are...oftentimes involve the victims. And I have a real concern that this bill addresses the criminalization portion of it and in particularly with the youth but does not provide for any services or substantive rehabilitation for the victims of this crime. So I throw that out to the Attorney General's Office and to any other county attorneys that come to us with proposals such as this is that we also need support from them to be able to provide services. [LB294]

RACHEL POINTER: Can I respond to that? [LB294]

SENATOR MORFELD: Sure. [LB294]

SENATOR SEILER: Any further questions? [LB294]

SENATOR MORFELD: I think she wanted to say something quick. [LB294]

RACHEL POINTER: Yes, sorry. [LB294]

SENATOR SEILER: Oh, I'm sorry. [LB294]

SENATOR MORFELD: Yeah. No, that's fine. Yep. [LB294]

RACHEL POINTER: I would just echo that I share a concern in terms of this piece of this legislation not specifically outlaying what our options for services might be. But in the same hand I would say, speaking as a survivor myself, that if we don't have some of the options that are legislated in this piece, we're not going to get very far and it's going to be very difficult for us to come back as a community and say, this is the issue, it's documented, we've got X, Y, Z

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

number of kids, adults in this position, we need to put services into place. If we don't have those pieces, it's going to be very hard for us to support the services. And I think that this is one of those situations where before, when the legislation for human trafficking...against human trafficking in Nebraska a couple of years ago started the question of, do we put the horse before the cart or not? And in this situation, we have to have both. But if we don't have, specifically, juveniles long enough to determine whether or not they need those services in the first place, it's going to be very hard to support that we need the services. [LB294]

SENATOR MORFELD: And I agree and I think this bill is a good part. I have concerns about Section 17. But I think this only gets us halfway there and... [LB294]

RACHEL POINTER: I agree. [LB294]

SENATOR MORFELD: Okay, thank you. [LB294]

RACHEL POINTER: I agree but I will take halfway versus no... [LB294]

SENATOR MORFELD: I know you will. [LB294]

RACHEL POINTER: ...versus nothing. (Laughter) [LB294]

SENATOR MORFELD: Thank you. [LB294]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. [LB294]

RACHEL POINTER: Thank you. [LB294]

SENATOR SEILER: Next proponent. [LB294]

AL RISKOWSKI: Yes. Al Riskowski, it's R-i-s-k-o-w-s-k-i. I'm with Nebraska Family Alliance. I started working on this about eight years ago and do serve, as well, on the Governor's task force, worked very closely with Senator McGill over the years being part of convincing her that we really had a problem here in the state of Nebraska. And what concerned us on the Governor's task force was when we heard law enforcement come forward and tell us how LB255 last year was being applied and what was taking place. It literally broke our hearts when you've got a minor in the hands of law enforcement that could get care, someone could do something for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

them and help them, and realize that they were helpless to do anything and a minor who was now in their care was gone and no help, no care, no possibility of doing anything for them. That's when we said we need to make some adjustments here to help to care for these girls. And I know...I spoke directly with Senator McGill as soon as some of the law enforcement came forward in regard to this to alert her as to what actually was taking place to make sure she was aware of what was happening here. I'll just make one other quick comment. There is a research feasibility study underway; unfortunately, the two professors from the University of Nebraska who are in charge of that were not able to attend today. And we're hoping before the Legislature convenes in this session that we'll have a better idea of how many minors are being used in the sex trade here in the state of Nebraska. Currently, the Governor's task force estimates 50-100 at any one time, but it would be interesting to find out what this study verifies in regard to that. So with that, I conclude and I thank Senator Scheer. I thank Senator McGill for all the work she had done. And I appreciate the Attorney General's Office for what they're attempting to do, as well. Thank you. [LB294]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB294]

AL RISKOWSKI: Okay, thank you. [LB294]

SENATOR SEILER: Next proponent. [LB294]

STEPHEN PATRICK O'MEARA: He's got my paper. [LB294]

SENATOR SEILER: You get his seat. [LB294]

STEPHEN PATRICK O'MEARA: My name is Stephen, S-t-e-p-h-e-n, Patrick O'Meara, O-'-M-e-a-r-a. I think I am here primarily because in my 25-year career as an assistant United States attorney, the last five were spent as the, I guess, the primary prosecutor for the Omaha Child Exploitation Task Force. I've been working in human trafficking for about seven or eight years now. And even though I retired from the federal government in July of last year, I continue to work with a number of organizations across Iowa and Nebraska, including the Iowa Attorney General's Office, and have also recently spoken with some people in the Nebraska Attorney General's Office. So I am here as a proponent as a good step forward. I don't think that this answers all the questions but it's a good step forward. I was going to address some other things, but I'm going to try to run down some of the questions that have been asked and then try to field any questions you have. First of all, I think penalties do affect the incidence of sex trafficking. One of the things that we have learned specifically is that as much as law enforcement tries to organize traffickers, use the Internet and social media to stay up with the marketplace in different locales--that includes enforcement efforts, laws, the market for trafficking itself, and for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

recruitment--so actually there is an organized attempt in some areas to actually measure those things as part of tea market analysis for whether or not to carry out trafficking in a certain locale. Certainly there are other issues, such as population, the established prostitution business in that place, special events, and things like that, but in fact there is an organized effort. The second thing I wanted to try to address was the issue that I've heard discussed a lot, about criminalization. First of all, I don't think, as I understand the Nebraska law, that this would be an issue of criminalization; but secondly, even if it was, the key issue here is custody. I don't think it's treatment. What is available is available, but the issue is to maintain custody of these individuals out of the box. I have, and I won't have time, I have four specific cases we dealt with that were not among the cases referred to by the assistant Douglas County attorney. If there is not a palatable result with regard to detention, and I certainly appreciate the idea of not calling victims criminals because we would not do that in the federal system, but it would seem to me that because of the overwhelming information that is available from neuropsychologists that the state of development of anyone under 25 years of age, and certainly 18 or younger, is such that there is critical judgment that is lacking as a matter of science and so that there should be able to be either an answer under the mental health code or an answer under the juvenile code which is more of a status relative to child in need of assistance if not a detention status. So the issue is custody. The issue is not criminalization. The issue is custody initially. The issue is not treatment. Those are two different things. You would only pursue the treatment if and, in fact, the initial custody developed the other. If I could give you a couple of other quick thoughts... [LB294]

SENATOR SEILER: Senator Morfeld. [LB294]

SENATOR MORFELD: Please continue, sir. [LB294]

STEPHEN PATRICK O'MEARA: There was a question about a sexual exploitation facility and whether or not there was sufficient number of victims to support that. I think that there would be some argument on this, but the best literature I think that's available is that there...such a facility could deal not only with victims of human trafficking, that is, particularly, sex trafficking, but could also deal with victims of other forms of sexual exploitation of minors. So in terms of that type of facility, I think you're looking at broader numbers than just sex trafficking, although sex trafficking would certainly be an important consideration. I'm going to cite a couple things that I think are weaknesses in the current bill but not necessarily the role of the Attorney General to pursue, maybe in part but not necessarily. I agree substantive services for youth are lacking. There's already been a comment. It's true. It's one of the reasons some of the cases went to Iowa, because there are, just candidly, better services available over there. If I was to look at other states, I would look at Iowa, particularly the central Iowa services network and particularly the youth services and shelter organization. I would look at Colorado, Texas, and Ohio. I'm sure there are other states, but I would look at those states in particular. Another thing this bill does

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

not address but which is very significant, this bill is not intended to, but certainly youthful, young-adult victims are very much at risk under this situation also, particularly up to about age 25 or 28. The range of victims of the Omaha Child Exploitation Task Force is from 13 years of age to 40 years of age. The mean at one point was about 17-22 years of age. It's probably a little lower now because more recent victims have tended to be in the 14- to 15-year-old age range. And finally, there has been no mention about the fact that whatever legislation, good legislation Nebraska comes up with, another important consideration is funding for some training. Ultimately, whether it's law enforcement or victim services, the service that is delivered, first to minors but also to young adults if they are involved, will only be as good as the people who are trained to deliver that service appropriately. That would also help effect a cultural change within these organizations to accomplish part of what the Legislature is trying to do, and that is to not look at these individuals as victim...I'm sorry, as perpetrators but, in fact, to look at them as victims because in many areas, including law enforcement, there is actually a cultural change needed to do that and appropriate training would help effect that. I'm out of time. Any questions, please. [LB294]

SENATOR SEILER: Thank you very much for your testimony. Further proponent. [LB294]

STANLEY CLOUSE: Good afternoon. My name is Stan Clouse, C-l-o-u-s-e. I am the chair of the human trafficking task force and I also am an elected official as the mayor of the city of Kearney. And my role, as the Governor asked me to do, was to chair the task force. And as I sat down with that task force it was very obvious to me that there were a tremendous amount of subject-matter experts and those victim advocates that you've heard from today. I was the least informed on that task force and I've learned an awful lot over the last couple years as we've worked through this. Initial goals of the task force was to increase awareness of what trafficking is, both labor and sex trafficking, and to identify training opportunities for law enforcement and also our county attorneys, so on and so forth, and then to study the extent of human trafficking in Nebraska. And we've accomplished a couple of those. And as Mr. Riskowski said, we are having an ongoing study to look at the extent of trafficking in Nebraska and that's a very costly piece of what we're doing but I think will be very important. And another thing that was apparent to me is that human trafficking exists all across the state. You know, being from Kearney and out west, although a little more centrally located than western, it affects all of us and it's not something that's isolated to metro-area Lincoln. It's across the state and in varying degrees. So it's an issue that needs to be addressed. And I've heard a lot of discussion on the juvenile aspect of it, but also in that bill there's a lot of things in there about some of the penalties. And I heard that from the law enforcement folks as we were having discussions on the task force is that was one of their biggest concerns is they didn't feel that they had the laws in place necessary to help them get convictions and to do the things that they needed to do. And the law enforcement, just like many of our city services, have very limited resources. And we all have experienced limited resources. So if you're going to run your law enforcement and...are you going to focus your attention on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

those criminal elements that will walk as soon as you bring them in and book them or are you going to focus it where you know you can get some type of conviction? So that was the one thing that resonated with me as I heard a lot of discussion on the human trafficking task force. So I would encourage you to advance LB294. And it sounds like there's some work that needs to be done on it, but I think the bill is important to our state and for our law enforcement and also to protect our citizens. Any... [LB294]

SENATOR SEILER: Any questions? Thank you very much for your testimony. [LB294]

STANLEY CLOUSE: Thank you. [LB294]

SENATOR SEILER: Next proponent. You may go ahead. [LB294]

DOUG PETERSON: Yes, Chairman Seiler. Doug Peterson, P-e-t-e-r-s-o-n, Nebraska Attorney General. I want to let this committee know where this bill initially came from. For two years, maybe three years, I've been involved with and commend Senator Amanda McGill for the work she did in this area and I would go to her committee hearings...not her committee hearings but her committee meetings where she brought interested Nebraskans together to talk about human trafficking. I was so impressed by this group and the compassion they had for these girls as victims. That's why I struggle a little bit with any perception that this bill would be an attempt to criminalize young juveniles that go through this horrendous manipulation by traffickers. But what was amazing about that was this was a cross-section of Nebraskans from all political parties, all world views, and they all cared about one thing: Nebraska kids being trafficked by adults and using these girls and young boys as commodities. What was clear to me through all of that, that there was a tremendous amount of compassion for this but what there wasn't in Nebraska was a hammer. And as chief law enforcement officer, I'm in the unique position to come forth with a hammer. That hammer is not to the girls who are the victims, or the young boys. The hammer is to those who take advantage of these girls and treat them like commodities. And Nebraska was woefully weak in that area. This is not the magic bullet to settle all the problems for these young ladies. But the first people we have to get by the neck is the guys who would do this type of business and that's why we pass these bills and strengthen the penalties. But in order to respond to the girls, the other thing we did was we put in here provisions for a private action to pursue it. If this is the number-two industry of organized crime according to the Department of Justice, there has got to be money in it, and there is money, and we want to go after that money and that's why we have forfeiture provisions and those forfeiture...the money that we gather from the forfeiture provisions goes one place. That's to service and provide help and support for these girls. It's not the end-all, but it's where we want to go. And as you've heard people say, it's the first step. So, Senator, yes, I appreciate your concern about services, and we want to go there, but we've got to start here. The main thing about this bill is I want to go after

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

the guys who are doing the trafficking and we can't do that right now. We need your help. We need this bill. The other thing I want to report about, talk about, is we do in the short life of what we do have in human trafficking we have a problem because, as many have spoken about, these girls are pulled into this industry and to some it may seem like the most secure situation they've ever had. So under the current system, when we bring them in and they're allowed to go to foster homes and we don't have the ability to keep them in the system, we lose them. And that's why we did that. It was not an attempt to go after them. And frankly, this is a bill about compassion. It's not a bill about trying to criminalize young ladies and young boys who might be pulled into this industry. [LB294]

SENATOR SEILER: Yes, Senator Morfeld. [LB294]

SENATOR MORFELD: First off, I want to thank you for coming down and testifying today, Mr. Peterson. I guess, you know, from my perspective, overall this is a good bill. And I appreciate that the Attorney General's Office and you as the Attorney General has brought this to a forefront and made this a priority, so I want to thank you. My concern is all too often we focus only on the enforcement and not on the services. It's good to hear about the forfeiture fund. I think that that can provide some resources. I just hope, as we move forward, your office also makes the services a priority, too, and it's not just us out there advocating for those services, because I know that Senator McGill also had a bill that would actually provide for a coordinator, I think it was a year or two ago, that wasn't made a priority by the last Legislature. And it had to be...and funds had to be found from private sources. So I applaud your office. I applaud you. I thank you for that. I just want to bring notice and priority to the services and I look forward to working with you on that in the future. [LB294]

DOUG PETERSON: I appreciate that, Senator Morfeld. Let's build on it. Let's keep building on it because this matters, it matters for Nebraskans. And you're exactly right, we can bring down the hammer on these guys who are doing it, but then we have to minister to these girls and young boys who have been hurt by it. [LB294]

SENATOR MORFELD: Absolutely, and we agree on that. Thank you. [LB294]

SENATOR SEILER: Any further questions? Thank you, Attorney General. [LB294]

DOUG PETERSON: Thank you. [LB294]

SENATOR SEILER: Any further proponents? [LB294]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

JASEL CANTU: (Exhibit 5) Good afternoon. My name is Jasel Cantu. That is J-a-s-e-l C-a-n-t-u. And I am the public information officer with the Nebraska Latino American Commission and I'm also the designee from the commission to serve as a member of the Governor's task force on human trafficking. I'm here in favor of LB294. Having spoken with members of the FBI and with members of the Governor's task force, there is agreement the provisions in the bill will help fight against traffickers and pimps and benefit the victims. A person engages in trafficking a human being for the purpose of exploitation and profit and this bill will hurt the traffickers' profits and help the victim regain what has been exploited from them through civil action. This is something members and retired members of the FBI who have dealt with human trafficking have recommended, and I am in agreement with these recommendations. Allowing a victim to prosecute their trafficker will help regain some of the confidence and control that was lost while they were being trafficked, which will be helpful for the victim to sever ties with the abuser, a problem that has been brought to our attention for getting a person out of trafficking, and help them stay out of trafficking. The forfeited profits can go back to the victim to help them with their healing. To give an example, the task force's 2013 report includes a statement from the Hon. Deborah Gilg saying that: there is no question that human trafficking is present in Nebraska; we have actively investigated cases involving adults, minors, and immigrants; we currently have at least three cases pending involving a metro prostitution sting with multiple locations. And it goes on to saying how...what they received as illegal enterprise. They took a house valued at more than \$300,000 and expensive sports vehicles and cash in excess of \$250,000. That was a federal case. This is an example of one human trafficking case where the profits were taken away. The Polaris Project, an international antitrafficking nonprofit, designated in 2014 the state of Nebraska to be tier one, or a state that has passed significant laws to combat human trafficking and should continue to do so. I believe LB294 is a step in this direction. There are currently not any statistics to show the impact of human trafficking in Nebraska, but nationwide figures from the National Center for Missing and Exploited Children reports that up to 100,000 children are at risk. The Polaris Project's human trafficking hot line received 312 phone calls from Nebraska since 2007, of which 61 were human trafficking cases. LB294 was conceived with the help of the Nebraska Attorney General and I support his recommendations that were brought forth with this bill. Human trafficking is a problem locally, statewide, nationally, and internationally, and I support efforts, such as this bill, to curb it. Thank you. [LB294]

SENATOR SEILER: Thank you. Any questions? Thank you very much for your testimony. [LB294]

JASEL CANTU: Thank you. [LB294]

SENATOR SEILER: Further proponent. Seeing none, any opponents? [LB294]

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Transcriber's Office

Judiciary Committee
March 04, 2015

TOM STRIGENZ: Good afternoon. Tom Strigenz, S-t-r-i-g-e-n-z, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to this bill. And everybody is probably going, how could you be in opposition to human trafficking? I mean, the bottom line is, no one is, of course not. But the bottom line is, as I think so much we heard during the testimony of the proponents, is there's two sides to this. And there's the criminal action side and the treatment of the victim side. And what is the best way to, you know...there's no question Senator McGill's bill of the last two years, which has not been into effect even a year so we really don't know how that has worked...we need to wait for that. This bill is premature and it does a lot more than just...that's what I really want to talk about is it...this bill does so much and this bill is not good for the purposes of the treatment side. We do, as a...the Nebraska Criminal Defense Attorneys Association, we have problems with the forfeiture portions of this bill. We feel that, because of the way this bill is written and the forfeiture statutes the way they're written, is the \$150,000 arbitrary fine as proposed by the bill is so intertwined with the criminal statutes that we feel that that...it could violate basically the constitution or basically Article VII-5, because fines and penalties are appropriated for exclusive use in support of schools and cannot be appropriated to specific governmental funds. So we think the language of the fine nature of this is bad. The bottom line is, this is an early...this is too early of a bill to bring up. I think we need to wait and see how the current law is effected, how the current law works. I mean, I know we heard from...there's been four in Douglas County that really were affected by this. But ultimately I just...we just...there's a lot going on in LB294, there's a lot of work that needs to be...go on in LB294 to clean it up and we would ask that this committee not forward it on. [LB294]

SENATOR SEILER: Any further questions? Thank you very much. [LB294]

TOM STRIGENZ: Thank you. [LB294]

SENATOR SEILER: Any further opposition? Anybody else in the neutral? [LB294]

JULIET SUMMERS: (Exhibit 6) Good afternoon, Chairman Seiler, members of the Judiciary Committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska. While we broadly support many portions of this bill, I'm testifying in a neutral capacity today because we fear and testimony today has confirmed that the current language of the statute will lead to prosecution of victims of sex crimes as delinquents in the juvenile courts. We recommend amending the language of Section 5 and Section 17 to clarify that juvenile court jurisdiction may be granted only under Nebraska Revised Statute 43-247(3)(a) or (3)(b), which are noncriminal charges which would emphasize therapeutic response and keep these children out of jail-like facilities. Ensuring child victims get access to necessary services is crucial. You've heard a lot of testimony that we're missing those services in Nebraska and we recognize that in many jurisdictions juvenile court involvement may currently be the only way to

access any services; however, labeling victims of the sex trade as delinquents and placing them in secure detention, even in the name of safety, is not the right way to protect them. Many, if not most, victims of sex trafficking have been abused, neglected, or otherwise exposed to trauma prior to being trafficked. While trafficked, they've been subjected to serial rape and abuse. Treating them as delinquent offenders ignores these traumas. These young people, mostly girls, have experienced horror after horror and we would not charge any other victim of child molestation as a delinquent. Requiring a child to enter a plea as a juvenile delinquent or face trial where police or other witnesses may come to testify against her compounds trauma with trauma. Locking her in a detention center for any length of time raises the specter of her powerlessness all over again. It can break down any fragile trust she might have in the system's ability to help her. And additionally, I, having looked into this, I fear it also may be an unconstitutional infringement on liberty interest based on the fact that it's her status as a victim rather than any actual criminal intent. I haven't looked into that far enough to say that definitively; it's just a concern. Voices for Children would be eager to assist in any way as Nebraska explores best practices for responding to victims of the sex trade. Meanwhile, until our state has a spectrum of services available to help this population without court involvement, juvenile court intervention thankfully does not require a delinquency charge. Our strong recommendation would be to add clarifying language on this point. A child victim deserves dignified treatment offered consistently and repeatedly as she learns to trust again. We broadly support this bill as it seeks to strengthen protections for this especially vulnerable population and we just have this one concern about this piece. We thank Senator Scheer for bringing this legislation forward and we thank the committee for your thoughtful consideration. Attached to my testimony you have a couple tables from a national policy organization just highlighting the unintended consequences of locking up or treating these young people as offenders. Thank you for your time. [LB294]

SENATOR SEILER: Yes. [LB294]

SENATOR MORFELD: Thank you, Chairman. Do you serve on the task force? [LB294]

JULIET SUMMERS: I do not, no. [LB294]

SENATOR MORFELD: Okay. [LB294]

JULIET SUMMERS: Voices for Children is not currently participating in that. [LB294]

SENATOR MORFELD: Okay, I'll follow up with task force after that. Thank you. [LB294]

JULIET SUMMERS: Thank you, Senator. [LB294]

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Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SEILER: Senator Williams. [LB294]

SENATOR WILLIAMS: Thank you, Chairman Seiler, Ms. Summers. And I missed the start of your testimony. I'm sorry about that. If we don't have some system that breaks that contact with the pimp and we don't have some system that stops them from running right away, what do we do? [LB294]

JULIET SUMMERS: Well, Senator, I think best practices would be to consider it almost like a domestic violence victim. In a domestic violence case you best serve that person by consistently offering help, offering a safe space where she can come, where she can go freely, too, but she knows it's there, she knows she won't be judged, she knows she can come back to it. Other states have implemented multidisciplinary team models where there's treatment providers, there's safe havens like this that I've just described, that are available, consistently offered, but not forced because ultimately it's going to have to be that woman's choice. [LB294]

SENATOR WILLIAMS: But if I'm hearing the testimony correctly, many of these, especially the young girls, are so attached that that's where they want to go. [LB294]

JULIET SUMMERS: And I wouldn't dispute that. I think that's a real problem. What I would say is that the best way to solve that problem is not going to be to lock them up because that actually reinforces what the pimp is telling her--you go back to society, you're going to be treated like a criminal, this is where you're safe, this is where you belong. If, instead, when she engages with the system she's immediately offered a wraparound, nonjudgmental plan of action--which I acknowledge we do not currently have, that's what we need to focus on--that's what's going to produce the results in the long run for these young women that's going to ultimately make them the safest. I'm...my fear is specifically the detention piece and the...I know there's some dispute about calling a delinquency criminalization, but if you think about it from the perspective of that young person, that's what it feels like. [LB294]

SENATOR WILLIAMS: Thank you. [LB294]

SENATOR SEILER: Any other questions? Thank you for your testimony. [LB294]

JULIET SUMMERS: Thank you. [LB294]

SENATOR SEILER: (Exhibits 7-13) Any others in the neutral? Seeing none, Senator Scheer, you may close. Before you close, I will make part of the record all of the written documents and sign-ins that have occurred as part of the transcript. You may close. [LB294]

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Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SCHEER: Thank you, Senator Seiler. I appreciate the committee's patience and their time and their interest to this subject. It's an important one. And, Senator Morfeld, I look forward to working with you because, no, this does not have the services penned in it. But what we have is the old theory of how do we eat the elephant, and we eat the elephant one bite at a time. But unfortunately, part of the problem here is we have the invisible elephant; most people don't perceive it to be around. So, one, we have to acknowledge it, and then we've got to take a bite out of it. Senator McGill took the first bite. It was a great start. This is a lot like many things that are in society today. It's a fluid program. It will continue to evolve as we move forward. This probably, without question, will last more than the term that I will serve, perhaps more than the term that you will serve, but that doesn't mean that we don't start somewhere or we don't start doing something to help that youth as soon as possible. You know, one gentleman said he had a problem with the forfeiture. Well, I'd just draw your attention that if a drug dealer sells my 14-year-old daughter some drugs and he gets caught doing it, if he's got cash in his car, it's gone; his car has got a clean title, it's gone; they find dope in his house and they find cash, it's gone; the house is gone. That's for selling dope. But he turns my daughter, 14- to 15-year-old kid, into a prostitute and we think that's too much to ask that he lose his valuables? Boy, I don't know. You'd have to ask me where society has gone if we don't think that's fair and just. We've got to be consistent. We have to look at the crime. It's real. It may not be a perfect bill. I certainly would look forward to whatever adjustments you might come up with. But it's something that needs to take place. It's a step that we need to take and it's the first of many. And again, I look forward to both working with any and all of you as we look at services that may become available because our youth need help, they need to break the cycle. And just as the bill was part of it, you folks are the next step because it does not go anywhere unless you let it go somewhere. So I ask you, let it go somewhere. Thank you. [LB294]

SENATOR SEILER: Okay. Thank you. LB459, Senator Crawford. Senator Crawford, open. [LB294]

SENATOR CRAWFORD: (Exhibit 1) Good afternoon, Chairman Seiler and members of the Judiciary Committee. For the record, my name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d. I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. Children are not miniature adults. However, our laws have not always reflected this general wisdom. Situations that can be challenging for adults can be out...downright frightening or trauma inducing for children, particularly young or vulnerable children. Currently children can be interviewed by a forensic interviewer at a child advocacy center and the interview is recorded. This recording affords the accused and his or her attorney the opportunity to see and hear the child describe the alleged crime in question in their own words. We have a duty to be sensitive to the trauma caused by the child continually repeating or being questioned about the traumatic event. This is why our statutes encourage the use of forensic investigators and videotaped interviews to cut down on the number of times the child retells his or her story and to protect

children from revictimization. LB459 as originally drafted affords children additional protections if there is a videotaped interview by a child advocacy center or a police department and the child is under the age of 16 at the time of the request. The pages are now circulating an amendment to LB459 that limits these protections solely to cases where there is a video-recorded interview by a child advocacy center. In these instances, the lawyers in the case have this videotape for discovery. LB459 also recognizes there are exceptions where a deposition may be appropriate. As such, the bill leaves discretion to the trial court to grant a deposition upon showing that the testimony is essential to assist the defendant in preparing for trial, that the evidence sought is not reasonably available through other means, and that the probative value of the deposition outweighs the detriment to the child. In other words, LB459 seeks to protect children but still allows depositions when necessary. LB459 also creates a process for the court to consider whether a protective order is necessary during the deposition of a child witness or a child victim to protect the child from emotional harm or harassment, undue influence, or intimidation. A protective order could include designating the time, place, or manner of taking the deposition, allowing the victim advocate or other support person who is not a witness to the proceedings to be present, and limiting the scope of deposition to certain matters as designated by the court. At least 13 states, including neighboring Iowa, Missouri, and South Dakota, allow courts to grant protective orders for depositions for children. Depositions are a tool that can be used in statutory discovery. They are not a constitutional right. The trial court has the discretion to grant or deny a deposition. This has been upheld by the Nebraska Supreme Court twice: once, in 2012, in State v. Collins; and in 1991, in State v. Tuttle. What's more, as of 2010, only 13 of our 50 states allow criminal discovery depositions at all. Unfortunately, though, in many cases, judges grant depositions as a matter of course, even though they have the discretion to deny them. I believe you'll be hearing about a U.S. Supreme Court case, U.S. v. Mejia, from one of the testifiers following me that confirms that the Sixth Amendment does not create a right to pretrial discovery. Confrontation, in contrast, is a constitutional right. This right applies at trial, not discovery. Therefore, not deposing a child poses no risk to the Sixth Amendment. Actually, our existing statute already provides a mechanism that allows protective order exceptions to court testimony and cross-examination for children in certain cases, so we already recognize that even this fundamental constitutional right to confront your accuser has to be balanced with the state's interest in protecting the child. If we allow protections here, surely, protections for depositions, which are not a constitutional right and which only occur in 13 of our states at all, are justified. Some opponents express concern that the bill will compromise the plea-bargaining process that often happens in these cases. In Vermont, which passed a similar protection, no county reported an increase in the number of cases that went to trial after a similar change. The study did, however, find a reduction in the amount of cases that were dismissed because the trauma to the child was too great and the child was unable to withstand the trial process. Additionally, the number of trials overall remained low. For example, in Chittenden County, which is Vermont's most populous county, less than 0.01 percent of cases were tried to a verdict between 2009 and 2011. I am happy to work with the committee on reporting requirements if the committee feels

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

this is a necessary addition to the bill to track the consequences of this change. It may be the case that key measures, like final disposition of cases, the number of requests for depositions, and the number of granted requests, are already readily available to Judiciary legal counsel and the committee. If so, then we wouldn't need to add reporting requirements to effectively assess the impact of the bill on our judicial system. Now I would like to share an analogy with you. Several years ago, the National Hockey League began requiring hockey players to wear protective helmets during play. This came as a relief for a number of hockey players who had wanted the protections that helmets could provide but who didn't want to admit it or appear as an advocate for that change. They realized that wearing a helmet when others did not put them at a competitive disadvantage. However, once the helmet rule was in place, they could wear the helmet without having to admit that would have been their preference. Colleagues, the current legal climate creates a disincentive for defense attorneys to avoid depositions out of a concern for a child's well-being. In much the same way, the hockey players were discouraged from wearing a helmet even though they knew it was the right thing to do. Defense attorneys may feel compelled to request a deposition of a child because of client pressure or out of concerns of an appeal on the grounds of ineffective assistance of counsel even if they do not really see the deposition as necessary or fear that the deposition may do more harm to the child. Today you will hear from several testifiers, including Tom Brantley. Tom is a former public defender who now works as a deputy county attorney in Sarpy County. He can share his firsthand experiences confronting this very issue. Under LB459, defense attorneys will still have the opportunity to cross-examine the child witness in court and the defendant will still have the right to face his or her accuser. LB459 does not change that. Instead, LB459 seeks to create an environment that protects truth and accountability while also protecting our children. I'm happy to answer any questions you have now. I will be here for closing so I can answer questions then if you prefer. [LB459]

SENATOR SEILER: Seeing no questions, thank you. [LB459]

SENATOR CRAWFORD: Thank you. [LB459]

SENATOR SEILER: First proponent. [LB459]

LEE POLIKOV: (Exhibits 2 and 3) Chairman Seiler, members of the Judiciary Committee, I'm Lee Polikov, L-e-e P-o-l-i-k-o-v, and I'm the Sarpy County Attorney. I want to thank you for allowing me to testify today. I'm here representing the Nebraska County Attorneys Association and to express support for LB459. First, I really want to thank Senator Crawford for outstanding work and assistance. Coincidentally, she's my senator, but she agreed to take this on. And you all know the process, how difficult it is to get attention to problems that result in a bill. The senator's focus and work in creating LB459 for introduction is apparent in her clear and concise opening statement. She really makes my task easier and I can be very brief. Your support and passage of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

this bill will give attorneys and judges important guidelines in the pretrial process in what are likely the most sensitive and emotionally charged cases we encounter. This law will not interfere with the constitutional rights of the defendant and will not hinder the defendant's ability to seek out and investigate evidence necessary for a competent defense. It will provide the court guidance in allowing pretrial depositions when appropriate and provide for the protection of child victims and witnesses. I have submitted a memorandum, carefully researched and crafted in my office, which outlines the current state of the law and the case law that allows and, arguably, anticipates passage of LB459. This is not an attempt to put imbalance in the system. If an attorney can prepare a defense without asking the same questions asked in the child advocacy center's forensic interview and can obtain the same facts and evidence through other sources, that same attorney can proceed without fear of incompetency-of-counsel claims if he or she chooses not to depose a child or a child witness. Thank you. I'm available for questions. I thought it not the best time to argue case law and the current state of the law. And I know your time schedule is very tight and that's the purpose of the memorandum. I think it encapsulates it pretty well. [LB459]

SENATOR SEILER: Any questions? [LB459]

LEE POLIKOV: Thank you. [LB459]

SENATOR SEILER: Seeing none, thank you. [LB459]

LEE POLIKOV: I will ask...the next testifier is Jean Brazda from my office and she has with her our newest member of the Sarpy County Attorney's Office, Manny. It's our facility dog. [LB459]

JEAN BRAZDA: (Exhibit 4) Hello, Senators. My name is Jean Brazda, B-r-a-z-d-a, and this is Manny, like Lee has said. I'm the executive director over the victim witness unit in the Sarpy County Attorney's Office and Manny is our facility dog. I've worked with crime victims in various capacities for the last 22 years. I'm here in support of LB459. This bill will limit what a child under 16 would have to experience when they have already completed an in-depth, videotaped, forensic interview by a child advocacy center. Manny and the professional crime victim advocates are in place to reduce the amount of revictimization. Despite our best efforts, children who are crime victims must still experience repeated amount of questioning by law enforcement, prosecutors, and defense attorneys. Passing this bill will limit the amount of time a child victim may have to talk about the extensive physical or sexual abuse they experienced or other horrific situations that they were exposed to. When a child is forced to retell their traumatic experience again, without proper preparation the child will get overwhelmed, the brain shuts down, and they clam up or become voiceless. This type of response can impair the child's ability to testify openly in court. This bill will allow the court to set up guidelines that defense must

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

follow as it relates to the criminal case. I have provided some scientific research that supports these measures to ensure that a deposition is conducted in a very trauma-sensitive way. LB459 is a great step forward in keeping child victims safer and being mindful of crime victim rights. Thank you for your time today. [LB459]

SENATOR SEILER: Any questions? Thank you very much. I'm glad you brought her. [LB459]

STEPHEN LAZORITZ: Good afternoon, Senators. My name is Dr. Stephen, S-t-e-p-h-e-n, Lazoritz, L-a-z-o-r-i-t-z. I've been a pediatrician for nearly 40 years. And prior to coming to Omaha 15 years ago, I worked in the field of child abuse as a medical expert for over 20 years, last being in Milwaukee where I was the medical director of the Child Protection Center of the Children's Hospital of Wisconsin. And over...in that capacity, I've had the opportunity and the responsibility of serving the courts and testifying in grand juries, preliminary hearings, criminal/civil proceedings. But depositions are something that cause me a great deal of pain. I felt very vulnerable during depositions. And I'm having some flashbacks now to the trauma of depositions. Here I am, as a grown-up adult, going back to feeling vulnerable in a situation where I did not have a judge to look out for me. I didn't have my physical well-being protected by a bailiff or a deputy, who is armed, in case the perpetrator, who is sitting right across from me, decides to lash out at me. I didn't have in a court the perpetrator glaring at me, making faces at me, and I didn't have...I was keenly aware of the defense attorney, whose main job was to discredit me, make me look foolish, or both. Children...imagine what that is like for a grown adult to feel that way, what it's like for a child. The reason I left the child abuse field was not working with children or their parents. It was testifying in court and giving depositions. And it got to a point that before giving a deposition I had to go in the men's room and I got physically sick. Depositions were a lot worse than testifying in court because they lack the structure, the formality, the rules, and the protections of a court. If I feel that way as a grown-up professional, imagine how a six-year-old feels who just had the courage to disclose that her father had raped her. Many children who have been victims told me over the years, and I've examined several thousand, that the worst part of the whole thing was repeating their story over and over and over again. In 1983, I bought my first camcorder and I used it in the dream of eliminating these repeated questions of the child. That dream is fulfilled now. We have advocacy centers where the people who do the interviews are skilled, peer reviewed, and highly professional. Everything a defense attorney could need is on that videotaped interview. And if it's not, let a judge make the decision whether a deposition should go forward and let the judge protect that child and do a deposition in the context of a formal courtroom. Children do not need to have their story repeated over and over again, and that is the true trauma of being abused for many children, being felt that people didn't believe them. Victims need to be believed. Thank you very much. If anyone has any questions, I'll be happy to answer them. [LB459]

SENATOR CHAMBERS: Just a comment. [LB459]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SEILER: Yes, go ahead. [LB459]

SENATOR CHAMBERS: It takes a lot for you to acknowledge the things that you did about the traumatic experience of going through a deposition, so I appreciate that openness. [LB459]

STEPHEN LAZORITZ: Thank you, Senator Chambers. I appreciate you saying that. [LB459]

SENATOR SEILER: Thank you for your testimony. Next proponent. [LB459]

LYNN AYERS: (Exhibit 5) Good afternoon. My name is Lynn Ayers and it's A-y-e-r-s. I am the executive director of the Child Advocacy Center serving southeast Nebraska. And today I'm testifying in support of LB459 representing the Nebraska Alliance of Child Advocacy Centers. There are seven child advocacy centers in Nebraska, located in Omaha, Lincoln, Norfolk, Kearney, Grand Island, North Platte, and Gering. Last year, child advocacy centers served 5,100 unduplicated child victims of abuse and neglect and conducted 3,500 forensic interviews. A forensic interview is a fact-finding interview aimed at soliciting details of a specific event that is needed to assist in the investigation and prosecution of the case. Our forensic interviewers receive basic and advanced training through the National Children's Advocacy Center in Huntsville, Alabama, and are peer reviewed on a regular basis. Forensic interviewers are specifically trained on issues related to child development, language acquisition, memory, and suggestibility. All they do every day is talk to child victims and witnesses of abuse and neglect. It's a highly specialized field that did not exist 15 years ago. Forensic interviews at the child advocacy centers are recorded and that recording is turned over to law enforcement. That recording is designed to reduce the number of times a child has to relive their abuse. Forensic interviewers utilize nationally recognized protocols and I've shared those or passed those around in terms of what an interview structure would look like at a child advocacy center. I think it's important to recognize that of the 5,100 children we served last year, 76 percent of them were under the age of 12, so a significant number were alleging sexual abuse, serious physical abuse, or they witnessed a violent crime or a homicide. LB459 limits the deposing of child victims and witnesses when that information is available elsewhere, as with the video-recorded forensic interview conducted at the child advocacy center. I'm pleased to see that, the amendment that was circulated earlier removing the police officer interviews that are not always videotaped. In closing, I just wanted to share the thoughts of ten-year-old Tatum (phonetic), who was deposed last Friday on a case going to trial in southeast Nebraska. As she stated, I've already done my part, I told the truth more than once, and now they want me to go through it all again; why can't it just be up to the adults, why can't it just be in the hands of the adults to figure this all out, why do I have to keep talking about all that yucky stuff? LB459 provides some safeguards for child victims in limiting when and how a child victim can be deposed. And we urge your support for this important legislation. [LB459]

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Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SEILER: Senator Williams. [LB459]

SENATOR WILLIAMS: Thank you, Senator Seiler. Ms. Ayers, thank you for being here. I've had the chance to be in one of your centers and view how that's done. A question about the availability of these services and the locations of child advocacy centers across the state, could you address that for me, please? [LB459]

LYNN AYERS: Well, I named where the existing centers are. Most centers are available 24/7--ours are--to assist with any kind of an interview that's needed to assure for the child's safety. There's also pending legislation that would look at expanding satellite locations across the state to reach even more populations that are not being reached, particularly out west and in the Panhandle, where we can do a better job of serving children if we had more resources. [LB459]

SENATOR WILLIAMS: That's my concern out in some of the more remote areas where we just simply don't have those satellites available quite as readily. [LB459]

LYNN AYERS: Yes. We opened satellites in York and Nebraska City last year. And you don't think of Richardson County as being remote, but it's a two-hour drive to Lincoln, so it's helped provide those services closer to home. [LB459]

SENATOR WILLIAMS: Thank you. [LB459]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB459]

LYNN AYERS: Thank you. [LB459]

SENATOR SEILER: Next proponent. [LB459]

SASHA REICHENBERG: Good afternoon, everybody. My name is Sasha Reichenberg, spelled S-a-s-h-a R-e-e-i-c-h-e-n-b-e-r-g. I am a mother of a minor child who had to go through a deposition and she was a victim of a sexual assault. She was only seven years old when she had to sit in front of a defense attorney and tell the story over, one more time, again, and go through the details of what had happened to her over the course of the time. She was very nervous and scared, as am I, sitting right in front of you guys--I hate public speaking--and I'm sure she was nervous out of her mind. I know she was confused and upset and she was worried that she'd miss school. And she just was upset at the fact that she had to keep going through the same things over and over again when she'd already been through them on a taped discussion twice, not just once. I think that LB459 would help children not have to face the fear of reliving the experience

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

over and over again and having their tapes speak for them instead of having to be questioned yet again. I am just here to speak on behalf of minor children and ask, why isn't it that defense attorneys can just look at the records and the tapes instead of having to go in front of an innocent little child and ask them again why or about the things that had happened to them? I don't have anything else. [LB459]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. [LB459]

SASHA REICHENBERG: Thank you. [LB459]

SENATOR SEILER: Further proponent. [LB459]

TOM BRANTLEY: Senator Seiler, members of the Judiciary Committee, my name is Tom Brantley, B-r-a-n-t-l-e-y. I am a Sarpy County deputy attorney. I've been an attorney for 20 years. Fifteen of those have been as a defense attorney; 13 of those 15 years have been as a public defender. I am entering my fourth year as a prosecutor. In addition to my experience as an attorney, I appreciate Senator Crawford's hockey example because I'm also a hockey player. We have to wear helmets, but shoulder pads were the issue for my particular league. When I read the legislation that's before you, I'm in support of LB459. It seems to me that obviously the main priority of this bill is to keep children from being revictimized. It seems to me that also dovetails with any kind of subconcern of what I would describe as the unnecessary repeated testimony or unnecessary discovery that isn't already known. It's kind of bound up with the revictimization of kids. As I look at my career as a defense attorney, I think of two examples that just jump out at me regarding each of these issues. One of the examples would be the revictimization. As part of a deposition I was with cocounsel deposing a...I think it was a six- to eight-year-old. During the course of this deposition, the child got up during the deposition, got under the table in an effort to demonstrate the subject matter at hand. That was to the shock of both myself, cocounsel, prosecutor, court reporter, and victim advocate. That was one just glaring example of revictimization of this particular child. In the area of unnecessary discovery, I think about one issue where we were deposing a child, I was deposing a child who had been diagnosed with syphilis...or, excuse me, herpes, and the boyfriend of the mother of the child also had herpes. Now, in my opinion, even as a defense attorney, it was unnecessary litigation but it gets me to the purpose of the litigation and the good and bad...or the good of the litigation or the legislation is to balance these issues versus the rights of the accused versus the legitimate need for a deposition. In my defenses, my experience as a defense attorney, it seemed to me that, the vast majority of the time, depositions served no legitimate purpose other than either trying to gauge the cooperation of the parents to making the child available, to go on a fishing expedition for perhaps something that you could use later as a "gotcha" moment on a minor detail that may

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

cloud the issue at trial, or just simple trickery, which I didn't engage in but it wasn't above other defense attorneys. The legislation at hand doesn't eliminate the deposition and my suspicion is that the opponents of the legislation might take issue with the provision that if a videotaped interview has been done by a neutral interviewer, my suspicion is that opponents...and I'm out of time. [LB459]

SENATOR PANSING BROOKS: Please...I was going to say to go ahead. [LB459]

SENATOR SEILER: Okay. [LB459]

TOM BRANTLEY: Thank you. My suspicion is that opponents of the legislation would take issue with some of the description of the interviewers as neutral and my response to that concern, if it were a concern, would be that, again, this legislation provides for cause for a deposition. If some...if a defense attorney...and every defense attorney is going to see the interviewer as non-neutral. That's just the nature of a defense attorney. My response to that is, you can still show the judge your area of concern in a videotape and let the judge make the decision as to whether or not this was an absolutely neutral interview. And if there's good cause, there will be a deposition. But as a matter of course, it just doesn't need to be done. [LB459]

SENATOR SEILER: Any further questions? Thank you very much. [LB459]

SENATOR CHAMBERS: I have one. [LB459]

SENATOR SEILER: Oh, excuse me, Senator. [LB459]

SENATOR CHAMBERS: If this question would require you to engage in speculation that you'd rather not engage in, you don't have to answer it. If you were a defense attorney, would you be in favor of this bill or would you be opposed to it? [LB459]

TOM BRANTLEY: If I were a defense attorney, I would be opposed to it but not necessarily because... [LB459]

SENATOR CHAMBERS: Oh, you don't even have to explain. I just... [LB459]

TOM BRANTLEY: I mean... [LB459]

SENATOR CHAMBERS: Okay. [LB459]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

TOM BRANTLEY: There are...my reasons would have nothing to do with the merits of what I'm arguing here. It would be purely gamesmanship and "strategy." [LB459]

SENATOR CHAMBERS: Good enough. That's fair. Thank you. [LB459]

TOM BRANTLEY: Thank you. [LB459]

SENATOR SEILER: Seeing no further questions, thank you. Any further proponents? [LB459]

AMANDA GUROCK: Good afternoon, Senator Seiler and members of the committee. I am Amanda Gurock, G-u-r-o-c-k, and I'm here to testify in favor of LB459. I work as a therapist and in my practice I work with a lot of traumatized children who have either been sexually or physically abused. I just kind of wanted to reiterate three points that happens with a traumatized child in regards to being deposed after they've already told their story numerous times. The first concern is that we do end up retraumatizing a child with the use of a deposition. What happens with therapeutic intervention is that a traumatized child, their symptoms and their behaviors begin to subside. And then when the deposition and getting ready for it happens, basically, what it leads to is that those behaviors and those symptoms kind of resurface again, which, unfortunately, the progress that they made gets diminished at that time. The second concern that I kind of want to bring up in regards to the depositions is that sometimes a deposition itself can be used inappropriately, which means that the perpetrator has a chance to either, you know, make the child feel threatened or they kind of put their dominance over them as they're normally there in regards to the deposition. And then, in even some cases, it's used as the perpetrator to have another contact with the child because all contact has been stopped with that child. Finally, the third concern that I kind of want to point out in regards to retraumatizing a child is that sometimes the retraumatization can lead to newer behaviors or worse behaviors and symptoms that had occurred than following the initial trauma that had occurred. So I just kind of wanted to point that out. And that's really the difference between a child and an adult when it comes to doing depositions is that not always the child realizes what happened to them was wrong and how those experiences were negative towards them. So in regards to that, when they're going through the deposition, not only are they reliving the horror that they did and the experiences they went through, but they're looking at it through the lens of knowing how wrong it was and how it really did affect them, which can cause more symptoms and behaviors. Basically, in order to bring home my point, I was on a therapist...I was the therapist on a case of a five-year-old who was sexually abused by his mom and dad. The state had decided not to call him as a witness, but mom's defense attorney had stated that they still wanted to call him to do a deposition even though the state wasn't going to use him. As this boy began to prepare for the deposition with the county attorney and start to relive those details of his trauma, he began regressing in his behaviors. He went from feeling safe in public to being fearful of leaving his house again. He

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

went from being able to sleep peacefully to having nightmares. And he further regressed by having accidents. And then he went from feeling safe to thinking at any moment his mom was going to hurt him again or hurt those that he loved, so. Oh, I have to stop. [LB459]

SENATOR SEILER: Thank you very much. Any questions? [LB459]

SENATOR PANSING BROOKS: You want to finish? [LB459]

SENATOR SEILER: Senator Williams. [LB459]

SENATOR WILLIAMS: Go ahead. [LB459]

SENATOR PANSING BROOKS: I just wondered if you had something to finish. [LB459]

AMANDA GUROCK: I just had one more sentence, honestly. I just wanted to say that I've seen firsthand how the retraumatization and the aggression in preparing for a deposition and that the reason I'm here today is because I never want another child to have to go through that. [LB459]

SENATOR SEILER: Senator Williams. [LB459]

SENATOR WILLIAMS: Thank you, Senator Seiler. I do have a quick question because you're the first one here that's actually been a therapist working with these young people. And I'm assuming, based on your testimony, that you have worked with a young person or multiple young people that have been through therapy. And not to ask you to disclose any confidential information, but in...during your therapy sessions, have you found out any time at all that that child admits that they did not tell the full truth under the recorded deposition that they had? [LB459]

AMANDA GUROCK: I've found it to be that they don't tell all of the details under the recorded Project Harmony interview or at the child advocacy center because, as they get more comfortable with people and that rapport is built, they actually tell more details in what's happened. So most of the time, it's...they haven't told enough. [LB459]

SENATOR WILLIAMS: Not a situation where they have lied about the perpetrator of that type of... [LB459]

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Transcriber's Office

Judiciary Committee
March 04, 2015

AMANDA GUROCK: I personally have not experienced that. I'm sure that it has happened. [LB459]

SENATOR WILLIAMS: Thank you. [LB459]

SENATOR SEILER: Okay. Any further questions? Seeing none, thank you for your testimony. [LB459]

AMANDA GUROCK: Thank you. [LB459]

SENATOR SEILER: Any further proponents? Seeing none, any opponents? [LB459]

TOM STRIGENZ: Good afternoon, Commissioners (sic). Thomas Strigenz, Sarpy County Public Defender's Office, S-t-r-i-g-e-n-z, testifying in opposition to LB459. It is very important to know what the purpose of a deposition is, and it's to get facts on a case. And why LB459 is not a good bill is it eliminates or attempts to eliminate the fact-finding portion of a trial. And anybody who thinks, and I appreciate the amendment that Senator Crawford added, but anybody who thinks that the officer's interview of a child victim and/or the Project Harmony or the public...or the advocacy centers are, they're not. They're not fact finding. They're...and I think the word was, they are aids in the prosecution of the case. They are to get facts to support a prosecution. A deposition by a party is to get the facts. And, Senator Williams, your last question was very important because that's what depositions are for is...you know, the advocacy centers, they touch on the basics. Yes, depositions are probing, and they are, and they're tough. But we have provisions in the law under 29-1907...sorry, 29-1917, the deposition section. We have to ask. Courts have to grant, and they get to set conditions. And in my county, Sarpy County, there are conditions that are set. My defendant does not get to come into the room. I bought a closed-circuit television set. They're outside. Whether or not a victim/witness advocate, whether or not Manny is in there, is all set out. But it is the fact-finding portion of a trial, a system that we have in the United States. And unfortunately, that witness is the percipient witness because these cases more than any other cases, and they're the most horrific of probably all the cases we have on the statute books, with all due respect, including the next one, the next bill we're going to hear, because it is a victim, but it is usually one word against another and the facts become important and that witness has those facts that need to be investigated. And many cases...the most recent is on February 5, 2015. A case was dismissed because of a deposition. Case went on for one...that was Bob Lindemeier in North Platte. The advocacy center took a...had a statement. Charge was filed against a college graduate, lost his job, lost his everything. But because of a deposition, case was dismissed. And more cases are resolved because of depositions and investigations of those cases than go to trial. This...I ask that this bill not go anywhere. It's just...there is laws already in place. [LB459]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SEILER: Any further questions? Thank you very much. [LB459]

TOM STRIGENZ: Thank you. [LB459]

SENATOR SEILER: Any further opponents? Anybody in the neutral? Senator Crawford, you may close. (Exhibits 6-8) Make the documents submitted to the Chair part of the record. [LB459]

SENATOR CRAWFORD: Thank you. And thank you for your attention and great questions. I'm just going to respond to a couple of questions and close briefly. So first of all, I want to say that LB459 does not eliminate fact finding. We did have some great discussion in my office, you know, about this concern of the defense attorneys. And one of their concerns was that when the forensic interviewing happens, sometimes, there is a suspect. And so a lot of the interviews may be done around that assumption of who the suspect is. And so if it's the case that then the defense attorney feels that there is another person that is a likely suspect or some other person needs to be considered, that would be the exact...that would be exactly the kind of thing that the bill anticipates in terms of asking a judge and indicating why in this case it's necessary to have another interview and, again, making sure that, when that happens, that there's protections for the child. I do want to remind you again that Vermont made a similar...had a similar policy change and did not see key changes in what happens at trials after that, which suggests to me that restricting the depositions did not really harm the defendants or change justice in that way but, instead, protected the child. And in response to your question about where the child advocacy centers are in Nebraska, there are seven and they're in Gering, North Platte, Kearney, Grand Island, Norfolk, Omaha, and Lincoln. And Senator Stinner has a bill in front of the Appropriations Committee to add nine additional ones across the state. And also, the ACLU letter mentions the Tome case before the Supreme Court in 1995. And while that case did involve the testimony of a child, the case revolved around hearsay and whether statements of other adult witnesses were admissible in trial. That case did not address the issue at hand in LB459, which is child depositions during a felony case. Finally, the American Bar Association's commentary on their current standard for discovery depositions in all criminal cases recognizes that depositions should only be allowed in limited circumstances. Specifically, it states, and I quote, the ultimate consensus was that discovery depositions should be allowed for both parties but under very limited conditions and only where a party could otherwise be surprised at trial by the witness's testimony, unquote. LB459 achieves this goal while also achieving an even more important goal of protecting children from further trauma. Thank you. [LB459]

SENATOR SEILER: Thank you. No further questions. [LB268]

SENATOR CRAWFORD: Thank you. [LB268]

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Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR SEILER: The...Senator Chambers, you may introduce LB268. [LB268]

SENATOR CHAMBERS: Mr. Chairman, members of the committee, I'm Ernie Chambers, representing the 11th Legislative District in Omaha. I owe an apology to the people who came to speak on this bill. Early on, I had mentioned that the bill would be heard on today's date because it is a sort of a lobby day for those who are opposed to the death penalty. I had given the impression, it was mine at the time, that this would be the only bill that would be scheduled. There are people who could not stay as long as that other hearing went and they left. I cannot blame them. The fault is mine. I should have been more attentive to how the scheduling was being done and I could have objected to it at that time. But I was not attentive. I blundered. I apologize not only to those people who left, but to those who stayed here all of this time. The bill is too important, not just because it's mine, to have been handled in the way that it was. And I will learn from this because I am a fast learner. But as I've said on the floor, when I speak forcefully because I believe something is a certain way, I will be just as forceful in acknowledging the error, the blunder on my part. And I'm not going to say a "mistake." That...I don't want to soft-pedal it. Everything is serious. People have things to do with their time. But I'll tell you what I do intend to do: cut considerably the amount of time I would have taken with an opening. I will stay here and close, and the people who want to testify will have an opportunity to leave, if they choose to, and not stay an extra amount of time. Because everything that's said is recorded and transcribed, I hope nobody will be deterred from saying what they feel ought to be said. It is a matter of record. The handouts I prepared for the committee, I'm not going to hand out. I'm confident the bill will be advanced from committee. I don't think that's overconfidence. And at the time that I present the bill on the floor, the members of this committee won't have to look at the same handouts twice. (Laughter) And I have prioritized this bill. I'm going to go through my statement of intent for the sake of the record, but it won't be lengthy. LB268 replaces the death penalty with a sentence of life without possibility of parole. Section 1 presents findings that enumerate problems in carrying out judicial executions. Section 20 leaves undisturbed the discretion of the sentencing court to order payment of restitution. And Section 25 retains aggravating and mitigating circumstances by which the sentence is determined. In Section 21, as the bill is drafted, there is a statement that in those--I'm paraphrasing--in those cases where a death sentence was pronounced but it hadn't been carried out, that sentence would be changed to life imprisonment without possibility of parole. We all know that the only entity in this state which can mitigate or soften a sentence is the Pardons Board. Because that was stated as a fact, not a fact but as something that should be done, I would not want, if this bill is ever challenged, should it become law, the argument be made that the Legislature counted on these pending death sentences being converted to life imprisonment as a basis for passing the bill. And if that were struck down as an unconstitutional usurpation of judicial authority, then it wouldn't make sense. So there is an amendment that would say it is the intent of the Legislature, so that it's clear that we are expressing to the court, that we would intend that those sentences be changed to life imprisonment without parole. Now the court cannot order the Legislature to spend money a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

certain way when we have the discretion to do so. If they cannot in the Attorney General's Office obtain the means to carry out an execution while a death penalty is on the books, we need not make provision to carry out an execution should we pass a bill abolishing the death penalty. That was a digression. Now I will...and I thought I should explain that. I'll go back to this statement: In addition to its negative propensity to diminish the value of human life, the death penalty exerted a degrading, corrupting impact on the office of the Nebraska Attorney General which disingenuously prevailed on the Nebraska Supreme Court to issue a death warrant setting an execution date for inmate Carey Dean Moore, despite knowing no execution could be carried out due to the legal unavailability of sodium thiopental, one of the three drugs mandated by law for use in judicial executions. And that remains the fact today. The Attorney General's Office deliberately withheld this critical material fact from the Supreme Court, which was compelled to withdraw the death warrant, and triggered an extraordinarily harsh rebuke from the Douglas County District Court in its December 11, 2011, order dismissing the postconviction motion of Moore. I would have gone into more detail on that than I'm going to now. But I will point out that what the district court was saying, that the postconviction relief action is not the instrumentality for seeking sanctions against the Attorney General, therefore, it couldn't be considered. But this is what that court said anyway, "Notwithstanding fairly persuasive proof that the Department of Correctional Services obtained controlled substances of unknown efficacy from a foreign distributor and manufacturer not inspected, registered or approved by the FDA or DEA, and a lack of transparency and candor, even with the Nebraska Supreme Court and the Douglas County Attorney's Office by the AG's Office beginning on January 24, 2011, and such acts require accountability, it is not available through postconviction relief." The court acknowledged that the Supreme Court had been snookered, the county attorney's office had been snookered, and the attorney for Carey Dean Moore had been snookered. Back to the statement: The inexcusable, unethical ambush of the Supreme Court and Douglas County Attorney's Office by the AG is but another example of the corrupting influence of the death penalty and a substantive reason for its elimination. I am going to go through this little chart that I prepared on the back for the record. This chart deals with the number of executions, the number of death sentences imposed, from the date that the first execution was carried out. The total number of people sentenced to death between 1903 and 2010--not that an execution was carried out in 2010, but people are on death row--the total number of people sentenced was 72. The total number executed was 23. Less than one-third of those sentenced to die were actually executed. The first method was by hanging, and that period was from 1903-1913. The total number hanged was eight. Then electrocution became the method in 1920. So between 1920 and 1997, when the last execution was carried out--that was 17 years ago--the total number electrocuted was 15; the total number of sentences commuted, 31; the number who died from natural causes, 3; the number from suicide, 2; furlough, whatever that meant at the time, 1, in 1913, a Jay O'Hearn, O-'-H-e-a-r-n; one vacated sentence that was in 2001, Jeremy Sheets; and currently there are 11 people on death row. So I'm not advocating for more executions. But if from 1903 until the present there were only 72 people sentenced to die and only 23 executed, it's clear that this is not

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Transcriber's Office

Judiciary Committee
March 04, 2015

a penalty or a punishment that is relied on to do anything. For those who say that it could serve as a deterrent, something so seldom used could not be a deterrent. Something so seldom used on its face was imposed arbitrarily. And the fact that nearly...well, not nearly half. Thirty-one were commuted out of 72. That's a high percentage. Something was not like it should be. Now in terms of the white members of the population, no females, the total number sentenced to death: 48...I meant 40...49. My specs and the light are conspiring against me. The total number of white persons sentenced to die: 49. Five were hanged, 11 were executed, for a total of 16. Out of 49 sentenced to die, 16 were actually executed. Twenty-two were commuted, five died--three of natural causes, two by suicide--then the one furlough, one vacated, and currently there are four white people on death row. Of black people, the total sentenced to die was 14. Six were actually executed, three by hanging, three by electrocution. Six of the 14 were commuted. Two black people currently are on death row. Of Hispanics, the total sentenced to death: six. One was commuted. Five are currently on death row. Native Americans, the total number sentenced to death: three. One was electrocuted, the other two commuted. So this information is attached to the statement of intent, but the statement of intent is not a part of the record that will be transcribed unless it's handled in the way that I'm handling it now. And if you just have burning questions that you must ask me now, I will answer. But I would hope that, for the reasons I gave, I can keep mine to this. We will allow as much time as possible for those who came to testify. Then I will close and I'll answer any questions relative to anything I've said or left unsaid or anything that occurs during the hearing. Thank you. [LB268]

SENATOR SEILER: Your procedure will be adopted. [LB268]

SENATOR CHAMBERS: Thank you, Mr. Chairman. [LB268]

SENATOR SEILER: First proponent. [LB268]

SENATOR COASH: Go ahead. [LB268]

ASHLEY GAGE: (Exhibits 1 and 2) Hi. Thank you. My name is Ashley Gage, A-s-h-l-e-y G-a-g-e. I want to ask you to please excuse my nervousness. The last time that I was in this situation, I was testifying at my father's murder trial. So this is a little overwhelming. I didn't expect to lose my composure. I'm from Kearney, Nebraska, and I'm here to testify in support of LB268 to repeal the death penalty. I was just a teenager when I found my father murdered. As well as offering my personal testimony, I'm also sharing a signed letter from 25 murder victims' families in Nebraska who also want to see the death penalty replaced by life without the possibility of parole. Regardless of our individual circumstances and even our philosophical thoughts about the death penalty, we recognize that Nebraska's death penalty fails victims. When a murder takes place, the most important question should not be, what is best for society? Particularly, the most

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

important...excuse me, the most important question should not be, what does the offender deserve? The most important question should be, what is best for society? Particularly, what best helps victims' families rebuild their lives after the horrible trauma of murder? The death penalty is not a good answer to this question. Nebraska's death penalty causes tremendous unnecessary pain and suffering to murder victims' families. In the effort to prevent innocent people from being executed, the process drags on for years, which delays the healing process for victims trapped in the system. It costs too much, which diverts resources that should instead be invested in much-needed victims' services or crime prevention programs that have been proven to keep us safer. The death penalty creates an arbitrary and painful distinction between victims who are worthy of the death penalty and the vast majority who are not. And finally, the high-profile and controversial nature of capital punishment can create rifts between families when they need each other more than ever. For all these reasons, I feel fortunate that my father's case was not a capital case. Had it been a death case, my family would surely still be going back and forth to court, waiting through appeals, and waiting for the court's promised punishment to somehow be doled out. I don't believe I would have been able to have the life I've lived, a good life, a life that my daddy would have wanted, if his case had been a capital case. I did not endure the lengthy prep time or the multipart trial, and that is unique to capital cases, and then spend years waiting for attorneys and then endured decades of appeals. After my father's killer was sentenced to life imprisonment, I was free to move forward with my life. But as you can tell, you don't really ever move forward from something like that, even after almost 15 years. I have a little more, but... [LB268]

SENATOR PANSING BROOKS: Please, can she go ahead and finish? [LB268]

SENATOR SEILER: Yes, go ahead. [LB268]

ASHLEY GAGE: After my father's killer was sentenced to life imprisonment, I was free to move forward with my life. I pursued my education in part because I didn't have to stay close to the courthouse. I have my Ph.D. now. Nebraska has a choice. We can continue with our broken charade of a death penalty system and continue to keep victims' families trapped in this system of false hopes or we can continue to waste millions of dollars that could be better spent. Or we could replace the death penalty system with life imprisonment, allowing victims' families to leave the courthouse that day knowing their offender is going to start his punishment immediately and anonymously. [LB268]

SENATOR SEILER: Any questions? Thank you very much for your coming and testifying. [LB268]

ASHLEY GAGE: Thank you. [LB268]

SENATOR SEILER: Further proponent. [LB268]

GWENDOLEN HINES: Good afternoon, Senator Seiler and the Judiciary Committee. My name is Gwendolen Hines. It's G-w-e-n-d-o-l-e-n. Hines is H-i-n-e-s. I'm here as a member of the social justice committee of the Unitarian Church of Lincoln. There are several reasons that we're against the death penalty. Perhaps the most important one is that sometimes innocent people are put to death. Since 1970, 150 people on death row have been found innocent and have been set free, which makes one wonder how many innocent people have been killed. Someone has to be guilty beyond a reasonable doubt to be convicted, but the burden of proof must be higher in a death penalty case. It must be beyond any doubt, which is hard to prove. Another reason we're against the death penalty is perhaps the most important factor in determining whether defendant will receive the death penalty is the quality of representation he or she receives. Also, the race of the victim and the race of the defendant are major factors in who receives the death penalty and who doesn't. The death penalty is not a deterrent and it costs far more to execute a person than it does to keep him or her in prison for life. In Arkansas, a bill to abolish the death penalty passed the senate judiciary committee. The bill's sponsor, Senator David Burnett, a former prosecutor and judge who at one time both sought and imposed the death penalty, said it's no longer a deterrent, it's a punishment that has actually been broken, it doesn't work, and it costs a huge amount of money to try and prosecute those cases. Also, many people feel that the death penalty should be done in a humane way, and that often doesn't happen. There has been a history of botched executions. On July 23, 2014, in Arizona, Joseph Wood was lethally injected. Mr. Wood gasped for one hour and 40 minutes before death was pronounced. On April 29, 2014, in Oklahoma, Clayton Lockett was lethally injected. It took an hour to find a usable vein. Ten minutes after the first drug, a sedative, was administered, the physician overseeing the process announced the inmate was unconscious and, therefore, ready to receive the other two drugs that would actually kill him. These two drugs were known to cause excruciating pain if the recipient was conscious. However, Lockett was not unconscious, as the doctor said he was, and three minutes after the latter two drugs were administered, Lockett began breathing heavily, writing in the gurney, clenching his teeth, and straining to lift his head off the pillow. Officials then lowered the blinds to (inaudible) the witnesses who had seen what was going on. And 15 minutes later, the witnesses were told to leave the room. Twenty minutes after the first drugs were administered, the director of the Oklahoma Department of Corrections halted the execution and issued a two-week stay for Lockett and also for his partner in crime, who was also on death row and due to be executed shortly thereafter. Lockett died 43 minutes later of a heart attack. And since 1985, there have been 39 botched lethal injections, and since 1982, there have been 10 botched lethal electrocutions. [LB268]

SENATOR SEILER: Thank you. Any questions? Thank you very much for your testimony.
Further proponent. [LB268]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

MIRIAM KELLE: Hi. My name is Miriam Kelle, M-i-r-i-a-m K-e-l-l-e. I'm from Beatrice. My family's experience is a perfect example of how Nebraska's death penalty fails victims' families. I'm here to testify in favor of LB268. In 1985, my baby brother James was tortured to death and his killer, Michael Ryan, was eventually sent to the death row. I have seen over and over again how Nebraska's death penalty is a false promise to victims. When we sentence someone to death, we sentence the victim's family also. Michael Ryan was sentenced nearly 30 years ago. At that time, my son was in diapers and now my son has two children of his own. And Michael Ryan still sits on death row. I would give anything to go back in time and change the death sentence to life imprisonment. If that had happened, my children would have grown up without seeing their uncle's killer made a celebrity as he slowly worked his way through the court system. If we'd been given a sentence of life without the possibility of parole, we could have left the legal system behind 30 years ago and not had our focus of our family energy on our grief and on a never-ending quest for justice. (Inaudible) has nothing to do with whether or not victims want the death penalty since it's in my family's wish to see Michael...some in my family wish to see him executed and others don't. When we should be united in our loving memories about Jim, comforting one another, the punishment has caused a rift in our family. I have a sister who sends flowers to Jim's grave every year until...she will continue to do so when Michael is executed. My daughter is now desperate to see that...the execution and expects she will feel better when it comes. That she could have passed with the justice system, started her healing journey 30 years ago. With every passing year, her pain is compounded by the fact that the justice system failed to deliver the justice she was promised. Our case isn't unusual. The death penalty can be shortened because the U.S. Supreme Court...can't be shortened because the U.S. Supreme Court has mandated that capital cases can be threatened...can be treated with extreme care. And that makes perfect sense. No one wants to see an innocent person executed. But the result is inevitable hardship on victims' families. Even in the quick-executing states like Texas, victims are forced to wait upward of a decade. What's more, in Nebraska, reversals are common and meaning that, if a family endures the extra-long capital trial process, the odds are good that the case is going to be reversed. A family is told that justice should be the death penalty but ultimately it's not available to them. The systems treat family victims like pawns. Only when we end the death penalty in Nebraska will we stop making the painful promises to victim's family like mine. I hope you will end the death penalty this year. I hate to think of another family going through what we've been through. Any questions? [LB268]

SENATOR SEILER: Any questions? Seeing none, thank you very much. [LB268]

MIRIAM KELLE: You don't want to know what this book is? [LB268]

SENATOR PANSING BROOKS: I want to know. [LB268]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

MIRIAM KELLE: You want to know? Three pages are about my brother's funeral and the rest of it is appeals and case...of this 30-year-old case from Mr. Ryan. Thank you. [LB268]

SENATOR SEILER: Next proponent. [LB268]

ANN SHERER: My name is Ann Sherer. I'm a retired United Methodist bishop. I served the Nebraska area from 2004-2012 and the Missouri area from 1992 until 2004. [LB268]

SENATOR SEILER: Will you spell your last name, please? [LB268]

ANN SHERER: S-h-e-r-e-r. [LB268]

SENATOR SEILER: Thank you. [LB268]

ANN SHERER: I come before you today thanking you for your consistent hard work and willingness to deal with the hardest issues in our culture. I also come before you to ask you, please, void the death penalty. It is expensive. It costs more than lifetime incarceration. It is inhumane. I'll talk about that again in a moment. It is inequitable. Poor people are the primary targets of the death penalty. It is an ineffective deterrent that has been documented time and again. And mistakes happen. Those also have been thoroughly documented. What I'd like to share with you very briefly is that, several years ago, when I was the resident bishop in Missouri, I was asked to walk with a man who had been sentenced to the death penalty. I went down to Potosi several times and visited with him and with his wife and his stepchildren. On the night of his incarceration, I was the only person allowed to sit outside the cage. I don't know what we do in Nebraska, but in Missouri they put a person in a cage for a 48-hour suicide watch so that they can't kill themselves before we do it. The light is on for 48 hours. They cannot go to sleep, they're allowed nothing, and they can touch no other human being. Because I was clergy, I was allowed to put my hand here and he could put his hand there. He was not a nice man. He had a terrible background and he had hurt innumerable people. But when he was executed, I was sitting beside his wife, holding her hand. She fainted. On the other side of a small barrier, I heard the victim of the murder's family cheer and cheer. I wanted to weep. I realized, as I saw that cleaned-up death that looks like a medical procedure but is the killing of another human being on purpose, I watched that take place... [LB268]

SENATOR SEILER: Ma'am, just a second. Entertain a motion? [LB268]

SENATOR PANSING BROOKS: Will you please continue? [LB268]

SENATOR SEILER: Now you can go ahead. [LB268]

ANN SHERER: Pardon? [LB268]

SENATOR SEILER: Go ahead. [LB268]

ANN SHERER: Oh. I watched that take place and saw what pain that inflicted on the culture and on all of us. If you choose to continue the death penalty, I challenge you to visit death row. I challenge you to walk with the person you've sent to death. And I challenge you to remember that you paid that terribly vulnerable person who actually put the IV in the man's arm and killed him, and he killed him on my behalf with the money that I had paid in taxes. I agree that some persons are too ill, too scarred, or too damaged to live freely. The culture needs to be protected from them. These persons need life imprisonment without parole. Please give this your careful thought and consideration. Retribution never heals; it only destroys. [LB268]

SENATOR SEILER: Any questions? Thank you, ma'am, for your testimony. Next proponent. [LB268]

RONALD REAGAN: (Exhibit 3) Mr. Chairman and members of the committee, my name is Ronald Reagan. I'm a retired district judge from Sarpy County with over 32 years of active service, and I'm here today to express support for LB268. I've also given a handout of my testimony in case my throat isn't able to carry through these two pages, but I'll do my best. Several years ago, I spoke in favor of a bill that abolished the death penalty, and I appear once more because I have a unique perspective of this particular issue. In my time on the bench, I served as a member of many three-judge sentencing panels determining whether a sentence of death was an appropriate punishment. I served as a presiding judge of a three-judge panel that sentenced John Joubert, a serial child murderer, to death, a sentence which has been carried out. It may surprise you someone with such a background would be here opposing the death penalty. Judicial ethics prevented me from publicly expressing my views while on the bench. My oath required me to follow the law. And so I did. Yet, during my time on the bench, I frequently spoke with other judges who were good friends of mine, some of whom still serve on the bench but many of whom are retired, and we all agreed with the hope that sometime the Legislature would simply abolish the death penalty. Many of us with the most intimate knowledge of the system are prevented, or choose not to, from sharing our suggestion or opinion as to why the death penalty doesn't work. When I say it doesn't work, I refer to a mistaken notion the death penalty provision has some general deterrent effect. I understand it is a specific deterrent, although no more so than a sentence of life without parole. But on a general deterrent basis, it has no effect whatsoever. The vast majority of criminologists have come to the same conclusion, but I have the specific case that makes the point. I mentioned John Joubert earlier. He was an extremely intelligent man,

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Transcriber's Office

Judiciary Committee
March 04, 2015

over...an IQ of 140, but a troubled mind lacking emotion. His first Nebraska victim, Danny Eberle, was kidnapped near downtown Bellevue, transported nearly five miles to the south of town where he was murdered. Iowa, a state without the death penalty, was less than two miles east of the kidnapping site. It wasn't ignorance or stupidity that kept Joubert from taking his victim across the river. The legal consequences of his action simply played no part in his decision, nor does it in any other murderer's. The general principle is affirmed by studies that show that bordering states, one without a death penalty and one with, have no higher murder rates than the non-death penalty state. The principle is in effect regionally, as well. The death penalty is now used almost exclusively in southern states. If capital punishment was a general deterrent, the per capita murder rate in those states should be lower, yet the reverse is true. We can repeal the death penalty, and there will be no detrimental harm to public safety. Given the time and resources attendant to capital cases from the police, prosecutors, and the court system, life without parole is the most efficient and effective penalty. I'd like to close with a comment intended to be neither critical nor self-aggrandizing. Putting aside for the moment the possibility of the state taking the life of someone actually innocent, I frequently hear an argument in support of the death penalty, the defendant, "deserved it for what he did." Retribution or revenge, although politically popular in polarizing cases, is simply neither a rational nor viable reason for the retention of the death penalty. I urge you to forward the bill for full consideration, and I'll answer any questions. [LB268]

SENATOR COASH: Thank you, Judge. [LB268]

RONALD REAGAN: Thank you. [LB268]

SENATOR SEILER: Next proponent. [LB268]

TOM STRIGENZ: Thomas P. Strigenz, Sarpy County Public Defender, appearing on behalf of the Nebraska Criminal Defense Attorneys Association. I'm just up here just to make sure we're on the record in support of this bill. That's all I have to say. Thank you. [LB268]

SENATOR SEILER: Okay. Any questions? I guess not. (Laughter) [LB268]

THOMAS STRIGENZ: Oh, sorry. Sorry. [LB268]

SENATOR SEILER: Next proponent. [LB268]

JEFFRY PATTERSON: My name is Jeff Patterson, J-e-f-f P-a-t-t-e-r-s-o-n. I'm a local attorney and I represent four of the individuals known as the Beatrice Six. My clients are Joe White, Tom

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Transcriber's Office

Judiciary Committee
March 04, 2015

Winslow, Kathy Gonzalez, and Ada JoAnn Taylor. I was asked to share with you some of my observations on how the threat of the death penalty contributed to six people spending a total of 77 years in prison for crimes they did not commit. Three of the Beatrice Six had significant histories of psychosis, hysterical anxiety, and the inability to cope with stressful situations. Some were intellectually low functioning. They were all unsophisticated in the criminal justice system. They were all financially indigent. When they were arrested, they were subjected to repeated interrogations, some lasting as long as five hours, about a murder and a rape they knew nothing about. Their interrogators would tell them there was no doubt they were involved in Ms. Wilson's murder and unless they started cooperating they will be convicted at trial and sentenced to die in the electric chair. The threat of being executed for a crime they had no memory of was terrifying. James Dean was so terrified that during the 22-day period between the day of his arrest and when he first started having dreams about Ms. Wilson's murder, a police psychologist was called to the jail on at least four occasions to talk James down from hysterically screaming incoherently in his cell. My client, JoAnn Taylor, was extraordinarily vulnerable. The county attorney and sheriff both knew that JoAnn was a high risk for psychotic lapses when stressed, but that didn't particularly matter to them. While she was in county jail, the sheriff, his deputies, and the county attorney would frequently come back to the jail and tell JoAnn, if she didn't start cooperating, she would be the first woman to die in Nebraska's electric chair. The threat of execution was instrumental in JoAnn later developing the psychotic delusion that she actually was the person who suffocated Ms. Wilson. JoAnn's lawyer at the time, her criminal defense lawyer, told me that he knew there were significant problems with the case against JoAnn, but when a plea deal was offered that took the death penalty off the table, it was just too risky to go to trial. Kathy Gonzalez knew she had nothing to do with Ms. Wilson's murder. After she was arrested and held in jail, the sheriff frequently told Kathy that she was a damn liar and that if she didn't start cooperating she'd be lucky if she made it to the electric chair, given the number of death threats that they had received. Kathy pled no contest because she knew she was not guilty, but she also knew the evidence they were going to use to convict Joe White would likely convict her. She told me that her only goal was to not die in prison for a crime she did not commit. Tom Winslow also knew he was not guilty, but he knew that the same evidence that was actually used to convict Joe White would convict him, too, and he didn't want to die in prison. Like Kathy, Tom pled no contest, denying his guilt but acknowledging that if he went to trial, he would be convicted. There was no doubt in Tom's mind that if he were convicted at trial, he would be sentenced to death. May I continue? [LB268]

SENATOR PANSING BROOKS: Please. [LB268]

SENATOR CHAMBERS: Would you continue, please? [LB268]

JEFFRY PATTERSON: Thank you. In the final analysis, the threat of execution was a significant factor in causing two of the Beatrice Six to start dreaming and having psychotic delusions that

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Transcriber's Office

Judiciary Committee
March 04, 2015

they were involved in Ms. Wilson's murder. The threat of execution also caused two of the Beatrice Six to agree to no-contest pleas to crimes they knew they didn't commit. The risk of trial was just too great, and they didn't want to die in prison for crimes they did not commit. The irony in this though is that, although the county attorney sought to have Joe White sentenced to death, the trial judge sentenced Joe to life in prison because of all the favorable plea deals that the county attorney had made with the others. If someone from law enforcement were to tell you that the threat of the death penalty was a good thing because it encouraged pleas, they'd be only half right. For the Beatrice Six, it certainly encouraged pleas, but it encouraged innocent people to plead to crimes they didn't commit and that is clearly not a good thing. The object lesson that we can take from the Beatrice Six case is that the threat of death penalty did not serve the interest of justice. It resulted in four people pleading guilty or no contest to crimes they knew nothing about. And the one person who could have been sentenced to death, thankfully, wasn't, because that's just how close we as Nebraskans came to having the blood of an innocent man on our hands. In the interest of justice, I ask you to support LB268. [LB268]

SENATOR SEILER: Any questions? Thank you very much for your testimony. [LB268]

JEFFRY PATTERSON: You're welcome. [LB268]

SENATOR SEILER: Next proponent. [LB268]

MATT MALY: (Exhibit 4) Good afternoon. My name is Matt Maly, M-a-t-t M-a-l-y. I'm the coordinator for Nebraska Conservatives Concerned About the Death Penalty. Capital punishment is an extremely costly program for our state. This cost can be difficult to see, since the death penalty is not listed as a line item in any particular department's budget. But this is a burden on taxpayers, nonetheless. The high cost is found in the initial trials, which take up considerably more of the court's time than noncapital cases, as well as the lengthy and necessary appeals processes which can last for decades. Nebraska has carried out three executions since 1976, with an estimated cost of \$15 million each. This is not a program that's compatible with the principles of limited government or fiscal responsibility. I've submitted the written testimony on behalf of our national organization, Conservatives Concerned About the Death Penalty. This was written by Marc Hyden, our national advocacy coordinator, and gives a more detailed analysis of the high cost associated with the death penalty system. [LB268]

SENATOR SEILER: Further questions? Seeing none, thank you for your testimony and your handout. Next proponent. [LB268]

GREG SCHLEPPENBACH: (Exhibit 5) Good afternoon, Senator Seiler and members of the committee. My name is Greg Schleppenbach, S-c-h-l-e-p-p-e-n-b-a-c-h. I'm the executive

director of the Nebraska Catholic Conference and testify on its behalf in support of LB268. The teaching of the Catholic church does not condemn use of the death penalty in principle. The death penalty is not regarded as intrinsically immoral. Recourse to it is not excluded from the right and duty the state has to defend society from unjust aggressors. Nevertheless, Catholic teaching also applies an extremely important condition to use of the death penalty, namely, if nonlethal means are sufficient to defend the innocent and preserve public order and safety, then public authority must limit itself to such means as they are more in keeping with the common good and more in conformity with the inherent dignity of each human being. In practical application, this teaching regarding the death penalty has become clearer and more relevant during the past quarter century. In his encyclical, The Gospel of Life, the late Pope and now-Saint John Paul II in 1995 articulated a standard for application of this teaching. The standard provides a sound and justified public policy test for the death penalty. The test is this: Is the death penalty, given its ultimate consequence and finality, absolutely necessary? That is, are there absolutely no other means by which to defend society from an unjust aggressor? In analyzing these questions, St. John Paul himself responded from a global perspective that the cases of absolute necessity are extremely rare, if not practically nonexistent. The Nebraska Catholic Conference urges you as legislators to consider LB268 within this framework. We think the correct and proper response to the test of whether the death penalty is absolutely necessary is unambiguously no. The death penalty fails the test because in this modern and technologically sophisticated age, means of punishment and protection other than the death penalty are available and adequate. The conditions necessary to justify using the means of last resort do not exist. What's more, in this culture, which too frequently resorts to death and violence as a response to social problems, using the death penalty when there is no absolute necessity of doing so diminishes society even more and contributes to the growing disrespect for the dignity and value of every human life. We understand and respect the fact that many people have legitimate concerns and fears about the frequency of violence and heinous crimes in their communities. Legislators and society as a whole need to do all that can be done to deter and to respond conscientiously to this violence that undermines a stable society. Moreover, the needs of victims and their loved ones must be addressed. Nonetheless, much of the support for capital punishment we believe stems from a desire for revenge or from a desperate attempt to balance the terrible damage wrought by capital crime. And such feelings are understandable in the face of a brutal and senseless violence inflicted upon innocent people. Just retribution is a legitimate desire. Nonetheless, it cannot be truly achieved under the veil of vengeance and its own form of violence. We urge a response that meets evil with justice worthy of our best nature as human beings enlightened by faith in the possibility of redemption and forgiveness. The Nebraska Catholic Conference urges the committee to advance LB268 to General File. Thank you. [LB268]

SENATOR SEILER: Any questions? Seeing none, thank you. Next proponent. [LB268]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

WILLIAM THORNTON: Good afternoon, members of the Judiciary Committee. My name is Bill Thornton, B-i-l-l T-h-o-r-n-t-o-n, here to testify in favor of LB268 to replace the death penalty with life without parole. For 30 years, I was a pastor here in Lincoln at Capitol City Christian Church. I'm now in my third year as a professor at Nebraska Christian College, which is located in Papillion. In recent years, fundamentalists and evangelical branches of our Christian faith have begun questioning the death penalty system in the United States, recognizing that our capital punishment system is out of sync with biblical mandates and Christian values. While many evangelicals continue to acknowledge that the death penalty was called for in the Bible in certain cases, the death penalty as it's constructed in the Bible is very different than the system that is used here in our United States. Evangelicals are also becoming increasingly aware of the massive injustices carried out in the death penalty system. Throughout the Old Testament scriptures, you find various laws that God established to ensure that the poor would not be unjustly treated in courts, that innocence would never be executed, and that there would be fair application of the death penalty. Exodus 23, 6 and 7, absolutely forbids the execution of an innocent person. These safeguards and standards rendered the death penalty almost obsolete in Bible times. The death penalty in the United States has almost none of these safeguards. For example, according to biblical rules, in order for the death penalty to be applied, there had to be at least two unrelated witnesses to the crime. However, in the United States, we can put people on death row with one jailhouse snitch who says the defendant confessed the crime to them. I won't belabor the committee with the countless injustices carried out in the death penalty system, as you have already heard from a number of other testifiers regarding this. I will just say that God has made it clear in Micah 6, verse 8, that we are to act justly, to love mercy, and to walk humbly with our God. Finally, I would just say that if we as followers of Christ believe that Christ died for all and no person is beyond redemption, then we should never advocate cutting someone's life short and, therefore, guaranteeing no chance at all for their ultimate redemption. Thank you. I'm willing to take any questions you may have. [LB268]

SENATOR SEILER: Seeing none, thank you for your testimony. [LB268]

WILLIAM THORNTON: Thank you. [LB268]

SENATOR SEILER: Next proponent. [LB268]

FRAN KAYE: Thank you for letting me speak to you today. My name is Fran Kaye, F-r-a-n K-a-y-e. Back in 1982, when some of my friends organized a group called Nebraskans Against the Death Penalty, I signed up. I thought then it would be an easy fight. Unlike knotty questions, like the nature of evil and the causes of child poverty, this problem could be solved by passing one simple law, such as LB268. The arguments against capital punishment seemed clear. After all, no human system is infallible, so the death penalty requires that innocent people be executed. The

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

death penalty has been imposed in a racially skewed way that is clearly unfair. Violence perpetuates violence. The death penalty does not deter others from committing murders. Looking at Nebraska and its contiguous states, Iowa has never had a death penalty and it has the lowest murder rate. Missouri has the most executions and it has the highest murder rate. No other western democracy has the death penalty for ordinary crimes, and no other western democracy has a murder rate as high as that in the U.S. The prison system is perfectly capable of holding dangerous persons forever and rendering them helpless to hurt the public. There is absolutely no rational reason to have a death penalty. Thirty-three years later, I have been to countless death penalty hearings by the Judiciary Committee, floor debates of the whole Unicameral, vigils, and teach-ins opposing the death penalty, and I have judged student essay contests arguing against capital punishment and written letters and articles explaining in excruciating detail why we only damage our society as a whole by retaining what my beloved NAACP friend Leola Bullock always called legalized lynchings. I have read scholarly articles purporting to show that executions really do deter murders, and I have read even more scholarly articles pointing out why the methodologies of the first set are incorrect and the conclusions simply wrong. I was mistaken about how quickly we could get rid of death sentences in Nebraska, but I was absolutely right in why we should do so. I remember a former senator stating, quite seriously, the studies have shown there is no deterrent effect to the death penalty but I believe in deterrence. We really can't afford that kind of reasoning. Thank you. [LB268]

SENATOR SEILER: Any further questions? Thank you. Next proponent. [LB268]

JOHN KREJCI: (Exhibit 6) Good afternoon, Chairman Seiler and committee. My name is John Krejci, K-r-e-j-c-i. I am a retired professor of sociology/social work/anthropology from Nebraska Wesleyan. I'll be very brief. The fact of the matter is, Nebraska really doesn't have a functioning death penalty, and this law if it were passed would make that a reality. Lawyers would say we have a de jure death penalty but we don't have a de facto death penalty. There's no way to carry it out, so to be honest, let's just get rid of it. Carey Dean Moore has been on the death row for 35 years. That makes no sense whatsoever. The national trend is against the death penalty. It's not a tsunami, but it's like that quiet voice that's moving, moving. More states are eliminating it. Let's get on the side of history. We know about it's not a deterrent, it costs a lot of money. There's been a lot of unjust convictions that we've found out more recently, lengthy appeals. I've passed out "Stays of Execution." There's something like 50 of them on the thing that I passed out. In other words, the trend is, you know, the only one...I mean, it's helpful for the defendants to have stays of execution. It costs a lot of money to the state and to the courts. The only people who are making money on it is the lawyers, no offense to the committee. I don't know when Senator Chambers introduced the first bill, but I know that Governor Charlie Thone repealed it in 1973. That was before Senator Morfeld was born. So if Senator Chambers and I meet our demise and...you'll...you need to carry this on. I've got three volumes of the Baldus study done in 2001. He concluded that if you kill a rich person, you're more likely to get the

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Transcriber's Office

Judiciary Committee
March 04, 2015

death penalty. Senator Chambers went round and round with him in the hearing because he tried to say that the death penalty wasn't disadvantageous to minorities and Senator Chambers, of course, said...he wouldn't give in though. However, in the last 20 years, we've executed three people and two of them were African-American or black. I also included, this is a little off the topic, but a letter that I just received from Mondo we Langa/David Rice who would have been executed probably had he not come in that gap, you know. He has been in prison for 40-some years. He really knows the system and he says, I'd like to meet and some of the prison inmates would like to meet with the Judiciary Committee members and talk about situation in the penitentiary. And he's very wise. Harold Clarke, director two times ago, used to meet with him and ask him for advice. He knows and he's a smart, smart guy. He's really in very poor health because of COPD. Anyway, it's time to put Nebraska on the right side of history and repeal the death penalty. Thank you. [LB268]

SENATOR SEILER: Any questions for this testifier? Thank you. [LB268]

JOHN KREJCI: Thank you. [LB268]

SENATOR SEILER: Proponent. [LB268]

ALAN PETERSON: (Exhibits 7 and 8) Chairman Senator Seiler and remaining senators on the Judiciary Committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n. I am an attorney, been a death penalty attorney for almost 30 years on the defense side, not the prosecution side, and I am the lobbyist for ACLU of Nebraska. I come here today, first of all, as I usually try to do, with some information you didn't already have. The assistants are handing out, first of all, a letter from Captain Jim Davidsaver, a former captain, high-ranking officer in the Lincoln Police Department for many years. Captain Davidsaver was not able to stay and, therefore, asked if we would hand out his written testimony. So I ask that you consider that. He has strong and very well-articulated views on the futility and worthlessness of the death penalty. Secondly, I have asked also to have the pages hand out three pages which is an exhibit I prepared. The top page of it shows where we are in the world, what countries have retained the use of the death penalty. And I handed that out so that you can see the list of those countries, and you'll find ours, unfortunately, on the list as the only western democracy that has retained the use of the death penalty. There is another major democracy, Japan, but look at the rest of the list. That's our company. The second page of that exhibit has the list of the states in this country that really are still using the death penalty. And now that there are some new moratoriums on the death penalty and some more states that have abandoned it, the majority now of this country has gotten rid of it. At least in effect, in de facto form, the majority of our country's states have gotten rid of it. I prepared a list of seven reasons. You've heard them today, most of them, at least, why we should get rid of it. And I'm not going to have much time, but I would like to go through the seven as quickly as I can. Seven strong

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

reasons to pass LB268: (1) No deterrent effect. Remember, you've got to compare people with a death sentence as to whether that deterred them. We know it didn't. I would continue with my seven if I could, but I'll keep it short. [LB268]

SENATOR CHAMBERS: May he? [LB268]

SENATOR MORFELD: Yes. [LB268]

SENATOR SEILER: Please. Please do. [LB268]

ALAN PETERSON: Thank you, Senator Seiler. You have to think, in the mind of the murderer, would they have killed if they thought they were going to spend the rest of their life in prison without parole, as opposed to would they kill if they thought they were going to get the death penalty? It's that marginal difference you have to look at. It's ridiculous to think that that would make a difference to them. Judge Reagan beautifully illustrated the point that Joubert could have gone a couple miles across the river and gone to a state with no death penalty. No deterrent effect, that's number one. It's established; it's proved. Secondly, there is a racial disparity in the application, especially with regard to the race of the victim, which has this country in effect devaluing persons of a minority race by having fewer of their murderers given the death penalty. Extensive studies have shown that and it's not a fluke. We shouldn't have a law that permits such a thing. Third: the cost and delay. I've been representing Carey Dean Moore since 1988. That's 27-28 years. Most of my work was not billed. But when I was in federal court, you could bill a certain amount of it. Attorneys don't make a fortune off it, despite the remark we heard earlier. But the prosecutors are tied up. The courts are tied up. The witnesses are tied up. And the cost and delay frustrates everybody from this body, I'm sure, to the rest of the Legislature, and the attorneys too. It's not worth it. What do you...what's the cost benefit? Fourth, the faulty methods of execution have resulted in torture, of people being executed...the Eighth Amendment doesn't permit unnecessary pain to be intentionally inflicted or inflicted with deliberate indifference. That's what the Eighth Amendment, which brings the ACLU into this, says. And Nebraska doesn't even have a method now and when they do get one, they'll have to do new Administrative Procedure Act rules to use it. And there will be more litigation over that, I guarantee it. I might mention, and I'm not a criminal defense attorney, but I was appointed to represent a death row person, Mr. Moore. And there have been 19 separate proceedings, appeals, some of them by the state when they lost, some of them by Mr. Moore when he lost, 19. Each of them takes hundreds of hours of preparation and anguish on most sides, frankly, as to whoever wins or loses. That's fourth. Fifth: the fear of a mistaken execution, killing an innocent person, it's happened in this country, maybe once in Nebraska. Get rid of the death penalty, then the mistakes, if there are some, like in Beatrice, at least can be repaired by paying big damages and so forth and letting the person out. Sixth, the moral and religious doubts about whether people should kill people to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

teach people not to kill people, that's nothing but a quip, I guess. But it's exactly what the death penalty apparently tries to do, to teach us not to kill people by killing people. And finally: the recognition that the loss of freedom, which many people think is the greatest value we have in our country, the total loss of freedom is not enough. Well, nowadays people recognize that it is. And those reasons are why the death penalty's use is diminishing yearly and in the United States and in the world. And the United States does not need to stay in the bad company of those nations that keep it. And so how about passing LB268 and strongly supporting the repeal of the death penalty by the Legislature, and we would hope the Governor would sign that too. Thank you very much and thanks for the extra time. I appreciate it. [LB268]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB268]

ALAN PETERSON: Thank you, sir. [LB268]

SENATOR SEILER: Any further proponents? Any opponents? [LB268]

LORAN SCHMIT: Pardon me, Mr. Chairman. I was a little late getting up. I stand in support of LB268. My name is Loran Schmit, L-o-r-a-n... [LB268]

SENATOR SEILER: Wait just a second, Loran. Are you opponent or proponent? [LB268]

LORAN SCHMIT: I'm a supporter of LB268. [LB268]

SENATOR SEILER: Okay. [LB268]

LORAN SCHMIT: Yes. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I speak here today as a longtime supporter of the death penalty and, since 1979, an opponent to the death penalty. I've spoken here many times before. I want to reemphasize my opposition is based upon the great disparity that exists between those who are sentenced to death and those who are not. Senator Chambers has outlined 23 executions since 1903 of the thousands of murders that have been concluded in this state. Those are pretty good odds for any kind of a gambler and I, therefore, believe that the deterrent factor is noneffective. My own situation is a little different. I have a neighbor who has a nephew who was 16 years old when he was involved in a murder. His accomplice was 17. Although the accomplice swung the bar that eventually rendered the gentleman unconscious who later died, they were in my opinion equally culpable. The unfortunate fact for my neighbor's nephew was, as he had no money, he had a court-appointed attorney. The deputy prosecutor offered the attorney the option of speaking...of accepting a, I believe, involuntary manslaughter plea. The inexperienced attorney turned it down. The

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

accomplice, and my friend's nephew, had a skilled attorney. He turned state's evidence, testified against my neighbor's nephew. He was sentenced to six years in Kearney. My neighbor's nephew was sentenced to life without parole. Judge Buckley at the sentencing said that the only mitigating factor against the death penalty was his extreme youth: 16 years of age. My neighbor's nephew is still in prison. I have appeared before the Board of Pardons several times asking that his sentence be commuted, not successful. It's amazing to me that one person can get by with a six-month (sic) sentence in Kearney and another life without parole and probably narrowly escaped being sent to the death row. That kind of disparity to me encourages disrespect for the law. The information recited here by the gentleman about the Beatrice Six befuddles my mind. I am a strong supporter of law enforcement. I only hold repugnance for law enforcement officials who use the tactics that were described with the Beatrice Six. Time is up, Senator. I'd be glad to answer any questions. Thank you. [LB268]

SENATOR SEILER: Any further questions? Thank you very much, Senator. Any further proponents, in favor of this bill? Opponents? [LB268]

DON KLEINE: Good afternoon, Senators. My name is Don Kleine, K-l-e-i-n-e. I am the Douglas County Attorney and I am here on behalf of the Nebraska County Attorneys Association to oppose LB268. In certain extreme, unique situations, we believe that there needs to be the death penalty. I can state in my history as a prosecutor, I've prosecuted probably as many first-degree murder cases as anybody ever has. And I have two people that are sentenced to the death penalty: Arthur Lee Gales and Roy Ellis. They were both...the victims on those cases were young African-American children. They were raped and murdered, Latara and Tramar Chandler, by Arthur Lee Gales after he left their mother for...he thought she was dead, at 11th and Grace Streets. He went back to the apartment and raped Latara and strangled her. And then, when her brother woke up, he went in and killed his...the seven-year-old. Roy Ellis killed, after he raped, Amber Harris, a 12-year-old, and buried her in Hummel Park. Both had a history of violent behavior, and a history of prior sexual assaults by Roy Ellis. The purpose I think is...again, I don't disagree with a lot of the testimony today, that I think it's something that should be only used in extreme circumstances. I see that particularly in Nebraska, as compared to other states that have the death penalty. It's meted out I think in as fair a process as it possibly can be. You know, as things have changed over the course of time, the county attorney now makes a determination if aggravating circumstances exists. If those aggravators exist, they are put up there by statute, by this legislative body, the people. And we determine if we can prove those aggravators. If we file that, the jury determines if those aggravators exist, then a three-judge panel is appointed to weigh the aggravators versus the mitigating circumstances that can be put on by the defense. A three-judge panel then makes the decisions as to the penalty. And if one judge votes against the death penalty, then there is no death penalty. I think the process is as...as set out is a good process, as far as the process can be. I do have reservations. You know, I go before juries right now and I go before three-judge panels on cases. And de facto, we don't...as

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

John Krejci said, we don't have a death penalty here because the state can't figure out a process. And I think that's...you know, you have a death penalty. The Legislature has a death penalty on board. And the state can't figure out how that system...they can't get a process, so I mean that's a problem from the state's perspective, not ours. But I do question sometimes that here I am in the trenches, filing cases with aggravating circumstances, asking a jury to make that determination of a three-judge panel, when the state can't get its act together as far as the penalty itself, the penalty case. I see my time is up, but I'd be happy to answer any questions. [LB268]

SENATOR SEILER: Senator Chambers. [LB268]

SENATOR CHAMBERS: For the sake of old times, do you have more you'd like to say for the record? [LB268]

DON KLEINE: You know, not really, Senator. You know. We've talked about this before and my views are my perspective. So I don't really have anything else to add. But if there's any questions, I'd be happy to answer them. [LB268]

SENATOR SEILER: Seeing none, thank you. [LB268]

DON KLEINE: Good. Thank you. [LB268]

SENATOR SEILER: (Exhibits 9-14) Any further opponents? Anybody in the neutral? Senator Chambers, you may close. I will have the written documents that were submitted received as part of the transcript. There were numerous, numerous signers on the outer side that favored the bill. Their names will be put into the record. Senator Chambers, you may close. [LB268]

SENATOR CHAMBERS: Thank you. Mr. Chairman, members of the committee, I'll be very brief. Not only was the situation in Beatrice bad where six people were pressured into confessing to murders that...a murder they had nothing whatsoever to do with due to the threat of a death penalty. In Douglas County, there was a sheriff's forensic investigator named David Kofoed, K-o-f-o-e-d, who actually planted blood evidence and obtained two convictions. And what helped one of those young men was he had a mental problem. There was extensive interrogation. Two young people from the eastern part of the country tried to pawn a ring, something involving a ring that had come from one of the victims that these two young people had, so they were to establish conclusively that these two people committed the murders, the two young men who had confessed nothing whatsoever to do with those murders. So the state of Nebraska has made errors. The name of the man who was deemed to have been executed in Nebraska who was innocent, his last name was Shumway. And former Governor Robert Kerrey was given enough

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

evidence to be convinced of the man's innocence that, posthumously, he pardoned this man whom Nebraska had executed. Based on what I had read about the case, there was never a body found. But this individual had gone hunting or camping and some of his clothing was found in a stream. And on the basis of that, it was determined by those who make such determinations that he had been murdered. Shumway, for some reason, was connected with it. He was executed. And if I'm not confusing that case with another one, I think they had to call out the National Guard or some people from the Army to carry out the execution. In a country like this, or anyplace, the killing of one innocent person by the state should be enough to forsake a system that could do such a thing. Nebraska is last in some areas for the wrong reason. It was the last state to have the electric chair as the only means of execution. And that was my doing. For over a decade, I stopped Nebraska from enacting a lethal injection law and I told them, as I always do, that my intent was to make sure that Nebraska would continue to have an electric chair and be the only state that had one. And people asked, if I was so much opposed to the death penalty and I thought death by electrocution and a judicial execution was so horrible, why would I want to maintain that method of execution? And I pointed out that, being realistic, with this studying that I had done of this penalty, I had actually gotten the case histories of people who were executed. They had them in little folders and I got them from the Historical Society and I read the documents. I knew, as sure as I knew that Boris Karloff played the role of Frankenstein, that nobody would be electrocuted before the chair would be struck down in Nebraska, and that is what happened. Nebraska is the last state to deny driver's licenses to these young people known as the "DREAMers." That is not anything to be proud of, but that's one of Nebraska's trophies. Georgia two days ago was going to execute the first woman in 70 years. But they had to cancel it because when they were going through a run-through, as they called it, the chemicals were cloudy and they felt that in order to avoid the fiascoes that had happened in other states with a botched execution, they wouldn't try to carry it out. I don't remember if it's Georgia, Alabama, Oklahoma, or one of those states, but to show how bizarre things have become, this particular state--I have the article which I will show by the time we get to the discussion on the floor--they're talking about experimenting with nitrogen. Now to take a life, maybe they'll next say, try antifreeze. I think that the Supreme Court may be on the verge of not allowing executions because of the horrendous, bizarre, grotesque occurrences during these executions. The governor of Pennsylvania has called off all executions. I didn't ask Mr. Kleine any questions because today, in my mind, is one of those days not to try to ask a "gotcha" question or to bring up cases which were more horrible than those where the death penalty was sought yet no death penalty was sought. Everybody knows that things like that happen. Don Kleine was serving as the prosecutor in Douglas County when a man named Clarence Victor, who was mentally challenged, had been sentenced to death. And a law that I had a hand in getting enacted before the U.S. Supreme Court took action that said people who are...it was...the term was "mentally retarded" then, could not be executed. And he fit that definition. And Don Kleine, the prosecutor, Michael Coffey, the judge against whom I filed complaints, would not try to have him executed anyway. Don Stenberg was the Attorney General. And when this happened, he was very upset

and he wanted to challenge the constitutionality of the law. The Supreme Court said what every first-year student in law school knows: An appellate court can only examine issues that were raised and decided by a lower court. The constitutionality had not been raised, so it could not be raised on appeal. So he ignominiously lost that case, as he had others. When you can see a situation like the one I touched on, where the Attorney General's Office deliberately and knowingly withheld information from the Nebraska Supreme Court, made the court believe that everything was in order to carry out the execution of Carey Dean Moore and all that was needed was a death warrant and the Supreme Court issued the warrant, then it became clear that the state could not carry out the execution. The Attorney General's Office knew that they couldn't carry it out. And when their hand was called, I had written a piece that the World-Herald printed. The assistant of the Attorney General said, well, they didn't think there was anything to reveal to the court because, although they didn't have the drugs, they thought that there was somehow they'd have them by the time the death warrant date came around and that the execution could be carried out. When you can deal with the state taking a life in such a slapdash, casual, careless, deceptive manner, the shame that it brought to the state should be sufficient. Since 1997, there's been no execution. And with some of the men who were executed, they wanted me to spend time with them. They knew I would not witness the execution. When John Joubert was going to be executed, he was very small. He had grown a beard and long hair. And while I was with him...I'll tell you why I went. There was a sheriff named Pat Thomas from Sarpy County. And he had asked Director Clarke, could he be an observer, not a witness, to the execution? But what Mr. Clarke had implemented was a program whereby certain officials could come out and watch the preparations during the days immediately preceding an execution to see how the person was treated. The first person who went to do such a thing was an auditor. His name was John Breslow. And he watched and guess what he commented on: how good the food was that was served. That was the most important thing to him. Well, Sheriff Thomas wanted to be such an observer and Mr. Clarke could not turn him away. But he called me and he said, Senator, I know how you feel about the death penalty, and that's why I'm going to ask you to do something. And I said, what is that? And he explained about the sheriff coming and how he had reason to believe that there would be some taunting and other inappropriate conduct by the sheriff toward John Joubert. So Mr. Clarke felt that I would be a foil to the sheriff if I agreed. And I said, I don't want my presence to be misconstrued as being in favor of this death penalty, and I'm only coming because I want the man's humanity, even though he is sentenced to die, to be acknowledged. When Sheriff Thomas found out I was coming, he canceled out. But because I had said that I would be there, I spent a lot of time with John Joubert during his last few days. Judge Reagan in a discussion with me just the other day said he has had many second thoughts about having agreed to sentence Joubert to die. There are articles now appearing talking about executioners who have committed suicide, guards who are talking about posttraumatic stress disorder because they were forced to participate in executions and to keep their job they had to do it but now that they're no longer worried about their job, they're worried about their sanity. When I was there with Joubert, they would not open the blinds. He was in what they called a hospital room. And I

asked, why? They said, well, when "Wili" Otey was executed--and I spent time with him; he asked me to; I won't witness an execution--they said that they were executed at night. When night fell, "Wili" Otey stood near a window and the crowd could see him. And the ones who wanted to see the execution broke out into a frenzy--the profanity, the screaming, the racial slurs, the cursing. So because of that--and it was written about days after that, the shame that was brought to Nebraska because of the way those people behaved--I said, it's daytime, there are no crowds out there, this man in a few hours will never see another sunrise, never see a sunset, I want those blinds open and, if you don't open them, I will open them myself and I'd like to see somebody working for the Department of Corrections stop me, and the only way he or she will stop me is to put hands on me and, if that's done, you ought to call the sheriff, because you're going to have to put me in jail. So they said, well, Senator, I guess it won't hurt. So they opened the blinds. When time came for them to prepare him--that's what they call it--he wanted his spiritual adviser to walk with him from his cell to where they were going to kill him. And the deputy warden would not allow it. And so I called Harold Clarke and I said, there's no reason not to let this man have his spiritual adviser walk with him. And before I could give an argument, Clarke countermanded that order and said the spiritual adviser could be there. So I sat with Joubert as they prepared him. When they cut off all of his hair, and he was young, he looked like a juvenile. When they shaved him, his face was babyish. And I'm not saying these things to indicate that I approve of what he did. That has nothing to do with it. I'm telling you what I saw with my own eyes. He was shorter than I am. So when the deputy sheriff, deputy warden was trying to cut his hair, Joubert said, Senator Chambers used to be a barber, so do you mind letting him cut my hair, because that blade is kind of pulling. And so I told the...I said, I told the guy, I said, yeah, I'll cut his hair. And the deputy warden was shaking, visibly. He said, well, I can't let you do that because this is a process and a procedure where only state employees of the Corrections Department can do it, but I'll be careful. So he took this blade and he cut his hair very short. Then he had to shave him, so he got this water in a container. It was a highly polished aluminum or metal container that was shaped like a kidney bean. And I said, is the water warm? He said, well, no. I said, well, if you're going to shave somebody, even though you're going to use that shaving cream, it would help if you would warm a towel, put it on his head, it will soften the hair, then you put this shaving cream on and you can shave more smoothly. And he said, well, thank you, and he did that. And as he made the first pull, it was a safety razor. Then he put the blade in the water because I told him, after you make the stroke, rinse the blade so that it will...I was going to make it as clinical as they were making it. But you know who suffered the most through that: not I who was watching something that was grotesque and that I disagreed with, not the man who was being prepared to die, but this employee who had to prepare him for the killing. He finally got through with that. Then he said--he called him "mister"--he said, Mr. Joubert, I have to shave the hair off the side of your leg. So Joubert made his leg available, and they cut the pant leg. And he went through the process again of trying to shave, and this time he nicked him. And he said, oh, he's bleeding. And Joubert said, with what you're going to do to me in a few minutes, does that nick really make any difference? But the man had to try to do it right,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

so he asked me, as a barber, what would you do if you nicked somebody? I said, do you see that stick right there? It looked like a crayon. I said, that styptic, it will stop bleeding when you have a small cut like that, so dip it in the water, then put it on the nick and roll it around, it'll stop the bleeding. That's how grotesque this was. And it did stop the bleeding. When finally the last few people who wanted to talk to Joubert were there, I told him, I won't be in that room with you, this is between you and whatever you have to say to those people. But then when they were going to escort him to the electric chair, he was in what looked like a box. Huge guards--you couldn't even see Joubert--there were two in the front, two on each side, and then two in the back and then one right behind Joubert. Joubert had a thick leather strap around his waist and all these chains. And this guy had to hold that strap and I didn't say anything. I just looked at him, and then he dropped his head. None of them would look at me. So we got on the elevator. And when we went down to the floor where the electric chair was, when you got off the elevator, if this table were the layout, the elevator came down here. There was a room to the right of the elevator when you got off, and then there was the gurney. And I told Harold Clarke, not where Joubert could hear it, that was the most vicious, cruel thing they could do, was leave that gurney in the eyesight of the man they were about to kill. So when they started strapping him in the chair, his feet wouldn't reach the floor. He was small. So he...they had to lift him up on this chair. And they began to tighten these straps. And he was so small that the guy who was...each man had a strap, one strap around one wrist, another to strap the other one, then somebody was going to put one around his chest, then his legs. And they had more people in there than they needed, but I guess they needed them. So when he started to have his hand, his wrist strapped, John Joubert told him, he said, my arm has to be held stable and it's not, it's not tight enough, it'll move. So then the guy...I don't know if he panicked. He took the strap and put his knee on the side of the chair and pulled as hard as he could and you could see the veins, blue, pop up in Joubert's hand. And then you could see all of his wrist and his hand below that strap turn blue. That's what they did to the other one. Then I watched while this other guy, he was a deputy warden, too, he took these sponges and he dipped them in water and he put them...put it on Joubert's head. And you have to have a way to make sure the circuit is closed so that the electricity will go through. Then he had trouble attaching this...it's like a small saucer, except it's made out of metal, and it had a wing nut. He had trouble tightening it. Everything they did, they had a problem doing it because Joubert was so small. They finally got it done. Then I told him, I said, I got to go now. And he just looked at me so. I don't have a heart, so don't get me wrong. But even without a heart, when you see somebody about to be killed by the state, then other things go out the window. They were going to get what they wanted. So I just put my hand on his hand. And then he dropped his eyes and I left. But before we started that walk that he had to take from that hospital room, we had a little conversation, and I'll never tell anybody what he said to me. But what I told him: The reason that I'm here is to make sure that they don't do anything except take your life, and that's what they're going to do, you can't stop them, I can't stop them, so don't let them do anything else to you, if you have any feeling of dignity, you keep that, and whatever you do, don't break down, don't let them see that. And why did I say that? Because--and this is not being melodramatic--his

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

eyes teared up, but only one tear came down his cheek and that was all. And then they killed him. I've spent time with Robert Williams the same way. And when he got in the chair, they had his arm so that the crazy bone in your elbow was against the chair. And he told them that the pain...they wouldn't do anything about. I say, hey, man, stop, stop what you're doing. And I told the man who was in the execution chamber just standing there, a deputy, I said, go get Harold Clarke, the director. He had to be there. So he called me. He said, Ernie, Ernie, what's the matter? And I told him. So he told them, don't let me hear of anything like that happening again, you're not going to do anything like that. So after they had him strapped in, I was leaving and I could hear him, Robert Williams, not asking for mercy, he called the name of the husband of one of the women he killed and apologized. And he said, I'm sorry for what I did, I'm sorry for what I did. And I don't know how people felt about it, but he made some comment about he'd have the chance pretty soon to apologize to the man's wife. Those are the things people ought to see when they watch how these executions occur. It's not where they...you walk in and everything is done in an efficient way. People are nervous. They haven't done this before. And I'm sure every one of those people who participated had problems afterward because I watched them and they wouldn't make eye contact with me. They were shaking. So in order to kill one man, you've created eight killers. And every one of them played a guilty role, not the Attorney General, who'd boast about having an execution, not the Governor, not the legislators, nobody. They wouldn't want to be there. They wouldn't want to see it. But that's what's done. And even before I saw that, I made up my mind when I first came down here I was going to do everything I could to stop the state from killing people. So I started offering bills to abolish the death penalty. In 1979, the Legislature passed a bill to abolish the death penalty. Then Governor Thone vetoed it, even though his wife was against the death penalty. And some of the senators wanted me to try to override. I said, no, I won't do it, I watched these senators casting those votes and I saw how hard it was for them to cast that vote and I won't put them through it again because we don't have 30, even if we got 27, 28, or 29, we will not get 30 and I will not make a motion to override. There comes a point when all things are at an end, and that was the end, as far as I was concerned, that year. This bill may not pass. But as long as I'm in this Legislature, I'm going to try to save this state from itself. I'm going to try to get rid of the barbarity that I witnessed. And I'm going to try to make it impossible for any employees to carry out an act that those who insist on it being carried out would not even be there to watch it. And if there is a shred of decency in us, no matter what anybody has done, we should insist that this state is not going to kill anybody else. I know they say Jesus had to die to save all of you all. But had I been a Roman senator, maybe I would have had the death penalty abolished and it would have had to be carried out a different way. But there is a man who was innocent, everybody says. He was executed. He went through a kangaroo court. And this one thing so people will understand how this system works: We are leaving in the bill the requirement that there be a three-judge sentencing panel, just as with the death penalty, because life without the possibility of parole, that is really a cruel sentence in my mind. But as long as somebody is alive, there is a possibility that something could happen where the state will recover its sanity and the killing will not occur. But at any rate, the three-judge panel will consist

of the judge who presided over the trial. Then Chief Justice at random will pick two other active district judges, and the three of them will take...it'll be a hearing. The state will present what they call aggravating circumstances, or those things that will keep this particular killing from being what is called an ordinary murder. The U.S. Supreme Court has said that an automatic or mandatory death penalty is unconstitutional because it does not allow for the taking into consideration of the particular circumstances of each individual. So each case has to be handled and you have to have these aggravating circumstances. Then you had to have mitigating circumstances which, if they overweighed, overbalanced the aggravating, you couldn't carry out a death sentence. But anyway, the state presents its aggravators. Then the other side presents the mitigators. And the only way a death sentence can be carried out or be pronounced to be carried out is if the panel rules unanimously that there should be an execution. And two men were taken off death row because the sentencing panel was not unanimous. In the old days, when somebody was talking earlier, they mentioned that two unrelated witnesses had to bear witness to exactly the same thing. And what the rabbis insisted on was that they use the same words to describe the incident. And if any...if either side...any...or however many witnesses, if there was a variation in how they described it, there could be no death carried out. People talk about the Jewish law, but they didn't even carry it out the way people who say they believe in that would do it. So what they would do when they were taking a person to the place of execution, somebody would go before and call, is there anybody who can say anything on behalf of this man, anybody? And if anybody said, I can, they didn't check to see if this is credible. Everything was stopped right there. They didn't want to kill anybody. They didn't take your eye if you took somebody else's eye; they didn't break your tooth out if you broke somebody else's tooth; they didn't take a hand if you cut somebody's hand off. That was to be a measure of compensation or damage. You had to provide for that family something to be the equivalent, to the extent that money could be an equivalent, to the damage you did to that person. So I had indicated that I was going to take some time to close and whoever had to leave could do so. But I wanted some of these things in the record so that if anybody in the future reviews these hearings, I want it clear why I will do all that I can to see that the death penalty is abolished. To my surprise, several senators have signed on to the bill, and all of them had been on one of those sheets. So naturally, I signed. Yeah, bring them aboard. This is the love train. (Laughter) And we haven't left the station yet. So anybody who would like to get on board, there's always room. Now if there are any questions that you all have that you'd like to ask me, I will answer them. Otherwise, I have said all that I intend to say. Thank you. [LB268]

SENATOR WILLIAMS: Senator Chambers, could I ask you... [LB268]

SENATOR PANSING BROOKS: I have a question. [LB268]

SENATOR SEILER: Oops, we've got two. Senator Chambers, we've got two questions. [LB268]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR PANSING BROOKS: I have a question. [LB268]

SENATOR SEILER: Williams, Senator Williams. [LB268]

SENATOR WILLIAMS: Thank you, Senator Seiler. And thank you, Senator Chambers, for your wisdom and foresight. I will ask this question on the record only. [LB268]

SENATOR CHAMBERS: Yes. [LB268]

SENATOR WILLIAMS: And then if we could discuss this in Executive Session, I have a question on paragraph 7. It's page 2, line...starting at line 30, on the intent of the law, that I would like to have further discussion on that very limited piece of this bill, which I support. [LB268]

SENATOR CHAMBERS: And we will discuss it, but I will say this for the record: Do you know, when they talk about medicine, there are active ingredients, then there are others that just bulk it out? Those findings are not active ingredients. The actual law takes place after that, so I will not fall on my sword about any one or all of those. If the committee is of the feeling or the mind that we don't need to include the findings, you have no objection from me. [LB268]

SENATOR WILLIAMS: Thank you. [LB268]

SENATOR SEILER: Senator, I believe we have a question over here. [LB268]

SENATOR PANSING BROOKS: Yes. Senator Chambers, thank you for your wisdom and vision for decades and always fighting for those who have no voice. I guess I just wanted to ask you, just briefly, just bring up the fiscal note. To me, and I guess I'm still learning about how that all works, we are going to save money if we do not have the death penalty. [LB268]

SENATOR CHAMBERS: Right. [LB268]

SENATOR PANSING BROOKS: So I don't know why we can't look at the number of people we that have on death row, look at the number of appeals that are made, and talk about that within the note. Do you have anything to say about that? [LB268]

SENATOR CHAMBERS: Well, there was an attempt to have a study like that made, but the Governor would not allow it, because he knew what the...what it would be. There have been

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

studies after studies in states where they have the death penalty by scholars, by these people who can put all these graphs and charts together, and it always comes out invariably that to get somebody to the death house, let alone to execute them, it would cost more than what it would take to let that person live his or her natural life. It seems counterintuitive. But when you start looking at how quickly these legal bills mount up, it's very easy to establish that. But there are people who will not accept that fact, that it costs more to execute somebody than to keep them locked up for life. But what I used to do was to keep articles every time there was a murder so that I could, when I presented the bill, show that there were very atrocious murders committed in the rural areas but there was never a death sentence imposed, never a death penalty sought. And one of the prosecutors told me, he said, not only is it too expensive, the counties don't want us to do that, it costs too much. One county was going bankrupt because they sought a death penalty. Maybe it was down there where Rulo was. And the Legislature actually appropriated some money to help them because, in order to get a death sentence, they went...they were going bankrupt. And for those who don't know, the man who committed a heinous crime, and the lady was here mentioning how she has to constantly be reminded, that man now has terminal brain cancer, so he's going to cheat the executioner of his prey. Why do we do that? It seems to me that, as bad as human beings are, we should be better than that. But at any rate, you can maybe Google--don't know what you'd look under, but that's a word I hear to find anything you want to (laughter)--for the cost of carrying out, you know, to implement a death sentence. And that's why some of the conservatives are starting to speak against it, and even in Congress, because the money is so much. And they had no idea that it was really costing as much as it is, so some of them I think were having the examination made because they were sure that it wasn't going to be like that. Then when they saw how much it really was, they started saying, you need to get rid of it. And consider this: 72 people from the early 1900s in Nebraska were sentenced to die; 23 have been executed. Do you think those 23 were the worst people who ever committed murder in this state? And is the state better now because those 23 people are moldering in the grave? And do people even know the number? Do they know the names of these people? Do they even care? I think what we have as an obligation is the duty to raise the level of civilization in this state, even if we're criticized for it. And not one of you is going to lose your election because of your position on the death penalty. People know so little about it that one year, when I was making the strongest push I had ever made, a woman wrote me a letter and said, Senator Chambers, I'm so glad you're there because you're the one pushing to reinstate the death penalty. (Laughter) First of all, the death penalty was in place, but she didn't know that. And I was trying to get rid of it. (Laughter) But that's how uninformed people are on it. But was that your...okay. [LB268]

SENATOR PANSING BROOKS: Yeah, I just wanted to get that into the record, because I just...it's so disappointing not to see...we've had over a century of death penalty cases. Surely, we can look at the number of appeals and compare those to people who have life sentences and look at that differential in court costs. [LB268]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
March 04, 2015

SENATOR CHAMBERS: I...not to cut you off, I do know that Kansas did conduct such a study and it verified what everybody else had been saying. [LB268]

SENATOR PANSING BROOKS: We're going to save millions. This is going to be good. We have to get these people fiscally behind this, because...if they won't do it morally. [LB268]

SENATOR CHAMBERS: You're right, whatever it takes. [LB268]

SENATOR PANSING BROOKS: Yeah, absolutely. [LB268]

SENATOR CHAMBERS: Anybody else? Thank you. [LB268]

SENATOR SEILER: Yeah. I have one thing. Come next March...come next Tuesday, I'm going to get a year closer to you. (Laughter) [LB268]

SENATOR CHAMBERS: He's...I didn't even understand you. You're going to get what? [LB268]

SENATOR SEILER: I'm going to get a year closer to you. [LB268]

SENATOR CHAMBERS: Oh, okay. [LB268]

SENATOR SEILER: You keep talking about being the old man up there, and you'd better keeping going, because I'm closing in on you. (Laughter) [LB268]

SENATOR CHAMBERS: Oh, okay. Okay, sonny, but you'll never catch me. (Laughter) [LB268]