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Judiciary Committee
February 24, 2016

[LB793 LB965 LB1055 LB1056]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 24, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB793, LB965, LB1055, and LB1056. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: Bob Krist.

SENATOR SEILER: Welcome to the Judiciary hearings. My name is Les Seiler and I'm Chairman. On my right, your left, is Senator Williams from Gothenburg, Senator Chambers from Omaha. On my left, your right, Senator Ebke from...

SENATOR EBKE: Crete.

SENATOR SEILER: ...Crete, not Wilber, Crete; our clerk Oliver; our legal counsel Diane; and our two pages who do all the work in this committee. They will be taking your document that you fill out to be a speaker. Make sure you fill that out before you come to the table. If you have handouts, make sure the pages get it. They will distribute them. Let's see, I want you to be, in the back row, you got to be a little careful about who you're slandering because these mikes are super sensitive. And if you want to be on the transcription, you might be if you talk too loud. So these aren't for amplification but it's for transcribing, and so we've got to be careful about that. We'll be on the light system. You'll have a green light to start with. When you've got two minutes left to go, you'll get a yellow. And then the red means stop. If we want you to finish, we'll ask you to continue your document until the end but only if you're asked. Otherwise, the red light means stop. I believe that's about all the preliminaries. Senator Watermeier, you may open on LB793.

SENATOR WATERMEIER: (Exhibit 1) Good afternoon, Chairman Seiler, members of the Judiciary Committee. I am Senator Dan Watermeier representing District 1, Watermeier, W-a-t-e-r-m-e-i-e-r, southeast corner of the state, and I am here to introduce LB793. Currently, Section 28-913 of the Nebraska Revised Statutes criminalizes the act of introducing into a detention facility or providing an inmate with a weapon, tool, or something else that could be useful for escape. This is currently a Class I misdemeanor. LB793 would expand the offense to prohibit the introduction of contraband into a detention facility. The bill adds a definition of contraband, which includes such things as controlled substances, weapons, explosive materials, cell phones, rope, or metal files. LB793 also adds a definition of detention facility which includes Department of Correctional Services' facilities, county and city jails, juvenile detention facilities, as well as Youth Rehabilitation and Treatment Centers, and regional centers. Persons violating this section are guilty of a Class III felony unless the contraband is alcohol, tobacco, or a credit

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card or money. Then the felony is a Class I misdemeanor. Currently, our statutes don't prohibit the introduction of contraband into a jail other than something that is useful for an escape. LB793 retains the provision of elements for escape but expands it to include other items considered to be contraband that have no place in a prison, jail, or other detention center. Under current law, an inmate may possess any number of items, such as tobacco products, cell phones, matches, needles or etcetera without the fear of facing more than in-house discipline. The person who provides the inmate with such contraband can't be punished for any offense other than possibly losing their visiting privileges. This poses a risk to the inmate, other inmates, and especially the detention facility staff. This bill removes a dangerous loophole in the law and provides clarity as to what types of objects are prohibited. LB793 also amends the statutes pertaining to the assault of an officer, emergency responders, and certain employees to specifically include county jailers, juvenile corrections officers. Previously, such sections of statute refer to those occupants individually, which are stricken under LB793 and replaced with the term "public safety officer." Public safety officer is defined as a peace officer, a probation officer, a parole officer, a firefighter, an out-of-hospital emergency care provider, an employee of a detention facility, and an employee of DHHS if currently...if working with a committed dangerous sex offender. Such officers would have to be in the performance of their official duties at the time of such assault. The need for the change in assault statutes became clear two years ago when a juvenile correction officer was assaulted and murdered by a juvenile inmate in the Scotts Bluff County jail Juvenile Detention Facility. Since the current assault on the officer statutes do not clearly cover juvenile corrections officer, had the employee not died the inmate could not have been charged with the enhanced penalty and would have been charged with a lesser crime based on the level of the injury of the employee. The changes in LB793 make it clear that juvenile corrections officers, as well as any county jailer, are protected under the provisions of the assault on an officer statutes. I believe there are several representatives, including sheriffs, as well as a representative from the AG's Office here today who will likely testify in support of LB793. I would try to entertain some questions, but I know those behind me are going to be more qualified and more able to answer any such questions. With that, Senator Seiler, I'll end my testimony and the opening, so. [LB793]

SENATOR SEILER: Any questions? Senator Chambers. [LB793]

SENATOR CHAMBERS: Just a couple, Senator. Do you have a copy of the bill? [LB793]

SENATOR WATERMEIER: Yep. [LB793]

SENATOR CHAMBERS: Would you turn to page 3? And I'm not going to go through this whole list but just to give you an idea. [LB793]

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SENATOR WATERMEIER: Yeah. [LB793]

SENATOR CHAMBERS: First of all, who provided the language for this statute? [LB793]

SENATOR WATERMEIER: I worked with several law enforcement agencies and the AG's Office. [LB793]

SENATOR CHAMBERS: Okay. Would you look on line 30, "combustible material." Paper is a combustible material, isn't it? [LB793]

SENATOR WATERMEIER: It is. And incendiary device I would assume is also hard to define, but we felt... [LB793]

SENATOR CHAMBERS: And...but that would be a crime to introduce if you gave somebody a piece of paper that they shouldn't have. [LB793]

SENATOR WATERMEIER: I don't know the exact definition of combustible but it would have to be started. I mean I don't know, Senator. [LB793]

SENATOR CHAMBERS: Okay. Now...and this is a criminal statute. You would agree, wouldn't you? [LB793]

SENATOR WATERMEIER: Yes. [LB793]

SENATOR CHAMBERS: Okay. On page 4 in line 3, the words "not limited to" means that a person is not informed by the language of this law what might constitute a crime. Isn't that true? Because if other things than those listed could be a crime, then the statute is vague, it is ambiguous, and it's unconstitutional. [LB793]

SENATOR WATERMEIER: My understanding was that this effort was tried a number of years ago and they felt like at that time there was discussion about specifically stating what it was. And then, obviously, it has to be posted in the detention centers, prisons, whatever the area is. So I...that was my understanding and why this was brought to me, that it was going to need to be put in statute because of an argument against leaving it so vague. [LB793]

SENATOR CHAMBERS: Okay. That's all I wanted to ask you to show those who are coming after you... [LB793]

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SENATOR WATERMEIER: Yeah. [LB793]

SENATOR CHAMBERS: ...that this is vague. A criminal statute must state very clearly what constitutes the crime to give a person notice of what conduct is prohibited. So when you say 1, 2, 3, 4, but not limited to, that means things other than what are listed in the statute could constitute a crime and you don't know what it is, nobody else knows what it is, so they ad hoc it along the way. And you can't do that constitutionally in a criminal statute. [LB793]

SENATOR WATERMEIER: I understand where you're headed. [LB793]

SENATOR CHAMBERS: But that's all that I wanted to ask, just to serve notice of what I'm seeing. [LB793]

SENATOR WATERMEIER: Okay. [LB793]

SENATOR CHAMBERS: Okay. Thank you. [LB793]

SENATOR SEILER: Senator Watermeier. [LB793]

SENATOR WATERMEIER: Yeah. [LB793]

SENATOR SEILER: ...in Section 1, 28-115, you list a number of sections of the Criminal Code. Do you know if this was drafted after LB605 or before? [LB793]

SENATOR WATERMEIER: I'm assuming it was after but I don't know, because LB605 was two years ago... [LB793]

SENATOR SEILER: Right. [LB793]

SENATOR WATERMEIER: ...and had...but I don't know that. [LB793]

SENATOR SEILER: We've run into that a couple times... [LB793]

SENATOR WATERMEIER: We can check into that, yeah. [LB793]

SENATOR SEILER: ...where statutes have been drafted... [LB793]

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SENATOR WATERMEIER: Right. [LB793]

SENATOR SEILER: ...prior and didn't comply with LB605. Would you take it upon yourself to check those... [LB793]

SENATOR WATERMEIER: Yep. [LB793]

SENATOR SEILER: ...and make sure they comply with LB605? [LB793]

SENATOR WATERMEIER: Yep. [LB793]

SENATOR SEILER: Thank you. Any other questions? Senator Williams. [LB793]

SENATOR WILLIAMS: Thank you, Senator Seiler. Thank you, Senator Watermeier. Again, following up on a couple of things that I just want to be sure of, on page 3, line 31, that this makes it a crime for introducing any "material or thing capable of inflicting injury." Can you describe something that that would be? Is that a paper cut? Is that a... [LB793]

SENATOR WATERMEIER: Well, and obviously... [LB793]

SENATOR WILLIAMS: Do you see where I'm going with that one? [LB793]

SENATOR WATERMEIER: Yeah, I do. [LB793]

SENATOR WILLIAMS: And we'll follow that with some... [LB793]

SENATOR WATERMEIER: Yeah, I do. [LB793]

SENATOR WILLIAMS: Then if you would look over to page 4, line 21, it describes a "youth rehabilitation and treatment center." Can you clarify for the record, does that cover both Kearney and Geneva? [LB793]

SENATOR WATERMEIER: Both Kearney and Geneva is my understanding,... [LB793]

SENATOR WILLIAMS: Would be covered. [LB793]

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SENATOR WATERMEIER: ...because of the definition. I've done work on that with HHS and I think that's the way that is. But I could check on that as well, so. [LB793]

SENATOR WILLIAMS: Thank you. [LB793]

SENATOR SEILER: Any further questions? Thank you. You'll stick... [LB793]

SENATOR WATERMEIER: I have another bill and appropriations issues. I'll see if I can stick around for closing, but I may not, so. [LB793]

SENATOR SEILER: Okay. [LB793]

SENATOR WATERMEIER: All right. Thank you. [LB793]

SENATOR SEILER: First proponent. [LB793]

KALE BURDICK: Chairman Seiler, members of the committee, my name is Kale Burdick, that's K-a-l-e B-u-r-d-i-c-k. I'm an assistant attorney general, appearing on behalf of the Attorney General's Office and the Nebraska County Attorneys Association in support of LB793. LB793 is a bill that is meant to improve the safety of inmates and staff members in detention facilities. Bill has two key components in Sections 2 and 4 which address contraband in detention facilities and assaults on detention facility staff. Section 28-913, as Senator Watermeier said, currently prohibits implements for escape in detention facilities, and there is also a statute that prohibits conveying a communication or article to an inmate in the custody of the Department of Correctional Services. That section only covers state prisons. Therefore, short of being classified as an implement for escape, current statutes do not prohibit the introduction of other contraband items into local detention facilities, such as county jails. LB793 seeks to remedy this problem by amending Section 28-913 to prohibit not only implements for escape but also other specific items that have no legitimate purpose in a detention facility. Prohibiting the items listed in the bill would greatly enhance the safety of inmates, as well as facility staff. LB793 also addresses assaults committed by inmates on local correctional staff. Currently, the assault on an officer statutes cover peace officers, probation officers, firefighters, EMTs, healthcare professionals, and employees of the Departments of Health and Human Services, and Correctional Services. Noticeably absent from that list are correctional officers employed by county governments. This disparity came to light in our office as a result of the assault and murder of Amanda Baker, who was a juvenile correctional officer for Scotts Bluff County. Ms. Baker was lured by a detainee into his cell and choked to death in an effort to escape. The assailant was ultimately prosecuted for murder by our office, but his accomplice, who coached him on applying the choke hold and

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encouraged him to commit the assault, was prosecuted for aiding and abetting assault in the first degree. The state was unable to charge the accomplice with aiding and abetting assault on an officer in the first degree because county correctional staff are not provided the same protection as their counterparts who work in state prisons. There are some concerns about the potential for an increased number of prisoners serving their sentences in county facilities. As we know, the Department of Correctional Services already houses some inmates in county jails and changes made by LB605 have a potential impact on that as well, LB793 seeks to address concerns about safety. The Attorney General's Office and the County Attorneys Association appreciate your consideration of this bill and encourage the committee to advance LB793 to General File. I would take any questions. [LB793]

SENATOR SEILER: Questions? Senator Chambers. [LB793]

SENATOR CHAMBERS: How long have you been working in the Attorney General's Office? [LB793]

KALE BURDICK: I have been an assistant attorney general since 2011. [LB793]

SENATOR CHAMBERS: And how long have you been a lawyer? [LB793]

KALE BURDICK: Since 2011. [LB793]

SENATOR CHAMBERS: Oh, okay. Do you know that there's no such thing as a common law crime in Nebraska? [LB793]

KALE BURDICK: Yes, I am aware of that. [LB793]

SENATOR CHAMBERS: So how is a crime commit...created in Nebraska if...since there are no common law crimes? [LB793]

KALE BURDICK: By the Legislature. [LB793]

SENATOR CHAMBERS: And nothing is a crime unless the Legislature specifically says so. Is that correct? [LB793]

KALE BURDICK: That is correct. [LB793]

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SENATOR CHAMBERS: Now, and I'm not going to take you on...keep you on this a long time, but you're a lawyer. Turn to page 4, if you will. [LB793]

KALE BURDICK: Okay. [LB793]

SENATOR CHAMBERS: When you give a list of specific items, then you include these words, "not limited to," that means additional things not listed would qualify as a crime. Isn't that true? [LB793]

KALE BURDICK: That's a possibility. [LB793]

SENATOR CHAMBERS: And that would be unconstitutional, wouldn't it? [LB793]

KALE BURDICK: Well, I think... [LB793]

SENATOR CHAMBERS: You're a lawyer. [LB793]

KALE BURDICK: ...I think the court would decide that. But I think in... [LB793]

SENATOR CHAMBERS: For a court... [LB793]

KALE BURDICK: ...in this situation there are specific categories. [LB793]

SENATOR CHAMBERS: For a court, is that what you said? [LB793]

KALE BURDICK: I said I think a court would decide whether that was... [LB793]

SENATOR CHAMBERS: Categories are not crimes. It must be specific. Now what notice does this give a person that a particular item not listed there is a crime? Show me the specific... [LB793]

KALE BURDICK: I think the reference to "any electronic communication device as defined in Section 28-833, telecommunications equipment, or component hardware." So those are... [LB793]

SENATOR CHAMBERS: No, I'm talking about... [LB793]

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KALE BURDICK: ...those are the specifics and then it goes into... [LB793]

SENATOR CHAMBERS: And then those words "not limited to." [LB793]

KALE BURDICK: Right. [LB793]

SENATOR CHAMBERS: So there are other things not listed. Isn't that true? [LB793]

KALE BURDICK: Well, yes, there could be things that aren't listed that would fall into that category. [LB793]

SENATOR CHAMBERS: I'm going to teach you something they didn't teach you in law school and what the Attorney General didn't teach you. Words "not limited to" means there is conduct that can be made a crime but which the person to be charged has no notice of. Anybody can make a statement, let's say a county attorney. How is somebody going to be charged for committing a crime by having or dealing with it in the way listed here, but it's not listed? How are you supposed to know it's a crime? You don't even know what those words include, do you? [LB793]

KALE BURDICK: Well, there's specific definition of electronic communication device in statute. [LB793]

SENATOR CHAMBERS: No, you...let me give you an English lesson. The words "not limited to" means that there are other things besides what are listed here and they need not be listed here to be crimes. And that violates the law relative to what constitutes a criminal statute. You don't even have to pay me for that. But I wanted to get that into the record to show that people are sent here who don't really understand what they're doing. And you know why I'm going after you like this? The county...the Attorney General was unfair to send somebody like you here who has...have you read this bill? [LB793]

KALE BURDICK: Yes, I have. [LB793]

SENATOR CHAMBERS: Would you turn to page 3? In line 30... [LB793]

KALE BURDICK: Line what, Senator? [LB793]

SENATOR CHAMBERS: ...is...line 30. [LB793]

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KALE BURDICK: Okay. [LB793]

SENATOR CHAMBERS: Is paper a combustible material? [LB793]

KALE BURDICK: I suppose it could be. [LB793]

SENATOR CHAMBERS: Not suppose. Either it is or isn't. Do you think it is or do you think it's not? [LB793]

KALE BURDICK: I think combustible means capable of catching fire, so yes. [LB793]

SENATOR CHAMBERS: Okay. Because if that term is unclear then it's ambiguous, and that would prevent it...that would make it unconstitutional. But if a piece of paper would fall into...now become a crime, if I gave an inmate a piece of paper, a note, then it could qualify as combustible material or something else, couldn't it? It could be unauthorized paper or whatever. So if one thing can qualify as two different crimes, you think that's constitutional? [LB793]

KALE BURDICK: I'm not sure of the question. That it can qualify as two different crimes? [LB793]

SENATOR CHAMBERS: All right. If they have a law that says I cannot give written communications to an inmate, slipping it to him or her, then that could be charged on the basis of that or it could be charged on the basis of it being a combustible material. Which one would it be? [LB793]

KALE BURDICK: It could be either. [LB793]

SENATOR CHAMBERS: But I'm not given notice as to which it will be, am I? [LB793]

KALE BURDICK: No. [LB793]

SENATOR CHAMBERS: Okay. Then the last thing I'm going to ask you, because I have it circled and Senator Williams mentioned it, any "thing capable of inflicting injury." My fist is capable of doing that, isn't it? [LB793]

KALE BURDICK: Yes. [LB793]

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SENATOR CHAMBERS: Does it say that, except a part of a person's body? My teeth would be capable of doing that, right? [LB793]

KALE BURDICK: Yes, they would. [LB793]

SENATOR CHAMBERS: So that would qualify as a crime, huh, as a dangerous weapon, my teeth would be. And I don't have to use them, just bring them. My shoes could inflict injury, couldn't they? [LB793]

KALE BURDICK: I suppose they could. [LB793]

SENATOR CHAMBERS: That's a crime, isn't it,... [LB793]

KALE BURDICK: I don't know. [LB793]

SENATOR CHAMBERS: ...based on this? Can it inflict injury? I'm going by what you were sent here by the Attorney General to justify. The language of this says any "thing capable of inflicting injury." Is my shoe capable of inflicting injury? And I could let you see the size of it and you'd see that the injury would be considerable. [LB793]

KALE BURDICK: Yes. (Laugh) [LB793]

SENATOR CHAMBERS: Okay. And I'm not going to go any further but just to indicate that the Attorney General, the County Attorneys Association, and whatever jail is in Senator Watermeier's district is sending us another bad bill which violates the principle of formulating a criminal statute. And if this embarrasses you, you ought to thank me for it because you're not processing anything in a court of law. You're not charging anybody under this. And next time you should read it carefully and make sure that, in your opinion, what you learned in law school is at least being adhered to by something like this. And I'm through asking questions, but if you'd like to respond in any way to state generally your feelings you're free to do so. [LB793]

KALE BURDICK: I don't have any reason to. [LB793]

SENATOR CHAMBERS: Okay. That's all I have. Thank you. [LB793]

SENATOR SEILER: Any further questions? Thank...oh, Senator Williams. [LB793]

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SENATOR WILLIAMS: Thank you, Senator Seiler. And to follow up a little bit, you know, we're focused, it seems like to me, on the idea of delivering contraband to an inmate in one of these facilities. But wouldn't you agree that under the definition starting on page 3, line 7, a person commits an offense if, and then it describes all this stuff, if they bring any of these things on to the grounds of any of the listed facilities. So if a person that works there, if the janitor, if a person visiting someone walks into the front door of the facility with a pack of cigarettes in their pocket, with credit cards in their billfold, batteries in their cell phone, aren't those all violations? [LB793]

KALE BURDICK: I guess if that's how on to the grounds is construed, if it's the entire property. I think what the intent was, was in the facility itself or the yard, I guess, is what the intent was. [LB793]

SENATOR WILLIAMS: We have to be really careful when we put words of intent that aren't there into the law. I want to confirm what I asked Senator Watermeier so that we put it on the record again. On page 4, line 21, where it uses the term "a youth rehabilitation and treatment center," is your understanding that that includes both Geneva and Kearney? [LB793]

KALE BURDICK: That is my understanding. [LB793]

SENATOR WILLIAMS: Okay. Thank you. [LB793]

SENATOR SEILER: Any further questions? Thank you very much for your testimony. Next proponent. Will you please state your name and spell it, please, for the record. [LB793]

MELODEE WINTER: Melodee Winter, M-e-l-o-d-e-e W-i-n-t-e-r. [LB793]

SENATOR SEILER: You may continue. [LB793]

MELODEE WINTER: (Exhibit 2) I am...I work at the Buffalo County Jail in Kearney, Nebraska. I'm a jail sergeant there. And I just have something on the assault part of it. On March 11, 2014, while on duty as a jail corrections sergeant in Kearney, Nebraska, I and two other staff members were assaulted by a young male inmate with a violent history of numerous assaults. As a result, I was punched in the head and neck until my C1-C2 vertebrae was broken. Sorry. My surgeon advised me that I was pretty lucky that I was not paralyzed or killed from this injury. I was very fortunate. My injury required extensive surgery with cadaver bone, wiring, and screws to stabilize my neck and head. I permanently have lost 50 percent range of motion in my neck and have ongoing medical issues which will be permanent. This has been a physical and mentally

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altering experience for me. The inmate that assaulted me received a light sentence even though he had a long history of prior assaults. This inmate had 23 assaults from YRTC, then which he was placed in our jail after that, which could only be considered misdemeanor under current law and, of course, the assault at our jail. I worked in corrections for over 19 years. I worked for the Department of Corrections in both the men and women's prison, and I've worked in two county jails in Nebraska. However, my life and career have drastically changed. I can no longer work one-on-one with inmates and risk any further injury. I have limited contact and now serve as an administrative sergeant position. As a county jail corrections staff member, I am requesting that all corrections officers and YRTC staff, regardless if they are state, county, public service positions, be covered under the assault of an officer statute. We perform the same duties with the same offenders and are in constant contact with the same risks. Our local jails are subject to housing state detainees and also some federal detainees. Corrections staff is put at risk on a daily basis of being assaulted. I feel also that harsher penalties also should be imposed for assaultive acts on jail staff. Imposing stiffer laws for offenses includes assault...including assaults on staff would also raise the guidelines for judges to impose more appropriate sentences and serve as a deterrent of assaults. Our close proximity and constant interaction with inmates puts us all at risk and I feel county jails deserve this change in the law as we need to be considered equal with other public safety employees. I feel county corrections staff deserve the same consideration and protections. Thank you. [LB793]

SENATOR SEILER: Any questions of this witness? Thank you for your testimony today. Next proponent. [LB793]

JEFF LICKEI: Good afternoon. My name is Jeff Lickei, the last name is L-i-c-k-e-i. I'm a lieutenant with the Cass County Sheriff's Department. I am currently employed as the jail administrator. I have been there 14 years. Before that I did 14 years with Douglas County Corrections, so I have 28 years of working in a jail setting. I'm here today to testify in support of LB793, which deals with the items that are considered contraband. I believe that LB793 will go a long way in helping keeping the inmates in our custody and the staff safer. In my years in working in a jail setting, I can tell you the contraband that is introduced into the jail almost always leads to fights, individuals giving up their meals or other privileges, performing sex acts, or escape in one way or another. There are two types of inmates that usually bring the contraband into the jail. The first is inmates that are out on bond and they know they're coming to sentencing and they know they're going to be sentenced directly to the jail. The other type is weekenders. These are inmates that the judge sentences only to weekends and they do five, six, up to six months, coming in every weekend. So they're out during the week. They know they're coming in on Friday and they get out on Monday. These type of inmates are often the ones that are pressured into bringing contraband into the jail. I have personally found everything from a lighter to a .22 handgun. We have found a whole category of drugs, knives, cigarettes, cell phones, and handcuff keys in places most people would not normally carry those objects. LB793

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is not just pointed at the inmates. We in the state of Nebraska need to let inmates, attorneys, deputies, corrections, probation, and contract workers know that we are going to stop contraband from getting into our facilities. LB793 will go a long way in doing just that. Thank you for your consideration in passing LB793. Any questions? [LB793]

SENATOR SEILER: Questions? Senator Pansing Brooks. [LB793]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. I just wanted to say to you, Sheriff Lickei, and also Sergeant Winter, whose testimony was very compelling and I am sorry about the difficulty that she had and I know that we all are, that you know as we question these things, these questions aren't because of a lack of support of the work that you do. It's just trying to clarify and make sure that the laws are appropriate. So I hope that you understand that that's...that these questions are not necessarily to say that we aren't supportive of your work in any means. It's just that we're trying to make sure that the law is clear and not overbroad in capturing people that are not intended to be caught within that system. [LB793]

JEFF LICKEI: Thank you. [LB793]

SENATOR PANSING BROOKS: Thank you. [LB793]

SENATOR SEILER: Anything further? [LB793]

JEFF LICKEI: Thank you. [LB793]

SENATOR SEILER: Thank you very much. Next proponent. [LB793]

ANTHONY SHEPARDSON: Good afternoon. I'm Anthony Shepardson, S-h-e-p-a-r-d-s-o-n, jail director for the Gage County Sheriff's Office. As a law enforcement officer and jail director, it only makes sense to include all correctional facilities and not just the state facilities. I believe it is our duty and obligation to all correctional officers, inmates, and the general public to do everything we can to cut down on and deter the introduction of contraband into our correctional facilities. I believe that our goal is to have a safe and secure facility for all officers, inmates, those who contract into our facilities, and the public. I believe LB793 is a step in that direction. I would like to share just a small glimpse of what has been located at the Gage County Detention Center over the years: street drugs, tobacco, lighters, prescription medication, shanks, tattooing material, and handcuff keys, and that...and the list just goes on. Some of those items were thankfully located before it could make it into the secure area of our jail, and some not. Everyone entering a detention facility in the state of Nebraska should clearly understand that possessing,

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introducing, or manufacturing contraband will make them subject to criminal prosecution. Thank you. [LB793]

SENATOR SEILER: Any questions? Thank you very much for your testimony. [LB793]

ANTHONY SHEPARDSON: Thank you. [LB793]

SENATOR SEILER: Excuse me, Officer. Officer, just one question dawned on me. Did you refer to that you contract with Nebraska for State Penitentiary prisoners in your facility? [LB793]

ANTHONY SHEPARDSON: No. What that was, was we contract our medical in... [LB793]

SENATOR SEILER: Oh, okay. [LB793]

ANTHONY SHEPARDSON: ...and we contract our food service in. [LB793]

SENATOR SEILER: Thank you. I wanted to clarify that. [LB793]

ANTHONY SHEPARDSON: Yeah. Okay. [LB793]

SENATOR SEILER: Thank you very much. Next proponent. Next proponent. Next opponent. [LB793]

SPIKE EICKHOLT: Good afternoon, Chairman Seiler, members of the committee. Spike Eickholt, first name S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the Criminal Defense Attorneys, testifying in opposition to LB793. We're opposed to the bill regarding the contraband portion of the bill, because the bill essentially has two components. Regarding the contraband portion of the bill, we are opposed to the bill as it's drafted because of the overbreadth of the language, the specifically and explicitly noninclusive or exclusive list of items. As Senator Chambers and Senator Williams indicated in questioning of the earlier witnesses, if you look at page 3, line 16, the crime is committed when a person brings these items onto the grounds of a detention facility. There's no requirement, as Senator Williams asked, that anyone brings these items with any sort of intent to convey it to an inmate or to do anything with it. Friday is a recess day. I'm going to go to the Lancaster County Jail. I'm going to park in the parking lot. I will have my phone with me. I'll have a tire iron in the trunk of my car. One of the inmates I'm going to see has a videotaped statement that we're going to watch on a laptop. That's considered an electronic communication device even under the referenced term without

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having the specific language of "included but not limited to." If you look at page 4, lines 23 and 24, the crime is committed when you...when a person intentionally or unlawfully does any of the following, but it delegates defining what unlawfully means to the detaining authority. In other words, not only is it contraband as defined in the statute but really anything that a detention facility wants to make. So those are our concerns regarding the overbreadth of the language. We are also concerned regarding the contraband portion of the bill because it delineates a separate felony punishment for some of the contraband items. And I guess we understand the distinction between a weapon or an instrument of escape versus a tobacco or drug item. But the reality is, any kind of contraband is for people that who are more familiar with me can say this really jeopardizes the sanctity or the protection of the institution. Regarding the second portion of the bill, the increased penalties for parole officers and employees of detention facilities, what happened to Sergeant Winter is unfortunate. I would remind the body that it is a crime, a felony crime under 28-932 and 28-933, for a person who is in...a confined person to assault somebody else. It's called assault by confined. In other words, simply because a person is in a jail or prison, if they assault any other person that's a separate felony offense and it is a mandatory consecutive sentence. A number of years ago, the Legislature started adding categories to the definition of peace officer. It was firefighters, then hospital personnel. We resisted those efforts because what we have now is a whole subcategory of public safety officer, and there's always that temptation the body is facing to add another group of people when they ask, please include us, why not me? So for those reasons, we oppose the bill. [LB793]

SENATOR SEILER: Any questions? I have one. Don't you think the firefighters and paramedics that went into Tecumseh should be covered? [LB793]

SPIKE EICKHOLT: They certainly should. I mean that's not necessarily a distinction. But the problem is if when you add somebody to that sort of super category of an enhanced felony, it's just everyone is rising with it. Everyone is sort of brought on board. I'm not trying to just ignore any of the sacrifices they made or anything that Sergeant Winter testified to earlier. [LB793]

SENATOR SEILER: (Exhibits 1 and 3) Okay. Any further questions? Thank you very much. Next opponent. Anyone else opponents to this bill? In the neutral? Seeing nobody in the neutral, I have a letter from the ACLU that opposes the LB793. And a letter in support of it from Director Frakes, and they will be received and made part of the record. Senator Watermeier. I guess he's introducing a bill somewhere else. So we will go on to the next statute...or LB, LB965, Senator Cook. What? Okay. Been informed that she's on her way, so we'll just wait for her. Welcome, Senator Cook. [LB793]

SENATOR COOK: Thank you, Senator Seiler. [LB965]

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SENATOR SEILER: You may introduce your bill, LB965. [LB965]

SENATOR COOK: Yes, sir. Good afternoon, Chairman Seiler and members of the Judiciary Committee. I'm Senator Tanya Cook. That's spelled T-a-n-y-a C-o-o-k. I come before you to present LB965. My bill would strengthen our Security, Privacy, and Dissemination of Criminal History Information Act in part by amending statutory language related to record expungement in order to protect the undisputed innocent. And I'm going to breathe now (laugh) because I dashed here from Appropriations and clearly need more cardio in my workout schedule. (Laughter) Thank you. Mistaken identity means a circumstance in which a person is arrested due to erroneously being identified as the one who committed a crime. This can happen because a person looks like the criminal being sought or the innocent person's name or birth date are identical or similar to those of the person who actually perpetrated the crime. I'm told that name confusion often occurs in the Hispanic community. Stolen identity occurs when an imposter provides to law enforcement another person's name and personal information, such as a driver's license, date of birth, or Social Security number, during an investigation or upon arrest. This includes the use of counterfeit documents using another person's data. The imposter may fraudulently obtain a driver's license or identification card in the victim's name and provide that identification document to law enforcement. Or the imposter, without showing any photo identification, verbally provides the name and personal information of another individual. Under LB965, the person who is a victim of mistaken or stolen identity may apply for an order to expunge from official records any information related to the arrest, charge, or trial. Upon a finding that the charges were dismissed or the person found not guilty, the court shall order the expungement. The expungement would apply to all law enforcement agencies, the Department of Correctional Services, the Department of Motor Vehicles, or any other state or local government agency identified by the eligible person. LB965 also provides for the reversal of any administrative actions that may have occurred because of the mistaken arrest at no cost to the person. For example, within DMV this could include the person having been assessed license points or license suspension or revocation. In these circumstances, the person would receive a certified, corrected driver history at no charge. And an insurance company that charged any additional premium based on the erroneous arrest would have to refund the additional premiums. Under current law, information can be removed from public records under certain circumstances, but there is a one- to three-year lag. A victim caught up in the nightmare of mistaken or stolen identity should not have to wait for such a period of time. LB965 provides for the expungement of information from all records and that expungement can and should occur as soon as possible. Our laws and pending legislation related to the sealing of expungement of records address circumstances where the affected person is actually the correct person. LB965 addresses those situations where the individual arrested is absolutely innocent and has been the victim of mistaken or stolen identity. In these circumstances, the victim's life is turned upside down and he or she is deprived of liberty while the guilty party remains at large. I'm not asserting that law enforcement or our criminal justice system is sloppy or lacking in general in integrity or

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professionalism, but mistakes do happen and mistakes can have short- and long-term emotional, mental, and practical consequences. Such errors can result in job loss and/or loss of wages when missing work while in jail. It can negatively impact being able to rent an apartment, get a home loan, government benefits, or consumer credit, or obtaining a professional license. In addition to the humiliation, fear, and frustration, it could sour one's regard for law enforcement and our criminal justice system. It is a great injustice for one to be blamed and punished for something another has done. Adding insult to injury would be having a record in one's name because of another person's criminal activities. It is important that our justice system get it right. If an error is made due to mistaken or stolen identity, it is imperative to have an avenue for the expungement of records as soon as possible. I want to note section (6) on page 7 of the green copy. I was asked for the inclusion of a provision on the refunding of additional premiums associated with mistaken arrest. This part, I believe, of the proposed law is important in helping to make a person whole under these circumstances. There are others that will testify who will provide you with real-life examples of mistaken or stolen identity and the havoc created in the victims' lives. I urge you to support this proposal and to work to incorporate its provisions into law. Thank you very much. [LB965]

SENATOR SEILER: Any questions? Senator Pansing Brooks. [LB965]

SENATOR PANSING BROOKS: Thank you. Thank you for coming forward, Senator Cook, with this bill. Okay, so I'm just trying to clarify a couple things. Is this so it would be if the conviction is set aside or a finding of not guilty under a mistaken identity? It's just on that kind of a case where... [LB965]

SENATOR COOK: Yes. [LB965]

SENATOR PANSING BROOKS: ...it was mistaken identity and then the conviction would be set aside. [LB965]

SENATOR COOK: Correct. [LB965]

SENATOR PANSING BROOKS: And so was there any or is there any way to have it happen with the court at the...when they've set it aside or when they find that person not guilty due to mistaken identity? Why should they have to come back and file a whole nother case? [LB965]

SENATOR COOK: Exactly. And I thought that this bill proposal, and perhaps you can offer some input as you're discussing it, offered that option for the person who has been victimized through mistaken or stolen identity. The current statute, which the green copy strikes, has the

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person, let's say it's me and I was in Platte County and something happened and it wasn't me. I would have to go back from my county of Douglas, where I reside, to Platte County to resolve the issue. What this draft does is have it automatically done once that information is available. [LB965]

SENATOR PANSING BROOKS: Well, it's my understanding that this is another hearing after where they have to apply to get that record expunged rather than within the hearing itself where it's set aside and the person is found that it was a mistaken identity. So it's a whole nother hearing where they have to file and come back. [LB965]

SENATOR COOK: I would say that's an improvement over what we have now, so I would be more satisfied with that, this option that's identified in the green copy, than having it chase you for the rest of your life and it wasn't even you. [LB965]

SENATOR PANSING BROOKS: I agree. But was there any discussion about making it so that the judge would decide that at the hearing where they set aside? [LB965]

SENATOR COOK: No, but I would be open to an amendment that made that the language of this bill. I'd be very open to talking about it. When I learned of this idea, it's something that I learned about at a conference and had actually met a young man who had gone out to plug a parking meter. Young professional man, happened to be African American, was grabbed up and taken to jail for about six hours. It was determined then it was mistaken identity. And then he went to go follow through with a job interview and it popped up on his record. So I came back to Nebraska and did research into what was available in terms of making the person whole, and drafted this bill. And then, in the drafting of the bill, just tried to change it from the way it is now, which is me having to go back to wherever...or hypothetically me having to go back to wherever the alleged crime or where the arrest was made and working through all that and also adding some things, with the help of Bill Drafters, of other places where this might be impactful on a citizen's life--DMV, insurance, etcetera. But I'd be very open to discussing that with you. [LB965]

SENATOR PANSING BROOKS: Thank you. And who is mistaken in this case? Is it law enforcement that's mistaken or is it...who creates the mistaken identity? [LB965]

SENATOR COOK: When I think about this, it is in the context of a person who has authority, law enforcement, someone who has authority to detain you. Law enforcement is mistaking you for someone that you are not. [LB965]

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SENATOR PANSING BROOKS: Okay. I guess what I'm interested in is whether or not there could be, instead of mistaken identity, it would be like an intentional, intentionally, like somebody might intentionally suggest that another person is... [LB965]

SENATOR COOK: Like over there it wasn't Tanya Cook, it was Patty Pansing Brooks that did it? [LB965]

SENATOR PANSING BROOKS: Yes. So I'm just... [LB965]

SENATOR COOK: So intentionally pointing in that direction? [LB965]

SENATOR PANSING BROOKS: Yeah. [LB965]

SENATOR COOK: Whether or not that could be included in... [LB965]

SENATOR PANSING BROOKS: I'm just thinking that through. [LB965]

SENATOR COOK: Well, the way I have it drafted now, mistaken identity could include either one. I have a definition here but there's no reason why it couldn't include that. [LB965]

SENATOR PANSING BROOKS: Okay. Thank you very much for bringing this, Senator Cook. [LB965]

SENATOR COOK: You're very welcome. Thank you. [LB965]

SENATOR SEILER: Any further questions? Seeing none, thank you. You going to stick around for closing? [LB965]

SENATOR COOK: Yes, sir, I am. [LB965]

SENATOR SEILER: Okay. First proponent of this bill. [LB965]

DAVID TARRELL: (Exhibit 1) Good afternoon, Chairman Seiler, members of the Judiciary Committee. My name is David Tarrell. I'm here on behalf of the Nebraska Criminal Defense Attorneys Association. [LB965]

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SENATOR SEILER: Will you spell your name, please? [LB965]

DAVID TARRELL: Certainly. It is T-a-r-r-e-l-l. And as I said, I'm a proponent, Nebraska Criminal Defense Attorneys is a proponent of this. We think it's a welcome change and I think there's basically three reasons that it is a welcome change. The first one, under current law the judge has discretion, even if you can demonstrate mistaken identity, to not grant this expungement. So this remedies that and changes it to "shall," and I think that makes complete sense. If you can demonstrate that you were the victim of mistaken identity, certainly that should be expunged. As Senator Cook said, it protects the innocent in that regard. The best...the second reason that this is a welcome change is that under current law you have to demonstrate--I think this goes to Senator Pansing Brooks's question about who creates a mistaken identification. Under current law you have to demonstrate that there was a mistake made on the part of law enforcement. And this is a competitive business. This is a difficult job that law enforcement does and that other parties do. And I've actually had this discussion with a prosecutor before where they said, wait, we didn't make a mistake; it was someone else. And these kind of mistakes happen a lot. In Omaha there is a full-time police officer devoted to this. And I've had conversations with them and they tell me that most of the time it's a family member, it's somebody using...somebody that the person knows who maybe they look similar to. I've had it in cases of sisters, where one sister uses her older sister's identification, probably to buy alcohol; gets picked up and suddenly the older sister is a victim of her younger sister's, you know, inadvertent mistaken identification. I've had that case happen before too. So this eliminates the requirement that a person demonstrate that law enforcement made a mistake. In that scenario, that was completely the fault of not law enforcement. But, personally, I think this really remedies that by listing "erroneous arrest," "confusion," "misinformation," or "other mistake," on page 7, rather than just requiring law enforcement. A couple suggestions as I wrap things up here: I would suggest on page 5, beginning of Section 6, if any person is arrested for or named, I think that's a little more broad in case a person was cited or something like that. And another suggestion, on page 7, just to clean it up a little bit. The beginning of section (7) indicates mistaken identity means erroneous arrest. I think that should also be added to or charged. Sometimes a person isn't charged. They're simply cited and that creates an erroneous record. As I said, this happens a lot. I think this is a welcome change and I thank you for your time. [LB965]

SENATOR SEILER: Questions? Pansing Brooks. [LB965]

SENATOR PANSING BROOKS: Thank you, Senator Seiler. Thank you for coming forward, Mr. Tarrell. I guess I'm interested in my question that I had before. Why couldn't this be done in the hearing when the judge is setting it aside? Why couldn't you do it then instead of having to come back and file a whole nother case and go through another hearing? [LB965]

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DAVID TARRELL: I think you actually could as this is written, but I think that could be cleaned up quite a bit. I think as it's...as current law stands, you need to come back and you need to file a...I think it says petition or motion. It adds some kind of legalistic language that a person might not be able to do it on their own. This new change indicates that a person would simply fill out a form, so I think you could accomplish that at that hearing. You'd come in and say, this wasn't me, here's the form, and you could do it right there. But I think, to clean it up, I think you could make it so much easier on an innocent person by saying, you know, clarifying that a judge should, if at all possible, take it up will eliminate that extra step. I think that makes complete sense. [LB965]

SENATOR PANSING BROOKS: Right. That makes more sense to me. [LB965]

DAVID TARRELL: Right. [LB965]

SENATOR PANSING BROOKS: Okay. Thank you for your help. [LB965]

DAVID TARRELL: You're welcome. Thank you. [LB965]

SENATOR SEILER: Seeing no further questions, thank you for your testimony. [LB965]

DAVID TARRELL: Thank you, Chairman. [LB965]

SENATOR SEILER: Next proponent. [LB965]

MILO MUMGAARD: Good afternoon, Chairman Seiler, members of the committee. My name is Milo Mumgaard, M-i-l-o M-u-m-g-a-a-r-d. I'm the executive director of Legal Aid of Nebraska. We are the civil legal services provider across the state for low-income individuals. We have over 70 advocates in seven different offices and represent every year over 20,000 individuals. I'm here today to emphasize the importance of this kind of piece of legislation. Expungement, set-asides, and sealing of records are some of the issues that our advocates see on a regular basis. Why? Because much of our community that are seeking to address the cause and effects of their poverty are oftentimes caught within this web of criminal allegations, criminal convictions, juvenile records that are not sealed, things of that nature that, as Senator Cook earlier described, significantly impact their ability to get ahead in life, to find the economic opportunity that we all want to help them find. So what Legal Aid has done--and this is why I wanted to seize upon this opportunity to come in and explain a little bit more about the opportunity that this bill presents as well as what's going on out there in the...sort of on the ground--is to address this in a number of ways to seek to help people to actually figure out ways they can get the set-asides of convictions, get records expunged, as well as to seal records that

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were created as juveniles that oftentimes are, by law, required to be sealed but unfortunately are not. So there's at least four different things that I wanted to describe as we work with ex-offenders and as we work with juveniles. First of all is the set-aside work that we're doing. We have clinics in both Omaha and Lincoln and we are moving them out into the rest of the state in which individuals will be provided and are provided information about how to file for their own set-aside of convictions, how to pursue in limited situations expungement of their records. We have a pretty good track record of this so far. We're going to build upon this. And again, the underlying reason for this of course is, frankly, the overcriminalization that has occurred over the last few decades and the fact that we have so many people facing these kinds of records. People can actually pursue these on their own and have success stories to relate. So the provisions within this piece of legislation about filing for and receiving opportunities to have a hearing and so on, at Legal Aid we believe that is a good thing. We can help people to do that. Furthermore, we are also working in a juvenile context in a very aggressive way. We're working with the National Juvenile Defense Center out of Washington, D.C. And in Lancaster County we've just started a project where we are actually dedicating a full-time attorney as part of our juvenile justice project to do nothing but work on the sealing of records and the expungement of charges for juveniles and for ex-offenders and for those who have been in detention who are entering...reentering civil society and are trying to reintegrate. And that clerk...excuse me, that full-time lawyer will be doing nothing but over the next year, testing the waters to see how successful this is in achieving the goal of helping juveniles to actually achieve educational opportunities that they otherwise wouldn't be able to get, employment that they otherwise were being denied, and so on. So within the year, we'll be able to report back to you how successful that is to help juveniles through things such as set-asides, expungement, and sealing of records. So Legal Aid of Nebraska is very enthusiastic about this type of legislation because it provides that second chance opportunity that so many people need, given today's criminal justice system issues as well as our requirements for employment and education. So with that, we support LB965. And I'd be happy to answer any questions you have. [LB965]

SENATOR SEILER: Seeing none, thank you very much... [LB965]

MILO MUMGAARD: Thank you. [LB965]

SENATOR SEILER: ...for your testimony. Further proponent. [LB965]

LASHONNA DORSEY: Hi. I'm Lashonna Dorsey. First name is L-a-s-h-o-n-n-a, Dorsey, D-o-r-s-e-y. I am the victim of identity theft and am still dealing with issues related to that today. About 15 years ago I applied for a job and I was denied the position because of a criminal record. So I went down to the...I can't remember right now but the police department to check into it and I was arrested on the spot. When I got arrested, they took me down to get my

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fingerprints and they compared them to what they had on file, and they were not me. I found out...or were not mine. I found out that the person that was actually using my identity, they showed me the mug shot and it was someone that I knew who was using my identity or my name and my date of birth and saying that they were me. Fifteen years have gone by. A few months ago I was involved in a domestic violence dispute or issue and during a deposition these criminal records were brought out again, and I thought that I had taken care of this so I had the records marked as fraudulent or not me or what have you, but it came up again. And so as a person who is a victim of domestic violence to be revictimized that way and have to live through that again was not pleasant at all. So 15 years later, this is still impacting me. And I definitely support this bill. I'll answer any questions. [LB965]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB965]

LASHONNA DORSEY: Thank you. [LB965]

SENATOR SEILER: Further proponent. [LB965]

BUB WINDLE: Chairman Seiler and members of the Judiciary Committee, my name is Bub Windle, that's B-u-b W-i-n-d-l-e, here on behalf of the Nebraska State Bar Association in support of LB965. The Bar Association supports LB965 because it aids the administration of justice. By adding to the statute provisions related to expungement of records for mistaken or stolen identity, the bill accounts for the unfortunate reality that mistakes happen. Innocent people are arrested and even charged or convicted based on errors. And these mistakes, as we've heard, can ripple through one's life, affecting, for example, the ability to get a job or to get credit. LB965 sets up a framework in which these mistakes can be undone as much as possible. Arrest and judicial records are expunged, collateral records like DMV or Department of Corrections' records are expunged, and the adversely affected party lawfully can state to anyone or on any application that he or she was not arrested, charged, or tried for a criminal offense. Therefore, misidentification does not follow a person for the rest of his or her life. One issue which has already been identified that we would be in support of is including instances in which someone is arrested but not charged based on mistaken or stolen identity, and happy to work with the committee on that, thinking that the law should likely reach to that situation as well. With that, we urge the committee's support of the bill. [LB965]

SENATOR SEILER: Questions? Senator Pansing Brooks. [LB965]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Thank you for coming today, Mr. Windle. I was just wondering, did the Bar Association by chance talk about whether or not

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there's an ability to have it happen at the time of the judge setting aside on a case of mistaken identity... [LB965]

BUB WINDLE: Yeah. [LB965]

SENATOR PANSING BROOKS: ...or doing it at the time of finding not guilty or setting aside? [LB965]

BUB WINDLE: No, did not, did not look at that expressly but it's something we'd consider. I think it does kind of provide for more automatic expungement. In the case that the charges are dismissed by the prosecutor, then the prosecutor notifies the judge and then says that the judge shall order the expungement. So we possibly could mirror that, as you've kind of suggested, with the set-aside based on this mistaken identity. [LB965]

SENATOR PANSING BROOKS: I think that's a good idea and hopefully somebody can work on that a little bit. It's a...it would be...because, of course, that judge would have the most knowledge about what...you wouldn't necessarily, on the application for another hearing to do that, you wouldn't necessarily have the same judge. So the judge would have to, all of a sudden, become all familiar with that case again and determine. So it seems much more efficient to do it with the judge who heard the case and understood why the set-aside was occurring. So thank you for your help and testimony today. [LB965]

BUB WINDLE: Thank you. [LB965]

SENATOR SEILER: Any further testimony? Thank you very much for your testimony. Further proponent. Seeing nobody scrambling, opponent. [LB965]

SHAWN RENNER: Senator Seiler, members of the Judiciary Committee, 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'm appearing today on behalf of my client, Media of Nebraska, Inc. Media of Nebraska is an umbrella lobbying group for the state's press and broadcast news media. My clients object to LB965 on a couple of bases. The first is a pretty general objection to the basic idea of expunging records, particularly court records. The news media's basic database for reporting, at least much of the news that it reports, are records contained in court records. And under LB965, court records can be expunged, in effect as if they had never been created. And that creates a wide variety of problems for the news media. If they report on a trial, throughout the trial, the trial comes to some conclusion and at some later point the records from that trial are expunged, that creates some problems for the news media in how to report in the future on that, whether they

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have an obligation (inaudible) back and unreport what they previously reported. And it reduces the amount of information that's available to the public as a matter of public record. That's a very general objection to expungement that my clients pretty regularly make. I'd like to talk for just a minute about a more specific objection to LB965 as it's written. It contains a very broad definition of mistaken identity, and that's contained in subsection (7) of Section 6 of the bill. Mistaken identity is defined as "the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime." So under LB965, let's assume hypothetically that a murder is committed. A person is charged with that murder. There is a trial held on the murder charge and at that trial a witness testifies the defendant did this, I saw it. That person is found not guilty, for whatever reason. When someone is found not guilty in a criminal trial, the verdict comes back "not guilty." The jury does not say we found not guilty because. It's just a general not guilty verdict. Under that circumstance, the person charged with that murder would have the ability to go to the judge and say, I was the victim of a mistaken identity, I was found not guilty, please wipe out every record that ever existed with regard to the murder trial we just went through. And I think that's inappropriate as a matter of public policy but it also makes it very difficult for the news media who have just reported on a lengthy murder trial that took place in open court before the public, as those proceedings have to take place. With that, I'll stop and I'd be happy to try to answer any questions. I see the light is on. [LB965]

SENATOR SEILER: Any questions? [LB965]

SHAWN RENNER: Thank you. Oh, I'm sorry. [LB965]

SENATOR SEILER: Senator Morfeld. [LB965]

SENATOR MORFELD: Thank you for coming today. I guess I can kind of understand your argument with the news media to a certain extent. But do you think that this is a problem, this mistaken identity? I mean put yourself in the shoes of, for instance, the young woman that came up here. Do you think that's a problem or not? [LB965]

SHAWN RENNER: I personally do, Your Honor, and I suspect my clients do as well. [LB965]

SENATOR MORFELD: Okay. [LB965]

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SHAWN RENNER: Their objection is not based on anything personal like that... [LB965]

SENATOR MORFELD: Okay. [LB965]

SHAWN RENNER: ...but more on how the process and the system works. [LB965]

SENATOR MORFELD: Okay. So how would you guys recommend the process and system works? [LB965]

SHAWN RENNER: Well, if you had... [LB965]

SENATOR MORFELD: I mean you pointed out the one problem, but I'm trying to find a path here because it's clearly a problem. [LB965]

SHAWN RENNER: First of all, my clients don't have anything to say about Department of Motor Vehicles, what you tell an employer, all those parts of the bill. [LB965]

SENATOR MORFELD: Uh-huh. [LB965]

SHAWN RENNER: We're talking about a very specific part of it and primarily relating to court proceedings, where there are open court proceedings that happen. There is currently a variety of methods of expungement. We have different statutes in the juvenile statutes. Mr. Mumgaard talked about juvenile proceedings. [LB965]

SENATOR MORFELD: Yeah. [LB965]

SHAWN RENNER: There are a whole set of expungement statutes here. This bill actually revises one current set of expungement statutes and there are others sprinkled throughout the statutes of the state of Nebraska. So there are means of that happening, of getting records expunged. [LB965]

SENATOR MORFELD: Okay. [LB965]

SHAWN RENNER: And we're certainly not here proposing that you backtrack on any of that. [LB965]

SENATOR MORFELD: Yeah. [LB965]

SHAWN RENNER: This expands that in a pretty substantial way and, more to the point, with that broad definition of mistaken identity, I think probably creates some problems for the system as well. Because one thing that's very clear from the literature is mistaken identity is a relatively common thing, particularly witness misidentification in criminal trials generally. There's a lot of literature out there that says people are not very good eyewitnesses. And what we're talking about, at least in part in this definition of mistaken identity, is this eyewitness got it wrong, for whatever reason, or at least a not guilty verdict would supply an argument that this eyewitness got it wrong. And that's very different than identity theft or what we often think of in terms of mistaken identity. And I think we create a lot of unforeseen problems, frankly. [LB965]

SENATOR MORFELD: Okay. Thank you. I appreciate your testimony. [LB965]

SENATOR SEILER: I have a little question as I don't quite follow your argument with the nexus of the trial versus wiping out the record when found not guilty. I understand you reported on the trial, and that's fine. But the nexus of not being able to wipe out these records of the court because he was found not guilty after a certain period of time, I don't quite understand the media's desire to do that. [LB965]

SHAWN RENNER: I think the concern is twofold. One is just a general concern on our court system is set up to be public for a reason. It's because we want to have the public, the press, everybody be able to see how our justice system operates. That's why we have open courtrooms. That's why we generally have open court records. [LB965]

SENATOR SEILER: I understand that. [LB965]

SHAWN RENNER: When that reporting happens, it is not uncommon, including today, I've seen these cases, I've not seen one of those filed but I've certainly gotten retraction demands. My clients have gotten retraction demands from people who say, you wrote a story when I was arrested. I just went through a trial. I was found not guilty. I demand that you retract that story because... [LB965]

SENATOR SEILER: That's different. That's different than the official records. [LB965]

SHAWN RENNER: It is. [LB965]

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SENATOR SEILER: I spent 50 years in a courtroom so I'm pretty sure I understand what you're...but I don't understand your nexus between the two. [LB965]

SHAWN RENNER: This provides an additional argument in that circumstance. It eliminates all the arrest records, the court records,... [LB965]

SENATOR SEILER: Right. [LB965]

SHAWN RENNER: ...the finding them not guilty. All of that goes away. [LB965]

SENATOR SEILER: And that's what the jury did. [LB965]

SHAWN RENNER: And the demand now comes in to my client, you wrote two stories about the murder trial that just happened. I was found not guilty. You libeled me because you wrote about that court record if the record has now been expunged. [LB965]

SENATOR SEILER: So your nexus is really trying to duck any type of liability, which you wouldn't have anyway. [LB965]

SHAWN RENNER: We would have to defend ourselves. That's correct. [LB965]

SENATOR SEILER: But you wouldn't have any liability. [LB965]

SHAWN RENNER: That would certainly be my legal position, yes. [LB965]

SENATOR SEILER: I agree. I agree with your legal position. Senator Ebke. [LB965]

SENATOR EBKE: Just to follow up on that, so are...what you're suggesting is that if you don't have any court records left, because they've all been expunged, that your ability to defend is tougher? [LB965]

SHAWN RENNER: Yeah. [LB965]

SENATOR EBKE: Okay. Thank you. [LB965]

SENATOR SEILER: Senator Pansing Brooks. [LB965]

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SENATOR PANSING BROOKS: Thank you. Thank you for coming, Mr. Renner. Can you tell me when you do think expungement is okay? [LB965]

SHAWN RENNER: I can tell you that my clients rarely think expungement is okay. As I indicated when I started testimony, their basic position is court records are public for a reason; they ought to stay public. And that is their basic position. I'm not here to testify personally. That's their belief. [LB965]

SENATOR PANSING BROOKS: All right. Okay. So no matter the damage done... [LB965]

SHAWN RENNER: We have, as I indicated to Senator Morfeld, we have a number of existing statutes in the juvenile area, in these criminal history information statutes, in other areas that allow for expungement currently. My clients believe those are adequate. [LB965]

SENATOR PANSING BROOKS: Okay. And as to your discussion of that, it's page 7, the definition of mistaken identity, if it were tightened up in a way would you have less problem with that? Because, you know, there is a difference, of course, between mistaken identity and when somebody is just, out of the blue, being pulled in and it isn't even close versus somebody who just thinks, well, a crime has been committed and I think it's that person. So I mean we're talking about cases, especially in the world of all the cyber stuff going on, that people can have mistaken identity even more easily or people can create whole profiles about people and that are not correct, and your lives could be destroyed by that. We know that just even from the ability of people to go in and mess with people's accounts digitally and as well as working on the Internet to hurt people's reputation. So if that were tightened up, would you feel... [LB965]

SHAWN RENNER: I would certainly feel better. And tightened up depends on how it's tightened up and what the language is. [LB965]

SENATOR PANSING BROOKS: Yeah. [LB965]

SHAWN RENNER: And as Senator Chambers pointed out earlier, statutes are what they're written to be and they need to be relatively clear when they're written. [LB965]

SENATOR PANSING BROOKS: And did your group work at all with Senator Cook or just not really? [LB965]

SHAWN RENNER: No, I spoke with Senator Cook's aide earlier this week, indicated that I'd be here today and what my position was, and talked with her briefly about it. But... [LB965]

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SENATOR PANSING BROOKS: Okay. [LB965]

SHAWN RENNER: ...there wasn't any direct working together, no. [LB965]

SENATOR PANSING BROOKS: All right. Thank you, Mr. Renner. [LB965]

SHAWN RENNER: Sure. [LB965]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB965]

SHAWN RENNER: Thank you, committee. [LB965]

SENATOR SEILER: Any further opposition? Anyone in the neutral? [LB965]

THEODORE FRAIZER: Good afternoon, Chairman Seiler, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r. I'm a local counsel and lobbyist for the American Insurance Association, a national trade association of property and casualty firms, appearing in a neutral capacity. Our particular interest is Section 6(6) of the bill on page 7. We're appearing in a neutral capacity because, to be honest, we didn't pick up on the insurance aspects of the bill till about 48 hours ago. We don't normally dig too far into criminal procedure type bills, so we were a little late in picking up that aspect of it. Senator Cook and her staff, Ms. Hale, have been kind enough to point us to some of the origins of this legislation, and we're looking into it. I guess our questions or the items we're looking at as far as formulating a position or working on the bill going forward is Section 6(6) refers to "any insurance," life, health, property, casualty. We just kind of want that refined down a little more if possible. It would seem that the effects of mistaken identity would probably be most seen in the property and casualty area, but that wasn't clear from the bill as such. There's the reference to the term "insurance points." That's not really a term of science or art within the insurance industry. When you hear the term "points" with reference to insurance, you usually start thinking of the point system on motor vehicle licenses, possible revocation or things like that. So we'd like...it would be more helpful to have a little more clarity on exactly what is meant by that term and where it's intended to go. It talks about a refund after notification. Again, there would be...what's the question of the process. Is it a letter? Do you provide a certified copy of a court order? Just a little more clarity on what the process might be. And our last point would be what is the time frame involved? It sounds like, under the bill, that there could be an attempt to go back and expunge or correct records some years after the event. And it could be, by that point, an insurance policy is expired. You've moved on to another insurer. There would be some question about how far back and under what circumstances you would be seeking the refund. But we're, as indicated, we're trying to talk to

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Senator Cook and get a little more information and do our own research on these issues going forward as far as seeing what might be doable here. And I'd be happy to try to answer any questions you might have. [LB965]

SENATOR SEILER: Seeing none, just a comment. I'm surprised they didn't put "damages" in there besides the "refund." (Laughter) [LB965]

THEODORE FRAIZER: Well, since we didn't make the mistake... [LB965]

SENATOR SEILER: I have nothing further. I have nothing further. You may step down. [LB965]

THEODORE FRAIZER: Thanks. [LB965]

SENATOR SEILER: (Exhibits 1-3) Thank you. Any further neutral? I have two letters of support, one from the Nebraska Criminal Defense Attorneys Association and one from Jasmine Harris of Omaha and one from the ACLU, and they will be made part of the record. Senator Cook, you may close. [LB965]

SENATOR COOK: Thank you, Mr. Chairman. And thank you, members of the Judiciary Committee. I appreciate greatly your line of questioning in bringing out some of the definitional and transactional issues that I believe could be worked out in the form of an amendment to LB965. As I mentioned in my opening statement and as you heard from the testifiers, this is an issue. And you heard that in the city of Omaha, there's an entire officer dedicated to addressing these kinds of issues. I wanted to do a little bit of a brag about one of my testifiers. She is an award-winning community servant, despite these barriers. Sometimes I think in our world here inside the Capitol we might have perceptions about who, the type of person, that this might impact. And when I hear the story of my testifier and read the letter that you got from my constituent, we are reminded that it could be any of us on any given day, going about our business and we could be caught up in something. Most of us around the table here, serving in the Legislature, would have resources and I hope friends that would help us out. But many people going about their day-to-day lives, this would be a great, great barrier to opportunities that they would otherwise be eligible to participate in, in terms of education and employment and an unencumbered lifestyle. So with that, I appreciate your consideration, look forward to working with each of the testifiers who brought forward a concern on an amendment to LB965, and look for your advancement of the bill from committee. Thank you. [LB965]

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SENATOR SEILER: Any further questions? Seeing none, thank you. Senator Chambers, you're on deck with LB1055. [LB965]

SENATOR CHAMBERS: Mr. Chairman, members of the Judiciary Committee, I'm Ernie Chambers. I represent the 11th Legislative District in Omaha, and I'm a member of this committee. The bill that I'm offering is very easy to understand, but what is not so easy for some people to understand who have not a good awareness of me or Douglas County Attorney Donald Kleine, that we have worked together in the past on issues. When we each have a position that we genuinely believe in, and they disagree, we at least know that the other is serious about that disagreement and it's not a matter of personality. This is one of those instances where a very important matter is before us because, as everybody knows, there have been any number of police killings which were presented to grand juries to investigate whether the officers violated any law by their conduct. In many of those instances, the grand jury would not find or hand down or up an indictment, and nothing would be made available to the public from that proceeding. Grand jury proceedings from the beginning were conducted in secret, and that very secrecy was what led to doubt and suspicion on the part of the public. So what I intend to do that I don't often do, but I'm going to do it on both of the bills that I have today, is read from my statement of intent because it does summarize what the bill is about and it will put it into the record without me departing from the issue at hand. Current law mandates the calling of a grand jury to investigate the death of any person while being apprehended or in custody. The incident is investigated by the agency employing the officer or officers involved, and all grand jury proceedings are secret. Such a process has generated deep public distrust and fueled the suspicion that secrecy is designed to conceal the formulation of a scheme to exonerate police officers who kill civilians, regardless of how egregious the officers' conduct may have been. An amendment, AM2257, jointly crafted by Douglas County Attorney Don Kleine and me...see, if we were on the other side of the law they would say we conspired, we aided and abetted. But since we're both a lawmaker and an enforcer of the law, we crafted jointly. And this amendment is the complete replacement of the green copy of the bill that you have and it's designed to bring needed transparency by removing some of the mystery and suspicion spawned by total secrecy. This move is one that you do not find commonly where grand jury proceedings are undertaken. So I made it clear how upset I was with the way grand juries have been behaving, had even talked about scrapping the grand jury system entirely in Nebraska as in the past I had considered doing. I became aware that Mr. Kleine, Douglas County Attorney Kleine, wanted to see some transparency and have some accountability to do away with the suspicion that because the agency that employs the officer that did the...involved in the killing would investigate the officer's conduct, it created, in the minds of the public, a scenario where Jesse James is investigating Frank James. And if their action was to be reviewed, it would be done so by the Dalton brothers. So Douglas County Attorney Kleine and myself, being men of the world who have been involved with these types of activities literally for decades, understand that what the public perceives as real is real to the public in its consequences. So to the extent that there could

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be some publicizing of some aspects of what the grand jury will do without compromising its role, that would be done. And that's what this bill attempts to do. There's a difference between a grand jury that is on a fact-finding mission and one that meets only for the purpose of indicting somebody. When the indicting is the only role, then that's different and you can have public viewing without any significant problem. But when the fact-finding is occurring, you have, in Nebraska anyway, 16 citizens of more or less good repute, and 3, I believe, alternates. They're in the grand jury room. The prosecutor, whether it's the Douglas County Attorney or the county attorney in any county or a special prosecutor if there would be a conflict of interest, a court reporter, and maybe an assistant to that prosecuting attorney, they would be the ones in the grand jury room. The identity of the jurors would be kept secret and never made known. Since the work is to investigate the possible violation of criminal laws, the grand jurors' identity will be protected. And that will serve a worthwhile purpose, because the fear of retaliation, the intimidation that might occur if the person who's being investigated was in that room glaring or making hand signals or body language, it would impair and impede the objectivity and thoroughness of the grand jury's actions. Now I'm saying what the theory behind all that is, not necessarily that I agree with it all. In Nebraska, I became aware that a person could not have a lawyer in a grand jury room with that person if he or she was called as a witness, not necessarily that you are the target but as a witness. You can never be made to testify against yourself. I argued that it did no good to allow the person to go outside the grand jury room to consult with a lawyer outside the grand jury room as to whether or not a statement made by that witness could be used against the witness. It's unreasonable to do that because the language of the question is necessary to be transmitted to the lawyer and the witness may not do that accurately. So the lawyer can sit in the room with the witness, but there would not be any interaction between the lawyer and the grand jury. If they were going to consult, they would leave the grand jury room under ordinary circumstances. That was a bill I managed to persuade the Legislature to do in lieu of abolishing the system entirely. So under current law everybody is sworn to secrecy: the jury foreman; the grand jurors themselves; the attorney, if he or she is in the room; the court reporter; and everybody else. If there were some subsequent judicial proceeding where the court felt it was necessary for certain things to be made open, the court would make that determination. Otherwise, everything is secret. Currently, the grand jury report cannot be released unless it dealt with an investigation or inspection of jails, which a grand jury can do. If a person had been made aware that something that could harm that person had been considered by the grand jury, that person could seek court directive to have that information released to that individual. Otherwise, the grand jury report is secret. There was a grand jury making an investigation of certain things in Omaha and my name was taken in vain, as was that of other people. And that judge had that report released, which was contrary to the law. If there's no indictment, the report cannot be released because there may be critical statements toward a person who wouldn't have the same forum for objecting and rectifying the record. So when that grand jury report was released, I went to court and wound up before the Nebraska Supreme Court, which had the entire report expunged, erased, not sealed but erased. It no longer exists as a part of the record. Now all that

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having been said, I will get to what this bill does that changes some of that. In a case where no true bill or indictment results--in other words, the officer is exonerated by the grand jury--the grand jury shall create a grand jury report with the assistance of the prosecuting attorney. The grand jury report shall briefly provide an explanation of the grand jury's findings and any recommendations the grand jury determines to be appropriate based upon the grand jury's investigation and deliberations, and the no true bill and the grand jury report shall be filed with the court where they shall be available for public review along with the grand jury transcript. That is a giant leap from where things are now. You will not find this in other states. There might be one that has something similar. And County Attorney Don Kleine came up with this language. I probably, if I was going to do something, not have made it as expansive because I would have wanted something and not have a lot of opposition. But again, Mr. Kleine and I have worked together and we have cooperated with each other wherever we could. So when he crafted this language he sent it to me, I sent it to the Bill Drafter, and had given my right up, which was the green copy. That bill goes much farther than I intended it to go. It would have just blanketly made everything that the grand jury did open to the public with one exception, and that's when they're actually in their deliberations. That's broader than should have been done. But I explained to Mr. Kleine and others who had an interest that a bill should be drafted that covered the waterfront and it would be easier then to prune material out of it instead of adding a lot without all of the law pertaining to this aspect of the grand jury in one place. So when I submitted that information to the Bill Drafter, I made it clear that what Mr. Kleine had gotten to me, and we had our discussions, I wanted that put into proper language for the purpose of a law. And I'll tell you all why I'm being meticulous like this. This area is very critical. There are going to be additional police killings. A change in the law like this should be as clearly explained as possible so there's no confusion, no misunderstanding. And because of that, I'm laying out for the record what I'm doing and the way that I'm doing it. And naturally, I'm open to questions, but this is going to wind up my formal presentation. The second significant modification is designed to alleviate the skepticism generated by "the police investigating themselves." Instead of the agency that employs the officer or officers involved in a death being the sole investigating entity, LB1055 mandates the prosecuting attorney shall, as soon as practicable, select a team of three peace officers trained to investigate homicides. At least two of such investigators shall be from agencies other than the agency under which the death occurred. The team shall examine all evidence concerning the cause of death and present the findings of its investigation to the prosecuting attorney. These two provisions are substantive steps toward "opening up" the grand jury process and enhancing public accountability. That is my presentation. If you have any questions, I'm prepared to answer them. And I won't answer as exhaustively as I have in presenting this information. In fact, whatever you ask me, I'll answer yes or no. (Laughter) Yes. [LB1055]

SENATOR SEILER: Senator Coash. [LB1055]

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SENATOR COASH: Thank you, Senator Seiler. Senator Chambers, you may have mentioned this, but this report that is to be completed by the grand jury... [LB1055]

SENATOR CHAMBERS: Say it again. [LB1055]

SENATOR COASH: The report... [LB1055]

SENATOR CHAMBERS: Yes. [LB1055]

SENATOR COASH: ...that is to be completed, who will be able to see that report? [LB1055]

SENATOR CHAMBERS: That report, which is going to be put together containing this information, the findings and so forth, that is going to be filed with the court. And anybody who is a member of the public will have access to all of that which is filed. And it will be the transcript and the findings and so forth, as listed in this statement and in the bill. [LB1055]

SENATOR COASH: What about the protections of the grand jurors themselves with regard to...I would assume they may not want their names... [LB1055]

SENATOR CHAMBERS: Their identity will not be disclosed. [LB1055]

SENATOR COASH: Okay. [LB1055]

SENATOR CHAMBERS: It will not be a part of the report or any public document. [LB1055]

SENATOR COASH: Okay. Thank you. [LB1055]

SENATOR SEILER: Any further questions? Senator Williams. [LB1055]

SENATOR WILLIAMS: Thank you, Senator Seiler. And thank you, Senator Chambers. Just a quick question on, as an example, if this were the situation with the Omaha police and the county attorney then would appoint three people, two of which would not be from the Omaha police,... [LB1055]

SENATOR CHAMBERS: Right. [LB1055]

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SENATOR WILLIAMS: ...is there any provision for compensation for them or compensation back to their employer for their time spent on this? [LB1055]

SENATOR CHAMBERS: No, that would be a part of their duty. And if there was to be any arrangement between those from outside agencies, that would be done between the prosecutor and those officers and their agency. But it wasn't necessary to put anything like that in the statute. [LB1055]

SENATOR WILLIAMS: Thank you. [LB1055]

SENATOR SEILER: Anything further? Thank you, Senator. First proponent. Don. Mr. Kleine, before you start your testimony, would you like all those nice things that Ernie just said about you compiled and put in a frame so that you could set it there on the table the next time you come down to testify? [LB1055]

DON KLEINE: He's said nice things about me before, so it's all right. (Laughter) That's not new. So my name is Don Kleine, K-l-e-i-n-e. I'm the Douglas County Attorney and I'm here also as a representative of the Nebraska County Attorneys Association in support of LB1055. Really, I think Senator Chambers did a very good job, an excellent job of portraying what the bill does and the purpose of the bill. Basically, you know, it ensures that, in the investigative process, it's not going to be just an agency investigating themselves; that there's going to be outside agencies that are going to be involved in the investigation, which is something that's always been questioned with regards to that. It's mandated now that outside agencies be involved in that investigation; that there's a...that the grand jury, rather than just say no true bill, is going to make a report that's open to the public after it's been received by the court, which gives reasons for what they did, their findings, their analysis of why they found no true bill with regard to the conduct of the officer. And then lastly, that I think the transparency is there with regard to the public ability to review a transcript of what's taken place with the grand jurors and without disturbing, as Senator Chambers says, the process itself. We're not divulging grand jurors' names. We're not. We don't want them to be intimidated in any way. And in having done many, many of these, the grand jurors participate very heavily in the process. They ask questions. They vet the testimony and the evidence, even though there's an attorney in there asking questions. One of the things you do is you turn around to the grand jury, say do any of the grand jurors have questions? And they get to ask questions. And so in that setting it allows them to do that without feeling any intimidation by a bunch of other people or the media sitting there and kind of scrutinizing their questions or what they're doing. There's no media reports about the process during the process, but certainly after the process is completed this allows some transparency to exist with what happened in that grand jury room, what happened in the testimony. There's a report with regard to their testimony or their findings and then also the transcript is available for public review with

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regard to what occurred exactly in the course of the testimony. So that's what this is about. You know, whenever I think the public hears the term that there's a secret process going on, that creates a question in your mind as to what's taken place. And certainly there are reasons that that's not open to the public, at least that part of the process. But after the process is completed or the reasons as to why...for the decisions that they made, and changing maybe the mandating outside agencies to be part of the investigative process I think is a very...some very important steps. So I'd be happy to answer any questions. [LB1055]

SENATOR SEILER: Let me ask you a question on the three officers that are appointed to help investigate that are trained in homicide. I assume that they would not be from the same agency that's the police officer that's being investigated. [LB1055]

DON KLEINE: Yeah, I think it says in there that they're to be from outside agencies. There are three... [LB1055]

SENATOR WILLIAMS: Two of them. [LB1055]

DON KLEIN: ...two of them are going to be from outerwear from outside agencies, I think is the word that's used in the amendment (inaudible). [LB1055]

SENATOR SEILER: From agencies, at least two. [LB1055]

DON KLEIN: Right. So you know, if it's a... [LB1055]

SENATOR SEILER: Is there a reason why you didn't have all three of them? [LB1055]

DON KLEIN: Well, sometimes it helps a little, to some extemporaneous the first part of the process is done by that agency... [LB1055]

SENATOR SEILER: Yes. [LB1055]

DON KLEIN: ...preserving the scene and the evidence--... [LB1055]

SENATOR SEILER: Right. [LB1055]

DON KLEIN: ...to have one person that can relate that information to these other two officers that were from another agency. [LB1055]

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SENATOR COASH: Okay. Very good. Yes, Senator Coash. [LB1055]

SENATOR COASH: Thank you, Senator Seiler. Going off Senator Seiler's question, Mr. Kleine, these...who would pay...who would bear the costs of...I mean these officers in this case are not going to do this. You're kind of bringing officers from a different jurisdiction into one jurisdiction. And I would assume that...like a county sheriff, for example, isn't going to want his sheriffs going to another jurisdiction to complete this report. [LB1055]

DON KLEINE: You know, I've talked to some of the rural county attorneys about that. There are already cooperative agreements... [LB1055]

SENATOR COASH: Okay. [LB1055]

DON KLEINE: ...between agencies in certain parts of the state to investigate major crimes. You also have the State Patrol. You might have the sheriff's office in a county that initially investigates the homicide. They could get the State Patrol as one of the outside agencies involved and maybe a sheriff from a neighboring county or a city police department there. And with regard to, you know, there's usually cooperating agreements between agencies when these kinds of things happen. So I don't see there being really a cost factor. [LB1055]

SENATOR COASH: Okay. Thank you. [LB1055]

DON KLEINE: Sure. Any other questions? [LB1055]

SENATOR SEILER: Thank you very much for your time. [LB1055]

DON KLEINE: Thank you. [LB1055]

SENATOR SEILER: Next proponent? Welcome, Chief. [LB1055]

TODD SCHMADERER: Good afternoon. I'm Todd Schmaderer. I'm chief of police for the city of Omaha. My comments are going to be short, but I did want to be on record as a proponent of LB1055 as amended, supportive of the evidence and the transcript being released after the grand jury is concluded. There's been some talk of the cost. The cost of this is not an issue. It goes towards administration of justice. The agencies can bear that cost. I promised I'd be short, but, Chairman, I have not had an opportunity to have any face time in front of your committee this

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year, so it's good to see everybody. (Laughter) And if Senator Chambers wants to say nice things about me, I will sit here and listen. (Laughter) [LB1055]

SENATOR CHAMBERS: May I do so now? [LB1055]

TODD SCHMADERER: Sure. [LB1055]

SENATOR CHAMBERS: Here's what I want to say, not just because he said that. Chief Schmaderer and I have had a conversation and it was in my office and I was not in custody or being investigated. (Laughter) And because of the nature of what we were discussing, each of us had enough confidence in the other to know that those things that should not be made public would not be made public. We were talking about some very serious matters that were occurring and involving my community. He has a job to do. I have a job I'm trying to do. And he cannot do his job the way I would like to see him do it, but he knows that I'm going to push every way that I can, not just the chief but other law enforcement agencies, to get to the source of the guns coming into my community and dry it up to the extent possible. That has not been achieved yet. But the chief so far, even if there have been criticisms that I've made because I don't think he has done as much as he should as quick as I'd like to see it done, I have no reason to say that he is not doing what he can. And I probably shouldn't tell him this because it's going to make him think I'm soft but I have sense enough to know that when you are the head of an agency and you have several hundred people under your direction and control, you don't even know who all of them are. You have no way of knowing what they are all doing or even most of them are doing on a day-to-day basis. So you do the best that you can with what you have to work with, and I recognize that. You're not going to hear me say this again, so enjoy it now. (Laughter) But I will always say that if it's me taking a position, I know what the responsibilities are going to be. I'm paid to assume those responsibilities. Whatever flack accompanies that job, I am to take that. I'm paid for it. I'm not a hero for doing it. I knew what I was getting into and I have to do it the best that I can. And I think that's what he does. Now if I were chief, things would be done a lot differently, but I'm not the chief, just like if he were in the Legislature things would be, in my place, things would be done a lot differently but not nearly so well. (Laughter) But we're each where we are. And, Chief, I want you to know that not just because you're here today but I do have respect for you and what you're doing. But you also know that we have disagreements on approach. And by the way, a difference in expressing an idea may not necessarily signal a difference in philosophy or ultimate belief. We are individuals. We have different experiences. Our goals may be exactly the same but we have to follow different paths to get there. And frankly, I'm surprised that you're here today but I'm pleased. And it shows how secure he is in his skin, because there are people in his organization who might wonder what in the world he's doing linking his name with anything that I have to do, no matter what it is. So for that, I would give you the red badge of courage or whatever color it is. Thank you. [LB1055]

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SENATOR SEILER: That was worth the drive, wasn't it? (Laughter) [LB1055]

TODD SCHMADERER: It was. Good seeing everybody. [LB1055]

SENATOR SEILER: You may be seated. [LB1055]

TODD SCHMADERER: All right. [LB1055]

SENATOR SEILER: Whoops. Excuse me. Any questions? Thank you very much, Officer. Next proponent. [LB1055]

JOE KELLY: (Exhibit 1) Mr. Chairman, members of the committee, my name is Joe Kelly, K-e-l-l-y, 575 South 10th, Lincoln, Nebraska. I'm the Lancaster County Attorney, here in support of the bill, LB1055, in particular the amendment now, AM2257. In Lincoln, we do about 20 death investigation grand juries per year, most of those as a result of the four Department of Corrections facilities, most of them natural deaths, many of them, it seems like in recent years, directly from the hospice unit out at the Lincoln Penitentiary or the State Penitentiary. And then once every year and a half or so in Lincoln it seems like we've had also a death investigation in an officer-involved shooting. We...I've conducted two of those within the last eight months. I'm in favor of this amendment. I think it's a needed and an intelligent improvement. I have a little question that we just haven't had time to discuss because it's moved so quickly. I want to make absolutely sure that the use of the two words in this bill, "public view," meaning the transcript and exhibits are in public view, could not in any way be interpreted to allow someone to copy. Now to me as an attorney, public view means just that. You're allowed to view it; you aren't allowed to copy it. I'm wondering if we might just look at that issue to make sure that someone for any reason isn't there to try and take a copy or a piece of it, and obviously because you've got crime scene photos, autopsy photos, the language of the autopsy itself that I don't think anybody wants to make public. And then secondly, I just have a little thought about the word...about the report and thinking, do we want the report to be more specifically defined by the statute or should we just have each of the county attorneys determine what they think is adequate for the report? I don't know the answer to that. I just leave that question. That's my testimony. [LB1055]

SENATOR SEILER: Questions? Senator Chambers. [LB1055]

SENATOR CHAMBERS: I appreciate your coming here. And we've had little clashes, but the issues that you raise I made a notation, and I'll talk to Mr. Kleine about them and we'll see what we can come up with to make sure that nothing that would compromise what grand juries do, not

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just this particular one that might be the subject, and make sure that nothing hinders that activity, because I hadn't thought of what you mentioned either. [LB1055]

SENATOR PANSING BROOKS: I guess I have a question. [LB1055]

SENATOR SEILER: Yes. [LB1055]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Kelly. It's sort of an amazing day in here right now, so. So I guess can you just tell me, not having experienced a grand jury, are the reports similar? Is that what you're saying, that they're all sort of different or is there a form that grand juries... [LB1055]

JOE KELLY: Presently, I don't do a report. If there's a no true bill, that's generally all and that goes on file. The no true bill, signed by the jury foreperson, goes into the clerk of the court. That's public record. Beyond that, I don't say anything to the press generally other than no true bill and it was concluded on this day, May 10, whatever year, you know? So to me, the report would probably mean a little more. And on those natural deaths or let's say that death in hospice, I don't know, maybe I would. Would I put the language in there that was suffering from acute X, Y, Z and complications, had been in hospice for two weeks and died? You know, I'm not sure if that would be in there or not. Unresolved, so. [LB1055]

SENATOR PANSING BROOKS: Okay. Well, thank you for that and I think it's just the beginning of being able to work together on lots of good things for the protection and safety of our communities. I'm hopeful. [LB1055]

JOE KELLY: Okay. [LB1055]

SENATOR PANSING BROOKS: Thank you. [LB1055]

JOE KELLY: Sure. [LB1055]

SENATOR SEILER: Any further questions? Thank you, Mr. Kelly. Further proponent. [LB1055]

SHAWN RENNER: Good afternoon, Senator Seiler and members of the committee. 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. I appear today on behalf of Media of Nebraska, in support of LB1055 as it was

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originally written and also in support of the amendment. Consistent with what I told you folks before, my clients think that more information about how government operates is better than less information about how government operates. There have been a number of occasions where there have been death-in-custody investigations and all that's filed is the no true bill that Mr. Kelly just mentioned, and that tends to lead to additional questions by the news media. Having a report and having access to the transcript will be useful and I believe will provide valuable information to members of the community about people that have died in the custody of our government officials. I have nothing further to say but would be happy to take questions. [LB1055]

SENATOR SEILER: Any further questions? [LB1055]

SENATOR CHAMBERS: Just a comment. The report that is talked about in here will be prepared with the assistance of the prosecuting attorney, so I think some discretion will be utilized in producing that report. And the aim will not be to conceal anything that needs to be out there but maybe some things of the kind that the prior witness mentioned may not be included in the report. And as to the transcript, I will do as I said, talk that over with Mr. Kleine and we will see if we need to come up with anything more specific. [LB1055]

SHAWN RENNER: Thank you. And as I indicated, more information is better than less. And we get no information now, so this is progress. Thank you. [LB1055]

SENATOR SEILER: Thank you for your testimony. Further proponent. [LB1055]

RICHARD HEDRICK: I'm Richard Hedrick. I'm for LB1055. Open to sunshine stops many things from happening in the darkness. Thank you. [LB1055]

SENATOR SEILER: Would you spell your last name, please? [LB1055]

RICHARD HEDRICK: What? [LB1055]

SENATOR SEILER: Spell your last name. [LB1055]

RICHARD HEDRICK: Hedrick, H-e-d-r-i-c-k. [LB1055]

SENATOR SEILER: (Exhibit 2) Thank you. Hold it just a second. Any questions of this witness? None? Thank you. Any further proponent? Anybody in opposition of this bill?

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Anybody in the neutral? We do have a letter of support from the ACLU and it will be made part of the entire record. Senator Chambers, you may close. Waiving? [LB1055]

SENATOR CHAMBERS: Yes. [LB1055]

SENATOR SEILER: Senator Chambers waives closing. That will end the hearing on LB1055. Senator Chambers, you are up next on LB1056. [LB1055]

SENATOR CHAMBERS: Mr. Chairman, members of the Judiciary Committee, I'm Ernie Chambers representing the 11th Legislative District in Omaha. This bill is going to take a much different course because of the subject matter. I want it clear for everybody to know who is in this room that I'm aware that this is a bill that can affect people in different ways. It can touch nerves. It can create discomfort. It can create very strong opposition, and that is to be expected on a subject of this kind. This issue is one of those that must be confronted because it's not going to go away. And whenever it can be discussed in a public forum, that is desirable. The more information on a matter such as this, the better it is for everybody. People that I know and have worked with on other issues may very well disagree very strongly with me on this one and that is their prerogative. I'm not going to fall out--to use a term that we use in my community--I'm not going to fall out with anybody because they may disagree with a position that I'm articulating. I have tried in the past to bring legislation like this. I believe that when there are things that affect the society no matter how deeply but it's an important thing, somebody needs to bring it to the fore and that's what I will do. Often, I have brought things that were, in a sense of speaking, before their time, meaning the public was not even prepared to have a discussion of it. So I'm bringing it at this time because other states are doing this. There are discussions of it. There have been many surveys taken. And no survey by any credible polling agency has ever come back where more people oppose this than supported it. More people are feeling free to express their point of view. More families are becoming involved with their elders and with members who are ill. Instead of turning away and saying others are going to deal with it, they become involved and it causes them to take a different perspective. They begin to see how the people affected really feel about their situation. So what I intend to do, as with the other bill, is read my statement of intent so that it's in the record and it will keep me from going too far afield. On the other bill, I made it clear that I did explain in great depth and detail because it dealt with a legal-type issue and there need to be clarity and precision provided by me as the introducer. On this, my opinion might not mean any more to people than anybody else's opinion. But I want it clear where I stand on issues such as this. So now I'm going to scurry right through this. And I've left the Chairman the name of the first person who I'd like to have testify after I get through because she came here from California. And so that everybody in the room may understand the procedures in the committee, whenever a member of the committee has a bill or in this case more than one bill, that bill or those bills will always come last. That will make it clear to the public that by virtue of being a member of the committee, you are not going to be bucked ahead of everybody else. The

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committee's bill, unless there's something very out of the ordinary, will be last. So the fact that this bill is last does not indicate any attitude or opinion by the committee or its members. In their questioning they'll have the opportunity to say for themselves or express themselves and this will express mine. And when I get through I'm going to sit back in my chair over there and I may even have a comment or two, meaning nobody is going to be grilled by me today as I did on that earlier bill where they were talking about creating crimes and so forth. That was a different kind of bill. This is one strictly dealing with people's feelings, their beliefs, their attitudes, and the kind of things that they're entitled to have no matter what anybody else may think or say. But if we get into a realm where factual-type statements need to be made, then we should deal with them as facts. So even though I'm going to read this opening, any questions you want to put to me I will answer. But I also will close on this bill, so if there are other searching questions you want to ask you can do so. LB1056 is denominated the Patient Choice at End of Life Act and provides that actions taken in compliance with the Act "shall not, for any purpose constitute suicide, assisted suicide, mercy killing, homicide or elder abuse." Its sole aim, s-o-l-e, is to allow a person to choose a manner of dying, when death is certain and imminent, that is peaceful, humane, and dignified. When it comes to the most significant and portentous decision in a dying person's life, no third party, including the government, has the right to interfere with, impede, or countermand the wishes of the person. Pointless, needless pain, wholly useless agony...and that's spelled w-h-o-l-l-y. I don't want it to be confused with the notion of some kind of religious significance to this that I'm talking about. Pointless, needless pain, wholly useless pain, agony and suffering and the loss of personal dignity is neither "good" or "ennobling," nor does it comport with the concept of human dignity. For the government to withhold from such a person the right and means to carry out his or her final decision is totally unjustified, inexcusable, unacceptable. For a person so situated to be deprived of the right to face death in the manner of his or her choosing because others find the decision to "not set well with them," is not only insensitive and wantonly cruel, it constitutes moral perversion. The act is "planted thick" with rules, regulations, protections, and safeguards to prevent and severely punish any abuse or violation of its provisions that result in harm to the person seeking to use its provisions. For example, it is a Class III felony for anyone to forge a request for a prescription of life-ending medication for another person or to conceal or destroy the rescission of a request for such medication written by another person. Everything involved in the process must be totally voluntary and uncoerced in any form, fashion, or manner. The patient must express his or her request for life-ending medication, both orally and in writing, and must self-administer the medication without the assistance of any other person, explicitly set forth at page 12, lines 2 through 4. An attending physician, as well as a consulting physician, must concur and document their belief that the patient is competent to make medical decisions and is acting voluntarily, otherwise no prescription can be written. Any reference to "physician-assisted suicide" is inaccurate on both accounts. As noted, no person may "assist" a person in the administering of the medication. Suicide is the negation of or giving up on life. The patient here is neither negating nor giving up on life but, rather, choosing the manner of his or her inexorable,

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inevitable, imminent death. Meaningful life, both as to quality and duration, is not an option. A person in such circumstances is not dealing with abstract speculation, but is in the inescapable embrace of impending death and may be experiencing a type and degree of mental and physical suffering which equates to torture and, if inflicted by the state or the U.S. government as punishment for a crime, would be prohibited by the United States and Nebraska Constitutions on the basis of its being both cruel and unusual punishment. The only thing the suffering, dying patient has done to "deserve" such a wantonly cruel fate is to have lived and contracted the condition that is slowly and excruciatingly draining away not only life but human dignity and peace of mind. All of those who find the relief provided by the Patient Choice at End of Life Act to be abhorrent are completely free to reject it for themselves, but they have no right to stand in the way of others seeking the solace they may obtain therefrom. Such are the considerations impelling me to introduce LB1056 and designate it as my priority bill for the current session. And rather than list all of the safeguards and protections in the statement of intent, I will mention one that is very critical. It has to do with the diagnosis, the prognosis of the attending physician which must be concurred in by the other physician that is going to be used by the attending physician to cross-check what the physician's diagnosis and prognosis are. Both of them must concur that this individual is not suffering from a psychiatric or psychological condition or depression, which can impair the decision-making capability. And if either of the doctors feel that may be the case, then a referral will be made to a mental health professional who will make an assessment to determine whether that person is competent to make a medical decision, is acting voluntarily without any coercion, and understands the nature of what is being done and the consequences and accepts all of those things, and that the patient's decision is informed, which means that the attending physician and the second physician must explain what this medication is, how it acts, any side effects other than dying, because that's what is intended. There may be the offering of a type of medication that will help the person avoid gagging, vomiting, or have any other difficulty associated with taking the medication. The patient must have it explained to him or her how this request must be made orally and in writing; that nobody can assist that person in taking the medication. The person can rescind that request at any time for any reason or no reason--just say I don't want it--or after receiving it can refuse to take it. There's no compulsion on that patient. There can be no coercion. And in order to determine whether or not this is a completely voluntary decision, the questioning of the patient, the counseling with the patient is done without anybody else present. And if because of a language situation an interpreter is needed, that interpreter cannot be related to this person by blood, marriage, adoption, or any other way or entitled to receive anything of value pursuant to a will or any other document involving this person. It is recommended that the person take the medication in the presence of somebody else, but not in a public place. When there are witnesses to this signing and various other activities, at least one of the witnesses must not be related in any way to the patient. And I'm trying to hit on the main things. Oh, and as for this documentation, every step of the way where these physicians are concerned, there has to be written documentation, records kept and filed with I believe it's the Department of Health and Human Services. Some

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medical people who agree with this have said that there is so much complexity here, it is so burdensome due to the recordkeeping that it could make the decision and the carrying out of it difficult. Nevertheless, I chose to present the bill in the form that you see it. And there will be people who will testify about various things that I could tell you about based on what has been told to me by others and their family members and especially some very horrendous cases of suffering by people which have been related to me when I brought bills in 1996 and 1997. So this has been on my mind for a long time. And whatever offering this bill makes me then that's what I have to be. But I am what I am and that's all that I am. But any questions about any aspect of it that you have I will answer it and if I need to refer to it because you could see that it is somewhat lengthy--it's very detailed and technical--rather than misstate something, I would ask that you give me the opportunity to leaf through the bill and find the precise language that would answer your question. But before I take my seat then I will answer any questions that you may have at this time. [LB1056]

SENATOR SEILER: Senator Williams. [LB1056]

SENATOR WILLIAMS: Thank you, Senator Seiler, and thank you, Senator Chambers. You and I had a conversation recently concerning this bill and I'm going to ask you a question that no one else in here can answer because it's directed only at you. There has been no one in our state that has more arduously and ardently argued for repeal of the death penalty than Senator Ernie Chambers. [LB1056]

SENATOR CHAMBERS: Correct. [LB1056]

SENATOR WILLIAMS: There are those who will testify, I'm sure, today that that is an inconsistent position with LB1056. Can you help me understand how you can want to repeal the death penalty in one case and yet have assisted suicides on the other case? [LB1056]

SENATOR CHAMBERS: Well, it's not assisted suicide, as I said... [LB1056]

SENATOR WILLIAMS: I used the wrong term there. I'm sorry. [LB1056]

SENATOR CHAMBERS: I don't use the term. Okay. If the state had any role to play in this, I would fight it harder than the death penalty because the death penalty supposedly is a punishment for a crime that somebody did. This is where the person who is seeking death has not done anything. So the difference is that the state was taking the life of somebody against the will of that person or even with the will of the person, which is something I don't believe the state should do, ever. It should never take a life. As a matter of fact, if the state mandated

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abortion and that's the only way it could be obtained, I would be the strongest antiabortionist you can find. But when these are private, personal, individual, uncoerced decisions and choices, I believe the person involved should be allowed to make it. When somebody is undergoing the types of agony that have been described to me, not just by the sufferers but by medical people who had to witness it, it's not for me to say that that person should not be able to make that choice. I've even had people ask me, did I know a doctor who might be willing to help take somebody away from here? And I said I don't get involved in that. That's between you, the person, and your family. So the main difference is that this is something that a person chooses voluntarily while he or she is shown to be in complete possession of his or her faculties, and that person can choose to do it, then change his or her mind. But it's a great difference between saying the state shall not take the life of a person and saying that a person may be allowed to make the choice of how he or she is going to die. You must be within six months of death. You must have that terminal illness which is defined by this bill, not any federal statute which talks about maybe a chronic condition which will never be cured so ultimately you're going to die, therefore, it's terminal. No, this sets a time frame. It is not tied to a federal law or anything else. Everything is contained in this bill so you have that short period. And it doesn't say that a person is going to start reviewing or making this decision at the commencement of that six-month period when they're told. They may think that they have a way to survive, and that's for them to decide. But if a point is reached where the pain, whether physical, mental, a combination of the two are such that the person begins to feel that their dignity is to be taken away such as not having control of your bodily functions, not being able to eliminate waste and your breath smells like feces, when you see a look of abhorrence on the face of people who care about you when they come to visit you, it's for that person to decide how he or she is going to leave this earth-- not a church, not the government, not me, not anybody else. That's my view and I know others differ. But I don't think there's anything of value to have pointless, useless, unnecessary, excruciating pain because of my view and it doesn't involve me at all. So that's how I see my fighting against the death penalty on the one hand and supporting this type of process on the other. [LB1056]

SENATOR WILLIAMS: Thank you. [LB1056]

SENATOR CHAMBERS: I see no contradiction whatsoever. [LB1056]

SENATOR SEILER: Any further questions? Senator Pansing Brooks. [LB1056]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Thank you, Senator Chambers. I guess I have one question from some things that I've sort of heard, that there's been an argument made that insurance companies will start withholding end-of-life treatment and just say, well,

this will be quicker way for you to end. So can you speak to that a little bit, that instead of... [LB1056]

SENATOR CHAMBERS: There are many things that people say by way of argument against this bill, but they have no facts to back it up. Something like that, maybe they say they've heard of a company doing it. But this law makes it unlawful for a healthcare provider, the seller of insurance of any kind--health, accident, or whatever--to give any information either advocating or objecting to this type of process being involved. And an insurance company cannot condition the providing of insurance on whether or not a person will seek to use this process or reject the process. And there might be some testimony about information developed over 30 years from Oregon where a bill like this has been in place where none of the horrors have occurred. And as in other states, there will be a requirement for the department to make annual presentations or reports on how this activity has been carried out, if at all. And then people can determine whether any of the things that people have said are going to happen have been happening. But in other states where this is allowed, that hasn't occurred. And even though there are some instances in some locations where numerous people may want to initiate the process, not all of them chose to go through with it. And it's speculated that when they were going through the agony and felt that that's the way their whole life, the remainder of it, would be, they just wanted to be at an end. But when they were given an option that would allow them to terminate it themselves, they chose not to. And that's the way this bill is crafted. It's up to that person. So on the insurance, that is specifically addressed in the bill, what companies may not do, even contracts and other agreements cannot allow this to be the sole reason for anything that is done. And the language is there. I'm just paraphrasing it very generally, but the language is very specific. [LB1056]

SENATOR PANSING BROOKS: Okay, thank you, Senator Chambers. [LB1056]

SENATOR SEILER: Any further questions? Seeing none, thank you, Senator. The first witness recommended by the introducer is Charmaine Manansala. [LB1056]

CHARMAINE MANANSALA: (Exhibit 1) Yes, you got it right. Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Charmaine Manansala, and I'm the political director of Compassion and Choices. Compassion and Choices is the nation's oldest, largest, and most active national nonprofit organization committed to improving care and expanding choice at the end of life. I am a Catholic person living with a disability and also a strong advocate for end-of-life options in support of LB1056. All Nebraskans should have the option, together with their families and their doctors, to make the end-of-life options that are right for them in the final stages of a terminal illness. These options include the choice to request a prescription from their doctor to end an unbearable dying process painlessly and peacefully. This legislation would provide an additional option in the range of end-of-life choices including,

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but not limited to, pain management, comfort care, and hospice. The bill you are considering before you is an option available to a mentally ill (sic)...capable adult with a terminal prognosis of less than six months to live. The legislation includes safeguards necessary to ensure that the patient is protected. They must make two requests: once in writing and once orally. They must consult two different physicians. They must self-ingest the medication. And at any time during the process, the terminally ill person can change their mind and decide not to take the medication. And most importantly, anyone who opposes the law does not have to participate. In the five states that already authorize medical aid in dying, people report significant relief from worry about future physical and emotional pain just from knowing this option is available if they need it, regardless of whether or not the medication is used. The legislation you are considering is very similar to Oregon's Death with Dignity Act that took effect in 1997. Oregon's law has been in effect for 18 years without a single documented case of abuse, coercion, or misuse. I want to repeat that. It's been in effect for almost two decades without a single documented case of abuse, coercion, or misuse. Less than .5 (percent) of 1 percent of people who die in Oregon actually use the law. Of those who did, most were dying of cancer, most were in their 70s, most were enrolled in hospice, most had some form of insurance, and most died at home. These laws work as intended. We know from our other states that this legislation includes the necessary safeguards to protect the patient. In fact, the Disability Rights of Oregon confirmed in a letter in February of this year that it has not received a complaint of exploitation or coercion of an individual with disabilities in the use of Oregon's Death with Dignity Act. I want to make clear that medical aid in dying is not suicide. Suicide involves people who are so severely depressed that they no longer want to live. Medical aid in dying involves individuals who would love to live, but they can't. They're dying and soon. These people request aid in dying not out of despair or depression but to maintain some dignity and comfort in their final days, to ease their pain and suffering, and to help them pass peacefully. Thank you for your time and I would be happy to answer any questions. [LB1056]

SENATOR SEILER: Did you finish what you wanted on record? [LB1056]

CHARMAINE MANANSALA: I didn't. [LB1056]

SENATOR SEILER: You did? [LB1056]

CHARMAINE MANANSALA: I have one minute left. [LB1056]

SENATOR SEILER: You may continue. [LB1056]

CHARMAINE MANANSALA: Not one minute, just 30 seconds. We should always provide quality end-of-life care for people who are suffering from an incurable and irreversible terminal

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illness. Yet when a person only has months, weeks, or even days to live, when there is nothing else that medicine can treat and it becomes impossible to provide relief from extreme pain, we should allow a person the option to end their pain and suffering when the time comes. Thank you. Thank you, sir. [LB1056]

SENATOR SEILER: Ma'am, you've handed out a folder. Would you like this made part of the record? [LB1056]

CHARMAINE MANANSALA: Yes, please. So in that record, you'll see a fact sheet of some myths that opponents usually use during legislative hearings. There's fact sheets on that. There's also a fact sheet on the support from the medical community, as... [LB1056]

SENATOR SEILER: The whole thing will be made part of the record. [LB1056]

CHARMAINE MANANSALA: Perfect. Thank you, sir. [LB1056]

SENATOR SEILER: Any questions? Senator Pansing Brooks. [LB1056]

SENATOR PANSING BROOKS: Can you speak to some of the things that I've heard that I asked Senator Chambers about? And I'm sorry, I didn't get how to spell your name. [LB1056]

CHARMAINE MANANSALA: It's Manansala. [LB1056]

SENATOR PANSING BROOKS: How do you spell that, please? [LB1056]

CHARMAINE MANANSALA: M-a-n-a-n-s-a-l-a. [LB1056]

SENATOR PANSING BROOKS: Thank you. Manansala. Thank you, Ms. Manansala. [LB1056]

CHARMAINE MANANSALA: Your question on what? I'm sorry. [LB1056]

SENATOR PANSING BROOKS: My question is just regarding what's happening. Are there actual instances where insurance companies are saying, here, you know, rather than giving you these life-ending treatments and trying to give you drugs to assuage your pain or your suffering, you can do this kind of thing? You can go ahead and just end your life more quickly, costing us a lot less money? [LB1056]

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CHARMAINE MANANSALA: So in the 30 years that it's been in place in the five states where the law is authorized, there's not been one case or one example. People use conjectures and anecdotes that opponents will use, that you will hear when the next panel comes up. But none of that has proven to be true because it's explicit in the law that coercion is a felony. If it did happen in other laws, we would see police reports. We would see massive investigations on it. The fact of the matter is no abuse, misuse, coercion has happened in the combined 30 years in the five states where the law is legal. [LB1056]

SENATOR PANSING BROOKS: Okay, and I see that side of it. But have you heard of instances where insurance companies are saying, no, we're not going to continue giving you this extensive treatment because of... [LB1056]

CHARMAINE MANANSALA: Well, that's separate from aid-in-dying medication. You know, some insurance companies have their rules regarding untested treatment or how they pay for their treatment, but it's separate from this, from medical aid in dying. [LB1056]

SENATOR PANSING BROOKS: Okay. Thank you. [LB1056]

SENATOR SEILER: Any further questions? Thank you very much for coming. [LB1056]

CHARMAINE MANANSALA: Thank you. [LB1056]

SENATOR SEILER: Next proponent. [LB1056]

JOHN ELSE: (Exhibit 2) Thank you, Mr. Seiler, Senator Seiler and the Judiciary Committee. My name is John Else, E-l-s-e. My wife and I strongly support LB1056. It provides the option of a peaceful and humane death with dignity for Nebraska adults who are suffering terminal illness that will result in death within six months. The bill provides extensive conditions to assure the person is making an independent decision, witnessed by at least two other adult persons--at least one of whom cannot be related, an heir, or owner of a healthcare facility...a staff or owner of a healthcare facility where the requester resides or is receiving medical treatment. Furthermore, the physician is required to interview the requester without others present to inquire about the possibility of pressure being applied by others. And I would assume that includes by the insurance company. We're both seniors and recognize that there's a significant increase in seniors in Nebraska and nationally. People are living longer and there will be a significant increase in major medical issues among seniors. We know that many terminally ill people face tremendous pain, humiliating conditions, and outlandish financial costs in the last six months of life. We believe people deserve to have death with dignity, a death that precludes unnecessary pain and

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suffering. My wife's sister was diagnosed with pancreatic cancer in December. I'm sorry. She had unbelievable pain, which required high levels of morphine. She chose to cease eating and drinking in order to minimize the length of time she would have to endure her situation. She died two weeks later, after her pain medication was increased to a level that made her unconscious. We believe she should have had a choice. Five states authorize doctors to offer mentally sound, terminally ill adults facing unbearable suffering the freedom to get prescription medication that allows them to die gently in their sleep. Those five states are Montana, Oregon, Washington, Vermont, and California. National polls and state polls consistently show the majority of Americans across the democratic (sic) and political spectrum want the option of medical aid in dying if they're suffering an unbearable end of life. California passed the law just last year and Governor Brown signed it into law on October 5. A major emphasis for this law was created by Brittany Maynard, a 29-year-old woman who was diagnosed with brain cancer. And her husband had to...she and her husband had to move to Oregon to give her this option for death with dignity. Oregon recently released a report with 18 years' worth of data since the Death and Dying (sic) Act took effect. The report proves the law works as intended, without abuses predicted by critics. I have some statistics in here... [LB1056]

SENATOR SEILER: Right. [LB1056]

JOHN ELSE: ...that you can read. Many other states, over 25, are currently considering legislation similar to Senator Chambers'. We hope Nebraska will be one of the first new states. [LB1056]

SENATOR SEILER: Questions? Seeing none, thank you very much for your testimony. [LB1056]

JOHN ELSE: Thank you. [LB1056]

SENATOR SEILER: Next proponent. [LB1056]

JEAN KRAL: Hello, Senators. My name is Jean Kral, J-e-a-n K-r-a-l, and I am a retired RN. I did nursing for about 34 years. If I may share with you a few of my experiences and comment on the proposed right-to-die bill. When I was 16 years old, I was working in a long-term care facility. I assisted nurses with patient care. I was asked to help the nurse reposition a patient and we went to the patient's room and his eyes were closed, his lips were bluish. And as we started to reposition him, he took two shallow breaths and died. The nurse said he was gone, God bless his soul. I always thought at that time, that was the way people died. They became comatose and went to sleep. About nine months later I was asked to...I responded to a patient who had her light on. And I went to her room. And she called me to the room and she was frail and on oxygen. She

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said, hurry, hurry, get the nurse. And so I quickly ran to get the nurse and the nurse came to the patient's room and said that she needed something for pain. The nurse said, no, you've got to wait an hour. There's...we don't have the doctor's orders. So about maybe five, ten minutes later, the patient turned their light on. I responded. The patient actually grabbed my arm with both hands and squeezed my arm so bad I started bleeding and she pulled me and said, I beg of you, please, please, I beg of you, please do something. I said, well, I'll ask the nurse again. And I asked the nurse and the nurse said to go tell her that she has to wait, you know, until it's time. I said, can't you call the doctor and ask him? And she says, I already have and she's at her maximum dosage. She saw that my arm was bleeding and she said, why don't you take a little break. I went down to the chapel and tried to figure this out, how one person could just go to sleep and how another person was just desperate. The next day I went back to work and the nurse told me that the patient had finally, finally died. She said it was just terrible. No one should have to suffer that way and be in so much pain. I finally became a registered nurse. I wanted to work with hospice and home-care patients. I saw numerous deaths. Some, I guess, were lucky. They were comatose and they looked like they just went to sleep. And then there was others that had... [LB1056]

SENATOR COASH: Ms. Kral. [LB1056]

JEAN KRAL: Excuse me. [LB1056]

SENATOR COASH: Ms. Kral, your red lights are on. [LB1056]

JEAN KRAL: Hmm? [LB1056]

SENATOR COASH: Your red light is on so we're going to see if there's any questions from the committee, okay? Your red light is on. [LB1056]

JEAN KRAL: Oh. [LB1056]

SENATOR COASH: We're on a timer system. But we're going to see if we have any questions from the committee. [LB1056]

JEAN KRAL: I'm sorry. [LB1056]

SENATOR COASH: That's all right. [LB1056]

SENATOR CHAMBERS: Was there a case you were going to relate? [LB1056]

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JEAN KRAL: Pardon me? [LB1056]

SENATOR CHAMBERS: Was there a case you were in the middle of talking about? [LB1056]

JEAN KRAL: What I wanted to say was--just real briefly, I'll be as quick as I can--is that I endured pain myself. I broke both of my hips at the same time and I endured pain where I begged for medication. And I thought of these patients. I said how, you know, how did they ever, ever get through this? And what I want to say is that things happen. Senators, don't ever think things are not going to happen to you because they will happen, they can happen. Bad things can happen. And I want everyone here to have this option if they need it. I pray that everybody would die peacefully but that's not...that's not how it is. And the last thing I'd like to say is, please, I kindly beg of you, please give the people who want the right to die a choice. [LB1056]

SENATOR COASH: Thank you, Ms. Kral. I don't see any other questions from the committee. [LB1056]

JEAN KRAL: Pardon me? [LB1056]

SENATOR COASH: I said I don't see any more questions from the committee. Appreciate your testimony. [LB1056]

JEAN KRAL: Okay. [LB1056]

GWENDOLEN HINES: Good afternoon, Senators. My name is Gwendolen Hines; it's G-w-e-n-d-o-l-e-n H-i-n-e-s, and I represent the Unitarian Church of Lincoln and we support LB1056. We believe people have a right not to face the physical and cognitive degeneration and suffering that comes with the end of a terminal illness. They have a right to die with dignity at home with their loved ones by their sides. In fact, I would go a lot further. My husband's mother and her brother and her mother all died of Alzheimer's. My husband, therefore, has a good chance of getting Alzheimer's. He doesn't want to go through the phase where he doesn't recognize me or our son or even know who he is. He plans to kill himself before things get too far, and I think he has a right to get medicine from a doctor to do this even though it may mean dying several years before he would die a natural death. Some people may argue against this bill on religious grounds. I say that if your religion is against this then don't do it. But luckily we have separation of church and state, so I should have this right. Even if it is against your religion, it is not against mine. I think this bill does a good job of putting in safeguards to ensure that someone is not coerced into taking life-ending medications, for example, maybe by family members who, for example, might not want to pay for an expensive last six months of life. I think this bill is well

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written. In short, we support this bill. We also support the repeal of the death penalty, Senator Williams. Thank you. [LB1056]

SENATOR SEILER: Any questions? Thank you for your testimony. Next proponent. You'll be next. [LB1056]

TOM MEYER: Good afternoon, Senators. My name is Tom Meyer, T-o-m M-e-y-e-r. I come in support of this bill by Senator Chambers and also on behalf of my late wife Dianna, my wife of over 35 years, Dianna. Approximately three and a half years ago, her father was diagnosed with cancer. Dianna was helpless as she watched him suffer through the pain, wither away, and eventually die. He was heavily medicated to relieve his discomfort but essentially was not with us. In the next year, Dianna's mother developed colon cancer with it spreading into her lungs. After surgery, Dianna again watched a loved one wither away and endure pain and discomfort when not medicated heavily. Dianna's story began on her 59 birthday when she was informed she had breast cancer. We learned it was a very aggressive form of breast cancer with a bad track record. Dianna entered into a very aggressive regimen of chemotherapy which had extreme side effects, and then radiation. But she was a trouper doing all she could do to beat the disease. She had no indication of any more cancer for the next three years, being tested minimally every six months. In October of 2014, she had a recurrence of the breast cancer in the liver which had spread to her hips, spine, and brain. Her oncologist told her that in the year 2014 there was no cure for stage IV breast cancer as it had spread in her body. In the next five weeks before her death, she became much weaker and had a great deal of pain and nausea. When hospitalized to manage the pain, she asked for help from staff, doctors, her oncologist to help her end the ordeal. Their answer, understandably, was they would do the best to help her be comfortable and in as little pain as possible. The end result was Dianna was fully aware of her terminal situation, the suffering ahead, and was ready to die and move on to her next journey. In order for the medical personnel to make her comfortable, they needed to medicate her with morphine along with other strong drugs. Dianna had two basic stages in her last days: One was extreme discomfort and pain when the drugs no longer were effective, had worn off; and the other was a medicated stage in which she was either sleeping or in a drug-induced stupor when she no longer was herself. She shouldn't have had to endure her end of life. She asked for help to speed her journey to end, and understandably, the medical profession had their hands tied. She wanted to make the choice that only she had the right to say was okay for her and LB1056 would have enabled her to do that if it had been enacted years ago. My end-of-life choice is mine alone. When faced with a hopeless, painful, terminal disease, religious factions have no say. No one, no one should other than me within the provisions of this bill, which seems to be very well written. I understand this bill has been made a priority bill, but I urge you to endorse, promote, and move this bill along with your support. Thanks for listening to my story. [LB1056]

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SENATOR SEILER: Thank you very much. Questions? Seeing none, thank you for sharing with us. [LB1056]

TOM MEYER: Thank you. [LB1056]

SENATOR SEILER: Next proponent. [LB1056]

TOPHER HANSEN: Senator Seiler, members of the committee, my name is Topher Hansen, T-o-p-h-e-r H-a-n-s-e-n. I come here on behalf of my family and my siblings and my parents in particular. Both my parents ended their life at their own hand. My...I want to talk a little bit about my dad because he provides the best example, I think. He was the first of my parents to do it at age 81 in 2007, and his ninth anniversary is tonight at 8:00 p.m. Good timing on the bill, I think, in terms of the hearing. My dad would celebrate this hearing. He was a lifelong believer in an end-of-life choice. He was part of an intellectual community that believed in this and he supported it with his money and his time and his compassion for people who are in difficult situations. He unfortunately then, in 1998, was diagnosed with Parkinson's disease. He lived with that until 2007 when he ended his life, but about a year prior to that he ended up in the hospital with pneumonia. He couldn't move. He was in his bed and he was incapacitated. It took a whole team of firefighters to remove him from his bed because of it. At the hospital he was confronted with the option of whether to treat. It's called the old person's friend; that you have pneumonia and let it take you away. And he was conflicted. After a lifelong belief in end-of-life choices and dying with dignity, he was conflicted. And so we had a hard conversation. I had many conversations with him about this issue. And he had a hard conversation. And his decision was that he was not ready to die, that he hadn't said his goodbyes, he hadn't processed it, he hadn't done what he wanted to do. And though he was largely incapacitated from the Parkinson's disease, he still wanted to live on, and he did. However, when he was in convalescent care he said to me one day when I walked in to visit, he looked at me straight in the eye and he said never again, never again will I be in this position. This is not by anyone's fault but just a place that living is not happening here and I don't want to be part of it. He carried on for a while, called the family together and announced this decision and said this the date. And he had on his own accord stockpiled medicines that would prove lethal and had those at the ready. And on the date that he indicated, we gathered and he administered his own medication and died two days later. It was not the best way to go in terms of what medication does to you in that volume. There are better medications that ease the death, but it was his choice. He said goodbye. He philosophically described his decision to us. He was as clear in thinking as anyone might be. This man was a Ph.D. in adult and continuing education, a man Senator Chambers once called the blue-eyed devil in his days of civil rights action in 1960s in Omaha, and was as focused in thinking about this as he could be. And as...in fact, all of my siblings and I felt like we were sitting at the feet of a philosopher as he described what life was about and what his death was about. You know, I choke up not in sadness of missing...of course I miss him, but in my pride of who he was. Wow,

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that was the most courageous act I've ever witnessed in my life. And my mother did the same. This bill is well written. We have history of understanding what the consequences are when a bill like this is in place as statute in a community. And I urge you to support this and let the facts be the witness to how sound this bill is as it's taken place in other states and pass it here in the Legislature. [LB1056]

SENATOR SEILER: Any questions? Senator Pansing Brooks. [LB1056]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Hansen, and I knew both your parents and am honored to have known them and called them my friends. And they were wonderful people, wonderful advocates, and you do honor to them today. Thank you. [LB1056]

TOPHER HANSEN: Thank you. [LB1056]

SENATOR SEILER: Further questions? Seeing none, thank you for your testimony. [LB1056]

TOPHER HANSEN: Thank you, Senator. [LB1056]

SENATOR SEILER: Next proponent. [LB1056]

GINNY WRIGHT: (Exhibit 6) Good afternoon, Senator Seiler and Judiciary Committee. My name is Ginny Wright, G-i-n-n-y W-r-i-g-h-t. I thank Senator Chambers and you for the opportunity to support a bill whose time has come. As a child, I witnessed my grandmother lie motionless, non compos mentis in a nursing home for years and the effect it had on my father. I knew I never wanted to be like that: alive and lifeless. My parents were early adopters of the living will. Dad had a DNR--do not resuscitate--and in-home hospice care when the metastasized testicular cancer invaded his bones and brain. I'm glad he had taken the steps he did. I do not want anyone interfering with my dying process. It's mine. Other people with other beliefs and attitudes have their life to make choices and decisions about. I do not want strangers, family, friends, outsiders, do-gooders, pro-lifers, religious organizations, faith leaders, advocates, or politicians. I do not want to be Terri Schiavo, if any of you remember that case. She made her wishes clear to her husband: no extraordinary measures, no life support. But her parents were unable to accept what happened to her and her state of being. Lawsuits, publicity, the Senate was called back to D.C. What in the world was their compelling national interest? The Senate actually sided with her parents, not the pledge her husband had made to her. Medical experts verified she would never be herself again. Lawyers, second opinions, expenses, emotional distress--I want my family and friends to be spared that aggravation. I believe there is a right to die with dignity, peace, and comfort. I believe that personal autonomy is real and should be

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honored through my last breath. I hope that LB1056 will be a comprehensive bill to deal with what has been learned during the previous incremental steps. At the most wonderful memorial I've ever attended, I learned of Compassion and Choices. I picked up three packets: one for each of my sons and one for me. The boys aren't up for processing this with me at this time but one of them worries, fears one day he'll come over and find me dead. Not talking about this will not keep me alive or assuage his fears. I am using the materials and forms developed by Compassion and Choices. They capture my essence, values, wishes, character. I showed the packet to my physician and he found the materials reasonable and ethical. He accepts them for me. Dying is personal. If my family could go through the forms together with me, they would see what, how, and why I feel as I do. Grief work could be started before my death and mixed emotions could be relieved. From seeing a colleague put her husband through numerous futile, painful surgeries...and I have tremors, essential tremor. Sorry. [LB1056]

SENATOR SEILER: Ma'am, can you wrap up? Your red light is on. [LB1056]

GINNY WRIGHT: I see that. Thank you. A colleague put her husband through futile, painful surgeries because she couldn't bear his death. He suffered without protection or recourse. That's what I fear. I also fear not being...to engage in life and to be contributing. I have three topics that I would like to put on the table. It's in the printed part... [LB1056]

SENATOR SEILER: Okay. [LB1056]

GINNY WRIGHT: ...and I left a copy with Senator Chambers' office. [LB1056]

SENATOR SEILER: Okay. It will be made part of the record. [LB1056]

GINNY WRIGHT: Thank you. [LB1056]

SENATOR SEILER: Any further questions? Seeing none, thank you for your participation and testimony. [LB1056]

GINNY WRIGHT: You're welcome. Thank you. [LB1056]

SENATOR SEILER: Next proponent. [LB1056]

SUSY McMAHAN: (Exhibit 3) Hi. Good afternoon. My name is Susy McMahan, and it's spelled S-u-s-y M-c-M-a-h-a-n. I'm a retired social worker who lives in northeast Lincoln with

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my husband of 44 years. My 89-year-old mom is in a long-term care facility. It's a nice place, clean, with great staff. She has frontal lobe dementia, which was diagnosed after a battery of tests at Madonna. This type of dementia can cause behavior outbursts and aggression, which hasn't yet been a problem for her. She is not yet in the memory unit. She knows and recognizes her family and friends. She has changed in many ways, but the number one thing I hear from her is that she is ready to go. She wants to die. She's a nurse and she knows what lies ahead. She begged me, she has begged me to take her to Oregon so she can die. She no longer embraces her Greek Orthodox religion, her need to die is so strong. It's difficult for me to watch her want something so much, yet I cannot help her. She gave me her permission to pass this information along to you. My husband's family is large, and I could tell stories of recent deaths and the toll it took watching the suffering of the family members dying. Children, grandchildren, siblings, spouses felt helpless seeing their love ones' suffering, such as...speaking of vomiting your own feces, my mother-in-law vomited her own feces. She had cancer of the stomach and the bowel. It's not a pretty sight. It's an awful way to die. Instead, I will relate another personal experience that also touches on this subject. In the past year, due to double shoulder arthroplasty on me--and it works, see, big wow (laugh)--which required me to have skilled nursing in a rehab facility for over a month, I was a patient in another great facility. There was a long-term unit there also, and a memory unit. The elders there were my peers. You know, I wasn't a nurse. I wasn't a doctor. They were my peers. We ate together. We laughed together, went to physical therapy together. We knew each other's stories. Since I was ambulatory--I could walk--and a lot of them were in wheelchairs, I also got to know some of the elders in the long-term unit because I could wander around. I heard many of the same stories I heard from my mom: pain, lived a full life; pain, boredom; pain, discouragement about long-term prognosis; pain, loss of personal dignity; pain, loss of mobility; on and on and on. I was really shocked at the number of people who say they want to die. They have lived their lives and they're ready to go. These are things they generally don't talk to nurses or doctors about. My doctor even kind of discourages you to talk about the fact that you want to die. But we talked about it. And because of that, I believe there's more dignity in dying when it includes compassion. It's a personal issue, and it's with the patient making the initial decision working closely with their physicians. You know... [LB1056]

SENATOR SEILER: Ma'am, ma'am. [LB1056]

SUSY McMAHAN: ...with the dementia, I don't know. My doctor has confirmed... [LB1056]

SENATOR SEILER: Ma'am, your red light is on. [LB1056]

SUSY McMAHAN: Pardon? [LB1056]

SENATOR SEILER: Your red light is on. [LB1056]

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SUSY McMAHAN: My red light is on. Okay. [LB1056]

SENATOR SEILER: (Inaudible) wrap up. [LB1056]

SUSY McMAHAN: Thank you. I hope there will be a prompt implementation of LB1056. [LB1056]

SENATOR SEILER: Questions? [LB1056]

SUSY McMAHAN: Questions anyone? [LB1056]

SENATOR SEILER: Thank you very much for your testimony. [LB1056]

SUSY McMAHAN: Thank you. [LB1056]

SENATOR SEILER: Next proponent. [LB1056]

RICHARD HEDRICK: I'm Richard Hedrick. I am for LB1056. I have had three friends die the hard way: a stroke that put them in hell on earth. One friend is in hell on earth now. He has not died. If this were a gun law, it would have been in a law a long time ago on constitutional grounds. I had family on Bunker Hill. I believe they were fighting for constitutional rights to do what a person wants without interruption with government imposed by conservatives who want to force others to have their beliefs. Thank you. [LB1056]

SENATOR SEILER: Any questions? Thank you for your testimony. Next proponent. [LB1056]

LAUREN WIPFLER: (Exhibit 4) My name is Lauren Wipfler, L-a-u-r-e-n W-i-p-f-l-e-r, and I'm a high school senior attending Ashland-Greenwood High School. I'm here today in support of LB1056, the Patient Choice at End of Life Act. I have worked at a senior living center for nearly a year, and in my time I have witnessed the suffering of multiple terminally ill residents. For months at a time, I watched as residents living off morphine cringed in pain until their deaths finally relieved them. I have watched as residents who are no longer able to swallow fall into a starvation-induced coma and consequently into their death. I have watched as residents with early dementia quickly deteriorate and become a deadly danger to themselves. Unfortunately, palliative care and hospice care can only do so much to ease patients' suffering, which is why this act should be adopted. Oregon, which first legalized their own version of this act, the Death with Dignity Act in 1997, has released their 2015 statistics. Over the last 18 years, 90.5 percent

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of those who participated under their act were of age 55 or older. This age range also covers the majority of those who currently reside in senior living centers. This shows that the situations I have witnessed may very well be common amongst the people most vulnerable to terminal illnesses: the elderly. The 2013 Nebraska Census stated that 27 percent of our population was at age 55 or older. This percentage of the population, if similar to Oregon, would be the ones most likely to suffer terminal illnesses and thus participate under this act. The popular story of one Oregonian woman further shows the importance of this act. Brittany Maynard was diagnosed with stage IV glioblastoma while residing in California. After her doctors explained her situation and the experiences she would suffer leading into her death, Maynard made the decision to move to Oregon where she could legally end her life in peace. On November 1, 2014, Maynard peacefully passed in her bed with her mother, husband, and best friend. Her story may easily be applicable to the many people who are currently fighting terminal illness. Nobody deserves to die in pain. This is why the option to die in dignity should be provided. In Ms. Maynard's own words: This choice is ethical, and what makes it ethical is that it is a choice. [LB1056]

SENATOR SEILER: Any questions? Thank you for coming and sharing you experience. [LB1056]

LAUREN WIPFLER: Thank you. [LB1056]

SENATOR SEILER: Next proponent. [LB1056]

GAIL RULE: (Exhibit 5) Hello. Finally a chair with padding. (Laugh) My name is Gail Rule, G-a-i-l R-u-l-e. Good afternoon and thank you. There's nothing more individual and more personal than a person's terminal illness disease process and ultimately their death. We live in a state and a wonderful country that holds dear our personal freedoms and our right to our own personal philosophy. We not only live with but we embrace our melting pot culture. Each with our own right of choice, we tolerate differences and we welcome differing opinions and I am proud of that country...this country for that. Let me be perfectly honest and say to you that I could care less what Joe Blow from Scottsbluff feels that he needs to do at the end of his life. That truly is none of my business, okay? It isn't that I'm not a caring person, far from it. I hope this man lived an enjoyable life with his family by his side. I hope that he realized all of his goals and that the ending in this world is one directed on his own terms with whatever medical assistance is necessary. But there's where my involvement should begin and end. Most of us have a difficult enough time handling our own lives to even pretend to know what is right for this man. These discussions and these decisions belong with Joe, with his family, and with his physicians. But without LB1056, Joe and thousands of others like him can't even have a discussion or realize an option. They are simply forced to endure. You know, one of the things that we've all heard and we've all said is when I die I want to go out like a light. Well, wouldn't that be wonderful if it

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was just always that easy and we could all individually be that lucky? But that's...that is not life. That is not the natural course of many disease processes. Most of us are going to spend a lot of time being sick, we're going to go through long lines of treatments, and we're going to pray they work. And we're all going to want the best medicine money can buy and we're going to hope that the grim reaper stays away. But someday, like my mother, my father, my grandparents, and many more, I promise you, you are going to hear the words, there is nothing more we can do. One of my father's favorite sayings was, the only thing you can count on in life is death and taxes. There's a lot of truth to those words. So I thank Senator Chambers for bringing this legislation. We all need to refuse to allow personal religious philosophies or clever wording to get in the way of this discussion because this discussion is too important for every single person in this room, because I promise you it's going to touch your life, okay? Okay, so I've been scribbling out and trying to get through this and didn't realize how quick three minutes is. But please, Senators, please, take this seriously. Find a way to advance this to the floor. I'm asking you to vote your conscience, not your party line or your personal religious philosophy. I know I want a choice someday. Thank you. [LB1056]

SENATOR SEILER: Any questions? Thank you for sharing your testimony. [LB1056]

GAIL RULE: You bet. [LB1056]

SENATOR SEILER: Next proponent. [LB1056]

LEAH LUKOWSKI: Thank you, Chairman Seiler and members of the Judiciary Committee. My name is Leah Lukowski; it's L-e-a-h L-u-k-o-w-s-k-i, and I'm from Omaha. If you would have asked me five years ago if I would be sitting here talking about this topic, my answer would have been no. However, personal experience can change a lot. My mother and my family have spent the last four years caring for my grandfather while he slowly died of Alzheimer's. Excuse me. The things that I witnessed and saw with my own eyes were enough to make me sit here in front of you today asking for the passage of LB1056. I would like make to a few things clear in my testimony. I clearly understand that this bill does not include dementing illnesses. And although my personal experience of caring for an Alzheimer's patient is why I am here today, I am not in any way asking for the dementing illness to be included in this legislation. I am also not a proclaimed atheist or a Christian. I come to you here as a logical, compassionate person who would like to speak on behalf of terminally ill people and possibly my future self. I truly believe that death is a very personal thing. Given a diagnosis beyond their control, I believe that people should be able to die as they see fit, be able to pass peacefully with loved ones by their side. I understand that there are members in the audience today that wholeheartedly disagree with me and I respect their right to do so. However, the truth is that those people are already have the ability to suffer to the end of their life, if that is what their personal and religious beliefs dictate.

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The law already tells them that they have their option and support their choice. But the citizens of this state...but what about the citizens of the state that do not hold those same beliefs? Unless there is anyone here in the audience...is a terminal patient themselves, none of us can truly understand what these people are going through. Myself and other caregivers see firsthand the suffering, the lack of life, and the lack of compassion that our loved ones are subjected to. We helplessly watch our grandparents, fathers, mothers, sons, and daughters while we stand by and watch. I've often wondered why people...when people see an animal suffering, they are so quick to say, why, let's put it out of its misery. And yet we continually ask humans to suffer. Why can we not see death as a personal thing? Why can we not show empathy and understanding for those who do not want to endure their tortuous ending? I feel incredibly frustrated that in the land of the free, I am not free to make my own choice regarding my own illness and my end-of-life decisions. Truly loving people is about empathy and understanding, even if it's not the decision that we could make for ourselves. People are choosing to take their life and death into their own hands because they do not have any other options. Please allow people the choice and the option to end their life legally and respectfully. And, Senators, I'd like to add one quick thing. Today, you've heard testimony from people with diseases such as testicular cancer, pancreatic cancer, Alzheimer's, Parkinson's, dementia. The list goes on and the chances are that one of us...all of us are going to get some type of that disease. And please just take that into consideration because it will affect all of us. Thank you. [LB1056]

SENATOR SEILER: Just a second. Are there any questions? Thank you for your testimony. Next proponent. Opponent. [LB1056]

STEVE HIGGINS: Senator Seiler and members of the Judiciary Committee, my name is Steve Higgins and I'm a semi-retired family practice physician and I thank you for the opportunity to testify on this bill. LB1056 is directed at the very same people who are eligible for hospice care. And so I just want to tell you my experience in providing hospice care. I have attended about 300 people during the end of their life. And of those people, none have asked me to end their life. I understand the issue about if you have no choice it feels much worse. There are some who would like to say that anyone who is against this bill is a religious bigot, and that is not true. I happen to believe that suffering does have some redemptive value when it is joined with Jesus Christ, but his suffering. But you know, he didn't have much choice about what the state did to him. And my real issue is not that. It is I do not want to see my profession drug into this issue. It is...there are no physicians in Nebraska that are trained in how to assess what is an appropriate dose to write in a prescription. So before we go with making physicians the people that are going to administer this, we have to have some kind of training and some kind of testing that allows us to understand what is a lethal dose for each person. We all know of the people who have died by lethal injection who lingered on and on, and we heard testimony today about someone who took what they thought was a lethal dose and they lingered for two days. That is not decent medical care. Now, hospice, I have never had a person in hospice that I couldn't relieve their suffering. There

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are people...you know, there are times in hospice that you have to inform the patient and inform their family that they are...that they require what may be a lethal dose. In other words, it's a dose of medication that could cause their death but we're giving that to them to relieve their discomfort. So I have real concern that the question you asked earlier, does this mean that soon we'll be required to have...to give this option as opposed to the hospice option? Hospice is a wonderful thing. We've heard testimony about suffering in nursing homes. There's... [LB1056]

SENATOR SEILER: Your red light is on, sir. [LB1056]

STEVE HIGGINS: There's plenty of that and I understand. There are alternatives to how that comes about. So I think it's time for a discussion of this issue. I do not think that we have the bill in front of us that is appropriate to this issue. [LB1056]

SENATOR SEILER: Questions? [LB1056]

STEVE HIGGINS: I'll be happy to answer any questions. [LB1056]

SENATOR SEILER: Senator Ebke. [LB1056]

SENATOR EBKE: Thank you, Senator Seiler. Thank you, Dr. Higgins. Being married to a family practice physician, I know a little bit about...of what you've talked about. Let me ask you a question and let me throw out just a set of situations, and let me know whether or not this in any way conforms to your way of thinking, okay? One of the things when I talk to husband--and it seems to be fairly rare this time of year--but when we get a chance to talk, you know, we've talked about this particular bill. And he said, what if your accountant tells you to cheat on your taxes? Or what if your teacher tells you to cheat on the tests? Or what if your lawyers tells you to lie to the court? He said the problem is that family physicians at least, and many physicians, have a very close relationship to their patients. It's a very trusting relationship. So would you see the option of prescribing these drugs, whatever they are, as sort of a, well, the doctor says it's okay to do it, sort of a doctor-sanctioned decision to make that way? [LB1056]

STEVE HIGGINS: Well, certainly a patient could take it that way. You know, we provide...I shouldn't say "we." The state provides drugs in the death penalty that are apparently lethal drugs. Those...you know, that's the best concoction that we...that, by consulting physicians, they probably came up with. And yet, it's not working. And so I just don't know of a way that I could do this, particularly without training, in any way that I could call medical care. So I don't know whether I'm answering your question. [LB1056]

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SENATOR EBKE: Nor is that drug available right now I don't believe. [LB1056]

STEVE HIGGINS: Right. [LB1056]

SENATOR EBKE: (Laugh) But here's the other issue, I think. My doctor says, gosh, you've got high blood pressure. You need to take, I don't know, whatever it is. [LB1056]

STEVE HIGGINS: Yes. [LB1056]

SENATOR EBKE: Okay? Or you've got high cholesterol and you need to take whatever it is. I kind of trust my doctor to write the prescription for the right thing. [LB1056]

STEVE HIGGINS: Right. [LB1056]

SENATOR EBKE: Or if I say I'm not sleeping well at night, I trust the doctor to prescribe the right thing for me. Okay? So do we...we can talk about informed consent, but how much will there actually be do you think? [LB1056]

STEVE HIGGINS: Well, to address that point, I think that the bill should definitely contain an issue that the doctor needs to disclose to their patient what their standing on this is, because it makes a huge difference. You cannot really...yes, patients trust doctors and there are some patients that trust them implicitly. And you know, for them, I mean I have no experience to tell you this but I can tell you that I've had other instances in which the doctor gave me this medicine and I have to take it. I don't know. I don't know the answer to that. [LB1056]

SENATOR EBKE: Thank you. [LB1056]

SENATOR SEILER: Any further questions? [LB1056]

STEVE HIGGINS: Thank you. [LB1056]

SENATOR SEILER: Thank you very much, Doctor. Next proponent...or opponent. [LB1056]

MARIA WHITMORE: Members of the Judiciary Committee, my name is Maria E. Whitmore, that's M-a-r-i-a W-h-i-t-m-o-r-e, and I'm here to testify on LB1056, against it. As humans, we grow tremendously arrogant about our forecasts on the end-of-life prognosis. And I'm glad the doctor gave his testimony right before I did. It is a little bit like taking the law into our own

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hands. Unfortunately, this bill is heavily reliant on the prognosis of doctors. Considering that doctors practice medicine and doctors are not God, to know for sure how long a person has to live and that medicine is not yet infallible, I'd like to present my personal experience with my grandfather's death. When my grandfather was diagnosed with lung cancer and he was given a prognosis of six months, he lived five years after that. However, without having had him around had he chosen to take this route, we would have never learned the things we learned from him or interacted with him as much as we did and have the opportunity to love him for what he was and continue to have him as a contributing member of society. The human body is resilient beyond belief and I can only speak to my own personal experience with pain. I cannot speak to my grandfather's. As a mother, I can tell you that my personal experience with birth when I had my three children by natural delivery and the tremendous pain that at one moment we think we cannot bear. But somehow my body knew what to do and how to mitigate what was happening in the process of delivery. And somehow I made it through the pain and then the joy of having my daughters. Many people in the process of death are still productive and things can be overcome. I can think of, at this moment, someone who suffered testicular cancer like Armstrong that went to win a Tour de France many times after that, or like Steve Jobs leading the Apple company for many years after he was diagnosed. Life is messy but the discomfort of relatives should not merit discarding anyone so easily. There is no dignity in a death that is self-inflicted. Thank you very much. [LB1056]

SENATOR SEILER: Any questions? Thank you for your testimony. [LB1056]

MARIA WHITMORE: Thank you. [LB1056]

SENATOR SEILER: Next opponent. [LB1056]

DALE MICHELS: Senator Seiler, members of the Judiciary Committee, I'm Dr. Dale Michels, D-a-l-e M-i-c-h-e-l-s. I'm a practicing family physician and have been a practicing family physician now in Lincoln for almost 42 years. I'm here representing myself, the Nebraska Medical Association, and the Nebraska Academy of Family Physicians. We're opposed to LB1056. In my opinion, it's a bad bill, poorly written, full of numerous inconsistencies. And I don't see it as an improvement in any way from the bill LB406 that was introduced in 1997 which was on physician-assisted suicide or aid in dying. My experience personally is that I've been asked a number of times by patients for some pills so they can end it all but never by anyone in the final stages of their terminal illness. These patients are almost always the ones who are severely depressed or just want to talk about how bad they feel. In fact, I don't think I've ever had a patient terminally ill with a medical condition ask for meds to help them die. To do something like that, for me, would mean that I'd really abandoned them and want them to go away--not what you want from your physician. Let me give you three quick scenarios, or at least

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two. We'll see how the time goes. Currently, I have a physician friend dying of a recurrent brain tumor. She was okay just a few weeks ago. Now she can't...often can't eat, can't get up by herself. She's having bad headaches. She's been having seizures. And she's been told that there is nothing more that can be done for her brain tumor. Does she want to end it all by taking pills? No. She's spending every last minute she can with her four kids, her husband, and friends. Is she dying? Yes. Does she want to die early? No, she wants to spend her last days with her family, who unfortunately have to suffer and grieve with her. One of my patients who unfortunately did kill themselves a few months ago might be considered physician assisted because she took an overdose of her own meds, meds not from me but from her psychiatrist. Having lost her husband from pancreatic cancer a few months earlier, she had tried once before and failed and so tried again and succeeded. Her only real medical problem was hypertension, but there were severe mental health issues. So per LB1056, her death certificate would say she died from hypertension so as not to say she took too many pills. Many years ago I had a patient who developed a problem swallowing and eating because his esophagus didn't work correctly; it's a problem for which there are multiple options to correct, improve, but not cure. So instead, he took the shotgun to the barn and took care of it all. Had someone given him pills instead, and it wouldn't have been me, but his death certificate would have said he died of achalasia, the esophagus problem, not a self-inflicted injury--fraudulent, misleading, and unethical. There are other examples I could use. I would point out that there are a number of over-the-counter medicines that people can die that will kill...or that people can buy that will kill them. However, this bill wants to give their suicide the sense of legitimately...legitimacy, since a doctor helped. So I have a couple of other things I could say, but the issue is I ask that you not advance LB1056.
[LB1056]

SENATOR SEILER: Senator Chambers. [LB1056]

SENATOR CHAMBERS: Doctor, with all due respect, I think you misread the bill. The woman who took those pills and killed herself would not have the death certificate say she died from the underlying illness. This can only be done pursuant to the requirements of this bill before what you're talking about could occur. So it's not where willy-nilly these things happen. And if the person does not want to make use of this, nobody can or should try to coerce him. And I admire your attitude in trying to make the last days of a person, no matter what they're going through, liveable. But I think your view is not what everybody's view is. And this is not for those people who have no interest. But for those who want to do it the opportunity is there. And the safeguards that you say are not there, in fact, are there. And if a person is found to be suffering from a psychiatric, psychological condition, or depression, no prescription can be written for that person pursuant to this bill. And if a doctor does not have the license, the authorization, or the DEA permission to dispense drugs, then a pharmacist is involved in it. And everybody has to do this voluntarily. So I'm not criticizing you for your view. And I hope that I made that clear in the beginning. I knew there were people who would have a different view from mine and I'm not

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condemning them. I'm not falling out with them. It's just one of those things where people are bound to have different points of view. But I think the bill should not be misconstrued. And if a person reads it carefully, it would be clear that some of the things you think the bill authorizes are not in this bill at all. [LB1056]

DALE MICHELS: And with all due respect, Senator, I agree. I've read the bill a couple of times just to make sure that I was reading it carefully. And I would agree that with some of those things...the mental health issue is a particular one. There are some difficulties, however, and it's written with getting the second, if we may call it, the second opinion that says, you know, I as a physician say, yes. Getting the second opinion, my concern for that could well be that, for instance, if you had a disagreement with your neighbor about something not related to suicide or assist in dying but you have a disagreement and you think he or she is doing wrong, my question is, would you ask me to come from Lincoln to agree with you, or would ask somebody who might be the neighbor on the other side who agrees with you because you know that you agree? So I have a real concern about that second physician who is...I'm asking if I were going to be involved in it...and I won't be and I understand well that I have the privilege not to be involved in that, perfectly understood. But I have a real concern that if you're going to ask the physician who is willing to do this to find a second opinion, he's also going to find someone who agrees with him and is willing to go along with that. So that I'm not sure that that second opinion is really...it's an attempt at a check and balance, but I'm not sure it really is. That... [LB1056]

SENATOR CHAMBERS: There are places, though, where a second doctor, the consulting physician, would not do so. And to avoid the notion of doctor shopping, the period of time might be too long because the person may not have that long to live anyway but cannot seek a second opinion in fewer than 90 days if a consulting physician did not agree. And I'm not trying to be argumentative, but just to state some of the things in the bill. And that's all that I would say. [LB1056]

DALE MICHELS: Yeah. And I have read it a couple of times. Yes, sir. I understand. [LB1056]

SENATOR CHAMBERS: Okay, thank you. [LB1056]

SENATOR SEILER: Doctor, I have a question. [LB1056]

DALE MICHELS: Yeah. [LB1056]

SENATOR SEILER: On the terminal illness description, it says: means an incurable and irreversible illness that will, within reasonable medical judgment, result in a death near...death

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within six months. I don't think we use that as an ascertainable standard in Nebraska. I think that should read, "reasonable medical certainty." Is that your...? [LB1056]

DALE MICHELS: And I'm not sure of the legal term, Senator Seiler, but, yeah, we attempt. The example I can use separate from this is the hospice program. We are supposed to, as family physicians or other physicians, certify that within a reasonable degree of medical certainty, you have less than six months, or six months or less to live. [LB1056]

SENATOR SEILER: Right. I'm sure you've heard that term used to you before on the witness stand. [LB1056]

DALE MICHELS: More than once, Senator. And the difficulty comes... [LB1056]

SENATOR SEILER: Senator Chambers, it's on page 3, line 30 that the term "judgment" is there, and I believe the term should be ascertainable...to be the ascertainable standards based on "reasonable medical certainty". [LB1056]

SENATOR CHAMBERS: I agree. [LB1056]

SENATOR SEILER: That's all I wanted to know. [LB1056]

DALE MICHELS: But it is difficult because I've had, over my 42 years, a number of patients who lived well beyond my best guess of reasonable medical certainty that they were going to pass away in six months. [LB1056]

SENATOR SEILER: I understand. Senator Coash. [LB1056]

SENATOR COASH: Thank you, Senator Seiler. Doctor, thank you for your testimony. And I understand you're not in support of the bill and this would not be something you would participate in. But let me ask you kind of a hypothetical question. Under the current law, as the law sits today, if you were caring for a patient who met the criteria under...this bill purports, you know, they have a terminal illness, your best judgment was that they had six months or less to live and you agreed and you agreed that...with their decision, that you were okay with their decision. And they asked you to prescribe something that would hasten the end of their life, what would prohibit you from doing that now? [LB1056]

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DALE MICHELS: I think the thing that would prohibit me is my own internal ethical sense that this is not appropriate. [LB1056]

SENATOR COASH: I understand that. I'm asking you as a person with a license... [LB1056]

DALE MICHELS: I'm not sure that there is... [LB1056]

SENATOR COASH: If you didn't have a moral objection to it, and there may be physicians...I'm sure there are physicians who don't have a moral objection to do what's in this bill, and I'm asking, what would prevent a physician who agreed with the patient's wishes to end their life? Asking their doctor and the doctor agrees--I agree, I can help you do that. You've got your pad; you can write it out and write a prescription. What prevents you right now from...what would prevent, not you, but a physician from doing that? [LB1056]

DALE MICHELS: Okay, thank you because in my own mind, my mind is too small to conceive that I would do that. [LB1056]

SENATOR COASH: Not you, a physician. I'm trying to figure out...you know, one of the things we try to figure out is, what are we trying to solve here? [LB1056]

DALE MICHELS: I think a couple of things that might help. Dr. Higgins mentioned that we sometimes prescribe medications with the warning to the patient or to the patient's family that there is a possibility that this medication, in our attempt to help you be comfortable, alleviate your pain, may kill you. And so I think we do that, you know? And I'll use a very personal example that doesn't apply to this but does apply to that. My wife currently has chronic pain, very...fairly severe, and is on four different medicines. One of my concerns is that we make sure that we balance her medicines so that she doesn't accidentally receive too much medication. We've not talked about...that's not in our plan but...so I think the question would be twofold. Number one, do we sometimes...or could we prescribe those? Yes. I think Dr. Higgins is also right that there has been no training. We as physicians are trained to cure, trained to serve, trained to help. We're not trained to, oh, well, now we have to suddenly be trained on how to help somebody die. [LB1056]

SENATOR COASH: But if there was a physician, and again it's not you, but if there was a physician who said, look, I know that if I prescribed X number of this medication to you and if you take it you're going to fall asleep and you're not going to wake up, what under the law would prevent a physician from doing that now, or with...under your license? [LB1056]

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DALE MICHELS: I'm not sure that I can totally answer that. I understand your question, I think, and I'm trying to think through it in my mind. And I'm not sure that there is something within the law that would say that with the exception that in those situations, let's say that your patient or my patient or the patient in this case had chosen to do this but had not chosen to tell anybody, and did it and then their family member comes back and says you caused her death. And that would be...become problematic. [LB1056]

SENATOR COASH: So...okay. Would you...would that affect your license to practice medicine or could that affect your license to practice medicine? [LB1056]

DALE MICHELS: Yeah, I think it could. It can easily be a complaint against your license, number one. It would be investigated and if you were found to have prescribed an excessive amount of a medication, the Board of Medicine would possibly look at you and say you need to take a course in prescribing. They might censure you. There are a number of things that they can do in that situation, which they...and I have the privilege, I guess, independent of this position that I'm (inaudible), to sit on the Board of Health. So I get to review all of the decisions of the Board of Medicine that they make, I get to read them. And there have been situations like that where they're told, you know, you did the wrong thing. [LB1056]

SENATOR COASH: So is it your understanding that it is the threat of losing the licensure that requires bills of this nature to be brought? [LB1056]

DALE MICHELS: I'm not sure that that's it. I think the bigger thing for us is the ethical choices in terms of wanting to make sure the physicians have the training to help and to cure, to heal... [LB1056]

SENATOR COASH: I understand that. And I haven't heard from one physician that wants to do this, but I'm sure they're out there and I'm sure you could find one but... [LB1056]

DALE MICHELS: I have not looked, Senator Coash. [LB1056]

SENATOR COASH: Me neither. So, okay. Well, I appreciate your testimony. [LB1056]

SENATOR SEILER: Any further questions? Senator Williams. [LB1056]

SENATOR WILLIAMS: Thank you, Senator Seiler. And thank you, Dr. Michels. I think your testimony has been that you have been 42 years in the family practice, taking people from cradle to grave for many years. Can you describe so that I can understand it how end-of-life care, in

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particular hospice, has changed from when you started in practice and how it has progressed and how successful it is today. [LB1056]

DALE MICHELS: I think that the comments from one of the proponents about having watched this rather rigid, structured approach to pain control or to helping a patient has dramatically gone away. We now use the medicines we need in the doses we need to control the pain, to relieve the suffering, to help the patient calm down. If a patient can't swallow anymore, we have medicines we can use so that we actually dry up the secretion so you don't have to feel like everything is coming out of your mouth because it can't go down. So I think we have dramatic things, we have ways to work with patients. One of our goals is to begin working with patients earlier, not the last week and a half before they pass away, but to help them understand what options they have, that we can provide them comfort, that we can support their families throughout what's going to be a very difficult situation. But in terms of pain control, medications, therapies, things that we can do that will alleviate this, I think we've come a long, long way in those 42 years because when I started, yeah, the pain medicine was every four hours and you didn't deviate from that because that wasn't good. And now, you know, we may use it every one to two hours if we need to, to help the patients control their pain. Does that answer your question? [LB1056]

SENATOR WILLIAMS: Thank you. [LB1056]

SENATOR SEILER: Senator Chambers. [LB1056]

SENATOR CHAMBERS: Doctor, the federal government has said that for these pharmaceuticals to advertise their products on television they are required to list at the same time all of the possible negative side effects. That's the only reason they put it on there. They want to advertise their products... [LB1056]

DALE MICHELS: Sure. [LB1056]

SENATOR CHAMBERS: ...and they can't do it otherwise. And there are some of them which say these can result in death. [LB1056]

DALE MICHELS: Uh-huh. [LB1056]

SENATOR CHAMBERS: So a doctor, I don't know if you'd call it a mental reservation or what, will...and I wouldn't identify any or say that I even know any, but who will be aware that this is a medication which can kill and knows that the patient does not want to live. And the doctor could convince himself or herself that, as you said, it's being prescribed to help, not to kill. But if death

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results, that is one of the side effects that accompanies the drug under the best of circumstances. So I'm aware of people who have, if you're just going to be blunt with it, helped people carry out a wish that they had not to linger here. [LB1056]

DALE MICHELS: Uh-huh. [LB1056]

SENATOR CHAMBERS: And I was out of the room when the other gentleman testified about lethal injection. First of all, there is no examination of a specific condemned person. There's no concern about what it would take to kill that person. They have a rigid, prescribed in statute, they call it a cocktail, an amount that has to go in the saline solution, the flushing of these tubes to hope that nothing clogs it up. And the ones who are trying to find the vein don't know how to do that, and in some of these botched executions the drug has gone directly into the muscle. They've used the wrong drug, because they didn't know what they were doing. Where they procured the drug was from a supplier who provided something that doesn't kill but it does something else that is very devastating. So to compare what this bill talks about with the ad hoc random administering of these drugs by way of lethal injection wouldn't apply because there can be no injectables used. This requires the person to swallow it. So when comparisons are made between something that is not even contemplated, which would not be allowed under this bill, is to mislead the public. You didn't do that... [LB1056]

DALE MICHELS: Okay, thank you. I didn't think I had. [LB1056]

SENATOR CHAMBERS: ...but the other gentleman said it before. I had had to step out and I was going to make that comment. [LB1056]

DALE MICHELS: And, Senator, I agree with you that this does not talk about this. This requires oral and I understood that. I've read that and I understood it. And it does eliminate a number of people who might otherwise...that you've heard testimony this afternoon that wouldn't qualify according to the law as you've written. I think it's important to recognize that, again, from my experience, because that's really all I can talk about, that in my almost 42 years now, I've never had that experience where somebody has come to me. [LB1056]

SENATOR CHAMBERS: Would it shock you to know that there are doctors who, in Nebraska, have assisted people in procuring medication that the doctor knew was going to result in their death? Would that shock you? [LB1056]

DALE MICHELS: No. [LB1056]

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SENATOR CHAMBERS: Oh, okay, because I've heard of some who have done that. And I've heard that there are people who have...are in the last stages of cancer and they're given control of the amount of medication they'll receive. And it's known that they can give themselves a lethal dose. Are you aware of that? [LB1056]

DALE MICHELS: Generally speaking, I know what you're referring to, Senator Chambers. But generally speaking, those options where you self-administer a pain medicine also have what's called a lockout built into it so you can only go to a certain level. And they try to set that level below the level which would be lethal. [LB1056]

SENATOR CHAMBERS: And you do say they try, but are you aware that that's not always done in practice? [LB1056]

DALE MICHELS: No, I can't...I am not aware of it, but that's not to say... [LB1056]

SENATOR CHAMBERS: I know of a case where it happened... [LB1056]

DALE MICHELS: I can't... [LB1056]

SENATOR CHAMBERS: ...and it was known that it was going to happen and the family knew it was going to happen. And by everybody's agreement, it happened. And it was not deemed suicide, it was not deemed homicide. And the reason I'm saying it now, there's an unrealistic view of what happens in the field of medicine. I can understand the medical profession and not all medical societies in all states have taken the position of the one in Nebraska. I don't know if you're aware of that. But the...if all doctors frankly stated everything that they do then there would be an entirely different view of the type of medical treatment they're receiving. So in some cases it's not medical help they're receiving. They're receiving deceiving. And that shocks you, I'm sure, but it doesn't shock me. There are people who talk to me about things because they know that I'm realistic, I'm practical, and I'm not a snitch. If somebody needs this help and a person in a position to give it gives it and needs somebody to talk to about what was done, I'm like a father confessor in a way, except I cannot grant absolution. So I know right now there are things going and I know there are doctors who know how to prescribe and I know there are pharmacists who fill prescriptions knowing what they're going to be used for. I know this of my personal knowledge, but I won't identify anybody and I wouldn't say it just to make a point. It's too serious a matter. But remember at the beginning I said I know there are people who disagree and I will not condemn or criticize anybody, because in the same way that I can have my opinion, they're entitled to their opinion. I won't challenge it. I won't question it. I won't be judgmental. [LB1056]

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DALE MICHELS: Okay. [LB1056]

SENATOR SEILER: Any further questions? Thank you, Doctor. [LB1056]

DALE MICHELS: Thank you. [LB1056]

SENATOR SEILER: Further proponent...or opponent. [LB1056]

HELEN STANTON CHAPPLE: I'm an opponent. [LB1056]

SENATOR SEILER: Opponent. [LB1056]

HELEN STANTON CHAPPLE: You're on opponents, right? [LB1056]

SENATOR SEILER: Sorry. Yeah, we don't jump around. We stay with...consistent. [LB1056]

HELEN STANTON CHAPPLE: (Exhibit 7) You stay with the same thing. Okay. Thank you for listening to me today. I have some double vision, so if I'm closing one eye it's not because I'm winking at you. I'm just letting you know that. My name is Helen Stanton Chapple, and that's spelled C-h-a-p-p-l-e. I am an associate professor at the Center for Health Policy and Ethics at Creighton, but I am not speaking for the university. I am also a nurse ethicist and an anthropologist, have been a hospice nurse in the past. I've specialized in death and dying for more than 30 years. My book, No Place for Dying: Hospitals and the Ideology of Rescue, was published in 2010. I now facilitate Nebraska's statewide coalition called It's All About the Conversation, which is about advanced care planning. In Nebraska, about 15,500 people die every year. Most of them want to die at home but not many get to do that. Many other of their choices are compromised as well. We think it's a good idea for Nebraskans to talk about their goals of care as their circumstances change, but state mechanisms to respect those goals are not yet in place. For instance, persons outside the hospital, at home, or in long-term care can't feel for sure that their wishes to avoid resuscitation, for instance, will be respected. And that's because Nebraska is one of the only states in the United States without a standardized form for out-of-hospital DNR orders. There's also a surprising amount of confusion in the state regarding the tools for advanced care planning, such as living wills, proxy appointment, advance directives, DNR orders, POLST forms, and all of their purposes. The rural nature of our state also makes access to healthcare challenging for many citizens. That's not something that's new news to you. Nebraska is also unique in that its county attorneys--again, you all know this well--and sheriffs issue death certificates and make decisions about death investigations. They are not required to receive training for this work. This bill, in not acknowledging the actual cause of death, will

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make that work even more problematic and troubling, I am afraid. My concern is that so far the state has not stepped all the way up to its duty to protect and attend to the many needs of its most vulnerable citizens and residents: those who are approaching the end of their lives. This bill does not address those needs. Many of those folks facing the end of their life don't have access to the basics that this bill assumes are in place: a stable relationship with a trusted provider; medical coverage to see that provider; freedom from depression; and most of all, they aren't really expecting to get out of their dying because they haven't been able to exert much control over their circumstances of their lives so far. Dying patients are marginalized. They are even an invisible group, and they need our help. Hospice and palliative care is growing, but it's not universally available in Nebraska. Long-term care residents who need transport between facilities can't be assured that their expressed desires regarding resuscitation will be honored. Now in LB1056, the state gives itself the opportunity--forgive me for saying this--but to wash its hands of the responsibility of some of this cohort. [LB1056]

SENATOR SEILER: Ma'am, your red light is on. Can you wrap up? [LB1056]

HELEN STANTON CHAPPLE: Okay, certainly. I will just say that patients with advanced age or illness need real choices. They are: reassurance that their lives are valued by their communities regardless of their state of health; realistic, reliable communication from their providers regarding these choices; information regarding the treatment options and advanced planning that's available to them at every stage; and ready access to palliative care and hospice, regardless of where they live in Nebraska. [LB1056]

SENATOR SEILER: We have your testimony, written testimony, so we'll make that part of the record. [LB1056]

HELEN STANTON CHAPPLE: Yes, thank you. [LB1056]

SENATOR SEILER: Questions? [LB1056]

HELEN STANTON CHAPPLE: Yes. [LB1056]

SENATOR SEILER: Senator Chambers. [LB1056]

SENATOR CHAMBERS: Thank you for coming. Doctor, are you finding that there is coming a greater acceptance of the idea of this choice in dying throughout the country? [LB1056]

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HELEN STANTON CHAPPLE: I do see that because there are...state after state, as you've pointed out and others have pointed out, have endorsed it. [LB1056]

SENATOR CHAMBERS: And it is something that's not going to go away, would you agree with that, and it must be addressed? And the only way...well, I don't want to seem argumentative and you answered the question. But it is becoming more and more accepted. And I've gotten more calls... [LB1056]

HELEN STANTON CHAPPLE: It's being passed in more places. That's doesn't necessarily mean it's more and more accepted. But, yes, it is more in the public conversation, for sure. [LB1056]

SENATOR CHAMBERS: Right. Well, when they take polls, and maybe the polls don't count anywhere, but the polls that they take show always a greater acceptance than a rejection of the idea. I'm not a pollster. I don't know the methodology. But to the extent that polls are accepted for anything, I don't think they should be rejected here because they give a result that maybe we would hope is not to be the case. But again, it would probably make a lot of difference if some of the issues that you have raised would be addressed: making medical care that's needed available, let people feel confident that there will be adequate medical care. But we cannot even extend Medicaid to people who need it with the government's help. So there are... [LB1056]

HELEN STANTON CHAPPLE: And this is a problem. [LB1056]

SENATOR CHAMBERS: ...practical problems that stand in the way. But I'll still think that people like you, who can articulate what needs to be done, should continue to do that even if those in a position to see that it's done don't seem to be receptive. So I appreciate your position even though we disagree on this aspect of it. [LB1056]

HELEN STANTON CHAPPLE: Thank you. [LB1056]

SENATOR SEILER: Further questions? Thank you for your testimony. And I didn't see you wink once. [LB1056]

PETER MURPHY: Good evening. My name is Peter Murphy, M-u-r-p-h-y. I'm a physician in Omaha certified in pulmonary and critical care medicine and I care for a host of patients with severe, often extreme illness in the intensive care unit, as well as patients with various sorts of lung disease. I'm also the director of the Adult Cystic Fibrosis Care Program in Omaha, so I care for patients with a life-shortening, essentially terminal genetic disease whose average age of

death is around 30 years old. I work in the intensive care unit of a really busy university hospital. Many of our patients receive extremes of what medicine has to offer to sustain their lives. And despite this, a great many patients, as we all know, die from their illness. I personally attended the deaths of hundreds of patients who die, despite aggressive care, both from their disease and from their treatment. My work as a cystic fibrosis doc carries me out of the intensive care unit into the clinic, so I care for outpatients where I see the daily struggle in a longitudinal relationship that I have with those folks. As such, I would be in the position to be asked to prescribe in this circumstance. I've served as a physician for 24 years and in that time I've never seen nor have I cared for any patient experiencing what has been described as unbearable suffering that no treatment can relieve. I've never allowed any patient to die in agony. I've never received any feedback or complaint from family or friends indicating that their loved one died in a painful, undignified sort of way. I have not witnessed that with others caring for patients in my institution. I think most of the cases that we've heard about today relate more to inadequate care and don't represent the state of the art that's been...that was discussed previously in terms of the medications and techniques that are available now to allow people to have symptom relief. I think that the important thing about our care is the relationship that we have with our patients as physicians. They need to trust us. They need to know that I advocate for them, that I won't kill them. I've had patients ask me personally, and families ask me, would I continue to fight for them or am I interested in ending their life? Am I too expensive? I feel compelled always to voice my opinion that I will do nothing to bring about my patients' deaths and I see nothing but relief in the eyes of patients and families, loved ones in this regard. I fear that if we pass this bill, give an easy route, if it were to become commonplace then society may begin to view our patients as disposable and ultimately change the way healthcare workers view their patients, and that's an unacceptable circumstance. We need to be our patients' advocates always. [LB1056]

SENATOR SEILER: Any questions of the doctor? Senator Chambers. [LB1056]

SENATOR CHAMBERS: Doctor, I want to be sure I understand you. I heard you say you've never seen anybody suffering this excruciating pain. Is that to say that you don't believe people when they say they have excruciating pain? I've seen people in interviews where they talk about the pain. I've seen interviews where doctors have described the pain and family members. So are you saying those people delusional? [LB1056]

PETER MURPHY: I'm saying that I have not seen a person die in agony. I have seen many people die with us controlling their pain and their symptoms. I didn't say that I haven't seen people in pain. I've seen many people in pain. Yes, sir. [LB1056]

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SENATOR CHAMBERS: Are you saying that you've never seen it, which I can understand, but are you going farther and saying that never happens, that people don't die in agony say from cancer of any variety? [LB1056]

PETER MURPHY: I would submit that people shouldn't in this day and age. [LB1056]

SENATOR CHAMBERS: No, I'm not talking about shouldn't. I want to find out if you're saying that, in your medical judgment, people do not die in agony from diseases. [LB1056]

PETER MURPHY: Oh, I think we've seen plenty of cases here where people did not receive adequate care. I don't think the answer to that is to provide them a way to kill themselves. [LB1056]

SENATOR CHAMBERS: I still don't know your answer so I'm going to not press it. But I do believe people die in agony. I don't think... [LB1056]

PETER MURPHY: I absolutely... [LB1056]

SENATOR CHAMBERS: ...that family members... [LB1056]

PETER MURPHY: That's obviously true. [LB1056]

SENATOR CHAMBERS: I don't think family members who have contacted me have been lying. And people call me, believe it or not...I'm a politician. They call to ask do I know some way they can help their family member get relief. You know what I tell them? [LB1056]

PETER MURPHY: You're twisting my words, though. You're kind of twisting my words. I'm speaking about my personal experience. [LB1056]

SENATOR CHAMBERS: Well, that's why I want you to say...no, I accepted what you said about you. I kept asking you, are you saying that people do not die in agony from diseases? Is that what you're saying? [LB1056]

PETER MURPHY: No. [LB1056]

SENATOR CHAMBERS: Okay, then I didn't have any...I wouldn't have had questions. I thought that's what you were saying. [LB1056]

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PETER MURPHY: No, sir, I'm not. [LB1056]

SENATOR CHAMBERS: So, if that does happen, you wouldn't know how to deal with that because you'd never seen it. But there are other doctors and other people who have and their view is different from yours. [LB1056]

PETER MURPHY: It's possible that the teams that I work with in the University Medical Center are pretty good at dealing with it, not just me, but the palliative care consultants and the other people involved are just very good and won't allow it to happen. [LB1056]

SENATOR CHAMBERS: I wish that what you said were so and everybody's pain could be relieved. [LB1056]

PETER MURPHY: Amen. [LB1056]

SENATOR SEILER: Any further questions? Thank you, Doctor. Next opponent. [LB1056]

WAYNE COCKFIELD: (Exhibit 8) Thank you, Mr. Chairman, members of the committee. My name is Wayne Cockfield, W-a-y-n-e C-o-c-k-f-i-e-l-d. I'm a retired Marine sergeant who was wounded in the Vietnam War and 46 years ago I was given less than 24 hours to live. I'm here to oppose this bill. First, let me say that people have always had the right to refuse medical treatment. But there is a huge difference between refusing medical treatment and institutionalizing the killing of vulnerable and unwanted human beings. This bill uses deceptive, public relation terms in order to give a false sense of respectability to killing the unwanted. Giving someone poison is not aid in dying. It is doctor-prescribed suicide. It is killing them. End-of-life care is not about the end of life. It is, in reality, about ending a life. Suicide proponents say people should have the right to end their lives, that this country is about freedom and choosing when to die. But if this is freedom, is this a freedom? Why will all...almost all Nebraskans be prohibited from this freedom? What other freedom is only available to 5 percent of the citizens in Nebraska? Why is it only available to a small segment--the elderly, the disabled, the old, the ill? The answer is because it's not about freedom. It's about supposed quality of life and making death a medical choice for those who do not measure up. This bill claims to provide a dignified and humane death. Death with dignity is always at the heart of the doctor-prescribed suicide debate. The term "death with dignity" is a slur against disabled and devalued people. It is saying to people like me that my life has no dignity unless I'm dead. It is dangerous to disabled people when society at large begins to include therapeutic death as a treatment. It is the ultimate form of discrimination. Doctors and medical professionals are not value- or opinion-free. If I'm depressed and go to a doctor for a so-called humane and dignified death, I would receive suicide assistance because I am disabled. Many doctors themselves have

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fear of disability. They would look at me and say, of course, of course you want suicide. Why would...who would want to be like you? I would not want to live like you. Therefore, you should not want to live. Let me help you. Here, take this poison. This is not compassion. This is medical abandonment, and medical abandonment is not compassion. Moreover, the definition of terminal has different meanings. This bill does not define whether terminal means treatment being provided or terminal means treatment not being provided. A person could live many years with treatment and still be classified as terminal under modern definitions. A Nebraska bill that transforms doctors into suicide enablers is not about end-of-life care. It's about killing the unwanted. Doctor-prescribed suicide is the final solution for people with disabilities. People like me know that we are the target. What we don't want is to be the victims. I'm asking you to oppose this bill. Thank you. [LB1056]

SENATOR SEILER: Sergeant, I would recognize that voice anywhere. (Laughter) Thank you for your service. [LB1056]

WAYNE COCKFIELD: Thank you. [LB1056]

SENATOR SEILER: Questions? Thank you very much. [LB1056]

WAYNE COCKFIELD: Thank you very much. [LB1056]

SENATOR SEILER: Sergeant, would you want your attachment made part of the record? [LB1056]

WAYNE COCKFIELD: Yes, sir. [LB1056]

SENATOR SEILER: Okay. Thank you. [LB1056]

MICHAEL CHITTENDEN: (Exhibit 9) Good afternoon, Senator Seiler, Senators on the Judiciary Committee. My name is Michael Chittenden, M-i-c-h-a-e-l C-h-i-t-t-e-n-d-e-n. I'm the executive director for The Arc of Nebraska. Today I'm handing you written testimony that mirrors the policy statement of The Arc of the U.S., which is also attached. We're here to testify today in opposition to LB1056. While the proposed law may state that disability is not a reason to consider physician-assisted suicide or death with dignity or whatever you would like to call it, there are still many major problems that exist for people with intellectual and developmental disability. There's a long and documented history of people with I/DD being denied basic human rights and medical care. There's a long and documented history of our constituents being unduly influenced by authority figures such as doctors, healthcare workers, social workers, families,

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guardians and conservators, friends. And all of this is resulting in a lack of true informed consent. Finally, society often incorrectly perceives that people with intellectual and developmental disabilities, by definition, have a poor quality of life. Historically, medical professionals have even often suggested euthanasia as a treatment for I/DD. And that is historically; I'm not saying that currently happens. So while we can legislate safeguards, Senators, we cannot legislate prejudices. And our issue would be that we would be afraid that there would be doctor shopping and undue coercion no matter how many safeguards you put in place. And the unfortunate fact is once death occurs, you can't take it back. That's it. I would answer any questions you'd have for me. [LB1056]

SENATOR SEILER: Mr. Chittenden, would like your...The Arc position statement made part of the record? [LB1056]

MICHAEL CHITTENDEN: Yes, I would, please. [LB1056]

SENATOR SEILER: Okay. It will be. Any questions? [LB1056]

SENATOR CHAMBERS: I haven't had a chance to read your entire statement, but at the bottom it talked about a woman who was depressed, I think, who received assistance, as you said, in suicide. Is there... [LB1056]

MICHAEL CHITTENDEN: Yes, in Oregon. [LB1056]

SENATOR CHAMBERS: Did you mention a case like that? And I'm not arguing, but did you mention a case like that? Well, that woman, if she had known it, could have drunk antifreeze, couldn't she, and died? [LB1056]

MICHAEL CHITTENDEN: Sure, she could have. [LB1056]

SENATOR CHAMBERS: Or she could find products in her own house and do it. You can drink lye if you choose to. [LB1056]

MICHAEL CHITTENDEN: This is true. [LB1056]

SENATOR CHAMBERS: So there are ways that a person can take or end his or her life. And this is something that, again, I acknowledged in the beginning. People can characterize any way they choose. But because of the way I view my responsibility, I'm not going to look away from

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an issue that is becoming more and more accepted and it is not affecting primarily people with disability, not necessarily primarily the aged, but it is affecting people who are in great agony. And I would advise some doctors who don't think that to read the literature written by doctors where they describe the pain, the attempts to alleviate that pain, even surgery that's attempted which cannot do it. Psychological examinations, the attempt to find out whether a person is imagining it, and they like to give the example if you cut off a limb you still feel that phantom limb. And they use all of these things. So anybody who is not interested in this is not going to have to do it. It's not mandatory. But as long as I'm in the Legislature and should I be reelected, which I think I will be but we never... [LB1056]

MICHAEL CHITTENDEN: I concur. You don't know, but I... [LB1056]

SENATOR CHAMBERS: ...know what people will do,... [LB1056]

MICHAEL CHITTENDEN: ...would think you would be. [LB1056]

SENATOR CHAMBERS: ...I'm going to spend four years that I have here trying to get this legislation enacted into law. And I say again, whatever it makes me, that's what I'm going to be. It presents a choice to people who want to take it. For myself personally, the thing that would make me inclined to do something like this is if I lost control of my bodily functions and I saw myself literally wasting away, then maybe I would. But because the way I view things, if there's enough of me left to support my brain and there's somebody who will translate on to paper what I'm thinking, I'll stay here as long as my brain is functioning. But I will not say that everybody has to do as I do. I don't drink; other people do. I don't smoke; other people do. I don't do drugs; other people do. I don't chase women or men; some people do both. [LB1056]

MICHAEL CHITTENDEN: Good for you. (Laugh) [LB1056]

SENATOR CHAMBERS: But I don't do those things. I don't go to church. I don't belong to a political party. I don't join organizations. I don't go to any social functions. I don't go to any of the dinners and things that they provide for senators. So I don't try to impose what I think on other people. Even though I offered a resolution that said they shouldn't be mooching and sponging, that's not binding. Here's the point I'm trying to get through with all of that. Some people will take their situation and view the entire world through it and see everything based on that. But since we know how human beings think and how they can feel, that is a part of the world in which we live and those people should be accommodated to the extent that they can. But they certainly should be allowed to expressed their view. And that's why I wanted to bring this and I'm going to keep bringing it and I'm going to keep bringing it and I'm going to keep bringing it. And contrary to what people might hope, there is increasing acceptance of the idea

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and the polls are showing that more and more Americans are accepting this idea. And as far as these baby boomers, they seem to be the ones who are really starting to embrace it. And maybe people will say that's because they're not being taught enough about self-respect, self-love, or any of these things that might make them feel that life is worth living. I don't have the magic to do that. So if they think life is not worth living for them, I'm not going to stop them from doing with their life what they choose to do with it because I cannot make their life what they would like it to be. And since you represent an organization and you feel that something is a threat to the people you serve, you have no choice other than to do what you're doing. And that's why I said at the beginning I'm not judging anybody. I'm not criticizing anybody. And I know that it's an uphill struggle, but I'm going to help those people who need this help to struggle up that hill. And I feel no guilt. I feel no conscience "smittiness" from what I'm doing. [LB1056]

MICHAEL CHITTENDEN: We understand your concern, Senator. We appreciate you and we hope you have a long and happy life. And we only come here to testify on behalf of the IDD population. [LB1056]

SENATOR CHAMBERS: And I think you know that if there's anything I can do to work with you and your organization and what you're doing, you know that I'll be there also. [LB1056]

MICHAEL CHITTENDEN: You have been a long-time friend, sir, and we appreciate all your support and help,... [LB1056]

SENATOR CHAMBERS: Okay. Okay. [LB1056]

MICHAEL CHITTENDEN: ...as have most of the senators here, so... [LB1056]

SENATOR CHAMBERS: Just so you won't think by me bringing this I'm deserting you and the work that we all believe in doing. [LB1056]

MICHAEL CHITTENDEN: Yeah. Nope, we don't feel that way at all, sir. [LB1056]

SENATOR CHAMBERS: Okay. [LB1056]

SENATOR SEILER: Further questions? Thank you very much. [LB1056]

MICHAEL CHITTENDEN: Thank you very much for your time, Senators. Have a great day. [LB1056]

SENATOR SEILER: Next opponent. [LB1056]

MARK WILES: Chairman Seiler and members of Judiciary Committee, my name is Mark Wiles, that's spelled M-a-r-k W-i-l-e-s, and I'm here testifying today on behalf of the Nebraska Medical Association and also myself in opposition to LB1056. As a family physician, board certified also in hospice and palliative medicine, I have had the humble privilege of walking through the final chapter of life with nearly a thousand patients, spanning nearly ten years as a medical provider at the bedside. While serving the geriatric population of Nebraska as a palliative care physician in the Omaha metro area, I work every day as a physician assisting patients and families as they struggle with difficult decisions at the end of life. We are blessed in this great state to have a number of men and women of integrity and compassion, armed with the art and science of medicine, caring for those suffering outside these walls today and every day. Today I'd like to focus my limited time and testimony on the valuable lessons learned during this last chapter of life well lived. Sandy (phonetic) was a 65-year-old woman diagnosed with metastatic ovarian cancer. She and her husband had relocated from Oregon years prior with no local family. Early in the treatment of her disease, the cancer made it clear that this was an aggressive process that would not be held back. The oncologist came to the end of what the cure-oriented plan of care could provide, and we began deeper discussions, formulating a palliative, symptom-based plan of care together. Sandy made it clear early on that she was a card-carrying member of the Hemlock Society, a national organization now renamed Compassion and Choices, committed to the so-called right-to-die movement. Sandy and I continued to remain focused on maximizing the quality and value of her life remaining, particularly as it related to the love she and her husband had for each other. As the cancer did its work, we also aggressively responded with palliative symptom-based treatment focused on the relief of pain, nausea, vomiting, constipation, low energy, shortness of breath, and decreased appetite. We also focused on exploring her psychosocial and spiritual needs, engaging in life review and openly discussing her fears and grief. Two months in, after weekly visits at the office and a few home visits, Sandy asked me the question: Will you help me die? Her husband sat holding her hand with tears in his eyes. I answered with a question: Why would you ask me that question? She answered, because I want to be in control of my time remaining and to spare my husband the burden of caring for me. I probed further, I can understand you wanting to be in control and wanting to limit your husband's sadness. I asked her husband if he felt the burden of care. And of course he answered, no, she could never be a burden. She decided instead to elect her hospice Medicare benefit, and over the next two months, with the help of hospice, opened doors to new blessings of care and giving and receiving. She was provided with the opportunity to control her elements of her care and make multiple choices regarding the direction of her treatment consistent with her goals of care. Those precious two months brought about spiritual and emotional wellness for Sandy, a time filled with freedom from guilt and regret, with a healing of past relationships that would not have been possible if her life had not been fully lived. Ladies and gentlemen, I believe we are equipped as medical providers more than ever before to meet the challenge of caring for

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individuals near the end of life with integrity and compassion, lending support to patients and families as we redefine hope, a hope that now may include a meaningful, pain-free, natural, dying process,... [LB1056]

SENATOR SEILER: Doctor, your red light is on. [LB1056]

MARK WILES: ...fully honoring the autonomy and personhood of the individual. Thank you. [LB1056]

SENATOR SEILER: Further questions? Senator Williams. [LB1056]

SENATOR WILLIAMS: Yes, thank you, Senator Seiler. Were there any final comments that you wanted to make that you didn't finish? [LB1056]

MARK WILES: No, sir. [LB1056]

SENATOR WILLIAMS: Thank you. [LB1056]

MARK WILES: I appreciate you comments earlier in regards to the advancement of palliative medicine and hospice. I think we are in a different time, in a different age, in a different decade, so equipped with good evidence-based material to be able to truly expand this specialty area of medicine that we just haven't had the luxury of before. [LB1056]

SENATOR WILLIAMS: Thank you. [LB1056]

SENATOR SEILER: Further questions? Senator Chambers. [LB1056]

SENATOR CHAMBERS: Doctor, did you say you're an oncologist? [LB1056]

MARK WILES: No, sir. I'm a family physician, also a palliative medicine specialist. [LB1056]

SENATOR CHAMBERS: I'm sorry. I misunderstood. Are you one of those doctors who's never seen anybody in great agony from a disease? [LB1056]

MARK WILES: Sir, I will say...I'll echo the remarks that Dr. Murphy made, which is certainly there are examples are suboptimal care that patients have received that I've been witness to. I

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would like to think that during my time and the patients that I've cared for at the bedside, that there not...there have not been individuals who have suffered unnecessarily. [LB1056]

SENATOR CHAMBERS: Are there people who do, though? And you say "unnecessarily," but nevertheless I'm talking the fact of it. Is it a fact that people don't die in agony in this country from diseases when they're receiving medical care, either by a physician or at a hospital? So if I went through a cancer ward, I wouldn't see anybody who's in agony. In other words, cancer is not a painful disease. Is that the status of the medical profession now? [LB1056]

MARK WILES: Certainly not. Cancer is a...can be a painful disease. Our ability to control it and aggressively treat it back... [LB1056]

SENATOR CHAMBERS: When you say control it, you don't mean you can alleviate the pain. You mean you might can make it less unbearable. See I've known people who have cancer. I had a brother-in-law. And I went out to California to give a speech. And there were some people who knew him and they wanted me to bring his wheelchair, a wheelchair back to Omaha for him. And I did it. In those days you could check a wheelchair on a plane just like you do baggage. They put it wherever they put it and it was...I could pick it up when I got to Omaha. He didn't want it. He said he was hurting so much he didn't want that wheelchair because it would remind him. And there were people who were willing to take up some money and send him to the Mayo Clinic. He said he did not want to go. He didn't talk about somebody helping him die. He was going to let that kill him as soon as it could because he couldn't stand it anymore. So what I have seen with my own eyes doctors have not apparently. And I'll say again, people bring me things that I shouldn't have to deal with. I'm not a doctor. I'm not a psychiatrist. I'm not trained in that. They bring things to me they won't take to a priest. And you can believe it or not believe it. But I know what I've seen. I know what people have told me and I don't believe that they're lying. And doctors may believe it. Maybe they have a notion that they want to believe about the status of medicine. But because of what I have see, what people have told me, what I have read, interviews that I've seen on television, something like this ought to be in the law and it ought to be available. And somebody cannot just go tell a doctor, I want this done, and it will be done. There are some physicians who are reluctant because of the amount of documentation they have to give because of something like this. And it often takes weeks, once a person decides to do this, to reach the point where it can be done. It's not where somebody says this morning I want to do this, and they say, yes, I want to do it, and sign a piece of paper and it's done. It's not that quick. And for people to say that, it's clear they don't understand this process. They don't understand how it has worked in states where they have the laws. And it would be good if they did that and got some empirical information rather than these anecdotes that they hear. And if I wasn't convinced of the things that I'm saying, I wouldn't bring the bill. But that's to indicate, once again, that I'm glad there are physicians who follow their mind, they're best judgment, and give their patients the best treatment they can. And because somebody says life is not worth living,

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you don't accept that. You try to show them that, whatever your situation, life may be worth living if you take a different view of it. All of these things, all of them of are valuable. You don't know what's going to work with anybody. And I don't think a doctor should give up on anybody. But I'm not in a position. I don't have the luxury of doctors, preachers, and those who live in a world where I wish it were not necessary. I have a conscience, if you want to call it that, that lashes me mercilessly. And when I believe something needs to be done, I will do it. I don't care how much discomfort it causes me, because for me, my life consists in more than just what I personally would like to do. I'd rather not be in this Legislature if the truth be known. So again, I'm emphasizing, I'm not critical. I'm not condemning. And I think if there was more of an attitude in this society of encouraging people to believe in themselves, not magic, but in themselves and how much they can do with their mind if they work to get in that frame of mind and then get help from those who can take them further. But no matter how much you want to help somebody, if they don't believe mentally that they can be helped, then it's like talking to a wall. So if there was some way the medical profession, including psychiatrists who are doctors, and psychologists, healthcare providers, would practice what they preach and not just use empty words and be out there showing people what they really believe, it would make a difference. But are you aware that they have to teach people who were taking medicine how to be human when they're dealing with a patient, how to talk to people like human beings, how to not let them think that the doctor doesn't care, and how to appear to care even if you don't? That may shock you, but they...now I'm going by what I read and I read medical journals, not that I'm a doctor or anything. But these are things they're talking about that they teach in medical school now and they call in nondoctors to help teach their would-be doctors how to treat people like human beings and to treat people the way they'd like to be treated if they were ill. So not all is well with the world. But I will be back with this bill again and again and again and yet again because I have four more years, if I don't die or the world doesn't end before that. We may meet again on this very bill. But I bet you'll be on my side by then. [LB1056]

SENATOR SEILER: Any further questions? Thank you, Doctor. Next opponent. Go ahead, Doctor. [LB1056]

LLOYD A. PIERRE: Chairman Seiler and members of the Judiciary Committee, my name is Lloyd A. Pierre, Jr.; that's spelled P-i-e-r-r-e. I speak in opposition to LB1056. I'm a family medicine physician and the medical director of a hospice care center in Omaha, Nebraska. I, along with wonderful nurses and other staff, provide medical care to 20 to 40 patients daily who are faced with terminal illnesses. I deal daily with patients who have illnesses that are associated with increased pain and stress and depression. There are countless stories of people who at one point in their lives felt that they would rather be dead than alive, yet, after care to address their depression and their anxiety and their pain, were able to recover from an illness and go on to live long, healthy lives. These patients would argue with you that if they had known better or more or were more aware of what was available for care, they would never have considered ending their

own lives prematurely. We need to respect the inherent dignity of people's lives and offer them the palliative care that they deserve and are entitled to. First, do no harm. As doctors, we take an oath to, first, do no harm. It is antithetical to the medical care profession to terminate someone's life prematurely. When there is life-saving care available and palliative care available that is anxiety-free and depression-free and pain-free that allows someone to transition to their next life with their inherent dignity intact, we're expected to do that. Even the American Medical Association...and I know that you might argue that physician-assisted suicide is not what you're talking about here, but in essence it is because, in fact, that's what we would end up doing. They even say, physician-assisted suicide occurs when a physician facilitates a patient's death by providing the necessary means and/or information to enable the patient to perform life-ending act. The physician provides sleeping pills and information about the lethal dose or something similar while aware that the patient may commit suicide. It is understandable, though tragic, as we've talked about here several times, that some patients in extreme duress, such as those suffering from a terminal, painful, debilitating illness, may come to decide that death is preferable to life. However, allowing physicians to participate in assisted suicide would cause more harm than good. Physician-assisted suicide is fundamentally incompatible with the physician's role as a healer, would be difficult or impossible to control, and would pose serious societal risks. Instead of participating in physician-assisted suicide, physicians must aggressively respond to the needs of patients at the end of life. Patients should not abandon...should not be abandoned once it is determined that care is possible. Multidisciplinary interventions should be sought, including specialty consultation, hospice care, pastoral support, etcetera, and other modalities. Patients near the end of life must continue to receive emotional support, comfort care, adequate pain control, respect for patient autonomy, and good communication. That's from the AMA. One year ago, Mrs. A lost her husband and wondered why she was forced to continue living. As she grieved her husband's passing, she was very distraught and made it clear that she would rather die than continue living. Today, one year later, after experiencing new grandchildren, another Thanksgiving, another Christmas, wonders what would have been like for her family not to share their lives with her. If she had prematurely taken her life over the last year, she would not have been able to even prepare herself for the next life. You asked about my own personal feelings. Well, my mother is an 83-year-old wonderful Hispanic lady who unfortunately suffered a fall last year with a fracture of her C1, C2, and C3 vertebrae in her neck. This left her a quadriplegic. She could not breathe on her own and, therefore, had to be intubated. Her first surgeon... [LB1056]

SENATOR SEILER: Doctor, Doctor,... [LB1056]

LLOYD A. PIERRE: I've got 30 minutes... [LB1056]

SENATOR SEILER: ...your red light is on. [LB1056]

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LLOYD A. PIERRE: ...30 seconds here. [LB1056]

SENATOR EBKE: Can he go ahead and finish? He said 30 seconds, so. [LB1056]

SENATOR SEILER: Okay. [LB1056]

LLOYD A. PIERRE: Her first surgeon suggested that we consider her quality of life and wanted us to consider taking her breathing tube out and let her die prematurely. After a restorative surgical procedure by another, more-caring surgeon, she is now living painlessly and convalescing in Madonna Rehab Center right here in Lincoln, Nebraska. I enjoy many Saturday afternoons watching old movies with her, as I did as a seven-year-old boy growing up in Puerto Rico. Now she sits with her son, who, by the way, is sitting here fighting non-Hodgkin's lymphoma. And will I look forward to palliative care when my time comes? Probably. I'm not going to take my life early. Let's not cut off the leg...I'll skip that. As you consider having someone in the medical profession other than doctors assist someone in killing themselves prematurely, we must consider those unintended consequences of enacting a law that would give someone who has less expertise in the awesome position to take away somebody's life prematurely. Even a bill that places so many safeguards in its implementation into an act does not justify having a medical professional complicit in ending someone's life prematurely. Do not let the fear of the unknown drive patients and medical care providers into rash, premature death sentences and the decisions, versus allowing a compassionate palliative care plan that respects the dignity of someone's life. Stop and think for now. And I agree, you can set aside religion, politics, and other paradigms, readjust the problem, consider a better solution in a bill that enhances palliative care. We should help patients transition painlessly and stress-free into the next life in a natural dignified death. Thanks for listening. [LB1056]

SENATOR SEILER: Questions? [LB1056]

SENATOR CHAMBERS: Doctor, this bill sets up rigid criteria. And if a person had a severe injury but was not within six months of death...and doctors make those predictions all the time and there's a medical term for it--within reasonable medical certainty. And they tell people how long they think they have to live, so that's not strange. Doctors do it. [LB1056]

LLOYD A. PIERRE: All the time. [LB1056]

SENATOR CHAMBERS: The profession came up with it. So if somebody had a serious injury, that would not qualify them for this. Even for the gentleman in the wheelchair, he wouldn't qualify for what this bill does. [LB1056]

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LLOYD A. PIERRE: Uh-huh. [LB1056]

SENATOR CHAMBERS: They have determined, by medical means, relatively brief period to live. Then there are numerous steps which must be taken. This is not where you just say somebody wants to die. And in fact, if they're found to have a psychological problem, that would not...that would disqualify them because they're not in a position to make a competent, medical decision. I think people have not read this bill. And when I say read it, I don't mean just let your eyes pass over the words and you see the words. When I say read it, I mean with understanding and comprehension, and reading it twice won't do that. It needs to be studied. But here's the point I'm getting to. When I hear the examples of people who wanted to die and subsequently their life became more liveable because of changed circumstances, this bill wouldn't work for them anyway. They couldn't make use of it. And if a doctor did anything contrary to what this bill says, the doctor would be prosecuted criminally. So this is not just where it says if you want to go, go find a doctor who will do it. And a doctor cannot be compelled to do it. Nobody can be compelled. And I'm not so arrogant that I would say you cannot die if you want to die. But there are people who are, and they can have that opinion. But for me, this is what I must do and I will continue doing it. And I think there should continue to be hospice care. And in fact, before one of these patients can be deemed to have acted with informed judgment, all of the alternatives to this must be discussed with the patient and there must be documentation. Now if people are going to take the opinion that all these doctors who would say that they went through these steps is a liar, then they're talking more about the kind of people who are in the profession than they are this bill. But if you accord to people the presumption that if they're in an honorable profession they're going to tell the truth, they respect their profession, they have a degree of self-respect, then they're not going to write down a lot of lies just to help somebody check out of here because they want to. So I wish some of the people who criticize the bill would read it with more understanding. [LB1056]

LLOYD A. PIERRE: May I answer that? [LB1056]

SENATOR CHAMBERS: Sure. [LB1056]

LLOYD A. PIERRE: You know, Senator, I think it would be great if you would come out and hang out with us in hospice care, palliative care, and others... [LB1056]

SENATOR CHAMBERS: My sister was in hospice, my favorite young sister. [LB1056]

LLOYD A. PIERRE: Well, but you need to be there. You kind of need to be there. You've got to be there with these patients and see what we experience and what we see daily. This is not something that we do 8:00, 9:00 to 5:00. We do this 24 hours a day. We have patients that can

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tell you some of the things that you've said. We have many patients that can tell you just the opposite. So some of the stuff you said, I agree with. Some of the stuff you said, disagree with because... [LB1056]

SENATOR CHAMBERS: Right. [LB1056]

LLOYD A. PIERRE: ...the reality, the reality is different. And you notice that Mrs. A was a year ago. She's now...she's beyond her six-month prognosis. Now isn't that interesting? I can tell you we're not perfect. Medical care is an art. It is not a perfect science. [LB1056]

SENATOR CHAMBERS: Right. [LB1056]

LLOYD A. PIERRE: So expecting that and thus jumping to an assisted--sorry, what is it?--end-of-life care bill is not the solution. The solution is to look at palliative care more closely. Several of us have said that... [LB1056]

SENATOR CHAMBERS: Not to interrupt, but... [LB1056]

LLOYD A. PIERRE: ...and I'm recommending that strongly because that's the kind of...that's where we need to get. [LB1056]

SENATOR CHAMBERS: ...when I was speaking...when I was speaking, I mentioned there are people who request the prescription, they get it, and never use it. So I know they'll change their mind. But they're given the option. You all don't want them to have the option and that's where we differ. [LB1056]

LLOYD A. PIERRE: I disagree with you. We do want them to have an option to examine palliative care more closely before they make that...any other decisions because right now... [LB1056]

SENATOR CHAMBERS: Then you think they should be allowed to make it? [LB1056]

LLOYD A. PIERRE: They can make their decision, but why would you bring the medical profession into that? [LB1056]

SENATOR CHAMBERS: Then you're not absolutely opposed to this bill. [LB1056]

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LLOYD A. PIERRE: No, actually because you bring a medical professional into it and you're taking me away from my primary duty: first, do no harm. [LB1056]

SENATOR CHAMBERS: Well, there are doctors who disagree with you on what that means. [LB1056]

LLOYD A. PIERRE: And they're wrong. [LB1056]

SENATOR CHAMBERS: And they think you're wrong, so we're right where we are with reference to any controversial issue. [LB1056]

LLOYD A. PIERRE: And that's why we leave it up for people to vote for, don't we? [LB1056]

SENATOR CHAMBERS: And I think that's why it's good to have this forum where people can express their views, pro and con. [LB1056]

LLOYD A. PIERRE: Right. And since you don't drink, we ought to go out and have a glass of milk and we can talk about this even more because you need to... [LB1056]

SENATOR CHAMBERS: I didn't understand you. [LB1056]

LLOYD A. PIERRE: It would be great. [LB1056]

SENATOR CHAMBERS: Say it again. [LB1056]

LLOYD A. PIERRE: Since you say you don't drink, I'm assuming that meant alcohol. You don't alcohol? Is that true? [LB1056]

SENATOR CHAMBERS: I still didn't understand. What...? [LB1056]

LLOYD A. PIERRE: You had said earlier that you don't drink. [LB1056]

SENATOR CHAMBERS: ...you asked, am I going across the hall? [LB1056]

LLOYD A. PIERRE: No, I thought you said you don't drink alcohol. I heard you say... [LB1056]

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SENATOR CHAMBERS: Oh, right. Right, I don't. [LB1056]

LLOYD A. PIERRE: Yeah, so we should go out for a drink and not a drink of alcohol. We could go out and have a drink of milk and we could talk about this even in more detail. [LB1056]

SENATOR CHAMBERS: I don't let anybody buy me anything. (Laughter) Seriously. I don't go to dinner with people. I don't go to lunch with them. [LB1056]

LLOYD A. PIERRE: Really? That's fine. [LB1056]

SENATOR CHAMBERS: I'll buy you lunch, but you couldn't buy me lunch. [LB1056]

LLOYD A. PIERRE: That's fine. I'll take you up on that offer. [LB1056]

SENATOR CHAMBERS: Someday we will. [LB1056]

LLOYD A. PIERRE: That's right. [LB1056]

SENATOR CHAMBERS: But remember, as I'm telling you, it was my favorite. She was my youngest sister. And there was so much difference between her age and mine that when I took her to Creighton Law School, because that's where I was going, they thought she was my daughter. And she was light skinned so they thought I had had my daughter with a white woman. But first of all, she wasn't my daughter. And her mother was not white. But there are a lot of things that happen in this world that give us experiences that differ. And also, the son of my favorite daughter was brutally murdered. And when that happened, there were people in this Legislature--not these who are here now because it was some years ago--they came to me gloating saying, what do you feel about the death penalty now? I said the same way I felt before this happened. I don't think that the state should kill anybody regardless of who the perpetrator is, the victim, or the method. So I might look at life a little differently from most of the people that you're accustomed to dealing with. [LB1056]

LLOYD A. PIERRE: But we feel like doctors shouldn't kill people either. [LB1056]

SENATOR CHAMBERS: Say it again. [LB1056]

LLOYD A. PIERRE: We feel that doctors should not kill people prematurely either. [LB1056]

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SENATOR CHAMBERS: You don't talk very loud. [LB1056]

LLOYD A. PIERRE: We feel that doctors shouldn't kill people either. Like you said, the... [LB1056]

SENATOR CHAMBERS: And the doctor doesn't do it. [LB1056]

LLOYD A. PIERRE: ...the state shouldn't kill anybody. Well, we feel that doctors shouldn't do that. [LB1056]

SENATOR CHAMBERS: The doctor doesn't do it. If the person cannot self-administer then it won't be done. [LB1056]

LLOYD A. PIERRE: You're assisting in that death. Senator, you're assisting in that death. Regardless of how you want to state it, you're still assisting in that death. [LB1056]

SENATOR CHAMBERS: That's what (inaudible). [LB1056]

LLOYD A. PIERRE: It's indirectly, but you're assisting in that. You can't mince words here. That's what so important. You're still assisting in that death by giving a prescription. So I'm still complicit in that person's death. [LB1056]

SENATOR CHAMBERS: So if you make a prescription and it's one of those medications where a side effect or it's counter indicated and the person dies, then you assisted in that death. And you can say it wasn't intentional,... [LB1056]

LLOYD A. PIERRE: But I...and I...it was not intentional. That's a fact. [LB1056]

SENATOR CHAMBERS: ...but the outcome is the same. [LB1056]

LLOYD A. PIERRE: There's a difference. There's an obvious difference there. [LB1056]

SENATOR CHAMBERS: The outcome...the outcome is the same. [LB1056]

LLOYD A. PIERRE: But there's a difference. The means do not justify...the end does not justify the means, Senator. [LB1056]

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SENATOR CHAMBERS: I (inaudible) agree with you. [LB1056]

SENATOR SEILER: Wait a minute, wait a minute. Any further questions? Thank you, Doctor. [LB1056]

LLOYD A. PIERRE: God bless you. [LB1056]

SENATOR SEILER: Next proponent...opponent. [LB1056]

JULIE SCHMIT-ALBIN: (Exhibit 10) Good afternoon. To echo what the doctor from Creighton said a little while ago, I am also not winking at you. I just happen to have...I'm blind in one eye, so oftentimes people think I'm winking. Mr. Chairman and members of the committee, my name is Julie Schmit-Albin, J-u-l-i-e S-c-h-m-i-t-hyphen-A-l-b-i-n, and I'm executive director of Nebraska Right to Life, the state affiliate to the National Right to Life Committee. We want to go on record in opposition to LB1056. Our mission has long included opposition to the right-to-die movement and efforts to strip protection for those who are at risk of being killed because of medical vulnerability, age, or disability. And I do have, because the hour is late, I do have an attachment here from the Disability Rights Education and Defense Fund that counters what the representative from Compassion and Choices said. It regards abuses in Oregon and Washington. [LB1056]

SENATOR SEILER: We can make that part of the record. [LB1056]

JULIE SCHMIT-ALBIN: Yes, please. [LB1056]

SENATOR SEILER: Any questions? Thank you very much for your testimony. [LB1056]

JULIE SCHMIT-ALBIN: Thank you. [LB1056]

SENATOR SEILER: How many more witnesses do we have? One, two, okay. [LB1056]

SENATOR COASH: Come on up. [LB1056]

CULLEN HEROUT: (Exhibit 11) Good afternoon, Senator Seiler, members of the committee. My name is Cullen Herout; that's C-u-l-l-e-n H-e-r-o-u-t. I'm a licensed mental health practitioner here in the state of Nebraska here to stand in opposition to LB1056, the Patient Choice at End of Life Act. I want to make three brief points about this bill. Number one, when

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you allow suicide in one population or demographic of people, you give implicit acceptance to the practice. The message is this: Suicide is okay. If you are suffering, go ahead and end it. But terminally ill people are not the only ones who receive this message. People with mental illness also receive the message, and to be sure, it is a message that kills hope. And as anybody who works in the mental health field will confirm, hope is an essential element of recovery and as well as forbearing any illness. As a person who works with suicidal clients each and every week, I can assure you that the victims of this bill will be people with mental illness. If the practice becomes more widespread, fewer and fewer people will find it appealing to search for hope. We saw this happen in Oregon. After physician-assisted suicide was legalized in 1994, the suicide rate spiked across the board. If we allow it in one population, we accept it in others. Number two, the bill does not prohibit assisted suicide for persons with mental illness. The safeguards set in place are meant only to ensure the person with mental illness is of sound mind at the time they request the prescription, not that they are actually free of mental illness. It also does not require that they be of sound mind when consuming the prescription. But as most of us would acknowledge, the instinct to preserve our lives is among the most basic instincts we are endowed with. The very fact that someone is desiring to end his or her life is an indication that the same person is, in fact, suffering from some sort of psychological distress. While one can try to make a claim that a person could make the choice absent any psychological turmoil that would affect decision making, this is clearly not true. Suicidal thoughts are so disordered that they are included in the criteria set for major depressive disorder. When someone wants to die, there is psychological distress that is affecting decision making. The very fact that they would choose death indicates that they are not capable of making sound decisions. It does a disservice to patients, to clients to ignore this element of the process and allow them to terminate their lives when the desire to make this choice is an obvious indication of psychological distress. Number three, in conclusion, as a mental health practitioner, I can tell you that the mental health field will be compromised by this bill. When some in the field are encouraging their clients to choose life and others are advocating their right to choose death, we will have achieved, if you will, a schizophrenia that is both ominous and embarrassing. The role of the mental health professional is to help clients achieve a better life, not a better death. When we have chosen to advocate for the latter, we choose to ignore the helping, healing element of our profession in order to fit an agenda in which the objective is absolute personal autonomy and the right to die. While personal autonomy is good in theory, it obviously has its limitations and the good of the mental health profession ought not to be sacrificed for it. Thank you for your time. [LB1056]

SENATOR SEILER: Questions? Thank you very much for your testimony. Next opponent.
[LB1056]

GREG SCHLEPPENBACH: Good evening, Senators and members of the committee. My name is Greg Schleppebach, S-c-h-l-e-p-p-e-n-b-a-c-h, executive director of the Nebraska Catholic Conference representing the mutual interests and concerns of the Catholic Bishops of Nebraska.

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The conference strongly urges you to indefinitely postpone LB1056. To live in a manner worthy of our human dignity and to spend our final days on this earth in peace and comfort, surrounded by loved ones, that is the hope of each of us. Today, however, many people fear the dying process. They're afraid of being kept alive past life's natural limits by burdensome medical technology. They fear experiencing intolerable pain and suffering, losing control over bodily functions, and lingering with severe dementia. They worry about being abandoned or becoming a burden on others. Our society can be judged by how we respond to these fears. A caring community devotes more attention, not less, to members facing the most vulnerable times in their lives. When people are tempted to see their own lives as diminished in value or meaning, they most need the love and assistance of others to assure them of their inherent worth. The healing art of medicine is an important part of this assistance. Even when a cure is not possible, medicine plays a critical role in providing palliative and hospice care. People who request death are vulnerable. They need care and protection. To offer them lethal drugs is not a victory for freedom but the worst form of neglect. Such abandonment is especially irresponsible when society is increasingly aware of elder abuse and other forms of mistreatment and exploitation of vulnerable persons, such as minorities and the poor. By rescinding legal protection for the lives of one group of people, the government implicitly communicates the message that they may be better off dead. If these persons say they want to die, others may be tempted to regard this not as a call for help but as a reasonable response to what they agree is a meaningless life. Taking life in the name of compassion also invites a slippery slope toward ending lives of people with nonterminal conditions. Dutch doctors who once limited euthanasia to terminally ill patients, now provide lethal drugs to people with chronic illnesses and disabilities, mental illness, and even melancholy. Once they have convinced themselves that ending a short life can be an act of compassion, it was morbidly logical to conclude that ending a longer life may show even more compassion. There are a number of specific concerns we have with this bill. I'll mention a few of them. Although the bill would penalize anyone who coerces or exerts undue influence on a patient to request the lethal prescription, those words have very narrow legal meaning. The proposal does not prohibit someone from suggesting, advising, pressuring, or encouraging a patient to request doctor-prescribed suicide. Such victims of domestic abuse, including elder abuse, are extremely vulnerable to persuasion from their abusers. It takes little imagination to understand how abused patients could be persuaded to request doctor-prescribed suicide. There are no protections for the person once the assisted-suicide prescription is filled and delivered. Like the Oregon law, the bill only addresses activities taking place up until the individual receives the lethal drugs. There are no provisions to assure that the person is competent at the time the overdose is taken or that he or she knowingly and willingly takes the drugs. Also, there are no protections for the return or disposal of unused lethal drugs. For these reasons and many others, we encourage you, we ask you to indefinitely postpone LB1056. Thank you. [LB1056]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. Next opponent. [LB1056]

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HALLIE HAMILTON: (Exhibit 13) Thank you, Chairman Seiler and members of the Judiciary Committee. My name is Hallie Hamilton; that's H-a-l-l-i-e H-a-m-i-l-t-o-n, and I'm a representative of Nebraska Family Alliance. What you're receiving now is a hard copy of my testimony that includes some citations and also a quick summary of observations that I made regarding Oregon's 2015 report, along with the report itself. And just first, I want to thank Senator Chambers for the way that he has framed the conversation that we've been having today on a very difficult issue. Nebraska Family...at Nebraska Family Alliance, we echo the concerns of the many qualified individuals who have already testified today. Legalizing doctor-prescribed suicide endangers the weak and vulnerable, corrupts the practice of medicine, betrays human dignity, compromises equality before the law, and promotes the view that the elderly and disabled are not people to be loved but burdens to be managed. This form of suicide, one where a doctor gives a prescription to a patient, and friends and family members are perhaps notified, is often considered only in the vacuum of personal choice. But this is a bad solution for the wrong problem. Here are the real problems faced in the end of life that are not solved by a poisonous pill. Are written, official, end-of-life directives being ignored by well-meaning nurses and doctors? That's a problem. Are terminally ill patients being denied access to medications that could truly alleviate their pain in their last days? That's a problem. When the ill and elderly are no longer able to be contributing members of society or help with the dishes or take themselves to the bathroom or cook their own food, do they feel abandoned by their friends, family, and country? That's a problem. Are people ill-equipped to make informed end-of-life decisions about potential treatments, hospice care, and palliative care? That's a problem. The National Center on Elder Abuse reports that a recent major study indicated that 7 (percent) to 10 percent of the elderly in that study had experienced abuse in the past year and only 1 in 14 cases of elder abuse ever comes to the attention of the authorities. That is a problem. Doctors Leon Kass and Eric Cohen were right when they said, how we age and die are not only private matters. Our communal practices and social policies shape the environments in which aging and caregiving take place, not only in moments of crisis when life-or-death decisions need to be made but in the long days of struggle and everyday attendance. Instead of doubling down on the woefully poor treatment that people have experienced under current laws and systems by beginning to consider a prescription for suicide a medical treatment, we should reclaim true compassion, true dignity, and true honor for the terminally ill and elderly. Thank you for your time. [LB1056]

SENATOR SEILER: Any questions? Do you want this, your "Troubling Statistics from Oregon" submitted into evidence? [LB1056]

HALLIE HAMILTON: Yes, please. [LB1056]

SENATOR SEILER: It will be received. Any questions? Thank you very much for your testimony. Any further opponents? Anybody in the neutral? (Exhibits 14-22) We have about 50

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letters of support that have been mailed in, and we've got 4 opposition letters, and they will be received into the transcript. That ends the...oh, excuse me, Senator. You're waiving? [LB1056]

SENATOR CHAMBERS: I'm waiving. (Laughter) [LB1056]