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Judiciary Committee  
January 25, 2017

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[LB146 LB167 LB293 LB350]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 25, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB293, LB167, LB350, and LB146. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR EBKE: Good afternoon and welcome to the Judiciary Committee. We're going to go ahead and get started and hopefully the rest of the committee will filter in over the next few minutes. My name is Laura Ebke. I am from Crete, representing Legislative District 32. I'm the Chair of this committee. I'd like to start off by allowing my colleagues who are present to introduce themselves. Senator Morfeld.

SENATOR MORFELD: Adam Morfeld, District 46 in northeast Lincoln.

SENATOR HANSEN: Matt Hansen, District 26 in northeast Lincoln.

SENATOR HALLORAN: Steve Halloran, District 33, Adams County and southern and western Hall County.

SENATOR EBKE: And we will be joined eventually, I believe, by Senator Roy Baker, who is introducing another bill in another committee, and Senator Pansing Brooks will be here, as will, I believe, Senator Chambers and Senator Krist. Assisting the committee today are Laurie Vollertsen, our committee clerk; Brent Smoyer, who is one of our two legal counsels. The committee pages today are Sam and Marilyn. They are over here. On the table in front of you, over there, you'll find some yellow testifier sheets. If you are planning on testifying today, please fill one out before you get up to testify and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There is also a white sheet on the table if you don't wish to testify but would like to record your position on the bill. We'll begin bill testimony with the introducer's opening statement. Following the opening we will hear from proponents of the bill, then opponents, followed by those speaking in a neutral capacity. We'll finish with a closing statement by the introducer if they wish to give one. We would ask that you begin your testimony by giving us your first and last name and spell them for the record. If you're going to testify, I ask that we keep the on-deck chair, where Senator Larson is seated, filled so that we know who's next and how many more we might have to go. If you have any handouts, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can also help you make some more. We will be using a five-minute light system. What that means is that when you begin your testimony the green light on the table will go on. The yellow

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light, when it goes on, is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. If members of the committee have further questions, they will ask you to continue. As a matter of committee policy, I'd like to remind everyone that we ask that you not talk on your cell phones inside the committee room. Make sure that your phones and public...and other electronic devices are turned to silent or turned off. Senators may be using them to take notes or to stay in contact with their staff. And at this time, everyone make sure to check those cell phones. Also, just a reminder, while I doubt that this will happen today, remind you that outbursts of applause are not expected in the committee hearing room while we're going on. One more thing: You'll notice that people will come and go, senators will come and go. This has nothing to do with the importance of the bills that are being heard but rather the fact that we have other hearings going on or that there are other committees going on or where senators have to go take meetings or whatever. So with that, I would invite Senator Larson to come up and introduce LB293. [LB293]

SENATOR LARSON: Thank you, Chairman Ebke and members of the Judiciary Committee. My name is Tyson Larson, T-y-s-o-n L-a-r-s-o-n, and I am here to introduce LB293 to the Judiciary Committee. LB293, relating to the Uniform Controlled Substances Act, proposes to add U-47700 to the list of Schedule I controlled substances in Nebraska. Once known as a research chemical, U-47700 has become an easily obtainable, deadly drug. According to a November 10, 2016, article posted by the U.S. Drug Enforcement Agency's Web site, U-47700 is a novel synthetic opioid and its abuse parallels that of heroin, prescription opioids, and other novel opioids. The DEA has placed U-47700 into Schedule I of the Controlled Substances Act effective November 14, 2016. This scheduling will last for 24 months with an option of a 12-month extension and comes after reports of numerous fatalities resulting from the use of the drug. U-47700, also known as "Pink," has found its way from China to the United States and into the hands of our youth with simple on-line orders. In September, two 13-year-old boys died within two days of each other after allegedly experimenting with "Pink." These are two tragedies among dozens of deaths cited as U-47700 overdoses. This is a chemical drug. This chemical drug is said to be about seven and a half times the strength of morphine when manufactured to the exact specifications of the patent. Furthermore, these research chemicals made in China are a low cost to produce and inexpensive to purchase, which makes them...makes on-line access even more desirable. I believe that it is imperative we, as legislators, do our best to control these dangerous drugs. And I strongly urge your support of LB293. I would be happy to answer any questions from the committee and would ask an E clause consideration as well. [LB293]

SENATOR EBKE: Senator Chambers. [LB293]

SENATOR CHAMBERS: Senator Larson, is that a brand name or is that the chemical? [LB293]

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SENATOR LARSON: So the chemical actually has a different name. U-47700 actually, if I remember right, was developed by a drug company in the '70s or '80s as a pain relief, but it never got FDA approval. But they filed a patent for it. So what a lot of people and companies, like underground lab companies in China, are doing are scouring U.S. patents and finding drugs that actually never came to market. And then, because there's a patent filed, they obviously have the chemical compound and they're recreating the chemical compound that actually never came to market and then selling them on-line to people. [LB293]

SENATOR CHAMBERS: No, I'm not arguing. [LB293]

SENATOR LARSON: Oh, yeah. [LB293]

SENATOR CHAMBERS: Does that designation refer to a product or is that the way they describe the chemical compound itself? [LB293]

SENATOR LARSON: It's my understanding the pages are on page 4 and 24, and that's just the name of the drug. But I think the chemical compound name is longer. It's U-47700 is 3, dichloro-N... [LB293]

SENATOR CHAMBERS: Okay. You don't have to read it all, but it's not just that brand name. There is the chemical component... [LB293]

SENATOR LARSON: Yeah. [LB293]

SENATOR CHAMBERS: ...or components in it. [LB293]

SENATOR LARSON: Yeah. [LB293]

SENATOR CHAMBERS: Okay. [LB293]

SENATOR LARSON: On page 4 there's the actual chemical component. [LB293]

SENATOR CHAMBERS: Okay. Gotcha. [LB293]

SENATOR LARSON: And I'm sorry, I was just giving you more the history of how it got...the drug company named it U-47700. [LB293]

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SENATOR CHAMBERS: Obviously you don't have legal training. When the question has been answered, don't say more. And to give you an example, and if there are lawyers they've heard it, this guy was testifying against the cross-examiner's client. And the cross-examiner lawyer said, you say that my client bit this man's ear off. And the guy said, yes. He said, did you see my client bite his ear off? He said, no. He should have stopped but he asked another question. Then how can you say he bit his ear off? He said, I saw him spit it out. So when the question has been answered, you get it. [LB293]

SENATOR LARSON: Thank you, Senator Chambers. [LB293]

SENATOR CHAMBERS: Okay. [LB293]

SENATOR EBKE: Senator Krist. [LB293]

SENATOR KRIST: Thank you, Chair, and thank you, Senator Larson. Having been through this revision to these kinds of drugs several times since I've been here, seems that we identify a chemical compound either by name or by compound and it becomes something that legal can use and the Attorney General's Office can use, the county attorneys can use for a period of time until some other "hexa," "hexa," "hexa" is added to the compound itself. So I'm sure legal will tell us why it's important at this point to do the name along with the compound and I'd like to hear that explanation. That question is asked to you basically to follow on. But in terms of drafting this, a question for you, on page 4, line 27, it does list the name and the compound. When I look at page 24, I wonder what that exception or that addition has to do with the addition of the actual drug itself. So let's, on page (sic--line) 9, page 24, "Unless contained on the," and we've eliminated the "administration's," "list of exempt anabolic steroids of the Drug Enforcement," and then added words, "of the Drug Enforcement Administration of the United States Department of Justice." What does that do in terms of purpose for this bill in adding the name of the drug? [LB293]

SENATOR LARSON: In terms of...are you asking...I'm just asking you to clarify. [LB293]

SENATOR KRIST: Absolutely. [LB293]

SENATOR LARSON: Are you asking why that was included in the bill or...? [LB293]

SENATOR KRIST: Yes. [LB293]

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SENATOR LARSON: Okay. I would have to check with Bill Drafters specifically. We just asked them to add the drug... [LB293]

SENATOR KRIST: Sure. [LB293]

SENATOR LARSON: ...and they added this language as well. So honestly, I don't know if administration, they wanted to change it specifically to DEA for regulate or just regulatory purposes. When we asked Bill Drafters, we just asked them to add the drug and they felt that...this came back. [LB293]

SENATOR KRIST: Okay. [LB293]

SENATOR LARSON: And we didn't see any problem with it. So I'm sorry I can't answer your question more directly than that. [LB293]

SENATOR KRIST: No, that's fine. You're fine. So, legal counsel, you get the question. [LB293]

BRENT SMOYER: Yes. Yes. [LB293]

SENATOR KRIST: We need to find if someone can answer and what was the purpose of changing to the administration versus DEA. Could be a simple explanation but just want to avoid unintended consequences. Thank you, Senator Larson. Thank you, Chair. [LB293]

SENATOR EBKE: Any other questions for Senator Larson? Okay. Going to hang around or...? [LB293]

SENATOR LARSON: I'll sit in here. [LB293]

SENATOR EBKE: Okay. First proponent of the bill. [LB293]

COREY O'BRIEN: Good afternoon. Chairman Ebke, members of Judiciary, my name is Corey O'Brien, that's C-o-r-e-y O-'-B-r-i-e-n, and I am the criminal prosecution section chief with the Nebraska Attorney General's Office. I appear today on behalf of the Attorney General's Office and the Nebraska County Attorneys Association in support of LB293. Before I get too far into my testimony, I want to first state that we did not bring this bill or draft this bill to Senator Larson. This was something that he filed on his own and we saw it and thought it might be a significant thing for us to get involved in. And the reason why we think it's important is because

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this was not a substance that I was aware of or any of the chemists in Nebraska were aware of until probably October of this year. I got a phone call from the State Lab and then also the Kearney Police Department where this, a large amount of this substance, actually showed up being distributed through the mail from packaging from overseas. And they told me what it was and, as Senator Larson described, it is seven and a half times more powerful than morphine, three and a half more times powerful than fentanyl. In doing research about it, we see that there are a number of overdoses across the United States. It's really taken ahold all across the United States. As Senator Larson indicated, in November the substance was temporary scheduled as a Schedule I for the department of...by the DEA, the federal DEA. The state of Ohio, Florida, and several other states have (inaudible) scheduled it as well because of the number of overdoses and the degree of opioid issue that they've had. The other thing I wanted to tell you is that this is a lot different than many of the bills that I've appeared before you before that relate to K2. Those were cannabinoids. This is a synthetic opioid. So there is a distinct difference between those two so I didn't want you to be confused that this is another rehash of a K2 substance that we're dealing with. It has also shown up a couple times recently in the Omaha area, and the chemists up there are seeing it as well. So it's an important issue for the Attorney General's Office. When I started as a deputy county attorney in the late '90s, everything that we were seeing on the streets mainly revolved around powdered cocaine or crack cocaine, and we knew from other states that we were going to start seeing the methamphetamine before too long. We just didn't know how to stop it and we weren't really prepared for it. Something similar is going on now with the opioid crisis, both the prescription drugs and then the heroin. We are praying to God that it doesn't hit us like it has in other states. It is here in certain quantities. We are seeing it more and more, the heroin and the opioids. But this is another example of being able to get out front of an issue before it really takes stock here and being able to address it legally so that we cannot create loopholes to say our citizens can have it or other citizens from other states can come here and get it legally. So we would like to see this advance to the floor and pass so that we can again get ahead of this issue. The Attorney General has taken a lot of painstaking efforts recently to address the opioid issue. We brought in the Attorney General from Ohio, where they've struggled with this issue, and we put together a summit, General Peterson did a really nice job of putting together a summit with UNMC and community leaders and law enforcement and prosecutors to address how we're better prepared, unlike we were for methamphetamine, to address hopefully the onslaught that will be felt by the opioid addictions and the heroine addictions. So we'd like to get ahead of this, and I'd answer any questions you have. [LB293]

SENATOR EBKE: Any questions? Senator Chambers. [LB293]

SENATOR CHAMBERS: I would call your attention to page 24 if you have the bill. [LB293]

COREY O'BRIEN: Sure, sir. [LB293]

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SENATOR CHAMBERS: I'm just going to refine the question that Senator Krist asked, lines 9 and 10. Does the word "administrations" refer to the Drug Enforcement Administration? [LB293]

COREY O'BRIEN: I believe that was the original intent and this is clarifying that that's who they were originally intending. That would be my guess that Bill Drafters intended. [LB293]

SENATOR CHAMBERS: Well, since that is being stricken, that is original law of the term with a small "A," administrations. Which administration is that referring to, is what I'm asking. And if it's to be the Drug Enforcement Administration, is there any place else in the law where that is made clear that the word "administration" applies to the Drug Enforcement Administration? Or don't you know? [LB293]

COREY O'BRIEN: You know, offhand I don't know, Senator. [LB293]

SENATOR CHAMBERS: And I don't either but I just... [LB293]

COREY O'BRIEN: I can look into it. I mean I... [LB293]

SENATOR CHAMBERS: Okay. [LB293]

COREY O'BRIEN: This was something that, again, we were not involved in the drafting of this. I honestly didn't even notice that portion in the bill. I looked mainly at the substance that was involved. But certainly if it will clarify things a little bit better, we're all about clarity. [LB293]

SENATOR EBKE: Senator Krist. [LB293]

SENATOR KRIST: So kind of the same question that I asked Senator Larson in the preview, because we've talked K2 and then you mentioned that as a...I'm sorry. Thanks for coming. But we talked about K2 ad nauseam in trying to make sure we define it and, you know,... [LB293]

COREY O'BRIEN: Right. [LB293]

SENATOR KRIST: ...chemically. Do you see a problem with the way this is written? I mean I get, I'm sorry, on page 4, line 27, we're calling it by its legal name, as I understand, or patented name, and then we're giving the chemical compound of it. Would that further restrict you in

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terms of prosecuting someone with the name? The lawyer could come back at some point and say it's not that, it's something else that is a derivative thereof? [LB293]

COREY O'BRIEN: No, I think it's very similar to what we've done with just about every other substance in there. We'll give, for instance, a generic...a more generic name and then also spell out the chemical compound itself. [LB293]

SENATOR KRIST: Compound, okay. [LB293]

COREY O'BRIEN: So that's quite typical. And when I talked to the chemists at the lab, they didn't have any problem with this language because it will read out in their machine either/or. [LB293]

SENATOR KRIST: So you've done the background with the chemists. That's...I guess that's (inaudible). [LB293]

COREY O'BRIEN: I've talked to Chris Gabig and Celeste Laird over at... [LB293]

SENATOR KRIST: Good. [LB293]

COREY O'BRIEN: ...the NSP State Lab... [LB293]

SENATOR KRIST: All right. [LB293]

COREY O'BRIEN: ...and they're fine with the language the way it reads. [LB293]

SENATOR KRIST: And I think that's important to put on the record, so thank you very much. [LB293]

COREY O'BRIEN: Right. And I don't know if we're going to see derivatives on this but, as you know from last year with Senator Williams' bill, we gave a little bit greater flexibility to go after things if they do develop that are derivatives of this. This is just something that we're always going to have to update the schedules, unfortunately, because things are always going to evolve. [LB293]

SENATOR KRIST: Yeah. [LB293]

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COREY O'BRIEN: I don't know if there's any way around it. [LB293]

SENATOR KRIST: And for the new members of the committee that haven't gone through the K2 discussion either here or on the floor, I think this is a...if you're going to stay on the Judiciary Committee, I believe this is a good orientation to know because these will come back over and over. And the right way to do it necessarily is not the easiest way to do it, for sure. We found that out in the last few years. Thank you, sir. [LB293]

SENATOR EBKE: Senator Halloran, did you have a question? [LB293]

SENATOR HALLORAN: A question or comment. This may more confuse things than clarify things, but this bill was relating to Section 28-405 as will be Senator Ebke's bill. Hers also includes 28-401 and on her bill it does refer to, on line 12, page 2, administration means the Drug Enforcement Administration of the United States. [LB293]

COREY O'BRIEN: That's the...401 is the definition section that governs the entire drug statutes under Chapter 400, 29-400. [LB293]

SENATOR EBKE: Any other questions? Thank you, Mr. O'Brien. [LB293]

COREY O'BRIEN: Thank you. [LB293]

SENATOR EBKE: Any other proponents of the bill? Do we have any opponents? Do we have anyone in the neutral? Senator Larson. [LB293]

SENATOR LARSON: Thank you, members of the Judiciary Committee. I did receive an update to Senator Krist's question and it was a recommendation from Bill Drafters to update our language, page 24, just as a clarification between the FDA and the DEA. And so Bill Drafters asked that this language be changed and felt that this was an appropriate vehicle, so. [LB293]

SENATOR CHAMBERS: I've scanned the bill and I find on page 7, line 3, the mention of Food and Drug Administration. Why should it change from the FDA to the DEA, because they have different functions? The FDA determines what drugs can legally be used in this country, can be imported into this country, and not the DEA. So I want to find out why they switched it to the DEA because of another very serious issue. And I won't belabor it now but just to call your attention to it. We can talk about it later on. [LB293]

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SENATOR LARSON: I am not married to that part of it. Like I said, that was just... [LB293]

SENATOR CHAMBERS: Oh, okay. [LB293]

SENATOR LARSON: ...that was just a recommendation from Bill Drafters they felt would be an update to Nebraska statutes. Obviously, the part of this that I care about is the U-4... [LB293]

SENATOR CHAMBERS: Right, the substance. [LB293]

SENATOR LARSON: ...the substance. And so, like I said, I sure hope that we can...the Judiciary Committee will act on this. And if you find an emergency clause necessary, that's fine. And I'm open to the other side of it. Like I said, that was just a recommendation from Bill Drafters that they wanted to see some updates in our statutes for other reasons, so. But if the committee sees differently... [LB293]

SENATOR CHAMBERS: You've answered my question. [LB293]

SENATOR LARSON: And I'll stop. (Laughter) Thank you, Senator Chambers. [LB293]

SENATOR CHAMBERS: (Laugh) Okay. [LB293]

SENATOR EBKE: Okay. Any other questions? Thank you, Senator Larson. It does not appear that we have any letters on this particular bill, so that will close our hearing on LB293. I'm going to switch and turn this over to Senator Pansing Brooks. [LB293]

SENATOR PANSING BROOKS: Welcome, Senator Ebke. And now please open on LB167. [LB167]

SENATOR EBKE: (Exhibits 1-3) Thank you, Senator Pansing Brooks and members of the Judiciary Committee. My name is Laura Ebke, L-a-u-r-a E-b-k-e. I represent District 32. I am pleased to introduce LB167 to you today. LB167 would reschedule--I'm going to say this once because I'll probably say...I can't ever pronounce it...cannabid...well--CBD (laughter) in a drug product approved by the United States Food and Drug Administration into Schedule V of the Nebraska Controlled Substances Act. Currently CBD in any form is a Schedule I controlled substance with no approved medical use. Possession, distribution, and sale of CBD is a criminal act in Nebraska. Later this year, this CBD in a pharmaceutical formulation will be submitted to the FDA for approval. The drug is called Epidiolex and is a pure CBD investigational product, is

currently being studied as a potential anticonvulsive in children with certain types of childhood-onset, medication-resistant epilepsies including Dravet syndrome and other epilepsies. These types of epilepsies are severe and highly resistant to treatment with existing medications. With uncontrolled seizures, most patients will develop moderate to severe intellectual and developmental disabilities in childhood and require lifelong supervision and care. They face a significant risk of early death. They urgently need new treatment options. Currently there are no approved treatments for Dravet syndrome and the FDA has granted Epidiolex fast track and orphan drug designations, meaning FDA approval could come as soon as eight months after submission. LB167 seeks to address the problem a CBD-based pharmaceutical has as a Schedule I substance under both federal and state law. Upon FDA approval, rescheduling by the DEA will take place and take care of federal law. But Epidiolex must then be rescheduled in each state including Nebraska. This bill allows our Legislature to proactively reschedule CBD in an FDA-approved product ensuring that Epidiolex will be available to patients in Nebraska, as soon as federal approval and rescheduling is complete. Without this proactive legislation, Nebraska children with these devastating types of epilepsy might not be able to obtain rapid access to an exciting new treatment option, especially if the federal FDA...the federal approvals occur when our Legislature is out of session. There is no reason why these children and their families should suffer a day longer than is necessary if there is an FDA-approved treatment that might alleviate the burdens of these uncontrolled seizures. There are other witnesses including a couple of pharmacists who will follow me who are experts in this area and can answer any technical questions the committee may have. I would be happy to try to answer any questions, but I won't say any more than I have to, Senator Chambers. [LB167]

SENATOR CHAMBERS: I have a question. [LB167]

SENATOR PANSING BROOKS: Senator Chambers. [LB167]

SENATOR CHAMBERS: Madam Chair. I'm sorry. I'm so used to addressing...does your train have another seat which could accommodate an additional passenger on your bill? [LB167]

SENATOR EBKE: Absolutely. [LB167]

SENATOR CHAMBERS: I'd be honored if you would allow me to take that seat. [LB167]

SENATOR EBKE: And I would be happy to have you. [LB167]

SENATOR CHAMBERS: Thank you, ma'am. That's all I have. [LB167]

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SENATOR PANSING BROOKS: Thank you. Anybody else have a question? No. Thank you, Senator Ebke. Are you going to...? [LB167]

SENATOR EBKE: Yeah, I'll be here. [LB167]

SENATOR PANSING BROOKS: Okay, further proponents now. Welcome. [LB167]

BOB BROADUS: Thank you, Senator. My name is Bob Broadus, B-o-b B-r-o-a-d-u-s. I'm a pharmacist, live in Louisiana, licensed in Mississippi, and I'm a consultant for Greenwich Biosciences. A licensed pharmacist and a former pharmacy owner, I've seen patients with condition where our medical community has fallen short of their needs. There wasn't an improved medicine that met their needs to treat a condition or cure the ills. That's a very helpless feeling for both the medical community and the patients involved but those situations were devastating, but nothing like the families and children with uncontrolled epilepsy. For over a hundred years we've depended on the FDA to lead our nation in ensuring access to not only the safest but most effective medicines for the healthcare community and to treat patients with all kinds of devastating conditions. The FDA is the best system in the world. It's designed to test, study, and supply the best medicines in the world and that keep our patients as safe as possible. The discussion today is about a pharmaceutical product, a product in the late stages of very promising clinical research that is following the laws in our land for legal drug approval. This cannabidiol is undergoing the rigors of standardization, safety, clinical testing, documented efficacy, and we are submitting those rigorous tests and results to and through the FDA process for approval. Our company, Greenwich Biosciences, elected to research one of those unmet medical needs. This cannabidiol is targeted toward some of the most fragile children that are in our care. Patients with Dravet syndrome and LGS, two of the worst types of epilepsy and some of the most difficult to control, as many as 80 percent to 90 percent of the patients with Dravet or Lennox-Gastaut syndrome also do not respond to currently available medications and multiple medications. This can cause developmental disabilities and in some cases death. The FDA has granted cannabidiol orphan drug status which is reserved for conditions like Dravet and LGS for which there are no currently approved drugs or therapies and for drugs that are attempting to address the unmet medical needs. Nothing currently approved by the FDA treats these syndromes. In a typical scenario the FDA approves and makes a scheduling a recommendation to the DEA and then the DEA reviews and agrees or changes that scheduling to some other determination. But here we have a product federally that has been designated as a component of Schedule I: no known medical purpose. It has to be retreated...rescheduled by the FDA out of Schedule I and into a less stringent schedule. As I've said before, we're breaking new ground with the medical community and the FDA and the DEA with these type of products. That takes care of the federal dilemma. Then each state must address this issue and make it available to patients in their state. We're asking you today to reschedule cannabidiol so that when the FDA approves and rescheduled by the DEA it will become available as soon as possible to Nebraska

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medical community to utilize with appropriate patients. Based on the current feedback from the medical research that has been done, the pharmaceutical product is showing very little abuse potential. So we believe that we're asking you all to appropriately reschedule the drug when it's approved. If you elect not to act then the product becomes FDA approved, then there would be patients in Nebraska that would continue to be denied access to treatment and for a very serious condition that could be devastating, debilitating, and quite possibly life threatening. I would be honored to answer any questions. [LB167]

SENATOR PANSING BROOKS: Senator Krist. [LB167]

SENATOR KRIST: Thanks for coming. [LB167]

BOB BROADUS: Yes, sir. [LB167]

SENATOR KRIST: And thank you as well for supporting an effort to try to take care of our kids and adults in the state of Nebraska as soon as it is safe to do so. I have a letter that we've been given from the Chief Medical Officer of the State of Nebraska, who, by the way, has not been...his appointment not been confirmed by the Legislature. Most of his comments are addressed at health hazards and risks. And let me just read this paragraph for the record. "There are questions about..." CBB...CPB, is that the correct...? [LB167]

BOB BROADUS: CBD. [LB167]

SENATOR KRIST: CBD. He gives the name but I don't want to pronounce it just like Senator Ebke didn't want to pronounce it. CBD "...is best administered and in what form in relation to treatment of various disease processes. There are questions about the desirability and efficacy of this drug when the patient is addicted to legal or recreational drugs or alcohol. There are questions about the safety of the use of cannabidiol during pregnancy, in pediatrics, in adolescent populations, and in the older adult. There are questions about the safety of cannabidiol to cardiac health, to the liver, to the eyes, to reproductive health, and to oral health." And it goes on from there. I just for the record want to say it was my interpretation of what this bill was to do was to not authorize it to be used in the state of Nebraska, not to legalize its use until it had been fully vetted, in this case, by the FDA. [LB167]

BOB BROADUS: Yes, sir. [LB167]

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SENATOR KRIST: All of these concerns that the Chief Medical Officer, who is not confirmed yet, has given to us seemed to be in that list of things that the FDA would do and assure us that those risks are not there, is that correct? [LB167]

BOB BROADUS: Yes, sir. All drugs approved have good, bad, and the ugly. But before a product is approved, the FDA goes through and evaluates all those and determines, based on all those facts, does this give enough comfort and safety and efficacy to then let a clinician make those determinations before he prescribes it. It would not be approved if it's not acceptable to the FDA. [LB167]

SENATOR KRIST: So just for the record for this hearing, almost everything that I have highlighted here that would have been his concerns, you would also be concerned with. [LB167]

BOB BROADUS: Yes, sir, absolutely. [LB167]

SENATOR KRIST: And you feel that the FDA would alleviate those concerns before it would ever approve it for prescription. [LB167]

BOB BROADUS: That's right. And drug interactions, which I don't think he mentioned, is another concern. They're going, how does that interact with other...you know, they will look at some of that. And then once it gets to the market, the rest of that will be determined. [LB167]

SENATOR KRIST: Good. Thank you, sir. [LB167]

BOB BROADUS: Yes, sir. Thank you. [LB167]

SENATOR KRIST: No more questions. [LB167]

SENATOR PANSING BROOKS: Senator Chambers. [LB167]

SENATOR CHAMBERS: Thank you, Madam Chair, Vice Chair. What credentials do you have to qualify you to give us information? And if you've testified before committees, you understand that there are certain questions asked for the record with no aspersion being cast. [LB167]

BOB BROADUS: Yes, sir. [LB167]

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SENATOR CHAMBERS: But see, you of all people would be aware of political implications that have nothing whatsoever to do with the medical effectiveness of something like this. So there are some things I'm going to try to get into the record so you won't think I'm attacking you in any way. [LB167]

BOB BROADUS: Yes, sir. I totally understand. I'm a pharmacist. I'm registered in the state of Mississippi. I've lived in Louisiana for the last 35 years. I've been government affairs for the last 30. So I've testified numerous times before committees. I went to work for Greenwich in November, specifically on this product. I was actually retired and came out of retirement because I was so excited. My oldest child is also an epileptic. She does not have these two syndromes. But if you've ever experienced a grand mal seizure with a child, then you understand the pull to see if you can make this available. And so that's the reason I really decided to come back out of retirement and work on this project. [LB167]

SENATOR CHAMBERS: If and when the FDA approves, would you utilize this product on your child if it was indicated? [LB167]

BOB BROADUS: Yes, sir. [LB167]

SENATOR CHAMBERS: And that's...what people often ask: If it was your own child, what would you do? Would you jeopardize your child for financial, political, or any other reason? [LB167]

BOB BROADUS: No, sir. [LB167]

SENATOR CHAMBERS: Do you know of any reason right now if the FDA goes through all that it's going to go through and says this is approved for that use, can you think of any reason why that should not be accepted in the way that this bill would allow it to be accepted for use in Nebraska? [LB167]

BOB BROADUS: No, sir. [LB167]

SENATOR CHAMBERS: I don't have any more questions. Thank you. [LB167]

BOB BROADUS: Thank you. [LB167]

SENATOR PANSING BROOKS: Any other questions? Senator. [LB167]

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SENATOR HALLORAN: Thank you, Madam Vice Chair. Thank you for your testimony. This is more of a point of interest or just curiosity question. Is the drug reasonably effective for adults as well who have grand mal seizures? [LB167]

BOB BROADUS: There...our next proponent will probably answer that better because she's been involved in the clinical studies themselves. But I understand there's ongoing research. Obviously we're going to attack the worst of the worst first, you know, and the folks who can't take care of themselves, the little babies and children, but obviously there's ongoing research. But I think Michelle will give you a better answer for that. [LB167]

SENATOR HALLORAN: Okay. Thanks. [LB167]

SENATOR PANSING BROOKS: Thank you. Anything else, Senator Halloran? [LB167]

SENATOR HALLORAN: No, that's fine. [LB167]

SENATOR PANSING BROOKS: Thank you. Anybody else? Okay, thank you very much for coming today. [LB167]

BOB BROADUS: Thank you all. [LB167]

SENATOR PANSING BROOKS: Next proponent. [LB167]

MICHELLE WELBORN: Good afternoon. I'm Michelle Welborn; that's M-i-c-h-e-l-l-e W-e-l-b-o-r-n. I'm the founder of the Intractable Childhood Epilepsy Alliance and I serve on the professional advisory boards for the Lennox-Gastaut Syndrome Foundation and the Charlie Foundation. All of these nonprofit organizations advocate for better treatment options for people with intractable epilepsy. In my back pocket I happen to have a doctorate of pharmacy degree that's helped me be able to navigate a lot of this medical language, and professionally I am a regulatory consultant that assists pharmaceutical companies with orphan drug development. I serve as the regulatory consultant for the compassionate access program that has provided Greenwich Biosciences' cannabidiol solution to a thousand children with intractable epilepsy in the United States. This has become the biggest compassionate access program in the world, unprecedented with the FDA. And it's been a pleasure being a part of that. The University of Nebraska Medical Center's compassionate use program is a part of this compassionate access program and I was instrumental in assisting Dr. Madhavan get regulatory approval by the FDA for his study here. Most importantly and the real pathway that led me here is my daughter Lilly. She has Dravet syndrome. She's 12 years old now and she suffers from this monstrous,

catastrophic condition. And I don't know, most of you know that this is a genetic mutation induced...type of disease where most patients with this have a gene mutation in the sodium channel in the brain. The symptoms include not only treatment-resistant epilepsy that begins in the first year of life, it also includes intellectual disability, unsteady gait, orthopedic problems, some type of immune deficiency, and behavioral problems. The mortality rate is 24 percent by the age of 18 and the major cause of death is sudden unexplained death in epilepsy or sudden unexpected death in epilepsy, referred to as SUDEP. There are no FDA-approved treatment options and epilepsy drugs...many of the epilepsy drugs approved by FDA are...actually worsen seizures in Dravet syndrome because they work in the very channel that's mutated. Lilly was a typically developing five-month-old baby when she had her first seizure. She was born with an APGAR of nine and nine, beautiful child. She went on to develop many seizure types, all were resistant to treatment. Many of the seizures that she had during her first four years of life lasted longer than 30 minutes and up to two hours. She coded four times during this period and was placed in drug-induced comas to stop the seizures. Sometimes she'd be in a coma as long as a month. Her seizures are less frequent and severe now, but her risk of sudden death remains very high. She is developmentally three years old and she's actually a joy to have in my life. Last week I attended the funeral of Kira (phonetic), a 12-year-old girl from Connecticut who suffered from Dravet syndrome and died in her sleep suddenly. Her seizures were also uncontrolled and there is a direct correlation with seizure frequency and sudden unexpected death in epilepsy. I'm encouraged by the positive results of the...I'm going to pronounce the word for you. It's cannabidiol--five syllables--of the cannabidiol randomized placebo-controlled trials for these patients that have both Dravet syndrome and Lennox-Gastaut syndrome. Patients enrolled in these studies had failed an average of six FDA-approved medications. The general rule for a neurologist is that epilepsy...an epilepsy treatment, the chances of responding to a third drug after failing two drugs is very slim to none and the odds are less with each additional drug being added to a regimen. A new treatment option with proven success in these catastrophic illnesses provides hope for families, and hopeful moments are few and far between. A few years ago back in 2011 I was asked to speak about cannabis-based products at an international Dravet syndrome conference. And at the time, I actually had a pharmacy student that was rotating with me through my professional practice and we concluded that there was not enough safety and efficacy data to recommend these products for use. And it's amazing the research that has occurred in just five or six short years. At the end of that presentation, even though I was concerned that there wasn't safety and efficacy, I was concerned about pesticides and herbicides and all the things that could go with vernacular preparations, content from batch to batch, my last line for these parents who were using these products was desperate times call for desperate measures. And parents are still desperate. We need new drugs. These children should not be denied in this state access to a drug that may help them because of delays in rescheduling. The Crawford bill provided cannabidiol to children in Nebraska with intractable epilepsy, as we discussed. Greenwich Biosciences provided the drug free of charge for all of the 1,000 patients that have received it compassionately. They're continuing all the development as we discussed. And we need to have this accessible as soon as

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it's FDA approved. I ask you to support the efforts to make this drug available as soon as possible. Thank you. Happy to take any questions. [LB167]

SENATOR PANSING BROOKS: Thank you, Dr. Welborn. Senator Krist. [LB167]

SENATOR KRIST: Hi. I'm just going to ask a question just to pronounce cannabidiol because now I can do it. (Laughter) Not really. [LB167]

MICHELLE WELBORN: You want to try it? [LB167]

SENATOR KRIST: I did. I just slurred over it. (Laughter) [LB167]

MICHELLE WELBORN: (Inaudible.) [LB167]

SENATOR KRIST: We'll let the transcribers work on that one. I guess during the Crawford hearing...Crawford bill, there were a lot of distractions I think in terms of do we, don't we, how fast can we do this? But more importantly, one of the main questions asked by the parents, this isn't going to help my child quick enough. How soon are we going to be able to do it? You heard the questions that Senator Chambers asked. And again, obviously you would expedite the treatment of your daughter with such a drug once the FDA approved it and we put this into the place? I don't want to put words in your mouth, but. [LB167]

MICHELLE WELBORN: Absolutely. If it was proven safe and effective, it means I would try any option. [LB167]

SENATOR KRIST: And given your professional background, the concerns of the Chief Medical Officer would be absolutely disposed of with the FDA approval. [LB167]

MICHELLE WELBORN: Absolutely. That's what I do for a living every day, get drugs through the FDA process. And they're vetted very carefully by the FDA. [LB167]

SENATOR KRIST: Thank you very much. [LB167]

MICHELLE WELBORN: Uh-huh. And to answer your question, Senator, the Lennox-Gastaut syndrome studies did include adult patients. The Dravet studies were children up to age 17. But there are adults in the Lennox-Gastaut syndrome study. [LB167]

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SENATOR HALLORAN: Can I follow up with a question? [LB167]

SENATOR PANSING BROOKS: Sure. Senator Halloran. [LB167]

SENATOR HALLORAN: Did I understand you correctly? Adults...well, anyone for that matter that's on...has been on the series of drugs to calm the epilepsy are less...the efficacy of any new drug added to the regime is less likely to be effective, is that generally true? [LB167]

MICHELLE WELBORN: So typically if someone fails two drugs, the addition of a third drug has kind of diminishing returns. What was encouraging about this is these people had failed an average of six drugs and still had a positive result. I was very encouraged by that. [LB167]

SENATOR HALLORAN: And the only reason I ask that is it's back to my question about adults because most likely adults have been on several drugs. [LB167]

MICHELLE WELBORN: Yep. [LB167]

SENATOR HALLORAN: And so it's not as likely as to be helpful. But I'm asking this question because I know someone, we all know someone that suffers with some form of epilepsy, seizures and so. Anyway, thank you. [LB167]

MICHELLE WELBORN: But that's why it's so important to introduce new drugs with novel mechanisms. [LB167]

SENATOR PANSING BROOKS: Thank you. Anybody else? Dr. Welborn, I have a couple. I was just wondering have you...number one, thank you for coming and for your incredible efforts. I'm interested if...is this legal? I mean is it being...in the states that have legalized marijuana, are they using this cannabidiol? [LB167]

MICHELLE WELBORN: Cannabidiol. [LB167]

SENATOR PANSING BROOKS: Cannabidiol. Okay. [LB167]

MICHELLE WELBORN: The only way that you can have access to cannabidiol that's manufactured and developed by this company, GW or Greenwich Biosciences, is through a clinical study. [LB167]

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SENATOR PANSING BROOKS: Okay. [LB167]

MICHELLE WELBORN: So clinical studies have occurred in almost all...many of the states, including the ones in which medical marijuana is available. This bill is very separate from any use of medical marijuana. It's really just to make a prescription drug product available. It's not to refute any other bills that are in place for any state. It's just singularly...to help provide access to this drug to patients once it becomes approved. [LB167]

SENATOR PANSING BROOKS: Okay. Are there drugs similar to this that are being used in the states where medical marijuana is? [LB167]

MICHELLE WELBORN: There are drugs which the...there are claims that it is pure cannabidiol. Unless a product that is artisanally prepared is tested by a lab each and every time you get a batch, it's unclear exactly what's in the product. So you can't certify because they don't make...these drugs are not manufactured under good manufacturing practices. The...as I said before, some of my concerns were how much herbicide, how much pesticide are children being exposed to? So there are claims that this product is available as a pure oil. But again, it needs to be tested in a lab to support that. [LB167]

SENATOR PANSING BROOKS: Okay. Thank you very much for your time today. [LB167]

MICHELLE WELBORN: You're welcome. [LB167]

SENATOR PANSING BROOKS: Next proponent. Welcome. [LB167]

KIM ROBAK: Senator Pansing Brooks, members of the Judiciary Committee, my name is Kim Robak, K-i-m R-o-b-a-k. I am here today on behalf of the Nebraska Medical Association. The NMA met last night to look over legislative bills and they expressed support for LB167. The Medical Association has taken positions that support research and support drugs that show the appropriate amount of dosage and efficacy. And for that reason, we are supporting LB167. The initial tests according to the physicians at our meeting last night show tremendous promise for this drug and so we are very supportive of ensuring that this drug be available as soon as the FDA gives its approval. On a personal note, I will tell you that our oldest daughter had childhood epilepsy. Fortunately, she did not have the type that resulted in continual seizures, but I happened to be very fortunate to be able to see a grand mal and other absence seizures. She was fortunate enough to grow out of childhood epilepsy. So I understand how traumatic it is for parents and hope that you will advance LB167 to the floor for all the people who are waiting for this drug. [LB167]

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SENATOR PANSING BROOKS: Thank you, Ms. Robak. Any questions? Senator Chambers. [LB167]

SENATOR CHAMBERS: Every member of the Medical Association is a medical doctor? [LB167]

KIM ROBAK: I believe that's correct, Senator Chambers. [LB167]

SENATOR CHAMBERS: And everyone in order to be a doctor would subscribe to the Hippocratic Oath. [LB167]

KIM ROBAK: That is correct. [LB167]

SENATOR CHAMBERS: And the first principle is: first, do no harm. [LB167]

KIM ROBAK: That is correct, Senator. [LB167]

SENATOR CHAMBERS: If they were...if they thought that this would do harm, they would not have been able in good conscience to take a position in support of this bill, would they? [LB167]

KIM ROBAK: That's correct, Senator Chambers. [LB167]

SENATOR CHAMBERS: Most people in this room I think if they had a sickness or an illness would go to a doctor. Does that seem to be a reasonable assumption, assumption not an absolute? [LB167]

KIM ROBAK: That's a very reasonable assumption, Senator Chambers. [LB167]

SENATOR CHAMBERS: So if we would trust doctors with our health, then we can trust them to study this situation. And they're not taking it for light or trivial reason or to be popular with anybody but because they think it would advance the cause of bringing health or at least appropriate treatment to people who need it. Would that be reasonable? [LB167]

KIM ROBAK: That is correct, Senator Chambers. That's reasonable. [LB167]

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SENATOR CHAMBERS: And to have a reasonable statement such as that made, the person making it would probably be a reasonable man? (Laughter) [LB167]

KIM ROBAK: Very reasonable. [LB167]

SENATOR CHAMBERS: That's all I have. Thank you. [LB167]

KIM ROBAK: Thank you, Senator Chambers. [LB167]

SENATOR PANSING BROOKS: Thank you. Anybody else? Thank you for your testimony, Ms. Robak. [LB167]

KIM ROBAK: Thank you. [LB167]

SENATOR PANSING BROOKS: Next proponent. Proponent? Okay, opponent. [LB167]

DEXTER SCHRODT: Madam Chair, members of the Judiciary Committee, my name is Dexter, D-e-x-t-e-r, Schrod-t, S-c-h-r-o-d-t. I'm a third-year law student at the University of Nebraska College of Law. I am the cofounder of the Students for Sensible Drug Policy chapter at the College of Law and I'm here on behalf of the Nebraskans for Family...Nebraska Families for Medical Marijuana. First, I want to draw attention to a few just interpretation problems that perhaps the legal counsel can help interpret. If you turn on page 3, lines 21-30, you'll find the definition of marijuana. And it says it means, and go all the way down the line 29, the CBD contained in a drug product approved by the Federal...by the FDA. That's the same line that appears on the Schedule V for the CBD oil on the very last page, page 42. To me, this seems to still include the CBD product that's approved by the FDA under the definition of marijuana which, as you recall, is still listed under Schedule I, because if you turn to page 15, line 10, you'll see marijuana listed as Schedule I. So what this seems to be doing to me is including the CBD within that definition. If you wanted to except it out, it would make more sense to have language like on page 4, lines 4-6 where it mentions industrial hemp. I would think that if you're wanting to remove CBD from Schedule I to Schedule V you'll want to except it like you did industrial hemp on the definition list. Also the CBD definition, how it must be approved by the FDA, there are also hemp CBD oils that do contain a percentage of CBD and those will not be approved by the FDA because FDA views hemp as a supplement, whereas CBD derived from the actual cannabis plant, marijuana, is viewed more as a medicine. So those are some things to keep in mind. We would also like to note that pharmaceutical products such as Epidiolex are not whole plant oils. It's my understanding that Epidiolex only contains one certain type of CBD. Whole plant oils, such as Charlotte's Web which you may have become familiar with over the last

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couple years, have been shown to have much better results in children with epilepsy and seizures than have pharmaceutical CBD products. I would point you to Iowa. In 2014 they passed whole plant oils so long as the THC content was under 3 percent. This would allow not only for Epidiolex, which does contain CBD, but it would allow for all types of CBD oil products. And to answer Senator Pansing Brooks's question, in medical marijuana states they can just issue the whole plant CBD oil because they do not need FDA approval or anything. You'll never...you probably won't see FDA approval because in order to test whole plant oils you have to be able to acquire whole plant oils. And unfortunately the DEA has a lockdown on that type material. So to compare that to tests between one pharmaceutical product and a whole plant oil just doesn't...it's apples to oranges, in my opinion. Yeah, I mean that's all I have for today. Just wanted to point out those few things. We feel that it would better serve the patients in Nebraska to have whole oils approved and allowed. But we understand the intent of the bill. We agree with the intent of the bill. We just feel it needs to go farther and also would want to check the language in the definitions to ensure that CBD products aren't still being kept under Schedule I when in reality we want to move them the Schedule V. [LB167]

SENATOR PANSING BROOKS: Thank you very much, Mr. Schrodt. Senator Krist. [LB167]

SENATOR KRIST: Thanks for...I'm sure that you have been assisted within your group in terms of the technical comments that you made to the bill. And I think that's very appropriate. I'm glad that your group and your law school is active in terms of feedback for these kinds of bills. I only have one comment as a layperson. We've already gone down the road of the whole oils concept and we have already declared it dead in the Legislature in terms of had a court proceeding, if you will, a lot of dialogue about the direction that the state wants to go. And I don't think maybe in my lifetime I'm ready to see or I will see Nebraska go down that road. So if you were in a court of law or you were trying to convince me of something other than what we have already...the road we're trying to go down, I think someday we may get to a point where the whole oils concept will be there. I don't think that I will give that to my child if it's not approved by the FDA and there's not some measure of the product in terms of the quality of the product that the FDA would bring forward. So I find your argument, although legitimate, to me having gone through these conversations on the floor, I know what is sellable, I guess, within the state. But once again, I think your comments about the actual language are appropriate for the...for our counsel to take a look at and make sure that we're not defining things different ways in different places. That's critical to the success of any statute. So thank you for coming and... [LB167]

DEXTER SCHRODT: Sure. If I could... [LB167]

SENATOR KRIST: Yeah, absolutely. [LB167]

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DEXTER SCHRODT: If I could comment, I do understand that we have gone this road the last couple years. I've actually testified here three years in a row now on this kind of topic. We just wanted to go on the record that we do feel it needs to be expanded. I will say under this language, since it does say "contained in a drug product approved by the federal Food and Drug Administration," if the FDA were to ever approve full plant oils, I guess that definition would fall under there. [LB167]

SENATOR KRIST: You're absolutely right. [LB167]

DEXTER SCHRODT: So the possibility is there. We would just like to see at the state level go farther. [LB167]

SENATOR KRIST: Okay. Thank you very much. [LB167]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Senator Chambers. [LB167]

SENATOR CHAMBERS: Having been trained in the law many years ago, sonny, before you were born probably, the law is filled with nuances and splitting of hairs because it deals a lot of times with a concrete situation where there is a clear, bright line sometimes around what it is you're dealing with. But you understand the difference between even medical research, medical science, the law, and then a political forum. [LB167]

DEXTER SCHRODT: Right. [LB167]

SENATOR CHAMBERS: If we cannot swallow a peanut, do you think you can swallow an elephant? [LB167]

DEXTER SCHRODT: I do not believe so, no. [LB167]

SENATOR CHAMBERS: And I think it's good to get things on the record. I've been against the death penalty as long as I was aware that the state would kill people. When I came to the Legislature many years ago I tried to get the death penalty abolished, have continued to do so. And the analogy I have to give people: If I were a hippopotamus, somebody could give me a bushel basket full of apples and I could swallow that in one go. But not being a hippopotamus and being in a situation like I am in the Legislature, I cannot even swallow a whole apple in one go. So I take it a bite a time incrementally and try to move toward the ultimate goal and by doing so I was able to persuade the Legislature before the U.S. Supreme Court went in that direction not to allow...the term was mentally retarded at that time. You couldn't execute somebody who

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fell into that category. You could not execute juveniles. Those are incremental steps, but not nearly what I would like to do. So we need different points of view of the kind that you bring to show that this is a broad issue. There are different groups looking at different aspects of it. And if we could get it all together we'd have a completed picture. So because the Legislature may not adopt what you want to see done doesn't even indicate that we're opposed when some of us may be very much in favor of it. But we have to get what we can get it and where the greatest need is found is where we have to focus our attention. And since children are the ones who are, as far as I'm concerned, the focus of this bill, I'll go all out for the children. I don't have a corpuscle of religion in me. I don't believe there's a there's a supernatural anything that's going to help me if I'm in trouble. If a bear can run 100 yards in nine seconds and I can run it in ten seconds, nothing supernatural is going to make me able to run it in eight seconds or the slow the bear down to ten seconds. I'm going to be a meal. But at least I'll be wearing a bear coat from then on. And here's what I'm trying to get to. I like to quote what people say what they believe. They say they believe in Jesus. And Jesus was dealing with little children and his disciples, probably politically inclined, said don't...you know, tell those children to go away, we've got important people here, they might advance our causes. He said, hold on. He said, you see these little children? Unless you become like little children, you're not going to heaven because such is the...is the kingdom of heaven. Then he said something else that was ominous, looked around the crowd, saw people with children, and he didn't need anybody to tell them what was in man because he knew what was in man. So he gave them a pointed message. Anyone who offends against the least of one of these, my little ones, it were better that a millstone were hanged around his neck and he was drowned in the depth of the sea. So when it comes to the children, everything else may take second place. Doesn't mean I wouldn't consider other things, but the first in line for me are the children. And I watched and listened to politicians cold-bloodedly be aware of these horrendous agonies that children suffer, the terrible suffering of the parents. And you don't have to be a religious person to say in order that my child not suffer, let me. But that doesn't work. So we're trying to move in a direction that will help children and those who love children. And I'm saying that so you won't think that what you're trying to do is discounted. And sometime I'd like to have a conversation with you because you may see an angle that I haven't seen and we might can get more from more people. [LB167]

DEXTER SCHRODT: I would welcome that conversation and I do see...would like to say I completely understand your analogy and your viewpoint and wholeheartedly agree that if biting the apple is what it takes, then that's what it takes. [LB167]

SENATOR CHAMBERS: It's difficult sometimes to be patient, but that's the best we can do. Thank you. That's all I have. [LB167]

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SENATOR PANSING BROOKS: Thank you. Anyone else have a question? Thank you so much, Mr. Schrodt, for coming in and for being a good representation. Good luck with law school. [LB167]

DEXTER SCHRODT: Thank you. [LB167]

SENATOR PANSING BROOKS: Okay. Any more opponents? Welcome. [LB167]

EDWARD WILLIAMS: Thank you very much. I'd like to say hello to all the Judiciary Committee members. My name is Edward Williams, W-i-l-l-i-a-m-s. I represent the Nebraska Veterans for Medical Marijuana. And I'm a current CBD user. I use it for neuropathy and it really helps me. I'm concerned about this bill making the CBD that I can buy locally in Lincoln, Nebraska, illegal. That's my concern. I know there are different types. You can get it at vape...a lot of the vape shops. You can also get it through the health food stores. What I get from the vape shop is certified and tested. So I know that it's pure and complies with the no THC. Now it was mentioned that CBD is actually illegal in Nebraska. And I have concerns over this because you hear both ways all the time. And I guess that's all I really wanted to say because a lot of people do use it for a lot of different things. It's a nonpsychoactive substance and anybody can get it in Lincoln, Nebraska, and try and see if it does help their condition. [LB167]

SENATOR PANSING BROOKS: Thank you. [LB167]

EDWARD WILLIAMS: So let me conclude. That concludes my remarks. [LB167]

SENATOR PANSING BROOKS: Okay, thank you, Mr. Williams. And where are the places that you're getting...where this oil can be obtained? [LB167]

EDWARD WILLIAMS: Most of the local vape shops you can get vape fluid, and all the health food stores. But that CBD is outsourced from overseas. It's not American made. What I get from the vape shop I go to is grown in Colorado specifically for CBD. [LB167]

SENATOR PANSING BROOKS: Okay. Thank you very much for your testimony. Does anyone else have another question? No. Okay, thank you very much for coming in today. [LB167]

EDWARD WILLIAMS: Cool. Thank you for hearing me. [LB167]

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SENATOR PANSING BROOKS: Any other opponents? Come forward, please. Welcome.  
[LB167]

JANE STANLEY: (Exhibit 4) Thank you. My name is Jane Stanley, J-a-n-e S-t-a-n-l-e-y. Some of you know me from last year and from many e-mails that I've sent you on the subject of cannabis, legalization in Nebraska. I want to welcome all the new senators to the Legislature. I am a patient and I have PTSD from childhood molestation from the age of 2 to 16. I have been attacked by a man with a knife. And when I was too strong for him, he whispered in my ear, my God, you're strong, and took off. Because I was 15 and a runaway and safer on the street, I did not go to the police and to this day I wonder how many other women he has abused. I am also a chronic pain patient with what is called interstitial cystitis. Prevention in 2015 did a study on the ten most painful conditions. Cancer was number seven; interstitial cystitis is number three. Prior to getting ill in 2006, I was a lab tech at an ethanol plant. I had graduated from Central Community College and I was proudly able to quantify m- and mu-calpain and have the DNA research from that published with Wesleyan in April 2000. During my time at AGP I also started to go school for my forensics degree because that was my dream: law enforcement. Then I became ill and my life ended November of 2006. I did traditional medication for nine years. I did everything the doctor asked me to. And like we heard from a previous speaker that when you are not healed from a medication, each prior medication, that chance of healing goes down. With interstitial cystitis, unfortunately 15 percent have no relief from any type of traditional medication. I am one of those 15 percent. As of November of 2006, we had to stop all pain medications to reset the receptors in my brain. The last medication, pain medication I took was Oxycontin. I took it for two weeks and the side effects, the hallucinations, I took it for two weeks, called my doctor, and said I refuse to take this anymore. By the end of the month I decided I'm not taking any more pain medications. And as of three months ago I took my last medication. I am healing naturally with food, with spices, with herbs. I am also using CBD. I have a team of cannabis experts. If you look on the left side, the first annual cannabis education seminar I did last year, we had people leave the room in tears because they had no idea what cannabis could do. The next page is Oregon's government, comparison of danger. Part of LB...Patent 6630507 and this chart tells you what all the cannabinoids can do. I like to tell people that when you start isolating the cannabinoids from cannabis it's like taking hydrocodone, taking out the codeine and expecting it to do the same thing. I do educational tours to Colorado and I have a patient advocate who is willing to have patients testify. My team is here to educate you. And if you are interested in going to Colorado with me on one of these trips and talking to patients, talking to parents, I have encouraged one mother to talk to her doctor to increase the THC. Do you want me to continue? This child was... [LB167]

SENATOR PANSING BROOKS: Can you summarize it quickly, what you were going to say.  
[LB167]

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JANE STANLEY: Yes. This...the child has Dravet syndrome. He was dying in the hospital. I encouraged her to increase the THC. This child is now home. He was dying in the hospital. And because she increased the THC, this child is living. And unfortunately children need high THC when they have severe Dravet syndrome. Lynnice Wedewer is one of my experts. She is a three-time cannabis government research subject. And she's allergic to chemotherapy. She is here any time you need her to talk to her. She was 14 at her...during her first government study. Dr. Melamede, he is an international cannabis expert. He is here for you. We are here for you to educate you on what this plant really can do. CBD alone, I'm sorry, unfortunately it's not going to help the worst of the worst. And it's sad but it's true. I was like a lot of Nebraskans who believed that this didn't have any medical benefits and because of my education, I have a master's in cannabis, I found different. And I hope that you take what I've said into consideration and I'm here anytime you need me. Any questions? [LB167]

SENATOR PANSING BROOKS: Thank you, Ms. Stanley. Now are there any questions from the committee? No. Thank you, Ms. Stanley, for coming. Appreciate it. [LB167]

JANE STANLEY: You're welcome. [LB167]

SENATOR PANSING BROOKS: Next opponent. Next opponent. Welcome. [LB167]

GREGORY C. LAUBY: (Exhibits 5-8) Thank you. I do have some handouts. Good afternoon. I'm Gregory C. Lauby, G-r-e-g-o-r-y C. L-a-u-b-y. I don't know whether you'll have a better-intended bill come before you for a hearing or not this year. Certainly I commend Senator Ebke for her efforts to address the suffering of the vulnerable who appeared before this committee on March 6, 2015, who detailed their need for legal access to cannabis plants for relief, even healing, as well as all of those who could not appear because either they couldn't attend the hearing or because it was closed at 9:00 p.m. But what I am concerned about is the unintended effects of this bill that cause me to oppose it on the grounds that the children deserve better. First of all, in the materials that are being passed out is a Hoban Law Group memo that addresses the issue of whether or not CBD is actually illegal under the federal statute. And I have not found where that analysis would not also question the illegality of it under the Nebraska statute. So I hope that you would look at that bill carefully...or that memo carefully. Secondly, there are an excerpt from the transcript of Paige Figi who testified to the Judiciary Committee on March 6, 2015. She is the mother of Charlotte Figi who had had a remarkable recovery from repeated daily seizures upon the first application of a cannabis extract. And that has led to the development of, together with, as I understand it, the Stanley Brothers of a program that supplies a high-CBD substance were together with a low THC substance that is not in any way intoxicating or euphoric that has helped thousands of children whose parents have taken them to Colorado because they can't get relief any other place. And one of the things I would point out to

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you is that her administration of that program is done under the industrial hemp provisions of both Colorado and the federal government. It is not done under the Colorado medical provisions. And Nebraska has very similar, if not identical, definition of industrial hemp here in our own Nebraska statute, Section 2-5701, which says: that "the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9"--and forgive me if I just say THC--"concentration of not more than three-tenths percent on a dry weight basis..." There is not...that would include all of the products that come from that plant with that low of a THC concentration. And that plant will produce CBD extract. I would also note that the definition of marijuana, and it's included in Senator Ebke's bill for your reference, before she makes the change, specifically excludes the stalk and the fiber from the definition of marijuana together with derivatives that are commonly taken from that plant. And it is that exception that has allowed retail products ranging from hand lotion and soaps and shampoos all the way to food to be sold on a retail level, especially given the permanent injunction that the hemp industry's association obtained against the DEA that is referenced in the memo that was passed out. There is also a statement that at least is one person's analysis of the benefits of whole-plant CBD versus the chemical or the extracted pharmaceutical version. There is also then a report from a conference that was taken recently in June. There was an international conference that featured 87 world presentations on a wide range of products...topics germane to cannabidiol science and medicine. The idea that this has not been studied is totally misinformation. Finally, I would call your attention to the statement... [LB167]

SENATOR PANSING BROOKS: Mr. Lauby, are you...can you summarize quickly because the light, we're supposed to... [LB167]

GREGORY C. LAUBY: Thank you very much, Chairman. I will summarize quickly. [LB167]

SENATOR PANSING BROOKS: Thank you very much. [LB167]

GREGORY C. LAUBY: I would also show...call your attention to another portion of the testimony that was given on March 6, 2015, by Professor Robert Mikos who assured the committee at that time there was no obligation under either the federal Supremacy Clause or the Preemption Clause to enforce state statute through the state law enforcement resources, unless the state agreed in some way to do that. And also there is the statement from the Otoe County Attorney representing the Nebraska County Attorneys Association which concedes that he would agree generally with that analysis. [LB167]

SENATOR PANSING BROOKS: We will make these a part of the record, the things that you handed out. And we need to go on because the lights. [LB167]

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GREGORY C. LAUBY: May I make one more statement? [LB167]

SENATOR PANSING BROOKS: Okay. [LB167]

GREGORY C. LAUBY: Finally, there is a reference to another company who is actively involved in marketing the CBD products. They make every effort to ensure those products come from the excepted portions of the plant not considered marijuana. To set up this plant then would in effect run the danger of creating a monopoly for one pharmaceutical company because they're the only one who would have FDA approval for some time to come. [LB167]

SENATOR PANSING BROOKS: Thank you very much for your testimony. Can you...our committee clerk is needing you to spell your name one more time, please. [LB167]

GREGORY C. LAUBY: Sure. Gregory, G-r-e-g-o-r-y, C as in cat, Lauby, L-a-u-b-y. [LB167]

SENATOR PANSING BROOKS: Thank you very much, Mr. Lauby. Any questions from the committee? Thank you very much for coming today. Appreciate it. [LB167]

GREGORY C. LAUBY: Thank you for allowing me. [LB167]

SENATOR PANSING BROOKS: Okay, next opponent. Next opponent. Okay, anybody in the neutral? Anybody would like to speak neutrally. Okay, Senator Ebke, do you have a closing? [LB167]

SENATOR EBKE: Thank you, Senator Pansing Brooks and the committee. I'm going to say it once: cannabidiol. We'll see if we got that right. Let me just point out that there is a very narrow purpose to this bill. It's not intended to address the broader question of CBD use or legalization or anything else. What it is designed to do is to allow a very specific group of patients to have a very specific CBD pharmaceutical prescribed if and only if it is rescheduled by the FDA, DEA based on the clinical trials. I would ask for your favorable consideration of LB167. And if there is language that we need to work out before we advance it to General File we can do that. Thank you. [LB167]

SENATOR PANSING BROOKS: I thought it was can-na-bid-ile (phonetically). [LB167]

SENATOR EBKE: Okay. Whatever. (Laughter) [LB167]

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SENATOR PANSING BROOKS: Thank you, Senator Ebke. [LB167]

SENATOR EBKE: Thank you. [LB167]

SENATOR PANSING BROOKS: And that closes the hearing on LB167. There are letters. Yeah, sorry. (Exhibits 1-3) We have a letter of support from Joni Cover who is the Nebraska Pharmacists Association Director; and a letter of support from Deepak Madhavan, M-a-d-h-a-v-a-n, who's testifying on his own behalf; and then we have a letter of opposition from Thomas Williams from the Department of HHS. Thank you. [LB167]

SENATOR EBKE: And I know Senator McCollister snuck in, I think, but let's... [LB350]

SENATOR PANSING BROOKS: He's right here. [LB350]

SENATOR EBKE: There he is. Ready to go? Okay, LB350. Senator McCollister. [LB350]

SENATOR MCCOLLISTER: (Exhibit 1) Chairwoman Ebke and members of the committee, I am John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha, Nebraska. I'm very pleased to introduce LB350 this afternoon. This proposal would broaden eligibility for a set-aside request to include people who were not placed on probation or only given a fine but, instead, were sentenced to jail or prison for their offenses. A petition to set aside a conviction would be available only after a person completes his or her sentence. Under current law a person may petition or request that a court set aside a criminal conviction after such person has completed his or her sentence. This remedy is only available for those people who are placed on probation and successfully completed their term of probation or received a fine and paid that fine. If the court determines that the set-aside is appropriate, the court will enter an order to restore some, but not all, of the rights or privileges that the person lost by the criminal conviction. LB350 would not provide the ability to request a set-aside order for any person who has a pending criminal charge in any court, is presently required to register as a sex offender, was convicted of a traffic offense under the rules of the road and similar misdemeanor or felony traffic offenses, or was denied a petition to set aside a conviction within the previous two years. The factors a court is to consider in determining whether to grant set-aside are the same as they are under current law for those people who have the ability to petition for a set-aside. LB350 also clarifies that a set-aside does not restore a person's right to possess a firearm under state or federal law assuming the person lost such right upon conviction. Please note the handout that you've received. I think it clarifies what the bill does and does not do. There are proponents here today to provide more information about the current set-aside laws and how the changes proposed in LB350 would benefit some Nebraska citizens without creating risk to the public. I would be happy to answer questions if I can. [LB350]

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SENATOR EBKE: There any questions for Senator McCollister? You going to stick around for closing? [LB350]

SENATOR McCOLLISTER: Thank you, Senator Ebke. [LB350]

SENATOR EBKE: Okay. First proponent. [LB350]

TIMOTHY NOERRLINGER: Good afternoon. My name is Timothy Noerrlinger. I'm an attorney here in Lincoln with Naylor and Rappl Law. I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association in solidarity as a proponent of the bill. I would tell you I have spent my career both as a prosecutor and as a defense attorney. For about the first eight years of my career I was a prosecutor in Otoe County, Nebraska; since then, I have been a defense counsel here in Lincoln. I will tell you there have been times where I've seen people petition the court, both as prosecutor and defense attorney, to ask for set-asides where they are summarily denied because they receive some sort of a statutory sentence, meaning jail, as opposed to being placed on probation or getting a fine. We think that this bill helps to fix that. There are a number of reasons why certainly people ask to not be put on probation legally. There are individuals that have schedules for work--over-the-road truckers, people that work third shift--that make it difficult for them to accept probation. And so in lieu of doing that, if it's a sentence that the court deems significant, they ask for a statutory sentence which usually is minimal, under seven days, just to avoid having further issues by not being able to comply with their probation. A set-aside legally really doesn't do the same things as a Board of Pardons. It is a lesser remedy. Obviously there is a separation of powers issue, but this allows for another avenue for people that are sentenced to minimal jail to receive a set-aside through the judicial branch. With regard to the bill itself, I would point out that there are certainly offenses that are being added that will not be eligible for the set-asides. And additionally, the law makes clear what the Supreme Court has already indicated: that a set-aside does not restore gun rights. There was an individual that litigated that issue a number of years ago that there is a case on point that says that that's already the case, it's already the law in Nebraska. It's just a matter of codifying what the Supreme Court says. So with those comments, if anyone has any questions with regard to a practicing attorney about the practical effects of this law, I'm certainly willing to take those. Otherwise, I think that outlines the position of our organization and why we think this is an appropriate thing to do, because there's certainly times where people are placed in jail; they're not people that are mal...it's not for malfeasance or anything like that and would just be a way to fix what is a defect that doesn't allow them to seek a set-aside in the same way that people that are put on probation or fined. I will tell you that that is often a conversation as defense counsel you have to have with your client and you have to explain to them, look, you take a jail sentence, we can't do a set-aside, we can't help to kind of clean up your record later when you go looking for a job. And so I think that this is certainly something that is appropriate. It's certainly still within the purview of the courts. The judge does not have to summarily grant a set-aside. There

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are certainly times where they have not. In my varied practice in south-central, southeast, and now Lincoln, I would tell you that judges tend to follow kind of a rule of thumb that before you get a set-aside you have to have a period where there are no further law violations generally. I've seen two to three years for misdemeanors, right around five years for felonies, and that seems to work to avoid having someone come back before they really should to get the set-aside. And obviously, again, that's separation of powers issue. The judges are well situated and kind of have a means for dealing with that, so. [LB350]

SENATOR EBKE: Okay, thank you. Senator Krist. [LB350]

SENATOR KRIST: Thanks for coming; thanks for your testimony. On page 3 of the bill, line 16, I think you said this but just to make it part of the record, the reason that this item (c), line 16 and 17, is in here is to codify what the Supreme Court has already ruled. [LB350]

TIMOTHY NOERRLINGER: That's correct. And it's good law in Nebraska. I should have written the cite down; I'm sorry I didn't, Senator. [LB350]

SENATOR KRIST: That's okay. We can find it. [LB350]

TIMOTHY NOERRLINGER: But I will tell you it's very clear. The Supreme Court has got a ruling directly on point that says that set-aside does not restore your firearm rights. The only way to do that in Nebraska for a felony conviction or a misdemeanor crime of domestic violence during the period that you're prohibited is to go in front of the Board of Pardons and successfully get the Attorney General, Secretary of State, and the Governor to pardon you for the offense. [LB350]

SENATOR KRIST: Pardon you? So is that citing easy for you to get for the Supreme Court ruling? [LB350]

TIMOTHY NOERRLINGER: Oh, sure. [LB350]

BRENT SMOYER: I can get it. [LB350]

SENATOR KRIST: We can get it? Okay. [LB350]

TIMOTHY NOERRLINGER: Oh, Mr. Smoyer says he can get it, so. [LB350]

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SENATOR KRIST: Yeah, one way or the other. Then the part two of the question--it probably happens all the time, I'm just not familiar with seeing it in a bill that I've looked at closely enough--this is the page 5, starting with line 5, (8) it says it's retroactive. [LB350]

TIMOTHY NOERRLINGER: Right. [LB350]

SENATOR KRIST: And I guess could you just explain the rationale behind that? [LB350]

TIMOTHY NOERRLINGER: Sure. I think that the rationale there as I understand it is that if there could be an argument that this bill is not retroactive, so that it does not apply to individuals that have already served statutory sentence that would be eligible. And again, statutory sentence means a jail sentence when I'm speaking legal parlance. [LB350]

SENATOR KRIST: Okay. [LB350]

TIMOTHY NOERRLINGER: So if you've got somebody that two years ago got an MIP in front of a judge and said, you know, judge, I don't want to do probation, I'm working third shift, I'm going to have trouble showing up for testing and meeting with this officer and I've got issues with where I'm living or how to get back and forth to probation, by making it retroactive, that allows that person that's already been convicted of the offense and served a minimal jail sentence to then apply for that set-aside as opposed to making it only available to people that are prospectively going forward, so from the date of enactment it is only available to people that would be convicted and sentenced after the act would take effect. [LB350]

SENATOR KRIST: So in essence it's a look back that has no statute of limitation in terms of application. [LB350]

TIMOTHY NOERRLINGER: No, you know, and again, obviously there is no...when you apply that retroactivity, there is none. You certainly have judges that will be looking at the guidelines that are listed in the statute to make a determination with regard to whether or not an individual should get a set-aside and there are also certain things that the judges generally look at in terms of legal behavior since the time. The county attorneys are always notified that a set-aside is being sought. It's set up in front of the judge so that the county attorney can object, can articulate their reasons why, so obviously those would still all apply. It just allows for former clients of mine, for example, that chose not to do probation or were unfortunate enough not to get a mere fine on something to be able to access the set-aside. [LB350]

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SENATOR KRIST: So thank you. It's a pleasure asking questions from someone who is prepared to answer them. Thank you for that. [LB350]

TIMOTHY NOERRLINGER: Well, all right, no problem. Thank you, Senator. [LB350]

SENATOR EBKE: Are there any other questions? Senator Halloran. [LB350]

SENATOR HALLORAN: Other than this being less red tape, clearly, than having a pardon, what would be the difference between this and a pardon? [LB350]

TIMOTHY NOERRLINGER: Well, certainly, as I talked about, there are some rules of thumb. Now I don't know how familiar you are with the pardons process, but I routinely do them. So I will tell you... [LB350]

SENATOR HALLORAN: Start from scratch. [LB350]

TIMOTHY NOERRLINGER: I will tell you that the Pardons Board will not pardon someone that's been convicted of a felony, for example, unless ten years have elapsed since they either finished serving their sentence at the Department of Corrections or, in the alternative, have finished from the time they were discharged from probation. So that's a ten-year period you're looking at. Right? With regard to misdemeanors, the Pardons Board applies the five-year standard, so it's five years from when probation was done or five years from when you were released from the county jail. With regard to set-asides in the way that I have seen judges apply this in my practice, a set-aside is available before you could get a pardon, so it is an intermediary step. For example, in Lancaster County here, you routinely see judges say you need to have three years, no further criminal conduct, you can get the set-aside on a misdemeanor in five for a felony. So you have a period of time where an individual that's been living a law-abiding life, fully rehabilitated themselves, can then get the set-aside; and then if they continue to do that, then they can go in front of the Board of Pardons to get the more robust pardon if that makes sense, Senator. [LB350]

SENATOR HALLORAN: Thank you. [LB350]

SENATOR EBKE: Any other questions? Thank you, Mr. Noerrlinger. [LB350]

TIMOTHY NOERRLINGER: All right. Thank you, Chair, Madam Chair. [LB350]

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SENATOR EBKE: Have a nice day. Thanks. [LB350]

TIMOTHY NOERRLINGER: Thank you. [LB350]

SENATOR EBKE: Next up, another proponent. [LB350]

STEPHANY PLEASANT MANESS: Madam Chair, Judiciary Committee, my name is Stephany Pleasant Maness. I'm a third-year law student at the University of Nebraska Law and I'm just testifying as a citizen today. [LB350]

SENATOR EBKE: Could you spell your name, please. [LB350]

STEPHANY PLEASANT MANESS: Yes, ma'am. It's Pleasant Maness, P-l-e-a-s-a-n-t, like the adjective, and then M-a-n-e-s-s. [LB350]

SENATOR EBKE: Okay, thank you. Go ahead. [LB350]

STEPHANY PLEASANT MANESS: I'm just quickly testifying as a citizen but I work in the Civil Clinic at the law school and I'm working on the criminal set-aside observation project. We've just been kind of observing criminal set-asides and looking at some of the data and some of the issues and I just wanted to get on the record. The previous defense attorney spoke about how people who take jail time in lieu of probation because they're unable to take probation for their jobs as over-the-road truckers, or I think he gave a couple examples for when that would be the case. There are two other times that people can take jail time and, in fact, get a set-aside. So the first time is when they take it as a condition of their probation. So they could be set for probation and then the judge could say in that probation you get seven days of jail time along with four months of probation, checking with your probation officer. In that case, because the sentence was probation and it wasn't the sentencing of jail time, they can, in fact, get a set-aside. So there still...they would still have jail time but it's under the condition of a probation, rather than swapping it out for probation for someone who is unable to commit probation. The second time is the sitting out of a fine. So the judge could sentence a fine and the person could take jail time in lieu of that fine. So for \$72 a day, they take...so say they're fined \$100. They would have to spend a day and a half in jail to pay for that. And in that case, because the sentence was, in fact, a fine, it still applies under the set-aside statute. So in both of these cases you have a time where someone is taking jail time because they either can't afford the fine or it's a condition of their probation to be able to be rehabilitated and go back into the community but instead they're taking some jail time which later can be set aside because that wasn't the sentence for jail. So I just wanted to kind of quickly...I could take any questions if you have any. [LB350]

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SENATOR EBKE: Senator Pansing Brooks. [LB350]

SENATOR PANSING BROOKS: I'm just so pleased to see law students coming and coming before us. And I don't know if it's a certain class that's encouraging this, but I think you did a great job explaining it and I hope that you'll encourage... [LB350]

STEPHANY PLEASANT MANESS: It was actually kind of coincidental. "Dex" and I are in the same class but had no idea we were going to both be here today. [LB350]

SENATOR PANSING BROOKS: It's totally (inaudible). Well, anyway, it's a wonderful way for the students to get involved and understand a little bit of another part of the law, so thank you very much for coming. [LB350]

STEPHANY PLEASANT MANESS: Thank you. [LB350]

SENATOR EBKE: Any other questions? Thank you for coming today. [LB350]

STEPHANY PLEASANT MANESS: Thank you. [LB350]

SENATOR EBKE: Any other proponents? I see nobody in the on-deck chair but I'll give you an opportunity anyhow. There we go. Good afternoon. [LB350]

JAMES HANSON: (Exhibit 2) Good afternoon, Senator Ebke and members of the committee. Jim or James Hanson, J-a-m-e-s H-a-n-s-o-n. As of a year ago December, I changed the alphabet behind my name from a felon, convicted felon, to a Ph.D. And so it's been quite a journey. My wife has been gone 12 years. And she asked me, said, Jimmy, how much longer do you have to keep paying back? I couldn't answer her. And my crime was a light offender crime. I got set up on a deal at a med center. I thought I was getting a loan. Not to get into the details but, plain and simple, the contractor wanted me out of the way and I had a...those that are around the area, Omaha, you'll know the name. My judge was a bad egg. Not to do name calling, but you'll know the name if I mention it: "Deacon" Jones, Richard "Deacon" Jones. He finally got thrown off the bench in Omaha. That was the judge I had. Well, anyhow, kind of like they said in Shawshank Redemption, you either get busy living or you get busy dying. So I got busy living. And to go along with what this gentleman said, he's exactly right on the full pardon--been there, done that, had the full pardon, had to do 300 hours of community service. I did over 3,000 hours community service. Before I got my full pardon, I volunteered on Governor Johanns' campaign, Secretary of State John Gale's campaign, and Attorney General was Jon Bruning at the time. I helped on all their campaigns. Not too many felons or otherwise have probably been invited to

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the Capitol, one on one, upstairs in their offices, and I did each one of them. And they said, Jimmy, you just messed up. And so along came the pardon and Governor Johanns stood up. He said, well, whoever is first hit the jackpot. Well, he knew who was first because it's a preprinted agenda. There were 73 items that day. And so anyhow, Governor Johanns said, James Hanson, come forward. I stood up and he said, you're here fully pardoned with honors; I've never had anybody do or take things to the level you have since I've been Governor of this great state of Nebraska. My wife was still alive at the time. We went outside and she burst into tears. And we thought it was over--wrong, not over. I thought maybe get the Ph.D., it would be over--no, not over. There's really only--as you know, President Obama, every President does it--they set aside, they expunge, or whatever, a conviction before they get out of office. Something is still missing from the picture, folks, and you'll be doing a great service for the state of Nebraska, for humanity, and for others. And I humbly say for what I have been through, I wouldn't want anybody to go through but I'm kind of a poster boy in a light sense of the word because I have experienced all this, so I can share with you what's worked, what's not working, and where I think we can all collectively make a difference as private citizens, parents, neighbors, politicians and, due respect, all of the above, and is to pull it together and, you know, go along and get the passage of this LB350. And I think it would be a great thing to do. There any questions?  
[LB350]

SENATOR EBKE: Thank you, Mr. Hanson. Yes, Senator Pansing Brooks. [LB350]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Hanson. I just want to clarify for the record, what do you think...so after the pardon it wasn't enough. Is that correct? [LB350]

JAMES HANSON: (Nods.) [LB350]

SENATOR PANSING BROOKS: So could you explain for the record why? [LB350]

JAMES HANSON: Well, you would still have to check the box. I suppose, Senator Pansing Brooks, that some of it's maybe paranoia after so much time, you mean. I got my doctorate at 67.5 and, you know, but you know what happens with a lot of applications: Oh, felony? Well, it goes in that pile. [LB350]

SENATOR PANSING BROOKS: Right. [LB350]

JAMES HANSON: Like OPS, I...no secret there. I've subbed for OPS for 15 years and I have a license to be a principal. Do I get hired? No, they won't hire me as a principal or a teacher and very qualified and I don't think they want to have somebody pick up the Omaha World-Herald

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and say, oh, the district hired a felon. And where if it's expunged or set aside, and I think after this amount of time--and as the Governor and everybody said, I trusted this guy and I screwed up, okay, I made a mistake, I readily admit that--but how long should I have to be punished? There has to be a reward of some kind and that's where (inaudible) accomplished offenders who are trying to rebuild their lives. That's what I did my entire dissertation, the thing I passed out, there's over 1,200 houses in north Omaha; they're sitting idle, gang infested, rat infested. Take these guys, rebuild these houses, rebuild the neighborhoods, make it safer, and help reconnect some of the families and things like that, so. [LB350]

SENATOR PANSING BROOKS: Well, thank you for your efforts and work and I'm sorry it's been such a struggle. [LB350]

JAMES HANSON: Well, you know, you just...but I thank you folks. I mean, you know, you always look for a brighter light somewhere just to...and I thank Senator McCollister for putting this together but, you know, you always look for a brighter light to build a better tomorrow, as they say, and an open mind and an open heart and how we listen and learn from others, so I thank you. [LB350]

SENATOR EBKE: Thank you. Any other questions? [LB350]

JAMES HANSON: Any more questions? [LB350]

SENATOR EBKE: Thank you, Dr. Hanson. [LB350]

JAMES HANSON: Good to see you, Senator. Thank you. [LB350]

SENATOR EBKE: Any other proponents? [LB350]

SPIKE EICKHOLT: Opponent or proponent? [LB350]

SENATOR EBKE: Pro. [LB350]

SPIKE EICKHOLT: (Exhibit 3) Good afternoon, Madam Chair. Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB350. We want to thank Senator McCollister for introducing this bill. I'm having a copy of my testimony distributed so I'm not going to read from it. I think that Tim Noerrlinger for the Defense Attorneys (Association) did a very good job of explaining the bill, the reasons behind the bill. I'm not going

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to restate those. But I think that what Dr. Hanson just said and really what Senator McCollister said in his introduction is that this bill is consistent with a principle among a number of different bills that you see in this body introduced this year and really around the country and that is this notion of giving people who have paid their debt to society a second chance. If a person does a sentence of jail under current law in Nebraska, even if it's just three or four days' jail as a sentence, what the...I didn't catch her name, but what the woman who was a law student said, that she's right. If you sit in jail serving a fine, on paper that would be considered only a fine, but if you just do a minimal jail sentence you cannot petition for a set-aside in Nebraska law. And it's not just the people that Mr. Noerrlinger talked about as far as who cannot do probation or who don't get probation. Sometimes people are in the mind-set when they're a first-time or a second-time offender that they're just going to take the jail sentence, they're just going to sit in jail for 30 days because they don't want to be on probation for 18 months because they don't want to quit drugs, they don't want to have to get a job, and they don't want to live a law-abiding life. And sometimes people make that mistake and they'll do a minimal jail sentence and then come to realize what a mistake it was and then experience the scenario that Dr. Hanson just talked about of being denied a job application or a job opportunity, being denied opportunities because of a mistake that they've made. And a set-aside, although it is not a full pardon, it does provide a remedy and it does provide an opportunity for someone to demonstrate to potential employer that they have changed, that things are different, and even the judge that found me guilty believed that. And that matters. I would just like to respond to something that Senator Krist asked about regarding the loss of possession of a firearm. The reason the defense attorneys worked on this bill, I work with the defense attorneys and so I had some role in drafting the bill. The reason that we suggested Senator McCollister to include that notice that the court, when they do issue a set-aside, notify the offender that if that person lost their gun rights that the set-aside does not restore those, is (1) to protect those people, protect the unwary. Sometimes people, and many times people apply for a set-aside with the court without a lawyer; they may not appreciate the distinction between a set-aside and a pardon and think that a set-aside somehow restores their gun rights. And that's a significant felony if you have a felony possession and get caught trying to buy a gun, caught possessing a gun that someone gives you. And Senator McCollister is right. This just reflects at least our understanding of the law. And the case is State v. Illig. I don't know the citation but I just...I remember the name State v. Illig with the Supreme Court. [LB350]

\_\_\_\_\_ : 237 Neb. 598. [LB350]

SPIKE EICKHOLT: Ah, okay, (laugh) well, somebody shouted it out behind me, so apparently there is a citation that...where the Supreme Court indicated that a set-aside does not restore a person's right to possess a firearm. So for those reasons, the reasons I stated in the handout that I distributed, we'd encourage the committee to advance this bill to the floor. [LB350]

SENATOR EBKE: Any questions for Mr. Eickholt? Thank you for coming today. [LB350]

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SPIKE EICKHOLT: Thank you. [LB350]

SENATOR EBKE: Any other proponents? Thank you. Any opponents? [LB350]

DICK CLARK: (Exhibit 4) Chairman Ebke, members of the Judiciary Committee, my name is Dick Clark, D-i-c-k C-l-a-r-k. I'm appearing in opposition to LB350 as drafted on behalf of the Nebraska Firearms Owners Association. Thank you for this opportunity to testify today. It does grieve me to appear in opposition to my friend Senator McCollister's bill but I do think that some of the folks who already testified have missed some of the collateral consequences that they simply may not be aware of as it pertains to set-asides and firearms rights. LB350 would modify the process for obtaining a judicial set-aside, list a number of reasons for which a petition to set aside a past conviction shall be denied; it also provides that while a set-aside may restore other civil rights, the fundamental constitutional right to keep and bear arms will not be among them. To be clear, insofar as this bill merely broadens who may be eligible for a set-aside of a past conviction, the NFOA has no objection to those provisions. Nebraska Revised Statute 29-2264 currently does two things for past offenders who are sentenced to probation and/or a fine. It mandates a court order for release from probation and restoration of voting rights after two years; and second, the law then provides that a person who is convicted of a misdemeanor or felony and gets only probation or a fine may seek a judicial set-aside that will nullify the conviction and remove most civil disabilities and disqualifications after a judge examines that person's behavior, the likelihood of reoffending, and other relevant information. A set-aside is useful for restoring some civil rights and for making it easier to get a job postconviction but it cannot function as pardon since the power to pardon is exclusively reserved for the Governor, Attorney General, and Secretary of State sitting as a board by the Nebraska Constitution. Federal law provides in 18 U.S.C. 922(d) that it is a crime to give a gun to a convicted felon or an individual defined in the statute as a prohibited person for some other reason; of course, that would include folks who are convicted of domestic violence misdemeanor, folks who have been adjudicated mentally defective, committed to a mental institution, etcetera, etcetera. I've attached the list with the full federal statute there for your reference. Another law or another section of the same statute, I should say, 18 U.S.C. 922(g), makes it a crime for a person...for that person to come into possession, so crime to transfer it to them, crime for them to receive a gun or ammunition if they have one of those violators that's on the federal list. State law in Nebraska incorporates these restrictions by reference in various places, including Nebraska Revised Statutes 69-4202 and 71-963. In State v. Illig, which you already heard cited by a previous testifier, the Nebraska Supreme Court noted that federal courts applying these federal gun prohibitions in light of our state set-aside law have held that that expunction, or expungement, does not do what a full pardon would do, that it would not restore your federal civil rights to keep and bear arms where a pardon would. And I'll let you read the exact quote that I've included in my printed testimony. So, therefore, serious offenders who are felons or who are convicted of domestic violence crimes cannot see their firearms rights restored by set-aside in Nebraska--

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previous testifiers were correct on that--but that language in this bill is a distraction. No serious offender will be able to legally possess firearms because a set-aside in Nebraska...excuse me, because of a set-aside in Nebraska and that's true whether or not this bill passes. Only a full pardon can restore firearms rights to such offenders as far as federal violators go. What I will offer as additional information that I think maybe the previous testifiers missed is this doesn't just provide notice about the effects of a set-aside. This bill changes the legal effects of a set-aside and explicitly provides that no firearms rights can be restored by a set-aside. In fact, there are collateral consequences of some convictions that do not create a federal firearms disability but do create a state firearms disability. For example, a person with a controlled substance conviction within the last ten years is not eligible to get a concealed handgun permit in the state of Nebraska. In the city of Lincoln, you can be a prohibited person entirely for possession of a firearm if you have any past weapons offense including carrying a pocketknife with a blade that's a quarter-inch too long. That can make it impossible for you to legally possess a firearm in the city of Lincoln. These collateral consequences can be addressed by a set-aside and I think the previous testifiers may have missed them. What a set-aside can do is restore the legal rights of a person who is convicted of a misdemeanor on which federal law is silent but for which state law or local ordinance create a disability. And I'm giving you some examples of those. Seeking a set-aside, as you've already heard, is usually a fairly short and inexpensive process that involves filing a petition and appearing before a judge. It's often successfully accomplished pro se by the offenders themselves, although I have helped clients who felt like they needed a lawyer's assistance in those matters. It still involves careful individual review by a judge before a person is allowed to possess firearms again but the process is more accessible and easier to understand and, frankly, shorter than the pardon process. Unlike the process for seeking a set-aside, the pardon application is long and expensive. Chairman Ebke, I've got a little bit longer, if I could have your leave to finish my prepared testimony? [LB350]

SENATOR EBKE: Go ahead and finish, yeah. [LB350]

DICK CLARK: Thank you. The pardon process involves compiling an extensive application with complete biographical information: work, family details, character reference letters, statements from the applicant about his or her crimes and reason for seeking a pardon. Often it involves getting a lawyer's assistance to go back in time and try to remember who was that judge who presided over the case, who was the county attorney, a lot of things that normal folks just don't even know how to look up if they've forgotten it. And even after a complete application is submitted, getting the first of two hearings will typically take a year just to get the hearing on the calendar for that pardon. Most applicants benefit from the assistance of legal counsel in completing the application and appearing at hearings before the board. It can cost thousands of dollars for that legal assistance, meaning that it is a remedy that is not as available to past offenders who are less financially well off. That's a real concern. Without the option of seeking a set-aside to alleviate some of these collateral consequence sorts of legal disabilities relating to

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firearms that are created by state law, this bill would push more offenders into the costlier, multiyear process of seeking a pardon from the Nebraska Board of Pardons. Instead of having many judges across the state thoughtfully handling the workload of evaluating those applications, you'll have three state executives and their staff doing all that work now. The NFOA does not deny that some dangerous offenders should be prohibited from having deadly weapons, but we believe that the right to keep and bear arms is an important civil right and we oppose efforts to narrow it, as we believe this bill does. This bill sets more constraints on each judge's ability to exercise discretion in setting aside past convictions and it would take a smart process, in our opinion, and make it dumber by making it more mechanistic. If you oppose mandatory minimums, it seems to me that you should oppose this bill, as drafted, anyway, for the same reasons. I think this bill as drafted is bad policy if you believe in helping past offenders achieve successful community reentry across all the areas of their civil rights, not just over here in this area away from the Second Amendment; it's bad policy if you want to help people keep their legal costs down as they seek restoration of their rights and I think it's bad for liberty. Thank you again for this opportunity to speak today. I'd be happy to answer any questions. I'd be happy to work with Senator McCollister to address our concerns with his bill. [LB350]

SENATOR EBKE: Okay. Any questions? Senator Hansen. [LB350]

SENATOR HANSEN: Thank you, Chairwoman Ebke. Mr. Clark, I'm trying to follow your opposition. Throughout your testimony, I felt like I heard you say this bill doesn't do anything, it does too little, and that it does too much. [LB350]

DICK CLARK: Sure, I can help you clarify that. [LB350]

SENATOR HANSEN: If you can give me a one-, two-sentence reason/rationale of your opposition and what we could do to fix it, I'd appreciate it. [LB350]

DICK CLARK: Sure. Specifically I object to lines 13 through 15 on page 3 of the bill. You'll notice immediately following that is the requirement for notice. We don't object to notice of folks who get a set-aside about what the set-aside does for them. We think that's important so people don't get a misunderstanding. Frankly, some judges in the past have misunderstood what a set-aside can do. But it's those preceding lines, lines 13 through 15, that provides a new limitation on what a set-aside can do, which is restoring an offender's rights under certain circumstances to possess a firearm under state or federal law. Again, it does not...it cannot cure, a set-aside cannot cure a felony conviction, can't do it now, wouldn't be able to do it with this bill on the books,... [LB350]

SENATOR HANSEN: Okay. [LB350]

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DICK CLARK: ...cannot cure that misdemeanor domestic violence conviction. But it's other things, like ability to apply for certain privileges, that are barred right now that this would knock out set-asides as a remedy for, for example, the concealed handgun permit. [LB350]

SENATOR HANSEN: So except for the...well, how would this affect a concealed carry permit if the language is "offender's right to possess a firearm"? The overall right to possess a firearm, overall right to concealed carry overlap significantly but aren't uniform. Is that correct? [LB350]

DICK CLARK: Yeah, I would agree with that last statement. The way that it affects it right now, if you apply to Nebraska State Patrol for a concealed handgun permit, they do a background check. It's based on a fingerprint, you know, criminal history check with the FBI. They also do a state database search. And if they turn up either an infraction that involves a potential violator, say a controlled substances violation or a misdemeanor or other violation, they will deny the application. They'll send a notice of denial that explains the rationale, explains what the process is for appealing that denial, and showing the State Patrol that that state violator, something that doesn't implicate federal law, just a state violator for our statutes, that that's been set aside. That will get a different result from them in the appeals process. I've worked through a number of appeals on behalf of clients there. [LB350]

SENATOR HANSEN: Okay. I appreciate your attempts to explain this more and I appreciate your commitment to help work with Senator McCollister. Did I hear that in the end of your testimony? [LB350]

DICK CLARK: Yeah. And again, I just want to emphasize, I want to broaden the ability of people to restore their civil rights here. Insofar as that's the intent of the bill, I'm wholeheartedly in support of that intent. I just don't believe it quite carries it off with this language. [LB350]

SENATOR HANSEN: Okay, thank you, Mr. Clark. [LB350]

DICK CLARK: Thank you. [LB350]

SENATOR EBKE: Senator. [LB350]

SENATOR CHAMBERS: These people could not be called those law-abiding citizens deprived of the right to carry a gun, could they, because that's what I always hear: You're interfering with law-abiding senators...I mean, right, law-abiding citizens. [LB350]

SENATOR EBKE: (Inaudible.) [LB350]

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SENATOR CHAMBERS: I got something else on my mind these days. But that couldn't be said about these people, could they? [LB350]

DICK CLARK: No, sir. [LB350]

SENATOR CHAMBERS: Okay. [LB350]

DICK CLARK: But I would say that I believe that if you have the right to life, you... [LB350]

SENATOR CHAMBERS: You've answered the question. [LB350]

DICK CLARK: ...have a right to defend your life. And so I would state that right broader than just being a right of law-abiding citizens. [LB350]

SENATOR CHAMBERS: You answered my question. Thank you. [LB350]

DICK CLARK: Oh, I thought I'd answer it to my liking, Senator. Thank you. [LB350]

SENATOR EBKE: Any other questions? Okay. Thank you. [LB350]

DICK CLARK: Thank you very much. [LB350]

KENNETH ACKERMAN: (Exhibit 5) Good afternoon, Madam Chairperson Senator Ebke and committee members. My name is Kenneth Ackerman, K-e-n-n-e-t-h A-c-k-e-r-m-a-n. My wife and I work with citizens, many who are military veterans, who enter or leave the prison system. We offer our home to sex offenders reentering society. I have been approved by the Nebraska Parole office and the federal supervised released program for taking in these men who need a place to restart their lives. I have found three necessary elements permitting former prisoners to succeed are: (1) a safe place to live; (2) community support; and (3) a meaningful job. These three necessary items result in purposeful, productive citizens and a safer society. I agree with every proponent of this bill. I believe the amendment for set-asides will help more offenders get better jobs. But (3)(b)--reasons for denial--on page 2, line 27, (ii) prevents registered sex offenders from applying and, line 29, (iii) prevents those using motor vehicle involved in an unintended death due to drugs, alcohol, reckless driving, or a revoked permit from ever applying for this set-aside. These sections of the bill take away from...take away an opportunity for a judge to decide whether anyone in these two categories of felons can be considered for a set-aside, therefore, these two groups of felons will have a greater difficulty finding meaningful jobs

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and be more dependent upon Nebraska government aid. So I ask, Senator McCollister, let's let the judges decide who to make the set-aside decisions and remove these two parts, (3)(b)(ii) and (iii). This would offer the greatest possibility for employment for all former inmates and create a safer society. Thank you. I'd be honored to answer any questions. [LB350]

SENATOR EBKE: Thank you, Mr. Ackerman. Questions? Senator Chambers. [LB350]

SENATOR CHAMBERS: Mr. Ackerman, I just want to say it takes a courageous person to make the appeal that you're making. I recognize and I want you to know that at least one person does, so thanks for coming. [LB350]

KENNETH ACKERMAN: Thank you, Senator Chambers. [LB350]

SENATOR EBKE: Any other questions? Thank you for being here today, Mr. Ackerman. Any other opponents? Any in the neutral? [LB350]

RYAN SULLIVAN: Good afternoon. I'm actually here to testify on a different bill but in listening to some of the testimony today, I wanted to add a few comments. I actually research and write on this topic. I wanted to just bring... [LB350]

SENATOR EBKE: Could I get your name? [LB350]

RYAN SULLIVAN: Oh, I'm sorry. [LB350]

SENATOR EBKE: That's okay. [LB350]

RYAN SULLIVAN: Sorry--jumped right into it. I'm Ryan Sullivan. I'm a faculty member at the University of Nebraska College of Law. Today I'm here though testifying on my own behalf and not on behalf of the university. Several testifiers mentioned a case, State v. Illig, 237 Neb. 598, as support for the contention that only a pardon can restore gun rights and that a set-aside cannot restore gun rights. I take the position that that law is actually not clear. That was the ruling in Illig; however, Illig relied on another case, an Eighth Circuit case, U.S. v. Germaine, at 720 F.2d 998, which took all its support from a Supreme Court case, Dickerson, at 460 U.S. 103, which has since been overruled by statute. At that time, federal law 18 U.S.C. 921(a)(20) was clear that a set-aside could not restore gun rights under federal law. That now has been changed. That law now reads clearly, "Any conviction which has been expunged, or set aside for which a person has been pardoned or has (had) civil rights restored...unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or

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receive firearms." So I think the language, by including that language in this amendment, would actually remove what is granted under federal law, would actually limit rights, and I don't think that's the intent. I think from what I understood from the testimony, the intent was to keep folks out of trouble. We deal with clients all the time who think that it just automatically removes the conviction from their record and that they can go and they can hunt and own firearms again, so I understand the purpose of that. But I think what the collateral consequence would be: that now they would be subject not only to a violation under state law but under federal law as well. And so it would be my position that that is not...any benefit of including that language would be outweighed by the cost to the citizen. And I'd welcome any questions. [LB350]

SENATOR EBKE: Any questions? [LB350]

SENATOR MORFELD: Senator. Thank you for coming today, Mr. Sullivan. Would you be able to provide that information to us so that we can provide it to legal counsel and the introducing senator? [LB350]

RYAN SULLIVAN: Absolutely. [LB350]

SENATOR MORFELD: Just a summary of it, I'm... [LB350]

RYAN SULLIVAN: Sure. [LB350]

SENATOR MORFELD: We'll have the transcript, too, but sometimes it's good to follow up with that so. [LB350]

RYAN SULLIVAN: Absolutely. [LB350]

SENATOR MORFELD: Thank you. [LB350]

SENATOR EBKE: Thank you. Any other questions? [LB350]

SENATOR CHAMBERS: I have one. [LB350]

SENATOR EBKE: Senator Chambers. [LB350]

SENATOR CHAMBERS: To be sure, what are you asking to be done? [LB350]

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RYAN SULLIVAN: Well, I don't think that...and I've only just glanced at it just today myself because I wasn't even aware this was...bill had been brought. But I don't think the language pertaining to the exclusion where it makes it clear that the right to possess a firearm is an exception, that it does not grant the right to possess a firearm because I don't think that law is as clear as was stated today. So the language that's incorporated... [LB350]

SENATOR CHAMBERS: But here's what I'm asking. You're saying they should be allowed to possess a firearm again or they should not? [LB350]

RYAN SULLIVAN: Right. I think by including... [LB350]

SENATOR CHAMBERS: I'm not arguing. I'm just want to know what you're saying. [LB350]

RYAN SULLIVAN: No, I think they...yeah, I think they should be. I think they should be. [LB350]

SENATOR CHAMBERS: Okay. [LB350]

RYAN SULLIVAN: And as others have stated, I think that should be left to the county judges and the district court judges to make that determination and to not have to go through the Board of Pardons process. I don't think it's a separation of powers issue. The Attorney General does think it's a separation of powers issue, but that's...I don't agree. I don't think that the Pardons Board...the Pardons Board is the only entity that can grant a pardon but I don't think that necessarily means it's the only entity that can grant gun rights. [LB350]

SENATOR CHAMBERS: But you understand that the Legislature is a policymaking body and can make determinations of this kind. You understand that, don't you? [LB350]

RYAN SULLIVAN: Correct. [LB350]

SENATOR CHAMBERS: We determine what the policy of the state is without regard to what the federal government says. Now we cannot do something that the constitution would not allow the Legislature to do. But in any area not prohibited by federal law or the federal constitution or prohibited specifically by the state constitution, the Legislature can do. So I understand you're just presenting an argument and not saying we lack the authority to establish such a policy. [LB350]

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RYAN SULLIVAN: Correct. [LB350]

SENATOR CHAMBERS: Okay. [LB350]

RYAN SULLIVAN: I mean the purpose of my testimony is just to make the committee aware that the law isn't as cut and dry as others have stated. [LB350]

SENATOR EBKE: Okay. [LB350]

RYAN SULLIVAN: Thank you. [LB350]

SENATOR EBKE: Any other questions? Thank you. Any other neutral testimony? Senator McCollister. [LB350]

SENATOR McCOLLISTER: Senator Ebke and members of the committee, thank you for your indulgence and attention to this matter. In the meantime, we'll work with some of the opponents and perhaps change some of the language to make this bill more acceptable to a greater number of people. Unless there are some questions, thank you very much. [LB350]

SENATOR EBKE: Okay, thank you, Senator McCollister. Do we have any letters? We have no letters on LB350 so, Senator Hansen, would you like to proceed with Senator...with LB146? [LB350]

SENATOR CHAMBERS: Did you say handsome or Hansen? (Laughter) [LB146]

SENATOR EBKE: Hansen, I think, but he is certainly handsome. [LB146]

SENATOR HANSEN: Thank you. [LB146]

SENATOR KRIST: Is that an opinion or a fact? [LB146]

SENATOR MORFELD: I've never seen him blush so much. (Laughter) [LB146]

SENATOR CHAMBERS: He's turning crimson. [LB146]

SENATOR KRIST: I know. [LB146]

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SENATOR HANSEN: Thank you and good afternoon, Chairwoman Ebke and fellow members of the Judiciary Committee. My name is State Senator Matt Hansen, M-a-t-t H-a-n-s-e-n. I represent District 26 in northeast Lincoln. I'm here today to introduce LB146. LB146, I'm going off my prepared remarks, LB146 deals with the same section and the set-aside sections as LB350 did, so I am very appreciative of the attention that drew there as well as kind of the overall determination of how our set-aside statutes currently work. Quite simply what my bill, LB146, would do would allow for infractions to be set aside in the same manner as misdemeanors and felonies currently are in statute. This issue was brought to my attention from Professor Sullivan at the University of Nebraska College of Law, who supervises...who is the supervising attorney at the school's Civil Clinical Law Program. He will be here to testify, but based on his numbers that he shared with me the law clinic has observed over 500 petitions for set-asides of past criminal convictions and around a quarter of those were included or were infractions that were set aside...to be set aside that were summarily denied because our statutes don't allow for it. So consider this scenario into why it's important to include infractions in the same statute as we would for misdemeanors and felonies. Person A is convicted of possessing greater than an ounce of marijuana, a Class III misdemeanor and a sentence of probation and a fine. Person B is convicted to have less than an ounce of marijuana, an infraction and just a fine. Under our statutes, only person A, who committed both the more serious offense and was sentenced to a harsher punishment, would be eligible to have their conviction set aside under current law. I believe that as we continue to work on issues facing corrections and justice reform that it is important to make it an option for those convicted of an infraction to put that conviction behind them and move forward with their lives, much in the same way that we currently provide that opportunity to those convicted of misdemeanors and felonies. With that, I will be happy to answer any questions for the committee and look forward to working with them on this issue. [LB146]

SENATOR EBKE: Senator Pansing Brooks. [LB146]

SENATOR PANSING BROOKS: Thank you, Madam Chair. Thank you for bringing this, Senator Hansen. Was there any discussion about making it automatic once the case has been disposed? I mean if we're talking infractions, was there any discussion about that? [LB146]

SENATOR HANSEN: No, I've not had any discussion about that. The discussion I had was very simply--and as the bill sits it's one of the more simple bills I've ever carried, inserts the word "infraction" four times--was it was, frankly, an oversight in our law that we gave more opportunities to those convicted of misdemeanors and felonies than infractions. But if that's something the committee wants to look at, I'd certainly be happy to have more discussions. But that's not something I prepared about or I thought about before today. [LB146]

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SENATOR PANSING BROOKS: Because I know that there are some states that are doing it automatically, so upon...for appropriate disposal, I believe, of the case, so disposition of the case. But I don't know, maybe others can talk about it. Maybe I'm making that up. I don't know. I think that's right. [LB146]

SENATOR KRIST: You're on the record now. [LB146]

SENATOR PANSING BROOKS: I am now. (Laughter) I think it's true. [LB146]

SENATOR EBKE: Anybody else? [LB146]

SENATOR PANSING BROOKS: It's certainly true in some juvenile court cases. Excuse me. Thank you. [LB146]

SENATOR CHAMBERS: I was just going to say if you want to state this philosophically or logically, if the greater is permissible then certainly the lesser ought to be permissible too. If Senator Krist is going to be forgiven or given a pass for having stolen a ram, then Senator Morfeld should be forgiven for filching a lamb. Correct? [LB146]

SENATOR HANSEN: Correct. [LB146]

SENATOR CHAMBERS: Thank you. I just want to clarify. [LB146]

SENATOR EBKE: Okay. Any other questions? [LB146]

SENATOR KRIST: I don't like Dodges. [LB146]

SENATOR CHAMBERS: Then you're not going to get forgiven. [LB146]

SENATOR EBKE: Okay. Thanks. [LB146]

SENATOR HANSEN: Thank you. [LB146]

SENATOR EBKE: You'll be here. [LB146]

SENATOR HANSEN: Of course. [LB146]

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SENATOR EBKE: Okay. Okay, first proponent. [LB146]

TIMOTHY NOERRLINGER: Timothy Noerrlinger again on behalf of the Nebraska Criminal Defense Attorneys Association. I think the senator did a pretty succinct job of explaining why we back this change to the legislation. Obviously, the main issue here is that misdemeanor and felony conduct are allowed to receive a set-aside by petitioning the court; however, certain types of infractions are not. The senator highlighted one I was going to use in my remarks, which is specifically under subsection (13) of 28-416. If you possess more than an ounce and less than a pound, that's a misdemeanor. If you're fined or you complete probation successfully under the current statutory scheme, you can have that offense set aside. If you have less than an ounce, which every police officer I've always known says that is definitely a usury amount and not a distribution amount--and they quibble about that larger amount, and depending on the officer, you get different responses, in my opinion--that smaller amount is not eligible for the set-aside. In a similar vein, the other one that I was going to bring to the attention of the committee is what commonly is referred to as the zero tolerance or the .02 violation for kids that are 16 to 21. That's an infraction. If that same kid was over the .08 limit, meaning convicted of a DUI, and successfully completed probation, that kid would then be able to get a set-aside. At the same time, if it's a .02 violation, which is only an infraction, and they have a lesser amount of alcohol in their system, they would not be eligible for the set-aside--same criminal conduct, lesser degree. So obviously we, as defense counsel, think that it should be available for any type of conviction that it can be available for. And there are other times where you see maybe a marijuana case and an MIP, another kind of similar thing that you see malfeasance on the part of kids, that possession of marijuana that's an infraction cannot be set aside; that MIP can be. Sometimes that's a decision for people to maybe subject themselves to a plea agreement where they take the misdemeanor, and I've had conversations with clients to that effect, because they want the ability to have the set-aside, whereas opposed to taking the lesser charge when they're plea bargaining with county attorneys, all anecdotal. Lastly, I was in front of I think it was Judge Acton, you'll have to forgive me, at Lancaster County about a month ago. There's a woman that filed set-asides in about six cases. She'd had a lot of trouble earlier in her life. She was coming back, trying to clean up her record to get a better job, as she articulated to the court while I was in the courtroom. The county attorney did not object to having the set-aside done for the theft charges, which were misdemeanors, but noted to the court that the marijuana charge on her record was an infraction and she was not eligible to get that set aside, which she was rather despondent about. That's the kind of inequity that exists by having the infractions not included. That's why we're asking and supporting the change by this body to the set-aside statute. I'll take any questions if you have them. [LB146]

SENATOR EBKE: Senator Krist. [LB146]

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SENATOR KRIST: Following Senator Pansing Brooks's lead, what would be the remedy if we, indeed, would pursue infractions being automatic? [LB146]

TIMOTHY NOERRLINGER: Well, obviously it comes to mind that you may be able to do that. There would be an issue maybe with some traffic-related offenses that are infractions and whether you need to exempt those or there needs to be a certain period of time before they're allowed to be set aside but...or ordered set aside by the court so it doesn't necessarily affect the point system. I don't think my clients would be adverse if you set them aside right away. I don't know that the DMV would necessarily be. That would be one thing that would come to my mind. I think that you could probably have kind of a sunset provision similar to what we do with juvenile court proceedings or even cases where juveniles are convicted in adult criminal court when they hit the age of 19 as it currently functions there. At that point, the court, on its own motion, sua sponte pursuant to the law, then does issue an order closing those, the juvenile cases. The county attorney is given notice before and a chance to object. I don't know if...prosecutors aren't here. I won't speak for them. As a former prosecutor, I could see that a few of them may want to have their say on whether those get set aside, whether they're appropriate or not. But I don't think that it's untenable work, not doable. I just... [LB146]

SENATOR KRIST: Because the traffic court is so different from either juvenile or adult, and juveniles face adult in that situation,... [LB146]

TIMOTHY NOERRLINGER: Right. [LB146]

SENATOR KRIST: ...aside from that idiosyncrasy, how would it happen? Do we have to name all...anything that is an infraction? [LB146]

TIMOTHY NOERRLINGER: Well, I think that...I mean that's statutory construction, but I think the easiest way is to...if you wanted to avoid, really, you just avoid violations of Rules of the Road under subsection 60 if you wanted. And there are other infractions throughout the code, mostly in Title 28, but there are other areas. And if you just specifically instruct the court to set aside all infractions except for, you know, violations under subsection 60, that would probably satisfy what you were getting at, Senator, so. [LB146]

SENATOR KRIST: Thank you. [LB146]

TIMOTHY NOERRLINGER: No problem. [LB146]

SENATOR EBKE: Any other questions? [LB146]

TIMOTHY NOERRLINGER: Okay. [LB146]

SENATOR EBKE: Okay. Thank you. [LB146]

TIMOTHY NOERRLINGER: All right. Appreciate the time. Thank you. [LB146]

SENATOR EBKE: Thanks. Any other proponents? [LB146]

RYAN SULLIVAN: (Exhibits 2 and 3) My name is Ryan Sullivan, R-y-a-n S-u-l-l-i-v-a-n. I'm an assistant professor of law at the University of Nebraska College of Law, stated previously. I teach in the Civil Clinical Law Program and I supervise the criminal set-aside research project. I'm testifying and speaking in favor of LB146 as a citizen, not as an employee or as a representative of the University of Nebraska. In my role as a faculty member at the College of Law, I've been observing and conducting empirical research on criminal conviction set-aside hearings here in Lancaster County. The section that LB146 aims to amend, it currently provides authority, as others have stated, to set aside past convictions when certain criteria are met. So it isn't automatic. It is a judicial discretion where they mainly if the individual can establish a certain period of time where they have stayed out of trouble and that they have taken steps to become better citizens. There's no...we sometimes hear a three-year rule or a five-year rule. Douglas County has a two-year rule. It's no hard and fast rule. We think the county attorneys developed that rule and then half of them became judges and brought that rule with them, and that's why we have this three-year rule. But very often they get granted earlier than three years, not usually less than one year. Some folks will say that setting aside a conviction really has no value, especially for an infraction. No, I would argue with any comments of that type. We have found that setting aside convictions help people get better jobs or get jobs, get better housing, more access to housing, and has the potential for opening other doors as well, doors that we find that are traditionally closed to people that are labeled convicts. The clinic has represented another...a number of people over this last year and a half since we've been doing this program and it's really been incredible to see the psychological impact that it's had on these folks to be able to have this brand removed from...you know, it's not on the driver's license but we all know that that data is out there. It's on your criminal history report. It's on the JUSTICE report. And to be able to have that brand removed, it's just amazing. Half of them, grown men will cry at that hearing because it's something they carried with them for so long. I would say half of them we've represented says I can look at my neighbors differently now because I'm no longer a convict, and I think that carries a lot of weight. Unfortunately, as others have stated, the way the statute is written now it only applies to misdemeanors and felonies, so it doesn't apply to what I would call petty offenses. The big one is the marijuana possession, one ounce or less, and the associated offense which is possession of drug paraphernalia, both of those deemed infractions and not eligible. Those are the most common ones we see in our hearing observations. And I'd tell you

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folks are surprised because they know that the greater crimes be set aside. In watching county court judges, you know, they literally will hold their hands up and say, I'd like to help you but my hands are tied; talk to your Legislature. And that's what's really inspired us to do this and talk with people, with Legal Aid and others, and then talking to Senator Hansen and bringing this forward. As Senator Hansen stated, you know, approximately a quarter of the ones that we have observed, the petitions have been for infractions. Even though it's not even allowed under the law, a quarter of them bring them, assuming that they are allowed. And of course they get denied because it's not permitted currently under the statute. Adding to that injustice is the fact that infractions can't be pardoned, either, because the Pardons Board has a policy that they don't want to pay any attention to infractions because they're low level. They're really busy, they do a high volume, and so they spend their time on the misdemeanors and felonies. So again, infractions fall through the crack. So as a result you have somebody convicted of marijuana, one ounce or less, for example, will be labeled a convict for the rest of their life, while somebody possessing a much greater amount or even selling drugs, selling drugs to children or committing a much greater offense would have an opportunity to have that conviction pardoned or set aside. LB146 cures that inequity and it permits and grants the same rights to those convicted of infractions that are convicted of felonies and misdemeanors. And with that, I'd be open to answer any questions. [LB146]

SENATOR EBKE: Senator Chambers. [LB146]

SENATOR CHAMBERS: Thank you. But since I'm chivalrous in reality, I will allow ladies first. [LB146]

SENATOR EBKE: Oh, all right. Okay. [LB146]

SENATOR PANSING BROOKS: Well, thank you, Senator Chambers. Thank you, Chair Ebke. I thank you for coming, Professor Sullivan. I'm again so pleased to see the law school showing up. And I know you're not representing the law school but it is great to have people. I think it would be good if we had some sort of like a state clinic. Since we're doing the Civil Clinic, there could be a state clinic, so there's an idea. I was wondering if there had been any discussion about making it retroactive, since you said that you've had over 500 cases and a quarter of them are infraction convictions. What about retroactivity such as similar to what happened under Senator McCollister's bill, LB350? [LB146]

RYAN SULLIVAN: You know, and to be honest with you, I assumed the language as it's written it would be retroactive because it would apply to anybody currently applying. However, there's another bill that was passed this last year that I think was intended to be retroactive but the

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county and city attorneys...it's the one for...I don't recall the statute but it's to seal the records of cases that have been dismissed. [LB146]

SENATOR PANSING BROOKS: Yes. Yes. [LB146]

RYAN SULLIVAN: And the county and city attorneys are saying, no, we're not, and we haven't seen a ruling from the court yet. There's a number under advisement. So I would suggest if the legal team think that's necessary maybe to add that to ensure that the courts have reason not to not make it retroactive. Because then you'd have a situation where you're unfairly treating somebody who got convicted this year... [LB146]

SENATOR PANSING BROOKS: Right, versus last. [LB146]

RYAN SULLIVAN: ...versus last year, December 31 versus January 1, and that would make no sense either. [LB146]

SENATOR PANSING BROOKS: I agree. Specificity is definitely better in this instance. [LB146]

RYAN SULLIVAN: Yeah. And if I could answer a question you've asked previous testifiers about it being automatic,... [LB146]

SENATOR PANSING BROOKS: Yes. [LB146]

RYAN SULLIVAN: ...one thing to consider, you know, thinking about policy is I think there's value in the process. I think there's value in allowing the judge to evaluate each person individually to see if it should be set aside, to see if that label should be removed, rather than it be automatic. I think judges are more than willing to think through these very liberally and will grant them almost as if they were automatic. But say if it was automatic right after they've paid their fine or if it was a two year, but if they continued to commit offenses in interim maybe that individual, it wouldn't be beneficial for that to be automatic. And so I'd rather...I personally would rather see it be on a case-by-case determination than automatic. [LB146]

SENATOR PANSING BROOKS: Or what about allowing them a grace period and then the county attorney could file, if there were a continuing issue, to not allow it to be automatic? [LB146]

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RYAN SULLIVAN: Yeah, I mean that would be similar. [LB146]

SENATOR PANSING BROOKS: And it certainly bogs down the courts more to have to keep coming back with all these people who have an infraction to be able to release them, so there would be far more released than not. So it seems to me if we're worried about our court system and the amount of time, that it would be better to let the county attorneys say why it shouldn't happen rather than (inaudible). [LB146]

RYAN SULLIVAN: Yeah, I would be...I think that would be a way, because that's how it is with the sealing of the juvenile records now, is that's automatic but we see about a third of the time the county attorneys will object to them for similar types of reasons. [LB146]

SENATOR PANSING BROOKS: Yeah. That's what I'm hoping. [LB146]

RYAN SULLIVAN: Yeah. [LB146]

SENATOR EBKE: Okay. [LB146]

SENATOR PANSING BROOKS: Thank you. [LB146]

SENATOR CHAMBERS: Sometimes I take a long time to get to what I want to say, so bear with me, counselor. A man named "Mr. Dooley" said--that was his fake name--and I'm not talking about Donald Trump now. Just get that out of your mind. But he said, I don't know whether the flag follows the constitution but I know that the Supreme Court follows the election returns. Now a lot can be learned in America by looking at what happened in England. London produced Jack the Ripper. London produced two notorious graverobbers, Burke and Hare. Literature was produced by a Londoner named Charles Dickens and one of the characters he created was Fagin. Fagin taught little boys how to be light-fingered or pickpockets. Now it seems to me that it would be illogical to say that consideration could be given to Jack the Ripper, consideration could be given to Burke and Hare, but no consideration could be given to the little pickpockets. Now Nebraska is not a common law state. There are no common law crimes. Nothing is a crime in Nebraska unless the Legislature says so. It is the Legislature that classified offenses as felonies, misdemeanors, and infractions. So if the Legislature sees fit to grant a boon to those convicted of felonies, those convicted of misdemeanors, it would be highly illogical to not extend the same consideration to those who committed even more minor offenses than those two. I think you made the case very well. I'm convinced. And you not only convinced me of this but you made me go back and remember some of the things I learned a long, long time ago when I

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was studying literature and when I used to talk to Charles Dickens about some of his writings. (Laughter) That's how far back I go. [LB146]

SENATOR EBKE: Any other...? Senator Krist. [LB146]

SENATOR KRIST: I want to follow through just very quickly. I don't want to belabor the point. You take pride in the process and you believe that the process sometimes needs to be carried out. What I've learned from the 605 process and from what we're facing here in the state of Nebraska, and particularly in juvenile courts in Douglas County that need more juvenile judges, court time is a premium. So what would you think if those automatic infractions...oh, all infractions, so we've cleared that up, but automatic infractions only need to be...no appearance is necessary but the proper conveyance of the request goes and is signed by the judge from defense or prosecution or both? Is there a vehicle currently in place that that could work and save that court time? [LB146]

RYAN SULLIVAN: Could you just state the process, your proposed process for (inaudible)? [LB146]

SENATOR KRIST: Well, I'm suggesting that we should eliminate the court appearances. [LB146]

RYAN SULLIVAN: And only just a judge would sign on. [LB146]

SENATOR KRIST: The process would be that I still have to apply, I still have to look at my situation one at a time. [LB146]

RYAN SULLIVAN: Ah! [LB146]

SENATOR KRIST: And I have to have a judge sign off, but I don't have to add it to my docket. [LB146]

RYAN SULLIVAN: So an individual would file a petition that would not require a hearing? [LB146]

SENATOR KRIST: Thank you, yes. [LB146]

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RYAN SULLIVAN: I don't think that, as it's written now, it actually does requires a hearing. In fact, some counties, I've been told...I haven't been in any of those because we take our students to the hearings. Even if they don't require hearings, we'd want the hearing. But I don't think it would necessarily...the petition would require a hearing as it stands right now... [LB146]

SENATOR KRIST: Okay. [LB146]

RYAN SULLIVAN: ...and it would be a matter of just educating the county court that they don't have to docket a hearing. They would still give notice and if the county attorney wanted to object to it, I think they could ask for a hearing. So that would clear...I think that would clear that up. [LB146]

SENATOR KRIST: Thank you very much. [LB146]

SENATOR EBKE: Thank you, Senator Krist. Any other questions? Thank you, Professor Sullivan. [LB146]

RYAN SULLIVAN: Thank you. [LB146]

SENATOR EBKE: Thanks. Any other proponents? Any opponents? Any in the neutral? (Exhibit 1) We do have a letter from Christopher Eickholt, Spike Eickholt, from the ACLU in support. Senator Hansen. [LB146]

SENATOR HANSEN: Thank you. Thank you, Chairwoman Ebke. I will close just by simply saying I feel like we've had a great discussion today on the set-asides, both my bill and Senator McCollister's bill. Looking forward to the opportunities in committee to continue working on this and maybe looking at Senator McCollister and coming to some kind of overall proposals on set-asides. [LB146]

SENATOR EBKE: Okay. Thanks. Anything else? Senator. [LB146]

SENATOR PANSING BROOKS: And would you be willing to look at the retroactivity language and maybe add that to the bill since... [LB146]

SENATOR HANSEN: Yes, absolutely. So specifically on that, I think my interpretation was similar to Professor Sullivan's. [LB146]

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SENATOR PANSING BROOKS: Right. [LB146]

SENATOR HANSEN: Since the hearings would be after the effective date of the law, it would kind of be presumed to apply to previous convictions. But if specificity would eliminate all doubt, let's go for it. [LB146]

SENATOR PANSING BROOKS: Wonderful. Thank you. [LB146]

SENATOR HANSEN: Thank you. [LB146]

SENATOR EBKE: Thank you. This concludes our hearings for the day. [LB146]