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Judiciary Committee
January 27, 2017

[LB162 LB199 LB349]

The Committee on Judiciary met at 2:00 p.m. on Wednesday, January 18, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB349, LB162, and LB199. 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. Welcome to the Judiciary Committee. My name is Laura Ebke. I'm the state senator from Crete representing District 32. I am the Chair of the Judiciary Committee and I'd like to start off our hearing today by allowing my colleagues to introduce themselves. Senator Baker.

SENATOR BAKER: Senator Roy Baker, District 30.

SENATOR MORFELD: Senator Adam Morfeld, District 46.

SENATOR KRIST: Bob Krist, District 10.

SENATOR HALLORAN: Steve Halloran District 33 which is Adams and part of Hall County.

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

SENATOR PANSING BROOKS: Patty Pansing Brooks, District 28, right where we're sitting.

SENATOR EBKE: Okay. And Senator Chambers is not here yet but I suspect he'll be along. Assisting the committee today are Laurie Vollertsen, our committee clerk, and Brent Smoyer, one of our legal counsels. Committee pages are Sam and Kaylee. On the table at the front over by the door you'll find some yellow testifier sheets. If you are planning on testifying today, please fill out one of those and hand it to the page when you come up testify. This helps us to keep an accurate record of the hearing, make sure we've got your name right and everything. There's also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. We'll begin bill testimony with the introducer's opening statement. Following the opening we'll hear from the proponents of the bill, those for it, then the opponents of the bill, followed by those speaking in a neutral capacity. We'll finish by a closing statement by the introducer if he or she wants. We ask that you begin your testimony by giving us your first and last names and spelling them for the record. If you're going to testify I ask that we keep the on-deck chair where Senator Hilkemann is sitting filled so that we know who's next and we can

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move things as quickly as possible. If you have any handouts please bring up at least 12 copies, give them to the page. If you do not have enough copies, the page can help you make more now. We will be using a five-minute light system today. When you begin your testimony the light on the table will turn green, the yellow light is your one minute warning, and when the red light comes on I ask that you please wrap up your final thought and stop. If there's something that needs to be said yet or if the committee members have a question they can do that. As a matter of committee policy I want to remind everyone that the use of cell phones, talking on your cell phone, is not allowed during public hearings. Please put them on silent or vibrate at this moment. And I'd also like to remind folks that verbal outbursts or applause are not permitted in the hearing room. Such behavior could be cause--I don't think that's going to happen today--but could be cause for you to be asked to leave. One more thing, you may notice committee members coming and going. That has nothing to do with the importance of the bills being heard but senators may have bills to introduce in other committees or have other meetings. So with that, we will begin our hearings today. Senator Hilkemann, LB349.

SENATOR HILKEMANN: Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. I am Robert Hilkemann; that's R-o-b-e-r-t H-i-l-k-e-m-a-n-n. I proudly represent District 4 in the Nebraska Legislature. I am introducing for your consideration LB349 which would transfer the administration and maintenance of the State DNA Sample and Data Base Fund from the Attorney General's Office to the Nebraska State Patrol. The reason for this bill is government efficiency by streamlined administration of this fund. The Attorney General's Office has no access to this fund and no part of the Attorney General's budget is paid from this fund. Both the Attorney General's Office and the State Patrol support the transfer of administration of this fund to the State Patrol. Since the State Patrol utilizes the fund, it makes sense that it also administer the fund. The statute established this fund was enacted through passage of LB190 introduced by Senator Avery in 2010. LB190 updated the DNA Identification Information Act to require DNA samples of all convicted felons at their own expense. Under the act if not waived due to a determination that the inmate or probationer is indigent, the inmate or probationer will pay a one-time \$25 fee which covers the cost of the DNA sample kit. This \$25 fee is submitted to the Attorney General's Office and deposited into the fund. The State Patrol or the Department of Correctional Services draw from this fund as needed for costs associated with collecting samples from indigent inmates and probationers. You may recall that I sat before you and admitted that my knowledge of many of the issues that come before this committee is slightly less than expert. So...okay, maybe a lot less than that. But anyway, it is nice, however, to see that this bill has zero fiscal impact as noted on the fiscal note to the bill. I kindly ask that you direct your technical questions to the testifiers who follow me whose knowledge of this subject is far superior to my own. Thank you for your consideration of LB349 and I look forward to a positive hearing and ask that you advance this bill to General File. [LB349]

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SENATOR EBKE: Thank you, Senator Hilkemann. Anybody have any questions at this time? Are you going to hang around? [LB349]

SENATOR HILKEMANN: I will waive closing. [LB349]

SENATOR EBKE: Okay. Very good. [LB349]

SENATOR HILKEMANN: Thank you. [LB349]

SENATOR EBKE: First proponent. [LB349]

BRAD RICE: (Exhibit 1) Good Afternoon, Chairperson Ebke and members of the Judiciary Committee. I am Colonel Brad Rice, B-r-a-d R-i-c-e, Superintendent of the Nebraska State Patrol. I would like to thank you for allowing me the opportunity to appear before you today so that I might offer testimony in support of LB349. The Department of Justice asked the State Patrol to testify in support of LB349, which would amend the DNA Identification and Information Act to allow funds to be administered by the Nebraska State Patrol. DNA testing is an important tool in criminal investigations. Currently, the Department of Justice administers the DNA Sample and Data Base Funds. The State Patrol draws from the funds as needed. The current process is a two-step process. This bill would transfer the administration of these funds to the State Patrol, which will make the funding stream more efficient and cost effective by making it a one-step process. In closing, I would like to express our appreciation for your ongoing support of public safety. The Nebraska State Patrol is committed to operating in a fiscally responsible manner and will continue to do so with your support. I'd be happy to answer any questions at this time. [LB349]

SENATOR EBKE: Any questions? Senator Baker. [LB349]

SENATOR BAKER: Thank you. Mr. Rice, who gets to decide what kind of a DNA test that you use? [LB349]

BRAD RICE: You mean the test itself? [LB349]

SENATOR BAKER: Yes, who gets to decide? [LB349]

BRAD RICE: We leave that to our...the crime lab. They look for the most up-to-date, advanced techniques. [LB349]

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SENATOR BAKER: Is it the same for everybody, the same DNA test for...? [LB349]

BRAD RICE: Yes. [LB349]

SENATOR BAKER: Okay. Is this a basic DNA test? I'm drawing some parallel from genome projects where you can select different markers. Do you know how many markers your DNA tests? [LB349]

BRAD RICE: I do not, sir, but I would be happy to get that answer for you. [LB349]

SENATOR BAKER: Okay. That's all right. Thank you. [LB349]

SENATOR EBKE: Senator Krist. [LB349]

SENATOR KRIST: Thank you. Thank you for coming, Colonel. The legal counsel just helped me out with this. My memory isn't all bad. LB190 in 2010 carried with it a little bit of fiscal note and that was the setup of the hardware/software tracking. But it also mentioned point-something of a manpower position. Is that already located with you and not with the Attorney General? [LB349]

BRAD RICE: I'm going to have to...I'll find the answer to that question for you. I think it's at crime lab, but I'm not sure. [LB349]

SENATOR KRIST: I'm getting ahead now. So I'll ask the same question so we put it on the record... [LB349]

BRAD RICE: Crime lab. [LB349]

SENATOR KRIST: Okay. Perfect. Thank you, sir. [LB349]

SENATOR EBKE: Any other questions for the Colonel? Thank you for being here today. [LB349]

BRAD RICE: Thank you very much. [LB349]

SENATOR EBKE: Next proponent. [LB349]

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COREY O'BRIEN: Good afternoon, Chairwoman 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 of the Nebraska Attorney General's Office. I appear on LB349 in support, not normally the type of bill that I testify on because it's more of an administration bill. But--I'm probably showing my age a little bit--I was here in 2010 when LB190 was passed and so I have a little bit of familiarity with the genesis of LB190. When LB190 came into existence requiring us to go back and test all convicted felons that were currently in the penitentiary, it created a tremendous backlog the State Patrol had to work their way through over almost a year, year and a half, two-year period to catch up so that we tested all of them. They didn't have an appropriation that went along with that that I remember, but what we did have is that there was money in the Attorney General's consumer protection settlement funds--I think was like \$179,000--that we actually put into this fund. And so that's why the fund was originally created was to help with this backlog and basically helping the new process going on with testing of these CODIS samples getting off the ground floor. So what I consider this bill to be now is now that the program is off the ground floor, there is no backlog as I understand it, in testing any of these CODIS samples--the state CODIS administrator, I just met with her yesterday of the state lab, does a fantastic job--my understanding, Senator Krist, was that LB190 was for a bill of some portion of an employee to assist the CODIS director over at the state lab, that the person does not work for the Attorney General's Office. However, currently under the administration, our office manager has to receive all the checks that come in for payment of the DNA samples that are collected and paid for by the offenders, has to deposit it in the fund. So basically we become the middleman and this would basically eliminate the middleman, so that's why I consider it a good government function and government efficiency function. If you have any questions I'd be certainly happy to answer them. Senator Baker, you had some questions about how many loci or locations that we test in DNA. Currently the State Patrol and our other DNA lab at the University of Nebraska Medical Center are changing their kits that they go to. For the past, I don't know, seven, eight, nine, ten years, we've been looking at 15 genetic markers plus whether the person is X or XY. And just within the past month the State Patrol started testing an additional eight markers. So now they're actually testing 24 individual locations in DNA, plus the gender identification. [LB349]

SENATOR EBKE: Okay. Any questions for Mr. O'Brien? [LB349]

SENATOR KRIST: So just close the loop, the original FTE or a portion of it was located in the crime lab so you're not going to shift. But you mentioned the acceptance of the checks. Is that also going to happen in the crime lab instead of your office? [LB349]

COREY O'BRIEN: That would be the purpose of the bill is that the checks would now, instead of coming from Probation to our office and put into the fund, they would go to the office administrators at the State Patrol. That's what's intended. [LB349]

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SENATOR KRIST: Okay. Thank you. [LB349]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB349]

COREY O'BRIEN: Thank you. [LB349]

SENATOR EBKE: Any other proponents of the bill? Do we have any opponents? Anybody speak in the neutral? And you've waived? And do we have any letters? And we are good. That closes the hearing on LB349. Thank you. Okay, LB162. [LB349]

SENATOR KRIST: Thank you, Senator Ebke and members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District in Omaha, some portions of unincorporated Douglas County and the city of Bennington. I appear before you today in introduction and support of LB162. We'll have two very technical testifiers that follow me and I'll kind of set the stage for how this came about and how it happened in very short introduction. I would point your attention to the statement of intent, letter of intent and you'll see the word LB605. Just for a refresher and edification of everyone, LB605 was the bill that resulted from Council of State Governments being here in phase one and identifying those problems that we had in our Corrections and our justice system. We then moved into phase two after LB605 was started. LB605 has not been fully experienced or manifested itself, so we do see continued savings coming in. But our, our, the Judiciary Committee's efforts to try to get LB605 out resulted in negotiations between all stakeholders. This is a continuing effort to make sure that those stakeholders are heard and make sure that those things that we may or may not have missed with LB605 are corrected. Regarding the tampering and bribery section, as codified, bribery of a witness in 28-918; tampering with a witnesses, 28-919; bribery of a juror, 28-920; and tampering with evidence, 28-922 is currently a Class IV felony and carries a possible penalty of a minimum of no imprisonment and nine months' post-release supervision, a maximum penalty of two years' imprisonment and 12 months' post-release supervision and/or a \$10,000 fine. Furthermore, a Class IV felony has a presumption of probation that goes along with it. Because of the low penalty provisions for the Class IV felony, there is a significant incentive for a defendant to illegally tamper with witness evidence. We heard a bill similar to this a few days ago. You will hear more from the expert. Regarding the criminal mischief section, currently there's no penalty for reckless criminal mischief if the amount of damage is over \$500. That situation, you hear testimony it needs to be rectified and I'll let the experts again tell you why that is. The other section of the statute do not have the words "recklessly" or "reckless" included and it's kind of difficult to define mischief in general terms. So they're asking for that term to be changed. Legislation provides a consistent language throughout statute and I think that's the biggest part of change. Thank you, Madam Chair. And I will be here for close. [LB162]

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SENATOR EBKE: Okay, great. Anybody have any questions for Senator Krist? Guess not. Okay. Okay, first proponent. [LB162]

MICHAEL JENSEN: Good afternoon. Thank you, Madam Chair. My name is Mike Jensen, M-i-c-h-a-e-l--it's actually Michael--J-e-n-s-e-n, Jensen. I am a deputy Douglas County attorney. I'm a member of the Violent Crime Prosecution unit, have been so since 2010. I thank Senator Krist for bringing forth LB162. He, the senator, shed a little bit of light on this, as currently witness tampering, bribery as is codified is a Class IV felony and with that carries a presumption of probation or zero to two years' imprisonment. Many of the crimes for which I prosecute are crimes that would carry significant penalties far beyond what a Class IV felony would be, you know, including robbery, use of a deadly weapon to commit a felony, possession of a weapon by a prohibited person, murders, assaults, so forth. In my experience what tends to happen is that when a particular defendant is faced with these possible crimes of significant imprisonment, there is an incentive for that defendant to try to solve their present situation through illegal means and that being some form of tampering. In my experience I've seen tampering come in direct forms, that being the defendant either calling or writing a letter directly to a witness or the victim encouraging them to not come to court, change their testimony, go give an affidavit changing their statement. There's also been a significant increase in indirect tampering. That would be placing witnesses' names or copies of police reports on social media and to call out these witnesses or victims for their cooperation with law enforcement. So the effect is here, Senators, is that instead of criminal justice being handled within the courtroom where you can confront your accusers, cross-examine them and judge them for the credibility for which they testify to, a lot of this is being solved outside of the courthouse. And I guess I think if LB162 were adopted, having a little more teeth to the possible penalty, I would hope, would lead to some of this tampering to end. I would give the senators just a couple of examples. I prosecuted a robbery of a clothing store in 2012. A single defendant was arrested positively identified in a photo lineup. As part of a prosecution, we always turn over all the police reports to the defense attorney. The defendant then has access to all those names and things contained in the police reports. This particular defendant called his younger brother and indicated to that younger brother that the person that identified me is the clerk at this particular clothing store. He instructed his younger brother to go kill this individual. Later that month, the brother went to that very same clothing store where the same individual was working and opened fire and struck that man several times. The defendant who was awaiting the robbery was charged with tampering with a witness which was a Class IV felony then; it's a Class IV felony now. His brother was charged with assault and they were both charged with conspiracy. You would think that even then the tampering would end when you...they've tried to kill the one witness who was against him. But then when they were both incarcerated, the tampering continues where they instruct their cousin to then go find the firearm that was used during the assault and to go get rid of it. So this is just one of the examples in which tampering...they try to solve these problems outside of the courtroom and leads to these alternative methods of criminal justice which I don't think we

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would want to have. You know, currently I have a homicide that is pending where we're having significant witness tampering issues. And I'm...the guy is awaiting murder, life imprisonment and I'm left with witness tampering, a Class IV felony. So I ask this committee to pass the bill along and support it. I'd entertain any questions. [LB162]

SENATOR EBKE: Any questions? You lucked out. Thanks. [LB162]

MICHAEL JENSEN: Thanks. [LB162]

SENATOR EBKE: Go ahead. [LB162]

JOEL JAY: (Exhibit 2) Hi there. Thank you. My name is Joel Jay, J-o-e-l J-a-y. I'm the Deuel County Attorney. I'm here to speak to the issue in regards to the criminal mischief offense. The first part of it is the...that I would speak to is the easiest part and that is the title of the offense of being criminal mischief, in changing that name to criminal damage to property. Although I have the privilege of being the Deuel County Attorney at this time, a lot of my practice in the past I did criminal defense. And I can tell you on this offense I would speak to some people and they would be charged with this and say well I did not commit any sort of mischief, to which I would say well did you break something? Well, yeah, I did that. But there's no...and so this just explains it more, makes it clear to the public, clear to everybody involved. The other part of it, and there was a handout that went around, is including the term "reckless" or "recklessly" in there, which that is a part that will incorporate that into the rest of the statute and have it based upon the amount of damage that is done. Three times over just this past 12 months I've had to deal with situations like what was handed out to you. This was just from last Monday there in Deuel County. It's a very small county on the other side of state, but I have two interstates that go through Deuel County. And in that photograph what had taken place is there was a truck driver who eventually we found he forged his log books and hadn't slept much in the last two days, the...he initially told the State Patrol that he was dodging a deer. But he told another witness at the scene that he had fallen asleep. So when questioned he said, oh yeah, I did fall asleep. It turns out he was even driving the wrong direction. And then he went across the interstate, across a median, across the other interstate, through two fences, and a treeline. And I, at this point, I don't know how much damage was done because this was only last week that this took place. And as I mentioned, this is the third time in the past 12 months something like this has happened--once took out part of a bridge. The repairs that have to be done, hopefully they have...the drivers would have insurance. And I'm using these drivers as an example of how this worked. In this particular case we didn't find out for two days where the insurance was because the initial load was subcontracted and that was subcontracted to someone else and it was subcontracted to someone else who then hired this driver. So eventually you find out where the insurance is and luckily he had it. They didn't think that had it to begin with, otherwise, the

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damage that would be done would be thousands of dollars in damages to different...as I mentioned before last summer there was a bridge that was hit. The Nebraska Department of Roads ends up having to repair that or repair damage here. And that's on the back of the taxpayers if we don't have an insurance company to cover it. Well as the way the statute reads now with the reckless falling only under the Class III misdemeanor, none of these drivers that I mentioned, the three in the last...live in Nebraska. So once they go back home to California or Colorado and they stick either Deuel County or whatever county or the state taxpayers with a bill for \$20,000 in repairs, we have no way to bring them back and hold them accountable if it's only a Class III misdemeanor, even though there might be tens of thousands of dollars in damage that's done. And so I recognize that some people would say, well there's...what about that element of intent that would rise to bring this felony? Agreed, but this sort of reckless behavior such as what you can see from this picture, if you're going to cause that kind of damage take out part of a bridge, the other instance wasn't quite like that. It was a decent but misguided young man who wanted to teach himself how to drive, to teach himself how to get his own CDL. And so he took a...the construction company he worked for without anybody's permission, he borrowed one of their semi trucks. He forgot to take the brakes off and so he drug the trailer such until every tire was destroyed. And then he realized he shouldn't be driving it so he moved off the side of the interstate and continue to take off every reflector post and mile marker for a few miles as he went down the road. He lived--I'm right next to Colorado--he lived in Colorado. Again, it was thousands of dollars in damage that was the lowest level misdemeanor there was. Luckily he ended up...him and his family stepped forward because this wasn't something that was insured and they covered the damaged in the restitution. But that's why this is a concern and so that's why we're asking for this change. I'll take any questions. [LB162]

SENATOR EBKE: Okay. Any questions for Mr. Jay? I guess not. Thanks for making the trip. [LB162]

JOEL JAY: Okay. I've got a drive. [LB162]

SENATOR EBKE: Very good. [LB162]

SENATOR KRIST: Thank you. [LB162]

JACK CHELOHA: Good afternoon, Chairman Ebke and members of the Judiciary Committee. My name is Jack Cheloha; that's spelled J-a-c-k, the last name is spelled C-h-e-l-o-h-a. I'm the lobbyist for the city of Omaha and I want to testify in favor of LB162 and thank Senator Krist for bringing the bill. And particularly I want to support the part relating to witness tampering. Last week this committee heard a bill by Senator Hilkemann, LB102, on that same subject matter. The penalties were enhanced under LB102 to a Class II felony. This bill goes about it a little bit

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differently, but the key there is to tie the witness tampering, if you will, to what the underlying crime that the accused is standing trial for, being investigated for. And so for those reasons, we wanted to let you know that it's important and obviously great minds, Senator Krist and Hilkemann, think the same, that the law needs to be changed. And for those reasons we'd ask for your support. Thank you. [LB162]

SENATOR EBKE: Any questions? Thanks for being here today. Any other proponents? Do we have any opponents? [LB162]

SPIKE EICKHOLT: Good afternoon, Madam Chair, members of the committee. Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association testifying in opposition to LB162. The bill, as Senator Krist explained, there's two components of the bill. There's the criminal mischief or changing the title to criminal damage, and there's the increasing penalties for witness and evidence tampering. With respect to the criminal mischief change, it's true that there is some sort of an oddity or discrepancy with respect to the mens rea requirement for criminal...what's now called criminal mischief. Right now, if the state wants to charge somebody with a criminal mischief or damage or property, they need to show mens rea or some sort of mental state or mental thought process that the defendant was doing at the time he or she committed the crime. And it is true what the Deuel County Attorney said, that it's only available as a recklessly...to recklessly...to charge someone with reckless conduct or misconduct if the damage involved is less than \$500. To solve that discrepancy the alternative suggestion we would have is just to eliminate recklessly for those lesser offenses and here's why--because when you're talking about criminal damage to property and when you're talking about prosecuting people with felony offenses if it's over \$5,000 or more serious misdemeanors, it's only fair that the state be required to show intentional or knowing misconduct. There's different states of mens rea in Nebraska law. There's intentional which is sort of the most deliberate or the highest level, if you will, of mental thought; knowingly or intentionally...intentionally, knowingly, recklessly, and then the lowest is negligently. Reckless a somewhere between accident and on purpose. The examples that the Deuel County Attorney gave maybe aren't the best ones, but think of the scenario where someone is driving maybe more negligent than they should and they cause damage. If it's more than \$5,000 that would be a felony. Most of the felonies in the criminal code require the state to show intentional or knowing acts and not mere reckless acts, so that's why we are opposed to that component of the bill. With respect to the evidence and witness tampering, we opposed LB102 that was Senator Hilkemann's bill. And part of the reason we opposed that bill is that, as Senator Krist explained, in LB605, this committee and the Legislature recodified, revamped, if you will, and reapportioned, the penalties for a variety of different felony offenses. At the time there was a decision to adjust some felonies, maybe 10 or 12, to keep them...to boost them back up to where they were before LB605 was passed. But witness tampering, evidence tampering is left as a Class IV felony. That was a deliberate choice. We are currently in phase two, as Senator Krist explained. The

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committee and obviously the body can revisit the issue. But we would urge the committee to be cautious in doing so because while this is more measured, Senator Krist's proposal is more measured and perhaps moderate than Senator Hilkemann's, it still is an undoing, if you will, of the efforts that were done to LB605 before we really have seen the benefits of LB605. There's two other points with respect to witness tampering and evidence tampering. The examples that...the other parts of the statute that deal with tampering with a juror or bribing a juror or bribing a witness, those are clear scenarios and we don't really oppose adjusting the penalties in that context. But when the committee heard Senator Hilkemann's bill, you heard some of the scenarios and Senator Chambers talked about those in which somebody could get ensnared, if you will, in a witness tampering situation or an evidence tampering situation. A typical, not like the example that the Douglas County Attorney gave, but a typical witness tampering scenario often happens on lower level offenses, domestic type cases. The state decides whether to charge somebody with a crime. The person who reports the crime is a witness and a victim. That person does not have a decision in our system to press charges or not press charges. That's the state's call. But many people somehow think that they do have some say over it. And oftentimes you have crimes that are committed, domestic situations between children and parents, and there is a coming together, if you will, there is a decision made, let's just move past this horrible incident, I'll talk to the prosecutor, I'll ask them to drop the charges. And that could be considered tampering with a witness. You are trying to induce or change that person's testimony or desired outcome of the case that's different with the state. And it's not necessarily meant and it's not a bribing situation. The witness that's being tampered with, if you will, could be very willing to have the case stopped. And you get many people there involved in that situation. The tampering with evidence is also problematic because a typical scenario that we see is a person has been stopped, searched by the police. They find a small amount of drugs. The person tries to eat or destroy the drugs. That's tampering with evidence. That's a separate felony charge and the prosecutors file those. And at the time that seems sort of odd, but it's just like the scenario that Senator Chambers gave. And finally, arguably there's already increased penalties for the scenarios the Douglas County Attorney talked about. I encourage the committee and counsel to look at 28-204(1)(c), accessory to a felony. It provides comparable existing penalties that are similar to what Senator Krist proposes in his bill. [LB162]

SENATOR EBKE: Okay. Thank you, Mr. Eickholt. Anybody have any questions? Must be no-question Friday. Have a good day. Thanks for coming. Any other opponents? Anybody testifying in the neutral? Senator Krist. [LB162]

SENATOR KRIST: Very briefly. I appreciate everyone who came, especially those that came long distances to give us information. That's part of the process and I do think that a conscious decision to go against anything we've done in LB605 needs to be deliberated and needs some careful thought. In this particular case, I think I would prefer to listen and to take on advisement and have legal counsel give us the kind of input we need because every decision we make to

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reverse anything in LB605 is very important to take a hard look at it. Secondly, I appreciate Mr. Eickholt's comments. And if the provisions are there as we have found with other subject matter, that the intent can be met by using other statutes or other parts, then that needs to be pointed out as well. So I'm sure we'll have vigorous debate in Exec and I'd ask you to take a good look at the subject matter. Thank you. [LB162]

SENATOR EBKE: (Exhibit 1) Thank you, Senator Krist. We do have one other letter opposed (sic--neutral) from Amy Miller of the ACLU of Nebraska. That closes the hearing on LB162. Next up, Senator McCollister, LB199. Welcome back to Judiciary. [LB162]

SENATOR McCOLLISTER: Thank you, Chairwoman Ebke and members of the committee. It's good to see you yet again. Ready to proceed? [LB199]

SENATOR EBKE: Go right ahead. [LB199]

SENATOR McCOLLISTER: 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. Today I am introducing LB199. This bill simply is a cleanup proposal to repeal sections of our state laws that give the authority for the Nebraska Commission on Law Enforcement and Criminal Justice to administer a state aid program for Indian reservation law enforcement. In February 2006, the Federal Bureau of Indian Affairs assumed responsibility for law enforcement on Indian reservation lands. The state aid program for law enforcement has remained in statute even though it has not received any funding since 2006. LB199 would support the Commission on Law Enforcement and Criminal Justice recommendation that Nebraska Revised Statute Section 23-362 and 23-362.01 be repealed. This proposal would better reflect the reality of how law enforcement on Indian reservation lands is currently administered. Commission staff are here today and they can provide additional historical information and answer any questions that you may have. Thank you. [LB199]

SENATOR EBKE: Any questions for Senator McCollister? Senator Pansing Brooks. [LB199]

SENATOR PANSING BROOKS: Thank you. We almost had 100 percent. [LB199]

SENATOR EBKE: Almost. [LB199]

SENATOR PANSING BROOKS: So can you tell me, Senator McCollister, how this relates to the Native Americans? [LB199]

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SENATOR McCOLLISTER: Well, I think it simply reflects the fact that the state no longer has the essential responsibility for Indian reservation lands and the Bureau of Indian Affairs has taken over that responsibility. It hasn't been funded from state funds since 2006. [LB199]

SENATOR PANSING BROOKS: I guess I'm just interested because it doesn't have...usually we have the cross through so we can see what section is being repealed. Now they've just listed the sections, so. [LB199]

SENATOR McCOLLISTER: Yeah, if your question is asking whether the state should assume responsibility, I think that's beyond what I'm here to talk about here today. [LB199]

SENATOR PANSING BROOKS: Okay. I guess I'm just interested if this affects the whole Whiteclay issue is what I really am concerned about. [LB199]

SENATOR McCOLLISTER: I don't believe it does. And I think that's a separate issue. And I respect the fact the state has a legitimate interest there and they need to expend some tax dollars to improve that situation. [LB199]

SENATOR PANSING BROOKS: Okay. I'm going to have to see this law better. But thank you. [LB199]

SENATOR McCOLLISTER: Thank you. Incidentally, Senator Pansing Brooks, it could well be that the speakers following me can better answer your question. [LB199]

SENATOR PANSING BROOKS: Okay. Thank you very much. [LB199]

SENATOR EBKE: Senator Hansen. [LB199]

SENATOR HANSEN: I will pose this to you and if you want to defer it to the speakers following you...first off, thank you, Chairwoman Ebke. But if you want to defer it to the speakers following you, feel free. Just to clarify, we haven't expended any funds under this section recently? [LB199]

SENATOR McCOLLISTER: I missed the question. Can you...? [LB199]

SENATOR HANSEN: So we're essentially removing a provision that we already don't use? We don't expend funds to these counties currently? [LB199]

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SENATOR McCOLLISTER: We're simply removing state statutes because it hasn't been used since...for, you know, ten years or so. So it's simply making that change in state statute. [LB199]

SENATOR HANSEN: Thank you, Senator. [LB199]

SENATOR EBKE: Senator Baker, did you have...oh, okay. I saw you. [LB199]

SENATOR BAKER: Water, please. [LB199]

SENATOR EBKE: Okay. (Laugh) Any other questions? Going to hang around for a few minutes? [LB199]

SENATOR McCOLLISTER: I'll listen to the next speaker or two but I think I'll probably waive closing. [LB199]

SENATOR EBKE: Okay. First proponent. [LB199]

DARRELL FISHER: (Exhibit 1) Good afternoon, Chairwoman Ebke, members of the Judiciary Committee. My name is Darrell Fisher; that's spelled D-a-r-r-e-l-l F-i-s-h-e-r, and I am the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, more commonly known as the Crime Commission. I am testifying in support of LB199, and I want to thank Senator McCollister for carrying this bill for our agency. The fund was originally created in 1957, in response to changes made in federal law, dealing with state jurisdiction and the resulting withdrawal of federal law enforcement on Indian reservation lands. Beginning in FY '80-81, the Crime Commission's General Fund appropriation included funds to equitably distribute the added burden of law enforcement imposed upon those counties which contain reservation lands. In 1986, due to subsequent changes in federal law, the Nebraska Legislature passed LB57 which retroceded criminal jurisdiction of the Winnebago Reservation located in Nebraska to the Federal Government. Effective July 1, 1986, the Bureau of Indian Affairs assigned law enforcement personnel to that reservation. In July 2006, the Bureau of Indian Affairs accepted retrocession for the Santee Sioux Nation here in Nebraska, and took over law enforcement there as well. The Legislature, in a deficit appropriation bill, reduced the General Fund appropriation for the aid to reservation law enforcement fund by 25 percent in FY '05-06, and the appropriation was reduced to \$0 in FY '06-07. The program has not been funded since that time. This bill also has zero fiscal impact. I'm asking you to move this bill to General File, and I'm happy to try and answer any questions you may have. Thank you. [LB199]

SENATOR EBKE: Senator Pansing Brooks and then Senator Krist. [LB199]

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SENATOR PANSING BROOKS: Thank you so much for coming, Director Fisher. Again, I'm just interested in why do we need to replace this because it does become a conduit if there is a need for monies to be directed towards law enforcement of certain areas in high need such as Whiteclay. [LB199]

DARRELL FISHER: And I understand your concern, ma'am. To my knowledge, it will have no impact on that. And I understand your concerns about Whiteclay. We have similar concerns in that regard. This is a fund basically that has not had any money appropriated to it since 2006. This was simply our attempt to clean up a matter that's still on the statutes and, hence, still subject to audit. So we're just simply trying to eliminate old, obsolete funds that no longer receive any appropriations. [LB199]

SENATOR PANSING BROOKS: Okay. Thank you for explaining that. So...but it was created originally for what? I'm sorry. You're throwing some dates... [LB199]

DARRELL FISHER: It was originally created to offset burdens on county law enforcement when the federal government did not have any criminal investigation, criminal authority on the reservation lands. They took back that authority in the mid eighties. Those nations were retroceded back to the federal government. [LB199]

SENATOR PANSING BROOKS: Okay. You can understand my qualms about this in light of all things that are going on at Whiteclay right now... [LB199]

DARRELL FISHER: Yes, ma'am. [LB199]

SENATOR PANSING BROOKS: ...and all the discussions about law enforcement and all of the discussions that are happening in regard to the "lawlessness" up in that area because it's a census area rather than an incorporated village or any other kind of community that is subject to laws. Okay. I just...I'm going to need...could you maybe submit your testimony, too, as a copy for all of us. I'd appreciate seeing those years. And I think I'm a better visual as well as auditory learner. Thank you. [LB199]

SENATOR EBKE: Okay. Senator Krist. [LB199]

SENATOR KRIST: Mr. Fisher, thanks for coming. Thank you, Chair. I'm going to go back in history or recent history. When did you take over the Crime Commission? [LB199]

DARRELL FISHER: I started January of 2014, sir. [LB199]

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SENATOR KRIST: Okay, I think it was prior to 2014, we had a special investigative committee with regard to Whiteclay and the issues. And we went into negotiation with the Bureau of Indian Affairs, who...we have no jurisdiction across into reservation land because of Bureau of Indian Affairs changes and acts that have followed. And nothing in Whiteclay on the other side of the border existed in...on tribal land. And I think this fund when you look at it, the charter, it has to be used to offset those counties that have federal land...federal Indian...federal reservation... [LB199]

DARRELL FISHER: Reservation. [LB199]

SENATOR KRIST: ...land in their county. We tried to put money into this fund and to fund some positions for...because they said they had no money for law enforcement, to fund positions jointly, the state of South Dakota, because I went to South Dakota to have to negotiate with them. South Dakota and Nebraska were going to put money into this fund and it was going to be used to augment law enforcement. And we were told you could not do that because, in terms of jurisdiction, money has to be spent within this fund. And I think that was the last attempt. I'm guessing that was...we'll have to look at it. I think it was '10-11, but I think that was the last time anybody talked about using it. So just a little history and we can look at the detail. But I think Colby was the one who had an exhaustive...Senator Coash was the one who had an exhaustive book on the possibility of augmenting those positions in law enforcement and the fact that we couldn't use...we could set up a separate cash fund that we could use for it. Anyway, we'll look at the details, but I do think that the fund needs to go if you're being audited and we can't use it for anything productive, whether it be any reservation. [LB199]

SENATOR PANSING BROOKS: There's...are you saying that it's supposed to go...only if there is tribal land in that county? Is that what you're saying? [LB199]

SENATOR KRIST: Yes, ma'am. [LB199]

SENATOR PANSING BROOKS: And there's a lot of discussion because land has been given to the tribe in Sheridan County. So if you look at the map in Senator Brewer's office, we do we have Pine Ridge Reservation lands in White Clay. So I just...I'm still concerned. I want to make sure that we aren't doing something precipitously. So anyway, those are my concerns. [LB199]

DARRELL FISHER: Thank you. [LB199]

SENATOR PANSING BROOKS: Thank you. Thank you for coming, Director. [LB199]

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DARRELL FISHER: Yes, ma'am. [LB199]

SENATOR EBKE: Okay. Any other questions? Thank you for being here today. [LB199]

DARRELL FISHER: Thank you, ma'am. [LB199]

SENATOR EBKE: Are there any other proponents? Do we have any opponents? How about neutral? Are you...Senator McCollister waives. I don't believe we have any letters. That closes the hearing on LB199. I would ask this committee members to hang around for 15 or 20 minutes and we'll try to make up that Exec, at least part of it, that we missed earlier. Thank you for being here. [LB199]