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Judiciary Committee
February 18, 2010

[LB894 LB955 LB989 LB1050 LB1062 LB1084]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 18, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB894, LB955, LB1050, LB989, LB1062, and LB1084. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: Mark Christensen.

SENATOR ASHFORD: Good afternoon, everyone. I think we're going to get started a bit late. Thank you all for coming. As you know, this is the Judiciary Committee and I am joined today by Senator Rogert from Tekamah; and Senator McGill from Lincoln; Senator Council; Senator Coash; LaMont Rainey is legal counsel to my right; and Christina Case is the clerk of the committee; and Jamie is over there as our page. So we are going to begin with LB894 and...or not. I mean we don't know. Maybe we'll... []

_____: Senator Pirsch. []

SENATOR ASHFORD: Senator Pirsch. Let's go...well, Price obviously isn't here. How many testifiers do we have on LB894, first bill? Okay. LB980...do you want to introduce yours? []

SENATOR MCGILL: LB1062? []

SENATOR ASHFORD: No, Senator Council. []

SENATOR MCGILL: Oh, you're looking at her. []

SENATOR COUNCIL: Oh you, I mean, I can do that if you'd like, Mr. Chairman. []

SENATOR ASHFORD: Yeah, why don't we go...who's here on LB989? Are you... []

SENATOR MCGILL: Are all your people here? []

SENATOR COUNCIL: I don't know. I don't think anybody is. []

SENATOR ASHFORD: All right, let's go ahead with LB989. []

SENATOR COUNCIL: Shall we? Chairman Ashford, fellow members of the Judiciary Committee, I am Brenda Council, last name spelled C-o-u-n-c-i-l, and I'm the senator representing the 11th Legislative District and I'm here appearing in this position this afternoon to introduce LB989, and LB989 deals with the issue of administrative segregation and administrative confinement with regard to inmates in the Nebraska

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correctional facilities. Each year the Department of Correctional Services places dozens of its inmates into what is alternatively described as administrative confinement or administrative segregation where they are kept in segregated cells for 23 hours per day with no programming and no idea of when they will be released and returned to the general population. I want to distinguish administrative confinement and administrative segregation from solitary confinement, which may be imposed as discipline for violation of rules. Administrative confinement and administrative segregation as used in LB989 refers to the use of solitary confinement for management purposes rather than as a form of punishment. And what we are looking at is that these administrative confinement places are oftentimes open-ended and, in fact, some inmates have remained in segregation cells on administrative confinement for many, many years. I'm sure you'll hear from the department that these placements are classification actions which are necessary to maintain order in the facilities and that LB989 does not so much challenge that idea as it raises questions about how these decisions are made by Correctional staff and what checks are in place to make sure that mistakes are not being made. As a practical matter, the decision is basically left up to the warden who can sometimes make decisions that are hard to explain because I have received letters since my election to this office from inmates across our correctional system who have raised questions, concerns, criticism about administrative confinement. Allow me to provide you a couple of examples. There's a case at Tecumseh State Correctional Institution which came to my attention where an inmate was placed on administrative confinement after he was the victim of assaults by other inmates. And then there's another inmate at Tecumseh who was placed on administrative confinement because he was observed demonstrating martial arts moves to another inmate, or another inmate at Tecumseh who was placed on administrative confinement because his artwork included a drawing that was considered by Correctional staff to be gang-related, or the example of an inmate who was placed in administrative confinement because it was suspected that his haircut indicated gang affiliations. Needless to say, I submit to you that none of those reasons fall within the category of punishment or disciplinary offenses or violation of rules, yet administrative confinement has been used to address those issues. There are also cases where it would seem that it would be more appropriate for the inmate in question to be processed through the department's standard inmate disciplinary system, but where the inmates instead are simply placed on administrative confinement because for technical reasons it may not fall squarely within a violation or a disciplinary case. The problem is that once an inmate has been placed in administrative confinement, the process seems to err on the side of caution so that some of the inmates tend to remain in administrative confinement for far longer than is probably necessary in order to protect the legitimate interests of the administration. While the inmates are in administrative confinement, as I said earlier, they do not have an opportunity for any meaningful program participation and there is no individualized plan for reintegration into the general population. The practical effect of this lack of programming is that administrative confinement inmates tend to get stuck in the system because the Board of Parole will favor inmates who have had programming. In 1976,

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this Legislature passed a series of statutes that outlined exactly how the department's system for disciplining inmates would work with hearings and time limits and administrative appeals processes. There are no comparable statutory guidelines for cases where inmates are classified to administrative confinement, yet the consequences for those inmates can be far greater than under normal disciplinary sanctions. With LB989, the Legislature would be setting the standards and providing guidance to the department to regularize the system and to describe exactly how the administrative confinement system should work in management cases just as we have done in disciplinary cases. And with that, I'll close on the opening. Close on the opening? That concludes my opening. [LB989]

SENATOR ASHFORD: That works. Opening, yeah. Your closing is your...your opening is your closing as well? [LB989]

SENATOR COUNCIL: In my opening is my closing. [LB989]

SENATOR ASHFORD: All right. Thank you. Okay. Any questions of Senator Council? Seeing none, thanks. Any proponents of this bill? [LB989]

MARSHALL LUX: (Exhibit 1) Good afternoon, Senators. My name is Marshall Lux, L-u-x. I'm the Ombudsman for the state of Nebraska and I am here to testify in support of LB989. Each year our office handles over 2,000 cases of complaints from citizens of the state of Nebraska. Some of those complaints are from inmates in our correctional facilities, and a certain segment of those correctional complaints are cases that have to do with administrative confinement inmates. So our office is very familiar with this issue and I would agree with everything that I heard Senator Council say in her introduction of the bill. And I've distributed some written comments so that you can, at your leisure, look at some of the concerns that our office sees with how the system of administrative confinement works in our state correctional facilities. I'd like to very quickly make three what I think are very important points that relate to this issue. One, I would acknowledge, and I think everybody who knows about our corrections system would acknowledge, that administrative confinement is an important tool that the department needs, that the facilities need to maintain security and good order in their facilities. It is an important tool. The LB989 doesn't take that tool away. It has to address a question of how that tool is to be used. Number two, I think we need to acknowledge that the Department of Corrections has made some very important improvements in this area in the last several years under Mr. Houston's leadership. Number one, they've created a transition unit which allows inmates who are in administrative confinement to transition out, back into general population, so that it's not an either/or question whether an inmate is in a segregation cell or in general population. They can be transitioned back out. That's a very important improvement that the system has already. Another important step was when the department created an excellent new mental health unit for mentally ill inmates. Previously, many of the inmates in administrative confinement

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cells were mentally ill inmates who were basically being kept in those cells because, by default, there was no place else for the system to put them. Now there is a new mental health unit to move them into. Those are good developments. And the other thing I think that I should mention is that the department has signaled to us that they are willing to discuss these issues further and there are some meetings coming up that will involve staff of the Department of Corrections and our office. The first meeting I think is a week from Monday. So we're going to be talking about this issue with the department in the near future, but I wanted to...I wanted to appear today, thank Senator Council for introducing this bill and bringing this issue to your attention. It's an important issue. I'd be happy to answer any questions. [LB989]

SENATOR ASHFORD: Thank you, Marshall, and thank you for all the good work you do for our state. [LB989]

MARSHALL LUX: You're welcome, sir. [LB989]

SENATOR ASHFORD: Any questions of Marshall? Seeing none, thank you. [LB989]

MARSHALL LUX: Thank you. [LB989]

SENATOR ASHFORD: Next proponent? Opponent? Neutral? Are you neutral, Bob, or...? [LB989]

BOB HOUSTON: No. Opponent. [LB989]

SENATOR ASHFORD: Oh, you're an opponent. [LB989]

BOB HOUSTON: Yes. [LB989]

SENATOR ASHFORD: Opponent, okay. [LB989]

BRAD MEURRENS: I'm a proponent. [LB989]

SENATOR ASHFORD: You're a pro, come on up. [LB989]

BRAD MEURRENS: I was sitting behind the post. [LB989]

SENATOR ASHFORD: Okay. Behind the post? [LB989]

BRAD MEURRENS: (Exhibits 2 and 3) Good afternoon, Senator Ashford and members of the Judiciary Committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I'm the public policy specialist and registered lobbyist for Nebraska Advocacy Services, the Center for Disability Rights, Law, and Advocacy. I'm here today

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to offer our strong support for LB989. There's a growing awareness of the interrelationship between the public mental health system and the criminal justice system. National and state-level statistics indicate that there is a significant incidence of mental illness among incarcerated individuals. In 2000, the Bureau of Justice Statistics estimated that 16 percent of the national population in prison had a mental illness. Nationally, there are three times more individuals with mental illness in prisons than in mental health hospitals. Rates for mental illness within the prison population are two to four times more prevalent than for the general public. Jails and prisons are quickly becoming, in effect, the country's front-line mental health providers. As my handout demonstrates, segregation can be psychologically damaging. Even if individuals have no prior history of mental illness, prisoners subjected to prolonged isolation may experience depression, despair, anxiety, rage, claustrophobia, etcetera. Inmates with mental illnesses are at even greater risk of suffering psychological deterioration if kept in segregation for prolonged periods. Stress, social isolation, and restrictions can exacerbate their illness and consequently impair any progress toward recovery or any benefits of treatment. Given the significant psychological risks associated with segregation, it is only prudent that there be institutional safeguards in place to prevent arbitrary use of segregation to ensure that the use of segregation is at the exhaustion of other remedies, and to attend to preventing or mitigating the psychological effects on individuals during and after segregation. It would be unconscionable for the state to place someone in an environment that assuredly will have a negative impact on his/her psychological condition without giving due consideration to the reasoning behind that placement or providing mechanisms by which the psychological damage can be mitigated. We support the language requiring that persons with mental illness have access to medication while in segregation, but we believe that the language should be broader--that the services available or accessible not be limited to just medication but a more robust array of services and other treatment modalities also be available. In the same vein, it should be incumbent upon the CEO to determine how best to support the reintegration of an inmate released from segregation to the general population. We applaud the inclusion of mental health consultation in the development of LB989's personalized reintegration plans. That concludes my testimony. I'd be happy to entertain any questions the committee may have. [LB989]

SENATOR ASHFORD: Any questions of Brad? Seeing none, thanks, Brad. Other proponents? Opponents? Bob. [LB989]

BOB HOUSTON: (Exhibit 4) Good afternoon, Chairman Ashford and members of Judiciary. My name is Bob Houston, H-o-u-s-t-o-n, and I'm director of the Nebraska Department of Correctional Services. I have a handout for you. Okay. I have included several handouts that will support my comments today. Administrative segregation is the removal of an inmate from general population to maintain order and security within the institution. It includes intensive management, administrative confinement, protective custody, death row, and transition confinement. When the safety of an inmate, staff, or

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the Nebraska community can be adversely affected, alternative housing is needed for a period of time. Every jail or prison system in the nation has a legal obligation to separate inmates when necessary. We have the duty to protect all, even those who say they do not want our protection...do not want protection. The use of solitary/isolated confinement ended in the 1980s. When the department implemented the unit management system, we forged an unspoken but very clear agreement with our inmate population--we will protect you so you do not need to defend yourself. The department has been successful in numerous audits by the American Correctional Association. These inspections include all forms of segregated confinement. The status of segregated inmates is reviewed once every two weeks, at least once every two weeks, once every 7 days during their first 30 days. The classification decision may be appealed at three levels administratively, and inmates can also challenge the classification decision in Nebraska and federal courts, and they do. This bill creates a due process system requiring a finding beyond a reasonable doubt no matter what danger it is believed the inmate poses to others or the danger the inmate might face in general population. An evidentiary hearing would be held to determine if the inmate posed a serious and immediate continuing threat to the facility. To determine a continuing threat, we must predict the future, beyond a reasonable doubt. An inmate may be placed on segregated status if he is a threat to others and himself. Proving either a danger to others or himself would not be sufficient. At the present time, we have 1,500 inmates who have identified 4,500 separatees--we have 4,445 people in our department--or inmates whom which the inmate has determined they must be separated. Security threat groups stretch across all facilities and transfers between general population is of little value. There's a chart that I have in there and you'll see two charts in there. The first one you'll see a web of connections, I don't know if you see that, and I'll be referring to that in a moment. Because the Department of Corrections runs safe, secure facilities, it has not been necessary for the courts to intervene and impose mandates upon our operations. This bill assumes a level of safety would continue. Changing administrative confinement would change that fact drastically. Should this bill pass, our prisons will be operated in a lockdown status to keep inmates safe and secure. This would end general population. In order to protect inmates, staff, and the public, inmates who pose a direct threat to themselves or others must be removed from the general population. I am proud to provide safe operations for the men and women who work and reside in our facilities. Thank you, and it would be my pleasure to answer any questions that you have. [LB989]

SENATOR ASHFORD: Any questions of Bob? Yes, Senator Coash. [LB989]

SENATOR COASH: Thank you, Chairman Ashford. Thanks for being here today, Bob. I think you run great facilities. Just want to ask you two questions about some of the previous testimony, just to get your feedback on it. And the first question has to do with something that the Ombudsman's Office said that in most cases the real decision about segregation falls to the warden or to the...to the warden or to the CEO. Is that how it

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happens in your estimation? [LB989]

BOB HOUSTON: Well, here's what our policies and procedures call for, is that usually there's a disciplinary process that precedes that and at the conclusion of that, the warden, he or she, can begin a process to have a person placed on administrative confinement. They can place that person on there for a 90-day period and then submit paperwork to either continue that or to let that terminate at the end. The classification decisions that are made are reviewed at three levels in the facility: starts on the unit, it goes then to the institutional classification committee, and then to the warden. What proceeds from there is it then goes...we have a committee that's put together to look at specifically administrative confinement, and then we also have the director's classification committee which is composed of our deputy directors, and then the last step is myself as director. But the...and then any decisions that are made can then be subject of litigation to federal and state courts. [LB989]

SENATOR COASH: Okay. All right. With the inmates that are in segregation, you keep an eye on their mental health? [LB989]

BOB HOUSTON: Yes. [LB989]

SENATOR COASH: How do...can you just briefly explain like how frequently, what the process is to keep...that the institution uses to make sure the mental health of inmates who are in segregation is being addressed? [LB989]

BOB HOUSTON: We have...we have, out of our staff of over 2,300 staff, we have 140, approximately, mental health, substance abuse professionals. We have formed, as Marshall Lux did a very good job of describing the efforts we've done in mental health, we have a unit that we've expanded to 80. We've added to that. We've vacated two positions in central office and created a psychiatrist position. We have a full-time psychiatrist. We have clinical psychologists. We have psychiatric nurses. We have mental health workers. We have substance abuse counselors and we have the availability of educators for that unit. [LB989]

SENATOR COASH: So you've got...you've got the staff, but how do they interact with those inmates? I mean what... [LB989]

BOB HOUSTON: Very good. [LB989]

SENATOR COASH: ...I mean, are those staff getting in to see the inmates who are in this type of segregation addressed in this bill? [LB989]

BOB HOUSTON: They are housed on that housing unit. [LB989]

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SENATOR COASH: On the housing... [LB989]

BOB HOUSTON: Yes. [LB989]

SENATOR COASH: And the segregation housing unit? [LB989]

BOB HOUSTON: Yes. [LB989]

SENATOR COASH: Okay. [LB989]

BOB HOUSTON: A good portion are on the housing unit and, only because we don't have enough offices there, they're across the hallway in our mental health office area. But they directly work and interact with the inmates all day long. [LB989]

SENATOR COASH: So in your estimation, the mental health of those segregated inmates is...? [LB989]

BOB HOUSTON: Is extremely good. [LB989]

SENATOR COASH: Okay. [LB989]

BOB HOUSTON: And the number of beds we have, when you proportionate it to our population, far exceeds any department that I've ever had the pleasure of working with. [LB989]

SENATOR COASH: Thank you. [LB989]

BOB HOUSTON: Thank you. [LB989]

SENATOR ASHFORD: Yes, Senator Council. [LB989]

SENATOR COUNCIL: Thank you. Thank you, Director Houston, and I appreciate your input on this matter. But I think you are aware, because I've mentioned to you, the number of pieces of correspondence I've received from inmates who are complaining about how administrative confinement and administrative segregation is handled. No one disputes the need, in fact the necessity, to maintain as safe an environment as possible in our correctional facilities. But my concern is, is that on these purported classification confinements that, at least from the information that I've received from the investigations that have been conducted by the Ombudsman's Office at my request on some of these, it does not appear that there is a standard policy that governs these placements and an inmate's right to challenge it, particularly in situations...I mean there's no question on discipline, I mean, and there's a process and a procedure, if someone is being administratively confined because he or she has violated institution

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rules. That's not the issue. The issue is where staff, for some reason or another, suspects a particular activity and, on the basis of that and solely on the basis of that, some...an inmate is placed into administrative confinement segregation. How long is it that they ordinarily remain in that status before they have an opportunity to challenge the decision or the set of facts that caused them to be placed in administrative confinement? [LB989]

BOB HOUSTON: Seven days. When we place inmates on segregation, they are reviewed every seven days and thereafter every two weeks. [LB989]

SENATOR COUNCIL: Okay, now explain a review. [LB989]

BOB HOUSTON: A review? Well, I can show you. We have a reclassification narrative. We also have classification forms and these are generated on intervals. Every 7 days and every 14 days the inmate has an opportunity to sit...to have input into the decision making concerning their placement there. We have case managers that meet personally with the inmate, go over the information. They are provided opportunities to write to any person they would like to write to. They can write what we call an interview request form and that can be considered when they have...when we have assessments of them when they physically are not present. And they are then reviewed after the classification process that I described to the senator after the nine-day period. Every six months, they are reviewed again and each one of those six-month reviews, we consider what their past has been and decide whether or not they continue to pose a threat to the institution. [LB989]

SENATOR COUNCIL: Okay. But, see, that's one of the problems. If an individual has been in administrative confinement, and I'll refer to a specific case where I've been in communication with this individual's parent from the time I was sworn into office,... [LB989]

BOB HOUSTON: Yes. [LB989]

SENATOR COUNCIL: ...that, you know, in the year...over a year that this individual had been in administrative confinement, you know, everything was fine. I mean no problems while he was in administrative confinement. When you say you look back at the past, at what past is it that you're looking at? I mean if you're always looking back to the incident or the set of circumstances or beliefs that led to their placement, classification in administrative confinement, then they'll never get out. [LB989]

BOB HOUSTON: Yes, and some will be in there for years. [LB989]

SENATOR COUNCIL: But...and there is no other plan to...no other way of planning and providing safely for their reintegration. I mean I can appreciate the suspected gang

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involvement and this inmate is suspected of gang involvement. There has to be some way to develop a plan for that individual to be safely reintegrated into the general population, even if that means transferring him to another facility. But instead, it seems to me that the choice is the least involved and that is just leave them in administrative segregation, administrative confinement. I mean...and I know you're aware, I mean I'm aware of people who have been in administrative confinement for 12 years. [LB989]

BOB HOUSTON: Yes. [LB989]

SENATOR COUNCIL: And so... [LB989]

BOB HOUSTON: We... [LB989]

SENATOR COUNCIL: And there's also some issue that if that particular individual needs to complete a particular program for parole purposes, if they're in administrative segregation or administrative confinement, they're not allowed to participate in those programs. [LB989]

BOB HOUSTON: Okay. Well, let me see if I can first answer the first part of your question. The chart that I said I would refer to, I think you have...you all have that in front of you. One is darkly colored in and so forth. The other one is extracting information from what you see there. That chart looks very confusing and I appreciate that. [LB989]

SENATOR COUNCIL: Uh-huh. [LB989]

BOB HOUSTON: That constitutes the communication, the relationships between three inmates, one at Tecumseh, one at the Lincoln Correctional Center, and one at the Nebraska State Penitentiary. And what we do is we have what is called data mining, and we have a criminal analyst. What that person does is we have a software package that we received from the Iowa Department of Corrections. We take every piece of information about inmates: their gang affiliations, when we have incident reports where there's gang connections and so forth; every telephone call, people they have on their telephone list; every check that is received in our institution; every time a check is sent out, that is recorded; when they make purchases; when they get on the calling system. We now can...we now see that they're calling common people and so that interwoven relationship that you see on the charts there, the one that is clear but has several lines, that's just pulling out a few criteria to look at those relationships between those three inmates. And so what we do is that we can see, we can see if they're receiving money or sending money from the same address, we can listen in on their phone calls and hear the substance of their conversations, we have incident reports that we put in there with criminal threat group associations, and so it really adds a science or a backup look at these individuals, and those are background investigations. They certainly are not

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conducted on every inmate that we have in administrative confinement, but it's a very complicated process, as you can see there, and the connections, I mean we're a small state so those connections are very important for us to monitor. We can't...we're not like Florida that has 60 institutions you can move people around in. The second thing I need to say is, very sadly, within the past month we had an inmate, Perrigo, who was sitting in the lower part of his gallery and an inmate tossed or dropped a piece of candy wrapper into his coffee. He became so angered by that, that it led to his violent death. That's being investigated now. And whether it was something that he brought on or something was brought on by another person is subject to investigation. But he violently died. I went to that housing unit and I visited with the staff there, and those things happen every day but they don't always turn out that way. I went to that young man's memorial service in Omaha and I watched his family cry. I mean it is just terrible that those types of tragedies happen to our inmates, and it's the smallest of things that bring these on. And so when you see that web that you have there of connections and you look at the small things, because in prison, you know, it's very important that we understand the culture because these things don't just happen, these are not events, the little things become huge and huge things become little. By that I mean it's just that something that is huge in life is of no significance to a person doing 100-200 years plus a life sentence, but little things, little detail things become hugely expanded in importance and it led to this young man's death. And I can tell you story after story. And so we'll get correspondence and say, all I did was this, all I did was stare at the person. Well, as I read the incident report about this person who said, all I did was stare at the officers, he pounded on his door for a half hour afterwards and refused to stop. He also used disparaging remarks against other inmates, using terms, derogatory terms concerning their sexual orientation. Those are the types of things we can't tolerate. If an inmate can be set off because a candy wrapper drops in his coffee, imagine, imagine what happens when we have racial or sexual orientation comments being made. Everything is important. Nothing leaves the prison. It all stays there in their behaviors and our culture. [LB989]

SENATOR COUNCIL: You know, and I can certainly appreciate that, Mr. Houston, but the problem I have is this distinction. If an inmate violates a rule and is disciplined, there are policies around how long that individual can be confined for that violation... [LB989]

BOB HOUSTON: Yes. [LB989]

SENATOR COUNCIL: ...and for that discipline. But in the case of a situation where...and I would imagine short of the violent death, and that is tragic, but an altercation, just an altercation resulted from the candy wrapper in the coffee cup, disciplinary action would have been taken which could have led to administrative segregation and there are limits on the length of those placements, the procedures for those placements. But when it comes to administrative confinement for management purposes, you don't have those same kinds of limitations. So you have an equal if not

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greater chance of returning someone to general population who could further harm himself or others in a disciplinary context than you have in management context. [LB989]

BOB HOUSTON: Well, in preparation for today, I visited with Harold Clarke, who we all know, who's the former director of the Nebraska Department of Corrections, and he is in Massachusetts. And I said, Harold, and I told him about the bill, and you go back, you know, and we go back nearly four decades in the Department of Corrections. I started in 1974, the same year as Harold did, and back then we would place people on, you know, through the disciplinary process, we would place them into discipline for eight, ten years. There was no administrative confinement the way we know it. In 1986, Director Gunter came from North Carolina and he brought the experiences of long periods of segregation and litigation through the North Carolina and through federal courts, and that's where we...when we changed to administrative confinement. If...the longest I think we give for segregation is in the matter of months, and so we could go back to that system where we give them ten years if we think that covers it, but we do not think that is the best way of doing it. So we went to the industry-best way of doing it and that's through administrative confinement and frequent reviews of those individuals. The standard that we use, Senator Council, is does this inmate pose a threat to the institution or to him or herself, and as long as that lingers out there we protect that person and we protect the inmate population by keeping that person separated. [LB989]

SENATOR COUNCIL: Yeah, like I said, I just don't understand why in the disciplinary context we have statutory guidelines, statutory policies to govern how an inmate was being confined for discipline, but we have no comparable set of statutory guidelines or policies that govern an inmate who is being placed in administrative confinement or segregation for management purposes. You know, my opinion is that we ought to have the same type of processes and procedures. And quite frankly, under the current state, if you can have someone who is placed in administrative confinement or segregation for disciplinary purposes who you simultaneously determine that that individual poses a threat to himself or others, after they serve the statutory maximum for punishment, they could be there as long as the institution decides for the management purposes. [LB989]

BOB HOUSTON: Well, Senator Council, those lengths of stay in segregated confinement off of discipline, that's governed by Department of Correctional Services' policies and procedures. I'm not aware of any statutes that cover that. It's our department in the 1980s that reduced that from several years down to days and months, and then established administrative confinement. I do audits, have done audits up until I came into this position around the country. I worked in jails. I was director of the Douglas County jail so I've been to jails and I've been to prisons. There's no place, no jurisdiction I've ever been to that has these types of guidelines or the necessity for law to govern internal processes and procedures when it comes to separating inmates. Even the states that are under federal supervision and have masters that have come in

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because of horrible conditions, to my knowledge do not have statutory guidelines for internal decisions. [LB989]

SENATOR COUNCIL: But you do have processes for administrative appeals and, at least as I read it, and I'm always open to being told that I'm not correct, as I read it, if you're disciplined, you have greater administrative appeal rights than if you're placed in confinement for management purposes. You have greater appeal rights for...after having been disciplined, and that is an indication of a violation of the rules, as opposed to these management decisions. You don't have comparable appeal rights. [LB989]

BOB HOUSTON: Well, I guess I would respectfully differ with you on that, Senator. When an inmate goes through discipline, we have... [LB989]

SENATOR ASHFORD: Well, Bob, just a second. Why don't we just... [LB989]

BOB HOUSTON: Yes. [LB989]

SENATOR ASHFORD: ...do a couple more questions and then we'll... [LB989]

SENATOR COUNCIL: Okay. [LB989]

BOB HOUSTON: Okay. [LB989]

SENATOR ASHFORD: ...just we need to move. Go ahead, Bob. [LB989]

BOB HOUSTON: Yes. Inmates have the right to an appeal. They have a one-level appeal that comes to central office. In fact, Thursday mornings at 10:00 is when we have that and that's an open session for anybody to sit in on, and that pretty much ends it and then they can go into the courts. When you have administrative confinement procedures, it is much more comprehensive and much more frequent. It happens on a more frequent basis. It starts with a case management development that is reviewed with the inmate, so the inmate knows exactly what we're talking about. It is reviewed by a team, a unit management team. Then it goes to a institutional classification committee, then to the warden, then it can go to the classification for administrative confinement, then it goes to the director's review committee, then it comes to me, and then they can...they can file litigation in court. So they have seven to eight tiers of decision making, plus we make those decisions on a frequent basis and so that process continues throughout their time in administrative confinement. We do not ignore these individuals when they get down there, Senator Council. We pay very close attention. On our transition unit... [LB989]

SENATOR ASHFORD: Bob, I'm going to... [LB989]

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BOB HOUSTON: Okay. [LB989]

SENATOR ASHFORD: ...I think we're going to...because we have five other bills. So do you have another one last question? [LB989]

SENATOR COUNCIL: No. [LB989]

SENATOR ASHFORD: Okay. And we have your comments and we can all...we know where to find you so... [LB989]

BOB HOUSTON: Okay. (Laugh) Yes, indeed. Thank you very much. [LB989]

SENATOR ASHFORD: Any other...let's see, we're on the opponent side. Any neutral testifiers? Seeing none, thank you. LB894, Senator Pirsch. [LB989]

MAX FREDRICKSON: Senator, you do have one person. [LB989]

SENATOR ASHFORD: Oh, come on up. Sorry. Are you an opponent or...are you against it or...? [LB989]

MAX FREDRICKSON: Yes. [LB989]

SENATOR ASHFORD: Okay. [LB989]

MAX FREDRICKSON: (Exhibit 5) That's my handout for you. My name is Max Fredrickson, F-r-e-d-r-i-c-k-s-o-n, and I'm opposed to this bill. I worked for the state of Nebraska in Department of Corrections for 27 1/2 years. On August 31 of 1991, inmate Gary Kennedy come up to me with his staff of inmates. They coordinated an escape attempt. I was doused with flammable liquid twice, stabbed ten times, and set on fire. This is the outcome of that. That was before the ambulance could get to me. I spent six and a half weeks in the burn unit, spent a year over at Madonna getting rehabilitated. Cost the state between \$500,000 and \$600,000. The inmate that doused me with flammable liquid and stabbed me three times in the right leg had been off of administrative confinement for a year and a half after being on it for eight years or eight and a half years. In attachment one, in this handout, is his profile. He was sentenced to prison for first-degree murder. Ten years before he did this to me, he was a trustee at the penitentiary living in the trustee dormitory. He was going outside the fence, working at the powerhouse. Thanksgiving Day of 1981 he was at work at the powerhouse. When he decided to escape, he took a crowbar to the two guys, two employees of the penitentiary that was working at the powerhouse and he beat them with it and he thought he beat them to death so he escaped. He went over to a store on West Van Dorn Street, waited till a lady and her two children showed up, kidnapped them, drove them down to Crete, let them out. State Patrol got him west of Crete, Nebraska. That's

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the type of violent individuals that are locked up in our prisons. The second guy, six counts of robbery. After he went to prison, he did get paroled. He violated his parole, come back to prison, he was involved in the assault on me and stabbed me seven times. The next guy, he threw a flammable liquid in an officer's face. Now if you notice on Mr. Fleming, the robbery charges, everything after that he got while he was locked up inside the prison and taken downtown to a court. Mr. Schwartz didn't want to get the time... [LB989]

SENATOR ASHFORD: Mr. Fredrickson, I'm going to ask you to just sum up, if you would. [LB989]

MAX FREDRICKSON: Okay. That's why we need administrative confinement, is because of individuals like this. You can have...offer the best programs, have the best psychologists, but if the inmates don't take advantage of them what good are they? They suffer from...oh, the disorder I've got listed on page 3--oppositional defiance disorder. [LB989]

SENATOR ASHFORD: And I appreciate that and we have your comments, so thank you. [LB989]

MAX FREDRICKSON: Yeah. [LB989]

SENATOR ASHFORD: Any questions of Mr. Fredrickson? Seeing none, thank you. [LB989]

MAX FREDRICKSON: All right. [LB989]

SENATOR ASHFORD: Any other testifiers on this bill, neutral or in opposition? Okay, that concludes the hearing. Senator Pirsch, LB894. [LB989]

SENATOR PIRSCH: Mr. Chairman, members of the committee, I am Pete Pirsch, representing the 4th Legislative District, and I am the sponsor of LB894. LB894 is intended to update Nebraska's shoplifting law to deter new techniques modern-day thieves employ. Many stores now use electronic merchandise tags to prevent shoplifting. As a result, thieves have developed countermeasures. Some use special devices to remove sensors, while others use special metal-lined bags or other types of covers to avoid setting off electronic theft alarm sensors. LB894 would make the removal or disabling of these tags or possession of devices designed to do so illegal. LB894 addresses new methods of stealing, which leads to higher prices for all consumers, and brings Nebraska in line with most of the surrounding states who have adopted such a law. Thank you. [LB894]

SENATOR ASHFORD: Thanks, Senator Pirsch. Any questions? Seems pretty

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straightforward. Thank you. [LB894]

SENATOR COUNCIL: Yes, I have a question. [LB894]

SENATOR ASHFORD: Yes, Senator Council. [LB894]

SENATOR COUNCIL: A metal-lined bag I guess is the question I have. The bill makes it unlawful for someone to possess a security device countermeasure, and I understand that, but how do you determine whether...what you're in possession of is a security device countermeasure? I mean I'm thinking about that. I have a bag, a shoulder bag that I got at a conference and in the inside has a metallic liner. Under this measure, I'm arguably in possession of a device...a security device countermeasure. [LB894]

SENATOR PIRSCH: Well, I appreciate that and the language--as I understand there will be others here who will follow me and I'd probably defer that question to them, including my understanding the city prosecutor of Omaha--but these are...this language exists in other states. The idea here behind the bill is to stop those who are intentionally using covers that are designed in and of themselves to prevent the sensors from going off in the store and, of course, we want those sensors...it seems to be when it comes to shoplifting, we want to encourage thing that leads away from subjectivity in stopping shoplifters but rather objectivity. And so with regards to that, I think you're going to hear some real-world kind of explanation that follows. But that is the idea behind the bill, that these are especially designed covers that are designed so that the sensor wouldn't go off. I don't know, you may have a metal-lined bag, but it is...I don't think that that, in and of itself, would prevent a sensor from going off. [LB894]

SENATOR COUNCIL: Well, but that's not...Senator Pirsch, in all due respect, it says for purposes of this section, security device countermeasure means any laminated or coated bag, container or cover capable of shielding goods. So it's any laminated or coated bag. So simple possession of that, without any intent to try to bypass a security measure, could expose someone to criminal prosecution here. [LB894]

SENATOR PIRSCH: Well, I think that language can be further addressed here by, as I said, I believe there's going to be others who will testify to that and it's my understanding that this language is employed in other states without any problem. But with regards to that, if this committee has problems with respect to tweaking the language to make sure that you feel comfortable that the intent of the bill is reflected well by the words, you know, I certainly look forward to working with the committee in that respect. [LB894]

SENATOR COUNCIL: Thank you. [LB894]

SENATOR PIRSCH: Thank you. [LB894]

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SENATOR ASHFORD: Thank you, Senator Pirsch. Marty, are you going to...? [LBO]

MARTY CONBOY: Good afternoon, Mr. Chairman, Senators. My name is Marty Conboy, C-o-n-b-o-y, the city prosecutor in Omaha. And I appreciate Senator Pirsch's efforts to bring this bill forward and this issue. This is something that is in place now in most other states around Nebraska and throughout the country. There's been litigation in other states, on the very issue that Senator Council is concerned about is the vagueness of that language. The Supreme Court of Kansas ruled that it is sufficient, and as a matter of fact that has to be determined by the trial court whether there was intent. They also cite the laws in a number of other states, probably a dozen or so, with similar language and issues in their courts and finding that it is a valid use of that term. Obviously, it's necessary for the state to prove intent so just having a bag would be the first step but it would have to be used for or intended to be used for shielding. And those kind of bags, I suspect, would also be a problem with security devices such as courthouse or airport metal detectors and things like that. The fact that it has metal alone would probably not, in itself, make it a shielding device. Only certain types of metal, aluminum in particular, are typically considered to be countermeasures. At any rate, this language is drafted largely from Iowa. They have the same language defining a security device countermeasure in terms of these bags. They make it actually...it's a level nine nonperson felony in Iowa to possess such a bag in a retail establishment. So the conduct that we're talking about here would be a misdemeanor in Nebraska. But this language is in response to the changing technology of basically merchandise and in times gone by they would watch people steal it and chase them outside and bring them to court. In order to avoid that kind of conflict, they use security devices. We're all pretty much familiar with those tags. You can buy these countermeasures. I looked on eBay. They were selling these little things that take the tags off for like a dollar, and you know, obviously, as stores become more capable of protecting their merchandise, these become more I guess energetic and, especially professional thieves. The type of people we're looking for in these particular kind of cases are professional thieves. The average person doesn't have a magnetic tag remover in their purse. You have to kind of go out of your way to find one. And as a result, this is just the way that merchants I guess are now countering the thieves' efforts to defeat their technology. There will be some merchants here that can probably give you more specific answers about that process, but I'd be happy to answer any questions. [LB894]

SENATOR ASHFORD: Any questions of Marty? Thank you, Marty. Next proponent. [LB894]

JIM CAHILL: (Exhibits 6 and 7) Good afternoon. I sit here today to testify with I guess three different hats on. My name is Jim Cahill, last name is spelled C-a-h-i-l-l. I'm the corporate security director for Nebraska Furniture Mart. I'm also president of Cahill Security Group, which is a Omaha-based security consulting firm and private detective

agency. And I'm here also on behalf of the Heartland Chapter of ASIS International, which is the premier organization for security professionals. We continue to see retail theft rise nationally. The National Retail Federation reported back in June of 2007 that retail losses had hit an all-time high of \$41.6 billion and that was for the prior year of 2006. The trend continues and it will continue to rise as Nebraska retailers fight the same battles as everyone else across the country. In fact, some of the more recent statistics show us that retailers lose \$35 million a day to the crime of shoplifting. Retailers are also spending \$12 billion a year in loss prevention efforts, and 1 in every 11 people commit the crime of shoplifting. These figures are coming from the National Association for Shoplifting Prevention and the Retail Industry Leaders Association. The current economic decline that we're in, combined with the growing presence of organized retail crime in Nebraska, has worsened this for us. As retailers continue to become victims of organized retail crime and shoplifting, so do Nebraska residents because they're being forced to pay higher prices for their goods to offset the losses. Nebraska retailers have invested large sums of capital to purchase technology and employ professional loss prevention teams to prevent, detect, apprehend these criminals that are stealing our merchandise. Much of the capital investments are in the form of theft detection systems that are in place on the showroom floors of businesses. They include the placement of various types of tags that you commonly see placed on pieces of merchandise that if they are...they'll activate an alarm if merchandise isn't paid for when you leave the store. Also, there's a whole additional array of physical security devices that we put on higher end product that affords more physical protection, and these are the things that require some of the specialized tools that you're hearing about that are being employed by the criminals to remove the physical security devices. Brought some of those with me today because I have a feeling I'm going to get quite a few questions here when I'm finished. On average, member of the criminal element, particularly those organized retail crime rings, they've long-understood the technology that we've had to pay a lot of money for and they've actively, creatively found ways to defeat these systems. So shoplifting is really not a small time crime anymore. It's being committed by more intelligent criminals and they're capable of outsmarting the high-end technology and for higher amounts of money. So as previously mentioned, we have 24 other states that currently have code like this on the books. All the states surrounding Nebraska do. It's important for us because it makes us a good target because we don't for the organized retail crime rings. So to summarize, I think it's time that we need to modernize the Nebraska state statute so that we can give retailers, law enforcement a modern tool to fight modern shoplifters and also to keep the cost of goods down for resale for Nebraska residents. I've distributed a couple of copies of letters that you should see, and I thank you for your time and glad to answer any questions you have. [LB894]

SENATOR ASHFORD: Any questions? [LB894]

SENATOR COUNCIL: Quickly. [LB894]

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SENATOR ASHFORD: Senator Council. [LB894]

SENATOR COUNCIL: Thank you, Chairman Ashford. Mr. Cahill, when you say that there are 24 other states that have similar legislation, is it your testimony that the language of the statutes in those 24 states is identical to what's on page 4 of LB894? [LB894]

JIM CAHILL: No, ma'am. [LB894]

SENATOR COUNCIL: Okay. [LB894]

JIM CAHILL: The language in these 24 other states varies. A lot of the discussion initially that I heard about the lined bags is some of what I would describe as the old-school legislation, that's the old style way of shoplifting, everything to...as Mr. Conboy mentioned the state of Kansas including legislation for the more modern tools and security devices. [LB894]

SENATOR COUNCIL: Okay. Well, and if I haven't made it clear through my question, I certainly understand, appreciate, and support the need to reduce shoplifting, but I have a fundamental problem with casting a net so broad that innocent people could be trapped in it and I have a problem with saying a laminated or coated bag, being in possession of that, subjects you to prosecution under this and, quite frankly, I don't care whether the state of Kansas or the state of Iowa Supreme Court said it was okay or not. So that's my issue. These other devices that you're talking about, you know, absolutely I support the industry in doing whatever they can, and I know probably better than some others how big an industry shoplifting has become over the last couple of decades. So you need to be equipped with the kind of technology and the laws should provide you whatever assistance to reduce shoplifting but it has to be narrow in its focus, and this is too vague in terms of, you know, laminated...any laminated or coated bag. [LB894]

JIM CAHILL: Your point is well-taken and I think that's probably the only issue that we're seeing is that language. To clarify for you, when we're talking about these laminated, coated bags, we rarely see that. What we're really talking about today is... [LB894]

SENATOR COUNCIL: Or the devices to remove the... [LB894]

JIM CAHILL: Well, not only that but what we're talking about more today is someone who's going to come in with an overcoat on where it has purposely been cut, tin foil placed all inside there, you know, for the purpose of getting by these security gates. And I think very easily by correcting that language we could remove any concern you have. [LB894]

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SENATOR COUNCIL: Okay. And if we can address that, I'm fine with it. Thank you.
[LB894]

SENATOR ASHFORD: Any other questions? Thank you, Senator Council. Any other...?
[LB894]

JIM CAHILL: Sure. [LB894]

SENATOR ASHFORD: Thanks. How many other testifiers do we have on this bill?
Thanks, Jim. [LB894]

KATHY SIEFKEN: Senator Ashford and members of the committee, my name is Kathy Siefken, Kathy with a "K," Siefken is S-i-e-f-k-e-n, and I am the executive director and lobbyist for the Nebraska Grocery Industry Association here in support of LB894, and we'd like to thank Senator Pirsch for introducing the bill. And the reason we support this is simply because there's no reason for people to have those kind of devices on their person, other than authorized store personnel, unless they're coming into the store with the intent to steal. And it is much easier to stop those people, it's safer to stop those people while they're in the store. Once they get to the parking lot, it's too dangerous for our employees. So this would make it a little bit easier to stop the theft. Organized retail crime is doing very well in Nebraska. These people actually come into our stores with shopping lists and they steal specific items, and if we could get this type of legislation on the books it would help us stop those folks. In addition to that, the cost is actually passed on through a higher cost of goods. If you have any questions, I'd be happy to answer. [LB894]

SENATOR ASHFORD: Any questions? [LB894]

SENATOR COUNCIL: Comment? [LB894]

SENATOR ASHFORD: Yes, Senator. [LB894]

SENATOR COUNCIL: Thank you, Ms. Siefken, but a statement you made just validated my concern. [LB894]

KATHY SIEFKEN: Uh-huh. [LB894]

SENATOR COUNCIL: Is you made the statement, if someone comes into a store with a laminated or a coated bag, they're coming there for the purpose of stealing. And that's what I have a fundamental problem with. I may own a laminated or coated bag and have no idea that...because this isn't defined what is a laminated bag, what is a coated bag. I own a bag that has a...it kind of looks like a silver lining. [LB894]

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KATHY SIEFKEN: It's a foil lining for your cold goods. It's a recycle... [LB894]

SENATOR COUNCIL: But that doesn't say...it doesn't say that. [LB894]

KATHY SIEFKEN: You're right. You're absolutely right. [LB894]

SENATOR COUNCIL: It says laminated or coated. Coated with what? [LB894]

KATHY SIEFKEN: Yeah, I have those bags also. [LB894]

SENATOR COUNCIL: Okay. [LB894]

KATHY SIEFKEN: And I would agree with you. I guess I'm making an assumption, from what you said to the prior testifier, that this needs work and that part of the bill needs to be removed. I'm speaking of the other devices. [LB894]

SENATOR COUNCIL: Okay. [LB894]

KATHY SIEFKEN: You know, just a laminated bag doesn't...you're right, it's too broad. [LB894]

SENATOR COUNCIL: Thank you. [LB894]

SENATOR ASHFORD: Thank you. No other questions? [LB894]

KATHY SIEFKEN: Thank you. [LB894]

SENATOR ASHFORD: Jim. [LB894]

JIM OTTO: Mr. Chairman, members of the committee, my name is Jim Otto, that is O-t-t-o. I'm president of the Nebraska Retail Federation. I'm here to testify in favor of LB894. Don't need to repeat many things that have been said. Do completely respect the concerns of Senator Council. I especially respect them because about four years ago I was here, Senator Chambers was sitting there and we had a bill that specifically had tin foil lined bags and I got grilled pretty good. So I'm not for that. If we can change that, I'm all with you, Senator Council. But I do want to mention that, as has been said, organized retail crime is a huge problem. All of the equipment to stop it that you see in every store, all of the efforts to prosecute those, those are all paid for by the paying customers of retailers and result in higher prices. So with that, I will answer any questions if there are any. [LB894]

SENATOR ASHFORD: Thank you, Jim. Any questions of Jim? Seeing none, any other proponents? Opponents? Neutral? Senator Pirsch. [LB894]

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SENATOR PIRSCH: Well, thank you for all the great questions and I think that at the end of this hearing it's pretty clear that the underlying concept here in principle holds some merit, although the language which was borrowed from statutes elsewhere may need to be tweaked so that it isn't overbroad. And I think Senator Council's points are well-taken, so I'm just interested in working with the committee to address Senator Council's concerns. [LB894]

SENATOR ASHFORD: Thank you. [LB894]

SENATOR PIRSCH: Thank you. [LB894]

SENATOR ASHFORD: Thank you. (See also Exhibits 20 and 21) That concludes the hearing on LB894. We'll go to Senator Giese, who's arrived, LB955. [LB894]

SENATOR GIESE: (Exhibit 8) Thank you, Senator Ashford and members of the committee. My name is Robert Giese, G-i-e-s-e, and I represent the 17th Legislative District, which includes Dakota, Dixon, and Wayne Counties in northeast Nebraska. Last year, the Legislature passed LB218 which would eliminate three county aid programs--the aid to counties program, the county property tax relief program, and the county jail reimbursement program--and merged them into one new program starting on July 1, 2011. While I vigorously opposed that legislation, the body felt that the problems that had long-plagued the jail reimbursement program necessitated the change and argued that a new county aid program would provide counties with a more stable funding system. When jail reimbursement goes away, however, counties that see significant jail costs from year to year are going to be left holding the bag. One of the counties in my district, Dakota County, is going to lose more than \$100,000 without the jail reimbursement program and, unless the Legislature does something to help these counties pay for their rising jail costs, many counties will have no choice but to raise property taxes. The goal of LB955, rather than attempting to solve the problem of rising jail costs, is to provide counties a mechanism that could potentially offset the pending losses from the elimination of jail reimbursement. Most states, including Nebraska, have statutes which require that a portion of any salary an inmate earns while in prison be garnished to help pay a portion of the costs of confinement. Under LB955, the Correctional Facility Reimbursement Act would join ten other states, including all but one of our neighboring states, in assessing the ability of the prisoner to help pay for their prison stay from income and assets outside of the correctional system. The mechanisms of LB955 which are mostly based from similar programs in Missouri and Michigan that have been operating since the 1980s provide a methodical way for the state, as well as cities and counties, to determine which prisoners have significant...excuse me, sufficient assets to pay a portion of these costs of confinement and ensure that prisoners without sufficient assets are not required to pay a portion of the costs. Under the act, the Department of Corrections would promulgate a form which

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would be used by the state and political subdivisions to determine which prisoners have sufficient assets, which would provide...then would be forwarded to the prosecuting attorney in that prisoner's case. Failure of a prisoner to return the form or cooperate with the department of political subdivision could be considered for purposes of parole determinations. If the prosecuting attorney has a good cause to believe that the prisoner has sufficient assets to recover not less than 10 percent of the estimated total cost of care for the prisoner or 10 percent of the estimated cost of care of the prisoner for two years, whichever is less. In no case would more than 90 percent of the value of the assets of a prisoner could be used for the purposes of securing costs and reimbursements under the bill. The costs of any investigations, securing reimbursements, and associated court costs under the act would be paid from the reimbursements that are secured, with remaining reimbursements credited to the General Fund and distributed to the Department of Corrections and political subdivisions based on where the prisoners were housed. One of the problems that has arisen in Michigan and other states and a concern that has been brought to my office by a number of county officials is that administrative costs could potentially outstrip the reimbursements that are secured. The committee should have received a copy of an amendment which seeks to address those concerns and which clarifies that prosecuting attorneys have the discretion to investigate and seek reimbursements from prisoners. This language should prevent money from being spent investigating prisoners who clearly have insufficient assets to seek reimbursement and would allow counties that have no interest in pursuing reimbursements to essentially opt out of the act. The amendment would also correct several issues that have been brought to my attention since the bill was introduced, including duties in Section 10 and Section 11 of the bill which were originally assigned to the State Treasurer. These duties would be shifted to correctional facility administrators under the amendment, which would eliminate the portion of the fiscal note from the Treasurer's Office. Finally, the amendment strikes "juvenile facilities" from the definition of correctional facility in the act, as the intent of the bill was never to go after juvenile prisoners' assets. In an ideal world, the need to introduce LB955 would never have arisen. By enacting LB218 last year, the Legislature decided that county jail reimbursement was a program that was going away and I respect the decision even though I disagreed with it. But decisions have consequences and the consequences of eliminating jail reimbursement is that many counties in Nebraska will be forced to increase property taxes unless we as a Legislature find a way to do something about increasing jail costs. LB955 offers a possible revenue stream that can help counties in the absence of state jail reimbursement, and while there may be a number of issues in the bill that need to be worked out, I believe that the jail funding cliff facing our counties needs to be addressed. Thank you for your time and I would be happy to answer any questions. [LB955]

SENATOR ASHFORD: Any questions of Bob? Seeing none, thanks. [LB955]

SENATOR GIESE: Thank you. [LB955]

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SENATOR ASHFORD: Proponents? [LB955]

WILLIAM McLARTY: (Exhibits 9 and 10) My name is William McLarty, M-c-L-a-r-t-y. I'm chairman of the Board of Commissioners in Dakota County. Chairman Ashford and members of the Judiciary Committee, I will not go through the provisions of LB955. I know that each of you have had plenty of opportunity to read the bill that Senator Giese has covered these points very well. My time will be spent expressing the importance of LB955 to the citizens of Dakota County and the other 92 counties across the great state of Nebraska. My actions...by actions taken in 2009 Session of the Nebraska Unicameral, Dakota County will be faced with increases in property tax in the amount of almost a half a million dollars per year. This results...the return of the assessor's office to Dakota County with a cost of more than \$350,000 per year and the removal of the state payment under the jail reimbursement act of another \$120,000 per year. Some members of the Nebraska Unicameral termed the payment under the jail reimbursement act as state aid and, thus, the need for a new formula for state aid to the counties. I am not here to debate that issue. What's done is done. Now let us move forward to a new system for jail reimbursement for correctional facilities across the state of Nebraska. This is not a new idea. LB955 was modeled from other states such as Iowa, Missouri, and Wisconsin. Some states have been utilizing these procedures for more than 30 years. The same system can work in Nebraska. The Correctional Facility Act charges inmates with the expenses incurred while they're incarcerated. These expenses include housing, feeding, securing, medical treatment, transporting, administrative costs, and more. Depending upon the size of the jail and the number of inmates, the cost will vary from \$50 to \$65 per day per inmate. The Correctional Facility Act will allow the sentencing judge to assess the inmate up to \$35 per day for incurred expenses. Of course, this does not cover the entire cost of housing the inmate. It is understood that some of the inmates will not be capable of paying anything against their expenses while they're incarcerated. The decision on how to employ this is left up to the sentencing judge. Dakota County correctional facility authorized budget is in excess of \$3 million. The correctional facility is 25 percent of that budget. Using Dakota County correctional facility's example, I offer this for your consideration. Knowing that all the inmates cannot afford their expenses, we'll use 50 inmates of our 97. We will also accept the judge will not assess the full amount shown under the Correctional Facility Act, so we'll use \$20 per day. Calculating 50 inmates at \$20, this would bring us \$1,000 a day, \$30,000 a month, \$365,000 per year. I accept that there will be additional costs for the county. There will be a need for an investigator to investigate the truthfulness of the financial statement provided by the inmate, and the need for an additional clerk to record the ongoing expenses. If we set their salaries at \$50,000 each, that's salary and benefits, this would be an expense of \$100,000. Subtracting that from the \$365,000, that would give us \$265,000 for aid against property tax. [LB955]

SENATOR ASHFORD: Bill, we have your statement and... [LB955]

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WILLIAM McLARTY: Yes. [LB955]

SENATOR ASHFORD: ...we're going to move along to questions... [LB955]

WILLIAM McLARTY: Okay. [LB955]

SENATOR ASHFORD: ...if we could. [LBO]

WILLIAM McLARTY: That would be fine. [LB955]

SENATOR ASHFORD: And I think, by looking at your statement, the meat of it you've had an opportunity to read to us so... [LB955]

WILLIAM McLARTY: Yes, that's correct. [LB955]

SENATOR ASHFORD: ...so we appreciate that. Any questions of Bill on this reimbursement formula? And the result of this, Bill, I assume is the change in the reimbursement funding in LB218 has caused this gap to occur. Is that... [LB955]

WILLIAM McLARTY: That's correct. [LB955]

SENATOR ASHFORD: Okay. And that goes into effect when? [LB955]

WILLIAM McLARTY: And we're looking for a way to gain money back so that we can reduce the amount of property tax asking in the county. [LB955]

SENATOR ASHFORD: Right. Okay. Fair enough. [LB955]

WILLIAM McLARTY: We believe this is a start toward that direction. [LB955]

SENATOR ASHFORD: Fair enough. Thank you, Bill. I think there aren't any other questions, so appreciate it. [LB955]

WILLIAM McLARTY: I thank you. [LB955]

SENATOR ASHFORD: Thank you. Any other proponents? Any opponents? [LB955]

JEFF LUX: Mr. Chairman, members of the Judiciary Committee, my name is Jeff Lux. I'm a deputy Douglas County Attorney representing the Nebraska County Attorneys Association in opposition to LB955, at least as it's currently written. Currently, there are about 16 states across the country that have these type of bills that try to recover, pays, you know, for incarceration costs. Similarly, about every state and the federal

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government has drug forfeiture type of statutes that allows for recovery of assets, money, that type of thing. Nebraska is the only state, and the Nebraska Supreme Court did this, that has ruled that such forfeiture actions are a punishment and, therefore, there's a violation of the double-jeopardy clause. And so we run into a potential constitutional problem which is specifically unique just to Nebraska. Now I know these laws have been modeled after other states, but they don't have the same Supreme Court that we do. So potentially we've got a situation here where we've got a forfeiture action, we've got prosecutors going after that money, and it could be considered a punishment because it's impacting the potential parole of these inmates and these inmates are subject to criminal prosecution on the forms that they fill out because they're filled out under oath. So there's some potential double-jeopardy clause issues which are unique to Nebraska. There's some other constitutional issues with regard to the assets that are subject to seizure. With regard to Social Security, federal courts have already determined that going after Social Security violates the supremacy clause. I think there's probably some similar problems with going after veterans' benefits, and with regard to workers' comp stuff there's different states' courts have determined when there's a conflict between workers' compensation laws and these type of reimbursement laws that workers' comp wins out. And other states have their treasurer's office or the AG's office doing this type of work; here we've got the local prosecutor. In doing that, we lose our prosecutorial immunity in doing these type of cases, which we don't want to lose. With regard to the cost, I know that's kind of been brought up in making this discretionary whether the county wants to go after it, but when it comes from a prosecutor's standpoint, if we're going to prosecute or go after forfeitures, we're going to choose prosecutions. So while I think this is a good idea, I think cutting the prosecutors out of it might sidestep a lot of constitutional issues, along with maybe rewording some of the other aspects of the law. If there's any questions... [LB955]

SENATOR ASHFORD: Okay. Any questions? Thanks. [LB955]

JEFF LUX: Thank you very much. [LB955]

SENATOR ASHFORD: Thanks for the comments. Any other opponents? [LB955]

WILLIAM BURGESS: Senator Ashford and members of the Judiciary Committee, my name is William Burgess, B-u-r-g-e-s-s. I'm Fillmore County Sheriff. I'm testifying for the Nebraska Sheriffs Association in opposition of LB955. The Sheriffs Association feels that LB955 would expend more manpower in enforcing this legislation than the county could ever recoup. Appreciate Senator Giese's attempt to do something, but we just feel it would cost more in the long run than what it would be worth. [LB955]

SENATOR ASHFORD: Thanks, Bill. [LB955]

WILLIAM BURGESS: Questions? [LB955]

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SENATOR ASHFORD: Any questions of Bill? Thank you. [LB955]

WILLIAM BURGESS: Thank you. [LB955]

SENATOR ASHFORD: Next opponent. Neutral? [LB955]

BETH BAZYN FERRELL: Good afternoon, Chairman Ashford, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm an assistant legal counsel with the Nebraska Association of County Officials. We're appearing neutral with respect to this bill for some of the same reasons that you have heard discussed by the County Attorneys Association and the County Sheriffs Association. Those issues were brought up when we discussed this bill. We do think it's a concept, though, that bears investigating. In fact, in 2003, we had legislation introduced that would have required inmates to provide a copayment for some of their routine healthcare costs if they were able to come up with the funds for that. So we do think it's a concept worth looking at. We realize that there are concerns and issues that would need to be addressed before this could proceed. Be happy to try to answer questions. [LB955]

SENATOR ASHFORD: Any questions of this witness? Thank you. Any other opponents? Any neutral testifiers? Senator Giese, do you have an answer to all these legal questions and constitutional issues? [LB955]

SENATOR GIESE: Well, Senator Ashford and committee, I would agree that there are difficulties with the bill, but I bring it as a possible solution. There are several of us that serve on a task force that look at what is the plan for the state of Nebraska and what are we going to do with our ever-increasing costs on what it takes to build new prisons and staff those and everything that goes with that. This is a result, a direct result of the jail reimbursement program that we did away with last year. Working with Mr. McLarty, Dakota County is not alone in their concerns and issues. And as we, if I may say so, continue to shift tax costs back on the counties, they continue to lose and are in a bind or worse as we go forward. Just one note: The bill would...I know the costs of doing the bill would be in some cases prohibitive and that's why the amendment dealt with the opt out. If you choose not to do that, you don't have to. So with that, I would just offer that to the committee and certainly appreciate your support. [LB955]

SENATOR ASHFORD: Thanks, Senator Giese. And obviously, there's a lot of thought has gone into this and we appreciate you coming up with potential solutions. Thank you. (See also Exhibits 22, 23, and 24.) That closes the hearing on LB955. Senator Price, LB1050. [LB955]

SENATOR PRICE: Good afternoon, Senator Ashford, members of the Judiciary

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Committee. I appreciate your time and beg your indulgence. It's been a long day, we have a lot of things before us, and I appreciate your attention. Again, members of the committee, for the record, my name is Scott Price, spelled S-c-o-t-t P-r-i-c-e, and I represent the 3rd Legislative District and I am pleased to be here as a sponsor of LB1050. Now before I get into the details of the bill, I think it's important to provide a little background. I won't go into the details here because there are testifiers to follow who can give you more specific information if you would like. In 2007, an infant boy passed away while in the care of a day-care provider, and as required by current law, an autopsy was performed and it was determined by the autopsy that the baby died from a head injury. As a result, the day-care provider was arrested and the case went to trial, and during the trial the defense presented an expert witness who disagreed with the cause of death provided by the coroner. In response, the prosecution solicited an opinion of a third expert who confirmed the findings of the second, the defense expert witness. Subsequently, the charges against the day-care provider were dropped. Now as you can imagine, the time from when the child passed away to when the facts and the truth about this death became known was a very difficult time for all parties involved and, to their credit, the family of the child has decided to use this experience to help prevent other families from having to go through and endure what they went through, at least in part. Last year the grandfather, a constituent of the young boy...actually, my constituent, the grandfather of the young boy, excuse me, contacted me about introducing a bill to require a second expert opinion on the results of an autopsy in cases similar to this one, and I agreed to work with him, which brings us to LB1050 and this hearing. As introduced, LB1050 would require a second expert, a qualified coroner or coroner's physician, from a different county, to review the results of an autopsy in cases where the initial autopsy has established the death occurred under suspicious circumstances while the child was in the care of a childcare provider. The intent of this bill is, first, to help prevent other families from having to endure what this family went through and, second, to prevent the judicial system from expending the time and resources on a case which may not or probably should not have gone to trial in this matter. With that said, I'm not convinced this bill achieves those goals. Now I'll let the family speak for themselves, and I don't think that they believe this is exactly the right way to do this or approach this either, but I believe the issues raised by this case are important enough to merit the attention of this committee and the Legislature. I know this committee is well aware of the need for accurate autopsies and that was seen just in the debate last year on LB671. And I believe that LB671 did and does help increase the accuracy and uniformity of death investigations across the state. However, I believe it is our duty to continue to strive to improve that reliability of the autopsy and the results, and I look forward to working with the committee to do just that. And I thank you for your attention to this important issue and I would be happy to answer any questions you may have. [LB1050]

SENATOR ASHFORD: Senator Council. [LB1050]

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SENATOR COUNCIL: Yes, thank you, Chairman Ashford. Thank you, Senator Price. We had a brief conversation about this bill. My question is, in hearing the reason for the introduction of the bill, the question that has to be posed is what happens if the second autopsy contradicts the first one? What do we gain? [LB1050]

SENATOR PRICE: Well, I believe what we gain there, Senator Council, and we're not necessarily advocating there has to be an autopsy, no, to review the facts of the processes used in the case that would perhaps sooner, in the chain of or the life cycle of the situation, would bring credibility to the initial finding or say, hey, there is subject...there is reason and cause to question this. I think that's what you gain out of this. Even if you...and I'd entertained and spoken about is this would...could be a tabletop of experts sitting around, say, hey, you know, all the right processes were followed and procedures were followed so there's no reason to expect or suspect that a different outcome would come from another autopsy or something of that nature. So it's more about validating that one because it was unknown, okay? And without going into too many details, it was my understanding that in this particular case rather unorthodox procedures were used and that would have been reason to cause (inaudible) ahead of time, and that's why I bring it. [LB1050]

SENATOR COUNCIL: Okay, but that I guess is the crux of my question. I mean you could have the second opinion be based on equally invalid techniques or processes. I guess I'm just trying to see what it is that...what advantage is gained if the second opinion says that the first opinion is inaccurate. What happens? [LB1050]

SENATOR PRICE: Well,... [LB1050]

SENATOR COUNCIL: You have two conflicting medical opinions. [LB1050]

SENATOR PRICE: And I agree with you, Senator Council, and that is what makes this tough to define and bring up. I mean in my world or in how I would almost envision, again, it would have been a tribunal of three persons that would sit there and look at these things. And again, it's about the process that was used, not just the findings but how those findings were derived and making sure that good...that we were following a good process. And the benefit of that is if you have any question, and I won't try to...I did sleep at a Holiday Inn but I won't try to portray myself as an attorney, okay? The idea is, from a layperson's...that's why we have appeals and sometimes there are contradictions and things. It's just that it provides...it would provide a level of surety that the processes were proper, not just the finding. That's how I viewed it. [LB1050]

SENATOR COUNCIL: Okay. And just a final statement, Mr. Chairman. Last year this committee considered legislation that would have established standards for coroners across the state and we couldn't get it done, didn't want to establish a uniform set of standards to be applied, and that's what the problem is. This bill is not going to alter that

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situation at all until we come up with a uniform set of standards to apply...to be applied from county to county to county, because, as you know, in some counties we have coroners, in some counties we have the county attorney acting as the coroner. So until you address that issue, this particular piece of legislation is not going to go very far in addressing the problem that you've identified. [LB1050]

SENATOR PRICE: Well, thank you very much, Senator Council, and I do understand what you're saying. [LB1050]

SENATOR ASHFORD: Thank you, Senator Council. And Senator Council does bring up exactly the point, is that we did struggle with this last year and I think this committee was ready to go quite a bit further with this than what happened, because we...I think we all felt, as a group, that there needed to be standards. There aren't enough trained physicians certainly in this area. Across the state we are lacking. We're down at the very bottom of states. So it's something that...and I appreciate your bringing this to us again. Until we attack the underlying issues that were brought up last year, we probably are, you know, we're going to continue to struggle, as you're doing here, to find some help for your constituents, which is a laudable goal. It's the right thing to do. So thank you, Scott, for your... [LB1050]

SENATOR PRICE: Thank you very much, and I'll stick around for closing. [LB1050]

SENATOR ASHFORD: Okay. Let me ask you, how many testifiers are there today on this bill? Okay. Mr. Lacey? [LB1050]

GARY LACEY: I'm testifying against. [LB1050]

SENATOR ASHFORD: Okay. Any proponents? [LB1050]

KEITH NIEMANN: (Exhibit 11) Senator Ashford, members of the committee, thank you for the opportunity to speak in support of this bill. My name is Keith Niemann, K-e-i-t-h N-i-e-m-a-n-n. Also want to thank Senator Price for the introduction of LB1050. Hope my words are clear and concise. I'm grandpa. Okay? I'm the grandpa of Chase, who died on October 17, 2007, while he was at his day-care provider's home. That initial autopsy indicated that he had suffered a blunt force trauma to his head, and within a few days the day-care provider was arrested and charged with felony child abuse that resulted in his death. A year later--Senator Council, here is the difference--a year later, these charges were dropped because different forensic opinions disagreed with the initial autopsy opinion. The only way that you can imagine the anguish our grandson's death caused is if your family has had a similar experience, and you cannot imagine dealing with this anguish for a year, only to have the case dismissed. We wasted a year of healing while this criminal case drug on, only for it to end without a conclusion. And it wasn't just our lives, the lives of the family of Chase, that were turned upside down. The

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lives of the day-care provider were also filled with turmoil. A friend of mine told me shortly after Chase's death that you try to get through; you never get over things like this, you try to get through them. So rather than waiting a year, the prolonged angst the situation caused for everyone could have been avoided by immediately requiring a second autopsy opinion. All of us could have begun getting through and not over Chase's death, and that's why I support LB1050. You're going to hear that the cost of this second opinion is too great for counties to bear. I understand about costs. But I also say how can you measure what we experienced in our family in dollars and cents? Any cost is small in comparison to the benefit of helping families move more quickly through this kind of ordeal. I cannot cite statistics but I believe the likelihood of similar cases that this bill addresses, of those similar cases occurring is not high. In Chase's example, the cost to the county of dealing with this case for a whole year, all the hearings, all the motions, all the procedures, all the depositions, had to be greater than the cost of that second opinion. In future cases like ours, that second opinion will allow legal authorities to either proceed more quickly to trial or dismiss the charges and get on to other cases. We urge you to move Senator Price's bill out of this committee, not for us and not for Chase but for other families, parents and grandparents like myself, in the future so that they won't have to experience what we went through. Again, I thank you for the opportunity to speak, and I'd be happy to try to answer any questions that you might have. [LB1050]

SENATOR LATHROP: Sir, did you say that you were charged with it? [LB1050]

KEITH NIEMANN: No, no. [LB1050]

SENATOR LATHROP: Who was charged with this? [LB1050]

KEITH NIEMANN: The day-care provider was charged. [LB1050]

SENATOR LATHROP: The day-care provider was. And that sat pending for a year and then somebody else...they didn't do a second full autopsy but just looked at the slides and the things that are retained by the person that does the original autopsy... [LB1050]

KEITH NIEMANN: That's correct. [LB1050]

SENATOR LATHROP: ...and they drew a different conclusion. [LB1050]

KEITH NIEMANN: That's right. [LB1050]

SENATOR LATHROP: It sounds like the system worked. [LB1050]

KEITH NIEMANN: That's correct, it did work, but it took a year for it to work. And our intention with LB1050 is to speed that process up, to require that second opinion by the

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prosecution right up front in situations similar to this. [LB1050]

SENATOR LATHROP: And so you would, with the passage of this bill, require it in every circumstance where it may not...never mind. I appreciate your concern... [LB1050]

KEITH NIEMANN: Sure. [LB1050]

SENATOR LATHROP: ...and the point you're trying to make too. [LB1050]

KEITH NIEMANN: I think the bill is worded so that it addresses situations that have extenuating circumstances, it looks like there's something that's happened legally. [LB1050]

SENATOR LATHROP: And believe me, I can appreciate what you guys lived through for a year, or at least I understand what you're trying to tell us. I don't think anybody can appreciate it... [LB1050]

KEITH NIEMANN: Sure. [LB1050]

SENATOR LATHROP: ...until they've been through it. [LB1050]

KEITH NIEMANN: Thank you. [LB1050]

SENATOR LATHROP: I've been near people that have gone through it and I know that is very, very difficult and... [LB1050]

KEITH NIEMANN: Thank you, Senator, appreciate that. [LB1050]

SENATOR LATHROP: ...and, yeah, I do. Okay, thank you. Any other questions? I don't see any. [LB1050]

KEITH NIEMANN: Okay. [LB1050]

SENATOR LATHROP: Any other proponents here today to testify? [LB1050]

GARY LACEY: Oh, go ahead. [LB1050]

LAUREN MADSEN: I'm sorry. [LB1050]

SENATOR LATHROP: Think we're still on proponents. [LB1050]

GARY LACEY: Oh, I'm sorry. [LB1050]

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LAUREN MADSEN: (Exhibit 12) Good afternoon, Senators. My name is Lauren Madsen, L-a-u-r-e-n M-a-d-s-e-n, and Chase Madsen is my perfect little boy. As my dad has said, in October of 2007 Chase died while at his day-care provider's house and, based on the experience that we went through as a family, I wanted to take this opportunity to communicate my support for LB1050. The prosecution's decision to wait nearly a year before obtaining their second opinion dramatically affected our lives and the lives of Chase's day-care provider and her family. I buried my grief and didn't truly deal with Chase's death because I knew that the trial would bring up all of that pain again, and so it wasn't until the charges were dropped and I knew that there would be no trial that I started the process of moving forward and learning how to deal with the loss of our perfect little boy. In addition, as a result of the way that this case was handled, my confidence in the justice system has been decreased. I no longer have full faith that prosecutors will take the steps that they need to before charging individuals. Chase's day-care provider has forever been branded because she was charged with this crime. That will never go away. It will always be there for someone to find and hold against her and her family. Just because the charges were dropped does not mean that she will not be looked at differently. There will always be those that will consider her guilty just because she was charged. In my previous career as an auditor, one of the tenets that we always followed was to maintain a sense of professional skepticism. This required us to make sure that throughout the audit we kept ourselves free from bias. We neither believed that the individuals we were working with were being completely truthful or being completely untruthful. We always made sure to obtain corroborating evidence to back up the interview evidence that we had obtained. In my opinion, in our case, I don't believe that the appropriate amount of professional skepticism was maintained. I believe the original autopsy report was not questioned because it was prepared by an individual considered to be an expert in his field. But even though he was an expert, he was still human, as we all are, and prone to mistakes. So in order to maintain the appropriate professional skepticism, I believe that prosecutors should closely review the autopsy and ask questions and obtain corroborating evidence until they fully understood the autopsy results and had no doubts. Prosecutors should have obtained a second opinion before charging Chase's day-care provider in order to obtain the corroborating evidence they needed. Prosecutors made a choice to charge Chase's day-care provider and drastically affect both her life, her family's life, and our lives without being sure that they were correct. If they had taken a moment and questioned the original autopsy, probed their expert for further explanations and had a second expert review the findings, they could have prevented a lot of negative effects. If prosecutors are required to obtain second opinions in the future, I have no doubt that they will save other families from experiencing the distress and frustration that we have. Thank you very much for allowing me to express my thoughts on this legislation. I hope that you can see how important this is and will take the necessary steps to advance LB1050. [LB1050]

SENATOR ASHFORD: Well, thank you for expressing your thoughts, most importantly, and we're here to listen to you, so... [LB1050]

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LAUREN MADSEN: Thank you. [LB1050]

SENATOR ASHFORD: Any questions of Lauren? Thank you. Thanks for coming down. [LB1050]

LAUREN MADSEN: All right. Thank you. [LB1050]

DANIEL MADSEN: (Exhibit 13) Good afternoon, Senator Ashford and members of the committee. The search for truth should be the goal in all that we do in life. It's been passed down from generation to generation, beginning with divine providence. [LB1050]

SENATOR ASHFORD: We're going to ask you to give us your name first. (Laugh) [LB1050]

DANIEL MADSEN: Sorry. [LB1050]

SENATOR ASHFORD: No. No problem. [LB1050]

DANIEL MADSEN: My name is Daniel Madsen, D-a-n-i-e-l M-a-d-s-e-n. From the Magna Carta to the nation's founding documents, the truth has brought light to secure the nation's foundations grounded in life, liberty, and the pursuit of happiness. This being said, the exhausting search for truth has brought us here today to hopefully bring us one step closer to the truth and, with it, justice. There's testimony for LB1050 that focuses on the injustices that occurred to the day-care provider, as well as me and my wife's feelings of being in limbo on the true cause of Chase's death. The pain felt by the death of a son or daughter is beyond measure and can only be understood by those who have gone through it. I do not wish to focus on the despair a grieving parent feels in a circumstance such as this. I wish to allow my son's life to have meaning and, in his absence, leave his legacy as a search for truth. I understand that the search for the truth has its costs--time, money, and effort, to name a few--I wish to focus on these costs and how they become truly trivial with regards to human life. Had more care been taken in obtaining the truth, injustices could have been circumvented had a second autopsy been completed. With regards to time, money, and effort, let us first take a look at the costs associated with a second autopsy. On this paper we've got...did a little bit of research and found...looks like three different sources. Skipping forward, if you average those, the cost of an autopsy lies in the range of \$1,200 to \$1,250. Now the cost to do...the costs associated with not doing a second autopsy, if we do not complete a second autopsy, the defense in the criminal case will find another expert to dispute the initial findings by the prosecutor's expert. This was stated by County Attorney Gary Lacey in the Lincoln Journal Star article titled the "County will end autopsy contract with Okoye," dated February 22, 2009. In it he said "defense lawyers are always going to find someone who disagrees with his," Attorney Lacey's, "expert." Therefore, county

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attorneys will need to depose the defense's expert witnesses. Some of the findings that we found in the course of what we went through, you can first look at the two attorneys that were sent up to Minnesota to depose the defense's expert. If you look on the state personnel 2009 salary survey, you're looking for an attorney II, their salary is in the range of \$27.25 an hour. If we estimate six hours for a deposition, you're looking at about \$327. We had two attorneys go up to Minnesota at roughly, using Orbitz, roughly about \$472 a person or \$944 for round-trip tickets up to Minnesota, plus a two-star hotel at \$63, you're looking at about \$126 for the stay up there. Summing these bullet points, they come up to nearly \$1,400. So keeping in mind the cost of a second autopsy, they're almost in a wash, so...and keep in mind that this is...this is just for the deposition and does not include any other time the county attorneys may spend in preparing for the deposition which would be billed out at the attorney II rate. There's also an opportunity cost that cannot be estimated by having attorney's time and effort and taxpayers' money ill-used due to the fact that the initial findings were found incorrect. So in conclusion, a second autopsy would only serve to strengthen a prosecutor's case when expert findings are consistent with each other. And furthermore, should the results of the two lie in discrepancy, a second autopsy may serve to avoid the costs of deposing the defense's expert, allow more productive time of the..allow more productive use of the attorney's time, as well as mitigate stresses and grief of all the parties involved. The monetary costs, given what we found, may end up being a wash in the end. As these costs relate to the human experience in life, liberty, and the pursuit of happiness, the costs should never outweigh bringing the truth to light and obtaining the correct outcome. A search for the truth in this case has taught us a few lessons that I hope we can take to heart and learn from. And I just thank you for allowing me to present my points. [LB1050]

SENATOR ASHFORD: Thank you. Any questions of Daniel? Seeing none, thank you. Any other proponents? Any opponents? Gary. [LB1050]

GARY LACEY: My name is Gary Lacey. I'm the Lancaster County Attorney and I certainly sympathize with the family members who have testified here today. This was a very difficult case for our office and I know it was difficult for them. My policy, as long as I've been county attorney, was to do autopsies in every person who dies 18 years of age or under, so cost is really not a problem for Lancaster County. If you want to do another autopsy, that's not a problem. We had a person who did autopsies for us who was the medical examiner for Washington, D.C., for ten years or so; came to Nebraska through the auspices of a local pathology firm to be our pathologist or coroner physician, and he served us very well for a number of years. He has got a medical degree and he's board certified in pathology, but he's also board certified in forensic pathology, which...and as far as I know, he's the only one except a guy that was in Scottsbluff that is no longer with us, a board certified forensic pathologist. [LB1050]

SENATOR ASHFORD: Isn't he the only board...yeah, he's the only board certified...

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[LB1050]

GARY LACEY: Yeah, he is. Well,... [LB1050]

SENATOR ASHFORD: Then he was here last year to talk. [LB1050]

GARY LACEY: Right. And anyway, I don't have any problem with doing second autopsies, I don't. We do them all the time. What I do suggest to you is that Lancaster County has no medical examiner type people. We have some pathologists. They're not qualified to do autopsies in criminal cases. They just don't have the training. So we go to Omaha to a firm there and I think that firm does probably the lion's share of all the autopsies in the state of Nebraska. So doing an autopsy and having, say, a regular physician do an autopsy and look at it wouldn't gain you that much. What we really do, in cases where we're unsure or where we need corroborating evidence is my first inclination is to call Mary Case, who's a neuropathologist forensically board certified in Saint Louis, because usually when you have child injuries, they're head injuries and they have to do with the brain and you'll need expert testimony on the brain. And you know, when the defense expert in this case told us that they didn't think that Dr. Okoye's autopsy was correct, we called Mary Case, and Mary Case put us in touch with somebody in Washington State who is a neuro...forensic neuropathologist in Washington State, in Seattle, and that person agreed with the person that was employed by the defense in Minnesota. So I mean, I think...I know the result was not very good, especially for a grieving family in this case, but unfortunately the criminal justice system doesn't really look out for people's feelings. They look out for protecting people that are charged with crimes. And I'll tell you that in the process of doing criminal cases and murder cases, frequently a defense is posited to us that a psychiatrist says they were not competent at the time to form the intent to kill, and so they were insane. Well, we might get a psychiatrist and they might get a psychiatrist, and they get another psychiatrist and then we get another psychiatrist, and by the time that the family of the person who was killed gets through all these psychiatric things I'm sure they're just terribly displeased with the way the criminal justice system works. But I didn't invent the system. All I do is participate in it and I'm willing to do anything at all that the committee authorizes or requires of us, including second autopsies if you think that would be appropriate. I don't think we have the forensic pathologists in Nebraska to do this, so to do that... [LB1050]

SENATOR ASHFORD: And that was my...I think Senator Council's point and it was my concern, too, is where are they going to come from. But... [LB1050]

GARY LACEY: Maybe you could...maybe you could establish a coroner...a medical examiner system in Nebraska and... [LB1050]

SENATOR ASHFORD: Right. And I think that's sort of where the committee would have

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wanted to have gone last year, a little more in that area. Yes, Senator Council. [LB1050]

SENATOR COUNCIL: And thank you, Mr. Lacey, because I think one of the points that kind of needs to be made in this discussion, and you know I have the utmost sympathy for the family here, I appreciate their position, but one of the problems I have, I don't want us to discuss legislation and believe it's a panacea and it's going to answer concerns, because that's not what is going to be the result here. And the interesting point is in the case that has given rise to this legislation, there was nothing that prevented you from deciding that after the second expert agreed...after the third expert agreed with the second, you could have gone and found a fourth expert to agree with the first. [LB1050]

GARY LACEY: That's right. [LB1050]

SENATOR COUNCIL: And they could have found a fifth expert to agree with the second and third. I mean that doesn't stop the battle... [LB1050]

GARY LACEY: No. [LB1050]

SENATOR COUNCIL: ...of the experts. I mean... [LB1050]

GARY LACEY: That's right. [LB1050]

SENATOR COUNCIL: ...and there was a point in time, and you exercised prosecutorial discretion based upon your opinion of the forensic pathologist who had been referred to you, the neuropathologist, you believed that that was the expert of all experts and there was no need to go any further. [LB1050]

GARY LACEY: No, I didn't. I didn't really believe that. (Laugh) [LB1050]

SENATOR COUNCIL: But I mean...I mean but that you felt comfortable that you'd be hard-pressed to find someone who would... [LB1050]

GARY LACEY: Well, my job is to prove beyond a reasonable doubt that the person... [LB1050]

SENATOR COUNCIL: Exactly, and that creates enough doubt to have you question the efficacy of going forward. And I just don't want to give false hope to this family, it doesn't change that situation, but false hope that this could alter someone else's situation and prevent what occurred to them from happening. I mean there are a lot of reasons cases are delayed in terms of when they get...ultimately get to trial and how long it takes to get there and when all of this discovery is over. But just looking at the bill itself, it doesn't even say when the second autopsy is to be performed. [LB1050]

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GARY LACEY: Yeah, that, and also you passed legislation a year or two ago that requires me to cooperate with the Nebraska organ retrieval system to make sure that, you know, somebody who dies and there's lungs or other organs available, then what do I do with those lungs? Because it might be that a second autopsy will...they'll need the lungs because of pneumonia or what other things that can arise. And so it's hard for me to say, okay, well, you can't have the lungs because we might need the lungs for a second opinion, when you don't even know, because I'm not a doctor, I don't even know whether lungs are relevant at the time that I'm required to make decisions about whether they can go to a person that needs them. [LB1050]

SENATOR COUNCIL: That's all. Thank you, Mr. Chairman. [LB1050]

SENATOR ASHFORD: Very good. Thanks. Thanks, Gary. Any other testifiers on this bill, opponents? [LB1050]

JON EDWARDS: Senator Ashford and members of the committee, my name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm here today representing the Nebraska Association of County Officials and we are in a position of opposition to LB1050. And certainly I want to be understood that we understand these are difficult circumstances under which this bill was brought, but in the end all we can do is practically look at the language of the bill, make a determination about the viability of the bill. And based on that examination, you certainly, from Mr. Lacey you've heard some from his practical application and his everyday work problems that are involved in situations like this. I would say that obviously there are costs involved, but I think in the end it's more about examining whether it's the prudent or best use of those dollars as you spend them, and certainly when you look at your more populous counties and you talk about another \$1,200 for another autopsy, that may not really be an issue. As you look out to less populous counties, you might be talking about issues and concerns there in the practical dollars that you're looking at. But aside from that, I think when you just look at how the bill will work, the lack of those individuals that can actually meet the needs that are demanded within this language, I think there's some real concerns there. So with that, I'll conclude my testimony. [LB1050]

SENATOR ASHFORD: Any questions? I don't see any questions. Thank you. [LB1050]

JON EDWARDS: Thank you. [LB1050]

SENATOR ASHFORD: Scott. [LB1050]

SENATOR PRICE: Thank you, Chairman Ashford, members of the committee. First and foremost, have to say I am so proud of Nebraskans. Such a painful subject and they come up before us, say can we alleviate this further, in the face of all the odds. I think

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that's commendable. Now I think we've seen, heard testimony that say the costs to the state could be a wash. We have technical things to overcome you said earlier, and I don't want to belittle that. You're the experts. You deal with it daily so I defer to you. But we also heard testimony that said there is a clearinghouse in Omaha that we turn to for expertise. Could we not maybe envision a tabletop where that is faxed over or sent through the Internet? We have devices where we can do surgery on people from halfway around the world using technology. I feel confident that we have the infrastructure to ship an electronic record to a clearing house to have this done, whether it's in Ord, Nebraska, or Imperial, or Scottsbluff. So I believe that there is a way forward, but I won't belabor the point. Senator Council, you've more than adequately shown that there are some sizeable hurdles here. And, Senator Ashford, your committee's work is laudable and I would stand here or sit before you to say I will work with you. [LB1050]

SENATOR ASHFORD: (Laugh) Thank you, Scott. Thank you very much. And thank you to the Madsen family for coming here today and sharing their experience, and it is true, as Scott says, that it's people like you that help us see the way to finding solutions to these difficult problems. We know this is a big problem in Nebraska and we're aware of it and I think those who are in the system dealing with these problems every day are aware of it and want to change it and want to make it better, and we do. But we thank you. I know this is not...in some sense not easy to do but in some sense I think I'm hearing that you feel it's your duty to be here to help all the citizens of Nebraska. And I think that's what Scott so aptly got across to us. So thank you for coming very much. That concludes the hearing. We won't forget your comments, please believe that, okay? Amanda, Senator McGill, LB1062. [LB1050]

SENATOR MCGILL: Are there any committee members here? (Laugh) I'm looking around the table. [LB1062]

SENATOR ASHFORD: The important ones are here. The important committee members are right where they need to be. (Laugh) [LB1062]

SENATOR MCGILL: Oh, that's right, Mark is out of town and...okay. All right. Good afternoon, Chairman Ashford and fellow members of the committee. I'm Amanda McGill, that's M-c-G-i-l-l, and I represent the 26th Legislative District. I'm here today to introduce LB1062. LB1062 would reform Nebraska's manslaughter laws by creating two separate types of manslaughter: voluntary and involuntary. Currently, there are two competing types of manslaughter housed under this same legal definition. One involving a sudden quarrel and intent to kill and one involving an unlawful act and no intent to kill. Both of these types carry a possible penalty of 1 to 20 years. LB1062 creates a legal distinction between the two types of manslaughter by creating voluntary manslaughter, which is the same as sudden quarrel manslaughter and increasing the punishment to a Class II felony which is 1 to 50 years. It also creates the offense of involuntary manslaughter which is similar to the current unlawful act theory of manslaughter and the penalty for

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this would remain a Class III felony. LB1062 also limits the types of unlawful acts that can be charged as Class III misdemeanors although while driving...although driving while intoxicated is not listed as one of these unlawful acts it can still be prosecuted as a Class III, so all of this is felony under current law. In a series of cases since 1979, the Nebraska Supreme Court has noted the confusion in the two theories of manslaughter. This has made it difficult to appropriately charge defendants and instruct juries. Under current law, a person who intentionally kills someone in a bar fight is treated the same as someone who unintentionally kills another person in a motor vehicle accident that happened as a result of a simple traffic violation. Over the last five months I have brought together members of the defense and prosecutorial bars to assess this glaring issue. I'm hoping that some common ground can finally be reached through LB1062. We know that there are some people, the prosecutors are not completely content with this language. We had to get a bill in before the tenth day and at that point the ball was in Brenda Beadle's court and she said she was interested in sending us some language that may help on their end. We have not seen any language like that yet. And I know she couldn't be here personally today. But I think somebody else is here. So I hope that we can continue to move forward with this bill in a constructive way as we try to figure out how to properly word the statutes dealing with manslaughter. We've needed to examine the inconsistencies in our manslaughter laws for a long time now. And this bill is the first step in making sure that someone gets the appropriate punishment with a certain specific type of crime. If you have any questions, I'd take them, though I'm sure the people following me will probably know more. [LB1062]

SENATOR ASHFORD: Okay, thank you, Senator McGill. [LB1062]

SENATOR MCGILL: Thanks. [LB1062]

SENATOR ASHFORD: Proponents. [LB1062]

JERRY SOUCIE: (Exhibits 14-17) Good afternoon, Senator Ashford. My name is Jerry Soucie. I appear here on behalf of the Nebraska Criminal Defense Attorneys Association. The...I'd like to give the committee a little background. What happened in 1979 was our entire criminal code was revamped and we changed one of the definitions concerning second degree murder. And it was a situation in which they eliminated "malice" from the definition of second degree murder in 1979. I think the Legislature either did that inadvertently or thought that it really didn't mean much because malice had always been an element of the offense and that they really weren't concerned about the step instruction. What really happened was after malice was removed from second degree murder it drew into question the interpretation that would be applied to manslaughter. And when Senator McGill discussed the cases that came down, I'm going to offer them to the panel, but the first one that came down to the committee, the first one was State v. Pettit, which was decided in 1989. Now Pettit drew a distinction between voluntary and involuntary manslaughter but there was a vigorous dissent by

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three of the judges of the Nebraska Supreme Court at that time. Pettit was then followed by the Myers decision which is the one that caused all the controversy in which the Nebraska Supreme Court at that time, again led by the three dissenters out of Pettit, to say that second degree murder required malice as an element of the offense. To be totally honest with you, I think the Supreme Court was incorrect in the Myers decision. I think it should have been an instruction question, not a statutory element issue. Shortly after the Myers decision was decided in 1994, in May of 1994, again the Nebraska Supreme Court, and again led by the same dissenters from the original decision, decided State v. Jones. And the Jones case reversed Pettit and said there was no distinction between involuntary and voluntary manslaughter. You then go to 1998 and you have the Burlison decision which...with a different composition on Nebraska Supreme Court overrules Myers. Now the problem is that you need to be able to distinguish between second degree murder and manslaughter. And the way that you need to do that, in my opinion, is to either do a statutory change that is recommended in this particular bill, which makes it clear, or you're going to find that myself and other defense lawyers are going to now be going in and requesting what you can call a negative element to distinguish between first degree...between second degree murder and manslaughter. This is essentially compelled by a constitutional Supreme Court decision in Wilbur v. Mullaney. And I think the way we stand right now is that we're on really dangerous footing with our statute. [LB1062]

SENATOR ASHFORD: Take another minute or so to... [LB1062]

JERRY SOUCIE: But that's the point is that I think that if we don't do something legislatively we're going to end up with a situation that we're going to be doing something from the defense perspective in the court system. And when that happens, prosecutor is going to walk in here and complain about how they got blindsided by this decision. But the bottom line is they're not getting blindsided, this problem has been here for 20 years. And the Legislature can do something about it or they can sit back and do nothing. And so that's why this bill is here. Now the only other thing I would add is that from the defense perspective I'm not real happy about increasing the penalties. But in the meetings that we held with Senator McGill, in the spirit of compromise, I mean I think we sort of gave in on that. Apparently, the prosecutors don't want to give anything, so... [LB1062]

SENATOR ASHFORD: Well, they might. I mean, they're here and we haven't heard from them yet. Senator McGill is usually pretty good at getting everybody to kind of work together. So just very briefly, the trigger case in '94, was that the '94 case? That was... [LB1062]

JERRY SOUCIE: No, the trigger case was really the Pettit case. [LB1062]

SENATOR ASHFORD: Okay. And that was...was that the case...what happened in that

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case? [LB1062]

JERRY SOUCIE: What happened in the Pettit case was the Supreme Court said there had to be a distinction between voluntary and involuntary manslaughter between the...or based on the statute as it was drafted. [LB1062]

SENATOR ASHFORD: And they actually... [LB1062]

JERRY SOUCIE: And they reversed that case. [LB1062]

SENATOR ASHFORD: ...they reversed that decision. [LB1062]

JERRY SOUCIE: They reversed the conviction and remanded because the instruction hadn't drawn that clear... [LB1062]

SENATOR ASHFORD: So they didn't have...the jury had no choice between... [LB1062]

JERRY SOUCIE: Well, yeah. And the jury needed to be able to decide whether or not during the sudden quarrel the defendant had the intent to kill, I believe it was his wife in that case. And that was why that got reversed. [LB1062]

SENATOR ASHFORD: I think I remember that case. All right, any other questions of...yes, Senator Council. [LB1062]

SENATOR COUNCIL: No, I was...just a comment. I have just a comment though. Thank you, Mr. Soucie, because that's the only problem, you know, I have. And I appreciate why Senator McGill, but you know, making the voluntary a Class II felony 1 to 50. That bothers me because you look at...you're correcting 20 years of, I guess, inconsistency. But at least the one consistency was whether it should have been voluntary or involuntary manslaughter, the penalty was 1 to 20. So you have all of these people who are serving 1 to 20. And now depending upon how you were charged it's 1 to 20 versus 1 to 50. [LB1062]

JERRY SOUCIE: Can I address that? [LB1062]

SENATOR COUNCIL: Yes. [LB1062]

JERRY SOUCIE: What happens is under the current system the people who ought to be convicted of a manslaughter, because of the step instruction and because there is no distinction in second degree murder, get convicted of second degree murder rather than manslaughter. And as a result, instead of doing 50 years, they're doing life. So the reason, while I agree with what you said concerning the penalties, the reason I got on board with this, since I thought it would be better to have a sentencing option of 50

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years as opposed to life. And that's why... [LB1062]

SENATOR ASHFORD: And that's what is happening now. [LB1062]

JERRY SOUCIE: Yeah. If you have a situation in which somebody has the intent to kill and that intent to kill was the result of a sudden quarrel, they...it ought to be that they get convicted of voluntary manslaughter. However, what happens with the step instruction, the jury never gets past defendant had the intent to kill, we don't tell them why it was...where that intent to kill came from, it was a result of a sudden quarrel, you're guilty of second degree murder. And under the step instruction, acquit first requirement, the jury never gets there. All right? [LB1062]

SENATOR ASHFORD: Okay. I think I understand. [LB1062]

JERRY SOUCIE: And here are the copy of the cases which I was referring to. Thank you. [LB1062]

SENATOR ASHFORD: Thanks, Jerry. Other proponents. Any opponents? Not even proponents with an asterisk? (Laughter) [LB1062]

JIM MASTELLER: Good afternoon, Chairman, members of the committee. My name is Jim Masteller, spelled M-a-s-t-e-l-l-e-r. I'm a deputy Douglas County attorney, speaking on behalf of the Nebraska County Attorneys Association in opposition to LB1062. Actually, I don't...in reviewing this proposed legislation I think there is quite a bit of common ground between all sides. We don't oppose Section 1, 2, 3, 4, 5 of the bill. And in fact, when looking at Section 4 our main concern is only with one portion of Section 4 of the bill and that would be the proposed subsection (3) to 28-305, where they now define unlawful act. The opposition...so that's really our only concern, Chairman. When you look at this, 28-305 currently does not require or doesn't define unlawful act. It just defines it as any unlawful act, which means any felony, any misdemeanor, any violation of a municipal ordinance. By restricting it to felony offense, Class I, II, III and IIIA misdemeanors you're really limiting and constraining the prosecutor's discretion in charging under 28-305. One of the concerns we have is in perhaps western Nebraska. We have situations where people blow through stop signs. Well, that's not a Class I, II, III or IIIA misdemeanor, that's an infraction of the state statute. If we amended the statute to this adjusted language, we would...the prosecutor would be constrained to file a motor vehicle homicide offense under 28-306, which is really only a Class I misdemeanor. Regardless of the attendant circumstances or the person's record, we would be limited to filing it under 28-306 as a misdemeanor. The current law, we can charge it under 28-305 which is a Class III felony, punishable up to 20 years. Similarly, if someone is...had been drinking one night and they're at .07, they aren't over the limit yet, they cross the center line, that's an infraction, that's something we can charge currently under the manslaughter statute, which we wouldn't be able to do under the

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proposed language. It also constricts our ability to charge an unlawful act which is a municipal ordinance. The city of Omaha has a very large array of offenses under our municipal ordinances, which we would not be able to utilize as a predicate offense for the manslaughter offense under this new language. For example, discharging a firearm within the city limits, we would no longer be able to use that if someone did that and actually killed someone, we wouldn't be able to use that as a predicate offense under the proposed language. The only suggestion I would have and the association would have was if you were to actually strike that subsection (3) and not define unlawful act, which is the way we currently do it, or alternately utilize language similar to 28-306.1 where they do include municipal ordinances. I'd be happy to answer any questions. [LB1062]

SENATOR ASHFORD: Yes, Senator Council. [LB1062]

SENATOR COUNCIL: I have one question. Mr. Masteller, good seeing you. Were these suggestions provided to Senator McGill for consideration as possible amendments? [LB1062]

JIM MASTELLER: I do not believe so, your honor, or not your honor (laughter) but Senator. [LB1062]

SENATOR COUNCIL: I don't mind, I don't mind that "your honor" stuff. And the reason I asked that question, so there is a possibility to be some agreement, discussion, negotiation to see if you can...okay, thank you. [LB1062]

SENATOR ASHFORD: It's just the underlying predicate, that's what you're... [LB1062]

JIM MASTELLER: Exactly. [LB1062]

SENATOR ASHFORD: It's not the...nothing else in the... [LB1062]

JIM MASTELLER: Nothing else, in fact, I think it makes sense to separate the two. And I applaud raising the penalty to a Class II because right now we're limited with the 1 to 20, which in many cases provides insufficient punishment for that offense. [LB1062]

SENATOR ASHFORD: For voluntary, for voluntary. Okay. [LB1062]

SENATOR COUNCIL: Just real quick. Did you say 28-306.2? [LB1062]

JIM MASTELLER: Subsection (1). [LB1062]

SENATOR COUNCIL: Subsection (1), okay. Thanks. [LB1062]

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SENATOR ASHFORD: Thank you. Okay, thanks. Any other testifiers on this bill?
Senator McGill. [LB1062]

SENATOR MCGILL: I just want to reiterate that, you know, we're more than happy to keep working on this. I took this on last summer. And was very pleased, and I think everybody was pleasantly surprised by the two sides' ability to come together and continue the discussion. I think then when it came to bill introduction the clock just ticked out on us and the communication wasn't quite continued until just now. So, hopefully, we can continue to work on this, come up with an amendment and get this in the hopper. Thank you. [LB1062]

SENATOR ASHFORD: Right. I think it's important work. Thank you. It's great to see the two somewhat opposing sides get together and... [LB1062]

SENATOR MCGILL: Cooperating a little bit. Thank you. [LB1062]

SENATOR ASHFORD: Yes. Thank you. All for the same cause but on opposing sides. All right. Senator Karpisek is here, LB1084. [LB1062]

SENATOR KARPISEK: (Exhibit 18) Chairman Ashford and members of the Judiciary Committee, long way to look around both sides there. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District in the Unicameral. LB1084 provides a court procedure for a county to obtain regular payments for the maintenance, care and disposition of any pet animals or equine seized by a sheriff while a case is pending against a defendant for the mistreatment of such animals. Under current law, if a defendant is found guilty of any offense against an animal the sentencing court may order the defendant to reimburse a public or private agency for the expenses incurred with the care, impoundment or disposal of an animal which is involved in the original offense. However, the cost for maintaining and caring for pet animals and equine while a case is pending can become a financial burden to a county. LB1084 relieves this burden by providing the county with the means for obtaining financial support from a defendant for taking care of such animals until which time the case becomes final. In the last couple of years, Nebraska has experienced what seems like a rash of horse neglect cases. In Fillmore County the sheriff seized as many as 38 horses, Dixon County the sheriff seized close to 50 horses, and in Morrill County the sheriff seized more than 200 mustangs and burros. Unfortunately, every time counties are forced to take custody of horses the result is the local taxpayers are responsible for paying for the care and maintenance of these animals. Long-term care of these animals, especially horses, can be in the tens of thousands of dollars and in the case of 200 or more horses the cost could be in the hundreds of thousands of dollars. It is true that current law permits a sentencing court to order a defendant to reimburse a public or private agency for the expenses incurred with the care and maintenance of an animal. However, this language is permissible and assumes that the case will even get

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to sentencing. For example, in the Fillmore County case the defendant was ruled to be incompetent to stand trial, which means that it may take years before the county would be reimbursed the costs for caring for those horses, if at all. All we are trying to do with LB1084 is put in place a hearing process before the court that immediately places the burden on the defendant for financially supporting the care of these animals rather than on the local taxpayer. Thank you. I would be happy to take any questions and I do have a handout, please. [LB1084]

SENATOR ASHFORD: Yes, Senator Council. [LB1084]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford. Senator Karpisek, and I don't know if anybody is going to testify to it, but this smells of the same kind of double jeopardy situation...potential constitutional argument as LB955. I mean, it's like double punishment if the individual in the case, when you ultimately get to trial is found not to have committed any violation of law, he or she has been forced to basically pay a penalty while awaiting a decision on the underlying criminal offense. Maybe I'm not viewing it...maybe somebody who comes up to testify on it, but that's problematic. [LB1084]

SENATOR KARPISEK: They would be reimbursed if they were found not guilty, if that helps. [LB1084]

SENATOR COUNCIL: I didn't see that. Okay. [LB1084]

SENATOR KARPISEK: And, Senator, we have changed...I don't know, the copy you got should say that. But at first it was not that way. This bill has been drafted off the Omaha city ordinance. And we have changed some of that in there. But... [LB1084]

SENATOR ASHFORD: Well, I know a lot of work has gone into this so, Russ, appreciate it. Thanks. [LB1084]

SENATOR KARPISEK: Thank you. [LB1084]

SENATOR ASHFORD: Any proponents? Bill. [LB1084]

WILLIAM BURGESS: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is William Burgess, W-i-l-l-i-a-m Burgess, B-u-r-g-e-s-s. I'm the Fillmore County sheriff. I support LB1084 as Fillmore County had an incident that occurred. It cost the county \$26,225.15 for the care of 35 horses in the southwest part of Fillmore County. And the taxpayers bore the cost and care of these animals for almost five months. After we had seized the horses and realized there was no way for the court...that the court had to either make the owner pay for or care for these animals, the court had no way of giving the county authority to dispose of the horses until the

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criminal case was finished. I went to Senator Russ Karpisek to see if there was a remedy for this problem. He and his staff drafted LB1084 and has the support of the Nebraska Sheriffs Association, the Police Officers Association of Nebraska and others. It has come to my attention that Fillmore County is not the only county in the state that is being affected by this. In the last several years it has cost county taxpayers thousands of dollars for the care and feeding of pet animals, however, horses have become very expensive. Some counties have expended over \$50,000 upwards to \$100,000 on horse cases. In a recent case, Dixon County has had a case with almost 100 horses being involved. LB1084 would help county taxpayers by putting the burden of the care and feeding of these pet animals back under the owners and should be...not be able to pay for or care for that the court would have control to put the animals in the county's care. And it seems that with the state of the economy, more and more cases of horse neglect and cruelty are on the rise. Counties will need a way for the courts to help law enforcement and prosecutors to deal with and seize animals. Thank you. Any questions? [LB1084]

SENATOR ASHFORD: Any questions of Bill? These are horses, all horses? [LB1084]

WILLIAM BURGESS: Yes, all horses, Senator. [LB1084]

SENATOR ASHFORD: And they were...what happened? [LB1084]

WILLIAM BURGESS: What happened is this gentleman was buying the horses off of racetracks. He had a stud horse. Basically, he was using, I feel, the mares just to get the foals out of them. And didn't really care about the mares. He was more concerned about the foals that they would...and these horses, it got to the point where they were eating the bark off of the trees. And we'd go down, we tried to work with him on feeding and water. And he'd get a big round bale of hay every once or twice a week and 20 or 30-some horses would just eat that. And then finding out the veterinarian that we used, he said the horses had become very dominant and that's why just a couple of the horses were in good shape and the rest of them just kept going downhill until we finally got a warrant and seized all the animals. We used the veterinarian to keep monitoring until we finally decided to go ahead and take the horses. [LB1084]

SENATOR ASHFORD: Thanks, Bill, very much. [LB1084]

WILLIAM BURGESS: Thank you. [LB1084]

SENATOR ASHFORD: Next...any more proponents? [LB1084]

JON EDWARDS: Good afternoon, Senator Ashford, members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm here today representing Nebraska Association of County Officials. We are in support of LB1084. I can tell you there were a

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number of groups that worked on this bill, worked on the language of this bill to try to come to some sort of language that we could use as a tool in these situations to possibly help recover some of the costs and shift that cost off of the taxpayers if possible. Really, I think, in a nutshell the bill is designed to try to bridge that gap in there in the time that the case may be being resolved in court in order to try to recover some of these expenses so the taxpayer is not on the hook at the time the case is being disposed of. And to address directly Senator Council's question on being found not guilty in the end, there is provision, page 7, line 24, that speaks directly to that, it actually provides for a rebate of whatever dollars have been paid in originally upon the determination of the court for support. So with that, I won't take any unnecessary time. And we are in support of this bill. Thanks. [LB1084]

SENATOR ASHFORD: Thank you. Any questions? Seeing none, good. [LB1084]

JON EDWARDS: Thank you. [LB1084]

SENATOR ASHFORD: Next proponent. Welcome back. [LB1084]

MARK LANGAN: (Exhibit 19) Thank you. Senators, thank you very much. I just have a short prepared text, very short, that I'll read here. My name is Mark Langan. I'm vice president of Field Operations for the Nebraska Humane Society. We provide animal control service in the Omaha and Sarpy County areas, but are routinely asked to provide guidance and assistance throughout the state of Nebraska, such as Fillmore County, on the seizure of animals living in cruelty conditions. LB1084 would have a direct impact on these seizures in that the responsibility of payment for the care and maintenance of these animals during court proceedings would revert from a taxpayer to the person who is responsible for putting the animals in this situation to begin with. Large-scale animal seizures are a huge financial drain on the taxpayers of the counties that incur the costs. Besides the \$26,000 bill incurred by Fillmore County, the Nebraska Humane Society is aware of Adams County paying an animal care bill of \$71,000 for a horse seizure case that was pending for several years, and also Kearney County incurred a \$41,000 bill for another horse seizure case in 2007. The city of Omaha presently utilizes a city ordinance similar to LB1084. As with LB1084, there are judicial hearings involved to protect the rights of the owner based on our city ordinance in Omaha. Attached are pictures of four of the many animal cruelty situations that we've assisted on recently in the state of Nebraska. As you can see, these are serious crimes that demand quick and immediate responses. The concept behind LB1084 has worked well in the city of Omaha and will be beneficial for the entire state of Nebraska, especially the taxpayers. The Nebraska Humane Society supports LB1084 and I'd be glad to answer any questions you might have. Thank you. [LB1084]

SENATOR ASHFORD: Questions of Mark? Yes, Senator Lathrop. [LB1084]

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SENATOR LATHROP: I read the bill and there is a provision in the bill for an appeal. And here's my question, it's really sort of a lawyer kind of a technical issue. Is the proceeding to determine if the owner needs to pay for the care of the horse and how much, the first one that happens, and that's like within 30 days, is that part of the criminal proceeding or is it a separate proceeding or do you know? [LB1084]

MARK LANGAN: My understanding is it's a separate proceeding. [LB1084]

SENATOR LATHROP: Does this mirror Omaha's ordinance? [LB1084]

MARK LANGAN: It doesn't mirror it exactly. It's based, I would say, probably loosely isn't a fair term, but it's based somewhat on the Omaha ordinance in that the Omaha ordinance allows the defendant in the case ten days to file an appeal on the seizure of their animals. So during that ten-day period, they either have to come up with 30 days worth of board and care fee to pay to us to care for that animal or they can file an appeal within that ten days and a judge can hear the case to determine (one) if we seized the animal appropriately; and (two) if the people have to pay for the care of the animal during that proceeding. [LB1084]

SENATOR LATHROP: Let me back up then. Let's say that you go out in whatever county this happens after this becomes law, somebody picks up a bunch of horses that look like they're not being properly cared for, they're skin and bones, they take them in. What happens before? Is there a notice that they will have a hearing in front of a judge to determine how much the cost of the care is going to be while the proceeding goes on or do they get a bill and then if they don't like it they've got to institute a proceeding that you call an appeal? [LB1084]

MARK LANGAN: I don't know if I have the answer to that to be honest with you. [LB1084]

SENATOR LATHROP: Let me... [LB1084]

MARK LANGAN: I don't know if it specifies that much in the bill. [LB1084]

SENATOR LATHROP: ...as long as you're doing this then you and Senator Karpisek or anybody that's interested can answer this question. The one thing that the courts don't like to do is have interlocutory appeals. So if you have a criminal case pending and you're going to charge a guy with animal cruelty, and in the middle of that we're going to decide what he needs to pay and then give him the right to appeal, that really is...if he's going to appeal an issue, normally the court, Supreme Court, Court of Appeals is going to say, don't send this to us until the entire case is over with and we'll take one look at it instead of taking 12 looks at it. Do you follow me? [LB1084]

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MARK LANGAN Yes. And that's actually... [LB1084]

SENATOR LATHROP So that's my only concern about the process that's in place. I don't want to depart from the tradition of the courts to not have interlocutory appeals, unless there's a really good reason. [LB1084]

MARK LANGAN: And what you're saying has actually been brought up in Douglas County by several Douglas County judges. So that is something that we can certainly look at in regards to the wording of the bill. [LB1084]

SENATOR LATHROP: Okay, thanks, Mark. [LB1084]

SENATOR ASHFORD: Thanks, Mark. [LB1084]

MARK LANGAN: Thank you. [LB1084]

SENATOR ASHFORD: Seeing no further questions, Gary. [LB1084]

GARY KRUMLAND: Senator Ashford, members of the committee, my name is Gary Krumland, that's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in support of LB1084. Cities generally don't face situations where they have to seize 30 horses, but they do get involved with, unfortunately, the law relating to animal fighting, to animal cruelty. And so there may be situations where a city also would be affected by this bill. And so for that reason we do support it. [LB1084]

SENATOR ASHFORD: Thanks, Gary. Any other proponents? Opponents? Neutral? [LB1084]

PETE McClymont: Senator Ashford, members of the Judiciary Committee, for the record, my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I am vice president of legislative affairs for the Nebraska Cattlemen. I am here in a neutral capacity. I, first off, want to thank Senator Karpisek who sought out our opinion, the Sheriffs Association and Senator (sic) Burgess. They've talked to us over a two-year period about this bill and sought our opinion out, as well the Nebraska Humane Society, Mr. Langan, and Ms. Varner have also been very inclusive, in our opinion, and we appreciate that. It would be the opinion of our membership that we, too, are taxpayers and we don't want to see our counties held financially liable in resolving this issue. So for that reason we understand where they're coming from. Senator Council brought up a great point that was addressed with the sheriff's opinion or asking our opinion of that. And so the only concern that I would have as for our membership is the discretion used in some of these instances. And so Sheriff Burgess brought up the fact that they go out and seek a veterinarian professional in doing that. One instance I'd like to share with you that I experienced at a local affiliate meeting a year ago in Broken Bow. It was late February, I

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was there and we talked about the federal horse slaughter issue. And one of the instances that was shared by us, one of our members was that somebody, a rancher had gone back to his pasture several miles northwest of Kearney from Broken Bow, so it's about an hour away. And they had taken the cattle out in September. They'd gone back in February to look at the pasture, check the fences and so forth and they drove into the pasture, drove over the hill and here's two dead horses that were not the property of the rancher. So somebody had taken them out, put them down and left them for somebody else to deal with. And so this is, you know, these issues may or may not be relevant to this bill. But nonetheless, when our membership is experiencing things like this, they don't want to be held liable for somebody else's actions. So that's the reason we're in support of the sheriffs of how they've sought us out as well as the Humane Society in dealing with these issues. So they're doing a good thing, we appreciate that. And just wanted to raise those concerns with the committee. [LB1084]

SENATOR ASHFORD: Senator Lathrop. [LB1084]

SENATOR LATHROP: Is there any reason this wouldn't apply or shouldn't apply to cattle? I mean, if somebody is not feeding their horses you think it's a good idea, but what about if they're not feeding their cows? [LB1084]

PETE McCLYMONT: I would say that probably currently does exist. I mean, if there's an issue there, you know, that somebody is probably going to go to a sheriff anyway and discuss that with them, Senator Lathrop. [LB1084]

SENATOR LATHROP: So do you have a problem including cattle in this? Is there any reason why it has to be confined to fed animals? [LB1084]

PETE McCLYMONT: The biggest concern that we would have is take, for instance, the weather. Okay? You can do it in one extreme in the summer, okay? In 2006, the summer was terrible, there was no moisture, people were having to pull cattle off. So if you have a cow that has poor condition and somebody drives by and looks at that animal and the flesh condition is poor, that wouldn't necessarily reference the fact that they've been poorly cared for. [LB1084]

SENATOR LATHROP: Wouldn't that be true with horses? I mean, if a cow and a horse were in the same pasture, aren't they going to experience the same? [LB1084]

PETE McCLYMONT: And I think you've hit the nail on the head in the sense that the incidence I referenced earlier is more of a pleasure horse situation. So when you have a working horse in an operation and they need to be utilized for the care of the cattle, you have the differences right there that bring it up. So that's why I referenced discretion to be used in this instance. So whether that's a sufficient answer to that... [LB1084]

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SENATOR LATHROP: Well, let me maybe go back to the question I was asking and that is if the concern is for the taxpayer paying for the cost of care of a herd of horses or a bunch of dogs or cats, wouldn't the same thing be true? I mean they have to be abusing the animals, not just they're starting to look a little skinny, but doesn't the same rationale apply to the cattle and shouldn't we include them? Because if a guy is abusing his animals by not feeding them or getting them water or getting them the shots they need, then why should the taxpayers pay for the keep of those animals while some crime investigation is underway or some criminal charges are pending? [LB1084]

PETE McCLYMONT: The response I'd give to you there is that if cattle are for a commercial operation, which we're talking about, their whole livelihood is depending on taking care of those cattle. So if somebody is not doing that and they've broken the law that's one thing. But 95 percent of the time or 99 percent of the time people are going to do this for profit, so they're going to care for the animals they can because that's going to put money in their pocket. [LB1084]

SENATOR LATHROP: So you don't favor putting cattle in this bill? [LB1084]

PETE McCLYMONT: No, sir. [LB1084]

SENATOR LATHROP: Okay. [LB1084]

SENATOR ASHFORD: Seeing no more questions,... [LB1084]

PETE McCLYMONT Thank you. [LB1084]

SENATOR ASHFORD ...next proponent, neutral, I'm sorry. [LB1084]

CRAIG HEAD: Yes, that's okay. Good afternoon, Senator Ashford, members of the committee. My name is Craig Head, that's C-r-a-i-g H-e-a-d and I'm the state director of government relations for the Nebraska Farm Bureau Federation here today in a neutral capacity on LB1084. Again, I would just repeat some of the testimony from the previous testifier. We greatly appreciate Bill Burgess and the Sheriffs Association, Senator Karpisek, and the Nebraska Humane Society seeking our input on this issue. We always appreciate that. And it gave us a chance to work with them very early on in the process developing the legislation to address any concerns we would have. I would also just point out maybe to the previous question a little bit, the issue of why we're seeing more horses now is the result of a specific example. I think it was mentioned, we've seen a rash of outbreaks of neglect in horse cases which we don't see that in the livestock industry. And it's for a simple reason. A few years ago, USDA stopped federal inspection of horse slaughter facilities in this country, which means that we had the three horse slaughter plants in this country, went out of business. And what that did is overnight it eliminated a market for these animals. And so we have situations now

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where people have these animals and there's really no marketplace for them. They have to be shipped out of the country to be slaughtered. Which is why we see more cases of the horse neglect cases in our state. The livestock industry it's not an issue because, obviously, those animals still have financial value. We just don't see that take place. But because of what's going on I will just as a point of reference, I think it's important to note that no one likes these situations. Our members certainly don't like to see those things happen. And we have taken a very aggressive stance in our organization, in our membership to when these activities and things happen, these neglect cases happen in these rural communities, our members have been very engaged in trying to find ways to work with the local sheriff to address the situations, whether it's helping them transport animals off site to get where they need to go or provide...donate hay and feed, our members have really stepped up in that role, recognizing that because of some of the issues related to the lack of horse slaughter, again, we don't like to see that happen. But we know it happens more than it should in this climate that we exist in right now. So with that, I'd be glad to answer any questions you might have and appreciate the chance to testify this afternoon. [LB1084]

SENATOR ASHFORD: Any questions? That's information I did not know, that the horse issue is... [LB1084]

SENATOR LATHROP: That makes sense. [LB1084]

SENATOR ROBERT: You didn't know that? [LB1084]

SENATOR ASHFORD No, I did not. [LB1084]

SENATOR LATHROP: I knew that but I didn't know that's why we see more people let them sit out in the pasture and starve. [LB1084]

SENATOR ASHFORD: You knew that Senator Robert, probably? [LB1084]

SENATOR ROBERT: Craig, how many, I should have asked this to Mark, but tell me about the increase in seizures you've seen or these cases of neglect. [LB1084]

CRAIG HEAD: Well, I can tell you there's two specific that our members have been involved with and they've happened here in the last year. We had this situation out in Alliance, trying to think, it was not actually a farming operation or a ranching operation, it was actually a horse rescue operation out there. It made the World-Herald a few days in a row, you might remember that. That wasn't your typical ranching operation. That was a situation where an individual was taking on horses for care in a rescue type situation and things didn't go well there. We had another situation up in Dixon County here recently where our members got involved with. But I do know there are some of those situations taking place more often out there. Those are two specific ones that we have

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been involved with. In fact, at our annual meeting this year our delegates did pass a resolution encouraging our County Farm Bureaus to make sure they work with sheriffs in these situations to help out. And that's why I raise it, because we recognize in the countryside it's becoming an issue. And I would also, if I could, just mention that Senator Dierks had an interim study resolution on this horse slaughter issue this past year on which we testified this summer. And I would tell you, I would not expect things to get a lot better on this issue for awhile because we just...the number of horses...when that animal loses...when there's no value to that animal, what do you do with it? Especially if you're in a setting where you're not on a farming operation, where you don't have a backhoe, where you can't properly dispose of that animal, that's why I think we're seeing some of the example that Pete mentioned earlier where we just...horses are just being dumped. We've heard anecdotal information of guys hauling cattle to the sale barn and turn around, when they come out of the sale barn there are horses in their trailer (laugh) that somebody is disposing of. And those stories are out there. And so there is a survey, and I'd be glad to get it to the committee, that showed up in Senator Dierks's interim study. But it looks at all these issues related to horses. There was an actual survey done by, I believe, the Quarter Horse Association to look at this issue of unwanted horses. So if that helps provide any light. [LB1084]

SENATOR ROBERT: I think we've estimated there's around 5,000 in the state probably today. [LB1084]

CRAIG HEAD: Of horses in the state? [LB1084]

SENATOR ROBERT: Yeah. [LB1084]

CRAIG HEAD: I'm not sure about the instate number. If I remember right, I think, in that... [LB1084]

SENATOR ROBERT: 500,000 nationwide. [LB1084]

CRAIG HEAD: Yeah, 100,000, I think, in the United States right now that they're looking for places to go. [LB1084]

SENATOR LATHROP: Whose idea is that to stop slaughtering horses? Can you euthanize one? [LB1084]

CRAIG HEAD: Yes, you can euthanize a horse legally but the issue is disposal. [LB1084]

SENATOR LATHROP: Okay, you just can't take them to a dog food factory. [LB1084]

CRAIG HEAD: Right, yeah, exactly. I mean, there's just...there's no real market for

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them, that's why we're seeing some of the problems that we are. And I'd be glad to get you more information on that subject. It came down from national. [LB1084]

SENATOR LATHROP: That's probably enough for me. [LB1084]

SENATOR ASHFORD: Senator Council. [LB1084]

SENATOR COUNCIL: Yes. Thank you, Chairman Ashford. Thank you, Mr. Head. And as a follow up question to Senator Lathrop's question, because I'm very familiar with the horse issue, serving on the Ag Committee and being involved in that issue. But I still don't understand the distinction that's being made between pet animals and equine and just animals, because the section of the statute that this is...the amendments are being made to just involve animals. And there is a section that allows for the seizure of animals, either with a search warrant or validly seized without a warrant. And, I guess, the question I was hearing Senator Lathrop posing, and if I'm incorrect, correct me, is if a whole herd of cattle are seized and kept and fed pending the outcome of some trial, why wouldn't those costs be borne by the person charged? Is it because of the...I mean, I guess, I'm trying to understand what the... [LB1084]

CRAIG HEAD: That's a good...my initial reaction would be you'd have issues related to volume. I think you'd also have issues related to ownership, simply from the standpoint that you might hear from the bankers in this state because in some cases those animals are used as liens against loans. So that was part of some of the conversation that came forward initially. [LB1084]

SENATOR COUNCIL: Okay, so you'd have an issue as to who would be responsible for paying the costs of... [LB1084]

CRAIG HEAD: You could potentially have. When you look at, you know, talking about three dogs in a house versus 20,000 head of cattle, it's a little different situation. [LB1084]

SENATOR COUNCIL: Well, you have 500 horses. [LB1084]

CRAIG HEAD: Yeah, and in that particular case they did have a couple hundred, I think, out in the western part of the state. [LB1084]

SENATOR ROBERT: Just one follow up, Craig. You can clarify it. I think, don't counties have the...when you're talking about a beef or a production animal that you can slaughter, they have the right to sell those, take the money and pay for what's been done. [LB1084]

CRAIG HEAD: Yeah. [LB1084]

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SENATOR ROBERT: Where you have no option to sell the horses for any type of money, there is an economic value to the withheld cattle. [LB1084]

CRAIG HEAD: Right. I don't want to imply that there is no market for horses because you can take a horse to market and you might be able to get it sold. But the reality is that there is no value there, it's not like a beef animal. You're raising it for a profit in this situation, we just don't see that like we used to. And more to your question, we don't have any policy on whether or not cattle should be included in it. And that was never really brought into any of our conversations to this point. Which is why we ended up here, because this was the problem of the day. [LB1084]

SENATOR COUNCIL: Yeah. And I appreciate the problem that's being addressed. But I'm just saying if the issue that's trying to be resolved is that these counties are having to bear the cost of feeding these animals pending a trial, and that the owner ought to be responsible for that, what's the difference between, you know, the county feeding a whole stock of...the whole herd of cattle pending a trial or feeding 20 horses during the trial. That's all I was trying to get to understand the distinction. [LB1084]

CRAIG HEAD: I understand where you're going with that. There's some issues there, I think, just again from the lien standpoint who owns the animals. [LB1084]

SENATOR COUNCIL: Yeah, and the lien... [LB1084]

CRAIG HEAD: And you could still have that issue when...you could possibly still have that issue with horses. But... [LB1084]

SENATOR COUNCIL: Yeah, but there's a greater likelihood of having it with cattle that a bank would have some interest in them. And to risk loss if the person who's raising that livestock isn't paying some kind of forfeiture, then you have all these complicated issues about whose rights are being extinguished. I understand. [LB1084]

SENATOR ASHFORD: Okay, thank you. [LB1084]

CRAIG HEAD: Yes, I appreciate it. Thank you. [LB1084]

SENATOR ASHFORD: Russ, you're up. [LB1084]

SENATOR KARPISEK: Thank you, Senator Ashford and members. Senator Lathrop, I think, if I can try to answer your question on the way it would work. The animals would be taken, there would be a court hearing. At the hearing, number one, they would determine if they will stay seized; and, number two, how much the care would be. If that...you could appeal the care, the amount of money there. So if that's what you were

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trying to get at I'm not sure. But you could appeal the... [LB1084]

SENATOR LATHROP: So you could appeal while the criminal case is still sitting there. [LB1084]

SENATOR KARPISEK: Yes. [LB1084]

SENATOR LATHROP: Okay. [LB1084]

SENATOR KARPISEK: You can appeal the monetary value while the criminal case still goes on, correct. Does that kind of get at what you were trying to get at? [LB1084]

SENATOR LATHROP: It does. If you're the court, traditionally, you just kind of have one appeal after the whole thing is over. And you can appeal anything in the middle of that that you want. And, I think, the court would probably say, you've put me in a situation where I'm going to hear this every 30 days, and this guy can appeal. And you know, you wear out the door according to appeals. [LB1084]

SENATOR KARPISEK: Sure. And that may be something that we would be glad to sit down and try to...maybe you get one, I don't know. But to make sure, I don't want to cause people undue hardship if their animals are confiscated, especially if they're going...if they would be found not guilty to pay. Also, hope that they don't have to pay a lot more than what it would be if they were at home. Senator Fischer has a bill also talking about livestock seizure this year. And part of that gets into this. And we wanted to make sure that we kept them apart from each other. Senator Fischer's bill, and I think her law says that you will have your settlement at the end. Again, back to what Mr. Head said, there is some value in the end of those cattle where you could sell them. And again, not to say that there is not for horses or dogs or any of that. But you'll probably run up a way bigger fee than can be paid off by selling them. The other thing is the court or the county can't take possession of any of these animals. So if the person just leaves, maybe find these animals out somewhere at an abandoned farmyard, you take them in, you're feeding them, you really can't take possession of them and the person is not even around. So in that way, if this isn't paid, that gives the county a way to get rid of those animals or horses. And I think what...I'm not positive but I think in the Fillmore case, finally, they were able to adopt those horses out. However, if it would have kept going on, they could have kept having those horses there and couldn't get rid of them. So the cattle issue did come up and I asked about that. And that already is the production, livestock, as Senator Rogert said, is different. There is a clause at the end that you can be reimbursed and there is something of value. I also did want to bring up, we talked about veterinarians a little bit. Had discussions with the dog breeders who wanted veterinarians in this bill, that the veterinarian would come out and see if the animal was indeed being neglected and then number two, if the animal should be moved or if they could stay on premises. The sheriffs were not...association was not on

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board with that. I think Sheriff Burgess, almost everyone will say, we want to have a vet out there when we confiscate these animals, when we seize them because we're building a case. Just to take them and if they get into court they can say, well, who said they were abused? So they'll have a vet there. I think there...my bad part of that was to say, we don't want the vet to say, well, the place is fine, they just need food. Well, if it's a couple horses out in the middle of the country and you have to have somebody go out there and feed them, or if you have, I think as Senator...Sheriff Burgess had a place near town that they could put some of them in that wouldn't be so much of a burden to go out and cost even more money. They did decide not to come in on that issue and maybe try to work on it next year if we can get this passed through. However, I did want you to know that just if it comes up in discussion that we did talk about it. And I'm sure that they will have a vet there most of the time to make sure those animals really should be seized. With that, I would try to clear up anything else if I could. [LB1084]

SENATOR ASHFORD: Any other questions? Very good. [LB1084]

SENATOR KARPISEK: Thank you. [LB1084]

SENATOR ASHFORD: Thanks, Russ. Thanks, everybody. [LB1084]