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Judiciary Committee
October 11, 2011

[LR249 LR254]

The Committee on Judiciary met at 10:00 a.m. on Tuesday, October 11, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR249. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: None.

SENATOR ASHFORD: (Recorder malfunction)...with LR249. Welcome, everyone, and I hope you all had a good summer and now things will happen very quickly and as we get moving this into the next session. Senator Harr, as you all know, Senator Harr has been committed to working through the issues on our DUI statutes to try to find some sense in them, the consistency with it, whether or not we need to address the inconsistencies in the statutes and the various remedies that our statutes do provide. It's a mammoth task and I think Senator Harr and his staff, I know they have spent a considerable time this summer on this issue. It is an extremely serious issue as this committee traditionally deals with DUI statutes certainly every session, many times every session, and so often we get, this is not a criticism, but we get suggestions (inaudible) suggestions how to deal with the problem, and I think the committee is interested in working holistically on this issue to try and make some sense out of it. So, Senator Harr, we do appreciate your efforts. Would you like to introduce...I think you would like to introduce LR249.

SENATOR HARR: (Exhibit 1) Yes, sir. Thank you, Senator Ashford and fellow members of the Judiciary Committee. My name is Burke Harr, H-a-r-r, and I'm here to speak on interim study LR249. I would be remiss not to start by thanking all the individuals who have worked so hard on this, beyond my staff, and that would be individuals we've spoken to individually and who have sent us information about that: Mike Behm; Lieutenant Terry Campbell of the Omaha Police Department, retired; Scott Carlson; Marty Conboy; W. Patrick Dunn; and Dan Stockman; Don Kleine; John Lindsay; Joe Kohout; Dave Lutton; Deb Minardi; Fred Zwonechek; Dr. Jim Stimpson from UNMC;

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Scott Carlson from Probation; Jane Raybould right here from Lancaster; Nick Paden from the Interlock...Ignition Interlock Systems; and Diane Riibe among...I'm sure I'm missing some. We had great participation on this study. Basically, how I got started in this, looking into this, was it seems there are two things you can count on in Judiciary every year--an abortion bill and a DUI bill. And so my question was, why are we...what are we doing right and what are we doing wrong and what are the best practices? One of the things that intrigued me was since 1991, which was the last time a DUI study was done, there have been 129 changes to statutes based on DUI, and that does not even include interpretations from the Supreme Court on the changes in those statutes. So there's a problem with consistency. And how do we know what is working and what is not working? There weren't really any studies done. And it seems as though a lot of the changes we do are in reaction to the worse case that happened the previous year. And so as Senator Ashford said, the idea was to look at a more holistic change and how can we do this better, what is working and what isn't working. We all know that drinking and driving is a major issue in the state of Nebraska and we all, I think unfortunately, have to come to the conclusion that we will never successfully get rid of it. As long as there's free choice and there's alcohol available and there's driving, there will be drinking and driving. The question is, how can we prevent that and what are the best practices? So that was kind of the mission statement we started with. We are not looking for prohibition to end alcohol. The one example I like to give is it used to be everyone smoked in bars. There's still smoking and there are still bars; people just don't smoke in bars. And so while there will still be drinking and there will still be driving, I don't want drinking and driving. It became socially unacceptable to smoke in a bar and I think we need to work to the same level on this DUI. I could go through and talk about all the statistics and the financial costs that drinking and driving have on a state. It is amazing what it has done and what we lose in productivity from our workers because of drinking and driving. So what did I learn? Just quickly--and many people will testify--and just to give you an overview is I've come to the conclusion that we've done a very good job of addressing the individuals who I'll refer to as outlaws and those are people who drinking and driving is just one of many bad things they do. We've done a decent job, I think we

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need to spend a little bit more time on the hard-core alcoholic, and that's an individual who is a functioning alcoholic who works, goes to a bar, gets plastered and drives. We are working on rehabilitation. I think we can do more or better in that area. But one area I found that we are deficient, and I don't have an answer for it, is the individual who is not a chronic drunk, who is not an outlaw but a functioning member of society who on a regular basis does not drink or drive. How do we address that person, the classic example being the father at his daughter's wedding? How do we address that to make sure that those people don't drink and drive? And again, it's more of a holistic front-end look of what alternatives do we provide so that person doesn't do that. Is that...we started with a designated driver program. Is there something more we could or should be doing? And then the other thing I found is it's rather confusing, if you actually read our statutes. Because there are so many changes, to actually know what the law says as a layperson or even as a lawyer can be difficult. So I think we need to work on maybe clarifying the language. And then we also need to study what is working and what isn't. In order to do that, we have to see where we're spending money and on what resources we're spending money, and I can tell you, after spending a whole summer trying to figure that out, I don't have the answers. I can't tell you where the money goes, all the money we receive, where it's going and what it's doing. There doesn't seem to be any one person or agency in charge, and that's a problem because then we lose accountability. And so what we're looking to do is to develop a holistic plan so that if there is a problem we can say, yes, something bad did happen and it is bad, there's no doubt about it. But there's always going to be something bad that happens. What we're looking to do is to have a plan in place that really helps individuals and stops drinking and driving. I know it's a bit redundant. I guess that's about all I have to say, if there are any questions. [LR249]

SENATOR ASHFORD: Well, thanks, Senator Harr. Any questions of Senator Harr? Thanks for all your work. How many testifiers do we have? I know there's a list here of a few people. Good. All right. We won't be using the lights probably. Go ahead, Burke, if you want to go over there. I'd like...you can tell by the number of senators here--every

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single member of the committee is here--how important this issue is and I'd like to introduce my colleagues: Senator Larson from O'Neill; Senator Coash from Lincoln; Senator Lautenbaugh, I can hardly see him, from Omaha; and Senator Harr of course; Senator Lathrop from Ralston; Senator Amanda McGill; and Senator Brenda Council. LaMont Rainey is legal counsel, as most of you know; and Oliver VanDervoort is the clerk of the Judiciary Committee. With that, I have a list and, Burke, do you want to...should we just go through the list? Is that your...what you would like to do? We have Fred Zwonechek from Highway Safety. Is Fred...? [LR249]

SENATOR HARR: He couldn't make it. [LR249]

SENATOR ASHFORD: Okay. First one is off the list. (Laugh) We're down to...Jim Stimpson. Is Jim...Jim is here, right. Jim is from UNMC. It's always good to see the university represented. Good morning. [LR249]

JIM STIMPSON: (Exhibit 2) Good morning. I am Jim Stimpson, S-t-i-m-p-s-o-n, an associate professor with the UNMC College of Public Health, Department of Health Services Research and Administration. I am here speaking for myself and I have copies of my testimony if you'd like it. According to the Centers for Disease Control and Prevention, motor vehicle crashes claim more than 30,000 lives in the United States every year, which amounts to one death every 48 minutes. Motor vehicle deaths have an immediate impact on numerous social systems, including families, employers, and communities, with an estimated annual cost exceeding \$41 billion. In Nebraska, motor vehicle crashes are the leading cause of injury death and the second leading cause of injury-related hospitalization. More than a fourth of all motor vehicle deaths involved at least one alcohol-impaired driver. Younger drivers have the highest likelihood of being involved in an alcohol-related crash. Among Nebraska youth, motor vehicle crashes are the leading cause of injury death and the fourth leading cause of injury-related hospital visits. The research indicates that attempts to solve the problem of impaired driving should carefully consider options at various levels of prevention. Primary prevention

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efforts focus on reducing drinking levels, particularly on preventing persons from getting drunk in public, and have the strongest relationship with preventing impaired driving behavior. The focus of primary prevention efforts is on reducing consumption of alcohol through, for example, excise taxes and monitoring alcohol serving and sales practices. Secondary prevention efforts focus on reducing the likelihood that a person who is intoxicated drives a vehicle. The research indicates this effort is less effective than primary prevention efforts because the person is already intoxicated. The focus of secondary prevention efforts is on increasing the perceived and actual risk of DUI enforcement and providing alternative means of transportation home, such as public transit, designated drivers, or free cab rides. And finally, tertiary prevention efforts focus on persons who are driving while intoxicated, which research shows has the least impact on preventing alcohol-related crashes. Tertiary prevention efforts focus on arresting offenders, punishing offenders, and providing drug and alcohol treatment. To move to the next step in addressing the problem of impaired driving, Nebraska could consider enacting policies that focus on primary and secondary prevention efforts. Primary prevention policies that could be expanded are improved training and monitoring of individuals involved in the sale of alcohol and increased excise taxes on alcohol. Both of these efforts can significantly reduce the consumption of alcohol, particularly among younger adults, according to the National Highway Traffic Safety Administration, the Center for Disease Control and Prevention, and the Insurance Institute for Highway Safety. Secondary prevention policies should focus on increasing the perceived and actual risk of getting caught driving drunk, which can lead to fewer crashes, especially among younger adults. The most effective efforts that are being used in other states include expanding the frequency and visibility of sobriety checkpoints, increasing police patrols, and creating mass media campaigns that advertise the risks of drunk driving and the heightened risk of getting caught. Policies geared toward reducing impaired driving have been particularly effective in other states when coupled with improved access to alternative methods of transportation so that intoxicated citizens have options to get home safely and with less risk of endangering the public. Thank you for this opportunity. [LR249]

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SENATOR ASHFORD: Thank you, Jim. Any questions? Yes, Senator Lathrop. [LR249]

SENATOR LATHROP: Does the work that you've done to this point in time tell you where the DWIs are in the state? In other words, are they concentrated or scattered across the state according to population or is it worse in Douglas County than it is, per capita, out in the Panhandle, for example? [LR249]

JIM STIMPSON: I don't have the research on that right now but I'll be happy to work on that in the future for you. [LR249]

SENATOR ASHFORD: Jim, what is the role that UNMC is taking on in this area right now? What is the focus...what sort of focus is there within UNMC? I know I've had some discussions with UNMC as it has expanded...well, now has accreditation, is that correct, the College of Public Affairs? Didn't it recently receive national accreditation? [LR249]

JIM STIMPSON: The College of Public Health is... [LR249]

SENATOR ASHFORD: Or not Public Affairs, Public Health. [LR249]

JIM STIMPSON: Yeah, yeah, is slated to potentially get accreditation and that may be announced this week. [LR249]

SENATOR ASHFORD: And that was...that's a pretty...that's a major step for the state, it seems to me. And I know that Dr. Mohandes has expressed a great interest in a program that Senator Council and I have been working on in violence, studying youth violence in the state, and that's an important issue. And now UNMC appears to be looking at DUIs. Is there a focus at UNMC Public Health on DUI issues? Is that happening now? [LR249]

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JIM STIMPSON: UNMC is able to conduct this research and I am one of the primary people that is interested and focused and doing some of this type of research, but again I'm here speaking of myself but... [LR249]

SENATOR ASHFORD: But I understand that and I'm not trying to put you on the spot,... [LR249]

JIM STIMPSON: Yeah. [LR249]

SENATOR ASHFORD: ...but I'm encouraged... [LR249]

JIM STIMPSON: Uh-huh. [LR249]

SENATOR ASHFORD: ...by the accreditation of the Public Health College and by Dr. Mohandes' commitment to youth and juvenile issues, and you've mentioned juvenile DUI issues. Are you aware...I'm not putting you on, I'm just trying to see, are you aware of any investigatory, evaluative work being done at UNMC Public Health on this issue now? [LR249]

JIM STIMPSON: Yes. [LR249]

SENATOR ASHFORD: And what is that work? [LR249]

JIM STIMPSON: Well, we're engaged in studies on, for example, doing comparative effectiveness of what these kind of...what kind of policies might be working--we don't have the evidence completed on that yet--and also what...the new problem in fatalities is distracted driving and what is the interaction between drunk driving and distracted driving. [LR249]

SENATOR ASHFORD: So there are studies underway? [LR249]

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JIM STIMPSON: There are studies underway. [LR249]

SENATOR ASHFORD: And who would be...are those funded by federal grants, other funding sources, internal funding? How are those being funded, those studies? [LR249]

JIM STIMPSON: There's external funding for those... [LR249]

SENATOR ASHFORD: Okay. [LR249]

JIM STIMPSON: ...through foundations and we have federal grants... [LR249]

SENATOR ASHFORD: Federal Highway Safety? [LR249]

JIM STIMPSON: ...in process. [LR249]

SENATOR ASHFORD: Okay. And how many of you are working on DUI-related matters within UNMC? [LR249]

JIM STIMPSON: I'm pretty new to UNMC so I can't say for certain. [LR249]

SENATOR ASHFORD: Okay. [LR249]

JIM STIMPSON: Within the...I'd say I don't...I wouldn't want to give a number. [LR249]

SENATOR ASHFORD: Okay. But would it be fair to assume that there is a study being undertaken and that it will eventually be completed or maybe not ever completed but there will be interim...okay. [LR249]

JIM STIMPSON: There is research. (Laugh) It all takes time. It all takes money. [LR249]

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SENATOR ASHFORD: Yeah. [LR249]

JIM STIMPSON: And so we're putting in the proposals to external funders to get those studies funded and to perform them. [LR249]

SENATOR ASHFORD: Okay. And I think this is all great so don't get me wrong. [LR249]

JIM STIMPSON: Yeah, right. [LR249]

SENATOR ASHFORD: I just...one of the issues that just as I might say I mean going back years ago when I think in the '80s we somewhat de-emphasized public health for a number of years and now have reemphasized public health as a critical element of dealing with these societal issues, and it's encouraging that UNMC is working on violence issues, working on DUI issues. It would be nice to know, I think the committee would like to know, if you could report back or someone over there, Bob Bartee or someone could report back with how...when we can expect to receive more detailed information on your investigations. Senator Council [LR249]

SENATOR COUNCIL: Yes, and thank you, Professor Stimpson, for appearing and testifying today. I'm curious, under the secondary prevention policies in your testimony you indicated that what has been effective in other states are policies geared toward improving access to alternative methods of transportation. Can you give us some example of what kind of state policy that provides for a means for an impaired person to access alternative transportation? I'm aware of some efforts by some of our renowned law firms but that's not a state policy, so... [LR249]

SENATOR ASHFORD: Not yet anyway but... (Laughter) [LR249]

SENATOR COUNCIL: But I mean I'm curious. What...I mean what are the types of

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policies in other states that are geared toward improving access to alternative transportation? [LR249]

JIM STIMPSON: Well, transportation policy is intricately intertwined with drunk driving and many other...economic development and other types of policies, and so a state can decide to invest heavily in just cars as a means of getting around or they can invest in light-rail or streetcars or expanding bus systems, bike routes, designing communities such that they're more tightly integrated so that there's a possibility, like some of the new urbanism designs that are coming along. So those are, I would say, are examples of places that have those kinds of transportation systems in effect, have much lower driving fatalities and particularly drunk driving fatalities because are methods of getting home other than driving home. [LR249]

SENATOR COUNCIL: Okay, so what your research looked at, I will assume, was that other...that the access to alternative transportation that existed in various communities and now that alternative transportation could be made more available. It wasn't necessarily a specific state policy that was geared toward reducing drunk driving. [LR249]

JIM STIMPSON: Correct. [LR249]

SENATOR COUNCIL: And then there was some... [LR249]

JIM STIMPSON: Correct. [LR249]

SENATOR COUNCIL: ...new means of accessing alternative transportation. You just looked at communities where there may have been ready access to alternative transportation and there was some corresponding reduction in the number of DUI fatalities. Am I correct in (inaudible)? [LR249]

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JIM STIMPSON: That's largely correct and... [LR249]

SENATOR COUNCIL: Okay. [LR249]

JIM STIMPSON: ...although you can also look at places that have expanded their public transit options and also track whether their driving fatalities and drunk driving fatalities decrease commensurate with the increased access as well and that... [LR249]

SENATOR COUNCIL: Okay, so communities where the buses run after 10:00 p.m. may have... [LR249]

JIM STIMPSON: Correct. Or maybe they expanded the number of miles of light-rail... [LR249]

SENATOR COUNCIL: Light-rail. [LR249]

JIM STIMPSON: ...or streetcars that are available. [LR249]

SENATOR COUNCIL: Okay. Thank you. [LR249]

SENATOR ASHFORD: I would be very interested in knowing more about what Senator Council is asking about because if you have some examples of other communities that have expanded or...expanded authorities or expanded existing transportation modes to see what that correlation is and what cities are actually doing that, because we can inquire into that, I think that's extremely important work. [LR249]

JIM STIMPSON: Yeah. [LR249]

SENATOR ASHFORD: And rather than sort of guess at it, if you could get us that information... [LR249]

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JIM STIMPSON: Yeah. [LR249]

SENATOR ASHFORD: ...on cities. What cities, off the top of your head, what cities are engaged in what Senator Council is inquiring about? Do you know? [LR249]

JIM STIMPSON: Well, in general, I have research in progress on this issue, and also on aggregate, places with the more miles you'll see that. [LR249]

SENATOR ASHFORD: Right. [LR249]

JIM STIMPSON: But you can look at a city like Portland is a great example because it's a smaller city, it's not a large city like New York City, that has, you know, expanded their light-rail and streetcar offerings and have seen a number of other benefits. They didn't do it to reduce drunk driving specifically but they did it for other...among reasons and it has a lot of different impacts. But Dallas, Texas, just recently vastly expanded their light-rail system and so we're kind of waiting, since they just did it this year, we're kind of waiting to see the data for next year and see if there were any kind of consequential declines in fatalities of particularly drunk driving fatalities. [LR249]

SENATOR ASHFORD: Great. Senator Council. [LR249]

SENATOR COUNCIL: Yes, just one other question. Again, I'm looking at your research on secondary levels of intervention and, in responding to Senator Harr's opening about the volume of new bills introduced with the latest worst case incident or some new development on the horizon, and I noticed the absence of reference in your testimony to the impact of ignition interlock devices. What has your research, if anything, told you about the impact of ignition interlock, use of ignition interlock devices? I would assume that would be at a secondary level as opposed to a first level of prevention. What has it shown? What is it showing you? [LR249]

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JIM STIMPSON: I think probably your...it depends. The effect of ignition interlocks depends on the policy because various states implement that policy in different ways. Some places make it a mandatory policy, like Nebraska, which is the most effective for ignition interlocks. Other places have made it voluntary and they basically found that it was not at all effective. The problem with some of the ignition interlocks is, you know, obviously it's an easy thing to get around and then ultimately I would kind of classify that as an intervention that's focused on someone that's already the type of person that's gotten caught drunk, drinking and driving, and I think that what we may want to consider are policies that are geared toward preventing other types of drunk driving. So they have an effect and in Nebraska, where it's mandatory, it can reduce drunk driving but perhaps not as much as other types of policies. [LR249]

SENATOR COUNCIL: Interesting. Thank you. [LR249]

SENATOR ASHFORD: Thank you. I would just conclude by saying that the importance of having a strong public health component in policy, which we have not had, is that we can start thinking about intervention prevention, and having data on all these behavioral issues across the state, that damage our state, that we have good solid data and so that we can justify, if just on cost, without looking at the other obvious human loss but just dollars and cents which...that those kinds of research projects are critical... [LR249]

JIM STIMPSON: Uh-huh. [LR249]

SENATOR ASHFORD: ...because so often we make policy without having that kind of information on prevention, intervention. And I applaud the university on this...in this area. So thank you for your comments. [LR249]

JIM STIMPSON: Thank you. [LR249]

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SENATOR ASHFORD: Okay. I hesitate to have Marty come up. I don't know how long it will take. (Laughter) So let's see, who's next? Nick, is Nick, Nick, okay. [LR249]

NICK PADEN: Good morning, Senators. My name is Nick Paden, spelled N-i-c-k P-a-d-e-n. I am the registered lobbyist for Affordable Ignition Interlock. In preparation for this hearing, first off, I kind of considered myself maybe more of a resource; try my best to answer any questions you may have about this product that you've heard so much about over the past couple years. In preparation for this, however, I did go to our location recently out on West O. And before I forget, I would like to extend an invitation to any of you to come out, see the product, put it in your hand, experience it, talk to the workers out there, and I would gladly organize that with any or all of you whenever you'd like to do that. Ignition interlock is a device. It is installed in your car and what you do when you start your car up, you blow into it. It's a seven-second test. You blow into it. If there's no detection of alcohol, your car starts up. Within the first five minutes, there will be a retest. That retest is an attempt to avoid the stereotype of someone else is going to blow into it and start my car for me. So after five minutes you do a retest. There are random retests every 15 minutes thereafter. And if you do happen to fail one of those tests, there's another...I've had questions on this. Your car does not shut off. What will happen is lights will flash and your horn will sound, kind of like a car alarm to warn other drivers, stay away for whatever reason. When you do pull over, turn your car off, it will not start back up for...I forget. Off the top of my head it's a substantial amount of time before it will restart. Those tests are recorded into a database in a device in your car and it will show up when it is taken in to be calibrated, which then that report is sent on to Probation or DMV. So that's kind of an overview and, like I said, I kind of consider myself to be more of a resource today and do my best to answer any questions you might have. [LR249]

SENATOR ASHFORD: Yes, Senator Larson. [LR249]

SENATOR LARSON: How much do one of your systems cost, roughly? [LR249]

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NICK PADEN: Twenty-seven to install, then the average, this average depends on the length of time you have it in your car but they say a little over \$2 a day. [LR249]

SENATOR LARSON: Two dollars a day and \$27 to install? [LR249]

NICK PADEN: Correct, and then \$25 to remove. That's our company. Other companies I know have different pricing but that's ours. [LR249]

SENATOR LARSON: Thank you. [LR249]

SENATOR ASHFORD: Senator Harr. [LR249]

SENATOR HARR: Thank you. Can you explain a little bit about the indigency fund, if you know about it? [LR249]

NICK PADEN: I do, and it was interesting, talking on my recent visit. One of the major factors in this, and he's seen it firsthand, he said were lower income people who would love to have this product in their car, you know, so they can get to work and it is sometimes prohibitive from getting this. He said, like I said, coming firsthand experience from the location, they do make them aware of it and people do utilize it sometimes. He said that a lot of times they don't, for whatever reason, just don't want to deal with the hassle of going through more work for the fund. And so he said they make them aware that it's there. Usage isn't as high as he thought it would be. [LR249]

SENATOR HARR: Under the new bill there's money set aside. [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR HARR: And do you know if it's a set amount or if it's everyone who qualifies

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gets it, or is it once that fund is used up you're done until the new year starts or until there's more money in the kitty, or how does that work? [LR249]

NICK PADEN: I apologize, I'm going to have to get back to you on that. I know it was one way originally a couple years ago, I believe it was Senator Fulton's bill, and I know it was addressed in a last bill and, like I said, I will get back to you on that. [LR249]

SENATOR HARR: Thank you. [LR249]

NICK PADEN: I'm sorry I don't have that answer. [LR249]

SENATOR ASHFORD: Senator Council. [LR249]

SENATOR COUNCIL: Yes, and thank you, Mr. Paden. [LR249]

NICK PADEN: Sure. [LR249]

SENATOR COUNCIL: The data that the system itself collects,... [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR COUNCIL: ...has your company analyzed that data to give us some feel for how many occasions the device has prevented an impaired driver from operating? Do we have any data that shows that? [LR249]

NICK PADEN: They do analyze that data. In fact, there are circumstances, he's even said, where if I see a client who has a lot of fails or tampering--they also have, you know, if you try to tamper with the device--he said there are situations where we'll notify Probation immediately and say, you might want to take a look at this case, we have seen a lot of failed or tampers. But they do and it's all printed out in the reports that they

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mail out for each client. [LR249]

SENATOR COUNCIL: Is there some way that that data can be assembled so we can really get a feel for how effective the interlock device is... [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR COUNCIL: ...in preventing impaired drivers from operating? [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR COUNCIL: It would be interesting to see how many people who have interlock...ignition interlock devices installed who still attempt to operate... [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR COUNCIL: ...while impaired, and I think the data that is collected on these systems would give us some feel... [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR COUNCIL: ...for how often that occurs. And my next question is kind of technology related. [LR249]

NICK PADEN: Sure. [LR249]

SENATOR COUNCIL: And I appreciate knowing that there is this, you know, retest and that there's random...as you're operating. But it would appear to me that since this is blowing in and there's saliva associated with that, that there would be some way for this equipment to be improved to the point where it would not allow someone to operate if

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the wrong DNA, and I don't know how quickly that could be... [LR249]

NICK PADEN: Sure. [LR249]

SENATOR COUNCIL: ...you know, I don't know. I'm just sitting here thinking. And when Professor Stimpson talked about... [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR COUNCIL: ...the ability to get around an... [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR COUNCIL: ...ignition interlock, you know, there are certainly two obvious ways:... [LR249]

NICK PADEN: Yeah. [LR249]

SENATOR COUNCIL: ...drive a different automobile or have someone else blow into the device. [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR COUNCIL: But if you're having someone else blow into the device, it would appear that we could probably get to that next level of technology where the system could detect that that's not the person actually blowing into the device. [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR COUNCIL: But again, it's good to know that because I think a lot of people

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think ignition interlock, you just blow in, your car starts off and you're on your way.
[LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR COUNCIL: I'm encouraged that at least your equipment...is that universal, this every so...periodic, random... [LR249]

NICK PADEN: I'm pretty confident in saying that most,... [LR249]

SENATOR COUNCIL: Okay. Okay. [LR249]

NICK PADEN: ...probably all do retests. When I was out at the location there is a little newer technology to where you actually mount a camera on your dashboard and it takes a picture every time someone blows into it and that picture also gets recorded. It hasn't been perfected yet he said. It's a processor and it's extremely slow. They're still working on the technology and he said it's actually \$20 to \$30 more a month to install that type of ignition interlock, but the technology is improving. [LR249]

SENATOR COUNCIL: Okay. Thank you again. [LR249]

SENATOR ASHFORD: Yes, Senator Harr. [LR249]

SENATOR HARR: Thank you. Thank you, Senator Ashford. Mr. Paden, I guess I have a question if you violate. So right now it works. You get the interlock after day 15. Is that correct? [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR HARR: What happens if your case has not been adjudicated, meaning day

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16 you go out and drink or your blow a .10,... [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR HARR: ...but your case hasn't been adjudicated in the court? To whom does your company report? [LR249]

NICK PADEN: Okay, walk me through this again. The interlock has been installed. [LR249]

SENATOR HARR: Interlock has been installed,... [LR249]

NICK PADEN: Okay. [LR249]

SENATOR HARR: ...but the case hasn't been adjudicated,... [LR249]

NICK PADEN: Okay. [LR249]

SENATOR HARR: ...meaning there wasn't a finding of guilt yet, so there isn't a probation officer. [LR249]

NICK PADEN: Correct. [LR249]

SENATOR HARR: Person hasn't been put on probation There isn't a finding of probation or probation officer. [LR249]

NICK PADEN: Uh-huh. Uh-huh. [LR249]

SENATOR HARR: Let's say the person blows a .37. [LR249]

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NICK PADEN: Uh-huh. [LR249]

SENATOR HARR: To whom would your company report at that point? Would they call police? Do they...and is that reported...if you do call the police is that reported to somebody so it shows up in a PSI down...presentence investigation down the road? [LR249]

NICK PADEN: Sure. Uh-huh. That's a new one for me too. I don't know who they'd go to on that one. And again, I can find that out for you. I feel like I'm not being very helpful to you right now but that's a new scenario. I've never had that one explained to me before. [LR249]

SENATOR HARR: And if you do blow a .37,... [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR HARR: ...do you lose your interlock device or it just doesn't work? [LR249]

NICK PADEN: Right there on the spot? [LR249]

SENATOR HARR: Do you lose the privilege? [LR249]

NICK PADEN: Oh, no, you do not. They don't see themselves as kind of the authoritarian of, you know, you better pass these tests or we'll take it away from you. They just, you know, similar to, you know, like the media, we just take the information and pass it on. They don't take it upon themselves to take it away from you. [LR249]

SENATOR HARR: Okay. [LR249]

NICK PADEN: I do know...and the other interesting thing, they actually also do...they

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have volunteer clients as well, people who have never been in trouble. But he said, we have, I forgot what the number...you know 25 clients who I go out after work and have two beers and, you know, I don't want to take the chance ever and I'll blow and if my car doesn't start I'll come back in a half hour or 45 minutes and try it again. So not every one of their clients has been in trouble before. [LR249]

SENATOR HARR: And just so it's clear for the record,... [LR249]

NICK PADEN: Uh-huh. [LR249]

SENATOR HARR: ...on those situations, right now when you're put on, if you're on the Intoxilyzer, it's calibrated to...it's not calibrated to .08, is it? It's calibrated... [LR249]

NICK PADEN: No. Right now I believe it's .02 is what I was told; .02 basically if you're running late and you mouthwash before you run out the door, it gives you a little leeway for things like that. [LR249]

SENATOR HARR: Okay. [LR249]

NICK PADEN: I've also heard if you eat a substantial amount of bread, the yeast in the bread can even set it off. So that's why it's not .08 but they don't set it at zero either. [LR249]

SENATOR HARR: Great. Thank you. [LR249]

NICK PADEN: Sure. [LR249]

SENATOR ASHFORD: Senator Coash. [LR249]

SENATOR COASH: He answered the question that I had, so thank you. [LR249]

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SENATOR ASHFORD: Thanks. Senator Council has raised a great point about data. Anything, any information that anybody can add here today or maybe DMV later, obviously would be very helpful to know how many fail it, how many people pass it, that sort of information is encapsulated in the data that is kept. It's not recorded in real time, obviously, correct? It's encapsulated in the device? [LR249]

NICK PADEN: Correct. [LR249]

SENATOR ASHFORD: And it's calibrated after... [LR249]

NICK PADEN: I believe right now it is 67 days. [LR249]

SENATOR ASHFORD: Okay. And so we've been in...this thing has...well, let me see. When did it go into effect? Did it have the E clause on it? [LR249]

SENATOR HARR: January 1. [LR249]

SENATOR ASHFORD: Oh, this last... [LR249]

NICK PADEN: Yeah. Yeah, January coming up, '12, '12. [LR249]

SENATOR ASHFORD: Oh, January, and so we haven't actually even... [LR249]

NICK PADEN: Correct. [LR249]

SENATOR ASHFORD: That's right it was...so we don't really know yet what it will do. Okay. [LR249]

NICK PADEN: Yeah, a bill from last session will be January 1. [LR249]

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SENATOR ASHFORD: Okay. Okay, thanks. Thanks, Nick. [LR249]

NICK PADEN: You're welcome. [LR249]

SENATOR ASHFORD: All right. I think that's all we have. Who would like to come next and talk? Is Jane here from the county board? I don't see her here. Scott Carlson, is Scott here? There he is. [LR249]

SCOTT CARLSON: Morning. [LR249]

SENATOR ASHFORD: Morning. [LR249]

SCOTT CARLSON: (Exhibit 3) Members of the committee, my name is Scott Carlson, C-a-r-l-s-o-n. I'm the statewide coordinator for problem-solving courts and am employed by the Nebraska Supreme Court. I'm here today on behalf of the administrative of the courts and Probation in a neutral capacity as it relates to LR249. I'd like to describe to you the current state of DUI offender in Nebraska as we see it and what is currently being done. As Senator Harr referenced earlier in his testimony, the DUI offender can be classified into three typologies. The situational offender is described as an individual whose risk-driving behavior is a result of an isolated or situational event. The offender may have chemical abuse tendencies but with the correct intervention is not as likely to reengage in the negative behavior. The chemically dependent offender is described as an individual whose risk-driving behavioral is a direct correlation to their substance abuse addiction. Any supervision approach will require substance abuse treatment with a significant aftercare component to reduce the potential for recidivism. The third is the criminal offender and can be described as the individual whose risk-driving behavior is linked to criminal orientation and antisocial attitudes and likely just one of multiple offenses demonstrated. This individual may or may not exhibit addiction. Any supervision approach must include cognitive restructuring programming, treatment as

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needed with high accountability to reduce the risk of reoffending. Currently, as of October 1 of this year, there were 6,627 offenders on probation for DUI. In 2010, of the total number of DUI discharges from probation, 66 percent of probationers from district court and 79 percent of probationers from county court were discharged successfully. Currently, there are several evidence-based strategies being utilized by Probation and the courts for the DUI offender. The first is accurate assessments. Currently, probation is utilizing two different types of assessments. The first is the Nebraska Adult Probation Screen, NAPS. It's a validated instrument utilized to identify risk and need factors within the DUI offender. The second is the Driver Risk Inventory II and is recognized by the National Highway Traffic Safety Administration and assists officers in pinpointing specific areas in need of intervention. There are also several targeted community-based supervision programs and services being provided for the DUI offender. Such evidence-based programs that are currently offered, one is the DUI problem-solving court, which is the program I oversee. They apply the successful principles of the drug court model to address specific needs of the DUI offender. Currently, we have one pilot program in operation in Scotts Bluff County. These post-adjudicatory, specialized criminal court dockets are spreading rapidly, with nearly 600 now in operation or in the planning stage across the nation. The specialized Substance Abuse Supervision Program, or SSAS as we commonly call it, focuses on felony drug offenders, including DUI III and above, who are intensely supervised by highly trained officers and treatment professionals. The Nebraska Standardized Model for Delivery of Substance Abuse Services provides for standardized screening, assessment, and treatment for adult and juvenile offenders through referral for substance abuse services. The model requires substance providers, working with justice clients, to be trained in the treatment of offenders and held to certain criteria established by the Nebraska Supreme Court. This model has been recognized by the National Highway Traffic Safety Administration and the American Probation and Parole Association as a best-practice model for DUI offenders. There are approximately 620 providers included in the standardized model. The Fee-for-Service Voucher Program provides high-risk, substance-abusing felony offenders, including DUI III and above, the ability to obtain evaluation and treatment

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through financial assistance. This financial assistance is for outpatient, intensive outpatient evaluations, and short-term residential services. Continuous Alcohol Monitoring Financial Assistance, and I'll discuss continuous alcohol monitoring again shortly, provides financial assistance opportunities for offenders who undergo the CAM system. Reporting centers are community-based facilities that blend high levels of offender supervision with intensive on-site delivery of services. Currently, there are seven reporting center sites in Douglas, Lancaster, Sarpy, Cass, Dakota, Buffalo, and Dawson Counties. They target the treatment needs of offenders through a one-stop-shop approach, and that includes services such as transportation. Cognitive groups are another example of an evidence-based strategy. They are behavioral programs designed to change the offender's negative patterns of thinking. One program currently being utilized is called Driving the Right Way, which targets the cognitive thinking process of the DUI offender. Another important aspect is drug testing. Beyond traditional urine testing, three specialized forms are utilized by the DUI offender...or for the DUI offender through the courts and Probation. PBT tests allow for immediate detection for the presence of alcohol through breath testing. ETg testing allows for a detection window of up to 72 hours for alcohol use. And continuous alcohol monitoring, which is an ankle bracelet technology that allows for continuous monitoring of alcohol levels in an offender's skin. Of 962 individuals placed on CAM in 2010, 87 percent had neither a positive test nor made attempts to tamper with the unit. The threat posed by a DUI offender cannot be based on the number of offenses alone but, instead, a comprehensive understanding of the offender's typology and assessment. There is no one solution. The research to date clearly indicates the need for a multisystem approach that includes understanding addictions, holding offenders accountable, and working through cultural norms, and investing in evidence-based practices. [LR249]

SENATOR ASHFORD: Senator Harr. [LR249]

SENATOR HARR: Thank you, Senator Ashford. And thank you, Mr. Carlson, for coming to testify. [LR249]

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SCOTT CARLSON: Sure. [LR249]

SENATOR HARR: SSAS courts, as you call them, the DUI court differs a little bit from drug court. In both of them you plead guilty. Is that correct? [LR249]

SCOTT CARLSON: Correct. [LR249]

SENATOR HARR: So in the drug court, sentence is suspended until you either complete or drop out of drug court. [LR249]

SCOTT CARLSON: Correct. [LR249]

SENATOR HARR: Whereas in the DUI court you plead and your suspension automatically takes effect. Is that correct? [LR249]

SCOTT CARLSON: Correct. [LR249]

SENATOR HARR: And at the successful completion of a program do you...drug court, your case is dismissed. That does not occur in DUI court. Is that correct? [LR249]

SCOTT CARLSON: Correct. [LR249]

SENATOR HARR: Okay. [LR249]

SCOTT CARLSON: They do serve the mandatory minimum. [LR249]

SENATOR HARR: So you still...and you still the mandatory minimum. [LR249]

SCOTT CARLSON: Correct. [LR249]

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SENATOR HARR: Up-front or after having completed the program? [LR249]

SCOTT CARLSON: Up-front. [LR249]

SENATOR HARR: Up-front, okay. And I did have another question for you. You say...well, what is the success rate of your program, of the pilot program out in... [LR249]

SCOTT CARLSON: Of the pilot program? I don't have an actual figure for the DUI court. We're actually in the midst of a statewide evaluation of all drug court and problem-solving court programs in the state and that will be completed this month, and as part of that study we will have some accurate figures as to those rates. Typically, just anecdotally, approximately 70 percent. [LR249]

SENATOR HARR: Okay. And let me ask you, what is the average caseload of a probation officer? This is separate from DUI court now. [LR249]

SCOTT CARLSON: Pardon me? [LR249]

SENATOR HARR: Separate from DUI court, what is the average caseload of a probation officer, if you know? [LR249]

SCOTT CARLSON: A traditional probation officer? [LR249]

SENATOR HARR: What's that? [LR249]

SCOTT CARLSON: A traditional probation officer? [LR249]

SENATOR HARR: Yes. [LR249]

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SCOTT CARLSON: I'd probably have to defer to Deb Minardi, the deputy Probation administrator. [LR249]

DEB MINARDI: Depending on the (inaudible) of the offender, our (inaudible) offenders are 1 to 30, if it's a lower (inaudible) it can be anywhere up to (inaudible). [LR249]

SENATOR HARR: And do you know what percentage of DUI offenders are the probation officer's caseload? Let's go with the low end. [LR249]

DEB MINARDI: And again with respect to the DUI offender again it depends upon the severity of the offender. We don't go by offense per se. The offender is assessed and put into any of those classifications. The large majority of the DUI offenders, because the highest number of DUI offenders are first offenders, will typically fall in the moderate to low range for their first offense. [LR249]

SENATOR HARR: And so what percentage of a probation officer's caseload is a first-time DUI? [LR249]

DEB MINARDI: That could be 1 to 100. [LR249]

SENATOR HARR: Okay, anywhere? Okay. I have no other questions. [LR249]

SENATOR ASHFORD: Senator Coash and then Senator Council. [LR249]

SENATOR COASH: Thank you. I want to...in the exchange between the two of you regarding the problem-solving court was interesting to me. I'm familiar with the drug court and that process but did I hear you correct that with the problem-solving court you still end up with a DUI on your record and you still serve time? [LR249]

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SCOTT CARLSON: Correct. [LR249]

SENATOR COASH: So what do you get out of it? I mean the motivation for drug court is to get it off your record, not have to serve any time. [LR249]

SCOTT CARLSON: Correct. [LR249]

SENATOR COASH: What's the motive...how are you getting...what are you giving to DUI offenders if you're not saving them some jail time or keeping a DUI off their record? [LR249]

SCOTT CARLSON: Sure. And it is, it's kind of a tricky play to try and get an offender into DUI court. The model is sold around treatment. This is your ability to get out of that vicious cycle of getting in trouble, you know, drinking and driving addiction and what have you. And so those treatment services and wraparound services are available for that DUI offender. So it's a matter of convincing an offender they're going to get better. [LR249]

SENATOR COASH: So the people who participate in this problem-solving court probably aren't your situational officers,... [LR249]

SCOTT CARLSON: Correct. [LR249]

SENATOR COASH: ...but these are your chemically dependent offenders... [LR249]

SCOTT CARLSON: Right, you're typically... [LR249]

SENATOR COASH: ...who are taking advantage of this. [LR249]

SCOTT CARLSON: Correct. The offenders in DUI court are typically seconds and

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thirds. [LR249]

SENATOR COASH: Okay. All right. What's your...is there a plan to expand it beyond the pilot in Scotts Bluff or where are you with that? [LR249]

SCOTT CARLSON: Currently, the Supreme Court is tentative in regards to expansion for DUI courts until the study comes out as to whether our DUI court out in Scotts Bluff is being as successful and having as much impact as the drug courts are. So at that point, until that research comes out, we're not moving forward in that direction. [LR249]

SENATOR COASH: Okay. Then let me...I want to ask about the CAMs, the continuous alcohol monitoring. You stated that we had 962 people utilizing those last year with an 87 percent, I guess, success rate. Can you just talk a little bit about those CAMs and is the 962 just as many as we have out there or is this an underutilized resource to monitor offenders? [LR249]

SCOTT CARLSON: Again, I'd defer to Deb Minardi. [LR249]

SENATOR COASH: Okay. [LR249]

DEB MINARDI: The court has the ability to apply continuous alcohol monitoring to any offender that they see where there's an alcohol problem, so it can be anywhere from a first offense all the way up to a multiple offender or even different kinds of offenses. We have a small number of offenders who may be on continuous alcohol monitoring that have an alcohol problem but they're actually on probation for burglary. But the largest percentage is DUI and the court can place the offender on a CAM. What the financial assistance program does is that it helps offset the cost of that CAM device. There's an estimated \$12 a day cost for CAM, but the CAM financial assistance program works on a sliding scale fee. So if an offender is unable to pay for their CAM device, there's dollars there that will help them pay for that. The 978 offenders that you referenced,

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they can have...we can have a lot more, although there is a limit to the amount of dollars that are set aside for that particular purpose to help with the financial assistance program. [LR249]

SENATOR COASH: Thank you. [LR249]

SENATOR ASHFORD: Senator Council. [LR249]

SENATOR COUNCIL: Yes, again I'm going to follow up on Senator Coash's question about the DUI problem-solving court, because...wanting to know if there's another distinction. On the drug problem-solving court, and Deb kind of alluded to it in her last response, you could have someone charged with a non-drug-related offense and be allowed entry into a drug problem-solving court because underlying their criminal behavior is an addiction. [LR249]

SCOTT CARLSON: Right. [LR249]

SENATOR COUNCIL: Does that the same principle apply in DUI problem-solving court? Do you have people in DUI or in the...it's called DUI problem-solving court, but do you have people in that court who have nonalcohol, nondriving alcohol-related offenses where alcohol is the cause of their criminal behavior? [LR249]

SCOTT CARLSON: No, they would all have a DUI. [LR249]

SENATOR COUNCIL: All have a driving-related alcohol (inaudible). [LR249]

SCOTT CARLSON: Correct. So any...if, you know, there was an alcohol issue but not an offense issue then they would likely be in a regular drug court. [LR249]

SENATOR COUNCIL: Okay. Because I mean at one time the drug problem-solving

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courts were not accepting offenders who did not have a drug dependency...who did not have an alcohol dependency, it had to be a drug dependency. So I was wondering if that's altered any because they used to, if you had an alcohol addiction, you weren't permitted into the drug court. So perhaps that's changed. I haven't been having any cases over (inaudible). [LR249]

SCOTT CARLSON: It has. It's...you know, if there's some chemical dependency diagnosis... [LR249]

SENATOR COUNCIL: So if you can...if you have an alcohol dependency diagnosis, you are now eligible for... [LR249]

SCOTT CARLSON: Sure. [LR249]

SENATOR COUNCIL: Okay. Thank you. [LR249]

SENATOR ASHFORD: Deb, how many, if I might, just generally how many offenders are on probation in Nebraska, not only for DUI but just across the board? How many offenders do you deal with today? [LR249]

DEB MINARDI: A one day count we did estimated about 18,000. [LR249]

SENATOR ASHFORD: So 18,000 and, of those, 6,000 approximately or 6,500 are DUI-related, and there could be some crossover, I assume, is that...they could be both. [LR249]

DEB MINARDI: Right. And that includes juveniles as well. [LR249]

SENATOR ASHFORD: Juvenile probation generally is...plus everything else is 18,000. [LR249]

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DEB MINARDI: Correct. [LR249]

SENATOR ASHFORD: And you have how many probation officers, juvenile and adult, just ballpark numbers? [LR249]

DEB MINARDI: 350. [LR249]

SENATOR ASHFORD: Okay. Thanks. One last question: When you're assessing success, I assume the 79 percent district court success on DUI cases means they have discharged successfully, mean they successfully completed probation, and it doesn't necessarily assess recidivism, or does it? [LR249]

DEB MINARDI: No, it does not. [LR249]

SENATOR ASHFORD: And on the...okay. And do you have numbers? Do you keep any tally of those numbers of the 6,627 offenders year out, two years out? That data, I assume, is accessible somewhere but not compiled? [LR249]

DEB MINARDI: Right. [LR249]

SENATOR ASHFORD: Okay. Okay. Thanks, Scott, very much. [LR249]

SCOTT CARLSON: Thank you. [LR249]

SENATOR ASHFORD: Thanks for your report. [LR249]

SCOTT CARLSON: Appreciate it. [LR249]

SENATOR ASHFORD: We look forward to seeing the other...your other report when it's

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done soon. [LR249]

SCOTT CARLSON: (Inaudible). [LR249]

SENATOR ASHFORD: Okay. I'm a little...who else is here? Marty is here I know.
[LR249]

MARTY CONBOY: Sorry. You're right, it did take a long time. [LR249]

SENATOR ASHFORD: Yeah. [LR249]

MARTY CONBOY: Good morning. I'm Marty Conboy, the city prosecutor in Omaha, and I'd like to start out by just kind of giving you my observations of over 30 years of coming down here and sitting in this chair on DUI issues. I would also just like to start out by saying, just to give you an idea of where I'm coming from, I've just returned from San Francisco where I addressed the International Association of Forensic Toxicologists about DUI law. I've been to probably 15 states in the last five years to work with them on DUI law issues. I've been down here probably 100 times to testify on DUI bills, worked in a lot of things. I'm the chairman of the National Model DUI Law Committee sponsored by NHTSA, the national institute for alcohol crime and misuse; and the National Institute of Health. And I will tell you that Nebraska has the best DUI law in the country. This body historically has been, just as it is here, and I'd like to thank Senator Harr and this committee for bringing this forward, but there has always been a receptiveness and a willingness to look at these issues in this building very objectively with I think a very sincere effort to try and have a good DUI law. The model DUI law that we have come forth with is very similar to Nebraska law because we have so many good, well-thought provisions. I think we're doing a great job. We certainly do it often. As Senator Harr pointed out the other day, I think we're down here two or three times a year with DUI bills. But the fact is that there is this constant effort to try and have a good DUI law. Our enforcement is good. The per capita arrest rate for DUI in Nebraska is in the top three in

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the country. Our test rate, in other words the people who don't refuse the test, approaches 98 percent, which again is one of the top in the country. Our alcohol fatality reduction statistics are, if they aren't still number one, are close to the top in the United States. Nebraska is doing a lot of very good things on a lot of levels, on the court level, on the enforcement level, and on the legislative level. We are a state I think that is trying sincerely to continue to do a good job and this committee hearing right here is I think a great illustration that at a policy level this is a huge issue in Nebraska. I will tell you that there are I guess some things that I have observed in my experience and that is that while you can't classify all offenders, I see really three groups of people that most offenders fall into. The first are young offenders. The frustrating part about this is they just keep reloading. Just about the time the 22- and 23-year-olds figure it out, there's a new batch of them coming along. So you can't count on that group getting the message simply through deterrence. The second group are the occasional offenders. These are, I call them, the wedding reception crowd. These are people who normally do not drink and drive regularly but unusual circumstances occurred where they do. They go to the office event or this block party and then they get picked up. And these are people who are the most receptive to sanctions because most of them are otherwise responsible and really would not want to make that kind of bad decision. And the final group and the one that you've heard a lot about are those chronic repeat offenders, the people whose drunk driving is more a product of the fact that they're always drunk than the fact that they are making bad decisions. And so your solutions have to address those groups differently. There's not one solution that's going to solve all those problems. I would say as to young offenders, if I were going to focus one issue, it would be that we address young offenders as early as early grade school. I believe that people make decisions...we have a deterrent model. I mean all these penalties and the things we're doing are trying to get people to make a better decision. But when it comes to drinking and driving, I think if it's just strictly out of fear that is not enough. We can have hugely draconian penalties, but when somebody staggers out of the bar and gets in a car they're not sorting out in their mind, well, I could get 90 days this time. You know, they don't know what it is. They're not making the decision based on a deterrent. We need

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people to make decisions based on facts, and we've brought it up here several times this morning, you need good data, what is the status report in Nebraska, and that data is the kind of thing that young people need to hear. You heard from one of the experts from the Medical Center tell us that these alcohol crashes are the number one cause of death among these young kids. I mean we treat them for all sorts of diseases and we inoculate them, we talk to them 100 times a day about all sorts of health issues; this is what's killing them and, you know, we need to tell them that. We need to tell them, give them facts about how alcohol affects your body at an earlier age. When they're ready to start driving, we teach them all about, you know, triangular-shaped signs and, you know, bright headlights and stuff like that. They should be learning about drunk driving, about facts so that they can make informed decisions for themselves so that, you know, think how (inaudible) it would be for a kid to be sitting around at a party and say, I don't drink. And I challenge kids, you know, if you don't drink, don't you feel kind of uncomfortable even saying that, because there's this culture that we've got that that's just somehow not normal for a teenager. And that's something that we need to counter because those are the kids who become those 20-year-olds and the 22-year-olds that we see everyday and those are the people that 20 years later are those chronic offenders with six and seven offenses that we read about in the paper and we scratch our heads and say, where do these people come from? There's somebody in Nebraska with like 14 offenses. How does that happen, you know? And the answer is because early in the process we did not deter them or find the cures that they needed. The second group I think we are doing a good job with. Those are the responsible people and I think in Nebraska, probably uniquely in this country, those people accept responsibilities. Makes my job easy. They come in, I think they're contrite, they plead guilty, they accept their penalties, they feel very bad about the decision that they made, and very few of those people come back unless they really have a chronic alcohol problem. The final group is the hardest nut to crack and I would point out that in the interim study one of the things that was listed here was the determination of the impact of recidivism and particularly as far as the cost to correctional institutes and public health institute service and so forth. That shifting of costs I think is critical, because

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you've heard about this DUI court, and I was originally an opponent and on a national level have sparred with people all over the country. It was kind of funny because I'm in a forum that we discuss regularly issues and I've been convinced, as this has been refined, to be a postconviction process and that the resources are now being given to it that it is a valid and very useful alternative for some of the sanctions. Senator Coash asked how does that work as an incentive, and that's a great question and that's why it typically only applies to those people at the felony level. We have got a great penalty system set up because we can tee those people up and say, this is your fourth offense, you're going to go to the penitentiary for five years potentially. Here's the alternative: you serve the statutory minimum, whatever this body sets that at, or you can even adjust it for people who choose to use treatment as an alternative, and that's an interesting concept to allow people to trade off treatment for jail. But in that case, when that person is at that crossroads, penitentiary or this very difficult and time-consuming program--it lasts a couple of years, the point is those are the people who say yes that we are going to have the most success with. And the ones who say no I think maybe the time in penitentiary maybe is appropriate. If they're just saying, I don't care, I'm not even going to try to correct this problem, we've at least had a very early process of narrowing the field. The success has been great with those people who do have that incentive because it's constant. They get six months into it and they are just falling off the wagon literally, then you bring them back and you either remind them or follow through on it, and that accountability is a real key to the success of this program; it has been throughout the country. And I would suggest you can get Dave Wallace or some of the people from the National Center for Courts to come in and talk to you about those programs and how they've been refined. And the interlock is another great tool. This Legislature has increased the use of interlock, modeling it to be, again, one of the better programs in the country. Senator Harr, in answer to your question, the reason we don't have accountability for those people who get it initially, and now it's going to be mandatory for those ALR people, is because our Supreme Court, in State v. Hansen, distinguished a punitive matter, which would be when they're convicted, as opposed to a societal protection matter which is the administrative, and that's why we don't have a

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double-jeopardy issue, but in that situation it is a specific deterrent. At least they can't...if they are at a .37, there probably is no accountability at that point but there is certainly a deterrent. They aren't going to be able to endanger society in that car at that time. So that is in consistency with the state statutory and court regulations, so that probably is something that the court might consider later. I mean if you're coming in for sentencing and you've been doing that poorly while you've been waiting for court, that probably should be an issue. The SCRAM devices, those continuous alcohol monitoring devices, are a tremendous technology. I am told that there are new technologies which are going to be substantially cheaper. Cost has certainly been the deterrent. It's a great tool but it's an expensive tool. Twelve dollars a day for the average offender who's on probation for six months or a year, that's prohibitive and the courts recognize it and just won't do it. Another area that we need to focus on this state that I think is probably one area we're behind on and that is drugged driving. The use of drugs and driving are seldom discussed in the conversation but they are a huge problem and we're learning more and more as data is coming forward. We require every fatality that people be tested for alcohol, so we know how many people are involved in that. But we don't do that for drugs and where it has been done the statistics are staggering: 50 percent or more fatalities, one or more of the drivers has been using some sort of either medication or narcotic medication or illegal drug, staggering statistics. And we are just now getting to the stage where we test for that and we are, you know, using the appropriate responses. Interlock doesn't do any good for somebody who's taking drugs. I mean the preliminary testing, all the things that we do don't address that. So that is an issue that we need to continue to look at. Another huge problem is the people who continue to drive after they're revoked, and I think Senator Council's question about what are the transportation alternatives, because in the real world people need to get around. Interlock I think has gone a great step towards allowing that. I think that was one of Senator Flood's concerns in bringing that forward, and I think we have a great improvement there, that it realistically does allow those people who live outside major urban areas where there aren't public transportation alternatives to have some way to drive legally, because if they don't they're going to drive illegally. My office does 10,000

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suspended license cases a year in a city like Omaha and that's probably representative of what's going on elsewhere. It's a huge problem and we can't fill our jails with those people. They tie up the courts, they tie up law enforcement, they fill up our impound lots. I mean it is a real problem and we need to look at rational alternatives to deal with the reality that that is going to continue to happen. We can't count on that sanction solving our problem. So those are another thing. And I'd finally tell you that as you look at drug court or DUI court, it's going to be essential for the success of that program to divert funds from things like correction. It costs over \$10,000 a year to house somebody in our facility in Omaha and that is at a local facility. Imagine the cost when you talk about a state facility. And that's exclusive of medical and other costs. That's just to feed them. That money, you know, a fraction of that would be all it would take to have an offender stay out of jail and be in a program that would allow them to actually resolve their problems. And the final thing I'm going to say has to do with data. I would say that there is, unfortunately, a lot of anecdotal information. The data is out there and this Legislature, as part of this process, should demand a status report from Highway Safety and from the other agencies that you heard from here today what is going on in Nebraska in terms of hard facts, hard numbers. You know I would just mention to you, there was a question about the interlock. One statistic that I think is...that I at least am not familiar of ever having heard, has anybody in Nebraska ever been involved in a fatal collision with an ignition interlock in their car? I've never heard of one. In fact, I've never heard of one anywhere. So the specific deterrence value seems to be pretty good. I mean that's the kind of information, though, that you need to have, not me telling you what I can remember because I'm old. What do the people who actually know that stuff know? And that I think is a good starting point to see where we're at. Because I will tell you Nebraska is doing a great job and I am confident they continue to do so because of efforts like this. As much as I can be of help, I'd be very happy to. And as you can see, we have tremendous resources. One other question or one statement before...years ago we had an ad hoc committee of the Legislature. This body appointed a group, and I think if you (inaudible) some of these people in this courtroom, if you put them together in a room periodically and said what do we need to do, and reported to you with the

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benefit of those statistics, I'm talking about,... [LR249]

SENATOR ASHFORD: Well, that's what I was going to ask. I mean why don't (laugh)...we've got this expertise here. Now public health is getting engaged on intervention prevention. You've got immense experience, you're a valuable asset. You've got Probation. I mean we can...that would be a valuable thing to sit down and on a periodic basis, quarterly for example, and think about what's going on and... [LR249]

MARTY CONBOY: When we bring forth a DUI bill to this body, it would be nice to have it vetted. Have defense lawyers there, have representatives of the courts that... [LR249]

SENATOR ASHFORD: Oh, I think...and I think that the nice thing about the positive part of last year's bill was that it was so thoroughly vetted and that your group spent a lot of time on it and it made a difference. Senator Council. [LR249]

SENATOR COUNCIL: Yeah, I just have a question, Marty, based upon your experience at the national level and in visiting other states and what they do, one of the criticisms that I've heard and read from the public about our efforts to reduce drunk driving is the lack of use of sobriety checkpoints. And I don't know if there's anyone here from law enforcement but how is that working in other states? Do they have data that shows, you know, any correlation between reduced incidents of arrest or fatalities associated with sobriety, regular use of sobriety checkpoints? [LR249]

MARTY CONBOY: The data has shown repeatedly that it is a tremendous general deterrent. The arrest numbers at those checkpoints are actually fairly small considering the resources they use, and I think that's a frustration. For instance, in the Omaha Police, they look at saturated patrols arresting more drunk drivers, and they're right. But in terms of deterrence, in terms of the people who are out there who think, I'm not going to get pulled over, I've done this 20 times, it's not likely that I'm going to get pulled over, they change their thinking when they think I might just accidentally get stuck in one of

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these checkpoints and now my tremendous mad driving skills are not going to save me because I'm going to get caught. And that fear of arrest is one of the four principle deterrents. I mean for it to work you have to have a fear of arrest, a fear that you're going to be convicted, and a belief that you're going to be punished before deterrence will actually work. And for most of these repeat drunk drivers, they obviously don't think they're going to get caught. All the data shows that as a general deterrent it's very successful. [LR249]

SENATOR COUNCIL: Thank you. [LR249]

SENATOR ASHFORD: Yeah, that's my sense. Jim, you are nodding. Do you have any data on that? [LR249]

JIM STIMPSON: Not with me but yeah. [LR249]

SENATOR ASHFORD: Well, not with you necessarily but do you have back at the shop there? [LR249]

JIM STIMPSON: Yes. (Inaudible). Absolutely. (Inaudible) What he's saying is absolutely correct. (Inaudible). [LR249]

SENATOR ASHFORD: Great. Any questions of Marty? The 10,000 suspension prosecutions, of those how many are generally related to DUIs? Are they all, because they can be suspended for other reasons? [LR249]

MARTY CONBOY: And truthfully, not very many. It's a very small percent. And that kind of dilutes the process because those are obviously much more serious matters than somebody who didn't pay a ticket... [LR249]

SENATOR ASHFORD: Right. [LR249]

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MARTY CONBOY: ...or his insurance expired. [LR249]

SENATOR ASHFORD: Right. [LR249]

MARTY CONBOY: And yet we treat them all similarly. They all wind up in the same line. [LR249]

SENATOR ASHFORD: Well, and that brings up a question. Should we address that issue somehow? I mean it's a lot of court time, is it not? [LR249]

MARTY CONBOY: It is, and there are probably ways that that could be...you know, again, the process of just trying to get people to just pay those tickets, for instance, we spend an awful lot of money as a collection process by arresting them and prosecuting them just to get them to go out and pay some tickets. And for those people who don't have ready access to the money to pay it, then they just kind of go and, you know, then they get more tickets and more tickets, and pretty soon...I've run into people who literally have never had a legal valid driver's license and they're 40 years old. They just get behind on that and can't get out of it. [LR249]

SENATOR ASHFORD: Okay. (Laugh) I don't know what we do about...that's another topic I guess. Marty, thanks for everything you...all your years of work and your national work too. Doing okay? [LR249]

MARTY CONBOY: Yeah. I just had surgery a few weeks ago. [LR249]

SENATOR ASHFORD: Okay. [LR249]

MARTY CONBOY: That's what happens when you get old. [LR249]

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SENATOR ASHFORD: Well, it could happen when you're younger, too, I think. [LR249]

MARTY CONBOY: It just takes longer it seems like. [LR249]

SENATOR ASHFORD: Yeah. Diane. How many other testifiers do we have here today?
A couple more. [LR249]

DIANE RIIBE: Good morning, Senator. [LR249]

SENATOR ASHFORD: Good morning, Diane. [LR249]

DIANE RIIBE: (Exhibit 4) Members of the committee, thank you for the work that you've done. Thank you, Senator Harr, and thank you to Andy, and our apologies for not being maybe more helpful in light of some things we had going. I would reiterate what you've heard from the speakers before, particularly Marty. We've made some really good progress and this body has looked at some really good proposals. Speaker Flood's proposal last year and others have made some significant kind of leeway. I would also say just for the record, as Marty, I have that opportunity to speak to other groups and organizations and professional groups across the country. I also just finished serving on a public health advisory task force for the CDC that came out just in the last few days with a guide on alcohol outlet density. I also serve in a European Union-U.S. Civil Society Dialogue that will meet again in Washington in the next few weeks, so I have many of those opportunities. And I think as Marty said, we're blessed with some of the expertise and, yes, we're just getting older. There are different types of interventions. You've heard some of them. What a good day; some good information you've had. But when dealing with drinking and driving behavior, we can look merely at the actions of one driver at a time. And you've heard some of that and we should do that and as part of our strategies in tackling the issue. But perhaps even more importantly, Senator Ashford, as you have talked about, we make the most progress when we begin to look at the issue at a place that exists much earlier than at a time when the individual

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decides to drink and then drive. Drinking and driving is preceded by high-risk behavior known as binge drinking. In fact, 85 percent of drinking and driving episodes were reported by binge drinkers, according to the CDC. And then of note which is very important in our discussion today, most people who drink are not alcohol dependent or alcoholics. Again, most people who drink are not alcoholic or alcohol dependent. They simply drink too much on occasion, and those that drinking episodes inflict devastating consequences to families, communities, and to our state. We all pay the price as taxpayers in increased costs to so many parts of our system, treatment enforcement, healthcare, you've heard many of those, as well as the people who love and care for those who are harmed by drinking drivers and those who do the harming. We all lose, frankly. We should do everything we can to avoid as many of these tragedies as possible. So what if we thought beyond the individual drinking driver and looked instead, as you said, Senator, to the public health model and considered the larger community environment that either makes it easier, even encourages sometimes someone to consume too much alcohol? We would suggest that taking this larger view of such a tough problem will begin to bring Nebraska to that next level of progress, and progress, frankly, equals lives saved. I'd like to note that the evidence-based interventions that I'll refer to later in my comments, and you have those in front of you, come directly from the Centers for Disease Control and Prevention and recommendations of the Task Force on Community Preventive Services. The strategies are based on systematic reviews of the scientific evidence and literature on intervention and effectiveness. The task force is an independent, nonfederal, volunteer body of public health and prevention experts with ongoing scientific and technical support from the CDC. So what do we know, to set the stage? We know that alcohol is the most commonly used substance in Nebraska and rates of underage drinking, binge drinking, and alcohol-impaired driving continue to be higher than the rest of the nation. Nearly 90 percent of the alcohol consumed by young people under 21 in the U.S. is done in a binge drinking fashion, and I did say 90 percent. Nearly 75 percent of the alcohol consumed by those over 21 is consumed also in a binge drinking fashion. We know that as binge drinking frequency increased, past month drinking after binge drinking...driving after binge drinking increased sharply.

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Binge drinkers are 14 times more likely to report alcohol-impaired driving than nonbinge drinkers. Young people under 21 in Nebraska are responsible for nearly 20 percent of all of our drinking and driving crashes. I'd like to give you a sense and kind of add some to what Marty Conboy talked about in talking about young people and particularly their decisions. Unfortunately, what we know from again the literature and brain development of young people is that they are not developmentally ready, particularly that frontal lobe, the hippocampus, to make those kinds of informed decisions until their early to mid-20s. Again, males mature more slowly on that regard. That is not a joke; that's truth. What options are available for policymakers and communities to choose from? And again, we've taken some good steps in recent years; we should be commended and be glad for that. What are the proven strategies so we simply don't spend our time reinventing the wheel? What if we look beyond again the individual to the larger comprehensive public health approach? The proven strategies are not necessarily the politically easy steps but they are, without question, effective at saving lives and reducing the negative consequences and harms of binge drinking and drinking and driving across the age span. And again as a reminder, most of those episodes are binge drinking episodes unfortunately, not the chronic repeat drinking driver as you've heard mentioned before. The top strategies identified to prevent excessive alcohol consumption and related harms, and again after a systematic review of all of the literature, based on that science include, first, dram shop liability. We continue in this state to have a partial law. We don't address sales to intoxicated or provision to intoxicated, and we need to include both the on-sale and the off-sale locations because we know that on-sale locations and off-sale can be equally harmful, depending on the type of business. Increasing alcohol taxes: Higher alcohol prices are consistently linked to lower alcohol-impaired driving, as well as youth alcohol consumption. Twenty percent of drinkers consume 85 percent of the alcoholic beverages. Maintaining limits on days and hours of sales: Unfortunately, we've taken some steps backwards on this in recent years. Regulation of alcohol outlet density: Nebraska's liquor licenses have grown by more than 30 percent over the last 20 years while our population has grown by about 14 percent. Maintaining minimum legal drinking age laws, and again we can make some improvements. Without going into the

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details, I'll just give you the surface of it. We could improve our zero tolerance law, the consequences that are there for young people. We could improve our use and lose law which right now applies only to those 18 and younger, so if a young person uses alcohol we don't, if they're 19 or 20, provide for them the same penalties as we do the younger. Enhanced enforcement of laws prohibiting sales to minors: We have always known that the opportunity to do better, when we have the most accurate, irrefutable signs in front of us is better. We know that some of the best attack on recidivism is, quite frankly, prevention. It's that up-front work that we do. We stand ready to do our part. We're grateful for the work that you've done in doing your part. We really thank you for the work that you've done, not just today but in the preceding months and years. There's really no doubt that we can make progress if we have these minds together and working collectively on some good solutions. Thank you. [LR249]

SENATOR ASHFORD: Thank you, Diane. And again, I would...as I have, I would encourage you, and I'm sure you already are doing this, working with Jim and the UNMC and Marty and to come up with a comprehensive public health model. It would be great to have a document. And we get a lot of documents that are telling and important for us to review. It would be helpful I think to the committee, and I think in the spirit of Senator Harr's initiative here, is for UNMC, for your group, for Marty and others, Probation, to really kind of bring all that information together for us so that we can see where we are, because again, the one-off solutions we need...how do they fit into the comprehensive approach, the public health approach? How do we prevent the drunk driver from getting in the car and driving? And that's public health, and what evidence-based solutions are out there? So all these things are...this information is good. One place would be helpful I think to all of us and to society, you know, to the... [LR249]

DIANE RIIBE: Well, I can say, Senator Ashford, you have much of that. I will tell you that the piece you have, the top sheet here... [LR249]

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SENATOR ASHFORD: And I think this is all good. [LR249]

DIANE RIIBE: Absolutely. [LR249]

SENATOR ASHFORD: No, absolutely good, and I'm not at all...that's not a criticism. I just think... [LR249]

DIANE RIIBE: No, no. [LR249]

SENATOR ASHFORD: ...we have this expertise and bring it all together and build a common report with UNMC I think would be great, so... [LR249]

DIANE RIIBE: Right. Well, real quickly, what I was going to say is that piece actually is the most comprehensive looking at all the research out there over the period of time that we have. That provides the environmental public health approach that says what does the community environment look like and... [LR249]

SENATOR ASHFORD: Well, for example, I'm very interested in what Senator Council has brought up about transportation. [LR249]

DIANE RIIBE: Absolutely. [LR249]

SENATOR ASHFORD: I mean I'm always...I'm not happy to see a bunch of kids running around, you know, with their feet sticking out of the window in a limousine, but at least they're not driving. And so, you know, there are...there could be some innovative ways to encourage people to...there could be liability things we could work on... [LR249]

DIANE RIIBE: Uh-huh. [LR249]

SENATOR ASHFORD: ...that would help encourage people to drive young people or

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any person who's intoxicated home. I mean I don't know what they all are. Obviously, Senator Lathrop, his law firm I think did a valuable service by saying you can, using their own money, you can get people off the street. And so anyway,... [LR249]

DIANE RIIBE: Yeah. [LR249]

SENATOR ASHFORD: ...I mean this is all good but I just... [LR249]

DIANE RIIBE: Yeah. [LR249]

SENATOR ASHFORD: ...I think the comprehensive approach is... [LR249]

DIANE RIIBE: And thank you for that. For those over 21, that's especially important. I would just let the committee be mindful that nine deaths occur of young people that are alcohol related today; three of them are drinking and driving, the other six are other. So we have to be careful to say this is a critical issues but there are other ways, unfortunately, the young people using alcohol kill themselves. [LR249]

SENATOR ASHFORD: Yeah, there just aren't any bad ideas. [LR249]

DIANE RIIBE: Right. Right. [LR249]

SENATOR ASHFORD: So thank you very much, Diane. [LR249]

DIANE RIIBE: Thank you. [LR249]

SENATOR ASHFORD: Hobie, are you next? [LR249]

HOBERT RUPE: Good afternoon, Senators. My name is Hobert Rupe, Hobie, as the Chairman already recognized. I'm the executive director of the Nebraska Liquor Control

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Commission. And I'll say this is sort of strange because normally we have not been involved in the drunk driving aspect of it but I think that one of the things that's happened, you know, from Senator Harr when he's been looking at it is, you know, trying to make it a more holistic look at the issue, and I think, Senator Ashford, you hit on that. And so I'm sort of here just to sort of testify, maybe answer some questions about the service side of the alcohol, where is the alcohol coming from, what's going on with it, how it's being utilized. You know, the first thing I will say, you know, I think that we should have more uniformed guidance going one way or the other because you do have a lot of expertise. I mean you have a lot of expertise within this very room. There's very many people who have served on very national committees, trying to look at alcohol policies as a whole, and I think drunk driving, although it's one of the issues here, I think whenever you're looking at an overall alcohol policy, I believe you need to have those stakeholders in the room and especially those people who have the information they can give going forward. A couple questions of things I can answer, and Senator Coash can probably back me up on this at least. This is somewhat anecdotal, this isn't evidence. I believe that one of the things that this committee might want to look at is the way that taxi services are allocated through the PSC in that regard. One of the complaints we hear a lot from licensees, and I will say, you know, broadly but especially in Lincoln, is that visitors to our city are amazed they go out to a bar or restaurant, ask them to call a cab, and they are told there's a two-and-a-half-hour wait. Well, what's the alternative? Either someone drinks and drives and, you know, takes that risk or they find somebody else. And so I believe that that is one area I believe that this committee can look into is in those regards. The issue has been brought up a couple times regarding excise tax issues, just, you know, and part of the purpose here is I serve as information for you. To let you know the current excise tax picture in Nebraska: beer is taxed at 31 cents a gallon; wine, not farm win produced in Nebraska, is taxed at 95 cents a gallon; and distilled spirits are taxed at \$3.75 a gallon. Last time I looked at that, that sort of puts us towards the middle at least of currently the other states, although we are a little high in our neighborhood if you compare the surrounding states. I'm not going to say anything but somehow Colorado and Missouri have remarkably low beer rates. I don't

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know of any major manufacturers located there (laugh) but...so it sort of deflates our region. But overall, we're sort of in the middle. [LR249]

SENATOR COUNCIL: Ah, Coors and Busch? [LR249]

HOBERT RUPE: We anticipate probably collecting approximately \$29 million this year, or close to it, in excise tax. I've already looked at, you know, how there are a lot of different people who have an interest in alcohol policy. You have the commission on the licensing and regulatory side of it. You've got Department of Roads, though the Office of Highway Safety, looking at, you know, some of the enforcement issues. You've got HHS taking a much broader look at it, at least I assume so based upon the amount of information requests I get from them. And then you've got other people who are looking at it. So I think, you know, the information is out there to look at but I think bringing it forward and sort of having a uniform, you know, policy is what is possibly needed. I could answer any other questions anybody might have in particular. [LR249]

SENATOR ASHFORD: Yes, Senator Lathrop. [LR249]

SENATOR LATHROP: The last couple of years we've had Senator Carlson come in with a dram shop bill, and every time we have Senator Carlson come in with a dram shop bill we hear the industry say we're working with the liquor control guys to come up with server training and some mandatory serving training or a program of server training. Can you tell us where that's at? [LR249]

HOBERT RUPE: I can tell you where it's at right now. As you're aware, years ago there was a dram shop bill which only partially got introduced but part of that had the ability of the commission to create a minimum standards for trainings. Last time I checked we have currently certified, I believe, 11 different providers who can... [LR249]

SENATOR LATHROP: Say that again. I'm sorry. [LR249]

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HOBERT RUPE: Eleven different providers who can serve, alcohol training. [LR249]

SENATOR LATHROP: Okay. [LR249]

HOBERT RUPE: You know, our process is just the floor, it's not the ceiling. It's not mandatory. You know the issue, of course, whenever you're looking at mandatory is, based upon the Department of Labor estimates, there's approximately 55,000 people who are currently employed in the beverage server industry. And when the first idea was brought up, I don't think there was capacity within the system unless there was a big investment at that point in time, i.e., tax dollars, to be able to do it. And there seemed to be a reluctance during that time to go forward in that method. The capacity is building. I can tell you what the commission has been doing with those certified training programs. [LR249]

SENATOR LATHROP: Can you, before you do that, can you tell me is server training something currently with these 11 providers where you have to go to some facility or is this done on-line? [LR249]

HOBERT RUPE: Both. Most of them are...most of them are live actions, one's we've certified. We have certified some on-line ones. One of the ones we first certified was from the University of Nebraska that we had worked with years ago, along with the city of Lincoln, coming up with a server trainer. That is one we still continue to support financially every year. The commission gives \$20,000... [LR249]

SENATOR LATHROP: Tell me what that costs, because it seems to me that once you put that on-line, I could take it, it wouldn't cost...it wouldn't cost... [LR249]

HOBERT RUPE: There are no costs for that. There are no costs for that,... [LR249]

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SENATOR LATHROP: Okay. [LR249]

HOBERT RUPE: ...you're absolutely right, currently. [LR249]

SENATOR LATHROP: Okay. Then why is it becoming or why are you saying that expense is an issue if we have something on-line and there may be 55,000 people serving in bars and C-stores but if they can take the thing on-line and it doesn't cost anything, what's the downside to mandating that people who serve participate in even an on-line free mandatory server training? [LR249]

HOBERT RUPE: Well, for one thing, you know, there are different types. Some people prefer their own live training. We do get a lot of resistance to mandatory on-line from certain licensees. I mean there are people who, let's be honest, in our community who just don't feel comfortable utilizing a computer and wouldn't feel comfortable going for that. So although we subsidize and it is about \$20,000 a year so it's not...we don't charge them. Right now we're subsidizing hosting of the mainframe, the commission is, because we thought if we weren't going to have a certified training program we want to make sure the one that was most widely available. So that's one reason why so far the commission has been subsidizing that (inaudible). [LR249]

SENATOR LATHROP: Okay. Let me ask a question before you continue your explanation. If we're spending \$20,000 to have an on-line computer training for people that serve alcohol, how many people are actually completing that training right now? [LR249]

HOBERT RUPE: I would say, last time I checked, I'll give you the exact numbers, were about 4,000 people have taken it. And because it's not mandatory here's why we're getting that number. The commission has the ability to place reasonable restrictions upon a licensee and the three commissioners for about the last two years, in the effort to utilize our theory that we're trying to bring a licensee into compliance, generally on a

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first offense, like a sale to a minor, like a failed compliance check, not only will there be a minimal probably ten-day suspension which they pay up as a fine but they will also, they and all their staff, will be ordered to take and show proof to the commission within 60 days of completion of one of those courses. [LR249]

SENATOR LATHROP: Would that suggest or would it be fair to conclude from that, that it's being used as part of the process of the Liquor Control Commission that at least the commissioners believe it's effective? [LR249]

HOBERT RUPE: Yes, the commissioners do believe it's effective. [LR249]

SENATOR LATHROP: And if it costs \$20,000 to host, does it cost more if we have more people use it or is it \$20,000, that's a fixed cost, and if we have 4,000 people use it a year it's the same price as if we had 55,000. [LR249]

HOBERT RUPE: Right now that \$20,000 is just to maintain the Web site. So anytime we need to update this, we have to allocate additional resources for that. [LR249]

SENATOR LATHROP: And that happens with the first person that takes the training. In other words,... [LR249]

HOBERT RUPE: Yeah. [LR249]

SENATOR LATHROP: ...the costs that you're describing are fixed costs of maintaining the Web site... [LR249]

HOBERT RUPE: Yeah. [LR249]

SENATOR LATHROP: ...and they don't grow with the number of people using it. [LR249]

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HOBERT RUPE: You're right. [LR249]

SENATOR LATHROP: So whether we go along like we are or we mandate server training for all 55,000 people who are serving alcohol, it doesn't change the commission's costs to run a Web-based server training program. [LR249]

HOBERT RUPE: Yeah. Right now the University of Nebraska runs it; we subsidize it. Now the area where there will be costs will be maintaining the database because most times if you're going to take a training course under the existing statute, you can certify those training for up to three years. And so there isn't a cost to the commission, so far it's about \$10 per person who wish to become certified and show proof of that, to maintain the database, to make sure that they continue to update their training. So the costs that will go up exponentially is...and, you know, hopefully there's ways we can do it, we are looking at ways to make it more cost-effective, is once the training is offered how do we make sure that people have taken it, how they serve, you know, maintain those records of those individuals. I know city of Lincoln right now is looking, and we have been working very closely with them, with the idea that, you know, I've always been of the opinion that statewide mandatory server training is coming. The city of Lincoln is going... [LR249]

SENATOR LATHROP: I would say it is too. It's coming the next time we have a dram shop bill in here. [LR249]

HOBERT RUPE: Yep. Well,... [LR249]

SENATOR LATHROP: I'm kind of frustrated because we go through this and it shows up not because the industry comes in and says it's time for mandatory training. It comes up as a defense to a dram shop bill. [LR249]

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HOBERT RUPE: Well, the other reason... [LR249]

SENATOR LATHROP: And we have one sitting around here. [LR249]

HOBERT RUPE: Yeah, the other reason I think you're going to see it... [LR249]

SENATOR LATHROP: It might even be out on General File. [LR249]

HOBERT RUPE: The other reason I think you're going to see that is because, you know, the local communities can regulate where the commission hasn't and you're seeing cities which are adopting certain mandatory server trainings. I know Kearney has one, North Platte one. Unfortunately, North Platte's is not sufficient to be certified by the commission, doesn't go far enough. And so I think the industry is now looking at it and I think they're going to acknowledge that a statewide mandatory system which is applicable to all licensee is going to be preferable to what they're seeing right now, where you're seeing different cities pop up with different criteria as opposed to different. What I was going back to, Lincoln, which does utilize our on-line server training, I've been working with them as they're going of how they're implementing it, because they're looking at, you know, it's the second largest city, how are they going to get those people certified, and they're coming up with an interesting way, is they're tying it off to almost everybody who has to work, at least in the city of Lincoln, at a bar or restaurant has to have a food handler's permit. And so they're doing a linkage there to try to reduce the amount of administrative costs to maintain that. [LR249]

SENATOR LATHROP: Well, what you're suggesting though is that we're going to let the second largest city be out front on it and it's going to become patchwork and... [LR249]

HOBERT RUPE: What I'm saying is, you know,... [LR249]

SENATOR LATHROP: Let me ask this. [LR249]

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HOBERT RUPE: Okay. [LR249]

SENATOR LATHROP: What do we need to do to make server training mandatory in the state across the state? [LR249]

HOBERT RUPE: Well, you would have to do a pass a law to make it mandatory. [LR249]

SENATOR LATHROP: You've already got the program, right? [LR249]

HOBERT RUPE: Yeah. Yeah, we've got the program. [LR249]

SENATOR LATHROP: And the university is already serving it. [LR249]

HOBERT RUPE: University. You would have give the commission the power to, you know, perhaps to expand that, you know, our rules, because I think we would be the logical entity to maintain that list. We probably would be looking probably maybe two, three FTEs would be the max because we also would have to do is if you allow this, you're going to make a decision. One of your simplest decisions you're going to have to make is do we want one training, one state-sponsored training, or do you want to allow private vendors to be able to have a certified training? Most states which have mandatory serving trainings have gone one way or the other. New Orleans...Louisiana, you have just the state one. Tennessee is similar to Nebraska where, although it's mandatory now, they allow third-party providers whose courses have certified to go forward. So that's the first decision you're going to make: is it going to be one way or the other? Give the appropriate funding for the staff to make sure it's maintained and, you know, like I said, I've been...I hope it didn't sound like I was letting Lincoln lead. I knew Lincoln was leading and I was using them, quite honestly, as a test subject to see what problems they were going to have in implementing that broad...or what ideas they were

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coming up with. So I think it's possible, I think it's probable, and I think given the fact that, you know, alcohol is a statewide issue there probably should be mandatory statewide server training and there's some different models out there and we are happy to work with you in coming up with which one we think works best for Nebraska.

[LR249]

SENATOR LATHROP: Okay. I'm going to put a bill in on mandatory server training and I would like your help. I want to know what we need to do so that we can keep track of them and what enforcement mechanism needs to be in place. [LR249]

HOBERT RUPE: Okay. [LR249]

SENATOR LATHROP: Because honestly, it's frustrating to sit here every time the dram shop bill comes up and have a discussion about server training because everybody in the industry says this is a great idea, you don't need the dram shop, all we need is mandatory training, and then people disappear and the subject doesn't come up again until we have the next dram shop or the reincarnation of the dram shop. And I think ours is sitting out on General File and I would just say that... [LR249]

SENATOR ASHFORD: It's still here. We can do a lot with it. [LR249]

SENATOR COUNCIL: It's still in committee. [LR249]

SENATOR LATHROP: Is it? Oh, okay. Well, whether I put a bill in or we amend that, if that's the route this committee wants to take, I think the time has come. And it seems to me that we don't need two or three full-time equivalent employees because that's sort of a way of trying to kill the idea with a fiscal note, right? [LR249]

HOBERT RUPE: Yeah. [LR249]

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SENATOR LATHROP: It seems to me that if it's done by computer, people can register after they take the test. The same program, the university can probably amend that program or change it. Somebody registers, they take the test, it shows they've taken it, and then when the Liquor Control Commission comes in they can access that and see if the people are certified. [LR249]

HOBERT RUPE: Yeah, I agree the technology... [LR249]

SENATOR LATHROP: I don't think we need to make it too difficult. [LR249]

HOBERT RUPE: I think, one thing, technology is making it easier to do that than when they first were...you know, because beforehand they were very much more paper sensitive in how they were going to do it. You know, I believe there will probably be at least probably one position because right now we've absorbed what we've got and we've got one of my licensing people doing this almost exclusively or at least half time. So there will be a little bit, because the other part of what you have to do, especially if you do it like we have right now where we have certified third-party providers, you're going to have to make sure that you go back and go through those providers and recertify those providers, making sure that they're up to date, making changes to laws, and actually audit those courses. [LR249]

SENATOR LATHROP: Do you think any of these vendors that are selling this training are doing a better job than the state's program? [LR249]

HOBERT RUPE: Some are. Yeah, I think a lot of it will depend upon, you know, the nature of how it's set up. Some people are on-line learners, some people are live learners. TIPS is one of the worldwide leaders on alcohol server training. They do a great program. That's a live-type program. ServSafe, which is supported by the Restaurant Association, does a fantastic job. And there's a combination of both as well. [LR249]

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SENATOR LATHROP: How long does it take to take the course on-line? [LR249]

HOBERT RUPE: Two to four hours. [LR249]

SENATOR LATHROP: If somebody just hired me, it would take me how long? [LR249]

HOBERT RUPE: Two to four hours. [LR249]

SENATOR LATHROP: Two to four hours? And is there a test at the end of it... [LR249]

HOBERT RUPE: Yes. [LR249]

SENATOR LATHROP: ...to see if you've learned what you needed to learn? [LR249]

HOBERT RUPE: Yes. [LR249]

SENATOR LATHROP: Okay. I don't see any reason why TIPS can't operate in the state and somebody can just jump over and take the test as soon as they're done taking the TIPS thing. [LR249]

HOBERT RUPE: Okay. [LR249]

SENATOR LATHROP: And I agree that if you're...especially if you're a chain like I'll just use Buffalo Wild Wings or something like that and they just say we're running all of our people through that program, and then have them take the test. [LR249]

HOBERT RUPE: Yeah, I agree that there's ways we can do it and I think technology is the way to the overall cost. [LR249]

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SENATOR LATHROP: Because the alternative is for us to increase some fee or some tax on liquor, which I can hear you say you don't want to see. [LR249]

HOBERT RUPE: That's your decision on the taxation. I just let you know where the tax is at. [LR249]

SENATOR LATHROP: Okay. Well, we're certainly going to hear that from the industry... [LR249]

HOBERT RUPE: Yeah. [LR249]

SENATOR LATHROP: And so my suggestion is we find a way to do it without some big fiscal note and then we see if it makes a difference. [LR249]

HOBERT RUPE: Yeah. One thing I'm going to put out there is I think education is only one part of it, you know? I mean...and Diane and I have had many discussions. You know, all the education you want without also the enforcement side of it...you know, because you try. You know, unfortunately, you can tell people how to do things but once they think there's a risk that something bad is going to happen, either criminally or administratively in front of the commission through enforcement, you know, you're only dealing with half the problem. [LR249]

SENATOR LATHROP: Okay. Okay. You will be hearing from Doug Koebernick. And if you're in the industry and you want to be part of the dialogue, call Koebernick, okay, because I'm serious about it. I think that we talk about it; it's time to do something about it. That's a piece that we don't have to wait for a study because it's effective. Am I right? [LR249]

HOBERT RUPE: Yeah. Yeah, I think it's effective. You know, it's not a silver bullet. I mean people will still make mistakes, but I believe that, you know, especially if you're

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looking through taking one of the training courses and if you'd like to, Senator Lathrop, I can arrange for you to actually sit there and actually take the on-line one. I can get you the password and... [LR249]

SENATOR LATHROP: Well, I probably should before I... [LR249]

HOBERT RUPE: You know, just so you know what's currently out there, at least on-line, so that would give you a better perspective, and I'll make sure that everybody has that access. [LR249]

SENATOR LATHROP: Okay. [LR249]

HOBERT RUPE: But I'd be happy to work with you on this,... [LR249]

SENATOR LATHROP: Great. [LR249]

HOBERT RUPE: ...because the commission, you know, believes, as you can see by their own actions, you know, when they start ordering it, you know, under their existing authority, they believe that there's a legitimate use for them. [LR249]

SENATOR LATHROP: Right. Okay. Thank you. [LR249]

SENATOR ASHFORD: Senator Harr. [LR249]

SENATOR HARR: Thank you, Senator Ashford. And thank you, Senator Lathrop, for hijacking this. Just kidding. (Laughter) But there is one thing I wanted to address was... [LR249]

SENATOR ASHFORD: This isn't Senator Lathrop's first comment on this issue. (Laugh) [LR249]

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SENATOR LATHROP: No, this is the first time I've... [LR249]

SENATOR HARR: No. [LR249]

SENATOR ASHFORD: As I recall, there's been about six years of it and we're still... [LR249]

SENATOR HARR: Yes. [LR249]

SENATOR LATHROP: It goes back to when Lowen Kruse was introducing the dram shop bills. [LR249]

SENATOR ASHFORD: ...without any, Hobie, without any responsible response by the industry. And you're a licensed industry. You know, lawyers have 10 hours of... [LR249]

SENATOR HARR: Yeah, 40. [LR249]

SENATOR ASHFORD: ...40 hours or whatever, no, we have 10, don't we? [LR249]

SENATOR LATHROP: 10. [LR249]

HOBERT RUPE: We have ten hours of continuing education. [LR249]

SENATOR HARR: Feels like 40. [LR249]

SENATOR ASHFORD: Which you have to do. (Laugh) So I think if someone has a license and they make the kind of money they make, we ought to have mandatory training. Yes, Senator. [LR249]

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SENATOR HARR: Yeah. And, you know, you talk about enforcement being so important and I think that is correct. You currently don't have the ability to register or charge fines. Is that correct? [LR249]

HOBERT RUPE: No, we don't. Currently, what the commission can do, they can suspend, cancel, revoke a license. Now under the suspension statute they specifically can pay, if it's a first offense, \$50 a day, or second or subsequent (inaudible) violation \$100 per day. So oftentimes if the commission puts a, say, 12-day suspension on a licensee, they're looking at maybe up to a \$1,200 fine, which then goes of course, according to the constitution, to the school board. [LR249]

SENATOR HARR: Would it be your recommendation that you be allowed to issue fines? [LR249]

HOBERT RUPE: I think it would be a better way to do it. Right now I can tell you we're dealing with an issue with a large supplier where we're going to give them probably a two-year suspension just so the fine is big enough to have it, because the problem which you've got right now, which we...where we look at from a suspension for somebody for, let's just do, sale to a visibly intoxicated or sale to a minor, you know, ten-day suspension. Well, a ten-day suspension or a \$1,000 fine on a mega firm like, you know, let's use Buffalo Wild Wings, I don't know if that's going to...you know, is that going to have the same effect as a one small grocery store, mom-and-pop type (inaudible)? So you've got an issue of where we look at a penalty phase as progressive in nature and try to bring a licensee back into compliance, I think having more discretion on...able to do fines might give us a little more discretion to forward that issue. [LR249]

SENATOR HARR: Thank you. [LR249]

SENATOR ASHFORD: Okay. Thanks, Hobie. We're going to conclude at noon. How many people want to testify? Two more? Okay, we're going to stop at noon so if

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anybody else wants to submit some written materials that's...Kathy, if you're going to come up and then the one last. [LR249]

KATHY SIEFKEN: Good morning, Senator Ashford, members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association. I did not intend to testify today. I was going to be here observing, until it got hijacked. So here I am. We did not disappear. We have been working on a certification program for grocery stores and I have said for the last three, four years there was not training out there that addressed off-sale. There was not good training out there. We were...our program was certified I think maybe two weeks ago. The problem that we ran into and the reason that we decided we needed to have our own certification program is to control the cost, because that is going to be the hurdle. We understand that mandatory training is on the way and we have been trying to be in the driver's seat, prepared for it when it comes, and we were hoping that we would have a period to transition into mandatory training. The program that we put together is at a fee of \$10 per person, which is the lowest in the state other than the free one that doesn't do my members much good because it addresses the issues in the bars, and until just recently, it had not been updated for ten years. It was not a high-quality program. If we're going to invest those kind of dollars, we want it to be good training that will make a difference at the front end of our stores. And once we got that certified, we got everything taken care of, there is an additional fee that the Liquor Control Commission charges of \$10 per person to register that training. If you don't register the training you don't get any credit for it in the event that you are found in violation of selling to an intoxicated person or a minor. So now suddenly the price is \$20 per person and that is a hurdle. When you have got several hundred people that you need to train and you are required to pick up the cost of the training and pay those people their regular hourly rate while they're training, it becomes prohibitive. So the training isn't free. We have to pay for the two to three hours that they train, because it is not mandated. That's where we are right now. And in addition to that, we've got the \$10 that we have to pay to the Liquor Control Commission. So it's still a fairly expensive thing to do at this point in time,

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but I do want you to know I would like to work with people as we move forward. We didn't disappear. We understand. We heard what you said and we are responding. So if you have any questions, I'd be happy to try to answer. [LR249]

SENATOR ASHFORD: Senator Lathrop. [LR249]

SENATOR LATHROP: Is the training that you've just had certified, is that on-line training? [LR249]

KATHY SIEFKEN: Yes, it is. [LR249]

SENATOR LATHROP: So the employee at the Hy-Vee can sit down and take the... [LR249]

KATHY SIEFKEN: Uh-huh. [LR249]

SENATOR LATHROP: Is it a...does it take two to four hours to do this? [LR249]

KATHY SIEFKEN: Yes, it does. It took me three hours. [LR249]

SENATOR LATHROP: Okay. And are your people going through it now? [LR249]

KATHY SIEFKEN: No, because it's \$20 per person and that is prohibitive. When you've got...an example is Hy-Vee. When you've 3,000 people that you're going to train it becomes prohibitive. And our whole idea was getting the cost down, keeping it at \$10 per person and that would be the cost. And at \$10, people, my members are telling me that they will take that training. [LR249]

SENATOR LATHROP: Well, wait a minute. Why is it \$10 a person if it's your program? [LR249]

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KATHY SIEFKEN: Because it's the cost of maintaining the software, the program, all the work that goes in behind it. There's a cost to doing that. Once the program is written, you have to pay for the software costs. It's not free. And so it's an ongoing cost. And then there's the \$10 fee to the Liquor Control Commission, which is understandable simply because they have...if you mandate this and 55,000 have to be trained, they will be buried in paperwork and certification, in files. I can't even imagine it. What we did is we planned it so that we would give the Liquor Control Commission an administrative code, they would go on-line and they can plug in...type in any name that they want to, to check on the status of the certification, and everything will be there. It's at their fingertips so that they don't have all of that extra work that they would have to do on the back end. [LR249]

SENATOR LATHROP: Have you made a study of what other states are doing? [LR249]

KATHY SIEFKEN: Have I made a study? No, I listen to you. [LR249]

SENATOR LATHROP: I'm being serious with the question. [LR249]

KATHY SIEFKEN: Serious. [LR249]

SENATOR LATHROP: Do you know what other states are doing to... [LR249]

KATHY SIEFKEN: There are some states that mandate; there are a lot that don't. It's all over the board. [LR249]

SENATOR LATHROP: Do you know the states that do? [LR249]

KATHY SIEFKEN: That do mandate? No, but I can find out. [LR249]

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SENATOR LATHROP: Okay, because when you talk to Doug,... [LR249]

KATHY SIEFKEN: Uh-huh. [LR249]

SENATOR LATHROP: ...that's going to be one of the things that we want to look at,... [LR249]

KATHY SIEFKEN: Uh-huh. [LR249]

SENATOR LATHROP: ...how they're doing that. [LR249]

KATHY SIEFKEN: The other thing is you have to understand that we are interested in training our people to stop the sales at the front of a grocery store, and that's a different environment and a different time frame than what you see in a bar. So what we've done is we've got two training programs, they are both completely certified. One is geared toward bars and on-sale, the other is geared toward off-sale for our industry. [LR249]

SENATOR LATHROP: Okay. [LR249]

KATHY SIEFKEN: So we have both and anyone, not just our members, can take those tests for \$10 per person. [LR249]

SENATOR ASHFORD: Senator Harr. [LR249]

SENATOR HARR: Thank you. And I'll just be quick. You talked about Hy-Vee having to train all 3,000 employees. Really, we could limit it. They only have to train their employees that sell alcohol. So I know if I go to a Hy-Vee right now, I look to see how old the cashier is... [LR249]

KATHY SIEFKEN: Uh-huh. [LR249]

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SENATOR HARR: ...personally, because I know if it's someone under 21, they call 21 on aisle 5, and then they find a front-end manager to do the liquor sales. So there wouldn't...you really, at the end of the day, could just make only the front-end manager be able to sell the liquor and that would save them the money right there. So they only have to train that front-end manager as opposed to all the employees in the store. [LR249]

KATHY SIEFKEN: That really doesn't work because it slows down the front end and no one wants to do that. Customers get irritated when they have to stand in line. And so what everyone will do is they will train everyone that's going to be on the front end. We have 100 percent turnover per year in our employees so it's a constant training even though it's a three-year certification program. And in addition to that, they move around in the store so someone may not be cashiering today but they may be tomorrow. So what they do is when they begin, they train them on everything. Now the certification will travel with the employee so eventually you'll get to a point where it's not 55,000 people all at once, so they'll carry it with them. [LR249]

SENATOR HARR: I mean I guess you can decide if you...it's up the store. What I'm telling you is they don't have to train all their employees. If they choose, they can do that manner. I worked in one of those stores and, let me tell you, I was never allowed near money, probably justifiably, (laughter) but I was kept in the back room and I did stocking, and those people never...I wouldn't have to have that training. So I'm saying there are ways around this if we have to, so it's not as, yes, you're giving the worst-case scenario when you do 100 percent, but I think as stores become more familiar with this I think they'll refine how they do it and it won't be, hopefully, as bad as you... [LR249]

KATHY SIEFKEN: In Kearney, if you're touching the beer on the shelf you have to be certified. [LR249]

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SENATOR LATHROP: And they're doing it. [LR249]

KATHY SIEFKEN: And they're doing it. [LR249]

SENATOR LATHROP: Okay. [LR249]

SENATOR HARR: Okay. [LR249]

KATHY SIEFKEN: Uh-huh. [LR249]

SENATOR HARR: Thank you. [LR249]

SENATOR ASHFORD: Senator Lautenbaugh has the last say here. [LR249]

SENATOR LAUTENBAUGH: Well, I didn't realize I was going to have the last say. I've got a ground to cover then. No, not really. I do thank you for the efforts that your industry has taken so far on this and my last say will be a question that I don't know the answer to, you probably don't either. I see it as two very different risks, whether we're trying to train the person who's serving the drinks to be consumed on site versus off-sale. And I don't know how much of the problem is coming from off-sale versus people sitting at a bar, so I'll want to be convinced, I guess, that we're...there's a point to dealing with the off-sale or if it's 90 percent over here and, you know, 5 percent down here, which doesn't add up to 100 but, in any event, it's just an open question I have as to how much of a problem we're dealing with if we're dealing with the grocery stores, how much of the whole problem we're dealing with. [LR249]

KATHY SIEFKEN: And I believe that the grocery stores are probably not the largest problem but our philosophy is if we're part of a problem we need to be part of the solution. [LR249]

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SENATOR LAUTENBAUGH: Okay. That's a great approach to have. I just have a question in my mind as to what we should be required and where we get the biggest bang for our buck, if you will. [LR249]

KATHY SIEFKEN: And I would agree. You need to focus on where you can make the most difference. [LR249]

SENATOR LAUTENBAUGH: Thank you. [LR249]

SENATOR ASHFORD: Thank you, Kathy. Final testifier? [LR249]

STACY RYAN: Hi. My name is Stacy Ryan, S-t-a-c-y R-y-a-n. I'm testifying on just behalf of me. I'm the mom of a repeat offender, an adult child with one DUI in 2007 and a second in 2010. She had a blood-alcohol content of .19 on her second DUI. She didn't tell me, she didn't tell her siblings. I found out about it two weeks after she was sentenced. A few days later I saw her driving. I suspected she was not supposed to be driving but she wouldn't talk to me. She did tell her father, my ex-husband, a sitting district court judge in Douglas County. I had to dig for the facts so that I could attempt to help my daughter. I discovered that several extended family members, those she knew who would not hold her accountable, knew about the second DUI. Unfortunately, people with drinking problems will lie to you. People who enable alcoholics are in denial themselves. To convince those enablers of the gravity of my daughter's problem, I needed the facts of this DUI and I needed to understand the system. Despite having a law degree, it took me weeks to figure out the process and months to get straight answers from the right people. You may want to ask me if I think my daughter has been treated special because of her dad. Everybody I talked to assured me she was not treated special. These people are either lying or this is how Nebraska treats DUIs. In either case, Nebraska needs to start holding the entire system accountable. I pulled her criminal file, her probation order, and obtained the transcript of her sentencing hearing. I talked to everyone who could explain this process. And during this time my daughter

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continued to drive on a revoked license and to drink. Her father knew she was driving on a revoked license and when she drove to his home one evening he followed her back to her apartment. A parent who enables a problem drinker is troubling. A parent who enables a problem drinker and who is also a judge is disastrous, not just to my family but possibly to yours. I contacted the DMV; the Douglas County Prosecutor; her probation officer; the head of Douglas County probation; the Probation administrator; Judge Atkins, the sentencing judge; Jim Schaefer, her private attorney; her dad, Judge Coffey; Christine Bacarri, the alcohol counselor who evaluated her. I tried nicely to get information and to formulate a plan to get my daughter help, and I was told by the system that she was an adult and this was none of my business. I was told that I might just have to wait until something happens. I'm a mother; waiting till something to happens to my child or someone else is not an option for me. This belief that something must happen is insane and puts my child and the public in danger every day. Now as succinctly as possible, I will tell you why it is we have reoffenders. Punishment is delayed by the legal process. She came in front of a judge three and a half months after she drove drunk. For parents here, imagine if you waited three months to punish your child. During that three months she was not monitored by the court or Probation. She continued her behavior with no consequence. How seriously do you think she takes you? When she was sentenced, Judge Atkins never asked for the chemical dependency evaluation. Jim Schaefer, my daughter's defense attorney, gave a quick, uninformative summary. I've been told by the prosecutor that this is an entirely normal procedure because there is no reason to believe a lawyer would lie. The charges were plead down so that her high BAC, more than twice the legal limit, became a lesser offense. The prosecutor represents the state but she never asked for the evaluation either. My daughter's sentence was ten days in jail, 14 outpatient treatments, and AA meetings. Her court file reads as if she spent time in jail. In reality, she spent time in her apartment under house arrest over her spring break--a request made by Mr. Schaefer and granted by Judge Atkins. Several people have explained to me the substance abuse evaluation process. The evaluator or registered provider is obligated to follow some standards. They are to get collateral information from the offender's family: medical history, legal

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history, and the family's opinion of treatment. Common sense would tell you that a mother might know her child better than a registered provider. Common sense might also tell you that it's likely some family members enable the offender. Common sense would tell you that if there's a mother so insistent to give her input and critical information to the people able to order the offender to treatment, perhaps you should give that mother the time of day. That didn't happen. I explained to the evaluator that I had information that there would be no other source for. Ms. Bacarri cut me off and said she had to have a release signed by my daughter. When I asked, my daughter refused to sign the release. No evaluator should require a release for me to give input. I don't need information about my daughter. I probably know more about my daughter than my evaluator. My giving them information does not abuse the confidentiality. The evaluator, if she were competent, would welcome the info. This evaluator refused to talk to me. When I asked my daughter why she would not sign a release, she said, because, Mom, you'll tell them I have a drinking problem. The chemical dependency evaluator, a registered provider, told me that she does not follow the standardized model for substance abuse evaluations because in this case she didn't have to and sometimes there's no time. Her father gave input into the evaluation and he does not believe she has a drinking problem. She has family and friends who do not believe that two DUIs, a second at .19 BAC, constitutes a problem. So getting information from them resulted in an inadequate evaluation and inadequate treatment. It also resulted in a second evaluation at \$190 going to the same or another evaluator. I was told the model standards did not apply to my daughter's case because the state did not pay for the evaluation. I don't know how many repeat evaluations the state pays for because of inadequate first evaluations, but my daughter had two. Apparently, a way to avoid the state model standard is that the offender can pay for it themselves and they go to an evaluator before they are in front of the judge. That way they can appear that they're eager to do the right thing. My daughter told me her attorney told her to go to Ms. Bacarri. I think it's obvious, manipulating the system is unacceptable and likely results in repeat offenses because treatment is based on the evaluation. My daughter's treatment was grossly inadequate. One probation officer cannot baby-sit hundreds of offenders,

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so offenders continue to drive on suspended licenses and continue to drink. I provided information to Probation regarding suspected violations of probation by my daughter, but Probation would not take any action. How do I know they didn't take any action? My husband and I attended my daughter's review probation hearing. In less than four months' time, she tested positive for alcohol on three different occasions. What did the judge do? Nothing. The judge did not order more treatment or more punishment. Supposedly, my daughter promised Probation she would go to more treatment. Seeing Probation's inability or reluctance to hold my daughter accountable, I highly doubt anyone is checking up on this promise. Not even a note about the fails went into her court file, despite the fact that the state is required to keep a complete criminal history. Apparently, violating probation does not come under the definition of criminal behavior until and unless Probation wants to file a formal charge. If the public wanted to know about a drunk driver and whether they obey their probation, those files are incomplete or even misleading. If I wanted to convince the enablers that my daughter has failed three random tests I have no proof. Only Probation or the judge would know, but neither entered this info into the file. I could obtain the transcript of the hearing and I tried that and was told that the recording of that hearing is inaudible. Skeptical, I asked for the tape recording, which is a public record. The Douglas County Court Administrator, Leslie Douglas, and Judge Atkins both told me I'm not entitled to a transcript of the proceeding or a recording. I did finally get a recording. It's not inaudible; it's intelligible because it was made unintelligible. This is an ongoing struggle. The state is enabling my daughter and likely hundreds more like her. The last prosecutor I talked to got quite annoyed at me--it was not Mr. Conboy--got annoyed at me challenging the system, and the last thing he yelled at me over the phone was, when are you going to drop this crap? I think it's obvious I'm not going to drop this. The process you have in place is setting up people to fail, and failing means hurting or killing themselves or somebody else. Thank you. [LR249]

SENATOR ASHFORD: Thank you, Stacy. Any questions? Seeing none, thank you. Senator Harr, do you wish to close? [LR249]

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SENATOR HARR: No. [LR249]

SENATOR ASHFORD: Thank you for your efforts this summer and your staff in bringing this material to us and we'll reconvene at 10 after 1:00. [LR249]

The Committee on Judiciary met at 1:00 p.m. on Tuesday, October 11, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR254. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Amanda McGill; Burke Harr; Brenda Council; Tyson Larson; and Colby Coash. Senators absent: Scott Lautenbaugh.

SENATOR ASHFORD: Why don't we get started? This hearing concerns LR254, which is a study of the Adam Walsh Act and its application in Nebraska. Let me just give you a brief summary, and then there is a list of testifiers somewhere here. Here we go.

They're listed one, two, three, four, five testifiers that have asked to testify and then we'll have...and then there will be six where we've asked to testify and then there will be six...the sixth category is public testimony. So we will have...somewhere around 4:00 is when we will complete the hearing today, so that should give us plenty of time. LR254 is an interim study of Nebraska's sex offender registry laws that were changed by LB285, passed in 2009, going into effect on January 1, 2010. Testimony from hearings held on March 15 and April 5 of this year have painted a picture that the implementation of LB285 and the shift from an assessment-based registry to an offense-based registry in placing all offenders on the public registry has had consequences that require additional study by our committee to determine if additional changes to our state statutes are needed. It has been suggested by opponents of LB285 that the state is less safe, as we have shifted to a system that lumps all offenders together under a single registry, instead of separating those who pose little or no risk of reoffending from those who are believed to be most likely to reoffend. As a consequence, it is suggested that we have increased the likelihood by this law that we are not paying enough attention to those

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individuals who require the most attention. It should be noted that supporters of LB285 argue that the changes made under this law make the registry more fair to all citizens of the state of Nebraska who violate an offense that requires registration in the same...in that the same violation will yield the same length of time on the registry. LB285, which increased the number of registrable offenses, lengthened offenders' duration on the registry, as well as increased the frequency by which certain registrants must appear before the county sheriff of the county in which they reside, to verify their information. And this bill, as we all know, was implemented in 2009 in order to comply with the federally-mandated Adam Walsh Act. The Adam Walsh Act seeks to implement a more uniform sex offender monitoring system nationwide. To date, the state of Nebraska has been deemed not to be in compliance with the Adam Walsh Act, and as of July of this year, it is anticipated that we will lose 10 percent of Byrne Grant funds, which are utilized by our law enforcement agencies in various enforcement initiatives. The 10 percent reduction in Byrne funds is estimated by...to be in the neighborhood of \$196,000, if last year's federal appropriation for this program is maintained. It cannot be argued that we need to provide safety to the citizens of the state from those who would do them harm. However, what is in question here now is, are the attempts that we have made in LB285 appropriate? Do they make our citizens...are they fair and do they make our citizenry more safe? I think these are the questions that we have to answer and we will consider today. As for whether or not we will be found to be in compliance with Adam Walsh, I think this committee has always focused on what is best for the citizens of Nebraska and I see no reason to shift that focus, especially since our best efforts to comply with Adam Walsh have been deemed inadequate by the federal government. To assist us in collecting needed information, we will hear from the Attorney General's office, the State Patrol, the Department of Corrections, the County Sheriffs Association, and the County Attorneys Association, and I'm sure that there will be other testifiers as well. With that, I'm going to open the hearing to those who we have asked to appear and Colonel Sankey is here, somewhere. Is he here? From the State Patrol? [LR254]

DAVID SANKEY: Good afternoon. [LR254]

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SENATOR ASHFORD: Good afternoon. [LR254]

DAVID SANKEY: (Exhibit 1) Chairman Ashford and members of the Judiciary Committee, my name is David Sankey, D-a-v-i-d S-a-n-k-e-y, and I serve as the superintendent of the Nebraska State Patrol. I appreciate Chairman Ashford's invitation to attend today's hearing and I am pleased to provide information regarding the Nebraska State Patrol's role in the Sex Offender Registry Act...in the federal Sex Offender Registry and Notification Act, SORNA, commonly known as the Adam Walsh Child Protection and Safety Act of 2006. One of the State Patrol's many responsibilities is to maintain the state of Nebraska's Sex Offender Registry, as directed by state statute. Federal Law 42 USC 16912 requires each jurisdiction, including the state of Nebraska, to maintain a sex offender registry conforming to the requirements of the Sex Offender Registration Notification Act. Federal Law 42 USC 16924 provides that after statutory extensions, each jurisdiction is to implement the SORNA requirements by July 27, 2011. Additionally, federal code imposes a penalty of 10 percent of specified funds if a jurisdiction fails, as determined by the Attorney General, to substantially implement SORNA. SORNA established the office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, the SMART office, within the U.S. Department of Justice. The SMART office exercises the considerable discretion granted to the U.S. Attorney General by the Act. The SMART office has determined that the state of Nebraska has not fully implemented SORNA, but full implementation is not the objective at this time. Rather, substantial implementation is the objective to preserve full funding and to clear the path towards full implementation, if the state so chooses to do so. The SMART office, in a letter from its director on November 30, 2010, determined that Nebraska had not substantially implemented SORNA and specified three areas of concern with the Nebraska program which prevents a finding of substantial compliance. One of those three areas involves offenders whose predicate offense occurred before SORNA was enacted. This retroactivity provision has since been waived and is not a requirement for substantial implementation at this time. In a letter dated February 1,

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2011, Linda Baldwin, the director of the SMART office, again reminded us that SORNA mandates a 10 percent reduction in our state's Byrne/JAG funding if we fail to substantially implement SORNA by the deadline. Director Baldwin wrote again on July 28, 2011, and stated that their preliminary finding remains unchanged and Nebraska has not substantially implemented SORNA by the July 27, 2011, deadline. The Nebraska State Patrol has responded to Director Baldwin, disagreeing with that finding, making the appeal that the state of Nebraska has substantially implemented SORNA as we understand the terms. A final determination has not been made. The remaining areas of concern relate to juveniles and tiering of attempted crimes. The Nebraska Sex Offender Registry Act, 29-4003, applies to those who have plead guilty to, plead nolo contendere to, or have been found guilty of sex offenses. That terminology relates to a conviction and does not apply to juveniles adjudicated in Nebraska in juvenile court. Federal Law 42 USC 16911 applies the Act to persons convicted of sex offenses and provides that convicted includes juveniles adjudicated for covered offenses. But SORNA does not include all juvenile offenders. The pertinent section provides: "...convicted as including certain juvenile adjudications. The term 'convicted', or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse, or was an attempt or conspiracy to commit such an offense." Nebraska statute 43-279 provides the court shall make a finding and adjudication, rather than a conviction. An aggravated sexual abuse would be a felony, thus SORNA requires the registration of all persons adjudicated as a person described by 43-247(2) as having violated first-degree sexual assault in Nebraska statute 28-319(1)(a) and (b). This would apply only to those who are 14 years of age or older at the time of the offense and it must apply to attempts or conspiracies to commit such attempts...or, excuse me, such offenses. One mechanism is to incorporate this new language in to what would be 29-4003(1)(a)(v): any person who, on or after the effective date, was adjudicated. Or, expand "been found guilty" as a definition in 29-4001.01 to include adjudication of having violated 28-319(1)(a) and (b). On January 11, 2011, the Department of Justice

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published Supplemental Guidelines. The Guidelines acknowledge resistance by some jurisdictions to public disclosure of information about juvenile delinquency, adjudications, and exempts them from mandatory public Web site disclosure. This is discretionary, not required. If the Legislature chooses to, this could be accomplished with an amendment to either 29-4009 or 29-4013, which provides that no information shall be included in public notification concerning a person registered solely on account of being adjudicated as a person described by 43-247(2). Attempts: The SMART letter of November 30, 2010, identified several instances in which Nebraska played an attempt...placed an attempt in a lower tier than the underlying offense. SMART determined that this did not meet SORNA requirements. 42 USC 16911 and the Guidelines reference a specified offense or an attempt or conspiracy to commit such an offense. Keeping the current language, substantial implementation could be achieved by inserting an attempt or conspiracy to commit into the definition of aggravated offense in 29-4001.01(1) and directing, in 29-4005, that the registration period for a conviction for an attempt or conspiracy to commit an offense shall be the same as a conviction for the underlying offense. I share this information with you today because it is my understanding that the Judiciary Committee is interested in a summary of the changes necessary to current state statutes to achieve substantial compliance, as it has been related to the Nebraska State Patrol from the SMART office. We'd be happy to provide whatever assistance necessary in this endeavor. I appreciate the opportunity to be here today and to provide this information regarding the Sex Offender Registry Act. The State Patrol continues to strive to provide for professional and reliable services to the citizens and those affected by the registry and community notifications systems. I'd be happy to answer any questions you may have. [LR254]

SENATOR ASHFORD: Senator Coash. [LR254]

SENATOR COASH: Thank you, Senator Ashford. Thanks, Colonel, and thank you for bringing actual language changes. Should the committee choose to go there, we've got a good place to start. That's very helpful. I want to talk...I want to ask you some

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questions about the difference between the old system and the new system. The old system was based on a risk assessment? [LR254]

DAVID SANKEY: Yes. [LR254]

SENATOR COASH: Was an assessment-based system, and prior to the change that we made, it's my understanding the State Patrol that took the duty of completing those risk assessments, is that correct? [LR254]

DAVID SANKEY: Yes, that's correct. [LR254]

SENATOR COASH: So, did the State Patrol have...I mean these are...not anybody can just do these risk assessments. So who did you have under the State Patrol, as employees or contractors, that were doing those risk assessments? [LR254]

DAVID SANKEY: Well, we had several individuals. What would happen is we would have staff assistants that would collect the information. Basically, what's the criminal history--you know, the presentence investigation reports, all of the information that they could on the offender: what their background's been, what their offenses were, those types of things. Then, they would put the information into the risk assessment tool that was created for the state of Nebraska and then ultimately all of that would be reviewed by a psychologist that we had on staff that would review that. Then we'd classify the individuals, and then those individuals would have an opportunity...we'd classify them either a Level 1, a Level 2, or a Level 3, to determine whatever risk threat we thought they were to the community. And then those individuals would have a chance to appeal that if they so chose to. [LR254]

SENATOR COASH: Okay, so you had a few staff assistants who would collect the data and then you had one psychologist on staff who would actually take that data and make a final determination on risk at that point? [LR254]

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DAVID SANKEY: Yes, and would review the final outcome of the tool. [LR254]

SENATOR COASH: Okay. When we changed from that system to the offense-based system, what did you do with those positions that you were using for risk? Were they absorbed? Did you have to RIF? Because that was no longer...because you don't have to do that anymore. [LR254]

DAVID SANKEY: Correct. Most of the positions--the staff assistant positions, the crime analyst position--those positions we were able to keep because we still had to do the research and we still had to gather the information on the individuals. The major change was we no longer needed the psychologist on staff, so the psychologist left. We replaced that position with an attorney position because what was important at the time was that we had an individual that could take a look at what is the offenses that were committed? How do those fit into the offenses as they are tiered in the new system? And then be able to tier those people appropriately. [LR254]

SENATOR COASH: Okay, so if there was a movement to go back to a risk assessment-based system and we put that duty back in the State Patrol's hands, you'd have to go find another psychologist to... [LR254]

DAVID SANKEY: We'd have to hire a psychologist again. [LR254]

SENATOR COASH: Okay, thank you. [LR254]

SENATOR ASHFORD: Yes, Senator Council and then Senator McGill. [LR254]

SENATOR COUNCIL: Yes, and thank you for being present today. As Senator Ashford noted in his opening, one of the primary drivers for LB285 was the issue of compliance so as not to lose the 10 percent of the Byrne funds. Now, in looking at the impact of

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LB285, it is my understanding--that's why I'm asking you, correct me if I'm wrong--it does place more responsibility and requires a little more staff time, if not of the State Patrol or...but in addition county sheriffs' offices with the regularity and frequency of the reporting that has to occur. For example, changes of residence and changes of jobs and then the extension of that time. I mean, one of the biggest complaints that I've received in my office is when LB285 was enacted, there were people who had completed their term of registration that now, based upon their offense--not the assessment, they were now extended and could go from having been required to be on the registry for 10 years, now it's a lifetime. And has that resulted in any cost to the State Patrol? Because I think there has to be some kind of balancing of the approximately \$200,000 at risk in Byrne funds with the cost associated with people moving from 10 years to lifetime and all of the associated reporting obligations. [LR254]

DAVID SANKEY: It actually, from a cost standpoint, it actually saved the State Patrol some money because we could hire an attorney for...at a less cost than we could the psychologist. [LR254]

SENATOR COUNCIL: Okay. [LR254]

DAVID SANKEY: So we had some savings there. We were also paying about \$42,000 a year to be a part of the VINE system--it's the Victim Identification Notification System--and we no longer had to spend money to do that, to send out notifications, because what we do now is we put everybody on the Web site. And so now, people go to the Web site and they get that information, so that was a cost savings to us as well. To try and answer your other question, it's my understanding that individuals that were currently on the registry and their time was not up yet, but we had to take a look at those individuals and see how they fit into the new system and where they were tiered. So there are individuals, I've been told, that could have been done in 10 years, but were extended to 15 years or 25 years, wherever their tiering landed. There were not any individuals that were off the registry that were put back on the registry as a result of

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LB285. [LR254]

SENATOR COUNCIL: Okay, well, I can tell you I know I've received at least one e-mail from an individual--family member of an offender who, in the e-mail, advises that the offender had completed the registry time period, but based upon the offense--which was lifetime rather than 10 years--this offender was placed on the...placed again on the registry as a lifetime registrant, so. [LR254]

DAVID SANKEY: Yeah, and maybe in that instance there was a period of...where that individual maybe wasn't compliant with the registry and that might have extended that person's time for a little bit. But I'm under...the impression I'm under is any individual that was still on the registry got retired. Any individual that was done and completed the registry requirements at the time was done. They were not put on the registry. So, I'd be happy to take a look at that individual, if you'd like, Senator, and we could take a look at their situation and see if we can figure it out. [LR254]

SENATOR COUNCIL: Okay. Thank you. [LR254]

DAVID SANKEY: Um-hum. [LR254]

SENATOR MCGILL: Well, real quickly on that, perhaps they were just on the one that the public couldn't see and suddenly they were on the registry that people could see. That could be something that was taken... [LR254]

DAVID SANKEY: Yes, could be. [LR254]

SENATOR MCGILL: ...which I know happened to a lot of people. They were on the private one and suddenly it became public. My first question...I don't know if LaMont shared this chart with you about how many offender registry convictions there were from 2007 to 2011. [LR254]

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DAVID SANKEY: I believe I've seen that chart, yes. [LR254]

SENATOR MCGILL: I guess my first question... [LR254]

DAVID SANKEY: If I have it with me, though... [LR254]

SENATOR MCGILL: ...is just, since it's gone into effect in 2010 and 2011, there was a tremendous decrease in the number of convictions. It went from 526 to 240, and I'm just curious to see if you have any thoughts on why it would have been cut in half. Was there something else going on, another statute that...? [LR254]

DAVID SANKEY: What I can tell you is if you're looking at the specific timeframe between 2009 and 2010, during that time period, there weren't, probably in the last six months of 2009, there weren't a lot of folks that were...their cases were getting processed and they were getting placed on the registry because we knew that Adam Walsh was going into effect July... [LR254]

SENATOR MCGILL: This is... [LR254]

DAVID SANKEY: ...or January 1... [LR254]

SENATOR MCGILL: I'm sorry for interrupting. [LR254]

DAVID SANKEY: That's all right. [LR254]

SENATOR MCGILL: Because from '09 to '10 it did go up. But then from '10 into '11 it went down by half, and so are we just catching less or is the population going down? Do you have any idea why it would be half? [LR254]

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DAVID SANKEY: I don't have an answer for you right now, but we could take a look at those numbers and I could try and get an answer. [LR254]

SENATOR MCGILL: Oh, we're...well, I, oh, that's true, we're still in that year. Thank you. I'm thinking fiscal years and not calendar years. [LR254]

DAVID SANKEY: Oh, so, you're talking about...we're talking about eight, nine months here. Okay. [LR254]

SENATOR MCGILL: Yeah, the one that we're in right now. Thank you. Thank you for pointing out the obvious. The other question I have is what kind of process is there...is there a process to get off the registry early for any sort of good behavior or is there anything someone can file? [LR254]

DAVID SANKEY: To get off the registry? [LR254]

SENATOR MCGILL: Yeah. [LR254]

DAVID SANKEY: There is a process that, if an individual is assigned to 15 years in that tier and for a 10-year period they are on good behavior and they've done nothing else, they can petition to get off the registry in 10 years. [LR254]

SENATOR MCGILL: Okay, that's...and that's just for those in the 15-year? [LR254]

DAVID SANKEY: Yes. [LR254]

SENATOR MCGILL: The people on 25 cannot... [LR254]

DAVID SANKEY: No... [LR254]

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SENATOR MCGILL: ...petition to be done? [LR254]

DAVID SANKEY: No, not to my knowledge. [LR254]

SENATOR MCGILL: And also another basic question, perhaps, but they gave us good information about which statutes have...people are being convicted under. But which...what kind of offenses would fall under that 15 years? [LR254]

DAVID SANKEY: You know, off the top of my head I would say something like, you know, statutory rape, those types of things. [LR254]

SENATOR MCGILL: Okay. [LR254]

DAVID SANKEY: I would assume. I'm not involved in the tiering process, in the classification, so I don't really look at the offenses and tell you what...which ones would be 15 years. [LR254]

SENATOR MCGILL: Thank you. Sorry. [LR254]

DAVID SANKEY: Yeah. [LR254]

SENATOR ASHFORD: And we can come back around to those questions because they're critical. I just have a...and I want to thank you, Colonel, for...and the department for your work with our committee. From the beginning of this exercise a few years ago, it's...you've always been objective and straightforward bringing us information that was requested. So I want to applaud you for that, and that has been the experience we've had with all the issues, quite frankly, where we deal with the State Patrol. [LR254]

DAVID SANKEY: Good. [LR254]

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SENATOR ASHFORD: My issue...there are many issues involved in something like this where you have a federal mandate that applies across the country because you obviously have states like Nebraska that, quite frankly, had a system that...where most everyone told us a couple of years ago that public safety was the preeminent concern and that public safety was...nothing can guarantee it, but that it was a...the system worked. I guess to my mind, and the reason we're here today or one of the reasons, is that the federal approach to this problem has been a moving target, quite frankly. I mean...and somewhat frustrating for policymakers on the state level to try to come up with some compliance system and I...in your testimony you mention, and this...when we initially passed the bill, we did exclude retroactivity in the bill. And at that time, initially, my understanding--and I think I'm gleaning this correctly from your testimony--my understanding was that those state laws that had that retroactivity provision similar to Nebraska's were not compliant, initially. [LR254]

DAVID SANKEY: Right. [LR254]

SENATOR ASHFORD: Or at the initial pass in 2010. Now, we understand that those retroactivity provisions are compliant. Is that a fair comment? [LR254]

DAVID SANKEY: That's the way I understand it, Senator, is they...the SMART office receives such pushback from the states that they basically waived the retroactivity issue, and so that no longer is a barrier for us to become substantially compliant. [LR254]

SENATOR ASHFORD: And I think that gets...and then subsequently, there, you've been informed in 2011 that...at least June or July time frame, that these other two juvenile provisions that you referred to on the attempt portion of the law caused the office to find substantial noncompliance or... [LR254]

DAVID SANKEY: Yeah, the... [LR254]

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SENATOR ASHFORD: Is that what you're saying? I mean, these...we treat attempt in our law differently than what the SMART office is suggesting. [LR254]

DAVID SANKEY: Yes, the two issues of juveniles and attempt are the two issues that we're being told are keeping Nebraska from being substantially compliant. [LR254]

SENATOR ASHFORD: Okay. I guess my question is this: It seems like a moving target, in a way. I mean, let's say we make these changes. Then, based on the track record of this SMART office in Washington, it is possible that we could get a noncompliance on some other provision as well. Maybe not, but I mean, certainly based on what we've seen up until now, the pushback from the states is...has...was such on the retroactivity that the SMART office changed its tune. And I think what bothers me a little bit is, in effect, the agency is really legislating instead of implementing. And if the legislation is that unclear or that...theoretically that unclear, arguably that unclear that you have retroactivity change or the application of the retroactivity rules change, that's a fairly significant alteration or modification in the original interpretation of the act, and I realize that in our...today's federal system, the Legislature and the agencies involved in implementing federal laws are not necessarily mirror images of each other. So, I guess raise that issue that's of concern to me as a policymaker, is for this committee to year after year after year come back and try to alter something, to meet some moving target that the federal government has implemented or interpreted, then especially in the case of Nebraska, where we had a system that was a good system--at least based on what we were hearing from the State Patrol and the Attorney General--that that...and I think that's bothersome to us as policymakers, so. [LR254]

DAVID SANKEY: I understand. [LR254]

SENATOR ASHFORD: And I know that's something that's hard to answer because you don't know what they're going to say. [LR254]

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DAVID SANKEY: Yeah, I feel pretty confident with our recent interactions with the SMART office that they have sent us the message that if we can take care of these two issues, then Nebraska has done everything they've asked us to do to be substantially compliant. [LR254]

SENATOR ASHFORD: All right. So even though initially--and that's a fair comment--that even though initially this interpretation of the SMART office was to go back to cases that had not only been adjudicated, but where there had been a, well, there had either been admission or adjudication and a sentence imposed and a registration, and that had been successfully completed. That was included in the...well I guess they had to have completed the registration process, right? Under the old...prior to this interpretation on retroactivity from the SMART office, the initial interpretation, the law was interpreted as meaning that it was retroactively implied. What did that exactly mean? Do you recall? [LR254]

DAVID SANKEY: Well, I'm of the opinion that yeah, we would have...if we would have adopted that portion, we would have had to go back and take a look at those individuals that were already off the registry, take a look at their situation to see if they should be put back on the registry. [LR254]

SENATOR ASHFORD: Actually go back 10 years, right? Wasn't that... [LR254]

DAVID SANKEY: Yeah, as I understand it, and so because we didn't adopt that, then we just said whoever's on the registry, we'll take a look at their classification and then reclassify them according to the new law. [LR254]

SENATOR ASHFORD: Okay, fair enough. So this latest interpretation, which...when did this last...in your testimony, is that June or July? [LR254]

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DAVID SANKEY: The last letter we received from them was in July, and we've had our folks and their folks have been...have had correspondence back and forth since that time, and... [LR254]

SENATOR ASHFORD: So... [LR254]

DAVID SANKEY: We have told them that we believe Nebraska has... [LR254]

SENATOR ASHFORD: Complied. [LR254]

DAVID SANKEY: Has complied. And so that...we're still awaiting a final response on that. [LR254]

SENATOR ASHFORD: So prior to July of this year, these other...the retroactivity issue...I'm sorry, the juvenile issue and the attempt issues were still unclear. [LR254]

DAVID SANKEY: Right. [LR254]

SENATOR ASHFORD: So it wasn't until July that those were...at least were clarified by the SMART office. [LR254]

DAVID SANKEY: Yes, in our correspondence over the course of this year, we have narrowed it down to these two issues. And, like I said, I feel pretty confident that if we could address these issues, we'd meet their requirements. [LR254]

SENATOR ASHFORD: Maybe. [LR254]

DAVID SANKEY: Well, hopefully. [LR254]

SENATOR ASHFORD: But the change in retroactivity rules, when did that happen?

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When did that... [LR254]

DAVID SANKEY: You know, I don't exactly know when they waived that. Over the last year or so, they've made that determination that because of the pushback they've gotten from the states, they've made that...they've said okay, we give, so to speak, on that issue. [LR254]

SENATOR ASHFORD: And what is it that they...was that a writing? Is that a document that they sent you? [LR254]

DAVID SANKEY : You know, I'd have to check. [LR254]

SENATOR ASHFORD: Okay. [LR254]

DAVID SANKEY: ...and get back to you, Senator. [LR254]

SENATOR ASHFORD: Okay. [LR254]

DAVID SANKEY: And see how they relayed that message to us. [LR254]

SENATOR ASHFORD: Okay. But at least you've been told that? [LR254]

DAVID SANKEY: Yes. [LR254]

SENATOR ASHFORD: Okay, at some point. All right, thank you. [LR254]

DAVID SANKEY: Yes. [LR254]

SENATOR ASHFORD: Any other questions? Seeing none, thanks. [LR254]

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SENATOR HARR: Whoa, me, I'm sorry. [LR254]

SENATOR ASHFORD: Yes. [LR254]

SENATOR HARR: You talk about 10 percent reduction in state funding. How much money are we talking about? [LR254]

DAVID SANKEY: Well, the latest numbers we have, and I know Senator Ashford when he started, I think you said \$193,000. That's all based on the current amount of money that we're getting from...for the Byrne/JAG program. The projection is that this would take effect next October 1, and we've been told that we're probably going to get an 8 percent reduction across the board on that anyway, so the number I've heard is \$167,000. [LR254]

SENATOR HARR: So we're basically talking about \$16,000? [LR254]

DAVID SANKEY: No, no, \$167,000 is 10 percent. [LR254]

SENATOR HARR: Is the 10 percent? [LR254]

DAVID SANKEY: ...of what the state gets for Byrne funds, yes. [LR254]

SENATOR HARR: Okay. All right. Thank you. [LR254]

DAVID SANKEY: Um-hum. [LR254]

SENATOR ASHFORD: Thanks. Thank you. Who's next, here? Bob? Is Bob Houston here? And then Dave after that. Okay, Bob, just to put this in context, what we asked you to talk about was the programming that you have at...in your...in the Corrections Department, currently, for these individuals, these offenders. [LR254]

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BOB HOUSTON: That's correct. Yes. Okay. [LR254]

SENATOR ASHFORD: Go ahead. [LR254]

BOB HOUSTON: (Exhibit 3) Can we go? Okay. Good morning, Chairman Ashford, and members of the Judiciary Committee. My name is Bob Houston, H-o-u-s-t-o-n, and I'm the director of the Nebraska Department of Correctional Services, and thank you for this opportunity to provide information regarding sex offenders committed to the Department of Correctional Services. I will summarize the written testimony that you have before you. Sex offenders comprise 19 percent of the department's total population, all of whom are screened for treatment needs. In 2006, LB1199 established standards for evaluating certain sex offenders prior to discharge and making recommendations to prosecuting authorities as to whether the individual meets the legal criteria of a dangerous sex offender who may be in need of civil commitment. LB1199 specifically provides that sex offenders attend appropriate sex offender treatment and counseling offered by the department. The department provides evidence-based sex offender treatment programs using the Risk-Need-Responsivity model, which promotes matching the risks and needs of an offender to the appropriate level of treatment, while being responsive to any special circumstances might interfere with that treatment. Our department sex offender programs are collectively called the Healthy Lives Program, or HeLP, and represent the application of the most current research in the field. The Clinical Sex Offender Review Team, or CSORT, provides systematic review of each sex offender in the department's custody. CSORT is comprised of mental health professionals familiar with and trained in sex offender assessment and treatment. Our department offers several treatment options for sex offenders. You also have a chart which kind of gives a chart as to the programs that I will now speak to. Generally, no treatment is recommended for those inmates assessed to be at the lowest risk to offend. Bibliotherapy Healthy Lives Program, or bHeLP, is provided for those inmates assessed to be a relatively low risk to reoffend. The program is low intensity and

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short-term, lasting a few months. Outpatient Healthy Lives Program, or oHeLP, is provided for inmates assessed to be at moderate- to moderately-high risk to reoffend. Now, outpatient doesn't mean that they're out of the facility; it just means they don't live in a residential setting. Inpatient Healthy Lives Program, where they actually live on a housing unit together, which provides to those individuals assessed to be at the highest risk to reoffend. Participants in this program live on a specialized unit at the Lincoln Correctional Center. Due to the intensive nature, this program lasts between two and three years, although individual times may vary greatly. Priority for placement on the recommended program is based on parole eligibility date and discharge date. Both dates are considered in order to maximize the number of individuals who can receive treatment prior to discharge. This is due in part to sentence structure. For example, individuals who become eligible for parole soon after admission may not have had the time to begin or complete treatment prior to their parole eligibility date. However, that individual may have enough time to complete programs prior to discharge. Additionally, someone with an earlier discharge date may be placed in treatment ahead of someone who has an earlier parole eligibility date but a longer sentence, to ensure that both receive treatment prior to discharge. Continuing Care may be recommended for individuals who have completed treatment programs to provide offenders with continued mental health contact to maintain treatment gains and address any new concerns that may arise. Possible treatment outcomes are satisfactory, adequate, and unsatisfactory and are determined by CSORT, which allows for uniform review of all participants, increases objectivity, and exceeds community standards for treatment outcome determination. In an effort to increase capacity for sex offender treatment in the community, the department has utilized SMART grant funds to provide training opportunities for community providers. The first training occurred in September with 135 participants. Subsequent trainings are scheduled for early 2012. The department has developed a plan to offer increased bHeLP--which is the low level--bHeLP treatment for and Continuing Care services at the community centers, which can be accessed by community custody inmates and those on reentry furlough and on parole. I can answer any questions that you may have. [LR254]

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SENATOR ASHFORD: I just want to pursue just one point here, Bob. This practice of placing sex offenders into certain levels of risk that you've done and you've referenced in your testimony... [LR254]

BOB HOUSTON: Yes. [LR254]

SENATOR ASHFORD: Is that process...has that process been in place for some while? [LR254]

BOB HOUSTON: Yes. [LR254]

SENATOR ASHFORD: And the...of the...you have around, what, 4,200 inmates? [LR254]

BOB HOUSTON: Forty-four hundred, yes. [LR254]

SENATOR ASHFORD: Going down? [LR254]

BOB HOUSTON: And going down.. [LR254]

SENATOR ASHFORD: Going down? [LR254]

BOB HOUSTON: Going down. [LR254]

SENATOR ASHFORD: To 30? [LR254]

BOB HOUSTON: Well, I hope just as low as we can get it. [LR254]

SENATOR ASHFORD: You know, I...huh? Yeah. [LR254]

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BOB HOUSTON: We're trying to get it down, just a tad below 4,000. [LR254]

SENATOR ASHFORD: Right. But I guess my question...my point, here, is that you make that determination of level of risk... [LR254]

BOB HOUSTON: Yeah. [LR254]

SENATOR ASHFORD: ...within the department or is that made by someone else prior to admission of this individual into the system? [LR254]

BOB HOUSTON: It is made by the department. We rely upon information that we have that comes with them, such as presentence investigation and social history and so forth, but basically we apply three major assessments. One is what's called the Static-99. What that does is that looks at the crime itself, those circumstances. It's called static because it won't change. I mean, it's just...it is what it is. And then the other two are more dynamic. And what they do is they look at a person at a point in time as to how they have evolved, either because of treatment or with treatment, and assesses their risk level using those two instruments. [LR254]

SENATOR ASHFORD: Who performs that analysis, Bob? [LR254]

BOB HOUSTON: We have clinical psychologists that do that. [LR254]

SENATOR ASHFORD: How many clinical psychologists do you have on staff? [LR254]

BOB HOUSTON: Oh, I believe I have 13, and that number changes a little bit as we fill some vacancies, but we have somewhere around 140 treatment staff, including our substance abuse staff, which is a little over half of all treatment providers. [LR254]

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SENATOR ASHFORD: Now, of those...of the 800 or so sex offenders in the system, how many are of low-risk? Do you have that number, or can you tell us generally? [LR254]

BOB HOUSTON: I can tell you generally. Generally, they would be towards the lower risk. They would be in the about 40 percent. In the middle is about 35 percent, the oHeLP, and the higher--those individuals either in the program or waiting to get into the program--would comprise the other 20 percent or so. [LR254]

SENATOR ASHFORD: So, for those generally, no treatment is recommended would be approximately 40 percent of that population? [LR254]

BOB HOUSTON: It would either be no treatment recommended, other types of treatment recommended for the bHeLP, which can be done in the community setting. [LR254]

SENATOR ASHFORD: Okay. I think that's all I had. Senator Harr. [LR254]

SENATOR HARR: Thank you. What's the rate of recidivism among this population? [LR254]

BOB HOUSTON: Generally, among the sex offenders, it's fairly low. I don't have that figure in front of me and I can get that to you, but I think it's lower than most crime categories or many crime categories that we have. [LR254]

SENATOR HARR: Is it lower than the general prison population? [LR254]

BOB HOUSTON: Yes. The recidivism rate overall is lower than that, yes. [LR254]

SENATOR ASHFORD: Could you say it again, Bob? I didn't hear that last part. [LR254]

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BOB HOUSTON: It's if you take our general return rate to prison, sex offenders is lower than that. [LR254]

SENATOR ASHFORD: I think that would be helpful information, and if we could break it down by level of risk... [LR254]

BOB HOUSTON: Yes. [LR254]

SENATOR ASHFORD: ...within the institution as well... [LR254]

BOB HOUSTON: Yes. Um-hum. [LR254]

SENATOR ASHFORD: All right. Senator Coash. [LR254]

SENATOR COASH: Director Houston, do you use the risk-based system...you described how you use it to identify treatment recommendations. Do you also use the risk-based approach to deciding where you house inmates or who you house them with or...? [LR254]

BOB HOUSTON: Yes. That's it. [LR254]

SENATOR COASH: So you use it? [LR254]

BOB HOUSTON: That's a very good question that goes really to the heart of what we're doing for our reentry and our parole plan, because on a continuum, the time and structure, the institutional behavior, those things that constitute risk-based assessment or classification system, which we've used since 1982, is based on different criteria than when you do a clinical assessment of individuals. And so as you put people along the continuum, based upon at least traditional risk or a classification system, we move them

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from maximum security to medium to minimum to community and on to parole. But it doesn't evenly match up with what their clinical risk assessment is, and so what we're doing to make the parole plan is we're merging the two systems together so that the risk classification becomes the driver as far as where we house them. And then we take the treatment programs and we line the treatment providers and the resources up along that same continuum. With that said, there's going to be some individuals that fall in the middle. They could fall into the intensive...the inpatient program, and other people that could fall into the bHeLP, depending upon the risk assessment over time. And so that's really the sorting out process we're doing to match the two together. [LR254]

SENATOR COASH: So even for offenders who are not in a community, a risk-based system makes more sense than an offense-based system within the corrections walls, because that's what you're doing. [LR254]

BOB HOUSTON: Yes, I mean it would...yes, exactly, yeah, and how we... [LR254]

SENATOR COASH: You don't just...my...I guess I...what I hear you saying is you're not just looking at the crimes. [LR254]

BOB HOUSTON: That's right. [LR254]

SENATOR COASH: You're looking at risk within corrections, which is different than what we're doing now outside of corrections. [LR254]

BOB HOUSTON: That's exactly right, yeah. [LR254]

SENATOR COASH: Gotcha. Thanks. [LR254]

BOB HOUSTON: We look at behaviors. [LR254]

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SENATOR COASH: Thank you. [LR254]

BOB HOUSTON: Um-hum. Thank you. [LR254]

SENATOR ASHFORD: That's a...Bob, I think I don't see any other questions. Thank you for your testimony. [LR254]

BOB HOUSTON: Okay, you bet, okay. [LR254]

SENATOR ASHFORD: David? [LR254]

DAVID COOKSON: Good afternoon, Senators, Chairman Ashford, and members of the committee. My name is David Cookson, C-o-o-k-s-o-n. I'm the Chief Deputy Attorney General. I'm also lead counsel in litigation filed by a member of John Doe Sex Offenders against the changes made to the Sex Offender Registry by the Legislature in 2009. I was invited to testify about the status of the litigation, which I will do. To provide context, the litigation was divided up into two parts. There were two separate bills that were being challenged. LB285, which is the subject of the committee's hearing, which is primarily the changes made by the Legislature to any attempt to qualify under the Adam Walsh Act. The other bill was LB97, which added and updated a number of penalty...or crimes involving electronic devices and then also provided additional protections for the public and especially children in the virtual world that we currently provide in the physical world, so I'm going to treat these differently as I discuss the litigation. With regards to the changes made for the purposes of the Adam Walsh Act in LB285, which is substantially all of LB285, the court has ruled that all of those provisions are constitutional and have been upheld not only in this case, but in almost, I believe, in every case that has challenged the specific provisions of the Adam Walsh Act adopted by the states. These have been addressed by the U.S. Supreme...all the way up to the U.S. Supreme Court and have consistently been upheld against constitutional challenges. That ruling was entered last year on motions for summary judgment by both

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sides. The only remaining issues are the LB93, discreet components of LB97 which were designed to provide protections in the virtual world that we provide in the physical world, which is providing the ability to search and monitor those who are still in custody, probation, or parole, for their use of the Internet. And then also to provide prohibitions against the use of certain social networking sites that cater to children. That was driven primarily in part because we discovered during the course of investigation into MySpace--which very few people use anymore--and Facebook, we were finding large numbers of what were then, under the risk assessment, Level 3 sex offenders on these various social networking sites, which while although they say they don't allow children, we know for a fact that they allow preteens. So what we're trying to do is to eliminate that connection, if you will--trying to protect the virtual part much in the same way we protect the physical part in the physical schools. So that is the current status. We do not have a...we're in the process of discovery on those discreet issues and, at this time, we do not have a trial date scheduled. But again, I would reiterate that all of the provisions of LB285, relating to the Adam Walsh Act, were upheld by the court as a matter of law on summary judgment. [LR254]

SENATOR ASHFORD: Including the retroactivity, the noninclusion of retroactivity is...? [LR254]

DAVID COOKSON: Yes. [LR254]

SENATOR ASHFORD: Senator Coash. [LR254]

SENATOR COASH: Thank you, Chairman. Mr. Cookson, I just wanted...with the LB285 lawsuit that was upheld as constitutional, is that the extent of what people have brought? Is that over for all purposes? Or is there other parts that are being...? [LR254]

DAVID COOKSON: Three of the LB97 components are what is being challenged. [LR254]

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SENATOR COASH: Okay. [LR254]

DAVID COOKSON: And those are the monitoring and search provisions and the social networking provisions. [LR254]

SENATOR COASH: Right. But the provisions of LB285, that... [LR254]

DAVID COOKSON: Have all been upheld. [LR254]

SENATOR COASH: It's done, there's no pending... [LR254]

DAVID COOKSON: They...right. [LR254]

SENATOR COASH: Nothing's pending, it's... [LR254]

DAVID COOKSON: That's correct. [LR254]

SENATOR COASH: So that ship has sailed. [LR254]

DAVID COOKSON: Technically, once there is a final...well, I believe that's correct. [LR254]

SENATOR COASH: Okay. [LR254]

DAVID COOKSON: There may be a possibility of appeal when the entire case has resolved, but I doubt that that will happen, given that every court has upheld those same provisions in other jurisdictions. That includes the notification, the enhanced notifications, the switch from the risk assessment to the offense-based assessment. [LR254]

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SENATOR COASH: So as far as your office is concerned, LB285 is a... [LR254]

DAVID COOKSON: From a legal perspective, it's all been upheld as constitutional. We, at the time...yes, it's been upheld. [LR254]

SENATOR COASH: Okay. [LR254]

DAVID COOKSON: And I believe you have a...you may have a chart and appendix that was submitted in the litigation that outlines the differences, the changes made by LB285 and the changes made by LB97, and that was adopted by the court on the motions for summary judgment. [LR254]

SENATOR ASHFORD: Yes, Senator Council. [LR254]

SENATOR COUNCIL: Just...and thank you, Mr. Cookson. Just a quick clarification--the lawsuit challenged both LB285 and LB97? [LR254]

DAVID COOKSON: Correct. [LR254]

SENATOR COUNCIL: There were motions for summary judgment filed; I don't know whether they were filed on both. [LR254]

DAVID COOKSON: Both sides, cross motions. [LR254]

SENATOR COUNCIL: Cross motions on both of the bills. [LR254]

DAVID COOKSON: Yes. [LR254]

SENATOR COUNCIL: But the ruling came down on the LB285 portion of the bill?

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[LR254]

DAVID COOKSON: Right, right. [LR254]

SENATOR COUNCIL: So the LB97, there's still, apparently, genuine issues of material fact? [LR254]

DAVID COOKSON: Correct. [LR254]

SENATOR COUNCIL: And what you were saying about appeal is that there may or may not be a final appealable order with regard to LB285 at this point in time? [LR254]

DAVID COOKSON: Right. [LR254]

SENATOR COUNCIL: Okay. [LR254]

SENATOR ASHFORD: I don't think I have anything. Thanks, David. [LR254]

DAVID COOKSON: Yeah, thank you, Senators. [LR254]

SENATOR ASHFORD: Oh, Bruce, or is it, who's...oh, Bruce is here, okay. [LR254]

BRUCE PRENDA: Good afternoon, Senator Ashford, and members of the committee. My name is Bruce Prenda. I am the Deputy Lancaster County Attorney, and here basically to answer questions on behalf of the Nebraska County Attorneys Association. I really don't have too many points to make in addition to what's already been said. The County Attorneys Association, as we indicated last session, is open to review and comment on the proposals that the committee makes. Clearly, the committee has and the Legislature has a number of fundamental policy issues to decide upon and I guess I'll just open myself up to questions. I have...I think I have some of the answers to the

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questions that were asked previously, maybe some additional information I can offer. [LR254]

SENATOR ASHFORD: Senator Council. [LR254]

SENATOR COUNCIL: Go for it. [LR254]

BRUCE PRENDA: Well, I think...specifically, as Senator McGill had asked about people who had...about the numbers decreasing, and it's true that you don't have all of the data. [LR254]

SENATOR MCGILL: Well, it could be that I wasn't counting properly and remembering that we're in 2011. [LR254]

BRUCE PRENDA: Well, and that's fine. But I think...I do think that we've seen, at least at the county attorneys' level, a difference in the numbers that we've seen, the number of cases, from the initial year after, which would be 2010, to this year. I think that's because in the initial year, there were a number of issues with respect to notification. Individuals who were on the registry not being aware of their...not being notified or being aware of their registration requirements, and so they would fail to come in and register as they were supposed to under the new law. I think we've seen a good period of time now where registrants are more aware of their responsibilities and are complying more with those responsibilities, so we may see a little bit of a decrease in numbers. And I apologize, I can't remember exactly what question it was that Senator Council had asked, but... [LR254]

SENATOR COUNCIL: I can't anymore, but let me... [LR254]

BRUCE PRENDA: Well, I think it had to do with retroactivity... [LR254]

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SENATOR COUNCIL: Yes, about... [LR254]

BRUCE PRENDA: And the person who... [LR254]

SENATOR COUNCIL: ...who had completed... [LR254]

BRUCE PRENDA: Right, right... [LR254]

SENATOR COUNCIL: But their offense says they're supposed to be a lifetime registrant. [LR254]

BRUCE PRENDA: And on that issue there, certain time doesn't count towards your registration responsibilities. For example, if you're noncompliant during that 10-year period, then your 10-year period is extended for that period of time that you were noncompliant. That noncompliance period is calculated by the State Patrol and so...and there's significant disagreement about how that time should be calculated. And so in your case, it may be that the registrant believes that they were compliant for that entire period, where the State Patrol is saying that they were not, and for that reason their time was extended. And then they found themselves still subject to registration requirements when the new law went into effect and then they were subject to a longer registration period. [LR254]

SENATOR COUNCIL: Right, and see that's a problem. Even with the noncompliance, that's still problematic for me that someone who, under the old system--which was more geared toward assessing an individual's risk of reoffending and threat to public safety--is placed on the registry for 10 years and is close to completing that 10 years or...but for maybe not reporting a change in employment or something because of a little...something more than that, they would not have been just an extension of their period. It'd have been some other action taken, but for that reason now faces lifetime registration because of the offense which, notwithstanding the offense under the former

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law, it is believed that the public was saved, and children in particular, if this person was registered for 10 years. That's... [LR254]

BRUCE PRENDA: Right. [LR254]

SENATOR COUNCIL: I'm having...I mean, it's difficult to reconcile all that. It's difficult...I mean, when we're getting e-mails from individuals who are in that situation where--you know, and those are the ones I get; I can't speak for my colleagues--is that, you know, I was rated the lowest possible level by the State Patrol and now I'm a lifetime registrant and because of the lifetime registration, now I'm having difficulty obtaining employment. And we all know that the data and the research shows that one of the factors that has the greatest impact on recidivism is whether you're employed. So I mean, we create the..sometimes a vicious cycle that perhaps won't reoffend us as a sex offender, but we set many of these people in a position where they're at risk of offending some...committing some other criminal offense because of the change, when they believe that they were at the point where they're about through with their requirement. And I'm...and Mr. Cookson is gone, but, I mean that's...I don't know what constitutional issues were raised in the case, but that's one of the issues would be...you know, is that administrable? Is that punitive? I mean, you give a sentence of whether it's 3 to 10 or 5 to 10, you complete the 3 to 10 or 5 to 10, and then you're on the Sex Offender Registry for...is that not punitive as opposed to...? Like I said, I don't know what was argued in the lawsuit, but. [LR254]

BRUCE PRENDA: Right, well, if it's any consolation, from a prosecutor's standpoint, we don't count periods of time that are...that they're in noncompliance unless they have been convicted of a violation. [LR254]

SENATOR COUNCIL: Right. [LR254]

BRUCE PRENDA: That's at least our local view of it, because that shows an intentional

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violation. [LR254]

SENATOR COUNCIL: (Inaudible) Right. Okay. [LR254]

BRUCE PRENDA: And a clearly provable period of time that they've been noncompliant, and that would extend their registration time. [LR254]

SENATOR COUNCIL: Okay, thank you. [LR254]

SENATOR ASHFORD: I want to explore one other area and that...because I'm not sure I totally understand the intent here. The government, the federal government now has changed their position on retroactivity; we've established that. They are also providing some direction on juveniles. We have excluded juveniles from the registry in our law. We can't, as the colonel suggests, be compliant on the juvenile side if we include 14-year-olds in the adjudicated...if they're adjudicated with to have...well, if they were adjudicated as sex offenders under the provisions of that 14-and-over provision, that they would not be required for them to be on the public registry, but that they would be required to be on the other internal registry. It's not really internal, but the registry that was made available to qualified persons. And I believe that would be housing is one of those areas, housing, and another area would be jobs. Do you know that, Bruce? Have I got... [LR254]

BRUCE PRENDA: I don't know. I'm sorry. [LR254]

SENATOR ASHFORD: The nonpublic registry, under current law--the nonpublic registry, does anyone have access to the nonpublic registry? [LR254]

BRUCE PRENDA: I don't know the answer to that question. [LR254]

SENATOR ASHFORD: You know, those that, under the old system... [LR254]

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BRUCE PRENDA: Right. [LR254]

SENATOR ASHFORD: If they were nonpublic, they were not on the public register, they were nonpublic. [LR254]

BRUCE PRENDA: Right. [LR254]

SENATOR ASHFORD: Who had access to those? [LR254]

SENATOR COASH: Schools, churches, day cares. [LR254]

SENATOR ASHFORD: Day cares is one. Was it...? [LR254]

SENATOR COASH: Schools. [LR254]

SENATOR ASHFORD: Schools. [LR254]

BRUCE PRENDA: Churches, yeah. [LR254]

SENATOR ASHFORD: Not employers or housing or anything like that? [LR254]

BRUCE PRENDA: That was an interesting point that the colonel made. I was unaware that the noncompliance was related to the juvenile adjudications, but again, that presents a whole host of considerations and issues. [LR254]

SENATOR ASHFORD: And what...maybe LaMont can help me here. He's the internal expert on the...those offenses that would apply to 14-year-olds. What offenses are we...we're talking about aggravated sexual abuse? [LR254]

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SENATOR COUNCIL: Aggravated sexual assault. [LR254]

BRUCE PRENDA: I think the colonel had talked about it only being if his statutory reference was accurate, I think he was just referring to first-degree sexual assault. And that really, in Nebraska anyway, I'm not sure how they would enforce it because in a juvenile petition, the juvenile petition can make an allegation of sexual assault under any number of our sexual assault statutes... [LR254]

SENATOR ASHFORD: That's what I'm trying to understand. [LR254]

BRUCE PRENDA: ...and not be specific to first-degree sexual assault... [LR254]

SENATOR ASHFORD: Sexual assault. [LR254]

BRUCE PRENDA: ...without a reference whatsoever of a statutory. [LR254]

SENATOR ASHFORD: Because you're just outlining what happened in a juvenile petition. [LR254]

BRUCE PRENDA: Right, and so how they would...how that would play out on a registry would be interesting. [LR254]

SENATOR ASHFORD: And that's what I'm trying, in my vague little way here, what I'm trying to understand is if we were today to decide, well, we need to adopt this provision, what are we adopting? [LR254]

BRUCE PRENDA: Well, I think you'd be giving the county attorneys broad discretion to make an allegation in a petition. [LR254]

SENATOR ASHFORD: In a juvenile petition? [LR254]

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BRUCE PRENDA: In a juvenile petition that reflects either a first-degree sexual assault, if that's what happened, or an allegation of a misdemeanor third-degree sexual assault or some other level of sexual assault, and still obtain an adjudication on a sex crime with the same factual basis. But there would be no... [LR254]

SENATOR ASHFORD: Okay, could you give me, just for my edification, the difference between an aggravated...in your experience, a claim for aggravated sexual assault versus a misdemeanor? [LR254]

BRUCE PRENDA: Well, the first-degree sexual assault statute is your typical felony sexual assault. It's either...it's done in one of three ways. Either...and it's...it involves sexual penetration. And then it's either done without consent--your typical rape situation with an adult and an adult. Or you have a person 19 years of age or older and a victim under 16, so your statutory sexual assault. And then you also have a...what's referred to as an incapacitated person--someone who's not able to appreciate what's happening and is sexually penetrated. And so if you have sexual penetration in one of those three factors, then you have your felony first-degree sexual assault. On the other hand, misdemeanor sexual assault is sexual contact without consent or when the person was incapacitated. And then you have a second-degree sexual assault that involves serious sexual contact with serious bodily injury--they vary in degrees. The misdemeanor is a third-degree sexual assault, just sexual contact without consent. And then you have the second-degree, first-degree, and sexual assault of a child, and those are all felonies. [LR254]

SENATOR ASHFORD: But could include a...in your broad understanding here, is that this section might--and you don't have it in front of you-- [LR254]

BRUCE PRENDA: I don't have it. [LR254]

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SENATOR ASHFORD: But this language in the federal law that would expand the juvenile...coverage for juveniles from our existing LB285, could be a laundry list of offenses. But that's not how you gain jurisdiction in the juvenile court anyway. [LR254]

BRUCE PRENDA: Right. Jurisdiction in the juvenile court is a petition and the petition has to reflect some, if it's a delinquency... [LR254]

SENATOR ASHFORD: Some base, factual basis? [LR254]

BRUCE PRENDA: It's some factual basis and the language of a statute, so that language of a statute could be any number of statutes that fit the factual basis. [LR254]

SENATOR ASHFORD: That just doesn't seem to match up, and that's again... [LR254]

BRUCE PRENDA: Not with our system. [LR254]

SENATOR ASHFORD: And again, I think that's what my concern is on the procedural side is, we pass something like this because the federal guidelines have used words which, in practice in Nebraska, very rarely, if ever, it just doesn't apply. We're dealing in a much different set of circumstances in most juvenile cases and... [LR254]

BRUCE PRENDA: Right, and if the...but if the county attorney believed that this was a juvenile for whom sex offender registration should apply, I suppose if the Legislature passed language like that, we could put in the petition the exact language of the statute and then it would be up to the...I guess the State Patrol. [LR254]

SENATOR ASHFORD: Aggravated sexual assault or first-degree sexual assault? [LR254]

BRUCE PRENDA: Um-hum. [LR254]

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SENATOR ASHFORD: Which is a serious...okay. Senator Council. [LR254]

SENATOR COUNCIL: (inaudible) But in that context, how often do prosecutors seeking...adjudicate a juvenile who's charged with first-degree sexual assault as opposed to prosecuting him as adult? I mean, how often does...I mean, a first-degree sexual assault, you know, penetration without consent, I mean... [LR254]

BRUCE PRENDA: I guess I can only answer it from my own experience. [LR254]

SENATOR COUNCIL: Your own experience. [LR254]

BRUCE PRENDA: Let's say in the past year, maybe two cases that involved individuals under 18 perpetrating a sexual assault on a victim who's a 13, 14, 15, and it's without consent, is basically the allegation. [LR254]

SENATOR COUNCIL: And they were adjudicated as juveniles as opposed to adults? [LR254]

BRUCE PRENDA: Those are prosecuted...the ones that I've done, I've prosecuted as adults, but those have not...we haven't gotten through the juvenile transfer process and that sort of thing. [LR254]

SENATOR COUNCIL: Okay. [LR254]

SENATOR ASHFORD: But you filed those as an adult? [LR254]

SENATOR COUNCIL: Adult. [LR254]

BRUCE PRENDA: But those are...yeah, when you have a juvenile who's...the allegation

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is first-degree sexual assault, it's without consent. It's not a statutory case because they're not over 19 and it isn't generally, well, sometimes it's without understanding because you have a victim who may have been consuming alcohol and drugs. But for the most part, it's without consent and in that case, it's a first-degree sexual assault. That's a Class II felony if they were an adult. Those are filed in adult court. [LR254]

SENATOR COUNCIL: Because the 19-year-old...the statutory rape is not going to be adjudicated in juvenile court... [LR254]

BRUCE PRENDA: Correct. [LR254]

SENATOR COUNCIL: ...because the 19-year-old is older, is outside of juvenile court jurisdiction? [LR254]

BRUCE PRENDA: Right, right, right. [LR254]

SENATOR COUNCIL: Thank you. [LR254]

BRUCE PRENDA: Um-hum. [LR254]

SENATOR ASHFORD: Thanks, Bruce. Sheriff? [LR254]

TERRY WAGNER: Thank you, Senator Ashford, and members of the committee. My name is Terry Wagner, W-a-g-n-e-r. I'm the sheriff of Lancaster County. I'm here today on behalf of the Nebraska Sheriffs' Association, and like Mr. Prenda, I am also here more to answer questions than to provide any testimony. I think I have a few numbers available should they be necessary, but I think Lancaster County has about 25, about 24 percent of the sex offenders in the state within Lincoln, Lancaster County, and so we do have a sizeable number of folks that come to our office every year. I can tell you that since the changes in the legislation, brought about by LB285, the visits we've had for

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sex offenders has increased dramatically. Heretofore, they were registered with the State Patrol, verification was done via mail by once a year, and since the new legislation was passed, the majority of sex offenders in our county have to come to our office four times a year if nothing else changes in their lives. And if their residence or their employment or their vehicle registration or any of those things change in their lives, they have to come back in and register with us. So at a minimum, most offenders have to come in four times a year to our office. With that, it has...it's consuming about three quarters of a full-time equivalent. I think one of the questions in the LR254 is the cost to counties, and it's running about three quarters of a full-time equivalent for us to manage the sex offender registration folks. It has calmed down since the initial year has passed and the DNA has been obtained from the folks that hadn't been previously registered, but it's still quite a few visits from folks to our office. And with that, I'll be glad to answer any questions the committee might have. [LR254]

SENATOR ASHFORD: Yes, Senator Coash. [LR254]

SENATOR COASH: Thank you, Senator Ashford. Thank you, Sheriff. These...you use the term visits. They have to come, face-to-face, to make...to check in with the sheriff, right? [LR254]

TERRY WAGNER: Correct. [LR254]

SENATOR COASH: There's no provision for signing something, putting it in the mail, saying I still live where I lived three months ago, I'm... [LR254]

TERRY WAGNER: No. [LR254]

SENATOR COASH: They've got to come in? [LR254]

TERRY WAGNER: And there's other provisions for if you're working in Lancaster

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County. You live elsewhere, you work in Lancaster County for more than three or four days--I can't remember exactly, one of the two--then they have to let us know they're here. Likewise, if they're on vacation and they're...they go from one jurisdiction to the other and they're there more than three or four days, they have to let the sheriff of that county know. So you have a lot more than just oh, our..we have about 1,244 verifications at our office. [LR254]

SENATOR COASH: So you mention we...Lancaster County's got about a quarter of the sex offenders. [LR254]

TERRY WAGNER: Yeah, 24 percent, I believe. [LR254]

SENATOR COASH: Which is how many approximately? [LR254]

TERRY WAGNER: You know, I don't have the...well, in 2010, we registered 2,322 people. [LR254]

SENATOR COASH: So... [LR254]

TERRY WAGNER: So, you know, that doesn't mean that's that many sex offenders. That means that's how many times sex offenders came to our office to register and/or verify. [LR254]

SENATOR COASH: Okay. [LR254]

TERRY WAGNER: So some of those folks could have come four times a year. [LR254]

SENATOR COASH: Okay. [LR254]

TERRY WAGNER: And so I think the 1,244...I'm sorry, 476 is the numbers that I have

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for the number of registered sex offenders in Lancaster County: 207 of those are lifetime registrants; 147 are 25-year; and 122 for 15-year. [LR254]

SENATOR COASH: So you added almost a full-time...well, you had to dedicate almost a full-time person, but he didn't...you had to find that in your tight county budget to do that? [LR254]

TERRY WAGNER: Yeah, and we...actually, we've just... [LR254]

SENATOR COASH: Please explain how you had to respond to this. [LR254]

TERRY WAGNER: Well, we just had to suck it up. We pulled people from other divisions to help out when it was extremely...I mean, for a while there, we were having lines of three or four sex offenders deep, you know, so it was very burdensome on our office and we just had to pull people from other divisions to help fill the need. [LR254]

SENATOR COASH: And that's part of the change? You weren't...you didn't have...this was part of what you had to do once we enacted LB285, right? [LR254]

TERRY WAGNER: Correct. [LR254]

SENATOR COASH: I don't have any further questions. [LR254]

SENATOR ASHFORD: The 122, Sheriff, that are low-level, are those generally misdemeanors? [LR254]

TERRY WAGNER: You know, Senator, I'm not sure. I think that...I think you're correct. [LR254]

SENATOR ASHFORD: That's the 15-year registry? [LR254]

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TERRY WAGNER: Correct. Yeah, I don't think there would be any felonies involved with that, but I can't remember for sure. I'd have to look at the bill. [LR254]

SENATOR ASHFORD: So anyway, the 122 are...or that come into your office four times a year and... [LR254]

TERRY WAGNER: No, no, the 122 that are 15-year, they only have to come in once a year. [LR254]

SENATOR ASHFORD: Okay. [LR254]

TERRY WAGNER: And then the 147 that are 25-year registrants, they have to come in twice a year. [LR254]

SENATOR ASHFORD: Okay. [LR254]

TERRY WAGNER: And then the lifetime registrants have to come in four times a year. [LR254]

SENATOR ASHFORD: Okay. [LR254]

TERRY WAGNER: So that's kind of how that...it's a progressive increase in the number of visits. [LR254]

SENATOR ASHFORD: Okay, thanks, sir. I think that's it. Thank you. [LR254]

TERRY WAGNER: Thank you. [LR254]

SENATOR ASHFORD: All right, why don't we open it up to comments from the public

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now? And I think we will use the lights because it seems to me that there are numbers of people here that may want to talk, so let's go...come on, John. How many do want to testify? And then I can determine the lights system--or we probably don't need to go there then. Let's just try to limit our testimony to around five minutes or so because there may very well be questions. John? [LR254]

JOHN KREJCI: (Exhibit 4) Good afternoon. My name is John Krejci, K-r-e-j-c-i. I'm really very happy that you're...you had this hearing to kind of straighten out things because there's a lot of injustice and a lot of undue burden on sex offenders. I'm not in favor of sex offending, but I think we've kind of gone overboard, the Adam's Act. And we're trying to comply with it and you can see that U.S. senators are trying to be fair and trying not to overly burden people. I'd just like to...I'm working with an ex sex offender. This person didn't commit a sex offense. It was aiding and abetting. It was...I guess it was a bad thing. But this person serves 11 years, she's out now, she's got a job, she found a place to stay, which is very difficult in Lincoln. It is almost maybe one or two places that you can find residence; very difficult to find work. She'd been classified as a lifetime and has to report four times a year and then it's a four-page thing she has to fill out every four months, you know, with do you have a cell phone, Internet connection? If someone visits her for several days, that has to be reported. Of course, she has to report when she goes out of town and it's a real, you know, it's just really beating up on someone who...and another young man who was guilty of statutory rape. Some white girls got away and stayed with them for a few days and their daddies got mad at him and he was spent almost 15 years in jail, then. So there's...and the biggest number of people going in jail now are sex offenders--I think Bob said 19 percent or something, so it's really high. So I'm just saying I hope you can find a way to do this fairly without...and the sheriff's got plenty more work than he needs and I think that we're...and sex offenders are low recidivism. I don't have that data, but I know in our Nebraska Criminal Justice Review, there was some data on that. So I think, kind of, we've overreacted and I'm glad that we're trying to, you know, gear things back. I don't have any...I have sympathy for people that are offended. That's a horrible, horrible crime. But, you know,

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are we doing any...are we safer? Are we better off? And are we helping to rehabilitate? There's a...several of us are trying to deal with all the people who have gotten out of jail so they won't recidivate and there's a group called COSA trying to work with sex offenders because they have so many challenges and so little support. So anyway, as you know I'm an advocate for people that need. I just talked to Ernie a few days...he's trying to come down to be an advocate for poor people, but I'd like to think that I...I'd like to that too. So I commend you for what you're trying to do. I have a one-page thing, (inaudible) a little bit, and some of the criticisms of it. I can just pass that out...yeah. That's all I have to say and I appreciate your giving me the chance to talk and if you have any questions, I'll address them. [LR254]

SENATOR ASHFORD: Thank you, John. Any questions of John? Thank you, sir. [LR254]

JOHN KREJCI: Thank you. [LR254]

SENATOR ASHFORD: Next testifier. [LR254]

BRIAN GRAY: Good afternoon. My name is Brian Gray, G-r-a-y. [LR254]

SENATOR ASHFORD: Can you spell your name for us? [LR254]

BRIAN GRAY: The first name or the last name? [LR254]

SENATOR ASHFORD: Both. [LR254]

BRIAN GRAY: B-r-i-a-n G-r-a-y. I'm here because, in the year 2001--I don't remember exactly what month--I got convicted of unlawful voluntary sexual relations with a minor. At the time before the conviction, I was 17 dating a 14-year-old. We were high school sweethearts, and probably about five days after my 18th birthday, I got convicted and

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got a year and...a prison sentence, a year, excuse me--I get nervous talking in front of people--and I ended up spending 19 months of my life in jail and prison and boot camp. It's affecting me a lot, it's affected my mom and my family, and I just kind of wanted to say that, from my point of view, they didn't really have any evidence of any kind of anything. And just letting everybody know that this was in Kansas, not Nebraska, but I have to register in Nebraska and Kansas because I live in Nebraska and I work in Kansas and a couple of years ago I tried to come into Lincoln and get a job and nobody wanted to hire me. I couldn't even get an apartment because nobody...as soon as my name came up, they ran it or whatever, and I couldn't get an apartment anywhere. Due to that, I have a 7-year-old daughter that I've tried to get better visitation of and they wouldn't allow it. I got one day a month to see my kid. And now I have another son and I just hope that this whole situation could help people, like in my situation, to get off the registry. I was supposed to be a 10-year registrant, and due to the new law, they switched it to 25 years. So I have to deal with this until I'm 55 and my whole life is pretty much messed up. I can't go to school, I can't get the degrees I want to get, I can't get a real paying job to support my kids and my house or anything like that. That's really all I have to say because we were short for time. Thank you. [LR254]

SENATOR ASHFORD: Yes, Senator McGill. [LR254]

SENATOR MCGILL: I'm not going to ask a question, but I just want to thank you for coming out, and this is the kind of situation that I'm concerned about, are the high school sweethearts or, if you will... [LR254]

BRIAN GRAY: It was less than three years. [LR254]

SENATOR MCGILL: The younger, yeah. [LR254]

BRIAN GRAY: It's gross...I'm sorry. [LR254]

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SENATOR MCGILL: But there's not as much of a gap in age, and I think there's a drastic difference between your situation and a 40-year-old molesting a 4-year-old. [LR254]

BRIAN GRAY: Yeah, there is. [LR254]

SENATOR MCGILL: And so that is my biggest concern with the statutes as they're written right now and I just want that on the record. [LR254]

BRIAN GRAY: Can I just say one more thing real quick? [LR254]

SENATOR ASHFORD: Okay, yes you may. [LR254]

BRIAN GRAY: At this time right now, this girl is about to be 26 years old, she's married and has two kids and about to have a third. I still keep contact with this girl and kept contact over the years and if I could have got ahold of her today, she'd be here with me to testify with this. [LR254]

SENATOR MCGILL: During...real quick, just to follow up. During your case, was her family or was she... [LR254]

BRIAN GRAY: Her family was... [LR254]

SENATOR MCGILL: ...claiming that it wasn't...I know it's underage, so consensual isn't the law, but... [LR254]

BRIAN GRAY: She admitted that it was consensual, but they didn't have any evidence to prove that it was before my 18th...or after my 18th birthday, they didn't have none, none at all, and I still got convicted. [LR254]

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SENATOR MCGILL: Thank you. [LR254]

SENATOR ASHFORD: Senator Council. [LR254]

SENATOR COUNCIL: Okay, just a minute. I just....it's Brian, right? [LR254]

BRIAN GRAY: Yeah. [LR254]

SENATOR COUNCIL: Thank you, Brian. I just want to make sure I have this clear, because if I have it clear, it's one of the other problems I have with the registration. [LR254]

SENATOR MCGILL: Um-hum. [LR254]

SENATOR COUNCIL: You were charged at age 17 with the offense? [LR254]

BRIAN GRAY: No, I was charged five days after my 18th birthday. [LR254]

SENATOR COUNCIL: Okay, five days after your 18th birthday. [LR254]

BRIAN GRAY: Yes. [LR254]

BRENDA COUNCIL: Now, correct me if I'm wrong, Committee Counsel. In Nebraska he would not have been charged with first-degree sexual assault if it happened five days after his 18th birthday. Wouldn't it have to happen after his 19th? [LR254]

LAMONT RAINEY: No, no, no. He wouldn't have been charged because both would have been under...they would have both been juveniles. [LR254]

BRIAN GRAY: I thought first-degree... [LR254]

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SENATOR COUNCIL: They would have both been under the age of 19. [LR254]

BRIAN GRAY: Kansas doesn't have that law. [LR254]

SENATOR COUNCIL: And she was...and she consented. [LR254]

BRIAN GRAY: Yeah. [LR254]

SENATOR COUNCIL: Is that you? [LR254]

BRIAN GRAY: We dated for like, I don't know, a couple months. [LR254]

SENATOR COUNCIL: Okay, and... [LR254]

BRIAN GRAY: And then, until this happened, we couldn't even be around each other. [LR254]

SENATOR COUNCIL: Okay, but because of that, although had you been...had that occurred in Nebraska, you would not have had the registration requirements. But because it happened in Kansas and their law is different and you elect to come to Nebraska, you have to fit the registration requirements of Nebraska, based upon the offense that you were charged with in Kansas. [LR254]

BRIAN GRAY: Yeah. [LR254]

SENATOR COUNCIL: Okay. I don't know if there's anything that can be done about it, but that's problematic as well, and my colleagues...don't get me wrong. My preference is that minors not engage in sexual activity. I mean, put that on the record, first and foremost. [LR254]

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SENATOR MCGILL: Yes. [LR254]

SENATOR COUNCIL: But secondly, you know, I have had--and I don't know if Director Houston is still here--but we've had...Director Houston knows my feeling about Romeo and Juliet convictions and the number of people that we have incarcerated right now because of Romeo and Juliet relationships. And that's problematic because I know what it does in terms of your ability to move forward with your life, to obtain employment, to obtain housing. And so I don't know, Mr. Chairman, if there's anything, if there's some exemption or if there's something we can look at. [LR254]

BRIAN GRAY: I can't even go to... [LR254]

SENATOR COUNCIL: But I know that he is required to register in Nebraska, based upon the offense that he's charged with in Kansas, although it would not have been the same offense if he had committed it in Nebraska. So I don't know if there's an opportunity for us to look at, you know, something there, you know, we'll get with the State Patrol, but that's problematic for me. And, I will submit to you, under the old system, he would be a Level 1 offender. [LR254]

BRIAN GRAY: Is that the worst or the...? [LR254]

SENATOR COUNCIL: That's the least likely to reoffend. [LR254]

BRIAN GRAY: Well, they've got me on a Level 3 right now. [LR254]

SENATOR COUNCIL: Um-hum. [LR254]

BRIAN GRAY: And the only evaluation--not to take every body else's time or anything--but the only evaluation I've ever had was when I was in the penitentiary.

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[LR254]

SENATOR COUNCIL: Okay. [LR254]

BRIAN GRAY: And that was from a psychologist, I believe. And after that, I didn't ever have another evaluation and I got a thing in the mail talking about I have to do it for another 20 years or 25. [LR254]

SENATOR COUNCIL: Twenty-five. Okay, thanks again, Brian. [LR254]

BRIAN GRAY: Um-hum. [LR254]

SENATOR ASHFORD: And you were paroled? [LR254]

BRIAN GRAY: Huh? [LR254]

SENATOR ASHFORD: Did you receive parole, is that what happened? You were paroled after one year? [LR254]

BRIAN GRAY: After doing more than my time. I was served...I was sentenced a year and I did 11.5 months and still ended up going to prison for three. [LR254]

SENATOR ASHFORD: Okay. [LR254]

BRIAN GRAY: For three months. [LR254]

SENATOR ASHFORD: Thanks. [LR254]

BRIAN GRAY: Thank you. [LR254]

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SENATOR ASHFORD: Okay. [LR254]

MIKE SMITH: Good afternoon. I'm Michael Smith. I'm a deputy sheriff with Douglas County. I'm here more to answer questions. I have numbers for you, so I'll just run through those real... [LR254]

SENATOR ASHFORD: Yeah, why don't you, if you have, yeah, that will be helpful, I think. [LR254]

MIKE SMITH: Okay. I can just run through those real quick for you. I just checked this morning and Douglas County has 894 sex offenders registered to us. For comparison numbers, in 2009, we updated and registered...we had 960 contacts for updates and registrations in our office. In 2010, we had 3,006 and so far this year we've had...just through the first three quarters, we've had 2,296. Compliance checks in 2009? We did 412. In 2010, we did 489 and through the first three quarters of this year, we've done 331. We had 101 offenders come into our office just last week alone to update information. [LR254]

SENATOR ASHFORD: Do you have any breakdown on how that breaks down on levels or just the offenses? Whether it's 10-, 15-year, 25-year, or life? Does that...do you have that data at all? [LR254]

MIKE SMITH: I do. I have kind of a rough figure--the math is a little off. For the 15-year registrants, there's about 135. For the 25-year registrants, there's about 260 and then the remainder are lifetime offenders--it's nearly 500. [LR254]

SENATOR ASHFORD: Five hundred are lifetime. I think that's it. [LR254]

MIKE SMITH: Okay. [LR254]

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SENATOR ASHFORD: That's helpful. Thank you. [LR254]

MIKE SMITH: Yeah. [LR254]

SENATOR ASHFORD: Any other testifiers? Yes. [LR254]

KARI UPCHURCH: Good afternoon. I am Kari Upchurch here on behalf of Brian Gray. The last...my last name is spelled U-p-c-h-u-r-c-h. I have been around him for several years and have watched him go through everything within those several years. Like he said, the not being able to get a job, the housing, the schooling, the stuff with his daughter and everything else. And not only that, but he...without the new law, he would have been done with everything, I believe, in November of next year. And because of the new law, now he's got to do it until he's 50. I have seen all of the stuff that he's gone through within the years that I've been with him and I've heard all of the stories with how it went down and I've seen the papers and all of the court stuff and I just wish that there was something we could do for stuff like his situation. That's about it. You guys have any questions? [LR254]

SENATOR ASHFORD: Questions? Thank you for coming down. [LR254]

KARI UPCHURCH: Thank you. [LR254]

ERIC BAIRD: (Exhibit 5) Good afternoon, Chairman Ashford. Senators of the Judiciary Committee, thank you for hearing me. My name is Eric Baird, last is spelled B-a-i-r-d. I am here representing the organization called Nebraskans Unafraid, in association with the Families Affirming Community Safety. And before I get started on the comments that I wanted to make, I wanted to address a couple of the issues that were brought up in the testifiers that were asked to come here. Mr. Cookson addressed the constitutionality of LB285. It takes a couple of years for these cases to work its way through the system and he made a mention that they...there has been no constitutionality issues that have

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come up with Adam Walsh Act compliant laws. That is not true. In 2003, the United States Supreme Court decided on Smith v. Doe, which addressed Alaska's SORA law. It had no notification piece. They decided that the sex offender notification...or that the sex offender registry was not punitive, and therefore could not violate ex post facto law. That gave carte blanche to not only the federal government, but the state governments to pass whatever sex offender laws they deemed necessary without having to worry about violating constitutional rights. Alaska then, the next year after they had changed the law to make it more harsh, Alaska itself overturned the United States Supreme Court decision in Smith v. Doe about the Alaska registry, making it unconstitutional under Alaska's constitution's provision against ex post facto laws. This last July, Ohio did the same thing. Ohio was the first state to actually implement SORNA laws, pursuant to the Adam Walsh Act, with this mandate that spurned LB285. In July of this year, for a second time, Ohio Supreme Court itself found that their laws violated...were punitive, and therefore violated ex post facto provisions of the Ohio constitution. Kentucky has had similar rulings, as well as Missouri, and so these laws...there is a fine line in SORNA laws between what is punitive by intent and by implementation, and so there is a different trend than what has been produced here today on what states are doing versus constitutionality in SORNA laws. There was a question on what triggers 15-year, 25-year, Tier 1, Tier 2, Tier 3 under the Nebraska LB285 system. The way LB285 is written is based upon what your offense could have carried as a punishment; not what was actually gotten, but what could have been carried. Anything above one year incarceration is considered not eligible for Tier 1--at least Tier 2. And in Nebraska's system, any felony, even a Class IV, the lowest type of felony, carries zero to five years incarceration. So there is no felony offense in the state of Nebraska that is eligible for Tier 1, and the numbers I heard from Lancaster County Sheriff as well as Douglas showed well over 50 percent of all registrants being a Level 3. The data that I have shows that this "stranger danger" that everybody worries about--I'll get to my handout. [LR254]

SENATOR ASHFORD: What was your point there? Would you reiterate your point?

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[LR254]

ERIC BAIRD: My point about what, sir? [LR254]

SENATOR ASHFORD: The last point you made. I'm trying to... [LR254]

ERIC BAIRD: About the constitutionality or about the tier? [LR254]

SENATOR ASHFORD: No, no, just this last sentence, when you're talking... [LR254]

ERIC BAIRD: There was a question that was posed during a few of the testifiers that you had asked to come here about what triggers Level 1 and Level 2. There is a very low level of Level 1 offenders--the lowest level offenders--versus what there used to be in this system, because Nebraska's law states that whatever can be sentenced above one year incarceration is a Level 2 or above. [LR254]

SENATOR ASHFORD: I gotcha. [LR254]

ERIC BAIRD: That's why the numbers have skewed so far towards Level 2 and Level 3. [LR254]

SENATOR ASHFORD: So instead of assessing the risk of the actual... [LR254]

ERIC BAIRD: Correct. The only people... [LR254]

SENATOR ASHFORD: So it's the sentencing, is what you're saying. [LR254]

ERIC BAIRD: The only people available for a Level 1 assessment... [LR254]

SENATOR ASHFORD: So they take the five years, in a sense, and disregard anything

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under a year. [LR254]

ERIC BAIRD: Disregard zero. It's...it could have gotten up to five years, so any felony offense in Nebraska qualifies as at least Tier 2. The only offenses in Nebraska that qualify for Tier 1 15-year registration is misdemeanors only. [LR254]

SENATOR ASHFORD: Okay. [LR254]

ERIC BAIRD: And not even all misdemeanors, because they could have carried more than one year incarceration as a misdemeanor. Certain classes of misdemeanors qualify for Tier 1, and that's all, and I don't believe with the data that I have that that many people are that much of a risk to society. And when you go away from a risk-based system, you front load on the Level 2 and Level 3 and scare the community more than is necessary, because the people that should be Level 3, in my opinion, should be the scariest people. That's what Level 3 is there for. When you go away from a risk-based system, it waters down the field of who's there. And when you put everybody on one, it waters down the field that is there and the community is not able to protect itself the way it's intended to by using a notification registry. I believe that's all the comments that I had on the people that were asked to testify here. The handout that I've given the Judiciary Committee is not an all-encompassing group of news stories, national organizations, positions, and studies regarding sex offender laws. This tells a story that I wanted to share with the Judiciary Committee. Crimes nationwide are going down. They have been since 1993. In a study of between 2009 and 2010, rapes and attempted rapes nationwide were down 5 percent. In the Midwest specifically, they were down 6 percent. As of yesterday, the statistics from right here in Lincoln, Nebraska, showed rapes from 2009 to 2010, where LB285 came into effect, increased 14 percent--over 14 percent. From 2010 to this time, this time in 2010 to 2011, we're up 34 percent by this time this year. So the national trend where rapes and attempted rapes are going down, LB285 and quite possibly other factors, are making Lincoln's numbers go up. That's just a very small sample of crimes, but this is from LPD's actual Web site.

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[LR254]

SENATOR ASHFORD: Are those charges or convictions or what are they? [LR254]

ERIC BAIRD: It says Part 1 crimes: rape, attempted rape--this is fourth page of the handout--and I can't speak to whether those are charges or reports. What this story tells is that sex offender registries have an effect of reduce in recidivism of sex offenders. Sex offense notification registries that put people on-line have the opposite effect. There are two studies at the end of this booklet that show that exact statistic and those findings. While I'm not here in support or against the registry itself, the notification pieces have been shown in empirical studies to increase recidivism and make the public less safe. The purpose behind sex offender registries is stated, dating all the way back to the Jacob Wetterling Act, is to protect public safety, to make the public safer. And quoting Senator Ashford from earlier today, that's the paramount purpose of these laws, is to protect the public safety. That is the charge of these registries. It's not doing that, and the money that we're spending in order to get the Byrne funding that we're not getting anyway, many people can say it's worth it to keep the community safe. But the statistics that I have today that have been coming out ever since the passage of the Adam Walsh Act in 2006, show the exact opposite trend: that it doesn't make the community safer. By destabilizing it, as Senator Council said, keeping people from employment and housing, which are the earmarks of what keep people from recidivating, that is the actual effect of these sex offender registry and notification laws. And that has the opposite effect of what they're supposed to have, making the community less safe. So, in effect, we're spending a lot of money to make people less safe. The news articles that I have, there's a long article from CNN about--this last July--about states that have complied or have not complied with the Adam Walsh Act and the troubles that they're having doing so. What that shows is that states that have gone away from risk assessments and into just whatever the crime of conviction was, cross state and everything, like what we had earlier with Brian behind me, shows that especially in states like Wyoming, who had 125 sex offenders that were identified as

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risks to the community when they went to a non-risk-based system, they changed in order of magnitude. It went from 125 registrants to 1,450 registrants in the state of Wyoming--registered residents. Are there that many people to fear? Is that the amount of people that should be on the registry? How much is too much and how much is not enough? I think that having a crime-based system is less effective than a risk-based system, and a notification system separating that out from a registration system altogether is another thing to look at. A news story I have here from Scottsbluff--this is very recent. A little girl named Kerra Wilson was...went missing and was found raped and murdered. That is a tragedy and a lot of the laws like the Wetterling Act, Megan's Law, and Adam Walsh Act are based on tragedies like this. The person that has been accused and arrested of this crime was neither a felon nor was he a sex offender. Ninety percent of all child sexual abuse happens with somebody that is known and trusted by the child victim. So those are in the home: the stepfathers, the grandparents, the coaches, the clergy. There is nothing that a sex offender law can do to prevent those crimes. The "stranger danger" that everybody worries about is about 7 percent of all sex crimes against children. Shouldn't it follow, then, that 7 percent of the people on the registry should be the ones that are focused on and given notification, the Internet notification, all that? So I have national organizational positions. ATSA, which is the premier therapeutic agency or association in America, warns that over-inclusive public notification dilutes the public's ability to identify the most dangerous offenders. The National Association for Criminal Defense Lawyers opposes sex offender registration altogether and community notification laws, but also believes that if such laws are passed, they should classify offenders based upon true risk, with full due process of law and that's not happening with a system that goes away from risk-based. There is no due process, there is no appeals process with the Nebraska State Patrol, there is no recourse for somebody that's been deemed a sex offender to get that label off of them. Now with that, I'll open to questions if you have any for me. I thank you for your time and thank you for listening to me. [LR254]

SENATOR ASHFORD: Senator Council. [LR254]

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SENATOR COUNCIL: Thank you. Mr. Baird, I want to thank you for appearing and the obvious effort that you went to, to put this data together for the committee. But I must take exception to one of the points you made: your data with regard to the number of rapes since 2009, rapes and attempted rapes since 2009 in Lincoln. While I might agree with a statement that, notwithstanding the passage of LB285, there have been an increase in those two categories, I will not agree, and I think you are hard-pressed to justify your statement that rapes and attempted rapes increased in Lincoln because of the passage of LB285. [LR254]

ERIC BAIRD: Causality was not my intention, ma'am. All I was doing was showing that national trends are going down and as of 2009, until today, there have been an increase in rapes and attempted rapes reported or charged in Lincoln. [LR254]

SENATOR COUNCIL: Okay. [LR254]

ERIC BAIRD: Because I have a degree in mathematics, I understand statistics and causality versus a casual relationship. It wasn't my intention to say that LB285 caused more rapes. [LR254]

SENATOR COUNCIL: All right, okay. [LR254]

ERIC BAIRD: All I'm saying is that there is an increase in community safety concerns and when the national trend is going down, there is a spike in those in Lincoln, Nebraska. [LR254]

SENATOR COUNCIL: Okay, not a problem, and I appreciate your clarification. [LR254]

ERIC BAIRD: Yes ma'am. [LR254]

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SENATOR COUNCIL: Because that may never been your intent, but that's what you said. [LR254]

ERIC BAIRD: Yes, ma'am. [LR254]

SENATOR COUNCIL: So I just wanted to make sure we got that clarified. Thank you. [LR254]

ERIC BAIRD: Okay. [LR254]

SENATOR ASHFORD: Thank you, thanks for your comments. [LR254]

ERIC BAIRD: Thank you for your time, ladies and gentlemen. [LR254]

SENATOR ASHFORD: Next testifier. [LR254]

MONICA JUDEVINE: Mr. Ashford, Committee, my name is Monica Judevine, M-o-n-i-c-a, Judevine, J-u-d-e-v-i-n-e. I don't have any large data, I don't have any statistics, I have a real-life situation. I have a 23-year-old son who happens to be a John Doe. He is one that you should be mad at, not that you should fear. As an 18-year-old, he attended a party with another 18-year-old female and they had drunken sex. Her parents then filed charges and he received false imprisonment and he served 90 days in jail and sentenced to 10 years on a Level 1 registry as part of his sentencing. We agreed to this, not knowing that within a year and a half, the Adam Walsh law was going to come along and take a 10-year sentence--which would put him at 29 years of age--on a registry until he was 44. My son went clear through school as an outstanding baseball player, never had a detention, never had a parking ticket, a speeding ticket, and as of this day has never been in a fist fight. But now, he is marked in the same category as people who go out and commit heinous crimes. You cannot put the people that you are mad at in the same category with people that you are in fear of. When the neighbors are

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asking you why, when I pulled a watchdog report, would your son's face pull up in our zip code? We don't understand. Well, you put the monitoring and the tracking devices on, do you think that Metro Tech Community College is going to want their computers monitored if my son goes back to school? Right now, he has given up because he feels like he has a black mark on his forehead. He's so shy, he's sitting back there and I'm up here speaking. Yes, sex crimes are heinous, but he took a plea, he did his time. He was wrong, he shouldn't have had drunken sex, she shouldn't have had drunken sex, but he does not belong on the sex registry with people that have really, really, really committed the crime. And the few dollars that you make on this are going to spent out fighting it. It's not a fair law. And as Nebraskans, do we have to follow what everybody else does? We haven't before. We don't have casinos. That's all I have to say, just so that everybody understands that this isn't the right thing to do. Yes. [LR254]

SENATOR ASHFORD: Senator McGill. [LR254]

SENATOR MCGILL: Can we just...we're just trying to discuss clarity... [LR254]

MONICA JUDEVINE: That's fine. [LR254]

SENATOR MCGILL: ...on what exactly he was charged with then if he was 18. [LR254]

MONICA JUDEVINE: He was 18. [LR254]

SENATOR MCGILL: It was here in Nebraska? [LR254]

MONICA JUDEVINE: Um-hum. Let me tell you exactly what happened and I'll make it quick. [LR254]

SENATOR MCGILL: Um-hum. [LR254]

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MONICA JUDEVINE: They went to a party in March of 2007. They were both 18 years of age. They both drank too much. The next day, she started feeling bad, told her sister that she had sex, her sister told her mother, her mother took her and the police report that I have states: We do not want to ruin this child's life, but if I don't press charges, my mother will be disappointed in me. So, our original charge was supposed to be false imprisonment misdemeanor. They changed it to false imprisonment lowest felony because he had sex with somebody who was drunk and not in complete control. Even though in a drunken state she said it was consensual, it ended up not being, so the judge gave him 90 days and so his original sentencing was 10. In fact, when he got his first letter while on probation, they were going to sentence him to life on the registry, and then the probation officer called to see what the deal was and they went back and now it's 25 years. And that's being a good kid, a baseball advocate. He can't even coach his child. He can't go help coach a high school team. He can't do nothing. He's done and he's only 23. He made a mistake, he did his duty, and just going to carry on. [LR254]

SENATOR MCGILL: Well, thank you. These are the types of cases I'm most concerned about, too, as I think Senator Coash has a question. [LR254]

SENATOR COASH: Prior to the change, was your son registering once a year with the county sheriff? [LR254]

MONICA JUDEVINE: He had just been sentenced in July of '09, so he hadn't even had to register because he was on the lowest level, Level 1. Unless a state trooper pulled his name to look and see if he was on the registry, he wouldn't even have been found. [LR254]

SENATOR COASH: So now, he's going four times? [LR254]

MONICA JUDEVINE: Now he registers four times a year. [LR254]

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SENATOR COASH: Four times a year? [LR254]

MONICA JUDEVINE: And I live in a small cul-de-sac in west Omaha and you should see the shades open up when the Sheriff's Department comes knocking on the door to see if he's at home or if he's at work. [LR254]

SENATOR COASH: So the sheriff in Douglas County has done, is doing... [LR254]

MONICA JUDEVINE: They do their compliance check, um-hum. [LR254]

SENATOR COASH: They're doing compliance, making sure that somebody who is on the registry is living where they say they're living? [LR254]

MONICA JUDEVINE: Right, and he lives home. He lives at home. [LR254]

SENATOR COASH: But he still has to register with the...he still has to go there four times a year to confirm? [LR254]

MONICA JUDEVINE: Yeah. [LR254]

SENATOR COASH: Okay. [LR254]

MONICA JUDEVINE: And when he decides that he wants to move out, which one of the hold backs are--right now he's at home. There's no question, there's no problems, there's no trouble. But he's 23 years old and if he goes and he fills out an application and they pull it up right now, boom, there's his face. And the registry is misleading, because he was sentenced when he was 20 because it took 18 months to get through the court system. His registry states that convicted at the age of 20 and that the victim is a minor because there was such a difference between when he was put on the registry. So it appears like he was with a minor when he himself was a minor, so it's misleading.

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Somebody looks at that and says, oh, he was 20 years old and he committed a crime against a minor. No, they were both minors. But by the time it came around for him to register, he was 20. [LR254]

SENATOR COASH: Thank you. [LR254]

SENATOR ASHFORD: And that was three years ago, when he was 20, when he registered? And was he registered on the public registry or the...? [LR254]

MONICA JUDEVINE: No, he wasn't. [LR254]

SENATOR COASH: It's all public. [LR254]

SENATOR ASHFORD: Not now, I mean before. Was he? [LR254]

MONICA JUDEVINE: He was on the lowest level. Nobody could see it but the state trooper. [LR254]

SENATOR ASHFORD: Okay, that's it, but he was registered before, but it was on...? [LR254]

MONICA JUDEVINE: That was part of his bargain. [LR254]

SENATOR ASHFORD: Okay, now. [LR254]

MONICA JUDEVINE: The parents wanted some type of sexual offense. [LR254]

SENATOR ASHFORD: Right, I get it. [LR254]

MONICA JUDEVINE: And so the prosecutor said, well we can't, you know, can't do

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rape, can't do this, so we'll put him on the registry, nobody will ever see it, in 10 years it will be all done, there won't be any problem. Yeah, not so much; we got blind-sided. And once somebody hands you a sentence, I mean, that would be like you getting a parking ticket and the police coming back in six months saying, you know what? We're going to get more money if we charge you for something else and they recharge you. Once you're charged, you should not have to be recharged. [LR254]

SENATOR COUNCIL: Can I say...? [LR254]

SENATOR ASHFORD: Yes, Senator Council. [LR254]

SENATOR COUNCIL: And I apologize, I was only here for part of it. I was outside of the room, so I heard part of it. The offense that he was convicted of, under the current statute, requires him to be on the registry for 25 years? [LR254]

MONICA JUDEVINE: At first they had him for life, and then the probation officer called and said that they needed to reassess his conviction because it wasn't...there was no violence, there was no nothing. It was just false imprisonment because he had sex with somebody who was drunk and felt bad about it the next day. So there was no violence whatsoever and he went from 10 years to 25. And at first, they had it wrong and had him for life. [LR254]

SENATOR COUNCIL: Okay, so just to be clear, under his current placement on the registry... [LR254]

MONICA JUDEVINE: It's 25 years. [LR254]

SENATOR COUNCIL: Okay, so he doesn't have to report quarterly. [LR254]

MONICA JUDEVINE: Yes, he does, yes. [LR254]

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SENATOR COUNCIL: It should be semiannually. [LR254]

MONICA JUDEVINE: No, he reports... [LR254]

SENATOR MCGILL: Is it six months? [LR254]

MONICA JUDEVINE: Twice, yeah, I'm sorry, twice a year. Every six months. [LR254]

SENATOR COUNCIL: Yeah, okay, okay. [LR254]

SENATOR MCGILL: Okay. [LR254]

MONICA JUDEVINE: Sorry. [LR254]

SENATOR COUNCIL: Okay, I just want to make it because that... [LR254]

MONICA JUDEVINE: It's okay. [LR254]

SENATOR COUNCIL: No, then that was really erroneous. [LR254]

MONICA JUDEVINE: If you knew how the inside of my stomach was rolling and...
[LR254]

SENATOR COUNCIL: Then that was really it, you know... [LR254]

MONICA JUDEVINE: Yeah. [LR254]

SENATOR COUNCIL: Then that would be...something would need to be corrected if
you had been required to report quarterly. [LR254]

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MONICA JUDEVINE: Right. But it's still inconsistent with...the crime doesn't fit the punishment. [LR254]

SENATOR COUNCIL: Okay, and did you say that the length of time on the registry was a part of his plea bargain? [LR254]

MONICA JUDEVINE: Um-hum. [LR254]

SENATOR COUNCIL: All right. And I thought that was one of the things we thought we had addressed with LB285. [LR254]

MONICA JUDEVINE: Yeah. [LR254]

SENATOR COUNCIL: But that's...and I don't know that we can address it now, so. [LR254]

MONICA JUDEVINE: When the prosecutor came to our attorney, the first plea was the parents want something done--they're mad. So we're going to do false imprisonment misdemeanor and 10 years on the registry that nobody will ever see, and it will be just like nothing happened. [LR254]

SENATOR ASHFORD: Was this in Douglas County? [LR254]

MONICA JUDEVINE: Yes, Omaha. And if anybody wants a copy of the police report or the things, I would be more than willing to give them. [LR254]

SENATOR COUNCIL: Thank you. [LR254]

SENATOR ASHFORD: Thank you. Any other testifiers? How many other testifiers do

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we have today? Okay. [LR254]

DANIEL KONECKY: (Exhibit 6) Hello, my name is Daniel Konecky, D-a-n-i-e-l K-o-n-e-c-k-y. Some of you are familiar with me and I knew that this was kind of a fact-finding...my impression it was kind of a fact-finding meeting, so I wrote a letter to keep my thoughts a little bit more contained just about some of the facts that have affected me because I went from being a Level 1 to a lifer, so I thought there were some pretty important facts that I wanted to share. I'll be fast. Prior to January 1, 2010, I was a registered Level 1 offender. Now, with the passage of LB285, I'm a lifetime registrant. After the passage of LB285, I'm forced to register for the rest of my life after serving a year of probation ending in March of '07. I hadn't been in any kind of trouble since completing probation, nor since way before the accusations that got me into this mess. I feel like I'm being punished again for the rest of my life after serving my punishment and proving my worth by living righteously, being a good father and husband, and staying out of trouble. I was released from probation March of '07 like I said, after one year and three months of probation. I was released early for good behavior and completion of all the requirements. I plead no contest to attempted second-degree sexual assault of a minor. It was a Class IIIA felony. I was accused of having consensual sexual relations with a 15-year-old girl when I was 23. There were many extenuating circumstances and dynamics that were involved with me and the girl's parents, who were actually my unhealthy friends at the time and really my only associations in their household. I took a plea deal out of fear, with an understanding that I would definitely be sentenced to probation for no more than two to three years at that, and the reassurance that I would be classified as a Level I offender not subject to Internet registry. My court-appointed attorney assured me that even the Saunders County Attorney at the time, back in 2005, was recommending these stipulations of the plea that involved me, so even the opposition was recommending this if I took this plea. So rather than face 100 years in prison, out of fear I took this plea and I was sentenced to two years of probation. After I was released from probation, I went through a job change. Life was noticeably harder with a felony, but I was still able to obtain employment. I had temp jobs. We weren't as

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well off as before. Now I've been unemployed since February of 2011. I can't pass a background check. Now that I'm on the Internet side of the registry, especially as a lifer, I can't even get hired at Wal-Mart or McDonald's because the registry is the first place they check. I failed background checks at all sorts of places from fast food, Wal-Mart, production companies, and all sorts of other companies where I have the experience to do the work. I worked for Waste Management in Nebraska, a trash company, all through my probation time. I was a residential trash can delivery man and I went into people's yards, garages, backyards all day every day for years--working making \$15-plus an hour. I was a Level 1 offender. I was on probation at the time. I had a great job, I was directly dealing with the public in the public. I mean, I'm not a threat to society. I proved it then; I continue to do so. I went from making, you know, decent money for myself to not even be able to get on at Wal-Mart or McDonald's, due to LB285. Now, let's see. Now, I'd just like to say that this new law and the way it erroneously slanders nondangerous people and nonpredatory people like myself needs to be revamped for public safety reasons. Since LB285, our house has been egged. Our garage door, screen door, and front door have been spray-painted with anarchy signs on them, like an A with a circle. We've had bags of trash and recyclables thrown in our yard. Our yard has become a magnet for the neighbors' dog feces from around the whole neighborhood. I've even witnessed one of my daughter's teachers from school do this--have the bag in her hand and just look at our house and walk away. People have driven by, flipping the bird, yelling obscenities at me--obscenities yelled at me from down the street. My car window was shot out. We've been getting knocked on and ran a lot lately. The kids from the neighborhood are constantly picking on my daughter. Even people who were formerly on the registry as Level 3s under the old system walk by and flip me off once in a while. I was confronted and badgered about the registry at a gas station earlier in September. I'm being erroneously slandered, not to mention the social stresses on my wife and especially my daughter at school. She's been pushed out of the popular group because her dad was in jail, when in reality I was never in jail, only on probation. I'm sure some of these other parents around the neighborhood were in jail or even prison for one thing or another, yet I'm made to look like this horrific monster,

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which I'm not. It says right on my registry papers: court-ordered sexual predator, and the box is checked no. So, if I was really a horrific monster like my lifetime registry status says I should be, then why was I just placed on probation? My court case went on for a year and half before I took the plea, so the courts got all of the details. There was much time for depositions and fact-findings and such, and they were all done pertaining to my case to render a sentence and a classification for me. If I was definitely deserving of this lifetime status, I mean, I wouldn't be so upset about this like I am now. This new law, I'm sorry to say it, but it's completely flawed. It's based on uneducated fears. This I can say with total surety because, I mean, I'm living it every day. I'm living this mistake every day. Now at the time of my plea, I had no clue that I was pleading to an aggravated offense. I still don't know what the exact terminology of my charge is. Somebody from the patrol office told me that I was a lifer due to the term aggravated, which meant forcible, and that they were retroactively applying it to many offenders. And there was nothing aggravated about my accusations, no violence, no nothing. I was accused of consensual, so how the term "aggravated" was attached to me and allowed to be used retroactively, I still haven't had answered fully. Now, I was never noncompliant as a Level 1 offender or a lifer. I've never been noncompliant. I've always made sure I was compliant. And all I knew at the time was, when I took that plea, that was that everybody knew that I was a nonthreat, that everyone understood that I had made a mistake of being in the wrong place, wrong time, with the wrong people, doing the wrong thing under the wrong circumstances. My best friend was passing away from cancer. I did what I had recently learned to do at the time: find comfort in the arms of addiction and in the arms of a family of people where I thought the parents were my friends. But now that I look back about 12 years, 14 years later, I realize that, you know, they weren't my friends. They were doing me harm. I mean, I hate to admit it now, but I have to, that, you know, at the time for me, it was all about methamphetamine the drug. I mean, I feel like I was partially a victim also and am now a victim of manipulation and of meth. I stopped using it and cleaned myself up and I've been clean ever since 2003, but I was cleaned up for a year before I was arrested for these accusations. The courts took that into account also, and also the fact that I was clean and learning from the most horrible

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time period in my life. I feel like it was the final stage of me growing up. If I had known it down the years that, you know, years down the road after probation without being in any more trouble, the government, you know, would violate ex post facto and take me from a Level 1 low-risk offender and make me into a lifetime offender--something I definitely don't deserve to wear--I would have never taken that plea. I took the plea at the time based on the registry and how I'd be looked at afterwards. That was the main thing. Now I'd like to end this letter with the assurance from somebody who was once a Level 1 offender on probation, then let off probation and remade by the state into a lifetime registrant after being in no trouble, that this is like being on probation again, no doubt. On probation, I had to check in 11 to 13 times a year. Now, as a lifer, I've been having to go in and check in or register at the same rate if not a little more. I've got to go in four times a year just for quarterly verification. Now if I get a job, a temp job, if I change my class schedule, if I register for a new college class, if I move, if say my stepson were to move back home, if I lost a job, if I got another car, changed my license plates, get new tags, if I sell a car, if I get another e-mail address or cancel one, if I go on vacation or anywhere for more than three days, when I get back from vacation, if I get too much of a haircut, if I drop a class or a class ends, then I'm afraid that there's a lot more and I don't really know what and that's what's scary. I have to go and report in. Now with my work history of these temp jobs over the last couple years, I mean, I've definitely had to go in more than 13 times a year, especially since a lot of times I have to do it in two counties. I live in Fremont and a lot of my business is in Omaha, which is Douglas County. That's a lot of time in gas to go from Fremont to 156th and Maple. Now with me looking for work and not having a job, I can't hardly afford the gas to do it. All of this taken into account, and heck yes I'm having to go in more than 13 times a year and it is like a probationary report-in. I mean, I've asked myself how many times have they got to take my picture? The wait time to make some of these small changes at the sheriff's office are sometimes ridiculously long without anybody waiting in front of you. Not only that, but when LB285 came into effect and roped so many unfortunate folks like me into its shadow of deceit and lies and public fear for money, the Dodge County Sheriff's Office and the Douglas County Sheriff's Office both cut down on the amount of time a person

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could come in and register by limiting the time. For instance, in Dodge County, now you can only come in and register Monday through Friday from 9:00 to 3:00. In Omaha, it's different. It's like 9:00 to 4:00, Monday through Friday, and there's like an hour-and-a-half break like two days out of the week, from what I understood, and it could be any two days. The requirements became more stringent and the time for...the amount of time to register dropped. Now Sarpy County has a 24-hour window for registrants to come in and make any changes and the jailer handles it. To me, that seems efficient and it makes sense. I don't know why the other county sheriffs' offices have not adopted this method. I'd just like to finish with saying I've been living ground level with this new law since January of 2010, caught up in one of the most unjust legal loopholes in American history, and I can say with pure honesty and surety that this law is flawed. It's promoting false fear, hate, and division, and the only people benefitting from it are law enforcement. The people hurt by it the most is most definitely the public. This law, I hate to say it, with all due respect, is a shame. It's a testament to greed and power, not public safety. People's lives are being ruined. Ever hear the saying "Worse things have happened to better people"? Well, I feel like I'm one of those better people and LB285 is one of those worse things. I'm telling you as an honest Nebraska citizen that this law needs to be overturned in its entirety because there are too many people like me who were doing great and now are hurt badly because of this law and have been falsely labeled and erroneously slandered to the point of no repair in our communities. Now with all due respect for anybody--whether a politician, law enforcement, you know, a plain citizen, anybody--to say that there is no hardship or throwback from this new law, no harassment or anything that comes with it for someone like me who is Level 1 and now over the Internet, I just don't feel like they're living in the same society that I am. They're not in touch with reality. [LR254]

SENATOR ASHFORD: Daniel, I appreciate your comments. I think we're going to ask if there are any questions and thank you for coming back. I don't see any, but thanks for coming back over. [LR254]

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DANIEL KONECKY: Well, thanks for giving me a voice to be heard. [LR254]

SENATOR COUNCIL: Thank you. [LR254]

SENATOR ASHFORD: Next testifier. [LR254]

TODD RUNG: Todd Rung, T-o-d-d R-u-n-g. I am a convicted sex offender. I was convicted of enticement via computer in 2008, I do believe. I was one of the first people charged with this crime in the state. I don't make excuses. I made a poor choice and I have made...done my time and I believe that I went through a lot of treatment. I went through STOP program here in Lincoln, Nebraska. And then when I went to prison I was told that, you know, we don't, us here at...we don't recognize that STOP program. Well, I didn't understand that because the STOP program was a federally-funded program for sex offenders. But when you get into Nebraska corrections system, they said we don't recognize that program. Now I don't understand how you go through a federally-funded program, but yet the state doesn't recognize it. I was listed as a Level 2 sex offender at that time. I was left out on appeal. I was appealed my cases in Supreme Court. I was left out. I was left out on an ankle bracelet for 18 months, and during that whole time I had to register. And now I find out that whole time, that I did have to register does not count against my time. Because I went to prison, now it's the time I served in prison. I've got all the time afterwards. I was a 10-year and now I'm a 25-year. My crime is not a hands-on crime. I didn't ever touch anybody. My victim is listed as a minor on the Internet, but in all actuality it's called a virtual minor through the crime. I never talked to a minor. I never laid my hands on a minor. It was a police sting with a profile that did not have an age on it. And, I mean, it's really...I had all the...I was a union mason, which is a pretty good job. I made \$25, \$26 an hour and now I can't even get a job at McDonald's. I mean, you go from making that as successful, that was successful. I mean, I made good money, and now I can't even get a job at McDonald's. It's affected my family greatly. My stepdaughter's going to come up and talk here in a second about how it's affected her, about how not being on the registry before and now being put on the

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registry has brought light to people in our neighborhood that would have never even known. I mean, my next-door neighbor, we have come out and talked to our neighbors about it and they have no worries. The reason why I was a Level 2 is my prior DUIs. It had nothing to do with any kind of sex crime, any kind of thing like that, it was DUI-based. I was sexually molested as a child by a family member. And to sit and, you know, a lot of times if you look at recidivism rates, that's where a lot of comes from, is people who have been sexually abused before have a tendency to go on and do that. I don't make excuses for what happened; it was my own poor choice. But my biggest worry is the effects that this law has on my children and other people's children that are out there, because we in the states say we don't want bullying, we don't want kids ridiculed, we don't want that to happen. When you put everybody out there, and Lincoln Public Schools actually pulled up a site of our neighborhood with dots on it and said, you know, these are people in your neighborhood that are sex offenders. Now, how right is that? I mean, you're asking for kids to get bullied. You're asking for kids to get ridiculed. You're asking for 13-year-olds that 14-year-olds, 15-year-olds, they don't care. They come vandalize your house. They don't know it's a felony. You know, you open that stuff up to people and I think that the old system worked a lot better. I don't think that the Level 1s and Level 2s, there's a reason why they were 1s and Level 2s by the assessment deal. You go by crime, like he said. Anything over 0 to 5 years is a registrable by 25 years. So now I have to register for 25 years, almost, what, 150 percent more than what I had to register in the beginning. I don't think that's fair.

[LR254]

SENATOR ASHFORD: Thank you. Any questions? Thank you for coming. [LR254]

RYLIE WIESE: I'm Rylie and I go to Irving Middle School and I'm going to tell you how this law has very much affected me. One day, while I was in 5th period, our teacher had a question of the day for us and it was what are some things you can do to keep your neighborhood safe. And my teacher went over the question with us and we moved on about how to keep your neighborhood safe and what kind of people to stay away from in

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a neighborhood. Then we moved on to a Web site that contained where a rapist or child molester lives. It gives address and shows pictures and that's when I got nervous because my teacher had the map of where rapists and molesters lived, right up around an area showing our school. Then she said that after lunch she was going to pull up some of the places where they were located and that's when I got very anxious because I know that my stepdad Todd was a registered sex offender. So anyway, he was going to be on that map and we lived around Irving and I began to worry very much because I knew someone was going to see and I was terrified I would lose so many friends and would get made fun of. And I was just devastated, but thankfully had to go to early lunch and I began to cry. I knew that after lunch we were going to see pictures of people and where people lived. I stayed in the bathroom and cried so hard. I also couldn't stop crying because I knew my friends would question why I was crying because they all saw while I was running to the bathroom and I had no idea what to tell them. They'd wonder if I was crying because of the subject in class and think maybe I had a family member that was convicted of rape or molestation and I was scared on what was going on through their head. Then I called my mom. The first time she didn't answer because she was in class. She called me again and asked what was wrong. I told her the whole story. She told me to stay calm and just breathe, but it was so hard. My Daddy T (phonetic) was calling me. He was telling me how sorry he was that I had to go through all of this. And while I was talking to my dad, my mom called Mrs. Krien, our school counselor, to come help me and stay with me until my mom got there. I wanted to run away from everything and not have to come back to this big mess, although this would have never happened if my dad was never on there, on the Web site. I feel that my dad never touched anyone or even saw anyone. Why does he have to be the bad guy when he never physically saw or touched anyone? And he is clumped together in this registry with actual rapists and people that hurt kids. I don't get why he has to be placed on this list. And it's discriminating and it puts kids in harm's way because we don't know who the real rapists are. How is that keeping us protected? I know for a fact I am not the only child in this situation. I am lucky because I had my mom and dad there for me to handle this issue. I really don't think this law is fair because kids are being bullied and have lost

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friends and family, just as I have. Thank you for letting me speak. Please help to change this law so kids are protected. Society needs to be educated about the registry and not everyone is a rapist. This way, society won't discriminate. [LR254]

SENATOR MCGILL: Thank you for coming and talking to us about this. Did they end up showing the map? Did the other kids at school find out? [LR254]

RYLIE WIESE: No, because I talked with my counselor and during...when everybody was at lunch, she went and spoke with the teacher so the teacher just stopped there, and after lunch they moved on to a different subject. [LR254]

SENATOR MCGILL: Did the teacher ever say anything to you or...? [LR254]

RYLIE WIESE: Yeah, she said that she was sorry and she never...she would never try to, like, put me out there like that or anything. [LR254]

SENATOR MCGILL: Well, thank you for coming. [LR254]

RYLIE WIESE: Thank you. [LR254]

AMY WIESE-RUNG: Hi, I'm Amy Wiese-Rung and I'm so proud of my baby. I can't tell you how important it is for everybody to become educated about RSOs, because not everybody has done a physical crime. And to be living through this with my little girl, having to get that phone call--she was blowing up my phone, texting me, Mommy you've got to come now, they're going to show Daddy on the Internet. I didn't know what to do. I was like, babe, just sit there, I'm going to get Mrs. Krien, the counselor, to come sit with you and I'll be there as soon as I can. I was clear out at school, so Todd talked to her while I got there. And the teacher was really apologetic and...but the whole thing is, as she said, these guys are rapists and, you know, I have five beautiful children and I want them to be protected and I feel that LB285 is dangerous. I don't know. I don't know

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who's physically hurt kids in my neighborhood or, you know, put their hands on kids. People look at Todd--oh, you're an RSO, you've physically...you're a "child mo." You know, we'll go out, people call us that. You know, they'll say, you're married to a "child mo"? It's wrong, it's wrong. People need to be educated and they need to go back to the list. We need to know these people are of really high risk and the people that are not. It's just not fair to the people that aren't. And my children are going to be victims--they're the victims. [LR254]

SENATOR ASHFORD: Thank you. [LR254]

SENATOR MCGILL: Thank you. [LR254]

ANDREW BAUMERT: My name is Andrew Baumert, A-n-d-r-e-w B-a-u-m-e-r-t, and I sat back there most of the afternoon wondering whether I should come up or not, but after hearing her come up...I spent 21 years as a six-figure computer consultant. I traveled around the world and had a fairly good deal going. I was convicted as a Level 2 sex offender. I was on the border between Level 1/Level 2. I went to Level 2 because I had a prior criminal record. It was an alcohol offense in college. I accepted what I did, was sentenced to probation. I would have been off the registry this coming February. As a result of the new law, I am on for life and labeled as a sexual predator. I have to go into the county sheriff's office four times a year to register. It's intimidating, like the cameras. I never know what to expect. One time I went in and they said they needed to take retinal scans. Another time I went in, they said they needed to take new mug shots. One time I went in and they asked me what my parents' address was--not sure what that was about. Under the new law, any computer that I have access to can be confiscated if there is any question of my activities. I can't expect a company like First Data Resources or First National Bank or Mutual of Omaha to hire me as a consultant and run the risk of having, well, any of their systems compromised. As a result, I do home remodeling now. I used to...my wife and I used to coordinate the neighborhood block party and now we don't know when the neighborhood block party is, other than all

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the people go down to the other end of the block. Kids in the neighborhood who used to play in our front yard, come up and talk to my wife, and they now run away if they see me. Their parents have cautioned them that a monster lives down the street. My life is different. People will tell you I'm different. At my church, I head up our divorce outreach ministry and help support addicts. I also have daughters. I have a 23-year-old daughter, a 20-year-old daughter, a 21-year-old daughter, and an 11-year-old daughter, and I don't see them because I don't want to put my kids through what she had to go through. Earlier there was questions about recidivism rates. The national average is 5.3 percent for sex offenders. It's 68 percent for other crimes. The one thing they don't take into effect is, or take into account, is the effect of counseling on recidivism. And when I last spoke with the counseling group that I was going through, they said their unofficial rate was 100 percent success--that no one who had successfully completed the program ever reoffended. I guess that's all I have. [LR254]

SENATOR ASHFORD: Thanks, Andrew. [LR254]

SENATOR COUNCIL: Thank you, Andrew. [LR254]

SENATOR ASHFORD: Any other...anyone else wish to comment? [LR254]

SENATOR LATHROP: Do you think we could have somebody from the State Patrol come back up? [LR254]

SENATOR ASHFORD: Sure. Colonel? [LR254]

SENATOR LATHROP: Or whoever administers this or knows something about it--and I don't mean to imply the colonel doesn't. Because I do have some questions about this myself, just listening to this. Before we changed the rule, it was...we tried to identify people who are at risk to reoffend, through some kind of a psychological assessment. Would that be... [LR254]

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DAVID SANKEY: Yes, there was a risk assessment tool. [LR254]

SENATOR LATHROP: ...a fair, short description of our system? [LR254]

DAVID SANKEY: Yes. [LR254]

SENATOR LATHROP: And in terms of the number of people that we put on that list in a year's time, what percentage would you have put on, or expect to put on the list, under the old system? [LR254]

SENATOR MCGILL: The public list? [LR254]

SENATOR LATHROP: Right. [LR254]

DAVID SANKEY: Well, if I could...if I can clarify a little bit, under the previous system, Level 1's were only...they were only known to law enforcement. And contrary to some of the testimony you've heard today, there weren't very many of them. Even under the old system, there weren't very many Level 1s. Level 2s, we notified schools, day cares, churches, other folks like that, that they were in the area, but the public didn't know about them. And then Level 3s, where the majority of the sex offenders were, those individuals were available to the public and they were made known to the public. [LR254]

SENATOR LATHROP: And was that...were those three levels based upon somebody's assessment of the risk? [LR254]

DAVID SANKEY: Yes. [LR254]

SENATOR LATHROP: Not an offense. [LR254]

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DAVID SANKEY: Right. [LR254]

SENATOR LATHROP: And what we've done is gone to an offense-based reporting system. [LR254]

DAVID SANKEY: Yes. [LR254]

SENATOR LATHROP: And we put all, every level onto the Internet, based upon whatever their offense was. [LR254]

DAVID LATHROP: Yes. [LR254]

SENATOR LATHROP: So, do you know how many people we were putting on the list a year under the old system, versus how many were put on the list now? [LR254]

DAVID SANKEY: I don't know that number off the top of my head, but I can find that, Senator, and get it to you. [LR254]

SENATOR LATHROP: Okay, and then... [LR254]

SENATOR COASH: It's about the same. Senator Lathrop, when we...the number of... [LR254]

SENATOR LATHROP: Well, were there some people that you did an assessment on and said, they're not on anybody's list or they would end up on one? [LR254]

DAVID SANKEY: No. If somebody was convicted of one of the offenses that required you to be registered, they would be placed on one of the levels previously. [LR254]

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SENATOR LATHROP: So we've just...we've taken some people who would have been on one, which was...which is the nonpublic list, and moved them up, based upon their offense, to either a two or a three. [LR254]

DAVID SANKEY: Well, the Level 1, 2, and 3 no longer exists. Now we have the tiers, based upon the amount of time they're on the registry. [LR254]

SENATOR LATHROP: Let me put it differently. How...to what extent did we expand the list of people that are now on the public Internet, with the change in the law? [LR254]

DAVID SANKEY: All of the people are now on the public one. [LR254]

SENATOR LATHROP: Okay. If we had the old system, what percentage of all the people would be on the public list versus on a list known only to law enforcement? [LR254]

DAVID SANKEY: I would only be guessing. But again, it was only a small percentage of individuals that were listed at Level 1, and another small group that was listed at Level 2--the majority of those folks. And, off the top of my head, I want to say something like 60 or 65 percent were Level 3s. But again, I'm just going off the top of my head. [LR254]

SENATOR LATHROP: So we're talking about the...a third, maybe, that would have been in one and not in the public? [LR254]

DAVID SANKEY: I don't even believe that many would have in Level 1, sir. [LR254]

SENATOR LATHROP: Okay. If the old system was risk-based and the new system is based upon tiers and offenses and everybody's now on there for some stretch of time, were there people who were identified under the old system as a risk...not as a risk. I'm trying to ask this question while I'm thinking it through. Under the old system, were there

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people that were Level 1s, who we didn't perceive after an assessment that they were a risk, that were involved in other activity? [LR254]

DAVID SANKEY: I'm not sure I'm following your question. [LR254]

SENATOR LATHROP: Under the old system, the first tier was the people who you did not perceive as a risk after some assessment. Were they offending? Because we've taken the people that we didn't perceive as a risk and put them in the public domain, right? [LR254]

DAVID SANKEY: Yeah. I believe...I mean, I believe all the folks that were on the sex offender registry prior to, no matter what level they were on, there is some risk to the community. [LR254]

SENATOR MCGILL: But what was the recidivism rate for the people in the first group? [LR254]

DAVID SANKEY: I don't know what the recidivism rate was. [LR254]

SENATOR LATHROP: And that's my question, because what we've done is we've taken...we had a system where we did an assessment of risk and put these people on Level 1. And I'm wondering if all of this makes sense if some of those people on Level 1 were actually repeating their offense, right? But if we had a system where we put these people out of the public view and none of them ever reoffended, then none of this makes sense, does it? [LR254]

DAVID SANKEY: Right. [LR254]

SENATOR LATHROP: How much money do we get because we've agreed to do this? You probably answered that question four times today, but... [LR254]

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DAVID SANKEY: We don't get any additional money for doing this. What we're doing is we're saving 10 percent of the state's Byrne money, the Byrne/JAG money that's used for drug enforcement purposes. The penalty is that we will receive 10 percent less of that each year. So not just next year, but the... [LR254]

SENATOR LATHROP: And you think that's about \$160,000? [LR254]

DAVID SANKEY: We project that the next round of money that the state of Nebraska will receive would be about \$1.6 million, so we're looking at \$167,000. [LR254]

SENATOR LATHROP: Okay. [LR254]

DAVID SANKEY: Starting next October 1. Then it depends on what we get each year after that. [LR254]

SENATOR LATHROP: How many of the 50 states have done what we've done, which is basically go into this other system? [LR254]

DAVID SANKEY: I believe there's five states, but I don't know that for sure. [LR254]

SENATOR LATHROP: Five? [LR254]

DAVID SANKEY: There's five states that have become substantially compliant. [LR254]

SENATOR MCGILL: Only five have qualified so far, some have chosen to not do this at all, and a bunch of others are like us. [LR254]

SENATOR ASHFORD: I mean that's....I think, Steve, that's really the point. I mean, there's no compliance... [LR254]

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DAVID SANKEY: Yeah, I don't know how many are still in the process, like Nebraska is, to try and become substantially compliant. [LR254]

_____ : The state of New York just today decided to not to become compliant. [LR254]

SENATOR ASHFORD: Steve, Steve, time out. [LR254]

LAMONT RAINEY: Fifteen states. [LR254]

SENATOR ASHFORD: All right. [LR254]

LAMONT RAINEY: Fifteen states have substantially complied. [LR254]

SENATOR LATHROP: Okay. [LR254]

LAMONT RAINEY: Sixteen tribes and two territories. [LR254]

SENATOR LATHROP: Okay. Can you find out for me what the recidivism rate was for the people under the old system who you...under the old system we did an assessment, how many of those people were actually repeat offenders? [LR254]

DAVID SANKEY: Sure, sure, we'll break that down for each level. [LR254]

SENATOR LATHROP: Yeah, I would appreciate that information. I think it would be...it would put into context some of what we've heard today. And I'll also say this: I appreciate the people that have come forward today. What we've heard is from the people who have been convicted and I'm sure that if we brought in some of the people who are victims of the crimes that we've heard about today, they'd probably have a

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different perspective on what we've heard. And so I take what I've heard today with a little bit of an appreciation for there's always two sides to every story. But as far as our policy decision to go to a different process, there is some consequence to it and I'm wondering if the other process was just as effective or more effective without doing some of the things we've heard today. So, information about the recidivism rate of the Level 1 people, before we changed the system, would be helpful. [LR254]

DAVID SANKEY: We'll get that to you, Senator. [LR254]

SENATOR MCGILL: And Level 2, for that matter. [LR254]

DAVID SANKEY: We'll break it down. [LR254]

SENATOR MCGILL: Thanks. [LR254]

DAVID SANKEY: And get it to you. [LR254]

SENATOR ASHFORD: Senator Coash. [LR254]

SENATOR COASH: Thank you. Thanks again, Colonel. I know that you will, and State Patrol will comply with whatever crazy law we come up with, sex offender law or otherwise. If it's law enforcement and we put it on the books, you'll enforce it. [LR254]

DAVID SANKEY: We'll enforce it, yes, sir. [LR254]

SENATOR COASH: That's your job. What I want to ask you now just relates to something that you do have expertise in, which is public safety and keeping communities safe. So, without regard to what we ask you to do, I just want to know, with your experience and expertise in keeping the public safe, can you tell me what you think about the difference between these two systems? And if you have an opinion on which

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one provides the best public safety, I'd like to know what that is, from your law enforcement background. I know that's loaded, Colonel, sorry. You're in the business of protecting the public, and how you feel about that is important to me. [LR254]

DAVID SANKEY: Yeah, there are advantages to both, I can tell you that. One of the disadvantages to the old system is the time it took for a serious, serious offender to be...for the community to find out about that individual. I could tell you about a story where an individual was a very dangerous individual and had committed many, many, many crimes against women. And because of the time it took to do the evaluation and then to classify that individual, and then for that individual to have his appeal, there was...it was more than a year--almost two years, if I recall--before that individual was even known to the public. And that individual moved across the street from an elementary school and folks started finding out about it. It was very problematic. [LR254]

SENATOR COASH: Because in the old system, you couldn't...you had to exhaust that appeal process before you were... [LR254]

DAVID SANKEY: Yes. [LR254]

SENATOR COASH: ...before that individual...I mean, the court process may...and the conviction, that was all done. But the risk assessment and the appeal of that level could take quite a while, and you couldn't stick that guy on that list until those appeals were exhausted. [LR254]

DAVID SANKEY: Correct. [LR254]

SENATOR COASH: Is that correct? [LR254]

DAVID SANKEY: Correct, correct, correct. And with the current system, folks get put

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onto the Web site and the community is aware of them quite quickly, but there are some disadvantages as we've heard today, so. [LR254]

SENATOR COASH: Any other...I mean that...what you described here is a public safety issue. Are there any other considerations with regard to public safety that you think we ought to consider? [LR254]

DAVID SANKEY: Well, I guess I would just leave you with this, with whatever we can do to help to make the evaluation on what's the best policy for the state of Nebraska, we're willing to do. You know, obviously, a 10 percent reduction in the state's Byrne funds will have an impact on all of law enforcement's efforts to conduct drug enforcement. So, I mean, you've got to balance, well, we're trying to balance it all, here. [LR254]

SENATOR COASH: All right. I want to ask you one more question, Colonel. I had a chance to talk with Sheriff Wagner about this numerous times, and he mentioned that in the old system he was able to access some grant money through the State Patrol. So Lancaster County would...was kind of a subgrantee of a State Patrol grant, which he would then...our sheriff would then use back grant money to allow his officers to go out into the field and do compliance checks and make sure that offenders were living where they said that they were living and things like that. However, because that was grant-funded, that shrunk up a little bit. Can you...do you have any comment on your...on the Patrol's ability or local law enforcement's ability, either through the Patrol or independent, to...and their ability to go out and...I mean, we're asking the offenders to come in more frequently, but what's going on as far as law enforcement going out and being able to check to make sure the offenders are where they say they are and...? [LR254]

DAVID SANKEY: It depends on the area, Senator. Some agencies are very active at going out and conducting compliance checks. Some police departments, some sheriffs' departments are very active at doing that. We have full-time troopers that are doing that

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type of work and have since the registry came into existence. But, on the other hand, some areas are not, so it's very hit and miss. And yeah, if...that's another thing that we need to consider, is we have been able to get some grants over the years to help address the sex offender registry issues. If we don't become substantially compliant, we'll lose that granting as well. [LR254]

SENATOR COASH: So that's a...so losing some of this Adam Walsh money is a factor in whether or not we'll be able to get compliance grants? Is that... [LR254]

DAVID SANKEY: Yes. [LR254]

SENATOR COASH: That's what you're saying? [LR254]

DAVID SANKEY: Yes, if we don't become substantially compliant, we'll...the penalty is 10 percent in Byrne funds, along with the grant funding that we have received to help go out and do compliance checks and, you know, some of the other things that we have used those grants for. [LR254]

SENATOR COASH: One final question, because it keeps coming to me. So you do have troopers going out and doing compliance checks now? [LR254]

DAVID SANKEY: Yeah, they're working with the locals, yes. [LR254]

SENATOR COASH: When you make the decision to say okay, we're going to...maybe it's an ongoing process, maybe it's something you kind of hit. You know, we want to really make a push this month or this quarter to do compliance. So whenever you make that decision, you've got a list of several thousand sex offenders. When you're going out and doing compliance checks, is it random or are you trying to target a particular group of offenders that you might consider to be more of a public threat, to do compliance checks on them? So, I'm asking what your criteria that you use is when you decide to go

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out and do compliance checks. [LR254]

DAVID SANKEY: There's several things. What we do is we partner with the locals. We've also partnered recently with the U.S. Marshal service to get a pool of resources put together. And then we'll target a community, say, for example, Scottsbluff. And then those officers will go in there, they'll take a list. And it's my understanding that they look at who are the most serious sex offenders in the community? And let's start with them first and then work our way down that list. [LR254]

SENATOR COASH: So even your efforts to make sure the offenders are in compliance is based on who do we think is the biggest risk to the community? [LR254]

DAVID SANKEY: That's my understanding, is...you know, and in some communities, we may be able to get to all the sex offenders that are registered in that community. [LR254]

SENATOR COASH: Right. So sometimes it might be regionally based, but... [LR254]

DAVID SANKEY: Yeah. [LR254]

SENATOR COASH: Okay, thank you, Colonel. [LR254]

SENATOR ASHFORD: Anyone else? Again, Colonel, I do, as I have said many, many times in the last five-and-a-half years, the Patrol has been always forthcoming and helpful in our efforts to get at what's going on here, and I'd say the same about the Corrections group as well, so we appreciate that. Let me...from my perspective, what is impactful and compelling is a couple of things. One is that I think, on balance, as you say, there are issues with the high-level sex offender under the old system and those are...it's important that, if we do address this again, and I assume we will a little bit in the coming months, that we can think about that and we can address to you those kinds of

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questions. And the questions that Senator Lathrop asked, I think, are very, very important so we can start to think about who goes into what category. But what is compelling to me is that we have a federal standard that is placed in federal statute. Only five states have complied with it. That's not very many. That would mean that 45 haven't. There has got to be a reason for that. And I'm struck by the...Director Houston's commitment to dealing with sex offenders in his institution and the way he goes through a process of psychological evaluation to determine level of risk in his institution. It's a process that you undertook in your years, and it's a process that Bob Houston's institutions do on a daily basis, as I believe they have 800 or 900 sex offenders. I'm also struck by the fact that there's such a low recidivism rate. And I don't know what...I'm not a psychologist at all and I don't know why or the reason, but I think it is clear from all the evidence we've heard that there is a very low recidivism rate in these kinds of offenses. I tend to think, maybe, that some of that is related to the nature of the crimes and the offenses that happen between individuals who are known to each other. That is not always the case. I just don't know. But the fact that the federal government has thrown something out here and does not have compliance by the states. There are 16 tribes that complied, but that's a different situation in many respects because you're dealing with the FBI and federal law enforcement officials that prosecute felonies on the reservations, so there are different standards. I don't know what the answer is. I do know that we have the resources, with your shop and the State Patrol, to get us the information that this committee can continue to digest. But it does strike me as problematic that we have a standard such as we have, where only five states have complied, and that these dollars are being wasted. I think to me, to me the fact that there's \$164,000 that we're not being able to use for drug enforcement and it's somehow tied to something that...where only five states have complied? Somehow the pieces of that puzzle just don't go together in my mind. I mean, there are needs that the states have in dealing with drugs and...the drugs that are pouring into our state that you have to...I see you out--not you personally, necessarily, now, with your new job--but out on the highway dealing with. In drug enforcement, we need those dollars, and to have the federal government suggest that we're going to withhold \$164,000 when 45 other

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states don't have a clue how to interpret this law properly, because the standards in those 45 states are different, as were the standards here in Nebraska. And I trust Nebraskans to deal with Nebraska problems. And I again, I commend your efforts and for all the years that you did it. It wasn't perfect; it couldn't be perfect. But that's all I have to say and it closes the hearing. Yes, Senator Lathrop. [LR254]

SENATOR LATHROP: Just one other thought. One of the things that we...one of the criticisms of the new system that we've heard is that if we pulled up a map to find out where these people live, that the map's going to be covered with red dots right now, because we have people who would have otherwise been a Level 1 or determined to be little risk. And do you think that diminishes the benefit of the map and the list in the first place, when you have so many people who are...if we've done an assessment under the old system, little- or low-risk? [LR254]

DAVID SANKEY: There is some argument that there's a desensitization that takes place because everybody's out there, where before you just...you knew about it if they were out there, they were on the Web site and they were available to you, then you knew they were a seriously...they were a person that could place the community in serious jeopardy. But there is other arguments on the other side that, you know, people want to know. You know, who's the sex offenders living in my area? And I'll make the determination whether that's a minor offense or a serious offense and this needs to be somebody I'm concerned about. [LR254]

SENATOR LATHROP: But if they're not a risk or they're a very low risk, then we could say the same thing about burglars. [LR254]

DAVID SANKEY: But if... [LR254]

MONICA JUDEVINE: DUI. How many people have been arrested for a DUIs? [LR254]

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SENATOR LATHROP: I wonder, and I haven't looked at that list. I think I did the last time we had this come up, I had my iPad with me, which I didn't bring today and I punched it up, and the thing's covered with red dots. I'm just wondering if I'm buying a house and that's important to me and I pull up this list, I'm going to find somebody in every neighborhood, aren't I? [LR254]

DAVID SANKEY: I don't know if I could say that. I mean...yeah. [LR254]

SENATOR LATHROP: Okay. I think today has been good, at least for showing what the advantages, or perhaps the disadvantages are. And if you can get me the information on the old system, that would probably help clarify whether it was broken or not in the first place. [LR254]

DAVID SANKEY: Sure. [LR254]

SENATOR ASHFORD: Thanks, Colonel. Thank you all for coming. That concludes the hearing. (See also Exhibits 7-14) [LR254]