

Judiciary Committee September 27, 2019

LATHROP: [RECORDER MALFUNCTION] frequent testifiers. Let me kind of lay out sort of our ground rules. When you testify, you need to have a testifier sheet filled out. You can give that to Laurie when you are-- when you come up to testify, give her that sheet. You can have a seat. The first thing we'll ask you to do is to introduce yourself and spell your name so that we have a good record of the proceedings. We'll ask you to make sure you speak into the mic. You don't have to do this like this, but if you can make sure that you're speaking into it, we want to make-- want to make sure everybody can hear. Today we're going to deal with a resolution on the sex offender registry, and there is not-- unlike a bill, when a bill gets introduced, it has a-- it has a proposition there, right? This should become law. Somebody introduces it. It's an idea, and then you have people that are for it and people that are against it. Today we've-- we have-- the hearing basically is what I would refer to as sort of open mic night. This isn't-- this isn't-- there is no particular proposition here. This is not about whether we should or shouldn't do something but to take information from people. In some cases it may be this is how the registry has operated unfairly in my life. We expect that we'll probably hear some of that today; some changes or thoughts you may have on how it might be improved to be more risk-based and less rigid, if I can use that term or-- so some ideas would be appropriate. And we may hear from

Rough Draft

people that think it's not tough enough. So I don't know but I thought, given some debate we had on an amendment of Senator McCollister's related to juveniles, and because I've heard from a number of folks who have expressed concerns and-- and I say "I." Members of this committee have. I thought we would have a-- a resolution or a hearing today to-- to take information to educate the Judiciary Committee, the members. Believe me, those that aren't here will be informed about what we hear today and then we can see if there's a need for policy changes and what those policy changes might look like. I know that for some of you this is probably maybe the only time you've ever testified. This is not an adversarial situation, so no one up here is going to start screaming or raising their voice or trying to make you look silly. We appreciate for many of you that it's a very sensitive subject, so we will treat you-- this committee treats its witnesses with respect. And the one thing we'll ask you to do, though, is to observe that clock, and that's so that we can get the hearing completed in a timely fashion and those people that are still waiting in line to testify all have their opportunity to be heard. The way the timer works, there is a box right on the testifier's desk. There's a green light. That's your-- you know, you-- you get that for four minutes. That just tells you, by the way, you don't have to use all five minutes. All right? If-- nor is it-- nor is it good to repeat what somebody else has already said, because we're looking for new information and new insight from each of the witnesses. But the light

Rough Draft

will be green for four minutes, then it will turn yellow. That's your one-minute warning. And when it turns red, we'll just ask you to stop. Once you've completed your testimony, members of the panel here, of the committee, are then permitted to ask questions if they have any. If they do, great. If they don't, it's not because, you know, they're not interested in what you had to say but that we're probably getting a pretty good flavor from-- collectively from the group. And so with that, I think we'll have the folks up here introduce themselves, and then I'll introduce the resolution. We'll start with Senator DeBoer.

DeBOER: Hi. I'm Senator Wendy DeBoer. I'm from District 10, which is Omaha and parts of Bennington.

LATHROP: This is Josh Henningsen, one of our legal counsel. I'm Steve Lathrop, the Chair from District 12, which is Ralston and Millard.

BRANDT: Senator Tom Brandt, LD32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

LATHROP: And Laurie Vollertsen is our committee clerk. That's the person here making sure that the lights work, the matter gets recorded, and she's also the person you'll give your testifier sheet to. And then we have Samantha Chavez from my office who's calling other senators. We don't have any pages today, so Samantha is standing in. And if you have handouts, you can share those with Samantha and she'll share them with the committee. I think I've gone through all

Rough Draft

the preliminary matters, Laurie. Today we're here for the purpose of having an interim study on LR204-- LR204. Generally, as the Chair of the committee, I'll put in a resolution to study some matter within the jurisdiction of the committee. We deal with things that include the sex offender registry. It was my decision that there is enough interest in this subject matter, given some of what we heard last year during the introduction of bills in the committee and the debate on the floor on McCollister's amendment to one of our priority bills, that I thought this was an appropriate subject of an interim study. It's not based on any one particular aspect of the sex offender registry. This is not about juveniles, necessarily, but broad enough to include any subject matter within what I would say the sex offender registry umbrella, if you will. That would be my introduction. We do have and I'm going to take one person first and then we'll just let you kind of come up organically. But Ryan Spohn has done some-- at UNO has done some study on this subject matter and we'll begin our testimony. I think this is a suitable place to start with somebody who is bringing to us some academic work in the subject. Good morning. Thanks for being here.

RYAN SPOHN: Good morning. Good morning, members of the Judiciary Committee. My name is Dr. Ryan Spohn, spelled R-y-a-n S-p-o-h-n. I'm test-- testifying today as director of the Nebraska Center for Justice Research at the University of Nebraska-Omaha. In 2012, NCJR was funded

Rough Draft

by the Nebraska Legislature through the Nebraska State Patrol to conduct a study to compare, on the one hand, sex offender recidivism under the pre-LB285 classification system that utilized risk levels derived from a psychological risk assessment instrument, to, on the other hand, sex offender recidivism under the post-LB285 classification system utilizing the Adam Walsh Act tier levels derived from offense severity. The goal is to determine if the new Adam Walsh-based classification system was performing better or worse than the previous risk-based-- risk assessment-based classification system. Data from the project was collected from three sources: Nebraska's sex offender registry database at the time; the Nebraska State Patrol criminal history database, known as PCH; and an FBI nationwide criminal records search. Looking at sex offender recidivism and comparing the old risk-based system of classification to the new offense-based classification system, the former risk-based system resulted in less overall recidivism. Specifically, the pre-LB285 classification system resulted in a two-year recidivism rate of 1.7 percent and a one-year recidivism rate of 0.6 percent. In comparison, the current classification system resulted in a two-year recidivism rate of 2.6 percent and a one-year recidivism rate of 1.7 percent. To compare this to other states, one of the most comprehensive studies of sex offender recidivism followed offenders for five years and found five-year recidivism-- recidivism rates varying from 3.5 percent in New Jersey to 7 percent in Minnesota. In looking at distinguishing the

Rough Draft

risk to reoffend, in general, the former system that utilized a psychological risk assessment tool consistently distinguished offenders who were at high, medium, and low risk to reoffend. In comparison, the Adam Walsh Act system was very effective in distinguishing those at high risk to reoffend from those of medium- and low-risk offenders; however, the Adam Walsh Act classification system consistently failed to distinguish offenders at medium risk to recidivate from those at low risk to recidivate. Our findings suggest that as an overall tool for identifying a nuanced risk to reoffend, the old risk-based system appeared more effective; however, if the goal is simply to distinguish the highest risk-- risk offenders from everyone else, the Adam Walsh Act tier system appeared most effective. And just recommendations from that report, that report now is six years old, so keep that in mind. If Nebraska returns to a risk-based assessment system, a new instrument should be developed and validated on modern data. The previous assessment is outdated and included significant flaws and biases on our opinion. Any policy changes must take into account the difference between severity of offenses, which should drive criminal punishments, from the likelihood to reoffend, which should drive the public safety purpose of sex offender registries. And finally, of most concern to me professionally, is a focus on sex offender registries protecting us from "stranger danger" and that can cause the public to ignore the greatest risks of sex offender victimization. A comprehensive study of sex offender data

Rough Draft

from the FBI NIBRS data, which is the National Incident-Based Reporting System, from 15 states, including Nebraska, indicates the following distribution of characteristics of offenders: 11.5 percent were immediate family; 9.3 percent were extended family; 4.7 percent were stepfamily; 7 percent were friends; 8 percent were considered significant others, and that group totals to 40.5 percent of offenders. In comparison, only 8.4 percent were confirmed to be strangers. Consequently, any attempts to increase the safety of the public from sex offenses should emphasize that most offenders are someone you know and probably trust. Thank you for this opportunity to speak today and I would be able to-- try to answer any questions that you have.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Just a quick question: On those last statistics, where's the other 60 percent or 50 percent?

RYAN SPOHN: It is things of either we weren't able to determine or small groups of other types of-- so basically it's kind of falling into the gray areas. And in our report, I believe that we found 17 percent in our Nebraska data were strangers and 83 percent fell into some other category other than a confirmed stranger.

BRANDT: All right. Thank you.

LATHROP: You said this-- oh, I'm sorry, Senator DeBoer.

DeBOER: No, you're fine.

LATHROP: You said this was done in 2013, your study was. What would it take to bring that current?

RYAN SPOHN: As long as the data is available. I know at that time-- that time-- that time is very difficult but-- because the data was in an old DOS-based database, and my belief was at about that point they were switching to a more modern database, so getting the data out of our sex offender registry would probably be easier. The PCH data should still be there. The FBI records search was a really big deal. I believe it was the largest one-time request in FBI history at that time to take a group of thousands of individuals and ask for data from all 50 states. Another concern was of some of our dispositions do not make it into that PCH database automatically from some of our smaller districts, so we had graduate students that were going up to staff at the Nebraska State Patrol and saying, can you check on the outcome of this case? And they would have to call the clerk of the court in some of our more rural district-- districts to get the information we needed. So it would be doable now, just like it was then. I think it took-- it was probably a six-month, nine-month process back then; might be a little bit easier now.

LATHROP: OK. For those that are here that might be interested in reading your report, where is that found?

RYAN SPOHN: It is on-- if you go to the Nebraska Center for Justice Research Web page, all of our reports and publications are found there. It's on one of the UNL Web pages and it's a PDF. It's-- anybody can download it and take a look.

LATHROP: Yeah, I did forget to mention to silence your cell phones, and I probably should look too. So the Adam Walsh Act came to the states in what year roughly? That was sort of a federal push tied to some federal money, wasn't it?

RYAN SPOHN: Right, mid-2000s.

LATHROP: OK. Have any states left that model, like adopted it as Nebraska did--

RYAN SPOHN: Right.

LATHROP: --and then left it because they've made a determination?

RYAN SPOHN: That I do not know, but we can certainly look that up and get you that information.

LATHROP: OK.

RYAN SPOHN: But I'm not aware of any that have.

LATHROP: If we were to scrap the Adam Walsh model in favor of a risk-based or some other model for determining who should be on the registry, what would that look like in your judgment?

RYAN SPOHN: I think it would-- the old system, you did an assessment up-front for individuals that were on the registry for a number of years. There would be follow-up assessments because things can change. Risk assessments are-- generally consist of static items, which are things that don't change; that might be age of first offense. But then they're generally also composed of dynamic factors that can change, and that would be perhaps living situation, relationship situation, education situation, those-- those sorts of factors. So follow-ups were done. I think that's a good idea. I believe that individuals on the list could ask for an-- could appeal the-- the risk assessment and you-- there could-- they could ask that another assessment be done. I think all of those, you know, were fairly good ideas. We could go back to that. I know there was-- actually talked to somebody that worked with that old system two days ago and she had some concerns about just items that were on the classification system, and that kind of brought me back to 2012, 2013, when we were talking about that. And I remember that, as well, that that, the data that drove the old classification system, came from probably the mid- 90s, maybe early 90s, and just thinking about the way that things have changed since that time to 2019, we definitely would want to look at a more modern, a newer

Rough Draft

system. There are off-the-shelves, the Static-99, for instance; there's off-the-shelf classification systems that could be adopted. You can build your own classification system based on local data. And then whichever route you go, in two or three years down the road, you want to validate it and make sure again that we're distinguishing low, medium, and high offenders as far as risk to reoffend. One of the other considerations I-- my understanding is the older system, only the highest-risk offenders remain-- were put on a public registry. Low- and mid-range offenders, law enforcement could have access to that data but the public didn't, so you need to take that into account. The-- the benefit of that is-- there's some concern under the current system that we don't know, if everybody is put out there on the registry, who do we really need to be concerned about? Who are the highest risk? If my family, your family, other people are concerned, we should probably be able to as laypeople understand this person is pretty high-risk, this one's medium, this one's fairly low. I don't know that the current registry does that. I think the old system did that a little bit better by only placing the highest risk. And everybody knew, if you're on this registry-- you did--

LATHROP: This was serious.

RYAN SPOHN: --you did assess as a high-risk individual.

LATHROP: Tell me. It seems counterintuitive. I think most people that are here to testify today think that the Adam Walsh tiered system captured more people than the risk-based. How did that become less effective at the recidivism? Why did the recidivism--

RYAN SPOHN: Right.

LATHROP: --rate get higher under a tiered system that seemed to capture more people than a risk-based assessment?

RYAN SPOHN: Well, a lot of factors probably went into that. But the Adam Walsh Act system, it's based on offense severity. And as I put in my written testimony, the offense severity that should drive whatever the punishment is, if it's probation, if it's a prison sentence, obviously that's how that process works. But what we might consider to be a severe offense doesn't mean that that individual is-- is likely to recidivate. That's a completely different question that we get at by using these standardized risk assessments. So just because somebody is on the-- the high level, is on the risk assessment under Adam Walsh, their actual risk to reoffend might be very, very low. So I think part of that, part of the issue is just it's-- it's confounding two-- two issues that it's difficult for professionals to distinguish in our heads because we think, if they did a horrible thing, we need to protect the public; they're going to-- you know, they're-- you know, that was a horrible act, we don't want it-- to do it-- to happen

Rough Draft

again but, based on professional assessments, may have been a one-time thing or very unlikely to happen again. So-- so a horrible act doesn't necessarily mean recidivism, and those two things tend to get conflated. And the Adam Walsh system just basically ignores; it doesn't-- doesn't look at risk to reoffend. It just looks at the severity of the act.

LATHROP: When we had the old system, who did the assessment? Who made the call about whether someone was high or low risk?

RYAN SPOHN: It was professionally trained staff within the Nebraska State Patrol was my understanding.

LATHROP: OK. Senator DeBoer.

DeBOER: What we're talking about, this conflation of the severity of offense and likelihood to reoffend, when you're saying low- and mid-range offenders and things like that, is that likelihood to reoffend?

RYAN SPOHN: Yes--

DeBOER: OK.

RYAN SPOHN: --likelihood to reoffend for a new-- a new crime that would lead to somebody to be placed on the sex offender registry, so not shoplifting, another sex offense.

DeBOER: OK, right, yeah. OK, so are those numbers-- so it sounds like we in the past had the system which was based on likelihood to reoffend. That was the initial system, and now we've gone more towards the severity. Is there some sort of hybrid system where we could sort of take both of those things into consideration because, you know, if your likelihood to reoffend on a very, very severe thing is 2 percent, I may be a little bit more afraid of that than I am a very, very unsevere thing, but it's 2.5 percent. You know what I mean?

RYAN SPOHN: Um-hum.

DeBOER: So is there a way to sort of look at both of those factors together?

RYAN SPOHN: You absolutely could. I don't know if there's any-- jurisdictions that currently do that. So we would call that like a weighted system. So you would do the-- the risk assessment of likelihood to reoffend, and then if you believed we needed to be a little bit more cautious with the individuals that have committed a more serious crime, then you would weight crimes by severity.

DeBOER: Sure.

RYAN SPOHN: Then you just multiply the weight times the risk to reoffend. So you could do that. I don't know if there's jurisdict-- jurisdictions that do, but absolutely it-- it could be done.

DeBOER: And are there other things which might be done to affect the rate of reoffense on a more sort of continual basis that could affect-- so, for example, if you voluntarily participated in additional programming of some sort, that then you could affect the placement on a later basis, or is it once you're placed, that's kind of-- that's kind of the way it is because the stigma or whatever?

RYAN SPOHN: Right. Well, in-- you know, whether it's community corrections, whether it's probation, whether it's parole, whether it's our reentry programs that are funded by the vocational and life skills program, it-- for all individuals that are reentering into society, we try to get them-- you know, what are the kind of things that are going to help them get back on their feet?

DeBOER: Sure.

RYAN SPOHN: Housing, employment, a stable social environment, we try to provide those for anybody. And risk assessment means the risk to commit a new crime, but we also have needs assessments. And needs assessments identify what are those criminogenic needs, what are those things that probably led you to this in the first place, and can we address those? So that could be-- that could be education, that could be trauma in an individual's past, that could be no-- no job skills, no vocational skills, unable to hold down a job. So you could also include a needs assessment that would identify those highest risk--

Rough Draft

highest criminogenic needs for each individual and then try to address those. And if that's done well in an evidence-based fashion, evidence does suggest that that would also help reduce recidivism. One thing, if-- going back to your previous question about if we could-- could take both risk and severity into account, I'm certain-- I'm not an attorney, so there's a number of states where there's been-- we looked-- sex offender registries have been accused of like double jeopardy or--

DeBOER: Sure, yeah.

RYAN SPOHN: --like so you can't punish the individual a second time, so those are the kinds of considerations you have-- you'd have to take into account. If it was considered to be additional punishment to weight those risk assessment scores by the severity of the punishment, then those are-- are legal issues that I can't speak to and--

DeBOER: But we're currently weighting based on the severity of them.

RYAN SPOHN: Um-hum, and that's led to a lot of lawsuits across the country.

DeBOER: OK.

PANSING BROOKS: I-- you pretty--

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: You pretty much answered mine. It was just that recidivism is for a repeat of a sexual offense--

RYAN SPOHN: Yes.

PANSING BROOKS: --not-- not just any law offense.

PANSING BROOKS: And that was one of the criticisms of the old classification system is it looked at-- it used convictions on any offense as a risk factor. So if somebody had committed-- I use shoplifting before, so if somebody had five shopliftings, then that boosts up their risk to reoffend for sex offenders. And those are very different things--

PANSING BROOKS: Yeah.

RYAN SPOHN: --and it's unlikely that committing other crimes--

PANSING BROOKS: Relates.

RYAN SPOHN: --would necessarily predict recidivism for sex offenses.

PANSING BROOKS: Thank you.

LATHROP: I see no other questions. I want to thank you personally and on behalf of the committee for the work you've done in this area--

RYAN SPOHN: Absolutely.

LATHROP: --and for being down here today to start off this discussion, so thanks for being here.

RYAN SPOHN: Thank you.

LATHROP: OK. So what we'll do is take people that are in the front row, and then if you're in the front row right now and you have an opportunity to testify, we'll just ask you to kind of filter back in. And let's keep the front row full of people that are yet to testify so that we can move the hearing along, and we'll take the first testifier. Good morning.

RICHARD TRIPLETT: Good morning. Morning, committee members. My name is Richard Triplett; it's R-i-c-h-a-r-d T-r-i-p-l-e-t-t. Thank you for taking time to listen to my story of how the sex offender registry has affected the lives of my loved ones and myself. My story is not to invoke sympathy or to portray my situation as something pitiful. This story is meant to paint a clearer picture of the hidden lives of individuals who just want to be human again. My federal crime was the receipt and possession of underage pornography. Many assumptions can be made at 30,000 feet as to what that really means. I can tell you that most of those assumptions are incorrect, not just about me but for others in my situation, especially those that are not-- noncontact offenses. Statistics have shown that noncontact offenders have one of the lowest recidivism rates of any crime category. The registry has

Rough Draft

devastated my ability to get a decent job. I have applied for over 250 jobs. Approximately half of them have been simple production positions where no degree is required, just a strong back. They will not hire me, this despite the fact that I have an associate's degree in graphic arts and a master's in business administration, this despite the fact that we have some of the lowest unemployment this country has ever seen and employers are begging for anyone to fill positions. I'm not even able to get interviews. Of the 250-plus applied positions, I have had approximately ten interviews. In one of those interviews, the employer simply walked out of the room once I disclosed my felony. In another interview I was politely told not to ever apply for another job in the company; they will not hire me ever. Being on the registry affects my personal life also. I cannot go on most forms of social media. Connecting and meeting with your peers without social media avenues at your disposal is nearly impossible. I cannot go on dating Web sites. If I do meet someone, they invariably will ask for my name and immediately Google search me. That's where the relationship ends. The registry is supposed to be about keeping the general public secure, but how is it doing that when everyone is thrown on there? How are we doing public good when the majority of people on the registry are like me, someone who has never committed a felony before, someone who has never tried to make contact with a minor, someone who has jumped through hundreds of hoops before, during, and after incarceration? Why is a drunken driver who actively gets in their car

Rough Draft

and potentially could kill someone not have to be on a public registry whereas Nebraska's sex offenders will likely spend 25 years on it after they've been incarcerated for thousands of days? The answer is simple. The registry is simply a political tool that garners politicians' votes but at the same time erodes all of our civil rights. There is no downside to bullying people that most perceive as degenerates. On the surface it may seem justifiable to take rights away from a bunch of perverts, but who gets to determine who the perverts are? Committee members, doing something to get on the registry could easily happen to someone you know or care about. Just look at the number of people on a registry map and know that it is a very real possibility. And under the current system, you do not get a do-over, ever. This stain is worse than that of a cold-blooded killer. And wouldn't you know it, even murderers don't have to be on a registry. We should not lose our basic civil rights just to give the general public a false sense of security. I plead with this committee to eliminate this archaic registry. At the very least, it needs to be curtailed to allow people and their families a second chance at life after so much punishment already. Thank you.

LATHROP: I just have one quick question for you.

RICHARD TRIPLETT: Sure.

LATHROP: You said yours was a federal offense. Did that put you-- are you on the registry because federal law requires it? Do they have their own? Or are you on then Nebraska registry because of a federal crime?

RICHARD TRIPLETT: Any-- anything that is a felony currently under the current system is 25 years, so anything with a felony is 25 years.

LATHROP: But that's because you live in Nebraska--

RICHARD TRIPLETT: Yes.

LATHROP: --and that's our registry.

RICHARD TRIPLETT: Yes.

LATHROP: Gotcha. OK. Not because of federal law? Federal law made your crime a felony--

RICHARD TRIPLETT: Yes.

LATHROP: --but being a felony then takes you into the Nebraska registry.

RICHARD TRIPLETT: Yeah, if I-- I'm sorry. If I was in Iowa, it would be ten years and it would start from the time I was actually sentenced. But here in Nebraska, it's 25 years and it doesn't start until I get off probation.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee September 27, 2019
Rough Draft
LATHROP: OK.

RICHARD TRIPLETT: So 2045 is when I will be off the registry.

LATHROP: OK. I don't see any other questions but thank you for your testimony.

RICHARD TRIPLETT: Thank you.

SHARON BAKER: Thank--

LATHROP: Welcome.

SHARON BAKER: Thank you, Senators, for hearing me. My name is Sharon Baker and I'm a mental health counselor at CityCare Counseling in Omaha. That's S-h-a-r-o-n B-a-k-e-r. At the end of World War-- at the end of the First World War, Germany not only lost the war and suffered heavy devastation, but was also declared solely responsible and forced to pay heavy reparations. This humiliation bred resentment in many, if not most, of the German people toward neighboring countries which eventually led to World War II, the most devastating war in history. I in no way want to denigrate the heartache and devastation victims of sexual abuse suffer. As a victim myself and also a counselor of women and men who have been sexually abused, I know firsthand how incredibly destructive it is. My fear is that the way we are administering justice is leading our country toward even more devastating consequences, just as World War I led to World War II. Brene Brown is

Rough Draft

a nationally known shame researcher. She makes the distinction between shame and emotion that says I am bad and guilt and emotion that says I did something bad. Saying I did something bad is part of taking responsibility and is very healthy spiritually, mentally, and also for the community as a whole. Shame, on the other hand, produces a whole host of unhealthy beliefs and behaviors for individuals that I believe has far-reaching unhealthy effects for the community-at-large. As a counselor, I see a lot of collateral damage from the registry. I see disenfranchised men shamed by the system trying to get jobs and housing, something made much more difficult by the registry. Many are trying to help their families and extended families, all the while operating under a net of shame and regulation; children and families and extended families being hurt; children who carry the shame of the registry because their fathers are in constant fear; young men who are juveniles when they offended who see the error of their ways and cannot escape the constant fear because they are on the registry; and even if they get off, it will forever be on the Internet. We are breeding resentments. The registry fosters isolation, impediments to jobs and housing, and separation from and hardship on families. This will not build a healthy community. Additionally, I cannot find a study that shows that the registry actually helps protect children. We need a comprehensive program that really helps. We need studies that focus on the efficacy of the registry, the efficacy of risk assessment without the registry, and the collateral damage caused by the

Rough Draft

registry. I'm thinking of three groups of sex offenders. One group has never been caught and, therefore, have not faced the natural consequences of their behavior; they have not been arrested or convicted. It is my belief that they are dangerous. Another group has been arrested, convicted, spent time in prison, received treatment for sex offending and then, when they get out of prison, they are on the registry for most of their lives. These people are disenfranchised and shamed and are being set up to be resentful towards society-- not the safest thing for society. A third group that I make up in my mind I think would be far better for society. This group has faced the natural consequences of their behavior. They have been arrested, convicted, imprisoned, received therapy, and assessed to be lower risk, but they are not put on the registry when they get out. They have felt the consequences of their behavior and they are set up to be contributing members of society. I believe this group is unlikely to reoffend. I ask that it be studied so that we can know that we are truly doing what is good for our communities. We learned the lesson of the heavy penalty laid on the German people in the wake of World War I only after the devastation of World War II. I'm afraid we're on the same path with the registry. I know you're here to make a difference for good and I'm really thankful that you care. How tragic will it be if the good that you are trying to do actually ends up making things

worse? I ask you to look closely at the studies and make a decision that is really good for society. Thank you.

LATHROP: OK. I appreciate your testimony.

SHARON BAKER: Thank you.

LATHROP: Thanks for being here today.

SHARON BAKER: Thank you.

LATHROP: Good morning.

AMY SOHM-VAN BEEK: Good morning. My name is Amy Sohm-Van Beek; it's A-m-y S-o-h-m, hyphen, V-a-n B-e-e-k. I'd like to go on public record today and say you have my permission to use my testimony, both written and spoken, in any and all legislation consideration regarding the sex offender registry in Nebraska today and from this day forth. My husband Randy-- I'm sorry-- got 6 years in federal prison for having child porn on his computer and he'll be on the sex offender registry for 25 years when released late 2020. This prison he's in is a 12-hour drive away, one way. I'm lucky to see him twice a year, if that. Randy was looking at adult porn on-line, which is not against the law. A lot of the child porn on-line is put there by the FBI. They have a legitimate problem on their hands. They're trying to catch child predators, except they keep catching men like Randy, adult porn addicts not looking for children. I'd call or write or go testify to

Rough Draft

the FBI about this, but I can't. So I'm appealing to you, our State Legislature. You can do something about the sex offender registry for men like Randy. One third of the federal prison overpopulation problem is sex offenders like my husband. Most are men like Randy who have never sexually abused a child in their life and never will. Three out of four of my children have severed ties with me and my seven grandchildren are not allowed around me because of this. They think my husband is a pedophile. That's what a sex offender is to them: a pedophile. People hear sex offender but they think pedophile. The sex offender registry was created to protect children from adult sexual predators. It's been 20 years and it's not working. It's the violent reoffenders you want to keep track of, not men like Randy, but you keep insisting on using the sex offender registry to keep track. You need to start somewhere changing this law. Start with men like Randy. They don't belong in prison and they definitely don't belong on a public list that stigmatizes them as pedophiles. You've heard the data over and over. You meet once a year to talk about new laws and changing laws. And if you don't finally make changes to this sex offender registry this year, this law, this year, right now, go home and spend time with your children, have Thanksgiving and Christmas with your children, buy Christmas presents for your grandkids, but remember my testimony, please, because I won't get to. Just a personal note, bottom line is, if there was no such thing as a sex offender registry, I'd have a relationship with my children right now and I'd

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee September 27, 2019

Rough Draft

be going to ballet recitals. I want my family back. Thank you. Sorry.

I don't mean to--

LATHROP: No, thank you for your testimony. We appreciate you being here today and sharing your experience. I do want to leave the front seats for people on deck, if I can, to help keep things moving. Thank you. Good morning.

STEPHEN KLINE: Good morning. Mr. Chairman and members of the Judiciary Committee, thank you for giving this issue your attention. My name is Stephen Kline, S-t-e-p-h-e-n K-l-i-n-e. When I was charged in 2005, I took complete responsibility, entering a guilty plea. I was sentenced to probation. I was assessed and found to be low risk, not likely to commit another offense. Back then, as you've heard this morning, Nebraska had a risk-assessment system and people like me, people in the lowest risk category, were not placed on the public shaming Web site. When I was sentenced, my time on the registry listing was to have been ten years. I successfully completed probation and therapy. My therapists concluded that I am not dangerous. I began to rebuild my life. I have three daughters and I went through hours of therapy with them and with my wife. I was president of a company that employed 20 people and generated tax revenue for the state. I paid every penalty prescribed by the law. By 2009, my life had stabilized. My kids were doing well in life, in school-- and in school and my company was thriving. Then this body passed LB285 of 2009. That change in the law

Rough Draft

put me on the public shaming Web site and increased my sentence on the registry from ten years to life. I did not become dangerous overnight because you passed a law, but the law labeled me so. My case was adjudicated before the law was passed, but you applied it to me retroactively. I lost my company and the state lost the tax revenue. My wife, who had stayed with me during the five years I was not on the public shaming Web site, divorced me. She blamed my devotion to working to change this law. I am a co-founder of the Nebraskans Unafraid organization and I facilitate one of our Fearless groups for registered citizens, their friends and family. I was forced out of my home. I have survived. I have a good relationship with my children. I am a responsible member of my community. I vote. Like you, I want our communities to be safe. Like you, I believe people should be held accountable for their crimes. Everyone, including registered citizens and their families, deserves to feel safe. No one deserves an after-the-fact life sentence, a punishment added to a sentence with no due process. Nebraska's public shaming Web site contributes to joblessness; it exacerbates homelessness; it exposes registered citizens and their families to state-sanctioned hatred. The law is so vague and ambiguous that people guilty of technical violations, like missing a meeting or forgetting a date, are sent to prison, contributing to overcrowding. Please read the document from Nebraskans Unafraid entitled "The Perfect Bad Law." It contains specific

Rough Draft

recommendations on how to change the law in ways that will make our communities safer for all of us. Thank you.

LATHROP: Thank you, Mr. Kline. I do not see any questions. I appreciate you coming down today.

STEPHEN KLINE: Thank you.

LATHROP: Good morning.

RODNEY HINER: Good morning, Mr. Chairman. Morning, members of the Judiciary Committee. My name is Rodney Hiner R-o-d-n-e-y H-i-n-e-r. I live in Omaha, Nebraska. I'm presenting my view as a registered citizen. I lived with my wife in an apartment home until I was incarcerated. Eight months into my sentence, my wife received an eviction notice from our landlord, giving her 30 days to vacate. She was confused and asked why she was being evicted. She was told, because your husband is on the Nebraska public sex offender registry. She appealed to the property management company. And only after making her sign and extended 16-month lease removing me from all paperwork, mail, etcetera, and promising I would not live with her or step foot on their property, was she allowed to stay. I had nowhere to live after my sentence was complete. I see my wife at church once a week. Employment was extremely difficult to obtain. I applied at 50 businesses before finding a job as a dishwasher, referred by my church men's group who knew the owner of the company I employed with. My wife

Rough Draft

is terrified that we will face retribution and physical harm when we live together. Thank you for your time.

LATHROP: Thank you for your testimony. Good morning.

BRIAN KITT: Good morning, Senators. And I want to thank you so much for doing this. It means so much that you're taking the time to at least listen to us. I think I can speak for everybody here that we greatly appreciate you taking the time to do this for us. My name is Brian Kitt, B-r-i-a-n K-i-t-t. I wanted to start off by addressing two things that Dr. Spohn talked about this morning. He had said that AWA is better at predicting high-risk offenders. If you look at the numbers, the old system classified approximately 300 people as level III; AWA puts approximately 50 percent of all offenders as a level III. So it's no secret. You make the pool ten times larger, of course it's going to be better. But what that means is it's less effective. The other thing is one of the senators, and it might have been you, Senator Lathrop, asked why, why is recidivism higher? If you look at the handout that I just passed out, I found a study that actually explains why recidivism is higher now than it was before. I found porn at age ten. As a teen, a priest groomed me and showed me stag films. This resulted in a porn addiction and in 1996, I bought a teen Webcam video. Now I'm labeled worst of the worst. I'm on the registry for the rest of my life. The registry is supposed to be fair and unbiased. I faced 20 years' mandatory minimum, federal prison, but I ended up not

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee September 27, 2019

Rough Draft

doing a single day in jail due to mitigating factors. I have passed ten polygraphs. I have had more than 700 therapy sessions over 23 years and I've led porn recovery groups. I've been offense free for 23 years. I've been married for 30 years and I've got three adult children and their friends who will all vouch for me that I've never touched anyone. Nobody cares. I was a computer tech at PKS for 12 years. Manager knew my status. A new HR manager came on board and immediately fired me. I then went to ConAgra. The manager knew my status. After three months, HR found out about my status and fired me. I then went to Valmont Industries. The manager knew my status. On the first day of work, I showed up and HR fired me at the door. I then got to InfoUSA. The manager knew my status and he also knew me personally. When HR found out, they brought me in to fire me, but thankfully my boss fought for me and kept me there. However, I was then barred from a raise for the next six years. HR would never sign off on it. I was denied promotions. I was denied awards. I was denied special projects. Today, if I simply hear the word "registry" at work, I start to develop anxiety and PTSD. The restrictions have created a significant hardship on travel for me. I have been to tech conventions where people have Googled me and found out. I've been harassed on on-line tech forums. In 2015, I earned a bachelor of science in accounting with a 4.0 GPA, but I was forbidden to take the CPA exam. They only go back ten years on criminal history, but they check the sex offender registry. In 2017, I was laid off. I applied at 70 jobs. I have three

Rough Draft

college degrees and 30 years on the job and I struggled to get interviews. Employment services will not work with me. Some companies have government contracts that forbid them to hire sex offender-- sex offenders, yet the state will argue in court that the sex offender registry does not harm your ability to get a job. I've had-- I've had some people scream at me for even applying at their company. I supplement my income with secret shopping, but I was actually forbidden a shop for beer at Buffalo Wild Wings because I was on the registry. I'm banned from retirement homes, banned from FEMA shelters, banned from homeless shelters, banned from beaches, public parks, amusement parks. I can't celebrate Halloween. I'm banned from pumpkin patches, the YMCA. I can't go to my own children's plays, their sports activities, their graduation. I'm even banned from public events at school after hours, forbidden to stay with my disabled parents because they live too close to a park. Children have had a soccer game in Lake Okoboji, but the town bans all registrants from even entering the town. I'm even hobbled from leaving the country or going on a cruise to celebrate the 30th anniversary with my wife. My wife lost her day-care career due to the humiliation of me being on the registry. My children were harassed in school, causing social anxiety in my youngest child. Watchdog.com sent e-mails to all of my neighbors labeling me a child predator, resulting in pictures of me being posted on our home and around our neighborhood. We also received vandalism because of it. To recover spiritually, I became a Eucharistic minister

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee September 27, 2019

Rough Draft

at the Catholic Church. I was going to mass two times a week. I was lecturing, ministering, and visiting shut-ins. Then the registry put me on the public shaming site. My church found out and told me not to come back. I'm banned from Web sites and public forums. I was kicked off of citizens' patrol when they found out. I'm secretary for my homeowners' association and we were forced to move our meeting location because it was being held at a-- at a school at 6:00-- I'm sorry, 7:00 at night. We had to move our meeting location. Con men impersonate sheriffs and try to extort money from me. I can't even trust if I hear a law enforcement officer calling me on the phone anymore. This label has been used to diminish my opinion. I've lost friends. I'm no longer invited to parties and events. There are four law enforcement agencies that demand unwarranted searches on my house at random. Nebraska Web site says harassment is not tolerated, but I've reported harassment three times and the officer said, what do you expect, you're a Tier III. I'm almost done. I'm sorry. The Web site says people must do everything they can to protect themselves from me and the Web site says the legislative finding that registrants present a high risk, which we know is not true. My formative years were poisoned by abuse and pornography. I received help in 1997 only to have the State Patrol label me public enemy number one and incite the public to harass me for two decades. If they were right, how have I not snapped? After 20 years of being degraded and punished, I've proven I'm not a threat. I've already depleted my 401(k) for therapy,

Rough Draft

unemployment, underemployment, and legal fees. Please give me the golden years of my life to live in peace.

LATHROP: OK. Any questions for Brian? I see none. Thanks for your testimony.

BRIAN KITT: Thank you again so much. I really appreciate this.

LATHROP: Sure.

PATRICK HOFER: Good morning.

LATHROP: Good morning.

PATRICK HOFER: Mr. Chairman, members of the Judiciary Committee, my name is Patrick Hofer, P-a-t-r-i-c-k H-o-f-e-r. As I am a person on the registry in the state of Nebraska, it has been a definite factor in my life to finding suitable apartment, is willing to continue to rent to me or a place where I wanted to live in an apartment complex I can rent in. Most all management companies absolutely laugh at me and tell me no. They reject me on the spot. I was volunteering at a youth services organization in Omaha for about ten years and I was told by the director to stay out of the place, don't even come near it again. Biggest disappointment I had is that I was no longer welcome in the Christian church where I'd been a member for 37 years. After getting involved in two other Christian churches, I've found a forgiving church that has welcomed me as a part of their congregation. It is not

Rough Draft

an easy task for an older person to do this on their own. I know I messed up. I paid a huge sum of money to regain my freedom, and counseling. I still do not-- cannot travel outside of my county I live in without getting prior approval of the county sheriff, giving him three-day advance notice that I'll be on to visit a friend in the next county. I understand that crossing state lines to visit state-- to visit a family member is more complicated. I'll have--I will have to go on the registry for the next 15 years or my life, whichever comes first, and it seems to be my life. Thank you for your attention.

LATHROP: Thank you for your testimony. Any questions? I see none.

Thank you, Mr. Hofer. Good morning.

DEBORAH WHITT: Good morning, Senators. My name is Deborah Whitt, D-e-b-o-r-a-h W-h-i-t-t. Almost 6,000 Nebraska families live under the discrimination and paranoia created by the registry. As you have heard, families are deeply and negatively affected by the unintended burdens of this legislation. It is unjust to families and to their communities. It does not protect; in fact, it does the very opposite. It creates community climates of suspicion, anxiety, hate, bullying, and fear. For example, a registrant who goes on a family vacation longer than 72 hours must update the registry at both respective outgoing and incoming county sheriff offices. That means setting up an appointment in advance. And if it's out of state, then the registrant is subject to cheek swabs for DNA collection, fingerprints, and

Rough Draft

filling out several detailed forms, to include the address of the person they are visiting, which is a terrifying experience for that person because they don't want their address associated with the registry, all of this so a family could take their own children, let's say, to the Corn Palace. It's overkill. My recommendation is to get rid of the registry and allow families to live in peace and harmony within their communities. If individuals have paid the price, served the sentences, gone through all the programming, why continue to discriminate against them and their families? Give the person and their families a chance to succeed and live productive and healthy lives within our communities. Senators, at the very least, please remove all the in-state travel reporting requirements. How can families have a simple vacation, manage to see other family and friends over holidays, or attend family life events such as weddings and funerals? It's not feasible; it's not practical. Furthermore, restricting travel is bad for our economy. It is not good policy. It is completely and unnecessarily undue stress and anxiety for all involved, and that does include the time it takes away from law enforcement officers who have to process these needless reports. Why is the Nebraska taxpayer even paying for this? Why are we diverting law enforcement time and energy to enforce needless reporting procedures? It is time to correct this and save taxpayer money. We are

here today because we all want to succeed. Please let us do that.

Thank you for listening to my testimony.

LATHROP: Thank you, Ms. Whitt. Good morning.

ERIC VAN HUNNIK: Good morning. My name is Eric Van Hunnik, E-r-i-c V-a-n H-u-n-n-i-k. I would like to thank-- thank Chairman Lathrop for allowing me to speak at this committee on the subject of how the registry affects my life and that of my family. I do not know how the testimony from these hearings are intended to be used, but my hope is that this committee will see the true cost of the effects of a public registry site. My wife would love to speak about how the registry has affected her, but she is afraid of the very real threat of reprisals from her employer, as this is a fire-at-will state. My wife and I now own our own home, but prior to that, we were forced to find a home to rent. We could not find an apartment to rent due to the policies of apartment management companies in Omaha. After an exhaustive search and having been turned down from ten other locations, we believed we had found a home that fit our needs. It wasn't the best but it was a home. We learned-- we told the homeowner that I had committed sexual assaults. He was a little hesitant at first, but having learned the assaults had happened more than eight years prior before that, he agreed to rent to us providing the criminal background check came back OK. We supplied him with the price of the background check and an application fee. Soon after, the homeowner contacted us and said he

Rough Draft

could not rent to us. I had cleared the criminal background check as I had disclosed everything that was on my record. But he said he didn't realize my crime was so bad where I was on a public registry and he didn't feel comfortable renting to someone where the registry-- I mean, excuse me, where the address would be affiliated with someone like me. Had the federally mandated registry been available to only law enforcement, the homeowner would not have had a problem with renting to us. The homeowner did not refund us our application fee and we were forced to move on to look elsewhere. We did not have the resources to pursue a fight for only several hundred dollars. Had I not been listed on a public Web site regarding my past criminal conviction, finding a safe and healthy place to live for my family would not have been so costly and difficult. And with that, I'm ready to answer any questions.

LATHROP: Any questions? I don't see any but thanks for being here today.

ERIC VAN HUNNIK: Thank you.

LATHROP: Appreciate your testimony. Good morning.

JEROMY WILSON: Good morning. Chairman Lathrop and Judiciary Committee members, my name is Jeromy Wilson, J-e-r-o-m-y W-i-l-s-o-n. I'm here actually with my fiancée and my daughter as well, and we're from Omaha. So I've been on the sex offender registry since I was 18 for

Rough Draft

indecent exposure out of Iowa and that-- I was charged when I was 17 as a juvenile. It was adjudicated in adult court, so due to the circumstances I've been on the registry my entire life. In 2011, here in Nebraska, I met a girl on an adult dating Web site Plenty of Fish. The girl turned out to be 15 after telling me that she was 19. I spent a year in prison for this. I am now required to register as a sex criminal for the remainder of my natural life per the laws of Nebraska as they stand. I've been a target of crimes in the past due to being on the sex offender registry when I was younger. I do you have PTSD and I was professionally diagnosed because I was shot in the back twice due to people finding out that I was a registrant. I'm lucky to be alive today and telling my story, but I'm very proud and thankful to be here. So I'm going to fast-forward to today's date. I have been free and clear of all major legal troubles for ten years at-- at least. I have a daughter, of which I've been the sole provider for, for two years now. I have two soon-to-be stepchildren and a beautiful fiancée. I currently own a successful business, of which has been named Best of Omaha for the last two years. I have served as a board member, surprisingly, as chairman for Nebraska Early Head Start for the last year, and much more. Had they have known I was a sex offender, that probably wouldn't have happened. But I was proud to do that for my daughter. The registry impacts my life because as a sole provider for my daughter, I am limited to the freedoms not only I have but the freedoms my daughter will never have or know because of the

Rough Draft

current sex offender registry laws. My fiancée and I want to-- wants me to adopt her son eventually because I have been the only father her son has ever known. Current laws won't allow that either. For example, I can't teach my children gun or hunting safety. I am limited to how involved I am in their schooling and extracurricular activities. Their mobility and freedoms become deeply impacted and they're barely three years old. The effects of the sex offender registry deeply impact the potential for my business, for my family, and the hopes of having any type of normal life in the future. I hope to be off the sex offender registry one day and hopefully you guys can make that happen through legislation. But it takes a committee like yourselves to listen to us registrants and see how far the negative effects of the registry truly do go. You have the power to create better legislation and a safer community through statistics and testimony of those of us who live through these things daily. I am a walking and talking version of rehabilitation in the truest form. I don't want to have a life sentence or a death sentence to my business or my family because I made some mistakes in the past that I have learned from. People make mistakes; mistakes do not make people. Thank you.

LATHROP: Thank you for your testimony and for coming down here today.

JEROMY WILSON: Thank you.

LATHROP: Good morning.

DEREK KINNISON: Good morning, Senators. My name is Derek Kennison, D-e-r-e-k K-i-n-n-i-s-o-n, and I can identify with all the travel reporting concerns others have brought up today as I am a registered citizen. But I'm also an honorably discharged veteran and a disabled veteran and I live with the challenges of PTSD every day. The added minutiae of travel reporting only amplifies my disability. This isn't right and I offer a solution: Amend the law to grant unrestricted travel privileges to registrants who meet merit-based criteria such as: (1) if they meet all their current registry requirements with the county: (2) if they were incarcerated, they completed all their programming requirements; and (3) if they're veterans with an honorable discharge or disability, apply veteran's preference for unrestricted travel privileges. My next topic is employment issues. I have a college degree, 14 years of organizational leadership experience from the military. I've solve complex logistic issues that come with deploying a squadron of cavalry soldiers, and I couldn't get hired to polish apples as a produce manager at a grocery store. They didn't even call me back. After that, I applied for a part time rural carrier associate job with the Postal Service. I went through multiple selection procedures and got an interview. I won the interview and was offered the job. I accepted the conditional offer but it was soon revoked once the background check was completed, and I had 15 days to write a reconsideration letter to the Personnel Management Office in Washington-- Washington, D.C., and this is what they wrote: In your

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee September 27, 2019

Rough Draft

response, you requested reconsideration in regards to your application for the U.S. Postal Service. You know what you did was wrong concerning the sexual assault conviction; you have worked hard to learn from your mistake. You have participated and completed a 12-month Outpatient Healthy Lives Program. The Nebraska State Clinical Sex Offender Review Team reviewed your file and deemed that you had satisfactory [SIC] met all the requirements for release. Regarding a public intoxication charge, you participated in a six-month program, maintained your sobriety for three years and nine months. You were formerly a U.S. Army Captain, deployed to two theaters of operation, were appointed by your superior officers to take command, have over 14 years of experience. You asked for a reconsideration and willingness to overlook your past mistakes. You've paid the price, are a different person now, and are looking forward to getting your life back on track. Additionally, you provided certificates of completion for your substance abuse programs and other self-betterment programs. After careful consideration, we have determined that the Postal Service's reasons for objecting are proper and adequate. After you read the contents for yourself, you tell me, Senators, how this makes sense. One final story: Earlier this month I decided to start my own business and I signed a purchase agreement to buy a coffee shop. I was going to close on the 15th of October, next month. I arranged-- in the meantime, I arranged for financing and it came up at the bank I was a sex offender. The vice president of the bank was so outraged at the

Rough Draft

thought of a sex offender owning a business on Main Street, he took it upon himself to go over to the sellers' house and confront them face-to-face. The sellers are husband and wife, both ministers, and this man, who doesn't even know me, went over there and told them about me. Then he said, you're selling to a sex offender, the coffee shop will not be supported, and your name and your ministry won't be supported. As a last resort, he commented that he and some other men would come up with the money to keep the property out of my hands. Naturally, the sellers were shaken up, distraught, and concerned for themselves and for me. They felt like they had no choice but to back out of the deal to avoid any future harassment and distress. So I got the call informing me of all this and I made the decision to sign the cancellation paperwork. The registry doesn't help people see who their neighbor is. It blinds them. So what do I do? I mow cemeteries and I fill graves. It's a job no one objects because my clients are deceased. What's happened to me and what's happening with all of us, it isn't right. It's a shame. Let's fix it. Thank you.

LATHROP: Thanks for coming down today.

JOHN GIBBS: Good morning, committee members. My name is John Gibbs, J-o-h-n G-i-b-b-s, and I live in Council Bluffs, Iowa. Thanks for your time and consideration regarding this issue. Until the last 14 months, I was a lifelong Nebraska resident, was on the Nebraska registry for over eight years, at which point I moved across the river. The impetus

Rough Draft

for my move was when my daughter's mother and stepfather moved to a different Nebraska school district. To avoid any of her friends from Googling me and finding I was a part of the Nebraska registry, I picked up and moved to Iowa and now am solely on their registry. I'm accepting of my sentence, prison time, and the consequences I face being on the registry. In fact, I look on it positively and am grateful the experiences I've had and the people I've met. I've even been afforded the occasion to hug it out with my sentencing judge, all phenomenal opportunities. What makes me least proud, however, of all this is the burden the registry has put on my daughter. Fortunately, taking preventative actions like moving to a different state have mitigate-- mitigated most effects. As a parent who is all too familiar with the registry, however, I see that the Nebraska registry is ineffective. There is no way for a public to discern whether someone on the public registry is a viable threat or simply someone who made a mistake as a kid and electronically sent a nude picture of themselves, unknowing make-- unknowingly making them a manufacturer of child pornography. And with courts handing down sex offender convictions at a high rate, similar to handing out participation trophies at a west Omaha t-ball tournament, it seems like you meant to catch a few fish but the net you've cast is far too big and catching more than what was intended. As a parent, I'd love for the registry to be refined back to an effective private tool which law enforcement can use instead of a broad-sweeping public list that provides the Joneses with a false

Rough Draft

sense of security. As my daughter's dad, I'd like her to be able to start college without having-- only to worry about her studies and where's the cheapest place to buy ramen noodles, not about someone stumbling upon my name on-line. Again, I thank you for your time, and have an amazing weekend.

LATHROP: Thanks, Mr. Gibbs. Appreciate your testimony. Morning.

RYAN POST: Good morning. Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Ryan Post, R-y-a-n P-o-s-t. I'm an assistant Attorney General with the Nebraska Department of Justice. My message today is short because I think this is going to be a longer conversation as we go forward. My office has litigated numerous challenges to the sex offender registry and we have a pretty good handle on the issues. We want to offer to work with the committee as-- as we move forward. We met with Senator Lathrop yesterday and would-- would enjoy continuing those discussions. But we do want-- do want to emphasize we must recognize there are some, at least some, on the registry who remain a real risk to reoffend, and we want the committee to make sure that's in the consideration as well. And with that, if there are no further questions, or no questions, we'd like to work with the committee as we move forward. Thank you.

LATHROP: I see no questions. I do want to-- I-- I appreciate the fact that you're here and you've made the offer. We did have a conversation yesterday and we will be talking to you after this hearing.

RYAN POST: Happy to. Thank you.

LATHROP: Yeah. Thank you for your appearance today.

RYAN GEIGER: Hi, Senators, my name is Ryan Geiger; it's R-y-a-n G-e-i-g-e-r. I've been on the registry since 2006. At sentencing I was given a 10-year registration and it was changed to a 25-year punishment in 2010. I should be off the registry next year; however, the ex post facto changes have given me a near lifelong sadness. As of 2010, I can no longer go to my sister-in-law's house and my brother. I was told that with her being a teacher for OPS, actually threatened her job multiple times if she associated with me. In 2010, I was working for-- with two job-- or two jobs at the University of Nebraska-Lincoln. I needed more money for tuition and rent, so I applied for a third job. A staff member recognized that I was a sex offender and I was fired from all the jobs that I had. I had previously accepted federal work-study money but that was rescinded because I no longer could work at UNL. In 2012, I applied and received and lost six different jobs and that happened within like three days to two weeks as soon as they found out my registry status. I could no longer pay rent, so my roommate at the time, she brought in two people

Rough Draft

that she met through drug use. They were local gang members. They were burglarizing properties. They were stealing guns, vehicles, anything valuable. I asked the police for witness protection so I could testify to their crimes but was denied because I was a sex offender. I was not involved in any of the illegal act-- illegal activity, even had a GPS unit on my foot because I was on probation-- or parole at the time. That proved that I had no involvement in the thefts. However, before I went to the police, I hid the property from the gang members so they could-- so they wouldn't fence it. And because I touched it, I was held as an accessory to the crime and given a two- to six-year prison sentence with no involvement in anything except trying to protect the property. The gang members associated-- or the gang members' associates assaulted me, both in county jail and in prison, because I talked to the police and because I was a sex offender. I did nearly three years on a nonviolent drug offense when I was only trying to ask for protection and get the stolen property back to the owners. The actual gang members who committed the crimes were either not charged or had their charges dropped upon my conviction. I had to stay in a homeless shelter for six months after I was ready to graduate the drug treatment program because I couldn't find employment or housing. OHA denied me housing assistance because I am a sex offender. When I did find housing with a friend, his child's mom found out about me and revoked his parental rights until I moved out of his residence. I recently had a very unstable roommate removed from my house by a

Rough Draft

protection order. He nearly strangled me to death on three separate occasions. He threatened future harm to me if the police were called. Because of the registry, I cannot move just like anyone else who is in fear for their life. Anybody else can just move and they probably can't find them. But within three days, because of the registry, he can find me anywhere in the United States. Even with renewing my protection order every single year, I'm not safe nor I do-- nor do I feel safe from someone who has strangled me and threatened my life because he can just look on the registry and find me. Any questions?

LATHROP: I don't see any questions, but I appreciate you coming down here today.

RYAN GEIGER: Thank you. I appreciate your time.

LATHROP: Thank you. Good morning.

LINDA BEN-DAVID: Good morning. My name's Linda Ben-David. Ladies and gentlemen, thank you for taking the time for hearing from us today. First I would like to start out by saying that we are your sons and daughters, brothers and sisters, nieces and nephews, your neighbors. We are everyday people.

LATHROP: Linda-- Linda, could you spell your last name for us?

LINDA BEN-DAVID: B-e-n, hyphen, D-a-v-i-d.

LATHROP: OK, thank you.

LINDA BEN-DAVID: We are everyday people, hardworking, just trying to get by on what we have. Here is where the issue lies. The registry was created in response to a murder, according to Wikipedia. It required them to register with local law enforcement to allow government authorities to keep track of their activities, including those who have completed their criminal sentences. The registry exists in many English-speaking countries; however, the United States is the only country where the registry is publicly accessible. Again, herein lies the problem. So with anything that is public-- publicly accessible, come on, tell me you haven't Googled your own name. What happens when people go-- when you meet somebody? They go out and they snoop. You meet somebody, you have a new neighbor, everybody goes out and looks. If they-- if they have-- if their name pops up on the registry, for whatever reason, imaginations go wild. They don't stop to ask questions or find out the facts. They automatically jump to the worst possible situation. We are human. It's what we do. And the worst possible creates fear, anxiety, worry, and so on, and with fear and anxiety comes "this person is not fit to live in this house or work at that job and their kids are not right to play with my kids or my wife can't talk to his wife," or even worse, "I have to protect my home, my kids, my neighbors, etcetera, for him or her." Then they talk and that-- the next thing [INAUDIBLE] then the next thing is it--it

Rough Draft

creates vigilantism. I can remember living in the '70s where someone with-- when the color of someone's skin would not allow them to walk into Benson, Omaha, without special permission from the police department. Today's society is getting bad enough as it is. Let's not add to it by continuing to enforce a bunch of outdated, unrealistic rules and regulations that cause fear and anxiety on both sides of the fence. Truth be told, most of us-- most of us have learned some very good, valuable lessons and we should be able to pass those on and don't need to be hemmed in by fear. We need to be bold and make changes.

LATHROP: Very good. Thank you for your testimony. How many people are yet to testify? Just getting an idea. OK. Morning.

ARCH SPENCER: Good morning, Mr. Chairman, members of the Judiciary Committee. Got a little cold, but my name is Arch Spencer, A-r-c-h S-p-e-n-c-e-r. I was released from prison on November 2, 2012, and immediately taken to Douglas County Jail for a civil commitment hearing, which I had to spend another month. The registry has caused me problems finding housing. The only place I could find was in an-- in an all one-bedroom apartment complex. Being one bedroom, it-- it inherently rules out family with children. It is tough to find decent housing. I spent 24 years in the military, 14 years at the Postal Service, and I have three years of college. Although I put in 80 job applications and resumes, I was forced to take a minimum-wage

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee September 27, 2019

Rough Draft

janitorial job, even though my Post Office job two years prior had paid \$60,000. I was only offered the job because although I put on my application that I was a felon, my company manager said he had not looked at that part of my application. My second job was in a hotel where my employer said knows does I am a sex offender; if anyone else finds out, he told me, you're gone. I have missed my granddaughter's volleyball games because they're held at public schools. I was disappointed and it had disappointed her as much as myself. Socially, I was refused attendance at a church, albeit I probably could have attended that church with some prejudice, because it had experienced its own prior sexual misconduct problems. Travel is difficult. My brother was severely-- severely ill and he was told by his doctor he would not leave the hospital alive. He lives on the East Coast and I was delayed in getting to my brother's bedside. Because of obscure, vague sex offender laws, I thought that I had to wait three days, come to find out I did not. I am not a dangerous sex offender and I have submitted a letter. I have attached a letter submitted from the Douglas County civil commitment that I will not reoffend because of the programs I have finished. The registry protects no one and it only hampers or prohibits altogether a former offender's success for re-- reintegration into the community. And basically this statement on the-- said because of the treatment plan heard on subject's motion to dismiss commitment-- "Curt Moore, therapist, subject's daughter and subject testified. Evidence fails to show subject is at this time a

substantial risk to reoffend." So my question is, why do we have a registry when we already have a vehicle in place which is civil commitment? And I had 19 months' therapy, incarceration, and another 24 months after I was released. So the only thing that protects the public is the-- the understanding of my-- which it is a mental illness, the understanding and treatment for that. And as I mentioned earlier, the things that happen to a person, understanding that and being comfortable in myself and my own resolve is what keeps me from reoffending, not the registry. Thank you.

LATHROP: Very good. Thank you for your test-- hey, I do have a question for you.

ARCH SPENCER: Sure.

LATHROP: Did you say you were convicted of a federal crime?

ARCH SPENCER: No. I was convicted of a Class III felony and at that time I was on Ambien PM and had drank alcohol, did not know, but they've done studies on that, you lose all-- all inhibition--

LATHROP: OK.

ARCH SPENCER: --and it multiplies the effect.

LATHROP: And I'm not trying to go into your --

ARCH SPENCER: Yeah, and-- and that--

LATHROP: --your offense. I'm curious though. You were sentenced to the Department of Corrections?

ARCH SPENCER: I was sentenced to three to five years for a Class III felony--

LATHROP: OK.

ARCH SPENCER: --which was basically just contact.

LATHROP: Did you get-- my question is about the programming. When you got to the Department of Corrections--

ARCH SPENCER: Yeah.

LATHROP: --did you go while incarcerated through the sex offender program?

ARCH SPENCER: I did not, because it does not allow for a person with that short of a sentence to get full treatment.

LATHROP: So they just-- you went-- were you paroled or were-- did you jam out?

ARCH SPENCER: I had to jam.

LATHROP: So you jammed out and then they said, and you need to go get this treatment--

ARCH SPENCER: Well, it didn't--

LATHROP: --outpatient?

ARCH SPENCER: They committed me and we had a hearing, but the commitment was outpatient, not inpatient--

LATHROP: OK.

ARCH SPENCER: --not the Regional Center.

LATHROP: And that, that access inside the Department of Corrections to the sex offender program is difficult for the short-termers, right?

ARCH SPENCER: It is very difficult for the short-- short-terminer's goals. No one knows how much therapy an individual will need. It's all different, pertinent to an individual, and most of them that I saw was at least three years' treatment. And they tend to let you get toward the end of the your jam date because you're not going to get paroled until you have your treatment. So no sex offender gets paroled unless they've had their treatment. So, yeah, they tend to push you off and wait until the end of your sentencing to throw you in there to get your two or three years in, and it's not very effective.

LATHROP: OK. Thank you for that, answering my questions.

GARY CROSS: Good morning, Mr. Chairman, Senators, and fellow citizens. My name is Gary Cross, spelled G-a-r-y C-r-o-s-s, of Lincoln, and I'm

Rough Draft

a lifetime registered citizen of Nebraska since 1997, practically when the-- the old law began. I'm not a lawyer, a paralegal, nor was I ever a jailhouse lawyer, and I have trouble reading legalese. I don't understand the difference between civil and criminal law, but in this state we-- we have no right to appeal the civil law. I do understand that we have three branches of government, but I do not understand why this legislative branch judged me and thousands of other citizen-- citizens to be at high risk to reoffend, then the executive branch judged us also by signing it into law. No member of the judicial branch has ever sentenced me to the registry. My wife and I are retired and on fixed incomes. We'd like to move into 55-plus housing where the rent is set according to income. I understand ex-felons have trouble qualifying for HUD and Section 8 housing. My wife has talked to landlords for HUD and retirement housing who would accept ex-felons on a case-by-case basis, but for citizens on the sex registry the answer was always no. I've heard in recent months a judge in Alaska ruled that registered folks there be allowed to present evidence that they were no longer a risk to reoffend and could be taken off the registry. Today I'm asking if you could write and pass a simple built to allow all registered citizens of Nebraska the right to appeal before a real judge our classification level. Under the old law there was a point system, and I did appeal to the State Patrol, but they're not the judicial branch. Since 2010, I have a lifetime sentence with no right to appeal. I heard through the media that all states had to

Rough Draft

comply with the Adam Walsh Act or face the loss of federal funds. But since 2010, I haven't heard anything over the media if Nebraska won or lost any funding. I haven't heard of anyone feeling safer, nor of any reduction in crime. In fact, we just heard testimony that the recidivism has increased. I have heard of many people having trouble finding jobs and housing. For myself, since retirement five years ago, I've been more active in volunteer work in corrections, the community, the Reentry Alliance of Nebraska, Nebraskans Unafraid, and three years ago I helped to start the Fearless support group of Lincoln for people on the registry and their family support. I enjoy being part of the solution instead of part of the problem. I'd also like to add that I didn't write down here that I don't believe there should be a felony charge for people that forget something to register. I've been diagnosed with a mild-- mild cognitive impairment and I know of two men that a little bit older than me and, just due to forgetfulness, they forgot to register and face a two-year felony charge. And it'd be nice if the sheriff would just give us a courtesy call, e-mail, registered letter, something like that to remind us if we forget to register. And there's-- and I'd also like to say, in response to Dr. Spohn, I lived through the entire old law. There was no follow-up; there was no re-evaluate--evaluations. We had to appeal to the State Patrol to be able to get our points reduced, and I was trying to do that to get down to medium risk and then I would have been off the registry and not rolled over to this new law. So I'm just asking if

Rough Draft

you have any ideas on how Nebraska can do a better job of protecting both the rights and safety of all the citizens of Nebraska. And I appreciate your listening and I'm open to any answers, questions, comments, or criticisms. Thank you.

LATHROP: Thank you, Mr. Cross. I don't see any questions for you this morning.

GARY CROSS: Thank you.

LATHROP: Next testifier. If you're going to testify, you can make your way up to the front row where we're-- we have sort of an on-deck process here. Keep things moving. Good morning.

GEORGE SHEPARD: Good morning, Senator Lathrop, Senators. My name is George Shepard, G-e-o-r-g-e S-h-e-p-a-r-d. I'm 65 years old. I've spent 36 years, 6 months and too many days in prison, and over 2 years, 8 months confined in a civil commitment treatment facility, all related to a sexual offense. Often during that time, I was a designated legal aide, assisting other inmates to defend themselves. While in-- while an inmate, I successfully brought a class-action lawsuit pro se and obtained a Nebraska Supreme Court decision in that state-- that a state statute violated ex post facto closure of the constitution. That was LB285. I do not condone molestation of children, nor the sexual assault of women and children or women and men under any circumstances, and I recommend the elimination of the

Rough Draft

sexual offender registration to reduce the crimes. I assure you, the registration does not protect anyone. It is not-- just a mere illusion of prevention. Nearly all sex offenders are committed by-- sex offenses are committed by first times-- timers, mostly by family members or individuals trusted by the family or the victim. Appearing at the sheriff's office every three months does not reduce the time nor the urge a person may have to molest or-- and the information obtained does not increase the likelihood of detection. But the registry often means lifetime punishment through shaming and ostracization while increasing the likelihood to reoffend. Before I was sentenced in 1990, I was evaluated under the old law, 1989, which qualif-- by qualified physicians and psychologists. In both states I was not mentally disordered sex offender, and the Douglas County Court included that in my sentencing order. Nevertheless, the Nebraska State Patrol determined I was a lifetime registrant based on my charger rather than the facts. There are no opportunities to contest a determination or appeal. The new restrictions on my freedom comes decades after the event. The requirements should be recognized as penalties retroactively imposed which violates rights secured by the ex post facto and due process clauses. The Legislature has a primary responsibility to conform the laws to constitutional provisions intended preserve freedom from irrational fears and impulses that can lead to a police state. The damage of the registration goes beyond requirements to report. Take housing: I was forbidden to live with my

Rough Draft

stepmother because her-- my status, since the property line was three feet too close to a day-care property 497 feet away. Most Lincoln landlords refused to rent to residents for fear of an outcry from tenants and neighbors or the property value will be declined and their building will be damaged by gangs or drive-bys. And I actually had my lawyer tell me that was what gives fear. Employers also reject registrants from fear of public reaction and business losses. We survive only by self-employment, which may sustain us but does not provide medical insurance or other benefits. Additional crimes can be the result as to this. Rejection can be the reaction of neighbors, socialized organizations, even some churches who does not want you around. This isolation or destitution is-- increases the likelihood to reoffend because at that time, when they start isolating, that's when things start happening, start thinking, and that's why the registry should be repealed. I also know that a long prison sentence is not the solution. Decades of hostile warehousing can solidify deviant thought patterns rather than correct them. It can lead to dependency on the isolate-- institution to meet personal needs which can result in reoffending just to return to institutional for personal comfort. Convicted individuals may be innocent. I have known several. Very few guilty offenders are so deviant as to be beyond reform. We seldom have-- see the worst and registrants are corrupt-- that corrupt to be pure evil. For instance, being troubled, harried, exhausted and alone can lead to crossing boundaries; however, boundaries can be taught.

Rough Draft

Most registrants can lead socially acceptable lives. Unfortunately, the sex offender treatment programs in prisons are very limited and prison offenders are many. The Parole Board will not parole a sex offender unless parole is approved by the prison mental health program and won't approve anyone who has not completed a treatment program and there are seldom opens [SIC] as a result of many offenders jamming out without treatment in prison. Too many are treated only after they've went to civil commitment after long years in prison. My recommendation would be that along with repealing the registration, the solution to reduce sex offending includes competent and comprehensive evaluations before sentencing. Judges may be trained to authorize to give sentences which treat the core issues, rather than the warehousing and convicted. I'd like to thank you all for that.

LATHROP: I see no questions for you today, but thanks for coming in.

GEORGE SHEPARD: Thank you.

LATHROP: Good morning.

BENJAMIN FOLTZ: Hi. Good morning. Thanks for having me. Thanks for this opportunity. My name is Benjamin Foltz, B-e-n-j-a-m-i-n F-o-l-t-z. I live in Papillon, Nebraska. I'm a-- I was convicted of a sexual assault of a-- attempted sexual assault of an adult in 2013 and I have to register for 25 years. I'm just going to give some examples of what's happened since I've been on the registry. My son and I were

Rough Draft

members of the YMCA and we were asked to not be members anymore. We're not allowed to go there. It's very unfortunate. I was in pharmacy school. I had left before this had happened. After I was getting my life back on track, I'd reapplied to finish my doctorate and they denied me based on this basically. They won't say that's the exact reason, but once they learned of the background, then I was not allowed in. I tried to get a pharmacy technician license as well and the same thing happened with that. Travel requirements, people have been discussing that. That's a difficult one. I'll actually choose my vacations on residency-- or on travel restrictions that are allowed. I like to ride my bike a lot and do these bike-packing trips and if we're gone for more than three days, that limits on where I can go. I was trying-- I was doing a bike ride across Iowa one time. It's the world's largest bike ride. And a State Trooper had learned that I was a sex offender, actually arrested me for public intoxication once he learned that I was a registered sex offender, so that was awful. This ride is known for people drinking and partying, but I was the only one who got arrested. I've had multiple job offerings and unemployments and they've all been rescinded after they find out I'm a sex offender. I had issues with alcohol use disorder and this definitely took that to a whole nother level. When I was trying to-- and I've been sober for a few years now. When I was trying to get that under control, I came to a rehab facility here in Lincoln, was admitted during intake. They knew I was a sex offender because I had told them. But during the

Rough Draft

intake, some minors had also been admitted and due to a Medicaid rule, then I had to-- I was asked to leave. I was no longer able to stay for the 28 days. I then went to a different facility in Nebraska for rehab and they allowed me to stay, but I wasn't allowed to discuss openly about my sex offender status, so that was kind of interesting. I guess to help create ideas or discuss ideas on what to do, our-- the way we have to register here in Nebraska, at least in the county I live in, I'm not allowed to do it electronically. I have to show up in person, which creates difficulty with scheduling and work. I think maybe allowing electronic or an e-mail or phone call to count as a registered status would work. Removal, at the very least a decrease, on travel restrictions, being able to appeal or apply for the removal of public sex offender, would also be something I'd suggest. I'm open to any questions.

LATHROP: I don't see any questions. I do appreciate that you're bringing some ideas along. The difficulties become apparent--

BENJAMIN FOLTZ: Yeah.

LATHROP: --as we listen to the testimony, but having ideas is helpful and I appreciate that.

BENJAMIN FOLTZ: Sure.

LATHROP: Thanks for being here today. Good morning.

ERIN ARELLANO: Good morning. Mr. Chair and members of the committee, my name is Erin, E-r-i-n, Arellano, A-r-e-l-l-a-n-o. My husband Jerry is also here. We live in Omaha, Nebraska, and we are constituents and parents to Carlos Arellano, a 38-year-old man who is a registered citizen. He is also intellectually and developmentally disabled, or IDD. His IQ is 57. He does not exhibit any physical deficits, so you can't tell by looking that Carlos has a disability. But his language, both receptive and expressive, is affected and he has trouble reasoning and understanding verbal and social cues and concepts. These deficits are factors in his tendency to get in trouble. One of those times was when he was first released from prison on Saturday, July 16, 2016. As soon as he was released, he began nagging me about when was I going to take him to register. That's one thing about Carlos. He's hyper-vigilant. When he knows something needs to be done, he won't stop bugging you until it is. I took him to register the following Monday. Like other IDD individuals, they like to be independent when they can, so because he had been there before and he knew the drill, I let him go in alone. When he returned to the car, he told me that the sheriff had told him, "See you in six months." At the time, Carlos was supposed to check in twice a year, once during September, his birth month, and then six months later in March. Because the sheriff had said, "See you in six months," I assumed they wanted to see him at his six-month registration date in March. When he went in, he was taken to Douglas County Jail and charged with failure to register. Because of

Rough Draft

the prison overcrowding in Nebraska, now even at the county level, it is in everyone's best interest to fix how the registry is run. As you review the sex offender registry, we ask for a simple change: Print off an appointment reminder for each registered individual upon their departure. It will help them avoid making mistakes and reduce the number of those who are arrested and incarcerated for failure to register. Thank you, Mr. Chair and members of the committee, for the opportunity to address you on this serious issue that affects many families in our state. We appreciate your consideration. I do have one thing that wasn't in my testimony. Dr. Spohn talked about risk levels and-- versus tier levels and assessment tests and I would just ask that when you consider developing assessment tools, please realize that assessments used for the normal population will not be effective for individuals who are IDD, and so other tools would need-- another tool would need to be developed for that population. Thank you.

LATHROP: I appreciate that. We'll keep that in mind as we move forward.

ERIN ARELLANO: OK. Thank you.

LATHROP: Yeah. Thanks for your testimony.

KENNETH ACKERMAN: Thank you, Senator Lathrop, for choosing to study this burdensome law that fails to protect our children of Nebraska. Thank you, members of the Judiciary Committee, for taking time to hear

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee September 27, 2019

Rough Draft

our stories. My name is Kenneth Ackerman, K-e-n-n-e-t-h

A-c-k-e-r-m-a-n. Fifteen years ago, I served over five years in prison and five years' probation for a crime that put me on the registry. I acknowledged I was guilty and immediately sought counseling to understand my cognitive disconnect with reality. Why did I victimize this innocent child? I accept that the registry was designed to try to protect the public from men like me. When I completed my term and paroled, I was forced to live in a van while waiting for my transfer to Nebraska. Assuming I would always be a danger to all children, my wife was forced to place our son in a boarding school for nine months so I could come home, a travesty for him when he already spent five years without a father. I continued therapy sessions, both in California and in Omaha, and included counseling with my wife to rebuild trust. Statistics show that only 1 percent of men serving more than five years in prison have their wife waiting when they leave prison. I'm proud that my wife is here to share the unintended consequences that the registry causes Nebraskan families. Through Nebraskans Unafraid, we opened up our basement apartment to offer registrants a place to reside while reentering society. We now have our sixth registrant. Three are former members of the U.S. Armed Services, as I am too. My wife and I also started our Wednesday night dinners to support those on the registry and wives waiting for their husbands serving time in prison. Julie Cornell of Channel 7 News featured our dinners two years ago with the headline "Sex offender

Rough Draft

support group reaches out to former offenders." Available on YouTube, it's reached thousands. Through Nebraskans Unafraid, I work with both federal and state parole agents. They asked for help for someone who needed assistance, assisted care. They asked me for help for someone who is on the registry for a crime committed over 20 years ago but now needs drug treatment and wasn't allowed in the facility. They also asked for help for the homeless. These agents are reluctant to send anyone back to prison, but there are too many obstacles with Nebraska's current laws. In August 2017, U.S. District Court Judge Richard Matsch found the Colorado sex offender registry act, which is similar to Nebraska's, poses "a serious threat of retaliation, violence, ostracism, shaming, and other unfair and irrational treatment from the public" for sex offenders and their families. Matsch also wrote, "The failure to make any individual assessment is a fundamental flaw in the system." The ruling also criticized Colorado lawmakers who claim the sex offender act is not punitive. He ruled that, quote, the act violates the cruel and unusual punishment clause of the Eighth Amendment of the U.S. Constitution and also the due process rights guaranteed by the Fourteenth Amendment. The Nebraska registry does not make our children safer, nor does it create a safe and healthy society. Please make the changes necessary for this law to protect everyone, including all our children. And I have that ruling.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee September 27, 2019

Rough Draft

I'm sure you can look it up, but I have the Colorado ruling if anybody is interested in looking at it.

LATHROP: OK. I appreciate that. I don't see any questions, but thanks for being here and for the work that you do with offenders. Welcome, Senator.

McCOLLISTER: Thank you, Senator Lathrop. Mr. Chairman, members of the Judiciary Committee, my name is John, J-o-h-n, McCollister, spelled M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th District of the Nebraska Legislature. I am very grateful and I salute this committee for taking up LR204. It's the proper thing to do and the proper time to do it. I also last year introduced LB510, which is a narrow slice of the sex registry law dealing with children registering in one state, coming into Nebraska. But I recognized at that point that reform of the sex registry law in Nebraska, it's time to do that now. The poignant stories of people and the-- the injustice that they have suffered as a-- as a result of this-- of this statute in Nebraska tells me that it's-- it's something that this Legislature needs to deal with in a very good way. These stories cry out for reform, and I think we need to take it up now. I think what we ultimately need to do is look at the best practices among all the states in the country and-- and put a law out, sponsor a statute next-- next session, perhaps with the AG, work with the AG and something they can support,

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee September 27, 2019

Rough Draft

and move something forward. It's-- it's time to do it and I'm grateful that you have taken this matter up. Thank you, Mr. Chairman.

LATHROP: Certainly. Any questions for Senator McCallister? I seen none. John, thanks for being here. We appreciate your interest in the subject, especially given that you're not on the committee but still concerned about the registry.

McCOLLISTER: Well, thank you, members.

LATHROP: Morning.

ELLEN CLARK: Well, mine is about the children. Mr. Chairman and members of the Judiciary Committee, thank you for listening to me today. My name is Ellen Clark, C-l-a-r-k. I am a spouse of someone on the registry and a mentor and counselor of numerous spouses of registrants. Most important, I am a mother of a child affected by the registry. The registry does not protect children. I am always upset when supporters of the registry say they just want to protect the children because that-- no one protected our son. Just the opposite happened. My husband was accused of lewd and lascivious offense. The charge was embellished and exaggerated until the written statement sounded horrific. He was sentenced to six years in prison. My first thought was, no one is thinking of Travis. Travis was ten years old at the time and the prison said that Travis could not visit nor talk with Ken. When Ken was released five years and nine months later, the court

Rough Draft

said that Ken could not live with Travis, so we needed to send Travis to a boarding school. Travis was thriving in school until he spent a year at a boarding school. The emotional effects-- effects caused him to fail miserably. The first time Travis saw his dad was Christmas when Travis was ten years-- 16 years old and my whole thought was no one is thinking of Travis. The state of Nebraska system is designed to inflict harm upon our family. All the advocates of the overreaching laws always say we just want to protect the children. There is no evidence anywhere that a registry has protected a child. Registry supporters always say, if we only protect one child, the registry is worth it. Well, what about the harm to my child? Travis is 22 now and he has lots of emotional and mental struggles. Not having a solid sense of himself, he has low self-esteem, an inferiority complex, and he suffers from shame and embarrassment. The public registry should be abolished. All it does is generate unfounded fear and hatreds and it harms families. Thank you.

LATHROP: Thank you for your testimony. OK. We must be getting close to the-- the end of the testifiers. If you still want to testify, come on up and, if you wouldn't mind, fill in the front row so that we can see how we're doing going through the-- those that wish to be heard.

SPIKE EICKHOLT: I was hoping to be last but I'll just go quick.

LATHROP: You're not last.

SPIKE EICKHOLT: Thank you. Good morning. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association as a registered lobbyist. Our members and our association regularly deal with the Sex Offender Registration Act. I didn't prepare a written statement because I didn't quite know how the hearing was going to go, and I'm not going to repeat all of the things that you've heard the people who have been subjected to Sex Offender Registration Act have experienced. I think they explained it very well. I thought I would offer some suggestions that the committee can look at regarding changing the law. One thing the court could con-- or one thing this committee could consider is sort of the scope of the Sex Offender Registration Act. I didn't bring enough copies of this and I didn't want to have Ms. Chavez do it because she's clearly busy. But if you look at 29-4003, that's the listing of crimes that result in how people have to register and basically it's all sex offenses in Nebraska, whether those-- and those are not necessarily sex crimes against children; in fact, a majority are not. They're not necessarily actual sex crimes with actual victims. They are things like indecent exposure all the way to forcible sexual assault, so you have all the sex crimes. There's also a laundry list of nonsex crimes that can be for people to be required to register if a trial court or if the sentencing court finds that the person should register, so it's everything from misdemeanor assault all the way up to first-degree murder. And one

Rough Draft

thing the committee could look at is trying to narrow that list because if you look, not every logical crime is on there. I don't know why-- I think it was done in LB285 in 2009-- why they decided to do that, but they did. I've distributed a copy of the sex offender registration notice form. This is what the judge gives to somebody at the time of sentencing. It's two pages. It's not all of the requirements, but basically it does include some advisements with respect to what a person has to do when they are finally in the community. And you've heard this before, but the registration requirement doesn't happen until someone is out of prison, so somebody can be placed on probation for a relatively insignificant offense but then have to register for a very long period of time. One thing I suppose the committee could do in addition looking how you end up on the registry is maybe go back to the tier system or some sort of risk-based thing. You've heard some testimony about that before. There used to be a three-tier system and you could argue it at the time of trial that it was based on a-- it was done by the State Patrol. You could somehow help or at least advise your clients as to where they would end up somehow, and it was based on a point system that they had, and frankly it wasn't all that great. And I-- my opinion, a lot of people ended up on the level III tier that probably shouldn't have been there anyway, but at least if you had somebody who was a first-time offender with no significant record, stable employment, all things going for them, they wouldn't end up on the level III public

Rough Draft

tier; they'd end up on I or II where the police would know, or other entities would know and they'd sort of have to deal with it and keep their eye on. They would still have to register. They'd still have to check in with the sheriffs and so on. But the ability of the general public to see them on there didn't matter; that was completely swept away in 2009 with LB205 and everyone is bumped up to essentially what was level III and everyone's time was lengthened. It used to be just 10 years for some people and I think 25 and then that was just lengthened from 25 for felonies, 15 for misdemeanors, and life for many other felonies. The courts have said you can do that retroactively because it's not punishment, right? At least that's that theory; it's not punitive. But I will tell you, and if Senator Wayne and practices in this area, too, one thing you'll try to do for your client is you'll negotiate a deal where they'll plead to even a more serious felony that's not registerable because at least, if you go to prison for ten years, you can be done with, right? Because even if you have to only register for 25 years when you're going in, if the Legislature ever expands that to life, when you come out, it's life, and you heard somebody who was impacted that way. One thing, we do have a provision-- we do have a provision at 29-4005 that allows for application for early release from the registry. That's so narrow that I don't even know if anyone's ever taken advantage of that. It only applies to somebody who is convicted of a misdemeanor crime and they have to register for 15 years. After they've done their ten years,

Rough Draft

they can apply to the State Patrol to have the five-year balance waived. There's no real guidance for the State Patrols to consider. I don't know if you can appeal the State Patrol's decision to a court if they don't do it right. But one thing you could do is maybe amend that somehow to provide for either courts to review those things, the State Patrol to provide these, a hearing or a process where not only people who have been convicted of misdemeanors have to register for 15 years, but people who had 25 years or life. So that would not be unprecedented because we had that, at least in statute. And one other thing, frankly, and Senator McCallister testified earlier, and that's LB510. We worked on LB510. In my opinion, when you hear of all the things that happened, that was a relatively modest proposal because all LB510 did was just reverse a Nebraska Supreme Court decision that we have been treating juveniles from out of state similar to the way we treat juveniles from in state, but that was apparently something that couldn't be done, but maybe next year hopefully that would be possible. And then finally, one other thing the committee might want to consider doing, and if I could just finish it, it is related to LB510. The issue with LB510, remember, is that you'd had juveniles who had to register pursuant to another state's registry law, but that registry law in the other state, whether it was Minnesota or Michigan, was not public. But that's-- we only have one registry, so one way you have to-- to comply with our registration act is if you have to register somewhere else, whether it's public, nonpublic, for a year,

Rough Draft

for ten years or whatever. It just triggers the automatic "everyone sees it" list. I'd take any questions.

LATHROP: So Nebraska was not the only state to buy into the whole Adam Walsh Act.

SPIKE EICKHOLT: No, I remember when-- I think our association opposed it. I wasn't really involved in the association then, but I think we opposed it, but there was just this sense that all states had to do it because there was money involved. But you know, if you look at the State v. Clemens case, that's our Supreme Court case. They sort of suggest one way that our State Legislature could clarify, at least to them, why nonstate, nonresident juveniles shouldn't have to register. It references Kentucky because Kentucky had recently revised its sex offender registration act, and apparently Colorado has had similar litigation. So I don't think we're the first ones to sort of go into all public, but I bet you, if you'd look statewide-- maybe the doctor from UNO could explain-- I suspect that a lot of other states have been dialing it back. I mean--

LATHROP: Well, that was going to be my question that I was leading into. Do you know what changes, like are other states trying to reform their registry because they found that many people are experiencing what we've heard this morning?

SPIKE EICKHOLT: I have-- I have found that, yeah. I mean, when we looked-- Josh Wier is hopefully supposed be here today. He's the one that was litigating the case against the Attorney General in the federal court system. But he explained to me that he has a lot of stuff in juvenile court. A lot of other states have developed a separate registry for juvenile offenders that is nonpublic that we just don't have, so that's one innovative change that's been done. A lot of other states, and this deals with all components of criminal law, it's easier to get things-- you know, we only really have the Board of Pardons as far as getting rights completely restored in our state. Other states have commissions you can go back in front of a judge on a resentencing type thing, and other states have done that not only with other areas of law but also with an offender registration act. I distributed the-- the form because a couple people talked about it. One thing you could consider doing, this three-day notice, if you look at this form, basically, if you live in Lancaster County and you're going to be out of the county for three days, you got tell the sheriff of Lancaster County you're leaving and then you've got to tell the county sheriff where are you going that you're going to be there for a while. So imagine if you are a sex offender and you've got the kind of job a lot of these guys can only really get, and that's working for a roads crew or something, right? And they're going to be working out in Blaine County out there by the forest for a week. Just all the logistical hassles you have to do, not

Rough Draft

only is it a hassle for the person who's got to register, but it's got to be very time consuming for the sheriff's offices around the state. They may not acknowledge that publicly, right? But I suspect it's a lot of staff time to sort of handle all these forms regularly, explain it to everybody. So one thing you could do is looking at just the conditions of what it means to register in addition to the being on a public list.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. You mentioned misdemeanors. Do you have any ballpark figure on what percent are felonies and what percent are misdemeanors?

SPIKE EICKHOLT: I don't. I suspect the State Patrol has that information. I don't. But not every sex offense is a felony, so a third-degree sexual assault, which is just contact over the clothing, grabbing someone's butt in a bar, it's-- if prosecutor can show that that is done for sexual gratification, that's third-degree sexual assault. That's a registerable 15-year offense. And, you know, many times, and you hear from before, people who are convicted of a crime got probation. You know, I-- I believe in judicial discretion, but I'll tell you that in my experience these judges don't take sex offenses very lightly, so the fact that someone's getting probation for these things, I think you could probably safely say it's not as

serious as you might think when you see the name of the crime or see someone on the registry.

BRANDT: OK. Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming today, Mr. Eickholt. I appreciate-- I also just wanted to say I appreciate everybody who's come to speak today and-- and given their heartfelt testimony and given some really good ideas as well. Two major hearings, Education and Judiciary, have been somehow scheduled for the same time, so I am heading out to go to the Education hearing. But I want to just say thank you to those who came and spoke and really clearly offered some-- some good ideas for us and ways to think about how to make some changes. Thank you.

LATHROP: Senator Wayne.

WAYNE: From your association perspective, how often-- thinking about the third-degree indecent, some of the lower level, how often are they charged higher and pled down?

SPIKE EICKHOLT: I mean that's-- that's-- that's regular. That's on every kind of crime. If it's not charged higher, you certainly get a threat or a promise or an assurance from the prosecutor that it's

going to be charged higher. Many times in those third-degree sexual assault-type things, you'll suggest your plead to a felony, right--

WAYNE: Right.

SPIKE EICKHOLT: --just a nonregisterable felony. Even though you're going to make them a felon, they can get-- there's an end to that, right?

WAYNE: Right.

SPIKE EICKHOLT: So--

WAYNE: Thank you.

LATHROP: Thanks for your testimony. We always appreciate hearing from somebody who can give us the experiences of many people.

SPIKE EICKHOLT: Thank you.

LATHROP: Thanks for being here. Welcome back.

JOHN MEZGER: Thank you. My name is John Mezger, J-o-h-n M-e-z-g-e-r, and thank-- I thank the committee and I thank the Chairman for bringing this subject up. It's-- it shows that-- it shows leadership, that Nebraska wants to be on the forefront of reform, and I appreciate it. I also hope that you appreciate, as Senator Pansing Brooks brought up, all the people that have testified today, the courage. You wouldn't believe the courage it took to get them here and to have them

Rough Draft

step up to this microphone. And some are holding back because they're trying to build up the fortitude to come up, I'm sure. And taking that courage into consideration, I was here back in March and there were about five or six bills that were being introduced that day. We were in the old house chambers and every one of those bills had at the end of the bill put this person or this offender or this-- this particular law on the registry. It's a registerable offense. And I spoke, I-- finally one-- on the bill "yes means yes," I spoke out to say just how much unemployment do you-- does the state want to bringing about with having additional people put on the list? And when I got finished I had to get home, so I proceeded to walk out of the room, but happened to hear the senator that introduced that bill say that her bill had nothing to do with the registry. But that's the point I want you to learn is, this day, with all these people speaking, every time you make a bill that require-- that ends up having a registerable person, you're not just punishing, and I want to emphasize the word "punishing" that person; you're punishing your children, your family. And I wonder whether-- how that viol-- I just wonder how close that comes to violating the Fourteenth Amendment because they deserve due process. You know, when the Supreme Court brought up the case about-- about the registry, it was due to the fact that somebody-- the-- the group that was suing at the time brought the case up. The registry required a card that was sent in, a card-- or actually, a card was sent out to the person that was on the registry. They checked it out,

Rough Draft

no changes to their status, etcetera, etcetera, and they mailed it back in. And the Supreme Court allowed or voted for the registry based on the fact that it's just a matter of civil duty. Well, the registry has grown more beyond civil duty. It is a punishment. It is a punishment when you can't find a job. It's a punishment when you can't find a house. It's a punishment when family members reject you, when your neighbors threaten you. It's a punishment, gentlemen and ladies. I have some suggestions. My suggestion number one is that we-- and by the way, Mr. Kline, in the sheet that he gave you, also has some suggestions for the registry. And I don't know if these are in agreement with his or not. This is something I wrote just in this session listening to people. One, let's bring up-- if you're going to have a registry, if you have to have it, I don't think you do, but if you have to have it, bring it back to a civil duty. Send out a card. Have us mark down the information, send it back. I don't see how that could be a big problem or how it could be any more expense than it is for somebody who fails to register and you end up putting him back in prison at \$38,000 a year. Two, eliminate the felony aspect of somebody who forgets to register immediately at the-- or at the due-- at their designated month. Make it a misdemeanor, make it a fine, but to make it a felony? I think that's a bit drastic. Number three, do away with the travel restrictions. You know, I own a house. I've been there 25 years. I'm not going to go anywhere; and anywhere I do go, my wife knows about it and I fear hear-- her more than I do the authorities.

Rough Draft

So if I go someplace outstate or to another place for four days, or even the hospital-- I'm 72 years old. Who knows what's going to happen to me? I could be in a hospital for over four days. How am I going to register when I'm in a hospital? Do away with that. And the other one is to find a way to get off the registry. There's got to be some escape clause. I'm on it for 25 years. I'm going to be 94 when I get off the registry. I think it will outlive me. It's a life sentence. And I worry about that when I-- if-- when and if the day comes that I'm incapacitated. And this is one that I would really like. Mr. Kline didn't mention this, but Mr. Kline has asked through the right to information a cost of what it is to run the registry, both at the state level and at the local level. Nobody knows how to give that information. I think it's about time they do. I'd like to know what it costs the citizens of Nebraska to run our registry. And number-- and then my last one is I'd like to know the number-- I'd like the state to keep track of the number of arrest-- arrests that come from the registry. I don't know if you knew this, but everybody that has to sign up for the registry gets their DNA taken. So if a crime is committed and DNA is available, they know who the-- they-- they can check the list of registered. They don't have to make a public registry to find out who committed the crime. But I'd like to know how many are actually arrested and that-- and they reg-- and the registry

Rough Draft

has helped them make that arrest. Those are my suggestions. Thank you very much for your time.

LATHROP: We appreciate that you came here with suggestions as well. Thank you. Next testifier.

ROY LAUBY: Thank you for your time and consideration here. I really appreciate it.

LATHROP: Good morning.

ROY LAUBY: My name is Roy Lauby, R-o-y L-a-u-b-y. I am a small business owner in Wymore, Nebraska. I have a brother that was convicted of a sex offense, spent time in prison. When he got out of prison, he-- part of the conditions were he had to have a place to live and a job, and there was no opportunities for him for that, so I agreed to-- to have him live with me and my wife and work at my company, which he did for approximately four years. And in a small community with the registry, you know, everybody in town pretty soon knew about him. I talked to the chief of police as soon as he did move in and informed him of the situation and told him not to worry, that my brother wasn't going to commit any more crimes, he was a good man, and in the four years that he worked for me I never but one customer ask me about him. I explained the situation, what had happened, and her comment was, Roy, don't worry, we all make mistakes, he's a good man and I trust you, I trust him, don't worry about it, we don't care.

Rough Draft

Recently he had emergency surgery and was in the hospital for a couple weeks. His neighbor came over and mowed his lawn for him, took care of things. I'd stop, pick up his mail. The neighbors would come over.

How's Greg? How is he? Well, you know, is he OK? What can we do? The people in the community took-- you know, didn't feel threatened by him and still don't. But the man is extremely intelligent, has a heck of an education. He has helped numerous people since he's gotten out of prison, all for, you know, no-- no compensation, taken on causes for the community but constantly has doors shut and it-- and it's-- and people find out that he's on the registry and then they won't communicate, won't allow him to-- to participate in meetings or he loses his credibility when up until that point he's the one they're all listening to and asking for help. So I'd just like you to really consider what you're hearing today. It is a serious problem, I feel, and I know how it's affecting my brother and-- well, you-- I've got my testimony here. I'll let you read it and I thank you for your time.

LATHROP: You were pretty close to it.

ROY LAUBY: Yeah.

LATHROP: Yeah, yeah. Thanks for being here.

ROY LAUBY: You bet.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee September 27, 2019

Rough Draft

LATHROP: Yeah. Appreciate that. I feel like we're down to three people. Would that be true? Show of hands? Three people, three or four. OK. Welcome.

SUE HILL: Welcome to you. My name is Sue Hill. I'm very grateful to have a chance to speak today. And a lot of what you've heard is basically what we all could have said. My son spent nine years in the Federal Transfer Center in Oklahoma City and was released in 2017. He worked while he was in Oklahoma City. He earned the respect of inmates and guards alike, took classes while he was in custody, and prepared as best he could for life on the outside. However, nothing really prepared him for the registry. I think, until you're there, you're not really sure what to expect. I joined Fearless before my son was released and the support and the education that we-- that I got and we got from each other, you just can't put a price on it. We've been broken by the experience of having a loved one on the registry. There's just no other way around it. You just are aching. You feel like a child needing permission to go anywhere or do anything. My son is 42 years old. It's really kind of demeaning on many levels, but he's learning. It changes the order of the family. No privacy for the registrant or their family-- we're just out there. We have to go through many things that others don't. And in fact, it made me think, you could be living next to a murderer, a thief, or a meth dealer, for Pete's sake, no public registry for these crimes. The parents of

Rough Draft

children whose fathers or mothers have served time for the crimes-- for those crimes, they can walk right into open house at school and join in family fun night with no problems. And it sounds like you're saying to us, even with your own family with you, the danger is so great that we just can't permit you to be on school grounds and participate in your children, who had missed you for nine years. You can't go there. And it sounds a bit ludicrous to me. It sounds a bit un-American after you've served your time and are just trying to have a life and rebuild the one you had lost for a long period of time. "Punitive" is a word I heard used today and it's what it feels like. It's not how our country rolls. There's a lot of conversation about what we should be thinking about as Americans lately, and really, I just can't think of any other crime. Even if my son had not had this problem in his life, I, as a school bus driver, just started thinking about how, you know, sad it is for those kids that have parents that their folks just can't participate any-- in any school functions. And I guess, just because you have not come up with a better plan, doesn't mean what we have today is the best plan. So I'm really hoping that you guys will come up with something that-- that will make it better because it's-- it's very painful to watch a loved one who's already spent a good portion of time to not feel like they could ever get past this. It's-- I've heard the guys say, you know, it's like having that scarlet letter; you know, people-- people know all about you before you get there and it just doesn't give people a chance to know who you

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee September 27, 2019

Rough Draft

are really. So thank you very much for being here and being the eyes and the ears of our state. Let's do something.

LATHROP: All right, thank you, Ms. Hill. Good morning.

JEANNIE MEZGER: Good morning, Mr. Chairman, committee members. I am Jeannie Mezger, the fearsome wife of John Mezger, Jeannie, J-e-a-n-n-i-e M-e-z-g-e-r. And for the last five years, I have moderated a peer support group of registrants and their family members. They face rejection because of the registry. Their address could be a target for vandalism and vigilante violence and they worry about loved ones doing time in the same prison system where three of the last four murders were of people convicted of sex crimes. In this study of the registry, I hope that the Judiciary Committee asks if Nebraska wants this set of laws to do what it does. Do we want to increase the number of homeless and unemployed? Because that is what we're doing. Over 50 people register with the Siena Francis House address, the only Omaha shelter that will accept them. At today's rate of growth, our 6,000 registrants become nearly 10,000 in ten years. How many Nebraskans do we want on the registry? Do we want schools preventing parents from taking part in their kids' education? If schools don't outright bar people on the registry from the school, registered parents stay home for fear they will be outed as registrants by someone at a school event. The fear of humiliating your children is hard to ignore. Do Nebraska employers want people taking

Rough Draft

time off work to tell the sheriff's office that they are driving a different car or that they're enrolled in college classes or that nothing has changed? Do they want people who live and work in different counties to take twice the time off work to register in both counties, even though both counties add data to the very same state registry? Do we want to continue overcrowding our prison system by sending registrants back to prison? Failure to register is always a felony. Imagine not a felony for committing a new sex offense, a felony for forgetting to tell the sheriff that you're leaving town for four days. Does Nebraska want to spend \$31,000 a year to incarcerate someone who forgot to report in time that nothing has changed? Do we want an elderly person to bundle up her spouse with all the accoutrements of old age and sickness, wheelchair, oxygen, blankets to take him to the sheriff's office four times a year to register the fact that nothing has changed? Do we want the state lying to people that those on the registry will reoffend frequently even after the UNO study clearly showed that that is not true? If you want fewer sex crimes, the registry is not accomplishing that. People continue to be arrested for sex crimes and almost all of them are not on the registry. It's no secret that jobs, housing, and community connection are the best ways to prevent new crimes by someone reentering the community. So why, if you think these people are dangerous enough to require tracking by law enforcement for decades upon decades, why are we not doing everything in our power to help them get jobs, housing,

Rough Draft

and find community connection? When you argue to leave people on the registry, you are arguing-- arguing that those families deserve everything the registry dishes out. The registry was foisted upon Nebraska by this Legislature, the same body that added new crimes and restrictions in 13 of the last 23 years, including last session. It's time for the legislators-- Legislature to stop encouraging unwarranted fear, do the right thing for thousands of Nebraska families, and abolish the registry. We don't want your family to go through what we go through. Thank you.

LATHROP: Thank you for your testimony.

JEANNIE MEZGER: And I sent in an e-mail that had some suggestions, too, so I hope that those are-- are looked at.

LATHROP: They will.

JEANNIE MEZGER: OK, thank you.

LATHROP: They will. I appreciate that. Thank you.

JEANNIE MEZGER: You bet.

KEVIN SIMNICK: Good morning, members of the Judiciary Committee. I-- my name is Kevin Simnick, S-i-m-n-i-c-k. I am blessed to be here. I was asked to be here today as I just recently paroled. I didn't have a speech, but I-- as I listened, so I-- as you said, Senator Lathrop, to try to not repeat others, I will just follow some suggestions I have

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee September 27, 2019

Rough Draft

been asked and have-- have dealt with in the last six months on parole. I, too, am a registered citizen. I am sorry for what I did. I take full responsibility for what I did. I do not want to sit here as a victim. I sit here as a concerned taxpayer who simply wants to contribute to society and no longer be a burden. With the exper-- things I experienced in prison, it probably cost the state Nebraska probably about \$50,000 a year to have me incarcerated. On a good note, I am assessed as a low risk to reoffend. As Senator DeBoer had asked about continuing care, I participate in that and I am a proponent of that. But I am still a low risk to reoffend and I-- because of the continuing care that I seek out voluntarily, I am confident that I will never reoffend. I volunteer with the Nebraskans Unafraid, the Lincoln Fearless group and the Reentry Alliance of Nebraska as well. I respect the registry, as the person I harmed has to deal with what I did for the rest of their life. So registering for life, as-- as I have to do, is OK; however, public access for low risk and medium risk, which has been assessed already-- said already today, I feel is unnecessary, as those have spoken from this registration today of all-- as I have understood, are all low risk to reoffend as well. I completed programming while incarcerated. I was incarcerated approximately 11 years in prison. And as I mentioned, again, I continue to seek help. I was-- I did the-- back then it was the bibliotherapy, the bHeLP, the low-- lowest risk. However, I, too, have had trouble finding housing. And because I have dealt with that and

Rough Draft

involved with support groups here in Lincoln, I try to be a role model. I did find housing. I was blessed with that, so I am thankful for that. But I try to help those find jobs, because I do have employment, and housing, at least for moral support, and that's one of the great things about our support group, Nebraskans Afraid [SIC]. But as was asked by the committee, I want to bring clarifi-- I want to bring suggestions, and one of the challenges on that very first day when the person came to pick me up and we signed out, my-- the parole officer, they gave me this list, and the laws were very ambiguous. It scared me to death. And I-- I've taken some paralegal classes and-- and all that, so I consider myself kind of intelligent, and I didn't know what to do when I got out that first day, so I can imagine what others who are getting out are trying to understand, like one example was no social media, no Internet uses. Well, how do I e-mail? How do I-- because most of your utility bills and your credit cards and banks, they want you to pay on-line. But I didn't know what that meant. So thankfully my parole officer sat down with me and explained that. So as a suggestion, bring clarification so less people are returning to an overcrowded prison. I-- I deal with fears and concerns. My parole officer just did my six-month assessment, as was another suggestion today about evaluating the people on the registry, and she, again, felt that I was low risk to reoffend. However, because of this-- the hate and concerns I have, I decided to keep my EM-- electronic-- I have an ankle monitor and out of fear I've decided to

Rough Draft

keep that on, and as my parole officer's suggestion. So in the interest of time, my criminal case was heard by the Nebraska Supreme Court, State v. Simnick, dealing with the difference between collateral and punitive consequences. I want to appreciate the committee's time and I plead to you with change-- with-- to make a change. And a second suggestion is the rules of registration need to be clear and concise across the state, because I have traveled and it is difficult knowing which rules are which, depending on what county you fall in. So thank you again, committee, for your time, and have a great day.

LATHROP: Thanks for being here.

KEVIN SIMNICK: Oh, any questions? No?

LATHROP: I-- I don't see any.

KEVIN SIMNICK: All right. Thank you.

LATHROP: But thanks for being here.

DAVID LADD: Good morning.

LATHROP: Good morning.

DAVID LADD: Thank you for giving me this opportunity, Judicial [SIC] Committee. My name's David Ladd; that's D-a-v-i-d L-a-d-d. Well, I-- I guess mine is going to be really short since so many people pretty

Rough Draft

much covered pretty much most of everything I was going to mention. My brother just recently lost his legs last year, so-- and he's a veteran, so he gets VA benefits. But because of the fact that when my parents passed away he became the person that was basically to take-- take care of me, because of the fact that I have no place I can live. And I've lived with him for 23 years, and because now where we live is not really wheelchair accessible, it makes it very difficult for him. But he knows if he goes to a VA home, that leaves me without a place to live. So he chooses to let me take care of him, and we live in a dump, but he chooses to do that to help me, which I'm grateful for. But in one standpoint, why should my brother suffer to help me? And then on the other hand, most people don't get the opportunity that I have where I still interact with my victim and my victim's parents. To give you an idea, I'm into computers. My victim and my victim's father went to a computer fair in the car ride to Chicago for nine hours and back. They have no problem with me at all, but yet when you're on the registry, people that don't know you will break out your vehicle's windows just because they think you're this horrible monster when, if you get to know me, I'm probably one of the best friends you could have. So that's one of the things that having a public registry doesn't tell people who you are. It just tells you what you did was wrong, but then people see that wrongness and don't give you that chance to even get to know, are you worthy of actually having a chance to be a constructive part of society? I have skills. I'm a computer

Rough Draft

technician. What am I going to do to a computer, molest it? No, but yet because you're on the registry, you can't get a job just fixing computers, which is ridiculous. So that's why a public registry does no good when a person's career is doing something that has nothing to do with sex. Why? If a job has nothing to do with it, then why should you be kept from doing something that you are capable of doing work in and contributing to society and being a taxpayer? So, you know, and this standpoint, that's where the public registry just hinders development of people that can be a productive part of society. And that's really all I have left that pretty much everybody else has contributed, so thank you.

LATHROP: No, I appreciate it though. Thank you, Mr. Ladd.

DAVID LADD: Thank you.

GREGORY C. LAUBY: Chairman Lathrop, Senators, thank you. I want to also thank you for having this hearing and allowing people to express the difficulties that they experience. Given what has been said, to try and avoid redundancy, it really leaves me very little--

LATHROP: Let's start with your name.

GREGORY C. LAUBY: Ah, yes. Gregory C. Lauby, G-r-e-g-o-r-y C., as in "Christian," L-a-u-b-y. But I would-- but I would share with you a Turkish adage which is, as I've been told, "no matter how far down the wrong road you go, turn back." That's what's expected of anyone who

Rough Draft

has been convicted of a sex offense and is in the-- on the registry.

It's not just expected, it's demanded, and a failure to do that is punished by a potentially very long prison term. It's also good advice for a government body to follow. I'll let you read my written statement. I would call your attention to the statement of Bob Creager, who spoke when the change was made or was being proposed to make in 2009, about the problems that he anticipated in terms of yet violating constitutional rights. And I think recent court cases are suggesting that there could be a tsunami of litigation facing the state if it doesn't make substantial revisions. And I think he also gives some hint to why the changes were being proposed in terms of complying with the Adam Walsh Act and some financial benefits that would flow from that. And I thank you again for having this hearing.

LATHROP: You're welcome, and thank you for being here today. Anyone else care to testify? Welcome.

MICHAEL WIGGINS: Thank you for having all of us here, Chairman and the Judiciary Committee. This was a last-minute thing for me. My name's Michael Wiggins. I am a registered citizen. In 1985, I was 20--

LATHROP: Can you spell your last name for us?

MICHAEL WIGGINS: Oh, I'm sorry, W-i-g-g-i-n-s.

LATHROP: Thank you.

MICHAEL WIGGINS: And please forgive I don't have a written. If--

LATHROP: That's fine.

MICHAEL WIGGINS: If it'll help, I can send you one but--

LATHROP: Don't need to. Go ahead and testify.

MICHAEL WIGGINS: --I'll probably-- I'll probably be the most disjointed speaker you've had today.

LATHROP: We've heard a lot of folks that come up and they just speak from the heart. That's fine.

MICHAEL WIGGINS: Well, I was convicted of a crime in 1985. I was 23 and my victim was also 23. Because-- well, there was no registry back then. You know, I didn't want a plea bargain for four years because I was arrogant, pompous, and didn't believe that what I did was wrong. Clearly I've changed my belief. And I have a halfway house, a transition house that I'm, as far as I know, the only transition house that houses specifically sex offenders. They have to be under parole, probation, under the Board of Mental Health. So I work with the state, federal probation officers. The registry, I think everyone in this room would agree that the number-one priority is safety, safety to children, safety the public in general. So then I would look over here and I'd say, OK, we all agree that our law enforcement officers are at risk every day, being shot, killed by total strangers for idiotic

Rough Draft

crimes. There is no registry for the people who kill most of these officers. Most officers are killed at domestic disputes. There's no domestic dispute registry. Do we not care about our officers like we care about our children? Man's best friend, we love our dogs. I feel like I've been treated like a dog many times. I got out of prison. I was happy to be free. I didn't hurt anyone, but I was so happy, I was that friendly dog that ran over the flowers or knocked the table over or did something accidental. Does that mean that I should be a "Tier III" threat to society, whatever the registry does? And if so, when does a person get to show, prove that they are a viable, productive member of society? I've had one sex offense in my life; it's almost 35 years ago. I'm sorry. I can't change it. I've paid, I'm paying, and I'll pay for the rest of my life. Collaterally, my family, my friends, anybody I have contact with at a given time could be potentially, you know, harmed as well. I've chosen not to get married, not to have children, not that I don't love children. I have no-- I just didn't want them to have to grow up with the stigmas that I've got around me. I recently went to Canada to see my father I hadn't seen, and my niece who-- my dead brother was finally getting married. I'd-- hadn't been there because I was in prison or on parole. I haven't been on parole now for about eight years. The border said-- the first gentleman said-- anyway, they said no, no. And I asked to see a supervisor and they said, well, maybe. They gave me an adjournment the next day. Overnight, I had a dozen letters from successful, professional,

Rough Draft

qualified people in the judicial system, a 44- year retired sheriff, a couple of parole officers, transition people who know me and know my character today. Should I still be on the registry? Not one of those people would say that I'm a risk to hurt, reoffend. I'm probably the best example. I'm the neighbor you'd want. It takes one to know one. We all have that X on our back, whether we were on the Internet looking at pictures or sent a text or an e-mail, or whatever the-- whatever the crime was, we all have that same sex offender stigma on our back. How do we get rid of that? Maybe we can't, but do we have to live under that microscope every single day with people telling us, reminding us, hey, you know-- safety and fairness, one thing that no one's touched on at all today is the federal funding that the states get for the registration. OK, Nebra-- and I'm hypothesizing here, so, OK, state of Nebraska, you're not going to get your federal funding if you don't make every one of these guys or girls register as sex offenders. I can't control that. I just do what I'm supposed to do. That's my acronym, DRT: do the right thing. I can't change the world. I can change me, and I can change those around me. The guy I sent back to prison yesterday, was that my fault or his? His actions, his choices allowed him, forced me in a position. And I tell my guys, I'm on your side if you're doing the right thing, I'm on the police side, law enforcement, if you're doing the wrong thing. So am I playing the God syndrome? Am I playing the cop syndrome? Or am I still the

piece-of-crap criminal that many in society see? And I know I have to go, so.

LATHROP: Can I ask you a question?

MICHAEL WIGGINS: Yes, sir.

LATHROP: Did you say that you are running a halfway house for people coming out of prison?

MICHAEL WIGGINS: Yes, sir.

LATHROP: And it-- and all of these folks are convicted of a sex offense?

MICHAEL WIGGINS: Specifically sex offenders. Now that doesn't mean I'd take everyone. I get people all the time, mothers, sisters, fathers, people who recommend: Hey, I've heard about you. I say, OK, if I can talk to the person over the phone-- they have to be men, obviously-- if I talk to him over the phone, I get a feel for him. I then have him write me a letter: Tell me how you ended up where you are, how you want to stay out of where you're at, and what you plan on doing in the future to preserve the safety and integrity of society, as you would want anyone to treat your family, your friends? If I-- if I like enough of that, then I go into prison and I meet him, because, let's face it, the mouth says anything; time tells everything. There's not a person in prison that won't tell you anything you want to hear to get

Rough Draft

out. I've done my time. The mouth says anything; time tells everything about everybody. Criminal, politician, or otherwise, there's good and bad in all. We all want the safety of everyone, I believe. That's--

LATHROP: Are you taking the people in who have-- who are being-- who are jamming out?

MICHAEL WIGGINS: So in the beginning I would take sex offenders in general. It is for me, just as if you put non-sex offenders in with sex offenders, you have the bigger, "badder," better me. I'm not like you. I've kind of taken that away, just as I've-- I want them to be on parole or probation or under the Board of Mental Health so that there's some secondary oversight. I had a gentleman who did great. He-- he got out. He's-- he worked with me because I'm a licensed contractor as well. I work through the system because I could not get a job.

LATHROP: As-- you're a licensed contractor as to what? Are you providing treatment?

MICHAEL WIGGINS: I-- no, no, no, a contractor as far as building contractor.

LATHROP: Oh, OK.

MICHAEL WIGGINS: Anyway, I-- so I can build up to a fourplex, so I rehab properties. I sell them. But I've hired guy-- when they get out,

Rough Draft

I like to spend time with them to see who they are, how they're going to adjust and adapt. There's nobody that's going to help them and understand them more than me. And in helping others, you help yourself. So when somebody says, well, why do you do it? Because I know that there's a lot of guys in there who really don't give a darn about the rest of society. That's why prisons are there.

LATHROP: So I'm leading up to something because we've talked about the difference between having a registry that is offense-based--

MICHAEL WIGGINS: Yep.

LATHROP: --current-- current process, and risk based.

MICHAEL WIGGINS: OK.

LATHROP: And it sounds like you're doing your own sort of risk assessment--

MICHAEL WIGGINS: Exactly.

LATHROP: --in determining who you're going to take. You think you're able to do that?

MICHAEL WIGGINS: So, if I may, so in prison, Sam Houston State University, which is one of the best criminal justice colleges in the country, they did a study and I was a part of that, and it was about relationships and sex off-- basically sex offenders and relationships

Rough Draft

while you're in prison with the female officers and how they're manipulative, because we're all manipulative. I'm manipulative. But I'm going to tell you how I feel, respectfully, and-- because I'd rather err on the side-- I was the clean-cut, pretty white guy in prison. I was 23 years old. And anyway, that's a whole different story. But I had my battles and I had to choose, how am I going to survive? Survival is the ability to adapt and overcome. But no matter where you come from, the truth shall set you free, inevitably, and I use that lightly. But I got more respect out of people by being truthful than hanging my head down. I'm not proud of my past and I'm not-- I mean, I can't change that. So in helping others, you help yourself. And I think I missed the question that you asked. Sorry.

LATHROP: Well, let me ask you this.

MICHAEL WIGGINS: Again, it's [INAUDIBLE]

LATHROP: Are you seeing any of these-- these-- are any of these folks reoffending?

MICHAEL WIGGINS: Reoffending as sex offenders, not one, and I can get-- the guy I sent back yesterday--

LATHROP: So they might drink or they might shoplift or something?

MICHAEL WIGGINS: But because they're sex offenders--

LATHROP: Yeah.

MICHAEL WIGGINS: Because they're sex offenders, society has zero tolerance. When I-- when I get pulled over, I tell an officer right off the bat, if you don't know that I'm a registered sex offender, you're going to find that out. So respectfully, I automatically go to-- I default to-- I can't tell you that water's wet and you're going to believe me. But it always works out.

LATHROP: OK.

MICHAEL WIGGINS: I've never had a problem with the officers. I mean, they-- they've done well. The guys, what happens, and if I can be as bold to say this, part of my teaching these guys is a pop quiz: What are the-- what are the three things, the top three things that are going to send somebody back to prison? What would you think they are?

LATHROP: Probably reporting, reporting, checking in [INAUDIBLE]

MICHAEL WIGGINS: Drugs--

LATHROP: Oh.

MICHAEL WIGGINS: --alcohol, and girls. Men are socially deprived. They're-- they're beat down; they feel inferior. Not my problem, but you can understand how-- so the-- they want to emaciate themselves. They get out and they want to find a woman. I've got a guy right now, he's-- he is the epitome of success, no drugs, no alcohol. He hasn't

Rough Draft

dated a woman in six months. But he started hanging out with a guy who he doesn't work with, and he asked his parole officer if he could go over to his house. But I said, just out of curiosity, how do you know this guy? He says, oh, I knew him from prison. Interesting. So that means he was a felon too. Does your parole officer know that? Did you tell him he's a felon? These are the little mistakes, seemingly-- I forget the therapeutic term, but anyway, they make little mistakes. Most of these guys are not going to reoffend. I had one federal guy. He had a picture of the-- remember the Cop-- the Coppertone girl, the little-- the little girl on the beach. OK, the-- this guy had a picture similar to that, a little girl. You're not supposed to do that. Well, you know you're not supposed to do that. And so when I let the authorities know what he was doing, come to find out, that was the only thing he had and he got it through something else. I'm going to err on the side of caution. I'm going to err on the side of safety, just like, you know, the CYA, cover your own.

LATHROP: OK.

MICHAEL WIGGINS: Anyway, it's-- I guess we could--

LATHROP: We-- go ahead.

MICHAEL WIGGINS: No, you go ahead.

LATHROP: No, I was going to say we appreciate you coming down.

MICHAEL WIGGINS: I mean, in an extreme example, we could do like England. We could just take everybody that's done something wrong and send them to an island, you know, in Australia and hope for the best.

LATHROP: All right.

MICHAEL WIGGINS: I'm being facetious.

LATHROP: No, we under-- we understand that.

MICHAEL WIGGINS: But thank you very much. I appreciate it.

LATHROP: No, thank you. Anyone else here to testify today? I am going to just express my appreciation for the number of you that came here. I'll make this observation. I got a number of e-mails from people who were like, is the news going to be there, somebody going to be there to watch, you know, is my name going to end up in the paper? I appreciate that it took courage to come down here today, to sit in that chair and begin your testimony with your name and spelling your name, and that this-- that you feel very strongly about this issue. I think we heard a lot of good testimony today, and this committee, and I'm sure Senator McCollister, will be taking a good, hard look at the subject. I expect we'll try to work with the attorney-- the Attorney General to come up with something, some kind of reforms. I can't promise anything. It's a-- as you know, it's in some ways a very difficult issue to legislate in because this is one of those things that's easy to politicize, and sometimes that makes reform difficult.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Judiciary Committee September 27, 2019

Rough Draft

But we'll-- we will take a good, hard look at it, much of it informed
by the testimony you've provided us today. So thanks for being here.

That will conclude our hearing on LR204.