

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
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COMMITTEE ON JUDICIARY
February 4, 2005
LB 457, 179, 594, 117, 148, 481

The Committee on Judiciary met at 1:30 p.m. on Friday, February 4, 2005, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 457, LB 179, LB 594, LB 117, LB 148, and LB 481. Senators present: Patrick Bourne, Chairperson; Ray Aguilar; Ernie Chambers; Mike Flood; Mike Foley; and Mike Friend. Senators absent: Dwite Pedersen, Vice Chairperson; Jeanne Combs.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is the 8th day of committee hearings. We're hearing six bills today. My name is Pat Bourne. I'm from Omaha. To my left is Senator Mike Flood from Norfolk; Senator Mike Friend from Omaha; Senator Aguilar from Grand Island. Laurie Vollertsen is our committee clerk. Jeff Beaty is our legal counsel and Senator Foley from Lincoln. I'll introduce the other members as they arrive. Please keep in mind that senators have other duties, bills to introduce, other obligations so they'll come and go as the afternoon progresses. Please don't take that personally. If you plan to testify on a bill, I'm going to ask that you sign in advance on the on-deck area there. We're going to use these two chairs as an on-deck area so that we don't have to wait between people coming in. I'm going to have you sign in advance. Print the information on the sign-in sheet so it's easily readable, can be entered into our record. Following the introduction of each bill, I'll ask for a show of hands to see how many people plan to testify. First we'll hear proponent testimony, opponent testimony, and then we'll hear neutral testimony. When you come forward to testify, please state and spell your name clearly. All of our hearings are transcribed and your spelling your name will help the transcribers immensely. Due to the large number of bills heard by the Judiciary Committee, we are utilizing the Kermit Brashear memorial lighting system (laughter). Senators introducing the bill will have five minutes to open and three minutes to close if they choose to do so. All other testifiers will get three minutes to testify exclusive of committee questions. The blue light goes on when there's three minutes. The yellow light comes on as a one-minute warning and then when the red light goes on we ask that you conclude your testimony. The rules of the Legislature state that there are no cell phones allowed in hearing rooms so if

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 2

LB 457

you have a cell phone please disable the ringer. Reading someone else's testimony is not allowed. We'll allow you to submit letters from other individuals but we won't allow you to read those into the record. With that, Senator Cornett to open on LB 457. While she makes her way forward, can I get a show of hands of those wishing to testify in support? I see one, two. In opposition? I see none. In a neutral capacity? I see none. And again we're going to make use of the on-deck area so if you're a proponent, make your way forward and sign in. Welcome, Senator Cornett.

LB 457

SENATOR CORNETT: Thank you. Senator Bourne and members of the Judiciary Committee, my name is 'obie Cornett representing the 45th Legislative District. I'm here today to introduce LB 457 which will increase the fines for second and third offense driving under the influence. Currently, the fines for second offense is the same as the fine for first offense. The third offense fine is only \$100 more. Most of my adult life was spent on the streets of Omaha enforcing laws passed by this body. One of the things I learned from this experience was that logical laws with rational penalties are easier to obey and to enforce. We face such an irrational penalty scheme in our current driving under the influence laws. The fines for second offense and third offense driving under the influence do not increase in a rational proportion to the more serious nature of these repeated offenses. I believe as legislators we owe our police, our courts but most of all, our citizens rational predictable laws. I believe this bill will help discharge our duty. Do you have any questions?

SENATOR BOURNE: Thank you. Are there questions for Senator Cornett? Seeing none, thank you. Next testifier in support?

SIMERA REYNOLDS: (Exhibits 1, 2) Okay, my name is Simera Reynolds, S-i-m-e-r-a. I almost forgot how to spell my name there, Reynolds. And I'm the executive director for Mothers Against Drunk Driving. We're here today because MADD would like to thank Senator Cornett for introducing LB 457 to increase fines for second and third offense drunk driving. In 2003 Nebraska had 13,415 DWI arrests. Of that 3,353 were

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 3

LB 457

multiple offenders which represents approximately 25 percent. Statistics show that these drivers are a special risk to the roads. Research shows that there is only one arrest made for driving under the influence for every 88 episodes of driving over the legal limit in the U.S. It is apparent that this is not a one time occurrence. Driving impaired is not an accident or a mistake, it is a choice. Just as blatant as making the choice to speed through a construction zone, not caring about the harm that may be brought upon an individual or a family. It is the repeat offender who did not learn from his or her experience in court, the probation system or from the variety of court-ordered alcohol education classes that MADD is most strongly concerned with. These individuals who continue to drive impaired pose a substantial threat to all of us as we drive to and from work, go to our children's sporting events, and just take a general trip to the grocery store or the mall. Sanctions of this form must be utilized and adopted by the state to deter repeat drunk driving in our community. MADD stands by a strong financial penalty for repeat offenders who put citizens in our community at risk of being killed or seriously injured. In Nebraska alone one person dies every three days and approximately every three hours a person is injured in an alcohol-related crash. We can no longer turn our backs on this epidemic and MADD would ask that you would strongly and fully support LB 457 and again we would like to thank Senator Cornett for bringing it to the committee's attention.

SENATOR BOURNE: Thank you. Questions for Ms. Reynolds?
Senator Flood.

SENATOR FLOOD: Thank you for your testimony. Would you object to us also looking at the penalties for minors that commit the offense under our zero tolerance drunk driving law where they're above .02?

SIMERA REYNOLDS: Minors who repeat the offense?

SENATOR FLOOD: Well, a minor right now convicted under .08 but above .02 is subject to loss of license for 30 days or a \$100 fine.

SIMERA REYNOLDS: Right.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 4

LB 457

SENATOR FLOOD: Do you think that's significant enough to get the attention of a minor that operates a vehicle with alcohol in their system?

SIMERA REYNOLDS: Well, what I think isn't of concern but as far as what MADD hears anecdotally and I know that you've heard this, is that a lot of the minors it's often a badge of courage because they've been MIP'd so, obviously, no...

SENATOR FLOOD: You wouldn't have any problem if we also looked at the minor in consumption...

SIMERA REYNOLDS: Right and...

SENATOR FLOOD: ...or not minor in consumption, the zero tolerance law.

SIMERA REYNOLDS: Right, but especially for the repeat MIP...

SENATOR FLOOD: Okay.

SIMERA REYNOLDS: ...because I think that's where this is kind of driving toward and it's clearly not a mistake and it is a choice but especially for younger people who are just, for lack of a better word, being stupid. Maybe what is in place for a first offense is okay but if they do it again they pretty much go through the same itinerary that an adult does just through a diversion concept and they know the difference.

SENATOR FLOOD: Thank you very much.

SIMERA REYNOLDS: Thank you.

SENATOR BOURNE: Thank you. Further questions for Ms. Reynolds? Seeing none, thank you.

SIMERA REYNOLDS: Thank you. Oh, and if I may enter on behalf, MADD is a member of the NU Directions Coalition and they have testimony regarding LB 457 in support and LB 594 and so...

SENATOR BOURNE: Thank you,...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 5

LB 457

SIMERA REYNOLDS: ...I'd just like to enter that.

SENATOR BOURNE: ...We'll make that part of the record. Thank you. Next testifier in support? (See also Exhibit 3)

MARTY CONBOY: Good afternoon. Marty Conboy, C-o-n-b-o-y, from Omaha and just briefly, don't want to overlap with some of these other bills but the fine concept, first of all, the Class I misdemeanor in the state, as you probably know, carries a thousand dollar fine already. And these fines for these offenses, in a way, are below that even for a third offense, actually, even for a felony in some cases so this certainly is not inconsistent with the fine schedule that already exists, you know, looking at other states, what they do for these similar offenses. These fines are also still on the low side, I think, for what you find in most other states. So they're certainly not onerous. In response to Senator Flood, it's almost embarrassing to call what we have now penalties at all. They are a temporary fine of up to \$100 and a 30-day temporary loss of license that doesn't even go on the record. And I can tell you both actually and anecdotally that they're horribly inadequate penalties and, in fact, law enforcement is so frustrated they seldom even enforce it.

SENATOR BOURNE: Thank you. Questions for Mr. Conboy? Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Mr. Conboy, hi, good to see you. I was wondering, can you speak really or maybe give us your observation about when things like this happen from a deterrent standpoint. I mean, a lot of folks will say, with stupid behavior or just ignorant behavior especially related to alcohol, deterrence doesn't really come into play. I mean, can you give us a little background about when something like this happens, laws are changed, fines are enhanced, what that actually does to the...in this particular instance, the crime rate?

MARTY CONBOY: There's no question that particularly in an offense like this that there's a recognition by offenders of what the penalties are. I think you could go nowadays to anyplace, a bar or a party, and start asking around and they might not know specifically but they'll know that they're serious. They'll know that they mean business and that is

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 6

LB 457

what generates a change in behavior. It is that general recognition that this body has taken a serious interest in it and Nebraska has stiff penalties. And I think if you were to take a poll at those places you'd find a huge number of people would say yes, the penalties are going up, that it's getting harsher on drunk drivers and that things like this do have an impact. The economic penalties are something that people take notice of. They're hard to avoid and they're immediate. It's...even with probation, when you have penalties like this it is something that almost everyone mentions and we see thousands of people every day and especially with the more repeat offenders. One of the fallacies, unfortunately, as a first offender comes through and when very little happens I think that reinforces the concept well, that this is not that big of a deal. But when they see the hurdles getting taller with repeat offenses that is an offense. Drunk driving is an offense that most of the people that commit it are not criminals in the sense that they'd wake up in the morning and have some nefarious plan. That's just a decision that they make and any time people make a cost benefit analysis, money can be a factor.

SENATOR FRIEND: Thanks.

SENATOR BOURNE: Thank you. We've been joined by Senator Chambers. Further questions? Senator Chambers.

SENATOR CHAMBERS: Good afternoon, Mr. Conboy.

MARTY CONBOY: Good afternoon, Senator.

SENATOR CHAMBERS: Mr. Conboy, we don't actually have a zero tolerance in Nebraska as far as youngsters consuming alcohol, do we?

MARTY CONBOY: In terms of consuming, no, we allow them to drink at home.

SENATOR CHAMBERS: Right, or in church.

MARTY CONBOY: True.

SENATOR CHAMBERS: In connection and it may not be at home or church but some facility where they're engaging in religious activities.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 7

LB 457

MARTY CONBOY: There is an exception for that.

SENATOR CHAMBERS: And .02 does not impair a person as far as driving, does it?

MARTY CONBOY: No.

SENATOR CHAMBERS: So it has nothing to do with them being a hazard on the road that they make it an offense to have .02 if you're a youngster in a car.

MARTY CONBOY: I guess the concept of having the limit of .02 is that because we see the tremendous danger that alcohol and youth together causes that we're trying to separate the two. It's illegal for them to drink in most situations and I think Senator Friend even has a bill that would address the issue of those kids who drink at home and then go out and run around and cause problems as if that somehow makes them safer or less of a danger to themselves. And I think that would correct that problem but I would agree with you that .02 is...the only reason that figure was arrived at other than just zero at all was because it's too hard to measure at a lower level.

SENATOR CHAMBERS: But if society through its Legislature and I opposed the so-called zero tolerance because I think it's a sham, it's that overkill on youngsters in trying to make the state do what parents are not required to do. Now the policy of this state is to allow youngsters to drink at home. Is there any law that says if a youngster drinks enough alcohol to have more than a certain level in his or her blood, not enough to kill him or her, that that in itself would be a violation. There is no such law, is there?

MARTY CONBOY: No.

SENATOR CHAMBERS: So that society agrees and has made it explicit in statute. It's there that kids can drink at home.

MARTY CONBOY: I don't know why they do but in Nebraska is at least one state that's done that.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 8

LB 457

SENATOR CHAMBERS: And that is the policy of this state. That's the public policy of this state.

MARTY CONBOY: It's the law of our state.

SENATOR CHAMBERS: Then you're going to punish these youngsters after doing what the law says they can do at home for leaving home and doing what everybody else can do when the condition they find themselves in will not make them any hazard.

MARTY CONBOY: Well, at what point they become...the dangers increase is difficult to say. You know, obviously, as the level rises it becomes more and I know some people that one drink and even adults that one drink makes them a little different.

SENATOR CHAMBERS: I might tend to agree with you but we're looking at what the law says. An adult can have .08 and be considered legal as far as alcohol in the system and driving.

MARTY CONBOY: Correct.

SENATOR CHAMBERS: The only thing I want to do is bring some reality into these discussions because these bills sound noble and highfalutin but when you get right down to the root of it, this society is not prepared to deal with youngsters drinking. It's approved in the home where they are supposed to get their basic sets of values and principles according to which they will guide their lives. So they can drink at home. Their parents can drink more than they can and go out and drive and be legal if it's no more than .08. They can leave a tavern with .08 and drive. Here is a youngster who has sat around because the family that drinks together thinks together and all this kind of thing. Then this youngster is with the parent and let's say the parent is very close to .08 and the parent says, I think I'm going to stop here, I got to see my friend. And then he takes another one and then another one and comes out and wants to drive. And the youngster says, who has a license, old enough to have a license, I don't think you ought to be driving. But the youngster may have .02 from having taken some at home. Is that youngster under the law allowed to drive that drunken parent home because if he doesn't the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 9

LB 457

parent's going to drive?

MARTY CONBOY: I think they're both in a position where they shouldn't be driving. If a teenager has been drinking and the adult is over the legal limit, neither of them should be driving.

SENATOR CHAMBERS: But somebody's going to drive.

MARTY CONBOY: Unfortunately, that's the way we see it every day.

SENATOR CHAMBERS: So that society would rather have the drunk parent drive than the youngster or create the dilemma. And what I'm posing is not out of the question. It's not something where I'm reaching into the twilight zone, one step beyond dark gallery and these other programs that they used to have on television. So when I hear what is being said, if I listen to it in a vacuum that's one thing. I don't think this is going to do anything as far as the problem. It makes people feel good because they're hitting harder with the lash but they're not getting at the problem. If somebody takes drugs because they like them that's one thing. If somebody takes drugs because they have a lot of problems, depression and so forth and they're looking for a way to escape, that's something else and you might can help that person if you eliminate the underlying cause for using the drugs. Is it your view then...it's my last question. I wanted you to see the context in which I'm asking it. Is it your view that when these penalties are stiffened, we're going to have a decrease in the people who commit the offense for which these penalties are assessed?

MARTY CONBOY: I think we'll continue to whittle around the edges and affect a few people here and there. It's not going to be the home run that's going to solve the problem. And I agree with you. I've been coming down here for 25 years and begging for changes and we've had the discussion and haven't solved the problem. I think we've taken steps to it and I guess I see this as just another hopeful step.

SENATOR CHAMBERS: If I disagree with this, would it mean that I'm in favor of drunk driving?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 10

LB 457

MARTY CONBOY: Not at all and I know you've never taken a step to say that. And I think, you know, looking at what's good and what's most effective is important.

SENATOR CHAMBERS: People needed to hear that from you, Mr. Prosecutor. Thank you.

SENATOR BOURNE: Further questions for Mr. Conboy? One quick one. You mentioned that our laws or our penalties are low compared to other states. Other states that have stiffer penalties, do they have more or less instances of DUI drivers per capita? I mean, where do we fit in with other states?

MARTY CONBOY: We actually do pretty well. We have a good reporting system. We have good enforcement. I think that that's an important link in the chain too. But I guess I would say, you know, the more serious the penalties and I certainly agree with Senator Chambers. That doesn't necessarily have an exponential effect on safer highways. You need to have a better education program and a good enforcement program and that's just one part of it. I think we do pretty well considering and our penalties, I think, are very meaningful. So those states that do better I know, for instance, Arizona has an excellent program, and their penalties are very strict. I was just down there last month teaching and they're very proud of it but, again, it's just a component of the whole program.

SENATOR BOURNE: Thank you. Further questions? Senator Chambers.

SENATOR CHAMBERS: This is what I wanted to ask. Mr. Conboy, when we're dealing with a Class W misdemeanor, it says driving under the influence or implied consent. That doesn't mean both of those have to be together, does it or does it?

MARTY CONBOY: No.

SENATOR CHAMBERS: So then a first conviction carries a mandatory minimum seven days.

MARTY CONBOY: Correct.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 11

LB 457

SENATOR CHAMBERS: But that doesn't have to be imposed. There can be probation?

MARTY CONBOY: Yeah, most of the time there is.

SENATOR CHAMBERS: How can there be probation if the statute sets a mandatory minimum?

MARTY CONBOY: The Class W misdemeanor is the only offense I'm aware of where they actually divide the penalties. If you don't get probation and if you do, and it prescribes, I guess, a range of penalties for both of those eventualities which, as I say, is unique but that's the way the body has done it.

SENATOR CHAMBERS: But here's what I mean. If the statute says mandatory minimum, does mandatory mean that is what must be imposed? And if it doesn't, where is the discretion allowed for a judge to give probation or do they just do it?

MARTY CONBOY: The statute itself which the drunk driving and the implied consent laws, in the penalties that are enumerated there, it talks about if the court should put a person on probation and it describes those penalties. And that probably is farther down inside the bill and I don't think there's any change proposed for that but it talks about issuing and actually, I guess, there's another bill that would change the language as to the suspension. But if the person is guilty, the court shall as part of the judgment order the person not to drive and then if they put them on probation there's language about the suspension or impoundment so I guess it's implied that the power of probation always exists in a sentence.

SENATOR CHAMBERS: So even though this provision that I'm talking about says mandatory, it's your view and that of prosecutors and judges that it doesn't mean mandatory, that there is other language that allows probation.

MARTY CONBOY: The concept of probation in our statutes and historically has been in lieu of the sentences that are prescribed. The court can order a term of probation which is, I guess, an incentive for the offender to avoid those penalties by performing the court's orders.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 12

LB 457, 179

SENATOR CHAMBERS: So if we were going to have truth in advertising so that if somebody looks at the statute, that somebody will know what is entailed, we should strike that mandatory minimum and say minimum seven days or probation. We should state or probation here. Then it would be clear to everybody.

MARTY CONBOY: I think that would make sense, yes.

SENATOR CHAMBERS: Okay. That's all that I have.

SENATOR BOURNE: Thank you. Further questions for Mr. Conboy? Seeing none, thank you, appreciate your testimony. Next testifier in support. Are there testifiers in opposition? Is there any neutral testimony? Senator Cornett to close.

SENATOR CORNETT: Thank you for this opportunity to close. First of all, I'd like to address what Senator Chambers said. I agree this is not the solution. The problem is the addiction to alcohol and we need to address the addiction to alcohol. This is a step, one, to make our laws stiffer, to hopefully make people think before they drink and drive. It will not cure the addiction but we do hope that it will reduce the number of drivers that are driving under the influence of alcohol. I would appreciate it if you could advance this bill through committee and thank you for your time.

SENATOR BOURNE: Thank you. Questions for Senator Cornett? Seeing none, thank you. That will conclude the hearing on LB 457. Senator Kruse to open on LB 179. And, again, we're going to make use of the on-deck chairs so those individuals wishing to testify in support of this next bill make your way to the front, please. Welcome.

LB 179

SENATOR KRUSE: Thank you. Senator Bourne, members of the committee and staff, good afternoon. LB 179 is a proposal to provide child protective measures. Some form of child endangerment, recognition of child endangerment when a minor is on board with a legally drunk driver, is recognized in 37 states. We would like to add to that number. It's a

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 13

LB 179

fairly straightforward bill and in order to show that, I would have you turn directly to the green copy. We're talking about not DUI section but the child abuse section on page 3, line 23, you will see the word "endangers." Backing up to line 20, a person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be placed in a situation that endangers his or her life or physical or mental health. That's what we're talking about here. You've turned the page to page 4, line 6, we have this addition in which we spell out a condition of endangerment. Now the passenger in a motor vehicle when such person is in violation of the DUI laws is in actual physical, and the driver is in control and the passenger is a minor that this qualifies under the sanctions of that law. We add to the sanctions in line 15, item 4, child abuse is a Class IV felony if there has been a prior conviction under subdivision 1(f) which is the one previously commented on. This follows along, I don't really have to add much to that because it follows along with the discussion you've just had. Persons can make a mistake and we all recognize that but when they make the same mistake, we need to make it very clear that that's against public interest. Those who are repeat offenders are dangerous. As usual, as those of you have talked with me before, my concern centers on public talk. I'm far more interested in what the public considers to be appropriate than the law involved. As we set laws and you've already been discussing that (laugh), I agree with it. As we set laws, we help the public figure out what is serious and how serious it might be. We must enhance the public awareness of the danger to a child or anyone of getting into a vehicle with an impaired driver. In the case of a child, often that is not a matter of choice to that child. I note parenthetically that two out of three children who are killed by an alcohol-impaired driver are in the vehicle of that driver. The personal stories that go with this concern that we bring often tell of an anxious parent wanting to keep a child in safety following a divorce but the custodial parent...but the law requires that they must turn this child over to the other parent who's standing at the door and it's obvious to them that this parent's been drinking. They have no choice except to turn them over, quite a bit of anxiety, and that's why we hear about the stories. Often alcohol is the drug of choice for a parent who's apprehensive about seeing his or her children and dealing with them. And, you know, we

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 14

LB 179

recognize that as a signal of a problem. The visitation trip is often to a bar where the parent continues to drink and the children are provided food over at a corner table until it's time to go home. Well, we want to sensitize people, these parents, who, I will assume truly love their children, to the extreme danger of this, of driving with energetic, noisy kids on boards. And we've all done that (laugh) when you are impaired. We are trying to protect a class of citizens who cannot protect themselves. I thank you.

SENATOR BOURNE: Thank you. Questions for Senator Kruse? So, Senator, this would apply to a first offense DUI, somebody that has a .08, I guess, or above, and...?

SENATOR KRUSE: Yes...

SENATOR BOURNE: Okay.

SENATOR KRUSE: ...yes, they must be guilty of the DUI. They do not have to be charged under DUI so it's an alternative. Sometimes the prosecution of a DUI is just so difficult that it'd be easier to go this way.

SENATOR BOURNE: And a Class IV felony is up to five years in prison?

SENATOR KRUSE: Yes, yes, that would be for the second offense of this offense, not of another DUI.

SENATOR BOURNE: Understood. Further questions? See none. Thank you.

SENATOR KRUSE: Thank you.

SENATOR BOURNE: Can I get a show of hands of those individuals wishing to testify in support? I see two, three, four. Those in opposition? I see none. Neutral? I see none. Would the first testifier in support please come forward? And, again, we're making use of the on-deck area so make your way to the front of the room and sign in if you're a proponent. Welcome.

SIMERA REYNOLDS: (Exhibits 5, 6, 7) You're going to get tired of seeing me today. My name is Simera Reynolds and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 15

LB 179

I'm the executive director for Mothers Against Drunk Driving, and I would like to...MADD and our organization would like to thank Senator Kruse for bringing forth this important issue before the committee. Child abuse and neglect is defined in Black's law dictionary as: "When a child's parent, custodian, by reason of cruelty, mental capacity, immorality, or depravity is unfit to properly to care for him or her, neglects or refuses to provide necessary physical, affectional, medical, surgical or institutional care for him or her or is under such improper care or control as to endanger his or her morals or health." Child abuse as it pertains to impaired driving falls into the above legal definition of child abuse when a parent or caregiver knowingly puts a child in the car after drinking alcohol with the intention to drive. This choice falls under the "improper care...so as to endanger his or her morals or health." MADD is most concerned about the increasing number of calls MADD victim advocates receive from distraught parents and other loved ones regarding allegations of an adult driving impaired with a child in the vehicle. In polling MADD organizations across the United States last year, MADD advocates received over 17,000 child endangerment calls. Nebraska has its share of calls regarding this issue also. These calls are not from victims of drunk driving crashes, but from potential victims of drunk driving. There seems to be no relief for the problem. In part, due to the lack of public awareness of the extent of the DWI/DUI child abuse problem and the reluctance to recognize that to drive while impaired with a child in the vehicle is a form of child abuse. In May, 2000, the Journal of American Medical Association published "Characteristics of Child Passenger Deaths and Injuries Involving Drinking Drivers." This study found that two-thirds of all children ages 14 and under that were killed in alcohol-related crashes were, in fact, riding with a drinking driver old enough to be the parent, caregiver, or guardian. This is a serious issue that needs to be addressed by this committee and the legislative body. However, I'd like to make one point, if I may, and that is on page 4, line 6, MADD would ask that the committee consider adding personal watercraft/boat as that would be consistent with other statutes that reflect it is illegal to operate a watercraft over the legal limit. And right now, only motor vehicle is included in that line. Thank you for addressing this serious matter and protecting our most precious cargo.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 16

LB 179

SENATOR BOURNE: Thank you. Questions for Ms. Reynolds?
Senator Chambers.

SENATOR CHAMBERS: Ms. Reynolds, I was out in the hall. Why should this be done? What is the reason for saying that if a child is a passenger in a motor vehicle when such person, the driver, is operating or in actual physical control of the motor vehicle, in violation of these sections which means under the influence.

SIMERA REYNOLDS: Correct.

SENATOR CHAMBERS: Why is it necessary to put that in this section of statute?

SIMERA REYNOLDS: Well, there's a child endangerment and currently there's no child abuse and it does kind of fall within the parameters of child abuse as defined in Black's Law. And I'm sure Marty Conboy can answer some of this better but for MADD it's important because it's important to recognize that driving with a child, especially 14 and under, they don't have the choice.

SENATOR CHAMBERS: Excuse me. May I ask you another question?

SIMERA REYNOLDS: Um-hum.

SENATOR CHAMBERS: On line 20 on page 3, a person commits child abuse...

SIMERA REYNOLDS: Correct.

SENATOR CHAMBERS: ...if he or she knowingly, intentionally, or negligently...

SIMERA REYNOLDS: Permits.

SENATOR CHAMBERS: ...causes or permits a minor child to be placed in a situation that endangers his or her life or physical or mental health.

SIMERA REYNOLDS: Correct, and...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 17

LB 179

SENATOR CHAMBERS: How is this that you want to put in here different from that?

SIMERA REYNOLDS: Well, it's not me, it's Senator Kruse. I'm just supporting it but my support would be that I think it would offer an opportunity for law enforcement to better gauge...

SENATOR CHAMBERS: Is it your feeling that if a law enforcement officer stopped a person who is under the influence...

SIMERA REYNOLDS: Correct.

SENATOR CHAMBERS: ...and there's a child of the description we have in this bill in that vehicle, that officer would have trouble determining that the child was placed in a situation that endangers his or her life or physical well-being? The officer couldn't make that determination under the existing law?

SIMERA REYNOLDS: Well, they do have that discretion under the existing law. I just don't know that it's utilized.

SENATOR CHAMBERS: But you don't know that it's not utilized, do you?

SIMERA REYNOLDS: I know child endangerment is utilized in a majority of the counties.

SENATOR CHAMBERS: Okay. That's all that I would have. Thank you.

SENATOR BOURNE: Thank you. Questions? Senator Flood.

SENATOR FLOOD: Thank you, Senator Bourne...Chairman Bourne. Along the lines of Senator Chambers' questioning, one of the concerns I would have is that a law enforcement officer makes an arrest and then uses a blood test at a hospital where the results aren't immediately known to the arresting officer and that person is placed under arrest for suspicion of drunk driving.

SIMERA REYNOLDS: Right, right, correct.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 18

LB 179

SENATOR FLOOD: How would that affect, in the event that you had an arrest where they used a blood test and didn't know the results. Obviously, with child abuse you would immediately remove the minor child from the custody of the parent at the time that individual is arrested but how would you make a determination as to when you charge this person? After the blood test came back and they had been with the parent for a month?

SIMERA REYNOLDS: So is your question, when they get pulled over and they're doing a breath test?

SENATOR FLOOD: A blood test at the hospital.

SIMERA REYNOLDS: Or a blood test because up in Norfolk they do blood tests.

SENATOR FLOOD: They do.

SIMERA REYNOLDS: Right. And it comes back that they're over .08 or higher.

SENATOR FLOOD: Right.

SIMERA REYNOLDS: And what are they going to do with the child?

SENATOR FLOOD: Well, when do they charge that person with child neglect or abuse?

SIMERA REYNOLDS: Well, if you're over .08 or higher, in most jurisdictions you're either lodged or taken to detox or someone has to sign you out on their own...you have to have a responsible adult come and get you.

SENATOR FLOOD: I believe the policy of the city of Omaha and I could be wrong is that you're issued a citation and then you're released from custody after you're processed. Mr. Conboy could probably correct me.

SIMERA REYNOLDS: And he could. But in Saline County, for instance, if you are arrested for drunk driving, they'll lodge you for eight hours. Here in Lincoln, if you're arrested for drunk driving, they'll take you to the detox center or else you need to call a responsible adult to come

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 19

LB 179

and pick you up.

SENATOR FLOOD: Thank you.

SIMERA REYNOLDS: Does that answer your question?

SENATOR FLOOD: I guess I was just interested in how you would enforce this.

SIMERA REYNOLDS: Well, if you need to call a responsible adult to come pick you up then that responsible adult would also come and pick up the minor child. Correct?

SENATOR FLOOD: Okay. Thank you.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Next testifier in support? And, again, if there's another testifier in support, make your way to the on-deck area, please, and sign in. Welcome to the committee.

TERESA ALEXANDER: (Exhibit 8) Thank you. My name is Teresa Alexander, T-e-r-e-s-a. Last name Alexander, A-l-e-x-a-n-d-e-r. And I'm here today on behalf of Mothers Against Drunk Driving and the victims that we serve. My job title is victim advocate so I work with the victims. MADD would like to thank Senator Kruse for introducing this bill. I am currently working with a grandfather who is concerned about the safety of his twin granddaughters because his son-in-law is a repeat offender of driving under the influence of alcohol. I have helped him write the victim impact statement which will be presented to the judge at the sentencing of this offender and I'd like to read you a section of his letter. "It was after Jason was charged with driving under the influence that we found out that this was his second offense on this charge. Jason said at that time he was going to overcome this problem, but there appears to be little progress towards that goal. In December 2003, Jason served jail time for his first DUI conviction. We thought this sentence would help him understand how serious his problem was and that he would continue to seek help to overcome it. However, less than one month after the end of the jail time, he was charged with the January 24, 2004 incident that he is about to be sentenced for. The Lincoln Journal Star article reported the story under the headline

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 20

LB 179

"Wild Car Chase Ends in Arrest of Lincoln Man." His violations include driving under the influence, driving under suspension, willful reckless driving, and fleeing to avoid arrest. While we believe with our hearts that only the will of God prevented harm from coming to anyone during this incident." Over the past year, this grandfather has taken time to study the relationship between drinking and driving and child death statistics. What he learned shocked him into calling MADD and into taking the action that he's requesting. At the sentencing of his son-in-law, he will be asking that Jason not be allowed in a motor vehicle either as a passenger or as a driver with any child under the age of 16 including his own children. And he would have to complete an accredited drug and alcohol recovery program so he is concerned for the lives of his twin granddaughters.

SENATOR BOURNE: Thank you. Questions for Ms. Alexander?
Senator Chambers.

SENATOR CHAMBERS: Is a bus a motor vehicle?

TERESA ALEXANDER: Yes, I assume that he could...

SENATOR CHAMBERS: So he couldn't be on a bus if there are children on that bus, could he? If he was going to go to work, he could not ride on a bus, could he?

TERESA ALEXANDER: Right, according to this and so you could amend that to say driving as opposed to driving...

SENATOR CHAMBERS: No, this says...I mean, I'm looking at what is being recommended by MADD.

TERESA ALEXANDER: Right.

SENATOR CHAMBERS: This...and you helped him write the letter.

TERESA ALEXANDER: Correct, um-hum.

SENATOR CHAMBERS: He should not be allowed in a motor vehicle as a passenger or, you know, as a driver but as a passenger with any child under the age of 16 years.

TERESA ALEXANDER: Right, and we were intending to be a car,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 21

LB 179

a van, something that it would be, you know, three or four passengers.

SENATOR CHAMBERS: But that's not what this says. He could not ride in a taxicab to take his children to the doctor, could he?

TERESA ALEXANDER: Correct, um-hum. So but we could amend this before it goes to the judge so that it would be inclusive to be a car.

SENATOR CHAMBERS: But do you see how when people are reacting emotionally, they commit things to writing and would recommend it to a judge and maybe the judge would scratch his head and be too polite to say anything but he'd wonder, what's happening here?

TERESA ALEXANDER: Exactly.

SENATOR CHAMBERS: You're speaking for MADD.

TERESA ALEXANDER: Correct, um-hum.

SENATOR CHAMBERS: I didn't read any comment from MADD when a judge in Omaha was driving drunk and rolled his SUV and destroyed it. Why didn't MADD make a comment about that since judges sentence others for drunk driving?

TERESA ALEXANDER: I'm not sure.

SENATOR CHAMBERS: Did you think it was a significant thing that a judge would be so drunk that he would roll his vehicle?

TERESA ALEXANDER: Well, of course, um-hum.

SENATOR CHAMBERS: But MADD does not comment when judges do what they will comment about when others who are not judges will do?

TERESA ALEXANDER: We follow many of those cases. I don't know that that particular one that we did but, you know, we follow many cases.

SENATOR CHAMBERS: Do you think it's...and then I don't want

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 22

LB 179

to be argumentative. I just want to find out MADD's position. They don't want this man to ride in a car...

TERESA ALEXANDER: Um-hum.

SENATOR CHAMBERS: ...as a passenger if children under 16 are in it.

TERESA ALEXANDER: Um-hum.

SENATOR CHAMBERS: But when a judge was driving drunk, I think he was probably more than twice the limit, MADD had not a whisper. Were they afraid to comment about a judge setting such a bad example?

TERESA ALEXANDER: Well, you can understand that this is from a grandfather trying to protect his grandchildren...

SENATOR CHAMBERS: Let's forget the grand...

TERESA ALEXANDER: ...and that's, as a victim that's what he's trying to do.

SENATOR CHAMBERS: Let's forget Grandpa because this isn't his words, these are your words so let's forget this particular thing. But I just wanted to show how this is not making sense and you might want to modify it before you give this to Grandpa and the judge. Let's say Grandpa and say to the bailiff, as soon as he leaves here have somebody put him in one of those jackets without any sleeves and let them check him.

TERESA ALEXANDER: Um-hum.

SENATOR CHAMBERS: This makes no sense. Whoever thinks it makes sense is wrong and it's foolishness. Why did not MADD, and you can find out because you said you don't know why, why did not MADD when they've come before us so many times trying to get us to stiffen penalties, not make a comment when a judge who sentences others was more than twice over the limit, driving drunk, had been partying,...

TERESA ALEXANDER: Um-hum.

SENATOR CHAMBERS: ...rolled his vehicle and to quote you,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 23

LB 179

"only the will of God prevented harm from coming to anyone during this incident."

TERESA ALEXANDER: No, that's the grandfather's quote. That's in quotes from the grandfather.

SENATOR CHAMBERS: Well, I'm saying that can apply to this judge's situation too, though, can't it?

TERESA ALEXANDER: It could, yeah.

SENATOR CHAMBERS: Are you all going to review your policies now and comment about drunk driving judges too perhaps?

TERESA ALEXANDER: Well, we try to cover all of those cases.

SENATOR CHAMBERS: But I mean, if there's a drunk driving judge again, you all will saying something? Or you can't speak for MADD?

TERESA ALEXANDER: Well, I really can't speak for the whole, you know,...

SENATOR CHAMBERS: Okay.

TERESA ALEXANDER: ...you know, you'd want to talk to Ms. Reynolds.

SENATOR CHAMBERS: Thank you.

SENATOR BOURNE: Thank you. Further questions for Ms. Alexander? Seeing none, thank you. Next testifier in support? If there's other testifiers in support, please come to the on-deck area and sign in. Welcome.

MARTY CONBOY: Good afternoon, Marty Conboy, city prosecutor. And this is a...I guess, Senator Chambers pointed out something indirectly that there is an inconsistent approach to how this is handled throughout the state. At the discretionary levels when a police officer encounters a drunken driver with a child in the car, some will arrest for that offense and some won't. Some prosecutors prosecute it, most do, but not all. Some judges will even convict for child neglect even with the existing law but many won't because it's not specifically stated.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 24

LB 179

And at least by taking a public policy position that's clearly making this an offense, we would have consistent enforcement throughout the state. And the problems that Senator Flood points out about how do you deal with somebody with a situation like that, are you just going to put the kid back in the car and hand the guy a ticket? Well, clearly not. If that's the law then there would have to be policy changes made to deal with that. In Omaha, if the police encounter that situation they find a parent or a grandparent aside from the drunk driver to take the child. If they can't, then the state has to intervene until somebody can be found. But without a consistent law, there's not going to be consistent policy and there's not going to be sentences that address this particular problem. This is surprisingly common and I don't have access to the statistics Ms. Reynolds cited but I do know that we see it frequently. And it's a tremendous concern to other parents and certainly when somebody's injured it's a huge concern. It is surprising that it is not already mentioned. We have a statute that says you shouldn't leave your kids in the car alone if they're under six years old and that's a bad idea. But statistically that's probably a lot safer than something like this that's not on the books. And it makes sense to put it there.

SENATOR BOURNE: Thank you. Questions for Mr. Conboy?
Senator Chambers.

SENATOR CHAMBERS: Mr. Conboy, if you put this language in the statute it would be clear that there is a declaration that would obtain throughout the state because it now is statutorily, explicitly declared to be an offense.

MARTY CONBOY: I think that will be important.

SENATOR CHAMBERS: Does that ensure that officers are going to enforce that who will not enforce or bring a charge under the current law?

MARTY CONBOY: It won't ensure that they will. It will ensure that they should and I think, you know, we have seen, I think, an improvement. I can tell you that you talk about the prosecution of a judge. Times were I don't think that was very common. We prosecute two or three law enforcement officers a year and times were that never happened. Lawyers

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 25

LB 179

are now arrested with frequency. And I'm not proud of it but I'm proud to say that at least the attitude that there are some people that are beyond arrest or that police officers aren't accountable for not arresting people. I think that time is over, I hope it is.

SENATOR CHAMBERS: But that judge I'm talking about was given consideration which all the parties want to deny. It was conspicuous in an out-of-the-way courtroom on the third floor and no notice in advance that this was going to happen. And by the time everybody found out, the deal had been cut, he was sent home and he'll go into some alcohol program. He was not subjected to the embarrassment that everybody else is. And then all of the parties wanted to say, it just happened to come out this way. But I don't buy that and these kind of activities are what make the public feel that there's a double standard. This judge had to be arrested because he rolled his vehicle and there would have to be an accounting for a destroyed SUV. So when the report is made they're going to know whose vehicle it was so it's like he's caught with a handful of cookies so he has to say, well, yeah, I took the cookies because they caught him with it. And I'm sure somebody with the alcohol problem that this judge has, has driven drunk before. He either didn't get caught or when he was caught they let him go. They couldn't let him go this time because he destroyed the SUV and he ran into a guardrail and you can say he destroyed public property too. So I'm not satisfied or convinced that judges and all lawyers are handled the same way. But coming back to this point, do you think a police officer during the course of the day enforces every law that he sees violated, he or she?

MARTY CONBOY: No, I'm sure they don't.

SENATOR CHAMBERS: And they probably couldn't practically speaking, would you agree?

MARTY CONBOY: I absolutely agree.

SENATOR CHAMBERS: And law enforcers, officers are given discretion in determining which laws they're going to enforce and which ones they won't. I haven't heard of any cop being charged for not arresting somebody for drunk driving or anything else. I'm not saying they shouldn't

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 26

LB 179

enforce the laws but practically speaking, they cannot. If an officer decides in a given situation that this is not one of those where I'm going to charge this person with whatever this would be, abuse as specified in this subsection. Maybe no charge of abuse will be made at all then because you're going to have to state what are the facts that led you to charge abuse. Then you could say, well, the child was placed in a situation that endangers his or her life. And they say, how was that done? Well, the person was under the influence. Well, why didn't you charge that? You actually feel...I shouldn't ask it like that. I don't want to be leading. Do you feel that this language will lead to more arrests under these circumstances and charges of abuse based on the fact that the driver was under the influence?

MARTY CONBOY: Yes, it absolutely will.

SENATOR CHAMBERS: And what would the penalty be?

MARTY CONBOY: It would be the same as...

SENATOR CHAMBERS: Currently.

MARTY CONBOY: Currently, it's a Class I misdemeanor up to \$1,000, up to a year in jail.

SENATOR CHAMBERS: And if there is a repeat of this particular one, subdivision 1(f), it would then be bumped up to what?

MARTY CONBOY: Class IV misdemeanor up to five years in jail.

SENATOR CHAMBERS: You mean felony.

MARTY CONBOY: Or felony, I'm sorry.

SENATOR CHAMBERS: Okay, I'm with you on that. Now, some of these other situations might place the child in greater danger than this because this doesn't say that there has to be any harm to the child or that there was even a wreck. Do you think some of these other things could be more dangerous to a child than this particular one?

MARTY CONBOY: Probably. You know, if you look at each one

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 27

LB 179

of them they are very generally. When you talk about cruelly confined or punished, that's a very difficult law to apply and we've seen some very horrible cases where kids are locked in cellars for a year and things like that. That obviously is a lot worse than some kid who gets too much of a paddling but so I would say consistently, though, that a child is in much greater danger riding with a drunk driver consistently every time. We can pretty much measure and I'm sure Sim could probably give you statistics to tell you what kind of danger they're in in terms of how many are injured.

SENATOR CHAMBERS: But a second offense would make it a Class IV felony. That is worse in society's view if we adopt this than placing a child in a situation to be sexually exploited. If you do that a second time, that's not as bad as driving under the influence twice.

MARTY CONBOY: It's too bad, it should be.

SENATOR CHAMBERS: Forcing such child not only to solicit for but to engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films or depictions. That, a second offense of that is not a Class IV felony. Isn't this one of those areas where society has decided that drunk driving is so bad that it's going to be treated differently from every other offense no matter how heinous, how harmful or whatever?

MARTY CONBOY: I would say yes. It's unfortunate that this particular issue has gotten the attention to consider it as a felony for a second offense and those others haven't. I don't know why.

SENATOR CHAMBERS: I just want to call people's attention to it. You've always been straightforward so that's why I put the questions to you. And that's all I would have. Thank you.

SENATOR BOURNE: Thank you. Further questions for Mr. Conboy? Seeing none, thank you. Next testifier in support? Testifiers in opposition? Testifiers neutral? Senator Kruse to close.

SENATOR KRUSE: Thank you. I apologize, Mr. Chairman, that I didn't state who I was for the record, to begin with. I

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 28

LB 179

continue to be Lowen Kruse and representing District 13. Senator Chambers, reflecting on the discussion you've had with Mr. Conboy, metro MADD made three very strong protests about that judge's situation to the media. And I know because I was there for two of them. And some of the comments being made were that...and the particular offense of it was that a judge should know better, knows the law, that plus .20 is over .20, represents for the average size person which that judge is, 15 drinks, 5 drinks an hour for 3 hours. This is not accidental; it's not incidental. It's (laugh)...I just hope that you understand our outrage at this type of behavior and it's too bad the press didn't see the point in picking it up. Of course, quickly was set aside in some ways but, at any rate, the outrage of the MADD officials in Omaha was very strong. Appreciate you asking.

SENATOR BOURNE: Thank you. Questions for Senator Kruse. Senator Chambers.

SENATOR KRUSE: Yes.

SENATOR CHAMBERS: Senator Kruse, I'm glad for the record, that you did point out what you did because I had not seen anything.

SENATOR KRUSE: We noted that.

SENATOR CHAMBERS: But you know what I did, don't you?

SENATOR KRUSE: I noticed that.

SENATOR CHAMBERS: And did you see that he was reprimanded?

SENATOR KRUSE: Yes.

SENATOR CHAMBERS: Now what's going to happen when these people who have term limited me out of office, when I am term limited, who then is going to monitor the judges?

SENATOR FRIEND: We will (laughter).

SENATOR KRUSE: Hopefully, you and I are training some more to follow us.

SENATOR CHAMBERS: That's all I would have, though.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 29

LB 179, 594

SENATOR BOURNE: Thank you. Further questions for Senator Kruse? Seeing none, that will conclude the hearing on LB 179. Senator Kruse to open on LB 594.

LB 594

SENATOR KRUSE: Thank you, Mr. Chairman, committee members, staff. My name is Lowen Kruse and the hard part of that is L-o-w-e-n (laughter). One comment on the last bill that I was going to say, Senator Chambers, in that bill, in the present child abuse bill, former item 4 but now 5, if we adopt it, states that an offense is a Class III(a) felony, even if there was not serious bodily injury so there's some pretty heavy penalties that are laid out in the child abuse bill. To this one, this is the repeat offender bill. It's been around for a long time (laugh) and had a lot of work done on it and I appreciate the work. It's been scaled down. There's a lot of sections that you have seen in there before if you're remembering them, kind of take that out of mind. There's nothing very dramatic about it. The changes in it will make a real difference in terms of prosecuting because it removes loopholes and gaps. I had a friend who was an English expert and wrote the journals and the regulations for the Army. And he said one of their clear rules was that you had to write a regulation so clearly that it could not be misunderstood even if they wanted to. We are speaking here of the court and I will come back to that. Going quickly through the bill, page 3, the second conviction has...the maximum is extended. The reason for that is that some of these individuals come before the judges three or four times and we've already given evidence of how that happens and still the second offense, we want to give that judge latitude for increasing the penalty. Second item in here, there are four in all that I will point out is page 5, to allow a court certified copy rather than just an authenticated copy. This is an action of recent years. You're more familiar with it than I but we were wondering about out-of-state court certified copies and how that would flow. It has done well and that simply identifies what can be evidence. The next item is page 6 and 7 and that really is to remove the confusion and I'm going to point three items out in there and I'm really looking on courts and I'm picking on courts but we have a few courts that don't seem

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 30

LB 594

to understand it. For instance, a judge will order somebody not to drive but not remove their license. And if you examine the present law, it's pretty clear that both is to happen. You order the person not to drive and pick up the license. So we're saying, okay, that's...make it so clear that they can't be misunderstood. We will remove the order not to drive that's redundant, it doesn't need to be done. The judge can include that in a speech but the point is to remove the license. Number two, we are not using the word, suspend, anymore and I'm talking about DMV and a number of places where we've tried to remove it because that person will be like the first person who is ordered not to drive. They have a license so they show it to the officer on the side of the road. The person with a suspended license shows the officer their license. Unless the officer gets connected with a computer someplace, they don't know that that license is invalid. So we're saying, revoke or if you don't want to revoke the license, impound. The court just hangs on to that license and keeps it for awhile. Again, it's not changing the intent of the law. It's not changing anything we've done before but it's making very clear (laugh) that that person is not to get out of there with their license in hand if they are ordered not to drive. And the third one is interlock and, again, we've had some courts where they have ordered the person not to drive. And, in fact, sometimes impounded the license and then order an interlock. Well, hello, (laugh) you cannot drive on an interlock without a license. You can't drive without a license and the court's in error here. But in order to correct this, we're just trying to make it a lot more clear that if you're driving on interlock you must have some kind of a license with you. So that's that section and to me that's the most important section and the one that will make some quiet differences as time goes along. The fourth item that I would talk to is the bottom of page 8 and then page 9, section 4. This is new. It is the aggravated DUI it's called in most states, 31 states have a high BAC regulation, we do not. It's again a repeat offender. The repeat offenders cause too much of this mayhem. They are four times more likely to kill somebody than the first offender, a person in the first offense. So we're saying here that they must...that if they've got more than double the item and we've already illustrated in the conversation that we had earlier about the judge, that that should be a felony. I thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 31

LB 594

SENATOR BOURNE: Thank you. Questions for Senator Kruse?
Senator Aguilar.

SENATOR AGUILAR: Yes, Senator Kruse, I see you ran out of
time there. Did you have anything else you wanted to add?

SENATOR KRUSE: (laugh) Thank you, Senator. No, I simply
want to say with this document, what we all know. We're
killing a hundred people a year in Nebraska. And it's
totally unnecessary. That's what makes me so frustrated.
If this was Sweden there wouldn't be one. It just doesn't
have to be. But again, it's a matter of us being so clear
and the public being so clear. I'm not letting the public
or anybody off the hook on this. We have got to say to each
other, when we see our neighbor out driving after having
been drinking, whatever. You don't have to know what...how
many, to say that really is offensive because my child is
out on that street so I'm just recognizing and the public is
recognizing. You see the long list of the persons there
that the repeat offender is a very dangerous person. Thank
you, Senator Aguilar.

SENATOR AGUILAR: One other question.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: I'm sorry. When you were talking about
having the license impounded, would it be possible if a
person had his license impounded for him to go up and get a
duplicate license or is that somewhere in a database that
would prevent that from happening?

SENATOR KRUSE: An impounded license, as I understand it, is
recorded but, again, someone else would have to have more
authority than I on that. Our problem has been with the
suspended license. A suspended license is recorded...

SENATOR AGUILAR: Right.

SENATOR KRUSE: ...in the DMV. The exception on this as I'm
thinking about it would be we do have impounding for some
minors and, in that case, we don't record it because it's
not to be a part of the permanent record and the court just
hangs onto it for 90 days or something like that.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 32

LB 594

SENATOR KRUSE: Thank you. Further questions? Senator Chambers. I almost said seeing none but I...

SENATOR CHAMBERS: That's quite all right.

SENATOR BOURNE: Sorry.

SENATOR CHAMBERS: That would have been an expression of a sincere desire...

SENATOR BOURNE: That would have been a Freudian slip, I think.

SENATOR CHAMBERS: Senator Kruse, when you said the hard part when you were giving your name is L-o-w-e-n. I was going to say if that's the way you spell Kruse, it is very difficult (laughter). I'll never learn that. But at any rate, what is the difference between a license being impounded and one being revoked for the record?

SENATOR KRUSE: For the record, a revoked license means that it passes out of existence and in order to get a license again, one must reapply. There's extra fees to it...

SENATOR CHAMBERS: And you lose the right to drive when it's revoked.

SENATOR KRUSE: ...you lose the right to drive under it. You lose the right to drive under either one of them but...

SENATOR CHAMBERS: Now...

SENATOR KRUSE: ...on a revoked license you must come back and reapply. An impounded license, you are handed it back at the end of the time.

SENATOR CHAMBERS: Now when we talk about an impounded license, in effect, is that really just driving without a license in your possession?

SENATOR KRUSE: Well, you're not allowed to drive with an impounded license.

SENATOR CHAMBERS: And they'll be charged with...what will

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 33

LB 594

they be charged with? Driving without a license?

SENATOR KRUSE: Yes, as I understand it.

SENATOR CHAMBERS: But the license has not been revoked.

SENATOR KRUSE: No.

SENATOR CHAMBERS: Can a judge impound a license for one day if he or she chooses?

SENATOR KRUSE: I would presume so since they can impound them for 30 days and they could take a lesser amount, yes.

SENATOR CHAMBERS: There's something I want to get at but I won't belabor the point with you. If a license may be either revoked or impounded, which of the two do you think would be more severe?

SENATOR KRUSE: Revoked.

SENATOR CHAMBERS: Because you have to pay and go through that process of getting it reinstated.

SENATOR KRUSE: That's right. The impounded license will be handed back to you at the end of the year or whatever time, handed back. I assume you probably have to go to the court to pick it up but.

SENATOR CHAMBERS: And that's all that I would have. Thank you.

SENATOR KRUSE: Thank you.

SENATOR BOURNE: Thank you. Further questions for Senator Kruse? Seeing none, thank you.

SENATOR KRUSE: Thank you.

SENATOR BOURNE: Could I get a show of hands of those individuals wishing to testify in support? I see three. Opposition? None. Neutral? And again, we're going to make use of the on-deck chairs. Welcome again.

SIMERA REYNOLDS: (Exhibits 9, 10) My name is Simera

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 34

LB 594

Reynolds and I'm here to support LB 94 (sic) on behalf of Mothers Against Drunk Driving and MADD would like to thank Senator Kruse for introducing this piece of legislation. Impaired driving is a real problem facing our society. Of the general driving public, 98 percent see drinking and driving as a threat to their personal safety and 86 percent feel it is important to do something about it to reduce this problem. And Nebraska likewise has the same concerns. Recently, we did a poll and 61 percent of Nebraskans surveyed stated that they do not think Nebraska's penalties for drunk driving are tough enough. High-risk drivers are characterized as individuals who repeatedly drive after drinking especially with a blood alcohol content of .15 or higher and who seem relatively resistant to changing their behavior. Nationwide, statistics show about one-third of all drivers arrested or convicted of drunk driving are repeat offenders and you have the information that I gave out with Senator Cornett whereas ours is about 25 percent. And we have a demographic of a high-risk driver and the gender is usually 80 to 95 percent male. The median age is 30. Education, high school diploma. Marital status 46 to 55 percent are single; 22 percent divorced. And ethnicity is Caucasian. MADD would like to see an approach for high-risk drivers that include restriction for the driver, repayment to the community, and restitution for the victims. In order to protect the driving public from the dangers caused by high-risk drivers, driving privileges must be restricted. MADD appreciates Senator Kruse including this concept in his piece of legislation. However, MADD strongly encourages the committee to utilize revocation and remove all references. I think they begin on page 6 to impoundment. There is no effective mechanism in state statute for the Department of Motor Vehicles to be notified upon neither impoundment nor are there any reinstatement requirements for impoundment. Including impoundment would only kind of blur the already blurry practices that law enforcement and the judicial system are utilizing. MADD would like to thank this committee for their attention to this matter.

SENATOR BOURNE: Thank you. Questions for Ms. Reynolds? Seeing none, thank you. Next testifier in support?

LISA WANEK: Good afternoon. My name is Lisa Wanek and, as you can see, I've come here straight from my clinical

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 35

LB 594

studies at Bryan LGH Hospital where I work as a nurse through the University of Nebraska-Lincoln.

SENATOR BOURNE: Could you spell your last name for the record, please?

LISA WANEK: Sure, W-a-n-e-k.

SENATOR BOURNE: Thank you.

LISA WANEK: Today I was at the hospital learning to care for other people. But only three-and-a-half years ago, I was there as a patient myself after being in a highway crash caused by a drunk driver. I was a 17-year-old high school senior who didn't drink and drive and didn't drink at all and thought that that would be enough to protect me. But little did I know, that was not nearly enough protection. The offender who ran a stop sign and crashed into me had been drinking with his girlfriend, a UNL student, at a college party. Despite warning signs, a lighted highway intersection and rumble bars in the pavement, they blew through the stop sign at 60 miles per hour and crashed into my small car in the middle of the intersection. It's only because of God and seat belts and air bags that I'm still here today. And because my life was spared against all odds, I decided to become a nurse. I know, however, that I might work in nursing all my life and never be able to save as many people as you, our own state lawmakers could save in about a year or two by reducing death and injury through drunk driving laws. It turned out the 22-year-old drunk driver who slammed into me had already been in trouble in Oregon. He had a history of drug and alcohol abuse that couldn't be considered in his sentence here in Nebraska. He and his girlfriend were not wearing their seat belts so she ended up in a coma and actually had to be flown to the hospital through a helicopter. Their choice to drink and drive cost all three of us our lives nearly and all of us as taxpayers untold sums of money. I personally spent over \$3,000 to replace my car with the exact same make and model not to mention all of my other property that had been destroyed, unpaid medical bills, and the pain and anxiety that still affects me today. The drunk driver who cost me and all of us so much was fined the maximum penalty of \$500 and went to jail for only 60 days. Worst of all, he struck again. The last time I checked, there was a warrant out for

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 36

LB 594

his arrest. I just don't think that a \$500 fine was a loud enough message. The time for stronger penalties is now. There are many examples we can refer to. In France, a first-time offense brings one year jail, three-year license suspension, and a \$1,000 fine. So it wouldn't be out of line for us to double our fines and jail sentences that we impose right now. We've all paid for drunk driving long enough. Now it's time for the drunk drivers to pay too. As a nursing student I know there are many unavoidable diseases and accidents that compromise health and consume financial resources. Drunk driving crashes are not among these. Drunk driving is a terrible choice, not an accident. It's time to discourage this choice with stronger penalties. Thank you.

SENATOR BOURNE: Thank you for your testimony. Questions for Ms. Wanek? Seeing none, thank you. We appreciate you coming down today very much. Next testifier in support? Usually we have those Kleenexes out for after Senator Chambers interrogates one of the witnesses (laughter) so.

SENATOR AGUILAR: I want them there for me (laughter).

SENATOR BOURNE: Welcome, Mr. Conboy.

MARTY CONBOY: Thank you. And I will add to what Senator Chambers said. It would be a sad day when that doesn't happen anymore and I do look forward actually to mention a few things that didn't come up. One of the things earlier in the bill was that it invites the prosecutor to use either the current language of an authenticated copy of a prior conviction and adds the possibility of a court certified copy which is what most of the cases are locally, at least the courts provide a certified copy. And the statute does not define either of those terms but to make it clear, I think that the county's attorneys and others who had an input on this bill had asked that that be included to make it clear to the courts and to the prosecutors what was permitted and because that is what the courts provide. At least, that title seems to fit it appropriately. The idea of not having a revoked license, I think, right now creates a very bizarre situation and years ago when interlock became an alternative to losing your license I was opposed to it under the concept that it allowed a class of people who could afford it and who could manipulate their way into it

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 37

LB 594

to avoid the penalty which was otherwise required. What's occurring now is that people who hire attorneys or who challenge their administrative license revocation do not lose their licenses. And the statistics show about 40 percent of those challenges are successful, usually through the officer not showing or the paperwork being improperly provided. As a result, when they go to court if they are impounded and not suspended, some of the judges then allow them to get an interlock device. And, obviously, if they get a public defender by that time the chance to avoid that administrative penalty is passed. And the reality of it is then when they come in they get the order not to drive which really is not binding on the state of Nebraska in the sense that it goes in your DMV record or that if you get pulled over by a police officer and they run you on the radio and say, I've got Marty Conboy pulled over here and they check my license, it wouldn't show up if I was ordered not to drive because there's no order to the state of Nebraska to do anything. They'd have to call the judge at home and say, is it okay if this guy drives? And, obviously, there's no access to that sort of information. So those offenders rarely get caught for driving during that period of time. It's just a reality that's very difficult for law enforcement to identify. The other prospect is then some of those people can get interlock devices immediately because judges view this language as to be not a revocation so that under another provision that they're entitled to. And I would just close by saying, we use this interlock device, it has value. But it's a concern because it is not uniformly applied. It's a tool that is not used consistently or well and, as a result, you have a whole spectrum of things happening based pretty much on the case by case situation. And we should clarify that.

SENATOR BOURNE: Thank you. Questions for Mr. Conboy?
Senator Chambers.

SENATOR CHAMBERS: Mr. Conboy, are you suggesting that there should be a deletion of the impoundment alternative or option under this that we're talking about here?

MARTY CONBOY: Yes.

SENATOR CHAMBERS: Okay. And then when we have the new addition of the words "court certified," we still leave in

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 38

LB 594

authenticated copy. What would be the difference between the two?

MARTY CONBOY: Well, in our state most jurisdictions use the certification, the raised seal, the notation signed saying that this is an accurate copy. And it's usually mechanically attached with the signature. Other states and I think this is something you expressed when that language was included about other states, there's not a consistent form that they use to send those things. Some are signed by a clerk. Some are stamped. Some there's a raised seal. And I think we have always urged authentication just so that there's some letter of transmittal or notation that this is the accurate and complete record of such and such a date so that that's included. I guess it's more a matter of definition. I think if a court puts a seal on it and certifies it to be an accurate record that is an authentication but because neither term is defined in the statute, just the fact that we're having to discuss the difference I think points out that we should probably allow both.

SENATOR CHAMBERS: Keep both of them?

MARTY CONBOY: I would say have both, yes.

SENATOR CHAMBERS: Okay.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Next testifier in support? Are there testifiers in opposition? Are there any neutral testifiers? Senator Kruse to close.

SENATOR KRUSE: Thank you, Mr. Chairman and members. I will segue off of Mr. Conboy by saying the whole point of this effort which has been going on for some time and will continue to is consistency in the law. We have looked for those places where persons who can spend a little bit more money can get away to have a convoluted ruling or something like that. We simply think the law should apply similarly to anybody who comes in on. Second, I would like to express my appreciation to the young woman who appeared before us to give a human face. So much of what we deal with is dealing with the technicality of the law and there is an outrage here which she clearly expressed. And third, my counsel,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 39

LB 594

Mr. Rainey, who keeps me on the straight and narrow, Senator Chambers says there is another distinction that I should point out in terms of revoked in comparison to impounded. Revoked is required upon conviction to second or third or fourth offense unless there is a probation. So revocation is presently required. Impoundment is possible on a first offense or on probation.

SENATOR BOURNE: Thank you. Questions for Senator Kruse? Senator Foley.

SENATOR FOLEY: Thank you, Chairman Bourne, and thank you, Senator Kruse, for your bill today and for all the work that you've done in your five years here on drunk driving statutes. Well done. You may have seen in the World-Herald a couple of days ago the story about a person by the name of Kevin Mattini. Kevin Mattini was driving drunk the wrong way down a street. He struck a woman who was pregnant and her unborn child was killed. She had a broken leg. And he's now been convicted to a jail sentence for the killing of the unborn child. And you and I both worked together on that bill. You supported the bill and I thank you for it. Will the passage of this bill in any way make DUI offenses inconsistent with the DUI offenses associated with killing an unborn child? You're enhancing penalties here. Are you also enhancing penalties for killing an unborn child?

SENATOR KRUSE: We're not enhancing penalties enough here that it would make any difference. My answer would be no, I don't see that this...

SENATOR FOLEY: But there would be an inconsistency.

SENATOR KRUSE: I don't see any inconsistency.

SENATOR FOLEY: There's not.

SENATOR KRUSE: No. Because we're working in this bill mostly on the inconsistencies of a court and the application of the law and a court which is not reading the language very precisely, to be frank about it. There's only one place where the penalty has changed and that's on the maximum. And it's not on a death or injury.

SENATOR FOLEY: Thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 40

LB 594, 117

SENATOR BOURNE: Thank you. Further questions for Senator Kruse? Seeing none, thank you. And, again, thank you, those folks who testified on this bill. That will conclude the hearing on LB 594.

SENATOR CHAMBERS: While Chairman Bourne is making his way to the testifying seat and the room is clearing of those who don't want to remain, how many are going to speak in favor of the bill which Senator Bourne is presenting at this time? And hold your hands up because they're kind of coming up and then I can get...one, two, three, four, five, six...I count seven. How many are opposed to this bill? One, two, three, four, five, six. I see at least six and there may be seven. How many are neutral? One, two. Senator Bourne, you've done something with this bill but (laughter) whenever you're ready, you may proceed.

LB 117

SENATOR BOURNE: Thank you, Senator Chambers, members of the Judiciary Committee. My name is Pat Bourne. I represent the 8th Legislative District in Omaha, here today to introduce LB 117 on behalf of the Governor and the Attorney General's Office. You need only to read the newspaper to be aware that methamphetamine use is a serious problem in this country and in our state. In recent years the number of meth users have increased. The number of local meth producers have increased, and the number of Nebraska families negatively impacted by meth has increased. These numbers will continue to increase until we do something to address the issue. LB 117 looks to tackle two issues in relation to the meth problem. One, the bill will increase penalties for meth traffickers and manufacturers. They will add meth to the list of exceptionally hazardous drugs. It will bring the penalties for manufacturing or trafficking to the same level as those related to cocaine, and it will enhance the penalties for possessing a firearm during a drug trafficking offense. I believe there is a representative from the Attorney General's Office here today to further explain what the increased penalties mean. The second part of LB 117 focuses on stopping the local manufacturers of meths or the cooks. It is my understanding that while only 20 percent of the meth in this state is made locally,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 41

LB 117

dealing with these labs take up 80 percent of law enforcement's resources. The labs which can be located anywhere present a particularly dangerous situation. The chemicals used to manufacture meth are highly volatile, putting law enforcement, emergency responders, and even neighbors of the cookers at risk. The ingredients in meth production which can include anhydrous ammonia, ether, gasoline, and lithium also present an environmental hazard. Regardless of which variety of ingredients the cook chooses to use in making meth there is one ingredient that is always necessary and that is pseudoephedrine, an ingredient that is easily found in many of the over-counter cold and allergy products. LB 117 seeks to make it harder for individuals to make meth by limiting their ability to obtain pseudoephedrine. Under the provisions of the bill as proposed, over-the-counter products containing pseudoephedrine may only be sold by a pharmacist, a pharmacy technician, or a pharmacy intern. The products must be located behind the counter or in a locked case and individuals cannot purchase more than 9 grams in a 30-day period. And when purchasing these products individuals will be required to show an ID and sign in a logbook. This will help serve as a deterrent to meth cooks and help law enforcement in investigating these individuals. LB 117 will not solve the meth problem but it is a beginning of what we as policymakers and as a community must do in order to combat this devastating drug. I would like to thank all of those individuals that are testifying today both in a proponent and in an opponent capacity. I look forward to hearing their ideas on what is the best policy for this state and how we all can work together to tackle this serious issue. Thank you. (See also Exhibits 11, 12, 13)

SENATOR CHAMBERS: Are there any questions of Chairman Bourne? Thank you, Senator Bourne. There are none. Next, and as Senator Bourne reminds, would you kindly use the on-deck chair so the next person will have signed in and we can keep things moving? And Senator Bourne now is at the command again.

SENATOR BOURNE: Welcome. Colonel Nesbitt.

TOM NESBITT: (Exhibit 14) Senator Bourne and members of the Judiciary Committee, my name is Tom Nesbitt, N-e-s-b-i-t-t and I'm the superintendent of the Nebraska State Patrol.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 42

LB 117

I'm here today to testify in support of LB 117. LB 117 proposes to enhance penalties for trafficking and manufacturing methamphetamine and erect barriers to acquiring pseudoephedrine, the key ingredient in the manufacture of meth. Meth and the clandestine labs that produce it are immense threats to public safety in Nebraska today. Our headlines have been dominated by the danger of meth. Brendan Gonzales, Christian Reifler both died in part due to the meth use of a parent, Ivan Henk and Brandy Blair. And we all know the unfortunate story of Janelle Hornickel and Michael Wamsley and meth. Methamphetamine labs are the birthplace of a substance that destroys lives and families. LB 117 is the tool that we need to help shut down clandestine labs by controlling the sale of all forms of pseudoephedrine, the key ingredient in manufacturing meth. Except for pseudoephedrine in liquid or liquid gel form, the sale of pseudoephedrine would be restricted by requiring that it only be available in pharmacies and sold by a pharmacist, pharmacy tech or pharmacy intern. A person wanting to purchase pseudoephedrine would not need a prescription. Instead, he or she would have to approach the pharmacy counter, show proper identification and sign a logbook to obtain pseudoephedrine. Purchases would be limited to 9 grams in a 30-day period. Some people have asked, why do we need to have a logbook? The logbook is an important tool in the attempt to control the sale of pseudoephedrine. Most people involved in the manufacture and use of methamphetamine are very nervous and paranoid. The last thing they want is to have to show identification and sign a logbook. For this reason alone, the logbook acts as a strong deterrent. Additionally, the logbook provides law enforcement with a tool to use while conducting drug enforcement investigations. We estimate that 80 percent of the methamphetamine is smuggled into the state from Mexico and southwest and 20 percent is manufactured here in Nebraska at clandestine labs. Yet, due to the dangerous chemicals involved with the manufacturing process, it takes about 80 percent of law enforcement resources dedicated to meth to address that 20 percent of the problem. Last year the state of Oklahoma passed legislation that controlled pseudoephedrine as a schedule V drug. As a result, Oklahoma has seen an 80 percent reduction in their meth labs. Unfortunately, the states of Kansas and Missouri have seen a dramatic increase of problems associated with sale of pseudoephedrine in those towns that border Oklahoma. As our

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 43

LB 117

neighboring states consider Oklahoma style legislation, and without LB 117, we can expect an increase in meth labs in Nebraska. I'd like to thank you for this opportunity and presentation. I'd answer any questions anyone might have, sir.

SENATOR BOURNE: Thank you. Questions for Colonel Nesbitt? Senator Aguilar.

SENATOR AGUILAR: Yes, thank you for being here, Colonel. Isn't it true that all the states around us are proposing some type of legislation to control this and other states that already have kind of a weaker model are beefing up their legislation in order to control the sale?

TOM NESBITT: That's my understanding, sir, that Missouri and Kansas and Colorado are proposing legislation. I believe Iowa has some type of legislation in place and Illinois has legislation in place as well. And my understanding is there is an underway to enhance that legislation in Illinois.

SENATOR AGUILAR: So if we, indeed, don't do something positive in this manner, we're really opening ourselves up to an influx of more labs in our own state, aren't we?

TOM NESBITT: Yes, sir, we feel that if we're not successful in trying to restrict this that there will be an increase in clandestine laboratories and that we'll have to deal with that manufacture methamphetamine.

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Thank you. I apologize for the cell phone ringing. Hopefully, that's been addressed. Further questions for the Colonel? Senator Chambers.

SENATOR CHAMBERS: Was it your cell phone, Mr. Chairman?

SENATOR BOURNE: No.

SENATOR CHAMBERS: Well, you can't apologize for something you're not responsible for and I won't tolerate it (laughter).

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 44

LB 117

SENATOR BOURNE: But it's our audience.

SENATOR CHAMBERS: We could have a ringer in here, no pun intended (laughter). Colonel, where it says that purchases would be limited to 9 grams in a 30-day period, what would stop a person from going from pharmacy to pharmacy?

TOM NESBITT: That's a good question, Senator, and there's nothing that would stop them from going to different pharmacies and purchasing that.

SENATOR CHAMBERS: So that really is language without any real significance.

TOM NESBITT: Well, as I said, while we feel that by going and purchasing behind-the-counter and showing an ID and signing a logbook, we feel that because of meth dealers and the cooks and their paranoia that will restrict them from continually going from place to place to do that.

SENATOR CHAMBERS: Did a psychiatrist assist in the drafting of this legislation?

TOM NESBITT: No, sir.

SENATOR CHAMBERS: So who's conclusion is it about the paranoia? Is that what law enforcement people have determined from their observation, their experience, and so forth?

TOM NESBITT: From observation, experience, sir, of seeing and dealing with people that not only manufacture methamphetamine but use it as well.

SENATOR CHAMBERS: This is based on your experience and observation.

TOM NESBITT: Yes, sir.

SENATOR CHAMBERS: Have you observed a manufacturer of meth purchasing pseudoephedrine...products with pseudoephedrine in them?

TOM NESBITT: No, sir.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 45

LB 117

SENATOR CHAMBERS: Have you seen them purchasing anything where as you observe them, they show these signs and marks of paranoia?

TOM NESBITT: Of purchasing ingredients to make methamphetamine?

SENATOR CHAMBERS: Anything, purchasing anything where they looked paranoid while they were purchasing it.

TOM NESBITT: No, sir.

SENATOR CHAMBERS: So you haven't observed anybody in this situation that would enable you to say that that person would be very nervous and paranoid if he or she had to sign a logbook. That's speculation, isn't it?

TOM NESBITT: What I can say, sir, is that when I was in the narcotics division and worked in an undercover capacity I purchased methamphetamine from folks throughout the state. And when I did purchase that I noticed paranoia, their behavior, and their actions that they have so I would base my observation on that from my experience.

SENATOR CHAMBERS: But you were a purchaser not an...

TOM NESBITT: I was purchasing from them, that is correct, sir.

SENATOR CHAMBERS: And that person was a seller.

TOM NESBITT: That's correct, sir.

SENATOR CHAMBERS: Could the nervousness and paranoia have been based on the possibility that the seller wondered if you might be an undercover officer?

TOM NESBITT: One of several, yes.

SENATOR CHAMBERS: So that is speculation that people having to sign this logbook is going to be a deterrent to them making these purchases.

TOM NESBITT: Yes, sir.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 46

LB 117

SENATOR CHAMBERS: Let's say that it would.

TOM NESBITT: Okay.

SENATOR CHAMBERS: Then the ones who are going to make the purchases and not be paranoid are ordinary citizens who need this compound that contains pseudoephedrine. Would you agree?

TOM NESBITT: Yes, sir.

SENATOR CHAMBERS: And you're willing to spread a net broad enough to ensnare any number or all citizens in order to deter a few of these people who will purchase these products.

TOM NESBITT: You know, as I said, we feel it's necessary because of the one ingredient, pseudoephedrine is necessary to make methamphetamine. And for us as law enforcement, public safety to try to control that, we feel that by purchasing it behind the pharmacy counter, an identification logbook will help us through the investigations of investigating those that are in the business of producing methamphetamine.

SENATOR CHAMBERS: Is there any other substance which is always found in methamphetamine besides pseudoephedrine?

TOM NESBITT: That is the one that absolutely, pseudoephedrine and ephedrine has to be used in that. Obviously, there's other precursors that are used different ways of manufacturing the methamphetamine.

SENATOR CHAMBERS: Are there any others which are always found in meth?

TOM NESBITT: You know, there will be another one testifying after me that could answer that more intelligently than what I would be able to, sir.

SENATOR CHAMBERS: I heard ether mentioned.

TOM NESBITT: Yes.

SENATOR CHAMBERS: Why don't we require the same thing for

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 47

LB 117

ether?

TOM NESBITT: Well, again, there's different precursors that can be used. Ether, it can use the heat for the gas, anhydrous ammonia, several different ways of manufacturing that.

SENATOR CHAMBERS: So why don't we deal with all of them then?

TOM NESBITT: Well, the one ingredient that they absolutely have to have is the pseudoephedrine to make it. And there's obviously a lot of legal reasons to use ether and those other things, too, you know, that citizens would use to use for different things.

SENATOR CHAMBERS: Aren't there legal reasons to use products with...

TOM NESBITT: Absolutely, and the folks that I personally have talked to that use pseudoephedrine and a starch tablet, the ones that I've talked to have absolutely no problem in going behind a pharmacist and purchasing it for the legal use of it.

SENATOR CHAMBERS: How many have you talked to?

TOM NESBITT: I've probably talked to, in the last 30 days, I've probably talked to 10, 11, 12 people that I've come in contact with through different civic areas that I've been involved...

SENATOR CHAMBERS: Do you know these people?

TOM NESBITT: I know a couple, three of them, yes, I do.

SENATOR CHAMBERS: So they'd probably tell you what you want to hear, wouldn't they?

TOM NESBITT: Sometimes that does happen when you're in a uniform as we know.

SENATOR CHAMBERS: Now, how many people do you estimate in Nebraska may make use of these products? Do you think more than 10 or 11?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 48

LB 117

TOM NESBITT: I would say several people use it legally.

SENATOR CHAMBERS: Several people.

TOM NESBITT: Yes, um-hum, don't know how many, sir.

SENATOR CHAMBERS: Several translates to mean a few.

TOM NESBITT: Yeah, okay.

SENATOR CHAMBERS: Do you think there is a large number of people who would use these products?

TOM NESBITT: That use it legally? Yes, sir.

SENATOR CHAMBERS: Now you're concerned about people who might legally use ether. Do you think more people use ether than use the products with pseudoephedrine?

TOM NESBITT: I couldn't answer that, I don't know.

SENATOR CHAMBERS: So you think...what do you think ether is used for? Do you have any idea?

TOM NESBITT: Well, you know, I grew up in a farm community and we used it to start our tractors. I remember that, being a young man.

SENATOR CHAMBERS: So you don't want to put this on farmers. You want it to be easy for them to get their ether but city folk and city slickers should have to sign a logbook and identify themselves.

TOM NESBITT: Well, it wouldn't only by city folks that would use it. There's obviously a lot of the residents throughout Nebraska that use it in the farm communities as well.

SENATOR CHAMBERS: Do you think there's more use of the products with pseudoephedrine than those who use anhydrous ammonia?

TOM NESBITT: Yes, I'm sure there are.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 49

LB 117

SENATOR CHAMBERS: Well, why don't we do this with those who purchase anhydrous ammonia? You don't have to identify yourself and sign a logbook, do you?

TOM NESBITT: You know, anhydrous ammonia I don't know the...again, there's a person who will be testifying...

SENATOR CHAMBERS: Okay, I'll wait.

TOM NESBITT: ...maybe they'll answer that as more of an expert on that, sir.

SENATOR CHAMBERS: Okay. Now on the second page of your testimony, you mentioned additionally the logbook provides law enforcement with a tool to use when conducting drug enforcement investigations. Would you explain what that means?

TOM NESBITT: Well, what it would do is it would enhance this as a tool to use for a probable cause for a search warrant if we feel necessary. Also, it is used in sentencing guidelines. It can be used for that as well...

SENATOR CHAMBERS: The logbook, how does the logbook provide probable cause?

TOM NESBITT: What it would do is it would show us how much pseudoephedrine a person is purchasing and we could use that in an affidavit for a search warrant.

SENATOR CHAMBERS: Would 9 grams in a 30-day period be sufficient to provide probable cause if this person is manufacturing meth?

TOM NESBITT: I believe the way the law is written at over 9 grams, purchasing more than 9 grams would be illegal and (inaudible)...

SENATOR CHAMBERS: And you would do that by going around to every pharmacy to see if any names show up at more than one pharmacy?

TOM NESBITT: Well, there would be a lot of different techniques of doing it, but that would be one way, yes, sir.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 50

LB 117

SENATOR CHAMBERS: Do you believe that in America citizens have the right to be left alone if they're not committing a crime?

TOM NESBITT: Yes, sir.

SENATOR CHAMBERS: Do you think...now I'm asking for your opinion...

TOM NESBITT: Okay.

SENATOR CHAMBERS: ...that a person purchasing any product that has pseudoephedrine, who has identified himself or herself and signed a logbook would have given probable cause for a search warrant to be issued to search that person's premises?

TOM NESBITT: Any person?

SENATOR CHAMBERS: Yes.

TOM NESBITT: Is that what you said? No, sir.

SENATOR CHAMBERS: Then what person would?

TOM NESBITT: I believe a person that if we suspected a person...obviously, this would be just one of the tools, you know, sir, in order to obtain a search warrant. We'd have to have more than just that alone and just a normal citizen that...

SENATOR CHAMBERS: Like what else...

TOM NESBITT: ...would be coming in to purchase pseudoephedrine and purchasing it for a legal reason would...

SENATOR CHAMBERS: ...but before I push you too far,...

TOM NESBITT: Pardon me?

SENATOR CHAMBERS: ...before I push you too far where I don't really need you to go to answer my question, what in addition to signing a logbook would it take to constitute probable cause to obtain a search warrant?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 51

LB 117

TOM NESBITT: Well, there could be many different things that we could be running surveillance on a residence and...

SENATOR CHAMBERS: Then you don't need a logbook because you've got probable cause based on something other than the logbook, haven't you?

TOM NESBITT: Well, Senator, what I was trying to say is this would be just one of the tools for that.

SENATOR CHAMBERS: You have obtained...you've obtained search warrants based on probable cause already without this, haven't you?

TOM NESBITT: Yes, sir.

SENATOR CHAMBERS: So whatever those elements are that satisfy a judge are there without making everybody sign this logbook.

TOM NESBITT: We have obtained search warrants and like I said, sir, this would just be another tool to assist us in that manner in investigations.

SENATOR CHAMBERS: Suppose I tell you, I don't believe you need it. You've got all the tools you need. You're getting, you're establishing probable cause without ensnaring all of the citizens who legally want this product into having to sign a logbook and identify themselves. Some people find those things so abhorrent that they will try to stop it. I found it so abhorrent to make people give a fingerprint to cash a check that I got a bill through the Legislature which says that any bank which holds government state funds cannot require a person to give a thumbprint, palmprint to cash a state warrant. And no bank has had any problem with those state warrants being forged or stolen or anything else. Law enforcement wants to have things made as easy as possible and they become lazy. In Omaha the lazy rascals are misusing DNA technology. They're coercing, intimidating people. They have no probable cause because if they have probable cause they could take the sample...I'm trying to give an example for the context of my next question. So the chief will say that this is all voluntary so here's how they create a voluntary situation. They have

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 52

LB 117

several plain, unmarked vehicles pull up. Guys in long coats get out. They come up to the door together and then they, when the man comes to the door they say, we are investigating a serial rapist and we would like you to voluntarily give a cheek swab. And they see that his wife, his children are there and he may feel, I'm not guilty of anything and I'm not going to let them make me do this. But if I don't do it then my wife is going to wonder, do I have something to hide? That's what the police do right now. I don't trust cops, in other words. I don't want to give them extra tools. I don't want them to become lazy as they have become. This is a lazy cop's way. Now, having made that statement so you know my particular bias, how many more instances of probable cause do you think will be established simply by having the element of somebody having signed a logbook that you don't get now. How would this be the final piece needed to produce probable cause where it doesn't exist otherwise?

TOM NESBITT: It wouldn't be the final piece, Senator. It would just be one of the tools to use as that.

SENATOR CHAMBERS: Then it plays no role at all.

TOM NESBITT: Pardon me, sir?

SENATOR CHAMBERS: It plays no role at all. You're not relying on it to produce probable cause. You have other factors that do that.

TOM NESBITT: As I said, it would be just one of the tools of the way that we look at it (inaudible)...

SENATOR CHAMBERS: If that were eliminated from the bill, would you still want the bill?

TOM NESBITT: You know, sir, methamphetamine and I know you understand that has just become a tremendous epidemic in things that have gone on in society and as...

SENATOR CHAMBERS: But that's irrelevant to my questions.

TOM NESBITT: ...but if I may expound a little bit on that, as I said, we are trying to do everything we can in public safety to try to curb this and try to help and help those

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 53

LB 117

that are addicted to it. And we feel this is a tool for that to try to help us accomplish that and to accomplish the reduction of these meth labs and clandestine laboratories so that we can take our resources of investigators that are working those of being 20 percent and 80 percent of our investigators' time so we can focus on how 80 percent of the methamphetamine is being brought in the state.

SENATOR CHAMBERS: I heard you and I read along with you and all that is irrelevant to what I'm asking. Do you believe in the fourth amendment to the U.S. Constitution which protects every citizen against unreasonable searches and seizures when it comes to his or her home, papers, effects?

TOM NESBITT: Yes, sir.

SENATOR CHAMBERS: Do you believe in...

TOM NESBITT: Yes, I do, sir.

SENATOR CHAMBERS: But law enforcement often violates that constitutional provision and that's why that doctrine approved from the poisonous tree has come into being and improperly seized evidence because of a violation of the U.S. Constitution or the Nebraska Constitution which has identical language to the fourth amendment of the U.S. Constitution.

TOM NESBITT: Yes, sir.

SENATOR CHAMBERS: It's illegally seized by law enforcement. These cops know, they know when they're behaving unlawfully. They know if they have probable cause but they violate the Constitution anyway. Why should I give them another tool like this which your testimony already has established is not necessary for probable cause? Is it busybody, nosy kind of legislation that you're after where you can just go in and rummage through these logs and see who's buying this?

TOM NESBITT: Well, as I said in my testimony, and it's not only a tool for that but also it's a psychological effect for those that do produce this, I feel that it will have a deterrent on those that are manufacturing methamphetamine and having to go in and show an identification and sign a logbook. We feel that will have a deterrent on it as well

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 54

LB 117

so it's a twofold, you know, for the logbook on that.

SENATOR CHAMBERS: Okay. This new principle of psychiatry which I haven't read in any of the literature and I haven't read all of the literature. Was it first articulated by the present Attorney General of Nebraska?

TOM NESBITT: No, this law, you know, originally was in Oklahoma was the very first time...

SENATOR CHAMBERS: No, no, I meant this idea of the paranoia. That's what law enforcement people came up with. Is that what I'm to understand?

TOM NESBITT: We feel from our experience in dealing with these people, yes, sir, law enforcement.

SENATOR CHAMBERS: And the Attorney General has read this bill.

TOM NESBITT: Yes, sir.

SENATOR CHAMBERS: And he agrees with that about the paranoia and the nervousness.

TOM NESBITT: Well, he's part of the sponsorship of the bill, sir.

SENATOR CHAMBERS: If this bill doesn't go anywhere, are you telling me, and that's why I'm putting it as a question, that you're not going to be as effective as you would be with it?

TOM NESBITT: I feel, sir, that with this bill that we as law enforcement will be more effective in investigating methamphetamine laboratories, clandestine laboratories.

SENATOR CHAMBERS: If you wanted to get at one of these logbooks, is it a requirement that you get a court order to do so under the bill?

TOM NESBITT: No, sir.

SENATOR CHAMBERS: You can just walk in in uniform and tell a pharmacist, produce your logbook.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 55

LB 117

TOM NESBITT: And look at the logbook, that's correct, sir.

SENATOR CHAMBERS: And you don't have probable cause to believe that anybody who has signed that logbook has committed a crime, do you?

TOM NESBITT: Well, we would feel, and when I say we, I'm going to talk about the State Patrol okay? When we conduct investigations, obviously, we have more probable cause if we would go into that extent to seeing what the logbook would say, we would do that. I mean we're just not going to randomly run around and look at logbooks so we have...

SENATOR CHAMBERS: I don't know that.

TOM NESBITT: Well, and I know you don't know that.

SENATOR CHAMBERS: Suppose we put in the...

TOM NESBITT: I mean, I'm speaking on behalf of the State Patrol and...

SENATOR CHAMBERS: ...suppose, well, all state troopers don't obey the law. There was a case, State v. Rathjen that came down last year where one of your state troopers because he knew the state law, said you can't use a parolee as an undercover snitch, went to a person with ATF to see if he as a federal agent would help him circumvent Nebraska's law so they could use this woman as a snitch. They had a meeting for that purpose and agreed. And the state trooper was a part of it. And they used the State Patrol and there was a York police officer, and the Nebraska Supreme Court said that when the state and local law enforcement people continue to play a prominent role in these activities, they cannot use a parolee as an undercover snitch. They violated the letter and the spirit of the law. The court used the word, violated, so state troopers violate the law...

TOM NESBITT: Okay, sir.

SENATOR CHAMBERS: ...I know they do if you don't.

TOM NESBITT: I...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 56

LB 117

SENATOR CHAMBERS: You've got one named Houser right now who violated the law and you've got him sitting at a desk now. Isn't that true?

TOM NESBITT: He's been reinstated. That's correct, sir.

SENATOR CHAMBERS: Did he violate the law?

TOM NESBITT: Yes, sir.

SENATOR CHAMBERS: So state troopers do violate the law. I'm not talking about mistakes. They violate the law. Okay, I just want that clear. We don't have sinless perfection with the State Patrol. How do we know that a trooper won't go into a pharmacy and say, show me your logbook?

TOM NESBITT: I'm sure that that could happen.

SENATOR CHAMBERS: Why didn't they put...since the Attorney General participated and this is to alert him or his minion, if he has somebody here because you may not be able to answer for him. Why didn't either the Attorney General or the State Patrol's counsel say that a provision will be put in here that none of these logbooks can be obtained by anybody in law enforcement without probable cause? And the probable cause would be based on a specific individual being investigated because there's probable cause to believe that individual committed a crime. They wouldn't want that in the law, would they?

TOM NESBITT: There's going to be an Attorney General representative testifying and you can ask him that question. As far as legal counsel from the State Patrol, I have not talked to legal counsel about that.

SENATOR CHAMBERS: I'm glad somebody from the Attorney General's Office is here and with that knowledge I might only have one other question that I want to ask you. And then I won't have to put this question to everybody who might be from the patrol or police agency testifying because they know what my attitude is. If this bill is passed, you have told us that 80 percent of the patrol's time...I don't know if you just mean the patrol or law enforcement in general, has to be devoted to the 20 percent of those who

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 57

LB 117

are manufacturing meth in Nebraska and by 20 percent I meant 20 percent of the overall problem.

TOM NESBITT: That's correct, sir.

SENATOR CHAMBERS: Eighty percent comes in.

TOM NESBITT: That's correct, sir.

SENATOR CHAMBERS: But 80 percent of the patrol and other law enforcement's time goes to the 20 percent manufactured inside Nebraska.

TOM NESBITT: Um-hum, sir.

SENATOR CHAMBERS: How do they arrive at those percentages?

TOM NESBITT: After me here, there's going to be one of our clan lab specialists who will be testifying. I think he can answer that better than what I can, sir.

SENATOR CHAMBERS: Well, can you answer this question? Do you think that if this bill is passed where a person has to give identification and sign a logbook there will be a significant reduction in the manufacturing of meth in the state of Nebraska?

TOM NESBITT: I believe with the encompass of the entire bill and things, I think it will make a difference. Oklahoma has showed a significant difference in the reduction of laboratories that have been producing methamphetamines since they passed that legislation.

SENATOR CHAMBERS: Well, maybe laboratories but I'm talking about the total amount of meth.

TOM NESBITT: What will happen as I stated, it will free up our investigators so that we can work on that other 80 percent and do a better job enforcing that and then dealing with the laboratories.

SENATOR CHAMBERS: Nobody knows how much meth actually, though, is produced in these laboratories as opposed to what actually comes into the state. Are you basing it on the people you apprehend with meth and you determine the origin

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 58

LB 117

of it and that's how you get the 80 percent, 20 percent breakdown?

TOM NESBITT: That's correct, sir.

SENATOR CHAMBERS: Because the only way you could determine the total amount of meth is if you knew every place it was being produced and how much was being produced there and how much was being brought in. But you don't know either of those things, do you?

TOM NESBITT: Right, we're basing it on what we experience with those that are violating it.

SENATOR CHAMBERS: So, actually, it could be the other way around. In reality, if you knew everything, 20 percent could be coming in and 80 percent could be manufactured.

TOM NESBITT: I'll refer that to our specialist, sir, in the patrol on that.

SENATOR CHAMBERS: That's all I would have. Thank you, Colonel.

TOM NESBITT: Okay. You bet, sir.

SENATOR BOURNE: Thank you. Further questions for Colonel Nesbitt. See none, thank you. Appreciate your testimony. Next testifier in support. Welcome.

SHANE FLYNN: (Exhibit 15) Good afternoon. My name is Shane Flynn, F-l-y-n-n. I'm an investigator with the Nebraska State Patrol and currently serve as the clandestine laboratory coordinator. I'm here today to provide support to LB 117. I've been involved with drug investigations since 1997. With that history and experience, I can tell you that methamphetamine is among the most evil influences that Nebraskans face today. Unfortunately, meth is also very simple to manufacture. A small number of changes to pseudoephedrine, a common decongestant into methamphetamine, a drug that destroys lives, families, children, and communities. Aside from the addictive and dangerous properties of the drug itself are the monumental dangers of the makeshift lab where methamphetamine is produced. Law enforcement, fire and rescue personnel, innocent bystanders,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 59

LB 117

and children exposed to meth labs are under a constant threat of fire, explosion, asphyxiation, poisonous gases, corrosive liquids, and chemical burns. During my time investigating meth labs I have seen neighbors suffer burns while attempting to extinguish a burning meth cook whose lab exploded. I've interviewed children who were playing in a creek bed and found a thermos. They brought the thermos home, where their mother discovered it contained anhydrous ammonia. I've been to state parks where meth labs had been established and then discarded for someone else to discover, potentially at the cost of their own health. I've dismantled meth labs in which I've found children's toys immediately adjacent to acid gas generators. I've had friends and fellow officers exposed to substances such as ammonia, hydrogen chloride gas, ether, and acids. Some were placed on restricted duty until blood analysis indicated their systems had recovered. At the heart of the meth lab problem is pseudoephedrine. In providing the most basic explanation, pseudoephedrine equals methamphetamine. Without pseudoephedrine, meth cannot be manufactured. Attempting to control associated chemicals like ammonia, lithium, camping fuel, to name a few is futile. The only ingredient that a meth cook has to have is pseudoephedrine. Attacking any other part of the problem is like treating a symptom rather than the disease. We have taken steps to fight meth. In 2001 the Legislature passed LB 113 which restricted amounts of pseudoephedrine that could be purchased at one time. Educational programs have warned the public and children about the dangers of meth. Yet with over 300 labs reported in 2004 alone we're seeing no significant decline in the methamphetamine lab problem. The logbook piece of the legislation has proved to be an important deterrent to the paranoid meth cook looking for an easy access to pseudoephedrine. The passage of LB 117 would be a significant step toward reducing the methamphetamine lab problem in Nebraska. Thank you for your time. I'd be happy to take any questions.

SENATOR BOURNE: Thank you. Questions for Officer Flynn?
Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Officer Flynn, according to the...just curious. I don't know why, when you were talking during your testimony it occurred to me. A logbook...there's nothing in the green copy here that would

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 60

LB 117

indicate what form a logbook would have to take in a particular establishment. Are we talking like a...just a standard paper general ledger or are we talking something that an organization is going to have to get some, you know, CD-ROM to back up on files easier for law enforcement agents to access? Can you speak to that just for a second? Because here, unless I'm missing something, it's fairly vague.

SHANE FLYNN: No, sir, you're not, you're not missing anything. The actual composition of the logbook itself was not addressed. However, that's something that law enforcement would be willing to work with the pharmacies and whatever means would make it easier for them to record those names. It could be something as simple as a standardized form kept in a three-ring binder or, again, as you stated, if it was kept on some type of a CD-ROM, that would also be a possibility.

SENATOR FRIEND: And I guess one other question. The intimidation factor that we were, I guess, wondering about and discussing with Colonel Nesbitt. I'm not a psychologist either but I got to tell you, you know, and dealing with pharmacists and their pounding away and, you know, all the information in there. Do you get the feeling that that would be a little more intimidating than somebody just signing a piece of...you know, a book or a piece of paper. I mean, where you've got an assistant or somebody actually implementing, you know, what that particular person is...the information that that person is giving them in a computerized format. More intimidating, less intimidating, or just irrelevant.

SHANE FLYNN: Are we talking, sir, about the specific form of the logbook?

SENATOR FRIEND: I guess what I'm asking you is, being in the investigative, you know, angle that you've taken, you know, through your career, would it be your estimation that somebody actually having to communicate and then dealing with a computerized type of logbook would be more intimidating than just a haphazard, oh, yea, go ahead, put my name in the book. Or you don't even know if that's my name blah, blah, blah. Is there a difference based on your experience...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 61

LB 117

SHANE FLYNN: I believe there would...

SENATOR FRIEND: ...as far as the intimidation level?

SHANE FLYNN: I believe there would be a difference between those two. I think actually having to sign your name and in and with that also part of the LB itself is having to produce ID to identify, to make sure that you are that person that is signing that. Now I understand that there's always that potential of fake IDs and things like that but, again, that's another hurdle that they have to overcome in proving who they are. Again, we're talking about this as a hurdle. It's not the solve-all for the meth lab issue. There's a whole bunch of things that have to occur with methamphetamine in general to reach some specific goals with meth. In the mind of a methamphetamine user and, as I said, I've been doing narcotics investigation since 1997. I have had, I couldn't even tell you how many occasions to deal with methamphetamine users, methamphetamine salespeople, methamphetamine addicts, methamphetamine cooks across the board to one form or another. They tend to be paranoid. They tend to be delusional. They tend to be more aggressive and agitated. They tend to be more nervous. Putting yourself in that frame of mind and then asking yourself to walk up to a counter where you already have in your mind what you are intended on doing with that product is illegal, it ups the bar on where your comfort level is if you have to go up and sign your name then and actually show somebody who you are. It removes the anonymity out of purchasing the pseudoephedrine.

SENATOR FRIEND: Well, thanks, and that's all. And maybe this a line of questioning that is just not that relevant to the whole scheme of things here. But I mean to me, what we're probably going to run into is resources in the practical nature of actually somebody dealing with all of this information. And I guess what I'm trying to get at is, what would be the most intimidating aspect for a criminal element in that type of situation and what would be the most effective way to handle a logbook situation? And I guess that was where my line of questioning was going and you've pretty much answered the majority of that so I appreciate it. Thanks.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 62

LB 117

SENATOR BOURNE: Thank you. Further questions? Senator Aguilar.

SENATOR AGUILAR: Thank you for being here, Investigator Flynn. Now some of these questions I'm going to ask you are in anticipation of some testimony that may follow you so I want an opportunity for you as an expert to bring these out.

SHANE FLYNN: Yes, sir.

SENATOR AGUILAR: Can meth be made from the liquid or multi-ingredient products in pseudoephedrine?

SHANE FLYNN: Yes.

SENATOR AGUILAR: Okay. And would you like to see the liquid product put behind the counter as well?

SHANE FLYNN: I'd be happy to see liquids included behind the counter.

SENATOR AGUILAR: Okay. You talked about how many meth labs were reported in Nebraska in 2004, in your opinion, are there...do you think there's other labs out there that haven't been reported?

SHANE FLYNN: We have no mandatory reporting in the State Patrol as that relates to methamphetamine labs. I believe in the national database which is EPIC, El Paso Intelligence Center, where we place these forms or these reports, they show around 220 meth labs for the state. And I know that there are departments out there within law enforcement that are sitting on as many as 60 meth labs that they've not turned in. With those numbers in mind, we're estimating the actual numbers to be somewhere in the arena of 300 to 400 as opposed to 220.

SENATOR AGUILAR: Now you're familiar with other legislation that may be introduced as a Schedule 5 part to it. You know what that means and what's your opinion of that?

SHANE FLYNN: I would be in support of Schedule 5 as well.

SENATOR AGUILAR: And for the record, Schedule 5 restricts it to the sale in the pharmacies. Thank you, Investigator.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 63

LB 117

SHANE FLYNN: Yes, sir.

SENATOR BOURNE: Thank you. Further questions? Senator Chambers.

SENATOR CHAMBERS: Investigator Flynn, thanks for coming today. What would prevent a person from going from pharmacy to pharmacy, buying the 9 grams and giving identification and signing the book?

SHANE FLYNN: Nothing prevents that from occurring necessarily. We're not asking pharmacies to lock their doors or latch onto somebody before they can actually leave the store. But what does happen is as they sign that logbook they leave a trail then of what they are purchasing. We can't necessarily prevent them from making those purchases but A) that logbook is a mental hurdle for that person.

SENATOR CHAMBERS: But how are you going to know that one person went from store to store if you're not going to periodically go in and rummage through all of these logbooks.

SHANE FLYNN: We would...some of that information can come from informants. Some of that information can come from a traffic stop. I think there's a great deal of information that can come in that we would then use to go back and say, okay, we do think that this person is probably manufacturing methamphetamine.

SENATOR CHAMBERS: Well, if you use...

SHANE FLYNN: We've got a Walgreen's receipt here. Let's go back to that Walgreen's and take a look at how much they purchased there. And you know what? There's another drugstore right across the street there. It makes perfect sense based on how methamphetamine lab operators conduct business to then go ahead and go across the street...

SENATOR CHAMBERS: And that's how you would establish in a cop's mind probable cause to go from store to store. You found a sales slip from Walgreen's where a product with pseudoephedrine in it had been purchased and you would use

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 64

LB 117

that to go back to that drugstore and ask, how much of this was purchased? That's what you said. Right?

SHANE FLYNN: That's one potential avenue, yes, sir.

SENATOR CHAMBERS: Well, now, you know that a person couldn't purchase more than 9 grams and that's not illegal. And if merely signing the logbook doesn't produce probable cause, you're contradicting what the colonel said. You're going to use something which does not produce probable use. You're going to use something which indicated that a person abided by the law as a basis for further investigation of that person. Isn't that what you said?

SHANE FLYNN: No, sir. What I said is if they can purchase 9 grams at one pharmacy and they've also purchased 9 grams at another pharmacy and we have a variety of pharmacies in a...

SENATOR CHAMBERS: Here's what I thought you said...

SHANE FLYNN: ...in a period of time.

SENATOR CHAMBERS: ...and correct me and I'll leave this line of questioning. I thought you said if there was a traffic stop and you found the Walgreen receipt where a product with pseudoephedrine had been purchased, that would be a basis to go to that store to ask how much had been purchased. You did not say that?

SHANE FLYNN: No, I believe I did say that. But there is more to it than that.

SENATOR CHAMBERS: Well, tell me what more there is to it.

SHANE FLYNN: I'm not going to conduct a traffic stop and just based on a simple store receipt go into that place...

SENATOR CHAMBERS: Okay, so why did you mention that...

SHANE FLYNN: ...if...

SENATOR CHAMBERS: ...I wanted to see the connection between that and this chain of visits to stores that you talked about.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 65

LB 117

SHANE FLYNN: If we also have other information that would indicate that maybe that person is worth looking at for producing methamphetamine.

SENATOR CHAMBERS: Why? Because of a traffic stop. You set up the hypothetical. You said a traffic stop...

SHANE FLYNN: Yes, sir and...

SENATOR CHAMBERS: ...and I believe you. Cops will do that...

SHANE FLYNN: ...on a traffic stop, sir...

SENATOR CHAMBERS: ...and they manufacture what they think is probable cause, in court say, no it isn't. But in the meantime citizens are harassed; people are embarrassed. So I want you to explain to me how in a traffic stop where you find this receipt it gives you a basis to go to that store. Now if that's not what would happen, I want you to simply tell me, that's not what would happen. It would take more than that.

SHANE FLYNN: On a traffic stop we also have other pieces of information there. We frequently call dispatch for a criminal history. That criminal history can come back as that person having conducted similar offenses in the past. That would also add to it. If we had...

SENATOR CHAMBERS: Like what when you say similar offense?

SHANE FLYNN: ...manufacturing methamphetamine. If we had...if I just stopped a person on the street, had no other reason to suspect that they were making methamphetamine other than a store receipt saying that they had purchased two boxes because they have a head cold, I'm not going to pursue that.

SENATOR CHAMBERS: Well, let's say that...okay, you call the dispatcher and the dispatcher looks up and says this person has been charged with or even convicted of manufacturing meth. You then are going to say that a perfectly legal and lawful transaction conducted in accord with the statute gives you probable cause to go back to this store and make

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 66

LB 117

these checks when the person did nothing illegal that leads you to do that?

SHANE FLYNN: First, there's...

SENATOR CHAMBERS: This is a strategy and let me leave that...

SHANE FLYNN: ...there's not a burden of probable cause for what we're looking at for a logbook. That's something that, if necessary, could be handled through an administrative subpoena...

SENATOR CHAMBERS: And that's why I want people to see...

SHANE FLYNN: ...if we felt it necessary. I don't want to waste my time, sir, on just going down and looking at every person that may have purchased pseudoephedrine. It'd be a waste of my time and the department's resources.

SENATOR CHAMBERS: Well, having not been sequestered, you've heard the other questions and testimony. But I want people to see how simple it would be based on what you said to go rummaging in these logbooks and what kind of incident would lead a cop to think there's a basis to go rummaging. Let's say that you went back to the first store and you found out that the receipt reflected a lawful purchase, not more than the 9 grams.

SHANE FLYNN: Yes, sir.

SENATOR CHAMBERS: Then you say, there's another store over there so because there's another store and he bought some here, I have a basis to believe that he probably bought some over there too. So then you go over there too, right?

SHANE FLYNN: Yes.

SENATOR CHAMBERS: And you found no purchase but there's a grocery store catty-corner from there. You then go in that grocery store. How many stores in the vicinity of that first store would you search out through the logbooks to see if this person had made other purchases?

SHANE FLYNN: That's really impossible to say. It depends

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 67

LB 117

on what other information we have there, you know, is it somebody that we've been watching already that we need one more...

SENATOR CHAMBERS: No, we're talking about the traffic stop still where you had the information from the dispatcher. Let me ask you this. When you go to a judge and you're going to give your affidavit seeking probable cause, and you say this is based on a snitch's testimony, all you have to do is say we've used this snitch and his information or hers has been reliable in the past. You don't have to give the name of the snitch, do you?

SHANE FLYNN: That's correct.

SENATOR CHAMBERS: So you can manufacture a snitch if you choose, can't you, and tell a judge that there was a snitch when there was no informant? That can be done, can't it?

SHANE FLYNN: I don't.

SENATOR CHAMBERS: Well, the you that I'm using here is the generic you. So let's not say you, a cop. A cop can manufacture an informant where none exists and get a judge on that basis to issue a warrant. That can be done, can't it?

SHANE FLYNN: Is the potential there? Yes, sir.

SENATOR CHAMBERS: Okay.

SHANE FLYNN: Since '97 I've not seen it from any of the officers I've worked with.

SENATOR CHAMBERS: Well, you don't know. When a cop goes to get a warrant, do they come to you and say, I'm going to get a warrant and this is the snitch? They give all that information to you?

SHANE FLYNN: There's no requirement for them to give it to me but...

SENATOR CHAMBERS: Okay, so then your statement doesn't really address what I'm trying to get at. Here's what is said on the last page of this bill on page 18. The logbook

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 68

LB 117

shall be open to law enforcement agencies and may be viewed by law enforcement officers involved in drug enforcement. They don't have to have any suspicion. All they have to do is be involved in drug enforcement. It doesn't say they have to be involved in an investigation. Are you an officer?

SHANE FLYNN: Yes, sir.

SENATOR CHAMBERS: Okay. And you're involved in drug enforcement.

SHANE FLYNN: I am.

SENATOR CHAMBERS: So you have access to these logbooks. They'd have to be open to you all the time under this bill.

SHANE FLYNN: Under this bill, yes.

SENATOR CHAMBERS: And you don't have to have suspicion or anything else, do you?

SHANE FLYNN: Don't have to. However,...

SENATOR CHAMBERS: No, no, we want to go by what the law allows. Not every officer is as circumspect as you because you haven't been convicted of domestic violence against your wife and are still working for the patrol, have you?

SHANE FLYNN: No, sir.

SENATOR CHAMBERS: But there is such an officer with the patrol so not every officer obviously is as circumspect as you. And I've told you, I don't trust cops.

SHANE FLYNN: Yes, sir.

SENATOR CHAMBERS: I don't believe in giving them this authority. Those who wrote the constitutional amendments and got them adopted don't trust them either. That's why they put in the fourth amendment. That's why similar language is in the Nebraska Constitution and it's why judges have thrown out evidence because cops have violated those constitutional rights. I'm very serious about all of this and now I'm going to go to something in your testimony.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 69

LB 117

Then I'll leave you be. On the second page...oh, first of all, what is the minimum age of a person who currently can purchase one...is Sudafed a product that would have this pseudoephedrine in it?

SHANE FLYNN: Sudafed is a brand name, yes, sir.

SENATOR CHAMBERS: Right. What's the minimum age at which a person may legally purchase Sudafed right now?

SHANE FLYNN: I believe 18 but I would have to research that.

SENATOR CHAMBERS: Why would that person, could somebody 13 years old buy a jar of aspirins?

SHANE FLYNN: I'm unfamiliar with aspirin regulation, sir.

SENATOR CHAMBERS: Okay, we'll wait till somebody comes and testifies to that. You said in your testimony, we have taken steps to fight meth. In 2001 the Legislature passed LB 113 which restricted amounts of pseudoephedrine that could be purchased at one time which is being done here, right? And it didn't work then, did it? Educational programs have warned the public and children about the dangers of meth yet with over 300 labs reported in 2004 alone we're seeing no significant decline in the methamphetamine lab problem. So restricting the amount has not helped, has it?

SHANE FLYNN: In LB 113, no it didn't but there were many other restrictions there that weren't in place with LB 113. LB 113 didn't address the issue of what is frequently referred to as smurfing wherein I can go in and purchase two boxes at one store and then I can go in and purchase two boxes at another store and another and another and another until I've got enough pseudoephedrine to go and make the methamphetamine that I'm wanting. Or, the...

SENATOR CHAMBERS: And you can do that under this bill, too, can't you?

SHANE FLYNN: Potentially, yes, but again, there...with that logbook there is a means to track what is going on there.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 70

LB 117

SENATOR CHAMBERS: Did you do some studying or talking to psychiatrists about this paranoia and nervousness that law enforcement is trying to get us to base a public policy on? What training do you have that lets you know that these people are paranoid and nervous if they have to sign a logbook? Have you witnessed them in this set of circumstances?

SHANE FLYNN: The paranoia?

SENATOR CHAMBERS: Yes.

SHANE FLYNN: Yes, sir.

SENATOR CHAMBERS: When they're signing...when they're purchasing something?

SHANE FLYNN: No, sir, not when they're signing a logbook. We don't have that...

SENATOR CHAMBERS: So you're extrapolating from other circumstances to this one and saying the paranoia you witness and whatever those circumstances that are there would be manifest here. Let's say that the paranoia is manifested but the person signs the logbook and makes the purchase. What becomes of all this paranoia then?

SHANE FLYNN: It leaves the store with that person.

SENATOR CHAMBERS: Is there an expectation that pharmacists will note paranoia and nervousness and notify a cop? They're not required to do that, are they?

SHANE FLYNN: No, sir.

SENATOR CHAMBERS: So this is just something they're throwing at us as senators because we're not too bright, right? And we believe anything that somebody tells us in a uniform who is not a psychiatrist or a psychologist?

SHANE FLYNN: What...I'm not following, sir. What are you asking...what are you being asked to believe?

SENATOR CHAMBERS: About this paranoia and nervousness. You want us to spread a large net to put people's names in a

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 71

LB 117

logbook so that you can come and rummage through whenever you want to. Is there anything in this law that would stop you from writing the names and addresses of these people?

SHANE FLYNN: No.

SENATOR CHAMBERS: Do they have to write their address when they sign this logbook?

SHANE FLYNN: I believe the name and address and type of drug that they're purchasing is logged.

SENATOR CHAMBERS: And that should be open to any cop who says he is involved in drug enforcement, right? If you look at the last page of the bill, page 18, the underlying language beginning in line 1.

SHANE FLYNN: Yes, that would be open to any officer involved in drug enforcement.

SENATOR CHAMBERS: If you were not a cop, you'd be comfortable with that if it would involve you and your family having your affairs exposed to any cop in this manner?

SHANE FLYNN: Because I have a family is why I want this bill to go through.

SENATOR CHAMBERS: Well, you're a cop, you're expected to say that. But I guess I can't get you to step outside that role. Well, I'm going to make my statement so that these other people coming up know what they're going to get. These are bad bills in my opinion. We're being asked to enact bad public policy and when they bring this stuff, I don't owe it to anybody to take a little bit of time or not to ask all of the questions I have because I see a threat to the privacy of citizens. I see something to allow lazy cops to find ways to harass people. They don't have to have probable cause. They can just be curious or leave the donut shop with nothing to do and see a drugstore and say, hey, let's go in there and look at the logbook. And that can happen and I believe it will. So you know that at least one person is against this bill and for all the cops here who might think their presence carries the same weight with me that it does with a judge who will listen to a cop say my

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 72

LB 117

experience tells me that this man is paranoid and nervous. The rule of 33 is that you need 33 votes to shut me up. If they haven't got 33 votes on this bill, it's not going anywhere. And none of the ones who come after you can persuade me that all that I've said is incorrect. And whoever follows you can respond to anything that I've said and I will not take offense. And I'm going to ask them questions whether they take offense or not. If they're offended of questions they shouldn't come here when I'm on the committee. We are dealing with one of the most serious bills that I've seen with some of the most wide-ranging powers given to the police that I've seen, the greatest intrusion on law-abiding citizens that I have seen without probable cause to believe that they have done anything wrong. They're being treated as though they are manufacturers of methamphetamine. My colleagues may not have lived the kind of life where the ones they represent have been hounded and harassed by the police. We learn from experience. My experience has taught me that police should not be given this kind of power and citizens should not be subjected to these kind of indignities even if they're cops and don't know better. I protect cops but my final question to you so that you will have a chance to respond any way you want to to what I've said. Is it your belief that if this bill passes, there will be more luck with it that existed with LB 113 and next year you'll be able to tell us there's been a significant decline not only in methamphetamine labs because you don't know how many there are really. Nobody does. But in the amount of methamphetamine in Nebraska so here's the question that I'm asking you. It is your belief that that will be the case.

SHANE FLYNN: It's my belief that this bill will have a significant impact.

SENATOR CHAMBERS: And which means there will be less methamphetamine in Nebraska.

SHANE FLYNN: That is our goal, yes, sir.

SENATOR CHAMBERS: And if there's not less methamphetamine, would you agree to the repeal of this wide-ranging legislation if somehow they can get it past me?

SHANE FLYNN: I believe that a one-year time frame is not

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 73

LB 117

necessarily the end-all, be-all.

SENATOR CHAMBERS: Well, why not? You're going to be more effective at the beginning than...the further you go because the further you go, the more the bad people will learn how to circumvent you. It should have the most impact at the beginning, shouldn't it?

SHANE FLYNN: In theory, yes, sir.

SENATOR CHAMBERS: Okay. That's all that I would have. Thank you, Officer.

SENATOR BOURNE: Thank you. Further questions for Officer Flynn? Seeing none, thank you. Appreciate your testimony.

SHANE FLYNN: Thank you.

SENATOR BOURNE: Next testifier in support?

COREY O'BRIEN: (Exhibit 16) Good afternoon, Senators. My name is Corey O'Brien. I'm an Assistant Attorney General with the Nebraska state Department of Justice. I'm also on the legislative committee of the County Attorneys Association. On behalf of both agencies I am here testifying in support of LB 117. While I certainly invite all questions about the bill, I've been asked to speak primarily about three other provisions in the bill. Certainly at the end of my testimony or at any time I will be willing to answer questions about the pseudoephedrine restrictions that have already gained much questioning by this committee. I, however, would like to talk about the three other provisions of the bill that are, in my opinion, designed to combat the methamphetamine problem that has inundated Nebraska over the past really six or seven years. There are defining methamphetamine as an ultrahazardous drug, exceptionally hazardous drug, making it on the same playing field as cocaine and heroin. Certainly looking at the lives that are destroyed as a result of methamphetamine, the minds and bodies that undergo serious physical harm as a result of this drug, it is easy to see why it, in fact, is an exceptionally hazardous drug on par with heroin and cocaine. Additionally, this bill increases penalties and equalizes the penalties for methamphetamine trafficking offenses. Those include delivery, possession with intent to

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 74

LB 117

deliver, and manufacture of methamphetamine with those that already exist for cocaine. As a prosecutor, it has always been unsettling that we have decided to have penalties for the same type of activity that have an unequal result. And given the fact that methamphetamine is such a rampant issue from one corner of this state to the other corner of this state, we believe that it will be effective in combating the trafficking situation within Nebraska to enhance those penalties as we did with cocaine. Finally, this bill also enhances people...enhances the sentences for people that possess firearms during the commission of a drug trafficking offense. It puts it on the same playing field as someone that commits a drug trafficking offense in a school zone, someone who delivers or manufactures methamphetamine in a school zone. Their penalty will increase by one class as a result. While we already have a law that deals with trafficking and carrying a firearm and conducting that activity, it is on the same playing field as someone that carries money under 28-416 sub. 16. The penalty is the same. It's a Class IV felony. We are asking that, this has real serious implications for the safety of the public and for law enforcement, those that possess a firearm more so than people that simply possess money during a drug trafficking offense. For those reasons, we'd ask you as we continue to find support for and answers to the methamphetamine problem in this state that we have support for LB 117. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. O'Brien?
Senator Chambers.

SENATOR CHAMBERS: Mr. O'Brien,...

COREY O'BRIEN: Yes, sir.

SENATOR CHAMBERS: ...when we get to the firearm provision, it says, anybody who commits a violation of subsection 1 would have this enhanced penalty if they happen to have a firearm at the same time.

COREY O'BRIEN: Yes, sir.

SENATOR CHAMBERS: That deals also with the person who possesses with intent to distribute a counterfeit controlled substance, you're aware of that?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 75

LB 117

COREY O'BRIEN: Yes, sir.

SENATOR CHAMBERS: You said you would answer other questions about the bill.

COREY O'BRIEN: Yes, sir.

SENATOR CHAMBERS: Did you have or the Attorney General's Office, any part to play in drafting this legislation?

COREY O'BRIEN: I collaborated with members of the Governor's Office, the State Patrol in drafting this.

SENATOR CHAMBERS: So you're familiar with the bill, in other words, besides those three provisions?

COREY O'BRIEN: Yes, Senator.

SENATOR CHAMBERS: Okay. Would you turn to the last page 18, if you have a copy of the bill?

COREY O'BRIEN: I actually handed my copy to the page. Thank you. Page 18, Senator?

SENATOR CHAMBERS: Yes, we're dealing with this logbook. The logbook shall be open to law enforcement agencies and may be viewed by law enforcement officers involved in drug enforcement. Now you are a practicing attorney. Do you see anything in there that requires reasonable suspicion, probable cause, or any basis whatsoever as a precondition for a law enforcement officer involved in drug enforcement to have access to these logbooks?

COREY O'BRIEN: Based upon the plain language used and my plain reading of that provision, I do not see any need for reasonable articulable suspicion or probable cause.

SENATOR CHAMBERS: Would you happen to know if there is a minimum age for a person to purchase Sudafed right now? It's an over-the-counter...I mean, you know, you can just go in and buy it.

COREY O'BRIEN: I don't believe that there is any restriction other than maybe at the pharmacist's discretion

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 76

LB 117

or the particular store policy as to whether or not they will sell to someone under a restricted age. But there's nothing in the law that I know of that would restrict someone from purchasing pseudoephedrine right now in Nebraska.

SENATOR CHAMBERS: I'm not aware of anything either but I've been doing it in a question-answer format. Based on what this bill says, a person who is going to make a purchase...if this should become law would have to have either a driver's license or a state identification card so that meant if a person were not at least old enough to get the driver's license then...because I don't know how many people younger than that would get a state ID, those who currently can legally purchase this could not legally purchase it after this bill passes. Wouldn't that be a possible effect of it?

COREY O'BRIEN: That would be possible, Senator. I guess it probably wasn't envisioned that persons that were under the legal driving age would be out there buying pseudoephedrine in the quantities that we're talking about but it certainly is possible.

SENATOR CHAMBERS: Well, you can only get 9 grams.

COREY O'BRIEN: Correct.

SENATOR CHAMBERS: So if a parent sent a child to the store to get it, that can be done now but it wouldn't be possible to be done if this bill were law, would it?

COREY O'BRIEN: I don't believe...

SENATOR CHAMBERS: If the child didn't have a driver's license or state identification card.

COREY O'BRIEN: I believe that the law would restrict that.

SENATOR CHAMBERS: Would you say that this law is broad in its scope and sweep?

COREY O'BRIEN: In terms of the logbook itself or in terms of the entire bill?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 77

LB 117

SENATOR CHAMBERS: And the restrictions that would be placed which are not placed on people who currently can legally make these purchases, who would not be able to do so if this became law.

COREY O'BRIEN: Since the law would apply to any purchaser of pseudoephedrine regardless of whether it was for legitimate or illegitimate purposes, I guess, the answer would be yes, that it is very broad.

SENATOR CHAMBERS: And it would exclude people who can legally make the purchase now from purchasing if it passed, the ones that I described? Okay.

COREY O'BRIEN: That's fair, Senator.

SENATOR CHAMBERS: Is it possible for a 15-year-old child to be emancipated in Nebraska? If a person gets married,...

COREY O'BRIEN: I believe that is possible. At least I know there's a bill pending. I'm not really sure whose but...

SENATOR CHAMBERS: No, I meant right now, if a woman is married at 15 with parental consent or a young man with parental consent, can they get married at 15 now legally?

COREY O'BRIEN: Since I don't deal with juvenile issues on a routine basis,...

SENATOR CHAMBERS: Oh, okay.

COREY O'BRIEN: ...I would probably be the worst source to answer that so.

SENATOR CHAMBERS: Okay. If they can, then they could not purchase it on their own even if they have children who might need it, could they? A child?

COREY O'BRIEN: That is very possible.

SENATOR CHAMBERS: Because that might be why they had to get married. Now, I'm not going to grill you like I did the others because you're not a law enforcement person so I'm not even interested in asking you those kind of questions. So I'm trying to keep them in an area where you might feel

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 78

LB 117

comfortable responding. Why was this portion about the firearm included in this bill?

COREY O'BRIEN: Senator, the entire bill is a part of an ongoing effort that this body, my boss, the Attorney General and the governor have had ongoing for the past several years. I was hired in 2002 as a result of this body's foresightedness in terms of dealing with some prosecutions of methamphetamine crimes throughout the state. This bill is similar in that it is a continued response both in terms of supply and demand to try to do something in order to effectively combat a drug crisis like no one has ever seen.

SENATOR CHAMBERS: And I'm not disputing any of that about how horrible meth is but I'm still looking at the rights of citizens.

COREY O'BRIEN: Sure.

SENATOR CHAMBERS: And since you have a copy of the bill, would you turn to page 15 because this is where we get right to the possession of the firearm?

COREY O'BRIEN: Okay.

SENATOR CHAMBERS: Okay. Any person knowingly or intentionally possessing a firearm, how can a person intentionally possess something without knowing that he or she possesses it? Should they put the conjunction and instead of the disjunctive or?

COREY O'BRIEN: It would probably be appropriate.

SENATOR CHAMBERS: But do you see what I'm saying?

COREY O'BRIEN: I do.

SENATOR CHAMBERS: Okay. And I'm not trying to nit-pick. I just want to ask your opinion on that and that's all that I will ask of you. Thank you.

COREY O'BRIEN: Thank you.

SENATOR BOURNE: Thank you. Further questions? Senator Aguilar.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 79

LB 117

SENATOR AGUILAR: Yeah. I just wanted to do a little follow-up on the path that Senator Chambers was taking there. When he asked you about the possibility of an emancipated person going in and buying, say for instance, Sudafed for their children if they were sick. In your opinion, don't most people use the liquid form for children? Isn't that specifically what it's made for and that is not in the restrictions in this bill?

COREY O'BRIEN: Honestly, I do not have children, Senator (laughter). But it is my understanding from my colleagues that do that liquid form is preferred for children as opposed to the starch tablet or the multi-ingredient tablets.

SENATOR AGUILAR: So as far as this bill is concerned, they could still buy that product for their children in that form.

COREY O'BRIEN: As it is, that is part of the response in terms of trying to give alternatives. Availability of pseudoephedrine without the necessity of having to show ID and be subject to signing the logbook so, yes, that is that portion, Senator.

SENATOR BOURNE: Thank you. Senator Flood.

SENATOR FLOOD: I, too, am following up with regard to the section on page 15, beginning on line 24 with regard to the possession of a firearm. You were sharing with me before this hearing a situation that happened in my district of Madison County where an individual was possessing a firearm. Do you recall that conversation?

COREY O'BRIEN: I do and that was relayed to me by members of the State Patrol in which they had a rather large methamphetamine laboratory that they took down in I believe Madison County outside of Norfolk in which when they took the individual into custody, he was placed into an ambulance and had a loaded firearm in his waistband. That is something that we see, not only just specifically from methamphetamine but, frankly, most traffickers, they are trying to protect themselves from what we call getting jacked or getting robbed. And they escalate the situation.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 80

LB 117

They pose a very real danger not only to fellow drug dealers, fellow drug abusers but to those of us in the public who are innocent members of society who may, incidentally, get in the way.

SENATOR FLOOD: Would you make a distinction between a subject that is not under the influence of any controlled substance, a subject that is under the influence of alcohol and a subject that is under the influence of methamphetamine if all three of them have a gun? So I'm asking you essentially if an offender that, or if a subject that is under the influence of methamphetamine and he has a gun. Does that present a more dangerous situation because of the paranoia and the schizophrenia than possibly somebody that's simply under the influence of alcohol? And I would assume, obviously, would be more dangerous if you were not under the influence of anything?

COREY O'BRIEN: Since I am not a clinical professional or a law enforcement officer, it would be just my opinion that the paranoia that I have read about in journals that I read on the subject of methamphetamine shows the extreme measures the likes of which I have not seen documented anywhere else in the way that people are willing to protect their methamphetamine habit from preventing going to jail and to allow them to continue to get high. Alcoholics and other drug users that I've seen and I've seen documentation on usually are not in nearly the desperation state as I would describe it as we typically see with meth addicts and people that traffic in methamphetamine to stay out of jail. I don't know what the cause of that is, whether it is the chemical, the pharmacology involved in the methamphetamine itself, or it has something to do with the character makeup of the users. But it does seem to be a phenomenon that is unlike any other drug we've seen.

SENATOR FLOOD: That incident that occurred in my district, in Madison County, was that news broadcast around the law enforcement community in this state and through the county attorney's offices and does that have your full attention?

COREY O'BRIEN: Unfortunately, it happens every day that I'm on the job, every day that these law enforcement officers are on the job. If it wasn't for my participation in this bill with some of the officers involved I probably would

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 81

LB 117

have never heard of it outside of Madison County. But the situation you describe and that they took down, quite frankly, has happened in every county in the state and it is absolutely shocking.

SENATOR FLOOD: Thank you.

COREY O'BRIEN: Thank you.

SENATOR BOURNE: Thank you. Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Mr. O'Brien, this bill...is it safe to say that there are quite a few states, while this may not mimic a lot of things that are going on legislatively in other states, it would come fairly close. I mean, we're trying to go down a certain path here where some of these things have been done before. Would that be a fair statement?

COREY O'BRIEN: It would be fair to say that we are not trying to reinvent the wheel...

SENATOR FRIEND: Okay.

COREY O'BRIEN: We're trying to use this bill that was first started in Oklahoma, that has at least initially shown very positive results.

SENATOR FRIEND: Okay,...

COREY O'BRIEN: And I do know of one case, Senator, in which individuals from Oklahoma did come up to Omaha to buy pseudoephedrine so that they could transport it back to Oklahoma. So that is part of the concern that we have.

SENATOR FRIEND: Okay, and with your experience, I want your opinion on this and this is theory. Now I don't want anybody in the room freaking out about this, okay? We aren't reinventing the wheel here. Why couldn't we reinvent the wheel? And I want your opinion on this. We're chopping around the corners here and we've got arguments going around this table. What if you just said, anything...pseudoephedrine is a huge problem in itself and anything that includes pseudoephedrine. Go grab a law and rewrite it and get 33 votes if you need it to require a

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 82

LB 117

doctor's prescription for anything pseudoephedrine in it. Now, okay, relax. Now, we're not reinventing the wheel but maybe we should. All I've heard is testimony about how this is an absolute scourge, okay? Now, the funny thing is, Senator Flood nudged me and said, oh, the doctors will love you. Well, I don't really care. I mean if this is a scourge, if this is a huge problem more than likely in the next couple of years if a bill like this gets passed, cold medication will not include pseudoephedrine anymore. Right or wrong, in your opinion?

COREY O'BRIEN: Based on everything I've read and I've heard that the pharmaceutical companies are scrambling for alternatives to pseudoephedrine right now. In fact, there's federal legislation very similar to the one that we have pending before this body in LB 117 that would force their hand even sooner.

SENATOR FRIEND: Bingo. So what...I would agree. So what would happen if Nebraska actually pioneered something instead of watching California or Illinois or some other state actually take the bull by the horns and Nebraska said, this is really an interesting idea. And they're moving in that direction anyway. The industry is moving in that direction anyway. How many people are going to actually go to the doctor and get a prescription with something with pseudoephedrine in it? No, they're going to the rack and they're going to find something with something different. Would that be a fair assessment at this very moment because you can do that right now, correct?

COREY O'BRIEN: Correct. And, Senator, all of us that have come before this body and that I believe that are going to come back even in opposition, they all know that this is a problem. I think that we're all on the same page and we are all looking for solutions to this problem pseudoephedrine and whether or not it's something new or something that's tried and true. We are open to it as long as it accomplishes the mission and that's getting more methamphetamine off the street.

SENATOR FRIEND: Do you think somebody that's going to cook some meth would be paranoid if they had to go get a doctor's prescription for pseudoephedrine?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 83

LB 117

COREY O'BRIEN: Yes and I do believe that they'd also be paranoid to go into a pharmacist and ask them for a box of it similar to, you know, condoms placed behind the pharmacy counter and having to go in and ask for those. I mean, people are embarrassed to do that in and of themselves. Meth users and meth manufacturers, they wear their crime usually on their face and in bodies. They physically take on a characteristic that makes them very identifiable and so they might be afraid of being detected by the pharmacist.

SENATOR FRIEND: I guess the final thing that I would say is, any other drug that has either indirectly or directly those kind of destructive purposes would...in your opinion, wouldn't it require a doctor's prescription in order to procure?

COREY O'BRIEN: The pseudoephedrine in and of it...

SENATOR FRIEND: Or is that a canned leading question?

COREY O'BRIEN: ...the pseudoephedrine in and of itself is harmless when it is used for its intended purpose. And when...

SENATOR FRIEND: And...

COREY O'BRIEN: ...and when it's not, it is an absolute devastating destruction to our society. And so, yes, in those limited cases, those who don't use it in that way.

SENATOR FRIEND: So if there were any other type of drug that somebody was using in these destructive purposes, well, that's all. Thank you.

COREY O'BRIEN: It's one of the reasons why we put ephedrine behind the counter so...

SENATOR FRIEND: Thank you, Mr. O'Brien, I'm just...thank you.

SENATOR BOURNE: Thank you. Further questions?

SENATOR CHAMBERS: I have one.

SENATOR BOURNE: Senator Chambers.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 84

LB 117

SENATOR CHAMBERS: If I may, Mr. Chairman.

SENATOR BOURNE: Okay.

SENATOR CHAMBERS: Thank you, sir. Mr. O'Brien,...

COREY O'BRIEN: Yes, Senator.

SENATOR CHAMBERS: When we look at an enhancement provision such as the one being offered in this bill, it would be necessary to have a jury make a determination about the existence of this factor that's going to enhance the penalty above what the law requires currently for that offense. Is that true or false?

COREY O'BRIEN: Given the recent Supreme Court case, having to deal with the federal sentencing guidelines and enhanceable offenses, it is very likely that they would unless the defendant admitted to the possession of the firearm. I don't know necessarily that it's a factor that enhances sentence but I think it's an element of the crime itself that they must be in possession of a firearm during the commission of a trafficking offense. And it's not a factor being used that does not need to be proven beyond a reasonable doubt at some point in time in order to enhance the sentence. So I think it would have to be...it's an element of the crime itself rather than an enhancement of the sentence.

SENATOR CHAMBERS: Okay. A person that I know had an injury and was incapacitated but needed pain pills and had a prescription. And I took the prescription to Walgreen and I guess they even recognized me but I went inside and so they looked at the prescription. Then they looked at me. Then they took it over to some other person and they looked at it. Then they called for two others and there were three or four people looking at it so I said, you don't think that's a valid prescription, why don't you call the doctor? Well, well, instead so I just took it. I said, well, I will have the prescription filled someplace else. I took it to a Walgreen's in a black community, presented it, and it was filled. Now, that's with a prescription. If they can create a set of circumstances where everybody has to sign this log, could there be ordinary citizens who because they

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 85

LB 117

know this is being done because criminals get this product? They could manifest some nervousness or discomfort. You mentioned about asking for condoms. Well, not everybody is embarrassed by that. Some people flaunt it. But if the ordinary citizen knows that this is in place because criminals do this, might some of them be nervous and uncomfortable because they are going to have to sign this log and produce identification?

COREY O'BRIEN: That is possible.

SENATOR CHAMBERS: As policymakers, could you...no, I won't put it like that. I'll make a statement, then I'll leave you because I don't want you to have to answer a question. As a policymaker, I will not put ordinary citizens in a set of circumstances where when they're purchasing a legal product they can be made to feel like a criminal, where they have to prove in America that they are who they say they are and write personal information in order to purchase a product which is not a controlled substance. Which, as you pointed out, properly used is not even harmful. In fact, it's a medication. This bill has too much in it and too much weight to carry so when you see the Attorney General he will understand this if he's not watching. Tell him that the rule of 33 is in effect on this bill. Then he can get busy trying to round up 33 votes. That's all that I have.

SENATOR BOURNE: Mr. O'Brien, can you think of another situation where a merchant, a retailer, a wholesaler, some entity keeps some form of a logbook that the police or law enforcement would have access to?

COREY O'BRIEN: Senator, I do know of a bill that the Unicameral did pass, I believe, a couple of years ago and it also had to deal with methamphetamine. I don't deal with the bill on a fairly regular basis but it has to deal with the sale of crystalline iodine that's used in one of the production methods of methamphetamine. In that requirement, people who sell crystalline iodine which is normally used by veterinarians for horses, must, in fact, submit documentation, documenting the sale, the amount and things of that nature. I believe it's 28-452 is the bill but that's the only recollection I know of at least offhand where a merchant is in fact required to submit a form in terms of an otherwise lawful purchase or sale.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 86

LB 117

SENATOR BOURNE: Thank you.

COREY O'BRIEN: Thank you.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: Just one quick question. Let's...use your imagination here a lot and if I were 21, 22 years old and I went to buy a six-pack of beer would I not probably have to show my identification?

COREY O'BRIEN: I'll use my imagination and say yes.

SENATOR AGUILAR: Thank you.

COREY O'BRIEN: Thank you.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: This is getting preposterous. In the law that you mentioned, you said the one who sells this product has to document the sale. Does it say that the purchaser has to identify himself or herself, sign a logbook and give name and address or is it on the merchant?

COREY O'BRIEN: Since I do not see the method of crystalline iodine used in terms of meth manufacturing that often, I've never used that bill. I do know it exists.

SENATOR CHAMBERS: But it...

COREY O'BRIEN: And it may require them to identify themselves. I cannot recall offhand but it may, in fact, do that.

SENATOR CHAMBERS: But the substance is not one that an ordinary family would use as would be the case with Sudafed.

COREY O'BRIEN: But it has legitimate purposes...

SENATOR CHAMBERS: But it wouldn't be that widely used. It's not something an ordinary person is going to walk in off the street and buy along with their bread, milk, and everything else.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 87

LB 117

COREY O'BRIEN: Probably not on an everyday basis, Senator.

SENATOR CHAMBERS: If a person walks in and has to show identification in order to buy beer, does he or she have to sign a logbook and give address in addition to that?

COREY O'BRIEN: Not that I know of.

SENATOR CHAMBERS: Me either. So that's totally irrelevant.

SENATOR BOURNE: Thank you (laugh). Further questions (laughter).

SENATOR FLOOD: You do have to sign a logbook to purchase a keg in this state, don't you?

COREY O'BRIEN: Since I haven't bought a keg since I was in my early twenties (laugh), I...

SENATOR FLOOD: Well, let me inform you that you do have to (laughter) sign a logbook to purchase a keg.

COREY O'BRIEN: Thank you, Senator.

SENATOR BOURNE: Thank you. Next testifier in support?

SENATOR CHAMBERS: And (inaudible) that's irrelevant too because not everybody can buy liquor legally.

SENATOR BOURNE: They'll come around. Welcome. Ready.

MARVIN VAN HAAFTEN: (Exhibits 17, 18) I am Marvin Van Haaften and I'm the director of the Governor's Office of Drug Control Policy in Iowa. My wife just calls me Czar rather than use that whole title so you can do the same. It's good to be here in Nebraska. I've had some good correspondence on pseudoephedrine issues with your governor's office and other people in this state. What I'm handing out is a meth lab map of Iowa county by county. We're presently at 1,473, I believe. That will go up for a couple of months as law enforcement continues to report. Iowa's two, three, four, and five in the nation and that's great if you're in the sports arena. It's not good when you're in the meth arena. We're number two in the nation in

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 88

LB 117

per capita, meth labs per capita. Only Missouri leads us. We're number three in the sheer number of meth labs. Missouri, Tennessee, and then Iowa has third place in the sheer number. We're number four in the nation, unfortunately in the number of people in treatment with their primary drug of addiction being methamphetamine. And just this week I found out we are number fifth in the nation in people in treatment with their primary drug of addiction being methamphetamine who smoke it. I commend your two senators, Senator Nelson and Senator Hagel along with Senator Grassley and Senator Harkin from Iowa who signed on as cosponsors to Senate 103, a bill in the United States Senate. It's called the Combat Meth Act of 2005 and that is a Schedule 5 bill. It would make all pseudoephedrine as Schedule 5. It also has a requirement for keeping of a log and in Iowa we are already starting an electronic prescription drug monitoring grant as 17 other states are to keep track of OxyContin, Hydrocodone, Percocet, Percodan, all the narcotic painkillers, opiate painkillers. This act recalibrates the existing prescription drug monitoring programs in states and allows it to also track the sale of pseudoephedrine. And it also coordinates it so it will be the same database that all the states in the United States have if this passes. This is proposed. There's an identical national bill in the House and our congressmen, one of the congressmen has already signed on, House File 314. It's an exact mirror of this. So nationally, your senators have linked hands with our senators and I commend you of that. What's going around in addition to that meth lab map is a kind of a chemical description of pseudoephedrine and methamphetamine. That comes from Dr. Lonnie Wright in Oklahoma and also Dr. Sandy Stotenu (phonetic) from our lab. As flour is to bread so pseudoephedrine is to meth. You'll notice there's only one oxygen molecule different. That is why you go after that precursor. You have to have it. If you're in Mexico you got to get it from China or Thailand, somewhere. If you're a super lab in California, you got to get it. In Iowa we have a law, you're limited to two packages, single active ingredient pseudoephedrine. Thirty-two percent of our meth labs were multiple ingredient when that was passed. Right now 66 percent of our meth labs are multiple ingredient and we are about 200 labs more than last year. Our law just drove them from single to multiple. You can use multiple ingredient. You just dump it into anhydrous ammonia and use

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 89

LB 117

it. The pharmaceuticals will tell you, you can't extract pseudoephedrine. Cooks don't extract it. They throw it in anhydrous ammonia and go. Multiple ingredient doesn't matter either. So what if acetaminophen comes through? When you put it on a piece of aluminum foil, hold a match under it, and smoke it...remember, Iowa is number five in smoking meth, you get all the benefits of methamphetamine leaving the acetaminophen and so behind. It's a cool smoke. Limits don't work. Missouri has some of the strictest limits in the nation and they're the highest in meth labs. My light is out and I'm not even close to being through so I open myself up to you folks.

SENATOR BOURNE: (laugh) Thank you. Questions? And I didn't catch your name, sir, I'm sorry.

MARVIN VAN HAAFTEN: It's Marvin and it's a Dutch name from Pella, Iowa. The last name is V-a-n, Van, Haaften is H-a-a-f-t-e-n. Pella windows come from there. That's our claim to fame.

SENATOR BOURNE: Thank you. Questions? Senator Foley.

SENATOR FOLEY: Thank you for coming all the way from Iowa and maybe...

MARVIN VAN HAAFTEN: I enjoyed it.

SENATOR FOLEY: I think you were cut off mid-thought there. Why don't you just complete the thought that you had there as you were making it?

SENATOR BOURNE: See, nobody can say that this is not a kind committee (laughter).

MARVIN VAN HAAFTEN: Well, I need to tell you last year I coordinated with Oklahoma. Iowa and Oklahoma had this wonderful vision, we were going to introduce Schedule 5 together. Oklahoma lost three troopers; they have Schedule 5. We didn't. We passed single active ingredient. This year I was going to go with Schedule 5 and do like Oklahoma, leave liquid gelcaps on the counter. Our chemists about a month ago and I can send you that documentation, took liquid gelcaps, just put them in anhydrous ammonia, let them dissolve, no grinding, didn't have to strain anything

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 90

LB 117

through a coffee filter; 25 percent yield, 75 percent purity. Just this Monday our chemists at the DCI Crime Lab and this is documented by the DEA Laboratory and I think your folks here in law enforcement have that report too. Took Nyquil, Dayquil, seven liquid ingredients basically, 25 percent yield, 75 percent purity. You can make meth from everything out there. That was news to me just this week. We have introduced Schedule 5 I believe and the governor believes we have to allow some access. We're not going to do liquid gelcaps because it's easier to make meth from liquid gelcaps than it is the other pills. We don't have a bill yet. What I handed out to the lobbyist and our ranking members of the House and Senate is a proposal to allow retail stores to carry on their shelves 360 mg. pseudoephedrine products or less. That allows a four-ounce bottle of what a child needs, Trimectrin (phonetic) or whatever. It also is more than a day's supply of an adult. We're going to allow them to purchase up to two so 720 mg. is what is being proposed. I don't know what the law will be because it's got to make it through our House and Senate. We're going to keep a log behind the counter or locked. We're going to show an ID and that's basically it. The Schedule 5 obviously we're limiting to 6,000 mg. or 6 grams, a little tougher than Oklahoma. I've heard 9 grams is what Oklahoma is. We looked at a family of four, Dad, Mom, and two juveniles. If they all had a cold for a solid week, the juveniles a week, each juvenile a week, each parent a week they would need, according to our Iowa Board of Pharmacy Examiners a little over 5,000 mg. We just chose to make convenient packaging work and set it at 6,000 mg. That's kind of where we're at in Iowa. But the Missouri Senate Judiciary Committee just passed out two nights ago Schedule 5 so it is out of the Senate Judiciary in Missouri as we speak. And maybe just one comment. Our...and Senator Chambers, I understand what you're saying. I'm not a policeman so don't ask me policeman questions (laugh). Our senate...actually, no, it was our house Public Safety Committee, 21 members on there, had two meth cooks come in and testify. And you could question the wisdom of that but I learned from that. I found it real interesting the first person, a Bruce Crosier, Class C convicted meth cook, cooked for four years, two times a week for four years, over 400 meth labs, never got caught. The one that shows up on your map, that almost should be a hundred so I think Iowa is vastly underreporting but he said he would go to a clerk,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 91

LB 117

buy his \$3.99 pseudoephedrine, cause a big scene, and his four partners would steal everything. They asked him over four years how much was stolen. He said well, I never stole any. I always purchased mine. Well, yeah, he was doing the diversion much like gypsies would do in the older days. He estimated 90 percent was stolen. A Kenny Mervin from Waterloo, Iowa, said the same thing only he had it even slicker. He would only go to retail stores where he knew the clerks were users themselves. They would set a box of pseudoephedrine by the door, enough for one cook. He would cook the meth, come back and pay them off in meth. I had not learned that before so there's some wisdom if you can find good credible people who have done the cooking to give testimony and I did enjoy that. They were asked, would you show an ID, would you go to a pharmacy, would you comply with recordkeeping with a signature? So both of those gentlemen said no, we'd have to steal it. So that's...I just heard that sitting in the Iowa House of Representatives Public Safety Committee. In Iowa, we've had wonderful results. We had a codeine addiction. Codeine was made a Schedule 5 a number of years ago. In the spring of '04 my wife had a terrible cold and codeine cough syrup I have heard is excellent, although it was very addictive. So I stopped at a pharmacy myself, asked for codeine. It was in Des Moines. He said, your driver's license says you're from Pella which is 44 miles away and I says, yes, but I drive by here, playing it along a little. He did look at my driver's license over very closely, wrote my name in a log. I went home with a bottle of codeine. Now I recall when we had the codeine addiction it was horrible. Grocery stores were finding empty bottles in parking lots. When I talk to treatment people and as the drugs are, I get to look at treatment prevention and enforcement. Occasionally, they will see someone addicted to codeine but it's extremely rare in Iowa today. In 1977 ephedrine was being used to make meth. We've had a ten-year scourge of this meth problem. Ephedrine was made Schedule 5. Right now our...last year our crime lab analyzed 906 methamphetamine labs. Seven were codeine; all the rest were pseudoephedrine. Again, ephedrine was made Schedule 5 in '97. Less than 1 percent of all the meth labs in Iowa are ephedrine. I think that works. And then as I talk to Oklahoma who successfully was able to pass Schedule 5 and we weren't, I see a tremendous reduction there and compare it to Iowa's experiences with codeine and ephedrine.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 92

LB 117

SENATOR CHAMBERS: Excuse me.

MARVIN VAN HAAFTEN: Yes.

SENATOR CHAMBERS: I'd like to ask you a question or two.

MARVIN VAN HAAFTEN: You certainly can, Senator.

SENATOR CHAMBERS: When we are told about reductions, are we being told that there is a reduction in the number of meth labs operational or the amount of meth that is in the state? And if they say it's the amount of meth in the state, what are they comparing it to and how do they know?

MARVIN VAN HAAFTEN: We are not looking at meth in the state. We are not looking at that. Our children are dying. I have a brochure here where a 14-year-old died...

SENATOR CHAMBERS: I don't have any doubt but so that we can get on...

MARVIN VAN HAAFTEN: So we are looking just at meth labs in Iowa and we are just looking at reducing those meth labs. Earlier today I heard an 80/20 formula mentioned.

SENATOR CHAMBERS: Um-hum.

MARVIN VAN HAAFTEN: I asked our Dr. Stotenau (phonetic) in our crime lab, what percentage of methamphetamine that you test is homegrown, is made here in Iowa? And what percent of your methamphetamine in Iowa is the low percentage rate, the P2P labs or whatever in California, Mexico and so, interesting enough, it's an 80/20. So we in Iowa recognize 80 percent comes into Iowa; 20 percent is causing our citizens all the fear and so in their communities.

SENATOR CHAMBERS: So then that could be a formula that was established someplace and then others...other law enforcement agencies would just adopt it without having undertaken any study to determine if that's the case and it's just as a rule of thumb stated. But here's what I want to ask you. You indicated that the two cookers that you had said they would not comply with the law if they were required to sign a log and show identification. Is that

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 93

LB 117

true? Is that what you said?

MARVIN VAN HAAFTEN: I think the state representative asked them the question, if you had to go to a pharmacy, sign your name and show ID, would you have bought your pseudoephedrine there? It was in answer to a state representative's question and they said no.

SENATOR CHAMBERS: And they said no. That was...how many cookers do they have in Iowa? If you would estimate. Do they have more than a hundred?

MARVIN VAN HAAFTEN: Oh, yes, I would say ten, fifteen thousand.

SENATOR CHAMBERS: Well, if you had ten or fifteen thousand people doing something. Would the answer or the experience of two out of fifteen thousand, could you extrapolate from that as it applies to the other 14,998?

MARVIN VAN HAAFTEN: You have to be real careful because these are unscientific polls. I toured the Newton prison system where the drug treatment program is and I was able to talk to meth cookers there. I also was at Mitchellville, Iowa, where 44 women are undergoing the nine-month long meth treatment program there. But at Newton, I didn't ask Schedule 5 in a pharmacy but I asked, would you show an ID and sign a logbook to about, I think there were six people that were convicted in prison of manufacturing meth. Those six told me, no, they would not show an ID and sign a name.

SENATOR CHAMBERS: Is there...

MARVIN VAN HAAFTEN: That's not scientific. That's just...

SENATOR CHAMBERS: Right. Is there a requirement in Iowa now that people sign a logbook and show ID or did you say they're working toward that?

MARVIN VAN HAAFTEN: If we pass Schedule 5 like we did codeine and ephedrine, they would have to go to a pharmacy. Our Iowa law, I believe, parallels the federal guidelines and that says if the pharmacist knows you, you don't sign anything. He just gives it to you. If the pharmacist does not know you then he is to require identification. It

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 94

LB 117

doesn't say driver's license, it just says identification. That could be a credit card perhaps. I don't know really how they interpret that. And a log is to be kept. When I bought my codeine he did write my name right off the address and so on my address I observed on the log that pharmacist.

SENATOR CHAMBERS: But with reference to what we're talking about, it's not required or is it required? Let's say the pharmacist doesn't know the person. It would be required that everybody sign a log and produce identification of some kind. Is that what the law in Iowa is now?

MARVIN VAN HAAFTEN: It is required that a log is kept. It does not say signature. It requires a log being kept, name, address.

SENATOR CHAMBERS: So the person could just say whoever they want to say they are and that's what would be written down.

MARVIN VAN HAAFTEN: I inquired and that is the federal guideline, yes.

SENATOR CHAMBERS: Okay. Now if...what these few people that you talked to really can be representative of what the cooker would do or not do and the requirement is there that you produce the ID and sign, then the only ones who will have to do that are the legitimate purchasers, the way it breaks out. Isn't that true?

MARVIN VAN HAAFTEN: The only...

SENATOR CHAMBERS: But the cops would say, well, it's deterring these others from getting it this way. But from what you said, they will find a different substance or a different way to get it. Is that true?

MARVIN VAN HAAFTEN: I think when you hear the meth cooks that have cooked for four years, say 90 percent of it was stolen, yes, I think I would have to say they will be very resourceful.

SENATOR CHAMBERS: And if it was very rigid and somebody didn't want to go to another state they might begin to do stick-ups in pharmacies to get the Sudafed.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 95

LB 117

MARVIN VAN HAAFTEN: I have been asked that and that did concern me and so I called Oklahoma, wondering what has happened since April of 2004. What I can gather from Oklahoma, they have not had one pharmacy robbery or burglary as it relates to pseudoephedrine yet.

SENATOR CHAMBERS: Then the number of labs has diminished drastically in Oklahoma?

MARVIN VAN HAAFTEN: I believe it's 50-some percent for the entire state and in Tulsa and Oklahoma in the center of the state it's above 80 percent.

SENATOR CHAMBERS: You mean reduction.

MARVIN VAN HAAFTEN: Reduction.

SENATOR CHAMBERS: Then they...do they have fewer arrests of people for possessing or dispensing methamphetamine?

MARVIN VAN HAAFTEN: I don't know that.

SENATOR CHAMBERS: Do they have fewer users?

MARVIN VAN HAAFTEN: I don't have an answer for that.

SENATOR CHAMBERS: Well, isn't the real issue the meth that is getting to actual people instead of just a statistical breakdown of fewer meth labs? I thought the aim was to prevent this substance from winding up being used by people.

MARVIN VAN HAAFTEN: That is not our aim. Our aim is to stop children dying. We have 960 children seized by Human Services at meth labs who are exposed to meth precursors. We've had children die. Right now in Des Moines we have a small child whose dad for a year cooked meth in the basement. He has aplastic anemia. He's going to need a bone marrow transplant at the University of Iowa Hospital. Our clean-up costs are over \$2 million just to clean the labs up...

SENATOR CHAMBERS: Well, what are they trying to do then if it's not trying to diminish the number of people who are using this stuff, what is the aim of it? Let's say you stopped all of the meth labs in Iowa but the usage remains

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 96

LB 117

the same, you would feel that you're successful if no meth is manufactured in Iowa even if more people would begin to use it. You would then feel that victory had been achieved. Is that what I'm hearing you say?

MARVIN VAN HAAFTEN: Our victory is to make Iowans safe in their homes. Iowans are so fearful in their homes that over 20...

SENATOR CHAMBERS: Okay, I won't ask any more...

MARVIN VAN HAAFTEN: ...20 communities have enacted laws...

SENATOR CHAMBERS: Okay.

MARVIN VAN HAAFTEN: ...stiffer, tougher than the Iowa law. Iowans are scared to death in their homes...

SENATOR CHAMBERS: What are they scared of?

MARVIN VAN HAAFTEN: We did a poll of Iowans and...

SENATOR CHAMBERS: What are they scared of?

MARVIN VAN HAAFTEN: ...they are scared of the explosions, the fires in the apartment building. In Newton people were running out of apartment, their skin falling off...

SENATOR CHAMBERS: Okay, okay.

MARVIN VAN HAAFTEN: ...because of the ether explosion.

SENATOR CHAMBERS: Okay, so then since you have no meth labs they know there will be no more explosions but they have more people using meth, doing what people on meth may do but they're not worried about that. Is that what you're telling me?

MARVIN VAN HAAFTEN: Then our citizens say to address that 80 percent that's coming in. We've done two polls, the Des Moines newspaper and the Sunday Register did a poll of Iowans saying, do you support Schedule 5 putting pseudoephedrine in pharmacies? Four out of five Iowans said, pass the law. We'll go to a pharmacy, we support that.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 97

LB 117

SENATOR BOURNE: Let's...let's...

MARVIN VAN HAAFTEN: The University of Northern Iowa on our website has that same survey.

SENATOR BOURNE: ...let's move on. We have a question from Senator Friend.

SENATOR FRIEND: Thank you. Thank you, Senator Bourne. Mr. Van Haaften, a quick hypothetical and it's not going to take very long. Let's say ten years ago we find out that you could crush up a whole bowlful of aspirin and you could receive the most amazing high. And we had an epidemic running throughout the Midwest and nationwide of people grinding aspirin up and using it in order to get high. What's your opinion? What we would do with aspirin in order to try to stop that type of epidemic?

MARVIN VAN HAAFTEN: I think my response would be, having lived in Iowa all my life, we would do the same as codeine; we would do the same as ephedrine. We would make it a Schedule 5 and that took care of those two problems.

SENATOR FRIEND: Okay, but that's not stepping on mice and there's elephants running over the top of our head. I mean, the fact of the matter is, if we had...there's a reason that you can't or it's extremely difficult to obtain cocaine. Meth by all testimony and the things I've heard is not only far more destructive but can cause all kinds of other problems in a community that cocaine may or may not cause. So I guess what I'm asking is, your opinion, how long would it take a market, a free market to adjust to not having cold medication without pseudoephedrine in it?

MARVIN VAN HAAFTEN: I think maybe...

SENATOR FRIEND: Because you've dealt with this issue and that's why I'm asking.

MARVIN VAN HAAFTEN: ...um-hum. I think maybe a couple of years. My understanding is that phenylephrine is not the exclusive property and rights of Pfizer so phenylephrine, although Pfizer...I think Pfizer next week in Iowa is going to have Sudafed PE the phenylephrine product on the shelf

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 98

LB 117

and that's helping us achieve Schedule 5. Proctor and Gamble, Johnson and Johnson, the other companies could do that too. But I suspect a pharmacy person needs to answer that but a couple of years I'm sure would...

SENATOR FRIEND: Okay, I appreciate that. Thank you.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Thanks for coming from Iowa.

MARVIN VAN HAAFTEN: Um-hum.

SENATOR BOURNE: Next testifier in support? Welcome.

GREGG WRIGHT: Good afternoon, Mr. Chairman, members of the committee. My name is Gregg Wright. I'm at the University of Nebraska at the Center on Children, Families, and the Law...

SENATOR BOURNE: Would you spell your last name for us?

GREGG WRIGHT: W-r-i-g-h-t and the first name is G-r-e-g-g. And I'm here testifying on behalf of myself, not on the university. I was the director of the Health Department for eight years and my job responsibilities at the center now involve training the protection safety workers in matters related to children and families. I was a member of the Drug Endangered Children Committee that was formed because of our HIDTA program and a member of the working group that developed the protocol for dealing with kids that we find in methamphetamine houses. So that's my interest in this. And I am in support of the bill and I think that we do need to look at the manufacturer as a separate issue, a separate endangerment of children and communities. If we did stop the manufacture but continued the same amount of meth use we would still have a big problem of meth use but we would have a big benefit to the kids' safety because kids are endangered by the manufacture in additional ways and communities are endangered by the manufacture in ways in addition to the problem we have just from the users. So I think we should look at them two ways. Meth manufacture does endanger children and pseudoephedrine or ephedrine are the two ways that you need as the previous testimony said, they're one oxygen atom away from methamphetamine. It's too easy and too tempting for people to try it and they do try

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 99

LB 117

it. It's not necessarily easy to do it safely and it's often done unsafely. The children are endangered by living in a lab with it because they're exposed to the chemicals. But they're also endangered if we stop the manufacture we'd be stopping other kids...or we'd be making other kids safe too. As was mentioned by Investigator Flynn, kids find methamphetamine labs in ditches or thermos bottles full of anhydrous ammonia. Lots of ways kids are injured by the manufacture process in addition to the ones that live in the home. We think about a third live in the home. The reagents damage the kids, the acids and bases that are there, the organic solvents, the anhydrous ammonia and the lithium are all dangerous to the kids. So this bill will take care of just the manufacture problem and I'm not sure it's the best way to take care of it. If it's not I hope that this committee can find some ways to reduce the manufacture because it's a big problem for kids.

SENATOR BOURNE: Thank you very much. Appreciate your testimony. Questions for Mr. Wright? Seeing none, thank you. Next testifier in support?

GLENN KEMP: Good afternoon. My name is Glenn Kemp, K-e-m-p. I've been an Adams County sheriff's deputy for 25 years, 22 of those years have been working in the narcotics field. I'm currently assigned to the tri-city federal drug task force in Grand Island as a HIDTA investigator. From '97 to February of '04 I was the coordinator for the central lab team. However, I had to leave that because of respiratory problems that I developed from doing meth labs or working in meth labs since 1988. Back when they were P2P labs using methylamide, aluminum foil, mercuric chloride and making L-methamphetamine instead of the D-methamphetamine that comes from pseudoephedrine. I'm a pseudoephedrine user myself because of the respiratory problems I have. It's not going to be a burden because I use over 9 grams per month for me to have to sign for this stuff. The thing that is important to remember here, since 1988 there's this large dam that keeps leaking through. They control stuff for P2P, the dam starts leaking over here. They changed ephedrine to pseudoephedrine and pseudoephedrine makes better dope than ephedrine so changing, we have to keep putting these plugs in the dam before it comes in on us. I'm not going to go any further into that. I am an expert in federal court and in state

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 100

LB 117

court as a methamphetamine expert. Investigator Flynn done an excellent job. I have two videotapes. One of them, if he would get back to me, I will show you an Oklahoma smurfer who came to Hastings, Nebraska, in 1999 and purchased 72 boxes of methamphetamine (sic) from our Shopko store. The manager was smart enough to call us. When we did get into this person's motel room he had three cases of pseudoephedrine that he bought in Nebraska because the laws in Oklahoma were so stringent he had to come here to get them. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Kemp?
Senator Chambers.

SENATOR CHAMBERS: In order that I might understand the last example you gave, where did you say this happened?

GLENN KEMP: In Hastings, Nebraska, sir.

SENATOR CHAMBERS: And the person had purchased a large quantity of what?

GLENN KEMP: Seventy-two boxes of the pseudoephedrine brand or Sudafed with pseudoephedrine in it, 24-count, 60 mg.

SENATOR CHAMBERS: Is having that much of that substance against the law in Nebraska?

GLENN KEMP: Yes, it is.

SENATOR CHAMBERS: What law is violated?

GLENN KEMP: It was over the 700 grams.

SENATOR CHAMBERS: And there's a law right now that says you cannot have more than that amount?

GLENN KEMP: It was back then, yes.

SENATOR CHAMBERS: But that's not the case now?

GLENN KEMP: I don't think anybody enforces it anymore.

SENATOR CHAMBERS: But what I want to know is in order to go through this person's room that person has...if what you

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 101

LB 117

were told is true, that person would have been in violation of the law simply by possessing that much of the substance. Is that true?

GLENN KEMP: It would have been. Unfortunately, Nebraska law doesn't cover it well enough so he was taken federally so there would be an appropriate penalty.

SENATOR CHAMBERS: It was a violation of federal law?

GLENN KEMP: Yes, sir, it was.

SENATOR CHAMBERS: You're saying? Now, if this bill were passed how many meth labs do you think would go out of business? Not number, what percentage, would you have any idea?

GLENN KEMP: I would think that a large percentage of our meth labs would go away from the pseudoephedrine and they would have to find one of the other 360 known by DEA methods of making methamphetamine. It may be different types. It may be uranium nickel that we're dealing with next.

SENATOR CHAMBERS: Right, but they'll have something. Would that be a safer method of manufacture than using...

GLENN KEMP: Absolutely not.

SENATOR CHAMBERS: ...pseudo, so then we might be driving them to something that's more hazardous than exists now?

GLENN KEMP: I think any form of it is hazardous but, yes, using uranium nickel or white phosphorous, shooting it into chemicals, yeah, it's going to be more dangerous.

SENATOR CHAMBERS: So what will be achieved if this bill is passed other than maybe in the short run people are going to have to scrounge around to determine what they'll use as a substitute? This might have some effect in the short run. In the long run, something else will probably crop up, wouldn't it?

GLENN KEMP: True, and then we deal with that as it comes along. That's been the way it's been since 1988.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 102

LB 117

SENATOR CHAMBERS: Would we then pass a law that says that if a person makes a purchase of this then that gives the police probable cause to go search that person's house to see if they might be using it to manufacture?

GLENN KEMP: Not based on that alone, no.

SENATOR CHAMBERS: No, not now but might a law like that be passed?

GLENN KEMP: I don't think the public would allow for that.

SENATOR CHAMBERS: And suppose the public mood is such that this one will be passed to make people keep a log, I mean sign a log when police have access to it on whim.

GLENN KEMP: Then that's the democratic way and I would accept it and I'm sure other law enforcement officers would also.

SENATOR CHAMBERS: And if the public was smart enough to send wise representatives who believe in the fourth amendment protection against unlawful searches and seizures are unreasonable, a law like this would not pass and you would accept that as the will of the people too, wouldn't you?

GLENN KEMP: If it was a majority vote, yes, I would.

SENATOR CHAMBERS: That's the only way anything could pass. Now if it was stopped that would be the will of the people too.

GLENN KEMP: Yes, it would.

SENATOR CHAMBERS: Okay.

SENATOR BOURNE: Thank you. Further questions for Mr. Kemp? Seeing none, thank you.

GLENN KEMP: I do have a tape that I would like you to see from a clinical psychologist.

SENATOR CHAMBERS: Is it the one that that officer won't give back to you? (laugh)

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 103

LB 117

GLENN KEMP: No, it's not (laughter). It's from Dr. Olms (phonetic). He's a clinical psychologist that talks about the paranoia. I think it would be important for you to see it. Thank you.

SENATOR CHAMBERS: Okay. Thank you.

GLENN KEMP: Thank you.

SENATOR BOURNE: Thank you very much. Further testifiers in support?

TIM KEIGHER: Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Tim Keigher. It's K-e-i-g-h-e-r. I'm here in support of LB 117 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. And I guess...

SENATOR CHAMBERS: Who?

TIM KEIGHER: The Nebraska Petroleum Marketers and Convenience Store Association. I guess, you know, we want to be a part of the solution. We see this bill as written as something that is acceptable to us. We are not able to sell the starch form tablet of this product but we do have the alternative of selling the gelcaps or the liquid form and feel that we're not put at a competitive disadvantage that way and, therefore, we wish to support this bill. With that, I'd try and answer any questions.

SENATOR BOURNE: Thank you. Questions for Mr. Keigher?

SENATOR CHAMBERS: I didn't understand your point at all. You said, you all produce the gelcaps?

TIM KEIGHER: No, we would still be able to sell the gelcap form of the Sudafed and the liquid form. We would not be able to sell the starch tablet form.

SENATOR CHAMBERS: Do you believe the testimony that the gentleman gave us that it's easier to make the meth using the gelcaps than these tablets? Did you hear him say that?

TIM KEIGHER: Yes, I did. I guess the information I had

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 104

LB 117

prior to being here today was that it was...the easiest form was the starch tablet that they had to go through an additional three or four processes to make it with the gelcaps.

SENATOR CHAMBERS: Well, if we're really worried about manufacturing and you get these tablets off but the gelcaps are still there, does this bill restrict the amount of gelcaps that you can buy at one time, do you know?

TIM KEIGHER: Not to my knowledge, no.

SENATOR CHAMBERS: So then they could just say, okay, you keep the tablets. I'll load up on the gelcaps so this bill would not stop the manufacture, would it?

TIM KEIGHER: Not if they switch the gelcaps for the liquid form, no.

SENATOR CHAMBERS: And it wouldn't stop those who are currently manufacturing because they probably know it better than you and I unless you've done something at which I don't know and I don't (laughter) (inaudible)...I don't want to put my limitations on everybody else. So if we pass this bill what are we really achieving?

TIM KEIGHER: I guess we looked at it as, you know, we'd like to be part of the solution and if removing the starch tablet is a way of helping reduce the meth labs in the state of Nebraska we're willing to go along with that.

SENATOR CHAMBERS: Okay. And you want to be part of that solution but not all of it by restricting the gelcaps too.

TIM KEIGHER: I think that if you ask my members, I have not asked them how many forms of these products that contain Sudafed that they sell. Being in the convenience store industry, I would think that it's not a tremendous amount and I think we would, you know, look at that at the time.

SENATOR CHAMBERS: Go along with that too. Okay, that...

TIM KEIGHER: We possibly could, yes.

SENATOR CHAMBERS: ...that's all that I have.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 105

LB 117

SENATOR BOURNE: Thank you. Further questions for Mr. Keigher? Seeing none, thank you. Other testifiers in support? I think before we go to opponent testimony, we're going to stand at ease for five minutes till 5 o'clock.

RECESS:

SENATOR BOURNE: We're going to take opponent testimony so, again, we'll make use of the on-deck area and please sign in. Welcome.

LIBBY DANNENBERG: Thank you. Good afternoon. Thank you, Mr. Chairman. My name is Libby Dannenberg. For the record it's D-a-n-n-e-n-b-e-r-g. I'm with the Consumer Healthcare Products Association. We are a 123-year-old trade association representing the manufacturers of over-the-counter medicines and nutritional supplements. And I'm here today in opposition to both LB 117 and LB 481. Unfortunately, I've got to catch a flight so my comments will cover both.

SENATOR BOURNE: We'll enter your opposition in on the other bill as well.

LIBBY DANNENBERG: Thank you. CHPA understands the scope and complexity of the problem for meth cooks in the state and throughout the country that's facing this. We support the need for a comprehensive multidisciplinary solution including tough law enforcement restrictions on the sale and distribution of precursor chemicals, demand reduction, education, and treatment. We believe a comprehensive approach is the best way to deal with both the supply and the demand side of the problem. I did want to point out that over-the-counter medications in the cough and cold category are an important aspect of this nation's healthcare system. Northwestern University recently concluded that the cough, cold, and allergy category saves the economy and the healthcare system nearly \$5 billion a year. Instead of sitting in a doctor's office waiting for hours to see a doctor to get a prescription for these medications parents and individuals can simply go to their local drugstore, grocery store, retailer and pick up these effective, safe medicines. Part of CHPA's position for effective legislation that would be comprehensive in attacking the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 106

LB 117

problem includes a retail sales limit for products that contain pseudoephedrine, in-store placement options for retailers to monitor and sell pseudoephedrine drug products, authorization and funding for community meth watch programs, increased criminal penalties for meth traffickers, funding for environmental clean-up, law enforcement education and treatment, community demand reduction programs, strong laws protecting drug endangered children in the community, and denial of bail for meth lab operators. While we've heard today that Oklahoma's law has been very effective in reducing their number of meth labs in the state, they are not the only state that has seen success and seeing significant decreases in the number of meth labs. I wanted to point out two states in particular, California and Washington. Both of those states use this combination of sales limits on the number that you can purchase per transaction as well as tracking wholesale and distribution movement of pseudoephedrine. They have other things besides placing these products behind the counter or in pharmacy only. California has seen, in the last three years, a significant decline. In 2002, they had 1,769 meth lab incidents. By 2004, that number was down to 639. Likewise, Washington State has seen significant reductions. In 2002, they had 1,409 meth labs. By 2004, that number was down to 687. So we do believe that other states are seeing good solutions and effects from their choices and not placing it in pharmacy only or behind the counter. I see my time is up. We do look forward to working with this committee. I hope that Nebraska can find a good comprehensive solution without restricting access to consumers. Thank you.

SENATOR BOURNE: Thank you. Questions? Senator Aguilar.

SENATOR AGUILAR: I think you had some really good suggestions there. But one of the things that bothers me and I've heard a repeat of what you said from other pharmacy representatives. And that is that we need to do education; we need to do treatment; we need to do all these multifaceted things. We're doing them. It's not enough. We need everybody on board. Multifaceted to me means all the players. Pharmacies are a player, a big player in this. If you'd like to comment, please do.

LIBBY DANNENBERG: I agree, it does take a comprehensive approach. One of the programs that CHPA works a lot with in

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 107

LB 117

communities is meth watch. We've helped provide grants to 13 states. That does have some of the education components in the community as well as voluntary programs for retailers to help watch and sort of be able to identify and safely report when they see people coming in making suspicious purchases.

SENATOR AGUILAR: And I think the meth watch program is probably a good idea but in all honesty let's look at a 24-hour Kwik Shop, if you will. A lot of times they hire whoever they can get to do that midnight graveyard shift, okay? Whoever. They don't come with high big resumes, okay? Do you really think that program is going to work with some of those individuals? And I don't mean to be derogatory about some of the people that work there but, you know, we have to be honest and realistic about this too.

LIBBY DANNENBERG: I do think it would be helpful. I think that the retailers get the training and that includes their sales clerks. I think most of them become aware that it is a community issue and we have had reports from several communities where those sorts of programs have been in place that their clerks have been very helpful in participating.

SENATOR AGUILAR: It's good to know. Thank you.

SENATOR BOURNE: Thank you. Further questions? So in California and Washington, do they have a logbook-type setup?

LIBBY DANNENBERG: Not that I'm aware of...

SENATOR BOURNE: What's been a...oh, I'm sorry, go ahead.

LIBBY DANNENBERG: Oh, sorry.

SENATOR BOURNE: No, go ahead.

LIBBY DANNENBERG: California, part of the way that they track the supply chain of pseudoephedrine and ephedrine moving through their state is for registration and reporting by distributors and wholesalers so that they can help track the product coming in and out. They don't, as far as I know, place any restrictions on a retailer to keep a logbook. And Washington State also requires that reports be

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 108

LB 117

submitted to their state board of pharmacy by manufacturers, wholesalers, and retailers just for the out-of-state sources so it's more of a wholesale and distribution end. It's not tracking through a logbook and individual purchases.

SENATOR BOURNE: So do you do a lot of this testifying in states that are trying to control the problem? I mean, you're really familiar with this.

LIBBY DANNENBERG: Yes, sir.

SENATOR BOURNE: What do you think, particularly in California and Washington, what has been...is there anything that has been particularly effective in those two states? You cited the reduction in the number of meth labs and it sounds like there were significant reductions. What do you think particularly caused that reduction?

LIBBY DANNENBERG: I don't think you could point to any one particular aspect. I think it is the whole comprehensive program and Washington State is one of the states that has the meth watch program. I think that they've taken a look at the whole picture and sort of all those things working in conjunction have helped.

SENATOR BOURNE: So by limits you mean two packages at a purchase time? Placement would mean something along the lines behind a locked cabinet or that type of thing? These are the things that you had outlined?

LIBBY DANNENBERG: Actually, Mr. Chairman, California has a three-package of 9-gram limit on each retail transaction and then Washington State has a three-package or 9-gram per retail transaction. And they also limit it to you can't purchase more than 9 grams in a 24-hour period.

SENATOR BOURNE: How do they track that? How do they know that an individual purchased in excess of 9 grams?

LIBBY DANNENBERG: I don't actually have the answer to that question but I do know they don't have a logbook.

SENATOR BOURNE: Okay. Thank you. Further questions for Ms. Dannenberg? Seeing none, thank you. Appreciate...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 109

LB 117

LIBBY DANNENBERG: Thank you. I appreciate the opportunity. Thank you.

SENATOR BOURNE: ...you bet and again we'll enter your opposition on that other bill. I realize you have to catch a plane.

LIBBY DANNENBERG: Thank you, sir.

SENATOR BOURNE: Next testifier in opposition?

RUSS RATHJEN: (Exhibit 19) Senator Bourne and members of the Judiciary Committee, my name is Russ Rathjen, R-a-t-h-j-e-n and I am a registered pharmacist in Kearney, Nebraska. I practice pharmacy at an independent community pharmacy in Lexington. I am currently chairman of the Nebraska Pharmacists Association Board of Directors and appear today on behalf of the NPA. While the pharmacists of Nebraska are in support of programs designed to crack down on the manufacture of methamphetamine we feel that certain provisions of LB 117 will be ineffective in this effort. I am pleased to tell you that most pharmacists across Nebraska are already voluntarily implementing many of the suggestions contained in LB 117. Many place the single ingredient pseudoephedrine products behind the counter or lock it up; many place only a few boxes on the shelves at a time to prevent theft; many require an ID upon purchase; and many have antitheft devices placed on the products. The requirement of most concern and that seems most unreasonable to pharmacists in LB 117 is the requirement that each purchase of pseudoephedrine be logged into a logbook. Logbooks have not worked in the past. I cannot imagine in my small community that if a customer came into my pharmacy, purchased a box of Sudafed, and I completed the log that the State Patrol would have the time to check my log and every logbook in my immediate 45-mile area to see if that same customer had also purchased Sudafed in another location. Perhaps a simpler approach might be to place a sticker on each pseudoephedrine product with this warning: This is a very inexpensive, safe, and effective treatment for the symptoms of cold and flu, but if you buy it we are obligated to inform the Nebraska State Patrol and other law enforcement officials of your purchase. Pharmacists are willing to do their part but requiring our law-abiding customers to submit to a logbook and forfeit their privacy

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 110

LB 117

seems like an unnecessary burden when meth criminals can simply go on-line and order pseudoephedrine without having to bother with a logbook. As I was preparing these remarks, I ordered 12 grams of pseudoephedrine on the Internet and it was delivered to my home in Kearney within 24 hours. There is also a store-front pharmacy that operates in Nebraska that a person could order pseudoephedrine products to be shipped from a foreign country. Since that store-front operation is not licensed as a pharmacy in Nebraska it would not have to abide by the rules and regulations concerning the logbook. In conclusion, the Nebraska State Patrol should be commended for its excellent work in reducing the number of meth labs found in Nebraska from a high of 271 in 2002 down to 119 in 2004. We think that downward trend can be greatly enhanced by limiting pseudoephedrine sales to pharmacies. We also believe that the State Patrol's efforts in curbing the illegal manufacture and use of meth could be enhanced by providing more funds for the cleanup of meth labs and by providing funds for the treatment of meth addicts. Those actions will be far more effective in controlling the meth problem in Nebraska than requiring pharmacists and average Nebraska citizens to submit to a logbook. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Rathjen?
Senator Aguilar.

SENATOR AGUILAR: Just one quick one. Did you hear some of the earlier testimony where a couple of the experts testified where the logbooks do make a difference in Oklahoma?

RUSS RATHJEN: Yes, I did.

SENATOR AGUILAR: Okay. Thank you.

SENATOR BOURNE: Thank you. Further questions? One last, one question.

RUSS RATHJEN: Yes.

SENATOR BOURNE: Do you keep a logbook for the sale of any other...the sale of any other product? As a pharmacist, do you keep a logbook for anything else?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 111

LB 117

RUSS RATHJEN: No, we don't because if there is anything at all that requires a logbook we don't carry it. I do know about the iodine thing but I think that's more of a poison control kind of thing than any kind of abuse. I don't know, we remember some time back when someone had proposed a logbook for the problem of ephedrine sales in Nebraska and at that time the State Patrol stated that it would be too time consuming and unmanageable to ask the patrol to enforce the log requirement.

SENATOR BOURNE: Thank you. Senator Flood.

SENATOR FLOOD: As a pharmacist and I appreciate your testimony, how long would it take the free market to respond if we placed pseudoephedrine products, all of them, under a Schedule 5 classification before the drug companies would start providing drugs that would do the same thing without the pseudoephedrine?

RUSS RATHJEN: It would take, in my opinion, it would take a long time because pseudoephedrine is a great product. It is safe, it is effective, it's inexpensive. There was mention made earlier of phenylephrine replacing pseudoephedrine. There's already concern. I've talked to some of the people at the University of Nebraska College of Pharmacy where phenylephrine may not be as safe for people with high blood pressure as pseudoephedrine and that's one of the things that when people come into my store and they say, can you help me with my head? I say, are you taking a drug for high blood pressure? And when they say that, say yes, then I say well then, we really need to talk about this.

SENATOR FLOOD: What's this Sudafed PE, is that what you were just referencing there?

RUSS RATHJEN: It could be because...it could be. I don't know.

SENATOR FLOOD: Okay. Thank you.

RUSS RATHJEN: In answer to your Schedule 5,...

SENATOR FLOOD: Yeah.

RUSS RATHJEN: That would be a tremendous overturn in the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 112

LB 117

state of Nebraska because in the state of Nebraska Schedule 5 means by prescription only. We're different. So if you went to Schedule 5 you would have to do a complete redo of the rules and regulations that govern the practice of pharmacy. In Lexington where I practice, an office visit is now \$108. That's a whole lot more expensive than a buck 99 for a few pseudoephedrine pills that can help you feel better with your cold.

SENATOR FLOOD: Thank you.

RUSS RATHJEN: Um-hum.

SENATOR BOURNE: Thank you. Further questions for Mr. Rathjen? Seeing none, thank you. Appreciate you coming down.

RUSS RATHJEN: Thank you.

SENATOR BOURNE: Next testifier in opposition.

DAVID WINKLER: (Exhibit 20) Chairman Bourne, members of the Judiciary Committee, my name is David Winkler spelled W-i-n-k-l-e-r. I am employed by Affiliated Foods Midwest and hold the position of director of security. Affiliated serves approximately 850 independently-owned grocery stores in a 12-state area. In Nebraska we serve approximately 250 grocery stores with the majority of these stores located in rural areas of Nebraska. Many of our stores are small independents, are unable to offer pharmacy services. I am a retired member of the Nebraska State Patrol, having served in excess of 27 years. I retired at the rank of captain where I served as Troop B area commander for 14 years. Throughout my career I was involved in and had responsibility to manage and supervise numerous investigations. My duties included allocation of personnel including communications, alcohol enforcement, SWAT, traffic services, criminal investigations and drug investigations. Based upon my firsthand experience as a law enforcement officer and my experience in the retail sector I feel I can speak with some confidence regarding the merits of LB 117. Please be assured we clearly recognize the problems associated with meth use and the horrific consequences to our communities, families and employees. We also recognize that the entire community must be involved to effectively

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 113

LB 117

address the wide-ranging problems caused by meth production and use. We support the need for legislation to assist in this endeavor by providing our law enforcement officers an effective means of fighting this epidemic. I am asking this committee to reconsider the use of the logbook and the requirement that pseudoephedrine products must be sold only at a pharmacy. In my opinion, a manual logbook will not provide law enforcement investigators an effective means to identify potential suspects involved in meth production. Drug investigators simply do not have the time to review the volumes of paper logs that will be generated. I recently spoke with Captain David Sankey of the Nebraska State Patrol. In our discussion of logbooks Captain Sankey stated that it is highly unlikely that law enforcement officers will routinely review or examine the logbooks to identify potential violators. While the logbook concept does have some deterrent value it fails to offer real solutions to assist law enforcement. Please be assured our retailers are responsible business people and are capable of taking the necessary protective measures to limit access. Many of our retailers have taken a proactive approach to protect the product from theft, restricting the quantity of sales and working with local law enforcement officers whenever encountering suspicious behavior. Restricting the sales of product to a pharmacy will have a negative impact upon many citizens especially those who live in rural Nebraska where pharmacies may be many miles apart. Thank you for taking the time to listen to my testimony. Are there any questions?

SENATOR BOURNE: Thank you. Questions for Mr. Winkler? Seeing none, thank you. Next testifier in opposition?

KATHY SIEFKEN: Chairman Bourne and members of the committee, my name is Kathy Siefken. That's S-i-e-f-k-e-n. And I am representing members of the Nebraska Grocery Industry Association. Our members agree that something should be done. We believe that access should be controlled by putting it behind the counter or locking it up but we don't think LB 117 is the answer. We think that grocers can control access as well as any pharmacist can control access. The facts state, 15 percent of our grocery stores have pharmacies and those 15 percent are in the larger cities: Lincoln, Omaha, Norfolk, Grand Island, Kearney. When you get into the rural areas, in a lot of those towns there

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 114

LB 117

isn't a pharmacy. The only thing that's left is a grocery store. The grocery store doesn't have a pharmacy in it. So what happens is that you've got people in outstate Nebraska that would not have access to a very low-cost and effective drug. And we are willing to put this stuff behind our counters. We're willing to do what it takes to control access but we would like to be able to sell this product. A little bit earlier someone had asked if there were other children's products that were not liquid and according to our national association, I asked that question this morning. And there are approximately 70 products that are not liquid or liquid gel form and these are children's formulas. So if you have any questions, I'd be happy to try to answer them.

SENATOR BOURNE: Thank you. Questions for Ms. Siefken?
Senator Aguilar.

SENATOR AGUILAR: What would your rural people do if the federal law passed?

KATHY SIEFKEN: If the...well, it's a matter of opinion as to what form that federal law is going to be in.

SENATOR AGUILAR: It's pretty specific that it's Schedule 5.

KATHY SIEFKEN: And I can tell you that that is being negotiated right now. That was a conversation I had with my national this morning so it depends on what you come out with. And what will those people do if it passes nationally? Well, then they won't have access and it's a problem. Meth use is a horrible...we're in crisis right now. We need to do something to get the problem under control but do you punish the legitimate customers that need a low-cost solution to allergies by completely taking away from them or do you try to find other areas where you can control the product yet allow those people that need it to still have access? And that's the avenue we'd like to go down.

SENATOR AGUILAR: I don't think we ever quit trying to find solutions.

KATHY SIEFKEN: True.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 115

LB 117

SENATOR AGUILAR: Never.

KATHY SIEFKEN: We're trying to find a solution that is not harmful to those people that use this product legitimately.

SENATOR AGUILAR: And that's why we're all hopeful that the pharmacy industry can come up with a solution on their own.

KATHY SIEFKEN: Absolutely.

SENATOR BOURNE: Thank you. Further questions? Senator Friend.

SENATOR FRIEND: Thanks, Senator Bourne. Ms. Siefken, is that language on 17 and 18 in relationship to the logbook, would you submit that the logbook is really kind of a showstopper here? I mean, if you had to sum up the way this whole thing has been going, I mean, I wouldn't say you'd agree totally with the rest of the bill but I mean, that language is kind of a showstopper, right for the folks you represent and some of the things that we heard...

KATHY SIEFKEN: The logbook would be very burdensome. The problem with the logbook, though, in reality is when you look at the benefit versus the amount of labor that goes into it, I don't see the benefit. When you talk to law enforcement or former law enforcement people that are familiar with the use of logbooks and when you talk to the State Patrol about how they're going to use that logbook, that logbook is not going to stop people, I don't believe. I don't think it's going to have an effect.

SENATOR FRIEND: Thanks.

SENATOR BOURNE: Thank you. Further questions? Thank you.

KATHY SIEFKEN: Thank you.

SENATOR BOURNE: Next testifier in opposition?

JEFF HINES: Thank you, Chairman Bourne, members of the committee. My name is Jeff Hines. It's H-i-n-e-s. And I work for Walgreen's and I did notice some of you talking about Walgreen's earlier. I'm a registered pharmacist in the state of Nebraska and also in Kansas and in Illinois. I

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 116

LB 117

currently supervise 25 Walgreen's pharmacies in Nebraska. I also serve on the boards of the Nebraska Pharmacists Association and Nebraska Retailers Federation. Walgreen's pharmacists take the issue of methamphetamine very seriously. We understand as healthcare practitioners that the abuse of this very dangerous substance is one that needs attention. I will say that while logbooks are a good idea conceptually they don't work. Unless there's a system in place that would track Sudafed purchases across all retailers, I don't see them being of any benefit. People will go from store to store. It's called smurfing and it's been done and it's being done right now. Walgreen's would support legislation that would limit Sudafed sales on a gram sale basis or we would allow it to be sold from behind the counter or in a clerk-assisted sale such as an acrylic box. I would say that if we limited the sales to pharmacy only it would affect rural counties more so than the urban counties. There are 17 counties in Nebraska right now that do not have pharmacies so that would limit access. On the next note, Pfizer the manufacturer of Sudafed is coming out with a product called Sudafed PE. It has phenylephrine in it instead of pseudoephedrine so that will speak to the question that you had had earlier, how long will the industry take to respond. It is doing so right now but we don't have a crystal ball so we can't say going forward exactly what that would look like. Walgreen's, as this bill is written, is opposing this bill for 1) the logbook, and 2) making this product a Schedule 5 as in Kansas or in Iowa still would not allow for someone to come in and sign for this product. It just wouldn't happen. Our law is stricter than those states' laws. It's stricter than the federal law. Anything that is Schedule 5 is prescription only.

SENATOR BOURNE: Thank you. Senator Flood.

SENATOR FLOOD: I don't know that this bill places pseudoephedrine as a Schedule 5 drug. I believe there's a bill coming out that will be LB 141 that will do that. But let's assume for a second that we are talking about Schedule 5 drugs and I was given a prescription for any Schedule 5 drug that allowed me to refill it up to four times. And I came to your pharmacy and used my insurance prescription card,...

JEFF HINES: Um-hum.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 117

LB 117

SENATOR FLOOD: ...and then I went to another pharmacy, not a Walgreen's store, and I used my prescription card two days later to attempt to get a refill. Would your computer system red flag my...would the second store's computer system red flag my purchase as a violation of, you know, if I just got 60 tablets for two months on Monday and I got another 60 tablets of the Schedule 5 drug on Wednesday, would I be red flagged?

JEFF HINES: We could fill that prescription legally but if it was billed to an insurance company, we probably would not be able to bill it. We could fill it but we couldn't bill it. And striking on the second adjudication claim adjudication, the insurance company would say, refilled too soon.

SENATOR FLOOD: When does your computer red flag excessive purchases of Schedule 5 drugs? Or does it even do that?

JEFF HINES: We're subject to the state and federal laws which is five refills in six months. Otherwise, there's professional judgment that goes into it or like that insurance ruling that would prohibit that sale.

SENATOR FLOOD: So if we went to Schedule 5 without a logbook, would there be some way that this database that's already in existence would keep track of this?

JEFF HINES: If we went to Schedule 5 without a logbook, it would just be...well, it would be without a logbook. It would be just by prescription only and then if a law enforcement officer came to us and said, I want to see all the sales for this one person or this one prescriber, we could sort our controlled substance records specifically for that person or that prescriber.

SENATOR FLOOD: And you're required to keep that data available.

JEFF HINES: For five years.

SENATOR FLOOD: And what does it take for a law enforcement officer to come in and look at that information on your computer?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 118

LB 117

JEFF HINES: It takes a request in writing, depending on how long the time period is, we usually can get that information for them within one or two business days.

SENATOR FLOOD: How do get around the HIPAA rules with regard to federal privacy of medical information?

JEFF HINES: The HIPAA rules are excluded in this such instance if they're searching for one specific person as a matter of public health. If an investigator comes to us in writing and requests information for one person or one situation, we are allowed to give them that information.

SENATOR FLOOD: Without a warrant or without any kind of an order from a court?

JEFF HINES: Without an order from court. The way I believe the law is written, we are to give that information to them.

SENATOR FLOOD: Okay. Thank you very much.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: You stated that you would be in favor of limiting the sale. That was one thing that you would be in favor of, correct? Let's just say, for instance, I walk into a Walgreen's and buy your limit, whatever that is, of Sudafed and walk out. Two hours later I come back in and I buy the same amount from a different clerk. Wouldn't that be a little easier for you to track if you had a logbook?

JEFF HINES: Well, I don't know. I really don't know. I will say this, that our concern is that we are holding a product that an impaired individual will come in wanting. Our pharmacists have expressed concern to me that they don't want to stand between an impaired individual, an addict and what they need. Their concern is for their own health. The second concern is is in Oklahoma these logbooks have been used against the merchant. The State Patrol or the officers have come in and they've said, these logs, you know, they're not quite in order or there have been sales throughout the month for the same individual. Why aren't you monitoring this? And then they're trying to point the finger at us as merchants as having it be our fault. So that is something

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 119

LB 117

that we don't want as well.

SENATOR AGUILAR: I think that's a stretch, I really do. But I will say that I think our intent here is that the people responsible for looking at those logbooks, going to be law enforcement, not your pharmacists. Thank you.

JEFF HINES: You're welcome.

SENATOR BOURNE: Thank you. Further questions? Thank you. Appreciate your testimony. Next testifier in opposition?

JIM OTTO: (Exhibits 21, 22, 23) I have some handouts.

SENATOR BOURNE: Well, the clock is running, I'll tell you that.

SENATOR AGUILAR: Boy, is it running.

JIM OTTO: Sorry, I'm sorry (laughter). I'll be very brief, Senator Bourne. My name is Jim Otto, O-t-t-o. I'm the president of the Nebraska Retail Federation. I'm here to testify in opposition to LB 117. I hope I don't make Senator Chambers too nervous because I think this is probably the first time I can remember that we've actually been on the same side of a bill and probably the first time I can remember that I was on the opposite side of Senator Aguilar so it is a unique situation. There's only three points I want to make. First of all, the point that has already been made that 17 counties do not have pharmacies. Our members would like to continue to sell the product. I just passed out what New Mexico is doing to register retailers that would wish to continue to sell and we would just like you to consider that as one of the options. Obviously, whoever registers would have to follow all of the same rules that you determine are necessary in this law. The second thing I wanted you to see is I just passed you this first picture is just a 20-foot cough and cold aisle of all the products probably in a cough and cold aisle. And the second picture with just the red squares on it are the items that would have to be pulled from that cough and cold aisle and either locked up or put behind the counter based on the present LB 117. It's just for your information, somewhere between 80 and 120 different items that qualify there that would have to be pulled. The real point I want

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 120

LB 117

to make is I want to follow up on the logbook concerns. Senator Chambers brought out a lot of the concerns about the logbook. I wanted to point out what Mr. Hines said about the Oklahoma thing and I agree with you, Senator Aguilar, I wish it were a stretch. But the real concern that I think people should have about the logbook especially if I were a retailer and didn't just represent retailers. Senator Chambers is...I think he's a defender of the downtrodden. Right now I'm a defender of the retailer. It actually is a request to incriminate yourself because once you...the only way that the retailer could be accused of selling more than 9 grams is if the actual record that they're keeping is picked up by law enforcement. There's no, as Senator Chambers pointed out, no I guess probable cause or anything that has to be proved to pick that up. I just wanted to point out how easy it is to sell over 9 grams. And I know that it's viewed...not too good to use a prop but this is a box of 96 tablets. It's approximately 3 inches by 4 inches by 1 inch thick. If you bought four of these in a month, you would violate more than the 9 grams. I'm saying it's very easy for a retailer to go over the 9 grams without even knowing it if you're keeping a loose-leaf log and someone comes in once a week and buys that. And you have several different clerks and are you going to flip back for 30 days and add all those up? I'm just saying it's very easy to get over that 9 grams and, unfortunately, Senator Aguilar, I have the article here that it was the Enid Police Department. They're actually taking, it says an Enid Walgreen's could lose its license to sell controlled drugs because of possible violations of the state pseudoephedrine control law. The Narcotics Bureau is investigating all Walgreen's in the state. So my point is, they couldn't even do this investigation had the drugstore not kept it and they're actually being asked to incriminate themselves. That is a big concern of the log. Obviously, want to...I'll be quiet.

SENATOR BOURNE: Thank you. Questions for Mr. Otto? So your opposition is...are you opposed to it being behind some sort of a...?

JIM OTTO: No, we are not.

SENATOR BOURNE: Okay.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 121

LB 117

JIM OTTO: Absolutely lot it up, have the proper surveillance, we're not opposed to any of that. In fact, obviously, every retailer is going to comply with whatever the law is. Just wanted to point out those things that are a concern.

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Any indication in that Enid story because I read the same story, somebody provided it to my office, how much they sold that (inaudible)...?

JIM OTTO: Supposedly over a hundred people across the...I don't know if it was at one store but over a hundred people had bought over 9 grams. I'm just saying that sounds ridiculous but when you see how easy it is for one person to come in one time just once a week, it's not, and if you have several clerks...if it were a centralized system like Senator Flood was talking about that flashed up on the computer then it would be able to do it but.

SENATOR AGUILAR: Okay. Knowing what we heard on earlier testimony, that box in front of you there is enough for a family of four for 30 days.

JIM OTTO: I agree.

SENATOR AGUILAR: Now you can imagine, you can figure out and do the math how much 9 grams is...

JIM OTTO: I don't disagree with you, Senator. Nine grams is a lot. I'm saying it's very hard to require the retail...it wouldn't be, it could just happen in the course of business that you would sell more than 9 grams to one person if it only requires doing this four times a month. I don't disagree with you. Nine grams is a lot. I'm just saying, it would be easy to happen. It's not like a plan to just sell it on purpose.

SENATOR AGUILAR: And our point is, I think, that with the logbook it's less likely to happen.

JIM OTTO: And if it were...I just think we ought to think about the self incrimination. You can't do it any other way in America.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 122

LB 117

SENATOR BOURNE: One thing I want to point out is that the opponents seem to be hanging their hat on Senator Chambers. Now, do you see how tired he looks? (Laughter) I do not look tired at all. Just want that for the record (laughter).

SENATOR AGUILAR: You know and the other comment is I've seen Senator Chambers go after a lot of bills and then turn around and vote for them. I don't want to scare you now (laughter). Okay?

SENATOR BOURNE: Can we wake you up? What? (Laughter)

SENATOR CHAMBERS: I'd just like to explain. He's the new Chair of the Judiciary Committee. After the A team has done its work the baton is passed off to the B, C, and so forth team (laughter).

SENATOR BOURNE: Senator Friend.

SENATOR FRIEND: When a dog is sleeping in a cage you don't walk up and rattle that cage as hard as you possibly can (laughter).

SENATOR BOURNE: Further questions for Mr. Otto? Seeing none, thank you. Oh, I'm sorry, Senator Flood.

SENATOR FLOOD: You touched briefly on the computerized database system that Walgreen's has. If retailers were given the chance to implement that kind of a system, it was an electronic logbook of sorts that would maybe address some of your concerns. Do you think retailers would be interested in looking at even...notwithstanding the fact there would be probably considerable cost to a grocery store that doesn't have a pharmacy?

JIM OTTO: Senator, we're willing to...obviously, everybody here wants to be a part of the solution and it's not comfortable to even testify against it. But in answer to your question, you mentioned the first thing, cost. But to really be effective it doesn't do any good for Walgreen's to have a computer and Safeway to have a computer system and Wal-Mart to have a computer system. It needs to be a centralized system run by law enforcement so that you can turn all these things in and it can pop up immediately as

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 123

LB 117

soon as somebody bought more than 9 grams. I don't mean it doesn't do any good. I would agree with Senator Aguilar, it does some good...

SENATOR FLOOD: I would agree with you.

JIM OTTO: ...but the optimum thing would be to figure out some kind of centralized database that would do that.

SENATOR FLOOD: If it was hooked to the State Patrol's mainframe, would you have a problem with that?

JIM OTTO: I don't think my members have any trouble if it's...I don't know that it's legal to collect the information but isn't that a violation of privacy laws right now to collect that information and pass it on? In other words, when you go into a bar you can flash your ID and they can look at it and make sure you're of age. I don't think they can keep the information legally by privacy laws in Nebraska. I don't know. But I don't know.

SENATOR FLOOD: When you purchase a keg they keep that on a...(laughter).

JIM OTTO: Yes, they do. Have you bought a lot of kegs, senator? (laughter)

SENATOR FLOOD: I'll ask the questions (laughter).

SENATOR BOURNE: Further questions for Mr. Otto? Seeing none, thank you. Next testifier in opposition?

CAREY POTTER: (Exhibits 24, 25) Chairman Bourne, members of the committee, my name is Carey Potter, C-a-r-e-y, representing the National Association of Chain Drug Stores today. Senator Flood, they want their keg back (laugh). That's the trick (laughter). I would like to just follow up with what Libby began speaking about since she had to (inaudible) out of here. I have a handout. Libby mentioned the Washington State law and the success that they've had with regulating their wholesalers. And I'd like to provide the committee with that language. I would also like to talk briefly about the Illinois options that Illinois retailers are using. That law just went into effect January 1, and Senator Aguilar, I do know that they have dropped a bill in

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 124

LB 117

in the House. We don't know yet where that will go but right now we'd like to see where the Illinois options are going. We are supportive of those options and those options include placing a package limits on products, putting the products behind a counter, possibly putting those products in a locked box. Illinois also involves the ability to do surveillance equipment at the expense of the retailer if that's how they choose to police their products and to do anti-theft ID tags for large stores that are afraid of theft that are not putting the items behind the box, a theft ID tag works well. So I'd like for the committee to have this language to consider as well. And, Senator Aguilar, I also know that you're speaking of the meth watch program. Libby blurted out quickly that 13 states have received grants from Meth Watch National Association of Chain Drug Stores also endorses that program. It is an education but also community awareness program that states can apply for to get grants and during our educational seminar we encouraged the state of Nebraska to apply for one of those grants and I hope that we will. We don't condone that that is a solution to this problem. We think it is an excellent tool in conjunction with behind-the-counter language, in a locked box language, limited packages language. We think it works really well as a tool. Iowa just got their award and their grant two days ago. Some of the states that are having terrible meth problems that are addressing Schedule 5 and other issues have applied for grants and have received grants. So we encourage Nebraska to look at that as well. This one is way out there but I wanted the committee to have the language since we're talking about all possibilities in addressing this problem. It is from Indiana. In Indiana they offer a tax credit to the manufacturers of anhydrous and what they do is they put an additive in anhydrous ammonia which turns the product a color pink. And so if you use the pink product it turns you pink (laugh). It's, I guess, relatively expensive and we've seen some opposition in Missouri and so on because of the expense to the farmer. Indiana has taken the approach that they offer a tax credit to the manufacturer so when it would go to a co-op or so forth there would be a tax credit and not a cost to the local people involved. It's just something for you to consider with the other language. And I guess finally, well, I guess not finally, Senator. I almost did it again. I wanted to bring up, we talk about the Oklahoma (laugh) law and how Schedule 5 has been so successful but the Schedule 5

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 125

LB 117

is only one component of the Oklahoma law. Oklahoma passed some extremely stringent law enforcement language with that law. That language is in here. I've run out of time? I would ask that the committee consider that. When we see Oklahoma being touted as the solution in all these states what the bills that we're seeing are not including is that really tough language that's addressing the criminal penalties and the bail situations so.

SENATOR BOURNE: So you're saying Oklahoma is effective but it...

CAREY POTTER: It's effective but it's not just because the product is behind the counter.

SENATOR BOURNE: Thank you. Questions? Senator Aguilar.

SENATOR AGUILAR: Yeah, since you mentioned you thought the Illinois laws were pretty good?

CAREY POTTER: No, I didn't say that the Illinois laws were pretty good. I said that other states are introducing the laws because state drug czars are saying that...I just drew a blank, Oklahoma has been successful so they're looking to that but in...

SENATOR AGUILAR: I just wanted to make the point that Illinois is in the process of strengthening their laws right now.

CAREY POTTER: They have introduced one bill. We have seen the Oklahoma version in I believe 23 states.

SENATOR AGUILAR: Most states are in the process of strengthening laws right now.

CAREY POTTER: They are, Senator. I have the privilege or not in my job of traveling nine states and in eight of my nine states we have some version of the Oklahoma law being offered. Fortunately or not fortunately, we are in the situation as we're in with this committee where there is tremendous opposition as well as support. And in every state we're working together to try and come up with a reasonable option. I'm hoping that some of this language will help you to do that.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 126

LB 117

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Thank you.

CAREY POTTER: Could I throw one more thing in?

SENATOR BOURNE: Certainly.

CAREY POTTER: I will not testify. Unfortunately, I signed in in opposition, Senator Aguilar, to your bill.

SENATOR AGUILAR: You haven't even heard it.

CAREY POTTER: I know (laughter) but to expedite, I wanted the committee to understand, we're talking about the schedule drugs, Schedule 1, 2, 3, 4, and 5. And in Nebraska Schedule 5 is a prescription drug. I had the CMS data pulled from Nebraska's Medicaid numbers and last year Medicaid prescriptions were filled at over three million. We filled over 20 million prescriptions in the state. That was 171 million Medicaid dollars so what that would do to our Medicaid budget, unfortunately, if we required a prescription at a C5 level would more than double our three million expenditure. And I've been told by the administration and others that we don't have available funding so I would really caution you to look at numbers before you consider C5.

SENATOR BOURNE: Thank you. A total of three million scripts were filled in the Medicaid program?

CAREY POTTER: Yes, \$171 million.

SENATOR BOURNE: Hundred and seventy-one million dollars.

CAREY POTTER: I can leave this with you, Senator.

SENATOR BOURNE: But that would include all scripts, not just...

CAREY POTTER: No, all scripts was one billion ninety-eight, four hundred seven.

SENATOR BOURNE: You're saying there were three million

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 127

LB 117

prescriptions filled? Okay.

CAREY POTTER: Three million Medicaid prescriptions.

SENATOR BOURNE: Right. Okay.

CAREY POTTER: Twenty million overall.

SENATOR BOURNE: But...okay. Three million scripts total but if we added it as a Class 5, obviously, it would be far less than three million scripts, right?

CAREY POTTER: No, if we have it as Class 5 that would go up.

SENATOR BOURNE: The three million includes everything.

CAREY POTTER: Yes.

SENATOR BOURNE: Okay.

CAREY POTTER: Not over-the-counter, though.

SENATOR BOURNE: Understood.

CAREY POTTER: Okay.

SENATOR BOURNE: Other questions? Senator Chambers.

CAREY POTTER: Oh, you rattled the cage (laughter).

SENATOR CHAMBERS: Everybody is commenting toward the end. Whenever a social problem is attempted to be solved by political means and for political purposes with a law enforcement solution both of those have very narrow aims. The Governor's Office, the Attorney General, they're looking to run for reelection so they want to make a big splash. Law enforcement only wants to arrest people. That's all. Innocent guilty...it makes no difference, the number of arrests. They tried to use a political and law enforcement type solution in Afghanistan so they got rid of the Taliban. Now, the opium crop is bigger than it has ever been before and they don't know how to control it because the politicians and the soldiers don't know how to deal with social issues but they got the political hay that they

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 128

LB 117

wanted out of it. I've listened to the proponents and they're the ones I ask questions because the burden of proof is on them. Not any of them wanted to talk about a lessening of the use of meth. Not one of them wanted to say that if you wipe out all of the labs there would be a decrease in the amount of meth or the use of it. They keep saying just like when the weapons of mass destruction went away suddenly just getting rid of Saddam Hussein. At first they were telling us what a horrible thing meth is in terms of how it makes people...they didn't say psychotic but it makes them paranoid; it makes them nervous. They do bad things. If one has a gun he or she is even more dangerous. But then when I began to talk about use then use is not what they're worried about. They're worried about labs because sometimes they blow up and cause fires in neighborhoods and terrible things. It has not been well thought out in my opinion. It's a politically motivated bill. It is an attempt by law enforcement to have access to more information on citizens from whom they couldn't get this information because they're not charged with a crime. There's no probable cause they committed a crime and maybe they wouldn't on a routine basis go through these logbooks but they have carte blanche access. And that's what I'm looking at as a policymaker. I don't trust them. If they never looked at a logbook the fact that a citizen is required to give this personal information and a cop has access to it whenever he or she wants to without any justification is enough to trouble me. So if there's no discussion about these issues as black people and others who have suffered problems would look at, it's not going to be solved. And what do I mean by that? There are reasons why human conduct is engaged in. When people undergo great risks to do something, those cooks want money. But there's a market out there. There are people who want this stuff for a reason. And it might be a good feeling. But there are things missing from their life that will make them go off into this. Some will go with crack. The rich people, the pretty people snuff the cocaine and they don't have as harsh a penalty. All of those things but nobody who talked today discussed what are the underlying social causes. So if we don't like spider webs, then I'm going to be through. We should take the advice of this old minister who was listening to this young man pray. And the young man would come to prayer meeting every day and try to impress people. He'd say, Lord, take the spider webs out of my

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 129

LB 117

life. And at first the old people and everybody was impressed. Then finally, the old preacher got tired. He said, son, don't ask God to take the spider webs out of your life. You kill the spider. So if they're never going to look at the spider and nothing in this bill does that, it's going to be just like that LB 113 that one of the testifiers mentioned was put in place where they restrict the amount and so forth, and it did no good. If I could be shown that there's actually a decrease not only in the meth labs but the use of it was going down and they put some safeguards on who would have access to these logbooks. I may not like it but my opposition wouldn't be as strong. This is just a helter-skelter thing that happens when you have two politicians doing it, namely, the governor and the Attorney General and they can send the State Patrol over here. Senator Bourne is just showing his basis for being canonized for carrying something like this. But I'm not doing this from a political standpoint and I do care about people's privacy and this bill runs roughshod over it. And if all the merchants said they would agree to it, if all the pharmacists said they would agree to it, they have lobbyists saying that. The people don't have anybody here except me and I'm going to say the people have a right to privacy and if these cops cannot solve crimes they're not going to try to pretend to be solving it at the expense of the privacy rights of citizens. They are lazy; they are inept; they are incompetent if they're going to tell me that they want a logbook which will not create probable cause. They're going to tell me they have other factors by which they create probable cause but they want to make every citizen give personal information because it will stop somebody who's going to cook meth from buying Sudafed. It doesn't wash with me. I had to get that in on the opponents so that you'll know that I'm still with you.

SENATOR BOURNE: Thank you.

SENATOR CHAMBERS: Mr. Chairman (laughter).

SENATOR BOURNE: I knew I had you rattled. For the record, I do want to say that there were a couple of testifiers that were going to testify about a treatment component which is what you alluded to and they had to leave because of the lateness of the hour...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 130

LB 117

SENATOR CHAMBERS: Oh.

SENATOR BOURNE: ...so that is something that people are aware of and are considering and that definitely is a component in fighting the problem as I see it. Further questions for Ms. Potter. Seeing none, thank you. Appreciate your testimony.

CAREY POTTER: Thank you.

SENATOR BOURNE: Next testifier in opposition.

_____ : No, not opposition, neutral.

SENATOR BOURNE: Okay. Are there any other testifiers in opposition? Okay, first neutral testifier, please. If there are other neutral testifiers, come on forward.

SENATOR CHAMBERS: Now please don't tell me that you cook meth but you don't inhale (laughter).

KELLY BORYCA: I'll leave that to the Presidents (laughter). My name is Kelly Boryca. That's K-e-l-l-y B-o-r-y-c-a. And I'm here representing Pfizer. The majority of pseudoephedrine that's sold in the United States is manufactured, produced and sold generically like by the house brands. But Pfizer is the largest seller-manufacturer of the branded pseudoephedrine. Sudafed is our brand. The reason that I'm here in a neutral capacity is that like everyone has said before me, we know it's a problem. And we know it's a big problem in the Midwest. I think the bill is trying to address the meth manufacturing in the small labs. Pfizer's feeling is that every state has to make a decision on what needs to be done within their state so we chose not to oppose the bill. There are a couple of things about the bill that we think could be better and I'd like to discuss that. First I want to mention the handout that I gave you. First I gave you the Pfizer position. Secondly, recently it was mentioned about our new product called Sudafed PE which does contain phenylephrine. It is a decongestant just like pseudoephedrine and to my knowledge as a (inaudible) D, they are both not recommending people with hypertension. That goes without saying. The first page of the Sudafed PE information does a consumer head to head, how did you like the product? And you can see that the phenylephrine and the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 131

LB 117

pseudoephedrine were very close. There will be people that are going to like the phenylephrine better. There's going to be people that like the pseudoephedrine better. Pfizer is shipping the Sudafed PE this week. It should be available in the state of Nebraska within the next couple of weeks. Single ingredient just phenylephrine. Within the next 12 months we're planning on replacing the pseudoephedrine in our combination products with phenylephrine. I believe there are a couple of products that will be exempted because it doesn't do well for extended release. But the vast majority of our combination Sudafed will contain phenylephrine not pseudoephedrine. The reason for that is phenylephrine cannot be converted into methamphetamine. The DEA has assured us of that. Pfizer spent three years and millions of dollars trying to figure out a way to lock the pseudoephedrine molecule so that you couldn't convert it into meth and it could not be done. So this was our option to offer consumers choice in front of the counter. In terms of improving the bill, 1) we think that you need to, as Senator Chambers pointed out, if you have exemptions they're going to use those exemptions to manufacture methamphetamine. Whatever restrictions you come up with should be applied fairly and firmly to any product that contains pseudoephedrine. We sell gelcaps; we sell liquids; we sell combinations. In Iowa the combination use went up to 66 percent then they limited single ingredient. Any exceptions is going to lead to an ineffective bill. And secondly, like all the retailers have said, it's important that patients have access. There are ways to figure out how grocers and convenience stores can offer the products perhaps with the same restrictions that the pharmacies have and again in Iowa they looked at using low strength as in 12 tablets or less to be available in the retailers that aren't pharmacies, enough to get you through a weekend and then allow you to buy full strength or a big bottle at your pharmacy when it's more available. My time is up.

SENATOR BOURNE: Thank you. Questions? Senator Aguilar.

SENATOR AGUILAR: Would you reiterate what you said about hypertension? I didn't get all that.

KELLY BORYCA: Yes. Both pseudoephedrine and phenylephrine are...they're decongestants and they can cause vasoconstriction. They're not recommended in people with

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 132

LB 117

hypertension.

SENATOR AGUILAR: That is pretty equal for both drugs no matter (inaudible)...

KELLY BORYCA: Yes. I don't know that...a previous testimony said that it may be worse but you'll see the ads that say you should not use pseudoephedrine if you have hypertension either.

SENATOR AGUILAR: Thank you for being part of the solution.

KELLY BORYCA: Thank you.

SENATOR BOURNE: Thank you. Further questions? Senator Chambers.

SENATOR CHAMBERS: Does it matter what the cause of the hypertension is or is it just the condition itself?

KELLY BORYCA: I believe it's the condition itself.

SENATOR CHAMBERS: Then I think during session none of my colleagues should use that product (laughter).

SENATOR BOURNE: Thank you. Appreciate your testimony. Other testifiers in a neutral capacity? Welcome to the committee. I appreciate your patience. It's been a long afternoon, hasn't it?

JALYN TODD: You're welcome. That's fine. My name is Jalyn Todd. My first name is spelled J-a-l-y-n and my last name is T-o-d-d. I come before the committee, I'm licensed for the state of Nebraska as a drug alcohol counselor but that's not why I'm here. I'm here because I'm a recovering meth addict. I've been in recovery for 11 years. My drug of choice is methamphetamines. I was introduced to meth in October of 1992. After my first encounter I knew that I liked it too much but the harm had already been done as I was addicted to it. It is important for each one of you to know that we had a family, we both worked, we had children that went to parochial school when they were in grade school. And from the outside our home looked like any normal home within Nebraska and rural Nebraska. Our usage affected our families, our relationships with others, our

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 133

LB 117

jobs but it especially affected our children. My daughter's thirteenth birthday cake was never cut nor eaten. It was only placed in the freezer and when I sold our home it was also thrown away. Her parents were out using meth. Within a few months I'd lost significant amount of weight and I only weighed 90 pounds. I had sores on my face and my neck which people that use meth consider meth sores from itching, having bugs you think. I was also hospitalized on two separate occasions due to breathing problems from doing methamphetamines and as a result of that I still have breathing problems and I will have those until the day I die. I also have physical scars from my meth use. Within a short amount of period of time many changes occurred within our family of 20 years. My husband and I were divorced and our home became very physical. Before we were divorced our home became very physical, violent and a lot of emotional abuse. I didn't realize it during that time that I was also ignoring my family and becoming very isolated, scared, and paranoid. Things only continued to get worse. I would like to expand on that paranoia just a little bit. When you're using meth and you're using massive amounts of meth like I was and a lot of people that I used with were, I don't know if you've ever heard the term like tree people or shadow people. You will look out the window and you will think you see people and things in the trees and the trees moving and they're not really moving. One of my experiences was I thought the ambulance came and took the neighbor man away across the street because he was dead. And there was never any ambulance and the man was never dead. So the chemical change in your mind is a lot and you really think you see these things and you totally believe you do, and they're not there. So that's where the paranoia comes in and where your mind plays a lot of games with you in regards to that. The last time I used was on December 24, 1993. Five days later I had had no sleep within those five days. I looked in the mirror and I didn't know who that person was looking back at me. I decided if I didn't quit using meth I was going to die. With the support of my children and the love from them, my family, and with treatment, my faith in God, I'm alive today. Meth does not care if you have money or whether you don't have money, what your age is, what gender you are, if you have a family, or what nationality you are it's an equal opportunity drug. Meth knows how to do one thing only and that is destroy people's lives and families. I ask for your help in getting the products that make this

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 134

LB 117

evil drug under lock and key. I believe that by making pseudoephedrine harder to access will serve as some deterrent. I believe passage of this legislation will help to save lives and save families from tragic consequences and undue suffering. I'd like to thank you for your support and answer any questions that you may have of me.

SENATOR BOURNE: Thank you. I should have had the neutral testimony first. Thanks for coming. Senator Flood.

SENATOR FLOOD: Thank you very much for coming and for sitting here all afternoon.

JALYN TODD: You're welcome.

SENATOR FLOOD: Would you tell me looking at the meth problem statewide, it's one thing to lock up these drugs. Where is treatment in importance to solving our meth problem in this state? How important is treatment and how important was it for you?

JALYN TODD: It's totally important, to be real honest with you. Most people that use a lot of meth, they have dual diagnoses because they develop mental health diagnoses at that time when they're using. Sometimes the mental health diagnosis goes away and sometimes it doesn't. I believe that it's long term treatment that they need. Thirty-day program will not cut it especially if they go back to where they came from. The society before they came into treatment, you know, their neighborhood, their old using people they will be back in that again real soon. I believe it's a long term treatment process. I was kind of intrigued what the gentleman said from Iowa about the 120 days. I believe that you need to go to treatment and then I think you need to go to a halfway house and then a three-quarter house and kind of titrate back into society.

SENATOR FLOOD: How long inpatient treatment would you...?

JALYN TODD: They usually...I didn't do inpatient treatment to be real honest with you. Managed care insurance allows 28 to 30 days. That's all they allow as managed care. And that isn't even enough for somebody that has really done massive amounts of methamphetamine for them to even start thinking correctly. It just really messes the chemicals up

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 135

LB 117

in your mind and it messes your brain extensively.

SENATOR FLOOD: As a counselor, drug abuse counselor,...

JALYN TODD: Um-hum.

SENATOR TODD: ...what would you like to see someone...how long would you like to see someone in inpatient treatment?

JALYN TODD: Inpatient treatment, short term res is so expensive to be real honest with you. I think...

SENATOR TODD: Take that out of the equation, like what...

JALYN TODD: Okay, okay.

SENATOR TODD: ...to make sure we have a successful person.

JALYN TODD: Sixty days.

SENATOR TODD: Okay.

JALYN TODD: And then they go to a halfway house or a three-quarter house and not go back to the same environment that they came from...

SENATOR TODD: Thank you very...

JALYN TODD: ...they have to do that on their own.

SENATOR TODD: I appreciate your testimony.

JALYN TODD: You're very welcome, sir.

SENATOR BOURNE: Thank you. Further questions for Ms. Todd? Thanks.

JALYN TODD: Thank you.

SENATOR BOURNE: Further testifiers in a neutral capacity? Closing is waived. That will conclude the hearing on LB 117. Senator Aguilar to open on LB 148. Could I get a show of hands of those individuals wishing to testify in support of LB 148? I see one. Those in opposition? I see one? Those neutral? I see none. Sir, we're going to make

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 136

LB 148

use of the on-deck chair so if you're testifying in support, make your way to the front of the room and please sign in. Senator Aguilar.

LB 148

SENATOR AGUILAR: (Exhibit 27) Senator Bourne, members of the committee, my name is Ray Aguilar, A-g-u-i-l-a-r. I represent the 35th Legislative District. I'm here to present LB 148, a bill about the safety of children who are nearby while a parent or some other adult is cooking or manufacturing methamphetamine. It's hard to even put into words how strongly I feel about a parent who would submit their child to the dangers inherent to a meth lab and the surrounding situation. These chemicals in and of themselves are toxic but add them together and apply some heat and you've got extremely toxic fumes that permeate the building, clothing, and the lungs of anyone near not to mention the extreme flammability of the chemicals used in the process. Meth labs are often discovered because of a fire was involved. Put a child in that environment and you are placing that child in extreme danger. The National Jewish Hospital in Denver concluded through their research and the cloud of chemicals released during a process of meth manufacturing can do permanent damage and could even result in the death of an adult. Let me paraphrase one portion of the research related to the children. We also placed a stuffed bear approximately 12 inches from the cook area. After the cook was completed the bear was sealed in a plastic bag and returned to the lab. Test results indicate an extremely acid PH. Further analysis indicates methamphetamine in the fur and clothing of the bear. The bear contained enough acid to cause severe burns to the skin and mucous membranes and would expose the child to significant concentrations of methamphetamine, particularly if the toy was placed in the mouth. The research was originally intended to gauge the danger for police and other personnels who clean up the lab. They tested for levels of chemicals during the process and they tested what remained after the cook. My handout points out some of these results. Meth usage in an adult will cause damage to every portion of the body including irreversible damage to the brain. Even small doses can do the same harm to children. When law enforcement officials go into a lab to gather

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 137

LB 148

evidence after cleanup of the aftermath, they wear full protective gear including gas mask and air tanks. Everything in that environment is considered hazardous material. Early cleanup efforts without the haz mat gear resulted in officers experiencing permanent damage to their lungs and various kinds of burns to the skin and eyes. If that happened to a fully cognitive adult think what it would do to a child. Knowing this, I think it's imperative to do anything we can to keep children from living in these conditions and to deter parents from allowing their children to be in that atmosphere. United States Senator Jim Talent from Missouri has introduced a bill in Congress that includes funding the Department of Justice program called Drug Endangered Children Rapid Response Team and is asking for two-and-a-half million dollars for each of the next two years for grants to develop these teams in states. He also put a priority on the funding for rural areas. Senators Hagel and Elsable (phonetic) signed onto the bill. Senator Callan (phonetic) is recognizing the extreme danger this situation places children in. All you have to do is read the latest child abuse headlines in the local newspapers and you will see that methamphetamines can play a large part in child abuse and neglect. I saw that as a member of the Governor's Task Force on Children. In 2003 LB 43 included enhanced penalty related to drug charts. Now Neb. Rev. Stat. 28-457 establishes a misdemeanor penalty for the first time a child is endangered and a felony charge for repeat offenses. LB 148 strengthens our stance against methamphetamine. When a child is in danger, I think it is very appropriate to include this concept directly into the child abuse definition. My hope is to ensure that no child is placed in that situation repeatedly. The chemical and fire hazard present in a meth lab are astoundingly high. The cloud of chemicals that form during the processing of pseudoephedrine into meth is like feeding methamphetamine directly to a child. The remnants of the acids in meth that linger can continue to injure the child. If you ask me, this type of endangerment is never by accident or negligence; it's intentional. I ask for your support of this legislation.

SENATOR BOURNE: Thank you. Questions for Senator Aguilar? Seeing none, thank you. (See also Exhibit 28)

SENATOR AGUILAR: If I could just have one more comment and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 138

LB 148

direct it to Senator Chambers. He asked about, you know, why aren't we doing something about it? I'd just like to point out that that's exactly what drug court legislation was intended to do. And it's working, it's working with some of the addicts. And I'm just thankful we got that passed and I appreciate...including Senator Chambers' help with that legislation. Thank you.

SENATOR BOURNE: Thank you. Questions? Seeing none, thank you. First testifier in support? If there's opponents, please make your way to the on-deck area and sign in (laugh). You changed your mind? Welcome.

TODD RECKLING: (Exhibit 29) Good evening, Senator Bourne and members of the Judiciary Committee. My name is Todd Reckling, R-e-c-k-l-i-n-g. I'm the administrator of the Office of Protection and Safety with the Department of Health and Human Services. I'm here today to testify in support of LB 148 which creates the offense of child abuse of a child that's placed in or near the processing, cooking, or manufacturing of methamphetamines. Those who manufacture or use meth are unable to understand or provide for the safety of others especially children. Within Child Protective Services we have the sense that we are seeing an increase in meth related child abuse and neglect cases although we do not specifically capture methamphetamine statistics. As one example, however, in 2004 a four-year-old child was placed in protective custody by law enforcement after the sheriff's office found chemicals used to make methamphetamine in the house and the outbuilding on the property. Some of the child's toys were found in the outbuilding where the anhydrous ammonia and pseudoephedrine were located, indicating that the young child had been playing near the chemicals. In the example I just gave, the child, fortunately, was not physically injured. However, this is not always the case. Members of the Child Death Review Team reviewed 30 child death cases at the request of former Governor Mike Johanns and issued a report on November 18, 2003. That report under the heading of characteristics of the perpetrator, category of substance abuse, noted that 17 of the individuals directly responsible for the child's death had significant histories of alcohol or drug abuse. Eight of those seventeen individuals had used or had a history of using the drug methamphetamine. Three of those eight individuals used methamphetamines

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 139

LB 148, 481

within 24 hours or were actually under the influence at the time of the child's injury. Efforts to locate and prosecute those who manufacture or use methamphetamine with disregard to the safety of a child is another critical step in our continued battle against the damaging drug. I would urge your support for LB 148 and I appreciate the opportunity to address the committee and I'll try to address any questions you may have.

SENATOR BOURNE: Thank you. Questions for Mr. Reckling? Seeing none, thank you.

TODD RECKLING: Thank you.

SENATOR BOURNE: Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Aguilar waives closing. That will conclude the hearing on LB 148. Senator Aguilar to open on LB 481.

LB 481

SENATOR AGUILAR: (Exhibit 30) Thank you, Senator Bourne, members of the Judiciary Committee. I'm the same person that was here before you last time. The goal of LB 481 is to reduce the number of clandestine meth labs in our state. I doubt anyone in this room is ignorant of the harmful effects of this drug and of the many surrounding issues it causes but let me give you just an idea of the dangers of the lab process. Officer Shane Flynn who testified earlier gave you a better look at the process but here are my impressions from watching his demonstration of manufacturing meth. It's a wonder that anyone survives doing this. Anhydrous ammonia, starting fluid, camping fuel and a hot plate, sounds like a recipe for disaster to me. If the cook doesn't burn the place down they could die from inhaling the ammonia or burn their lungs with the fumes from any of the process that chemicals are used during the cook. If they aren't careful and spill any one of the acidic concoctions they inflict chemical burns on themselves or anyone else in the way all for a high that lasts about eight hours during which time they stop functioning even eating. And after several highs they fall into a near comatose sleep for another day or two. It's no wonder the kids caught in these situations are abused and neglected and that addicted have

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 140

LB 481

permanent, irreversible damage to the brain and other organs. In every meth lab there is one constant ingredient, pseudoephedrine, the focus of this bill. As many people legally use it to clear up allergies and colds but we cannot deny the fact that in the hands of the meth maker is a very dangerous ingredient and a precursor to a very dangerous drug. Twenty states have legislation addressing this issue in their legislative body this year. One state, Oklahoma, has had some success by restricting the availability of pseudoephedrine and enhancing penalties. This success, an 81 percent reduction in meth labs, is mentioned...this was mentioned in a New York Times article that I've handed out to you. I'm sure you will hear about the efforts of other states in further testimony. Even Congress is considering a bill that would place pseudoephedrine on a Schedule V of the Uniform Control Substance Act. That is Senate Bill 103 sponsored by Senator Talent from Missouri. When drafting LB 481, the initial opinions I received about the Schedule V designations were not clear about whether that meant prescription only. Since then I have come to know that prescription only is exactly what that means in Nebraska. Although I am prepared to back off the Schedule V requirement for now, I still want the issue on the table in the recognition that we may have to deal with the Schedule V listing soon anyway. I've talked to U.S. Senator Talent's office about Senate Bill 103. They have received overwhelming support and believe the bill will pass this year. Another piece of LB 481 that I want to address is the prima facie evidence paragraph. I'm sure this will initiate the discussion of the burden of proof during a trial but I felt a useful tool in prosecution. This bill states that when a person is arrested and is in possession of a product containing more than 24 grams of pseudoephedrine or about eight boxes, the judge can consider that possession as evidence towards the intent to manufacture methamphetamine, unless otherwise rebutted or successfully contradicted in court. Mark Young, Hall County Attorney, wanted to be...I think he is here, in person to testify. The other portions of LB 481 includes limiting the sale of products containing pseudoephedrine to a pharmacy and requiring a logbook be kept so that law enforcement may research the purchasing habits of someone they are investigating. The exception would be the liquid or gel formulations with pseudoephedrine in them because those are not the product of choice for meth makers. However, they can be used to make meth just through

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 141

LB 481

a longer process. Senator Talent's Senate Bill 103 makes no exception for these products when placing it on a Schedule V. It also requires a logbook. I wasn't aware till today that you can actually make it faster with the gelcaps. That surprised me but as we said, you know, in the senate bill, in the federal legislation that goes (inaudible) anyway. LB 481 and LB 117 are very similar and they have the same goal. Working with the committee I hope to craft the best of both bills into a useful tool to restrict the sale of pseudoephedrine and to reduce the number of meth labs in our state. I guarantee if states around us pass the legislation they are considering and we don't, our State Patrol will not have 80 percent of their resources spent on methamphetamine as they do now, it will probably be closer to 90 percent. This is an issue that will not wait another year. You will hear from some pharmacists as they are not and should not be made gatekeepers of this drug. I was under the impression that that was exactly what their job was. I ask for the support of the committee to work with the governor, myself, and others to put this bill on the floor this year and to restrict the sale of pseudoephedrine. Thank you for your attention and I'll answer any questions at this time.

SENATOR BOURNE: Thank you. Questions for Senator Aguilar? Seeing none, thank you. First testifier in support? Welcome.

MARK YOUNG: Good evening. I'm Mark Young, Y-o-u-n-g. I am the Hall County Attorney and I'm here testifying in support of this piece of legislation. I guess one of the advantages of going last and late is I've had a lot of time to listen to some pretty thoughtful testimony and think about some of the issues raised. One is start by addressing the log. You know, three months ago I bought a keg for my boss's going-away party and, in fact, I signed the log and if I had been 18 years old and the clerk had sold me that keg, the clerk would be in trouble. But there are a lot of other areas in Nebraska where we give that kind of information out. If you buy a handgun you're giving away information that is readily accessible to law enforcement. If you cash a check at a check-cashing establishment or many banks they make a record including your photo I.D. and if law enforcement requests it they will have access to that. If I rent a car my I.D. is checked, a record is kept of that and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 142

LB 481

that evidence can be accessed by law enforcement. Certainly if I get on a plane the same thing is going to apply. there's one other area where this happens and has happened for years and years and years in the state of Nebraska and that's pawnshops. Years ago, a law was passed that requires I.D. to be shown when you pawn an item and you fill out your name and address, show your I.D. and a record is kept and every day the pawnshop owners are required to turn that information over to law enforcement. And it's gone through and it is a powerful tool in finding stolen property and identifying people who steal property. So law enforcement can...there was some discussion earlier on the log issue about whether or not it was worthwhile because of the amount of time it would take it can be used when appropriate. I also want to commend to the committee's attention the prima facie portion of the bill. It does not shift the burden. It is specifically designed, I think, to not shift the burden of proof which is always on the state. Certainly, as a recovering defense lawyer I would never be in support of anything that would attempt to shift the burden but it is an important portion of the bill and one that would be helpful at preliminary hearings and at direct verdict portions. You know, I'm in awe of the common sense that jurors use. I don't worry so much about jurors as I do getting to the jury and the prima facie portion will get me to the jury. And the jury can look at all the factors, not just the amount but the other things that are going to be involved and make appropriate decisions. I am wholeheartedly in support of this. Thank you for your time.

SENATOR BOURNE: Thank you. Questions for Mr. Young? See none, thank you.

MARK YOUNG: Thank you.

SENATOR BOURNE: Next testifier in support? Testifiers in opposition? Testifiers neutral? Did you sign in?

JONI COVER: No, but I will when I'm done.

SENATOR BOURNE: Okay. Are there other testifiers in a neutral capacity? I'm not encouraging you (laughter).

JONI COVER: I'm in opposition. Aren't we there first?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 143

LB 481

SENATOR BOURNE: Well, we already went by that but that's okay.

JONI COVER: Okay. Well, I'll testify in a neutral capacity. Which would you rather I testified in?

SENATOR BOURNE: Opposition testimony. You're on.

JONI COVER: (Exhibit 34) Okay (laugh). Senator Bourne, members of the Judiciary Committee, my name is Joni Cover. It's C-o-v-e-r and I'm the executive vice president of the Nebraska Pharmacists Association. The pharmacists of Nebraska are in support of programs designed to crack down on the manufacturing of methamphetamine and that is why so many pharmacists are already voluntarily limiting the amount of pseudoephedrine products that they sell and stock on their shelves. As Mr. Rathjen testified earlier, I'm quite honestly surprised that people still go to their pharmacy or to their retailer to buy the products when you can get it so readily available on the Internet and through the illegal storefronts that we have operating here in Nebraska. It is my understanding that Senator Aguilar drafted LB 481 to mirror the law that was passed in Oklahoma. We support the provisions of the Oklahoma law that require persons arrested for meth production to appear before a judge before being released, to allow a judge to deny bond to meth offenders and increased penalties for manufacturing and possession of methamphetamine. The issue that we're opposed to and that causes the most problems is that the Oklahoma law makes pseudoephedrine products a Schedule V controlled substance which does not require a prescription in Oklahoma. In Nebraska, however, Schedule V controlled substances require a prescription per Section 28-401.4 of the Controlled Substances Act of Nebraska so in order for a consumer to purchase any pseudoephedrine products you'd have to first go to your prescriber, your physician or your nurse practitioner, whomever, pay for an office visit, have a prescription written out, and then go to your pharmacy and have it filled. In addition, we're opposed to the log requirement and, in fact, we feel it would be quite redundant if you did require a prescription for a Schedule V controlled substance, why you would even need a logbook since those prescriptions are required to be kept on file for five years. So I think that's a redundant requirement. In addition, one other provision we saw in LB 481, it limits

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 144

LB 481

the sale of these products by a licensed pharmacist or a licensed pharmacy technician. Just for your information, pharmacy technicians are not currently licensed in the state of Nebraska. It did not include pharmacist interns which are the pharmacy students that are employed and on rotations at pharmacies and are allowed to practice in pharmacies. The map that I just handed out, if you'll notice, people kept talking about the 17 counties that didn't have pharmacies. Those are the ones in bright yellow. And I just wanted to show that to you because I know you've heard us talk about the Illinois option with the different sizes of pharmacies throughout the communities in the state of Nebraska, providing an option on how to best curb the sale or lock up the products or whatever. We feel would be a huge benefit if we patterned the Oklahoma law to give options for those rural retailers. I would welcome the opportunity to continue to work with this committee on this issue and I would urge the committee to indefinitely postpone LB 481. Thank you.

SENATOR BOURNE: Thank you. Questions for Ms. Cover?
Senator Aguilar.

SENATOR AGUILAR: Just as sharing information. When we drafted legislation there, we did mirror the Oklahoma law. We were not aware that Nebraska had to have a prescription to go along with that so since we didn't...weren't educated in that process we drafted an amendment prepared to take out that part of it.

JONI COVER: Okay.

SENATOR AGUILAR: Now, do I honestly think this legislation is going to pass? I'm not that naive. However, I think there's some parts of it, I think the rest of the committee might want to look at and maybe meld one bill together out of these two and get something accomplished. I think we need to do something, I really do.

JONI COVER: Well, again, we are supportive of trying to crack down on methamphetamine and I think that you have...I think there's been some opportunities to look like us versus them type of an issue with this and that's not the case at all. Again, if we were opposed to doing something about meth our pharmacies wouldn't be limiting the sale of it

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 145

LB 481

right now so and like Mr. Rathjen said, we've got pharmacies that are doing all of the things proposed in your several bills. And that's being done voluntarily without any legislation.

SENATOR AGUILAR: You know, I can't help but keep going back to what if federal legislation passes?

JONI COVER: I don't know. I guess we'll have to wait and see. I quite honestly am not sure that our federal delegation understands that Schedule V controlled substances require a prescription in the state of Nebraska. But we can explain it to them or we can change it so that you don't have to...

SENATOR AGUILAR: I think we can change...I think this amendment that I have can do that.

JONI COVER: Okay. We look forward to working with you on that amendment (laughter).

SENATOR BOURNE: Thank you. Further questions for Ms. Cover? Seventeen counties without a pharmacy and yet we don't have a mail order program doesn't make sense but that's...

JONI COVER: That's another hearing and that's a conversation I would love to have with you but probably not today (laugh).

SENATOR BOURNE: Thank you. Further testifiers in opposition? And, by the way, there are several letters we've received in opposition to LB 481. They'll be entered in as part of the record. Welcome again. (See also Exhibits 31, 32, 33)

KATHY SIEFKEN: My name is Kathy Siefken, S-i-e-f-k-e-n and I'm representing the Nebraska Grocery Industry Association. Apparently, I wasn't quite as quick as everybody else because when they sat in the chair they said we're opposed to both of these bills and I didn't do that so that's why I'm here and you get to hear me again. Again, we would support putting products behind the counter. We would like to continue to be able to sell them. We don't want to see them go completely to the pharmacy in those areas where

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 4, 2005
Page 146

LB 481

there are theft problems. Our grocers have already put the products behind the counter in the grocery stores to alleviate that problem. We can't afford to have them stolen any more than you really want those products out there being cooked up and meth extracted. As soon as we find out what direction the Legislature is going, we're willing to jump out in front of the curve and we will start pulling these products from..we will encourage our members to pull the products from their shelves before the effective date of anything that passes. We take this very seriously. These are our communities. These are our families. These are our people that we know that are affected by the use of meth and we want to be part of the solution. We also don't want to punish those people that are legitimate users of these cost effective drugs that actually work so with that, if you have any questions I'd be happy to try to answer them.

SENATOR BOURNE: Thank you. Questions for Ms. Siefken? Seeing none, thank you. Further opposition testimony? Neutral testimony? Senator Aguilar to close. Closing is waived. That will conclude the hearing on LB 481 and the hearings for today. Thank you.