

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

COMMITTEE ON JUDICIARY
January 19, 2006
LB 932, 777, 925, 772, 774

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 19, 2006, in Room 113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 932, LB 777, LB 925, LB 772, and LB 774. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Ernie Chambers; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: None.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is our second days of hearings. We have five bills on the agenda today. My name is Pat Bourne. I represent the 8th District in Omaha. To my left is Senator Friend from Omaha; Senator Aguilar from Grand Island; taking his seat is Senator Flood from Norfolk. The committee clerk is Laurie Vollertsen. The legal staff for the committee is Jeff Beaty. To my right is Senator Foley from Lincoln; and Senator Pedersen from Elkhorn. I'll introduce the other members as they arrive. Please keep in mind that senators have duties that require them to leave the hearing room periodically. They're simply conducting legislative business, so please don't take it personally if they leave in the middle of your testimony. If you plan on testifying on a bill today, we're going to ask that you sign in advance at the on deck table where the gentleman in the striped shirt is sitting. Please print your information so that it's easily readable and can be entered accurately into our permanent record. Following the introduction of each bill, I will ask for a show of hands to see how many people intend to testify on a particular bill. We'll first hear the introducer, then we'll hear proponent testimony, those people in favor of the bill, followed by opponent testimony. And then after the opponents, we'll take any neutral testimony, if there is any. When you come forward to testify, we ask that you clearly state and spell your name for the record. All of our hearings are transcribed. Your spelling your name will help the transcribers immensely. Due to the large number of bills that we hear each session in the Judiciary Committee, we do utilize the "Kermit Brashear Memorial Lighting System." Those are the timer lights that you see here on the testifier's table. Senators introducing a bill get five minutes to open and three minutes to close if they choose to do so. All other testifiers get three minutes exclusive of any questions that

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

Committee on Judiciary
January 19, 2006
Page 2

LB 932

the committee may ask of you. The blue light goes on at three minutes. The yellow light will come on as one minute warning, and then when the light turns red, we ask that you conclude your testimony. The rules of the Legislature state that cell phones are not allowed in hearing rooms, so if you have a cell phone with you, if you would disable it so as not to distract others, we would appreciate that. Also, reading someone else's testimony is not allowed. If you have someone's testimony that you would like to submit to us as part of the record, we'll take that and enter it in, but we won't allow you to read it. With that, the Committee has been joined by Senator Chambers, also from Omaha. I think that concludes the housekeeping issues. With that, Senator Stuthman to open on Legislative Bill 932. As Senator Stuthman makes his way forward, can I have a showing of hands of those here wishing to testify in support of this particular bill? I see three. Those in opposition? I see 50 in opposition. Senator Stuthman.

SENATOR STUTHMAN: Thank you.

SENATOR BOURNE: Senator Stuthman.

SENATOR STUTHMAN: Thank you.

SENATOR BOURNE: Just kidding. Are there any individuals here that would like to speak in a neutral capacity on this bill? Okay. And again, would the proponents make their way forward to the on deck area and sign in. With that, Senator Stuthman. Welcome.

LB 932

SENATOR STUTHMAN: Thank you. Good afternoon, Senator Bourne and members of the Judiciary Committee. My name is Senator Arnie Stuthman, A-r-n-i-e S-t-u-t-h-m-a-n, and I represent District 22. LB 932 is a bill to increase the penalties for the theft of gasoline. Under current law, individuals caught stealing gasoline at the pumps are most likely charged with theft of less than \$200, which is a Class II misdemeanor punishable by up to six months in jail and/or up to a \$1,000 fine. LB 932 would enhance that penalty by adding a six-month license impoundment for theft of fuel, diesel fuel, compressed fuel, and electricity if

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

Committee on Judiciary
January 19, 2006
Page 3

LB 932

used to propel a motor vehicle. LB 932 would also enhance the penalty for the crime of grand theft auto by adding a six months license impoundment. With escalating fuel prices, we are going to see more and more drive-offs at the pump. I introduce this bill to give law enforcement and fuel retailers another tool to help deter the theft. When people steal gas, it's a result in loss to the retailer. In the end, all consumers absorb that cost by paying more for the gasoline. I believe there will be some testifiers that will follow me that can share in their personal experiences about how drive-offs has affected their business and drives up gasoline prices. With that, those are my opening comments.

SENATOR BOURNE: Thank you, Senator Stuthman. Are there questions for Senator Stuthman? Seeing none, thank you.

SENATOR STUTHMAN: Thank you.

SENATOR BOURNE: First testifier in support of Legislative Bill 932. Welcome.

BILL GUMM: Thank you, Senator Bourne, members of the committee. My name is Bill Gumm, G-u-m-m. I'm chief of police in Columbus, Nebraska, and I recommended to Senator Stuthman the consideration of adding a driver's license impoundment to the crime of theft of services or theft of product, gas drive-offs specifically. Every day in Nebraska, law enforcement agencies respond to theft of product service from various retail establishments in which anywhere from \$10 to probably \$50 or \$100 at some of the larger establishments drives out the door because someone failed to pay. Several other states, Kentucky and Oklahoma that I can cite specifically, impound, have a civil impoundment penalty for theft of gasoline. I've talked to police chiefs and police supervisors in those states and they feel that that is an important deterrent to the theft. Those states post signs at the pumps reminding purchasers that a drive off is subject to not only a criminal penalty, but an administrative civil penalty of your driver's license. I believe it would be a deterrent in Nebraska that if persons are aware that their driver's license, their sense of mobility would be restricted because of that theft, that we would see fewer gas drive-offs.

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

Committee on Judiciary
January 19, 2006
Page 4

LB 932

SENATOR BOURNE: Thank you. Is Officer Gumm, or Chief Gumm?

BILL GUMM: Chief.

SENATOR BOURNE: Chief. Are there questions for the chief?

BILL GUMM: Yes, sir.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: Chief, how in the world did somebody steal gas from a service station?

BILL GUMM: Well they fail to pay for it, Senator.

SENATOR CHAMBERS: Well, why should the Legislature create a criminal offense because private businessmen and women will not establish a system which protects their own interests? Couldn't they require a person to pay before pumping the gas?

BILL GUMM: They could, Senator.

SENATOR CHAMBERS: They choose not to, though, don't they?

BILL GUMM: I can't speak for the business.

SENATOR CHAMBERS: Well, nobody makes them adopt that policy, isn't that true?

BILL GUMM: That's true.

SENATOR CHAMBERS: So it must be a voluntary thing which they choose to implement in conducting their business, isn't that true?

BILL GUMM: That's true.

SENATOR CHAMBERS: So when a person who is business has the means within his or her control to protect his or her property and fails to do so, why should the state pass a law to fill in the gap for a careless or negligent businessperson?

BILL GUMM: On the greater sense, Senator, we police

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

Committee on Judiciary
January 19, 2006
Page 5

LB 932

agencies responds to reports of thefts from persons who fail to properly secure their property from Christmas decorations to anhydrous ammonia. So if that logic carries through, then we would not respond to anybody's theft who didn't lock it up.

SENATOR CHAMBERS: No, here's the difference. This businessperson controls the entire situation. This businessperson allows and gives permission to a person to obtain that property without paying for it in the first instance. It's not where the property is taken from the businessperson against his or her will. The businessperson gives permission to take that property. Then the person choose not to pay. Wouldn't a prudent person say, ah-ha, what I need to do is get my money before I relinquish my property. You don't relinquish your anhydrous ammonia, you don't relinquish your Christmas lights. You relinquish that gas voluntarily with the hope that person will pay. If you're not a slow learner, after you've been bitten once, then you figure there is a different way you ought to do that. Does that seem irrational?

BILL GUMM: No, sir.

SENATOR CHAMBERS: Okay, that's all I would ask. Thank you, Chief.

SENATOR BOURNE: Further questions for the chief? Chief, I spent some time in Columbus this summer. That's a nice community you have there. I would like to ask, have you seen, since the gas prices started to come up, have you seen an increase in your receipt of complaints from drive-offs?

BILL GUMM: We have noticed an increase in the number of drive-offs. It's hard to separate those out because we just classify those as a theft with other thefts that are reported. But we have noticed what appears to be an increase in number, and an increase in the dollar value of the theft, of the individual theft.

SENATOR BOURNE: Great. Thank you. Further questions? Seeing none, thank you.

BILL GUMM: Thank you.

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

Committee on Judiciary
January 19, 2006
Page 6

LB 932

SENATOR BOURNE: Next testifier in support of LB 932.

MIKE SHRAMEK: Thank you, Senator Bourne, member of the committee. My name is Mike Shramek, S-h-r-a-m-e-k, 16515 Pierce Street, in Omaha. I represent Fantasy's, Inc. I am a gasoline retailer. I am here today to support this bill from the standpoint of it is very serious problem, especially so in Omaha. The rising prices that have been occurring have created an increase of incidents where individuals have prepaid for gasoline coming into the store, for example, and stating that they would like \$5 worth of gas or \$10 worth of gas or \$20 worth of gas, and at that time, you would think \$20 worth of gas seems like reasonable expectation. You clear the pumps for them to pump that \$20 worth of gas, and as you know, gasoline can easily cost \$40 into a tank, or \$60, or \$100, depending on the grade, depending on how big a tank capacity you have. Many times, contractors come in. Many times, we are concerned about this prepay issue from the standpoint of safety. What prepay, if one does not have a credit card to pay at the pumps, requires one to do is to get out of the car, make a trip to the store to prepay. You're crossing a lot that involves traffic that is coming in from speed off the streets. You're a pedestrian essentially in a crosswalk trying to make your way safely to a store. About 30 percent of our customers are cash or check customers. They're not credit card customers. We are concerned about, what about those individuals that don't have credit cards, that if we go to a total prepay system, have to begin making a decision about taking that walk into the store. We are concerned about parents who may have young children in their car, driving up to the storefront, making a decision whether or not those individuals are going to be safe in a car. We've had incidents that have involved serious injury to individuals in our stations, good samaritans stepping out, attempting to stop these issues, cracked windshields, violence. We do have prepay at out stations. We don't believe it has solved the problem at all. Thank you, senators.

PAT BOURNE: Thank you. Are there questions for Mr. Shramek? Senator Chambers.

SENATOR CHAMBERS: If a person pays after pumping the gas, doesn't the person walk to the store to pay then? If you

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

Committee on Judiciary
January 19, 2006
Page 7

LB 932

let them pump the gas without paying first, they're going to have to pay after they pump it. Don't they have to walk to the store to pay it?

MIKE SHRAMEK: That's true.

SENATOR CHAMBERS: Well, aren't you worried about all those things you said could happen if they walk to the store before pumping the gas?

MIKE SHRAMEK: That's correct, Senator. We are concerned about that. That's why we have two clerks on duty, to provide safe service. We have attendants that are out...

SENATOR CHAMBERS: Here's the point that I'm getting to: Everything you described as a problem that could exist if you required people to pay before they pump the gas will apply if they pay after they pump the gas. The walk is no less dangerous, the child left in the car is no less unsafe. It's just that the merchants would find it inconvenient to have everybody pay before they pump the gas. Isn't that true?

MIKE SHRAMEK: Senator Chambers, I will respond to that by telling you that where we have required prepay situations, our customers, hopefully, these are your constituents, are extremely irate at the suggestion that they're dishonest and they need to prepay.

SENATOR CHAMBERS: Then as a cost of doing business and avoiding most of the customers being irate because they're asked to pay before they pump, you lose some gas. That's a cost of doing business, but I personally am not going to do anything to make a law enforcement problem out of a merchant's choice of the way he or she will do business. You could control that situation yourself, but you don't want to face the irateness of your customers, isn't that true?

MIKE SHRAMEK: Senator, as a businessman, when those situations occur, the true loser, the end loser, is not the business owner. The business owner passes along the costs of the business in the product.

SENATOR CHAMBERS: But here's what you and I both know:

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

Committee on Judiciary
January 19, 2006
Page 8

LB 932

When gases prices are high and service stations don't make that large a profit anyway, isn't that true?

MIKE SHRAMEK: That's correct.

SENATOR CHAMBERS: You cannot afford to add to much to the price of your gas when they can go down the street and get it cheaper.

MIKE SHRAMEK: That's correct, sir.

SENATOR CHAMBERS: Okay, but that's all I...I don't want to be argumentative with you or make you feel you did anything wrong by coming here to present your view. That's what you ought to do, but you're entitled to know what my view is and why I would have it. That's why I pose the questions to you to let you know what my thinking is.

MIKE SHRAMEK: Thank you, Senator.

SENATOR BOURNE: Further questions? Senator Foley.

SENATOR FOLEY: Thank you, Chairman Bourne. Sir, when someone walks in the store in a prepay situation and they hand you a \$10 bill and they say, I want \$10 of gas, and they go out and pump \$40 of gas and drive off, could you have not just set the pump to only dispense \$10 of gas?

MIKE SHRAMEK: There is technology that is available to do that. It is an expensive addition, and most stations throughout the state of Nebraska are not set up to do that. Only a few currently have that technology already installed.

SENATOR BOURNE: Further questions? Seeing none, thank you. Appreciate your testimony. Next testifier in support. If there's other testifiers in support of this bill, if you'd make your way forward.

RAY ANDERSON: (Exhibit 1) I do
have a handout. Should I pass it on?

SENATOR BOURNE: For people testifying afterwards, if you'd just set it on the side of the desk, any handouts, the page will grab them. Welcome.

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

Committee on Judiciary
January 19, 2006
Page 9

LB 932

RAY ANDERSON: Thank you. Thank you for your time, Senators. My name is Ray Anderson III from Omaha, Nebraska, representing Anderson Food Shops. As stated and as presumed, gasoline theft has risen to what we now feel and describe as intolerable levels. It is market wide, it is statewide. Without your assistance, we do not anticipate that this intolerable level will decrease. LB 932 is quite simply, to us, a simple solution that will provide more significant consequences to those individuals, and only to those individuals, who engage in gasoline theft. It focuses strictly on the perpetrators of the crime and doesn't penalize the entire consumer base. Bottom line is an increased consequence of gasoline theft combined with our industry's ability to communicate that seriousness should result in decreased occurrences of theft. And as the chief of police referred to earlier, it's a significant issue for law enforcement. I have given you that handout that we've recently from OPD and it states right on there that we are one of many cases in that occurrence that they're investigating. As I think of the numbers in my head, there's postage, there's time, there's the actual call it took to come out to our site, which could have been up to an hour by the time everything was completed with paperwork. We believe one of the advantages is clear and concise, and that is less time for law enforcement, which results in tax savings for us as consumers. Number two, there will be less expense for the business to cover, which should allow better competition, which should allow lower prices in gas and related products. What we are here asking for is your help. We believe it is now time. Please don't overlook the seriousness of the gas theft issue. We encourage you to keep this moving forward, and we encourage you to let this proceed to the floor of the Unicameral. Two comments in response to issues that were brought forth with previously. Senator Chambers, I think you may recall we were here in 2001 and we were asking for similar legislation. And we did institute prepaid company wide. The result was worse than the situation we're in today: very angry customers, a significant loss to business. The way we see it is the situation we're in today versus the prepaid, they're both negative options. Number two, the trip into the store would be doubled. The trip into the store for that family with kids would have to be on the front end to give them something to say, I'm going to buy gas, and then come back

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

Committee on Judiciary
January 19, 2006
Page 10

LB 932

again to finish and complete the transaction. So you're doubling the safety issue in that scenario. Any questions? Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Anderson? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. Anderson, how does the credit card system, not necessarily the credit card system, but your chain of gas stations or food shops is where I bought gift certificates from for Christmas this last year to give to kids, my children, for...to get gas. That doesn't help a whole lot in this case, does it?

RAY ANDERSON: It certainly could help for the consumer. If you were in a prepay situation, that consumer would have an option to pay cash previous to purchasing fuel and they could use out of the dispenser like a credit card. I guess it would be a good alternative to somebody who could not attain or secure credit or debit facility for that payment.

SENATOR Dw. PEDERSEN: Thank you.

RAY ANDERSON: Is that what you were heading toward?

SENATOR Dw. PEDERSEN: Yeah, yeah, it's just...my kids don't even like the idea of using a credit card. They want to be able to go into the store after they're through.

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

SENATOR CHAMBERS: Not many, and I'm not going to take you over the same ground I went with the others. Let's say that a person runs without paying and you had a license plate and you called the police and the police saw the vehicle and tried to get the person to stop, knowing that he or she had stolen this gas, the driver chooses to run. The police chase. That creates a very dangerous situation, doesn't it? Are you aware just the other day a cop in Omaha was rushing to join in a high speed chase and he ran into a power pole and put himself in the hospital? He was not wearing a seatbelt. Were you aware that that happened?

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

Committee on Judiciary
January 19, 2006
Page 11

LB 932

RAY ANDERSON: Yes, I was familiar with that.

SENATOR CHAMBERS: Do you think police chases pose a danger to the officer and to the public.

RAY ANDERSON: That's not...I must say, that's not my area of knowledge and I'm not an expert on police process to see what would occur in those situations. I don't think, unless a law enforcement officer is on the property and witnesses, I don't think they're going to enter into a high-speed chase. They're probably knocking on somebody's front door.

SENATOR CHAMBERS: Well, you say that, but I know they chase for next to nothing and they have chased for exactly what we're talking about here. And I have been critical because, in some instances, the state patrol had been involved because the theft, as it was called, took place at a station on one of the highways. And I don't want to have high-speed chases, and I'm not going to support anything that would increase them, especially when you could control it. When you say the situation is worse now than it was before, you don't mean more gas is being stolen, do you?

RAY ANDERSON. Yes.

SENATOR CHAMBERS: Well, how can it...

RAY ANDERSON: The volume, the dollar volume, and the occurrences have increased.

SENATOR CHAMBERS: How is it stolen if you make them pay before they pump the gas?

RAY ANDERSON: We had...we discontinued that because we lost too much business.

SENATOR CHAMBERS: But while you were requiring them to pay before they pumped, you weren't losing gas then, were you?

RAY ANDERSON: Up to that point, we were losing a much more significant amount than we have in any year previously.

SENATOR CHAMBERS: So when you made people pay before they pumped gas, how were they stealing it if they paid for it before they pumped it.

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

Committee on Judiciary
January 19, 2006
Page 12

LB 932

RAY ANDERSON: At that point, they weren't. But we lost so much business and we lost so much trust of our consumers because they felt as if we were accusing the entire consumer base that they would engage in theft. And...

SENATOR CHAMBERS: But you made a business decision...

RAY ANDERSON: Correct.

SENATOR CHAMBERS: ...to stop doing...

RAY ANDERSON: That's correct. We...

SENATOR CHAMBERS: ...the thing that had kept you from losing gas.

RAY ANDERSON: That's correct. We attempted the same recommendation you had given us four years ago, and it resulted in a worse scenario for our consumers and for us.

SENATOR CHAMBERS: Had you ever considered selling ice cream and...I'm just kidding. I'm just kidding.

RAY ANDERSON: Ice cream would be good.

SENATOR CHAMBERS: I just wanted to lighten the mood before we left.

RAY ANDERSON: I appreciate that, Senator Chambers, but I also hope that we're not penalized as an industry or a business because of a chase issue. I wouldn't think you would allow theft to occur simply to reduce the chase by law enforcement. There's a lot of things people could do, engage in theft to eliminate a chase by law enforcement. I think you need to eliminate the theft...

SENATOR CHAMBERS: But the difference is...

RAY ANDERSON: ...and that's what this is going after.

SENATOR CHAMBERS: ...you make the theft possible. You make it easy. You could stop the theft and you choose not to. That's the difference.

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

Committee on Judiciary
January 19, 2006
Page 13

LB 932

RAY ANDERSON: It's not...I should say, we chose to attempt to stop it, but it wasn't a good alternative for us. So...

SENATOR BOURNE: Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Senator Chambers made me think of something when you said ice cream. You sell more things than gasoline at your stores, don't you?

RAY ANDERSON: Correct. Some do, some don't.

SENATOR Dw. PEDERSEN: Do you have prepay on the ice cream?

RAY ANDERSON: We do not. And I would find it, I think of the analogy, I wouldn't consider walking into a Wal-Mart and having to prepay for my merchandise prior to picking it up. The gasoline business is just an entire different animal altogether. You cannot put dispensers inside of buildings with security monitors and RF ID tags and things that most retail industries can. We're a different entity, and we don't know how to change that unless we built an indoor arena. I'm not sure how you would accomplish that.

SENATOR Dw. PEDERSEN: Do you have a big problem with shoplifting and that...

RAY ANDERSON: Probably similar to any other retail environment on the inside. But raw numbers, it takes us one day of fuel sales to pay for the theft that occurs in an entire month. I wouldn't think that a Wal-Mart or a Home Depot or a Walgreen's has to achieve one day of sales to pay for their theft. Their mark-up on their products are much greater, their ability to recoup those costs are much easier, and the gasoline industry is just much different.

SENATOR Dw. PEDERSEN: You've done something similar to this already, not by law, but you have to, in the store itself, you have, you keep most of your cigarettes behind the counter to keep, so people can...

RAY ANDERSON: That's correct.

SENATOR Dw. PEDERSEN: Thank you.

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

Committee on Judiciary
January 19, 2006
Page 14

LB 932

RAY ANDERSON: And that is a requirement industry-wide. So it's parity within the industry for that issue.

SENATOR DW. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you.

RAY ANDERSON: Okay. Thank you, Senator. Appreciate it.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support of this bill. Are there any testifiers in opposition? Are there any neutral testifiers on LB 932? Senator Stuthman to close.

SENATOR STUTHMAN: Thank you, Senator Bourne. One of the main reasons that I introduced the bill is to address what I feel is the problem, and the problem is wrongdoing by someone that gets a product and doesn't exchange dollars for that product, and drives off. And that is where I feel the thought should be directed to the main problem, and that is the person leaving without paying for that problem. And that's where the penalty should be addressed. I really don't feel that we should be penalizing all of the other customers, consumers of gasoline at that station, to pay a couple, a half a cent more, to take care of the one person that has not done his right commitment as far as paying for that product that he received. And I also don't think it should be an additional burden on the retail business, you know, that they would have to do that, although it would be a good business decision to do that. But in the comments that have been related to the committee, they said that is not a foolproof deal. You know, theft still does occur. So I think there's one direction we can take, and that is the possibility of increasing the penalty for the person that has done wrong. The other people that come to that service station, receive fuel, pay for it, should not be penalized. So I would hope that you would take that into consideration, and I would like to see that we could move this bill out. Thank you.

SENATOR BOURNE: Thank you. Questions for Senator Stuthman? Seeing none, thank you.

SENATOR STUTHMAN: Thank you.

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

Committee on Judiciary
January 19, 2006
Page 15

LB 932, 777

SENATOR BOURNE: That will conclude the hearing on Legislative Bill 932. Senator Kruse to open on Legislative Bill 777. Why don't we just wait a second until the room clears, Senator.

SENATOR KRUSE: They aren't staying for my bill?

SENATOR BOURNE: I don't want you to do that to them, but they don't want to hear what you have to say.

SENATOR KRUSE: That's remarkable. They must know what it is.

SENATOR BOURNE: The entire room is empty, Senator Kruse.

_____ : Not totally empty.

SENATOR KRUSE: Seven-seven-seven, folks.

SENATOR BOURNE: Can I have a show of hands of those folks here wishing to testify in support of this next bill? I see none. Are there any in opposition? Okay, we have one supporter. Are there any in opposition? I see none. Senator Kruse to open on Legislative Bill 777.

LB 777

SENATOR KRUSE: Thank you, Senator Bourne and committee members. Good afternoon. For the record, my name is Lowen Kruse, and the hard part of that is L-o-w-e-n, representing District 13. LB 777 sounds like an auspicious number, and there's nothing auspicious about this bill, whatsoever. You're going to hear me for the next couple of minutes, and then you're not going to hear any more from me. I'm not going to speak to it or do any more about this bill. It's in your hands. To speak to it more seriously, LB 777 is a technical bill to provide corrections for a bill which I sponsored and which you approved last spring, LB 594. The bill itself, within its interior references and all of that, was well-put together, but there were references to other sections of statute that were not correct and normally would be caught by E & R, and it was not. We're not putting out any negative. There's no blame. It's really not much blame at all. But at any rate, by failing to get the proper

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

Committee on Judiciary
January 19, 2006
Page 16

LB 777

number when the number of paragraphs that we provided were changed, one of our statutes had a greatly reduced penalty and another of our statutes had a greatly increased penalty. Marty Conboy, prosecutor for the city of Omaha, discovered this. As I recall, he discovered it when some defense attorney was especially happy that the penalty for this crime had been reduced. So he discovered that. You have in your record, and as a part of the witness of this a letter from him about that. I'm not going to get into the technicalities of it. He does in the letter. It's really not important. It's a matter that this be taken care of. And as I said, I will have nothing more to say or do about this. Senator Friend has a bill that would open the same section of statute and would work with that. By default, it could go to consent, possibly. You also have a system called bundling. I'm so old that I remember only the original meaning of the word bundling, and so I'm having trouble adopting to this new language that you have. But at any rate, I leave it in the committee's hands. I have nothing more to say about it.

SENATOR BOURNE: Thank you. Are there questions for Senator Kruse? Senator, is there...okay, I'm aware of the, or became aware of the technical issue this summer. But there are other things in the bill beyond the technical correction, aren't there?

SENATOR KRUSE: There are not.

SENATOR BOURNE: There are not.

SENATOR KRUSE: We took those out.

SENATOR BOURNE: Okay.

SENATOR KRUSE: Now, I did...in earlier speaking with you, there was another technical correction from a different bill. As I understand it, Mr. Conboy has found another way of accommodating it. Again, it was a mistake in the statutes, a conflict between the way that the city and the state enhances. But I think that he's...at any rate, it's not in here.

SENATOR BOURNE: Further questions? Senator Flood.

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

Committee on Judiciary
January 19, 2006
Page 17

LB 777

SENATOR FLOOD: Thank you, Chairman Bourne, Senator Kruse. One of the things that I realized about this bill from last year, I don't know if you have a copy of it in front of you there...

SENATOR KRUSE: I have a copy of the current one.

SENATOR FLOOD: ...is that on a second offense, it's a revocation of your license for at least one year, but up to 15 years. And then, obviously, on third offense, it's 15 years. And the more I think about it, somebody is 19, they get a DUI, they use, exercise poor judgment, and then they're 31, close to the 12 year expiration date of the statute, they get a second DUI, and a judge has the discretion to take their license for 15 years, in the prime time of their earning capacity and providing for their family. I wonder what your thoughts would be on trimming that down below 15 years on a second offense. I guess last year I was more focused on the Class IV felony that was in the bill, but now I'm a little focused in on the 15 years.

SENATOR KRUSE: Well, Senator, as I'm indicating, it's not really here, but of course, it's opened by the bill. You're stretching my memory, but as I recall, that was put in there not from our office, but by request in order to accommodate many persons who come before the court with many previous offenses, but still technically only the second offense, and to give the judge opportunity to recognize that this person has been here a lot. And judges were saying we're hampered by that. So, as I would understand it, and in the spirit of the way we all work together, what you're describing as a first-timer, or a second...I mean, a young kid or something...that's not what this is for. It's not what it's to apply for. It's to take care of persons who have been there a long time. We've had persons with 30 offenses who were up for their second offense. And it's frustrating.

SENATOR FLOOD: I can tell you without reservation that would not happen in Madison County. It's been my experience that prosecutors have done an especially good job of working toward enhancing the offense even if you have two first offenses. I've seen prosecutors use that as they go after a third offense conviction, but...are you primarily concerned about offenses from other states that the court will not recognize for some procedural defect, or...

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

Committee on Judiciary
January 19, 2006
Page 18

LB 777

SENATOR KRUSE: Once in a while, they're from outside the state, but many of them are within it. The person that I referred to with 30, I think actually the convictions were 45, were all in, there were a few in Iowa. But 40 of them were from Nebraska.

SENATOR FLOOD: Forty instances of drunk driving?

SENATOR KRUSE: Yes.

SENATOR FLOOD: Well, this is something you and I can talk about in our off time.

SENATOR KRUSE: We can...

SENATOR FLOOD: But I appreciate you...

SENATOR KRUSE: ...and I'd be open to talk about them.

SENATOR FLOOD: ...and I do appreciate you bringing this up, because I haven't asked these changes in the bill, and this is a good idea to come in and take care of it. Thank you.

SENATOR KRUSE: Thank you.

SENATOR BOURNE: Thank you. Further questions for Senator Kruse? I just have a, I need a clarification. And not to quibble, but just so I understand.

SENATOR KRUSE: Fine.

SENATOR BOURNE: Okay. On page 7 of the green copy, on line 5, there's an underlined area that says, or sub five, or (5) of section. As I understand it, that's the technical correction that was inadvertently dropped last year. So then, you go to page 5 of the bill, and there's new matter on lines 2 through 4, and 9 through 11. And I'm trying to ascertain, is that...that's not the technical correction. That's new matter, is it not?

LaMONT RAINEY: Yeah. That's new to LB 594.

SENATOR KRUSE: It's new to LB 594, he's saying.

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

Committee on Judiciary
January 19, 2006
Page 19

LB 777

LaMONT RAINEY: The penalties aren't new. It's...

SENATOR BOURNE: Okay, just...

SENATOR KRUSE: We're not changing the content of the bill or the legislative, or anything about it in any way, correct?

SENATOR BOURNE: Well, okay. We'll figure this out.

SENATOR KRUSE: Yeah.

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

SENATOR KRUSE: Thank you.

SENATOR BOURNE: First testifier in support of Legislative Bill 777.

SIMERA REYNOLDS: (Exhibit 2) My name is Simera, S-i-m-e-r-a, Reynolds, R-e-y-n-o-l-d-s, and I'm with Mothers Against Drunk Driving. Chairman Bourne and members of the committee, thank you for this opportunity to testify in support of LB 777. It's my understanding and that we support the concept of the minor clean up language that needs to be attached to last year's bill, LB 594. And that we would like to thank Senator Kruse for introducing these corrections because they have been brought to the attention of a couple of other people, also. And if you could look this over in committee and pass it out to the floor for debate so that the minor clean up language can be handled, we would appreciate your consideration for that.

SENATOR BOURNE: Thank you. Are there questions for Ms. Reynolds? Seeing none, thank you. Other testifiers in support of this bill? Testifiers in opposition? Are there any neutral testifiers? Senator Kruse to close.

SENATOR KRUSE: My staff is telling me that this is new language within this particular statement, but it's not new to statute. It is all presently in statute that he's speaking to. It's gets a little bit complicated because it comes from different sections, but it's summarizing what's already there.

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

Committee on Judiciary
January 19, 2006
Page 20

LB 777

SENATOR BOURNE: So it's not new language.

SENATOR KRUSE: It's not. No.

SENATOR BOURNE: We just took it from another section...

SENATOR KRUSE: Yes.

SENATOR BOURNE: ...of the drunk...

SENATOR KRUSE: Yes. And...

SENATOR BOURNE: ...of the driving under the influence and put it in here?

SENATOR KRUSE: It fits better here and makes for better enforcement for it to be seen here in this way, but it's under the general subject and it is not new.

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Senator Kruse, if I understand what you're saying here is that the way your bill, and to answer Senator Bourne's question, came out of committee and was passed on the floor last year is that usually on second offense, it's a year penalty, and under this green copy, unamended in the lines on page 5, you could get up to 15 years for second offense and you could get anywhere from one year to 15 years on third offense, and usually it's one year on second and 15 years on third. Is that correct?

SENATOR KRUSE: Correct.

SENATOR FLOOD: Okay. And so now you're just delineating the second and third offenses and making sure it's at least one year on second and not less than 15 on third?

SENATOR KRUSE: Trying to clarify it.

SENATOR FLOOD: Okay. Thank you. I appreciate it.

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

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

Committee on Judiciary
January 19, 2006
Page 21

LB 777, 925

SENATOR KRUSE: Thank you all.

SENATOR BOURNE: That will conclude the hearing on Legislative Bill 777. Senator Friend to open on Legislative Bill 925. As Senator Friends makes his way forward, would those...could I have a showing of hands of those folks here to testify in support? I see one, two, I see six people in support of this bill. And if I could as you to make your way forward, we're going to use this front row as the on deck area. And if you would sign in prior to testimony, or testifying, I'd appreciate it. Senator...I almost said Senator Kruse. Senator Friend to open on Legislative Bill 925.

LB 925

SENATOR FRIEND: (Exhibits 3, 4, and 5) Thank you, Chairman Bourne, and members of the Judiciary Committee, thank you as well. For the record, my name is Mike Friend, F-r-i-e-n-d is the last name, and I represent the 10th Legislative District in northwest Omaha. I'm here to introduce Legislative Bill 925 at the request of the Nebraska Attorney General. LB 925 is a comprehensive overhaul of Nebraska's drunk driving statutes and increases the penalties for repeat drunk drivers and those who drive on Nebraska's roadways with an exceptionally dangerous blood alcohol content, or BAC. The primary concern is protecting the public and this initiative goes a long way toward that goal. LB 925 creates new offenses with enhanced penalties for those offenders with BAC at or above 0.15 percent. The enhanced provisions are among the criteria that Nebraska must meet to qualify for \$4.6 million in federal alcohol impaired driving countermeasure grants over the next four years. One of the charts that, before you underscore the problem, is you can see 47 percent, which would be nearly half of the DUI arrests in 2004, had a BAC of 0.15 or more. Also, please note on the bottom of the pie graph that I think you have in front of you as well, that almost two out of every five alcohol-related fatalities in Nebraska, which would equate to about 38 percent, were caused by repeat offenders. The National Highway Traffic Safety Administration conducted a study of Minnesota's enhanced sanctions for higher BACs and found that their high BAC laws

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

Committee on Judiciary
January 19, 2006
Page 22

LB 925

are effective. State Legislators magazine, as a matter of fact, published an article last month about the NHTSA study indicating that high BAC laws in Minnesota lowered recidivism and refusal rates among high BAC first time offenders. LB 925 also increases the penalties for leaving the scene of an accident and would allow the state to use blood drawn for medical purposes not only for DUI investigations, which current law now allows, but also for DUI resulting in serious bodily injury, motor vehicle homicide, and manslaughter as well. The three-page chart before you also provides an in-depth comparison of the components of the bill. I'd like to highlight a few of those key points really quickly. The bill allows prosecutors to use valid prior DUI convictions obtained within the last 20 years to enhance a convicted drunk driver's current criminal liability. It does create new offenses and increases penalties for offenders convicted of three or more DUI offenses over a 20-year period. It increases penalties for offenders convicted of driving with blood alcohol content of 0.15 or above as well. Also, LB 925 seeks to strengthen and clarify certain portions of Nebraska's existing DUI and DUI-related laws in the following ways: increases the penalties for offenders who leave the scene of property damage, injury, and fatal accidents; increases the penalties for motor vehicle homicides caused by DUI; it requires the imposition of a 15-year license revocation as part of any sentence for felony operation of a motor vehicle during suspension; it allows prosecutors to use blood samples obtained for medical purposes in prosecutions for manslaughter, DUI resulting in serious bodily injury, and motor vehicle homicide; and lastly, it requires all convicted DUI offenders to receive a chemical dependence assessment from a certified drug and alcohol counselor. This bill is important and it's important because, not necessarily because many other states are moving in this direction; that's not why I look to accept legislation and do things. It's not important because we're trying to flex political muscle here. I think it's important to understand that. It's important because we could have deficiencies in our criminal code in this area, could very well likely have those deficiencies. And with that, I want it to help. I thought this piece of legislation from the Attorney General's Office did just that. So, that's my opening. I appreciate the time and be happy to answer any questions.

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

Committee on Judiciary
January 19, 2006
Page 23

LB 925

SENATOR BOURNE: Thank you. Are there questions for Senator Friend? Senator Foley.

SENATOR FOLEY: Thank you, Chairman Bourne. Senator Friend, thank you for bringing the bill. Your bill calls for enhanced penalties for motor vehicle homicide and four years ago, when we wrote the homicide of the unborn child act, the intent at the time was to try to parallel the provisions of motor vehicle homicides. If we increase the penalties under your bill for motor vehicle homicide, would we not also want to increase the penalties for motor vehicle homicides as it relates to the unborn? And would you be willing to work with me on an amendment that would bring those two sections, to keep those sections in harmony?

SENATOR FRIEND: Thanks for the question. It goes to the closing that I just made. I think that there could very well be deficiencies in our criminal code in this area. That's one of them, and it should be included in here. I would be more than happy to address that if we have to address the parallel statutes. Be happy to. I would feel more comfortable if somebody behind me with the Attorney General's Office or somebody that helped in a significant way draft this up that there might be some sort of reasoning that it's not necessarily included in this legislation, but be very open to dealing with that parallel legislation if it exists.

SENATOR BOURNE: Thank you. Are there further questions for Senator Friend? Senator Chambers.

SENATOR CHAMBERS: Is somebody from the Attorney General's Office here to testify?

SENATOR FRIEND: Yes, I'm sorry. There is somebody from the Attorney General's Office here to testify, I believe Mr. Corey O'Brien. I don't know if anybody else would testify.

SENATOR CHAMBERS: Just so somebody will. I'll save my questions for that person. Thank you, Senator Friend.

SENATOR BOURNE: Further questions for Senator Friend? Senator Friend, I have a question. It seems to me that what

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

Committee on Judiciary
January 19, 2006
Page 24

LB 925

you're advocating for here on behalf of the Attorney General is a pretty much a comprehensive look at our statutes. And when Senator Kruse was testifying earlier on LB 777, I think it illustrates the need to look at the entire section of DUI statutes. He's indicating that that language that appears to be new in his bill is from another section, and quite frankly, you know, I wonder if we should look at, you know, from beginning to end of our DUI statutes. I'm not sure that this is the bill to do that. But the question that I have for you is, I receive a lot of inquiries from constituents of mine regarding the ignition interlock device. And I personally think that, generally, or in general, people can be rehabilitated and should retain rights that they've lost when they've made mistakes in certain instances. Does your bill deal with the ignition interlock device in any regard?

SENATOR FRIEND: I believe so and I...

SENATOR BOURNE: I don't want to put you on the spot.

SENATOR FRIEND: I would be more comfortable...I see a place right here where we deal with that issue, on page 4 of the bill where it discusses the expiration.

SENATOR BOURNE: I guess the reason I'm...I receive a lot of inquiries from constituents on that. There's problems with that, and quite frankly, regarding the DUI statutes, that's the inquiry I receive the most, that there's problems with the device. Other people can, you know, it can be defeated. And again, I was just wondering if that was in your...since we're looking at comprehensive way, I'm just looking for a way to satisfy some constituent inquiries that I've had.

SENATOR FRIEND: Let me answer that this way. I know there's language in here dealing with that issue. Now whether we, the Attorney General's Office, the idea was to actually enhance that, or incorporate that into the ability for this bill to be more effective in dealing with drunk driving, I'm not sure if that's implemented. But there's language in here that deals with some of that stuff, and I would, I think Corey, Mr. O'Brien may be happy to address that piece.

SENATOR BOURNE: Good to know. And I've heard that you are

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

Committee on Judiciary
January 19, 2006
Page 25

LB 925

planning on prioritizing the bill. Is that...

SENATOR FRIEND: Correct.

SENATOR BOURNE: With that, are there further questions for Senator Friend? Seeing none, thank you. First testifier in support of Legislative Bill 925.

COREY O'BRIEN: Thank you, Mr. Chairman. My name is Corey O'Brien. That's C-o-r-e-y O-'-B-r-i-e-n. I'm an assistant attorney general with the Criminal Division of the Nebraska Department of Justice. It's my honor to be here today representing Attorney General Jon Brunning and the entire Attorney General's Office in voicing support for LB 925. I'd personally like to thank Senator Mike Friend and his staff for their leadership and dedication to this most important public safety issue. Under current Nebraska law, if in their lifetime someone gets convicted for passing two bad checks for a mere \$5, that person will be subject to the same penalty as someone who commits four or more DUIs over a 12-year period, a Class IV felony. That leads me to the question of which of these two courses of conduct should the criminal justice system strive hardest to prevent? I believe LB 925 goes a long way in answering that question. LB 925 is a comprehensive effort aimed at habitual drunk drivers and those offenders who drive with exceptionally dangerous blood alcohol contents. With that objective in mind, LB 925 creates new offenses and stiffer penalties for those that repeatedly offend Nebraska drunk driving laws. Included within these stiffer penalties are longer mandatory license revocations, which in some cases can be an even greater deterrent than jail itself. LB 925 also enhances the penalties for motor vehicle homicides caused by impaired drivers. It enhances the penalties for leaving the scene of property damage, personal injury, and fatal accidents, extends the period prosecutors can go back to use prior convictions to enhance penalties, from 12 to 20 years, and it mandates all convicted DUI offenders to receive a chemical assessment from a certified drug and alcohol counselor. Finally, LB 925 creates new offenses and stiff penalties for offenders who drive with a blood alcohol content of 0.15 or below. This provision is important for two reasons. First, the 0.15 threshold is significant because empirical scientific data prepared by the National Highway Safety Council shows that the majority of all DUI

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

Committee on Judiciary
January 19, 2006
Page 26

LB 925

collisions occurred where the offender's blood alcohol content was at 0.15 or above. Secondly, this provision is important because it would help Nebraska qualify for the receipt of more than \$4.6 million in federal funds over the next four years to use for drunk driving education, prevention, and enforcement. While the \$4.6 million is a significant factor to consider regarding the merits of LB 925, to me, someone who has spent their entire professional career as a prosecutor, this sum would be greatly overshadowed if LB 925 could help prevent the loss of just one innocent life. I thank you for your time and attention and I invite any questions you may have.

SENATOR BOURNE: Thank you. Are there questions for Mr. O'Brien? Senator Chambers.

SENATOR CHAMBERS: Mr. O'Brien, if a person's drivers license can be suspended for a longer period of time under this bill, that means there's a longer period of time during which that person can face a serious punishment for driving on a suspended license only. Not anything else, just driving on a suspended license. Is that true, that for a longer period of time, a person is at risk for that? What is the punishment now for driving on a suspended license?

COREY O'BRIEN: For felony suspension on a license?

SENATOR CHAMBERS: What makes it a felony suspension?

COREY O'BRIEN: If you are convicted of third-offense DUI or above.

SENATOR CHAMBERS: So let's not make it a felony. Only on those felony suspensions would the period be longer, is that true?

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

SENATOR CHAMBERS: All right. Now you don't have to be committing a felony when you're driving under suspension, merely driving under suspension, isn't that true?

COREY O'BRIEN: There is a misdemeanor provision, Senator.

SENATOR CHAMBER: Now if you get convicted of a felony, is

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

Committee on Judiciary
January 19, 2006
Page 27

LB 925

the punishment for the felony greater than it would be for a misdemeanor?

COREY O'BRIEN: Yes, sir. It's...

SENATOR CHAMBERS: So you've already received a harsher punishment and then, if you drive under suspension, which occurred because of a felony, is there a harsher punishment for driving then than had you been suspended for a lesser offense?

COREY O'BRIEN: Yes, Senator, there is.

SENATOR CHAMBERS: What sense does that make? Where is the correlation? The bad offense was when you committed the felony. How can driving under suspension be a worse offense, no matter what the original reason was for losing the license?

COREY O'BRIEN: And I don't know that necessarily that the bill seeks to make a value judgment that one offense is greater than the other. I think that the intention is to make sure that we try to, in some way or some measure, try to deter them from repeating the felony driving on a suspended license.

SENATOR CHAMBERS: Mr. O'Brien, I don't want to put words in your mouth. Did you say a person who's devoted his life to prosecuting, or was the reference to you as a person that devoted his professional life to prosecuting? Were you referring to yourself when you made that statement?

COREY O'BRIEN: I was, yes, sir, I was...my entire professional career has been spent as a prosecutor thus far.

SENATOR CHAMBERS: Okay, then you know from studies that a deterrent effect is created more by the certitude of apprehension and punishment than by the severity of the punishment provided in the statute. Well, I know the situation in Douglas County where a man was convicted of prescription fraud as a felony. He was kicked out of pretrial diversion program for drunk driving. He was convicted of drunk driving and he was fined \$400, suspended his license for 60 days, was placed on probation for the felony conviction, and was placed on probation for the drunk

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

Committee on Judiciary
January 19, 2006
Page 28

LB 925

driving, was allowed to serve the drunk driving probation as the same time as the two-year felony probation, and allowed to leave the state. In your experience as a prosecutor, is that the way you handled cases? And was that the typical result in your experience as a prosecutor? Or would that be considered unusual?

COREY O'BRIEN: I guess the best way I can answer that is that, as far as I'm concerned as a prosecutor, Senator, I look at each case on an individualized basis, and make a determination on what a presentence investigation tells me, you know, this offender would best respond to in terms of probation, what conditions of probation. I don't make...

SENATOR CHAMBERS: Well, if he'd been kicked...

COREY O'BRIEN: ...blanket assessments.

SENATOR CHAMBERS: If he'd been kicked out of a pretrial diversion program because he violated the requirements there, why would you then place him on probation when he's convicted of a felony drug offense?

COREY O'BRIEN: It would certainly be a consideration that I would take into account and...

SENATOR CHAMBERS: The public might wonder why a person would get that kind of break, huh, especially if he was a former senator and a former cop, and they know people who had committed fewer offenses than that and were treated far more harshly and are in fact doing time in the penitentiary now? You know cases like that where people convicted of felony drug offenses are in prison?

COREY O'BRIEN: Yes, sir, I do.

SENATOR CHAMBERS: And you're aware of people who have been convicted of drunk driving who got some jail time?

COREY O'BRIEN: Yes, sir.

SENATOR CHAMBERS: Maybe what we ought to do as senators is make these value judgments and when we see prosecutors excusing people of their own political party in this manner, we cannot give those prosecutors a club to hit some people

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

Committee on Judiciary
January 19, 2006
Page 29

LB 925

with when we know the prosecutor can excuse his buddies. So why should I agree to toughen these penalties when the existing penalties are evaded because prosecutors like a particular person? In other words, allow them to throw the book at one and completely excuse the other. My approach is that I want to see fair treatment in the law, and when I see a prosecutor who will pay a snitch for testimony, who will withhold information which the law says should be given to a defense attorney about a snitch, and additional types of things, I don't trust prosecutors. Do you have somebody who's going to make this a priority bill, do you know?

COREY O'BRIEN: I'm not really sure, but I think that Senator Friend had talked about making this a priority bill.

SENATOR CHAMBERS: Are you saying that the money that they can get more easily from the federal government as a result of a law like this was not a significant factor in drafting this bill the way it's drafted?

COREY O'BRIEN: I can honestly say that, Senator. I can tell you that the day before this bill was filed that we learned for the first time of the availability of this money through Fred Zwonechek from the Department of Roads, so the bill was 99.9 percent drafted. There was a few modifications made slightly afterwards, after we learned about the availability of the money, so that we could completely conform with the qualifications, but it was very, very minor. It took me less than an hour to make those slight modifications.

SENATOR CHAMBERS: Well it doesn't take a long time to do something. I can change a penalty from a class I misdemeanor to a Class IIIA felony in less than a minute. So it's not the amount of time; it's what is done. Why at this particular time when (inaudible) drunk driving down through the years would the Attorney General's Office decide that this is the time to stiffen these penalties and do what this bill does? Did you discuss it with the Attorney General? Did he draft it, or somebody in his office, namely you, do the drafting?

COREY O'BRIEN: I did not discuss the motivation behind why we did this directly with the Attorney General. I did collaborate with him in helping...

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

Committee on Judiciary
January 19, 2006
Page 30

LB 925

SENATOR CHAMBERS: Whose idea was it to bring a bill like this?

COREY O'BRIEN: I think it was a collective idea. I don't know necessarily if it was one single person's, but I was asked...

SENATOR CHAMBERS: How many were in the...

COREY O'BRIEN: ...I was asked to work on it.

SENATOR CHAMBERS: How many were in the collective?

COREY O'BRIEN: I would say five or six members of both the prosecution unit as well as...

SENATOR CHAMBERS: Did they, were they collected in a room and discuss this with each other among themselves?

COREY O'BRIEN: I think it was just more of a brainstorming operation in terms of what kind of statutes do we think need to be looked at further. I think this...

SENATOR CHAMBERS: Well, did they brainstorm collectively or individually, then come together or write memos about what the result of their brainstorming was?

COREY O'BRIEN: I think it was more just a verbal brainstorming episode.

SENATOR CHAMBERS: Were there any meetings among these people which you attended?

COREY O'BRIEN: Yes.

SENATOR CHAMBERS: Who did the most talking as far as making recommendations as to what should go into the bill? You?

COREY O'BRIEN: I think it was probably a shared exercise. I probably did a fair amount of talking. I think that...

SENATOR CHAMBERS: Was the Attorney General there?

COREY O'BRIEN: He was there.

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

Committee on Judiciary
January 19, 2006
Page 31

LB 925

SENATOR CHAMBERS: Did he do a lot of talking?

COREY O'BRIEN: He did. He led the discussion.

SENATOR CHAMBERS: So then he suggested a lot of these harsher penalties. Is that true?

COREY O'BRIEN: I would say a fair amount.

SENATOR CHAMBERS: Did he offer any bills like this when he was in the Legislature, do you know?

COREY O'BRIEN: I'm not familiar with that history, if he does have that, sir.

SENATOR CHAMBERS: He became born-again after he was Attorney General, though, more or less, on this issue, as far you know?

COREY O'BRIEN: I don't know his history, Senator, I'm sorry.

SENATOR CHAMBERS: Is there a push in his office to fight drunk driving?

COREY O'BRIEN: I believe so, yes.

SENATOR CHAMBERS: Why do you think his office didn't question the leniency of the way with which this former senator, Raymond Mossey is the one that I'm talking about for the record, was treated? Why didn't he bring a question about that, because you know the Douglas County Attorney won't because he was in cahoots with all of it. He could have done that, but he choose not to.

COREY O'BRIEN: And I was not involved in any discussion about that. I don't even know if it was brought up, Senator.

SENATOR CHAMBERS: Okay. I was trying to get this information from you because you were privy to some of the discussions, you are a part of the office which originated the bill, and if I understand your testimony correctly, it was not initially motivated by the ability to get more

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

Committee on Judiciary
January 19, 2006
Page 32

LB 925

federal money more easily, but after you found that out, you made some changes so that it would be easier to get the federal money. Do you think the criminal statutes ought to be written on the basis of how much money it will draw into the state, or because the criminal sanction is designed to address a specific evil, which a sanction can address? Which do you think it should be?

COREY O'BRIEN: I believe firmly that money should never be a motive.

SENATOR CHAMBERS: So what changes did you make in response to being able to get more money?

COREY O'BRIEN: Originally, Senator, the enhanced penalty portion of the bill that we had included in the bill itself regarding people with blood alcohol contents in excess of 0.15 as it currently reads, it mirrored the enhanced penalty provision that Senator Kruse, I think, had last time, which said 0.16. So we lowered that from, we had it originally written as 0.16. We lowered it to 0.15, and the reason we did so was because at the same time that we got the information on the funding, we were shown empirical scientific data put together by the National Highway Safety Board that says, that showed conclusively that the majority of fatal DUI accidents occur at the level of 0.15 percent or above.

SENATOR CHAMBERS: And you got that information only after you became aware of more money being available if you lowered the amount of blood alcohol that would let you qualify. You didn't find out about that until after you found out about the money?

COREY O'BRIEN: No, sir.

SENATOR CHAMBERS: You knew about it before you found out about the money?

COREY O'BRIEN: No, I did not know about it before I knew about the money, sir.

SENATOR CHAMBERS: Who first found out about it?

COREY O'BRIEN: I believe the Attorney General.

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

Committee on Judiciary
January 19, 2006
Page 33

LB 925

SENATOR CHAMBERS: And he didn't know about it until after he found out about the money?

COREY O'BRIEN: No, sir.

SENATOR CHAMBERS: So 0.16 he felt was reasonable until he found out that he couldn't get as much money if he lowered it to 0.15, correct? He did it in response to getting the money, so we are told that a bill was drafted and in the judgment of those who drafted it, 0.16 was the threshold. But when money came into play, it was lowered to 0.15, and you could procure more convictions on that basis, couldn't you, than you could with 0.16, couldn't you?

COREY O'BRIEN: Potentially.

SENATOR CHAMBERS: So why should we convict people now that we can get more money for an offense which they wouldn't have been subject to conviction for if the money hadn't come into play. Money did change the scope of the bill and place more people at risk for conviction, isn't that true?

COREY O'BRIEN: Personally, for me, it did not. The money was never a motivation, as I've indicated. But the data regarding the majority of collisions occurring at 0.15 was very convincing to me.

SENATOR CHAMBERS: Well, if I'm convinced that the money had something to do with it, I should not agree to that because, unlike you, I don't think criminal law should be motivated by being able to procure money.

COREY O'BRIEN: I agree.

SENATOR CHAMBERS: So you know I can't support this, don't you?

COREY O'BRIEN: Yes, sir.

SENATOR CHAMBERS: Because you and I have the same principle, and if I didn't have it before, you convinced when you came here that that ought to be my...that's all that I have to ask you, though. Thank you very much.

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

Committee on Judiciary
January 19, 2006
Page 34

LB 925

SENATOR BOURNE: Further questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. O'Brien, first question I have is where would this money go that we'd get from the feds if we pass this bill? What would it be used for?

COREY O'BRIEN: It's my understanding, and I'm no expert on the money whatsoever, I believe Fred Zwonechek is here, and might be able to answer that questions a little more clearly than I can. But it's my understanding that it would be devoted towards education, prevention, and I think enforcement of drunk driving. So I think those are the things that it could be dedicated for. That's my understanding, at least.

SENATOR Dw. PEDERSEN: You mentioned in your testimony about having evaluation from the drug and alcohol licensed, which I happen to be, but my question is what is the reason for putting that in there?

COREY O'BRIEN: It already is, actually, part, I mean, it actually is already part of the DUI laws that you must obtain a chemical evaluation, but the federal guidelines actually suggested, and I definitely agreed with this, that they should be obtained by someone that is certified in the area if possible because, I think, as you know as a CDAC, sir, truly being able to diagnose and rehabilitate the problem, you have to understand the problem. I'm not saying if you're not certified you can't understand the problem, but the likelihood that we deliver the proper services to the offender are enhanced if we do make sure that they are, in fact, certified drug and alcohol counselors.

SENATOR Dw. PEDERSEN: Was there any counselors involved in the drafting of this bill, or the origination of it?

COREY O'BRIEN: I'm sorry, sir, I...

SENATOR Dw. PEDERSEN: Was there any counselors, licensed alcohol-drug abuse counselors involved in any of this?

COREY O'BRIEN: Not actively, sir.

SENATOR Dw. PEDERSEN: The problem I'm having, and I don't

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

Committee on Judiciary
January 19, 2006
Page 35

LB 925

know if this bill would be the place, but...so often, you can do an evaluation, which I do a lot of them, and send them to the court, and some of the judges decide that they are also licensed counselors and do exactly what they want anyway. The evaluation is not used for what it was meant to do. Our beds in this state, as you're probably well aware, are very precious for inpatient treatment.

COREY O'BRIEN: Unfortunately.

SENATOR DW. PEDERSEN: And as soon as we make more laws like this, we have society pressing on the judges to do more of that, and they're sending people to treatment now without a license and filling up them beds for no other reason than they answer to court watches. And then those people who come along who really have a serious problem, we can't get into a bed for three, four months. And three, four months kills a lot of them. I mean dead, on the table. And I look at this kind of law and what is that going to change? What is this going to make different? If we look at the cost of \$4-and-a-half million, that's a lot of money. But we have over 300 people in prison in this state today, Mr. O'Brien, for driving on a third offense, 15 years suspension, and less than 10 percent of them were drinking. And their cost would be far more, with that many, more than \$4-and-a-half million because our prison budget is right now at \$150 million a year. I just think we have to look at all them numbers and bring them together and concerns. And Senator Chambers mentioned one that I thought was a travesty to this state's judicial system, and that was the case of Mr. Mossey. That was a travesty. What that doesn't do to the people that I work with on a regular basis is mockery of the law. So I look at laws like this very, very closely. Thank you for your time.

COREY O'BRIEN: Thank you, Senator.

SENATOR PEDERSEN: Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. O'Brien, thank you for testifying. I guess my first question is, could we use some of this money that would be available, the \$4.6 million over the next four fiscal years, for treatment of offenders?

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

Committee on Judiciary
January 19, 2006
Page 36

LB 925

COREY O'BRIEN: I cannot answer that specifically, although I certainly am an advocate of treatment. There's no doubt that everybody rehabilitates differently, and certainly treatment is something that I've always been a big advocate of since I became a prosecutor. I helped Judge Jim Murphy in Douglas County help start the first drug court, so I've always been a believer that, you know, we can do as much good with rehabilitation as we can with jail. So I don't know if that's true or not. Maybe Fred Zwonechek can answer that, but certainly I don't think that, I at least I would hope some of it could go to treatment.

SENATOR FLOOD: It's been my experience with drunk driving offenders that when the offender at the time of the sentencing has prepared or made plans to attend a private treatment facility or a treatment facility that is funded through state funding, that the court can make special concessions when you have somebody that's willing to abide by...to seek help and to get help, and condition it upon help. I think that would be a pretty big step for the state to earmark this money for the treatment of the offenders, and I would encourage that office look into that. I guess question is, you know, much has been made by Senator Chambers about the difference between 0.16 and 0.15 and the motivations for changing that. In all reality, though, if you're 0.15, you're very dangerous on the road, aren't you?

COREY O'BRIEN: I was trying to think back and I don't believe that I've personally seen a motor vehicle homicide where they were not in excess of 0.15, the offender was not in excess of 0.15, so I think that that was part of, you know, me reading into the empirical data that we were provided regarding that figure. So I would say, yes, you're dangerous.

SENATOR FLOOD: There's not much, I mean, a person is severely drunk if they're 0.15 or 0.16. There's not much of a difference there, is there?

COREY O'BRIEN: Probably not. And every person is probably different in the way that they tolerate that 0.15 or 0.16, so it's hard to make an absolute value judgment on that, Senator.

SENATOR FLOOD: Well, thank you very much.

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

Committee on Judiciary
January 19, 2006
Page 37

LB 925

COREY O'BRIEN: Thank you, Senator.

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

SENATOR CHAMBERS: Mr. O'Brien, I don't think at any time did I suggest that 0.15 or 0.16 was more or less dangerous, but merely that the change was made in response to receiving money. Is that the way you understood my questioning to you?

COREY O'BRIEN: Yes, Senator.

SENATOR CHAMBERS: Okay. Because I think it should be far lower than that before a person is considered a danger, but that's what we were discussing. Mr. Mossey's was 0.165, and he got away clean. So, sometimes there are academic discussions here among the others, but I have specific cases in mind. And Senator Pedersen knows a lot of cases of people that he works with in the pen who wouldn't get anywhere like the breaks that were obtained in this case. And it wouldn't be where the person that committed the multiples, one person may have done one of these things and be in the pen, may have done one of the others and be in the pen. And you can go to jail for a substantial period of time just for driving while you're on suspension. If your wife were pregnant and she needed to go to the hospital and your license were suspended and you drove her to the hospital, you can go to jail for that, can't you?

COREY O'BRIEN: Yes.

SENATOR CHAMBERS: Even though you're driving your pregnant wife to the hospital. Those are the kinds of things I'm talking about. And this bill, by lengthening the period of time for which a suspension would obtain would keep a person at risk for a longer period of time for that to happen. Is that true?

COREY O'BRIEN: If you're a repeat offender that falls within the qualifications, yes.

SENATOR CHAMBERS: And you're pushing the period back from 12 years to 20 years when you can consider an offense for

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

Committee on Judiciary
January 19, 2006
Page 38

LB 925

the purpose of this bill coming into play, isn't that true?

COREY O'BRIEN: Yes, Senator.

SENATOR CHAMBERS: Was that moving from 12 years to 20 the Attorney General's idea?

COREY O'BRIEN: No, Senator. That was mine after looking at neighboring states that had moved in that direction.

SENATOR CHAMBERS: Well what difference does it make what they do in neighboring states? Here's why I say that before I get you to answer. Had you investigated to see why those states went from 12 to 20, or the fact that they were doing it was persuasive to you?

COREY O'BRIEN: It was partially persuasive to me, and then when I looked at other examples of, across Nebraska law, such as I brought up the fact that you could write two \$5 bad checks in your entire lifetime and that can be held against you, that one that you did maybe 30, 40 years ago...

SENATOR CHAMBERS: Well, you and I know there's no correlation when it comes to property crimes between the offense and the punishment. The merchants comes in here and get the Legislature to do things as those people who were talking about their gas being taken. These senators don't think that writing a bad check is that serious. They capitulate to the merchants. That's what that is. But I mainly wanted to make it clear, if I hadn't, that I don't think a person is a less dangerous entity on the road at 0.15 than 0.16. That's not my point. I think they're all very dangerous, but apparently the federal government felt there was quite a significant difference because if you had it at 0.16, you couldn't qualify for that money. So the difference between 0.16 and 0.15 is important enough for the government to say you better drop it back to 0.15, or you don't get the money. So I don't know what Senator Flood heard me say or understood me to say, but I hope it's clear now what I was getting at.

SENATOR BOURNE: Further questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne: Mr. O'Brien, I had a couple of other questions. Was there

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

Committee on Judiciary
January 19, 2006
Page 39

LB 925

any consideration in any of the talks about using such things as ignition interlock or mechanical type devices that would help these people when they are put on probation and parole and stuff, and when they lose their license for that length of time?

COREY O'BRIEN: You know, that's probably outside of my realm of expertise I know that personally I was never involved in any discussions where talked about...I know that there's some new inventions coming around, you know, in terms of, I guess, "alco-sensors" that you wear all the time, and things of that nature that have been developed. And, you know, the ignition interlock was never addressed specifically. I know that there was a bill was filed yesterday dealing with ignition interlock, and I did not have a chance to review it before I came down, but specifically, that was not within my realm in terms of what's the appropriate way to sanction in terms of rehabilitative purposes, because I don't have enough familiarity with ignition interlocks.

SENATOR Dw. PEDERSEN: Well obviously, I'm interested in rehabilitative parts of this. But something a lot of people don't ever hear me say is if somebody refuses to drive sober, then they're a danger to society. I want them locked up and kept away from the wheel if they refuse to drive sober. But if they are actually have a dependency, and there's some compliance to stay sober, then we had start setting up some other things besides just the penalty. And the 12 to 20 years I have concerns about because we have, like I said, we've got 300 people in prison. Less than 10 percent of them, I think were actually drinking again when they were driving on a 15 year suspension. However, we let them out, and part of their probation order or parole order is that you have to have a job, you have to go to your self help meetings if you've been ordered to that, you have to go to any other therapy, a therapist, and you know what public transportation is in this state. If you happen to have, if you're a young person and you have a wife or a husband at home that also has a job, you lost out on a ride. I think we need to also take a real good look at that type of thing that what we can use in the future to help them out because, I mean, there are a lot of them in prison in the state. I can just tell you that right now, you can check it out yourself, just driving on a 15-year suspension. If they

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

Committee on Judiciary
January 19, 2006
Page 40

LB 925

were drunk, they need to be in there. I don't have any problem with that at all. They've proven to themselves, proven to it. The 12 to 20 years, were you here when we changed it from eight to 12 years? I think it was eight to 12 years, it's been done in the last few years, and part of that agreement was, we made an agreement that those that were on a 15-year suspension could now apply for a pardon with the Pardons Board and possibly get their driver's license back in seven. It was kind of a trade-off type thing. Are you aware of that?

COREY O'BRIEN: No, Senator. No, Senator, I wasn't.

SENATOR DW. PEDERSEN: (Inaudible) Thank you for your time.

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Mr. Chairman. I guess one of the questions I have is, did you spend any time looking at the administrative license revocation enabling legislation or anything, some of our statutes relating to ALRs, when you reviewed this bill?

COREY O'BRIEN: Not extensively, Senator. No.

SENATOR FLOOD: And I ask that question because a lot of times I see judges approve the interlock device in a court where you have all of the protections of the rules of evidence, and then we send the offender into the administrative realm and these courts, kangaroo courts sometimes, they make all these little rules on this administrative level and you have a hearing, which often times is a waste of the law enforcement officer's time and an opportunity for discovery for the defense attorney, but then these hard and fast rules apply, so you have a court over here, with all the rights of the defendant considered and all the, you know, the interests of the state considered, and then the judge rules, and then the administrative judge hands out an ALR ruling that doesn't comply with the way the courts go in. If we went with something like this, could we get rid of the administrative license revocation and have one court to do the work of the people, one court to hand out the sentence with all the protections of the rules of evidence, and focus our law enforcement's time testifying in one court versus everything

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

Committee on Judiciary
January 19, 2006
Page 41

LB 925

else that comes with the ALR?

COREY O'BRIEN: I think that decision would have to be made by someone much higher up than myself, but I guess it's probably doable. That just would have to be a decision made by someone else other than me.

SENATOR FLOOD: And you know who asked me about getting rid of ALRs? Not the offenders, but the law enforcement officers.

COREY O'BRIEN: I've heard the same complaint, Senator.

SENATOR FLOOD: Yeah. And they asked me to get rid of the ALR, and I'm sure other Senators have heard this, because they get up at eight in the morning to go down to the police station and have a 25-minute free discovery session with the defense attorney on the other side. They're their own prosecutor, essentially, because the hearing officer/judge/prosecutor/litigant is asking the questions. Would you, you know, I guess as we go forward with this process, if we're going to look at everything like Senator Bourne said, we need to look at the ALR system and see if it's getting us to the point where we want to go. Thank you.

COREY O'BRIEN: Thank you, Senator.

SENATOR BOURNE: Thank you. Further questions? I have one last question. I'd like to follow up on what Senator Flood said regarding using that potential federal money, and again, I'm not compelled in any regard by the money as it relates to passing the legislation. But I do think it would be, if you can use it for treatment and things of that nature, I think that would be appropriate. Can you tell me which agency here at the state that money would go through.

COREY O'BRIEN: I don't believe it would go through our office. I could be wrong about that, but I believe it would go to the Department of Roads or through the Department of Roads.

_____ : No.

SENATOR BOURNE: No, we're taking comments from the

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

Committee on Judiciary
January 19, 2006
Page 42

LB 925

audience. You'll have your turn to testify.

COREY O'BRIEN: Somebody else may know.

SENATOR BOURNE: Thank you.

COREY O'BRIEN: I don't know, sir.

SENATOR BOURNE: Okay.

COREY O'BRIEN: Thank you, Senator.

SENATOR BOURNE: Thanks. Thank you.

COREY O'BRIEN: Thank you, Senators, for your time.

SENATOR BOURNE: Further questions? Thanks, Corey.

COREY O'BRIEN: Thank you, Senators.

SENATOR BOURNE: Next testifier in support. We've got a long afternoon, Ms. Reynolds.

SIMERA REYNOLDS: (Exhibits 6 and 7) Thank you. Thanks. DMV, that money goes to DMV. Does that help? My name is Simera Reynolds and I'm here of Mothers Against Drunk Driving. Thank you, Chairman Bourne and members of the Judiciary Committee for having us here. First and foremost, I want to thank Senator Friend for introducing this important piece of legislation that addresses drunk drivers who repeatedly make the choice to drive after drinking. These high-risk drivers are slipping through the cracks in the criminal justice system. In 2005, there was 77 alcohol-related motor vehicle fatalities, 29, 40 percent, of which were committed by a driver with a prior offense. On average, repeat offenders account for approximately one-third of the DUI arrests. In Nebraska, that would amount to approximately 4,000 individuals who did not learn from their first arrest. These high-risk drivers are determined to pose a public safety hazard to those of us who navigate the roads daily as a part of our normal course of life. And I gave you a handout on the cost of the alcohol-related crashes. LB 925 is a comprehensive bill that increases the penalties for habitual drunk drivers. MADD is in the strong support of defining high BAC drivers

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

Committee on Judiciary
January 19, 2006
Page 43

LB 925

at 0.15 or higher. On a typical night nationally, research has shown us that 58 percent of alcohol-related fatalities, and in Nebraska, 40, someone involved is at 0.15 or higher. Also, in Nebraska, the average BAC last year for arrest was 0.157. This is because a driver with a BAC at 0.15 is 382 times more likely to be involved in a fatal crash than someone who has had nothing to drink. And this is not social drinking when we get to 0.15. This is a callous disregard for human life. MADD strongly supports the restrictions on driving as provided in LB 925. These sanctions work. The one-year hard license suspension with interlock ignition scientifically has proven to be effective. Sanctions that include at least a one-year license revocation has been scientifically shown to work when dealing with high-risk offenders. High BAC repeat offenders are required additional treatment above and beyond that of a normal DUI sanctions, and those just currently do not, are not provided in current statute. The provisions in LB 925 address the concerns expressed by our community members. High-risk offenders need to be held accountable for their crime. Additionally, the definition 0.15 is essential in order to qualify for the \$4.6 million in federal funds to address alcohol impaired driving countermeasures. And that money would be directed to DMV.

SENATOR BOURNE: Thank you. Are there questions for Ms. Reynolds? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Miss Reynolds, MADD is now supporting such things as the use of the ignition interlock, is that right?

SIMERA REYNOLDS: Yes, sir. MADD is in total support of low cost incarceration concepts, which would include interlock ignition, house arrest, ankle bracelets.

SENATOR Dw. PEDERSEN: What was the number you used of the, was it above a 0.15?

SIMERA REYNOLDS: Three-hundred-and-eighty-two times more likely to kill somebody if you're 0.15 or higher.

SENATOR Dw. PEDERSEN: I believe that, but...how many, in the percentage of arrests for DUIs were above 0.15? Did you give a number like that?

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

Committee on Judiciary
January 19, 2006
Page 44

LB 925

SIMERA REYNOLDS: I think the BAC, on average, for the drunk drivers arrested last year, in 2004, averaged 0.157 in Nebraska.

SENATOR Dw. PEDERSEN: Does MADD have any position on the fact that just because you have a 0.15 or above, now in my own practice, 0.15 automatically, I see as an abusive drinking. I mean that's, it's far above, I mean, it's obviously, it's abuse, but...

SIMERA REYNOLDS: One-five is...

SENATOR Dw. PEDERSEN: ...having a 0.15 by itself, you don't have a position on saying that automatically...

SIMERA REYNOLDS: ...puts you in...

SENATOR Dw. PEDERSEN: ...gives a diagnostic impression of dependency, does it?

SIMERA REYNOLDS: No, but it puts you in a high-risk category as far as...

SENATOR Dw. PEDERSEN: Oh yeah.

SIMERA REYNOLDS: ...fatal crashes and...

SENATOR Dw. PEDERSEN: I agree with that.

SIMERA REYNOLDS: ...just the endurance. I mean, to get to 0.15, someone probably does have an alcohol problem.

SENATOR Dw. PEDERSEN: They've had some tolerance.

SIMERA REYNOLDS: Right.

SENATOR Dw. PEDERSEN I mean, they've built up tolerance.

SIMERA REYNOLDS: But I mean, but, you know, there's some crazy people that go out and celebrate their birthday and maybe they, you know...

SENATOR Dw. PEDERSEN: But we're also seeing more, even in the state of Nebraska, across the board, of acute alcoholic

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

Committee on Judiciary
January 19, 2006
Page 45

LB 925

poisoning, and a lot of times that...

SIMERA REYNOLDS: Right.

SENATOR Dw. PEDERSEN: ...is first, second, or third time use. And they're coming up with BACs of 0.25 and above.

SIMERA REYNOLDS: Well, I think there's some new scientific research out, and I don't have it all memorized and I'm sorry, but I know that...

SENATOR Dw. PEDERSEN: Well, that's, I don't expect your to.

SIMERA REYNOLDS: ...but some of it has the alcohol arrests have gone down, but at the same time, the BACs of those being arrested has gone up with 0.08 being a federally across the board in all states.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you for testifying today. Would you, you're pretty happy with LB 925 on behalf of your organization?

SIMERA REYNOLDS: I especially am happy with the 0.15 because that is a definition of a high-risk repeat offender across the board unilaterally in the United States. I think that's important to look at. I also think that some of the felony, you know, leaving the scene of a crime as a felony, is especially important, but I'll talk to that on on LB 772.

SENATOR FLOOD: What if we eliminated the administrative license revocation in Nebraska as a committee amendment?

SIMERA REYNOLDS: Well, you know, we talked about that in the Impaired Driving Task Force, and I think...if it was 2003 or 2004, but over 9,000 people were handled through ALRs. And the one thing about ALR law is meeting one of the requirements, like 0.15, in order get some of the federal funding. If you take away ALR, then you're losing one of your requirements because there's eight different requirements that you need to meet. And I think, and Mr. Zwonechek would know this exactly, but I believe we have

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

Committee on Judiciary
January 19, 2006
Page 46

LB 925

to have five of those eight requirements at any given time in order to get our federal funding.

MIKE FLOOD: So we could do away with the ALR system and still meet the federal funding requirements if we have five of the eight?

SIMERA REYNOLDS: Correct. But we don't have primary seat belt law.

SENATOR FLOOD: Thank you very much. I appreciate your testimony.

SIMERA REYNOLDS. We need a primary seat belt law.

SENATOR BOURNE: Other questions for Ms. Reynolds? Seeing none, thank you. Next testifier in support. Welcome.

PAUL RAMIREZ: Thank you. My name is Paul Ramirez. I don't represent any specific group. I didn't expect that there would be anybody here that's a recovering alcoholic who would testify on behalf of this bill, and so I wanted to make it my responsibility to do so. I have been sober over 15 years. I was in drug and alcohol counseling for eight years, certified by the state of Nebraska, and I've worked with primarily persons within the Corrections Department or people who have offended and been prosecuted and on probation, that type of thing. But one of the things I wanted to stress is that when someone has a first, second, or third offense DUI, it is not the first, second, or third time they drove drunk. And this, I think, is a perception that people just fall into. And I myself have never received a DUI. I've been stopped once and let go by a sheriff who, and I should obviously have been taken in. And, but I drove drunk thousands of times, way beyond the limit. And I think it's important and imperative to know that when a judge, or anybody is convicted of, or if someone is convicted of a second or third offense DUI, that the risk to the community is significant, that it is not a occasional experience. It is a total flagrant disregard for the consequences of one's behavior. And as an alcoholic, I can specifically state that I never considered the consequences of my behavior. I had this idea that I was impervious to any kind of harm. I'm ten-foot tall and bulletproof, as we like to say, and we don't think through. And then if we

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

Committee on Judiciary
January 19, 2006
Page 47

LB 925

happen to take upon the idea that, you know what, I might get stopped by a cop if I drink and drive, then we think, oh, that's okay. I can talk my way out of it. That is the thinking of an alcoholic. And that's what the second and third offenses are all about, is it's somebody who has problem with alcohol. And I just wanted to point out, yesterday in the paper, it was posted, a gentleman, Mark Macek third offense DUI, ten days in jail. I was outraged. We need to be held accountable for our behavior and we need to feel those consequences before disaster strikes. And when this ten-day sentence and one-year license revocation was not a slap on the wrist; it was a pat on the back. That's all I have to say.

SENATOR BOURNE: Thank you. Are there questions for Mr. Ramirez? Seeing none, thank you. Appreciate you taking the time to testify. Next testifier in support of this bill? Welcome. If you just set them on the edge of the table, the page will handle it. Thank you.

LISA WANER: (Exhibit 8) My name is Lisa Waner and I'm 21 years old and I'm a nursing student at the University of Nebraska Medical Center.

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

LISA WANER: Uh-huh. W-a-n-e-k.

SENATOR BOURNE: Thank you.

LISA WANER: A little over four years ago, I was a senior in high school driving home on Nebraska Highway 33 when a drunk driver blew through a very clearly marked stop sign...sorry, it's just hard for me to talk about...and crashed into my car at 60 miles per hour on our highway intersection. A seatbelt and an airbag and the grace of God saved my life. I believe I lived so that I could try to keep this from happening again to someone else. The 22-year-old drunk driver who crashed into me had already had a substance abuse problem, but in Oregon, so he was considered a first-time offender in Nebraska. He might have received practically no punishment at all, except that I submitted a victim's statement and the judge wisely imposed the strongest penalty she could. He got 60 days in jail, a six month's license

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

Committee on Judiciary
January 19, 2006
Page 48

LB 925

suspension, and a \$500 fine. He nearly killed myself and another person. I didn't think it was enough punishment to suit the crime. As it turns out, I was right. This man did it again by the next year. He was charged again with drunk driving and it might have been what was considered his third offense. But this time, he fled the state and there was a warrant for his arrest. So after four years, my parents and I have still not recovered thousands of dollars of out-of-pocket costs. The medical and property damages far exceeded the driver's insurance, and the drunk driver is still at large. This drunk driver caused me more physical pain and emotional suffering, obviously, than I can have time to describe. But the financial costs applies to all of us as taxpayers, not just me. One drunk driver costs taxpayers thousands of dollars for emergency personnel, including the life flight helicopter and special accident investigators that had to come from out of state since no one involved in our crash had any conscious memory of what had happened. I paid with my injuries, both physical and emotional. All of us paid financially. The drunk driver only had to pay \$500. His 60 days in jail was not a high-enough price to keep him from doing it again. Six months was not long enough to keep him off the roads, because in a year he did this again. For victims of drunk driving, LB 925 is a step in the right direction toward making it unthinkable to drink and drive. That's what our laws need to achieve and you can help by supporting this law. And I just wanted to add that, the thing is, as Paul mentioned, in six months, this person, even though their license is revoked, they could get on the roads and drive every single day and never get caught. But if it's 15 years, then there's more of a likely chance that they could get caught doing it. So that's why I think it's really important to strengthen these penalties. Thank you.

SENATOR BOURNE: Thank you. Appreciate your testimony very much. Are there questions for Ms. Wanek? Seeing none, thank you. Next testifier in support. Welcome.

CINDY WANEK: (Exhibit 9) Good afternoon. Thank you for the chance to be here. My name is Cynthia, I go by Cindy Wanek, and that's spelled W-a-n-e-k, and I'm actually the mother of the victim that you just heard from. You've already heard her tell about a drunk driver barreling through an intersection and crashing into her at 60 miles

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

Committee on Judiciary
January 19, 2006
Page 49

LB 925

per hour. Well, it's been about four years that I've been interested in this topic since then, and I have prayed for something like LB 925. I read the whole bill, and I'm happy with it. I think that it's a great piece of legislation. And I'm here because of the midnight phone call that I received from the Lancaster County Sheriff's Department about four years ago. It was that infamous, dreaded opening line, are you the parent of, your daughter has been in a serious crash, she has severe facial injuries, and so on. It was a terrifying sight to arrive there that night on the crash scene and see her car crushed up like a little white pop can, and then ultimately to...her face was just swollen, bleeding, unrecognizable to me. And later I felt so angry because she had gone through these injuries and she couldn't remember things. She would have to learn her biology notes over several times. And I became angry when I thought about the drunk driver. He had missed many warning signs that an intersection was ahead because of his intoxication. There were lighted buildings on both sides of the road, a warning sign, stop ahead, rumble bars in the pavement, a stop sign with an extra warning that oncoming traffic would not be stopping. And when his blood alcohol was taken, it was a matter of hours after the crash, I was there at the time that it was being done by the law enforcement officer, and I received the information from Sheriff Terry Wagner, that the reading at that time was 0.101. And yet this driver was still, when I observed this taken, exhibiting very drunken behavior. He was chuckling inappropriately when he couldn't supply his own mother's name, and all this was happening while his own girlfriend was in a coma, and my daughter was in the bed next to him in the emergency room. And I bring this up because no one needs to fear that LB 925's increased penalties for BACs of 0.15 is too harsh. The drunk driver who caused all of these thousands, maybe even a hundred thousand dollars worth of damage to my daughter, to his girlfriend, and to all of us as taxpayers had substantially below 0.15, and therefore I submit to you that a BAC of 0.15 is substantial and is appropriately punished with these more severe measures in this piece of legislation. I also would like to relate to you that I won't forget how a law enforcement officer commented to me a month after this crash took place that my daughter's drunk driving offender was really a pretty good guy. Well, he had that officer very fooled because it was less than a year after the sentencing, and this fellow struck again. And I tell you this because I

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

Committee on Judiciary
January 19, 2006
Page 50

LB 925

want to make the point that I believe we bend over backwards to be concerned about what we're doing to these offenders. I appreciate the point you made, Senator Flood, and what Senator Pedersen said about rehabilitation. I appreciate what you said about what do they do for 15 years on a suspended license about supporting their family. As a mother of a victim, I just want to emphasize here today that we need to think about what has happened to the victims for 15 years. My daughter is alive here. Most people like me have a daughter in a cemetery. And I come to speak for them because a lot of them just don't the strength to do it. And her life is affected and it will be for more than 15 years with her timidity with driving, and I think that these people can plan ahead. If they make that mistake, they can move. They can relocate to a city with more transportation for the public. If their wife is pregnant, they better have a sister-in-law or somebody else to make that drive to the hospital because those who are affected, such as myself, my daughter, people like Senator Kruse, they will make adjustments in their life for 15 years and way more. So I would ask you to please keep that point in mind. And so finally, in closing, I would just like to say that we desperately need to get tougher on all drunk drivers, but especially the repeat offenders. We need to follow the example of many other locations in the world where the law is so tough that no one would ever think of drinking and driving. And I believe that LB 925 can make that happen for every parent who doesn't want to get the midnight call saying that their child has been wounded or killed. So I thank you and I respectfully ask you to support this piece of legislation.

SENATOR BOURNE: Thank you. Are there questions for Ms. Wanek? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. I just wanted to go and thank you for your testimony. I'm interested in supporting the tougher penalties. One of the problems that's been voiced to me in my district is that law enforcement officers sometimes say, if I stop this person for DUI, I'm going to have to go through all this paper work, including the administrative license revocation. What do you think of eliminating that component if we had tougher penalties in the actual statutes and the actual criminal proceeding, you know, with the tougher penalties, and leave

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

Committee on Judiciary
January 19, 2006
Page 51

LB 925

it all up to the court instead of an agency and a court and doing half and half?

CINDY WANER: I love that idea, and the reason is I did go through with my daughter the system that's set up in Lancaster County Court for victims. They do a wonderful job in this county, which wouldn't have been true, I believe, in our county, Saline County, with informing people this is the court date, this is the hearing, and so forth. And there was a lot of paper work. There were all sorts of other agencies that I wasn't even familiar with the people involved with this drunk driving offender. And it would be nice for the victims also if things were simplified. And I'm a great believer that less paperwork would be a better idea, so I like your suggestion. And the only concern I would have, though I don't fully understand what that entails, is that I would hate to see this piece of legislation killed off because of the desire to change it and add more things. I just think we need to get on the ball and start getting the penalties toughened up. I believe, after thinking about this for four years about what needs to be done, that the solution to this problem begins with laws that are so strong that people are just too scared to get in a car and drive and that their significant others will help them make that decision when they're drunk, or that they will just call cabs, they will find a way to get a ride home from where they're drinking because they don't want to risk it. So the sooner we can start doing this, the sooner we can save people's lives. And I like your idea if it doesn't slow this up.

SENATOR FLOOD: The only, and I should present this question to you with the caveat that I think what folks like Mothers Against Drunk Driving would be concerned about, and probably the biggest advantage to the administrative license revocation, is it starts the process of taking the license right away. And you might give some of that up if we eliminate the administrative license revocation because, I believe, after 30 days, your license has been revoked and you'd have a temporary license that's essentially revoked as well. I mean, there's some give and take here, but I really think if we're going to have tough penalties, let's have them on one place, let's focus it on the court that has all the protections built in so we don't have all this challenges and paper work and we're dragging police officers

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

Committee on Judiciary
January 19, 2006
Page 52

LB 925

all around. So if you would talk to your organization about that, I think there's some value in making this all work.

CINDY WANEK: Well, I agree, and I would say that in my daughter's case, it took a full year for the court case to be resolved. And so the man was driving around, and she lived in constant fear, driving the same highway that the same guy was going to run across her path again. And you can believe, as parents, we had that fear also. So it's not happening speedy now, so if it would not be any slower than it is, I can't see any disadvantage. Thanks for that interest.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. Appreciate your testimony. Next testifier in support of this bill?

CYNDEE McCARTHY: (Exhibit 10) Members of the committee, thank you for this opportunity to voice my strong support for LB 925. This legislation goes to the heart of a matter that...

SENATOR BOURNE: Excuse me, ma'am. I'm sorry.

CYNDEE McCARTHY: Yes.

SENATOR BOURNE: Could you state your name and spell it for the record?

CYNDEE McCARTHY: I'm sorry. Cyndee McCarthy...

SENATOR BOURNE: Okay. Thank you.

CYNDEE McCARTHY: ...M-c-C-a-r-t-h-y.

SENATOR BOURNE: Appreciate that.

CYNDEE McCARTHY: Sorry about that.

SENATOR BOURNE: No problem.

CYNDEE McCARTHY: This legislation goes the heart of a matter that impacted my life almost three years ago. My

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

Committee on Judiciary
January 19, 2006
Page 53

LB 925

husband and I were traveling home after dinner with family when a drunk driver struck us. As a result of that crash, Tom, my husband, died in the car and I was taken to the hospital where I remained for the next three months. Our children were forced to make funeral arrangements and I was unable to help or to attend my own husband's funeral. People who drive drunk are dangerous. People who continue to drive drunk after being convicted of this violent crime are truly a menace to our society, our community, and the well-being of anyone who operates a motor vehicle. I know all too well. LB 925 will make a long overdue and substantial change to the DUI laws. These changes will not bring back my husband or make my injuries disappear. However, if this law had been in place four years ago, I may be still living on the acreage in Cass County that Tom and I worked so hard to afford. I would still have the luxury of walking barefoot. Since the crash, I can no longer walk barefoot, and what would seem like trivial thing has become a ball and chain that I must bear. When traveling, I am subjected to embarrassing screenings because I cannot remove my shoes. Even when I shower, I must wear shoes. The offender who caused this dramatic shift in my family dynamics was driving with a BAC of 0.184, and this was not his first offense. This offender did not have enough insurance to help pay for the million dollar hospital bill, the funeral, the new vehicle we bought five months prior to the crash. As a victim, I fear my offender along with many others disobey the law and drive without driver's license. As a victim and survivor, I want to personally ask each of you to vote in support of this legislation, and I encourage you to please advance this important piece of legislation to the floor for full debate. Thank you on behalf of a safe society.

SENATOR BOURNE: Thank you. Are there questions for Ms. McCarthy? Seeing none, thank you. We appreciate your testimony. Next testifier in support. Are there other individuals wishing to testify in support of this bill. If you would make your way to the on deck area and sign in, please. Welcome.

BOB SCHMILL: Bob Schmill, and that's S-c-h-m-i-l-l. I'm a victim's father. And I'm going to speak later on LB 772. But this is one that is, because the person who killed my son, or our son, was a multiple offender, even though the

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

Committee on Judiciary
January 19, 2006
Page 54

LB 925

two priors were MIPs, minor in possession, and she was on probation for a DUI at the time. Hopefully, that it with stricter penalties, it will change the thinking of people so that they will not be going out and drinking and driving. As was stated before, that in 2004, there were 89 people who were killed due to drunk driving. And last year, it was down 12. Well, it was 12 families, with 77 people, that's 12 families that didn't have to go through what we went through. But 40 percent of those people that cause those accidents are repeat offenders. So I ask for your support of LB 925, and I'll speak later on LB 772.

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

JERRY STANTON: I'm Jerry Stanton, S-t-a-n-t-o-n, and I believe I can probably answer Senator Bourne's questions about ignition interlocks. I'm with Ignition Interlock Systems of Iowa and Nebraska, and I wanted to speak in support of this bill.

SENATOR BOURNE: Are you with an organization?

JERRY STANTON: Yes, Ignition Interlock Systems.

SENATOR BOURNE: Oh, okay.

JERRY STANTON: It's our company.

SENATOR BOURNE: Thank you.

JERRY STANTON: In support of the bill, but also to clarify a few areas that you may want to look at, make some change to. In Section 2, the test fail, the 0.15 or above that we're talking about, is part of the federal highway money that I believe we're talking about, if I'm not mistaken, that for a first offense, a 90-day suspension, if the blood alcohol level is below 0.15. If it's above 0.15, it's a one-year mandatory suspension, but after 45 days of that suspension, the federal government allows an ignition interlock restricted license for the balance of the suspension period. For 0.15 or above for repeat offenders, or any repeat offender for that matter, the federal government allows an ignition interlock restricted license

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

Committee on Judiciary
January 19, 2006
Page 55

LB 925

after one year of the suspension period. That's a piece of federal legislation as regards the one year that we're expecting a change later this year, as we have been for the prior two years, so we haven't succeeded at that. But the momentum is clearly there. So there is a mechanism for people to become licensed and back into the system, to be able to drive even with the 0.15 test failure. The other area I'd like to point out is that most of the enhanced sanctions refer to an impoundment or immobilization under 60-6,197.01. What that calls for, it goes back almost 10 years, it calls for the impoundment or immobilization of a vehicle belonging to the person for a period of five days to eight months, presumably during the period in which the license is already suspended, or the ignition interlock for six months after the license is reinstated. And I feel that if those two were put more in parity then, more of us would have the opportunity to be protected from the repeat, high-risk offender, drunk driver by an ignition interlock to make sure that he or she is sober whenever he or she drives.

SENATOR BOURNE: Thank you. Are there questions for Mr. Stanton? Seeing none, oh, Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Stanton, I appreciate your testimony. You realize, though, under the ALR, a subsequent offense and you are prohibited from having any interlock device in Nebraska.

JERRY STANTON: No, sir. I was not aware of that.

SENATOR FLOOD: Thank you. Appreciate your testimony.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next testifier in support. Is this our last testifier in support of this measure? Are there any opponents to the bill? If you'd make your way forward and sign in please, use the on-deck area. Welcome.

TIM HOEFT: Thank you. My name is Tim Hoeft, H-o-e-f-t. I'm the Phelps County attorney in Holdrege, Nebraska. I'm also the president of the Nebraska County Attorneys Association. I'm here on behalf of the County Attorneys Association to let the committee know that we are in support of the concepts of this bill. We have not yet had our legislative committee meeting. It's actually scheduled for

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

Committee on Judiciary
January 19, 2006
Page 56

LB 925

this evening. At that time, we will discuss the bill at length and develop our association's official position. At that time, it's our intent to draft a letter to the members of the committee and forward our position to you. But we felt that it was important to let you as a committee know that we do intend to study the bill and develop an official position. And I can say that we do support the concept of the bill.

SENATOR BOURNE: We'll look forward to your letter. Questions for Mister, is it Hoaft (phonetic)?

TIM HOEFT: Hoeft.

SENATOR BOURNE: Hoeft. Senator Flood.

SENATOR FLOOD: Thank you, Senator Bourne. I hate to ask so many questions, but I'm just interested. In my county, there's been a lot of complaints about the ALR system, from law enforcement especially. Have you received any of those comments from law enforcement officers in your area?

TIM HOEFT: In my particular area, we do get complaints about the ALR process and similar complaints to the ones you've alluded to previously. And they're similar, that it's a free opportunity at discovery by defense bar, that it's difficult to go to a hearing where the hearing officer is acting as officer, or judge, prosecutor, and litigant all at the same time.

SENATOR FLOOD: Do you, what would you think if, and I know I'm asking you personally and not necessarily the County Attorneys Association. If you don't want to answer, that's fine, give the association a chance. If we did stiffen the penalties as recommended her in LB 925 and did away with the ALR revocation, do you personally have any idea of how you'd feel about that?

TIM HOEFT: My personal opinion as the Phelps County attorney is I would have no opposition to, if the penalties were stiffened, to the elimination of the ALR. It's something I certainly will discuss with the members of the County Attorneys Association and forward our thoughts to you on it.

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

Committee on Judiciary
January 19, 2006
Page 57

LB 925

SENATOR FLOOD: And I would greatly appreciate knowing what the association thinks on that. I think that would carry a lot of weight.

SENATOR BOURNE: Further questions? Seeing none, thank you.

TIM HOEFT: Thank you.

SENATOR BOURNE: Last call for proponents. With that, we'll move to opponents. Are there any other opponents to this bill besides this gentleman? Are there any neutral testifiers? If there's a neutral testifier, please make your way forward to the on-deck area and sign in if you have not already done so. Thank you. Welcome.

JOHN JORGENSEN: Good afternoon Senator Chairman, fellow senators. My name is John Jorgensen, J-o-r-g-e-n-s-e-n, currently employed with the Lancaster County Public Defender's Office. However, I'm here primarily today as a concerned citizen and taxpayer that sees this matter as an unfunded, unnecessary measure to the counties that deal directly with these sorts of law enforcement matters. It's an unfunded mandate with draconian intent that completely destroys any hope of rehabilitating any offenders that would be drawn under this bill. As I read the language that's currently set forth in this bill in regards to interlock exchange devices is unchanged as to second offenses. However, the felony offenses that are created under this bill as well as some of the enhanced offenses that were previously misdemeanor offenses are not eligible for that interlock device, so we're taking away that rehabilitative hope there. We are also taking away the eligibility for community service options out of what's currently in the statutory scheme. There are, I think there was testimony here today, that the money that might be received, approximately \$1.125 million per year over four years is going to the DMV. To the best of my knowledge, the DMV doesn't fund any treatment or rehabilitative centers. They don't employ any regular, full-time licensed drug and alcohol counselors that might be able to reach out to these people. It's an unfunded mandate because the counties that have to deal with these cases are dealing with new offenses that were previously misdemeanor offenses now becoming a felonies. Judges are setting higher bonds on these cases. People are staying in jail longer. There's more pretrial

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

Committee on Judiciary
January 19, 2006
Page 58

LB 925

matters that are being presented to courts. There are more lawyers involved, more judges, more jailers. There is more cost that are going to these counties, which I can assure you readily do not match this \$4.6 million that might be received. It's also my understanding, too, that in order to receive that \$4.6 million through the passage of this, I don't believe that each and every proposed aspect of this legislation is required to get that monetary award. I would also ask the body to take a look at the matter as a whole. I would ask the body to carefully consider the entirety of this bill and the affect that it may have upon the taxpayers and your constituents in this regard. Obviously, I'm almost out of time here. I don't have time to go into each and every aspect to which I believe problematic, but mainly, I think it is problematic that we're looking at life imprisonment for some individual that may be a repeat offender. I think that that's draconian in intent and an unnecessary measure and an undue burden upon the localities that have to deal with these types of offenses, especially when there's not being equal money being transferred towards rehabilitative programs and (inaudible) in that regards. If there are any questions in regards to specific aspects of this bill which I believe are concerning, I would be more than happy. Otherwise, I would thank the body for hearing the testimony here today, and that of the members in support of the bill.

SENATOR BOURNE: Thank you, Mr. Jorgensen. I appreciate your testimony. It's hard to come in and speak in opposition when there are so many people in support. Would you be willing to provide your testimony in a written format to the committee so we'd have your input rather than, if you could do that. And we'll just keep the record open if you could submit in the next week or so.

JOHN JORGENSEN: I would be more than happy to do so to this body.

SENATOR BOURNE: I appreciate that. Questions for Mr. Jorgensen? Seeing none, thank you.

JOHN JORGENSEN: Thank you.

SENATOR BOURNE: I'll look forward to that summary. Appreciate it very much. Other testifiers in opposition?

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

Committee on Judiciary
January 19, 2006
Page 59

LB 925

We'll move next to neutral testimony. Is this the only neutral testifier? Welcome.

DIANE RIIBE: Hi. Senator Bourne and members of the committee, my name is Diane Riibe, R-i-i-b-e, and I come representing no one but myself. And I just really wanted to give a very quick historical perspective because I've worked on the issue of drunk driving for 15-some plus years. And I would, and of course, for whatever my opinion is worth, I would really oppose and hope that the committee would consider some of the comments on the ALR. It does exactly what Senator Chambers was referring to earlier. Truly, the things that are most effective are the swiftness and the certainty of the penalties, and the administrative process provides that. I just came earlier this morning from the Liquor Control Commission hearings, which is a completely administrative process. It does work. It's applied pretty evenly and fairly across the board. I can understand and appreciate, having been part of that process as we got ALR, and the subsequent years to see why law enforcement would be frustrated, and it's appropriate frustration sometimes. Some of the pieces that were inserted into ALR at the time were almost intended to frustrate law enforcement, and I don't say that in a good way. It was certainly not a positive. But such things as the need to use telephonic testimony, which now has happened only recently, it made more difficult for law enforcement in their life and their schedules to come in and to kind of demand their presence in an administrative process, which is not necessarily necessary. There were some things. There's a judicial bypass in Nebraska's law, which is really unheard of. In fact, we may be the very only state. I'd be happy to get up to speed with it, but I guess what I want you to know, just in closing quickly, is that ALR is one of the most effective countermeasures, less intrusive than most you'll do, far worth the dollars and the investment. And if it's not working, then fix it. Fix it so it works for law enforcement because in terms of deterring drunk driving, it's very effective, so...

SENATOR BOURNE: Thank you. So just for clarity, you would be opposed to elimination of the ALR process. Is that...

DIANE RIIBE: Yes.

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

Committee on Judiciary
January 19, 2006
Page 60

LB 925

SENATOR BOURNE: ...okay. And would you also submit, if you have questions, or, not questions, if you have comments or ways that you feel would make the ALR process better or anything regarding this bill, would you submit those to the committee in writing?

DIANE RIIBE: I'd be happy to.

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

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you for your testimony today. Other than the immediateness of taking the license, which I can respect, and I certainly can understand how that would be effective, what else does this dual process on the administrative level offer to us as citizens than a judge in a courtroom that has better penalties to impose.

DIANE RIIBE: Well, he or she may have better penalties, but it provides for the certainty that Senator Chambers was concerned about. I, too, have watched many, many courtrooms and I can tell you that the kind of discrepancies that we talked about earlier are unfortunately all too common. I can tell you that in some counties we saw people of color getting sentences that were far outstripped anything that a Caucasian would receive, and that happened in the court system without the kind of objectivity of a very sterile administrative process, so...

SENATOR FLOOD: So you don't support the court system?

DIANE RIIBE: That isn't what I said.

SENATOR FLOOD: I mean, you don't trust the court system to hand out penalties and sentences that are uniform, is that what you're saying?

DIANE RIIBE: They frequently don't hand out uniform penalties.

SENATOR FLOOD: I guess I asked the question, you don't have trust in the court system to dispense justice for criminal defendants?

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

Committee on Judiciary
January 19, 2006
Page 61

LB 925

DIANE RIIBE: No, I didn't say that.

SENATOR FLOOD: Okay. Do you trust the court system to do a good job?

DIANE RIIBE: Sure.

SENATOR FLOOD: So why would we want this administrative enforcement over here and the criminal enforcement over here in a criminal court with a judge and a prosecutor, both well paid, hopefully in most counties, working on the issue, and then having this auxiliary hearing officer drive from Lincoln to have hearings and cause, you know, confusion, and officers are telling me, gosh, if I stop this person for DUI, I'm going to have to write out all this other paperwork, and I'm going to have to show up on Tuesday morning or get out of bed after a long shift?

DIANE RIIBE: But those are very valid concerns on the part of law enforcement that have been addressed in other states to reduce the kind of paperwork and the kind of time commitment. I guess my point is, is we could wrap it all up and make it more difficult, which we have done from the get-go. I think the better question is how can we unwrap the ALR system so that it is more effective and is used as intended, so it is applied fairly, evenly, swiftly, and certainly.

SENATOR FLOOD: But if you trust the court system, then why do you have to have your insurance policy at the ALR level?

DIANE RIIBE: I don't know that I'd be the person to answer that.

SENATOR FLOOD: So if we got rid of the ALR, we stiffen the penalties, do you have enough faith in court system that we'll be able to handle that? I guess I'm confused, because on one level you say to me...

DIANE RIIBE: Well, I think...

SENATOR FLOOD: ...we have, you know, courts are doing different things, and I'm not going to disagree with that, but you say, but I have complete faith in our court system.

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

Committee on Judiciary
January 19, 2006
Page 62

LB 925

DIANE RIIBE: No, Senator, I didn't say I have complete, 100 percent faith. I don't know that anybody does because they're humans who do that, and I'm just saying that the ALR process is more objective, it is more swift, it is more certain. You could have delays. We can look at the former chairman of the Liquor Control Commission...

SENATOR FLOOD: But it's based off of convictions, isn't it?

DIANE RIIBE: The court system?

SENATOR FLOOD: If you ALR someone's license and they later are acquitted in a court of law, doesn't that ALR go away immediately?

DIANE RIIBE: Again, because I haven't dealt directly with it recently, I wouldn't be able to answer that question. I'd be happy to get up to speed.

SENATOR FLOOD: If we were able to find some way to temporarily take the license of a defendant pending an action in the criminal court with some due process and we could make it all work that way, would you be in favor of that?

DIANE RIIBE: I don't, I'm not in favor of getting rid of ALR, no. I don't think it's, I think what you're suggesting is terribly do-able. I've been in...

SENATOR FLOOD: Why is it not terribly do-able?

DIANE RIIBE: I, personally, have been in far too many courts where I don't see the equal treatment and placement of the law. And the situation I was going to refer to is the situation of the former chairman of the Liquor Control Commission who literally delayed his entire process for more than five years. That does happen when you have an ability to have that kind of stature and that kind of favor by the court system, because the court system is...

SENATOR FLOOD: So we're back to my original question. You just say, I don't see the equal treatment in the court system. Five minutes ago, you said, I do trust the court system.

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

Committee on Judiciary
January 19, 2006
Page 63

LB 925

DIANE RIIBE: I do, Senator, let me be clear. I do trust the court system. It's the best that is around, but it still is not as equally applied as it can be. So, if...

SENATOR FLOOD: Sentence minimums would be your preference, then, if we tied judges' hands and say, you must do this.

DIANE RIIBE: Well, again, I wouldn't say that across the board. I think it has to be looked at...I certainly wouldn't want to make that decision here in 10 seconds without looking at those issues.

SENATOR FLOOD: Well, when you get a chance, maybe you could send me some information.

DIANE RIIBE: I'd be happy to.

SENATOR FLOOD: I appreciate it, thank you.

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

DIANE RIIBE: Thank you.

SENATOR BOURNE: Appreciate your testimony. Senator Friend to close.

SENATOR FRIEND: Thank you, Chairman Bourne. Thank you, members of the committee. And all I wanted to say is I appreciate your patience here. I do think this is important legislation. I think you all recognize that, too. But what I'd like to point out is, and I pointed out this on a couple of occasions, a couple of wise members of this Legislature, and I heard this from them and I'll use it again, we need to treat people, and I've always tried to think about this in judiciary committee, we need to treat the ones that we're mad at differently and differentiate between the ones that we're afraid of. And I think we're afraid of, I think you've heard that today, we're afraid of some of these folks, second, third, fourth, fifth offenders. I'd like to work with the committee to the best of my ability, to come up with something where we can deal, you know, with some of those issues. So I would just leave it at that.

SENATOR BOURNE: Questions for...

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

Committee on Judiciary
January 19, 2006
Page 64

LB 925, 772

SENATOR FRIEND: Thank you.

SENATOR BOURNE: ...certainly. Questions? Senator Chambers.

SENATOR CHAMBERS: I would like to ask Senator Friend a question which only Senator Friend can answer. Senator Friend, are you going to prioritize this bill?

SENATOR FRIEND: I am.

SENATOR CHAMBERS: He answered it.

SENATOR BOURNE: Further questions? Seeing none, thank you. Thank you, Senator Friend. That will conclude the hearing on Legislative Bill 925. The committee will stand at recess for 10 minutes.

RECESS

SENATOR PAT BOURNE: The next bill we're going to have is Legislative Bill 772. Can I have a show of hands of those folks here testifying in support of LB 772? I see five or six. And again, we're going to make use of the on deck area, so if those people that want to speak in support of the bill would come and sign in and find a spot there on the front row, we'd appreciate it. With that, Senator Friend to open on Legislative Bill 772.

LB 772

SENATOR FRIEND: Thank you, Chairman Bourne, members of the Judiciary Committee. For the record, my name is Mike Friend, again, F-r-i-e-n-d, and I represent the 10th Legislative District, northwest Omaha, and I'm here to introduce LB 772 at the request of the Douglas County Attorney's Office. LB 772 changes the penalty provisions for failure to stop for certain accidents. Leaving the scene of an accident where bodily injury is involved would be a Class I misdemeanor. Leaving the scene of an accident where serious bodily injury is involved would be a Class IV felony, while leaving the scene of an accident where a death is involved would be a Class III felony. And a person

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

Committee on Judiciary
January 19, 2006
Page 65

LB 772

convicted of either felony charge would have his or her operator's license revoked from one to fifteen years. It's called leaving the scene in the courts, hit and run in the media. Some law enforcement officers refer to it as hit and skip. What it essentially is is a failure on the part of the driver to stop, render aid, and accept responsibility for their part in a vehicle accident. Whatever you call it, dozens have been victims of it in Nebraska over the last 25 years. Nearly one in five pedestrians, more specifically, 18 percent, killed on America's roadways is a victim of a hit and run crash, according to a major research report released in April of 2003 by the U.S. Department of Transportation's National Highway Traffic Safety Division. LB 772 not only defines the term bodily injury and serious bodily injury, but also increases the penalties for those who fail to stop after inflicting that bodily injury or causing death. And with that, I would just say thank you, and thank you again, be happy to entertain any questions. But I know that there's folks behind me that had a hand in the legislation, so...

SENATOR BOURNE: Thank you. Are there questions for Senator Friend? Seeing none, thank you. Would the first proponent of the bill come forward? Welcome.

STUART DORNAN: Good afternoon, Senators. My name is Stuart Dornan, S-t-u-a-r-t D-o-r-n-a-n. I am the Douglas County attorney. I wanted to thank Senator Friend for preparing this legislation here for us today. When a defendant or a driver leaves the scene of an accident, it becomes very very difficult to prove at the time that he was legally intoxicated and it makes prosecution very problematic. We've had a number of cases in the office here in the last few years where individuals have left the scene of an accident and, in particular, one case where the individual then went to a bar and drank and we were unable to get their blood or breath alcohol level until many many hours after the accident. This led to us not being able to convict them of felony motor vehicle homicide. The easy out, or the escape clause for them, is to leave the scene and then, again, in this one instance where the individual went to a bar, we need a tool to deter that from happening and appropriate punishment that would be consistent with what they would have been convicted of if they had stayed and been tested and had been legally intoxicated at the time of

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

Committee on Judiciary
January 19, 2006
Page 66

LB 772

the offense. So it's very very important as a prosecutorial tool for this offense to be enacted and to give us an option if somebody does leave the scene to charge them appropriately.

SENATOR BOURNE: Thank you. Questions for Mr. Dornan? Seeing none, oh, Senator Chambers.

SENATOR CHAMBERS: Mr. Dornan, are you here in your role as the county attorney or as a private citizen?

STUART DORNAN: As the county attorney.

SENATOR CHAMBERS: I'm looking at some items here that trouble me about the way that office works and I'm wondering how this particular law would be enforced. Now, this law is not going to stop somebody from doing exactly what is done now in the absence of a law such as this. Isn't that true?

STUART DORNAN: If somebody wants to leave, they can leave.

SENATOR CHAMBERS: So you would need a witness to establish that this person who is suspected had been the one in the accident, and then went to a bar or wherever they go to avoid having to face the consequences.

STUART DORNAN: Witnesses are helpful with respect to making a case, yes.

SENATOR CHAMBERS: And your office has used snitches and informants?

STUART DORNAN: Yes.

SENATOR CHAMBERS: In one case, a snitch was even offered money to provide testimony against a man charged with first-degree murder. Isn't that true?

STUART DORNAN: The money was designed to pay for the living expenses, yes.

SENATOR CHAMBERS: But it was money that would come from the County Attorney's Office to a snitch to testify against a man who was being framed for first-degree murder, if I want to characterize it that way.

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

Committee on Judiciary
January 19, 2006
Page 67

LB 772

STUART DORNAN: The witness felt in fear of his life, yes.

SENATOR CHAMBERS: And so people will know what I'm talking about, this snitch had been arrested for domestic violence and misdemeanor assault on his fiancée in 2003. He received probation for that and quickly violated it. In the past year, which would be 2004, he has been charged with five felony counts of forgery, two counts of giving false information to police, and obstructing justice. He ran from officers investigating the domestic assault. He twice has told police his name was Mark Bell, which was not his name. In the forgeries, he used stolen checks to set up a bank account. At one point, he withdrew nearly \$4,000 over five days. And this is the man that your office was going to provide with \$1,400 or \$1,500 to testify. And the deal that was made was for... was disclosed only as the World-Herald reported because of a law proposed by state Senator Ernie Chambers requiring prosecutors to reveal information about jail house snitches to defense attorneys. So this case went to trial, the snitch did testify, and the jurors were outraged based on the accounts. And what I was told by people who were in the courtroom, they were outraged by what was done in this case. And they said it wasn't so much the money, but that these two snitches were absolutely unbelievable and they acquitted the man who had been charged with first-degree murder and was to be convicted through work by your office on the basis of this testimony. And this is to show why I'm not sure I trust giving this kind of power to your office. The jurors were not only concerned about what was said during the trial. They talked about the poor investigation conducted by the police, that they did not do DNA tests on cigarette butts that they had, interviews with people were not recorded, some reports were not written till several months after an interview had been taken, and the main thing is that the man was acquitted. Being one against the death penalty, I watch what happens in first-degree murder cases, and when I see this kind of testimony utilized, I have a problem. There was another case involving your office in 2004, November, which a judge had to throw out some evidence because he ruled that the prosecutors could not use a taped phone call between this individual and an undercover police officer because another inmate helped set up the call. The judge said state law, which I'd gotten into place, prohibits inmates from working

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

Committee on Judiciary
January 19, 2006
Page 68

LB 772

as agents of the state. And I would expect the county attorney to be aware of that. And in the earlier case I mentioned, your office had knowledge of the slip shod investigation by the police, the weaknesses in the case, the crimes committed by this snitch, because your office had offered to dismiss them, and in the case of some of the forgeries, to recommend against any jail time. Your office made a mistake the latter part of last year with a molester because your office hadn't taken the time to determine which law was going to apply when your office worked out a plea bargain. And under the law that applied, the person could not get more than a five-year sentence, your office apparently thought that a law that had been passed subsequently toughening sentences was the one pursuant to which the plea bargain was concluded. After the blunder was discovered, the Attorney General asked the Supreme Court to allow your office to take a second bite at the apple and the court said, no, the plea bargain as agreed to would have to stay in effect because the law at the time the crime was committed called for that lower sentence, which your office was not cognizant of, but could have been had the law been researched. To what extent does your office rely on snitches and informants, if it could be quantified, or can it not be?

STUART DORNAN: Respectfully, Senator Chambers, I think we're getting away from the bill and issue in hand, but I'll answer your question as best as I can. We always do the very best we can to collaborate and corroborate any information that we have from people who are providing testimony who are cooperating witnesses.

SENATOR CHAMBERS: You might feel that I'm going far afield, but your office is the one asking for this law. Your office is the one that will enforce it, not the only one that can be used anywhere in the state, but because of the track record, I'm skeptical. I said a lot of things about Ray Mossey's case. Your office was deeply involved in that. I wrote you a long letter as to why I thought he was unsuitable for pretrial diversion. You did not want to reveal to the public the conditions of his pretrial diversion until I had to do additional legal research on criminal history information available to the public and pointed out to you that if a person were a public official or candidate, that information would have to be revealed.

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

Committee on Judiciary
January 19, 2006
Page 69

LB 772

Why should I have to do that? And I did it because you said in the paper you were not going to reveal this information, and the law said you have to. So you make my job hard, and you might make my job hard if this other law is put into effect. So if this law is not passed, what is the worst thing that can happen, because I want to let you talk directly to this bill now?

STUART DORNAN: Well, somebody that is intoxicated leaves the scene and we can't prove that they were legally intoxicated at the time of the crime, they're going to end up with a class I misdemeanor, which is a current penalty.

SENATOR CHAMBERS: So what you're looking at really is only the punishment. You cannot prevent the person from leaving. It does not make easier the proof relative to whether this person was the perpetrator or not, isn't that true?

STUART DORNAN: True.

SENATOR CHAMBERS: The reason I'm taking that approach, I don't want people who come here testifying on this bill to think somehow there's going to be an easier job of prosecution. It's going to make a harsher punishment if somebody does this. Now if I've misstated it and somehow it's going to make the job of prosecution easier, I would like you to show me that language in the bill which does that.

STUART DORNAN: It's going to provide an additional tool, Senator Chambers, concerning if somebody leaves the scene and they are legally intoxicated and we can't prove it because they've left the scene and they have not been accountable, we'll be able to charge them with leaving the scene of a serious bodily injury or death, and it'll be a felony.

SENATOR CHAMBERS: But that won't...

STUART DORNAN: So yes, we will be able to get a felony conviction out of it.

SENATOR CHAMBERS: If you can prove that what they say is untrue, if they leave the scene and go to a bar, and then you want to show that they were under the influence when

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

Committee on Judiciary
January 19, 2006
Page 70

LB 772

they did this, and they say, well, I was, I became under the influence not while driving, but while at the bar. If that allegation is made even with this law, it will not be any easier to prove it with this law than it is to prove without the law, is it?

STUART DORNAN: All we have to prove is that they left the scene, Senator Chambers.

SENATOR CHAMBERS: And how would you do that?

STUART DORNAN: That's a case by case basis concerning investigation and what evidence is available to us.

SENATOR CHAMBERS: What do you have to prove now?

STUART DORNAN: With respect to leaving the scene, that they were at the scene and they left it.

SENATOR CHAMBERS: I didn't hear you.

STUART DORNAN: That they were at the scene and they left it.

SENATOR CHAMBERS: And that's what would have to be proved under this law?

STUART DORNAN: Yes, sir.

SENATOR CHAMBERS: Now, this has to do with any time a person leaves the scene, whether intoxicated or not. Is that true?

STUART DORNAN: Correct.

SENATOR CHAMBERS: And this would not...would this increase the punishment for somebody who is not intoxicated?

STUART DORNAN: It would.

SENATOR CHAMBERS: Would it increase the punishment for somebody who was intoxicated?

STUART DORNAN: It would.

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

Committee on Judiciary
January 19, 2006
Page 71

LB 772

SENATOR CHAMBERS: Would the intoxication be the reason for the increase in the punishment or the fact that they left, intoxicated or not?

STUART DORNAN: I think as far as a duty, the people have said it is more appropriate not to leave the scene of an accident for many many reasons and to stand accountable and to allow the police to do their work, including their investigation.

SENATOR CHAMBERS: If a person leaves the scene now when the punishment is a misdemeanor, you think they'll be less likely to leave it when it's a felony?

STUART DORNAN: Yes.

SENATOR CHAMBERS: Do you think they'll know what the law is when they leave? Do you think people know now that it's a misdemeanor, the ordinary person?

STUART DORNAN: I can't answer for them, Senator Chambers.

SENATOR CHAMBERS: Mr. Dornan, you had an idea, I believe, that you were going to encounter from me maybe not exactly what I asked you, but something along this line of questioning, didn't you?

STUART DORNAN: Which line of questioning, sir?

SENATOR CHAMBERS: Those issues that I brought up about why I have distrust or lack of confidence in the way your office functions. Or does it take you by surprise?

STUART DORNAN: I didn't come here with any expectations, Senator.

SENATOR CHAMBERS: Let me give you another reason why. A bill was before this body dealing with DNA, the collection of DNA evidence. Your top, I think it was your top prosecutor, your right-hand man, his name was Rose, came here speaking for the county attorneys association and he was supposed to be in a neutral capacity. And he attacked the bill, spoke so harshly against it, outside of what the county attorneys association had done--they hadn't even met and gone through all this stuff--that a person in the

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

Committee on Judiciary
January 19, 2006
Page 72

LB 772

audience contacted the association to say what this man from your office was doing. And it turns out that your office was the one advising the Omaha Police when they were making these racial DNA sweeps of black men. And your office had denied it. But as it developed, Leigh Ann Retelsdorf had to acknowledge to a reporter that she, in fact, had been talking to the police and advising them. So we have not even been given the truth when people from your office come here. Now I cannot say that you've told me a lie anytime you and I have talked, but you're responsible for what comes out of your office. Did you come here today rather than send somebody here because of the way some of the people in your office have conducted themselves on issues?

STUART DORNAN: I came here in support of a number of the folks behind me who have been hurt very much by drunk drivers who have left the scene. And I came here to change the law, or to provide testimony to request you folks to change the law so that justice can be served if somebody who was intoxicated left the scene. That's why I came here.

SENATOR CHAMBERS: Well, I wanted you to be, know what my position is by me telling you and not you hearing it from somebody else. I am tremendously and profoundly disappointed when a man has been fined for violating campaign laws, \$2,000 each for seven counts, failed even after the assessment of those fines to make the filings with the Accountability Commission that he was supposed to, went off the road drunk with 0.165 blood alcohol count, then was convicted of a felony drug offense, and he's allowed in effect to go scot-free, and your office did not challenge the leniency of the sentence...now I realize that drunk driving was in Sarpy County, but the heavy stuff was in Douglas. Did your office ever consider challenging the leniency, namely, allowing him probation and leaving the state?

STUART DORNAN: The appeal of that, Senator Chambers, would be based on an abuse of discretion and a sentence that was excessively lenient.

SENATOR CHAMBERS: And you didn't think that was excessively lenient in view of his overall record?

STUART DORNAN: If you look at the factors in the statute

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

Committee on Judiciary
January 19, 2006
Page 73

LB 772

based upon his overall record, the court has broad discretion concerning that. I wasn't happy with the sentence.

SENATOR CHAMBERS: But you could have appealed anyway.

STUART DORNAN: Well, I could have appealed it if I'd felt that the factors in the law that allow me to appeal it were met, and that there was an abuse of discretion and the sentence was excessively lenient.

SENATOR CHAMBERS: But suppose I had taken that attitude when you said you were not going to reveal to the public the conditions of Mossey's pretrial diversion and said, well even though the law says that it has to be revealed, it's not my job to do that. The county attorney's office is just not going to do it and I'll let it slide, but I didn't. So if I, a private citizen as well as a state senator, in whichever capacity, will undertake to do things which are not a part of my job discretion, not incumbent upon me as a private citizen to do, you may not agree with what I'm saying, that I would expect a county attorney to establish in the minds of the public confidence that the county attorney is not complicit in this travesty, the appeal should have been filed. That's my view. You obviously disagree. Now, what I'm saying to you is what I'm saying to you, these people are coming here for whatever reason in terms of the testimony they give will not be a part of any of this. They will not listen to any of this from me. I will hear them. I'll be respectful of what they say. But their testimony is not going to change my view about my reluctance to pass laws like this when offices which behave such as yours will do the enforcing. And I want that on the record, so when I don't question them, they won't think it's because I'm going along with the law, but there's no reason for me to question them. And you're able to defend yourself. You're able to speak, and I wouldn't cut you off if you had anything you wanted to say. But if you don't, then I'm through.

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

STUART DORNAN: Thank you, Senators.

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

Committee on Judiciary
January 19, 2006
Page 74

LB 772

SENATOR BOURNE: First testifier in support? Or excuse me, next testifier in support? Welcome.

LYNN SCHMILL: (Exhibit 14) Thank you. My name is Lynn Schmill, S-c-h-m-i-l-l. I am the mother of Matt Schmill. Matthew was very special and beautiful baby. Hoping for a blue-eyed, blond baby, he fit my dreams completely. I cherished my pregnancy and realized that the wonderment growing inside me was the only chance in life to assist God in a miracle. Matt was truly a miracle. As Matt grew, he brought so much joy to our family. Matt was blessed with a large circle of friends and he cared about everyone. Matt treated everyone with respect. My love for Matt is so huge and we had such a special relationship. As a young man, Matt would share his feelings and his life with me. How wonderful it feels to have your child confide in you! Unless you have had the misfortune of losing a child, it is impossible for you to realize the devastation and life altering experience it is. This was a senseless death caused by a person that obviously has no remorse for what she has done. Her past history included MIPs, DUI. Her lack of guilt in leaving the scene of the accident, too immature and heartless to face the wrong she had committed. By driving away, it shows she had something to hide and proves her guilt. A truly good, honest person would have been responsible, stopped, called 911, helped my son who, after being hit, was thrown over 30 feet onto the pavement. She obviously was speeding and her reflexes were hampered by alcohol. My heart is broken and I miss Matt every second of every day. Matt is in my mind always, even if it's just his name being repeated over and over. I think about what he and what we will miss. An endless number of things are ongoing in my mind. I at times feel I am losing my mind. The anxiety, depression, insomnia are overwhelming and my life will never be as it was. I wish for my old life when we were all happy. Sadness is now my mood and I feel I am acting my way through the days trying to carry on as others expect me to do. While other mothers are buying their sons gifts out of love for their child, I am buying flowers and accessories to decorate Matt's grave. It just shouldn't be this way. Angels and statues now decorate our home. A large flower garden in our yard was made in memory of Matt. I still have a hard time believing my beautiful child is gone. Had Susan been paying attention and not compromised by alcohol, Matt would be alive today. She was speeding,

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

Committee on Judiciary
January 19, 2006
Page 75

LB 772

did not swerve, did not apply her brakes; she hit Matt, and then left the scene. Why is it that good people are taken and those that do wrong live on with the chance of ruining someone else's life. Matthew was my happy-go-lucky child who would seize every minute, look at it and really see it, live it and never give it back. He would never sweat the small stuff. He would not worry who didn't like him, who has more, or who's doing what. He cherished the relationship he had with those who loved him. God blessed me with this beautiful boy, and I loved him more than life itself. Space and time cannot affect love, and I love Matt more than words can say. We have a legacy of memories, good and bad, happy and sad, silly and serious, and yes, I will live on with Matthew always in my heart. I believe he is walking beside me, but my grief will not lessen, and I will forever be waiting to get that special hug from him. I love you, Matt.

SENATOR BOURNE: Thank you. Are there questions for Ms. Schmill? Seeing none, thank you. Appreciate your testimony. Next testifier in support?

BOB SCHMILL: (Exhibit 11) Bob Schmill, S-c-h-m-i-l-l. Chairman Bourne and members of the committee, my name is Bob Schmill. I'm the father of Matt Schmill, who was hit and killed by a drunk driver on April 24th, 2004. The reason for my support of this bill, though it starts with Matt, extends further into the citizens of the state. With each person that is killed or seriously injured by a hit and run driver, it includes at least 50 to 60 other persons and families, other friends and families. The hit and run report that I sent to your office last week that shows since 1982, there have been 49 pedestrians and 81 total individuals have been killed by hit and run drivers in Nebraska. After years of decline in numbers, the offense is growing, is now growing ever increasing numbers and regularity. It is an equal opportunity crime, both from the perspective of the victims and the offenders. It affects those of every age, race, sex, and social status. It leaves behind death, permanent injury, psychological trauma, grieving family and friends, and one basic question: why would anybody hit, or hurt and kill or maim someone, and just leave? Nearly one-fifth of pedestrians killed in America, or 18 percent, are victims of hit and run crashes. Some of the common causes that police have discovered on why

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

Committee on Judiciary
January 19, 2006
Page 76

LB 772

the driver of a hit and run runs is the first one would be driving impaired, drinking and drugs. The second one is unlicensed driver or car, suspended or revoked, or uninsured. Third is a self-preservation, a secret to keep, or a status to protect. And fourth is aggressive drivers or road rage. Unfortunately, because the hit and run crashes are punished less severely than alcohol-related crashes, we are giving drunk drivers the incentive to flee the crime and try to escape the BAC test done. If captured shortly after the accident, it is more difficult for the prosecuting attorneys to prove impairment at the time of the accident. We can ensure that this is known in drinking circles. To repeat DUI offenders who face manslaughter or murder charges, they feel that they have nothing to lose and make up one of the largest groups of hit and run deaths or killers. People say that those that survive a hit and run are the lucky ones. This range from disfigurement, facial scars, loss of both legs, paralysis on one side, brain damage, and left them in a vegetative state. One of these survivors is a 37-year-old police sergeant in Grand Island that he's had three surgeries on his legs and knees. At this time, 43 states have made it a felony to leave the scene of a personal injury accident. Why is Nebraska not one of these numbers? Why must we sacrifice one of our own before you're motivated to take the necessary changes on this law? Thank you for time.

SENATOR BOURNE: Thank you. Are there questions for Mr. Schmill? Seeing none, thank you.

BOB SCHMILL: Thank you.

SENATOR BOURNE: We appreciate your testimony. Thank you. Next testifier in support? Did you sign in, sir? Did you sign in previously?

JOHN SCHMID: Yes.

SENATOR BOURNE: Thank you.

JOHN SCHMID: (Exhibit 12) My name is John Schmid from Bellwood, Nebraska. S-c-h-m-i-d. Thank you, Chairman Bourne and members of the committee for this opportunity to voice my support for LB 772. I am speaking on behalf of myself, my wife, Susan, and our daughter, Laura, and Jon

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

Committee on Judiciary
January 19, 2006
Page 77

LB 772

Mifflin, who was with her, who were both killed in an accident. The legislation goes to the heart of a matter that impacted my life two years ago this October. My daughter Laura and her friend Jon Mifflin were traveling on a motorcycle on the streets of Lincoln and were hit by a drunk driver at the intersection of 27th and O. My daughter and her friend died shortly after. The driver of the vehicle, Randy, fled. He had four other, three other boys in the pickup with him, and they all kind of said, you've got to go back, but he was scared, and he says, I don't know what he was thinking, but he just decided to flee. When finally found several hours later, his blood alcohol content was below the legal limit. At this time in the state of Nebraska, it is a misdemeanor to leave the scene of a personal injury accident. Because he left the scene, the state could not prove that he was drunk at the time of the accident. If he had stayed, it would have probably been a felony punishable by up to five years in jail. Instead, he received 90 days in the county jail and a charge of misdemeanor for leaving the scene of an accident. LB 772 is long overdue and substantially changes leaving the scene of an accident which involves deaths and injuries. Had this been in place, the offender would be serving a term in jail instead of walking the streets. In the United States, 42 states have a law that make it a felony to leave the scene of an accident. Nebraska is among eight states that need to change their law. So for speaking for my daughter Laura Schmid and for Jon Mifflin, I want to thank personally each one of you and ask you to support this legislation. And I'd also like to thank Senator Friend and the Schmills for bringing this important legislation to a head.

SENATOR BOURNE: Thank you. Are there questions for Mr. Schmid? Seeing none, thank you. We appreciate your testimony. Next testifier in support.

TOM WHEELER: Good afternoon, Senators. Captain Tom Wheeler, that's T-o-m W-h-e-e-l-e-r, of the Douglas County Sheriff's Office speaking in support of LB 772. Douglas County Sheriff's Office supports this bill for three reasons I want to discuss, and I will be brief. We believe stiffer sentencing will serve to deter those who would leave an accident scene, especially a repeat drunk driver who may be aware of current penalties associated with a conviction for an accident involving serious injury or death, and the

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

Committee on Judiciary
January 19, 2006
Page 78

LB 772

current penalty for leaving the scene of an accident. Simply put, the risk-reward under the current law favors leaving the scene of an accident. Number 2: Having drivers at the scene of an accident helps accident investigators complete a more accurate report of what occurred. And finally, we believe it's the right thing to do. No one involved in an accident should lay dying while the other driver, who may be the only one able to assist or summon aid, leaves the scene. In those cases, that individual should be held to account for his or her decision to leave. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Wheeler? Seeing none, thank you. Oops, Senator Flood. Sorry.

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you for your testimony. I like what you said about number three. It's the right thing to do. If for any other reason, whether it's your own personal worries or not, you should be there to assist the other motorist. What happens in rural areas? Have you had it happen before where a motorist has been involved in a physical, or in a personal injury accident and left the scene and the victim remains in a ditch or on a county road or in a situation where aid, you know, someone is not going to come around quickly? Have you run into those kinds of accidents?

TOM WHEELER: Yes. As far as someone dying, no, I haven't run into one recently, but where someone is injured, yes.

SENATOR FLOOD: Thank you very much for your testimony.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next testifier in support.

SIMERA REYNOLDS: (Exhibit 13) Chairman Bourne, members of the committee, my name is Simerá Reynolds, S-i-m-e-r-a Reynolds R-e-y-n-o-l-d-s. I am with Mothers Against Drunk Driving. Thank you for the opportunity to testify on LB 772. This is an essential piece of legislation. All too often, I have worked with victims who have been impacted by drunk driving who chose to leave the scene of the crime and go to a bar, go to home, go to another venue and consume alcohol. This tactic often throws the BAC evidence into

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

Committee on Judiciary
January 19, 2006
Page 79

LB 772

question and it makes it very hard to prosecute. Any of us who have a motor vehicle wreck have the duty to stop and ensure that the parties impacted are in safe condition. To flee the scene of a personal injury or death is an unthinkable act. If a person makes the choice to flee, they should be held accountable to a higher criminal standard for their conduct. As a society, we must impress upon driving motors that they are duty bound to stay at a scene of the crash to ensure that the safety and well-being of those involved is addressed. I also strongly support the one-year license revocation on page three. MADD would strongly urge that you look favorably upon LB 772 and pass this bill to the floor for full debate. Thank you.

SENATOR BOURNE: Are there questions for Ms. Reynolds? Seeing none, thank you. Next testifier in support? Have you signed in, Ms. Riibe? Thank you. Are there other testifiers in support of this bill? We'll next move to opposition.

DIANE RIIBE: Diane Riibe with Project Extra Mile, R-i-i-b-e. And just wanted to very briefly, quickly acknowledge our support of LB 772 and I would say the primary reason that we would be supporting it is that the penalties that are there for causing serious bodily injury if one leaves the scene are just simply more appropriate than what we have currently. I don't know that I would see it as easing prosecution burden, prosecutorial burden so much as we would see it as a penalty that's appropriate. So thank you for your consideration.

SENATOR BOURNE: Thank you. Are there questions for Ms. Riibe? Seeing none, thank you. Last call for proponents. Are there any opponents? Are there any individuals wishing to testify in a neutral capacity? Senator Friend to close.

SENATOR FRIEND: Thank you, Chairman Bourne. Just to say, I wanted to thank everyone for coming down to testify. And if there were any other questions for me, I'd be happy to answer them. Other than that, no.

SENATOR BOURNE: Thank you. Are there questions for Senator Friend? Seeing none, thank you. That will conclude the hearing on Legislative Bill 772. Senator Friend to open on

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

Committee on Judiciary
January 19, 2006
Page 80

LB 774

Legislative Bill 774.

LB 774

SENATOR FRIEND: Thank you again, Chairman Bourne and members of the Judiciary Committee. Mike Friend is my name, F-r-i-e-n-d is how it's spelled, and I represent the 10th Legislative District in northwest Omaha, still. I'm here to introduce LB 774 at the request of the city of Omaha. And the bill addresses flight to avoid arrest penalties. This bill has obviously, as some of you can attest to, been before this committee in various times in the past. The bill says that a person who operates a vehicle to avoid arrest is guilty of a Class I misdemeanor now and may lose their license for one year. What the bill would do, the flight becomes a Class IV felony if one of these three conditions is met: The person has been previously convicted under the Section 4 flight to avoid arrest; the flight results in death or injury to any person; and the flight includes willful reckless operation of a motor vehicle. In those cases, if any of those conditions are met, the person shall lose their license for a period of two years. Last session, I think, some of you probably remember that I introduced legislation, I believe it's LB 200, to eliminate third-party liability statute or strict liability as it's called. I think, and I respect the will of the committee in holding that bill in committee, but that said, I think if strict liability is here to stay, then I think that this piece of legislation is a logical extension of that discussion. And I believe LB 774 represents a straight-forward approach in dealing with the situation where criminals avoid punishment by fleeing arrest. So, I'd be happy to answer any questions, and again, thank you.

SENATOR BOURNE: Thank you. Are there questions for Senator Friend? Senator Chambers?

SENATOR CHAMBERS: Senator Friend, are you willing to put the correlative with this and say that any officer who initiates or participates in a chase which endangers the public shall be guilty of a Class IV felony if his driving includes the willful reckless operation of a motor vehicle? Are you willing to put some responsibility on the cop, too?

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

Committee on Judiciary
January 19, 2006
Page 81

LB 774

SENATOR FRIEND: Well, I don't know. I think that there is some responsibility, Senator Chambers, on the...

SENATOR CHAMBERS: Criminal.

SENATOR FRIEND: ...I think that our laws do protect our society in certain ways, and...

SENATOR CHAMBERS: That's not what I asked you, and I don't want to prolong it.

SENATOR FRIEND: No, okay.

SENATOR CHAMBERS: Are you willing to put a criminal offense against a cop who recklessly operates a vehicle in a chase?

SENATOR FRIEND: And I'll answer this by saying, in this legislation, I don't know if that's the appropriate place to do it. But what I would say is, the only way I can answer is I think we do have that protection already, Senator Chambers, respectfully. But also, if it could be done in this piece of legislation, then, you know...

SENATOR CHAMBERS: Okay, that's all I'll ask you...

SENATOR FRIEND: ...why not, I guess.

SENATOR CHAMBERS: ...because I think others are going to testify, and you and I can talk, and I don't want them to have to stay here too long.

SENATOR FRIEND: Sure, thank you.

SENATOR CHAMBERS: Thank you, Senator Friend.

SENATOR FRIEND: You bet.

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

SENATOR FRIEND: Yes.

SENATOR BOURNE: First testifier in support?

MICHAEL TESAR: Chairman Bourne, members of the Judiciary

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

Committee on Judiciary
January 19, 2006
Page 82

LB 774

Committee, I'm J. Michael Tesar, that's M-i-k-e T-e-s-a-r. I am the chief deputy city prosecutor in Omaha, and I'm here to urge you to act favorably upon this bill. I have been in the City Prosecutor's Office in Omaha since 1973. Our office is responsible for handling all of the misdemeanors filed in Douglas County. We handled 32,000 cases last year and arrived at 32,000 for several years before that. I bring up 1973 when I started in the prosecutor's office not because I think you're interested in my personal life, because it was in that year, on the 19th of October that the Nebraska Supreme Court encountered a case called State v. Hubert Etchison, E-t-c-h-i-s-o-n. At that time, as the flight to avoid arrest existed, it carried a penalty range from one to three years here in Nebraska. The Supreme Court at that time found that that wasn't cruel and unusual. And, in an dissenting opinion, Judge McCown at that time, M-c-C-o-w-n, suggested that the attention of the Legislature ought to be drawn to the provisions of this. He said, and it was in dissent, it was just one judge in this court, that he thought that it seemed obvious to him that the punishment didn't fit the crime and that there should be some correlation between the crime that gave rise to the motivation of the offense and the punishment for it. I am here to tell you that my 32 years of experience with prosecuting flight to avoid arrest suggests that Judge McCown, respectfully, just was wrong in that observation. Apparently, the Legislature, though, a couple of years later at what was pretty much its first opportunity, and I recall back in '77, there was a comprehensive realignment of various criminal statutes, it was LB 38 at the time. LB 38 in '77 dealt somewhat with flight to avoid arrest. But there was a separate legislative bill, laws, 1977, LB 176, Section 1, which went on to produce the result we have now, where if it's a flight to avoid arrest based upon an attempt to apprehend for a misdemeanor, it is only a misdemeanor. I suggest there's no more sense to that than, we'd all agree that if a young man goes into a store and steals a \$15 compact disc of music by concealing it in his pants or something like that a Class II misdemeanor is plenty adequate for addressing that level of theft. If, when he's caught at the door, he takes a knife out of his pocket and slashes at the store employee, we, I suggest, should logically disassociate ourselves from the motivation, the apparent motivation for his apprehension, and focus on the amount of danger that he was willing to inflict when he

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

Committee on Judiciary
January 19, 2006
Page 83

LB 774

brandished that knife. And in that case, that example, we don't know if it was just the fine for the theft that motivated him. We know why we try to catch him, but he might have had a warrant out for him. People that shoplift might be wanted for something. There might be other reasons, including being that he's carrying the knife. We don't know from our experience with these leaving the scenes that, we do know that many, many of the people who are, we try to stop for very simple things, running a red light, speeding, weaving, or something like that, they're not afraid of paying a \$75 fine for the red light. They're running because they got a pistol under the seat, they've got drugs, they've got warrants out for something else, but the fact of the matter of is is that if it was just the red light that caused them to put people in danger by setting in motion this flight, by running around with a two ton motor vehicle at high speeds through out city streets, that those people, it's all the more reprehensible if they're willing to put that much danger into something the very low crime that they're trying to avoid. The bill that's before you corrects several problems that we have with trying to read people's minds about why they're running from the scene. It correctly addresses the level of violence used in people trying to avoid arrest by having that willful, reckless driving become part of the thing that jumps it from a misdemeanor to a felony. I know I've got the red light, and I appreciate your patience. I have looked at several other states. There's a number of states. There's a fairly nice opinion from the Circuit Court of Appeals in the, oh, let's see, Ninth Circuit, just last September, where the issue was whether or not that was under certain things...

SENATOR BOURNE: If you could, if we could have a copy of that, we'll enter that as part of the record, and, or do you, if you could give us...

MICHAEL TESAR: The only reason I mention is it goes through Wisconsin, Washington, Michigan, and South Carolina, they're all felonies.

SENATOR BOURNE: Just, if you could give us a cite, we'd take a look at that.

MICHAEL TESAR: Okay, that's 422 F.3d 889. Likewise, Omaha is in kind of a unique situation in that we have another

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

Committee on Judiciary
January 19, 2006
Page 84

LB 774

state right across the river from us. We have a lot of back and forth chases that involve people trying to leave, if you know how it works with Carter Lake; you drive to the airport and you're in Iowa for a couple of seconds. The ability of officers from one state to the other to go back and forth and to aid each other in apprehension of fleeing people is it's very important that they be able to have a nice, neat workable bill and don't have to focus on the difference between what a person's real motivation is for trying to flee and the officer's initial maybe low-level offense that draws to their attention.

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

MICHAEL TESAR: Tesar.

SENATOR BOURNE: Tesar. Senator Chambers.

SENATOR CHAMBERS: Mr. Tesar, what does red mean on a road, on a...what does red mean when you're driving your vehicle?

MICHAEL TESAR: In the context of the...

SENATOR CHAMBERS: Driving a vehicle.

MICHAEL TESAR: ...of the lights at an intersection, it means stop. I assume that's what you mean.

SENATOR CHAMBERS: When the light, when red comes on on that box, what does that mean?

MICHAEL TESAR: I apologize.

SENATOR CHAMBERS: No, I'm not looking for an apology. I use things to help make my point.

MICHAEL TESAR: It means stop, no doubt about it.

SENATOR CHAMBERS: And what did you do?

MICHAEL TESAR: I tried to come to a conclusion, yes.

SENATOR CHAMBERS: You continued.

MICHAEL TESAR: Yes.

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

Committee on Judiciary
January 19, 2006
Page 85

LB 774

SENATOR CHAMBERS: So some people might do that at a traffic light, and if a cop comes in behind them, especially in Omaha, they'll run because some people when they fall into hands of cops wind up dead, people black like me or brown like Senator Aguilar. And they are always exonerated. Somebody made a suspicious move. But that wouldn't work if I shot you on the street. I say, well, Mr. Tesar made a suspicious move. They say, get out of there. What is it that these cops get away with murder? And they lie, and the courts have said in some of their opinions they're allowed to lie. Now, here's what I want to ask you, Mr. Tesar. When was the last time I saw you in a courtroom?

MICHAEL TESAR: DNA hearing, courtroom 25.

SENATOR CHAMBERS: And you didn't want the affidavit of the officer made public, or certain other papers which would have given the underlying basis for the judge's order. You didn't want that made public, did you? That's what you were there for, to stop that from being made public, didn't you?

MICHAEL TESAR: Yes.

SENATOR CHAMBERS: And you lost, didn't you? Was it made public?

MICHAEL TESAR: Eventually, yes it was.

SENATOR CHAMBERS: Then you lost, didn't you?

MICHAEL TESAR: Yes, I did.

SENATOR CHAMBERS: Okay. Now, you were using a statute to justify your position, weren't you?

MICHAEL TESAR: Statutes and case law. The ability to seal an affidavit and the law enforcement necessity for it were very clear. The lawyer that was involved in that cite with you cited a case that had been pretty clearly rejected in Nebraska, if you'll recall.

SENATOR CHAMBERS: Did...

MICHAEL TESAR: Cited Eighth Circuit case and the Nebraska

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

Committee on Judiciary
January 19, 2006
Page 86

LB 774

Supreme Court had just...

SENATOR CHAMBERS: Don't try to...

MICHAEL TESAR: ...plain said he was wrong.

SENATOR CHAMBERS: ...we don't have to argue all that.
You're here to answer...

MICHAEL TESAR: I agree. We don't have to go out in left
field on all their business.

SENATOR CHAMBERS: You're here to answer questions today,
Mr. Tesar.

MICHAEL TESAR: About flight to avoid arrest, yes, sir.

SENATOR CHAMBERS: Not just about flight to avoid arrest,
but a way to get around to that. What was the basis for the
judge ruling against your position?

MICHAEL TESAR: I can't recall, and it would be a little bit
of second guessing what he had in his mind for why he did
it.

SENATOR CHAMBERS: Did you cite a statute which did not, was
not applicable to the case?

MICHAEL TESAR: No.

SENATOR CHAMBERS: Who was that guy who did that? It was
somebody representing the city of Omaha. Were you the only
representing the city of Omaha?

MICHAEL TESAR: I don't remember anybody.

SENATOR CHAMBERS: Okay.

MICHAEL TESAR: I was certainly the chief one representing
the city of Omaha. The only misrepresentation that came out
in that hearing was by Mr. Gallup, who was with you, and the
case that he cited had been clearly overturned...

SENATOR CHAMBERS: But the judge did say...

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

Committee on Judiciary
January 19, 2006
Page 87

LB 774

MICHAEL TESAR: ...or rejected in Nebraska.

SENATOR CHAMBERS: ...that Omaha, when they were trying to get the judge to keep the documents sealed, had brought their appeal under the wrong statute. You didn't handle the appeal?

MICHAEL TESAR: That I did handle.

SENATOR BOURNE: You got to make sure you're speaking in the microphone, so sit back.

MICHAEL TESAR: Oh, I'm sorry.

SENATOR CHAMBERS: No, he doesn't want to be recorded. He's smart. He knows what's going on around here, and I do, too. Thank you.

MICHAEL TESAR: I did handle the appeal and yes, I lost the appeal on a procedural grounds.

SENATOR CHAMBERS: And did the judge say it was the wrong statute?

MICHAEL TESAR: Yes. No doubt about that.

SENATOR CHAMBERS: Okay. And you'd been working for the city since 1973.

MICHAEL TESAR: Yes, sir.

SENATOR CHAMBERS: '73, '83, '93, 2003, that's three decades plus two years, and you cited the wrong statute. What had you been doing all those years? You probably hadn't handled an appeal before, had you?

MICHAEL TESAR: I've handled hundreds of appeals as a matter of fact.

SENATOR CHAMBERS: Now, if you can handle hundreds of appeals and make a mistake like that, it's possible that when hundreds of men wind up on death row and are executed that somebody could have been executed who was innocent. Isn't that possible?

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

Committee on Judiciary
January 19, 2006
Page 88

LB 774

MICHAEL TESAR: I am not confident to speak to death penalty cases. That's not part of the provenance...

SENATOR CHAMBERS: In the way that you were not competent to handle that appeal?

MICHAEL TESAR: I was competent to handle that appeal. That was a very unique factual situation...

SENATOR CHAMBERS: But you handled it...

MICHAEL TESAR: ...there was a very big question about whether that would be handled as a criminal appeal under state statute or it was a, it wasn't, didn't fit neatly into a procedural civil...

SENATOR CHAMBERS: But you lost.

MICHAEL TESAR: ...It...

SENATOR CHAMBERS: You were competent to handle the appeal, but you handled it incompetently and you lost.

MICHAEL TESAR: I did not handle it incompetently.

SENATOR CHAMBERS: You did so handle it (laugh).

MICHAEL TESAR: There's a big difference, there is a huge difference between being incompetent and losing.

SENATOR CHAMBERS: Right, okay.

MICHAEL TESAR: I've lost hundreds of cases...

SENATOR CHAMBERS: Okay.

MICHAEL TESAR: ...that I handled competently, Senator.

SENATOR CHAMBERS: Okay, and you've kept your job. Here's the thing that I want to ask you. Are you aware of the other day that a cop was eager to get involved in a high-speed chase. He had been on the force since August. His hormones were raging, adrenaline probably coming out of his eyeballs, and fortunately for the public, he ran into a pole instead of a citizen. Are you familiar with that case?

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

Committee on Judiciary
January 19, 2006
Page 89

LB 774

MICHAEL TESAR: Senator Chambers, earlier you said that people who are stopped by the police are always exonerated.

SENATOR CHAMBERS: Are you familiar with the case?

MICHAEL TESAR: Just in the same sense that you...

SENATOR CHAMBERS: ...Mr. Tesar...

MICHAEL TESAR: ...used hyperbole in saying always exonerated...

SENATOR CHAMBERS: ...Mr. Tesar...

MICHAEL TESAR: ...I take it that you're using a great deal of hyperbole in describing the adrenaline in this officer.

SENATOR CHAMBERS: ...are you familiar with the case where an Omaha cop was rushing to participate in a high speed chase or pursuit and he ran into a telephone pole or power pole and was quite seriously injured? Are you familiar with that case?

MICHAEL TESAR: I'm not familiar with it. I have heard of the case where the officer was injured. The elaboration that you put on it is something that I haven't heard before.

SENATOR CHAMBERS: So you didn't know he ran into a power pole?

MICHAEL TESAR: I knew an officer ran into something when he was trying to catch a person that was fleeing from him.

SENATOR CHAMBERS: No, he wasn't trying, he was heading to participate. See, this is the reason I'm doing this to show how people in your position will fudge and hedge to get away from the facts in order not to answer a question. When you talked about a person who is handling one of these several thousand pound vehicles creates a danger, is the danger created by several thousand pound vehicles chasing that vehicle?

MICHAEL TESAR: The danger is created by the person who decides to flee. The officer doesn't create that situation.

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

Committee on Judiciary
January 19, 2006
Page 90

LB 774

If that criminal or that suspect or for whatever reason just does the simple thing of pulling over and allowing the officer to go about vindicating his suspicions or making the arrest or whatever it is, no chase ever takes place.

SENATOR CHAMBERS: Is there a danger...

MICHAEL TESAR: It is always the person that runs...

SENATOR CHAMBERS: Is there, okay, you've answered that.

MICHAEL TESAR: ...that causes it.

SENATOR CHAMBERS: Is there a danger posed to the public by the pursuing vehicles driven by the cops? They don't pose a danger?

MICHAEL TESAR: The officers' vehicles are a danger to themselves and others. The cause of their being in that situation is always the person who runs.

SENATOR CHAMBERS: Do the cars that are pursuing pose a danger to the public also when they are pursuing through a residential area? Do they pose a danger, too?

MICHAEL TESAR: All moving vehicles might come in contact with other moving vehicles and cause injury, yes.

SENATOR CHAMBERS: And what about this bill do you think will stop people from running from the cops?

MICHAEL TESAR: The certain knowledge that they will be punished for doing so at a level that makes them weigh the pros and cons, do a cost-benefit analysis where the certain ones of them that are rational, and if we can just...

SENATOR CHAMBERS: Well, just, just, we don't want to stay here forever. How old are, if you know, would you say on the average people are who run from the police?

MICHAEL TESAR: I don't know.

SENATOR CHAMBERS: And it's not like, are they middle aged people, young people, old people?

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

Committee on Judiciary
January 19, 2006
Page 91

LB 774

MICHAEL TESAR: No, most of them are young.

SENATOR CHAMBERS: And you think they know what the law is in terms of a punishment for running from the police?

MICHAEL TESAR: I hope they know, and I hope that the word gets around. They will always be a purpose of criminal punishment that has to do with deterrence. And when a few of their friends run and go to the penitentiary for five years, the word will get around, I hope.

SENATOR CHAMBERS: Do you think some of them...

MICHAEL TESAR: That's the whole, that's the way criminal justice is supposed to work.

SENATOR CHAMBERS: Do you think some of them fear being caught by the police more than going to jail? You haven't dealt with these cops. I deal with situations where they break into old black people's homes without a warrant, and where they terrorize the people and tear up the house, and they were at the wrong house.

MICHAEL TESAR: I've...

SENATOR CHAMBERS: That's what my experience with them has been and the people that I represent. And yours is to defend them no matter what they do.

MICHAEL TESAR: I've dealt with thousands of police officers and I can tell you that you're referring an extremely small fraction. When you list a particular problem that you have with a particular thing, you are forgetting that those officers, just on the cases, the 32,000 I do. Officers have contacts with thousands and hundreds of thousands of people...

SENATOR CHAMBERS: That's irrelevant. That's irrelevant. Most of the people driving cars don't run from the police, do they?

MICHAEL TESAR: Most of the people don't, but if...

SENATOR CHAMBERS: So then why should...

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

Committee on Judiciary
January 19, 2006
Page 92

LB 774

MICHAEL TESAR: ...can stop 12 of them...

SENATOR CHAMBERS: ...wait a minute, Mr. Tesar...

MICHAEL TESAR: ...just a dozen in a year...

SENATOR CHAMBERS: ...Mr. Tesar, Mr. Tesar...

MICHAEL TESAR: ...yes, sir.

SENATOR CHAMBERS: ...you don't run this hearing.

MICHAEL TESAR: That's true. The chairman does.

SENATOR BOURNE: Well, and I'm not doing a very good job of it.

SENATOR CHAMBERS: And you're not going to talk over me, either.

SENATOR BOURNE: Let's answer the questions and let's kind of stick to the bill, if we could.

SENATOR CHAMBERS: I can pursue it any way that I want to because I'm an elected official. And if you don't like the way you're questioned, you don't have to come here. But you're not going to talk over me.

MICHAEL TESAR: I apologize, Senator.

SENATOR CHAMBERS: You don't have to apologize.

MICHAEL TESAR: I do if I've offended you.

SENATOR CHAMBERS: I'm not looking for an apology.

MICHAEL TESAR: If I've offended you, I should apologize.

SENATOR CHAMBERS: You're wasting the committee's time when you go way on. I want to give you enough time to answer, but then when you go on and on, that's when it becomes a problem. Now, you say it's a small number of cops who do these things. Nothing is ever done to those. Nothing is ever done. And I've got numerous letters from the chief of police if you need to see them, but I'm sure you're aware of

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

Committee on Judiciary
January 19, 2006
Page 93

LB 774

them. So let me bring it to the bill. Compared to the number of people who drive vehicles and are approached by the police, an infinitesimally small number will run. So why should we change the law for that infinitesimally small number?

MICHAEL TESAR: Because the harm caused by that small number cries out for something that will keep even a dozen from doing it in a given year.

SENATOR CHAMBERS: Well stated, and the relatively small number of cops who do the wrongful things but are never punished cries out to have something done, but nothing is done. So, what makes you think that this bill is going to go anywhere this session of the Legislature?

MICHAEL TESAR: I think it's going to go someplace this session of the Legislature because just as you are willing to say nothing is ever done to officers when we have hundreds of discipline cases that are appealed, we have officers fired for things constantly, so in the extent that there is, that you can call that nothing, when we have an entire personnel board busy with disciplining officers, I think that the committee and the Legislature as a whole will see that we are dealing with a serious problem that deserves serious attention consistent with other states.

SENATOR CHAMBERS: What I would like you to do, and I'm going to be fair with you, you find me in the last 10 years, ten cases where anything was done by way of discipline against a cop in Omaha for something done against a black person. Find me just ten in the last 10 years, because you talk about all these hundreds of discipline cases. Now, you didn't tell me why you think this bill is going to go someplace. Who's going to prioritize this bill?

MICHAEL TESAR: I have no idea.

SENATOR CHAMBERS: Somebody asked Senator Friend to bring it on behalf of Omaha. Who asked him? Did you?

MICHAEL TESAR: No, I didn't. I would have encouraged whoever would have been in the position to ask that. The way bills get from (inaudible), the city council debates what should be their priorities. I guess an answer might be

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

Committee on Judiciary
January 19, 2006
Page 94

LB 774

that our lobbyist, Jack Cheloha, might have approached him. I don't know.

SENATOR CHAMBERS: Okay, who drafted this bill?

MICHAEL TESAR: I don't know that.

SENATOR CHAMBERS: Have you examined it and analyzed it carefully?

MICHAEL TESAR: I've read it.

SENATOR CHAMBERS: But you haven't really analyzed it carefully? There might be questions about aspects of it that you're not as familiar with as you would be had you studied it carefully.

MICHAEL TESAR: I like to think that I looked into it fairly deeply. You might find some aspect of it that I haven't thought of, though. I'll concede that to you.

SENATOR CHAMBERS: When a bill of this kind is submitted to the Legislature and the City Attorney's Office is asked to send down a person to speak for it, who generally will draft a bill of this kind on behalf of the city, if you know?

MICHAEL TESAR: I don't know.

SENATOR CHAMBERS: Could you find out and let me know?

MICHAEL TESAR: Sure.

SENATOR CHAMBERS: And that's all I will ask you unless somebody provokes me by asking a question eliciting an answer which I feel must be pursued by me.

MICHAEL TESAR: Thank you, sir.

SENATOR BOURNE: Further questions for Mr. Tesar?

SENATOR Dw. PEDERSEN: No, I don't want to provoke anybody.

SENATOR BOURNE: Thank you. Appreciate your testimony.

MICHAEL TESAR: Thank you very much.

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

Committee on Judiciary
January 19, 2006
Page 95

LB 774

SENATOR BOURNE: The committee has been joined by Senator Combs from Milligan. Next testifier in support.

DAVID BAKER: Captain David Baker, B-a-k-e-r, Omaha Police Department. I'm testifying on behalf of the department. Senator, I'd like to thank you and the committee for allowing me to testify before you today. The Omaha Police Department's position on this bill is one of support. The bill seeks to amend Section 28-905, which gives us different categories for the penalties involved in police pursuits or fleeing from police, flight to avoid arrest. The Omaha Police Department feels that this bill, or LB 774, would go a long way towards clarifying and making more equitable and correlate more the penalties of the offense with the dangers of the offense that we have. As currently written, we have some disassociation between the danger and the actual act of fleeing, and the penalties that are there. We can have a minor offense fleeing in a very dangerous way, even getting into a collision or hurting others, and remain a misdemeanor. Nevertheless, we can have somebody who is driving in such a way simply not to pull over, maybe has a felony nonsupport or something like that on their record, and they can be charged with a felony. We feel that this is an equitable position and doesn't address and doesn't have any clear correlation to the danger posed to society as well as the criminal act that's ongoing. We feel the bill would clarify that. We know that police pursuits do pose a danger and we want to do our best. This is not a bill to try and attempt to bring more of them. It's a bill to try and bring less. We hope there will be some sort of a preventative or an affect to dissuade people from making this choice. But it is a choice that we don't want to see more of. We don't want to use this in that way. But what we would want to see is a danger to society, and as Mr. Tesar said, even if this saves one life, this dissuades one people or a dozen people from getting into a pursuit, then it's worth the bill. I have, my best friend's father was killed in a police pursuit. It was back in, it was Mr. Lee, back in the 1970s. It was prior to the strict liability law. I've known the family forever and remain close to them this day. I understand the dangers that pursuits can cause and I understand that we need to have laws such as LB 774 to help discourage and appropriately address the crime that's being committed. Questions?

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

Committee on Judiciary
January 19, 2006
Page 96

LB 774

SENATOR BOURNE: Thank you.

DAVID BAKER: And that's all that I have at this point if there's questions.

SENATOR BOURNE: Thank you. Are there questions for Captain Baker? Senator Chambers.

SENATOR CHAMBERS: Captain Baker, I don't have any questions.

SENATOR BOURNE: Are there further questions for Captain...

DAVID BAKER: Thank you very much, Senator. (Laughter.)

SENATOR BOURNE: Thank you.

DAVID BAKER: Thank you.

SENATOR BOURNE: Next testifier in support.

TIM HOEFT: Senators, I'm Tim Hoeft, H-o-e-f-t. I'm the Phelps County attorney, I'm the president of the Nebraska County Attorneys Association here on behalf of the County Attorneys Association to let you as a committee know that this, we do support the concept of LB 774. It's our intent to discuss this bill in addition to the other bills at our legislative committee hearing, which is convening as we speak. And we will develop our official position and provide the committee with letters of our position on the merits of the bill. We do, however, support the concept. And at this time, I would be willing to answer any questions the senators might have.

SENATOR BOURNE: Thank you. Are there questions for Mr. Hoeft? Seeing none, thank you. Other testifiers in support? Are there testifiers in opposition? Are there any neutral testifiers? Senator Friend to close.

SENATOR FRIEND: Thank you, Senator Bourne, only to say that the bill, it's my understanding, the bill was drafted by City Attorney Marty Conboy. So, for the record, and if that's incorrect, well, we can correct it later on, but that's my understanding. Thank you.

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

Committee on Judiciary
January 19, 2006
Page 97

LB 774

SENATOR BOURNE: Questions for Senator Friend? Senator Chambers.

SENATOR CHAMBERS: Senator Friend, are you going to prioritize this bill?

SENATOR FRIEND: I am not.

SENATOR CHAMBERS: Okay.

SENATOR FRIEND: But...

SENATOR CHAMBERS: You answered it. Thank you.

SENATOR FRIEND: Okay.

SENATOR BOURNE: Further questions? Seeing none, that will conclude the hearing on Legislative Bill 774 and the hearings for today. Thank you.