

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

COMMITTEE ON JUDICIARY

February 16, 2006

LB 1199, 963, 793, 1210, 767, 863, 867, 1205

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 16, 2006, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1199, LB 963, LB 793, LB 1210, LB 767, LB 863, LB 867, and LB 1205. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: Ernie Chambers.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is our 12th day of committee hearings. We have seven bills this afternoon. I'm Pat Bourne. I'm from Omaha. To my left is Senator Aguilar from Grand Island; to my immediate left is the committee clerk, Laurie Vollertsen; to my right, is the committee legal counsel, Jeff Beaty; to my far right is Senator Dwite Pedersen from Elkhorn. I'll introduce the other members as they arrive. Please keep in mind that from time to time members will come and go, and if they happen to leave while you're giving your testimony, please don't take offense to that. They're simply conducting other legislative business. If you plan on testifying on a bill today, we're going to ask that you sign in in that on-deck area there. Please print your information so that it's readable, and it can then be accurately entered into the permanent record. Following the introduction of each bill, I'll ask for a show of hands to see how many people plan to testify on a particular measure. The introducer will go first. We'll then have proponent testimony, then opponent testimony, then we'll have neutral testifiers, followed by the closing from the legislator. When you come forward to testify here, please clearly state and spell your name for the record. All of our hearings are transcribed, so your spelling of your name will help our transcribers immensely. Due to the large number of bills that we hear here in the committee, we do utilize a timing light system. Senators introducing bills get five minutes to open and three minutes to close, if they choose to do so. All other testifiers get three minutes to testify exclusive of any questions the committee may ask. The blue light goes on at three minutes, the yellow light comes on at a one-minute warning, and then when the red light comes on, 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

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

Committee on Judiciary
February 16, 2006
Page 2

LB 1199

cell phone, please disable it. The committee has been joined by Senator Flood from Norfolk and Senator Friend from Omaha. With that, I'll turn the committee to Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. We'll now open the hearings for the day, and our first bill to be heard is LB 1199 sponsored by Senator Bourne, and he's here to present the bill to us. Whenever you're ready, Senator Bourne.

LB 1199

SENATOR BOURNE: (Exhibits 1, 3) Thank you, Senator Pedersen, members of the Judiciary Committee. My name is Pat Bourne. I represent the 8th Legislative District, here today to introduce Legislative Bill 1199. LB 1199 is a bill dealing with sex offenders that I introduced on behalf of the Governor. I do want to make clear that I worked very closely with the Governor's Office as well as the Attorney General's Office from the beginning stages of drafting. This was a group effort that has resulted in a piece of legislation that I believe addresses the issue of sex offenders in a comprehensive and hopefully effective manner. I also want to make clear that the green copy you have before you is in no way the final version of LB 1199. The purpose of the public hearing is to gather information from experts, concerned citizens, and from the people whose daily lives are impacted by the bills we pass. I hope to hear from each of these groups today as we examine this issue. With that, I'll give you a brief summary of the bill, and then individuals from the Attorney General's Office and the Governor's Office will follow in more detail about each component. First, the bill creates new offenses regarding sexual assault of a child. First-degree sexual assault of a child, second-degree sexual assault of a child, and third-degree sexual assault of a child. Under current law, rape of a child can be prosecuted as a first-degree sexual assault, which is punishable by one to fifty years with no minimum prison time. Under LB 1199, first-degree sexual assault of a child which involves a child under the age of 12 carries a mandatory minimum of 25 years in prison. In 2005, of the 97 people in prison for first-degree sexual assault, 23 of them had assaulted a child under the age of

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

Committee on Judiciary
February 16, 2006
Page 3

LB 1199

12. Nine years is the average length of their incarceration. By creating the new offenses, we are able to enhance the penalties for the most heinous crimes. If the enhanced penalties aren't enough to keep most dangerous sexual predators away from potential victims, LB 1199 also creates a new civil commitment standard. Currently, some dangerous sex offenders can't be committed because they don't meet the standard of mentally ill under the mental health commitment act. LB 1199 allows for the commitment of dangerous sex offenders who are unable to control their conduct and who have a mental illness or personality disorder which makes them likely to commit future acts of sexual violence. Aside from the mental illness standard, it is my understanding that some dangerous sex offenders slip through the cracks because of the growing lack of communication between our governing bodies. In the past five years, there were a total of 133 recommendations for commitments and 93 successful commitments, which is an average of 18 commitments a year. This is compared to last year, in which there were only fourteen commitment recommendations and four commitments. To address this issue, LB 1199 requires that the agency having jurisdiction of a sex offender provide notice at least 90 days prior to the offender's release. The notice is to be sent to the county attorney in the county where the individual will be released, the county attorney where the individual was prosecuted, and to the Attorney General. In addition, county attorneys receiving this notice must inform the Attorney General within 45 days whether or not they will begin civil commitment procedures. LB 1199 also requires mandatory civil commitment evaluations prior to the completion of a criminal sentence for repeat offenders, child predators who refuse treatment, and violent offenders. Violent offenders include those convicted of sexual penetration of a child less than 12 and forcible rape. Finally, if an offender is released from prison or civil commitment or is not qualified for commitment, LB 1199 provides a third layer of protection. The bill subjects repeat and high-risk offenders to extended supervision. This includes offenders who have more than one sex offense conviction and first-time offenders convicted of forcible rape or rape of a child. The conditions of the supervision are determined by the Office of Parole Administration. The reports I have read and the experts I have spoken to indicate that sex offenders are much less likely to reoffend

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

Committee on Judiciary
February 16, 2006
Page 4

LB 1199

if they are monitored. In addition to these components, LB 1199 makes changes with respect to the Sex Offender Registration Act. It enhances the penalty for a second conviction for failing to comply with the act. The penalty is increased from a misdemeanor to a Class IV felony if the offense requiring registration was a misdemeanor. The penalty becomes a Class III felony with one-year mandatory minimum if the underlying offense was a felony. The bill expands the list of offenses requiring registration to include first-, second-, and third-degree sexual assault of a child. Also added is debauching a minor in which the registration would be at the discretion of the sentencing judge. It removes that discretion and mandates registration for the crime of child enticement. LB 1199 clarifies that a person required to register in another state is required to register here in Nebraska, and it clarifies that homeless registrants are to notify the sheriff within five working days of becoming homeless, as well as report their general whereabouts every 30 days. Law enforcement agencies would have access to all level 1 offenders and the Internet is added to the method in which notice of level 3 offenders can be provided to the public. Finally, the bill authorizes municipalities to enact residency restriction ordinances. However, these restrictions could only apply to level 3 offenders who have committed crimes against children. In addition, the restricted area can't be more than 500 feet around a school or licensed day care facility. The bill exempts correctional institutions and treatment facilities from the restricted areas. I've made no secret about how I feel about residency restrictions. Studies show they don't work, and could actually encourage offenders to go underground. In Iowa, sex offenders have begun living at rest stops, and since that state's law took effect, twice as many sex offenders are unaccounted for. Iowa state prosecutors are asking for repeal of their residency restriction law. I do realize our local governments have adopted these ordinances in reaction to Iowa's restriction, and that they are limited in what they can do to guarantee the safety of their communities. The adoption of these ordinances across the state is also a message to the Legislature that more needs to be done to protect the public from sexual predators. LB 1199 attempts to do that. I have invited the cities that have adopted residency restrictions to give this committee feedback today regarding this issue and LB 1199. I have also encouraged people who would be

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

Committee on Judiciary
February 16, 2006
Page 5

LB 1199

subject to these restrictions to weigh in. Though I understand their hesitation to come before this public forum, I hope they will step up and help us in what we consider the best policy for this state. With that, I will close my opening. I look forward to the dialog that hopefully will follow, and I would answer any questions the committee may have.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Any questions from the committee? Seeing none, I'll return the committee to you.

SENATOR BOURNE: All right. The first testifier in support is Senator Dwite Pedersen. As he makes his way and gets ready to testify, could I have a show of hands of those folks here wishing to testify in support of LB 1199? I see roughly ten. And again, we're going to make use of the on-deck area where Mr. Kleine is, and if you'd sign in before the testimony, we'd appreciate it. With that, Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne and colleagues on the Judiciary Committee. I know it's highly irregular that we have somebody on the committee that would testify in favor or against a bill with the rest of you. I want you to know that I'm not here for myself today. I am... a lot of you know that since I've been in the Legislature, I try to spend at least a half a day every three or four weeks in one of the institutions in the state of Nebraska, correctional institutions. In doing so, I've met a lot of people, and I met a very interesting person who I'd never met before in my life in prison about five years ago. His name is Father Dan Herek. You've heard his name. There's been lots of pictures of him on TV, paper, and lots of stories about him. I bring to you today a letter from Father Dan Herek in support of this bill. It's absolutely, for him, he sees it as something that needs to be done. He talks about his treatment, the treatment he had with the regional center where he was committed to after he did his prison time. He's had good treatment. He's doing well. This is a way, also, when we pass this kind of legislation that is good for those who are doing well, too, those who are working to stay out of trouble. It gives them some freedom to move about. Father Dan supports electronic monitoring. He supports the 25 year for a second offense.

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

Committee on Judiciary
February 16, 2006
Page 6

LB 1199

He supports everything in the bill except for the residency, and for the residency, where would he live? Where would he work? I ask you all to look at it. I asked him to keep it to two pages, which he has done. And I think you'll be impressed by what he had to say. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Senator Pedersen? Seeing none, thank you. First testifier in support, or second testifier in support.

DON KLEINE: Good afternoon. My name is Don Kleine, K-l-e-i-n-e. I am the chief of the criminal bureau of the Nebraska Attorney General's Office. I am here testifying in support of the bill for the Attorney General, who has made this bill a part of his crime package. The two issues that I'll address briefly today are the notice requirement on commitment and the penalty phase of this particular bill. With regard to the notice portion of commitment proceedings about a person who's in prison or in a facility with jurisdiction over a sex offender is a requirement that notice be sent out 90 days prior to that person being released to the county attorney in the county where the person resides, the county attorney where the original offense occurred, and to the Attorney General. And prior to this, there have been some gaps. An anecdotal story would be the Miller case in Saunders County, the question of where that letter was received and what was done about it. This would try and cover those particular gaps, or any gaps that might occur, to make sure that somebody gets notified with regard to this person being released, and if this person should be committed in a civil commitment proceeding. The Miller case, at that time, the letter was simply sent to the Douglas County Attorney's Office, forwarded then to Saunders County by Douglas County, and there was no commitment proceeding occurred. This way, in this situation with this law, what would have happened is Douglas County would have received a letter, Saunders County would have received a letter. If Saunders County wasn't going to do anything about, the Attorney General would have been notified and could have taken action had the county attorney not acted on that particular civil commitment. With regard to the penalty phase of this particular bill, the new offense, one of the new offenses, first-degree sexual assault of a child, there still would be first-degree sexual assault, and there would still be statutory rape under the statute that

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

Committee on Judiciary
February 16, 2006
Page 7

LB 1199

currently exists, which requires sexual penetration by somebody 19 or over and the victim being less than 16. This adds, though, and that's a Class II felony, one to fifty years. This adds sexual assault of a child when we're talking about the victim being under 12 years of age and the defendant being over 19, and ups the penalty then to a Class IB, so it's not a one- to fifty-year, it's a mandatory minimum of twenty-five-year offense. Second-degree sexual assault of a child and third-degree sexual assault of a child don't require penetration. Those are fondling cases, and if there's serious bodily injury that occurs, the penalty then becomes a Class II felony. If there's no serious bodily injury, then it's a Class IIIA felony. But those are the changes, the basic changes, most significantly that being first-degree sexual assault of a child, making that penalty a mandatory minimum 25 years. And as Senator Bourne already addressed, the changes in the penalties with regard to registration requirements, it's when a person doesn't register properly a second time, it ups the ante on the penalties. I'd be happy to answer any questions about those.

SENATOR BOURNE: Thank you. Are there questions for Mr. Kleine? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you, Mr. Kleine for your work on this bill, the Attorney General's work on this bill. I guess my question doesn't arise from the bill itself, but an issue that's important in my district. A lot of times, we have individuals that behave in such a manner that they're charged with a sex crime, but it doesn't rise to the level of level 3 sex offender status upon their release from prison. Do we need to look at how we classify sex offenders in this state? As I understand it, right now, it's by conviction, and there's a point system, versus having a psychiatrist evaluate and go off that diagnosis following an exam. Is there a way, should we be looking at that as well? Has that been a concern?

DON KLEINE: Well, certainly, that's a concern. I guess, my question to you would be, are you talking about from the standpoint of a civil commitment, or assessing someone?

SENATOR FLOOD: I guess, I know that we're going to get into

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

Committee on Judiciary
February 16, 2006
Page 8

LB 1199

the discussion of residency restrictions today, and the way the bill is written right now narrowly tailors the 500-foot residency restriction for a level 3 offender. I just want to make sure that we're spending our money on level 3 offenders that are at high-risk to offend versus somebody that maybe is at low risk to offend and shouldn't be classified that high, making sure that we target the right population. Do we need to be looking at how we classify?

DON KLEINE: I don't think, I think someone else is going to address that today, in particular with the assessment process. But I think, when we're talking about a level 3 offender, we're talking about a person that's a serious risk.

SENATOR FLOOD: Right. And I guess my fear is that we have had situations in my district in the last couple of years where we had individuals or offenders that are peeking through windows, watching people change their clothes and taking pictures of children in various states of undress, and because of their action, they're charged with a crime that's much less than, you know, first-degree sexual assault. They basically possess child porn, which is what, a Class IV felony.

DON KLEINE: Right.

SENATOR FLOOD: But if you're looking through somebody's windows in a home trying to get pictures of a little boy or little girl changing, I'd rather rely on a psychiatrist to evaluate the offender than a point system that's based on conviction. Does that make sense, what I'm saying?

DON KLEINE: It makes very much sense, and I would agree with that. And in that regard also, there's another issue that I'll just bring this up with regard to assessments, and that is I think there's a problem with the individual appealing their assessment, and then not having to register or be required to do what they're supposed to do with that particular assessment during their appeal process. So they're delaying, in effect, if they're assessed as a level 3, if they appeal, that process, then everything is put on hold until that appeal is decided, rather than making them do what they're supposed to do while the appeal is pending. That's another issue.

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

Committee on Judiciary
February 16, 2006
Page 9

LB 1199

SENATOR FLOOD: And I guess my concern is that if we catch somebody, convict them of a crime, and can put them in treatment or in prison before they go out and hurt somebody else, we shouldn't have to wait until they commit the most serious act before we start treating them if they've got those tendencies.

DON KLEINE: I would agree.

SENATOR FLOOD: Thank you very much.

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

DON KLEINE: Thank you.

SENATOR BOURNE: Next testifier in support. Tell you what we'll do is, next testifiers come forward, if you have handouts, just set them on the edge of the desk. That way, we can just move along quickly. Welcome.

MICHAEL NOLAN: (Exhibit 7) Senator Bourne, members of the committee, my name is Michael Nolan, N-o-l-a-n. I'm the city administrator of Norfolk testifying in support of LB 1199. I'll make my testimony brief. I'm giving you a memorandum that has all the various ordinances attached to it. The most important paragraph in the memorandum, which is supported by the mayor and city council, city attorney, and the administrative staff, is the last paragraph, which states: As a result of the differences in these ordinances, we would encourage the Legislature to develop a statewide response and preclude localities from having the authority to do something than what is provided in that statewide response. Failure of the Legislature to do this would lead to a labyrinth of regulations relating to sex offender residence making compliance difficult even for those trying to obey residency requirements. So we would like to have it be whatever you end up with being one size fits all.

SENATOR BOURNE: Thank you. Questions for Mr. Nolan? Mr. Nolan, let me ask you a quick question, just for clarity. And what you as the city administrator for Norfolk, you're encouraging us to basically preempt localities from having the ability, or the authority to adopt a residency restriction that's more restrictive than

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

Committee on Judiciary
February 16, 2006
Page 10

LB 1199

what we would put in LB 1199.

MICHAEL NOLAN: I am, sir. Yes, sir.

SENATOR BOUPNE: Oh great. Okay. Thank you. Appreciate your testimony. Next testifier in support. Welcome.

BRYAN TUMA: (Exhibit 8) Good afternoon, Senator Bourne, members of the Judiciary Committee. My name is Colonel Bryan Tuma, B-r-y-a-n T-u-m-a. I'm the superintendent of the Nebraska State Patrol. I am here today in support of LB 199, and to provide information specifically regarding the changes proposed by the bill to the Sex Offender Registration Act. The Sex Offender Registry-Community Notification Division of the Nebraska State Patrol maintains the statewide registry of sex offenders, assesses the level of risk, and provides community notification based on that risk level. The bill addresses certain issues which have arisen since the 1996 enactment of the Sex Offender Registration Act. LB 1199 expands the number of sex offenders required to register under the act by including a number of new registerable offenses and by closing loopholes. The bill would require registration of individuals convicted of incest regardless of whether the victim was a minor, persons convicted of criminal child enticements, and persons convicted of the newly proposed crimes of sexual assault of a child. It would also provide judges with the discretion to require registration of those persons convicted of debauching a minor. LB 1199 also clarifies that individuals would be required to register in Nebraska, including lifetime registration, if they are required to do so in another jurisdiction. This prevents people from moving to Nebraska to avoid lengthy registry requirements imposed by other states. The issue of homeless sex offender registration is also addressed. Homeless registrants would be required to notify the county sheriff where they are located of their situation and whereabouts every 30 calendar days while they are without residence or located in temporary domicile. This legislation also requires written notice of a registrant's status, providing for better documentation and verification, and it provides for harsher consequences for those individuals who repeatedly violate the registry. The Nebraska State Patrol's primary goal is to provide the highest possible level of safety to the citizens of Nebraska. The changes

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

Committee on Judiciary
February 16, 2005
Page 11

LB 1199

encompassed by LB 1199 will provide for a more accurate Sex Offender Registry. Consequently, I urge you to advance LB 1199 to General File. Thank you for the opportunity to present the information to you today, and I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Colonel Tuma? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Colonel Tuma, thank you for your testimony, your service.

BRYAN TUMA: Thank you.

SENATOR FLOOD: And I know that the Patrol has a very dynamic, well-educated psychologist that operates your Sex Offender Registry Program. Is she here today?

BRYAN TUMA: She's in the Governor's policy research office...

SENATOR FLOOD: Oh, is she?

BRYAN TUMA: ...listening to the testimony, so she's in the facility, yes.

SENATOR FLOOD: And I don't want to ask you any, I know that she's very involved in this, and I just have some simple questions. And if she's the one, maybe the more important one, I can catch up with her later.

BRYAN TUMA: Okay.

SENATOR FLOOD: But, I guess my number one question is just a little background. How do we currently classify sex offenders in Nebraska through the State Patrol?

BRYAN TUMA: Yes, there is a classification instrument that's utilized to classify offenders by the potential for recidivism, for risk. And Dr. Black, who you referred to, is responsible for administering that process.

SENATOR FLOOD: Now, it was my understanding from her prior testimony that, at a previous hearing, that a lot of our, of the instrument that we use to classify sex offenders based

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

Committee on Judiciary
February 16, 2006
Page 12

LB 1199

on the conviction of the sexual offense committed by the offender. Is that your understanding?

BRYAN TUMA: I would say this, I'm not intimately familiar with the instrument, but I think the instrument is based on the potential risk for recidivism based on a number of factors. And it does include some rating based on the severity or the violence involved with the original act.

SENATOR FLOOD: And I appreciate, you know, the service of the State Patrol in classifying sex offenders. My only interest and concern would be that we make sure and catch a sex offender that's looking in windows before they have to actually act out, to be classified a level 3, because we have concerns with that in my district. And when individuals like that get out of prison, it's my hope that they are under, they're closely monitored even though they didn't actually commit a crime in the first-degree for assault.

BRYAN TUMA: I understand, yes.

SENATOR FLOOD: Thank you very much, Colonel. I appreciate your evidence.

BRYAN TUMA: Yes, sir.

SENATOR BOURNE: Thank you. Further questions for the Colonel? Colonel, if you know, we had conducted several interim studies on the issue. And I want to say that Dr. Black mentioned that the assessment tool that you referred to was, was it 96 or 98 percent accurate for predicting recidivism. Is that...

BRYAN TUMA: I can't speak to that specifically, but, you know...

SENATOR BOURNE: I remember, we had had a discussion. Maybe she could follow up with a letter. And she had statistical data indicating the predictive value of both the assessment tool currently used versus an actual interview by a psychologist or a psychiatrist. And I want to say that the tool we're using was more effective than an actual interview.

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

Committee on Judiciary
February 16, 2006
Page 13

LB 1199

BRYAN TUMA: Yeah. I just can't speak to that, Senator.

SENATOR BOURNE: Okay. All right. Thank you. Further questions? Thank you.

BRYAN TUMA: Okay. Thank you.

SENATOR BOURNE: Next testifier in support. Welcome.

JAMES MCKENZIE: (Exhibit 9) Good afternoon, Chairman Bourne, members of the Judiciary Committee. My name is James McKenzie and I'm the Adult Parole administrator for the Nebraska Department of Correctional Services, and I'm here to testify in support of LB 1199. Adult Parole Administration can provide the necessary lifetime supervision of sex offenders required by this legislation. We plan to collaborate with treatment providers, mental health facilities, law enforcement, and other individuals involved with each sex offender to exchange necessary information for protection of the public and to assist sex offenders in adjusting to a community supervision program. I plan to make a number of changes for the supervision of sex offenders which are known to be best practices. These changes include specialized caseloads composed only of sex offenders, manageable caseloads limited to 25, officers specially trained in supervision of sex offenders, and the use of a validated risk assessment instrument exclusively for sex offenders. All sex offenders will be required to get an updated mental health evaluation from a treatment provider, and will have to follow all recommendations from the evaluation. In addition, all sex offenders will be screened for substance abuse issues and referred for evaluation and treatment where indicated. Programming will be monitored by parole officers to ensure that sex offenders are making progress. Adult Parole Administration will only impose conditions of community supervision that relate to public safety, the sex offender's crime, recommended treatment, and general supervision. Should an offender under lifetime supervision threaten the public safety, be resistive to treatment, or show a wanton disregard for supervision, Parole Administration will report such matters to the proper authorities for the disposition. Should a sex offender pose an imminent threat to public safety, Parole Administration will call upon law enforcement to arrest the offender and we will move for an appropriate outcome as

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

Committee on Judiciary
February 16, 2006
Page 14

LB 1199

determined by the courts. The department has suggested a few technical recommendations on LB 1199 to committee counsel, and we look forward to working with the committee on this legislation. Thank you for the opportunity to testify, and I'll be glad to answer any questions you may have.

SENATOR BOURNE: Thank you. Questions for Mr. McKenzie?
Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. McKenzie, thank you for coming. How many sex offenders get paroled? Do you have any idea on a percentage?

JAMES MCKENZIE: I can tell you right now we are supervising 23 registered sex offenders.

SENATOR Dw. PEDERSEN: Now is this the type 3 or the...

JAMES MCKENZIE: This is from unclassified through all levels, up to level 3.

SENATOR Dw. PEDERSEN: And in percentagewise of the caseload, of your overall caseload, how many people do you have on parole altogether?

JAMES MCKENZIE: This would be less than 1 percent.

SENATOR Dw. PEDERSEN: Are the sex offenders that you have on parole on parole more than six months?

JAMES MCKENZIE: Yes. Usually, they are longer than a six-month period.

SENATOR Dw. PEDERSEN: If they're sex offenders, they get parole. What is the average length of parole for a sex offender?

JAMES MCKENZIE: I would really have to take a guess at that. I don't know.

SENATOR Dw. PEDERSEN: Okay. That's all right, Jim. Thank you.

JAMES MCKENZIE: You're welcome.

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

Committee on Judiciary
February 16, 2006
Page 15

LB 1199

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

CHRIS PETERSON: (Exhibit 10) Thank you. Good afternoon, Senator Bourne and members of the Judiciary Committee. I'm Chris Peterson, P-e-t-e-r-s-o-n, policy secretary for the Health and Human Service System, and I'm here to testify in support of LB 1199. One of the most pressing issues facing Nebraska is the protection of the public from sex offenders. LB 1199 works to protect society through enhanced criminal penalties, active treatment, and monitoring of sex offenders in the community. It expands the mental health commitment act to provide for the civil commitment of sex offenders and renames it the Civil Commitment Act. By requiring treatment for mentally ill and repeat sex offenders, LB 1199 takes an important step towards improved public safety. HHSS has played an important role in the management and treatment of sex offenders. The Lincoln Regional Center currently has 64 acute care beds in a secure setting for treatment of sex offenders. There are 21 additional beds in the sex offender transition program, and we currently are expanding the transitional program beds to 45. Successful completion of this treatment program typically takes two and a half to five years after a sex offender is released from prison. The individual's willingness to participate in and successfully complete the treatment program plays an important role in the length of treatment before release. Successful completion is required prior to a sex offender being released from LRC, and some patients simply refuse to participate or are resistant to treatment. These individuals can expect to remain at a regional center level of care for a much longer time. In 1999, HHSS had 78 patients in sex offender treatment. The number of beds devoted to treating sex offenders has grown to 105. Eighty-five beds are at LRC, and there are twenty individuals at the Norfolk Regional Center with some type of sexual deviation diagnosis. Four of these individuals are either awaiting admission to the treatment program at LRC or are refusing treatment at this time. The remaining 16 patients, although not committed for sex offender treatment, have sex offenses as part of their background, and have limited discharge and community placement options. Based on numbers provided by Department of Correctional

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

Committee on Judiciary
February 16, 2006
Page 16

LB 1199

Services and our own information, we project that LB 1199 will result in an average of 33 more civil commitments annually. This includes eight additional mentally ill sex offenders and 25 sex offenders with personality disorders. During the past five years, Department of Correctional Services recommended civil commitment for approximately 40 mentally ill sex offenders for whom no commitment proceeding was justified. Based on the length of stay for current sex offenders, we project an average length of stay of approximately four years. During the acute phase of treatment, patients receive approximately 36 hours per week of group and individual therapy. Patients' progress is measured through a goal attainment scale, and once the acute phase is completed, patients enter the transition phase. During this phase, patients are prepared for discharge to the community. Thank you for your time, and I would be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Ms. Peterson. So where you've analyzed the bill and estimated what the growth will be, and you can handle it?

CHRIS PETERSON: Yes, we believe we can.

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

STEVE GABRIAL: Good afternoon, Senator Bourne and members of the Judiciary Committee. My name is Steve Gabriel, and that last name is spelled G-a-b-r-i-a-l. I work in the Child Protection Division of the Nebraska Attorney General's Office. I actually work for one of the previous testifiers, Don Kleine. I'm here today, though, in support of this proposed legislation on behalf of the Nebraska County Attorneys Association. We've had an opportunity to look at the legislation. We've had an opportunity to discuss the legislation and we believe that it's worthwhile and it's something that should be passed. And other than echoing the comments of Don Kleine that he made earlier, I really have no other comments on the proposed legislation, but I'd be certainly happy to try to answer any questions you might have.

SENATOR BOURNE: Thank you. Questions? Senator Flood.

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

Committee on Judiciary
February 16, 2006
Page 17

LB 1199

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you for your testimony. It's one of the important components to LB 1199 is the county attorneys receive notice and hopefully take action to civilly commit offenders leaving our prison system. In working with your association, are you pretty confident that county attorneys are interested and ready to civilly commit offenders that aren't ready to be out in the community? Do you receive good communication from DCS on that?

STEVE GABRIAL: Yes. Yes, Senator. I believe, at least the ones that I've dealt with are certainly willing and able and encouraging as far as wanting to do that sort of thing. You bet.

SENATOR FLOOD: What kind of information does DCS provide a county attorney before a sex offender is released from the prison system. Do you receive a copy of the offender's diagnosis, or do you get a heads-up from DCS that says, this individual is at a high risk to reoffend, or...

STEVE GABRIAL: I don't know, Senator. I have not received anything like that.

SENATOR FLOOD: Thank you.

STEVE GABRIAL: And it may be because of the position I'm in. I actually work in the Attorney General's Office, so I may not get that information.

SENATOR FLOOD: Okay. And the Attorney General's Office is prepared to exercise its concurrent jurisdiction in the event that a county attorney decides not to?

STEVE GABRIAL: Yes, Senator, I can assure you of that. You bet.

SENATOR FLOOD: Thank you.

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

STEVE GABRIAL: Thank you.

SENATOR BOURNE: Next testifier in support. Welcome.

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

Committee on Judiciary
February 16, 2006
Page 18

LB 1199

TIM GILLIGAN: Good afternoon. My name is Tim Gilligan. The last name is G-i-l-l-i-g-a-n. I'm the mayor of Gretna, and we are one of the communities that did enact our own ordinance. I'd like to thank all the members of the Judiciary Committee, who most of you have signed on to introduce this bill. And we are in full support of it due to the fact that we feel, in Gretna, that we need a statewide bill. And I would agree with the city administrator from Norfolk that it should be uniform and it should be statewide, from one end of the state to the other, from the South Dakota border to Kansas. The only thing that I would ask, I know our ordinance was based basically on the one from Iowa, with the 2,000 feet. And I understand that, you know, it's hard to enforce whether it's 500 feet or 2,000 feet. That is hard to enforce. But this bill does provide supervision. It provides penalties if an offender does not register. And one of the questions that Senator Flood had, we had. You know, when it comes to first- and second-degree offenders. How do we keep them, is there some way to keep them from becoming first-degree going to third-degree offenders. But we are in full support of it. And the only thing that I would like to ask that you consider, besides schools and day cares, would be parks and libraries. Because in the summertime, many of our younger children in town, and a lot of our older senior citizens wind up in the library or in our city parks. And if we are going to make restrictions on schools and day cares, I would ask that that consideration be given to parks and to libraries. And that'll conclude my testimony. I'd be glad to answer any questions you might have.

SENATOR BOURNE: Thank you. Are there questions? Is it Mayor Gilligan?

TIM GILLIGAN: Yes.

SENATOR BOURNE: Okay. Questions for the mayor? Mr. Mayor, I just want to clarify. You know, we've had a lot of discussion. There's been countless newspaper articles and I just want to acknowledge and recognize, the only thing the cities can do is what you did. And there's no criticism from our point of view on how you handled it. Mr. Nolan from Norfolk testified that he would hope that there was a basically a preemption by the state of any residency

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

Committee on Judiciary
February 16, 2006
Page 19

LB 1199

restrictions enacted by communities. And what the bill says is that there's a, you can adopt a restriction that's no more restrictive than 500 feet from, I believe, it's a school or a day care...

TIM GILLIGAN: (Inaudible) Right.

SENATOR BOURNE: ...only for a certain type of sex offender. So, are you saying that you appreciate, or support the language as written in the bill, or would rather have a preemption like Mr. Nolan had testified?

TIM GILLIGAN: I think we would go along with what Mr. Nolan testified to, so that everything is uniform.

SENATOR BOURNE: Okay. So you want to solve the problem. It doesn't...

TIM GILLIGAN: Right.

SENATOR BOURNE: ...okay. And a comprehensive approach makes sense.

TIM GILLIGAN: Right.

SENATOR BOURNE: Okay.

TIM GILLIGAN: Exactly.

SENATOR BOURNE: Further questions for the mayor? Senator Flood.

SENATOR FLOOD: I guess, Mayor, I appreciate your testimony. Are you okay with the 500 feet as written?

TIM GILLIGAN: Yes, we could live with that. And ours was 2,000 feet Senator, basically because we were following what Iowa had done. And, as Senator Bourne pointed out earlier, the 2,000 feet in Iowa is not working. And so, you know, if we could have a 500 feet, we would live with that.

SENATOR FLOOD: And have you had any sex offenders that have been looking to move into your community that have been, have you had to enforce it all? Have you had to...

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

Committee on Judiciary
February 16, 2006
Page 20

LB 1199

TIM GILLIGAN: As of this morning, Gretna does not have one sex offender in town, but that could have changed from the time that I left at 11 o'clock. But we do have several in the county. There are, I know, Bellevue and Papillion and La Vista do have them.

SENATOR FLOOD: Thank you.

SENATOR Dw. PEDERSEN: Thank you. Mayor, did you have some before they put the city ordinance in?

TIM GILLIGAN: No.

SENATOR Dw. PEDERSEN. Thank you.

TIM GILLIGAN: And the main reason we put in our ordinance was that people came to the council members when the law in passed in Iowa and they said, we're only 20 miles from the river. What are you going to do to protect our citizens? And that's how our ordinance came about.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Bourne. Mayor, you also said that you kind of mirrored the Iowa law. If I'm not mistaken, the Iowa law exempts someone that's already living in one of those areas.

TIM GILLIGAN: And our ordinance did, Senator.

SENATOR AGUILAR: Yours did as well. Wouldn't you be somewhat concerned that that may create a false sense of security for young people?

TIM GILLIGAN: It may, but, you know, our concern was that we needed to do something to protect our younger people, was mainly for the younger people. But for me, getting to be on the shady side of sixty, I was concerned, too, for our older people in town, that, you know, we have a lot of widows living in town. And we wanted to make sure that they were protected as well as we could protect them. Obviously, we did not have the penalties and things that LB 1199 would give us.

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

Committee on Judiciary
February 16, 2006
Page 21

LB 1199

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Thank you. Further questions? Mayor, thank you for taking the time to testify. Appreciate it.

TIM GILLIGAN: Thank you.

SENATOR BOURNE: Next testifier in support.

BRIAN KITT: Good afternoon, Senators. Thank you for your time. My name is Brian Kitt, last name is K-i-t-t, first name is spelled B-r-i-a-n. I support this legislation. I am a sex offender. And this legislation has reasonable and very fair consequences for sex offenders. I'm sorry if I'm a little bit nervous. I've had problems with pornography my entire life. I started looking at Playboy magazines when I was in first grade. By the time I was in seventh grade, I was looking at hard core pornography. I spent a great deal of my time in high school and college obsessed with pornography rather than socializing. In fact, I first became interested in computers in the early 80s because it was a way to get pornography. When the Internet became widely available, I used my computer skills to feed my developing addiction for pornography. I wrote programs to search for and download pornography, and as my addiction grew, I dug further and further into the world of pornography. Eventually, I lost my boundaries and began downloading child pornography. I've never attempted to harm a child, and I have no interest in harming children. My problem is an addiction to pornography, but because of that, I have two federal counts of possession of child pornography and I am a level 2 registered repeat offender in the state of Nebraska. I have never harmed anyone. I have never attempted to harm anyone, but I am considered a serious threat in Nebraska. Not all murderers are first-degree murderers. Not all burglaries are first-degree armed burglary, but not all sex offenders are monsters. The problem with sex offenders is a lack of adequate treatment. LB 1199 goes a long way towards addressing treatment for sex offenders. Had I gotten adequate treatment on my first offense, there would not have been a second offense. My problem was pornography and I wasn't treated properly for it, and that's why I reoffended. Displacing sex offenders, humiliating sex offenders, making them isolated, that just

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

Committee on Judiciary
February 16, 2006
Page 22

LB 1199

makes the problem worse. I greatly fear being on the Internet. As a level 2, I'm not on the Internet right now. My friends, my family, everybody I know, sends around links of, find all the sex offenders in your neighborhood, find them and get rid of them, get them out of your neighborhood. Sex offenders need treatment. With proper treatment, we can turn the problem around. Just humiliating people and disgracing them, I can't find a job. It is very difficult for me to get employed because I have to tell people I'm a sex offender. I can't visit anybody's house if they have minors because I'm a sex offender. I can't visit, I can't be part of society, and it's this way for ten years. And certain laws that are being proposed could make it worse. Sex offenders need a chance to turn around. I need a chance to turn around and show people that I will not hurt anybody and that I can be treated and that I can change. And a lot of the current thoughts in society is that, you're a sex offender, let's go hang you. And I have been told that by people. When my name went in the paper, people came up to me and said you're a sex offender; they should just hang all of you and get rid of you all. And that is the general thought of public, but the public doesn't understand, a lot of sex offenders were molested, a lot of sex offenders were abused, a lot of them have mental problems that need to be treated. Thank you.

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

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Mr. Kitt, I'm going to ask you a personal question. If you choose not to answer it, say, I choose not to answer it. Do you have any other addictions? Are you cross-addicted?

BRIAN KITT: Yes, I did. Yes, Senator. I had a severe addiction to alcohol, and I was an extreme alcoholic, and that was tied very closely to my addiction to pornography. The two were hand-in-hand. The more I got into pornography, the more I got into alcohol to try to drown my embarrassment of being into pornography.

SENATOR DW. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Mr. Kitt, I want to thank you for coming today and telling us your story. I

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

Committee on Judiciary
February 16, 2006
Page 23

LB 1199

appreciate it.

BRIAN KITT: Thank you, Senator.

SENATOR BOURNE: Next testifier in support? I want to kind of make a little announcement. This young man has a personal story he wants to tell us, and I would ask that the media grant him some modicum of privacy in that he's, in my opinion, anyway, courageous in coming forward. So if the media would expect that, I'd appreciate it. Welcome.

CHASE ARDUSER: My name is Chase Arduser. I am 13 years old. I'm a victim of a sexual predator. Laws need to help kids feel safe and to keep predators that hurt innocent children off the streets. Before my assault, I had no worries, no concerns. Now, I trust only my family. I look over my shoulder at all times. I face being teased by some kids in my school. I'm in counseling now and it helps a lot. I take medication to help me sleep because I have had terrible nightmares. Please pass LB 1199 for me and help other kids to feel safe. Please stiffen the laws, post bigger bonds, and lock up people that try to hurt children. Thank you.

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

SENATOR FLOOD: Just a quick comment. Thank you, Chairman Bourne. I'd like to thank you for your bravery for being here today. You are a very brave young man and you should know how grateful we are for you coming forward and talking about such a difficult time. Thank you.

SENATOR BOURNE: Thank you. Appreciate your testimony. Next testifier in support? Welcome.

TARA MUIR: (Exhibit 11) Hi. Good afternoon, Senator Bourne, members of the committee. My name is Tara Muir, M-u-i-r. I am the legal director of the Nebraska Domestic Violence Sexual Assault Coalition. For 30 years, this coalition has provided training and technical assistance to Nebraska's network of 22 domestic violence and sexual assault programs. Our work is dedicated to the safety and support of survivors of these crimes, and to find ways to end the violence. We support LB 1199. It treats the sexual

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

Committee on Judiciary
February 16, 2006
Page 24

LB 1199

assault of children seriously by creating new crimes and enhanced penalties. It prioritizes the safety of survivors and the community after high-risk offenders have served their time by utilizing civil commitment and community supervision programs. We believe that this bill, in conjunction with LB 1205 that creates a working group on sex offender management, will have significant impact on offenders and their treatment. We do not believe residency restrictions are an appropriate piece of this solution, however. I've handed out our position statement outlining all the different reasons. Primarily, we know that few sexual assaults of children happen by complete strangers. While we take nothing away from the devastation caused on a young life affected by a stranger assault or the fear it instills in a community, the reality is that in 90 percent of these cases, child victims know their offender. Child predators typically don't participate in blitz attacks. They groom the victim by building a rapport with the child and/or the child's family. Where they live is irrelevant to their access to children. We also know that most sex offenders are never held accountable for their crimes, and therefore live undetected in every community. Only 16 to 30 percent of victims report to law enforcement. Child sex offenders use deception, bribery, and threats to other children and family members to keep victims silent. Victims also don't report the assault due to the fear that people will find out who they are and blame them for the assault. In addition, limiting the residency restrictions and other remedies solely on sex offenders whose victims were children ignores a wide array of offenders. Research and anecdotal evidence indicate that while some sex offenders choose only one type of victim, such as young girls, older boys, adult women, et cetera, others cross over and perpetrate on different types of victims. To make assumptions about an offender's victim preference in one conviction and then taking precautions based only on those assumptions leaves the community with a false sense of security and increases the risk of victimization. The 2001 Governor's report also recommended increased prevention services that include community education and preparation for the release of offenders. If the passage of LB 1199 creates a community dialog about holding all offenders accountable, it can create a more informed and less vulnerable community. A community that is educated and understands the dynamics of sexual assault are more likely to support victims when they

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

Committee on Judiciary
February 16, 2006
Page 25

LB 1199

disclose and are more likely to hold offenders accountable. Thank you for your time and Senator Bourne for introducing this bill and for your attention to these serious crimes. Happy to take any questions.

SENATOR BOURNE: Thank you. Are there questions for Ms. Muir. Tara, would you prefer to see, you know what the exemption is, or the, as it relates to residency restrictions in the bill, would you prefer to see a total preemption, or is what's proposed here de minimis enough that it solves the problem without being intrusive, as your testimony indicates?

TARA MUIR: I think our position of our full board is that we would prefer no residency restrictions, but the taking on of stiffening the penalties, the crimes, some of the other proposals that are out there for today, are a better solution than trying to restrict residency.

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

MARY PAINE: (Exhibit 12) Hello. Thank you, Senator Bourne. I'm Dr. Mary Paine. I am a licensed clinical psychologist...

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

MARY PAINE: I'm sorry. P-a-i-n-e.

SENATOR BOURNE: Thank you.

MARY PAINE: I'm a licensed clinical psychologist with 17 years' experience working with sex offenders across almost every setting that we have in our area. I've worked at the Lincoln Regional Center for seven years doing risk assessments and writing sex offender treatment. I've worked within the Department of Corrections as an intern, and most recently, for seven years, consulting with the Community Mental Health Center where I am one of two therapists helping to run an outpatient sex offender treatment program in the community. I've also worked extensively with victims and conducted numerous mental health board evaluations of

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

Committee on Judiciary
February 16, 2006
Page 26

LB 1199

sex offenders. There are a number of aspects of LB 1199 that I strongly support and I believe would be beneficial in managing sex offenders. I'm impressed with the bill's effort to establish a comprehensive, long-term sex offender management program through funding, in part, of enhanced parole-based programs administered by specially trained parole officers. I strongly agree, I cannot agree enough, with the emphasis on sex offense-specific treatment, it's a specialized type of treatment provided by professionals who have been appropriately trained in the provision of this type of therapy and evaluations. This is critical. There are currently nowhere near enough professionals in the state who are trained in evaluating and appropriately treating sex offenders. Fail to receive appropriate treatment, you've heard from numerous individuals today, both in writing and personal testimony regarding the consequences. We do know that appropriate treatment, completion of appropriate sex offender-specific therapy, can substantially reduce the risk of sexually reoffending. I also support the mandatory evaluation for possible commitment of those sex offenders who have not successfully completed sex offender-specific treatment while they were incarcerated. One of the difficulties that I would tell you that we have, though, is there are not enough beds presently. I believe even with the expansion of the beds that were mentioned previously by the individual with Health and Human Services, and we certainly do not have enough sex offender-specific treatment in the community. I know because I get referrals virtually from across the state asking me for programs and trying to come into our program at Lancaster County Mental Health Center. Aspects of LB 1199 that are of concern to me, I do certainly agree with the harsh sentences for repeat offenders, particularly after they've been incarcerated and still reoffended, and especially if they have had sex offender-specific treatment and still reoffended following that. I am concerned regarding the length of the sentences currently proposed for first-time offenders as I'm concerned not only about the great financial cost of that, but that this would be likely to produce highly institutionalized individuals who would be ill-equipped to reenter society. These are already individuals who are not healthy, who have multiple complex problems are difficult enough to treat. To get somebody who has been locked up for 25 years and is coming out at 40, 45, 50 years old, never having held a job, and being through 25 years of incarceration is almost

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

Committee on Judiciary
February 16, 2006
Page 27

LB 1199

inconceivable for me to think about where you'd start to pick up with that. I'd like to stress the importance of community based sex offender treatment. Even if individuals have completed the regional center's program, which is a fabulous program, they still need to participate in after care and often times need assistance re-integrating into the community with some clinical supervision provided. Currently, as I stated, we do not have enough. We know that it substantially reduces the risk for reoffense, and it's a cost-effective means. Finally, my concern is, echoes virtually everything that Tara Muir just reported with respect to the residency restrictions. Although there are some children who are sexually victimized by strangers, by far, this is not the case with most of them. Not only are most offenders known to victims, most have established important relationships that meet needs for the victims. It's a process. It's not a place. It's a process by which sexual victimization occurs. I don't believe the residency restrictions are going to do anything to provide safety. And I'm also concerned that it lulls the community into believing that we've done something effective to address the problem.

SENATOR BOURNE: I'm in agreement with those thoughts. Questions for Dr. Paine? Senator Aguilar.

SENATOR AGUILAR: Thank you, Dr. Paine. Thank you for coming today and your testimony. There's been some discussions statewide of making the Hastings Regional Center into a treatment facility for sex offenders. Do you think that's a workable idea?

MARY PAINE: I think that that's a workable idea. My suggestion would actually be a variation on that. I would like to see there be some intermediary level where the treatment is not as expensive or intensive for housing offenders who do pose extremely high risk and are not appropriate for placement in the community, yet have reacted to treatment. What happens with the regional center, while I was there and it still continues to happen, is you get individuals who are committed for treatment but are not responsive to treatment. They are taking up the bed space, and then you can't get individuals in who are more viable for the treatment.

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

Committee on Judiciary
February 16, 2006
Page 28

LB 1199

SENATOR BOURNE: Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne.
Dr. Paine, thank you for what you do.

MARY PAINE: Oh, thank you.

SENATOR Dw. PEDERSEN: There is very few of you, and we need more of you. Could you give us, in general, what the success rate is in working with these sex offenders? Not specific numbers, but how is the success rate going with them?

MARY PAINE: I would, if you're not asking for numbers, specifically, I would tell you in both my experience of working at the Lincoln Regional Center and the Community Mental Health Center that the success rate has been very, very impressive. It's been very impressive in that, with the regional center, you're talking about the highest risk offenders. So, depending on what rate of reoffense I've heard, I've heard anywhere from 5 to 13 percent reoffend, you're still talking about individuals who were at much higher risk to reoffend, 30, 40, upwards percent before treatment.

SENATOR Dw. PEDERSEN: So, then, when you read the papers and look at the media and stuff, it, I mean, they have it that the reoffenders are very, very high. And you have not found that to be true?

MARY PAINE: Not at all, not when they are participating in appropriate treatment.

SENATOR Dw. PEDERSEN: Let's talk a little bit about the residency. If we, what do you see as a problem if we don't give them a place to live, and we don't, they can't get a job because of their history. What is their position to possibly reoffend? It would be higher, would that not be true?

MARY PAINE: Yes, I agree that that is the case. Dealing with stresses, coping with stresses, are a substantial risk factor for sex offenders to reoffend. When you can't find a place to live, when you can't find a job, when you can't maintain a job because your name has come up on the registry

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

Committee on Judiciary
February 16, 2006
Page 29

LB 1199

and you lose positions and you're struggling to meet your basic needs, that's very, very difficult to maintain stability.

SENATOR Dw. PEDERSEN: Do you not find in your work, Doctor, that a lot of these people are also cross-addicted to substances, alcohol/drugs?

MARY PAINE: I would say cross-addicted and dually diagnosed. Well over 50 percent of the people who we've treated at the Community Mental Health Center have had major mental illnesses and sex offending problems such as bipolar disorder, schizoaffective disorder, substance abuse problems.

SENATOR Dw. PEDERSEN: Is there a tendency for them to act out more when they are under the influence of chemicals on their sexual addiction?

MARY PAINE: Absolutely.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Thank you. Further questions for Dr. Paine? I want to go over the penalties, if you will, and I want to just kind of clarify exactly what we're doing and then get some feedback from you as to what's enough, what's too much. And I'm about, and I think this committee is about solving the problem, and no more. You know, not making it particularly onerous, but solving the problem. We've carved out where there's new offenses: first-degree sexual assault of a child, second-degree sexual assault of a child, and third-degree. And those penalties are enhanced from the current penalties because they're, it's just first-, second-, or third-degree sexual assault. And then we also make second offense failure to register a mandatory minimum of one-year in jail. But the first offense sexual assault of a child, as you indicated in your testimony, is a mandatory minimum of 25 years, and that's first-degree, so it involved penetration. And then second-degree sexual contact of a child under 15 by a person 19 or older, which results in serious personal injury, as a Class II felony, one to fifty years. And then third-degree is sexual contact with a child under 15 by a person 19 or older, there's no element of serious personal injury, that's a Class IIIA

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

Committee on Judiciary
February 16, 2006
Page 30

LB 1199

felony, one to five years. So is it the second- and third-degree that you're concerned with, or is it more the mandatory minimum of 25 years, which...

MARY PAINE: The mandatory minimum of 25 years was of particular concern for me. Also, my understanding from reviewing, I read the legislative bill pretty carefully, and working with sex offenders, I understand that when we say penetration, most people think of penetration as being full penetration. This is a very, it could be oral-genital contact, the tip of an object or a digit, simply entering the labia and not, and, I mean, I understand the legal difficulties of prosecuting minuscule distinctions, so I appreciate that. But I still have concerns about the 25-year minimum.

SENATOR BOURNE: And legitimate concerns they are, and I appreciate you articulating them. One of the things that, I've been on the Judiciary Committee, I think throughout my career here, about five of my eight years, and I'm always concerned with unintended consequences. You know, best of intentions, but, oh we never thought of that, and here's somebody that shouldn't be in jail for 25 years and he is. How would it ever happen that a person, and I appreciate however slight the digital or whatever type of penetration there is, but how would it ever happen with somebody that we wouldn't want to incarcerate for an extended period of time? Do you see the question?

MARY PAINE: There are different layers of reasons that we give sentences. We give sentences for punishment. We give sentences to keep people from physically being able to reoffend. We also give sentences in hopes of recidivism. You could have an incest offender. Incest offenders are some of the most treatable offenders, according to the research. You could have an incest offender who had oral-genital contact with one of their children, and is sentenced to 25 years when that individual may well have been very treatable within three to five. I appreciate, and if I'm taking up too much time, please feel free to go ahead and cut me off...

SENATOR BOURNE: No, I think...

MARY PAINE: ...what you said about the unintended

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

Committee on Judiciary
February 16, 2006
Page 31

LB 1199

consequences, one of the statements that I would like to echo of Tara Muir's, is one of my concerns is because I've worked with both victims and perpetrators, I realize that what you do to perpetrators inherently has impact for victims as well. It is already exceedingly difficult for victims to come forward. When you're talking about sexual abuse of a child, in particular, these are the only two individuals who know about what's going on are the victim and the perpetrator. The victims already have a difficult time coming forward. I'm concerned not to liken AIDS victims to sexual predators, but if you'll bear with me for just a moment. In the early days of the AIDS epidemic, when HIV, being HIV positive was essentially a death sentence of life as you had known it, people abandoned you, your family abandoned you, you lost your job, and there was no hope of treating you. It was very difficult to get people to come forward and be tested. Likewise, my fear is that we're turning these individuals, none of whom in my 17 years of working sex offenders, I've never known anybody who aspired to grow up to be a sex offender. It's a problem like any other problem. These individuals are attached to families who care about them, often times including their victims, even though the victims are horrified about what's happening to them. I'm concerned not only that we're going to drive the sex offenders under with the harsher approaches, but that also we're going to drive victims and the people most likely to be closest around to see anything going on, make it less likely that they're willing to report.

SENATOR BOURNE: Yeah, it adds a layer of complication.
Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Doctor, thank you. It's been pretty enlightening. I wanted to, I guess, ask, it just occurred to me while part of the conversation, that especially, you know, the aspects of maybe some of the concern that you have in regard to LB 1199. Do you think, I guess, is it your professional opinion, do you think we do enough to try to rehabilitate? And maybe a tough hypothetical, but do you think we do enough in our society to try to rehabilitate a citizen abuses physically, you know, beats up, let's just take for the hypothetical, a man who beats up an 11-year-old or a 10-year-old, physical abuse of his own kids, for example, possibly even murders, even though obviously that's on a different level. I think a lot

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

Committee on Judiciary
February 16, 2006
Page 32

LB 1199

of the things that I think I've learned from Senator Pedersen and others that have worked in this arena is that we're not, maybe, doing enough to rehabilitate those folks as well. I think what concerns me is that if we're willing to be, I'm not even, I guess I'm not even saying draconian, but if we're willing to say, look, if somebody is going to murder an 11-year-old, or somebody is going to beat a 11-year-old up and we're going to throw a 25-year sentence at him, I guess I'm defending, you know, number one in the new offenses, first-degree sexual assault of a child, 25 years just doesn't seem that extreme to me. Do you see what I'm saying, Doctor? And I'm not trying to be that draconian. I'm trying to say, most of this stuff, I guess, I wouldn't share your concern about this bill the way I read it, you know, two days ago, and what I see as fair the way we've treated other folks in our, you know, penal system. You know, speak to that. I mean, are we doing enough, I guess, in other arenas?

MARY PAINE: I agree with what you're saying, Senator. I would put a little bit of a different twist on it. I also do a lot of work with Child Protective Services-referred clients, and I don't think we do enough to address other forms of child abuse, physical abuse of children, emotional abuse of children, abandonment of children. It's part of why we have this problem to begin with. Sex offenders aren't just people who've been sexually abused as children. In a lot of cases, they've experienced other forms of abuse as well. It's not just sex offenders that experience those types of abuse. I don't think that we make a distinction about this particular area. It's abhorrent, what sex offenders do to children. It's very damaging. But there are also other forms of abuse that are equally damaging over the long run to individuals that I don't think we're adequately addressing, and I do think we need a more comprehensive approach to child abuse in general.

SENATOR FRIEND: Thanks, Doctor. I think part of the reason that sentence ideas like this show up, potential legislation like this shows up, is because we have a society that's saying what, you know, we punish X amount for a murder. We punish X amount for somebody who would do something like this to a child, sexual penetration of a child under 12 by a person 19 or older. And I guess what I'm saying is, I understand the pattern. I understand what we're doing here,

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

Committee on Judiciary
February 16, 2006
Page 33

LB 1199

and it doesn't seem to me...a couple of different thoughts, like the one I brought up before. Are we doing enough to help all, you know, involved in that big umbrella? But the second piece is, if we're going to follow that transcript, then it seems logical.

MARY PAINE: Part of my concern, Senator, with the 25 year mandatory minimum is also the cost of that. If we lived in a society where we had infinite resources, I might be more inclined to agree with you. But the bottom line is that may be money that's then not going toward paying for treatment of victims or prevention programs or other areas that are also very important.

SENATOR FRIEND: Thanks for the testimony.

SENATOR BOURNE: Other questions for Dr. Paine? Doctor, I want to tell you thank you for coming. I know, you know, in this day and age it seems like everybody is so, you know, has the cry of, you know, let's be tough on crime, and for you to come in here and say, maybe we should rethink this, is appreciated.

MARY PAINE: Well, thank you very much.

SENATOR BOURNE: Thank you. Further testifiers in support?

VIRGIL HORNE: Chairman Bourne, members of the committee, my name is Virgil Horne, V-i-r-g-i-l H-o-r-n-e, representing the Lincoln Public Schools. We're in support of the bill, and given the weighty matter of this bill, I hope you don't think that our issue was trivial. It is a concern to us, and I do not mean to not have full respect for the bill. Our concern is that as you look at this bill, if you would consider some method to allow us to restrict level 3 sex offenders from coming to school buildings when that school building is serving as a polling place for voting purposes. We are not asking that you not allow sex offenders to vote. That's not the point at all. We're simply asking that as you're considering these various issues that are in this bill that if there would be something, and I apologize for not having suggested material for how that might be worded, and I can certainly get that to your legal counsel if you desire, that that would be, if they could simply be referred to the election commissioner or an alternative site when the

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

Committee on Judiciary
February 16, 2006
Page 34

LB 1199

poling place is in a school building. We would certainly appreciate your consideration of that.

SENATOR BOURNE: Thank you. Questions? Senator Aguilar.

SENATOR AGUILAR: I'm just going to point out that most jurisdictions, anybody can get an absentee ballot, can't they?

VIRGIL HORNE: I assume that's correct. Yes, sir. Our concern is that I don't know that we would have any authority to require them to get an absentee ballot or to prohibit them from coming into the building if they, in fact, wanted to vote because it is their appropriate place to vote.

SENATOR AGUILAR: I understand. Thank you.

SENATOR BOURNE: Further questions? Thank you.

VIRGIL HORNE: Thank you.

SENATOR BOURNE: Next testifier in support.

WILLIAM McLARTY: (Exhibits 13, 14) My name is William McLarty, spelled M-c-L-a-r-t-y. I'm the mayor of the city of South Sioux City. I appear today, before you today on behalf of the city council and the citizens of South Sioux City to testify on LB 1199 as it relates to our city and our state. I would like to begin by taking this opportunity to commend Senator Bourne and the Judiciary Committee for their efforts in this most important area of concern. LB 1199 has many positive and important changes designed to safeguard our citizens. We are in favor of requiring sex offenders to submit to positive identification by requiring the capture of their fingerprints, registration immediately upon conviction, notification to the Attorney General and local prosecutors 120 days prior to their release, and enhanced penalties for repeat offenders of the registration statute and mandatory sentence for violators. These are laudable changes and we support them. There are, however, other areas that we feel to be worthy of reconsideration. As you are aware, the city of South Sioux City is located on the border of two states, Iowa and South Dakota. As a result, legislation passed in

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

Committee on Judiciary
February 16, 2006
Page 35

LB 1199

one state can directly impact the other two states. This is the case when legislation was recently passed in Iowa. When Iowa passed the 2,000 foot residency restriction, it prompted numerous calls to the South Sioux City Police Department, city hall, and the Dakota County Sheriff's Office by persons seeking to move out of Iowa and questioning whether Nebraska's laws had the same 2,000 foot restriction. There are 234 registered sex offenders in Woodbury County just across the river. In Dakota County, Nebraska, we have 12 offenders listed as, which is eight have been convicted in Iowa and five in Nebraska. One offender was convicted in both states. The difference between the state laws causes great concern. It is clearly not our intention to be a safe haven for sex predators wishing to avoid Iowa restrictions. South Sioux City has passed a local ordinance requiring a 2,000 foot residency restriction that is reflective of the state of Iowa's law. The ordinance places a restriction on predators residing in 2,000 feet of schools, school bus stops, libraries, day-care centers, parks, and playgrounds. See the attached map that I have provided you showing those. We believe that this proposed legislation needs to include all these areas where children are congregated. The South Sioux City council has taken a strong stance supporting the 2,000 foot restriction. We feel that that this proposed legislation has done much to protect our communities, and we would offer these suggestions in that same spirit. I appreciate the opportunity to speak to you and, again, wish to commend the members of the committee for your attention to this serious concern. I also have provided you a statement from the city of Dakota City in support of LB 1199. And what are your questions?

SENATOR BOURNE: Thank you. Are there questions for the mayor? Mayor McLarty, first I want to thank you for coming clear out to Gering to testify on this issue this summer. So, what you're advocating for is to allow, I want to focus in on the residency restrictions, and you're saying that you would like to be allowed as a community to keep the residency restriction that you and your city council passed this last summer.

WILLIAM McLARTY: That's correct, Senator. The distance is only reflective of that of Iowa, and that's why we would desire to keep that 2,000 foot because of Iowa's law. If

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

Committee on Judiciary
February 16, 2006
Page 36

LB 1199

they were to reduce it, we would be in favor of that, too. That's not the problem. We just don't want to be a safe haven for Iowa's people who want to move out of Iowa because of that restriction into South Sioux City.

SENATOR BOURNE: We tried, in drafting the bill, we tried to recognize the unique situation that our border towns are in by making clear that the registration for offenses that occurred in another state for people that moved here would be included in the registration requirements, including the mandatory minimum of one year in jail if they did not register as a sex offender for the second offense. You don't feel that would be sufficient to solve the problem that your town is seeing?

WILLIAM McLARTY: I think the issue we have is that of Iowa's. If theirs is a thousand, we need to be a thousand. If they're going to reduce theirs to 500, then we could reduce ours to 500. I have no problem as long as we have the same as they have, or the ability to have that same.

SENATOR BOURNE: I see. Further questions for the mayor? Seeing none, thank you.

WILLIAM McLARTY: Okay. Thank you very much.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support. If there's other proponents of the bill, if you'd make your way to the front row and sign in and get ready to testify, we'd appreciate it. Welcome.

ROB BUTLER: Thank you. I'm Rob Butler, B-u-t-l-e-r. Thank you, Chairman Bourne, members of the committee. I notice that all of you have actually signed your name to this bill and that's really great. You know, from the summer of '85 to the summer of '87, I was on a weekly basis molested. You know, had this law been in effect then, or had this bill been law then, you know, that still would have happened. However, the punishment would have been much, much greater. That perp happened to receive 20 months to five years, of which he served about two-and-a-half, about one year at the regional center and what your report said, I don't have it in front of me, but it's memorized, I assure you, "Mr. Margan (phonetic) is not responding to treatment and continues to portray himself as unique." He was then sent

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

Committee on Judiciary
February 16, 2006
Page 37

LB 1199

off to prison for the remainder of his sentence, another year or so. You know, this really takes care of 20 years' worth of, more importantly, about the first five years because of what was done in the early 90s, this really takes care of getting things all, you know, tightened up. The only one thing that I would urge you to delete before advancing is Section 31, and of course, I'll be speaking con to LB 867 later in the day. Not that a city cannot or should not be allowed to set those restrictions, but I think that almost endorsing that they do just puts too much variation and makes it almost a state mandate that they have to do that. And that is all.

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

ROB BUTLER: Thank you.

SENATOR BOURNE: Appreciate your testimony. Are there other testifiers in support? Are you in support, sir? Okay, would the opponents make their way to the front row and sign in? So, we have two opponents to the bill? I wasn't trying to clarify or magnify that there are only two opponents. I was just trying to make the best use of time. Welcome, Mr. Butz.

TIM BUTZ: (Exhibits 15, 16) Good afternoon, Chairman Bourne, members of the committee, my name is Tim Butz, B-u-t-z, executive director of ACLU Nebraska. I've got a written statement that you can review at your leisure, and much of what I have to say today has already been said by others, and I don't want to waste the committee's time with duplicative testimony. I think that the witness behind me is going to introduce into the record a statement from the Iowa Association of County Attorneys. And in January of this year, they issued a 14 point report on the effect of the Iowa sex offender residency restriction law. I'm here today only to oppose that part of LB 1199 that deals with sex offender residency restrictions. And the Iowa County Attorneys' statement reads like a true bill indictment of that law. The Iowa County Attorneys found that there was no connection or correlation between residency restrictions and reducing sex offenses against children or improving the safety of children, and that has been the argument from day one on this type of a law, that it's going to keep children

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

Committee on Judiciary
February 16, 2006
Page 38

LB 1199

safe. Other people that have testified in support of this bill have called your attention to the fact that 90 percent of child victims are victimized by people they know, people in their home, or people that are close to their family. They're not victimized by strangers. The gentleman who, himself, was a sex offender and talked about the problems that this type of a bill creates for rehabilitation is a concern for treatment experts, as you've heard today. There's really, being very honest about it, this is the kind of a law that makes politicians look good to the public. But, and I have no intention of denigrating the intentions of those that have promoted such laws. I think they're doing what's necessary for the best interest of their community. We part ways on what that best interest is. We think that these things violate rights that are secured by the Constitution. The courts have looked at the Iowa law. The District Court found it was unconstitutional. The Eighth Circuit said it wasn't unconstitutional because while there were restrictions on rights, they were counterbalanced by the government's interest in promoting public safety. But that argument is losing steam as can be seen by the views of the Iowa County Attorneys. These bills do not promote public safety. They act as a tool to drive people underground so that they're not getting the kind of treatment they need. When they're not getting the kind of treatment they need, society becomes un-safer rather than safer. And with that, I'll take your questions, if you have any.

SENATOR BOURNE: Questions for Mr. Butz? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Butz, thank you for your testimony. I'm not, I don't focus on the residency restrictions as being the central issue of the bill, but the fact that the Supreme Court denied review of the Eighth Circuit's decision in the case over in Iowa tends to support the position that in the United State right now, these residency restrictions are, in fact, constitutional.

TIM BUTZ: Until such point as there's differing, I mean, the Iowa case was the first one the Supreme Court was asked to look at. And, as you know, as a general matter, they'll wait until there's a conflict between the circuits before deciding on a case.

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

Committee on Judiciary
February 16, 2006
Page 39

LB 1199

SENATOR FLOOD: But in America, right now...

TIM BUTZ: In America right now, but I think if you go back and you read, and I'll be glad to supply you with a copy of the Eighth Circuit decision, if you'd like, the court made very clear that the restrictions on rights contained in the Iowa law were counterbalanced by the government's need to promote public safety. What the Iowa County Attorneys are saying is that there is no public safety issue here. This law isn't making us safer. And, in fact, right now, the sheriff's association in Iowa is considering a similar statement. On February 15, just yesterday, the statewide domestic assault coalition in Iowa endorsed the County Attorneys' statement. So, you can see the...

SENATOR FLOOD: And I guess where I'm coming...

TIM BUTZ: ...ball rolling here saying that, well, this thing...

SENATOR FLOOD: Right.

TIM BUTZ: ...really isn't making us any safer.

SENATOR FLOOD: I guess where I'm coming from, and I would agree that 2,000 feet may be excessive, you know, Iowa's situation is still constitutional currently in our country, but...if you operate a day care on south First Street in any community in Nebraska and you have a level 3 sex offender that has committed first-degree sexual assault on a child under the age of 12 living next door to that day care looking out his or her kitchen window at a group of kids playing in a playground at a home-based day care, I think that does present a significant, at least concern to the parents of the children at the day care.

TIM BUTZ: Well, I'm a parent, also. And, trust me, parents always have to be concerned. Laws such as this, I think, have the opposite effect of creating a false sense of security. You want parents ever vigilant. My kids never played outside alone. Not one day of their life were they out in the yard without a German shepherd and me or my wife. And...

SENATOR FLOOD: But when both parents work and they've got

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

Committee on Judiciary
February 16, 2006
Page 40

LB 1199

to send that kid to day care, I mean...

TIM BUTZ: Right, and day-care centers aren't unsupervised.

SENATOR FLOOD: And I'm not saying that I completely disagree with your logic, but I'm just saying it's easy for me to see both sides if you're a parent and there's a registered sex offender that moves in next to the day care.

TIM BUTZ: Oh, no doubt that it's a difficult situation, Senator. The question in front of this committee, I think, is what are we going to do with this emotional situation we find ourselves in right now where there are well-intentioned, honorable men in public service seeking to protect their communities, and they believe that these residency restrictions are the way to do it. And, on the other hand, you have treatment experts, people whose knowledge of how sex offenders are likely to behave is far greater than what I might offer this committee, telling you that there's no connection here. And the reason for it is mobility. In fact, I believe that Ms. Houser, who's going to come behind me, might be able to address this. But I think that what the studies show is that a sex offender living in a neighborhood who's known to be there as a level 3 sex offender would be, is not going to offend. If he's prone to reoffending, he's not going to re-offend in an area where he's widely known. People are mobile.

SENATOR FLOOD: I guess, I don't want to take too much time here, but what level of scrutiny did the Eighth Circuit apply in its ruling?

TIM BUTZ: I don't know that, but I can find that out for you.

SENATOR FLOOD: I would imagine that they applied strict scrutiny.

TIM BUTZ: Strict scrutiny is what I would imagine, also.

SENATOR FLOOD: Which, I admit I was somewhat surprised by the decision, but if the Eighth Circuit is applying strict scrutiny review to Iowa's 2,000 foot residency restriction, that's a fairly significant decision from the Eighth Circuit that I think should be, that has me looking at restrictions

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

Committee on Judiciary
February 16, 2006
Page 41

LB 1199

where I might not have been a year ago.

TIM BUTZ: I guess it depends on how you view the Eighth Circuit. Personally, I think the Eighth Circuit hasn't met a civil liberty they wouldn't like to tinker with a little bit.

SENATOR FLOOD: I'm not that sure many courts have, in your mind.

TIM BUTZ: (Laugh) Well...

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: Thank you, Chairman. Mr. Butz, you and I do share the same opinion when it comes to the residency restrictions in this bill. Personally, I feel that it's much more important if we know where they are instead of where they're not. If we know where they are, and then we can educate our children to be forever vigilant and aware that these people are out there, they do exist, and we need to be careful and always be aware that situations like this can happen and to try and protect themselves as best they can.

TIM BUTZ: As I said earlier, as a parent, you always have to be vigilant. And I think neighbors have to be vigilant on behalf of their neighborhood, and neighborhoods have to be vigilant on top of the entire community. And that's not to say we need witch hunting or running people out of town or anything like that, certainly not the intent of my statement. But the idea that we can cure a problem as complex as sex offenders with a law that restricts where they can live does not give credit to the intelligence that's represented in this state. We're a smarter people than that. Unfortunately, we had an opportunity four or five years ago when the Governor's working group issued its report on sex offender management to address this. And I'm not sure where things broke down that the Legislature never acted on that, whether it was a failure of leadership in the Governor's Office or elsewhere. But that report has been sitting out there for five years begging for attention, and could have provided this state with a road map, a plan, to

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

Committee on Judiciary
February 16, 2006
Page 42

LB 1199

deal with this in a less excited environment.

SENATOR BOURNE: Further questions? I will say that I think that, this is not to make an excuse or a justification, but I think the reason that, in some of those, or not some, none of the recommendations of the task force, I think it was budget considerations. And that's not to...

TIM BUTZ: And, you know, that, therein lays the problem, Senator. You know, nothing that this committee can craft as legislation is going to be cheap. If you're really going to address this problem, it's going to cost the state some money.

SENATOR BOURNE: Yup. And I will tell you that the Governor recognizes that and is committed to solving the problem. Let me bring a couple of things to your attention and see if you have other information. In Iowa, since the residency restrictions have been passed and upheld and are now currently being enforced, and actually the enforcement of those restrictions hasn't been in place that long. They were suspended during the pendency of the court case. So during that time, Iowa has had 48 offenders literally register at rest stops along Interstate 80. And that will literally put a rest area near the Ankeny exit on Interstate 80, and these folks are living in the parking lots of these. We've also seen, and again, there's been a real limited period of time that the residency restrictions have actually been enforced in Iowa. It's a matter of months, not years. We've seen the number of sex offenders released in the community double in terms of those not registered. So we have the twice the number of offenders running around in Iowa, for lack of a better word, and we don't know where they're at.

TIM BUTZ: Right.

SENATOR BOURNE: Or they don't know where they're at. So, I guess what I'm saying is you and I are in agreement that residency restrictions don't work. Are you aware of any other information that would point to the break down of residency restrictions as the solution?

TIM BUTZ: I think if you look at the Iowa County Attorneys

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

Committee on Judiciary
February 16, 2006
Page 43

LB 1199

Association, as I said, it contains 14 points where they find fault with the current Iowa 2,000 foot law.

SENATOR BOURNE: And what I heard you say is that the Supreme Court denied review based on the overriding state interest in protecting their communities. Now, however, we're seeing that it's really not protecting our communities and what you're suggesting is that as soon as another circuit rules in an opposite way of the Eighth that there will be sufficient grounds for an appeal.

TIM BUTZ: Right. And there are other challenges off in the wing. The ACLU in Oklahoma just settled a case, it was an "as applied" challenge to the Oklahoma statute. And I think that case is instructive to this committee in terms of some of the technical problems that exist with residency restriction laws. And the gentleman in Pace (phonetic) told his probation officer where he was going to buy a house. The police department and probation office signed off on it. He bought a home, he moved his family into it, only to have the probation department come back and say, hold it, we're changing the way we calculate 2,000 feet and you're now in an exclusionary zone and you must move out of your own home.

SENATOR BOURNE: This is the last question that I'll ask you. I don't know if Iowa's law says this, but I know some of the communities have adopted residency restrictions and it says 2,000 feet and then it'll have what I call a laundry list, day cares, schools, parks, playgrounds. And then the last, they have this last little tag line that says, or anywhere else children may congregate. And that strikes me as either arbitrary or vague. If you were to challenge such an ordinance, and I realize to challenge ordinances like that requires infinite resources, but I would assume if a state had such a tag line on the end that that would be challengeable. Do you have some comments or thoughts on that?

TIM BUTZ: Yes. And, you know, Senator Bourne, I've never made it a practice to come here and say, the ACLU is going to sue over something, because I don't think public policy should be set by that kind of threat.

SENATOR BOURNE: We've been sued before, and it hasn't stopped us.

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

Committee on Judiciary
February 16, 2006
Page 44

LB 1199

TIM BUTZ: That's right. But it's also not a secret that my board has instructed the staff to start looking at these local ordinances and seeing whether or not they're susceptible to challenge. And we're in the process of looking at that. And that's exactly one of the areas where we have some concern is language that is so vague, so broad, that people are unable to conform their conduct to meet the requirement of the law. When you have something like, anywhere children may congregate, well, that might be in front of the ice cream truck on a hot Saturday afternoon. So, yes, there is some problem there, I think, with vagueness and, if the state law were to have such a broad application, it would be something people that would want to challenge the law would certainly look at.

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Butz, I'm not saying that you don't raise valid points, but when I look at it this way, when an offender is released from prison, presuming it's a level 3 offender, let's presume that the offender has violated or offended against someone under the age of 12, 12 or under, the parole officer and the Department of Parole essentially has the authority to tell the offender where they can or cannot live.

TIM BUTZ: Right.

SENATOR FLOOD: So I look at the 500 foot residency restriction as an extension upon what parole already does. Now, if we were to get rid of the 500 foot residency restriction and we get into the business of lifetime supervision, aren't we going to be controlling where an offender lives?

TIM BUTZ: You know, that's a very good point, Senator, and it shows the problem with blanket restrictions. If, in the opinion of treatment specialists that are working with that probation officer, placing someone in a residency near a day-care center or a home with children would pose a risk, that's a valid restriction that the probation officer can enact. But it's based on a specific examination of that person, and it's not a blanket, universal prohibition on where the person can live. It's specific. It's tailored to

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

Committee on Judiciary
February 16, 2006
Page 45

LB 1199

meet the risk assessment that the state has conducted on the person. And I don't think we would ever challenge, I can't see us challenging something that was based on an individual assessment of risk. What we're challenging here is the idea that you can wave a magic wand and say, this is a protected zone, and that violence against children is going to disappear. It's not going to happen that way. But with what you're talking about, that's different. It's almost an apple and orange situation with, if someone like Dr. Paine were to meet with someone and report to the probation officer, look, you know, this guy is in a fragile place. You don't want to put him where he might have a higher risk of reoffense, so don't let him move in next to a day-care center. That's fine. That's understandable. But to say the guy can't live there simply because he's been in prison doesn't make sense.

SENATOR FLOOD: I guess along those lines, I'd be interested in discussing the view, outside of this hearing, and presenting whatever we talk about to our chairman, ways that we could make sure a parole officer has the ability to get input from a neighborhood and to direct an offender in a certain way so that we don't have, you know, my only concern is the sex offender that's level 3 that violated children under the age of 12 right next to a day care...

TIM BUTZ: Right. And, you know, I think if you go back to...

SENATOR FLOOD: ...or school or whatever.

TIM BUTZ: ...Senator Pedersen's bill about mandating parole 180 days before release, give you a little plug on that bill, Senator Pedersen, because I think it fits into what you're talking about. Because some of these folks "jam" out, and the go out into the community unsupervised. But probation isn't a right. It's a privilege. And with that privilege, there's going to be certain restrictions that the state can enforce on the liberty of the person who's on parole.

SENATOR FLOOD: Thank you very much.

SENATOR BOURNE: Senator Foley.

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

Committee on Judiciary
February 16, 2006
Page 46

LB 1199

SENATOR FOLEY: Thank you, Chairman Bourne. Mr. Butz, a few moments ago, in your exchange with Senator Flood, I thought I heard you to say that when a sex offender moves into a neighborhood and it is widely known in the neighborhood of this person's prior history, he's less likely to reoffend. Did you say something along those lines?

TIM BUTZ: Yes, I did. And I think that's a matter of the fact that he is known makes people more vigilant. And the kind of crimes you're talking about are the kind of crimes that are committed usually in secrecy. And I think, certainly, there's been enough testimony on that point today from the treatment folks. The stranger victimization of children is the exception and not the rule when it comes to child victims. But that's not to, and that's not to downplay the existence of it, but I think, just common sense tells me that a sex offender who is known who is known to be a sex offender by people in the neighborhood is going to comport himself in a way that is not going to call additional attention to himself. He's going to, he knows the eyes of the community are on him.

SENATOR FOLEY: Thank you.

SENATOR BOURNE: Further questions? I just want to follow up a little bit on what Senator Flood did, what he said. There is an element in the bill of community supervision of repeat and high-risk offenders. And I want to flesh that out with you for just a second. Those are sex offenders who have more than one conviction for a sex offense...

TIM BUTZ: Um-hum.

SENATOR BOURNE: ...first-time offenders convicted of rape of a child under 12 or forcible rape of a person over 12. So those folks are going to be subject not just to residency restrictions, but an element of supervision. Probation-parole will put, they can put conditions on that individual. Each individual subject to enhanced supervision shall undergo a risk assessment to determine the conditions of supervision to be imposed on the offender. The conditions imposed shall be the least restrictive conditions available which minimize the risk of the individual offending again and are compatible with public safety. So, I do want to point out, and I want the cities in attendance

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

Committee on Judiciary
February 16, 2006
Page 47

LB 1199

to recognize that, for those folks that we as a state deem mostly likely to reoffend, we'll have an additional element of supervision which would include, perhaps, a residency restriction as a condition of remaining on parole. So, I just...

TIM BUTZ: Right. But again, that goes back to individual assessment and...

SENATOR BOURNE: You're absolutely right.

TIM BUTZ: ...my legislative committee did not find a problem with that.

SENATOR BOURNE: You're absolutely right, but I wanted to bring that to the attention of the cities in attendance because I think that's a crucial element of this bill that goes a long ways towards solving the problem rather than just putting a blanket residency restriction on the offender. Further questions for Mr. Butz? Thank you. As usual, appreciate your testimony. Next testifier in opposition. I usually don't thank people who testify in opposition to one of my bills, but, no, it is a dialog and I appreciate all input.

ERIC EVANS: (Exhibits 17, 18) Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Eric Evans, that's E-r-i-c E-v-a-n-s, and I'm deputy director at Nebraska Advocacy Services, The Center for Disability Rights, Law, and Advocacy. I'm here today to testify in opposition to LB 1199. Let me be clear. We're not opposed to the goal which LB 1199 seeks to achieve, but how LB 1199 goes about achieving that goal. Sexual crimes, especially against children, are an unspeakable tragedy and among the most heinous forms of violence imaginable. Clearly, how to protect children and prevent this violence is an important public policy discussion that must be made. Nebraska Advocacy Services is particularly opposed to the changes in the Mental Health Commitment Act that are in LB 1199, and that's, in particular, page 63 to 101. Our opposition stems for the following reason: the mental health system is not the appropriate place for indefinite incarceration of sexually violent predators. The historic purpose of the mental health system has been treatment, but many sex offenders do not have a diagnosable and treatable

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

Committee on Judiciary
February 16, 2006
Page 48

LB 1199

mental illness, nor are they amenable to most kinds of treatment currently available in the public mental health systems. These are specialized treatments that must be made available. Secondly, detaining violent sex offenders who do not have a mental illness and who are likely to reoffend in the public mental health system places people who are there for appropriate treatment purposes at risk. This is not something raised as a mere hypothetical possibility. In fact, we have received and substantiated allegations against individuals incarcerated in the regional centers who were judicially determined to be sex offenders who perpetrated against vulnerable persons while confined in those facilities. Third, linking of mental illness with sexually predatory behavior in the public consciousness and in statute deals a severe blow to the many efforts that have been undertaken during the past 30 years to reduce the stigma attached to mental illness and to treatment in the public mental health system. We're also concerned about the costs associated with implementation of LB 1199. We think that they could have a devastating effect on the publicly funded mental health system. For decades, Nebraska's publicly funded mental health system was ranked at the bottom quarter in terms of per capita expenditures on mental health when compared with other states. Nebraska's mental health system is financially stressed and inadequately funded to meet the mental health needs of current public sector recipients. In closing, although we oppose LB 1199, we appreciate the opportunity to offer our concerns and we stand ready to work with other stakeholders to develop a public policy response that addresses the issues presented by violent sex offenders in a way that is not detrimental to the interests of people with mental illness. I thank you for this opportunity and would be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Evans? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Thank you, sir, for your testimony. I appreciate your reference to the case law found in Kansas v. Hendricks and would remind the committee that, in that case, a sex offender does not need to be mentally ill to be incarcerated. Is that correct?

ERIC EVANS: That's correct. Yes.

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

Committee on Judiciary
February 16, 2006
Page 49

LB 1199

SENATOR FLOOD: Okay. You, on page 2 of your written statement, in the second full paragraph, state, "Detaining violent sex offenders who do not have a mental illness and who are likely to reoffend in the public mental health system places people who are there for appropriate treatment purposes at greater risk."

ERIC EVANS: Yes.

SENATOR FLOOD: My question is, then where do we put them? If not in prison and not in a regional center, then where do they go if they're a violent sex offender that are offending against other people? Where do you want them to go?

ERIC EVANS: I guess, if you could fulfill my wish as to where they go...

SENATOR FLOOD: I wish I had some wishes fulfilled there, once in a while.

ERIC EVANS: ...you know, and I know that there may be constitutional problems, there could perhaps be constitutional problems, at least state constitutional problems with this, but, you know, we would prefer to see them still within some kind of a correctional system environment as opposed to in a mental health environment. You know, that may, like I said, that may not be possible. And the National Association of State Mental Health Program Directors says that they recognize that that's a problem as well. I mean, say that if you are going to put them in mental health program areas that you have to ensure that there's sufficient security in place so that the risk of them perpetrating against a vulnerable person is minimized to the greatest extent possible.

SENATOR FLOOD: I guess, this is prefaced somewhat on my belief that corrections is not well-known for its capacity to treat offenders. And it's odd to me that the Nebraska Advocacy Services is talking about jailing someone for years and years and years because we don't want to put them in a treatment program at any point. I guess, I have a problem recognizing or reconciling...

ERIC EVANS: Reconciling, sure.

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

Committee on Judiciary
February 16, 2006
Page 50

LB 1199

SENATOR FLOOD: Yeah.

ERIC EVANS: And I think part of that issue is that we don't see this as a mental illness. All right? It may be a mental abnormality. It may be a mental disorder. But that doesn't necessarily mean that it's a mental illness.

SENATOR FLOOD: But if we, and we do have forensic unit at the Lincoln Regional Center, don't we?

ERIC EVANS: You do have a forensic unit at the Lincoln Regional Center.

SENATOR FLOOD: In fact, the Lincoln Regional Center, and I have not been there, but it's my understanding that they have special wings or quarters just for sex offenders that are in a prison-like secure environment at the regional center.

ERIC EVANS: In the Forensic Unit, yes. But not all sex offenders at the regional centers are in the Forensic Unit.

SENATOR FLOOD: Is that because they have not been convicted of a sex offense, or they present a mental illness symptom, or...

ERIC EVANS: I don't know what the criteria the Department of Health and Human Services uses to make the decision as to where a person is placed. But there is, on the grounds of the Lincoln Regional Center, a unit for sex offenders that is not part of the Forensic Unit.

SENATOR FLOOD: I guess, constitutionally, I have a problem jailing somebody, say they're sentenced to 20 years and they serve 10 with good time, I have a problem jailing them even though they present a risk. I guess I would rather have them in a regional center environment because they're no longer confined to the Department of Corrections, you know what I mean?

ERIC EVANS: Yeah, yeah.

SENATOR FLOOD: I'm not for letting them out, but at some point, you earn your, you do your time and you go to the

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

Committee on Judiciary
February 16, 2006
Page 51

LB 1199

next step, which hopefully is treatment, until you're no longer a risk. Does that make sense?

ERIC EVANS: Right. Yes, and again, you know, as I said earlier, I think, you know, that the train's out of the station on this one. There's no doubt that these people are going to end up within the mental health system. And what I'm asking you to do is, if that's your policy decision, then make sure you have sufficient protections in place for the people who are there for treatment of their mental illness, okay, and who are vulnerable.

SENATOR FLOOD: You don't want those populations mixed.

ERIC EVANS: I would, that would be worrisome if they, yes.

SENATOR FLOOD: And I will say that I've heard treatment providers at my regional center in the 19th Legislative District say that HHS goes to great lengths right now not to mix the sex offender population with the severely persistent mentally ill population, so I appreciate you raising the concerns and actually, I...

ERIC EVANS: Right, and all I can say in response is we've had substantiated allegations, we have substantiated situations where people were, vulnerable people were sexually assaulted by individuals who were there for treatment as a sex offender.

SENATOR FLOOD: More security, you say.

ERIC EVANS: Yeah.

SENATOR BOURNE: Further questions for Mr. Evans? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. Evans, are you familiar with a book called DSM IV?

ERIC EVANS: Yes, I am, The Diagnostic and Statistical Manual for Mental Disorders.

SENATOR Dw. PEDERSEN: My understanding of that book, which I use from time to time to look up things, because I'm not a mental health counselor, I'm strictly a substance abuse

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

Committee on Judiciary
February 16, 2006
Page 52

LB 1199

counselor, that any violence is considered a behavior disorder, which would be a psychiatric disorder, would it not be?

ERIC EVANS: I don't think there's a one-to-one correspondence between behavior disorders and, well, I used the term "mental illness," okay? That's a specific term. I did not use "psychiatric disorder" nor did I use "behavioral disorder." I used "mental illness," and that's what my concern is about, people who have mental illness. The typical forms of mental illness are depression, bipolar disorder, schizophrenia, I think maybe, no, obsessive-compulsive OCD, or like, so they're, so...

SENATOR Dw. PEDERSEN: And there's behavior disorders in there.

ERIC EVANS: The common list of mental illness includes those things, that I just said.

SENATOR Dw. PEDERSEN: I agree with you...

ERIC EVANS: Whether they're behavior disorders or not, I...

SENATOR Dw. PEDERSEN: ...in trying to keep them separated.

ERIC EVANS: ...yeah, I don't know if they're, you know, if they're behavior disorders or not.

SENATOR Dw. PEDERSEN: We have to protect the...

ERIC EVANS: Yeah.

SENATOR Dw. PEDERSEN: ...patients from other patients, too,...

ERIC EVANS: And that's my major...

SENATOR Dw. PEDERSEN: ...and I don't have any problem with that part of it.

ERIC EVANS: ...that's my major concern here.

SENATOR Dw. PEDERSEN: Violence, I didn't quite, I don't understand that word.

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

Committee on Judiciary
February 16, 2006
Page 53

LB 1199

ERIC EVANS: Right.

SENATOR Dw. PEDERSEN: Thank you.

ERIC EVANS: Yes. And it's, just, if I may, it's not just protecting vulnerable people, but it's also this issue of using the Mental Health Commitment Act as a vehicle to address this issue.

SENATOR BOURNE: Further questions for Mr. Evans? Seeing none, thank you. Next testifier in opposition. If there are other opponents, if you'd make your forward and sign in, we use the front row. Welcome.

J. ROCK JOHNSON: Thank you, Senator. My name is J. Rock Johnson, initial J, Rock, R-o-c-k, J-o-h-n-s-o-n. Senator Bourne, members of the committee, I testify in opposition to this bill, LB 1199, most specifically the changes that would be made in the Mental Health Commitment Act. Few people realize that the Mental Health Commitment Act came into being in order to protect persons with mental illness. For many, many decades, just about anyone could put just about anyone into a state-operated insane asylum. And then, in the era of civil rights, the judiciary system looked at this and said, we cannot deprive someone of their constitutional right to liberty without a reason, without a standard. And the standard was, dangerous to self or others. And since that time, we've learned a lot more about mental illness, and one of the things that we know about people who have mental illnesses is that they are more likely to be victims than to be perpetrators. And such, what has happened, however, what was sought to protect people with mental illnesses became inextricably intertwined with the concept of dangerous, mentally ill and dangerous. And, in fact, that's language that appears in our statute, mentally ill and dangerous. There's no, to the best of my knowledge, no, what do I want to say, really a definition of that. But the point is that dangerous has become associated with people with mental illnesses, and now we have a class of people who have been adjudicated to be dangerous. So somehow it seems fitting, in the minds of some, to put these two together. I think that's totally inappropriate and it's dysfunctional, and it doesn't meet the needs of the public or people with mental illnesses or people who have been found guilty of sex

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

Committee on Judiciary
February 16, 2006
Page 54

LB 1199

offenses in the criminal justice system. Senator Pedersen mentioned the DSM IV. There are 347 diagnoses in the DSM IV, and I believe that personality disorders is an axis 5, which is a specification, a classification that psychiatrists use. But to ascribe a psychiatric diagnosis, if you will, to an individual and piece of legislation is a great deal of concern to me. I'm also very concerned, we've talked a lot about residency and those concerns, but what we must have the concern about the people the sex offenders will come in contact with. It is not appropriate for sex offenders to be in contact, even though whatever precautions are being taken, to people who are vulnerable, that we know are vulnerable in the system, and, in fact, we know are vulnerable sometimes even to staff. And there's been litigation about that. I would just end by saying that I'm very concerned about the funding, which is inherent in this problem. There's the funding that's being taken away from supporting people with mental illnesses who will be able to live and recover in the community. We have ample evidence about the ability of people with mental illnesses to live in recovery, but this is being drained away. And I just bring to your attention, if you take Highway 77 and take the turn down, what you see is a road sign that says, to Correctional Center and Regional Center. What we have here is trans-institutionalization. And I would offer my help to be of any assistance that I might be in this regard.

SENATOR BOURNE: Appreciate that. Are there questions for Ms. Johnson? Seeing none, thank you.

J. ROCK JOHNSON: If I may, Senator, I wish to identify myself at the offset. I actually was going to ask for a glass of water, too, but I didn't get that done. Just for purposes of identification, I am a commissioner on the Legislative Behavioral Health Oversight Commission. I'm also a member of the PAIMI Advisory Counsel, which is Protection Advocacy for Individuals with Mental Illnesses, a part of the protection and advocacy group here in Nebraska, Nebraska Advocacy Services.

SENATOR BOURNE: Okay. Thank you. Further questions? Seeing none, thank you. Are there opponents? Are there neutral testifiers? I'll tell you what, we'll just have you sign in after you testify if that's okay.

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

Committee on Judiciary
February 16, 2006
Page 55

LB 1199

CHRIS RITSCH: (Exhibit 19) And before I begin, I'd really like to know where I get my parking ticket validated.

SENATOR BOURNE: Well, that's not an option.

CHRIST RITSCH: Okay.

SENATOR BOURNE: I'm sure the Lincoln Police Department will happily accept your contribution. I've made many.

CHRIS RITSCH: In way of introducing myself, a simple piece of paper may be enough for those of you who saw WOWT Channel 6 at 10:30. My name is Chris Ritsch, last name spelled R-i-t-s-c-h. You may also have heard me this morning on KFAB radio talking with Gary Sadlemyer. And I suspect that within the next two days, weeks, months, whatever I have left, I may replace Saddam Hussein as public enemy number one. Before you, you should have a copy of my position paper with a cover sheet. And then I will speak to several of the things as we proceed through the early morning hours. To the members of the Judiciary Committee of the Nebraska Unicameral and other concerned parties. In 1987, I made the hardest decision of my life. I told my wife that I had not only violated our marriage vows, I had violated the law. From that point, I began a long process of making amends starting with my notifying authorities and culminating with receiving a maximum sentence for each of my first and only offenses, two felony counts of what was referred to at that time sexual assault of a child for having inappropriate contact with the two teen-age girls, ages 13 and 15, who baby-sat for my children. After serving out my sentence, going from NSP, Nebraska State Penitentiary, to OCC, Omaha Correctional Center, to parole, after the struggles of rebuilding my marriage and my family, after years of problems obtaining and retaining, or keeping, employment, I may have used the wrong word, after nearly two decades of being quiet during discussions and legislation regarding sex offenders, especially child molesters, I now face the second hardest decision of my life. I come here today to step forward and let my voice be heard and my face be seen as you take up legislation that impacts not only me, but my family and those who support me. I submit to you through this document and my testimony my position regarding several of the legislative bills currently proposed. First and foremost, I do not want anyone to think that my efforts

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

Committee on Judiciary
February 16, 2006
Page 56

LB 1199

represent any disagreement with the protection of children or the punishment of those who hurt children. It is my opinion that, for the most part, current laws adequately fulfill both concerns. What my efforts do represent is to point out what I and my family view as proposed laws that move in the wrong direction to further protect children and, in some regards, subject me to double jeopardy by being further punished for something I did nearly two decades ago. Additionally, I will submit that my decision to present my opinion and testify before you today, and for that matter, my going public in any way at all, which includes Fox News Saturday night at 9 o'clock, may serve me no better than to make my life and that of my family and friends harder to live from this point on. If this issue impacted only me, I would take a different course of action. But because of what is being proposed and what is being done by states and counties and municipalities across the nation, this issue impacts my wife, my children, my family, and friends by subjecting them to scrutiny and guilt by association and punishment after the fact. And that, I will go on public record and state loudly, is wrong. I open myself to all questions. I have all manner of answers. Since I have a red light, I'll make it real quick. I want to address one thing. Those of you who are in the psychiatry field may be familiar with Dr. Fernandez from the Council Bluffs Psychiatric Clinic, who died tragically a little while ago. He was my psychiatrist, that recently diagnosed me with borderline personality disorder stemming from an OCD, obsessive compulsive, stemming from post-traumatic stress, as well as an axial of clinical depression with suicidal ideations that I have held for most of my adult life. And in addition, I was diagnosed in January 2000 with multiple sclerosis. I open myself to your questions.

SENATOR BOURNE: Are there any questions for Mr. Ritsch?
Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Ritsch, thank you for your testimony. Are you a registered sex offender in Nebraska now?

CHRIS RITSCH: It is my understanding, and I see the deputies and I quake in fear, that I was grandfathered out by the fact that my offense and my time served was complete prior to the passage of that legislation.

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

Committee on Judiciary
February 16, 2006
Page 57

LB 1199

SENATOR FLOOD: Have you ever been contacted by...

CHRIS RITSCH: Absolutely not.

SENATOR FLOOD: ...the state with regard to your prior...

CHRIS RITSCH: Absolutely not, nor have I stepped forward to ask, hey, should I be classified? I took the State Patrol's classification instrument off the Internet, which I will address at some point, and did a self-ranking. And I fall, based on my understanding of that instrument, in the moderate level 2 classification primarily because I have two convictions...

SENATOR FLOOD: Do you...

CHRIS RITSCH: ...and because they were against teen-age girls.

SENATOR BOURNE: Let's, if we could just limit it to the answer and the questioning. Go ahead, Senator Flood.

CHRIS RITSCH: Yes.

SENATOR FLOOD: I guess, and I'll keep it short, I mean, I don't know enough about psychology and the psychiatry and all the different testimony we've had today is somewhat confusing about whether it's a mental illness or not. Were you ever diagnosed by a psychiatrist as someone that had pedophile tendencies, or did you ever meet with somebody that classified you as somebody that had these urges that couldn't be handled?

CHRIS RITSCH: Absolutely not. When I went to my wife, the first place we went was to a mental health facility, and they were obligated to notify the authorities. After I was released from my arraignment, upon arraignment, I immediately sought out a counselor, not because I was mandated by the court, but of my own volition. I met with Therese Korth, who at that time was...I met with a counselor who had never worked with an offender. She had only worked with victims. I was the first offender she had ever worked with and that gave her and I both a unique opportunity to explore what was up.

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

Committee on Judiciary
February 16, 2006
Page 58

LB 1199

SENATOR FLOOD: But this law, as written, wouldn't affect you because you haven't been classified as a registered sex offender under our current law. Is that right?

CHRIS RITSCH: I don't know that.

SENATOR FLOOD: I guess, have you had any contact with your psychiatrist from Council Bluffs before his passing? Did he ever suggest to you that you still have a psychiatric condition?

CHRIS RITSCH: Not at all. What my current therapist and Dr. Fernandez, again, who died a couple of months ago, what's wrong with Chris Ritsch is something that can never be fixed.

SENATOR FLOOD: About, and this...

CHRIS RITSCH: I cannot go back in time and undo what I did. And that's primarily what's wrong with me. I am not a pedophile. I don't have an attraction to children, but I have two offenses that say otherwise. But there has been no professional psychiatric evaluation of me that says I am attracted to children. Why am I here? I don't know, I'm reading your expression.

SENATOR FLOOD: No, I...

CHRIS RITSCH: I'm sorry, but why am I here? I don't know. I don't know that anything you act upon today will not bear on me.

SENATOR BOURNE: I can tell you this bill won't. Are there further questions for Mr. Ritsch? Seeing none, thank you. Appreciate your testimony. Next testifier in a neutral capacity. Welcome.

KRISTIN HOUSER: (Exhibits 20, 21) Hello. My name is Kristin Houser, K-r-i-s-t-e-n H-o-u-s-e-r. I have two testimony copies to you. The first one is from Elizabeth Barnhill, who is the executive director of the Iowa Coalition Against Sexual Assault. She was unable to make it here today due to the weather, but had intended on being here. So, there's some additional information there about

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

Committee on Judiciary
February 16, 2006
Page 59

LB 1199

Iowa's experience with the residency laws. And then my own testimony. Real quickly, just to give you a background on who I am, I've been working to end sexual violence for over 14 years as a victim advocate, professional trainer, and policy expert. I'm currently a member of the advisory committee to the Violence Against Women Network Sexual Violence Applied Research Forum. I've served on the board of the National Alliance to End Sexual Violence, including one year as president. Also, on the National Task Force to End Sexual and Domestic Violence, the Nebraska Attorney General's Sexual Assault Task Force and the Governor's Working Group on Sex Offenders. And I understand that LB 1199 has been introduced this session to calm the public, take care of harmonizing some penalties, increase penalties in response to public outcry. And I do believe that some provisions to this bill, such as the changes made to the registration requirements make good sense and are in the best interest of community safety, but I also think that some of the provisions are grounded in mythology about sex offenders as well as victims, and as was discussed earlier may have some serious unintended consequences. Some of them have been covered, so I'm not going to go into detail with them, but I, as well as Dr. Paine had testified earlier, I agree that a 25-year minimum sentence for sexually assaulting a child may actually prohibit children and their families from coming forward, that it will be forcing them to make choices about family income, family housing, tearing families apart. My experience in working with victims, most victims, is that they simply want the abuse to stop. But many people who are being abused by somebody in the home, a close family friend, a relative, don't wish to see that person locked up forever. It's the rest of us that feel that way. So, I'm not here saying that there shouldn't be any public punishment, or we should simply respond, but with whatever victims want, but I do think that a 25-year mandatory minimum sentence will be prohibitive to some families being able to make that decision by coming forward. My biggest concern, which has not been brought up today, is that LB 1199 creates a state-sanctioned hierarchy of victimization that is based upon age of the victim. By clearly stating that those who are caught for raping prepubescent citizens are more deserving of punishment than those who are caught for raping adults or adolescents implies that, this somehow, the age of the victim makes the crime more serious. And I'd like the committee to consider

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

Committee on Judiciary
February 16, 2006
Page 60

LB 1199

if this is really the message that the state intends to be sending to adolescent and adult women of the state as well as adolescent and adult men in the state. This sort of disparity between sentencing structures should be considered in terms of, does it actually encourage adults and teens to report? If I'm looking at the same kind of lengthy involvement with the police, the courts, public scrutiny, absence from my job, my own mental anguish, disruption of my own family, knowing that in the end it's perfectly capable that my offender is going to get a one-year sentence and maybe serve six months of it, as opposed to, if my next door neighbor, who's eight years old, were the victim. That's a little bit unsettling to think about. Where do those differences come from? And I believe that this is where it's based on mythology, and that much of society still confuses rape with sex. And because we don't view children as sexual beings, the thought that anybody would do anything sexual in nature to them is absolutely reprehensible to us. And I agree that it is. I think that the problem is, that because, when you have adolescents or adults who do behave sexually in nature, because that's part of life, that we somehow think that a sexual assault is not as violent, not as serious, not as outrageous for us to be concerned about. And I would like to suggest to you that it's equally wrong when a perpetrator selects a child as a victim because they lack the physical ability to stop the assault as it is to select an adult who perhaps is unconscious from drinking too much alcohol, which is very common, because they, too, are also unable to defend themselves and stop the assault. And the intent of the perpetrator is the same in most cases, which is to trick, overpower, and sexually violate the victim. This bill ignores multiple research studies which Tara Muir mentioned briefly, which documented that the majority of offenders commit crimes against people of all ages, commit multiple offenses, and generally do not inflict serious bodily injury. So the designation within our sentencing structure about whether or not serious personal injury has been done to the victim is, again, based on mythology of what real rape looks like. The National Violence Against Women Survey was very specific in stating that the rape itself is a serious personal injury, and just because the majority of offenders do not inflict gratuitous violence on their victims should not make us think that it's somehow less serious or less impacting to the victim's life.

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

Committee on Judiciary
February 16, 2006
Page 61

LB 1199

SENATOR BOURNE: If you could conclude, I'm sorry.

KRISTIN HOUSER: Sure.

SENATOR BOURNE: I've tried to keep everybody to three...

KRISTIN HOUSER: Absolutely.

SENATOR BOURNE: Let's see if there's some questions. Are there questions for Ms. Houser? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Ms. Houser, you are the owner of Moxie Resources?

KRISTIN HOUSER: Yes.

SENATOR Dw. PEDERSEN: Is that a counseling service?

KRISTIN HOUSER: No. I do consulting on sexual violence issues, so I do contractual work for other agencies.

SENATOR Dw. PEDERSEN: So you don't do therapy yourself.

KRISTIN HOUSER: I do not do therapy.

SENATOR Dw. PEDERSEN: Thank you.

KRISTIN HOUSER: Um-hum.

SENATOR BOURNE: Further questions? Ms. Houser, so, you, just succinctly say what your objections, we've heard a lot about the residency restrictions and we've fairly heard about the 25 years too much, you're saying the 25 years is too much. You're saying that somehow enhancing the penalty against children is not appropriate vis-a-vis, and I don't want to put words in your mouth, a crime, an equally heinous crime against an adult?

KRISTIN HOUSER: That's not exactly it.

SENATOR BOURNE: Okay, help me out.

KRISTIN HOUSER: I do think that 25 years as a mandatory minimum...

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

Committee on Judiciary
February 16, 2006
Page 62

LB 1199

SENATOR BOURNE: Is too much.

KRISTIN HOUSER: ...is too much.

SENATOR BOURNE: That's fair.

KRISTIN HOUSER: It takes away some of the flexibility I think that needs to be considered in some cases.

SENATOR BOURNE: Okay.

KRISTIN HOUSER: I think, I'm not suggesting that we raise mandatory minimums for adult cases up to meet 25, but what I'm saying is that a 24-year difference between what a minimum sentence can be based simply on the age of the victims seems rather arbitrary.

SENATOR BOURNE: Doesn't there have to be an element of, and I appreciate your comment about the alcohol, you know, but doesn't there have to be an element of an enhanced penalty for a criminal against somebody the state has an obligation to maybe offer a little more protection to?

KRISTIN HOUSER: I think that that's a difficult philosophical question. I can tell you that I've worked with plenty of adolescent girls who are over the age of 12 and plenty of adult women who are both living in extremely vulnerable situations where they're from, as it was discussed, with mental illness, living on the streets as a result of addiction, running from other violent situations in their home. And the point is is that it doesn't matter, to many offenders, it doesn't matter who the victim is. They're looking to do the same thing, which is essentially strip that person of their humanity and dignity. I understand that it's emotionally much more difficult to see that happen to a child, but I'm asking the state to consider, is it really so much less reprehensible to do that to any of our citizens, that are we not all equally deserving of equal consideration to our bodily integrity, our spiritual soundness, our belief that we have a right to be safe with the people we interact with and in our own homes? And I think that such a large differential in the sentencing structure merely based on the age of the victim is sending mixed messages about that.

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

Committee on Judiciary
February 16, 2006
Page 63

LB 1199

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. I appreciate your testimony. Other testifiers in a neutral capacity? Welcome.

MARGE SCHLITT: Thank you. Thank you, Senator Bourne and members of the committee. I had not planned to testify. I was just going to hear what other people had to say.

SENATOR BOURNE: Do you mind stating your...

MARGE SCHLITT: My name is Marge Schlitt, last name is S-c-h-l-i-t-t. I live here in Lincoln. I have four children raised here in Lincoln, two grandchildren. I've been a volunteer in prisons for about 18 years. Currently, I go to Lincoln Correctional Center, spend one whole weekend a month with the Alternatives to Violence Project, and I'm not speaking for that group at this point. I'm speaking from my own experience. And part of the bill, I want to commend the bill for your very thoughtful working-through of a very difficult problem. And I'm very glad to see legislation coming forward that is going, I hope, I haven't seen the final result, address the problem of sex offenders in our society. I am, right now, speaking in my concern about the minimum of 25 years minimum sentence. This is intended to punish the person. It's actually punishing society. It's not only extremely expensive to keep somebody in prison for 25 years, as we all know how much it costs to incarcerate somebody for a long period of time, but it's also punishing society in that they're depriving that person from the motivation to change, to become a different person, and I have seen a large number of people change, grow up, while they're in prison. And we're not giving them the chance to go out into society and be fathers, husbands, brothers, and good people, and taxpaying citizens if we have a minimum of 25 years. There are too many states that have for drug reasons or whatever reasons have passed these very long sentences, and they aren't doing us any good at all. They're a detriment. They're something we ought to seriously consider before we impose any more of those. So that's all I had to say.

SENATOR BOURNE: Thank you. Questions? Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Ms. Schlitt, this is a different side than I usually take,

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

Committee on Judiciary
February 16, 2006
Page 64

LB 1199

but the idea of corrections, we take the word off, corrections, and put it back into jail, and department of, you know, incarceration, originally came from, in history, where we locked up people who we were scared of. If they're not safe to be on the streets, shouldn't they not be kept locked up as long as possible?

MARGE SCHLITT: Maybe they were not safe when they were sent to prison, but that doesn't say that after ten years, maybe they have changed and the professionals in that situation are the ones who can evaluate it or the judge who sentenced them should have more flexibility than an automatic 25-year assumption that they are never going to be a good person. What are they going to be like when they get out?

SENATOR Dw. PEDERSEN: If this a person we're talking about that has reoffended, (inaudible) as a reoffense, and they are, you know, gone after our most vulnerable people, whether it be rape or sex or, I mean, child, or whatever, adults, and they are not, they've proven they can't be well, should not we have them a place to keep them so we can be safe?

MARGE SCHLITT: Yes. And we need to be safe. That's why we're doing all of this is because we want society to be safe. And the question is, how long does it take for that person to change? Will they ever change? Some won't, and we need to have prisons because there are some people that we should never let out. But 95 percent of them will get out and will be part of our society, and when they come out, we want them to be good neighbors.

SENATOR Dw. PEDERSEN: I would agree with that 100 percent, yes. Thank you.

MARGE SCHLITT: And so that, I think the flexibility, I mean, legislating something that may be a little more restrictive than you really want is my only concern.

SENATOR BOURNE: Thank you.

MARGE SCHLITT: Thank you.

SENATOR BOURNE: Further questions? Senator Flood. No, come on back, come on back, Ms. Schlitt.

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

Committee on Judiciary
February 16, 2006
Page 65

LB 1199

_____ : Ma'am.

MARGE SCHLITT: What?

SENATOR BOURNE: Come on back. We have another question.

MARGE SCHLITT: Oh! Sorry! Yes.

SENATOR BOURNE: Senator Flood.

SENATOR FLOOD: Senator Pedersen might be able to answer this better than you can, but if we do the 25-year minimum with good time, aren't they eligible for parole at 12-and-a-half years, or one-half of their sentence? I guess that's why the 25 years is attractive to me, because I think they get credit for good time, and a minimum 25-year sentence, and I heard you mention ten years...

MARGE SCHLITT: Possibly.

SENATOR FLOOD: ...and if that was the case, does...

MARGE SCHLITT: Maybe.

SENATOR FLOOD: ...it make your objection a little bit less?

MARGE SCHLITT: Maybe it would not be, if that's true, and if that works, and if the system does what it says it's going to do, yeah. But I've known too many people who've been in prison for 25 years. I just got a letter today from somebody who was in prison for 25 years. He should have been let out 15 years ago, at least. He is not a danger to society, but the law said he had to be there.

SENATOR FLOOD: But your opinion might change if good time played into the equation, I mean...

MARGE SCHLITT: If that doesn't get changed, yeah. If it actually works.

SENATOR BOURNE: As drafted, good time wouldn't be applied here. It would be a mandatory minimum.

MARGE SCHLITT: A mandatory minimum no matter what, there

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

Committee on Judiciary
February 16, 2006
Page 66

LB 1199

would not be any flexibility.

SENATOR BOURNE: That's how it's drafted, and again...

MARGE SCHLITT: That's what I was afraid of, yeah.

SENATOR BOURNE: ...I want you and people in the audience to recognize this is a starting point, so...

MARGE SCHLITT: Yeah.

SENATOR BOURNE: ...but I do want to ask you, and I should have perhaps asked Dr. Paine or, not to say you're not an expert in the field, but...

MARGE SCHLITT: I'm not an expert.

SENATOR BOURNE: ...I mean, doesn't there have to be an element of deterrent? And I guess, let me flesh it out a little bit. Okay, I don't what the perpetrator's mind is like, but if they knew that there's a mandatory minimum of 25, that wouldn't make any...

MARGE SCHLITT: I don't think so...

SENATOR BOURNE: ...difference whatsoever.

MARGE SCHLITT: ...from what I know. Legislators think that's a deterrent. Society thinks it's a deterrent. But in reality, it isn't a deterrent. When somebody is in the mood to commit a crime, they don't think of anything else.

SENATOR BOURNE: Okay. Further questions? Senator Aguilar.

SENATOR AGUILAR: I'd just like to point out that Dr. Paine was acknowledging that that was a correct statement.

SENATOR BOURNE: Okay. Thank you.

MARGE SCHLITT: Thank you.

SENATOR BOURNE: Appreciate your testimony. Other neutral testifiers? I want to thank everybody that participated in the hearing. It was very informative. Closing is waived. That will conclude the hearing on LB 1199. (See also

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

Committee on Judiciary
February 16, 2006
Page 67

LB 1199, 793 963

Exhibits 2, 4, 5, 6, 33) I think we're going to press on and have Senator Foley open on Legislative Bill 793. And this next hearing, LB 963 and LB 793 are going to be a combined hearing. So what we're going to have happen is Senator Foley is going to open up on LB 793, and then Senator Price will open on LB 963, and then we'll have proponents and opponents.

LB 793 963

SENATOR FOLEY: (Exhibit 22) Thank you, Mr. Chairman. For the record, my name is Mike Foley and I represent District 29, here to introduce LB 793. This past fall, Mr. Chairman, you might recall that we held an interim study hearing on issues related to sex offenders. And one of the testifiers was a woman by the name of Maryann Foster, and I'm circulating to the committee a written statement of Ms. Foster regarding this bill and its reiteration of the testimony that she provided to the committee this past autumn. The essence of her statement is that as a parent she believes she has the right to know who the level 2 sex offenders are when they reside in her neighborhood. And she observed that under current law, when a level 2 sex offender moves into her neighborhood, the local day-care operator, which may serve only three or four children is notified of the presence of the sex offender in the neighborhood, but she as a parent is not notified. Her statement resonated with me because I have six children, and if a sex offender moves into my neighborhood, I can't know about that. But a day care, which only takes care of children for a certain number of hours per day and a fewer number of children is notified. So that's the essence of the bill, that it would require that level 2 offenders be listed on the State Patrol's web site just as level 3 offenders are also so listed. And that's the essence of the bill. Thank you, Mr. Chairman.

SENATOR BOURNE: Thank you. Are there questions for Senator Foley? Senator, I remember this lady testifying, and I was compelled by her comments, too. And she said it, basically, that I'm a stay-at-home mom, you know, and I have as many kids as a day care may, a licensed day care. They have access and I don't. It doesn't seem right, and so I appreciate you bringing this back to the committee's

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

Committee on Judiciary
February 16, 2006
Page 68

LB 793 963

attention. Further questions? Thank you. Senator Price to open on Legislative Bill 963. As she makes her way forward, if those proponents would make their way to the on-deck area and sign in. Welcome.

SENATOR PRICE: Senator Bourne and members of the committee,...

SENATOR BOURNE: Not as big a crowd as the last bill you introduced here. (Laughter)

SENATOR PRICE: ...that's right, sir. But the interest is maybe higher in this one. I appreciate all of the members of the committee that are here, and I am Marian Price. I represent the Legislative District 26, and I am here to introduce LB 963. It is identical to Senator Foley's, and so that's why you scheduled a joint hearing on this. A neighbor of mine, the gentleman in the blue shirt, to my right side here, brought this bill to my attention this past summer. And like I said, it is identical bill as Senator Foley's. The intent of this bill is that it would amend the original Sex Offender Registration Act to make the three categories of released offenders into two categories. Of the current three categories, only the highest risk offenders are required to be revealed to the general public, most usually through a newspaper listing, which appears monthly in the Saturday newspaper. That is here in Lincoln. My bill would combine levels 2 and 3 to make one category. Law enforcement, schools, day-care centers, healthcare facilities providing services to children and vulnerable adults, and religious and youth organizations, and the public would be notified of the presence of such offenders. Level 1, those considered to be at low risk for reoffending, would remain the same and only be known to law enforcement agencies. Perhaps you're aware that urinating in public is a level 1 offense. I appreciate your attention to LB 963, and I would welcome any questions that you would have.

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

SENATOR PRICE: I will stay and I will close.

SENATOR BOURNE: Super.

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

Committee on Judiciary
February 16, 2006
Page 69

LB 793 963

SENATOR PRICE: (Exhibit 23) And if you have questions then, I would welcome them also. I would like to submit written testimony from Lori Yeager, a neighbor of mine. It's very well written. I'm going to leave it up to you to please read this at your leisure here because it is very, very impacting. It talks about the neighborhood in which we reside, and there used to be a sexual offender just living there close on this cul de sac to all of our neighborhood children. And it's a passionate letter, and I can verify that it is the correct information.

SENATOR BOURNE: Thank you. We'll make that part of the record.

SENATOR PRICE: Yes, sir.

SENATOR BOURNE: Thank you.

SENATOR PRICE: Thank you very much, Senator Bourne.

SENATOR BOURNE: Thanks. First proponent of either of these bills. If you would come forward and, given it's a combined hearing, state your name, spell it, and indicate which bill you're in support of for the record. I realize they're, welcome.

WILLIAM YAEGER: (Exhibit 35) My name is William Yaeger. That's W-i-l-l-i-a-m Y-a-e-g-e-r. Lori Yaeger is my wife that you got the other letter from. I am here in support of LB 963. As a victim of sexual abuse and now a father who is concerned about my children's safety, I believe we should allow the community of Lincoln to be aware of sexual predators in its neighborhoods. I will speak mostly of child sexual abuse. This is what weighs most heavily on my heart. I have seen it destroy good people firsthand. We should, however, not forget about other people who are attacked by sexual predators. Some people are quick to point out that we can't do anything to stop what is happening in the home, abuse from people not convicted or accused as of yet, but nonetheless still committing a horrible crime. We can't let this talk sway us from doing all we can to prevent such crimes. Perhaps that issue is better addressed under another bill. My father wasn't known as a sexual predator until we told the authorities. Sadly, he got off easily because he was our father and not a

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

Committee on Judiciary
February 16, 2006
Page 70

LB 793 963

stranger. Now that he is convicted and living in a family rich neighborhood, people have the right to know that a predator and a very sick man is living in their neighborhood right next to where their kids play. Would you let your kids play outside if you knew there was a rabid dog or a mountain lion in your back yard? Most people wouldn't. Unfortunately, there are people who would still allow their kids to play amongst these dangers. There is little we can do for such people. All we can do is pray for the safety of those children. For those people who do care and wouldn't let their children out, we should arm them with the knowledge of the predators that may lurk in the shadow of a bad policy. Doing this will allow them to make safer decisions for their little ones we all love so much. We must do everything in our power to prevent predators from abusing our children and potentially destroying their lives. I have siblings whose lives have been literally destroyed by a sexual predator who liked to be called Daddy. There is little we can do to stop something we don't know about, but we must do as much as we can about the ones that we do know about, like making all classifications or at least the class 2 and 3 level sex offenders known to all of our citizens of Lincoln. I pray that this law passes and it can be a deterrent that helps prevent the most heinous of acts and prevents people from destroying lives. It is our duty to do all we can to prevent another innocent child from being raped by sick people. Thank you.

SENATOR BOURNE: Thank you. Questions from Mr. Yaeger?
Senator Foley.

SENATOR FOLEY: Mr. Yaeger, thank you for your testimony. Is the man that you've mentioned in your testimony a registered sex offender under Nebraska law?

WILLIAM YAEGER: I believe he was convicted in the early 80s, and I don't know when, he has not, I don't think he has to register.

SENATOR FOLEY: Thank you.

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

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

Committee on Judiciary
February 16, 2006
Page 71

LB 793 963

KORBY GILBERTSON: Good afternoon, Chairman Bourne, members of the committee. For the record, my name is Korby Gilbertson. That's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Media of Nebraska, Incorporated, in support of these two measures. Media of Nebraska represents the print, radio, and television media in this state. We primarily watch for issues regarding open meetings and public records, and feel that anything that provides additional information to the public is a good step in the right direction. And we support these bills. Thank you very much.

SENATOR BOURNE: Thank you. Questions for Korby? Korby, I wanted to ask you a quick question. Senator Price touched on this in her opening, and she mentioned that monthly on the Saturday edition of the Journal Star those are disclosed. And up until recently, I was under the impression that was mandatory, that they had to be published. But that, isn't that just at that print media's discretion?

KORBY GILBERTSON: That's my understanding, that it's just at their discretion. And I think it's still in, at least Senator Price's bill, and I'm sorry I didn't bring a copy of Senator Foley's with me, but they can do it by a variety of means under both of these. So it's just getting the information out to the public doesn't necessarily have to be through one of the groups that I represent.

SENATOR BOURNE: Exactly. But I think the point is is that these print media take it upon themselves...

KORBY GILBERTSON: Yes.

SENATOR BOURNE: ...to use the space and disclose the information, so, as a public service, right?

KORBY GILBERTSON: Yep.

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

KORBY GILBERTSON: You're welcome.

SENATOR BOURNE: Next testifier in support. If there are other proponents, if you'd make your way forward, we'd

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

Committee on Judiciary
February 16, 2006
Page 72

LB 793 963

appreciate it. Welcome.

LYNN REX: Senator Bourne, welcome. Senator Bourne, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. We're here today in strong support of both measures, LB 963 and LB 793. Several mayors testified in support of LB 1199. We appreciate the hard work of this committee because we strongly support a unified statewide effort. We also support this because we think it's important that the public be made aware. And perhaps there is a way in which law enforcement agencies can be required to make sure that those monthly publications occur. People need to be aware, and we think that that is the first step to making sure that we don't have more victims. I'd be happy to respond to any questions that you have.

SENATOR BOURNE: Thank you. Questions for Ms. Rex? Seeing none, thank you.

LYNN REX: Thank you.

SENATOR BOURNE: Other supporters of this bill? Are there any opponents? Are there any other opponents after Mr. Ritsch? Whenever you're ready.

CHRIS RITSCH: Because you have a written copy of my position, I will just make some amendments to what I have said based on some things I've heard. First of all, I'm going to work with the emergency declaration that you've included in both of these. And I am opposed to the concept that this is an emergency. I believe it's driven more out of political motivation than realistic conditions. I have heard in this room, we had to do something because Iowa, okay. So we have to follow Iowa's lead and not think for ourselves in Nebraska? I would hope that you could better than that. Someone said there's not much we can do, but there is something we can do as parents. We can teach and teach and teach. We can utilize people like me who've been there, done that, and who can tell you, this is what I'd do. They hire people that can break into security because they probably are the best people to know how to develop security. I have family that are currently living in Iowa, and I don't know if I can even go visit them without notifying the local authorities. So is this, are we going

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

Committee on Judiciary
February 16, 2006
Page 73

LB 793 963

to establish the same thing here where people that have family in Nebraska, we're going to have to notify the local authorities before they can come home for Thanksgiving? Both of these involve changes to an assessment and classification. And I have one item that I need to bring up, and that is the classification system as it stands allows the opportunity for someone like me that's a level 2 to improve. But you throw me in with the mass of high risk type people, and there seems to be less motivation to improve. By the way, my neighbors were told by me, not by the local law enforcement. I went to my neighbors and I said, I went to prison. This is what I went to prison for. I just want you to know. Also, I want to reiterate, not all sex offenses are against children. When are we going to stop the focus on children and say, hey, sex offense. That's just something I've noticed. By the way, any Internet notice is a global notice. Please keep that in mind.

SENATOR BOURNE: Thank you. Are there questions for Mr. Ritsch? Am I pronouncing it right?

CHRIS RITSCH: Ritsch, like lots of money that I don't have.

SENATOR BOURNE: (Laugh) Thank you, Mr. Ritsch. Appreciate it. Other neutral testifiers? Senator Foley to close? Senator Foley waives closing on Legislative Bill 793. Senator Price to close.

SENATOR PRICE: Chairman Bourne and members of the committee, again I thank you for listening on this long afternoon to this very important legislation. I would welcome any questions that you have after I thank Ed and Lori Yaeger for bringing this to my attention. They are the driving force behind this legislation. Are there questions?

SENATOR BOURNE: Senator Foley.

SENATOR FOLEY: Just to put on the record, my staff researched this, and to the best of our knowledge, there's 640 level 2 offenders in Nebraska today, and they would be impacted by this statute.

SENATOR BOURNE: Sounds about right. Senator Friend.

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

Committee on Judiciary
February 16, 2006
Page 74

LB 793 963, 1210

SENATOR FRIEND: Thank you, Senator Bourne. Senator Price, has there been discussion about prioritization of, you know, yours or did you prioritize it? I mean, I guess today was the day that we (inaudible). Just curious.

SENATOR PRICE: No, sir, I have not.

SENATOR FRIEND: Okay.

SENATOR BOURNE: Further questions? Seeing none. Thank you. That will conclude the hearing on Legislative Bill 963. Senator Jensen to open on Legislative Bill 1210. As Senator Jensen makes his way forward, if the proponents of this next bill would also make their way forward and sign in at the on-deck area. Welcome.

LB 1210

JIM JENSEN: (Exhibit 25) Thank you, Senator Bourne, members of the Judiciary Committee. For the record, my name is Jim Jensen, J-e-n-s-e-n, representing District 20 in Omaha. And I appreciate the effort that you're making on this very important issue, and hopefully, that between all of the bills that are introduced that we can come forward on the floor with something that we can pass this year. That's certainly my goal, and I'm sure it's yours. The purpose of this act is to provide for the continued treatment of sexual offenders who have completed their criminal sentence but still pose a threat of harm to others. A convicted sex offender is defined as any person who has pled guilty or has been found guilty of any offense set forth in Section 29-4,003, the section of Sex Offender Registration Act which defines the act's registerable offenses. A threat of harm to others is defined as a moderate to high risk of recidivism as determined by the Nebraska State Patrol under Section 29-4,013. The section that provides for a classification of sex offenders based on his or her risk of recidivism. The Sex Offender Court-Ordered Treatment Act permits the Attorney General or county attorney to file a petition in district court of the county in which the subject resides or a county in which the subject pled guilty or was found guilty of any registerable sex offense. The petition must allege that the subject is a convicted sex offender who poses a threat of harm to others and contain

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

Committee on Judiciary
February 16, 2006
Page 75

LB 1210

factual basis to support such a statement. Once the petition is filed, it then becomes the burden of the state to prove by clear and convincing evidence that court-ordered treatment is necessary. If the court finds that the state has met its burden and that the subject is in need of further treatment, the court is empowered to order the subject into an appropriate treatment program. The court-ordered treatment program must be based upon evaluations of an independent psychologist or psychiatrist who is trained in the area of sex offender treatment and evaluation. In addition, the plan must be shown to be the least restrictive alternative or no more restrictive of the subject's liberty and no more intrusive than necessary to provide appropriate treatment and protect society. This may include supervised outpatient treatment, inpatient treatment where the subject is in custody and care of the Department of Health and Human Services, where there is appropriate under the circumstances. Finally, the treatment plan must be evaluated once a year, and it is the state's burden to prove by clear and convincing evidence that the court-ordered treatment continues to be necessary. It is important to note that the act's language regarding the Attorney General or a county attorney filing of the initial petition is merely permissive. Not every level 2 or level 3 sex offender is required to be civilly committed under this act. Rather, the Attorney General or county attorney merely has the option to petition the court for an appropriate treatment program. The court then becomes the final arbiter and whether court-ordered treatment is even necessary. According to the number of committed sex offenders, it really should not increase. In fact, it is my belief that courts will be less willing to commit sex offenders if appropriate, safe, but less-restrictive alternative is available. This is because mental health boards have developed a culture of civil commitment where confining persons to the Lincoln Regional Center has been seen as an easy option of the first resort. The consequences of our behavioral health system has been profound. As more sex offenders clog up our regional centers, the less space is available for other mental health consumers and the greater the drain on our state finances. The cost of occupancy of an individual in a prison bed today is around \$33,000 to \$36,000 a year. The cost of a regional center bed is \$118,000 a year. Now, unfortunately, we have individuals who jam the prison time as sex offenders, then are committed

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

Committee on Judiciary
February 16, 2006
Page 76

LB 1210

to the regional center and jam their time there again, not responding to treatment, refusing to respond to treatment. And at \$118,000 per bed per year difference. As a matter of fact, I looked at the regional center census, which I just got, we have a total in Norfolk and Lincoln now of 360 individuals, and we're reducing that number every day--360. Ninety-eight of those are sexual offenders, and we have another 18 that this year alone probably could go there. We have added 40 beds in the last four years to sexual offenders, and soon it will be not only, as we are right now, about one-third, we're going to be approaching pretty close to one-half of our regional center beds are going to be sexual offenders. I think that is wrong. I think that it's a financial problem. Without a doubt, Sex Offender Court-Ordered Treated Act represents a substantial change from the current commitment process for sex offenders. The act eliminates the ability of mental health boards to order commitments and places a power to designate treatment program within the Nebraska district courts. The act recognizes sex offenders should be treated differently from other mental health consumers, and that continued custody and care of sexual offenders should be decided by the criminal system. I would just urge its advancement, and if it can be woven into the mix, I think it would be a very good solution. Be glad to answer any questions.

SENATOR BOURNE: Thank you. Questions for Senator Jensen?
Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Senator Jensen, have you, in drafting this bill, have you talked to any of the mental health boards? Do you think they would be in support of this?

SENATOR JENSEN: I have talked to some of the individuals that even have testified here today--Dr. Mary Paine, certainly Dr. Roy, and some of the trained personnel. The boards, no, I have not.

SENATOR DW. PEDERSEN: Thank you.

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

SENATOR JENSEN: And I'll waive closing now, Senator.

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

Committee on Judiciary
February 16, 2006
Page 77

LB 1210

SENATOR BOURNE: Thank you. First testifier in support.

ERIC EVANS: (Exhibit 26) Good afternoon, again, Chairman Bourne, members of the Judiciary Committee. My name is Eric Evans, E-r-i-c E-v-a-n-s, and I'm deputy director of Nebraska Advocacy Services. I'm here today to testify in support of LB 1210. And I want to thank Senator Jensen for introducing this piece of legislation so we can at least have a discussion about the best approach to deal with the civil commitment of sex offenders. We strongly support LB 1210 as an alternative to using the Nebraska Mental Health Commitment Act as a procedure for civil commitment of violent sex offenders. Last session, if you recall, this committee heard and the Legislature passed LB 206, the Developmental Disabilities Court-Ordered Treatment Act, which established a civil procedure to address the issue of people with developmental disabilities who are a threat to the safety of others. We agreed with the approach taken in LB 206 and believe it would be a good model for civil procedure to commit sex offenders. One of the principle reasons a legal counsel for the Department of Health and Human Services argued for establishing a court-ordered custody procedure was that the mental health commitment boards were not sufficiently knowledgeable about people with developmental disabilities so they could make decisions as to what was appropriate for those individuals. We argue that the same logic applies in this situation. We think a court-ordered custody procedure would ensure the best decisions are reached in those cases brought before the court. In 1999, when the state of Texas was considering the issue of civil commitment of sex offenders, the House research organization for the Texas House of Representatives issued a report that stated, lawmakers could establish a civil commitment procedure distinct from the mental health commitment procedures that would pass constitutional muster and respect the rights of those who are considered for commitment. As you may recall in the testimony we prepared for LB 1199, we did detail the reasons why we are opposed to using the Mental Health Commitment Act as a process. And even though we are in support of procedural framework in LB 1210, we are also concerned that LB 1210 puts that responsibility within the Department of Health and Human Services to provide that placement, and that again we would like to see a separate administrative structure within the Department of Health and Human Services to deal with sex

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

Committee on Judiciary
February 16, 2006
Page 78

LB 1210

offenders as opposed to them being part of the current behavioral health service system. That concludes my testimony. I'd be happy to answer any questions.

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

J. ROCK JOHNSON: Senator Bourne, members of the committee, my name is J. Rock Johnson, J. Rock, R-o-c-k, J-o-h-n-s-o-n. For identification purposes only, I'm a commissioner on the Legislative Behavioral Health Oversight Commission pursuant to LB 1083. I very much support the approach that's taken by this bill. I think it's consistent with the decisions that have already been made as a society that will try punishment first and then treatment. Speaking very personally, I'm not sure that that's the best approach. But given that's what exists, I believe that we should be consistent and this bill does do that. The thing that I would suggest is that any funds expended for treatment of individuals subject to this act be earmarked and tracked separately from other funds. Thank you.

SENATOR BOURNE: Thank you. Questions for Ms. Johnson? I will tell you that it's not my intent, or I don't believe anybody that's been involved with the bills' intent, to divert money from other mental health treatment options to this one. So, just so you know, but I very much appreciate you bringing that to the committee's attention.

J. ROCK JOHNSON: With all due respect, Senator, it's happening now.

SENATOR BOURNE: But the bill hasn't passed.

J. ROCK JOHNSON: We heard, no, I'm saying it is already happening. The sex offenders, the numbers that Senator Jensen gave us, those funds are coming out of behavioral health funds. Those people are occupying beds in the regional center.

SENATOR BOURNE: I don't disagree with that, but I would suggest to you that the point of the bill is to have an additional appropriation that's designed to deal with this problem. But I appreciate your bringing your concerns to the forefront.

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

Committee on Judiciary
February 16, 2006
Page 79

LB 1210

J. ROCK JOHNSON: And that we must deal with the problems that exist, and I'm certain you intend to do so.

SENATOR BOURNE: Absolutely. Thank you.

J. ROCK JOHNSON: Thank you.

SENATOR BOURNE: Other proponents?

CHRIS RITSCH: Yes, believe it or not, I am in support of LB 1210, Senator Pedersen.

SENATOR BOURNE: State your name.

CHRIS RITSCH: My name is Chris Ritsch, R-i-t-s-c-h. Again, you have a copy of my position, but I will amend it. I asked one thing when I went forward, and that was, just don't send me to prison. But there really weren't any alternatives in 1987. As stated somewhere earlier, I engaged in a treatment plan of my own volition. There was no court mandate or order, either prior to my entering prison or upon completion of my parole. But I maintained it because I knew I needed it. I didn't have an addiction to alcohol, drugs, pornography, anything. Maybe sex. My wife was pregnant during the process that I offended with these teenage girls, and maybe that was the trigger. Over the years, that's kind of what we figure, was maybe that was the trigger and I just, hey, took advantage of an opportunity. I hate to sound like I'm unrepentant and unremorseful. The fact remains is I did something wrong. I was asked this morning how to ensure that people like me will never offend, and I said there is no way to ensure that I or anyone else will never reoffend short of making sex offenses a capital offense subject to the death penalty. I will also state that there are individuals that I know will play the game. I lived with them. We went to the mental health program in the prison system, and we played the game because if you didn't, you got to jam your time. I've stood next to people who've said that sex offenders, child molesters should be castrated, lined up against the wall and shot, skinned, tarred and feathered, molested the same way they molested their victims, without really realizing who they were talking to. I am not the victim here. I want to make that clear. I am not the victim here. What I did was terribly,

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

Committee on Judiciary
February 16, 2006
Page 80

LB 1210

horribly wrong, and I have always fully acknowledged that. However, I would support this treatment because there are individuals that can be aware of the people that are playing the games and help somebody like me in the future to improve their life. One of the things we used to joke about in jobs I had was that I am a crazy person. I know I'm a crazy person. But it's not the crazy people who know they're crazy you have to be afraid of.

SENATOR BOURNE: Thank you. Are there questions for Mr. Ritsch? Seeing none, thank you. Next testifier in support. First testifier in opposition. And if there are other opponents, if you'd make your way to the front row and sign in, appreciate it.

ROBERT KLOTZ: My name is Robert Klotz, K-l-o-t-z. Civil commitments of this nature blur the lines of criminal commitments, and this can be very dangerous. The purpose of this bill is to provide for the court-ordered treatment of sex offenders who have completed their sentence, but continue to pose a threat of harm to others. Why are you circumventing the constitutional requirements of a trial by one's peers in order to take away one's substantial rights to freedom? And the sad fact is, you do this by using the subjective opinion of psychology where one practitioner says one thing and you can find another practitioner saying something totally different. Then you want to have one person, a judge, make a supposedly good decision based on what they say? Therefore, because I think you are a threat and a judge agrees, we lock you up or treat you or whatever. Is thought now to be a crime, or civil crime? If so, how many of you should be put away? At least LB 863 gives a person their day in court before their peers. Furthermore, a convicted sex offender has demonstrated in action that they will act on their thoughts and are a threat to the safety, security of children. So put them away for a long time, for whatever time you want. This way, you not only protect children, but you protect the fundamental right of freedom. Psychology should never be used to take one's substantial right of freedom away. No one knows to what actions a person's thoughts will lead them. And to predict this is like predicting the weather. You may be right, but you are wrong a lot of times, too.

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

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

Committee on Judiciary
February 16, 2006
Page 81

LB 1210, 767 863 867

Seeing none, thank you. Other negative testifiers? Neutral testifiers? Senator Jensen has waived closing. That will conclude the hearing on Legislative Bill 1210. (See also Exhibit 24) Senator Howard is here to open on Legislative Bill 767. Would the proponents of this next measure make their way to the front row and sign in? Senator Howard, welcome.

LB 767 863 867

SENATOR HOWARD: (Exhibit 27) Thank you, Chairman Bourne, and I'd like to make an offer here. That if it would be your pleasure to hear these three bills presented at the same time to conserve your time, I would be happy to do that.

SENATOR BOURNE: I will consult with the committee clerk. Let's do that.

SENATOR HOWARD: Oh, certainly. Certainly.

SENATOR BOURNE: I've got to check with the real power in this committee right here and make sure we can keep track of this. So...

SENATOR HOWARD: I know that feeling when I talk to my staff.

SENATOR BOURNE: Senator Howard.

SENATOR HOWARD: Thank you, Senator Bourne, and members of the Judiciary Committee. For the record, I am Senator Gwen Howard and I represent District 9. I am before you today to introduce LB 767, LB 863, and LB 867. LB 767 was drafted in response to constituent concerns about the inconsistency of penalties that sex offenders have faced for noncompliance with the Nebraska Sex Offender Registry Act. This bill simply recognizes that failure to comply with the act is, and of itself, a criminal offense and should have a consistent penalty for all violators. LB 767 revises Section 29-4,011 to change the penalty for failure to comply with the Nebraska Sex Offender Registry Act to a felony offense for all violators. The intent of this bill is to improve compliance with the Nebraska Sex Offender Registry

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

Committee on Judiciary
February 16, 2006
Page 82

LB 767 863 867

Act and to increase safety for Nebraska's children. And I ask your favorable consideration of LB 767. LB 863 increases the penalty for first offense of sexual assault on a child from what it is currently now, zero-to-five years, to a minimum sentence of one-to-50 years and increases the penalty for second offense from five-to-50 years to a minimum sentence of 25 years without the possibility of parole. This revision makes the penalties for sexual assault of child equivalent to the current penalties for first-degree sexual assault. LB 863 was drafted following extensive research done in our office over the interim about public policy strategy for sex offender management. When I learned that the state of Nebraska had no required minimum jail sentence for the first offense child sexual assault and only a five-year minimum requirement for second offense, frankly, I was appalled. The way the law is currently written, it infers that children are not worth the same protection under the laws as adults, and simply, that's not acceptable to me. I want to direct your attention to a handout that I have here for you. What I'd like you to look at, and I'll give you a chance to get that, if you could when you receive it is to look at the section that discusses reoffense rates. Information from the document, Facts About Adult Sex Offenders, available through the Association for the Treatment of Sexual Abuse, states, it is also important to recognize that official recidivism statistics are always lower than actual reoffense rates because some sex offenders commit many sex crimes that go unreported and undetected. It is estimated that less than 10 percent of all sex crimes result in a criminal conviction. In the interest of offering individuals the opportunity to seek treatment for their behavior and to make changes, the changes I have proposed for first offense provides for a reasonable mandatory minimum. The mandatory minimum for the second-offense, however, is intended to send a strong message. The first offense may have been a lapse in judgment or an unfortunate circumstance, but by the second offense, the violator is well-aware that their behavior is criminal. When my staff visited with child advocates during the interim and asked, what changes to the existing system would benefit victims and their families? Penalties was the number one answer. Child advocates also shared that are countless situations in which failure of society to hold the offenders accountable has a tremendous negative impact on the well-being of children. Increasing penalties for child

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

Committee on Judiciary
February 16, 2006
Page 83

LB 767 863 867

sexual offenders is the right thing to do. On behalf of the children in our state, I ask for your favorable consideration of LB 863. LB 867 was drafted in response to constituency concerns about sex offenders living near schools and other areas where children regularly congregate. And I'll back up here to give you just a little background information. This bill would restrict sex offenders assessed by the Nebraska State Patrol as being high-risk for reoffending from residing within 1,000 feet of an accredited school or a licensed childcare center. The bill would not require individuals residing within 1,000 feet of these facilities prior to the enactment of the statute to relocate. After a review of the data on residency restrictions, other sex offender management strategies, and actions taken by other states, I came to the conclusion that resident restrictions should be considered as a component of a comprehensive strategy to manage sex offenders in our communities. I handed out a sheet, which you've received now, on some of the questions that are frequently asked sex offender residency restrictions. And I'm going to try to summarize that for you, some of the information, because it's relevant to my decision to introduce this bill. One of the arguments is, most children are not assaulted by strangers, so residency restrictions won't have any effect. Our data indicates that 34 percent of the children are assaulted by family members, and the majority of children, 58 percent, are sexually assaulted by acquaintances. And that would be neighbors, family friends, other trusted adults. But contrary to the assumption that offenders don't offend in communities where people know them, the research indicates that most child sex offenders spend a long time developing relationships as trusted adults in these children's lives and communities before they assault them. They even use the trusting relationships they have with the parents to access the children. The other question I've been frequently asked and that Senator Bourne and I, in fact, discussed was what research supports residency restrictions? I've learned that because sex offender registry restrictions are relatively new, there really isn't enough data to determine a cause and effect relationship between sex offenders residency and reoffense rates. But there is research on community notification that makes a strong case for residency restrictions, and I'll briefly read you this information quoted from the Association for Treatment of Sexual Abuse. There is no evidence that

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

Committee on Judiciary
February 16, 2006
Page 84

LB 767 863 867

community notification reduces sex offense recidivism or increases community safety. Sex offenders who are subjected to community notification were, however, arrested more quickly for new sex crimes than those not publicly identified. And this is important. It was found that 63 percent of the new sex offense occurred in the jurisdiction where notification took place, suggesting that notification did not deter offenders or motivate them to venture outside their jurisdiction where they would be less likely to be identified to commit the crimes. The research my office reviewed contained two consistent recommendations about residency restrictions. (1) They should be based on risk assessment procedures, and (2) the strategy should differentiate based on the offender's level of threat to the community. While LB 867 doesn't address assessment, I believe it is an area that should be strengthened so that we can be sure people affected by sex offender statutes are assigned the appropriate level of risk. And lastly, I'd like to remind the committee that as surrounding states and municipalities within Nebraska create public policy to restrict the residency of sex offenders, where there is danger of ending up with communities in our state where pockets of sex offenders congregate. We are already hearing some reports of this, and it can seriously challenge the resources of local law enforcement. I think it's critical that the Legislature develop parameters that would ensure that the sensitive issue is addressed in a manner that doesn't place an unfair burden on any of our communities. Residency restrictions are not the answer. They are one piece of a comprehensive plan to manage sexual offenders and to increase the safety of our children. And I sincerely thank you for your time. I know it's been a long afternoon.

SENATOR BOURNE: Thank you, Senator Howard. I appreciate all the work you've done in this area, and I and the committee look forward to working with you on whatever proposal gets advanced, so.

SENATOR HOWARD: Thank you, sir.

SENATOR BOURNE: Questions? Senator Friend.

SENATOR FRIEND: Thanks, Senator Bourne. Senator Howard, I can only echo what Chairman Bourne said. I mean, I know that beginning last spring, you've been dealing with these

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

Committee on Judiciary
February 16, 2006
Page 85

LB 767 863 867

issues. And not only that, most of your life, you've been trying to track.

SENATOR HOWARD: Yeah, thank you.

SENATOR FRIEND: What I would say is, no matter what happens, I think, and I don't know if I can speak for the committee here, but there are going to be elements of what you're to accomplish, depending on how, you know, we get some of this stuff on the fast track, if we do. So there's so much out here right now, I just wanted to let you know. I've looked at all your bills, and there's been a lot of time and effort put into them. Appreciate that.

SENATOR HOWARD: I really appreciate that. And I would say, certainly, the same about the committee. And Senator Bourne has come to me and we've shared information and shared considerations and concerns, and I am very grateful that this committee has taken on this very tough issue. It certainly is not, there's no easy answer here. And all we can do is work together to do our best to protect the little ones in our community. Thank you, sir.

SENATOR BOURNE: Thank you. Questions for Senator Howard, further questions? Seeing none,...

SENATOR HOWARD: Thank you.

SENATOR BOURNE: ...thank you. Appreciate it very much. Look forward to working with you. Now we'll take proponents of either, or any of these measures. And if you, when you come forward to testify, if you would indicate which one you're testifying, after you state and spell your name, specify which one you're testifying in support of. Welcome.

RICHARD HOPPE: Good afternoon, Chairman Bourne, members of the Judiciary Committee. My name is Richard Hoppe, that's H-o-p-p-e. I'm an aide to Lincoln Mayor Coleen Seng, and I'm here on behalf of Mayor Seng in support of LB 867, Senator Howard's attempt to bring statewide uniformity to the issue of sex offender residency restrictions. The Mayor would like to also like to acknowledge that Sections 29 to 31 of LB 1199 are an important step in addressing the uniformity issues as well. First, let me tell you that in Lincoln, we recognize the issue of protecting our families

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

Committee on Judiciary
February 16, 2006
Page 86

LB 767 863 867

from sex offenses is multifaceted. We have spoken with several experts, many of whom have testified today throughout the various hearings, who remind us the vast majority of sex offenses are committed against children or perpetuated by someone known to the child, many times family members. We recognize that sex offenders seek victims outside of their own neighborhoods. However, our concern is focused on the residency restrictions in Iowa and the at least ten communities in Nebraska that have considered or adopted some form of residency restriction. Mayor Seng, in response to many of these actions that have been taken in Nebraska, ordered the city staff to begin preparation of our own residency restriction ordinance. She was concerned that the tough restrictions passed in other communities would simply force sex offenders to relocate to other cities. So currently, our city council has in their pending action file, waiting for the outcome of legislative action, an ordinance that would impose a 1,000-foot residency restriction around any school containing any of the grades kindergarten through eighth for level 3 sex offenders. In Lincoln, we are willing to manage our sex offender population responsibly and in a dignified manner. However, the residency restrictions of some communities are so severe, it will force Lincoln to manage the sex offender populations of other communities. We are already home to a disproportionate share of sex offenders from other places. There are about 417 sex offenders registered on the registry right now that live in Lincoln, and of that total, about 242 committed their crimes in other places outside of Lancaster County. Our regional center treats a large number of offenders who then move into Lincoln's neighborhoods. We simply do not have the law enforcement resources nor the community mental health and human service resources necessary to deal with an influx of sex offenders who have been effectively banished from their previous homes. Mayor Seng has asked me to urge you all to adopt a uniform standard. We recognize there's some objections to residency restrictions and their effectiveness, but we do sincerely believe that one standard for the state is where we ought to be, and we are grateful to Senator Howard for bringing the issue forward. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Hoppe? So what is the status of the Lincoln ordinance? You're just, you've put it on hold?

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

Committee on Judiciary
February 16, 2006
Page 87

LB 767 863 867

RICHARD HOPPE: It's on pending file, which means we can bring it off, and we thought we'd wait to see what the committee came up with and what the Legislature decided to do before we took any action.

SENATOR BOURNE: And, does it mirror the ordinance that other communities, the 2,000 feet, and then states...what is Lincoln's? I'm sorry if...

RICHARD HOPPE: Lincoln's is 1,000 feet.

SENATOR BOURNE: ...thousand feet, okay.

RICHARD HOPPE: And it's just schools. It isn't involving childcare centers.

SENATOR BOURNE: Okay. Thank you. Senator Aguilar.

SENATOR AGUILAR: Just a quick question here. You stated that Lincoln had a disproportionate number of registered sex offenders? What are you basing that on? Did you survey a similar city of the same size and...

RICHARD HOPPE: Disproportionate for the number of where the crimes were committed, i.e., we had more than half of those folks had committed their crimes in other places. And, no, to answer that, we're assuming that's a disproportionate number. I did not look at any other cities and where their folks had come from.

SENATOR AGUILAR: Okay.

SENATOR BOURNE: I can tell you that based on the number of registered offenders in this state, you're right on target. It is disproportionate, the number, if that number is accurate, what you have here in Lincoln, so.

RICHARD HOPPE: We took it right off the registry, so I assume it is.

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

RICHARD HOPPE: Thank you.

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

Committee on Judiciary
February 16, 2006
Page 88

LB 767 863 867

SENATOR BOURNE: Appreciate it. Next testifier in support of any of these three bills. And again, after you state your name, if you'd say which bill you're in support of.

ROBERT KLOTZ: I'm Robert Klotz, K-l-o-t-z, and I'm here to support LB 863. Here are some things you may want to consider. In addition to the safety, security, for children, there is also the consideration for fiscal responsibility as well as protected freedom concerns. If you cannot trust a person in society, keep them in prison, as this bill attempts to do. If you can trust them out, then give them their freedom. In the case of sex offenders, give them, for example, a ten- to 50-year sentence for the first time. They're eligible to parole in five years with a release date in 25 years. Make it mandatory they go through some type of programming. If they are successful and mental health deems them a reasonable candidate, they parole. If they are not successful or deemed a candidate for parole, they will spend the next 25 years in prison for the first offense. The fact that there may not be enough programming for everybody to make it out in five years does not give them a free out. On the other hand, if an individual is on parole and doing very well, the Parole Board, in conjunction with a mental health examination, may release them early from their sentence. By doing this, you will provide reasonable safety, security, for children. You will promote fiscal responsibility as individuals are not a burden to society needlessly, and you reinstate freedom to the individual so they may become a full member in society ready to do their part. Now, if an individual offends a second time, put them away for life. They've had their chance. They cannot be trusted.

SENATOR BOURNE: Thank you. Questions for Mr. Klotz? Seeing none, thank you. Next testifier in support of any of these measures.

LYNN REX: Senator Bourne, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. We're here to support LB 867 in concept. I know that your committee bill also includes some limitation relative to how, the distance that you can be from a school and so forth. Our concern is this: That although 99.9 percent of the time, we're here saying local control

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

Committee on Judiciary
February 16, 2006
Page 89

LB 767 863 867

and we're asking that cities have the ability to basically look at these issues individually, this is one of those times when there needs to be a statewide unified response. And we would implore the committee, whatever the number is, that that would be the number for the state of Nebraska regardless of which city you live in, what village you live in, that is the number. That being said, we also understand some of the issues that Senator Bourne and many of you have pointed out, which is, many times, these folks basically, for example, the incident here in Lincoln, Nebraska, involving one of our kindergarteners, the individual that committed that crime drove ten miles to that school. So the residency requirement would have had no impact whatsoever. But not withstanding, we have them for liquor establishments, we have them for other kinds of establishments as well, and we would implore you to have a state uniform response. Thank you.

SENATOR BOURNE: Questions? Senator Flood.

SENATOR FLOOD: Thank you, Senator Bourne. Lynn, I guess, although I may be willing to vote for a residency restriction, I sense that some members of the committee are not. In the event that we strike the residency restriction requirements, would it be your preference we then preempt all communities from across the state from doing this? I know that's kind of a difficult question,...

LYNN REX: Boy.

SENATOR FLOOD: ...but I guess I can see that being an outcome, if not here, but on the floor. I'd be interested in the League's position. You may not be able to answer that today.

LYNN REX: Well, let me just say that our board was hopeful that you would, in fact, have a state uniform response. Our concern would be, especially for those border cities, Iowa, Colorado, Kansas, Wyoming, pick your state, that, indeed, as those other states develop these sorts of statutes, they must have some impact or you wouldn't have an influx of individuals coming from Iowa into Nebraska, as an example. They must have some impact, so, and some effect. And I would just suggest to you that, for that reason, Senator Flood, we would not want to preempt other cities from doing

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

Committee on Judiciary
February 16, 2006
Page 90

LB 767 863 867

it. But by far, the preferred response is that there be a state uniform response. I just think that that is the way to do it. And our board feels very strongly about. If, by some fluke, however, there are those that do not support that, we certainly would not to take away the right from other municipalities that have done it to protect themselves, quite frankly.

SENATOR FLOOD: I guess then the other question I have, and this may be unsettled, but yesterday, we learned a little bit more about Dillon's Rule as it relates to the authority that cities have to enact ordinances without express authority from the legislature. Do these cities, and I have never, ever requested an Attorney General's opinions, what is the League advising the cities? Do they have the authority to enact a residency restriction without enabling legislation from the Legislature?

LYNN REX: I think they do. And Dillon's Rule basically has three parts, as you know, and that is, that the Nebraska Supreme Court in implementing Dillon's Rule has said the municipalities have three powers--those that are expressly implied in statute, those necessary in statute to effectuate corporate powers, and those implied. So those expressly state, implied, and necessary to effectuate corporate powers. And I think that as a public safety and welfare provisions, we could certainly make that argument. I know that there are legal counsels and city attorneys that have made that argument.

SENATOR FLOOD: Okay. Thank you.

LYNN REX: Not withstanding, I do not think having every city pick their own number is the way to go.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Bourne. Lynn, I have to ask this question just for the record and make sure that everybody is thinking about it. But is there even a remote possibility that we have, here in Lincoln, for instance, a very high registration rate because we don't have residency requirements? In other words, are more people, sex

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

Committee on Judiciary
February 16, 2006
Page 91

LB 767 863 867

offenders, more apt to follow the rules and register if they don't have to fear getting booted from their homes?

LYNN REX: That's a good question, and I simply don't have any basis for knowing what that answer might be.

SENATOR AGUILAR: And I understand that. I just...

LYNN REX: It's a great question. I don't know the answer.

SENATOR AGUILAR: ...wanted that question out there for the record.

LYNN REX: I don't know the answer,...

SENATOR AGUILAR: Thank you.

LYNN REX: ...but it's a good question.

SENATOR BOURNE: Further questions? You know, it could be that the prisons and the regional centers are here as well. So, basically what I hear you saying is you, we're uncertain, oh, first of all, I want to go back a little bit. We have looked at whether or not a city has the ability to do that. And I agree with you that if it is related to public safety, they do. I'm not sure that residency restrictions, when it all shakes out, you'll see that it's related to public safety. That's my personal feeling. So you'd be opposed if we took out the language in LB 1199--and I'm assuming that's going to be the vehicle because it's been prioritized--if we took out the language in there, and the reason I'm bringing this up, because we had two mayors, we had the mayor from Norfolk and the mayor of Gretna say, if there was a preemption, they'd be okay with that, but the good mayor from South Sioux didn't want that. And I'll agree with you, their situations are different based on where there communities are located relative to Iowa. But basically, we're hearing from cities that there is a difference, you know. They want uniformity. They want maybe some shelter from citizens who are pushing for this even though I think most of us that have looked into this agree that, by in and of themselves, residency restrictions don't work. So I guess what I'm saying is, if LB 1199 was changed so that it was a total preemption, you feel that, in general, the cities would be opposed. And you're in general

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

Committee on Judiciary
February 16, 2006
Page 92

LB 767 863 867

support of what's in there now?

LYNN REX: If I understand the question, I mean, basically, our board supports a unified response. In other words, you pick the number, and that's the number in municipalities throughout the state. The same token, however, if the committee says, you know, we don't think that these residency restrictions are valid, are effective at all, so we're just going to let every city pick their own number, we would certainly want every city to have that right. South Sioux City and other cities are going to want to have the right to have one.

SENATOR BOURNE: What if we said that we feel as a state our policy is, these enhanced penalties and these additional supervision obligations, and I don't think you were in earlier when we...

LYNN REX: I apologize. There was another hearing.

SENATOR BOURNE: ...no, that's okay. But I don't think you were in earlier when we talked about the fact that for certain types of offenders, there's going to be an element of basically long-term or lifetime supervision by probation-parole. And as part of that, the conditions that would be attached, the probation and parole officer could say, you can't live there, 500 feet from the school. So what I'm saying is, what if there was a preemption in the bill that said, cities, you cannot adopt residency restrictions, and any residency restriction a city has done, has adopted, is null and void as of the effective date of the law, and in order to solve the problem, here's what we've done. We've enhanced the penalties against first-degree sexual offenders. We've enhanced for the crimes against children. We've enhance the penalties for those who fail to register. And for those criminals, those sex offenders who have more than one conviction for a sex offense, and first-time offenders convicted of rape of a child under 12 or forcible rape, you are going to be subject to lifetime probation-parole, and the conditions set forth is that each individual, each one of those sexual offenders, has to undergo, is subject to enhanced supervisions, shall undergo a risk assessment to determine the conditions of supervision to be imposed on the offender, the conditions imposed shall be the least restrictive conditions available

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

Committee on Judiciary
February 16, 2006
Page 93

LB 767 863 867

which minimize the risk of the individual offending and are compatible with public safety. So what I'm saying is that those offenders who we feel are a danger to society are going to be monitored, and probation-parole will have some input as, not some, they will have exclusive input as to where that individual live. Did I make that too long and complicated?

LYNN REX: No. In fact, and you gave a presentation at our conference as well, which our members really appreciated hearing. I mean, clearly, I think what the committee has put together in LB 1199 is a comprehensive approach which is going to hopefully be effective. And I would just tell you today that I would have to go back to the board if you're asking me would we support a total preemption, so in other words, you cannot have, a municipality in the state could not have a residency restriction. I have to go back to the board on that because their position was just as I have outlined, Senator Bourne, which is they think there should be one, it should be a uniform one. But also, I will tell you, they feel very strongly that LB 1199 will go a very, very long way to assisting in this effort.

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

LYNN REX: Thank you very much. Thanks for your work on this issue.

SENATOR BOURNE: You bet. Next testifier in support of any of these bills? First testifier in opposition on any of these bills? Doesn't look like we have any opponents. Oh, opponents should be in the front row. You're all right, Mr. Ritsch.

CHRIS RITSCH: My name, once again, Chris Ritsch, for the record, R-i-t-s-c-h. I will go in numerical order. And before, actually, I was not aware, with all due respect, Senator Howard, I was not aware that you were my state senator, because I gave up my right to vote when I committed my crimes. But I would say that...

SENATOR BOURNE: Mr. Ritsch, if I could just interrupt. Would you tell us which of the bill you're testifying in opposition to?

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

Committee on Judiciary
February 16, 2006
Page 94

LB 767 863 867

CHRIS RITSCH: LB 767, LB 863, LB 867 I am opposed to.

SENATOR BOURNE: Thank you.

CHRIS RITSCH: I view them primarily as feel-good legislation, to use a popular...okay. LB 767, basically what I am hearing is that you will give someone like me a life sentence by default. I also noticed that there is nothing in there that is grandfathered. So I need to know, you know, am I going home tonight, or am I going to jail for something that I did 20 years ago. I don't know. There is no clarification. You have not directly stated anywhere that it will not impact me. And I have to tell you I can out of prison the most bitter person you may have ever met in your life, some remnants of which you might see now, and I had absolute disgust of humanity. Thank the Lord I was able to continue with therapy and continue with counseling and continue going through my church, and I improved. Like I said, that was LB 867 my notes, other than what you have before you. Regarding LB 863, I hear people say, research says sex offenders commit many crimes. Well, okay. Is that multiple events or multiple individuals? Because if it it's multiple events, then I guess I am to be arrested because I had two victims, but there were multiple occasions. So what are you using for your statistics? I was given the maximum sentence available for a first offense with no prior convictions for anything. Was it a lapse in judgment on my part? Absolutely. But was it something that was worthy of being given the maximum sentence when it was zero to five years? My therapist, as I, before, was one of the strongest supporters I had who submitted in writing to the judge not to send me to prison. It wasn't necessary. But unfortunately, when I got convicted and sentenced, it was also the time of the Franklin Credit Union debacle. Is that a familiar term? I hope so. Additionally, I lost my job in April 2002 when somebody notified them of my prior offense during the same time that a certain religious organization had a scandal. And now I got a case of bad timing because Amber Harris' stuff was found the same night.

SENATOR BOURNE: I'll tell you what. You're going to have one more bite at the apple. If there are any, because there's one...

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

Committee on Judiciary
February 16, 2006
Page 95

LB 767 863 867

CHRIS RITSCH: Well, there was three of them, but I was hoping that I'd have three minutes per, so.

SENATOR BOURNE: One more bill.

CHRIS RITSCH: Okay.

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

CHRIS RITSCH: Okay.

SENATOR BOURNE: Next opponent to any of these three measures.

TIM BUTZ: (Exhibit 28) Senator Bourne, members of the committee, Tim Butz, B-u-t-z, executive director, ACLU Nebraska. I don't want to duplicate what I said in the prior hearing. Senator Howard mentioned that she couldn't find any research on the impact of sex offender residency restrictions. I found one journal article in the International Journal of Offender Therapy and Comparative Criminology, volume 49, issue 2, in 2005 by Dr. Jill Levenson and Dr. Leo Cotter. I think I provided members of the committee a copy of this back prior to the November interim hearing, but I just wanted to introduce the article into the record. It's entitled "The Impact of Sex Offender Residence Restrictions: 1,000 Feet From Danger or One Step From Absurd?" And I wasn't planning on doing this, but I'll bring copies over on Tuesday for members of the committee. And of course, what the journal article says is that the residency restrictions are counterproductive. They create instability and increase the chance of reoffense.

SENATOR BOURNE: Okay. Questions for Mr. Butz? Seeing none, thank you. Next testifier in opposition to any of these three measures? If there are further opponents, if you'd make your way to the front of the room.

ROB BUTLER: (Exhibit 29) Thank you. I'll be speaking of course, against LB 867. Rob Butler, B-u-t-l-e-r. And, you know, while I really appreciate the commitment of Senator Howard, I have, after, you know, careful consideration decided that LB 867 will provide a false sense of security and very little else. A 1,000-foot radius is merely a line

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

Committee on Judiciary
February 16, 2006
Page 96

LB 767 863 867

drawn in the sand. The people of your state would be potentially subject to more harm due to believing that they are either within the 1,000 foot, and not, or are absolutely within the radius, but naive enough to believe that it actually matters. We all know that protection orders keep people from getting murdered. To illustrate this, I've used the city of Grand Island as an example. As you will see in figure 1 in the enclosed packet, that city has 25 residents who are registered level 3 sex offenders and represented by a blue dot that corresponds to the registered address. You will also see 17 public and private schools represented by purple icons. Of the 25 registered level 3 sex offenders in Grand Island, seven--28 percent--live within 1,000 foot of a public or a private school. In addition, although a majority of registered level 3 offenders beyond the 1,000-foot radius, 0.19 miles, most do live within half a mile or 2,640 feet of a school. This does not consider licensed or nonlicensed day cares, nor does it consider places that youth may congregate, such as swimming pools, that are of course not listed in this bill. Similarly, that 1,000 foot can encompass some, but leaves many just outside of its protection. As you'll see in figure 2, your colleague, Senator Aguilar, lives 1,394 foot from his neighborhood elementary school. The 394 foot difference is the equivalent of five to seven houses. To show this on a more controlled illustration, you'll see in figure 3 that the Westgate neighborhood in Omaha, where my daughter attends Westgate Elementary, the 1.5 square mile Westgate Elementary area indicated in gray also contains a private school, Joan of Arc. Both of the 1,000-foot radiuses, or 0.11 square mile, total only 15 percent together of that neighborhood. Now it is for this reason that I believe LB 867, although with really good intention, is ultimately dangerous and I would like to encourage that it be indefinitely postponed.

SENATOR BOURNE: Thank you. Questions for Mr. Butler?
Seeing none, thank you.

ROB BUTLER: Thank you for your time.

SENATOR BOURNE: Next opponent of any of these three bills.
Are there any neutral testifiers on any of these three measures? Senator Howard to close.

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

Committee on Judiciary
February 16, 2006
Page 97

LB 767 863 867, 1205

SENATOR HOWARD: (Exhibit 32) I was just handed this information, and I will put a copy out here for the pages to distribute. This is a resolution from the City of Omaha, and I'll just briefly sum this up for you. Whereas legislation may be proposed relating to prohibiting sex offenders from residing near schools or childcare centers, which is of interest to the city of Omaha and its citizens, and whereas the city of Omaha desires to express its support of such legislation, a legislative bill, if introduced, and whereas it is the purpose of this resolution to approve support for legislation if introduced relating to prohibiting sex offenders from residing near schools or childcare centers, and whereas it is in the best interest of the city of Omaha and its residents that a legislative package be prepared for submission to the state legislature, now therefore be it resolved by this city council of the city of Omaha that at the request of Councilman Garry Gernandt, the legislative package of the city of Omaha for the second session of the 99th Legislature of the state of Nebraska shall include a review of legislation relating to prohibiting sex offenders from residing near schools or child care centers. And I'm happy to be able to distribute that to you. I would like to conclude by saying I deeply appreciate Senator Friend's supportive remarks, and makes it possible to persevere on a tough issue. And I respect that, a subject like this draws out all manner of information. And I thank you for not walking away from a tough issue. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Senator Howard? Seeing none, thank you. That will conclude the hearings on Legislative Bills 767, 863, and 867. (See also Exhibits 31, 33) Senator Pedersen is here to open on Legislative Bill 1205. Would the proponents of this next measure make their way to the front row and sign in. Senator Pedersen.

LB 1205

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne and colleagues on the committee. Thank you for staying so long with me today and hearing this last bill, which I think is very important to be hooked in with all the other bills we've heard today. And it's very appropriate to have it at

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

Committee on Judiciary
February 16, 2006
Page 98

LB 1205

the end. Senator Bourne and colleagues of the Judiciary Committee, for the record, I'm Senator Dwite Pedersen, representing the 39th Legislative District, and I'm here today into to you LB 1205. As the talk has swirled around us regarding sex offenders, the nature of their crimes, the proper length of time they should serve in prison, whether or not the public safety can be protected if they are released, and where they can live, I became very concerned that not much was being said about the persons we are trusting to make those decisions on our behalf. My purpose of introducing this bill is to make sure that those people who are responsible for the treatment of sex offenders possess the necessary qualifications and training to provide sex offender-specific therapy--let me repeat, that's sex offender-specific therapy--as that type of therapy is very different from the treatment provided for other types of mental illness. I want to make sure that persons who are making decisions that can affect a person's life and liberty know what they are doing and haven't just hung out a shingle indicating that they are qualified as a sex therapist. In 2001, the Governor's Working Group on the Management and Treatment of Sex Offenders issued their final report making recommendations for legislative and administrative changes in providing services for sex offenders. In that report, there were recommendations in the following areas: The credentialing of professionals who provide sex offender assessment and-or treatment, including psychologists, psychiatrists, licensed mental health professionals, licensed clinical social workers, and medical personnel; creating mandated treatment standards for sex offender-specific treatment as a component of a comprehensive approach to sex offender management; and providing increased training opportunities for all professionals involved in the treatment and management of sex offenders. In order to implement these recommendations, this bill would establish a working group made up of representatives from the Legislature, the Health and Human Services System, the courts, the Department of Correctional Services, the State Probation Administration, the Parole Board, law enforcement, private providers of treatment, victim advocates, mental health and medical personnel, as well as other interested parties. The working group would be charged with making recommendations for improvements in the treatment and management of sex offenders, and presenting that information to the legislation on or before

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

Committee on Judiciary
February 16, 2006
Page 99

LB 1205

December 1, 2006. I strongly believe in ensuring that those persons having control over determining whether or not a person is a danger to the public need to prove that they have the ability to do so. For the public's sake, and for the offenders, I believe that bringing together the people outlined in this bill to work for consistency in training and credentialing will be a huge step forward for the state of Nebraska, and that their recommendations can guide us to formulate a fair and consistent way of treating and managing sex offenders in the state of Nebraska. I urge your support to LB 1205. If you have any questions. I do have one amendment, by the way, that I would like to take a look at. In the list of people that I said, beyond the task force or the study group, I think we should include a recovering offender.

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

SENATOR DW. PEDERSEN: Thank you.

SENATOR BOURNE: First testifier in support.

DEAN SETTLE: Mr. Chairman, I'm Dean Settle. I'm director of the Lancaster County Community Health Center here in Lincoln. Dr. Mary Paine, Dr. Roy, Jason Christianson are the professionals who work in our sex offender community based treatment program here. We serve about 40 people at any given time. We've been doing it for seven years. It, indeed, has shown that people can change, and with ongoing contact and with knowledgeable staff, we know where people are. We know when they need to be brought in for further treatment and observation. And a community based program works. I think it's important for you all to know that, and it works at much less cost than some of the more expensive alternatives at the regional center or at other kinds of correctional entities. Dr. Paine had to leave, and she wanted me to, first of all, thank Senator Pedersen for introducing this important measure. If we're going to treat sex offenders appropriately, we must have professionals trained to do that very specialized work. The white paper that was prepared in 2001 by a group of professionals regarding sex offender treatment had a lot of very good recommendation in the area of specific staff and professional training. That's a good start. I would

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

Committee on Judiciary
February 16, 2006
Page 100

LB 1205

encourage the committee to utilize that beginning statement. Also, access the training protocols from the Association for Treatment of Sexual Abusers. It's a national organization strictly for the professionals in this field. They have protocols already thought out, already available, and I would commend the working group and you all to that particular resource. I think it must start as soon as possible. I mean, we are totally full, with a waiting list. More and more people will be pressuring behavioral health organizations to go into treatment. And it's absolutely critical that people be trained to evaluate, trained to provide treatment, trained to do interventions, trained to reel somebody back in when they're, you know, they're thinking of reoffending. It takes trained staff to do that. Senator Pedersen, I would also offer, since we are so concerned about the influence of substance abuse and what that does with impaired judgment and not filtering properly, that we also have on the working group a LADAC, licensed alcohol and drug counselor.

SENATOR DW. PEDERSEN: I was hoping I'd be that person.

DEAN SETTLE: There you go.

SENATOR DW. PEDERSEN: Take care of two stones.

DEAN SETTLE: Perfect. And also, I think in this field, since it's, again, a highly specialized, very small community of professionals, that ongoing, continuing education units be required and that some consideration be given to mentors and supervisors, someone that you can always pick up the phone and consult with. Absolutely essential. Thank you.

SENATOR BOURNE: Thank you. Is it Dr. Settle, or "mister"?

DEAN SETTLE: No, I'm an administrator, master's degree level.

SENATOR BOURNE: Okay. Oh, you look like a doctor. I'm sorry. Other questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Not to keep us here any longer tonight, I appreciate your testimony and the need for statewide certification in response to sex

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

Committee on Judiciary
February 16, 2006
Page 101

LB 1205

offenders. And I can also appreciate the need for some community based programming. I don't want to make a mistake with sex offenders where we take the idea of institutionalization off the table. At the Norfolk Regional Center and at the Lincoln Regional Center, we have a number of sex offenders. On a recent tour, I ran into a gentleman in Norfolk, appeared to be fine. I even questioned why he was there, and by his own statement he said he did not want to be out of the regional center because he was a pedophile and he had been out several times in the community and had failed each time. Would you agree with me that there is a need for that highest level of care. We cannot lose sight of the fact that regional centers are necessary for sex offenders, while some can be treated in communities. Is that a fair statement?

DEAN SETTLE: Absolutely, Senator. I do agree. And one of the key roles that Dr. Mary Paine plays in our facility is to very carefully evaluate who best can be served in the community and who belongs in an institutional setting. That's the first job description in her job protocol. She needs to do very careful evals. We need to make sure we accept the right person into the community based program who can benefit from very limited services. We're a community based mental health center, so they're coming to us on a sliding fee scale. Most of them are unemployed. We have to subsidize that particular program, currently.

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

DEAN SETTLE: Thank you very much, Senators.

SENATOR BOURNE: Appreciate it.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Next testifier in support.

CHRIS RITSCH: For the record, my name is Chris Ritsch. Once again, it is spelled R-i-t-s-c-h. First of all, I was thankful that Senator Howard read the notice that Omaha just banned me. That's what it sounded like. So I hope to get more information on that. However, in regards to LB 1205, it is my opinion and position as posited by Senator

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

Committee on Judiciary
February 16, 2006
Page 102

LB 1205

Pedersen, I would only amend one thing, and that being the inclusion of ex-offenders in the working group to assist with a more balanced perspective towards making useful recommendations. First of all, every Sunday at church, there's a confession that man is by nature sinful and unclean in thought, word, and deed. It's just in my belief system. And so to say that one person knows better than the other kind of flies in the face of that because, essentially, my belief is that everybody has the same potential. Any one of you sitting in front of me could be a pedophile, male or female. Being a sex offender is the modern day leprosy. When are we going to establish the colonies? The community incorporation is wonderful component of this legislation as long as the vindictive legislation is not associated with it. I speak for myself. If I fall victim, using the wrong word, but if these things begin to apply to me, I will view it as vindictive, not as anything other than that because Iowa did it so we better do it. Well, I don't know. Okay. Those of you familiar with sexual abuse will understand the next thing I'm going to say, which is there is a triangle of sexual abuse. The three corners of that triangle involve being a victim, being an offender, being a relative. And there's one individual in this room that has been in all three corners. There may be more than one. But I guarantee you you're looking at one. Finally, in my last minute, is it a paid position? Sorry, I have a sense of humor. I'm sorry. But, in regards to qualifications, not only do I have a bachelor's degree in psychology, being one of the 50 percent that did it to fix themselves, I've also been out 20 years successfully. And I think that stands for something, and I think that qualifies me as "an expert." Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Ritsh? Seeing none, thank you. Thank you. Appreciate it. Next testifier in support.

J. ROCK JOHNSON: J. Rock Johnson with an initial J. I must call to our attention the fact that assumptions are being made that to be a sex offender is to have a mental illness, and that has not been something that has been substantiated. Further, to think of the regional center as a correctional institution, I think, is problematic. There is indeed a forensic area where people who are not guilty by reason of insanity, not responsible by reason of insanity, or who are

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

Committee on Judiciary
February 16, 2006
Page 103

LB 1205

there for evaluations. And I think again we must be very careful in the way we characterize the regional center and its activity. So in that regard, I do not agree with Mr. Settle. I think that there is a need for the highest level of care, and that that would be a prison. I want to thank Senator Pedersen for not only bringing forth this bill, but his amendment. I would make it just a little bit different. I would suggest that to the members of the working group, the interested party add "including victims and perpetrators who self-identify and the economic and personnel supports they may need to fully participate." That's at Section 2, line 7. Also, in terms of providing professional training, or training to professionals and the mentors, which I fully support, I would add, "and individuals who have an interest and capacity to provide peers supports, such as mutual aid, promote self-help, staff warm lines of people who need someone to talk with, and similar activities." But given the particular nature of the offenses, that may be under whatever supervision could be necessary. Something that I have really yet to hear is that, and it may be in the 2001 report that I have not read, is that perpetrators becomes victims who become perpetrators who become victims. It is, in fact, a vicious cycle. There are programs in this country, institutes regarding torture in Montreal, Boston, Minneapolis, that deal with the political equivalent of sex offenders, and I think that there's a great deal that we might be able to learn from them. Thank you.

SENATOR BOURNE: Thank you. Are there questions? Thank you. Next testifier in support of this bill? First testifier in opposition? Are there testifiers neutral? Senator Pedersen to close? Senator Pedersen waives closing. That will conclude the hearing on Legislative Bill 1205 and the hearings for this afternoon. (See also Exhibits 30, 34)