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Judiciary Committee
February 08, 2007

[LB179 LB242 LB428 LB474 LB525 LB532]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 8, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB242, LB179, LB428, LB525, LB474, and LB532. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None.

SENATOR ASHFORD: Good afternoon. Speaker Flood is already seated, but before he starts I just would like to welcome you all first of all to the Judiciary Committee, and introduce my colleagues on the committee. Senator Pete Pirsch from Omaha, Senator DiAnna Schimek from Lincoln, Senator Dwite Pedersen from Elkhorn, Senator Steve Lathrop from Omaha, and Senator Amanda McGill, who is from Omaha, but serves as a representative for Lincoln. But welcome all of you. A Victorian poet once said that brevity is the spice of life. Actually, a Victorian poet never did say that, but it sounded better. What we're going to try to do...many of you testify here on a recurrent basis and you're here a lot, and it's good you're here a lot and I'm not criticizing you for that, but hopefully if you're on the same side of an issue and you're talking about a bill, if you listen to your colleagues and try to simply add to what your colleagues have said and not repeat what your colleagues say, because I think that will help us get through this. We have a number of bills on a number of topics, so it will be helpful if we try to be brief as possible. We have a light system. Those of you who are here a lot know that. When the yellow light comes on it means you have one minute left in your time, and the red light is the time to stop and to wrap up. Speaker Flood is here and the first bill is LB179. [LB242]

JONATHAN BRADFORD: LB242. [LB242]

SENATOR ASHFORD: LB242. What happened to...oh, we're going with you first. LB242? Okay. I don't know. How did you get in front of...(Laughter) He is the Speaker. I think that's how he got it done. So, no you are fine. LB242. How many proponents do we have at LB242? Opponents? Okay. Speaker Flood, would you like to get started? [LB242]

SENATOR FLOOD: Thank you, Chairman Ashford, members of the Judiciary Committee. My name is Mike Flood. I represent Legislative District 19, which includes all of Madison County. I'm here today to introduce LB242. This bill does three main things. First, in Section 4 it creates a new offense for assault on an officer using bodily fluids, which would be a Class I misdemeanor. The section was drafted to protect the officer on the street as opposed to correctional officers who are protected by a later section of the bill. The bill also amends another assault provision that applies to those individuals who are confined in our jails. In Section 5, LB242 proposes to expand the

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scope of this assault provision to include those who are being transported to or from our jails and other correctional facilities. And finally, Section 5 proposes new felony offenses applicable to confined individuals and those being transported to and from confinement who cause another person to come in contact with a dangerous substance. Subsection (7) defines the phrase dangerous substance as "blood, seminal fluid, urine, feces, saliva, mucus, excrement, vomit, or any other bodily secretion or fluid." The level of felony associated with this offense varies based on 1) the confined individual's state of mind, 2) whether the dangerous substance had a potential to transmit a life-threatening or debilitating infectious disease or condition, and 3) whether such disease or condition was actually transmitted. LB242 also provides that victims who are exposed to a dangerous substance pursuant to Section 5 may request that the person from whom the substance came submit to a diagnostic blood test. If that person refuses to do so, the victim may then seek a court order directing that such testing be completed. In concluding, I want to explain my reasons for bringing this bill to your attention. A few years ago, several officers approached me from the Norfolk police division and other departments in my district. They were concerned about detainees spitting saliva and blood at them. These officers were upset because they were told there were no laws that made such conduct a criminal offense. I also want to mention my conversation with the Centers for Disease Control. I was advised that it is indeed possible to contact communicable diseases through one's eyes, nose, mouth, and any open cuts on one's exposed body parts. I was also specifically advised that first, although the chances of contracting the disease purely through saliva is pretty small, there would be a relatively high likelihood of transmission if, for example, an individual with herpes of the mouth spit into another person's eye. Second, anytime blood to blood contact occurs the chances of contracting a disease such as hepatitis or HIV increases from an infected individual increases. Third, all individuals who come into contact through the eyes, nose, mouth, or open cuts on exposed body parts with bodily fluids from an infected person are encouraged to get tested. So in summary, my conversations with law enforcement indicate that there is indeed a problem that needs to be addressed. And my conversation with the Centers for Disease Control indicates that this is a problem with serious long-term consequences. I'm going to depart from my testimony just to share this. I talked to a police officer in my district that made an arrest for shoplifting at a grocery store. At that time, the suspect that he was apprehending, during the course of being handcuffed, spit into his eyes and made the statement that he was doing that hoping that he contacted what he had already. Now officer went home that night and he looked at his family and he didn't know what would happen in six months, because sometimes it takes that long for the tests. That's no way to live and if you do that intentionally, that's wrong. And so I guess I would just ask the committee to think about the reasons for this bill. I understand if there are questions, but I would like to do whatever I could to work with the committee to make something like this law in our state. Thank you very much for your consideration. [LB242]

SENATOR ASHFORD: Thank you, Speaker Flood. Any questions for Speaker Flood?

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Senator Schimek. [LB242]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. And Mr. Speaker, I have just a couple of questions. This applies not only to people who are confined then? Is that right? [LB242]

SENATOR FRIEND: Yes. [LB242]

SENATOR SCHIMEK: It applies to any situation in which a law enforcement officer might be involved. [LB242]

SENATOR FLOOD: Section 4 on page 4 beginning at line 23. [LB242]

SENATOR SCHIMEK: Right. [LB242]

SENATOR FLOOD: Yes. [LB242]

SENATOR SCHIMEK: Okay. I have a letter here that I think all the committee got that reflects that this probably would be a matter that should be handled in another way other than making it a crime. That, one, our prisons are already full, that there are ways administratively when you are confined that this matter could be handled. I'm not sure that the same things is true for somebody who's arresting somebody. Would you like to just respond to that a little bit? [LB242]

SENATOR FLOOD: Yes, thank you, Senator Schimek, for your question. And I think what--and I haven't seen the letter that you're referring to--but I would assume that the person says that if it regards inmates in prison or in a jail they could be placed in administrative segregation or they can be taken out of general population. Senator Pedersen would know a lot more about than I. I guess I would just offer, just like the police officer that made the arrest at the grocery store, that correctional officer also goes home to his family or her family and has the same uncertainty of the situation following that kind of contact. And I think we prosecute inmates for physical assault in prison. I see no reason why we couldn't also charge them with assault by bodily fluids if they intentionally are causing this kind of transmission or attempting to cause this kind of transmission. So... [LB242]

SENATOR SCHIMEK: Thank you. [LB242]

SENATOR FLOOD: ...I know what you're saying and yes, prisons do have different ways to handle it because they're already dealing with a convicted inmate, but we still charge inmates with crimes inside prison. [LB242]

SENATOR SCHIMEK: And if they weren't in prison and we did convict them of this, that

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would be adding to the prison population. [LB242]

SENATOR FLOOD: Yes, it would. Well... [LB242]

SENATOR SCHIMEK: Well, maybe not. [LB242]

SENATOR FLOOD: ...Class I misdemeanor, so up to one year in the county jail most likely in connection with whatever else they did. So a lot of times people get probation on Class I misdemeanors, too. [LB242]

SENATOR SCHIMEK: Thank you. [LB242]

SENATOR FLOOD: Thank you. [LB242]

SENATOR ASHFORD: Yes, Senator Pirsch. [LB242]

SENATOR PIRSCH: Just a bit of clarification, so it creates this new offense for assault on an officer using bodily fluids and that can occur anywhere, correct? [LB242]

SENATOR FLOOD: Yes. [LB242]

SENATOR PIRSCH: And in addition to that, does it affect correctional officers in particular as well? [LB242]

SENATOR FLOOD: Yes, Section 5 addresses folks confined in a jail, correctional or penal institution, and their transportation. Say that we have an inmate in the penitentiary that gets transported back to Wayne County. The sheriff will drive down to Wayne County most times, pick up the inmate, and transport the inmate back for a hearing. If it happens during that period of transportation that would also be covered if they were an inmate. [LB242]

SENATOR PIRSCH: Okay, so it expands an already existing coverage, correct, to include...when it comes to correctional officers it expands protection of those correctional officers? Is that what this bill does to points and times when they're not necessarily within the confines of the building, but being transported, etcetera? [LB242]

SENATOR FLOOD: Yes. [LB242]

SENATOR PIRSCH: Okay. Are those the major...the meat of the provisions then essentially? [LB242]

SENATOR FLOOD: Yes. Primarily, Section 4 is the reason I initially started my interest in the bill. [LB242]

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SENATOR PIRSCH: Okay. [LB242]

SENATOR ASHFORD: Senator Pedersen. [LB242]

SENATOR PEDERSEN: Thank you, Senator Ashford. Senator Flood, is there anything in this bill--I read through it this morning, I didn't get time to see it last night--that says anything about somebody who may be not accountable for what they're doing at the time? For instance, somebody who's high on meth or some other drug and not aware of what they're doing. It seems to be intentional, but at the same time they're not of their own mind. I could not see anywhere in there that that would be covered. [LB242]

SENATOR FLOOD: Well, my understanding is that the not guilty by reason of insanity defense would be available to any defendant facing such a charge. And I guess I want to recognize that we do have a mental health problem in our prison system and we are--thanks to you--addressing those issues in our prison system. It's not my intent to punish the mentally ill. But someone on meth is not necessarily mentally ill and I think they would be subjected to this--should be subjected to this. [LB242]

SENATOR PEDERSEN: And I understand the intentional, I just wanted to make sure that them people are covered who would not, because most of the time that...I've worked in a jail many years and have had some of this stuff thrown at me. But they were usually premeditated thought, knew what they were doing and then that makes a whole lot of difference other than somebody that's just having some kind of a breakdown or may not be capable. And you answered my question. I think the mental health part of it would be innocent because of insanity. Thank you. [LB242]

SENATOR ASHFORD: Thank you, Speaker Flood. [LB242]

SENATOR FLOOD: Thank you very much. May I be excused? [LB242]

SENATOR ASHFORD: Yes, you may. Thank you. [LB242]

SENATOR FLOOD: I'd also like to waive my closing. [LB242]

SENATOR ASHFORD: Great. Thanks. [LB242]

SENATOR FLOOD: Thank you. [LB242]

SENATOR ASHFORD: Proponents on LB242. [LB242]

ROY WILSON: Good afternoon, senators. My name is Roy Wilson. I'm the sergeant with the Douglas County Correctional Center and I'm here on behalf of the Fraternal

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Order of Police, Lodge 8, which is our union. I'm here in reference to LB242 as use of the bodily fluid. Now we're proposing that there be stipulations made to try and evaluate things in a sensible manner and possibly more of a deterrent than anything. We have had many occasions where our officers have had urine thrown in the face. There's an incident where one of our sergeants was walking through one of the housing units at night checking on the inmates and received a complete cupful of urine into the face. Subsequently, that officer was forced to retire because he obtained hepatitis C. Nothing could be done to that individual except placed in a segregation housing unit for about seven days. We currently have one incident where through a bite the officer has come down with hepatitis C and is possibly looking at a liver transplant. These are long-term diseases that these people are subjecting others to. Not knowing what you've been subjected to, going home is hard on a person's mind and it's hard on the families sitting at home, because as it is right now whether it be corrections or an officer on the street they do not know if their loved ones are coming home again. Thank you, Senators. I would gladly try and answer any questions. [LB242]

SENATOR ASHFORD: Thank you, Sergeant. Senator Pirsch. [LB242]

SENATOR PIRSCH: There is a--say in Douglas County--a courtroom located within the jail facility there? Is that correct? Douglas County Correctional Center? [LB242]

ROY WILSON: Yes, Senator. [LB242]

SENATOR PIRSCH: And so you provide the supervision for the court proceedings in that center? Is that correct? [LB242]

ROY WILSON: In that particular center, yes. [LB242]

SENATOR PIRSCH: Yeah. And during the midst of those proceedings, how come or how often is it that some sort of physical altercation may come into play during the midst of those proceedings? [LB242]

ROY WILSON: Since we have opened that up, as you're probably well aware, that this is new area for us. Last year we've had three attempts on a judge. One where one gentleman jumped up trying to get to the judge up over the bench. [LB242]

SENATOR PIRSCH: And is there some sort of physical barrier that prevents these individuals from getting at the judge or what is the method by which they are controlled? [LB242]

ROY WILSON: The only physical barrier there is between the civilians and from the defendants. There is a physical barrier in that direction. There are two officers that are stationed there. [LB242]

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SENATOR PIRSCH: So it's the officer's responsibility then to stop these assaults then from occurring? [LB242]

ROY WILSON: Yes, Senator. [LB242]

SENATOR PIRSCH: Okay. Is that again what...could you kind of quantify the amount of times that physical altercations then occur within that courtroom? [LB242]

ROY WILSON: Last year there were three physical altercations. [LB242]

SENATOR PIRSCH: You said three times in which somebody went at the judge, correct? [LB242]

ROY WILSON: One. One went at the judge. [LB242]

SENATOR PIRSCH: One went at the judge. [LB242]

ROY WILSON: One did go after the judge. Jumped up on the bench and was trying to get to the judge at which time the officers took the individual down and subdued him. There have been some minor altercations where the person started getting irate with the judge and the officers would intervene and a physical altercation would take place. [LB242]

SENATOR PIRSCH: During those physical altercations is that the type of uniform that you'd be wearing then? Is that correct during that? [LB242]

ROY WILSON: Yes it is, Senator. [LB242]

SENATOR PIRSCH: Okay. And is it commonplace then that scrapes and other abrasions can take place in which there's...is that a common thing that blood is present during these type of assaults or where there's these type of conflicts? [LB242]

ROY WILSON: Yes, it's not uncommon. [LB242]

SENATOR PIRSCH: Thanks. That's all the questions I have. [LB242]

SENATOR ASHFORD: Thank you, Senator Pirsch. Thanks Deputy Wilson. Any other proponents? Lynn. [LB242]

LYNN REX: Senator Ashford, members of the committee, my name is Lynn Rex representing the League of Nebraska Municipalities. We strongly support this bill for reasons that I think are quite obvious. We don't think that law enforcement personnel

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should be subjected to this when these are intentional acts that are occurring. Be happy to respond to any questions that you may have. [LB242]

SENATOR ASHFORD: Thank you, Lynn, very much. Any questions of Lynn? Thanks. [LB242]

LYNN REX: Thank you. [LB242]

LARRY THOREN: Chairman Ashford, members of the Judiciary Committee, I am Larry Thoren, T-h-o-r-e-n. [LB242]

SENATOR ASHFORD: Welcome back, Larry. [LB242]

LARRY THOREN: (Exhibit 1) Thank you. Chief of police for the city of Hastings, testifying in support of LB242 on behalf of the Police Chiefs Association of Nebraska. And in the interest of brevity we support this bill. Just for your information, I have five or six police officers who are undergoing constant monitoring for the potential of diseases or something that they would have contracted during the sharing of bodily fluids by arrested persons. In one incident an individual smeared some blood on a police officer and said I have AIDS and I hope you die. Now this police officer has to live with this because it's six months before many times anything shows up and, you know, it's a matter of years that officers undergo monitoring, screening, and blood tests to determine if they've contracted any diseases. So obviously the police chiefs support this because it's in the interest of the safety of our police officers. So what questions can I answer for you? [LB242]

SENATOR ASHFORD: Thanks, Chief. Any questions of the chief? Do you have any...in the blood case, that could not be tried as an assault? [LB242]

LARRY THOREN: No, for an assault to occur in Nebraska you have to do harm to an individual. You know, this harm may not show up for a year or two. [LB242]

SENATOR ASHFORD: And it can't be psychological harm, it must be physical? [LB242]

LARRY THOREN: No, it has to be harm. [LB242]

SENATOR ASHFORD: Or it has to be physical, it can't be... [LB242]

LARRY THOREN: Yeah, you have to cause harm is what it says. [LB242]

SENATOR ASHFORD: Okay. [LB242]

LARRY THOREN: If we go to psychological harm that could be very dangerous

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because words and insults could be considered harm. You know, some states have an assault charge that if they contact a person in an insulting and provoking nature... [LB242]

SENATOR ASHFORD: Right. [LB242]

LARRY THOREN: ...but in Nebraska the threshold is there has to be harm conducted before the crime occurs. And again, we see people at their worse. We see humanity at their worst point. [LB242]

SENATOR ASHFORD: It's obviously a fairly common occurrence. To have five people under observation now is quite a number in your department. [LB242]

LARRY THOREN: Yes. Yeah, that's... [LB242]

SENATOR ASHFORD: How many officers do you have? [LB242]

LARRY THOREN: We have 39. [LB242]

SENATOR ASHFORD: Okay. [LB242]

LARRY THOREN: And I've got five or six under observation so that's about 15 percent. [LB242]

SENATOR ASHFORD: That's a lot. [LB242]

LARRY THOREN: Yes. [LB242]

SENATOR ASHFORD: Okay. Thank you very much, Chief, for your testimony. [LB242]

LARRY THOREN: Thank you. [LB242]

SENATOR ASHFORD: Opponent...are you opponent? [LB242]

COLEEN NIELSEN: Opponent. [LB242]

SENATOR ASHFORD: Opponent. No more proponents? Opponents. Coleen? [LB242]

COLEEN NIELSEN: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n. I'm the registered lobbyist on behalf of the Nebraska Criminal Defense Attorneys Association and I am testifying in opposition to LB242. I think that the members of my association do understand what this bill is trying to get at, but they do have problems with the way that

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the bill is written and I want to share with you some of the comments that have been made by the members. For example, in Section 4, the section does not define the term bodily fluid and it's some members' observations that this could cause some absurd results in that coming in contact with sweat could be a possible violation of this particular statute. It also does not require any affirmative action to cause the contact. Section 28-932 sub(2) creates the offense of assault on an officer by bodily fluids and can be committed recklessly. And we believe that the offense can be abused under a reckless standard especially when it broadens the definition of an officer to individuals involved in transportation. For example, if someone vomits in the back of a cruiser while intoxicated they could be prosecuted under this particular statute. Section 28-932 sub(4) uses the language should have known when defining the crime, and obviously in the context of where most of these situations occur could be argued that inmates should have known the medical status of other inmates when this is not a realistic assumption to make. At least with the assault there is some requirement of physical injury under the current law, which has an objective standard, whereas spittle that flies from the accused mouth during a resisted arrest that lands somewhere on the victim couldn't be verified or proven to exist. And finally, offenses classified as felonies should require an element of intent or mens rea. I'd be happy to answer any questions. [LB242]

SENATOR ASHFORD: Any questions of Coleen? Thank you. Thanks, Coleen. [LB242]

COLEEN NIELSEN: Thank you. [LB242]

SENATOR ASHFORD: (Exhibit 2) Any further testimony on LB242? I do have a letter from Amy Miller from the ACLU in opposition to LB242 which we'll make part of the record. Any neutral testifiers? Thank you. That concludes the hearing on LB242. (See also Exhibit 3) LB179, Senator Lathrop. [LB242 LB179]

SENATOR LATHROP: (Exhibit 3A) Good afternoon, Mr. Chairman, members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I represent the 12th District in Omaha. I am here today for the purpose of introducing LB179. This bill is generally referred to as the electronic recording of interrogations bill. The bill LB179 requires that law enforcement record custodial interrogations of those charged with serious offenses. The bill defines custodial interrogations. It requires that the accused be, first of all, in custody, and second of all, in a place of detention. A place of detention is defined in the bill as jail, police station, county attorney's office, a hospital, or any other place under the control of the law enforcement. If a statement is taken from an accused in that environment, it must be recorded. It is not all crimes and statements that must be recorded, but only those that relate to serious offenses. The bill sets out the offenses of felony assault, crimes involving death, sexual assault, kidnapping, robbery, drug offenses involving delivery or intent to deliver, strangulation, or terrorist threats. These are the most serious offenses that law enforcement deals with. We feel it's important as a matter of public policy to have those statements recorded. The policy

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behind this bill is to promote or to reduce the number of pretrial hearings where we have judges trying to sort out, as between an accused and a law enforcement officer, what actually took place during the course of an interrogation. If these are all recorded...and I understand most of them are recorded in Omaha and Lincoln right now...if they are recorded statewide, we will end the endless hearings on what happened during the course of the interrogation. The judge will simply be allowed to review the tapes and make a judgment for themselves. The bill has been introduced in the past, those of you that have been around for awhile will remember that Senator Bourne has introduced this bill. Each time this bill has been introduced in the past, it has undergone some changes which are responsive to the concerns of law enforcement and the county attorney's office. Again, before this bill was introduced,...and I have some amendments in your...I'll pass out the amended form. The amendments...the concern the county attorneys expressed was that the penalty for failing to record was that the confession would be excluded. The county attorneys indicated they thought that was too harsh. As a consequence in response to their concern, we changed the bill to provide the district court with discretion to either exclude the statement or to give a cautionary instruction to the jury. That is certainly a lot less of a problem for prosecutors if they have a statement they want introduced that has not been recorded. So we think we've responded to the concerns and we've put this bill in a place where it is good policy, and we'd ask the committee to advance LB179 for General File. [LB179]

SENATOR ASHFORD: Thank you, Senator Lathrop. [LB179]

SENATOR LATHROP: Any questions? [LB179]

SENATOR ASHFORD: Any questions? Senator Pirsch. [LB179]

SENATOR PIRSCH: Just briefly, under the definition of reasonable excuse means circumstances in which...and then there's a list. This is on page 2 of the amendment, subsection (d) of that; 4(d). "The equipment used to electronically record the statement malfunctioned." And that would constitute one reason, correct, for allowing the court to allow the testimony? [LB179]

SENATOR LATHROP: It's an excuse for failing to record a statement, and that's...this was one of those provisions that was responsive to concerns in the past. It went in this way last year, and it has...it takes it...the bill takes into account the fact that in real life certain things can happen that a statement wouldn't be recorded. This, having an equipment malfunction, is just one of them. If the equipment malfunctions or if you don't pick up and there's some break in the audio, that's not a reason to exclude the statement or even to give a cautionary instruction. [LB179]

SENATOR PIRSCH: What about in cases of operator error in certain recorders where the operator would testify, I meant to, in fact, start recording the proceedings, but

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instead of hitting record or sometimes there's two buttons that need to be pushed to start it, but instead of hitting record, I accidentally hit a different button or stop or whatnot, such that the equipment itself, everyone agrees was working properly, but through an honest or inadvertent mistake the wrong button is pushed. That testimony...in such a case, the admission would be excluded in that case, correct? [LB179]

SENATOR LATHROP: No. As this bill was originally drafted, the penalty for failing to electronically record was exclusion. And as you know, as a prosecutor, that is a significant penalty for failing to do something. The bill, as amended, allows the judge to decide whether the statement should be excluded or whether simply there should be a cautionary instruction. If you make an honest mistake and the court makes a determination there's been an honest mistake in the operator error, then you would be more likely to have a cautionary instruction rather than to have the statement excluded. [LB179]

SENATOR PIRSCH: But that would be up to the judge to decide, and he may exclude it, correct? [LB179]

SENATOR LATHROP: Well, it would be up to the judge, and I think you would have a spectrum. At one end would be someone who said, I'm not going to record this, I don't care what the rule is. And then at the other end are honest mistakes. [LB179]

SENATOR PIRSCH: Right. Thank you. Appreciate it. [LB179]

SENATOR LATHROP: Sure. Yes. [LB179]

SENATOR ASHFORD: Yes, Senator McDonald. You caught me reading over here. [LB179]

SENATOR McDONALD: This is my first year on Judiciary so I'm learning lots of legal issues. Does law enforcement already have capability for recording? Are we putting an undo burden on some of our smaller counties to have this equipment? Or who pays for it or do they already have it? [LB179]

SENATOR LATHROP: Oh, I'm glad you asked that question because I think most of the people behind me are going to talk about it. But I'll tell you what my experience is and what I've been told. First of all, in the larger cities they already have this equipment and they're already using this equipment, so it's not going to be, for example for Lincoln or Omaha, they're not going to have to go out and get equipment; they have it. For those who have to go out and get equipment, I've recorded statement myself in practicing law, you can go to Radio Shack and buy a recorder and set it on a table and record a statement. The expense is not significant. [LB179]

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SENATOR McDONALD: Okay. Are we recording in a room? Are we recording in a car? Where about is the recording happening? [LB179]

SENATOR LATHROP: I'm glad you asked. There are two criteria for deciding when the recording must happen. The first is when a person is in custody, and the second requirement is not only that they be in custody but that they be detained. And the bill indicates where places of detainment are; I'm going to try to remember it rather than find it here. It is the police station, the jail, the county attorney's office, or a hospital, and there may be some others but those are the ones that I remember. [LB179]

SENATOR McDONALD: So you're saying they wouldn't have to have one in every car. [LB179]

SENATOR LATHROP: No. If they...a car is not on that list of places where it has to happen. And so if an officer arrests someone and they read them Miranda rights, which you have to read before you can take a statement, and you're talking to the fellow in the car on the way down to the police station, that is not covered by this bill. It would not be excluded if that person made an incriminating statement in the police cruiser. Once they get to the police station and they are Mirandized, and they're questioned at that point in time, then they would have to have that recorded if it one of the serious offenses that we've outlined. If they start to take a statement from somebody over a small, petty matter, and the person blurts out, I killed my wife, that doesn't...I mean, we've had every conceivable problem worked out of this bill, and that's one of them. And it wouldn't require exclusion if the person started to give a statement that's not on the list of serious offenses, but admitted a serious offense during the middle of that statement. [LB179]

SENATOR McDONALD: Okay. Thank you. [LB179]

SENATOR LATHROP: Sure. [LB179]

SENATOR ASHFORD: If I might just follow up. That's a great question, Senator McDonald, because I think that's where it gets confusing to people, and Senator McDonald certainly saw that. It does not preclude admissions, statements voluntarily made at any time by a defendant. [LB179]

SENATOR LATHROP: No, it does not. [LB179]

SENATOR ASHFORD: It has to be...they have to be custodial, they have to be in the course of interrogation. [LB179]

SENATOR LATHROP: And in a place of detention. [LB179]

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SENATOR ASHFORD: And in a place of detention. I had this bill when I was here before. It was something like it. And I do recall it and I do recall that you did (inaudible). This is a lot tighter than it was in those days, but...so it really is a pretty narrow definition. It's a narrow type of application. It does not preclude police officers from utilizing and prosecutors for utilizing statements. [LB179]

SENATOR LATHROP: No. And the thing about recording these interrogations is we'll now know what happened instead of litigating what happened, and it will save on court time, it will save on law enforcement time, and it will...I think it will become a tool for law enforcement, although they may not view it that way right now. [LB179]

SENATOR ASHFORD: And arguably where that would come up initially, would be at a preliminary hearing, for example, and there would be...those statements would be recorded and they would be available during the preliminary. [LB179]

SENATOR LATHROP: Sure. You would have it for pretrial hearings, but the other side of it is, is that if you have a recorded statement where the guy is talking to the police officer, and the officer asks did you do it, and he says yes, you now have that on a record. And he's less likely to go to trial because he's got a recorded statement that he said I did it. The county attorney will have that to use in his prosecution of the case or her prosecution of the case, and so we think it will promote efficiencies. We'll have a record of what happened instead of litigating that issue, and for that reason we think it's good policy. [LB179]

SENATOR ASHFORD: And it is exculpatory statements also. It does provide... [LB179]

SENATOR LATHROP: That's exactly right. [LB179]

SENATOR ASHFORD: ...the ability to record those exculpatory statements. [LB179]

SENATOR LATHROP: That's true. [LB179]

SENATOR ASHFORD: Yes. Senator McDonald. [LB179]

SENATOR McDONALD: I am assuming that you assume there's going to be opposition? [LB179]

SENATOR LATHROP: Oh, I've already talked to them. (Laugh) I thought there wasn't but I found out today there will be. [LB179]

SENATOR ASHFORD: They crept in. [LB179]

SENATOR McDONALD: Did you solve all their concerns with this amendment? [LB179]

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SENATOR LATHROP: You know, I'm glad you asked. [LB179]

SENATOR McDONALD: Have they seen the amendment or is there...? Or what's going on here? [LB179]

SENATOR LATHROP: You know, I had the county attorneys come into my office, and they said, we have a problem with the exclusionary rule which would mean that if you took one of these statements without recording it, under the circumstances indicated, that it would have to be excluded completely. And we changed it to accommodate their concern, and I learned today that they're still opposed. [LB179]

SENATOR McDONALD: So, it's kind of like, on the floor, we vote for it because it makes a bad bill better, but we still don't like the bill so we don't vote for the bill? [LB179]

SENATOR LATHROP: I don't know if I've gotten to that exercise yet. (Laugh) [LB179]

SENATOR McDONALD: It happens. [LB179]

SENATOR ASHFORD: It's sort of an Oklahoma offer, kind of, you know. [LB179]

SENATOR LATHROP: It was an Oklahoma offer, for sure. [LB179]

SENATOR ASHFORD: Not reflective of that particular group. Thank you, Senator Lathrop. [LB179]

JAMES MOWBRAY: Senator Ashford, members of the legislative committee, my name is Jim Mowbray, M-o-w-b-r-a-y. I'm currently the chief counsel for the Nebraska Commission on Public Advocacy. I have been, my entire legal career, involved in criminal cases. I started out as a deputy county attorney in Lancaster County, did that for about three years. And it was so easy I decided to go do the work on the other side, and I've been doing that for the last roughly 22 years. During all that time, on either side that I have sat in the courtroom, always was concerned about different types of evidence, i.e., confessions, eyewitness identification, police misconduct, even my own prosecutorial misconduct in terms of getting convictions. And always knew there were problems but really didn't know how to identify them. DNA has opened that window. And now we know that that does occur because 195 people have been exonerated through the Innocence Projects because of DNA. Unfortunately, not every case has DNA; in fact, very few cases have DNA. But the point is, DNA opened the window and we could look in and say, okay, now that we know this person is actually innocent, how did they get convicted? False confessions was the number two reason why individuals were innocent or convicted was because they falsely confessed. The number one reason is eyewitness identification, and maybe someday I'll be back and we'll be talking about

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that. But we're talking about false confessions. And by recording the confessions in very serious cases, as we have limited, and I'm the primary drafter of this and have worked through the years trying to address all of the concerns law enforcement has. But be that as it may, is that if you have an actual record, everybody knows what happened. If I don't know what happened, I have to base that on what my client tells me, which means if my client said they made a promise, a threat, they hit me, whatever it may be, then I'm going to have to litigate that, and I'm going to call the officer to the stand and I'm basically going to call him a liar because they are not going to say I made him a promise or a threat. So we're going to litigate that and that's going to go on. If you have, though, the confession, everybody knows what happened. I can show it to my client. But the other part of that is, if that person has falsely confessed, we're going to know that also. Confession is probably one of the strongest evidence prosecutors have, and that's why they're worried about losing that. That's not our intent. Our intent, though, is to encourage the police to make sure, in serious cases we get it recorded, so that if there is a false confession, we're not putting somebody in jail who's innocent. My office in the last six years has two cases of which Jerry Soucie is going to talk about, where false confessions, had they not been recorded, would have landed three people in jail for life or death. And I think it's the type of evidence that it's not hard to gain now. Technology has provided us with inexpensive recording devices; audio is just as good as video. It doesn't require anything like that. We do have exceptions in there for problems that could occur, and it's not intended to be a land mine field for police so that we can somehow this is some sort of defense trickery. That's not what this is about. It will help the police just as much as it will help the defendant. If there are any questions I'd be happy to answer them. [LB179]

SENATOR ASHFORD: Thanks, Jim. Any questions of Jim? We could all wear little cameras in our retina or something. [LB179]

JAMES MOWBRAY: That would work. [LB179]

SENATOR ASHFORD: And then use that for eyewitness...okay. No questions, Jim. Thanks for your testimony. [LB179]

JAMES MOWBRAY: Thank you. [LB179]

THOMAS SULLIVAN: (Exhibits 5-9) Ladies and gentlemen, I'm Tom Sullivan. I'm a lawyer from Chicago, and I have been practicing since 1954. I served as United States Attorney for four years during the Carter administration, and I was cochair of Governor Ryan's Commission on Capital Punishment. I am now chair of the Capital Punishment Reform Study Committee. [LB179]

SENATOR ASHFORD Just briefly, we always get admonished for not talking up here. [LB179]

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THOMAS SULLIVAN: All right. I'm sorry. [LB179]

SENATOR ASHFORD No, that's fine. We're usually the culprits, so if you would just speak into the mike. [LB179]

THOMAS SULLIVAN: And that's a committee that's been formed by the General Assembly in Illinois to study the effect of the reforms. As a private citizen and not on behalf of any organization, I became interested in the question of recording custodial interrogations as a result of my work on the governor's commission. And I took it upon myself to try to find out what the experience has been of police officers who have recorded interrogations. I started, knowing that in Alaska and Minnesota, the Supreme Courts had, many years ago, required the recording statewide, of custodial interrogations in a felony in one of the states, and misdemeanors. And that I started with a list of eight. I am up to over 500 in every state in the Union, and including 12 police departments and eight sheriff's departments and the State Patrol in Nebraska. I have, every time we talk to a police officer, we ask them...we write a memo and I mail it to them and ask them to respond that I got it right. In my office I have a set of three-ring binders about as big as this table with those memos in it, and this is going to sound like an exaggeration, but it's not. There is not a single one of those over 500 men and women, because they're experienced police officers, who have said they would go back to nonrecording interrogations. This is not a defense bill, believe me. This is a law enforcement bill. [LB179]

SENATOR ASHFORD: By the way, Mr. Sullivan, you fall under the rule of coming here from longer than 300 miles away, so you get an extra minute. [LB179]

THOMAS SULLIVAN: Thanks. [LB179]

SENATOR ASHFORD: Or two. Or two. [LB179]

THOMAS SULLIVAN: All right. [LB179]

SENATOR ASHFORD: Okay. [LB179]

THOMAS SULLIVAN: This is a law enforcement bill. The major...the irony is that policemen oppose it. It's the ghost under the bed opposition. The opposition comes basically from policemen who have not recorded. The support comes from those who have. Their own peers will tell them that it's good. Now, they also say, well, we'll do it and it's a great idea, but we don't want it shoved down our throats. That's a different argument. That's a matter of judgment. But if you want to get uniformity throughout the state, you want to provide proper exceptions, you want to provide and make sure this is done, which is should be done in every case, and you want to provide the proper

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funding for this, it should be done by statute. And I think it unfortunate that the police and sheriffs oppose this bill, which is basically in their own interest. I would like to read you from something that was said to me by a sergeant in the Lancaster County Sheriff's Office. Recordings provide the police with huge benefits. They protect officers from allegations of improper conduct and demonstrate to judges and juries that officers did not threaten or coerce suspects. They show whether the suspect appeared nervous or fidgety. They serve as a great evidence. They are a useful teaching tool. The sheriff's office has shown recordings by skilled officers to train officers in good interrogation techniques. And then perhaps the most important thing, given the number of uniforms I see in back, veteran police officers often oppose changes in the way investigations are conducted, but embrace and enjoy the new procedures when they become accustomed to them. I've also got other quotes that I won't bother reading to you because of the time. In Illinois, we require recordings in homicide cases. Bob Haida, the state's attorney from St. Clair County, one of the high crime areas in Illinois, testified in front of my committee last November. We had a public hearing. St. Clair County started a videotape interrogation process before the reform package was passed. I have to tell you that initially law enforcement was not totally on board. They perceived it as intrusive into their decision making. We went through much training. Certainly having the statute that codified the reforms put in place, made my case easier. It has been so overwhelmingly successful that most of the police departments in my jurisdiction now videotape interrogations in almost every felony investigation. The police law enforcement realize it's better for them. It protects them from false accusations of physical or mental coercion. It's a better end product. Many of the issues that were foundations for some of the exoneration cases are gone. Most law enforcement in St. Clair County has responded very positively to this and it's working for us. I could repeat 500...in fact, I have said... [LB179]

SENATOR ASHFORD: This exception doesn't go that far. (Laughter) The 300-mile one. [LB179]

THOMAS SULLIVAN: No. In fact, Senator, when you listen...when I call the police departments, at 500 it gets boring, because it's the same thing over and over. We love it, we love it, we love it, it's great for us. It's a law enforcement bill. And I would like to point out that there are five states that now have such statutes. It's moving throughout the country. Four courts have required it, either directly or indirectly, and I think the statute can not only provide it...it needs to provide funding for equipment, for the proper soundproof rooms, training, transcribing, and storage. This is not a free thing. But the savings, at least in Illinois where we paid over \$100 million in damages for wrongful convictions, that's gone. The officers sitting around waiting to testify and getting beat up on cross examination, that's gone. Motions to suppress confessions, that's gone. Rogue officers, I'm a police fan. Most officers do not coerce or lie. That's why I undertook this. And they got, those rogue officers, have to go out on the street with a gun. They can't be detectives anymore. I have some written material I'd like to submit to you, and I will

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give a copy to the whoever is an opponent because I'd...and I've sent this material to every police department in Nebraska to whom I've spoken, which is about 25 of them, so they probably already have my writings on the subject. But I do have a copy for them here. [LB179]

SENATOR ASHFORD: Thank you, Mr. Sullivan. Thanks for coming. Any questions?
Senator Pirsch. [LB179]

SENATOR PIRSCH: Well, thanks for coming here today. You had...I'm sorry, could you tell me your name one more time? [LB179]

THOMAS SULLIVAN: Thomas Sullivan. [LB179]

SENATOR PIRSCH: Mr. Sullivan. And you said that this was currently in place now in five states that have such statutes, correct? [LB179]

THOMAS SULLIVAN: Yes. [LB179]

SENATOR PIRSCH: Has it been successful in all five of those states then? [LB179]

THOMAS SULLIVAN: Well, the states are Illinois, Maine, New Mexico, Wisconsin, and the District of Columbia. They are all relatively new. Illinois took it...we started recording in homicides in July of '05, so there's not a lot of evidence. But I do have a statement from Wisconsin that I brought with me, the prosecutor there, lauding the system. We have, in my committee in Illinois, we have talked to many of the prosecutors and police there, and they like it in Illinois. And I think you'll find the same thing in the other states. In Alaska, Massachusetts, Minnesota, and New Jersey, court orders have required it. And in Minnesota and Alaska, they've been doing it for over 15 years, and I've talked to many officers there--many officers. [LB179]

SENATOR PIRSCH: I'm sorry. And those...you mentioned four other states? Alabama, Massachusetts... [LB179]

THOMAS SULLIVAN: No. Alaska,... [LB179]

SENATOR PIRSCH: Oh, Alaska. [LB179]

THOMAS SULLIVAN: ...Massachusetts, Minnesota, and New Jersey. [LB179]

SENATOR PIRSCH: And what's different about those states that...? [LB179]

THOMAS SULLIVAN: The court ordered it. It's court-ordered rather than statutory.
[LB179]

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SENATOR PIRSCH: Okay. It's statutory in the five you mentioned before, right? [LB179]

THOMAS SULLIVAN: Yes. [LB179]

SENATOR PIRSCH: And, now, you had said that your experience in Illinois, though, was overwhelmingly successful, correct? [LB179]

THOMAS SULLIVAN: Yes, so far it's been good. [LB179]

SENATOR PIRSCH: And the statute in Illinois and in these other states, are they the same type of statute that's in question here today in Nebraska? [LB179]

THOMAS SULLIVAN: In general, but they vary from state to state. [LB179]

SENATOR PIRSCH: Is it true to say that in a majority of these states that you mentioned, there would not be an exclusionary feature, but rather the judge would allow for, in open court, that evidence to go before the jury so they would be informed that there was no tape recording? So that the jury would be aware of that but the evidence wouldn't be...the admission wouldn't be excluded altogether? [LB179]

THOMAS SULLIVAN: That is not correct. [LB179]

SENATOR PIRSCH: That is not correct. [LB179]

THOMAS SULLIVAN: And just for your information, I have been in touch with the uniform law commissioners...I don't know if you're familiar with them, but they try to get uniform laws throughout the United States. And I've asked them if they would put together a uniform law on this subject. And one of the things I did to help them was to summarize the laws and the cases, these nine jurisdictions. It takes time for me to go through this and I don't want to take up...I don't want to overburden you. [LB179]

SENATOR PIRSCH: You're not overburdening me. [LB179]

THOMAS SULLIVAN: I can give you this and it summarizes it. It's different from state to state. In Illinois there's a presumption of inadmissibility. In New Mexico, they don't have any statement about failure to comply because the New Mexico Supreme Court has said, only we can determine admissibility of evidence. In Maine, it was merely a direction to the Maine's chiefs of police to start recording; the statute said that. In Wisconsin, I think it's got a presumption of inadmissibility. And in the District of Columbia I think it's also a presumption or there's some evidentiary consequence to failure to record. But they all have exceptions and that's one of the beauties of doing this through legislation. In one of the articles I'll give you it's got the Sullivan suggested bill.

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It's got so many exceptions that they eat up the rule. And I'll tell you why I do that. It's my experience that if you can get the police to start recording, you can give them any exception they want. If you don't feel like recording, don't do it. Once they start recording, they realize how great it is for law enforcement. The real detriment falls on the indigent who waives his Miranda rights and confesses. You get rightful confessions and you get rid of wrongful confessions and you get rid of big judgments. I don't know if it's happened in Nebraska for police being accused of wrongful conduct, sometimes falsely accused. But it's a swearing match in court because you don't have any recording of it. [LB179]

SENATOR ASHFORD: Thank you, Mr. Sullivan. Senator Pirsch, any further questions? [LB179]

SENATOR PIRSCH: No, that's fine. [LB179]

SENATOR MCGILL: I have one. [LB179]

SENATOR ASHFORD: Yes, Senator McGill. [LB179]

SENATOR MCGILL: I was just wondering if you could speak to the effectiveness of audio versus video recordings of these. [LB179]

THOMAS SULLIVAN: Yes. Video is obviously better. If you watch football games or tennis matches, it's the instant replay. Video is much better. You get to see the expressions in my face, whether I'm equivocating, whether I'm looking down. However, I am opposed to a statute that requires video because in many...and I've been all over the country talking about this and writing, and I've talked to many police officers...many jurisdictions are dinky little rural places that don't have any crime. And to require them to put video equipment in for the two or three felonies that are going to happen every year is just a waste of money. They can do it...and somebody said, you can go to Radio Shack for \$30 and get the audio equipment. So video is better but I would not mandate video. I might...if I were doing it, I might have a limit having to do with population or something or like that, but I would not make it statewide. [LB179]

SENATOR MCGILL: Thank you. [LB179]

THOMAS SULLIVAN: And this doesn't make it statewide. [LB179]

SENATOR ASHFORD: Thank you, Senator McGill. Senator Pirsch. [LB179]

SENATOR PIRSCH: I guess I would just ask, if you do have a state-by-state breakdown of the different laws that are in place that you mentioned today, I would certainly appreciate having that. [LB179]

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THOMAS SULLIVAN: Right. What I am going to give you is my breakdown. I'm going to give you my list of 500 jurisdictions--more than 500--with footnotes into all the statutes, and the statutes are summarized here. And if you like, I can send you the actual statutes there. My secretary has it on her e-mail. [LB179]

SENATOR PIRSCH If you could just give me...you had mentioned the Illinois, Maine, New Mexico, Wisconsin, and D.C., and then the other four states. [LB179]

THOMAS SULLIVAN: All right. And then I'll give you... [LB179]

SENATOR PIRSCH If you could just give me those, that's all I was... [LB179]

THOMAS SULLIVAN: ...a couple other writings I have here, including an article in The Chief of Police magazine. [LB179]

SENATOR PIRSCH Okay. Thanks so much. Appreciate it. [LB179]

THOMAS SULLIVAN: And who do I give this to? [LB179]

SENATOR ASHFORD Kristin (phonetic) there will... [LB179]

THOMAS SULLIVAN: And I would like to offer this same material to whoever is in charge of the opposition. [LB179]

SENATOR ASHFORD: I am sure they would...I would assume they might be willing to look at it. (Laugh) I don't want to...it's up to the opposition, but... [LB179]

THOMAS SULLIVAN: Oh, I think a lot of them already have it because I mail it to everybody I've talked to. [LB179]

SENATOR ASHFORD: Okay. And we can make it available to them through the committee, too, so thanks. Now, we're part of a project Innocence Project or...? [LB179]

THOMAS SULLIVAN: No. I am not affiliated with Project Innocence. [LB179]

SENATOR ASHFORD In Illinois at all, or...? [LB179]

THOMAS SULLIVAN: No. I am affiliated with that organization. I've done this as a private citizen. [LB179]

SENATOR ASHFORD: Well, that's an interesting thing. Thank you. Any other proponents? Good afternoon. Just give us your name and spell your last name if you

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would for the... [LB179]

NICK SAMPSON: Nick Sampson, S-a-m-p-s-o-n. Like I say, my name is Nick Sampson. I was one of the original people charged with the killings of Wayne and Sharmon Stock from Murdock, Nebraska. On Easter Sunday I'd like to tell you what happened. Pretty much...let me see, you know, I come here to represent via my attorney, Jerry Soucie, for this bill. On April 26, the state and local law enforcement stood outside the Cass County Courthouse and announced that the murders of Wayne and Sharmon Stock had been solved with my arrest, and my arrest and the cousin of the...excuse me...and the arrest of my cousin, Matt Livers. For five months and ten days later, the charges against me were dismissed. They were not dismissed based on some legal technicality. I did not commit these crimes, did I not assist anyone else to commit these murder. I had absolutely no direct or indirect knowledge of regarding who killed Wayne and Sharmon Stock or why. The nightmare began on April 25 when Cass County sheriff's deputies and the Nebraska State Patrol investigators made a decision to arrest me without any evidence except the statement of my cousin, Matthew Livers. These investigators made no attempt to, first, verify any of the things that were said by my cousin, Matt Livers. For an example, when Matt said that they had discussed...that we had discussed the murders over our cell phones the Thursday and Friday before Easter. And yet they had checked the phone records and they found that we had absolutely no phone calls or other conversations for over four months. And they didn't even check my alibi with my two essential witnesses, my fiance, Lori Muskat, and my roommate Ashley Hageman (phonetic) who both told the police that I was home in bed, and I lived in Palmyra, Nebraska, which was over 20 miles away from Murdock where the murders were committed. I was arrested and charged with murder before the police had conducted any forensic ballistic testing of my shotgun, my car, my clothing, or my shoes, or anything. All of these evidence that was later tested by the crime lab after my...excluded me as a suspect. I have many serious concerns about how this investigation was conducted, not only regarding whether the evidence may have been accidentally or intentionally tampered with by the police, but how the interrogation was conducted on Matt Livers and many others. My cousin was not a strong individual. When you read the transcripts of his interrogation, it was clear that he was threatened and pursued into coming up with something to tell the police simply to get them off his back. However, that is not the information contained in the police reports. The attorney appointed to represent me was able to go through Matt's statement, line by line, to show where he had lied to (inaudible) and promised things as the result of those police tactics. Matt repeated and clearly made false statements regarding his and my involvement. Without that recorded statement and the help of a wonderful lady in New York who broke the case by a connection to the guilty parties from Wisconsin I would be standing trial for my life. Please pass this bill so other people don't have to go through what I've been through. [LB179]

SENATOR ASHFORD: Any questions? Thank you, Mr. Sampson. Any questions of Mr.

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Sampson? [LB179]

NICK SAMPSON: Thank you. [LB179]

JERRY SOUCIE: (Exhibits 10 and 11) Mr. Chairman and members of the committee, my name is Jerry Soucie. I'm an attorney with the Commission on Public Advocacy. I'm here in support of this bill and I think it's very important for a number of reasons. And as some of the earlier speakers said, this isn't just a defense bill; this is also a prosecution bill. But in terms of the defense side, my experience shows that there have been a number of cases in which the statements were actually recorded. But had those statements not been recorded, we would not have been able to have determined that it was a false confession or that there had been violations, significant violations of the person's constitutional rights. I have some materials that I want to pass out, one of which is a copy of a suppression order that was issued in the Maxine Betts case. And that suppression order lays out the factual basis for that order. There is no remarkable law that was made by the district judge in that particular case, but he went through and laid out the hours and hours of interrogation that took place, the false statements, the lies that were made by the officers, the pressures that were used, the fact that when she ultimately confessed to that particular case, it was in the context of something that she had dreamed a few days before she was questioned. And what happened was, by being able to actually see that tape and hear that tape, the judge concluded that it was just totally unreliable and wasn't something that should be in a court of law. Now, that lady was able to go back to her daughter and didn't have to stand trial for the murder of Mr. Quador. We were able to win that case before we even had to go to trial. But I think that case, had we actually gone to trial and had it not been suppressed, no jury would have convicted her of killing that man when her confession had come to her in a dream, didn't fit the facts of the case, and involved a gun that was absolutely excluded as having been the murder weapon. The second case, the more recent one, the one that is the one I talked to you earlier about, was the Sampson case. And again, I want to hand out some materials to show you the problems when you rely on police officers who do police reports versus what the transcript actually shows. And what I'm passing out now is a series of police reports. The first one was an interview that was done in a patrol car. It's a summary of what the officer said. But the significant one is the second interview where he claims in his statement, in his police report, what was said during the first interview. And in fact, none of that is contained in the first interview that he's referring to in the second interview. More importantly, he summarizes this interrogation over two days and about four pages, and in fact when we do the transcript it's over 300 pages, and left out numerous significant and important matters regarding what Matt Livers said that were proven to be demonstrably false. Another case we had involved Maurice Miley, where Maurice Miley, on 19 different occasions during his interrogation invoked his right to remain silent. That police report contained none of that. Now, lastly, on a prosecution side, I had a case involving Ivan Henk where he gave a recorded statement. That recorded statement made a trial unnecessary. That case was disposed

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of with a plea. In other cases that we've had, one involved Ray Mata, one involved a Mr. Jones, while they weren't confessions, those recorded confessions, I think played a significant part in those individuals being convicted. But this is a bill about fairness. This is not a bill about protecting the defendants. It's a bill about getting to a just and fair result. Are there any questions? [LB179]

SENATOR ASHFORD: Any questions of Jerry? Senator Pirsch. [LB179]

SENATOR PIRSCH: You referred to the first case, a dream confession? Is that correct? [LB179]

JERRY SOUCIE: I'm sorry? [LB179]

SENATOR PIRSCH: You had referred to a case of Maxine Betts, is that correct? [LB179]

JERRY SOUCIE: Yes, Maxine Betts. [LB179]

SENATOR PIRSCH: And she had...could you just tell me briefly? She had been interviewed on audio videotape or videotape? [LB179]

JERRY SOUCIE: That case happened to have been on videotape. [LB179]

SENATOR PIRSCH: What that audio videotape then viewed by the judge? [LB179]

JERRY SOUCIE: Yes, it was. In fact, I used it quite extensively during the suppression hearing. [LB179]

SENATOR PIRSCH: What was it about that particular case then that the judge said made her feel uncomfortable with (inaudible). [LB179]

JERRY SOUCIE: It was the fact that she...she said a number of things in there that are indicative of false confession. One, an individual who will falsely confess will typically be tired, there will be stress, they had other matters going in their life. In her particular case, she had a sick kid. It took her awhile to get there. She told them straight up front she was very tired. The second thing that's involved in a false confession will be the length of the interrogation. In this particular case I want to think...I think it's along three and a half to four hours before they get anything remotely resembling an admission. The third thing that will happen will be expressions of confusion; they're not understanding. It's like how could I have done this? That was all present in the interrogation. They will be confronted with irrefutable evidence: Look, we've got your fingerprints, we've got witnesses who saw you go to the crime. That happened in the Betts case. And then when the confession actually takes place in a false confession, it

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becomes grudgingly: Well, this must have happened. It will be equivocal. A true confession will have the same kind of pressures put on the individual as were present in this case, but when they finally break, when they finally confess, the cop can't get them to shut up, because the pressure, the trigger for releasing the confession will be the absolving themselves of moral guilty and they will provide all...I killed him because he was beating me, he was belting my daughter, and then after I did this I threw the murder weapon and the such and such. They'll give you all those details. You can't shut them up. And a true confession, the individual will start giving you details that the cops didn't know before. Now, that didn't happen in the Matt Livers interrogation, it didn't happen in the Maxine Betts case, as well. [LB179]

SENATOR PIRSCH: And then with respect to Mr. Sampson's case, then you're saying that that's a similar scenario, that it was a false (inaudible). [LB179]

JERRY SOUCIE: It was a similar scenario in that I didn't represent Mr. Livers. I would have loved to but I had Mr. Sampson, and Mr. Sampson was a situation in which they were using Mr. Livers against Mr. Sampson. But had I then had to cross examine Mr. Livers, it was absolutely essential that I have a recorded transcript where I can through, line by line, what he said. [LB179]

SENATOR PIRSCH: And did you...you did have one in that case (inaudible)? [LB179]

JERRY SOUCIE: We were walked right up to it and then they dismissed. [LB179]

SENATOR PIRSCH: I'm sorry? [LB179]

JERRY SOUCIE: As soon as they saw that we were going to have to go to trial, they dismissed against Mr. Sampson. The other sequence that happened was they then end up with confessions from people up in Wisconsin, and the physical evidence fit the Wisconsin people; it didn't fit the Nebraska people. [LB179]

SENATOR PIRSCH: Thank you. [LB179]

SENATOR ASHFORD: Thanks, Jerry. [LB179]

JERRY SOUCIE: Thank you. [LB179]

SENATOR ASHFORD: Any further proponents? How many opponents do we have on this bill? Okay. [LB179]

BILL MUELLER: Mr. Chairman and members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB179. Among our members in the bar, are prosecutors as well as criminal

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defense lawyers. When the bar looked at this bill this year, and when we looked at LB112 back in 2005, to say that we had a spirited debate and discussion about what position, if any, the bar would take, would be an understatement. Both criminal defense lawyers and prosecutors weighed in on the discussion, and at the end of both the discussion in 2005 and the discussion in 2007, the Bar Association took the position of supporting the requirement that interrogations be recorded. Courts have long recognized problems that occur when a statement has not been recorded. In a 2004 Massachusetts Supreme Court case, the court wrote in its opinion, as in all too often the case, the lack of any recording has resulted in the expenditure of significant judicial resources, all in an attempt to reconstruct what transpired during several hours of interrogation conducted several years ago and to perform an analysis of the constitutional ramifications of that incomplete reconstruction. Given the fine line between proper and improper interrogation techniques, the ability to reproduce the exact statements made during an interrogation is of the utmost benefit. The Nebraska State Bar Association believes that LB179 will improve the administration of justice in criminal cases where statement has been obtained and will be used against the accused. The bar believes that to protect the constitution and the constitutional rights of the accused, that recording a statement is necessary and should be done, and therefore the bar supports LB179. I'd be happy to answer any questions the committee may have. [LB179]

SENATOR ASHFORD: Any questions of Bill? Thanks, Bill. [LB179]

BILL MUELLER: Thank you. [LB179]

SENATOR ASHFORD: Opponents? [LB179]

TOM CASADY: (Exhibit 12) Good afternoon, Senators. My name is Tom Casady. I'm the police chief here in Lincoln. I'm from Oklahoma. [LB179]

SENATOR ASHFORD: Excuse the reference. [LB179]

TOM CASADY: That's all right. We're used to it. [LB179]

SENATOR ASHFORD: It wasn't a reflection on the state. It was... [LB179]

TOM CASADY: Just its residents. (Laughter) I'm representing the city of Lincoln. We oppose this bill. Two simple words: unfunded mandate. Our opposition is based on the fact that we don't have the money to implement it, at least as it existed this morning, and we don't expect that the Legislature will provide the money to implement it. If there was a bit fat A bill that would satisfy my needs attached to this, Mr. Mowbray could buy me a beer and I would be here testifying in support of it. But there's not and there's not going to be. [LB179]

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SENATOR ASHFORD: How do you know? [LB179]

TOM CASADY: I know the Legislature. I've been at this for 33 years. [LB179]

SENATOR ASHFORD: Okay. I agree; you have been. [LB179]

TOM CASADY: Last year, my department arrested 28,523 people. Actually that's the number of arrests; not the number of people. Some people got arrested more than once. Everything from urinating in public to murder. About 30 percent of those people went to jail, but for thousands of those people we conducted a custodial interrogation as defined in this bill. And if this bill were to pass, we would be required to record all of those custodial interviews. It's unclear to me and I think there's a problem with the definition of a facility under the control of law enforcement in this bill. I think and I worry that we might even have to record interviews in places that are only temporarily under our control, such as the back room at Target, which is temporarily under our control. It's not clear in the definition unless it's taken care of with an amendment. Regardless, it's clear that there's going to be a lot more transcripts, a lot more recordings required if this bill passes. And transcribing those recordings is where my primary concern is. Mr. Sullivan really pointed it out for me. He said it's not free. You need soundproof rooms; you need recording equipment; you need storage; and you need transcription. He's right, absolutely. Those things are not free. They're very expensive. I'm looking at a digital evidence system just to serve up the digital audio from our existing recordings, and it's going to be in the excess of \$120,000 for the Lincoln Police Department. Digital recorders for my officers would add another \$20,000 of that; transcribers for my records unit, another \$20,000, just to make the leap from analog tape to digital. But the real cost is in the transcribing of statements, which is very difficult tedious work. Get on the Web. Google it: Police transcripts. You'll find plenty of companies that will do this for you for a very hefty fee. I estimate that it's going to double the amount of transcription that we do easily, and that would cost us well in excess of \$100,000, even if we had all the needed equipment to record each and every interview we do that's a custodial interview. We can't afford it. I know the bill doesn't require transcripts. But you heard Mr. Soucie say how important it is to have what the transcript actually shows. You notice that he handed out transcripts and you will also notice that he said it was absolutely essential that I had a transcript. Prosecutors, defense attorneys, both are going to require transcripts to proceed with cases, and we'll be hung with the cost of producing those. So show me the money or don't pass the bill. Thank you. [LB179]

SENATOR ASHFORD: Thanks, Chief. Senator McGill. [LB179]

SENATOR MCGILL: What kind of statements do you currently record? [LB179]

TOM CASADY: Pretty much any high grade felony that we do at headquarters or at one

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of our substations where we have recording equipment, and that's three places out of our ten facilities. We would do a taped or most likely a videoed interview, and transcribe those. So that's a real small subset of that 28,523 arrests. [LB179]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB179]

SENATOR LATHROP: Yes. It's Chief Casady? [LB179]

TOM CASADY: Yes. [LB179]

SENATOR LATHROP: I've met you before. But you've seen this bill before, haven't you? [LB179]

TOM CASADY: Yes, I have. [LB179]

SENATOR LATHROP: In one form or another. Have you been down here to oppose it every single time? [LB179]

TOM CASADY: I was down here last year to oppose...no, I think it was in 2005, it was LB112, and I was down here to oppose it. In fact, my testimony is virtually identical. I changed the numbers, but other than that it's virtually identical. [LB179]

SENATOR LATHROP: So you came down here to read what you read the last time in opposition to this bill today. [LB179]

TOM CASADY: Well, I didn't read it, but, yes, it's the same basic testimony. [LB179]

SENATOR LATHROP: Summarized it. [LB179]

TOM CASADY: Yes. [LB179]

SENATOR LATHROP: Okay. And today your argument is that you don't have the money to do the recordings? Is that true... [LB179]

TOM CASADY: I don't have the money to do the transcribing, primarily, or the recording of the number of transcripts that I'm afraid will be required if the bill passes. [LB179]

SENATOR LATHROP: Okay. Let's talk about that. [LB179]

TOM CASADY: Okay. [LB179]

SENATOR LATHROP: You're doing recordings right now of serious offenses? Is that the case? [LB179]

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CASADY: No. High grade felonies, like sexual assaults, armed robberies, murders, of course, would almost universally be recorded at our department. [LB179]

SENATOR LATHROP: Would you regard those are serious offenses? [LB179]

TOM CASADY: Yes. [LB179]

SENATOR LATHROP: Okay. Then you're recording statements taken in interrogations involving serious offenses. Is that true? [LB179]

TOM CASADY: Not all serious offenses, no. [LB179]

SENATOR LATHROP: So, that may illustrate the problem that we're having and the reason the bill is here. You're not recording all of the interrogations even with serious offenses, just some of them. Is that the case? [LB179]

TOM CASADY: It depends on how you define a serious offense. If you define a serious offense as something that it would be a felony, then, no, we are not, definitely not. [LB179]

SENATOR LATHROP: No. We already decided what a serious offense was. My question to you was whether or not you're recording all interrogations involving serious offenses or not? [LB179]

TOM CASADY: How did we decide what serious offenses were, Senator? I must have missed it. [LB179]

SENATOR LATHROP: Do you think? [LB179]

TOM CASADY: Is it all felonies? [LB179]

SENATOR LATHROP: No. That's not what we were talking about. You called them what? What was your terminology? [LB179]

TOM CASADY: I think I said high-grade felonies. [LB179]

SENATOR LATHROP: Okay, let's use high-grade felonies. Tell me what a high-grade felony is. [LB179]

TOM CASADY: Oh, let's say a high-grade felony is a Class I or a Class II felony. That would work for me. [LB179]

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SENATOR LATHROP: All right. Felony assault. Crimes involving death. Sexual assault, kidnapping, robbery, drug offenses involving intent to deliver, strangulation, or terroristic threats. Would those be high-grade offense or high-grade felonies? [LB179]

TOM CASADY: You know, I would have to check the statute book. I think they all would be I's and II's except for the possession of a controlled substance with intent to deliver, which could be lower. [LB179]

SENATOR LATHROP: Okay. Of those offenses that I just recited, do you record your interrogations of each of those type of offenses? [LB179]

TOM CASADY: Pretty close. I can't guarantee you that every, a custodial interrogation, every one of those cases would be recorded, but pretty close. [LB179]

SENATOR LATHROP: So what you're telling me is, you're pretty close to right now doing a recording of each of these already. Yes? [LB179]

TOM CASADY: Pretty close. [LB179]

SENATOR LATHROP: Okay. So you must have the equipment to do it right now if you're already pretty close to doing all of them to start with. [LB179]

TOM CASADY: That's nowhere close to all the felony offenses, though, and it's nowhere close to all the offenses. [LB179]

SENATOR LATHROP: Have you seen the list of felonies that's in this bill? [LB179]

TOM CASADY: I'm holding the bill. I am assuming there's been some kind of an amendment proposed and I don't have that. [LB179]

SENATOR LATHROP: Okay. Well, I've just given you a list of crimes and you told me that you are in the case of your...when you're doing an investigation and doing an interrogation of these crimes from the list I just gave you, that you are recording them for the most part. Would that be true? [LB179]

TOM CASADY: Yes. [LB179]

SENATOR LATHROP: And would it...? If this became the rule that you had to record interrogations, custodial interrogations in a place of detention involving these crimes, we wouldn't be asking you to do anything more than you're already doing for the most part. [LB179]

TOM CASADY: Well, no, that's not true, because you've also broadened the place of

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detention quite a bit beyond the police substation and the police station. [LB179]

SENATOR LATHROP: Where are you doing them now? You said you have equipment in three different police stations? [LB179]

TOM CASADY: Yeah, I have three of my... [LB179]

SENATOR LATHROP And that when you... [LB179]

TOM CASADY ...ten facilities where I've got the kinds of equipment Mr. Sullivan testified about--the soundproof room and the recording equipment. [LB179]

SENATOR LATHROP: And that when you are doing your interrogation regarding these type of offenses, you must be taking them to one of these three places that have the equipment to record it. Is that true? [LB179]

TOM CASADY: Not necessarily, no. [LB179]

SENATOR LATHROP: Didn't you just tell us that almost all of the these interrogations involving these offenses are recorded? [LB179]

TOM CASADY Well, let me clarify that. If I told you that, then I probably answered incorrectly. When they're done at the police station, we are almost always recording interviews in those kinds of offenses. That may not be true of other places like the hospital emergency room, like Cornhusker Place Inc., our local detox center. And again, just to make it crystal clear, I don't think that this would be true at all on the drug offenses. [LB179]

SENATOR LATHROP: Are you taking statements in hospital emergency rooms with these kind of offenses? [LB179]

TOM CASADY: Yes. [LB179]

SENATOR LATHROP: Would you...you've given me an example of a drug rehab facility. Do you take statements regarding these kind of offenses at a drug rehab facility? [LB179]

TOM CASADY: I think I said Cornhusker Place, our detox center here in Lancaster County. [LB179]

SENATOR LATHROP: Okay. Is that a rehab center? Detox center. [LB179]

TOM CASADY: Yeah, it's a detox center. [LB179]

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SENATOR LATHROP: Would that be a place that's not practical to electronically record a statement, in your judgment? [LB179]

TOM CASADY No, I think it would be practical to record a statement there. [LB179]

SENATOR LATHROP: So, no hardship for you? [LB179]

TOM CASADY: Well, I would have to get the equipment. I would have to have the money to get the equipment. I would have to have a room constructed that has the soundproofing materials so that you could record well in there. Easily doable. A few thousand dollars would accomplish that. [LB179]

SENATOR LATHROP: I think that's all the questions I have for you [LB179]

TOM CASADY: Thank you. [LB179]

SENATOR ASHFORD: Thanks, Chief. Hello, Chief. A lot of chiefs in here. [LB179]

LARRY THOREN: (Exhibit 13) Senator and Chairman, senators of the Judiciary. Larry Thoren, T-h-o-r-e-n, chief of police, city of Hastings, testifying on behalf of the Police Chiefs Association of Nebraska in opposition. This bill requires...and I haven't seen the amendment...but it requires the...Senator Chambers, how are you? The original bill requires the recording of all custodial interrogations. It creates an unfunded mandate, and not to repeat the previous testimony, but the Kearney Police Department is outfitting four recording rooms at \$9,000 apiece. We recently had to transcribe a 45 minute interview. It took two weeks. And it's...two weeks, and that's not only the typist, the transcriber, but it's the officer going line by line, trying to verify that it's word for word, and sending it back for correction. It's very cumbersome; it's very time consuming. We usurp our resources. It applies the doubt as to the integrity of police officers. We hold above all else that police officers tell the truth. I appreciate my fellow Chicagoan testifying that police officers do the right thing and that this bill will verify that they do the right thing and treat people appropriately. But you have a very sophisticated recording system here and you had to make adjustments so that you could hear Mr. Sullivan testifying. This is far more extensive than we will have in any police station or recording room. It makes this mandatory by law. And the concern is and my concern is always unintended consequences because I've seen bills and laws come back, and cause more problems and create problems that weren't intended. What questions can I answer for you? [LB179]

SENATOR ASHFORD: Any questions? Yes, Senator McDonald. [LB179]

SENATOR McDONALD: Do recordings have to be done in a soundproof room with all

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the technology? This is being recorded and I don't know that it has all the technology that's up-to-date? [LB179]

LARRY THOREN: I know there's a lot of noises, especially sitting in the audience. It's hard to hear especially when you're radiators are running. But if you take a \$6 recorder and you try and listen to it. And, you know, previously when Chief Casady testified, he had a transcript that was so thick, and he said it was done in a very well soundproofed room, and there was hundreds of inaudibles in there. This isn't going to solve all the problems as to recording and what was said. [LB179]

SENATOR McDONALD: But doesn't it just have to be transcribed and then evaluated on the reading material? Isn't that what's brought to court is what was said, not basically whether you could hear it, everybody in the room could hear, it was just the transcriber could get it from the recording. [LB179]

LARRY THOREN: The transcriber needs to get it from the recording, then the officer needs to review it and compare it with the recording itself. It would be very cumbersome and it would be very...it would usurp our resources. I, you know, it's...if you've ever tried to transcribe something, even something that you've done yourself,... [LB179]

SENATOR McDONALD: And I have. I have done that before. And you run it back and forth and back and forth until you get it exactly. [LB179]

LARRY THOREN: Right. [LB179]

SENATOR McDONALD: Yeah, it does take time. [LB179]

LARRY THOREN: Yes. [LB179]

SENATOR McDONALD: But it can easily be done, and mine was just a little recorder. I mean, it wasn't anything fancy, but I got it and I'm not that smart. I just got it. [LB179]

LARRY THOREN: And currently I don't have personnel to do that. This would become a job skill. And cities are under lids. And we're working on shoestrings and surgical threads now. I don't know where we would find the money if we had to hire a transcriber. We would have to either to do that or find money to outsource the process. [LB179]

SENATOR ASHFORD: Thank you, Senator McDonald. No, I'm here. No, (laugh) I was reading again. Senator Chambers. [LB179]

SENATOR CHAMBERS: Chief Thoren, it's good to see you again. [LB179]

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LARRY THOREN: It's always good to see you, sir. [LB179]

SENATOR CHAMBERS: One of these days we're going to be on the same side of an issue. [LB179]

LARRY THOREN: Probably this afternoon. [LB179]

SENATOR CHAMBERS: Oh, okay. Well, on this particular bill, in Section 7 of the amendment, which you said you didn't see yet, it says the existence of...and maybe this has been covered, but I'll just do it so I can get to my question. The existence of inaudible portions of an electronic recording which are not the result of bad faith by a law enforcement officer to produce an inaudible result, standing alone, do not render a statement inadmissible. Would you agree that we don't live in a perfect world? [LB179]

LARRY THOREN: Oh, absolutely. [LB179]

SENATOR CHAMBERS: With discretion allowed to judges, as is the case now, are you confident that they can review evidence which is presented to them to at least determine the nature of that evidence and the likely validity of it? And these are not trick questions. I'm leading up to something else but I want to lay the groundwork. Well, let me ask you differently. Do you think the people who serve as judges are people of at least ordinary intelligence? [LB179]

LARRY THOREN: Yes. [LB179]

SENATOR CHAMBERS: You paused a long time, Chief. (Laughter) [LB179]

LARRY THOREN: I was trying to formulate an answer for your first one, because police officers don't always agree with what judges decide. [LB179]

SENATOR CHAMBERS: Okay, right. Now... [LB179]

LARRY THOREN: Nor do defense attorneys or prosecutors. [LB179]

SENATOR CHAMBERS: Now, I know you to be a law abiding citizen but I'm going to ask you for the record. Chief Thoren, do you deem yourself to be a law abiding citizen? [LB179]

LARRY THOREN: Yes, I do. [LB179]

SENATOR CHAMBERS: And you are a sworn officer of the law? [LB179]

LARRY THOREN: That's correct. [LB179]

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SENATOR CHAMBERS: And if the law was enacted by the Legislature and placed a responsibility or duty upon you, would you carry it out or would you not? [LB179]

LARRY THOREN: Sir, we follow the law. [LB179]

SENATOR CHAMBERS: So if this bill were enacted into law, you would carry it out. [LB179]

LARRY THOREN: We would do the best we can to fulfill the law; yes, to fulfill our obligations. [LB179]

SENATOR CHAMBERS: Thank you. That's all that I have. I don't know whether I'm a thorn on your side or in your side, but that's all that I have today. [LB179]

LARRY THOREN: I always thought that was my label, sir. (Laugh) [LB179]

SENATOR ASHFORD: Thanks, Chief. Any other questions? Thank you. [LB179]

LARRY THOREN: Thank you. [LB179]

SENATOR ASHFORD: Next witness. Next opponent. [LB179]

LANCE WEBSTER: Senator Ashford, members of the Judiciary Committee, my name is Lance Webster. I'm the chief of police in Wayne, Nebraska, in the beautiful northeast part of the state where it's really cold right now. And like Chief Casady, I'm originally from Oklahoma, so don't hold that against me, please. I just want to go on record as saying the Wayne Police Department... [LB179]

SENATOR ASHFORD: That was a bad statement, wasn't it. (Laughter) [LB179]

LANCE WEBSTER: The Wayne Police Department videotapes or audio tapes almost all of our confessions...or our interrogations, I should say--hopefully confessions--and things of that nature. But I'm not here to say that this is a bad idea to videotape or audio tape interrogations or interviews with people. What I'm here to say is I think it's onerous to call it a law. We should make this a policy. This should be done through the County Attorneys Association, through the prosecutor's office, encouraging departments to do this. The cost has been raised. Transcription is a huge, huge cost for us if we have to do that. At this point we don't have to, but as Chief Thoren said, unintended consequences can sometimes come up. And there's one question that I have, an unintended consequence. In my physical structure we have a booking room and an interview room, and they're separated on different floors. So if I'm escorting a prisoner who's already been talked to in the booking room, to the interview room, and he confesses en route, I

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don't have audio equipment in that venue, if you will. So my question is, is that going to be considered as part of this bill, and I believe the intent of the Judiciary Committee and Senator Lathrop is that it would be. But my question is, how would that then be interpreted two to three years down the road where we have no control over that? The final thing is, one of the unintended consequences of in-car video...I mean, everybody thought that was a great idea and we won a lot of DWI cases because of the in-car video...but one of the unintended consequences is if the video malfunctions or if the tape runs out or the mike pack batteries were low, then the question of our officers' credibility is called into effect. And I can see that also happening in this case in the future. Thank you. [LB179]

SENATOR ASHFORD: Thank you. Thank you very much. Yes, Senator McGill. [LB179]

SENATOR MCGILL: How many cases...I don't know, have you seen the amendment that lists the specific felonies? [LB179]

LANCE WEBSTER: No, I have not. I have not seen that, no. [LB179]

SENATOR MCGILL: As far as the more high level felonies that are now included, the felony assault, crimes involving death, sexual assault, kidnapping, robbery. How many do you think you have in the average years? I mean, because you guys are talking about the cost of transcribing. But how many cases...? [LB179]

LANCE WEBSTER: Of those cases, we don't have very many in Wayne because we have a very low crime rate. But we record almost every interview, custodial interview we do, so we go beyond the scope of what this law would be. And as we do that, as this comes up, we're being asked now to provide transcripts and things like that, and it's always about who pays for it. If the defense attorneys wants to, do they pay for it? If the prosecutor's office wants it, do they pay for it? And that's why, again, I say, I'm not sure this should be a state law as much as a policy or direction through the organizations. As a police chief, I certainly want my people to do this but I also don't want something excluded because something beyond our control happened. And I understand the amendments have been made to make that less likely but I still have a concern about that. [LB179]

SENATOR ASHFORD: Senator Lathrop had his hand up. [LB179]

SENATOR LATHROP: Okay. You said that you're doing audio tapes of almost all your custodial interrogations? [LB179]

LANCE WEBSTER: Yes. [LB179]

SENATOR LATHROP: Do you have special equipment for that or...? [LB179]

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LANCE WEBSTER: We do. [LB179]

SENATOR LATHROP: Do you? Okay. And did the city of Wayne pay for that itself? [LB179]

LANCE WEBSTER: Yes, they did. [LB179]

SENATOR LATHROP: Okay. [LB179]

LANCE WEBSTER: If I might add, we are upgrading that because of storage concerns with them because we VCR tape everything. We're running out of storage. [LB179]

SENATOR LATHROP: Are you doing them by video or by audio? [LB179]

LANCE WEBSTER: Both. [LB179]

SENATOR LATHROP: Really. And now you're about to update it? [LB179]

LANCE WEBSTER: Yes. [LB179]

SENATOR LATHROP: And the city of Wayne is paying for that itself? [LB179]

LANCE WEBSTER: Unless you'd like to. (Laughter) [LB179]

SENATOR LATHROP: Well, apparently we don't do that, I'm told. But... [LB179]

LANCE WEBSTER: If that's an offer, we'll certainly take you up on it. [LB179]

SENATOR LATHROP: Okay. But it's not that onerous. It's something that you've been able to do. [LB179]

LANCE WEBSTER: Right. It's something we've been able to do. I can see it being problematic for some of the smaller departments, much smaller than ours. [LB179]

SENATOR LATHROP: But at the same time, you probably have fewer of these...and let me give you the list. You probably have fewer of these: felony assaults, crimes involving death, sexual assault, kidnapping, robbery, drug offenses involving delivery or intent to deliver, strangulation, or terroristic threats. You probably don't have very many of those that go on in your community in a year, do you? [LB179]

LANCE WEBSTER: No, and we don't. And that points to one of the concerns that I have, is low volume, high risk. Because agencies, smaller agencies such as mine, have

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a low volume of these crimes, then we have a high risk of whether or not we follow the letter of the law every time. So training is an issue. But, again, you have to have people that used to using this equipment, and if it's a one or two times a year, those type of issues, maybe not for my department but for other agencies that may play in. And I would hate to see a statement excluded because of a simple they didn't understand how everything worked together. [LB179]

SENATOR LATHROP: A couple of things. It wouldn't be excluded because of a malfunction and it wouldn't necessarily be excluded; it could just be the subject of a jury instruction. [LB179]

LANCE WEBSTER: Okay. [LB179]

SENATOR LATHROP: Okay. That's all I have. [LB179]

SENATOR ASHFORD: Thank you. Senator Chambers. I'm sorry. Senator Chambers, I think was... [LB179]

SENATOR CHAMBERS: She can go...ladies first. [LB179]

SENATOR ASHFORD: Okay. [LB179]

SENATOR McDONALD: This was the handout given to us but I'm not sure if (inaudible). Did you ever read this, The Chief of Police? It's the National Association of Chiefs of Police. [LB179]

LANCE WEBSTER: No. [LB179]

SENATOR McDONALD: Have you read that publication? [LB179]

LANCE WEBSTER: Well, have I ever read it? Yes. Am I familiar with that particular issue? No. [LB179]

SENATOR McDONALD: Okay. Well, this one, looking back (inaudible), there's an article in here about electronic recordings, and it says...this person that wrote this in this magazine says, "I urge all Chiefs and Sheriffs to support appropriate legislation requiring electronic recordings of custodial interrogations of felony suspects...and to adopt that practice in their agencies." That's from...do you belong to that association? [LB179]

LANCE WEBSTER: No, I do not. [LB179]

SENATOR McDONALD: But you're familiar with it. [LB179]

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LANCE WEBSTER: I am familiar with it but I don't belong to it. [LB179]

SENATOR McDONALD: And just briefly reading through it, they said that there's a lot of resistance but once they've done it they would continue to do it because they truly believe in it. [LB179]

LANCE WEBSTER: Correct. And I'm not opposed to the concept of taping. I'm opposed to making it a law. I think it's something that, by policy, professional agencies can do and can incorporate. I just don't see the need to have the state make it a law that requires it. [LB179]

SENATOR McDONALD: But how can we enforce it if we don't make it a law? [LB179]

LANCE WEBSTER: That's what we have the courts for, ma'am. [LB179]

SENATOR ASHFORD: Thank you, Senator McDonald. [LB179]

LANCE WEBSTER: That's why we have the courts. [LB179]

SENATOR ASHFORD: Senator Chambers. [LB179]

SENATOR CHAMBERS: Chief, as a law maker and having been on this panel for 37 years and having dealt with police officers for even a longer period than that, I don't have the confidence the chiefs express that all of their officers always do the right thing. And I'm not talking about just mistakes. I have yet to have a chief or a sheriff appear and acknowledge that an officer did anything wrong unless it was so egregious that it was reported in the newspaper and there's no way to deny it. So with that having been said, when we are establishing a procedure of this kind, it's our responsibility as legislators to make it a law that covers the state. And I wouldn't trust law enforcement to do it because I look at the opposition that's being expressed here. If we said, leave it them, they're not going to do it. They're telling us here today, we're not going to do it. It's too hard. But since they obey the law, they'll do it if we put it in the law. But here's what I want to ask you. You were talking about the difficulty perhaps of these individuals who would use this equipment if they only used it once or twice a year. Have you seen the number of controls that are on a piece of recording equipment, like first there's an on and off button, there's a record, a play, a fast forward, a rewind, and a stop. And these are all clearly marked. Now, don't take this as a facetious question because I want it in the record, are all police officers expected to be able to read? [LB179]

LANCE WEBSTER: Yes. [LB179]

SENATOR CHAMBERS: If those buttons are marked, how much training would it take

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would you have to give the officers to let them know what that button does when you push it? [LB179]

LANCE WEBSTER: I'm not necessarily disagreeing with you, Senator, but I'm not concerned about the manipulations of the equipment so much as when you need to use it. [LB179]

SENATOR CHAMBERS: [LB179]

SENATOR CHAMBERS: Say it again. When you...? [LB179]

LANCE WEBSTER: When you need to use it. We would all assume, I would hope that for serious felonies these type of things would happen automatically. [LB179]

SENATOR CHAMBERS: Well, with the listing that would be in the amendment, it's being made clear that it would be... [LB179]

LANCE WEBSTER: Correct. [LB179]

SENATOR CHAMBERS: ...the serious felonies, and I'm sure that officers would know what they're dealing with. And if they doubted, then they should err on the side of caution and go ahead and do it. And I don't want you to think I'm hostile towards you... [LB179]

LANCE WEBSTER: No, no. [LB179]

SENATOR CHAMBERS: ...because I was up in Wayne a few months ago and I did have a pleasant time, but it was cold then also. [LB179]

LANCE WEBSTER: It was very cold. I remember when you were there, sir. [LB179]

SENATOR CHAMBERS: Oh, okay. That's all I would have. [LB179]

SENATOR ASHFORD: Thanks. Any other questions of the chief? Thanks for your testimony, Chief. Let's see, how many other opponents do we have? I saw Mr. Polikov back there. [LB179]

TERRY WAGNER: Senator Ashford, members of the Judiciary Committee, good afternoon. My name is Terry Wagner, W-a-g-n-e-r. I'm the sheriff of Lancaster County and I have the honor of serving this year as the president of the Nebraska Sheriffs' Association. And I'm here on behalf of the association to oppose this bill. I'm not going to reiterate what my colleagues have said. It comes down to a matter of money. The only thing I would add, as Mr. Sullivan pointed out, my agency does record the vast

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majority of our custodial interrogations. Transcription is an issue. Foreign language transcription is even a bigger issue and more expensive proposition than transcribing the English language, and I would point that out to you for your consideration. But I think, as Chief Webster said, it's the small agencies in the state that really, I think, would have a difficult time affording both the equipment and the transcription of required custodial interrogations. And I do think it's an agency policy issue. It's a policy in our office to the greatest extent possible. And with that I'll answer any questions the committee might have. [LB179]

SENATOR ASHFORD: No questions. [LB179]

TERRY WAGNER: Thank you. [LB179]

SENATOR ASHFORD: Thanks. Good afternoon. [LB179]

JIM PESCHONG: Good afternoon. Mr. Chairman and members of the Judiciary Committee, my name is Jim Peschong, P-e-s-c-h-o-n-g. I am here to testify on behalf of the Police Officers' Association of Nebraska, and we are opposed to LB179 unless it provides the necessary funding to offset the associated costs. This bill brings with it a substantial costs to cities and counties across the state. It requires law enforcement agencies to secure recorded conversations of individuals who are detained. This is not as simple as purchasing a cheap recorder, recording an interview, and forgetting about it. The recording becomes evidence and additional material which will need additional scrutiny and accountability. Rarely will this end up as being a recording that will be placed on a shelf in an evidence room and never be thought of again. The largest cost of this bill is in personnel costs, which are always constant and fluctuating. Officers who currently question a detained person in a variety of surroundings will now need to focus more attention on finding a quiet and secluded place. They will need to be cognizant of background noise, the need to ensure microphones on recorders are within close proximity of the detained arrestee so conversations can be recorded in order to minimize the inaudible. Transcribing the recording is probably one of the most costly parts of this mandate. Transcriptions are time consuming. They require the typist to specifically identify on the transcript each person's comments, and to do so as accurately as possible. This slows down the typing process. Many times this an arduous process is exacerbated by the fact that both individuals may not be speaking clearly or close enough to the microphone. This is entirely different than standard dictation. While one can certainly argue that the bill does not require recording to be transcribed, the reality is that it is an inevitable part of the bill. Prosecutors will want to know the full value of the information contained in the recording, and defense attorneys will want to review the information in order to defend their client. In order to put this in a better perspective of dollars and cents, let's break this down. According to the Nebraska Crime Commission, there were 96,731 people arrested, cited, for a crime in 2005. If there is an arrest or a citation for a crime, there is a detention. We can probably also agree that law

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enforcement detains far more people than they arrest for a crime. So what could this financial impact be? Let's say for argument's sake, the Lincoln Police Department's typing staff is reflective of law enforcement agencies across the state as far as skill sets and personnel costs. Our personnel costs for an average statement to be typed for the first draft cost is about \$24.10. Since there were 96,731 people arrested or cited in the state, of 2005, and a recorded statement was taken from each one of them, just to transcribe the first draft, it would cost approximately \$2.3 million. However, these costs do not stop or start here. This is just one aspect of the associated costs of this mandate. There are benefits for staff, personnel, office space, etcetera. I'll answer any questions if you have any. [LB179]

SENATOR ASHFORD: Any questions? [LB179]

SENATOR CHAMBERS: Just a couple. Officer Peschong, if there is a drug deal that's going to be set up by police or any other activity where the person working with the police wears a wire, does that wire transmit whatever is picked up to somebody who is listening, or does it also have connection to a recording device? [LB179]

JIM PESCHONG: It also has connection to a recording device. [LB179]

SENATOR CHAMBERS: And what do you do with those recordings? [LB179]

JIM PESCHONG: We transcribe them. [LB179]

SENATOR CHAMBERS: I'm sorry, I didn't...? [LB179]

JIM PESCHONG: We transcribe them. [LB179]

SENATOR CHAMBERS: Why do you record them? Why don't you just let what people say be entered in testimony? Because they can testify to what they heard, so why don't you just do that and then you could dispense with a possible malfunction of the equipment. You could do away with the expense of transcribing. So why don't you just rely on the oral testimony of those who are involved? [LB179]

JIM PESCHONG: We try to record them when we can, although anybody that's pretty well used body wires very much, is pretty well aware that the recording of those is not very good, and for the most part that's ultimately what ends up being... [LB179]

SENATOR CHAMBERS: But you do record them? [LB179]

JIM PESCHONG: Yes, we do. [LB179]

SENATOR CHAMBERS: Okay. Now, when you mentioned all of these recordings that

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would have to be made, I'm sure that you have not read this amendment either that we've been talking from. [LB179]

JIM PESCHONG: That is correct. [LB179]

SENATOR CHAMBERS: Okay. This is the listing again: felony assault, crimes involving death, sexual assault, kidnapping, robbery, drug offenses involving delivery or intent to deliver, strangulation, or terroristic threats. I'm sure the vast majority of detentions or arrest by LPD are not in this category. [LB179]

JIM PESCHONG: That would be correct. [LB179]

SENATOR CHAMBERS: Okay. And my final question: Do you have interrogation rooms now? [LB179]

JIM PESCHONG: Yes, we do. [LB179]

SENATOR CHAMBERS: How large would those rooms be? [LB179]

JIM PESCHONG: I'm sorry. How large? [LB179]

SENATOR CHAMBERS: How large, roughly? [LB179]

JIM PESCHONG: Oh, I would say maybe 10 foot by 10 foot. [LB179]

SENATOR CHAMBERS: Not very large. [LB179]

JIM PESCHONG: That's correct. [LB179]

SENATOR CHAMBERS: Do you have a table in that room? [LB179]

JIM PESCHONG: Yes. [LB179]

SENATOR CHAMBERS: And there's a chair on either side? [LB179]

JIM PESCHONG: Yes. [LB179]

SENATOR CHAMBERS: And the recording device, when you do record, is on that table? [LB179]

JIM PESCHONG: No. [LB179]

SENATOR CHAMBERS: Where is it? [LB179]

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JIM PESCHONG: It's a microphone in the ceiling. [LB179]

SENATOR CHAMBERS: And do you have any trouble with the recordings you make currently being audible? [LB179]

JIM PESCHONG: Yes. [LB179]

SENATOR CHAMBERS: So if that is not working now, why do you keep using that system which is not reliable? [LB179]

JIM PESCHONG: It's the best that we wind up having. We try to do everything that we can. In fact, some of the judges in Lincoln-Lancaster County have gotten very upset with us on the fact that our recordings aren't any more audible than what they currently are. [LB179]

SENATOR CHAMBERS: Could you get a recording device and place it on the table? There are recording devices like that and they record very well. I do a weekly program on television, but I also make an audio recording. And in the studio there are noises, and there is no trouble understanding what is on that device. So what would there be to prevent you from using a recording device on the table? [LB179]

JIM PESCHONG: Probably, if we could get defendants to speak up, you generally don't have the inaudibles with the officers talking. You have the inaudibles with the person who you're interviewing at the time. They talk slow, soft, they mumble. [LB179]

SENATOR CHAMBERS: Well, if that is not...if that's the case, the judge is not going to hold that against whoever is trying to make the recording. Now, I said one question but I needed those follow-ups to make it clear without asking a real long convoluted question. [LB179]

JIM PESCHONG: Okay. [LB179]

SENATOR CHAMBERS: What types of circumstances now result in a recording by LPD? What kinds of offenses are involved? [LB179]

JIM PESCHONG: Oh, I would say major felony cases that we have. The one difference...the distinction to us anyway, there is a difference between a person who is detained and a person who is in custody. Custody is probable cause to believe that the person committed the crime, and they're actually in custody. Detained...I'll give an example of maybe last summer where we had some gentlemen in a car that drove by another car and unloaded a firearm and killed a particular person. Officers went to a party call. This car matched the description of a vehicle that we thought might have

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been involved in that shooting. Several people were detained at that party. The officers talked with them. Those weren't recorded when they detained them out at the party to talk with them. Although if somebody gets arrested and we actually bring them down to the police station and we're talking to them about a murder or a homicide, that is going to get recorded. I've been on the police department for 32 years and we've been recording homicide investigations every since I've been there. [LB179]

SENATOR CHAMBERS: But if this bill were enacted into law, LPD would comply with it. [LB179]

JIM PESCHONG: We would most definitely comply with the law. [LB179]

SENATOR CHAMBERS: I have never sat at a hearing where the Legislature was criminalizing conduct which had been criminalized before, and had any police agency object on the basis of cost because now they're going to have to arrest people whom formerly they didn't. They're going to have to book people. They are going to have to go through all of this which they didn't have to do. They never complain at all. In fact, they applaud and sometimes they support it, and they certainly never ask us to fund it. So duties are placed on law enforcement by the Legislature, and I'm confident that if this becomes law, LPD will find a way and I think they will do it very well. But that's all that I would have. Thank you, Mr. President. [LB179]

SENATOR ASHFORD: Thank you, Senator Chambers. Yes, Senator Pirsch. [LB179]

SENATOR PIRSCH: Sir, is it Peschong (inaudible)? [LB179]

JIM PESCHONG: Peschong. [LB179]

SENATOR PIRSCH: Sorry if I mispronounced it. Now, when looking at the words of the crimes involving death, that would involve misdemeanors, too, correct? [LB179]

JIM PESCHONG: Crimes involving death. [LB179]

SENATOR PIRSCH: Well, there's misdemeanor motor vehicle homicide, correct? [LB179]

JIM PESCHONG: Motor vehicle homicide. I guess it is a misdemeanor. [LB179]

SENATOR PIRSCH: What about cases like procuring alcohol for minor where you have a misdemeanor in which the perhaps the minor who received the alcohol then drove into a tree or off the side of the road and died. Would that also be, in your opinion, crimes involving death? [LB179]

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JIM PESCHONG: Yes, it probably would be crimes involving death. [LB179]

SENATOR PIRSCH: So perhaps contributing to the delinquency of a minor, in that case, or procuring alcohol for a minor, may be also encompassed in that? [LB179]

JIM PESCHONG: Yes. The problem is, you get involved in some of that stuff at the particular time. We may wind up thinking that we're not dealing with something early on as serious and as significant, such as you might have an incident where someone was involved in a fight. Somebody went to the hospital for treatment. We really didn't think that it was a big deal at the particular time. You're following up on it. And several hours later you're notified by the hospital that the person died. It is a completely different situation. [LB179]

SENATOR PIRSCH: That would be at a point in time after the interview was conducted. [LB179]

JIM PESCHONG: Yes. [LB179]

SENATOR PIRSCH: You can't turn back time and meet the requirements. What about sexual assault now? Isn't there incidences of misdemeanor sexual assault, as well? [LB179]

JIM PESCHONG: Yes. You would have the third degree. [LB179]

SENATOR PIRSCH: So this would ostensibly include those misdemeanors, as well then, if you look at the fine language then? Is that your interpretation? [LB179]

JIM PESCHONG: Yes. I would have to hear again what it was that they had wound up making on the amendment, but... [LB179]

SENATOR PIRSCH: Oh, I'm sorry. (Inaudible). Well, if the types...and I know, I'm sorry, you didn't get, I don't think, a copy of this to look on, but if it would be felony assault, which is I think you talked about sometimes, you only know after the fact that it was a felony. [LB179]

JIM PESCHONG: Correct. [LB179]

SENATOR PIRSCH: But crimes involving death, which may (inaudible) directly or indirectly, sexual assault, including misdemeanor and felony sexual assault, kidnaping, robbery, drug offenses involving delivery or intent to deliver, strangulation. And was there a new domestic violence strangulation that was added to the statutes not too long ago? [LB179]

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JIM PESCHONG: There was a strangulation that was passed a couple of years ago. I would have to refresh my memory exactly on the details or the elements. [LB179]

SENATOR PIRSCH: Do you know if that's a misdemeanor or a felony, the possible penalty? [LB179]

JIM PESCHONG: I think it's a felony but I shouldn't say for sure because I'm really not sure. [LB179]

SENATOR PIRSCH: And, again, that's strangulation wouldn't be a type...it might involve a fact pattern then, saying crimes that involve strangulation, it may later be determined that that was, in part, a fact that was part of an assault, what was thought to be a misdemeanor assault case previous to that... [LB179]

JIM PESCHONG: Yes, that's correct. [LB179]

SENATOR PIRSCH: Do you have any concern that obviously individuals who have been charged with crimes and who have, if this law goes into effect, individuals who are charged with crimes and there is a recording, given that there's a requirement to the recording, do you think then those recordings will be the subject...? Well, I don't know if you know this, then. I guess if you had a feeling, wouldn't it create then, in almost every case, that there was an admission? You know, even though I'm taped, that that would be a subject of litigation in almost every case. If there was muffled noises on there, that that would then create the, in many cases, then...I guess that would be a pretty damning piece of evidence on tape, correct? [LB179]

JIM PESCHONG: Yes. [LB179]

SENATOR PIRSCH: And so that would be the center, in almost every case that there was then, that the tape recording was taken in an inadequate basis, not meeting the statutory requirements then? [LB179]

JIM PESCHONG: Generally, a lot of our statements have inaudibles. You know, you try to do the best that you can possibly given the circumstances, but you do have inaudibles. That's just a matter of practice on what you do, and I guess ultimately it would be up to a judge to decide whether or not there are enough inaudibles that it has a significant impact on it. [LB179]

SENATOR PIRSCH: But ultimately, whether or not there's a recording there or not, it's going to be up to the judge to decide that, even with the record (inaudible) if there's muffle sound, there still can be contentions that the...that it still didn't make...it didn't meet the statute in the way that it should have. [LB179]

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JIM PESCHONG: Yes, that's my understanding. [LB179]

SENATOR PIRSCH: That's all the questions (inaudible). [LB179]

SENATOR ASHFORD: Thank you, Senator. Thank you. I think that's...Senator. [LB179]

SENATOR CHAMBERS: Officer Peschong, you and I have had some lively exchanges, on occasion, haven't we? [LB179]

JIM PESCHONG: Yes, we have. [LB179]

SENATOR CHAMBERS: But one thing I hope I've never done is to suggest that you don't have common sense or that your years of experience don't teach you how to conduct your affairs. Now, as an experienced officer with almost as many years doing what you do as I have had doing what I do, although you've always been paid better, (laughter)... [LB179]

JIM PESCHONG: I appreciate that. [LB179]

SENATOR CHAMBERS: I (inaudible) too if I could do it a little better. But if this were the law, if the situations arose that Senator Pirsch was talking about, common sense, it seems to me, would cause an officer to record a statement if there were a death, period. I don't think you would have to sit down there and say, now, was he drunk? Was he under the influence of this or that? Here's what I'm trying to get to: There are some decisions that you will make as an experience officer which may not be absolutely required, but to be safe and sure that you're covering the bases, you do some things which later on may turn out not to have been absolutely necessary. So you would rather do it and not need to have done it, rather than need to have done it and not done it. So I have confidence, as I stated before, that if this became law, the department would be able to assist the officers in erring on the side of caution if there's going to be an error. And I think judges, with the language in the amendment that you haven't seen, will distinguish between something that might be deliberately done and can be shown to have been deliberate, and something which was just one of those vagaries that occurs when this kind of action is under way. [LB179]

JIM PESCHONG: Yeah. Just hope that putting the DVD upside down in the recorder is not considered deliberate. [LB179]

SENATOR CHAMBERS: It won't go in. [LB179]

JIM PESCHONG: Yeah, we had one within the last couple of months. [LB179]

SENATOR CHAMBERS: Well, you probably had King Kong forcing it in, so tell him next

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time if it doesn't go easy, big boy, don't force it. [LB179]

JIM PESCHONG: So anything can happen. [LB179]

SENATOR ASHFORD: Thanks (inaudible). Let me try to...thank you. No, I'm not going to ask any questions, but let me just remind everyone that we have four bills left and I know I have senators that are required to be somewhere else after...in about an hour and a half. So those are obligations they need to be at. So let's try to, if we can, all of us, just keep this all moving along. Lee. [LB179]

SENATOR CHAMBERS: You've got four bills and I wasn't even here? [LB179]

SENATOR ASHFORD: No. We've got four left and you were in another area. We would still be halfway through the first bill (inaudible). [LB179]

LEE POLIKOV: (Exhibit 14) Chairman Ashford, members of the Judiciary Committee, I'm Lee Polikov, Sarpy County attorney. P-o-l-i-k-o-v. I'm going to read my comments into the record. My purpose is here to create the record and keep in mind that the amendment, which I now have seen but got 15 minutes before we started, did make some changes to what I may be saying and I'd be glad to direct my comments to that afterwards. I appear today as an officer and board member of the Nebraska County Attorneys Association in opposition to LB179 as originally written. Many of the county attorneys across the state believe that this legislation appears to be based upon the premise and may go so far as to create a statutory presumption that all law enforcement officers are basically dishonest in their handling of statements made by criminal defendants. This perception may be derived from the language when a key element of the proposed laws requires a reasonable excuse and not, for example, the descriptive good cause adopted by New Mexico. Additionally, few prosecutors feel that there is a helpful purpose to this proposal. The National District Attorney's Association Policy on Electronic of Recording of Statements encourages police agencies to record statements by suspects and witnesses, but also recognizes that there are circumstances in which statements could not be recorded. The policy says that in a truth-based justice system we should always want juries to have as much truthful information as possible. The NDAA policy points out that concerns about unrecorded statements are routinely addressed through motions to suppress, jury trials, and appeals, and that the prosecutor must always prove the accuracy of the confession and that was freely, voluntarily, and knowingly given. The consensus amongst prosecutors is that the proffered cure, the suppression of unrecorded statements, is more harsh than the ailment. Even with the attempt outline reasonable excuses in this proposal, many experienced prosecutors predict disastrous consequences should confessions not be admitted, even though knowingly and voluntarily made by the defendant. One can hardly blame those who worry that the exclusion of unrecorded statements might lead to violent and dangerous criminals escaping prosecution. The fact is that the strongest proponents of mandatory

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recording report that many of the police agencies, large and small, already use recording equipment for in-custody interrogations and their informal studies find it well received. Why then invade the province of the courts in predetermining inadmissibility? I see my light is on and I was just going to say that I spent a great deal of time last night going through Mr. Sullivan's material, and I appreciate his frankness about it, but I suspect that a lot of the comments that come back represent what prosecutors would tell you. It's great when you have a recorded statement and it works. There's no question about that. What we are concerned about, and were concerned about on the original writing, is that there would be a suppression of a statement because of an irresponsible officer, and there are irresponsible officers. And Senator Chambers, you talked about common sense. It's not always common sense. I've been a police administrator for more than 30 years, and that doesn't always rule, in law enforcement certainly. So we need to move forward in that. That's fine. But, as Senator Pirsch mentioned, one thing I would add, for example, and having seen this for 15 minutes, I would add negligent child abuse to this list. In our jurisdiction we have faced seven or eight shaken baby cases in the last couple of years. Those are horrendous cases and it doesn't always result in a death. [LB179]

SENATOR ASHFORD: Thank you, Lee. Any questions of Mr. Polikov? [LB179]

SENATOR LATHROP: Just tell me again, what was the other crime that you would add to the list, sir? [LB179]

LEE POLIKOV: Intentional child abuse. [LB179]

SENATOR LATHROP: I thought you said negligent child abuse. You said intentional child abuse. [LB179]

LEE POLIKOV: Well, I have a problem. I have difficulty sometimes separately negligence and understanding the difference between reckless and careless and those kind of things. I meant intentional child abuse... [LB179]

SENATOR LATHROP: Are there any other crimes you would add to this list? [LB179]

LEE POLIKOV: I would like to look and see. And I assume the strangulation was the domestic strangulation which is a felony. [LB179]

SENATOR LATHROP: Felony assault, crimes involving death, sexual assault, kidnapping, robbery, drug offenses involving delivery or intent to deliver, strangulation, or terroristic threats. [LB179]

LEE POLIKOV: Yeah. And I did get a copy of that and I think that's a...I don't have any problem with that list but I'd like to...I'd like the ability for us to spend more time working

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through some of these thoughts, and finding...we did have a meeting, other representatives from the County Attorneys Association, and then I'd been prepared to come and testify on the original bill for several weeks. [LB179]

SENATOR LATHROP: Sure. I appreciate the... [LB179]

LEE POLIKOV: I've been prepared. I had the material. [LB179]

SENATOR LATHROP: I appreciate the fact that it just changed on you, and...but I appreciate your testimony. If you have anything else you want to add to the list, let me know. [LB179]

LEE POLIKOV: You'll be the first one I'll call. [LB179]

SENATOR LATHROP: All right. [LB179]

SENATOR ASHFORD: Lee, let me follow up on that. If...we probably will take this bill up the middle of next week would be my guess, so truthfully if you do have something that you would like to add, we would much appreciate that. [LB179]

LEE POLIKOV: Absolutely. And I speak for the association. This is a group of men and women who are really concerned about this and want to do the best for justice. [LB179]

SENATOR ASHFORD: Your reputation precedes you, so it would be helpful to have your input. Thank you. [LB179]

LEE POLIKOV: Thank you. [LB179]

SENATOR ASHFORD: Thank you. [LB179]

LEE POLIKOV: Thank you all. [LB179]

SENATOR ASHFORD: All right. I believe this is the last opponent, I believe. [LB179]

BRUCE PRENDA: Good afternoon, members of the Judiciary Committee and Senator Ashford. My name is Bruce Prenda; it's P-r-e-n-d-a. I'm a deputy Lancaster County attorney. I'm appearing in opposition to LB179 on behalf of the Nebraska County Attorneys Association. I'm going to talk about one area, basically, that hasn't been covered. Hopefully give you some insight into another concern that the County Attorneys Association has. The concern that I will call the separation of powers concern is with the mandatory suppression provisions of Sections 3, 4, and 5, collectively, and that's of the original bill. The Legislature should consider whether it has the authority to bypass judicial scrutiny in its exercise of discretion as it relates to the admissibility of

statements, in the application of facts and circumstances to the law in order to arrive at a conclusion of law whether a statement was given freely, voluntarily, knowingly, and intelligently. Under the language of LB179, it is possible that a court will not know anything about the facts and circumstances of a custodial statement, and nevertheless be required by the Legislature to enter a court order suppressing that statement. We have provided Senator Lathrop's office with a list of other states that have addressed this issue in different ways, and that's been talked about today. And interestingly enough, some of the states have enacted legislation. Some of the states have responded to court orders. On the separation of powers issue, I would direct your attention to the states of Massachusetts, Minnesota, New Jersey, and Wisconsin. Those are most instructive, specially Massachusetts. Perhaps the bill could say something along the lines of failure to record is a factor that the should consider in weighing the evidence, resolving conflicts in the evidence, and making findings of fact in conclusions of law. Also, I'm a bit surprised with the Bar Association's position on this bill. I want to read to you what I read in the World-Herald today. It was a comment by the Bar Association representative on LB373 that was heard yesterday in this committee. And they summarized our concerns in this area. Quote, the Bar Association takes issue with a bill that would override a judge's decision about what is admissible and a jury's decision about what weight the evidence deserves. We would agree, as Mr. Soucie pointed out, that it's important to rely upon the judge's decision in this area. And as you can tell, Mr. Soucie passed out court orders based on a judge's understanding of the evidence, after hearing the evidence and weighing the evidence, and arriving at a conclusion of law. The same issue was present here. It seems disingenuous to take a supportive position on LB179 and oppose LB373. So I present that issue for your consideration. [LB179]

SENATOR ASHFORD: (See also Exhibits 4 and 4A) Thank you. Any questions? Thank you. That concludes the hearing on this bill. We now go to LB428. Senator Synowiecki. Can we find Senator Synowiecki? Good afternoon, John. [LB179 LB428]

SENATOR SYNOWIECKI: Good afternoon, Mr. Chairman. We'll be ready to go. I'm sorry; I was running a little bit late. Senator Ashford, members of the committee, good afternoon. My name is John Synowiecki. I represent District 7 here in the Legislature. Today I am happy to present for your consideration LB428, the Peace Officer Employee-Employer Relations Act. The purpose of LB428 is to establish a minimum statewide standard of procedural due process for all Nebraska law enforcement personnel when they are placed under formal administrative investigation by their employer. LB428 would require that administrative investigation interrogations be conducted when the officer is on duty, or during normal duty hours, and be conducted at the employer's facilities, unless urgent circumstances require otherwise. Under these investigations, the officer is to be given prior written notice of the employer's intent to interrogate, who will conduct the interrogation, and the nature of the interrogation. The officer is also given a copy of the formal written complaint 24 hours prior to the

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interrogation. The officer must be permitted to have representation present during the interrogation and must be notified that any statement given may be used by an employer as part of a formal investigation. In addition, LB428 limits interrogations to 14 hours in a 24-hour period, under normal conditions. This 14 hours does include the officer's work shift. I want to be clear: Nothing contained in LB428 prevents an employer from investigating or making administrative rulings relative to an officer's conduct, and LB428 does not apply to any criminal investigations conducted on an officer. By following the procedural standards established in LB428, employers will be able to conduct effective investigations of complaints and enforce appropriate sanctions, when necessary. Peace officers in large departments are currently protected by provisions provided in departmental employment contracts. LB428 would provide similar protections to peace officers in smaller Nebraska communities by setting a statewide standard for all law enforcement agencies. Establishing a peace officer bill of rights is not a new concept. Twenty-three states, including Arkansas, Missouri, Minnesota have adopted some level of administrative due process rights, and similar bills have been introduced in Congress, with bipartisan support to establish a similar nationwide standard. I contend that the application of the standards outlined in LB428 will provide statewide uniformity and stability in relations between peace officers and their employers, and ultimately, perhaps, provide for more effective law enforcement in Nebraska. I want you thank you, Senator Ashford, and members of your committee, for your consideration of the bill. [LB428]

SENATOR ASHFORD: Thank you, Senator Synowiecki. Senator Chambers. [LB428]

SENATOR CHAMBERS: Senator Synowiecki, you're going to have others testify on the bill? [LB428]

SENATOR SYNOWIECKI: Yes. [LB428]

SENATOR CHAMBERS: I will save my questions for them, then. [LB428]

SENATOR SYNOWIECKI: Yes. I know this is your favorite bill, Senator Chambers. (Laughter) We've gone round and round on this for quite a long time. [LB428]

SENATOR ASHFORD: Well, I'm glad you did that, Senator. Any...do we have any...how many proponents do we have back here? Opponents? All right. John, do you wish to close or waive closing? [LB428]

SENATOR SYNOWIECKI: I'll stick around. I'll reserve my right to close. [LB428]

JIM MAGUIRE: Good afternoon, Senators. My name is Jim Maguire. It's M-a-g-u-i-r-e. I'm here speaking in support of the bill that is presented before you. I am president of the Douglas County deputies' union. I'm also speaking on behalf of the state Fraternal

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Order of Police. What this bill does is just give a basic guideline on if there is an investigation to be done on a police officer, that this is how the departments are going to proceed in those investigations. That's all this bill does. It just provides the basic guidelines for the investigator, in that our department has had, in a portion of its contract, a bill of rights. We've had it for ten years. The current bill that we have at our department works. This bill is not nearly as stringent as the one that we have in our department. And I can assure that if there is misconduct, this bill will not prevent the investigator from finding out the truth. That is not the intention at all of this bill. It's just to give basic guidelines on how investigations are to be done. I know you've had a long afternoon, so that's all I have to say. [LB428]

SENATOR CHAMBERS: Are there any questions of Officer Maguire? You are an officer, correct? [LB428]

JIM MAGUIRE: Officer, deputy--it doesn't matter. [LB428]

SENATOR CHAMBERS: Okay, Deputy Maguire. Any questions? No questions. Oh! [LB428]

SENATOR MCGILL: Actually, I just need something clarified. When it says this is for administrative investigation versus criminal investigation, can you just explain that to me, what administrative investigation is? [LB428]

JIM MAGUIRE: I can give you my perception of it. Jane Burke will be coming up behind us. She's kind of the legal counsel. She works...she can probably handle that. She's a lot smarter than I am, so it's probably better that she comes...that it comes from her mouth than mine. (Laughter) [LB428]

SENATOR MCGILL: Okay, thank you. [LB428]

SENATOR CHAMBERS: Thank you. [LB428]

JIM MAGUIRE: Thank you. [LB428]

SENATOR CHAMBERS: And by the way, people are not leaving because they have any objection to the bill. The senators have other bills that they have to introduce and reasons for not being here. So don't take offense, anybody. [LB428]

JANE BURKE: My name is Jane Burke. I'm an attorney in Lincoln. I represent a number of different law enforcement... [LB428]

SENATOR CHAMBERS: Excuse me. Would you spell your last name, please? [LB428]

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JANE BURKE: I'm sorry. B-u-r-k-e. I represent as an attorney a number of different law enforcement agencies around the state, and today I'm here on behalf of the state Fraternal Order of Police, in support of this bill. As you know, Senator Chambers, this bill has been around for ten years or so, and it's greatly watered down, I think, at this point. It provides a bareboned structure for officers, deputies, and smaller departments that may not have any type of employment contract or rules and procedures in place to guide them through an investigation of an internal nature or an administrative nature, versus criminal, which is the distinction you were asking about. The administrative investigation would be something such as an internal affairs investigation, which would be an investigation into any type of alleged misconduct that might occur in the law enforcement agency, that could have involved complaints initiated within the agency, or complaints from outside the agency that come to the agency and are investigated administratively. There may be...sometimes that there's a criminal case and administrative case in the same situation, but certainly, an investigation of an administrative nature might be something like somebody, you know, excessive use of sick leave, it might be a complaint of excessive force, things like that. This doesn't apply to the criminal investigations. As I said, it provides a structure, and in the capacity as an attorney, I've been consulted management side also, to help at times to provide some guidelines when there's been an incident and they want to investigate it. They're from a smaller agency, and they haven't had the experience in investigating it. This would provide a structure for that chief or sheriff to investigate something internally. This would provide, I think, a minimal amount of process for someone in that setting. There are some other things in statute, I think, that there are some concerns a merit commission or civil service commission might take care of these kinds of issues. That's not true--I think those address appeal processes, and this is the only thing that's available to provide the structure that you would need for someone who doesn't have it by contract, or by policy or regulation. Thank you. [LB428]

SENATOR CHAMBERS: Any questions? Ms. Burke. I have one. Do you have a copy of the bill? [LB428]

JANE BURKE: I do. [LB428]

SENATOR CHAMBERS: Okay. I'm going to look on page 2, and in subsection 4, it talks about when the act does not apply, a)...if the department has a) adopted a set of policies or procedures, or b) negotiated a collective bargaining agreement that, at a minimum, provides the rights that are contained in this bill. This, then, could trump a negotiated contract, couldn't it? [LB428]

JANE BURKE: You know, Senator, I have one problem here. When I first talked to you about this bill, I could hold it here and read it. [LB428]

SENATOR CHAMBERS: Um-hum. [LB428]

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JANE BURKE: Now I have to hold it here and read it. (Laughter) [LB428]

SENATOR CHAMBERS: Take your time, however you have to do. [LB428]

JANE BURKE: I have concerns as to exactly what that does. I don't think it trumps a collective bargaining agreement. I had...I was curious as to whether, if there was a gap in the negotiated agreement and this, if this would fill in. [LB428]

SENATOR CHAMBERS: Let me ask the question differently. It says, if the agreement, at a minimum, provides the same rights and protections. So if an agreement is negotiated which does not contain the same rights, then this takes the place of that negotiated agreement, where these rights are not contained; isn't that true? [LB428]

JANE BURKE: I would say it supplements it. [LB428]

SENATOR CHAMBERS: And so...but that means that this takes priority over a negotiated agreement, and the collective bargaining agent does not even have to try to get these things into the agreement; isn't that true? And the law will provide them. [LB428]

JANE BURKE: I think that's true. [LB428]

SENATOR CHAMBERS: Okay. And now that Senator Lathrop is back, he is the one who takes over when the Chair is gone, and I return to him the arduous responsibility of chairing this committee. [LB428]

SENATOR LATHROP: The weight of it. (Laughter) Thank you, I appreciate that. Any other questions? Seeing none, thank you very much for coming down. [LB428]

JANE BURKE: Thank you. [LB428]

SENATOR LATHROP: We're on proponents, I assume? [LB428]

JONATHAN BRADFORD: Yes. [LB428]

STEVEN GRABOWSKI: (Exhibits 15, 16, 17) Good afternoon, senators. My name is Steve Grabowski, and I'm the past president of the Nebraska Fraternal Order of Police. You've already heard from others on the merits of LB428. I'm here for a little historical perspective. Legislation similar to this has been introduced in the Nebraska Legislature for ten years. Senators, if you saw the original employer-employee relations act, it would only vaguely resemble LB428. These changes have been made because of past meetings and compromises with Police Chiefs Association of Nebraska and the

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Nebraska Sheriffs Association, and other entities that have had concerns with this piece of legislation. Senators, LB428 is the language that was in last session's LB64. That language reflects the Judiciary Committee's amendments to the bill at that time. Senators, there are letters on file and I've passed them out, from Chief Bob Lausten of the La Vista Police Department, speaking in favor of the then LB64, an E-mail from the Washington County Sheriff showing his support for then LB64, both Douglas County and Sarpy County Board of Commissioners have passed resolutions supporting LB64. Finally, Senators, opponents of LB64, again, like Ms. Burke said, would have you believe that the merit commissions and civil service commissions deal with this type of problem. It's not true. Merit commissions and civil service commissions do not address how an administrative investigation should be handled. Both of these commissions deal with appeal processes and the results of investigations, and not the investigation. Thank you. I'll stand for any questions. [LB428]

SENATOR ASHFORD: Any questions? I think you're okay. [LB428]

STEVEN GRABOWSKI: Good to be late in the day. Thank you. (Laughter) [LB428]

SENATOR ASHFORD: Do we have any opponents? Chief Thoren. [LB428]

LARRY THOREN: (Exhibit 18) Good afternoon. Larry Thoren, Chief of Police, city of Hastings, testifying on behalf of the Police Chiefs Association, in opposition to LB428. The chiefs met in January to discuss this bill and are still in opposition to the police officer bill of rights. The concerns we have are that this may unnecessarily restrict or inhibit our ability to determine wrongdoing by police officers. It was discussed earlier about Section 2, subsection 4, which states about policies and procedures, and a collective bargaining agreement being compared to this bill, and that the chief would have to determine section by section, which provided more rights to the individual, and then use that and comply with that section. So you may have an investigation that deals partially with LB428 and partially under your collective bargaining agreement, or your policies and procedures. It will give defense attorneys much to argue about, and may negate your investigation. A second concern we have is that the interrogation must take place when the officer is on duty. You know, you don't have judiciary hearings at three o'clock in the morning, because some officer...people who testify work nights. It's not practical for police officers...or police chiefs to conduct interviews or interrogations on an 11 to 7 shift. Another concern is that police officers must be given at least--the following information--at least 24 hours advance. It's the names of all known complainants, a full description and the nature of the investigation. We're concerned that the known complainants, you know, if that becomes law, it will deter and inhibit people from filing complaints on police officers. People are reluctant to do it now. You know, it's clear by recent publicity that probably the hardest thing in our business is to terminate a police officer--fire him. You've seen headlines on police officers that are wrong, who have been reinstated. If there is a concern about, you know, the rights of police officers for

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cities and villages that are not covered by civil service or merit commissions, that serves as due process. They may not have that due process now, and we would suggest extending those acts to those smaller cities. What questions can I answer for you? [LB428]

SENATOR ASHFORD: Any questions of Chief Thoren? Thanks, Chief. [LB428]

LARRY THOREN: Thank you. [LB428]

SENATOR ASHFORD: Next opponent? [LB428]

TERRY WAGNER: Good afternoon again, Senator Ashford, members of the Judiciary Committee. My name is Terry Wagner, W-a-g-n-e-r. I'm the sheriff of Lancaster County. I'm here today to testify in opposition of LB428. I'll be very brief. Chief Thoren said it well, and I'll say it, as well. I think the majority of the proposed tenets of LB428 are in place in my agency, either in employee contract or in policy and procedure, and that's the proper place for them to be. And I think that about 90 percent of those proposals are currently in place within my agency, but I think that's certainly a policy decision and/or a negotiated settlement with employees. That shouldn't be state law. As the president of the Nebraska Sheriffs Association, which opposes this bill, I think it really is...would be very difficult for very small agencies to implement all the proposals of LB428. I can't help but think, when I read LB428, it was written for an agency that would have a full-time internal affairs division and would probably provide them with the guidelines of how to conduct those investigations. I think you'll see very few agencies in this state that have full-time internal affairs divisions. Our agency is large, by Nebraska standards, and we do not have a full-time internal affairs officer. So I think LB428 is a matter of policy and employee-employer relationship that should not be a matter of state law. With that, I'll answer any questions you might have. [LB428]

SENATOR ASHFORD: Thanks, Sheriff. I'm sorry. Yes, Senator Schimek. [LB428]

SENATOR SCHIMEK: Thank you, Sheriff Wagner. I just have a...I think a quick question. One of the bullet points on this information from Larry Thoren is that we could extend the Civil Service Act to these smaller communities and take care of problems, if we're concerned about treatment of police officers in those smaller communities. I don't know what that act is. Why would it be suitable for those communities and not other communities? I should have asked him, but I just picked up on it just now. [LB428]

TERRY WAGNER: I'll be honest with you, Senator Schimek. I'm not sure what the Civil Service Act is, either, because it doesn't apply to counties. What I can tell you, though, is the merit commission, which was also alluded to by Larry, and alluded to, I believe, in Sheriff's Watson's letter to this committee, that the merit commissions are in place, and Jane Burke and Steve Grabowski also talked about the merit commissions. The merit

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commissions are for sheriffs' offices, and the civil service are for municipal agencies. So that's the difference in the two. [LB428]

SENATOR SCHIMEK: Oh, okay. [LB428]

TERRY WAGNER: I do not know the provisions of civil service. The merit commission statutes only apply to those counties with 25,000 population or more. So there are, I believe, 11 counties in Nebraska that are counties that are required to have merit commissions. It is the county equivalent of a civil service commission. It does set the standards for hiring, firing, promotion--a whole host of employer-employee issues. There are three members that sit on the merit commission in Lancaster County. One is appointed by the county board and is an elected official in Lancaster County; one is a citizen at-large, appointed by the presiding district court judge; and one is a deputy sheriff, elected from within the ranks of the deputies of Lancaster County. So those are the people who comprise our commission, and while the merit commission can set down and prescribe the manner in which internal affairs investigations are conducted, they can do so either by rule and regulation, which we have in Lancaster County, or they can do so as the appeals body for any disciplinary action that may be taken by the administrator, by the sheriff. [LB428]

SENATOR SCHIMEK: Well, I think you told me in the very beginning about the fact that the Civil Service Act really refers to cities... [LB428]

TERRY WAGNER: Correct. [LB428]

SENATOR SCHIMEK: ...and not counties, and that's... [LB428]

TERRY WAGNER: And I'm not sure what size...merit commissions refer to counties over 25,000. I'm not sure about civil service. [LB428]

SENATOR SCHIMEK: Okay. Thank you very much. [LB428]

SENATOR ASHFORD: Thank you, Sheriff. [LB428]

LYNN REX: Senator Ashford, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. We're also in opposition to this measure. I think that it's already been articulated in terms of why this bill, we think, does not need to happen on the state level. We think there are number of options for you to consider, one of which is, if you want the civil service commissions that apply to cities of the first class--and those are cities with a population of 5,000 and up. So if you would like to have them, perhaps, develop procedures in writing, if that's what you want...because they're already the ones that govern. For example, if you look on page 2, line 25, they're the ones that already deal with, actually, the entire prime one. They

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deal with proceedings dealing with suspension, removal, discharge. They serve as an appeal body, in terms of how officers are treated, both police and fire, for first-class cities. There's also provisions in place dealing with second-class cities and villages that have law enforcement personnel. And my point, I guess, is that you could actually say, if you want to make sure that...if the issue is that police officers do not know in advance what process will be in place if they're going to be disciplined or if there will be an internal investigation, then to the extent that it's not already being done--and I would submit to you, in almost all the first-class cities, it's already in writing--but you could require the civil service commissions in those cities...and if my memory serves me correctly, it's Chapter 19, Article 18, to require them to have that type of proceeding, investigation, in writing, so everybody knows what the process would be. And you could also, if you're so inclined, then indicate that for second-class cities and villages, that they would do that, as well. It is important that the committee know, of course, that for the smallest of villages across the state, most of them have already contracted with the sheriff's office. They don't have their own independent police department. Some do, but many, many do not. So with that, I'd be happy to respond to any questions that you have. But I do think that bill is not necessary. This is the kind of thing that does need to happen on a local level, and again, at the sake of being redundant, if the issue is that police officers don't know what the process is, then to the extent that they're not already there, require that the local governing bodies and/or civil service commission develop them. I would submit to you, though, in almost every case in first-class cities, that's already there. I'd be happy to respond to any questions that you may have. [LB428]

SENATOR ASHFORD: No. Thanks, Lynn. Thank you. [LB428]

LYNN REX: Thank you. [LB428]

SENATOR ASHFORD: Any neutral testifiers? That concludes the hearing. Senator Aguilar, I think you're up, LB525. Welcome. [LB428 LB525]

SENATOR AGUILAR: Thank you, Senator Ashford, members of the esteemed Judiciary Committee. My name is Ray Aguilar, A-g-u-i-l-a-r. I represent District 35 in the Legislature. LB525, under the State Tort Claims Act and the State Political Subdivision Tort Claims Act, the state or political subdivision is held strictly liable for damage done to an innocent third party as a result of a pursuit by law enforcement. The state or subdivision is then allowed to recover the amount it pays, from any others who are obligated to pay, such as the driver being pursued, and the insurance companies that may have coverage on the innocent third party or their property. However, the law has been interpreted by the courts to allow the reimbursement only for bodily injury and not for property damage. By adding the words "property damage" to the specific subsections that came into question by the court, LB525 clarifies that reimbursement for property damage is among the obligations which must be reimbursed, and that the state or political subdivision is the last entity to cover these costs. In reality, what often

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happens is, all the entities involved sit down and figure out what each is obligated to pay, and everyone, including the state or subdivision, pay the innocent party. Only in a dispute situation is it necessary for the state or political subdivision to pay the first, and then ask for reimbursement. Since the Department of Administrative Services brought this to my attention, I think someone from the DAS will be following me for testimony and to answer all the tough questions about this, and I would ask for your support, and move the bill to General File. Thank you very much. [LB525]

SENATOR ASHFORD: Thank you, Senator Aguilar. Any questions? Thank you. Do you wish to close, Senator, or are you...you're going to waive closing. Good man. [LB525]

LAURA PETERSON: (Exhibits 19 and 20) Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Peterson, P-e-t-e-r-s-o-n. I'm the state risk manager, and I'm here to testify in support of LB525, which we asked Senator Aguilar to bring for us. The bill is intended to clarify the state's and other parties' obligations to compensate innocent third parties who sustain property damage as the result of a pursuit. The intent of the pursuit statute, we think, was to ensure that innocent third parties are made whole, and that unless there is negligence on the part of the state, the state was to be the last or stop-gap funding source to make the person whole. The most common scenario when subrogation of the state occurs is when the driver who being pursued crashes into the innocent third party driving near the pursuit, the innocent third party is injured, and receives damage to his or her vehicle. The driver being pursued usually does not have insurance or has inadequate limits on their insurance, and the innocent third person has uninsured motorists or underinsured motorists, collision insurance coverage, may be covered by workers' compensation, or may have other insurance. The pursuit statutes make it clear that insurers remain obligated to pay benefits for disability or for loss of earned income, and for medical expenses in pursuit cases, and that they do not have rights of contribution or of subrogation against the state. What the statute does not say, and what we're asking you to have it say, is that these insurers also remain obligated to pay benefits for property damage, and do not have rights of contribution or subrogation from the state for those payments. I distributed for you a copy of a district court order in the case of Malcom v. State . In that case, Malcom's care was damaged in an accident with a driver who was being pursued by the Nebraska State Patrol. Malcom's insurance company paid for her vehicle damage and sought subrogation against the state. The court found that the pursuit statute prohibits subrogation from the state for only the payments specifically listed in the statute and that all other payments, in that case property damage payments, remained subject to subrogation. We are asking you to advance LB525 to clarify that while the state is required to contribute to make innocent persons whole when no other coverage exists, we are not required to do so in place of those who would otherwise be obligated. Thank you, and I'd be happy to answer any questions. [LB525]

SENATOR ASHFORD: Any questions? [LB525]

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SENATOR LATHROP: Can I just ask a few questions, just to clarify. The purpose is to just include property damage on the list of damages that are not subject to subrogation? [LB525]

PETERSON: That's right. [LB525]

SENATOR LATHROP: Okay. We're not changing any of the substance of the vehicular pursuit statutes, other than to include property damage among the elements of damage. [LB525]

PETERSON: That's right. If there's nobody else who's obligated to pay that property damage, the state would still be responsible in the same way, or the political subdivisions. It makes the same change to their similar statute. [LB525]

SENATOR LATHROP: Okay, and the point of the subrogation is, is American Family pays the property damage, they can't go back against the state or the political subdivision to be reimbursed for property damage. [LB525]

PETERSON: That's right. If the person had vehicle insurance or homeowners' insurance or something that paid them, they wouldn't, then, get out of that payment by payment from the state, yeah. [LB525]

SENATOR LATHROP: Okay, just wanted to make sure. [LB525]

LAURA PETERSON: Yep, absolutely. [LB525]

SENATOR ASHFORD: Thank you. [LB525]

LYNN REX: Thank you. Senator Ashford, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. We support this bill. We think it, frankly, is just a clarification. I'd be happy to respond to many questions that you might have. [LB525]

SENATOR ASHFORD: Any questions of Lynn? Okay, thank you. [LB525]

LYNN REX: Thank you. [LB525]

SENATOR ASHFORD: Looks like...any neutral testifiers...opponents, I'm sorry. Any opponents? Neutral? You're done. Thank you very much, Senator. Senator Chambers, LB474. [LB525 LB474]

SENATOR CHAMBERS: Already? [LB474]

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SENATOR ASHFORD: Yes. We are really clipping. [LB474]

SENATOR CHAMBERS: (Exhibits 21) Mr. Chairman, members of the Judiciary Committee, I'm Ernie Chambers. I represent the 11th Legislative District, and in keeping with what seems to have been developing as the modus operandi, I will be as brief as I can while covering what I must, in order to make clear what I'm undertaking. This bill is LB474, and I think my statement of intent will adequately present to the committee what I'm after. This bill gives public record status to disciplinary action involving law enforcement personnel specified in Section 1, and certificated school employees, and you can see Sections 12 and 23. They are not singled out and subjected to treatment different from other categories of persons having a unique relationship and responsibility to the public. As public servants obliged to adhere to a high standard of conduct due to the nature of their duty to the public and the power they exercise over others, law enforcement personnel and certificated school employees are not entitled to concealment of disciplinary action imposed for misconduct. Any such concealment runs counter to the transparency that should exist in government, and to which the public is entitled. For example,...and I have given you three examples of that, and one is from October of last year, January of this year, and February, to show that there is a periodic reporting. Now I'll say what it refers to. Number one, the Nebraska Health and Human Services System regularly publicizes allegations and disciplinary actions against medical professionals licensed in Nebraska. The Omaha World-Herald routinely publishes such information, and that handout is what I was referring to. Disciplinary action taken against attorneys is made public by the Nebraska Supreme Court, and the Omaha World-Herald routinely reports such cases. What I'm holding up here is a copy of what's known as Supreme Court advance sheets. Prior to the publication of their cases in bound volumes, they come out in these little paperbound versions, which every senator receives, because some years ago, I had gotten into the law that we would receive them. And in practically every one, you will see a caption of this kind--State (inaudible) Counsel for Discipline versus--in this case, Wickenkamp (phonetic)--and the date of this advance sheet is January 12, 2007. That lets you know that it is a complaint against an attorney, brought by the Counsel for Discipline, which now is a part of the Supreme Court administration, rather than the state bar association. So any disciplinary action taken against an attorney is made public, not only in this advance sheet, but it is published in the bound volumes of cases that are reported, and these incidences are reported in the Omaha World-Herald and other newspapers. Even judges are not exempt from disclosure of disciplinary action. In addition to disciplinary action imposed by the Nebraska Supreme Court, even a reprimand imposed by the Commission on Judicial Qualifications "shall be public, and shall be announced in a fashion similar to that of published opinions of the Supreme Court." And that is pursuant to Section 23-731 of the 2006 supplement. So in the same way that supreme court opinions are published, that disciplinary action against any judge will be published also. In recent months, religious organizations have come to realize that disclosure of misconduct and

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punishment of clergy is demanded by the public, if such organizations are to retain even a shred of public credibility. The disclosures required pursuant to LB474 are in the public interest as well as the interest of the entities employing those affected. The requirement that disciplinary action against judges be published was put into the statute by way of the collaboration of myself and former Chief Justice Hendry, because his reasoning was that it enhances public confidence in the integrity of the judiciary in policing itself. When a judge misbehaves, there is no basis for keeping that from the public. Judges are public employees paid by the public, required to do the public's business. There are agreements that have been reached by some of these groups that I'm talking about that shields them, when they have misbehaved, from disclosure. But there is no societal interest which resulted in their being shielded. Some of the examples in OPS: Not long ago a second-grade student was hit in the head by a librarian at Lothrop Elementary School with a rolled-up almanac, and I pursued it on behalf of the parent and was told that appropriate action was taken. But the man is still a librarian, and nobody knows whether any was taken or not. We were told, but we don't know what kind of action was taken. When a bunch of teachers on the clock at North High did what they called a parody that mocked Martin Luther King's "I Have a Dream" speech, which ridiculed me and other black people and used words like "crap" and "screw"--and one of the allegations was that I, Senator Chambers, wants to screw your children, nothing was reported as to what was done about that misconduct by these teachers. It was done on the premises of the high school. It was condemned by the president of the school board, condemned by Ben Gray, who happens to be head of an African-American achievement council organized and funded by OPS, but we don't know that anything was done. Even after that action, a journalism teacher this past semester assigned students to write defenses or criticisms of what those teachers did, and a parent wrote me a letter complaining, because she said she had kept all of that from her child, who is a student at North, because it was so demeaning, so undermining, and the child, as well as the mother, had respect for Martin Luther King. But now, by virtue of its being made an assignment, this was brought into her home and the stress was recreated. Nothing was done about that. None of these things, even if something is done, will ever be brought to the public's attention. Since I see no reason why law enforcement officers and teachers are shielded, I'm bringing a bill that will take that away. By the way, I was told also that disciplinary action taken against people holding real estate license is a matter of public record also. If you have any questions of me, I'm prepared to answer them. And I'm keeping this very low key. [LB474]

SENATOR ASHFORD: Senator Schimek. [LB474]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Senator Chambers,... [LB474]

SENATOR CHAMBERS: Yes. [LB474]

SENATOR SCHIMEK: ...I'm certain that you probably saw this letter from ACLU that

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was distributed to everybody. [LB474]

SENATOR CHAMBERS: No, I didn't see it, but tell me what it... [LB474]

SENATOR SCHIMEK: Well, they had some concerns with the bill, because they thought there weren't certain safeguards written into it. That would be a disclosure of information that wasn't necessarily pertinent to the disclosure. [LB474]

SENATOR CHAMBERS: Oh well, all that, I'm willing to work on that. [LB474]

SENATOR SCHIMEK: For instance, home address, telephone number, Social Security number, blah, blah, blah. [LB474]

SENATOR CHAMBERS: Yeah, I'm willing to... [LB474]

SENATOR SCHIMEK: And then they go on to say the other essential ingredient we see to protect employees from disclosure of private information is to allow only public access to the actual misconduct reports, when a complaint or disciplinary action was sustained against the individual. In other words, you don't report all the other stuff that may have been complained about, or you know, somebody may be trying to harass this particular individual. [LB474]

SENATOR CHAMBERS: Well, this would be when disciplinary action is taken. [LB474]

SENATOR SCHIMEK: Okay, to that specific incident, without all this other extraneous... [LB474]

SENATOR CHAMBERS: But if there were 20 incidents where disciplinary action was taken, all of those incidents would be available. They would be a matter of public record. [LB474]

SENATOR SCHIMEK: If they were all subject to discipline, yes. [LB474]

SENATOR CHAMBERS: Right, if disciplinary action were taken, unlike...the reason I gave you a copy of what the state does is because allegations are published here against these healthcare professionals. That's why I gave you what is printed in the World-Herald, the disciplinary action and the allegations. This does not go to mere allegations. [LB474]

SENATOR SCHIMEK: Thank you. [LB474]

SENATOR CHAMBERS: And all those other things, I have no problem. If it's necessary to ensure that personal information of that kind is to be excluded, I would put all of that

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in the statute. That is not even what I'm interested in. [LB474]

SENATOR SCHIMEK: Thank you. [LB474]

SENATOR ASHFORD: Senator McDonald. [LB474]

SENATOR McDONALD: Certain publications list that information, and I've seen nurses that have had allegations against them and issues. I've not seen it in the paper, but then whatever the medical journal thing, has that information. Also, as far as insurance and financial people, if they've had issues, that's in there also. [LB474]

SENATOR CHAMBERS: Right. [LB474]

SENATOR McDONALD: Are you looking at broadening that, or are you taking that information to the newspaper or...some of that information is already there. [LB474]

SENATOR CHAMBERS: Not on teachers and police officers. [LB474]

SENATOR McDONALD: But not for everyone in the professional field. [LB474]

SENATOR CHAMBERS: Right. [LB474]

SENATOR McDONALD: So you're just broadening that. [LB474]

SENATOR CHAMBERS: Right, uh-huh. And there are some states--I don't know whether it's by law or standards of their professional associations--where action against doctors who've misbehaved, and hospitals, is being publicized. So the idea of transparency is taking hold, and the public has a right to know if its public employees are misbehaving. If Senator Pirsch, God forbid, which I do, were to commit a violation of his ethics as a lawyer, if there were action taken, he knows it would be published, as every other lawyer knows, as a matter of course. These groups have managed to negotiate protection for themselves from disclosure, and that's all it's based on--not anything that would benefit society. And if a teacher struck a child, the public is entitled to know what kind of disciplinary action was taken in that case. But that cannot be disclosed, and I was talking to the president of OPS, and I'm saying this on the record, Ms. Sandra Jensen, and when I was talking to her about this, she said she thought that that kind of information should be available, because she was not free to tell me what they had done in any of these kinds of instances that I have mentioned. And if you doubt what I am saying, if you know her, contact her and see what she tells you. [LB474]

SENATOR ASHFORD: Thank you. Senator, is the...what is the...the underpinning here is that it's a public employee; is that what makes it...is that what...is the rationale...is it all

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public employees? Or how do we make the... [LB474]

SENATOR CHAMBERS: These teachers and these police officers have direct contact with people's children, with the public at large, and when they misbehave, the public is entitled to know the kind of people wielding this kind of authority and having these kind of privileges and prerogatives. If the committee wanted to expand it, that's fine with me. But there are some specific problems and instances that relate to these two categories. [LB474]

SENATOR ASHFORD: I guess what I am getting at is that they're all types of allegations that are made, and I hear you telling me that allegations aren't dispositive in these cases. [LB474]

SENATOR CHAMBERS: Right. That would not be covered by this. [LB474]

SENATOR ASHFORD: It would not be covered, but it would have to be a disciplinary action that was undertaken or one that's concluded. [LB474]

SENATOR CHAMBERS: Right. [LB474]

SENATOR ASHFORD: Is it concluded or undertaken? [LB474]

SENATOR CHAMBERS: Disciplinary action would have to have been imposed. If they have an investigation and no discipline is imposed, then that investigation would not be a matter of public record. I've had some of these upstanding, ethical people tell me, well, if you require that, we simply won't impose any disciplinary action. So that lets you know the kind of people we're dealing with. [LB474]

SENATOR ASHFORD: Well, that's sort of what I'm getting at. [LB474]

SENATOR CHAMBERS: They're not interested in correcting the misconduct, but concealing it. [LB474]

SENATOR ASHFORD: That's sort of what I'm getting at, is if it doesn't...if it applies to all disciplinary action taken, a one-day suspension, a reprimand in the file. Are we going to go that far? [LB474]

SENATOR CHAMBERS: It depends on what it's for. Some school systems may not view misconduct as seriously as others. So suppose a teacher touched a young girl on her breasts, and that school system thought, well, she must have had it coming, or this is a good guy, so we're not going to do anything but reprimand him. There was a violin teacher who was convicted of some kind of...some level of sexual assault or child abuse with one of his students. And he had had similar misconduct in Alabama or Georgia or

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some place, and came up here, and although he was convicted, the judge just put him on probation. So, come to Nebraska, and you have, you know, a license. So I'm not willing to say that simply because the school district or the law enforcement agency did not consider something serious--and that would be determined by the length of a suspension, if there is one--should exempt it from public disclosure. [LB474]

SENATOR ASHFORD: And the problem here is that these records are now not available. [LB474]

SENATOR CHAMBERS: Right, and... [LB474]

SENATOR ASHFORD: They're not public records. [LB474]

SENATOR CHAMBERS: Right, and even where the school...I'm telling you, they want it, based on what Ms. Jensen told me, to state what, if anything, had been done in the North High situation, but they couldn't. [LB474]

SENATOR ASHFORD: They're just not available. They can't be published or made available. [LB474]

SENATOR CHAMBERS: Right. They cannot do it. [LB474]

SENATOR ASHFORD: I believe that's...any other questions of Senator Chambers? Thank you, Senator. Do we have any other testifiers on this bill? Any proponents? Okay. That must mean that there are some opponents (laugh), unless we're all neutral. Yes, Chief, come on up. [LB474]

TOM CASADY: (Exhibit 23) I'll be the first victim. I'm Tom Casady. I'm the police chief here in Lincoln. I'm representing the City of Lincoln, and we oppose this bill. We believe that it will have some significant unintended negative impacts, and there are three unintended consequences that concern me that I'd like to tell you about. First, I'm concerned that some people may not come forward with information about alleged police misconduct if they know that their information and the information they provide will become a public record. Second, I'm concerned that some witnesses may not be forthcoming during disciplinary investigations that we conduct, when they know that the information they provide may become public record. And finally, I'm concerned that some supervisors may choose to refrain from official disciplinary action in low-level cases, when they know that this will become public record. I have examples of each of these from my years of experience, where I'm convinced the net result would be to impair the police department's management, because we would have failed to hold employees accountable for misconduct. In two of these cases that I'm thinking of, it was serious misconduct that I think would never have been discovered, because I think that in one case, for example, an officer's relative reported this misconduct, who would not

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have provided that information if that person had known that it would become public record. In another case it was a fellow officer who provided information about some serious misconduct. Now both of those cases ended in termination, by the way. And then my third concern, which is the kind of low-level disciplinary action that happens very regularly at my department, hundreds of times every year, I'm concerned that supervisors will be reluctant in those low-level cases to officially document things that I think should be officially documented, because they're going to be apprehensive about creating a public record of disciplinary problems on an officer, when what they're really trying to do is take low-level corrective action. These cases happen all the time. I've received a fair share of disciplinary reports myself that I'd be more than happy to tell you all about--not things that I'm proud of, but things...it was probably a good thing that my sergeant or my lieutenant corrected when I was a young man, and in some cases, things that were corrected while I've been police chief. I think it's good to have that kind of early intervention and document things early, before they become serious behavioral problems. I agree completely with Senator Chambers that it's imperative for citizens to have enough information so they can adequately judge whether police departments are responding appropriately to poor performance and misconduct. I think it's critical for citizens to have confidence in that. I would like very much for citizens to have a better understanding of the job that we do in that regard in my department. I'm just concerned that this bill may not accomplish that, and it may have some of those unintended side effects, and I'd urge you to continue examining how that goal might be accomplished. Thank you. [LB474]

SENATOR ASHFORD: Thank you, Chief. Senator Chambers. [LB474]

SENATOR CHAMBERS: Chief, let me read you an example of what some of this material is, where reports are made by HHS. Censured, Dr. so-and-so, and ordered him to complete a prescribing course. By phone in (inaudible), this doctor told a woman whose children were not his patients to give some of one son's medication to the other. It gives no names, so I don't understand what you mean by saying that if somebody filed a complaint against an officer, that person's name is going to be disclosed; that if an officer gave information on another officer, that would be disclosed, if the law made it clear that it relates only to the disciplinary action imposed, and not the names or information about who made the allegation. Would that take away some of your concern on that score? [LB474]

TOM CASADY: Yes, it would. So if it's specifically outlined in greater detail exactly what information is publicly disclosed, I'd probably feel a lot better about it. [LB474]

SENATOR CHAMBERS: Now, what do you mean by low-level discipline or whatever that...whatever you applied that term to? What did the term "low-level" mean? [LB474]

TOM CASADY: Well, the Lincoln police chief went to a school board meeting one day,

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and he was asked a question by one of the school board members, Doug Evans, and he responded by using the word...he used a swear word. [LB474]

SENATOR CHAMBERS: Um-hum. [LB474]

TOM CASADY: The school board member said, and exactly what are you doing about all these people that are bringing methamphetamine into the community, and I responded that well, we are primarily engaged in arresting the heck out of them, only I used a different word. My mother-in-law pointed that out to me when it was quoted on the first page of the paper, and I wrote myself a warning for violating department policy that prohibits the use of profanity. I think we have a real problem in law enforcement with people using the language that is so common in our culture, and I don't think police officers should ever use profanity in their dealings with citizens. It doesn't bother me around the locker room; it bothers me a great deal when it's in public, and I think a supervisor who has an officer that has used a swear word like that ought to write up what we call an employee incident report. It ought to be officially documented, and I'm worried that it won't be. I think that documenting that does several good things. It tells the employee how seriously you feel about this. It starts creating a record so if it becomes a chronic problem, you've got that recorded. It documents that you have made progressive steps to try to resolve that behavioral problem, if it becomes a chronic problem. [LB474]

SENATOR CHAMBERS: But Chief, in Omaha there have been officers who have been disciplined numerous times and then information gets out because somebody in the department will make it available. And that officer might be somebody's brother, brother-in-law, or a relative of a lawyer, and the public has no way of knowing any of this. Is it your feeling that the public...it's none of the public's business when these people misbehave? [LB474]

TOM CASADY: No, that really isn't my feeling at all. I'm looking at it from the practical standpoint, of how it's going to affect my ability to manage the department in an effective disciplinary system. I want the public to know. Like the school administrator that you were speaking of, I'd like the public to know that when we have misconduct, that we take care of it appropriately. And my experience has been that about 99 times out of 100, if I give my disciplinary action the smell test with someone outside the department, they generally think, if anything, they think it was too harsh. They're surprised that we did what we did. I'd like the public to know that. I'd like them to be confident that we're doing a good job of it, or if they think we're not, I'd like to know that, too. [LB474]

SENATOR CHAMBERS: Well, in the cases that I'm talking about, the family whose child was mishandled was not informed, and people are distrustful of the police. So if a chief writes a letter and says, your complaint was upheld and this officer was appropriately

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disciplined, that's not good enough for people now, because police cover for others. They will observe an officer violating the law and not do anything about it. And there are situations where others saw it and came forth later. Then it would be made clear that other officers witnessed it, and nothing was said and nothing was done. Then what would you say ought to be the line drawn...well, let me ask this. Do you think there's any misconduct by an officer that ought to be made public? [LB474]

TOM CASADY: Yes, I do. [LB474]

SENATOR CHAMBERS: So what kind should be made public? [LB474]

TOM CASADY : I'm not exactly sure, but I think when an officer has been...I think when an officer has been charged with a criminal offense, that certainly should...and is public. I think when an officer has been subjected to discipline and has appealed that to the personnel board, I think that should be public and is public. And I think other kinds of information on disciplinary action should and could be public, if it protects against the things that I'm concerned about, if it doesn't chill the willingness of people to come forward, to participate in an honest, open way in an interview, it doesn't scare them off, in other words, and if it doesn't cause supervisors to think, well, you know, I'm just going to talk to him about this, I'm not going to write anything down. And I think that can be accomplished. I don't have the formula for you right now, but I think your goal is a meritorious one. I agree with it philosophically and personally. I'm just worried that this is going to do something that's going to hurt our ability, rather than improve it. [LB474]

SENATOR CHAMBERS: But we don't know that for a fact, do we? [LB474]

TOM CASADY: No, we don't. [LB474]

SENATOR CHAMBERS: And we've not had a situation where misbehavior was required to be, or accessible to the public, have we? [LB474]

TOM CASADY: Well, actually, in my case we sort of do, and it's with our citizens' police advisory board. About 12, 13 years ago, I started--not because it's required, but because I wanted the board's advice--I started taking these matters to the board at their quarterly meetings. And we review all of our internal affairs cases, not the ones that were filed with the citizens' police advisory board, but the ones that we've handled internally. And we review those with the citizens' police advisory board, but we do it in a way that redacts information that would identify the people involved in it. And essentially we're doing that because we want to get the smell test from a... [LB474]

SENATOR CHAMBERS: So if I'm a thief, you say somebody stole something, but we're not going to tell you who he was. [LB474]

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TOM CASADY: That's correct. [LB474]

SENATOR CHAMBERS: That's doesn't pass the smell test with me. [LB474]

TOM CASADY: We tell them about the complaint and the investigation, and what we did. [LB474]

SENATOR CHAMBERS: Okay, but I'm not going to keep you here and argue with you, but you haven't allayed my concerns about these people being guaranteed concealment of their misbehavior. I don't think that's right, especially in law enforcement, where there should be public trust. Judges would like not to have their misbehavior made public, because you know what some judges have argued? How am I going to do my job as a judge? People are not going to think I'm fair? Well, the Chief Justice's response was, well then, do what you're supposed to do, but the public is going to know, and you're not going to be shielded. And the same with lawyers. [LB474]

TOM CASADY: Senator, I can't argue with you, because you and I are on the same page on this. I just...I'm just concerned that this bill...it may accomplish a little bit of this, but it's going to come at some unintended consequences that I think will be harmful, and that's just based on my experience and the cases that I've personally been involved in and know about. That's what I'm worried about, and I just want you to know that I think it's a...I think some more consideration on how you might be able to accomplish some of these things without creating those, would be merited. [LB474]

SENATOR CHAMBERS: Would you think about it a few days and then let me know what you come up with, if anything? [LB474]

TOM CASADY: Yes, I will. [LB474]

SENATOR CHAMBERS: Okay. That's all I would have. [LB474]

SENATOR ASHFORD: But I think we're getting to common ground here. If we just gave it another 30 seconds (laughter), we'd probably have this...thank you, Chief. Hi, Mark. [LB474]

MARK McGUIRE: Senator Ashford, members of the committee, my name is Mark McGuire, M-a-r-k, McGuire, M-c-G-u-i-r-e. I'm attorney for and lobbyist for the Nebraska State Education Association. I'll scrap my prepared stuff and go right to the heart of the matter, knowing what time it is and so forth. I do not see that LB474 requires disclosure of anything except, upon request, certain disciplinary action items are public records. So you'd have to know something going in, that the person you were checking on's name was Joe Smith or whatever. I find a problem with what is meant, or the definition of disciplinary action. Obviously, in the extreme case of termination and so forth, it's

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certainly my experience that those matters--certainly, in the school world and in the teacher world--are subject to a public hearing. They usually generate lots of press, lots of coverage, and the outcome is well publicized. In contrast, the day-to-day stuff is a different issue, and if the statement is made to teacher Brad Ashford, Ashford, you're late one more time and we're going to fire you, now is that disciplinary action? It kind of looks like it, but that's said verbally. Where is, then, this public record that's to be disclosed and so forth? If I put that in writing, Ashford, if you're late again we're going to move to hire you, then there's a document that if somebody comes and says, is there any disciplinary reports in Ashford's personnel file, that, oh yeah, here it is. It was signed on such-and-such date and says that he's to be terminated. The...I agree with Chief Casady, with respect to unintended consequences, of whether or not there's some inducement for administrators to...in the school world to not document anything. Therefore, it doesn't become a record, a public record. Therefore, it's not subject to disclosure upon request. The... [LB474]

SENATOR CHAMBERS: Mr. McGuire,... [LB474]

MARK McGUIRE: Yes, sir. [LB474]

SENATOR CHAMBERS: ...let me ask you a question. [LB474]

MARK McGUIRE: Okay. [LB474]

SENATOR CHAMBERS: You don't like...I mean, you're uncomfortable with the term "shall be considered a public record." What about your suggestion or your comment, "disclosed upon request"? See, the parent whose child was mishandled cannot get the information. That parent knows what happened, that parent knows the teacher or the principal or the miscreant. Do you think that parent should not have information as to what disciplinary action was taken against that person? And if none was taken, they would have to disclose that. Do you think parents are not entitled? First of all, do you think parents are patrons of the school? [LB474]

MARK McGUIRE: You're going to probably like my answer, if I could get to your question. (Laugh) [LB474]

SENATOR CHAMBERS: I want to try to narrow it. [LB474]

MARK McGUIRE: Okay. [LB474]

SENATOR CHAMBERS: Do you think parents are patrons of the school? [LB474]

MARK McGUIRE: Are parents patrons of the school? Yeah. [LB474]

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SENATOR CHAMBERS: Yes, meaning that the schools serve them? [LB474]

MARK McGUIRE: They're a part of school community that's served, yes, sir. [LB474]

SENATOR CHAMBERS: Are the parents entitled to know what happens to their children, if something untoward occurs? [LB474]

MARK McGUIRE: I would agree with that. [LB474]

SENATOR CHAMBERS: And if they bring a complaint and some kind of disciplinary action is taken, or if none is taken, is the parent entitled to know that? [LB474]

MARK McGUIRE: The...it's all within the disposition, the resolution of the matter, yes, whether it's...nothing's taken, or something more profound. But part of it, if they're going to move to terminate the individual, that ultimately...I was... [LB474]

SENATOR CHAMBERS: I'm not talking about going to termination, because they're not doing that in OPS. They don't terminate people when they do bad things to black children. We're going to be frank about this, because those are the kind of complaints I bring. You think these parents don't have a right to know what action is taken against a teacher who has harmed his or her child; isn't that what you're saying? [LB474]

MARK McGUIRE: That I think they don't have a right to know? [LB474]

SENATOR CHAMBERS: Yes. [LB474]

MARK McGUIRE: No, I just... [LB474]

SENATOR CHAMBERS: Well, if they have a right to know, then should that information be disclosed to them upon request? [LB474]

MARK McGUIRE: It should be available upon request, as part of the discussion with them by the administration, as to the outcome of whatever the event or circumstance was. [LB474]

SENATOR CHAMBERS: Okay. I'm not objecting to your choice of language. If your choice of language is used, then you no longer have an objection to the bill; is that correct? [LB474]

MARK McGUIRE: As long as we understand what it means and what it doesn't mean. [LB474]

SENATOR CHAMBERS: And we can work that out. I'm going to call on the Beatles. We

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can work it out, we can work it out (singing). (Laughter) If we can work those things out, then you'd feel... [LB474]

MARK McGUIRE: You sang Billy Joel the other day to me. (Laugh) [LB474]

SENATOR CHAMBERS: ...less uncomfortable? [LB474]

MARK McGUIRE: I would feel less uncomfortable,... [LB474]

SENATOR CHAMBERS: Okay. [LB474]

MARK McGUIRE: ...but I think it has to be clear that...what's going to happen and what's not going to happen. [LB474]

SENATOR CHAMBERS: I'm willing to do that. [LB474]

MARK McGUIRE: Okay, and this bill does not create any kind of public disclosure requirement such as pertains to judges, such as the statute you referred to, in terms of opinions in these cases shall be published in accordance with the Supreme Court requirements, and so forth. [LB474]

SENATOR CHAMBERS: I am showing that those current things go beyond what I'm looking for here. I'm not saying--and I will work with you to make it clear--that when a person is disciplined, that the school or the law enforcement agency has to notify the media, this has been done. I'm taking it a step at a time. We can put language that would make this information available upon request. And it should be at the request of any member of the public. But it wouldn't just be a blanket something--tell me everything that any person has been disciplined for. Now that might be the desire of some people, but that's not the level of which I'm operating at this first step, to let you know what I'm willing to work with you on. [LB474]

MARK McGUIRE: Well, I appreciate that, because has to be...I think we recognize, then, there are certain parameters that do have to be put on there, so that this does not just simply become a vehicle for a fishing trip of--I wonder if all these people have...and I have a concern about retroactivity. Chief Casady referred to some event that he experienced as a young officer and so forth. You know, can one reach back 5 years, 10 years, 15? [LB474]

SENATOR CHAMBERS: Well, if he did it when he was a young officer, that would be so long ago nobody would remember it anyway! (Laughter) But that also is a matter that I'd be willing to talk to you about. [LB474]

MARK McGUIRE: We'd be happy to visit. [LB474]

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SENATOR CHAMBERS: Because here...let me make it clear what I'm getting at. I don't want to say, just from this point onward, because there are some very egregious things that have happened. But by the same token, people should have notice that certain things are going to occur. Now you can give me this information. Are there provisions in these teacher contracts where that kind of information is not made known? [LB474]

MARK McGUIRE: That limiting criteria would be in the (inaudible) two statutes, one pertaining to what we call our progressive discipline statute, 79-826. The... [LB474]

SENATOR CHAMBERS: Well, to simplify, I will make it prospective. Then everybody has notice and it's not catching anybody for something which they were entitled to believe that they would be...they would have that misbehavior concealed, even though I think that shouldn't have happened. [LB474]

MARK McGUIRE: I think... [LB474]

SENATOR CHAMBERS: It will be from this point onward--you don't have that shield any more. [LB474]

MARK McGUIRE: I think also that there needs to be some thought given to defining the standing of the requesting party to get it. You can't...because I do have a concern that there are some people that would just like nothing better than to... [LB474]

SENATOR CHAMBERS: Well, I'm not going to give you everything you have concern about, because the media may want to know and make some inquiries, and that's something...that's why I keep saying, I'll discuss these things with you, and we might come up with some language that is satisfactory to both of us, perhaps. But I'm willing to work with you on these things. [LB474]

MARK McGUIRE: That would be good, perhaps. I've got to start with kind of a long list, you know, and then we can work backwards. (Laughter) [LB474]

SENATOR CHAMBERS: Well, I don't care. Make it as long as you want to. Some of them I'll just say, that's out, that's out, that's out. And then if you become what I consider to be too demanding or unreasonable, then I'll just push for what I think I ought to get, and see if I can get it through this Legislature, which would rather now fall on their sword to protect misbehaving cops and misbehaving teachers, when they have some very important legislation they want. They might say, Ernie, if I didn't have this pending, I'd fight you tooth and nail; but if a cop did wrong, he's not entitled to be protected; if a teacher hurt somebody's child, that teacher is not entitled to be protected--yeah, I'll support you. I want you to know I'm going to play hardball on this, but before I do that, I'm going to play softball with you. And you don't have to give me answers to those

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things today. I want to give you time to think about it, and you can even talk to your...whoever you talk to. [LB474]

MARK McGUIRE: I'll do so. Thank you. [LB474]

SENATOR CHAMBERS: Okay. [LB474]

MARK McGUIRE: Any other questions? [LB474]

SENATOR ASHFORD: Thank you, Mark. I don't...do I see any? No, I don't see any more questions. Thank you. [LB474]

LARRY THOREN: (Exhibit 24) Larry Thoren, T-h-o-r-e-n, police chief, city of Hastings, testifying in opposition, on behalf of the Police Chiefs Association of Nebraska and in brevity, I would echo the previous testimony of Chief Casady. If the intent...and we agree on the intent of identifying and eradicating inappropriate behavior of police officers. I share the concerns that this will not do that. You know, currently, there's disclosure of inappropriate conduct. Under the Brady decision, prior to trial we're required to disclose any information that may question the truthfulness or the integrity of a police officer. Disciplinary hearings are conducted by the civil service commission for cities over 5,000--merit commission for 25,000 and plus. There's minutes taken, there's notice of those hearings. Those hearings, many times, are open to the public. And the other concern I have is, any disciplinary action, what is the definition of disciplinary action? You know, if I send a police officer home because...and require them to take vacation time or sick time because they may have been in court all day, worked the night before and they're not fit to work tonight, is that considered disciplinary action? [LB474]

SENATOR CHAMBERS: Chief, let me ask you, so you won't have to go beyond what I'm looking for from you, and then others might have questions, and then we can narrow it, do you ever use the term "disciplinary action" with reference to the way you handle an officer? [LB474]

LARRY THOREN: Yes. [LB474]

SENATOR CHAMBERS: So you know what disciplinary action means in your setting. [LB474]

LARRY THOREN: In my definition, yes. [LB474]

SENATOR CHAMBERS: So we can talk about what it means to you, and maybe come up with some language; correct? [LB474]

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LARRY THOREN: Yes. [LB474]

SENATOR CHAMBERS: Okay. [LB474]

LARRY THOREN: And disciplinary action is a written or verbal reprimand, or a suspension with or without pay, or termination. [LB474]

SENATOR CHAMBERS: And I'm not going to limit you to that today. You're giving me examples? [LB474]

LARRY THOREN: Yes. [LB474]

SENATOR CHAMBERS: Which I accept. But anything you have along that line, are you willing to write it up and send it to me, or fax it? [LB474]

LARRY THOREN: I'll be glad to send you our internal investigation policy and what the consequences are of inappropriate police behavior. [LB474]

SENATOR CHAMBERS: And... [LB474]

LARRY THOREN: You know, civil review boards were going to be the answer, and we found that they were not as tough on cops as police chiefs were. [LB474]

SENATOR CHAMBERS: Well, that's not what I'm looking at. I'm looking at when disciplinary action is, in fact, imposed--not allegations, not the names of people who filed a complaint, even when the disciplinary action was taken. But if the person who filed the complaint succeeds in having that action taken, that person is entitled to know what action was taken, and not just be told that the officer was appropriately disciplined. [LB474]

LARRY THOREN: And I don't think you need a law to do that. [LB474]

SENATOR CHAMBERS: Well, it's... [LB474]

LARRY THOREN: You know, we are subject to the pressures of our community. We're accountable to our communities. [LB474]

SENATOR CHAMBERS: Well, you keep saying "we." [LB474]

LARRY THOREN: Police chiefs. [LB474]

SENATOR CHAMBERS: I live in the largest community in the state, and that does not happen. How many times have you had an officer taze a man in handcuffs ten times?

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[LB474]

LARRY THOREN: Not once. [LB474]

SENATOR CHAMBERS: Okay. [LB474]

LARRY THOREN: And appropriate disciplinary action, I understand by reading the papers and listening to you, was taken in the... [LB474]

SENATOR CHAMBERS: I don't think so. Well, maybe as far as what the police department did, but there ought to be criminal charges brought. And the only reason that was done was because other cops ratted him out, because it was so egregious they had to cover themselves. Ordinarily, they would not have said anything. If he'd then tazed twice or three times they wouldn't have said anything, but they thought this guy might die. And they didn't want to have been there and have that happen and not have said something. So they weren't being good guys; they were being protecting of self. And the one who first did the tazing when the man was handcuffed, in violation of the regulation, was not disciplined, and he gave the tazer to another. If I shot somebody, then gave the gun to Senator Pirsch and he shot him, I'd be aiding and abetting what he did. But see, that's how police cover for police, so I don't seem them as the pristine, pure people that you do. [LB474]

LARRY THOREN: Okay. The chiefs that I know are very concerned about police behavior, and if we don't act appropriately, we're subject through the courts, through vicarious liability and other statutory... [LB474]

SENATOR CHAMBERS: Not good enough for me. That's why I bring proposals to change the law. But I do have your position. [LB474]

LARRY THOREN: Okay. We agree on the same thing, but not the method. [LB474]

SENATOR ASHFORD: Thanks, Chief. Thank you for your testimony. Other opponents? [LB474]

JANE BURKE: My name is Jane Burke, B-u-r-k-e. I'm an attorney in Lincoln, and I'm here today representing the Omaha police union, the Lincoln police union, the Fraternal Order of Police, Lodge 2, which is Douglas County, and the Fraternal Order of Police, Lodge 3, which is Sarpy County. We opposed this bill--many of the reasons have already been discussed, some of the general topics, such as the lack of definition, retroactivity. All of the law enforcement agencies or unions that I just mentioned have some sort of progressive discipline, which starts at a low-level discipline such as a verbal warning, maybe then a written warning, then a reprimand, and then going into a suspension, then termination. We think it would be excessive to have each and every

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discipline made a part of a public record. [LB474]

SENATOR CHAMBERS: Which ones do you think should be available on demand or request? At what level do you think that should start? [LB474]

JANE BURKE: On behalf of my clients, I don't think any of the disciplines should be made public. I think... [LB474]

SENATOR CHAMBERS: So you're testifying, then, so I can cut to the chase, that police officers are entitled to have their misbehavior concealed from the public; that's what you're testifying, isn't it? [LB474]

JANE BURKE: I think that if it's a personnel matter, it...they should have some privacy within the personnel matter. [LB474]

SENATOR CHAMBERS: I'm asking you a simpler question. You're saying that these officers who misbehave are entitled to have their misbehavior concealed from the public; isn't that what you're saying? [LB474]

JANE BURKE: I think, if they have... [LB474]

SENATOR CHAMBERS: What should be disclosed to the public, then? [LB474]

JANE BURKE: I think if they have conduct that rises to the level of a criminal case, they should be... [LB474]

SENATOR CHAMBERS: No, that's not what I'm talking about. You know that's not what I'm talking about, because a criminal case does not involve discipline, what I'm discussing. As the other chief pointed out, that's a matter...as soon as the charges are filed, that's public. You know what I'm talking about,... [LB474]

JANE BURKE: I think you're... [LB474]

SENATOR CHAMBERS: ...but if you don't want to answer, I'm not going to waste my time or yours. [LB474]

JANE BURKE: I think, Senator, when you're talking about things such as excessive force type complaints, I don't think those are...that's perhaps what you're looking at. I think there are so many other types of discipline that take place in police departments; like Chief Casady said, hundreds a year--said in his department. And I know he does discipline for swearing, for... [LB474]

SENATOR CHAMBERS: Still, with all that, you're not answering my question, so you

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don't have to keep saying the same thing for my benefit. [LB474]

JANE BURKE: Okay. Moving on, I think that there are internal morale reasons that an employee's discipline should not be disclosed to the public. I think that...I'm not sure why it's focused on just teachers, school nurses, and police officers, when you look at people who are dealing with the public. You mentioned an HHS worker in an article. HHS workers have access to children on a regular basis. [LB474]

SENATOR CHAMBERS: No, these are public...there are healthcare professionals, and there are other professionals, who in their discipline, that discipline is a matter public record. These that I'm talking about have contact with the public in a unique way, and when they misbehave, it should be made public. [LB474]

JANE BURKE: Which, I guess, Senator, that would beg the question, then, what would be the difference between a firefighter, for example, and a police officer? [LB474]

SENATOR CHAMBERS: Good. I forget. I'm going to include them (inaudible).
(Laughter) [LB474]

JANE BURKE: Great. Just what I wanted. [LB474]

SENATOR CHAMBERS: Seriously! [LB474]

SENATOR ASHFORD: You know, get more opponents in here, Senator. [LB474]

JANE BURKE: Senator, I think that there are, in fairness to your question, I do think there are times that cases may be disclosed. And I can't tell you a definition. I don't know on behalf of my clients. But I can tell you that these police unions do not want police officers who are bad cops, and... [LB474]

SENATOR CHAMBERS: They defend a cop, no matter what he's accused of, virtually, unless it's a crime that has been charged. [LB474]

JANE BURKE: I don't think we are going to agree on that. [LB474]

SENATOR CHAMBERS: I know, because I've read of incidents in the Omaha World-Herald even, where the union came out in defended the guy. They defend them, always, no matter what. [LB474]

JANE BURKE: I do think a definition of discipline would be helpful, and I think, Senator, to go back and look, for example, at your attorney example, I think there are some private sanctions for attorneys, even at a low level, that aren't made public, for low-level disciplines for attorneys, I think, in the structure of attorney discipline. And I think if you

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make those comparisons, you ought to look at starting at the point that some things definitely should not be made public, some of the day-to-day types of activities that take place in... [LB474]

SENATOR CHAMBERS: I asked you that, and you couldn't tell me anything. [LB474]

JANE BURKE: I know, and I still can't. [LB474]

SENATOR CHAMBERS: So then that's irrelevant, as far as your testimony. [LB474]

JANE BURKE: As far as where we are on what Chief Casady described, there are different avenues. The police department here does use their review. I think there have been different types of reviews. There are the merit commissions, civil service commissions, which are made public. So there are ways, when there are disciplinary cases, to make those public or at least to make them available for the public to review. If there are any questions. [LB474]

SENATOR CHAMBERS: This is the kind of testimony that goes right over everything that is on the table, so I don't have any questions. I don't know if anybody else does. [LB474]

SENATOR ASHFORD: Thanks, Jane. Sheriff,... [LB474]

TERRY WAGNER: No, I'm not. [LB474]

SENATOR ASHFORD: I wouldn't, if I were you. No, I...(Laugh) I love this job. [LB474]

TERRY WAGNER: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Terry Wagner,... [LB474]

SENATOR ASHFORD: That's fine. That's good enough. Trust me, that's good enough. I don't... [LB474]

TERRY WAGNER: I'm going to voice the same concerns, without restating them, that Chief Casady and Chief Thoren had. I am...I don't want to thwart any disciplinary action or propose disciplinary action because it might be public. The question that I would have, I guess, for Senator Chambers--and I...Jane alluded a little bit in her testimony...I think there are different levels of disciplinary action, and I would submit to you that if a nurse is disciplined by a hospital for being rude to a patient's family, that's not reported to the public. However, if there is a violation of professional standards, nursing standards, those would be reported. I think we have that same opportunity in law enforcement, if the bill was worded differently. All disciplinary action... [LB474]

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SENATOR ASHFORD: Then that brings up a...that is the point--excuse me for interrupting you, Sheriff--but I think that's...I understand the point here, I think, after I've listened for awhile. It takes me a bit of time to understand. But I mean clearly, we...in the statutes we clearly differentiate public safety officers, we differentiate educator, people in education and public safety. They are in a special class. Now how we treat that class depends on what we want to do legislatively. But I think...and physicians, we treat them as a separate class, because they're dealing with the public in life or death matters. Police officers are dealing with the public in life or death matters, and teachers are dealing with our children. So they are unique, and I know you're not saying they're not. But it does seem to me that a case can be made that there's some...at some point in the process, when you're dealing with people in these classes, that there's some right to know, and where that starts and where it doesn't is a matter of discussion and debate. But I do think...and to simply say, in all deference to Jane, I think I understand her points, too. But if a matter is a personnel matter for a police department, it's a personnel matter, but it could also very well be a matter of public concern, if it involves the health and safety of the public. So...and that is unique, for example, to someone who is just working for a private employer and it's a personnel matter. Those are normally not disclosed, but if it does impact...so I would be interested in hearing about that, because I do think we can't deny that these types of employees are in a special class. So how do you deal with them, is a question. [LB474]

TERRY WAGNER: Well, I think both class of employees referred to here, teachers and law enforcement, have a professional...state professional standards level,... [LB474]

SENATOR ASHFORD: Very clear--clear standards. [LB474]

TERRY WAGNER: ...just as teachers do, just as lawyers do, just as any certificated professional. And so I think that disciplinary action that reaches those levels, when you get to the certificated portion of it, it certainly public...it is public record now, Senator, as are merit commission appeal hearings from the sheriffs' offices, and civil service on the city side. [LB474]

SENATOR ASHFORD: But even if there's not an appeal. I think what the question is, if there's not...the action has been taken, there is no appeal. It's still...it occurred. [LB474]

TERRY WAGNER: Certainly, in law enforcement... [LB474]

SENATOR ASHFORD: Something occurred. [LB474]

TERRY WAGNER: That's true. If it rises to the professional standards level, and that goes...and disciplinary action is taken there, then that's public record, no question about it. [LB474]

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SENATOR CHAMBERS: Chief, let me give you the example. [LB474]

TERRY WAGNER: Sheriff, please. [LB474]

SENATOR CHAMBERS: See, I don't like... [LB474]

TERRY WAGNER: Senator, senator--sheriff. [LB474]

SENATOR CHAMBERS: ...any adult hitting somebody's child, and when a grown...if it had been my child, a cop would have been coming to arrest me. A grown white man is going to roll up an almanac and hit a seven-year-old child in the head with it and make him cry, and have other children so upset one of them said, we ought to burn down this school? And he was immediately suspended. They knew what the child was reacting to, and I'm the parent and they're not going to tell me what they did with him? And you think he's entitled to be protected so that if they take disciplinary action, I don't have a right to know what action they took, or that they didn't take any? You're saying that misbehavior merits concealment? That's what I think I'm hearing you say, that if they don't take action to fire or suspend that guy, then his conduct should not be made public. [LB474]

TERRY WAGNER: Well, a couple of things, Senator. I think, first of all, what's the purpose of disciplinary action? [LB474]

SENATOR CHAMBERS: Say it again. [LB474]

TERRY WAGNER: What is the purpose of disciplinary action? Is it punitive or is it corrective? [LB474]

SENATOR CHAMBERS: Both. [LB474]

TERRY WAGNER: You know, we have a counseling level of discipline, you know, that's the lowest level, and that could include required visit to EAP... [LB474]

SENATOR CHAMBERS: I've already said I'm willing to work with the people who have these concerns, and they ignore it. [LB474]

TERRY WAGNER: Well, I'm just saying, if you're trying to correct bad behavior, public disclosure does not help that process. [LB474]

SENATOR CHAMBERS: Well, yes, it will. But I think what would really help is to say, took, this is what you're required to do. If you don't do it, you're fired. Now we're going to let you make that mistake, and then the second time, you're fired. There was a new chief that came on some years ago in New York. They were having a lot of problems with corruption and so forth in the police department. I wish I could remember his name.

And he was known as a reformer, and that's what he was coming in for, and these cops said, yeah, well, if you do, then you're not going to have any cops working for you. So he had a big bushel basket and he put it right inside the front door. And he said, all those who don't want to work here, put your shield in there on your way out, and don't come back! Not a shield wound up in the basket. They like to bluff, and they intimidate sheriffs, they intimidate police chiefs, and they say, if you try to correct what we're doing, we'll have the blue flu. But no matter what you do, we're going to cover for each other. You've heard the term, "blue wall of silence." You know that there are officers, who will observe another one violating the law and not take action, is not going to arrest that officer. I'm talking about reality, and you all talking this nonsense, which is theoretical. So I have to use what methods are at my disposal, and this is one of them. And if you all are successful in persuading enough senators to agree with you, that misbehaving cops and misbehaving teachers are entitled to have their misbehavior concealed from the public, that's going to be discussed on the floor, one way or the other, because if the committee falls for it, I'm going to make a motion to pull the bill from the committee. And you all's testimony will be transcribed, and the senators who agree with you all can make that available to the other senators and let them see how those who are in charge say, when these people misbehave, their psyches are so delicate, they're so special, nobody's entitled to know that they did wrong. That's what I'm getting from what I hear all of you all say. But you're not able to stop the misbehavior. It continues. And there are cops...I'm sure if you would check your records--you used to work for the police department, didn't you, in Lincoln? [LB474]

TERRY WAGNER: No. [LB474]

SENATOR CHAMBERS: Oh, okay...that you'll have cops who have had repeated run-ins with the rules, and they're still there. And the reason I know this, there are some in OPS who are so upset they give me documents. It's not, I say so-and-so. They show me the guy's record. And I say, well then, why isn't anything done, when they've got this as the record? Well, he knows somebody, or he knows something on somebody, and he stays. Now what I could have done, if I just wanted to be a bad fellow, is turn all that over to the media and let them investigate the police department, but I don't know how far they would go with it. I try to work with these people. They mistake that for the notion that nothing can be done. So when I get the names of these teachers, Mr. McGuire and the rest of them, I'll talk about it on the floor of the Legislature, and I'll talk about what they're accused of having done. If that's the way they want me to do it, that's what I will do. I do have a platform. Ordinary citizens don't, and I think people around here know that I won't bite my tongue, because I'm not afraid of anybody--the one whose name I'm calling, his friends, his brothers, his buddies--none of that. And if that's what I'm going to be forced to do, to try to persuade some of these people who have oversight, to correct some of these things, you leave me no choice. Now I'm not implying that everything I'm saying is what you're doing or not doing. I'm giving you examples, to let you understand why I'm bringing this bill, the kind of things I have in mind that I intend to address. But

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from what I hear you and the other people, except Mr. McGuire, that there's no point at which this conduct ought to be made available to the public, unless there's an appeal or some kind of civil service hearing. Well, I don't need to offer a law for that, because as you say, that's public anyway. I'm going for these things where police and teachers have misbehaved. Somebody has been harmed. Action has been taken, or we're told it has been taken, but it's going to be kept secret. I don't think they're entitled to have that kind of protection. That's what I'm talking about, and I'm willing to work with people on language. If they want a definition of disciplinary action, fine. Instead of saying "involved in disciplinary action," say "where disciplinary action is imposed." I'm not rigid, but I want something that has some teeth in it and that will accomplish the purpose that I have in mind. I'd work with you. I've told Mr. McGuire I'll work with him. I'll even work him Emperor Radcliffe. (Laughter) Well, he's on deck. [LB474]

TERRY WAGNER: Well, I believe that the statement...your definition of disciplinary action in the...or not your definition, but the disciplinary action statement in there, I think it needs to be modified. I think there are degrees, and I hope you would agree with that. [LB474]

SENATOR CHAMBERS: And I'm willing to work with you on it. But nobody will tell me anything. Once you bring it up, when I say, well, what do you mean...so let me ask you. What do you mean when you say that? Is there any degree where you think it ought to be accessible to the public? [LB474]

TERRY WAGNER: You know, I haven't actually given that much thought. All I have thought of is, I don't want this disclosed to the public, but there is a valid point to that. But I do not...without giving it more thought and more discussion, I don't know. [LB474]

SENATOR CHAMBERS: I'll let you think about it, too, like I said to the others. [LB474]

TERRY WAGNER: Okay. [LB474]

SENATOR CHAMBERS: I don't want to be unfair to you. [LB474]

SENATOR ASHFORD: Thanks, Sheriff. Oh, Senator... [LB474]

SENATOR LATHROP: Can I ask you a couple of questions? [LB474]

TERRY WAGNER: Certainly. [LB474]

SENATOR LATHROP: Do you guys maintain a book with the standards of conduct? [LB474]

TERRY WAGNER: Several. On several different levels. On the state level, certainly

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there's a standard of conduct, the police standards advisory council on (inaudible) will hear a bill later about that body, but it has a level of conduct. Individual agencies have, certainly, their policies and procedure manual, and that's kind of what I was referring to earlier, to Senator Chambers' question about some of those minor violations of policy violations. [LB474]

SENATOR LATHROP: If I'm going to do...if I'm a doctor and I'm going to do a surgery, I can go to the book on surgery, and there's going to be the standard of care, the way that it's done. Do police officers have a similar...I mean, do your standards direct that if you pull a motorist over and... [LB474]

TERRY WAGNER: Yes. [LB474]

SENATOR LATHROP: ...you see one thing, then you should do the next two things? [LB474]

TERRY WAGNER: You bet. We have a policy manual that covers traffic enforcement, criminal investigations, on and on. [LB474]

SENATOR LATHROP: When law enforcement doesn't do those things, if you find out one of your officers doesn't do that, do you then discipline them? [LB474]

TERRY WAGNER: Can be. [LB474]

SENATOR LATHROP: Can be, depending upon the standard that's being violated? [LB474]

TERRY WAGNER: Exactly, and depending upon the intentional or inadvertent violation, or some of the things, yeah, certainly can be disciplinary action. [LB474]

SENATOR LATHROP: So if we talk about disciplining somebody that works for you, there are state standards, then there's standards in your office. [LB474]

TERRY WAGNER: That's correct. [LB474]

SENATOR LATHROP: And there's discipline for violating those standards, not just for...I mean, if you're going to discipline them for using profanity, then that's going to be in one of the standards somewhere. [LB474]

TERRY WAGNER: That's correct. If a deputy would not have his tie on, on a traffic stop, and a sergeant would drive by or I would drive by, they could be disciplined for that. [LB474]

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SENATOR LATHROP: That strikes me as trivial, and at least in relationship to what I think Senator Chambers is looking for, how do you grade those? Do you have the mortal sins up here, and the little ones down here? [LB474]

TERRY WAGNER: Well, we also are under a graduated disciplinary type of ladder, you know, where progressive discipline is in use. So while not having your tie on, on a traffic stop, or swearing in the presence of a citizen could get you a warning this time, the fourth time down you could see days off, or the third time you could see days off, or you could be terminated eventually. So while a violation in and of itself may not be...may not warrant a higher level of disciplinary action, with progressive discipline it could result in a more severe disciplinary action. I understand your...and that's the dilemma. You know, what's... [LB474]

SENATOR LATHROP: Well, there seems to be two parts to this. One is generally finding out who in the department is getting disciplined, and the other piece is, what happened when this happened to my child, or when you pulled my wife over and I told you that, you...you know, you roughed her up, or you were rude to her? What happened after you got done with that? Can people access that now? [LB474]

TERRY WAGNER: No. [LB474]

SENATOR LATHROP: So if I make a complaint about how you treated my daughter when she got pulled over, there's no way I can find out what you did to your officer in response to that. [LB474]

TERRY WAGNER: I would tell you, the complaint that your daughter made was sustained, and the deputy was disciplined for the violation of policy that was committed. [LB474]

SENATOR LATHROP: But we don't know what the consequences were. [LB474]

TERRY WAGNER: No, I would not tell you what the penalty...what the disciplinary action was. [LB474]

SENATOR LATHROP: But we don't know what the consequences were. [LB474]

TERRY WAGNER: Okay. I better understand the issue. [LB474]

SENATOR ASHFORD: Yes, Senator Pedersen. [LB474]

SENATOR PEDERSEN: If you fired the officer, could you tell the family that? [LB474]

TERRY WAGNER: No. [LB474]

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SENATOR PEDERSEN: You can't even tell them that? [LB474]

TERRY WAGNER: I could tell them they're no longer employed with us, but I wouldn't tell...I couldn't tell them they were fired. (Laughter) [LB474]

SENATOR LATHROP: Well, that may be part of the problem, is the dancing around in the terminology, that you don't get a straight answer when the answer is, we fired the guy, and the best you can do is say he is no longer with us. It does lead one to wonder how you get to the bottom of it. [LB474]

TERRY WAGNER: It...yeah, it depends. [LB474]

SENATOR ASHFORD: Well, you're implying, then, those are policies and...those are civil-service type policies that are private sector policies, as well. If someone is fired, they normally don't give the information out as to... [LB474]

TERRY WAGNER: That's correct. [LB474]

SENATOR ASHFORD: And you apply your practices to apply the same sorts of principles to public...well, to your law enforcement people. [LB474]

TERRY WAGNER: To a degree, yes. [LB474]

SENATOR ASHFORD: Okay. [LB474]

SENATOR CHAMBERS: Senator Ashford, this doesn't say so-and-so no longer has a license. It says revoked--the license was revoked. [LB474]

SENATOR ASHFORD: I'm not defending the Sheriff, I'm just...I understand. No, I'm just trying to make the difference... [LB474]

TERRY WAGNER: Well, and if a law enforcement officer's license was revoked, that would be public record, too. [LB474]

SENATOR ASHFORD: I get to say something. Sheriff, hold on a second. I get to clarify myself. I get to say something. I think the point I'm making is, is there...the public policy question that I have in my mind, is there a difference between adopting customary policies and human resource policies and procedures that are utilized in the private sector, versus is there a public policy reason to change those or apply different sets of rules to public employees? That's the...in my mind, that is the issue. So it's a...that's just...I'm just telling you what I think. But anyway, thanks, Sheriff, very much. [LB474]

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TERRY WAGNER: Barbers are certificated, right? They should...(Laughter) [LB474]

SENATOR CHAMBERS: People know anything we do, because when they walk out, it's...(Laughter) [LB474]

SENATOR LATHROP: And nothing six weeks won't fix. [LB474]

WALTER RADCLIFFE: Senator Ashford, members of the Judiciary Committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e, appearing before you today as a registered lobbyist on behalf of the Nebraska State Troopers Association, simply in opposition to LB474, as it sits before you, not in opposition to anything that, quite frankly, that Senator Chambers has said. You know, we might be able to solve the whole problem, for on page 2, line 1, to strike the word "any" and put in "some." And then we can figure out what the "some" means, Senator Chambers (laugh), because in essence, that's what we're talking about. Simply put, it's the objection to the sweeping "any disciplinary action." I think that...I think Senator Lathrop drew that distinction. I think...and I also think that Sheriff Wagner did, too. So yes, I'm always willing to work with you, have been for 37 years, Senator. [LB474]

SENATOR CHAMBERS: And Senator, I mean, Mr. Radcliffe (laughter), they, in watching you, will learn the difference between a dodger and an artful dodger. (Laughter) But I will work with you. Are you willing to work with me on it? [LB474]

WALTER RADCLIFFE: I will just look forward to it and await your call. (Laughter) [LB474]

SENATOR CHAMBERS: Okay, good. [LB474]

SENATOR ASHFORD: And we'll work on it, too, Senator Chambers. [LB474]

WALTER RADCLIFFE: Yeah. When you and Senator Ashford get it worked out, give me a call (laugh). [LB474]

SENATOR ASHFORD: You want Walt? [LB474]

SENATOR CHAMBERS: Yeah, we work. That doesn't exclude anybody. [LB474]

WALTER RADCLIFFE: Thank you. [LB474]

SENATOR ASHFORD: Thank you. I don't believe there are any questions, Walt. [LB474]

LYNN REX: Senator Ashford, members of the committee, my name is Lynn Rex, R-e-x,

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representing the League of Nebraska Municipalities. I think many of the reasons why we oppose this bill have already been articulated, but there's really one that really matters, and that's the one that says, "any disciplinary action." And that's a concern that's been raised with the League of Nebraska Municipalities, in terms of what we could express to the committee this afternoon. And I guess I can tell you I think it's very important, Senator, that you're willing to work with some of the people in this room. It doesn't have to include me, but certainly representatives of the police, teachers, and any others that you may want to include in this, because I guess in thinking about what would not be covered, what should not be covered, and the kinds of things I think Sheriff Wagner was trying to outline to you, would be those sorts of issues of, you came in late too many times, you don't play well with others on the force--things that are internal in that regard. But I think when you get to the level of certain things happen with actions involving with citizens, do citizens have a right to know what the status of that is, as it applies to them or their child or someone involved, that's a much different situation. And so I'm just suggesting to you that I think that that would certainly handle this. I would also respectfully request the committee, whatever you do in working on this bill, take into consideration 84-712.05(7), because that is the section deals with the public records law, that expressly now says that you may withhold these records from the public; in other words, it's very broad, and I'll just read you the language quickly: Personal information and records regarding personnel of public bodies, other than salaries and routine directory information. Under the open meeting...public records law, rather, the law expressly says here are a list of things--and this is 84-712.05(7)--and which there are more, but certainly, this was says you can withhold it. And this is basis under which any entity I know would withhold some of this information, but I would also respectfully suggest to you that in most...with most entities. And I would think...and Mark would know--I don't represent teachers--but I would think with most police departments, if you had a situation where someone wanted to know whether or not...they had an interaction with an officer and they called that person's supervisor or chief, someone had said, so what happened? Well, I mean, I guess as a citizen, I would at least expect someone to tell me, well, I talked to Harry, or I talked to Sally. I gave them a warning or I didn't--something. [LB474]

SENATOR ASHFORD: They're not going to say that, though. [LB474]

SENATOR CHAMBERS: They won't tell you that. They won't tell you that. [LB474]

LYNN REX: So I'm just suggesting to you that perhaps you can work with the various individuals involved here and talk about it. But I do know that there's a whole host of things that basically are disciplinary actions on a routine basis, that shouldn't be disclosed, because they don't really relate directly to that officer's performance, as it applies to citizens. I'd be happy to respond to any questions. [LB474]

SENATOR CHAMBERS: If your child were struck by a teacher, and there was no doubt

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that the child had been struck, an acknowledgement that the teacher violated, not only school policy but the law against striking children, would you want to know what they did to that person, by way of discipline? [LB474]

LYNN REX: Would I? Absolutely. I would also... [LB474]

SENATOR CHAMBERS: They won't tell you. [LB474]

LYNN REX: I would tell you, I would think right now...Mark would know; I don't. One would think they are violating the law. It's a public record. [LB474]

SENATOR ASHFORD: It isn't, not if they didn't take any action. [LB474]

LYNN REX: Oh, you mean they just didn't take any action. In other words, there are allegations that someone violated the law. [LB474]

SENATOR ASHFORD: And the personnel records, the laundry list of public records you're talking about include personnel records, don't they? [LB474]

LYNN REX: Yes, the expressed provision is... [LB474]

SENATOR ASHFORD: So that's why they're not being disclosed. That's what I was asking before. [LB474]

LYNN REX: Yes. And right now, the law in 84, Article 7, Senator Ashford, says that they may withhold them. But for all intents and purposes, that's regarded as...they withhold them. I mean, so there are privacy issues, and also there are union contracts and other things that come into play. And perhaps some folks have negotiated union contracts that allow disclosure--some things are not. But I believe that with the folks in this room, you'll be able to work out something to make it clear what "any disciplinary action" means. [LB474]

SENATOR CHAMBERS: Well, anything you put into the law cannot be negotiated away by...in a union agreement or anything else. If we say that certain things ought to be disclosed, I don't care what the employees and the employer negotiate to, they cannot through negotiation nullify a law. So if we say certain things are... [LB474]

LYNN REX: No. [LB474]

SENATOR CHAMBERS: Oh, maybe I misunderstood you. [LB474]

LYNN REX: No, what I'm saying is, now there is a difference based on what... [LB474]

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SENATOR CHAMBERS: Oh, right. I agree. I agree. [LB474]

LYNN REX: ...what may happen from time city to city. Thank you. [LB474]

SENATOR CHAMBERS: Okay, I misunderstood you. [LB474]

SENATOR ASHFORD: Thanks, Lynn. [LB474]

LYNN REX: Thank you. [LB474]

SENATOR ASHFORD: I think we're finished. Do I have any neutral testifiers? Senator Chambers, do you wish to close? (See also Exhibits 22, 25-28) [LB474]

SENATOR CHAMBERS: I have about an hour, but because the hour is late, I don't have anything to say. (Laughter) [LB474]

SENATOR ASHFORD: Okay. Well, don't feel inhibited. If you feel... [LB474]

SENATOR CHAMBERS: No. Leave me alone. Now don't force me. [LB474]

SENATOR ASHFORD: I'm sure (laugh), we'd love to...no. LB532, Senator Nantkes. Good evening. Good evening, yes. [LB474 LB532]

SENATOR NANTKES: Good evening. Chairman Ashford, members of the committee, my name is Danielle Nantkes, N-a-n-t-k-e-s, representing the Fighting 46th Legislative District, here today to introduce LB532. LB532 would add an additional member to the Police Standards Advisory Council. The additional member would be a law enforcement officer with the rank of sergeant or below. The Policy Standards Advisory Council was created by the Legislature to oversee all training schools, academies, and the law enforcement training center in Grand Island. The council is further charged with ensuring that all rules, regulations and policies with regard to precertification, certification, continuing education, and other training requirements are implemented. The council is also a standing committee within the Nebraska Crime Commission and acts for the commission in all matters relating to law enforcement training. Current law provides that individuals appointed to the council are to be full-time law enforcement officers or employees of a law enforcement agency. However, those who currently serve are administrative personnel. They are not frontline officers. This bill would ensure that the statutory intent of the council is carried out. The Fraternal Order of Police brought this bill to me and a representative is here today to answer any specific questions you may have. One final note: My father has been a deputy sheriff with the Seward County Sheriff's Office for over 25 years, and this issue is important to me, as well. I urge the committee's consideration on this measure, and would be happy to answer any questions. [LB532]

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SENATOR ASHFORD: Thank you, Senator. Any questions? Senator Lathrop...no. Oh, I thought you were approaching the mike there. Thank you, Senator Nantkes. Do you wish to... [LB532]

SENATOR NANTKES: Sure. At this time I'll waive my close. [LB532]

SENATOR ASHFORD: So waived. Any opponents? I see a proponent. What? [LB532]

SENATOR LATHROP: (Inaudible) [LB532]

SENATOR ASHFORD: (Laugh) You've got to be kidding! No. (Laugh) [LB532]

JOE KOHOUT: I agree, Senator Lathrop. (Laugh) [LB532]

SENATOR ASHFORD: I'm serious. No, you're okay, Joe. You haven't been up yet. [LB532]

SENATOR LATHROP: No, we were talking about the guy waving his arm behind you. He's like on a four-bill terror today. [LB532]

JOE KOHOUT: (Exhibit 29) Mr. Chairman, members of the Judiciary Committee, I will be brief. My name is Joe Kohout, K-o-h-o-u-t, registered lobbyist, appearing on behalf of the Nebraska Fraternal Order of Police, here to thank Senator Nantkes for introduction of LB532. I am handing out a copy of former president of the FOP's testimony, Steve Grabowski. Unfortunately, he had a commitment and was unable to stay for this part of the hearing. I would note for the committee...I would ask them to draw special attention to paragraph three, which really kind of gets to the heart of his testimony, which really gets to the heart of the reason for the introduction of LB532, and that is, we think it appropriate that a line officer or someone below the rank of sergeant be on the Police Standards Advisory Council. I would be happy to attempt to answer any questions that you might have. [LB532]

SENATOR ASHFORD: Yes, Senator. [LB532]

SENATOR CHAMBERS: What organization did you say you're representing? [LB532]

JOE KOHOUT: The Nebraska Fraternal Order of Police. [LB532]

SENATOR CHAMBERS: Have you sat through anything that transpired this afternoon? [LB532]

JOE KOHOUT: I have, Senator Chambers. [LB532]

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SENATOR CHAMBERS: After the way they have savaged me and what I believe, then why should I support this bill? [LB532]

JOE KOHOUT: Well, I thought you may ask that question. (Laughter) [LB532]

SENATOR CHAMBERS: Tell me why you think I should support it? [LB532]

JOE KOHOUT: Well, let me just address very quickly, sort of the... [LB532]

SENATOR CHAMBERS: Good answer, thank you. That's enough. [LB532]

JOE KOHOUT: ...conversations that have occurred since testimony earlier. Obviously, original conversation between some of our lodges and also with legal counsel was that they would oppose any sort of changes, and I believe you are referring to the bill that was immediately preceding this one. We have had discussion, and we would be willing, obviously, to talk. I think Senator Lathrop's comments about, is there something we can do, or is there...Mr. Radcliffe's comment, as well, that striking "any" and insert "some"... [LB532]

SENATOR CHAMBERS: So the answer to my question is that I ought to just not carry over any negative attitude I may have from the prior discussions, judge this on its merits, and you're giving me the reassurance that some of the people you work with are willing to work with me on that other bill, and therefore, the good arguments that were given by the introducer ought to sway me, whereas maybe yours standing alone wouldn't; is that what you're telling me? [LB532]

JOE KOHOUT: Absolutely, Senator Chambers. (Laughter) [LB532]

SENATOR CHAMBERS: Good answer. (Laughter) [LB532]

SENATOR ASHFORD: Well said. No, well said, Joe, well said. [LB532]

JOE KOHOUT: I work for reasonable people. [LB532]

SENATOR LATHROP: The less said, the better. [LB532]

SENATOR ASHFORD: (Laugh) Yeah, well said. I think...Senator Chambers...no. Go ahead. Do you have any...okay. Thanks, Joe. Any opponents? Sheriff Wagner. [LB532]

TERRY WAGNER: (Exhibit 30) I almost feel like I need to apologize for being up here so often, but... [LB532]

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SENATOR ASHFORD: (Laugh) No, no, no. [LB532]

TERRY WAGNER: Senator Ashford, members of the Judiciary Committee, my name is Terry Wagner. I'm the sheriff of Lancaster County. I also serve on the Police Standards Advisory Council, which is who this bill affects. I had prepared written testimony and I will have that distributed to you, so I won't hash over my written testimony. You can read that at your leisure. I do want to bring a couple of things to the attention of the committee. First, the Police Standards Advisory Council was restructured in the 93rd Legislative Session in 1994. It was expanded at that time and was very carefully restructured so that it represented law enforcement officers and agencies across the state. I'll give you a quick example. The statute requires that a representative of the metropolitan class and/or the primary class be on the council. Lincoln and Omaha combined represented 28 percent of all Nebraska law enforcement officers. It also requires a chief or his designee for cities of the first class, and it also requires a chief of a city of the second class or village. Those two classes of cities represent 27 percent of all law enforcement agencies and officers in Nebraska. It also requires two sheriffs--one sheriff from a county of over 40,000, and one sheriff from a county of under 40,000 population, and together, sheriffs' offices represent 27 percent of all law enforcement officers in Nebraska. So you can see that the council is very equally divided amongst all segments of Nebraska law enforcement officers and agencies, in that with State Patrol, with a citizen at-large, it's just a very good, equal representation. It's also an odd number, and I think an even number here could create some deadlock issues that should...certainly would be an issue. I think the third issue that the committee needs to be aware of is certainly the language in the current LB...or the current statute allows for a chief or a sheriff or his designee. It doesn't have to be the sheriff; it doesn't have to be the chief. It could be a sergeant, it could be a line officer, and I think if those people are willing to serve, their names could be forwarded to the Governor for his selection, if that's who he'd choose. So what this bill is asking for is already permissible in statute, and the statute is not broken--don't fix it. [LB532]

SENATOR ASHFORD: Thanks, Sheriff. [LB532]

SENATOR LATHROP: I'm just wondering. Does this group develop the standards I was just talking about, on the last bill? [LB532]

TERRY WAGNER: Yes, sir. Title 79 in the Nebraska administrative code basically spells out all of the professional standards for law enforcement officers--hiring, disciplinary action, firing, those kinds of things. [LB532]

SENATOR LATHROP: But do they set the standard, to use the medical jargon, the standard of care? Do they set what you should do when you're confronted with a situation, as to what you should or shouldn't do? [LB532]

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TERRY WAGNER: No, sir. No, sir. Those are going to be individual agency policies. [LB532]

SENATOR LATHROP: Okay. That's all I have. [LB532]

SENATOR ASHFORD: Thank you, Sheriff. [LB532]

TERRY WAGNER: Thank you. [LB532]

SENATOR ASHFORD: Chief? [LB532]

LARRY THOREN: (Exhibit 31) Larry Thoren, T-h-o-r-e-n, testifying on behalf of the chiefs' association, who is opposed to this bill. We think it's a bad precedent to allow rank-and-file under the PSAC. Senator Pedersen and Chambers may remember two, three, maybe four years ago there was an attempt to get three seats by the FOP on the PSAC. Any questions I can answer for you? [LB532]

SENATOR ASHFORD: I'm not sure I got the last point, but I'll let it...I'll let...(laugh). [LB532]

LARRY THOREN: This is an ongoing initiative. This has been an ongoing initiative. [LB532]

SENATOR ASHFORD: Oh, it's an ongoing...okay, I'm sorry. I just didn't...I guess I wasn't here for that. That's all I have, Chief. Thanks. [LB532]

SENATOR LATHROP: The Senator may want to close. [LB532]

SENATOR ASHFORD: Senator? Senator Nantkes, do you have any closing? [LB532]

SENATOR NANTKES: To be brief, thank you, Chairman Ashford, members of the committee, for your patience. I know it's been a long and arduous afternoon for you. I guess, just to reiterate a few points for the main impetus behind the bill, it's just to provide a broader representation for those that this body does regulate, to ensure that a rank-and-file officer's perspective can be brought to the table. And I guess, maybe in response to some opposition testimony, if there is a great fear about deadlock occurring, we'd happily work with the opponents to submit an amendment to put in two, three, four, or file rank-and-file officers on the committee, to help out. (Laughter) So we'd be happy to work with them into the future. With that, thank you. [LB532]

SENATOR ASHFORD: Thanks for the offer, Senator. Thank you. [LB532]

SENATOR LATHROP: That should solve it all. [LB532]

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SENATOR ASHFORD: That's concludes our business for the day. Thank you. [LB532]

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Disposition of Bills:

LB179 - Advanced to General File, as amended.

LB242 - Held in committee.

LB428 - Advanced to General File.

LB474 - Advanced to General File, as amended.

LB525 - Held in committee.

LB532 - Held in committee.

Chairperson

Committee Clerk