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Transcriber's Office

Judiciary Committee
January 19, 2011

[LB19 LB20 LB66 LB128 LB136]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 19, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB19, LB20, LB66, LB128, and LB136. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: None.

SENATOR ASHFORD: Good afternoon. Welcome back, those who are regulars at the Judiciary Committee; and those who are not, welcome. This is the Judiciary Committee of the Legislature. I want to introduce my colleagues that are here: Senator Steve Lathrop is the Vice Chair of the committee; and Senator Amanda McGill, next to Senator Lathrop, is from Lincoln; Senator Brenda Council from Omaha; and our new addition, Senator Tyson Larson, from O'Neill, Nebraska. Welcome, Senator Larson. Let me see. Oliver is here; Oliver VanDervoort is the committee clerk. Welcome to Oliver. This is his first hearing. The idea here is to record what they say. Okay, he's got it. (Laughter) So we're fortunate to have Ollie here. Christina Case, our clerk for four years, or three years, is now at another--two years--is at another committee now in the General Affairs Committee--is that right?--so good luck in the General Affairs Committee, Christina. LaMont Rainey; those of you who are here often know LaMont. LaMont is legal counsel and is back again. Senator Burke Harr is a little late. He's here from Benson--from Omaha. Welcome, Senator Harr. Just a couple of quick comments, first to the press. I've been asked about Exec Sessions, when we will have them and whether we will give notice of Exec Sessions. We will try during the public hearings to let people know whether or not we will have an Exec Session that day, the day we're having our bills. Otherwise, the best way to check is to check with the committee on the day of, on the Wednesday, first day of the week when we have hearings, and we can let the press know when we think we at least plan to have hearings...or Exec Sessions. We may have one tonight. We'll see how the testimony goes. Another quick announcement on an issue that was before us earlier--well, actually last week--on the metal detectors at the Judiciary Committee. If I feel that there is a need to have metal detectors for any particular hearing, I will discuss that issue with my committee colleagues, with the Speaker, and with Patrick O'Donnell, the Clerk, and with the Capitol security. It may be that we will have the need to have metal detectors, but that will be a decision that will initially be made by this committee consulting together on the need--so just to clear the record on that issue. But it will be a committee decision. So when we, if any of the committee members feel the need or if I do, we will discuss it in Exec Session prior to the time that we have metal detectors. We have used them in the past when we felt there was a need to protect the public and staff and others, and it may occur again, I don't know. We will use the light system, meaning that each testifier has three minutes, not including the introducer. Senator McCoy, he has two minutes. (Laughter) But we will (laugh)...seriously, we will use the light system--and not including questions, obviously.

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If there are questions that run over, that will be in addition to the three minutes. There are sign-in sheets. Most of you have been here before. If you have not, there are sign-in sheets located behind the desk, and we'd ask you to sign in prior to testifying. State your name and where you're from, and then we'll proceed. Today, the first hearing is LB19, Senator McCoy. And his bill concerns the use of, to prohibit the use of certain drug substances. So, Senator McCoy. I want to also tell Senator McCoy, and those that are here, how much I as Chair and the staff appreciate Senator McCoy and his staff, his willingness to work with us throughout the summer and fall in this very incredibly serious issue. And I want to tell you that's why we scheduled this hearing as the first hearing. Normally we don't start with something that has as much gravity as this does and maybe we start out with some more procedural-type hearings, but the committee felt that this was a critical issue and that's why we're starting with it. And again, Senator McCoy, thank you very much, because you have worked very hard coordinating this with our committee. So thank you. And also Senator Lautenbaugh is here, so welcome, Scott. Senator McCoy. [LB19]

SENATOR McCOY: (Exhibits 1 and 2) Well, thank you, Chairman Ashford and members of the Judiciary Committee. Welcome to your first day, and my first day as well, this session in hearing. For the record, I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District in the Legislature. I'm here today to introduce to you LB19, which amends the Uniform Controlled Substances Act to include the class of synthetic cannabinoids used to make the drug commonly known as K2 or Spice. LB19 seeks to apply a ban for synthetic cannabinoids, and there are eight classes in our piece of legislation, LB19. Under this bill, the penalties for possessing, manufacturing, or distributing K2 mirror those currently in statute for possession, manufacture, or distribution of marijuana. I first became aware of K2 in March 2010. There was a piece in our fine newspaper in Omaha, in the Omaha World-Herald, again last March, that really outlined just what a serious problem this was becoming. Senator Ashford alluded to it. We had a conversation at that point that we needed to do something about this issue. At that particular juncture it was late enough in last year's short session that we were past the point of bill drop; didn't have the opportunity to introduce any legislation about it. At that time, I made a commitment to Senator Ashford that I would work...that our office or staff would work on this with the appropriate folks and try to address this as early as possible in this session and because we just really felt like it was a critically important issue that we get a handle on this. I'll make a note, a few things that you'll see in some of the handouts, and I'll explain a little bit of those later. But according to the National Conference of State Legislatures, nine states have banned K2 by compound name, and three states by the state board of health or pharmacy boards have enacted emergency bans, including our bordering states of Kansas, Missouri, Iowa, and then also North Dakota. K2 Spice products are a mixture of herbal or Spice plant products sprayed with potent psychotropic drugs, and they are marketed under a variety of names. One of the handouts that you'll see in front of you is for a product...it just gives you an idea of the variety of names out there for these different products. There are a

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ton and whole list of symptoms and side effects, including vomiting, blood pressure higher than 200/100, elevated heart rate--medically dangerous levels of 150 or higher--increased anxiety or agitation leading to panic attacks. There's just a whole host of issues with this. And these products are anywhere from 4 to 100 times more potent than regular marijuana. It's often sold as incense. As you can see from one of the handouts marked--and you'll note this, particularly, on the front of this: "Not for human consumption. Keep away from children, pets, and pregnant women." Prices average \$45 for three grams--about equal to three sugar packets just to give you an idea--which is higher than good grade marijuana. And it's sold and found in anywhere from tobacco shops, head shops, and convenience stores. The handout that you have--and I actually have the package itself--came to a smoke shop in Omaha. And this would be from a manufacturer of these products soliciting business, wanting the smoke shop to carry this product. So clearly they are out there marketing this to businesses in our state. You know, stores have seen huge increases in sales from this product. The anecdotal evidence: There was a store here in Lincoln, a news story from a few months ago, that an individual had to hire...an owner of a store had to hire five new employees to keep up with the level of business from the sales of K2. Many of you are probably familiar with the story that took place later, a few months after Senator Ashford and I initially spoke about this in June, and a young man in Indianola, Iowa, tragically lost his life due to an overdose on K2, and took his own life tragically. The story was in the newspaper. It was a horrendous thing for their community to go through. And again it renewed the commitment that we would do everything we could to hopefully never have that happen in our state and have such a story such as that. In July, we announced plans to introduce what became LB19, and the work really began. From that point on, we--and you'll hear some testifiers behind me, the law enforcement community, experts in this field--really...it was really amazing to see the folks that came forward to help with this that saw this as a problem in their communities and what they were dealing with on a daily basis. We've heard from folks, the treatment centers and drug courts began to see K2 use, really it started at the beginning of last year. And it's considered to be a huge, very serious treatment issue, too, for those that have used it. Many of you also saw a story in October about a young man in Sidney, who's here today and will testify, along with his mother, that crashed into a residence after using K2, and thankfully, walked away from the accident. And he'll share his story a little bit later. You know, I was privileged to speak at a community forum at Lincoln North Star High School in November and really heard what the Lincoln Public Schools were doing on this issue. And it's hard to comprehend and explain just how concerned parents were and even a lot of young people that were there as well, about this, that maybe they have friends that are using this, maybe they used it in the past themselves. As many of you know--and you'll also hear, by the way, from Tami Lang, who will testify on that too from the school perspective as security there. As many of you know, the DEA issued an emergency scheduling of the five most common chemicals used to make K2. And going back to that handout earlier that all of you have, I wanted to make note that you will see that on the "Toxicity Report" page of that, at the very bottom it says, "This Product meets upcoming

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Federal requirements." So as we went about this process, and the Attorney General's Office and his staff along with law enforcement, we were able to put this together from a chemical class perspective rather than a chemical compound. And that really...the importance of that really hit home yesterday when I came into possession of this material and was able to see just that already manufacturers are doing an end run around what the DEA has scheduled. You know, as I conclude, what's really become apparent to me and to those of us that have worked on this now for about nine months, is that K2 and all its derivatives are really a dangerous, dangerous drug that has invaded our communities. And I really hope that we can work together. I appreciate very much the early nature of this hearing so that we can address this issue and hopefully get this in place so that we can protect our kids. Because what more important issues do we tackle here in the Legislature than making sure that we do everything possible to keep our kids safe? And with that I'd be happy to answer any questions if there are any. [LB19]

SENATOR ASHFORD: Thanks. Senator Lautenbaugh. [LB19]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, Senator McCoy, for coming today and bringing this bill. And this may not be your area of expertise but I'll ask the question anyway, and if you want to defer to someone else that is in law enforcement or whatever, that's fine. So this recently received thing is something that would not be covered in what we're being asked to outlaw today? This is something different than K2? [LB19]

SENATOR McCOY: No. Actually this would be covered. This would be as I understand it what we are proposing in this legislation would cover this. This would be illegal to possess or to sell. However--and I appreciate that and the opportunity to follow up on that--other states that have tackled this issue have gone about it in the chemical compound format and in which case this very likely would be legal. This also would be legal and would skirt around what the DEA has put in place. So that's why we believe with, as we've worked on this, it's important to go about this from a chemical class standpoint rather than the specific chemical compounds. And there will be law enforcement officials behind me that can probably speak to that from a more scientific perspective. [LB19]

SENATOR LAUTENBAUGH: But your approach then avoids us having to come back next year to ban the next thing and next year to ban the next thing as they tweak the chemicals in some way. [LB19]

SENATOR McCOY: That's certainly the hope, I mean, and there's always the opportunity that some enterprising individual out there would find a way around it. But we really believe that this will hopefully create an environment that is very, very difficult for that to occur. [LB19]

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SENATOR LAUTENBAUGH: Thank you. [LB19]

SENATOR ASHFORD: Thank you. I know...let me...Senator Coash joined us also, so welcome, Senator Coash, from Lincoln. Senator Council. [LB19]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford, and thank you, Senator McCoy. Senator Lautenbaugh's question touched upon mine, and my concern is, are we going to be constantly chasing those who are going to build a better mousetrap? I mean I don't know. You've indicated the broad coalition that has worked on this, but it's my assumption that the chemical classes that have been identified are those that are known to be distributed at this point in time. I mean isn't it very possible that, you know, we'll be almost annually coming back. It's kind of like technology. If somebody can build it in their garage, the next day you're going to have a new chemical class that we haven't identified yet that could produce the same types of results. [LB19]

SENATOR McCOY: Well, that's certainly been the experience of some of the states that have had K2 bans in previous years as they went about it from a chemical compound. So it was very easy, from a chemistry standpoint, to do an end run around that and be legal again. As we put this together and worked with the Attorney General's Office, law enforcement, DEA, to work on this, there were essentially eight classes. And it really broadened it--and there will be those behind me that can speak better to this than I--but really broadened it way beyond what is out there currently and really covers the gamut, hopefully. And certainly the hope would be, Senator Council, that we aren't back here, and that's why we went about it this way, because the states that only addressed this, obviously trying to do it as quick as possible, that addressed it from a chemical compound standpoint are having to go back, many of them, and address this again. [LB19]

SENATOR COUNCIL: And the other question that is raised as a result of one of the communications that's been offered into the record indicates that it's difficult to test for the presence of this substance in the system--and if you can afford the test; that unlike marijuana, that stays in your system for seven days or more, this substance can go through your system in a far shorter period of time. [LB19]

SENATOR McCOY: Well, there is currently only one lab that can test for this because this isn't detectable through a common or standard drug screening. And there will be those behind me and particularly in law enforcement that can speak better to that. But, yeah, this definitely has some implications from a drug testing standpoint as far as undetectability goes, for certain. [LB19]

SENATOR COUNCIL: Thank you. [LB19]

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SENATOR ASHFORD: Yes, Senator Larson. [LB19]

SENATOR LARSON: Under the committee statement, it says many of the penalties for K2 will mirror those of the possession of marijuana. Those include the distribution and the processing and manufacturing of it will mirror what we have for marijuana currently? [LB19]

SENATOR McCOY: That's correct. [LB19]

SENATOR LARSON: And is there any substantive amount that they need to possess, over such amount, or any amount...at what...any amount they possess will be criminalized, or...? [LB19]

SENATOR McCOY: I believe it's an ounce. I'll have to glance through here. But law enforcement can speak to that behind me, but I believe it's an ounce is how it's in here. [LB19]

SENATOR LARSON: An ounce is how much? Okay. [LB19]

SENATOR ASHFORD: Seeing no other questions, thanks, Senator McCoy. [LB19]

SENATOR McCOY: Thank you. [LB19]

SENATOR ASHFORD: And I assume you're going to hang around for a bit. [LB19]

SENATOR McCOY: I will most certainly. [LB19]

SENATOR COUNCIL: Oh, real quick, Senator McCoy. [LB19]

SENATOR ASHFORD: Yes, Senator Council. [LB19]

SENATOR COUNCIL: This other document that we've received, "Highlighted compounds are those...", that's when you're talking about the compounds as opposed to the classes. [LB19]

SENATOR McCOY: Correct. [LB19]

SENATOR COUNCIL: Okay. Thank you. [LB19]

SENATOR ASHFORD: Thanks, Senator McCoy. We have a list of testifiers that has been submitted by Senator McCoy's office. Corey is here. I see him in the front row so he can come up next. And then Christine Gabig from...I know Christine; there she is. And Dave Partsch, Tami Lang, Angie Dickman, and Zach Dickman, who's all...I believe

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are also here. Corey, welcome again. [LB19]

COREY O'BRIEN: Thank you, Mr. Chairman. Mr. Chairman and senators of the Judiciary, my name is Corey O'Brien, that's C-o-r-e-y O'B-r-i-e-n, and I'm an Assistant Attorney General with the Nebraska Attorney General's Office. It's my honor to speak to you today on behalf of and in support of LB19. LB19 is a bill that seeks to schedule and prohibit the use, manufacture, and trafficking of synthetic cannabinoids. From my travels across the state of Nebraska, I can tell you that there's abundant evidence that synthetic cannabinoids are finding their way into our communities, our schools, and into the hands of our children. In fact, in some communities, including Lincoln, they have become so prevalent that according to some of the law enforcement and school administrators I have talked to, they have identified synthetic cannabinoids as the number one drug threat they are currently facing. Synthetic cannabinoids have become rampantly popular amongst our teens due in large part to their abundant availability in local head shops and via the flashy and targeted marketing campaigns of many Internet entrepreneurs. While this threat is relatively new to Nebraska, synthetic cannabinoids have been inundating states nationwide over the last couple years, causing many state legislators to enact measures similar to the ones proposed in LB19. At last count, 13 states, including our neighbors in Kansas, Missouri, and Iowa, have passed legislation prohibiting certain synthetic cannabinoids. In November 2010, the federal DEA enacted a temporary one-year emergency ban on five of the most common synthetic cannabinoid compounds. While these bans are a good start, we have learned in talking to these other states that their bans have left many holes that the manufacturers are none too quick to exploit. Thus, from what we have learned, LB19 attempts to enact a more complete and inclusive list of prohibited synthetic cannabinoids by banning most, if not all, derivations of these substances that are created from the eight known nucleic bases or root structures that virtually all synthetic cannabinoid compounds have, to date, been derived from. As Senator McCoy indicated, we can't be entirely certain that some profit-minded scientist will find a way to skirt this broadened ban, but LB19 almost certainly puts Nebraska in a much better position than our neighbors and the DEA to more fully address this ever-emerging and constantly changing threat. It also will enable us, unlike other states who are already contemplating additional legislation to close the gaps that their current laws fail to close, be able to prevent us from coming back, hopefully, year after year, adding to this list. As Senator McCoy indicated, we are treating K2 or synthetic cannabinoids similar to marijuana. For simple possession, the crime will be an infraction punishable by a \$100 fine. But that's not really who we're after. We're after the people that are putting this into the hands of our children: those who make it and those who traffic it. They will be eligible for a Class III felony punishable by 1 to 20 years imprisonment. It's my genuine hope, ladies and gentlemen of the Judiciary, that you'll advance this quickly to committee to allow us to do something that we're not able to do currently under Nebraska law, and that's to put the people behind bars to take this stuff off the shelves, to take it off the Internet and keep it out of the hands of our children. Thank you, and I'd look forward to any questions you

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might have. [LB19]

SENATOR ASHFORD: Thank you, Corey. I would also like to thank you and your office for your work on this issue. I know you've been on it for a year, and appreciate the Attorney...please thank the Attorney General for his interest in working with us and getting this matter before us. Senator Council. [LB19]

COREY O'BRIEN: I will. Thank you. Senator. [LB19]

SENATOR COUNCIL: Yes, Mr. O'Brien. Before you leave, through your research have you determined whether is there any legitimate medical use for any of these compounds? [LB19]

COREY O'BRIEN: We discussed that. We've had many discussions on many topics, but one of those was, you know, what the potential was for this to be used in terms of research or future medical use. And we believe that the statutes that are already in place regarding controlled substances do provide for exemptions for research and medical studies sufficient that they apply to the division of drug control policy for the state of Nebraska, I believe that's through the Nebraska State Patrol, and say we would like to do a study or use this for medical purposes--and they can become exempted from doing that. But as of right now, I'm not aware of any valid use for any of this beyond its incense use or its use to be smoked as a replacement for marijuana. [LB19]

SENATOR COUNCIL: Okay, so...and maybe we have to look at it, because I don't know. And I don't know if any of these compounds or classes could be legitimately prescribed by a licensed medical provider for some ailment and whether we have any way to determine whether that's the case and to make sure that we make necessary provisions for that. [LB19]

COREY O'BRIEN: This substance is being placed in Schedule I of the controlled drug schedules, and certainly a valid prescription, after it passes FDA testing and things like that, would be exempt from prosecution similar to other substances that are on Schedule I. [LB19]

SENATOR COUNCIL: So it's Schedule I. All right. Thank you. [LB19]

SENATOR ASHFORD: Yes, Senator Harr, and then Senator Lathrop. [LB19]

SENATOR HARR: Thank you, Mr. Chairman. A couple of questions for you, Mr. O'Brien. [LB19]

COREY O'BRIEN: Yes, sir. [LB19]

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SENATOR HARR: As I read this, I guess my first question is, and I'm...there's section...what is it? It's going to be (15). Let's see, where do I start? I apologize--(c)(15). Do you see where I'm speaking of? On page 8 of the bill if you want to look at that. [LB19]

COREY O'BRIEN: Yes, sir. [LB19]

SENATOR HARR: It looks like it. Yeah, (inaudible) 15. Okay, you have that. And then if you go over to (35) of the proposed--(a), paragraph (a)--can you explain to me what the difference between those two paragraphs are? And if not, why do we...also why do we need both? Is one redundant? So I guess that's two points. Let me ask you what the difference is. [LB19]

COREY O'BRIEN: The first, the tetrahydrocannabinols, that is generally referring to the THC that's found in naturally occurring marijuana, even though it does reference synthetic derivatives. We believe that that was not a thorough enough coverage because certainly we're talking about many more cannabinoids, seven more cannabinoids that have been identified that have been... [LB19]

SENATOR HARR: And what's a cannabinoid? [LB19]

COREY O'BRIEN: Cannabinoids. [LB19]

SENATOR HARR: And what is what? [LB19]

COREY O'BRIEN: Basically they are narcotics--and I'll have a chemist coming after me--but that essentially attack the C1 and C2 receptors in the brain or the cannabinoid receptors in the brain. And so they've been identified as substances that affect that part of the brain and give that stimulant effect. When we were talking about the first reference, though, generally it's trying to refer to the naturally occurring THC that's found in marijuana. And with the second one, we're talking about synthetic cannabinoids that are specifically...have that base nucleus of a tetrahydrocannabinol and any derivatives that can be derived from that synthetically. So it was probably a little bit of overlap but it's also giving us a fudge factor where if a defense attorney came in and said, "Well, is this a naturally occurring or a synthetic version of tetrahydrocannabinol?", we can clearly say we're covered on both ends of the synthetic as well as the naturally occurring THC. [LB19]

SENATOR HARR: And to your knowledge has there ever been a case prosecuted under the synthetic equivalent? [LB19]

COREY O'BRIEN: Nationwide? [LB19]

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SENATOR HARR: Well, based on this statute, I would say under a Nebraska statute since we're looking to change that. [LB19]

COREY O'BRIEN: Has there been a THC prosecution in the state of Nebraska for naturally occurring THC? [LB19]

SENATOR HARR: No. For a synthetic equivalent as written in the statute... [LB19]

COREY O'BRIEN: There have been but not based on this statute. There have been some prosecutions for possession offenses based on a huffing statute that doesn't really quite equate to what we need it to do. [LB19]

SENATOR HARR: And why hasn't it been tested under the, but not limited to, synthetic equivalents? [LB19]

COREY O'BRIEN: Well, as far as I know, none of the substances...none of the cannabinoids that have been identified here in Nebraska are tetrahydrocannabinols. They're some other variation of the other seven nucleuses that we're talking about. So as far as I know, that's not been an option where we had a tetrahydrocannabinol as a nucleus of any of the substances we found that has allowed us to push that envelope to see if this would hold up in a prosecution there. [LB19]

SENATOR HARR: Okay. So this (35)(a) is more proactive than a reaction? So there hasn't been an issue with this currently, is that your understanding? [LB19]

COREY O'BRIEN: No. No. I'm not aware of any. [LB19]

SENATOR HARR: Okay. All right. And just to clarify the record from earlier, there isn't a minimal weight requirement or a percentage requirement to prosecute for distribution, is there? [LB19]

COREY O'BRIEN: No. I mean as a... [LB19]

SENATOR HARR: If I have a tenth of a gram and try to sell it to you, that's still distribution, correct? [LB19]

COREY O'BRIEN: Absolutely. I mean we have various options, including distribution or possession with intent to distribute controlled substances. It's not weight dependent. There are many factors that we, as prosecutors, look at in terms of whether or not we can make such a trafficking offense, such as the existence of drug records, the existence of money--the nonexistence of certain factors as well. So it's not weight dependent on what we've drafted here. [LB19]

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SENATOR HARR: Thank you very much, Mr. O'Brien. [LB19]

COREY O'BRIEN: Thank you. [LB19]

SENATOR ASHFORD: Senator Lathrop. [LB19]

SENATOR LATHROP: I may have a question that's similar to Senator Harr's. And, believe me, I'm interested in getting rid of any of these and making them all illegal and so forth. So we have an amendment to this statute which is found on paragraph (35), pages 10, 11, and 12. And what we've done is we have listed a variety of chemicals or synthetics derived from certain chemicals that can be used to create some kind of a high that we want to stop. Is that right? [LB19]

COREY O'BRIEN: Right. [LB19]

SENATOR LATHROP: Okay. And here's the question, and it may be the same thing that Senator Harr was driving at, but I got...somebody did some research on this, an intern in my office, and said, "Hey look, I'm not sure that this stuff isn't already illegal under paragraph (15), found on page 8." So let me ask you this. Do you see that definition of I think you called it THC, right? [LB19]

COREY O'BRIEN: Yes. [LB19]

SENATOR LATHROP: And it says the synthetic equivalents of the substances or any synthetic substances similar to it. That isn't broad enough to cover these? Or are you coming in here to be more specific about things that are already included in the definition found in paragraph (15) on page...? [LB19]

COREY O'BRIEN: I'm doing...what we're trying to do is do both, honestly. We're trying to be more broad as well as more... [LB19]

SENATOR LATHROP: Okay. Then answer this question for me. [LB19]

COREY O'BRIEN: ...more specific. [LB19]

SENATOR LATHROP: If you...and I appreciate what you're doing. I'm just trying to understand if we already had the authority to prosecute these people and haven't been because somebody didn't read the definition on page 8. What is it in our amendment, that is this bill, which one of these compounds are now going to be illegal that were not illegal under paragraph (15)? [LB19]

COREY O'BRIEN: Subsections (b) through (h) are more specific...have broadened what (15) may already do for us. So... [LB19]

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SENATOR LATHROP: You don't think these things were already illegal under the (15) found on page 8? [LB19]

COREY O'BRIEN: No, sir. And the reason is, is because again the chemical compounds that are being used are not all derivatives of THC or tetrahydrocannabinols. Some of them are derivatives of those nucleuses that are listed in (b) through (h). And so since they're not all tetrahydrocannabinols, then they must be something else, and most of them have been either (b) through (h) in terms of their nucleus, their underlying nucleus. So that's why I say that they would not necessarily be all-encompassing. The other thing is, is generally when we went back and we looked at the legislative intent on the tetrahydrocannabinols, most of the discussion again revolved around naturally occurring THC, and we wanted to make absolutely sure that this was going to cover synthetic tetrahydrocannabinols and their derivatives. [LB19]

SENATOR LATHROP: But paragraph (15) on page 8 specifically says "and the synthetics," doesn't it? [LB19]

COREY O'BRIEN: It does. [LB19]

SENATOR LATHROP: Okay. [LB19]

SENATOR ASHFORD: Thanks, Corey. [LB19]

COREY O'BRIEN: Thank you. [LB19]

SENATOR ASHFORD: The next testifier is Christine. And give us your name. And Christine called me early about this issue and--last summer--so I appreciate your doing so and I'm glad you're here. So if you'd give us your name and where you're from, and proceed. [LB19]

CHRISTINE GABIG: All right. Good afternoon. I appreciate the opportunity to be able to speak to you folks. My name is Christine Gabig; that's C-h-r-i-s-t-i-n-e, Gabig, G-a-b-i-g, and I'm a forensic scientist with the Douglas County Sheriff's Office up in Omaha. And I have a whole little spiel written out that I wanted to say to you folks, but I'd like to address your question that you were going back and forth about under section (15) if I could. [LB19]

SENATOR LATHROP: It would be fine with me. [LB19]

CHRISTINE GABIG: The reason that section (15) on page 8 does not cover the synthetic cannabinoids that we're seeing is because they're not tetrahydrocannabinols. What we're seeing, these are chemicals that were made by pharmaceutical companies.

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What they did was they studied THC to see which receptors in the brain it works with, and then they came up with some chemicals that are not related to THC at all. They don't have the same chemical structure at all, and those will fit into that same receptor. And then that information got out, and people took those and made those chemicals and put it on a plant-based mix and are selling it as K2 and Spice and many other things. So they're not tetrahydrocannabinols so they would not fall under section (15). What they are, are as Corey said, the ones that are listed in (b) through (h). He also included tetrahydrocannabinols underneath there. But we have the naphthoylindoles, the naphthylmethylindoles. That's what the chemical structure of those are--not THC. They don't have a THC nucleus. Okay. Anyhow, I'm here today to offer support for the LB19 bill to add these synthetic cannabinoids to the Schedule I list of controlled substances. Because it's legal, there's this public perception that these are a safe thing to do--and these are not safe chemicals to ingest. They are THC agonists so they work with the brain, like I said, in the same receptor that THC does, but they work better with that receptor, making them 3 times to 100 times more potent than THC. People have been presenting to the emergency room across the country with circulatory and heart problems, even loss of consciousness and stroke. Writing the legislation to control these substances is challenging because there's so many different synthetic cannabinoids out there. There are literally hundreds of these substances in existence, and experience has shown that as soon as the state controls a specific cannabinoid, those manufacturers pump another one out into the product and then that product is now legal. That's why this class-based approach is the best way to address the current synthetic cannabinoid problem and also looking into the future to other cannabinoids that could be put into these products. The classes that are included in this bill represent some of the classes that are the easiest to make and that's what most manufacturers are going to do. They're also the least expensive to make which is also going to be attractive to manufacturers. And they also represent the ones that have the highest affinity to that receptor in the brain so are more likely to be abused and have the psychoactive effects. In summary, the Douglas County Sheriff's Office supports LB19, which will prohibit elicit possession and abuse of these products while not restricting legitimate research. [LB19]

SENATOR ASHFORD: Thank you, Christine. Yes, Senator Larson, and then Senator Coash. [LB19]

SENATOR LARSON: You mentioned that these chemicals react better with the brain than normal marijuana or tetrahydro...or I guess I'm having trouble. THC. (Laugh)
[LB19]

SENATOR ASHFORD: Tetra is close enough. [LB19]

SENATOR LARSON: Tetra. THC. Since they do react better with the brain, what are the effects that they have on the body? Are they more adverse effects to the body? You

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said people have been admitted into the emergency room. Are they worse for the body than regular THC, and what effects do regular THC have compared to these chemicals? [LB19]

CHRISTINE GABIG: Good question. The receptor that they react with, which is the same as the THC one, it's called the CB1 receptor, and there's a lot of those receptors in your brain; also some in your lungs, your kidneys, your liver. But mainly the ones in the brain it affects, and that affects your central nervous system. So people will have paranoia; they can even have seizures, loss of consciousness. And because it attaches so tightly to that receptor, it can stay in your system longer and so people cannot know what to expect and can experience these very long paranoid delusional instances. [LB19]

SENATOR LARSON: Thank you. [LB19]

SENATOR ASHFORD: Yes, Senator Coash. [LB19]

SENATOR COASH: Thank you, Chairman. I'm glad I have a chemist here. I have two questions. One, we know it's being sold in Nebraska. Are we aware is K2 being manufactured here, as well, or is it being manufactured outside of our state and being brought in? [LB19]

CHRISTINE GABIG: Oh, I'm certain it's being manufactured here. I mean we see it has been manufactured. We, with some of my colleagues, they've had labs that they've busted in Kansas and Iowa, so I would...I think it's fair to assume it's also being manufactured here. It's easy to get the chemical. You just can order them from the Internet and then just spray it on a plant-based material, you know, in your garage, and then package it and sell it. [LB19]

SENATOR COASH: Okay. Well, that's kind of a follow-up to that question. I mean if you want to illegally grow marijuana, you need, you know, dirt and a plant and the seeds, and it's agriculture after that. But what do you need to be...? I mean what are the...? You mentioned spraying it on a...what?...do you spray it on a houseplant and then they smoke that? [LB19]

CHRISTINE GABIG: Kind of. You order the compound. You have this list of things that I have compiled, some of the different compounds. These all have chemical names, so JWH-018 might be a chemical compound. You order that from China or from India where they can cheaply manufacture these. It's just a white powder. It comes in a big box to your house. And then you dissolve it in something like acetone that's a nail polish remover, and then you can just spray it--now it's in a liquid--and you can just spray it on the incense, whatever plant material you choose to use, and that acetone evaporates leaving behind the powder. We can actually see it under the microscope on the herbs.

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[LB19]

SENATOR COASH: So people spray it on, like, cigarettes or...? [LB19]

CHRISTINE GABIG: No, they spray it on things that smell good because they market this product as incense. So lavender. I don't know, other plants, herbs that smell good. If you open up a packet of this and smell it, it smells very nice. [LB19]

SENATOR COASH: But then you've got to smoke it, right? [LB19]

CHRISTINE GABIG: And then you smoke it. Correct. [LB19]

SENATOR COASH: Okay. All right, thank you. I'm just trying to understand how people are making this and getting it and it's getting in the hands of kids. Can you speak to where we are within the chemistry world of being able to detect the use of this drug in a drug screen so that we will know if people who have to stay drug free as part of the probation conditions, or things like that, we'll be able to detect whether or not they've used this product? [LB19]

CHRISTINE GABIG: Where we are currently is there is one lab, that's toxicology, and there's one toxicology lab. It's in California. And they currently...when you're doing toxicology on your own and looking for this, you're looking for the metabolites, the breakdown products of the compound. And they only currently can test for two of the compounds because those are the only metabolites that have been tested. This is such a new issue. And now with the DEA passing their licensing, I am certain that there will be toxicology labs across the country doing research to determine what the metabolites, the breakdown products of these are, and be able to test for it. And I personally intend to do research, you know, like that in my lab. [LB19]

SENATOR COASH: Okay. All right, thank you. [LB19]

SENATOR ASHFORD: Yes, Senator Council, then Senator Harr. [LB19]

SENATOR COUNCIL: And thank you, Christine. I have a couple of questions. Looking at page 10 on (35), is the combination...correct me if I'm wrong. It's the combination of these enumerated substances with something else that is on the schedule. I mean is it illegal to just possess naphthoylindoles? Close, huh? [LB19]

CHRISTINE GABIG: Yes, it would... [LB19]

SENATOR COUNCIL: Just to simply have that...is that...okay, is that a compound or a class? [LB19]

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CHRISTINE GABIG: Very good. That's a class. Like for instance, (b) naphthoylindole... [LB19]

SENATOR COUNCIL: Yes. [LB19]

CHRISTINE GABIG: ...is a class. [LB19]

SENATOR COUNCIL Okay. [LB19]

CHRISTINE GABIG: There are many different compounds which are listed--some of them are listed here for you--that fall in that class. And so it would be illegal to possess any compound that would fall into that naphthoylindole class, whether it be in a box of white powder that you just ordered from China or whether it be in a package of Spice that you just bought at the gas station. [LB19]

SENATOR COUNCIL: Okay. That's what my question is. But would you have to mix that with something to create the harmful product, or is it harmful in and of itself? [LB19]

CHRISTINE GABIG: Correct, it is harmful in and of itself. That's...it's just put on the plant-like material for marketing and for easy smokability. [LB19]

SENATOR COUNCIL: Okay. And my second question...I'm not even going to attempt to pronounce this. But you go back to page 8. I'm just curious, what is trans tetrahydrocannabinol and their optical isomers? What is an optical isomer? [LB19]

CHRISTINE GABIG: It's interesting. Like, for instance, if this is tetrahydrocannabinol and this is a piece of that chemical structure, optical isomer is just when it's flipped like this. It can have a whole different effect in your body whether it's positioned like this or like this. [LB19]

SENATOR COUNCIL: Thank you. I learn something every day. (Laughter) [LB19]

SENATOR ASHFORD: Christine is pretty good. I had a long conversation with her. Senator Harr. [LB19]

SENATOR HARR: Thank you, Mr. Chairman. I quickly am remembering why I went to law school and not...so the white substance is they come from China right now. They're currently illegal to come into the United States or not? [LB19]

CHRISTINE GABIG: No. I mean the new DEA legislation that was enacted did make five of those, I believe, illegal. But there are many, many, many others that are not illegal underneath the federal legislation. [LB19]

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SENATOR HARR: Okay. And I'm trying to figure out what's the difference between the DEA approach and what you are suggesting we do here. [LB19]

CHRISTINE GABIG: The difference between those? [LB19]

SENATOR HARR: Yes. [LB19]

CHRISTINE GABIG: The DEA approach, they listed specific compounds that were made illegal: JWH-018, HU-210, JWH-073. They listed those five compounds. What the problem that causes is that there are so many other compounds that people can put into this, and so then the products are legal. Does that make sense? If the DEA scheduled these five things, there are 700 other compounds that the manufacturers can choose from to use in it instead, and they're going to have to wait until the next legislative session for the DEA to get those added. Our approach, listing the classes, almost...some...most...a very large majority of the synthetic cannabinoids that are out there fall into one of these classes. So we're not going to have to keep coming back, you know, year after year, and saying, okay, now we're seeing HU-"shugabadah," you know, because they're going to already be scheduled, hopefully, in this legislation. [LB19]

SENATOR HARR: Which I guess leads to my next question, is how did you develop this list of what drug...I mean again I'm not a chemist so I have no idea what "tetrahydrocodone"...yeah...or whatever (b) and (c). How did you come up with this list of, let's see, (a) through (h)? Well, (a) is already pretty much covered, but (b) through (h), how was that developed? [LB19]

CHRISTINE GABIG: Okay. There are a couple different factors that went into it on my thought process. Corey might have a different...some other reasons. There are 14 other states that are proposing legislation with these same classes. This isn't a novel idea necessarily. Over in Britain, the ACMD, the American Council on the Misuse of Drugs, they published a report in 2008 or '09 where they were proposing scheduling different classes, and these classes were all included in that report as well. And these classes were chosen and kind of put together by chemists because there are lots of different synthetic cannabinoids besides these, but some of them...I guess technically they won't get you high. They're not going to work as tightly with that receptor in the brain, and so we're not really thinking we need to control those classes because people are less likely to put those into Spice because people wouldn't really feel high. And there's also some others that are incredibly expensive to manufacture or difficult to manufacture, and so some of those classes aren't in here either. [LB19]

SENATOR HARR: And again I don't know this area very well. Is there a concern that this might...this doesn't involve any drugs that are currently monitored by the FDA? [LB19]

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CHRISTINE GABIG: No. [LB19]

SENATOR HARR: Okay. And then this is just a stupid question: What does K2...does it stand for something or how...where does that name come from? [LB19]

CHRISTINE GABIG: The name K2 came from...it's the mountain summit, you know, K2, when people go hiking and they climb the highest summit, K2. That's where that came from. [LB19]

SENATOR HARR: Thank you. [LB19]

SENATOR COUNCIL: I learn more stuff around here. [LB19]

SENATOR MCGILL: I had no idea. [LB19]

SENATOR COUNCIL: I had no idea. [LB19]

CHRISTINE GABIG: Get really high. Yeah. [LB19]

SENATOR COUNCIL: I'm getting educated. [LB19]

SENATOR ASHFORD: Christine, just a couple of questions. These studies you refer to are generally...are studies that are relied upon in your profession to arrive at conclusions on the chemical makeup of these various products, is that correct? You rely on those studies as do your peers? [LB19]

CHRISTINE GABIG: Correct. Yep. There's...it's somewhat peer...this is a new...there's not a lot of studies on this, but it is somewhat peer-reviewed and we do... [LB19]

SENATOR ASHFORD: But you do consult with your peers in other states, do you not? I mean we had that discussion. [LB19]

CHRISTINE GABIG: Yes. There are many...there's a big group of chemists and we...a different list there, so we all focus on this issue. Everybody is having a problem with this. [LB19]

SENATOR ASHFORD: Correct. And the only other question: Have you had occasion to review case studies in Douglas County involving K2 as it relates to maybe possibly other offenses, other cases involving other drugs where K2 was a component? Even though it was not illegal, it was part of the case study or the case that you studied or looked at? [LB19]

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CHRISTINE GABIG: We haven't had a lot of that in Omaha simply because the officers aren't seizing the substances because they're not illegal. So we don't really know what effect that has on these other crimes. [LB19]

SENATOR ASHFORD: Have you had occasion to look at cases where an officer might ask a young person, for example, are you high on something? They'll pick a child up, or a young person--a child, a young person--up on the street, and they're obviously disoriented and so forth and so on. And this may not be the...asking you this question may be unfair, but where the officer will ask, are you--and they will ask this: Are you high on something? And do you have any knowledge of K2 as being a response to that? [LB19]

CHRISTINE GABIG: I don't know about the response on the street because I'm pretty much in the lab. [LB19]

SENATOR ASHFORD: Right. [LB19]

CHRISTINE GABIG: But we have seen pipes come through. So when officers will seize paraphernalia, they don't know what's in that--THC or K2--so they'll seize that and submit that, and then I'll test that and find these synthetic cannabinoids in it, and not THC, so. [LB19]

SENATOR ASHFORD: Okay. And you've had occasion to find those substances. And over what period of time? [LB19]

CHRISTINE GABIG: I started seeing those just within this last year. [LB19]

SENATOR ASHFORD: And is it a relatively frequent occurrence? [LB19]

CHRISTINE GABIG: I wouldn't say it's frequent because... [LB19]

SENATOR ASHFORD: But it does occur? [LB19]

CHRISTINE GABIG: It does occur. [LB19]

SENATOR ASHFORD: Okay. I don't believe I have any other questions. Does anyone else? Thanks, Christine. [LB19]

CHRISTINE GABIG: You're welcome. [LB19]

SENATOR ASHFORD: Thanks for all your hard work on this. [LB19]

CHRISTINE GABIG: Thank you. [LB19]

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SENATOR ASHFORD: Dave. Is Dave next? Hi. [LB19]

DAVID PARTSCH: Good afternoon, Mr. Chairman and members of the Judiciary Committee. My name is David Partsch, P-a-r-t-s-c-h, and I'm from Nebraska City. I'm the Otoe County Attorney. I'm here to express my support for LB19. I wanted to start basically by sharing a story with you about something that happened or almost happened this last summer and fall in Nebraska City. There was a woman from Missouri, she was from the Kansas City area, who was planning on opening a storefront in Nebraska City, and she was advertising that she would sell incense, oils, novelty and herbal essence. The local newspaper, Dan Swanson of the Nebraska City News-Press, then ran a story about this particular business. And in his local newspaper story he indicated that the owner was also planning on selling K2 from the store. He had interviewed her and ran this story in July 2010, a July 26 article in the Nebraska City News-Press, where this store owner said that the substance K2 was being banned in Missouri; that the ban was going into effect August 28, 2010, and that she was going to open a store in Nebraska on September 1, 2010. She indicated that she was expanding into Nebraska, New Mexico, California, and Arizona, and that she had chosen Nebraska City, because of its proximity to Kansas City, to be her first expansion of her store. In that story she also was quoted in reference to K2, as saying "It's always very lucrative and I'm not ready to give it up." So I think it was apparent why she was coming to Nebraska. Fortunately, for our community, the building owner, who she had worked out a lease with, read the article and was a little irate about it and was able to back out of the lease and not rent the space to her--and we haven't had that particular business open in our community. However, I have seen the use of K2 and other synthetics in Otoe County, both in Nebraska City as well as Syracuse and throughout the county. One of the main places we're seeing it is with juveniles, with our kids that have already been caught smoking marijuana. They may be on probation and now they're turning to this K2 because they've heard it won't show up in their urinalysis. So I think it is an important issue. I am thankful that you're considering it. And I thank Senator McCoy and the Attorney General's Office for their support, and would urge the committee to advance LB19. [LB19]

SENATOR ASHFORD: Thanks. Any questions of Mr. Partsch? Yes. South Sioux City, your colleagues, other county attorneys in the state are aware of this issue obviously, and I've talked to many of them. Have you had occasion to talk to your colleagues up in the northeast corner of the state? [LB19]

DAVID PARTSCH: I haven't spoken with anybody from that area about this issue, but I know it's... [LB19]

SENATOR ASHFORD: From Dakota County or in that area? [LB19]

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DAVID PARTSCH: No. But I... [LB19]

SENATOR ASHFORD: Because I've had some discussions with them about the South Dakota-Nebraska interface with this drug, so. [LB19]

DAVID PARTSCH: I know in the southeast area of Nebraska, that, you know, with the bans in Iowa and Missouri and Kansas,... [LB19]

SENATOR ASHFORD: It has an impact. [LB19]

DAVID PARTSCH: ...naturally they're coming into the corner of Nebraska now, so. [LB19]

SENATOR ASHFORD: I don't know if I've ever asked you, are you related to Frank? [LB19]

DAVID PARTSCH: He is my uncle, yes. [LB19]

SENATOR ASHFORD: That's what I thought. (Laughter) So you're...let's see, so his daughter is at the Community Foundation, and you are cousins. [LB19]

DAVID PARTSCH: Yes. [LB19]

SENATOR ASHFORD: All right. It's a great family. [LB19]

DAVID PARTSCH: Thank you. [LB19]

SENATOR ASHFORD: Thanks for coming. Okay. Tami Lang is next. [LB19]

TAMI LANG: Good afternoon. I appreciate the opportunity to come before you. My name is Tami Lang, T-a-m-i L-a-n-g, and I'm going to speak on behalf of what I see personally. And I don't have all the "sciency" stuff, so don't ask me those questions. [LB19]

SENATOR ASHFORD: But Tami, before you do, tell us...it says here you're with the Lincoln Southwest security. Can you explain what that is? [LB19]

TAMI LANG: Well, actually...yes. I was in charge of all security at Southwest High School. I recently switched jobs because I just got my master's degree and they're going to hire me as an outpatient therapist. So I just switched jobs this week, so. [LB19]

SENATOR ASHFORD: Well, congratulations. [LB19]

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TAMI LANG: But I will base a lot of this on my former experience because I was also a Lincoln police officer for 15 years, then went into this Southwest job and now into my current position. So based on what I saw--and this is personal events, seeing kids and the effects of K2. I have seen kids in seizures. We've had to call an ambulance twice. And I have seen people in seizures before and I have held people down that were on meth, but this really scared me when I saw these kids in seizures just from smoking K2, a supposedly harmless substance. It just really was a difficult thing to watch, to experience. I've also seen kids come into the building and they had been smoking K2, and they just laid down on the floor in front of the other 1,900 students walking in, because they're so tired. They have no idea where they are at. It just affects people so differently. I have seen kids that normally you can have a conversation with, but then they smoke K2, and very lethargic and have no idea of their whereabouts, anything like that. So it has different effects on different people. And I also work with other students and other people and their accounts of using K2 and what happens to them. Some say when they smoke it, it feels like they've swallowed glass. It feels like they're nauseated. Some get terrible headaches. But they say sometimes the high lasts 4-10 hours. Some will become very paranoid, and to be that paranoid maybe for 4-10 hours is fairly intense. And so I see a gamut of reactions with this. [LB19]

SENATOR ASHFORD: How long have you been at...how long were you at Southwest? [LB19]

TAMI LANG: I was at Southwest in that position for four years, and I was their first school resource officer so I was basically there since the inception of the school. [LB19]

SENATOR ASHFORD: Have these incidents of K2 increased during your time? [LB19]

TAMI LANG: Oh, greatly. And that's just not Southwest. That's all over. I can speak on behalf of Lincoln, just...it's many, many cases. Yes. [LB19]

SENATOR ASHFORD: Do we have any questions? Senator Lathrop. [LB19]

SENATOR LATHROP: Just a simple couple, maybe. Is this stuff expensive? [LB19]

TAMI LANG: Actually it seems fairly expensive to me. It is more expensive than marijuana. It's just...I think it's more accessible and then it doesn't show up in the tests for drugs. [LB19]

SENATOR LATHROP: And I maybe should have asked this question of Corey, but is...are people...can you buy this stuff over the Internet? So if I got on the Internet and hit K2, would I find people that are selling it in different states? [LB19]

TAMI LANG: Yes, you could. And now I don't know exactly what Web site you would go

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to or anything like that, but... [LB19]

SENATOR LATHROP: I'm not suggesting you would. (Laughter) But I assume that's how it's... [LB19]

TAMI LANG: Yeah, yeah. Exactly. [LB19]

SENATOR LATHROP: If it's legal here, then people can get it just by ordering it over the Internet. [LB19]

TAMI LANG: Right. [LB19]

SENATOR LATHROP: So tell me--you said you were in law enforcement 15 years--if we make this illegal to have it, is that going to stop people from shipping it into Nebraska? [LB19]

TAMI LANG: Probably not. I mean it's just like anything else. It just takes away the accessibility of it. If we can make it less accessible, then it's harder to get. It's going to become more expensive. And right now it is more expensive than marijuana. [LB19]

SENATOR LATHROP: And maybe my point is, if we're addressing this issue today, do we completely address the issue if we haven't addressed how people can have it mailed into this state? Let's say that we make this illegal here. In New Mexico it's not. [LB19]

TAMI LANG: Right. [LB19]

SENATOR LATHROP: Okay, that's a hypothetical, and maybe Corey can talk to Beau, and Beau can answer this when he comes back up. But if it's not illegal in New Mexico and somebody in Nebraska orders it, it's not going to be a crime for the guy in New Mexico to mail it to Nebraska, is it? [LB19]

TAMI LANG: Probably not. Just... [LB19]

SENATOR LATHROP: It's just if the guy opens the mail... [LB19]

TAMI LANG: Right. [LB19]

SENATOR LATHROP: ...and then uses it. [LB19]

TAMI LANG: And then they are then in possession of it because it's in their possession. That's the way I understand it. [LB19]

SENATOR LATHROP: Okay. It's kind of a problem. If you universally ban marijuana,

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then there's an answer for that. [LB19]

TAMI LANG: Right. [LB19]

SENATOR LATHROP: It's illegal everywhere. Okay. Thanks. [LB19]

TAMI LANG: Um-hum. [LB19]

SENATOR ASHFORD: Any other questions of...? I asked Senator Larson if he would--about five seconds ago (laugh)--if he could see if he could find K2 on the Internet per Senator Lathrop's questions. And five seconds later we have it. "Total liquidation sale. Buy now. (Laughter) All products are currently federally legal. Welcome to K2. We are one of the only authentic retailers of the enchanting K2 blend, such as the all new K2 to the Power of 2 Ultra Incense. If you are searching for the fresh botanical K2 incense for the most affordable price out there, then you have come to the correct place. Being a reputable business organization, we pride ourselves with providing simply the greatest customer support. If you have virtually any questions or concerns or merely do not trust purchasing on-line, don't hesitate to contact us. Buy now and save." Our children are in jeopardy in this state, as they are in every state in the country. We have experienced here, and other states, the most incredible tragedies that I can even imagine. And we're not going to stop people from putting ads on the Internet, as Senator Lathrop rightly suggests. But this is an issue; this is a problem. Thanks very much. [LB19]

TAMI LANG: Um-hum. [LB19]

SENATOR ASHFORD: Angie. [LB19]

ANGELA DICKMAN: (Exhibit 3) Good afternoon. Thank you for letting me be here today. My name is Angela Dickman, A-n-g-e-l-a D-i-c-k-m-a-n, and I have a story for you. September 21, 2010, what started out as an ordinary day turned out to be an extraordinary day. The event that changed our lives forever is the reason we are here today. Imagine trying to make sense of a phone call that tells of a horrible accident involving your son at the opposite end of town, where he should be at school, or seeing all of the emergency vehicles and wondering what just happened to your day. Worst of all, imagine hearing a police officer telling you that your child has taken a drug. Life as we knew it suddenly stopped as we heard those poisonous words. Only by the grace of God did Zach survive the accident. We don't believe it was a coincidence that he narrowly missed hitting a tree head-on, by a foot, or that he stopped just 30 feet from a tanker full of sulphur. It wasn't coincidence either that a state senator replied to a simple e-mail from a thankful parent over 300 miles away. While our story thankfully had a happy ending, many others won't unless this drug gets banned. Many people have tried to say it's the legal marijuana, but it obviously isn't. The chemicals that are sprayed on

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the incense are made from the same ingredients as...such as fertilizer, as you've already heard. When sprayed, K2 can be anywhere from 8 to 800 times more potent than marijuana. From what we researched, K2 seems to have the opposite effect on the body as well. Some of those side effects, as you have also heard: vomiting, severe agitation, hallucinations, elevated heart rate, and seizures. Zach experienced several of them. His heart rate that morning was 180 beats per minute, almost three times faster than normal. He also had hallucinations, as well as possibly a seizure or a convulsion. I'm just an ordinary mom who can't pronounce half of the ingredients in K2, but if we protect ourselves from lawn fertilizer, why aren't we protecting our kids from this awful drug? Shouldn't something that's been banned in Russia and almost all of Europe get banned here too? How many tragedies do we have to witness before something finally gets done? It's up to us to protect our children and make a better tomorrow for them. Please ban K2 for our kids. Thank you. Any questions? [LB19]

SENATOR ASHFORD: Thank you, Angie. Do we have any questions of Angie? Thank you. I believe Zach is here, is that correct? [LB19]

ANGELA DICKMAN: Yes, he is. [LB19]

SENATOR ASHFORD: Zach, can you come up, please? So give us your name and where you live. [LB19]

ZACH DICKMAN: My name is Zach Dickman, Z-a-c-h D-i-c-k-m-a-n, and I live in Sidney, Nebraska. I'm 16 years old and I'm here today to tell you how K2 has affected my life. On September 21, I and three other guys went to school...or before school, went to go try smoking marijuana. After it had been passed around, it was my turn. I don't think I did it right the first time because it did not affect me right away. But the second time that it came to me I tried a little more and it affected me immediately. I became very dizzy and looked around for somewhere to sit down, but I couldn't find anywhere. While they were still smoking, I went outside to try and get some fresh air. While outside, it kept getting worse and I started to feel very weird. My arms were feeling numb and my eyes were moving jaggedly. I felt as if time was slowing down. Then I looked into the street and saw my truck. I immediately knew I could not drive. The other three guys started walking back to school and so I ran to catch up with them. When I ran, my brain tried to trick me and told me that I could feel more normally when I would run or move fast. Then I offered them a ride back to school, even though it was only a couple blocks away. The next thing I remember is having a dream that I was driving. As I woke up, I was in my truck still, only it was very bumpy and the air was becoming very dusty. As soon as I stopped moving, I wasn't sure what had happened, so I unbuckled my seat belt, which I do not remember putting on in the first place and that probably saved my life. I got out and stumbled over a pile of debris and started walking down an alley where I wasn't quite sure where I was or how I had gotten there. As I started to figure out where I was, I realized that I was across town from where we had smoked.

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Once people started coming to help me, they seemed to come very fast and keep coming. I had to get in the ambulance because of a few minor cuts, and while I was in there they measured my heart rate at 180 beats per minute. Then they took me to the hospital to check me out and give me a drug test to find out what was in my system. After releasing me, since I was still under arrest, I went down to the police station with the officer. There I was given more tests to confirm that it was marijuana, like I had admitted to them. Then he said that he strongly did not think that it was marijuana but a new drug called K2. I didn't know what it was and he said that it was similar to marijuana but much more potent. Then he explained what all had happened that morning from when I started driving. I drove by a middle school and an elementary school when everyone was either going to school or work. I had missed a little kid by only inches on a crosswalk, and passed cars going 70 miles an hour, 17 blocks across town. After he had explained that, my dad asked me if I knew whose house I had hit. Hearing that shocked me very much because I did not know that I had hit a house. I thought I had hit a shed or something. Luckily, there was nobody home and I did not hit it that bad. The officer also did an investigation on the other three boys at school, and found both the K2 and the pipe, confirming that it was K2. I am very lucky to be alive and not to have injured or killed anyone. It is crazy why somebody would want to sell something that would seriously harm, if not kill, them. That is why I am here today, to help get rid of K2 so that nobody else will be hurt or killed by it. Are there any other questions? [LB19]

SENATOR ASHFORD: That's my job, Zach. (Laugh) Yeah, Senator Larson. [LB19]

SENATOR LARSON: Thank you, Zach. How available is it in a school, like Sidney, under...in your estimation? [LB19]

ZACH DICKMAN: It's very available. You just have to find someone that's 18 to go get it for you. [LB19]

SENATOR ASHFORD: How large is your school, Zach? [LB19]

ZACH DICKMAN: It's probably 400 kids total. [LB19]

SENATOR ASHFORD: Okay. And that's high school? [LB19]

ZACH DICKMAN: Yeah. [LB19]

SENATOR ASHFORD: And I...tell me again where you are in high school? I'm sorry. [LB19]

ZACH DICKMAN: I'm a sophomore. [LB19]

SENATOR ASHFORD: And what's the town? I didn't get the town. [LB19]

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ZACH DICKMAN: Sidney, Nebraska. [LB19]

SENATOR ASHFORD: You're in Sidney. Okay. Great, great. So it's a...very prevalent?
[LB19]

ZACH DICKMAN: Yeah, there's quite a few people who have tried it. [LB19]

SENATOR ASHFORD: Do you play sports and do other...? [LB19]

ZACH DICKMAN: Yeah. [LB19]

SENATOR ASHFORD: What sports do you play? [LB19]

ZACH DICKMAN: Football, basketball, and golf. [LB19]

SENATOR ASHFORD: And obviously you understand the gravity of what can go wrong now. Probably more...you're more aware than anybody around, aren't you? [LB19]

ZACH DICKMAN: Yeah. [LB19]

SENATOR ASHFORD: Okay. Thanks, Zach. [LB19]

SENATOR MCGILL: Thank you, Zach. [LB19]

SENATOR ASHFORD: Thanks for coming. Thank you very much. How many other testifiers do we have? Okay. Okay, why don't we...come on...why don't you come up next. And then as we...everybody else sort of come to the front and then we'll go through. How many opponents do we have, of the bill? Any neutral testifiers? All right. Good afternoon. [LB19]

PAUL CARTER: Good afternoon, Senator Brad Ashford. I'm so glad to see you again. It's a pleasure to be here. My name is Paul Carter, P-a-u-l C-a-r-t-e-r. I'm the executive director of PRIDE-Omaha. PRIDE, as many of you know, is a nonprofit organization, nationally recognized, and we're in our thirty-second year; formed in 1978. Our sole mission is to keep our young people and our children safe and drug-free. We're very pleased that we had the opportunity to provide, along with many other people, some of the technical assistance to Senator McCoy and his staff with this. I'm very grateful that a lot of the questions...you know, I feel like I'm overwhelmed by attorneys sitting here, but--there's more in this room than spectators, I think--but I am appreciative of the technical questions that came, because I think it was very clearly stated that if we're going to be able to ban this drug in this state...by the way, how many of you have actually held one of these packages in your hand or smelled it? Senator Harr, have you

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actually smelled it or looked at it? [LB19]

SENATOR ASHFORD: I thought you were going to ask us how many of us have tried it. (Laughter) [LB19]

PAUL CARTER: No. I said, how many of you have held a package like this? [LB19]

SENATOR ASHFORD: We're supposed to admit to that or...? [LB19]

PAUL CARTER: If any would...if one of the pages wants to bring this around to you, I'll be glad to let you do that. We are pleased, from a prevention standpoint, to support LB19. I think it's imperative that all of you understand that we need to arm the law enforcement and the prosecutors in our state to take this deadly scourge off of our streets. There is a great deal of misconception, and I am going to read from part of an e-mail that I sent to Senator McCoy on January 5. It was an update on K2. And many of you are aware that the DEA had, on November 24 of this year, that the DEA had at that time issued a temporary ban. They had published that in the Federal Register. And what had come out of that is that with that temporary ban, that they had a 30-day period to make it a final rule. That has not yet happened. I spoke with the senior special agent in the DEA office, the division office in St. Louis, last week. And so what we need to be aware of is we cannot look for the federal government to deal with the prosecution as well as the law enforcement role. It must be our local police and our local prosecutors. It is imperative that with this drug--and you'll find some information in the packet that I have left for you--that you understand that in this country, right now, to ban this item...and one of the things you've heard over and over again is that Senator McCoy's legislation approaches this in a class way rather than a compound way. This is going to avoid the problems that our neighbor state Kansas had when they were very quick to ban K2, and a week later K3 was on the street. So I would encourage all of you. We are well aware. But I do want to point out one thing. It goes back to Senator Council's question and also part of a couple of other questions. Depending on the synthetic compound--and by the way, as you look at that package you'll see "not for human consumption." You don't see any FDA stamp of approval on it. Depending on the commercial brand, most research is now finding that it's anywhere between 4 times and 100 times more potent than marijuana. And we can no longer allow this type of a drug. Yes, it's available on the Internet. In five seconds you find it. Yes, it can be bought by any kid going to a store, buying a cash debit card, and ordering it. But we must get it off the shelves. It is a \$100-million-a-year business. [LB19]

SENATOR ASHFORD: Thanks, Paul. I appreciate your comments. Yes, Senator Harr. [LB19]

SENATOR HARR: Just a quick question. How much did this cost? [LB19]

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PAUL CARTER: I purchased that last March. We've been looking at this for about a year and a half. I paid \$65 for that at Exotica in Omaha on 72nd Street--an outrageous price. Craigslist, you can find it for \$25-30 for 3 grams. The other part of that, it was interesting, the very day that I bought that for \$65, Amazon.com had a special for 15 grams for \$108, and they threw in the pipe and 12 screens for free. So that tells you how it's marketed. [LB19]

SENATOR COUNCIL: Excuse me, Paul. I've dropped about \$10 of it (inaudible). (Laughter) [LB19]

PAUL CARTER: Oh, okay. I'm sorry, Brenda. I didn't mean to do that to you. [LB19]

SENATOR COUNCIL: Because I didn't realize it was open. (Laugh) [LB19]

SENATOR ASHFORD: We try to listen. That's very telling, Paul. Thank you. Yes, Senator Larson. [LB19]

SENATOR LARSON: How much is in that packet? [LB19]

PAUL CARTER: About 3 grams. [LB19]

SENATOR LARSON: You overpaid about \$30 according to what you were looking at on-line. [LB19]

PAUL CARTER: Yeah. The price now is somewhere between \$30 and \$45. Like I say, you could go on Craigslist today. You're going to find a guy in Fremont selling it to you cheaper. [LB19]

SENATOR LARSON: I guess my conversions aren't that great. Three grams converts into how many ounces? [LB19]

COREY O'BRIEN: It's about a fourth of an ounce. [LB19]

SENATOR LARSON: A fourth of an ounce? [LB19]

COREY O'BRIEN: Less than a fourth of an ounce. [LB19]

SENATOR LARSON: Okay. [LB19]

PAUL CARTER: So you probably get about 10-12 hits out of that. [LB19]

SENATOR LARSON: I guess I'll save that for Senator McCoy at the end. [LB19]

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SENATOR COUNCIL: Is a hit, a puff? [LB19]

PAUL CARTER: The thing you have to understand... [LB19]

SENATOR ASHFORD: I don't know. Is a hit, a puff? [LB19]

PAUL CARTER: No. No, you'd actually fill the pipe with it and get a number of hits off of it, depending on if you were by yourself or with someone else. Thank you, Senator Ashford. Appreciate it. [LB19]

SENATOR ASHFORD: Thanks, Paul, very much. And we're laughing with you. This is an incredibly serious matter. [LB19]

PAUL CARTER: I know. I know. [LB19]

SENATOR ASHFORD: And then Gary is next and then one more after. [LB19]

SENATOR COUNCIL: I am making no light of this. I'm just... [LB19]

SENATOR ASHFORD: No, no. I know you're not. No, this is...you almost have to...you almost have to laugh. [LB19]

SENATOR COUNCIL: I mean when people talk about...when people talk about hits and things, there's an assumption that everybody knows how marijuana is used, so. [LB19]

SENATOR ASHFORD: Right, right. You just...it's so tragic, you just sometimes have to laugh and...yeah, go ahead. [LB19]

SUSIE DUGAN: Good afternoon, Senator Ashford and committee members. My name is Susie Dugan, S-u-s-i-e D-u-g-a-n, and I am with PRIDE-Omaha, but also with Drug Watch International, which is a network of drug policy experts in prevention from across the nation and indeed throughout the world. And about a year ago we started getting alarms about K2 and how dangerous it was and how it was really just skyrocketing, because there were no tests and kids thought it was legal. And when I first heard about it, about a year ago, I happened to be talking to a group of young people. And they're average--average kids. Most of them would not really be drug users. And they said, well, we know all about K2. I knew nothing about and they knew all about it. They knew you could pass a drug test. They knew it was legal so how could it be so bad. And that's what is so alarming. And that's the reason I'm not going to repeat anything that anybody else said, but I just want to urge you to pass this legislation and to get it onto the floor, and let's get this into law just to protect our kids. [LB19]

SENATOR ASHFORD: Susie, thanks. And thanks for all your work. Any questions of

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Susie? Seeing none, thanks. Gary. [LB19]

GARY KRUMLAND: (Exhibit 4) Senator Ashford and members of the committee, my name is Gary Krumland, spelled K-r-u-m-l-a-n-d, appearing on behalf of the League of Nebraska Municipalities in support of LB19. As you've heard, this has been a problem across the state either as the letter you're getting from South Sioux City, where they have establishments who are selling K2, or like Nebraska City, where someone was coming in--and actually it did not go. But we're hearing that all across the state, and city officials are really concerned about that. City attorneys have looked at the issue and figured out that they really can't do anything under current city statutes and they do need a state law to help them do that, and that's why we're here in support.. [LB19]

SENATOR ASHFORD: Thank you, Gary. Any questions of Gary? Seeing none, thanks. [LB19]

DAVE BYDALEK: Chairman Ashford and members of the committee, my name is Dave Bydalek. I'm the executive director and legal counsel of Family First, and I'm here today to express our support for LB19. Clearly, as you've noted, Senator Ashford, drug use is a substantial problem facing parents today, and as the father of three teenage girls and a 12-year-old boy, you become aware that even the best students from all walks of life give in to peer pressure every now and then. Because of the fact that K2 is currently a legal substance, some students may see little or no harm in doing something perfectly legal. But as you've heard here today, K2 is not harmless, and unfortunately, the fact that there is no stigma of illegality to K2 makes it even more dangerous. As a former state Assistant Attorney General who handled over 100 criminal cases before the Nebraska Supreme Court and Court of Appeals, I believe LB19 will provide a valuable tool for prosecutors in combating the harms associated with K2. So therefore, I'd urge the committee to advance LB19 to General File for debate among the entire legislative body. [LB19]

SENATOR ASHFORD: Thank you, Dave. Any questions of Dave? Seeing none, thank you. Any other proponents? Do we have any opponents? Neutral testifiers? Senator McCoy. [LB19]

SENATOR MCCOY: Thank you, Chairman Ashford. There's probably very little that I could add to what's already been said other than to be happy, if I could, to answer any other questions that any of you may have. [LB19]

SENATOR ASHFORD: Do we have any other questions of Senator McCoy? Yes, Senator Lathrop. [LB19]

SENATOR LATHROP: Maybe just...I saw you talking to Corey. And do you have an answer to the concern about what if this stuff is shipped, or is there anything we can do

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to stop it from being shipped from outside the state? [LB19]

SENATOR McCOY: I do, and I appreciate the opportunity to go back on that. I believe you'd asked...an example you used was the state of New Mexico. And the answer is, the infraction, if the law was broken here, clearly a prosecutor could go after that. [LB19]

SENATOR LATHROP: The recipient of the mail. [LB19]

SENATOR McCOY: Well, and the actual manufacturer according to Mr. O'Brien. Now a prosecutor would have to look at that... [LB19]

SENATOR LATHROP: I see him behind you nodding his head. [LB19]

SENATOR ASHFORD: Steve, would you like to have Corey come back and...? [LB19]

SENATOR LATHROP: Yeah, it might be worthwhile only because the question is whether or not somebody can commit an offense... [LB19]

SENATOR ASHFORD: Or you can both sit...I guess we only have one chair, otherwise... [LB19]

SENATOR COUNCIL: Yeah, but you just can't get jurisdiction over them. That's the problem. [LB19]

SENATOR LATHROP: It's like trying to make it illegal to gamble in Nevada. [LB19]

SENATOR ASHFORD: Yeah, how do you get jurisdiction over the... [LB19]

COREY O'BRIEN: From a practical standpoint, any part of any criminal offense that takes place within the state of Nebraska gives Nebraska the opportunity to acquire a venue and jurisdiction over that individual. The fact that it's being shipped into a state where it's illegal would give us the opportunity to go after that individual. A good example would be someone that sends a threat from Iowa, a threatening letter or makes a threatening phone call from Iowa to a party here in Nebraska, we're able to go and prosecute those individuals. The problem with that is, in reality, (1) you've got to find that individual, and (2) then you have to absorb the expense of getting a warrant for them, having to send sheriffs out there to arrest them to go through the whole extradition process and bring them back. [LB19]

SENATOR LATHROP: But in your example you are talking about something that's illegal over in Iowa as well as Nebraska. This is shipping something from, in my case, New Mexico, which may or may not makes this illegal. I don't know. But assuming that they don't, they're doing something that's perfectly legal, aren't they? [LB19]

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COREY O'BRIEN: Not in Nebraska, it's not. It's not... [LB19]

SENATOR LATHROP: But they're not doing it in Nebraska. [LB19]

COREY O'BRIEN: Oh, legal to send it here. They're distributing it here where it is illegal. And by sending it across state lines they are committing the crime of distribution of controlled substances over a state line where it is illegal, so. [LB19]

SENATOR LATHROP: So we don't need to do anything in this bill to fix that problem. [LB19]

COREY O'BRIEN: We are doing what we can. Now again we still have that practical reality and whether or not we're going to be able to bring them back. But certainly we do have that opportunity to do so under the criminal laws in the state of Nebraska. [LB19]

SENATOR LATHROP: Okay, good. Thanks. [LB19]

SENATOR ASHFORD: Thanks, Corey. Senator McCoy, do you have any further conclusions? Okay, thanks. That answered that. The only thing I would say is, Zach, now when you go back home, do you tell your colleagues or your... [LB19]

SENATOR MCGILL: Friends. [LB19]

SENATOR ASHFORD: ...and friends (laughter) and fellow students, are you going to tell them how concerned we are about this problem and that...and do you tell your buddies what's going on in your life when you went through this? Do you do that? [LB19]

ZACH DICKMAN: Yeah. [LB19]

SENATOR ASHFORD: Will you do that for us, continue to do it, tell the story, please? [LB19]

ANGELA DICKMAN: We've talked to schools and we've talk to area groups (inaudible) actually might (inaudible) already... [LB19]

SENATOR ASHFORD: Because you can save lives by doing that and we really appreciate that. Okay? Thank you. Thanks. (Also see Exhibits 10, 11, and 12.) [LB19]

SENATOR MCCOY: Thank you. [LB19]

SENATOR ASHFORD: Okay, what's next here? LB20. Is that right? LB20, Senator

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McCoy. [LB20]

SENATOR McCOY: (Exhibits 5 and 6) Thank you, Chairman Ashford, and good afternoon again. For the record, I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District in the Legislature. I'm here also today to introduce LB20 to you which implements the statewide electronic tracking system for purchases of methamphetamine precursor chemicals at the point of sale. The system is designed to stop individuals who are illegally stockpiling precursor chemicals used to make methamphetamine. And there will be quite a number of experts behind me as there was on the previous bill that will help explain the technical aspects of NPLEx, which is the National Precursor Log Exchange. Also folks from the Consumer Healthcare Products Association--CHPA, and Appriss, who handles the data as well. I do have handouts. You'll see before you the white copy of the bill in addition to what you have, which includes AM8, and then there's also another amendment behind that, that's a slight tweak from the pharmacists, as well, to AM8. This clarifies scanning driver's license that's a part of the statute that deals with this. There will be those behind me that can explain that a little bit better, or I can later as well. Very simply, what NPLEx endeavors to do is to upgrade the current localized handwritten system, which is federally mandated by the Combat Methamphetamine Epidemic Act of 2006. The seller either enters the information on a Web site or through their scanner at the point of sale. They receive immediate notification when a person is attempting to purchase illegal amounts of the methamphetamine precursor pseudoephedrine through a stop-sale alert. The seller can then override if they fear bodily harm. The system is provided by the drug manufacturers, which is CHPA, Consumer Healthcare Products Association, at no cost to the participating states or retailers. There also is a waiver through the Attorney General's Office if there is shown to be a hardship. And what that's deemed as, an example would be no Internet access, in which case they would continue with a paper log which is the system that we currently have today. This is used in ten states, including the bordering states--and part of the importance of this issue right now--including Iowa, Kansas, and Missouri. A couple of very interesting statistics and then there will be those behind me that will testify to this as well. In Iowa, there were over 10,000 stopped sales in the first three months of using NPLEx, which is 4 percent of total sales attempts. You know, this issue is another one that really, in my opinion, has to do a lot with protecting Nebraskans. And much as we discussed and was part of the conversation in the previous bill before your committee, we're in a unique geographical position where many of our neighbors have already dealt with this issue. And the hope would be that we can also deal with this issue so that we don't become a haven for smurfing. And I believe that's critically important for the safety of Nebraskans. And with that, I'd be happy to answer any of your questions if any of you have any. [LB20]

SENATOR ASHFORD: Any questions of Senator McCoy? Senator Lautenbaugh. [LB20]

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SENATOR LAUTENBAUGH: Did you say smurfing? [LB20]

SENATOR McCOY: Yes. [LB20]

SENATOR LAUTENBAUGH: What is that? [LB20]

SENATOR ASHFORD: That's what he said. [LB20]

SENATOR LAUTENBAUGH: Okay. [LB20]

SENATOR McCOY: And there will be those that can probably provide a better explanation of that. But smurfing is very simply the method in which one goes around or a number of individuals go around and purchase these products in small amounts and lump those together in the creation of methamphetamine. We'll just take where my family and I reside in an area of town that we reside in. You have a number of retailers around the 180th and West Center area. You have a Walmart, you have a Target, you have Walgreens. You have four or five retailers literally within walking distance of each other. That isn't to take away from the fact that you have retailers in a number of states that you can all touch within a matter of a few hours' drive. So the term smurfing whereby you combine all those in small dosage with these handwritten logs. So NPLeX, as it will be explained behind me, is a way that's been...and it's very effectively used to track even those small amounts to avoid this insidious issue that we have before us. [LB20]

SENATOR ASHFORD: Senator Council. [LB20]

SENATOR COUNCIL: Yes, Senator McCoy. Now are all retailers required to have this system, this electronic system? [LB20]

SENATOR McCOY: Well, they currently have a paper log, and as I mentioned that's part of the federal Combat Methamphetamine Epidemic Act of 2006, and that's the current handwritten system. I'm sure virtually all of us have probably at one time or another have had to experience when you go in to purchase a product that has these substances in it. So that's the current system. This would put this in a real-time tracking system to be able to track so that it isn't just a handwritten log in an individual retailer. [LB20]

SENATOR COUNCIL: Okay, but this requires the retailer to acquire some equipment that would link them into this system. [LB20]

SENATOR McCOY: As it will be explained behind me, that's what's paid for by the drug manufacturers. That system, the setup of that is all taken care of by the organization of

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CHPA, and one of their representatives will be with us here in a few minutes [LB20]

SENATOR COUNCIL: Okay, now I had one other question because I just found it curious that if you get a stop-sale alert, the seller can go through with the sale if they have a reasonable fear of imminent bodily harm. I mean who's going to go...I mean so somebody comes by later, there's something in this CHPA system that I get a stop alert, a stop-sale alert, that prevents me from progressing the sale? [LB20]

SENATOR McCOY: No, it would shoot up a stop-sale alert, but that stop-sale alert could be overridden if the seller thought that, you know, obviously--hopefully it would never happen, but at knifepoint, gunpoint, whatever the case may be--obviously they could call 911. But they could override that if they thought there was a fear of bodily harm. [LB20]

SENATOR COUNCIL: Okay, which gives rise to my next question: Who enforces and determines whether there's any legitimacy to an override of a stop-sale alert? [LB20]

SENATOR McCOY: That's a great question and I believe Mr. O'Brien of the Attorney General's Office will be able to answer that. But that is where they would step in to help with that situation. [LB20]

SENATOR COUNCIL: Yeah, I guess that after five or six or seven overrides, somebody would raise some concerns. But, I mean, if you do a couple of stop-sale alerts over an extended period of time, I mean who is it who's monitoring this to see, okay, Retailer X had four overrides of stop-sale alerts? Whose jurisdiction does that fall in to monitor those overrides? And maybe again that's a question for Mr. O'Brien. [LB20]

SENATOR McCOY: Mr. O'Brien can better address that. But that certainly is something that we have discussed, and that is very closely monitored, those stop-sale alerts, and then the subsequent overrides if there are any. [LB20]

SENATOR ASHFORD: Yes, Senator Harr. [LB20]

SENATOR HARR: Just a quick--thank you, Mr. Chairman--just a quick question. The path to heaven is paved with good intentions--or to hell, excuse me--with good intentions. I'm always a little worried about a more onerous government. What is the enforcement mechanism right now? It's off of what she says. I'm a retailer; I have the system. I don't use it ever, and I know there's a penalty out there, a Class IV misdemeanor. But what...who monitors it to make sure I'm using the system that's out there? [LB20]

SENATOR McCOY: Senator, do you mean the current handwritten log system, is that what you're referring to? [LB20]

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SENATOR HARR: No, I'm referring to... [LB20]

SENATOR McCOY: If you say you're a retailer that's in possession of which...the proposed NPLeX system or the existing handwritten log system? [LB20]

SENATOR HARR: Well, we're here to talk about the proposed legislation, so let's stick with the...yeah, the proposed legislation at this point. Yeah. [LB20]

SENATOR McCOY: Well, again that would probably be a question behind me. But clearly it's...you're prohibited from selling this product unless you're using that system, unless you...and then obviously, as I mentioned, you would have the ability, if you're a retailer, to apply for a hardship waiver for whatever reason--no Internet access or whatnot. So it's very closely monitored as to if you're selling these products, it has to go through, now, a handwritten log system or, if this proposed legislation were to pass, through the NPLeX system. [LB20]

SENATOR HARR: And I guess I'm not very smart. But I'm a retailer. I have this pencil that I'm supposed to have electronically...before I could sell it to you. If I don't run it through the system, who is going to know that I didn't run it through the system? [LB20]

SENATOR McCOY: Well... [LB20]

SENATOR HARR: And if they don't, is there a way to monitor it to make sure I am running this pencil through the system before I sell it to you? [LB20]

SENATOR McCOY: The specific nature of that question--and that's a very good question. I'd probably defer, if I could, to how that's tracked to those that would come behind me, testifiers behind me, if I may. [LB20]

SENATOR HARR: Okay. Thank you. [LB20]

SENATOR COUNCIL: It would be tied to your supply. [LB20]

SENATOR ASHFORD: Senator Larson. [LB20]

SENATOR HARR: Okay, thank you. [LB20]

SENATOR LARSON: You had talked about a hardship system. Obviously there's a lot of places in rural Nebraska that might not have...you know, a smaller pharmacy, that don't have the Internet access or whatnot. Are those pretty accessible to get...for those constituents in other parts of the state? [LB20]

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SENATOR McCOY: That's a great question and that is something, as myself coming from a very rural area, I'm very familiar with the... [LB20]

SENATOR LARSON: Smaller...smaller pharmacies. [LB20]

SENATOR McCOY: Sure, absolutely. And that will be handled on a case-by-case basis. Believe it or not, it's my understanding that just within the last few years, obviously with the advancement of Internet access to residents of Nebraska from border to border, there is a very, very small number of retailers now that do not have Internet access. Now perhaps it might not be necessarily very convenient depending on where it may be inside a retailer, and that's where it will be handled on a case-by-case basis. But there...it's my understanding less than a handful of retailers now, perhaps across the state, that don't have Internet access. [LB20]

SENATOR HARR: Okay. Thank you. [LB20]

SENATOR ASHFORD: Yes, Senator Coash. [LB20]

SENATOR COASH: Thank you, Chairman. Senator McCoy, this bill provides for a stop-sale. Is there anything in here that requires, then, the retailer to, you know, to report, hey, you know, we've seen this guy come in five...you know, five times this week, and we haven't sold to him because the software has stopped that. Is there any requirement on the retailer then to notify law enforcement of the attempt to continue to purchase? [LB20]

SENATOR McCOY: I don't believe so, but that's a question specifically to that particular hypothetical example that I might defer to behind me as far as that requirement. I mean obviously the intent here is not to create a situation that is onerous to retailers. Clearly, we want to stop the problem, and the problem is smurfing and these methamphetamine precursors being readily available at individual retailers, different retailers. And so the particular nature of your question, perhaps if you don't mind, refer to a specific of what you just detailed, but the idea obviously is to get at this rather than make this difficult for retailers. [LB20]

SENATOR COASH: Okay. I'll let Mr. O'Brien answer that if he can. [LB20]

SENATOR ASHFORD: All right. Thanks, Senator McCoy. Corey, are you next? I do remember in the late '80s when we took up this issue and there was no Internet...or there might have been an Internet. There just wasn't one that I was aware of. (Laughter) But we did go through the...and probably John Lindsay was there when we started the practice of doing the log. I can't remember when that was, but probably 20 years ago, maybe before then. Okay, Corey, go ahead. [LB20]

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COREY O'BRIEN: Thank you, Mr. Chairman. Again my name is Corey O'Brien, C-o-r-e-y O'B-r-i-e-n, an Assistant Attorney General to the drug and violent crime division of the Nebraska Attorney General's Office. I'm here to lend my support on behalf of my office and Attorney General Jon Bruning on LB20. What LB20 is, is that it simply tries to promote communication and information sharing in an area that, because of previous legislation passed by this body, has resulted in unprecedented success--that being the area of clandestine methamphetamine production. In 2004, this body passed LB117, a bill that I had a chance to be a part of, and that placed drug products containing methamphetamine precursors, like pseudoephedrine, behind store counters, and it posed daily and monthly purchase limits for these substances. In one year's time, after the passage of LB117, clandestine methamphetamine manufacturing declined by over 200 percent in the state of Nebraska. In 2006, the federal government passed the Combat Meth Act requiring retailers and pharmacies nationwide to obtain specific information from each person who purchases a drug product containing a methamphetamine precursor without a prescription, and to record this information in a written or an electronic log book. These requirements like those contained in LB117 have no doubt played a significant role in helping us keep our clandestine lab numbers from reapproaching those pre-2004 levels. Despite the success, a gap has always remained in our struggle against clandestine meth labs, and that gap seeks to be addressed in LB20. The gap is that there has never been a system in place that will allow pharmacists and retailers to communicate with one another in order to determine if a purchaser of a methamphetamine precursor has exceeded his or her daily or monthly purchase limit. In the world of meth manufacturing, there exists the term that you heard earlier: smurfing. Smurfing is a practice wherein meth cooks will employ straw purchasers to go from pharmacy to pharmacy, or retailer to retailer, in order to purchase above or at their daily or monthly methamphetamine precursor allowance. What LB20 is designed to do is simple: Take the information that's already required by federal law, pull it together in a centralized database using the Internet, and allowing retailers, no matter where they are in the state of Nebraska, to see whether or not their customers have exceeded their daily or monthly purchase limits. [LB20]

SENATOR ASHFORD: And this is a real time? [LB20]

COREY O'BRIEN: It's supposed to be real time, and there are testifiers behind me that will talk to the merits of the system itself and how it works. [LB20]

SENATOR ASHFORD: Oh, um-hum. [LB20]

COREY O'BRIEN: With that, I would ask you to advance LB20 out of committee onto the floor for its full consideration. And with that, I'd answer any questions any of you may have. [LB20]

SENATOR ASHFORD: Any questions of Corey? Yes, Senator Lathrop. [LB20]

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SENATOR LATHROP: Just a quick one. Is this a model bill or did you come up with this on your own? [LB20]

COREY O'BRIEN: I did not come up with this on my own. This was something that was used, I think, in other states, and it was... [LB20]

SENATOR LATHROP: Just the idea behind it comes from other states but the language itself is not a model. [LB20]

COREY O'BRIEN: It's not necessarily a model. I think it was given to us by the manufacturers themselves to consider, and then we tweaked it to meet our needs. [LB20]

SENATOR LATHROP: Okay, good. Thanks. [LB20]

SENATOR ASHFORD: And...yes, Senator Harr. [LB20]

SENATOR HARR: Thank you, Mr. Chairman. Just a quick question, Mr. O'Brien. Back to what I asked Senator McCoy: What is in the system to pick up if I'm a retailer selling it without running it through the system? Is there something in place? Is there a mechanism in there, or how do they know? It just goes on the good faith that they... [LB20]

COREY O'BRIEN: Are there ways to skirt the system? Yes. You know, and honestly this isn't a system where we're trying to play a gotcha game with the retailers or the pharmacists. I mean it's really where we're trying to facilitate their communication. Hopefully, they're going to use it. We're going to encourage them to use it. There are penalties involved for them not using it. So hopefully that will be the incentive that makes them...above and beyond what's provided in the bill, they could face penalties for violating 28-456, which sets a parameter on them. They can't sell above and beyond the daily or monthly purchase limits to a consumer, and they could be eligible for criminal penalties. They could also face potential penalties under federal law. I don't know if you remember, but there was a pharmacy, a national pharmacy, that paid millions and millions of dollars of fines for violating and selling pseudoephedrine over and above the daily and monthly purchase limits to customers, and they paid it to the federal government. I don't want to name that pharmacy but you can read it. It was in California, so. [LB20]

SENATOR HARR: Thank you, Mr. O'Brien. [LB20]

SENATOR ASHFORD: And so in that respect this is an added layer of protection for the pharmacy because they obviously will have real-time access to prior sales. [LB20]

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COREY O'BRIEN: Right. I think it's an added level of information for them so that they know who they're selling to and whether or not those people that they're selling to are complying with the law. [LB20]

SENATOR ASHFORD: And if it's a larger pharmacy where you have numbers of employees where you can be...even though...I mean, of course, they can have false identification. But that's always a problem. [LB20]

COREY O'BRIEN: When we passed LB117, this was always our goal at some point, to try to link these pharmacies together and the retailers together so that they knew what the guy was doing down the street or in the next town over. [LB20]

SENATOR ASHFORD: Right. Right. Okay. Any other...? Thanks, Corey. [LB20]

COREY O'BRIEN: Thank you. [LB20]

SENATOR ASHFORD: Any other proponents? How many proponents do we have of this law...bill? Do we have any opponents here? Any neutral testifiers? Okay, go ahead. Welcome. Good afternoon. [LB20]

KEVIN KRAUSHAAR: Thank you, Mr. Chairman and members of the committee. My name is Kevin Kraushaar, K-e-v-i-n, last name spelled K-r-a-u-s-h-a-a-r, currently a consultant to the Consumer Healthcare Products Association. You've heard it referred to as CHPA, C-H-P-A...is the trade association, national in scope, representing the makers of over-the-counter medicines which most of us have in our medicine cabinets even across the board. We strongly support this bill, LB20, and we commend Senator McCoy for his leadership on this issue. There are 11 other states that currently have in place electronic systems--this system in particular--whereas, as he indicated previously, the states can exchange information which is required under both state and federal law to identify that no persons are crossing state lines or going from jurisdiction to jurisdiction to commit the what has been referred to as smurfing, which has been identified as quite a serious problem, even though federal law and state law provide all kinds of limits on the amount of daily transactions. We think that this statute, this law, provides a reasonable balance between limiting access to important nonprescription medicines and making sure that law enforcement have the tools that they need to track and to monitor suspicious transactions, and that consumers can have access to these products as they're needed. The purpose of the system is to stop illegal transactions, to stop transactions which are over the federally and state-mandated limits. And the system itself is supported by law enforcement, the National Sheriffs' Association, in particular, and law enforcement agencies around the country. We're very happy to be part of this system; we support it strongly. And again I'd be happy to take any questions or defer to the technical expert who is also behind me. [LB20]

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SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, sir. I just want to get it straight in my own mind. Your group is paying the cost for the installation of this? [LB20]

KEVIN KRAUSHAAR: That's correct. [LB20]

SENATOR LAUTENBAUGH: Why is that? [LB20]

KEVIN KRAUSHAAR: Because we need to make sure that the...it's the way that we can ensure that the products remain available to consumers as they need them, as OTCs or nonprescription medicines were designed, but also creates a system whereby law enforcement and the states themselves can implement a reasonable system to make sure that the system is working and that retailers have the tools that they need to enforce the statute as well. [LB20]

SENATOR LAUTENBAUGH: So the system, when it's in place, will probably be less onerous than what they have to do now? More streamlined? [LB20]

KEVIN KRAUSHAAR: We believe so. The federal and state law require either, as has been stated before, either a paper logbook or the electronic method as contemplated under federal law. This is a much more efficient system for both retailers and for law enforcement in having to keep track of and go from store to store to look who's purchasing in the paper logs. [LB20]

SENATOR LAUTENBAUGH: And I don't say this as a criticism, I say it because I think it's true: What you're doing then is making it easier for these companies, these outlets, these retailers, to continue to carry your products and make it less onerous for them to carry your products and comply with this law. [LB20]

KEVIN KRAUSHAAR: That's correct, Senator. [LB20]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB20]

KEVIN KRAUSHAAR: Thank you. [LB20]

SENATOR ASHFORD: Senator Coash. [LB20]

SENATOR COASH: Thank you, Chair. This system is not just Nebraskawide? And is it connected with pharmacies in other states as well? [LB20]

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KEVIN KRAUSHAAR: That's correct. It'll be connected...pharmacies or retailers who have access to the system in Nebraska will be able to...and it pools the information from all the other, the 11 other states that have the system. [LB20]

SENATOR COASH: Is Iowa one of the other states? [LB20]

KEVIN KRAUSHAAR: Iowa is. [LB20]

SENATOR COASH: Iowa is. [LB20]

KEVIN KRAUSHAAR: Yes. [LB20]

SENATOR COASH: Okay. Thank you. [LB20]

KEVIN KRAUSHAAR: As is Missouri and Kansas. [LB20]

SENATOR ASHFORD: Senator Council. [LB20]

SENATOR COUNCIL: And thank you, Senator Ashford. And Kevin, I apologize if while I was out of the room someone answered this question: Who actually monitors this system? [LB20]

KEVIN KRAUSHAAR: The technical person who can explain the entire exchange themselves, but it's essentially the law enforcement would have access to monitor the system, and there are various grades of things that they can monitor in pursuing an investigation. [LB20]

SENATOR COUNCIL: Okay, because I mean it would appear to me that it would be, like an after-the-fact data collection method, as opposed to some ongoing evaluation as to whether or not there are violations of the law that...yeah, I mean we don't have someone who monthly goes through CHPA and says, oh my god, the retailer on 32nd Street has four stop-sale alerts; let's go check it out. [LB20]

KEVIN KRAUSHAAR: Senator Council, the beauty of the system is that it does both. It provides after-the-fact tools for law enforcement to find out who's purchasing or making suspicious purchases, but it also will stop, in real time, attempts to purchase over the federal and state limits. [LB20]

SENATOR COUNCIL: Okay. Now will CHPA itself, you know, like, self-monitor to see whether their retailers are... [LB20]

KEVIN KRAUSHAAR: No. This will be a system which is accessible by law enforcement. [LB20]

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SENATOR COUNCIL: Law enforcement. Okay, thank you. [LB20]

SENATOR ASHFORD: And I assume that's through the...our Crime Commission?
[LB20]

KEVIN KRAUSHAAR: That would be...well, local law enforcement... [LB20]

SENATOR ASHFORD: Database. [LB20]

KEVIN KRAUSHAAR: ...would have access to it, but through the national exchange.
[LB20]

SENATOR ASHFORD: Oh, it's not through our Crime Commission database or? [LB20]

KEVIN KRAUSHAAR: No, it's not a state-based system. It's a...hopefully, to become a
national system. [LB20]

SENATOR ASHFORD: Okay. Thanks. Thank you. [LB20]

KEVIN KRAUSHAAR: Thank you, Mr. Chairman. [LB20]

SENATOR ASHFORD: Thank you. Thanks for coming. Next testifier. Sheriff, good to
see you again. [LB20]

TERRY WAGNER: Good afternoon, Senator Ashford. Good to see you too. My name is
Terry Wagner. I'm the sheriff of Lancaster County. I'm here today to testify on behalf of
the Nebraska Sheriffs' Association in support of LB20. Much of what I was going to say
has already been said and I don't want to reiterate that, but I think the main thing is that
right...this is an enhancement of the current system that we have. It makes it easier not
only for law enforcement and for pharmacies, but it also makes it easier for consumers
to purchase and have their driver's license scanned rather than fill out a paper log. We
have made cases of folks purchasing, smurfing pseudoephedrine, after the fact, and
generally that's from collecting receipts from meth lab sites and then backtracking and
going back to those sites and seeing how the pseudoephedrine was purchased. I can
tell you that for the majority--Senator Lathrop, your question--the majority of clerks and
employees of pharmacies are very attuned to this issue. They call us on a regular basis
when they have folks that they believe are smurfing. When they see one person get out
of a van, come in and buy pseudoephedrine, and there's another person getting out of
the same vehicle, they're very apt to call us and let us know what's going on. And so it's
a very productive system and we have great cooperation from the retailers, throughout
this county anyway. So with that, I won't belabor the points any more. I think this is a
good bill that automates a system that's already in place, and I would urge you to

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advance this bill to the floor. Thank you. [LB20]

SENATOR ASHFORD: Senator McGill. [LB20]

SENATOR MCGILL: Just in 60 seconds, can you give us a quick update on the status of meth and meth labs in Nebraska? From what I remember, they kind of went down once some of this legislation was enacted. [LB20]

TERRY WAGNER : They did. They dropped...in the first year after the initial registration law was passed limiting the accessibility of pseudoephedrine, our meth labs in Lancaster County dropped 90 percent, you know, when you consider meth was being cooked along bike trails, in rental houses, in every place you can envision. It was certainly a huge public health hazard in addition to the meth itself. So it's been a great...a great tool and has worked well. [LB20]

SENATOR MCGILL: So you think this will cut out on this last 10 percent that is still existing, or...? [LB20]

TERRY WAGNER: Well, I'm thinking that it will...it will close that loophole, like Mr. O'Brien said. I mean we all know that there are folks that travel around and they'll buy what they can, when they can. And hopefully they'll realize that this is another finger in the dike. [LB20]

SENATOR MCGILL: Okay. It's good to hear we've been successful at something. [LB20]

TERRY WAGNER: It has been. [LB20]

SENATOR ASHFORD: Okay. Thanks, Sheriff. [LB20]

TERRY WAGNER: Thank you. [LB20]

JAMES ACQUISTO: (Exhibit 7) Good afternoon, Mr. Chairman, Senators. My name is James Acquisto; that's J-a-m-e-s A-c-q-u-i-s-t-o. I'm the director of government relations at Appriss, in Louisville, Kentucky, and we are the technology provider for the NPLeX system. I'm also a retired law enforcement officer and I spent 24 years in law enforcement: 16 working in narcotics, 7 years in the plastic suit and working methamphetamine labs. And I've worked on this subject, precursor regulation, for about 12 years, back in my state of Kentucky for the most part. And I'd like to refer you to the PowerPoint that the page is handing out now, so I'll wait just a second until everyone receives one. NPLeX is the National Precursor Log Exchange. And when you think of a meth lab, think of the picture right there. That's the first one that we found in my home county, Daviess County, Kentucky, where I was a detective sergeant on the sheriff's department. That's what meth labs look like. The next page, that's actually me going

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down in the hole. That's what law enforcement officers face across the midwestern United States. There's the finished product. And what we realized early on is that the primary precursor used in every meth lab in the United States is pseudoephedrine hydrochloride, which is a commonly available cold and allergy medicine--a quite effective product. Matter of fact, I took some myself this morning. But what we saw was the picture you see below there where we'd see hundreds of them--we call that a clue in law enforcement. That is not an appropriate amount for medical purposes. Flip over to the next page. That's the state record in Kentucky. It occurred in my county, my case, 243,000 doses of pseudoephedrine seized from one lab. We believed that that's inappropriate at the time. We had a state law passed about the same time you all did here in Nebraska where we went behind the counter and you had to buy pseudoephedrine at a drug store behind the counter. And we saw that that was very effective. And then the feds came along, as usual, after some states proved the theory, and passed the CMEA. It required the paper logs that we in Oklahoma and I believe you all may have already done. It limited the seller to selling no more than 3.6 grams a day. That's the largest single box made by the manufacturers. It limits the purchaser to 9 grams in 30 days, and it requires that law enforcement can see the logs whenever they desire. There's no probable cause or reasonable suspicion required to see the logs. That's federal law and has been since 2006. Initially had a great impact. What we saw though was, is that you can only look up so many paper logs, as a law enforcement officer, and collate that data. And when drugstores are on every corner and state lines are what they are, and borders, law enforcement officers had a difficult time collating this data and, therefore, identifying smurfers. What my company did, before I even came along, was invent what we called at the time the meth check system, where they made these logs electronic and real time. And, in fact, it is real time--subsecond, less than one second. It is no cost to any state or any law enforcement agency. Our partner is the National Association of Drug Diversion Investigators, which is a 20-year-old law enforcement nonprofit. And then the folks that pay the bill are the members of CHPA. We provide the technology. It blocks across the state lines and it is so successful that already 25,000 of the 60,000 pharmacies in the United States are in the system. It is actually what the CMEA intended to be because all the data is in one database. We have some 61 million transactions housed in our database in Louisville, Kentucky. It is seamless. No state lines block any of the transmissions. No chain stores block it. Only law enforcement has comprehensive access. The manufacturers never see the data. We only see it because we have to manage the data, and there is no new data collection over and above the federal and state law, what it already mandates. Law enforcement gets to see this in real time as well. It's all completely cloud-based--if you remember that term. It's on the Web. Law enforcement officers--we have almost 4,000 users in the country now--will sit in their cruisers in store parking lots and see the transactions come across their screen and watch the person walk out the door and know that that's the person that just made that transaction. It includes advanced intelligence tools, 24/7 support. There's a few screen shots there. You can see... [LB20]

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SENATOR ASHFORD: Terry (sic--Jim), time-out just a second. [LB20]

JIM ACQUISTO: Yes, sir. [LB20]

SENATOR ASHFORD: I think what we'll do is move to any questions. [LB20]

JIM ACQUISTO: Yes, sir. [LB20]

SENATOR ASHFORD: Do we have any questions of Terry (sic--Jim)? I think this is good information and you've given us the whole...the entire PowerPoint, so... [LB20]

JIM ACQUISTO: Yes, sir. [LB20]

SENATOR ASHFORD: I don't want to...obviously you have had great success with it and I appreciate you coming over from Kentucky and showing it to us. [LB20]

JIM ACQUISTO: Glad to do it. [LB20]

SENATOR ASHFORD: Thank you. I don't see any questions, so...wait, we do have. Senator Coash. [LB20]

SENATOR COASH: Just a quick question. Do you think if we don't do this, because of the surrounding states are doing this, we'll kind of have a target on our state? [LB20]

JIM ACQUISTO: Yes, I do. And what I believe is that any measure must be multistate because you'll just push these very driven people to the next state over. That you couple that with the one-pot method of making methamphetamine, which we're already seeing in our state, Kansas and Missouri and Iowa, as well, and it's already creeping into Nebraska, then the time to do this would be now as opposed to reacting to thousands of meth labs that you're finding out in the state. [LB20]

SENATOR COASH: Thank you. [LB20]

SENATOR ASHFORD: Yeah, that's a great question, and we have seen some re-...well, I could ask Corey that. But go ahead, Scott. [LB20]

SENATOR LAUTENBAUGH: I just wanted to thank you, sir. This is a very impressive thing and I want to reiterate what I said before. Sometimes when we hear, well, the industry is going to pay for this and the industry wants to do it, some were suspicious as to why is the industry doing it. I think they're doing it for the best of reasons and for the most old-fashioned reason: They want to still sell their product and have people carry it. [LB20]

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JIM ACQUISTO: Right. [LB20]

SENATOR LAUTENBAUGH: And I think that's perfectly fine and I think it is very forward-thinking and impressive. [LB20]

JIM ACQUISTO: I appreciate that. As a person who was on the other side of that table in passing these regulations, as a police officer in Kentucky, I'm familiar with that sentiment. But the way this is done, they are completely hands off. They write the checks; the citizens still get their medicine; the healthcare costs don't go up; and the police get the data in real time. It's a no-brainer. [LB20]

SENATOR ASHFORD: Okay. I think I get it. Thanks, Terry (sic--Jim), very much. No more...yes, Senator Council. [LB20]

SENATOR COUNCIL: I'm sorry. I just have one question and it arises out of the amendments and the amendment to the amendment. And last year we passed legislation regarding the use of information scanned from a driver's license, and we put specific restrictions on the use of that data, and the system had to be such that the data couldn't be used for any other purposes and couldn't be released for any other purpose. Is the precursor exchange capable of complying with existing statutes as it relates to what data can be compiled and retained from scanning a driver's license? [LB20]

JIM ACQUISTO: Yes, ma'am. We are in 100 percent compliance of that as we speak, because federal law requires that this information not be used for anything other than law enforcement or product recall, and so no retailer in the country that logs this data is allowed to use that for any other purpose. [LB20]

SENATOR COUNCIL: Okay. But I'm just talking about the system itself. And just let me give you an example. As it's currently allowed to use the information scanned from a driver's license, it imposes an obligation that "The stored information may only be used for those purposes," and "The retailer shall utilize software that stores only the information allowed," and that, "A programmer for computer software designed to store such information shall certify to the retailer that the software stores only the information allowed." And that's...and you're saying that your system is capable of... [LB20]

JIM ACQUISTO: Absolutely. [LB20]

SENATOR COUNCIL: Okay. [LB20]

SENATOR ASHFORD: And those are federal compliance issues. [LB20]

JIM ACQUISTO: Correct. And most states mirror those exact... [LB20]

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SENATOR ASHFORD: Is that Title 42 or is that...what...? [LB20]

JIM ACQUISTO: It's part of...it was part of the PATRIOT Reauthorization that took effect in 2006. I'm not... [LB20]

SENATOR ASHFORD: I mean technically this is medical information. [LB20]

JIM ACQUISTO: It is not HIPAA but it's personal health information. [LB20]

SENATOR ASHFORD: Right. [LB20]

JIM ACQUISTO: So HIPAA doesn't attach, although we maintain it as if it's HIPAA data. [LB20]

SENATOR ASHFORD: So you have...you used HIPAA compliance criteria in developing the...and you have a password access, I assume, and... [LB20]

JIM ACQUISTO: Absolutely secure. We have never had a single breach. [LB20]

SENATOR ASHFORD: Okay. [LB20]

JIM ACQUISTO: This is a 16-year-old company that houses victim's notification data for 43 states of the country, including the federal government. We are experts at notification and maintaining security of the data. [LB20]

SENATOR ASHFORD: Got it. Okay, thank you. Thanks, Terry (sic--Jim). I think that's it. [LB20]

JIM ACQUISTO: Great. Thank you guys. [LB20]

SENATOR ASHFORD: Next testifier. Let me ask again: How many proponents do we have? One more. [LB20]

JONI COVER: I'll talk really, really fast, okay? [LB20]

SENATOR ASHFORD: Well, you have three whole minutes. (Laugh) [LB20]

JONI COVER: (Exhibit 8) I have three whole minutes. I can talk really fast. Senator Ashford, members of the Judiciary Committee, my name is Joni Cover; it's J-o-n-i C-o-v-e-r, and I'm the executive vice president of the Nebraska Pharmacists Association. We are here in support of the amended version of LB20. We understand the issues that surround methamphetamine and what it does to law enforcement and to communities and to individuals and to families. That was why, when we passed the

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meth bill or the pseudoephedrine bill a few years ago, we worked with law enforcement and the Attorney General's Office and others to get the product behind the counter. And once again, the pharmacies and the retailers are being asked to step up and assist with this program as well. We appreciate Senator McCoy and his staff, and the Attorney General's Office, Holley Bolen and their staff, to help us address our concerns, because we did have some with this bill. While this is a free system to the state of Nebraska, it may not necessarily be free to a pharmacy. This is a Web-based program, so if a pharmacy has a point of sales system that is scanning information or that can scan information, and they don't have the Web site right there at their point of sale, it could be problematic for us; which again, we appreciate the exemption for those pharmacies. And we do have a few in our state that maybe have their Web access in the back office and don't have the capability to have that Web point of sale system right at the cash register. So we appreciate that. We also appreciate the Attorney General's Office working with us on the amendment for the scanning technology. I believe when we read the scanning bill that was passed last year, we were not included in that, so we could not use our scanners for the upload and tracking, if you will, of the system. And so that was why we asked for an amendment. We received a copy of the amendment. We asked for a further amendment because we didn't feel like it went far enough. We were afraid that we wouldn't be able to scan and send, to the NPLeX system, the information. So there's a few, you know, a few bugs we've had to work out along the way, and we appreciate their willingness to address our concerns. Smurfing is an issue with pharmacies across the state. We laughed at some of our rural pharmacists say this really isn't an issue in our community because we can tell you if somebody is buying too much or too little. So we know that it's more of a larger city like Council Bluffs and Omaha where there's overlap. We do have a requirement under the federal Combat Meth Act which requires training of our employees, and that's of all retailers who sell pseudoephedrine. So that piece of reporting and training is already available. That doesn't mean that obviously we had a pharmacy get in trouble--not in Nebraska, but outside--that was not...it was not compliant with the law. And so this will hopefully address that, so. Anybody, if you have any questions, I'd be happy to answer them. But we still have some bugs to work out, but we have provided the amendment that we were supportive of and hopefully we can address that with the amendment. [LB20]

SENATOR ASHFORD: Okay. Any questions? Senator Council. [LB20]

SENATOR COUNCIL: Okay, because you were involved in the drafting of that amendment with regard to using the encoding, I assume that you're familiar with the existing law that was passed last year about that. [LB20]

JONI COVER: Sort of, yes, which was the reason we felt...after we read that law we felt that we could not use scanning technology because we weren't included in that provision, which is why we added it. [LB20]

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SENATOR COUNCIL: So would you be comfortable if the amendment actually added you in the body of that which says that information encoded on a driver's license can be used to determine compliance with lottery sales, alcohol sales, tobacco sales, and pseudoephedrine sales? [LB20]

JONI COVER: I would assume...as long as we can scan and as long as we're able to transmit that information to law enforcement, you know, it doesn't really matter how it's drafted I think. [LB20]

SENATOR COUNCIL: Okay. [LB20]

JONI COVER: I mean we can look at it. If there needs to be some changes, LaMont, I can work with you on that, so. [LB20]

SENATOR COUNCIL: Okay, and the only other thing that that requires is that you post that: Your driver's license can be scanned to determine.... So you'd have to change your sign if you...you'd have to add "sales of pseudoephedrine" to the sign that says we can scan your driver's license and retain information for purposes of compliance with sale of lottery, alcohol, and tobacco, and then we would just add pseudoephedrine. [LB20]

JONI COVER: We already have a requirement under the federal Combat Meth Act that requires informing the patient or the client, when they purchase the Sudafed product, that they have to be compliant and then they have to sign a log book. So we have similar language right now. [LB20]

SENATOR COUNCIL: Okay. But I just...take a look at it... [LB20]

JONI COVER: Okay. [LB20]

SENATOR COUNCIL: ...and see if it imposes any undue burden on you... [LB20]

JONI COVER: Okay, I will do that. [LB20]

SENATOR COUNCIL: ...to change your sign or make a sign, because that's what the current law requires. [LB20]

JONI COVER: Okay. [LB20]

SENATOR COUNCIL: Okay. [LB20]

SENATOR ASHFORD: Okay. Thanks very much. [LB20]

JONI COVER: Thank you. [LB20]

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SENATOR ASHFORD: I think this is our final proponent. [LB20]

KATHY SIEFKEN: Thank goodness. Chairman Ashford and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n, and I'm the executive director and lobbyist for the Nebraska Grocery Industry Association here today in support of LB20. We thank Senator McCoy for bringing this and we thank the AG's Office for working with us and answering all of our concerns regarding the original bill. In answer to some of the comments that have been made earlier...well, first of all, many...I am not aware of any grocery stores that don't have pharmacies that are still selling pseudoephedrine. Once the feds passed the federal legislation, it became too burdensome and grocery stores just were no longer a place where you could meet all of those requirements. So everything was moved. They took everything that had been locked up and they put it in pharmacies, and those grocery stores that were selling it without a pharmacy, no longer sell it. I am not aware of any grocery store in this state that doesn't have a pharmacy that is still selling that. So everything is behind the pharmacy. We've got pharmacies in grocery stores. We have contacted programs in other states, like Iowa, and the program works very well. There is no cost to the retailers except for if they want to upgrade their system because they've got the connections. One of the concerns that you all have is regarding the bill that we passed last year: scanning. And the amendment that I have...and now this amendment is old. This is the one that Senator McCoy's office sent out this morning. But it says, on line 14 and 15, "except as authorized in subsection (3), (4), and (5)." And the scanning portion is subsection (4), so I believe that scanning this information for the NPLeX program doesn't fit the same...doesn't come under the same requirements that we passed last year for scanning driver's licenses. My only concern is that we need to make sure that we're able to pass along all of the information that is required. And also the ability to scan is not a mandate; it's not required. It's an option in the event the pharmacy wants to scan, so they don't have to, the way it's written now. [LB20]

SENATOR ASHFORD: Well, we'll sort that out. We'll sort that out. [LB20]

KATHY SIEFKEN: So if you have any questions I'd be happy to... [LB20]

SENATOR ASHFORD: Any questions of Kathy? Great. Thanks, Kathy. Any opponents? John. [LB20]

JOHN LINDSAY: Senator "Brashford"...Ashford, members of the committee... [LB20]

SENATOR ASHFORD: Not a very good start. This is a long...a long three months. (Laughter) [LB20]

JOHN LINDSAY: Oh, my time's up. (Laughter) Senator Ashford, members of the

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Judiciary Committee, for the record my name John Lindsay, a registered lobbyist appearing on behalf of the Nebraska Association of Trial Attorneys. And, Senator, I'm actually appearing in a neutral capacity on the bill. We do not take any position on the thrust of the bill. Obviously, I think the proponents have stated their case for that. We merely take issue with Section 6 of the bill which provides an immunity from liability in any civil cause of action. The Nebraska Association of Trial Attorneys has historically had a position in opposition to immunity provisions, with the basic reason, therefore, is that when there is a lack of accountability, it tends to breed negligence. You can imagine if this type of language was used--and it's a standard language--but if it was used and it said that a driver utilizing good faith shall be immune from any civil cause of action, you can imagine what that would do to driving habits out around the state. Our thought is that when people are held accountable for their actions they tend to do it much more carefully. A second concern with the provision is that it appears to kind of mix a contract term, which would be good faith, with a tort concept. I think that makes for a lack of standard which makes it more difficult in any litigation. I did talk to Senator McCoy about this. We will be working with Senator McCoy's office on to see if there's some language that we could provide to the committee that might satisfy his concerns as well as our concerns, and we will get that, like I say, after we've worked with Senator McCoy's office. I'd be happy to answer any questions. [LB20]

SENATOR ASHFORD: I suppose as long as they...well, that's fine. We'll talk about it. Any questions of John? Seeing none, thank you. Senator McCoy, do you wish to close? [LB20]

SENATOR McCOY: I will just very briefly. I know you have other pieces of legislation. Again I'd just offer up the ability to answer any other questions that you might have. The only thing I guess I would add to this: You know, there have been several states that have just gone the direction of scheduling pseudoephedrine. We just really didn't feel that that was practical in Nebraska. It just seemed onerous for Nebraskans to have to go get a prescription to get cold medicine. And so that's where we arrived, obviously, at this system, and you've heard a lot of testimony about it. So with that, I'd close. If there are any other questions, I'd be happy to try to attempt to answer them. [LB20]

SENATOR ASHFORD: Any questions? Yes, Senator Council. [LB20]

SENATOR COUNCIL: Just a follow-up on Mr. Lindsay's neutral testimony. Under the current paper log system, there's no immunity provision. Is there any particular additional risk of liability associated with using the precursor system? [LB20]

SENATOR McCOY: That's a good question, Senator Council, and I guess the only way...and again not having the privilege of being an attorney, I'm perhaps not the best suited to answer a direct question. What I would say with that is, you know, this is not a gotcha bill that we're trying to go after retailers, obviously, as it's been said. And we

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don't, again, want retailers to be afraid to use it and afraid of prosecution to use it. So to answer to your direct question, I'd be happy to look into that further, but I guess I'd answer it in that way if I could. [LB20]

SENATOR COUNCIL: I appreciate it, because I'm just curious as to whether there was any...since it wasn't required under the written log system, is there something peculiar about this that increases a retailer's exposure to liability that warrants any kind of immunity? [LB20]

SENATOR McCOY: Not that I'm aware of. [LB20]

SENATOR ASHFORD: Yeah, we were just thinking about that. I mean there might be some denial of the ability to buy some medication that could result in some...there would be a lot of Palsgraf in that I think. But anyway, thanks, Senator McCoy,... [LB20]

SENATOR McCOY: Thank you to all of you. Appreciate it. [LB20]

SENATOR ASHFORD: ...and thanks for spending time with us this afternoon. [LB20]

SENATOR COUNCIL: Did you just go back to freshman law school? [LB20]

SENATOR LATHROP: The lawyers chuckled. That's an inside joke. [LB20]

SENATOR ASHFORD: That's an inside joke. [LB20]

SENATOR COUNCIL: Did this just go back to freshman law school? [LB20]

SENATOR ASHFORD: You know, that's the last time I ever learned anything. [LB20]

_____: (Inaudible.) [LB20]

SENATOR ASHFORD: That was freshman year, Senator Council. [LB20]

SENATOR LAUTENBAUGH: We're officially the nerdiest committee now, by the way, chuckling at Palsgraf jokes. [LB20]

SENATOR ASHFORD: Okay, LB66. Thanks, Beau, and thanks for spending time with us. Senator Cornett, you're emptying the room. [LB20]

SENATOR CORNETT: I'm okay with that. [LB66]

SENATOR ASHFORD: LB66, Senator Cornett. [LB66]

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SENATOR CORNETT: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Senator Abbie Cornett, C-o-r-n-e-t-t, and I represent the 45th Legislative District. LB66 clarifies that probation officers are responsible for taking DNA samples from convicted felons who are placed on probation and who will not enter into a prison, jail, detention facility, or institution. LB66 also provides that if a court waives the fee or the defendant fails to pay for the collection of the DNA sample, then the county will not be financially responsible for the cost of collection. Thank you for your time and consideration on this bill. There are several people here to testify who can explain the situation to you. Thank you. [LB66]

SENATOR ASHFORD: Thanks. And Senator Council. [LB66]

SENATOR COUNCIL: Okay. Thank you, Senator Cornett. I'm going to withhold one of my questions for...hopefully someone from probation will be testifying. But on the waiver issue: So if the county jail or the county detention facility doesn't assume that cost, who does? [LB66]

SENATOR CORNETT: Well, I believe that it would be the defendant that would be assuming the cost of the DNA sample. [LB66]

SENATOR COUNCIL: No, but it says if the court waives the costs of taking... [LB66]

SENATOR CORNETT: I will have to look into that and answer that for you. [LB66]

SENATOR COUNCIL: Yeah, because if it's waived and the county jail... [LB66]

SENATOR CORNETT: And the county doesn't have it, and then... [LB66]

SENATOR COUNCIL: Yeah, who pays for it? [LB66]

SENATOR CORNETT: That I will have to look into. [LB66]

SENATOR ASHFORD: Ellen probably has some insight on that. [LB66]

SENATOR COUNCIL: Okay. [LB66]

SENATOR ASHFORD: Abbie, do you want to stay around or are you going to go back to reading bills? I know you are reading 80 bills or... [LB66]

SENATOR COUNCIL: And can I ask one other question? [LB66]

SENATOR CORNETT: Sure. [LB66]

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SENATOR COUNCIL: Is LB128 like a fallback if you don't...if you don't do LB66, do LB128? I mean because the only difference is... [LB66]

SENATOR CORNETT: Yes. [LB66]

SENATOR ASHFORD: Are you introducing that one, as well, or is...? [LB66]

SENATOR CORNETT: No, I have LB66. [LB66]

SENATOR ASHFORD: All right. Great. Thanks. [LB66]

SENATOR CORNETT: Thank you very much. [LB66]

SENATOR ASHFORD: Thanks, Abbie. [LB66]

SENATOR COUNCIL: They're two different, but they're the same subject and I just wanted fallback. [LB66]

JEFF DAVIS: Thank you, Chairman Ashford, members of the committee. My name is Jeff Davis. I'm the Sarpy County sheriff. I've been in law enforcement for 37 years. I not only represent my county and the jail facility that I run but also from the Nebraska Sheriffs' Association. I can tell you that I don't know of a sheriff in the state that believes DNA testing isn't a good idea. They all knew that it had to come. It certainly will benefit all of law enforcement at some time in the future. And the problem here exists in the current bill. There's an open area that isn't clear when you read the legislation. There are three different ways when you're convicted of a felony that you are handled. There's actually another one, but basically three different ways. One is you are remanded to the custody of the sheriff and given jail time as a felon. In those cases, we are currently and intend to, under this bill, continue to do the DNA swab--the buccal swab. Some people from the bench are sent to the Department of Corrections. The Department of Corrections in those cases does the buccal swab. What we're talking about are the people in between that receive probation from the bench. For the most part, those people come into court; they're out on bond. They're not in a secure facility, they're not in a secure setting. And if you read the current bill, some people expect judges to place those people back into the custody of the sheriff, come back into my facility, which is a secure facility. We basically have to stop our operation. We have a 148-bed facility that is overcrowded like everybody else, or at least ours is at this point. Strip search...not...excuse me, pat search these people because they're coming back into a secure facility. Take 7 or 8 minutes out of our time to buccal swab them, when in fact that's part of our intake process for somebody who's being put into our jail. We're merely suggesting that in the case of probation they have to go through an intake process with the probation department. It would be very simple for them for 7 minutes to do this buccal swab. It's very simple, self-explanatory. I know some of the questions that come

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up are: Well, what about chain of custody? I think we trust our probation people to do presentence investigations that determine whether people are incarcerated or not. They do UAs on a regular basis. Some of them have labs where they conduct these...do the UAs at. It would be very simple for them to do the buccal swab, send it into the state. And I would add to that, they're a state agency. They probably have a better shot at collecting that \$25 that goes to the state, not back to the county. And you don't see in this bill the sheriff saying, hey, we want some money for the time it takes. We're not. We're simply saying, don't give us extra people to do what shouldn't be in our facility in the first place. With that, I can answer any questions if you have any. [LB66]

SENATOR ASHFORD: Any questions of Jeff? Yes, Senator. [LB66]

SENATOR COUNCIL: Just a comment, because...and I meant to ask Senator Cornett the question because I was looking at that too. So I go...I get arrested on a felony charge. I bond out. I come in; I plead. I'm found guilty. I'm fined. So under LB66, the sheriff, who may be present in the courtroom, would have to take me in custody and take me to a facility to swab me. [LB66]

JEFF DAVIS: I would make the same argument that I did earlier, Senator. Although I will tell you that happens so infrequently, at least in our jurisdiction, that I'd be willing, numberswise, to say if that's what you want to do, we'll handle those also. But those are very, very infrequent. [LB66]

SENATOR COUNCIL: Very few that you get a fine for a... [LB66]

JEFF DAVIS: More often what happens, Senator, is somebody has spent a great deal of time in our jail facility, then bonds out and comes in and pleads guilty. And the judge may say, I'm going to sentence you to... [LB66]

SENATOR COUNCIL: Time served. [LB66]

JEFF DAVIS: ...time served and a fine. And those cases may still be out there. I don't think they're very frequent. I would tell you that I speak for the sheriffs, and if we had to add those to our list, we could fit them in. But the additional people that we're talking about in the middle here, it does not work. And I know probation is going to get up and say: We don't have the people; we don't have... [LB66]

SENATOR ASHFORD: Well, they may say that. We have to wait... [LB66]

JEFF DAVIS: See, I'm pretty sure I know the person very well, and she's... [LB66]

SENATOR ASHFORD: I mean we try not to assume defenses. [LB66]

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JEFF DAVIS: Yeah. But we don't either, you know. [LB66]

SENATOR ASHFORD: Jeff, are you a proponent? You're a proponent of the bill though. [LB66]

JEFF DAVIS: I'm a proponent of the bill. I can also speak about the following bill. If you want me to wait, I'll come back up. It's up to you. [LB66 LB128]

SENATOR ASHFORD: I would...if you want to speak about the next bill, that's fine. [LB66 LB128]

JEFF DAVIS: Well, I will tell you that the next bill...I think both of these are attempts to fill that void or that gap where everybody sees, hey, who's supposed to do this. I will tell you that I don't believe that bill facilitates that. It puts it back on the judges. I personally went to all of our district court judges, and each one of them said: Look, we have enough to decide; I don't want to decide from the bench where this person has to go, and I certainly don't think they should be taken back into custody and brought back to your facility to have a buccal swab done. And I think they would be...I speak for my own judges, I can't speak across the state, but I think they'd be a proponent of LB66 because let people do their own buccal swabs. And again, if it's part of the intake process for probation, it would take 5-7 minutes. These are very simple to do. The longest part in here is you have to wait 5 minutes for it to air dry before you put it in an envelope, put a stamp on it, and send it to the state. [LB66 LB128]

SENATOR ASHFORD: Thanks. And, Ollie, we're going to have testimony on the next bill too, from Jeff, so he won't have to come back up again. But, Scott, go ahead. [LB66 LB128]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. So what you're saying is this bill that we're talking about right now, LB66, just sort of has a division of labor. And if they're going to be in your custody, you'll do the swab. If they're going to go to the state then Mr. Houston will accommodate it there and get that done there. But for the people who don't go back into your custody, you're saying the next likely, easiest, cheapest person to do this would be the probation officer. [LB66]

JEFF DAVIS: Yes, sir, that's what I believe. I also believe the state has a better chance of collecting the money in those cases. We currently don't collect money from those people in our jail. We hand them a sheet of paper that says you now have to send \$25 in to the state of Nebraska. I would venture to say you probably don't get many of those checks. [LB66]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB66]

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JEFF DAVIS: Any other questions? [LB66]

SENATOR ASHFORD: Thanks. It seems like we've got your point firmly. [LB66]

JEFF DAVIS: Thank you. [LB66]

SENATOR ASHFORD: Do we have a real proponent or...? [LB66]

SEAN KELLEY: I don't know if I'm a real proponent. [LB66]

SENATOR ASHFORD: Sean. (Laughter) Ellen, are you going to testify on this bill?
[LB66]

ELLEN FABIAN BROKOFISKY: Opposition. [LB66]

SENATOR ASHFORD: Oh, okay. [LB66]

_____: Oh, no. [LB66]

ELLEN FABIAN BROKOFISKY: Yes. (Laughter) [LB66]

SENATOR ASHFORD: I'm confused because I don't know who's on first. (Laughter)
Sean. Somebody has got to be a real proponent and a real opponent. That's how we
work this thing. Okay. [LB66]

SEAN KELLEY: Mr. Chairman, members of the committee, my name is Sean Kelley,
S-e-a-n K-e-l-l-e-y, here on behalf of the Douglas County Board of Commissioners. The
Douglas County Board passed a resolution to clarify the DNA sampling issue and at the
Douglas County Correctional Center. We are undergoing a similar problem and process
where we don't have people in custody who are coming to the correctional center for
sampling of their DNA. And with that, I'd be happy to answer any questions you may
have. [LB66]

SENATOR ASHFORD: You don't now have. What did you just say? [LB66]

SEAN KELLY: I'll answer any questions if you have them. [LB66]

SENATOR ASHFORD: No, no, before that. (Laughter) [LB66]

SEAN KELLEY: (Laugh) [LB66]

SENATOR ASHFORD: Sean, don't...don't. You and Lindsay are already...what did you
say before the part about the questions? (Laugh) You said the Douglas County jail

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doesn't... [LB66]

SEAN KELLEY: Yeah, that we have the exact same problem as the sheriff alluded to: people are coming who are...have never been in the custody of the facility, coming for DNA sampling. [LB66]

SENATOR LATHROP: So you're in favor of the bill? [LB66]

SEAN KELLEY: Yeah, we're proponents. [LB66]

SENATOR LATHROP: Does the bill take care of that problem? Is that what it does? [LB66]

SEAN KELLEY: We're more than happy to do the sampling of people in the DCC custody. [LB66]

SENATOR LATHROP: Yeah. I think what I'm struggling with after listening to you and the sheriff is, I can't tell, does the bill take care of the very problem that you're describing... [LB66]

SEAN KELLEY: Yes. [LB66]

SENATOR LATHROP: ...or are you describing a hole in the bill? [LB66]

SEAN KELLEY: No. We're describing the reason why we support the bill. [LB66]

SENATOR LATHROP: Okay. [LB66]

SENATOR ASHFORD: Yeah. Could you take a stab, Scott, because I'm still a little concerned about the... [LB66]

SENATOR LAUTENBAUGH: What you're saying is there's a hole in the existing law that is causing people who aren't in custody to come get their swabs because the probation people don't currently do it. [LB66]

SEAN KELLEY: Exactly. [LB66]

SENATOR LAUTENBAUGH: So this bill would address that by saying: Probation people, take the swab yourselves. [LB66]

SEAN KELLEY: Precisely. [LB66]

SENATOR LAUTENBAUGH: So it would address your problem. [LB66]

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SEAN KELLEY: Yeah. Thank you. [LB66]

SENATOR LAUTENBAUGH: So you're in favor of the bill then. [LB66]

SEAN KELLEY: Yes. [LB66]

SENATOR LAUTENBAUGH: All right. Thank you. [LB66]

SENATOR ASHFORD: And so is Sheriff Davis. Sheriff Davis is also in favor of the bill and Ellen is against the bill. [LB66]

SEAN KELLEY: Yeah. [LB66]

SENATOR ASHFORD: Okay, got it. [LB66]

SENATOR COUNCIL: Question. [LB66]

SENATOR ASHFORD: Yes, Senator Council. [LB66]

SENATOR COUNCIL: So what about the individual who's convicted and doesn't come back to your facility and doesn't go to probation? The bill says here if they receive a penalty of a fine or something short of, and to take the sheriff's example, time served and a fine, are you prepared to take those people and perform the DNA swab? [LB66]

SEAN KELLEY: That is the last problem with this issue. And I think our...the director of the Douglas County Correctional Center would rather not have to deal with that, but we understand those people are never really sent anywhere after...because they're time served and fined. So if we had to deal with that, with those people, then I think we would be willing to. But, you know, we... [LB66]

SENATOR COUNCIL: Yeah, but I think there would also have to be some mechanism set up to get the people...I have a problem, you know, after you've been sentenced and then saying now you're back in the custody of someone to take you to a correctional center facility for a DNA swab. I think that's a serious...I mean those cases, as the sheriff indicated, are few and far between that someone convicted of a felony, you know, gets sentenced to time served and a fine. But if you have situations where individuals are able to arrange such a plea and they are released, there's a hole here. And then the problem is exacerbated if the judge says: Okay, you're sentenced to time served, a fine; you've got to have a DNA swab. The defendant says: Boy, I can't afford to do that. He says: Well, I'll waive the costs; go over to the Douglas County Corrections. Are you guys prepared to pick that up? [LB66]

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SEAN KELLEY: We do it now, so...I mean we would prefer them to go to the probation office if they had to...you know, that would be our preference, but. [LB66]

SENATOR COUNCIL: Okay. Thank you. [LB66]

SENATOR ASHFORD: Senator Harr, and then Senator Lautenbaugh is going to clean it up. So go ahead Senator. [LB66]

SENATOR HARR: Well, I'll mess it up then. To clean up what Senator Council said...(laughter)...I think there is a hole in the law as it is right now. And while time and cost served is not the norm, it is not uncommon to have that, from my own experience. If you take a person back into custody, that counts as a day served, correct? [LB66]

SEAN KELLEY: After the... [LB66]

SENATOR HARR: So...yeah. So let's say, from my hypothetical let's say the person has served...taken in and served 30 days, bonded out. [LB66]

SEAN KELLEY: Okay. [LB66]

SENATOR HARR: Okay, now they're bonded out. Plea bargain is for...it's a shoplifting, third offense. They've bonded out. It's been worked out. Okay, fine. Time and cost, 30 days. Now you've got to go back into custody to have the DNA swab. This person doesn't have the money. I would argue that they would...that that day and cost would pay for that because you're serving a day. And you get how much per day for serving? [LB66]

SENATOR COUNCIL: (Inaudible.) [LB66]

SENATOR HARR: How much? [LB66]

SEAN KELLEY: Ninety. [LB66]

SENATOR HARR: So that would cover that cost right there, so it wouldn't have to be waived. Would you agree with that? [LB66]

SENATOR COUNCIL: Yeah, but you would have to be considered to be a day in custody. [LB66]

SENATOR HARR: But the second you serve, it's a day. The second you're taken into custody, that's a day. Even if you're...if you come in at 11:59 p.m. midnight, you've already served a day. So this would cover that. [LB66]

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SEAN KELLEY: Yes, it would. [LB66]

SENATOR HARR: So you'd agree with that? [LB66]

SEAN KELLEY: Yeah. I'd agree with that. [LB66]

SENATOR HARR: Okay. Thank you. [LB66]

SENATOR ASHFORD: Senator Lautenbaugh, would you agree with that? [LB66]

SENATOR LAUTENBAUGH: Sure. But my question was, so currently there's a hole in the law dealing with people on probation and people who get fines. [LB66]

SEAN KELLEY: Yes. [LB66]

SENATOR LAUTENBAUGH: This bill is designed to address the people on probation, but you're still going to have the problem with the people who just get fines. But you're not any worse off than you were before because you've already got that problem, right? [LB66]

SEAN KELLEY: Right. [LB66]

SENATOR LAUTENBAUGH: Okay. [LB66]

SEAN KELLEY: It's getting better but I don't think LB66 is a catchall with the time served. [LB66]

SENATOR ASHFORD: Do you have any comments on the next bill, Sean? [LB66 LB128]

SEAN KELLEY: No. We're just neutral on the next bill. [LB66 LB128]

SENATOR ASHFORD: Okay. So you don't need to come up again. [LB66 LB128]

SEAN KELLEY: No, I don't. Thank you. [LB66 LB128]

SENATOR ASHFORD: Okay, thanks. [LB66 LB128]

SEAN KELLEY: Thank you. [LB66 LB128]

AMY PRENDA: Okay, I'm going to try to answer questions. My name is Amy Prenda, A-m-y P-r-e-n-d-a. I'm the one responsible for drafting LB66, so we'll just start there. This...when LB190 was passed, which was Senator Avery's priority bill last year, there

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was a big gaping hole in who would take the DNA test from those convicted, from those placed on probation. And then we had those that sort of fell through the cracks, those felons convicted that didn't get jail time or placed on probation. Initially, the thought was we would divide the load. Probation would take care of probation, sheriffs would take care of those convicted and sentenced to their jail facilities, and Department of Corrections would take care of those convicted to the state. There was, of those few that were felons that weren't convicted, we decided to assume the responsibility for taking those DNA samples only because we were trying to divide the load. We think it's good public policy that the DNA buccal swabs be taken, but we were trying to limit our caseload as far as what buccal swabs were being taken by the sheriffs' office. There still is a very large gap in who pays for those tests, how that money is remitted to the state. Right now, the sheriffs do not have the authority in statute to collect the fee. So the solution is, is that when they come to the sheriffs' office to take the buccal swab, we give them this letter that was drafted by the State Patrol that says: Here, your buccal swab has been taken; it's up to you to write a check for \$25 and send it to the Attorney General to be remitted. Whether they do it, whether there's enforcement of it, I have no idea and I didn't go there in this bill. What I was trying to do was to spread the burden of taking these DNA tests. So, yes, there still are gaps in the law as far as collecting the fee and remitting it. We assume the responsibility for those placed on...not placed on probation or convicted. And I don't know whether that was great public policy or whether I drafted it correctly, but that was the thought. So if you have any other questions, I will try to answer them the best that I can. [LB66]

SENATOR ASHFORD: Any questions of Amy? [LB66]

SENATOR COUNCIL: So, if I could, so essentially the county corrections, the sheriffs, are actually absorbing the costs of these swabs. [LB66]

AMY PRENDA: We are...so far we are not. The DNA tests are free. They are mailed out to the sheriffs to do the buccal swabs, and then we mail them back. And we give the letter to the person to write a check and send it in to the Attorney General's Office. But if you read the fiscal note from LB190 from last year, it was mentioned that it might happen that the state doesn't have the money to pay it and the costs would come back on the sheriffs to pay for the DNA buccal swabs. And so that's what that language is, is that we just wanted to make sure that if that account suddenly goes dry at the state level, we wouldn't have to assume the costs for the DNA kit. [LB66]

SENATOR COUNCIL: Okay, so...so the cost you're talking about is the actual storing of it, I mean, because the taking the swab shouldn't cost you anything, I mean. [LB66]

AMY PRENDA: Except for FTE and additional... [LB66]

SENATOR COUNCIL: For FTE time. Right. [LB66]

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AMY PRENDA: Right. Correct. [LB66]

SENATOR COUNCIL: So the \$25 goes to the AG's Office for what purpose? [LB66]

AMY PRENDA: It goes in to the AG's Office so that more kits can be purchased to send back down to probation, to corrections...or...yeah. [LB66]

SENATOR COUNCIL: Okay. [LB66]

SENATOR LATHROP: Can I ask just this question: Amy, shall we amend this to take care of the one thing it's not taking care of? [LB66]

AMY PRENDA: Yes. But politically, this summer, this was all I thought that I could do without causing the least amount of ripples. [LB66]

SENATOR ASHFORD: Well, and we'll sort it out. [LB66]

SENATOR LATHROP: Okay. [LB66]

SENATOR ASHFORD: We'll sort all this out and we'll get it all sorted out. [LB66]

AMY PRENDA: Okay. And to save you time, LB128, which Senator Avery introduced, we're opposed to that because it...all it does is gives the judge discretion to do probation or sheriffs. Our fear is that they'll do sheriffs because probation is with the court. The other problem is, is that because it puts it on a sheriff or a probation officer, in Douglas, Lancaster, Hall County, and Scotts Bluff County and Cherry County--and I'm missing one and I'm sorry--where the sheriff has not taken the DNA buccal swab now, based on Senator Avery's law everybody now will show up at the sheriff's office to have those swabs taken, so. [LB66 LB128]

SENATOR ASHFORD: Okay. Thanks, Amy. [LB66]

AMY PRENDA: Thank you. [LB66]

SENATOR ASHFORD: And we'll note your...yes, Senator Lautenbaugh. [LB66]

SENATOR LAUTENBAUGH: I'm sorry. Just one question. So how should we address the fine issue? People who just get a fine, who should swab them? [LB66]

AMY PRENDA: Well, the sheriffs that I talked to, because there's so few, they were willing to absorb that responsibility, and that's the way I drafted the way it does. But after listening to Sean in Douglas County, I might have made an assumption without talking...

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[LB66]

SENATOR ASHFORD: Well, I think what we need to do here is, rather than have us sort it out here today, I mean we'll obviously...Senator Avery is here and he'll talk about his bill. Why don't we all...why don't you guys all get together and come up with something, and we'll hear from Ellen, and then we'll take up the bills when you guys are through looking at it together. I mean thanks for doing the work, but I...you know, I think just another pass at it maybe. How about opponents of...I think we're on the opponent side, aren't we, of LB66? [LB66]

ELLEN FABIAN BROKOFSKY: We're on the opponent side? That's me. [LB66]

SENATOR ASHFORD: Are there any other opponents? Okay. [LB66]

ELLEN FABIAN BROKOFSKY: (Exhibit 9) Good afternoon. I know it's been a long day. I have prepared testimony that's 5 whole minutes, so I'm not going to read it. I do have some bullets that I've prepared for you. My name is Ellen Fabian Brokofsky. Chairman Ashford and members of the Judiciary Committee. Brokofsky is B-r-o-k-o-f-s-k-y. I am the state probation administrator and am employed by the Nebraska Supreme Court. I testify today in opposition to both these bills, LB66 and LB128, but totally in support of DNA sampling for felony offenders. I testify in opposition to probation and the use of probation officers specifically as an appropriate entity for collecting DNA. Let me restate that. Nebraska State Probation stands in support of DNA sampling. In fact, we believe it is so important that it should be done by those most qualified to conduct it and those most interested in the results. That entity would be law enforcement, not probation. This testimony is an attempt to make the case as to why probation is not the entity the Legislature should charge with DNA sampling. DNA sampling is not a statutory responsibility of probation for a reason. DNA sampling results are not utilized by probation officers for any reason in regard to our statutory obligations of investigation, supervision, and juvenile intake. Probation officers are not trained to obtain DNA samples. Probation officers are not law enforcement officers; they are officers of the court. As I've stated, law enforcement is the most knowledgeable and logical entity for collecting DNA samples. Another important reason why probation should not be collecting DNA samples is the issue of resources. And let me just go through the bullets so I don't go through all of the testimony. There are 250 probation officers to supervise 20,000 probationers statewide. With legislative support, probation programming for alternative-to-prison programming for adults and alternative-to-state-custody programming for juveniles has shown great promise. Probation is underresourced, so adding a duty unrelated to our statutory responsibilities will deter from our ability to serve the court and Nebraska's citizens who rely on probation's provision of supervision services as a community safety measure. Probation does not possess the administrative or operational infrastructure to develop, train, and implement the standard protocols necessary for DNA collection. Alcohol and urine testing by probation

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officers determines suitability for treatment and behavior change while holding the probationer accountable for conditions of the order. New funding would be required to support the process of collecting DNA in that infrastructure. We do not...probation does not possess an internal mechanism for fee collection for DNA sampling. We do not touch money at all. Probation appreciates and does not want to jeopardize its strong working relationship with law enforcement; however, law enforcement is the most appropriate entity to collect and process DNA sampling. [LB66 LB128]

SENATOR LATHROP: Okay. Thanks, Ellen. And I see from that handout that you have also...that this applies to both LB66 and LB128, and you're opposed to both. [LB66 LB128]

ELLEN FABIAN BROKOFISKY: Yes. [LB66 LB128]

SENATOR LATHROP: And we'll have the record reflect that you're opposed to both... [LB66 LB128]

ELLEN FABIAN BROKOFISKY: Yes. [LB66 LB128]

SENATOR LATHROP: ...and for the reasons that you've just indicated. [LB66 LB128]

ELLEN FABIAN BROKOFISKY: Yes. I would appreciate that. [LB66 LB128]

SENATOR LATHROP: Okay. Great. Any questions? Seeing none, thank you very much for your testimony. [LB66 LB128]

ELLEN FABIAN BROKOFISKY: Thank you. [LB66 LB128]

SENATOR LATHROP: Are there any other opponents here today on this particular bill? Anyone here in a neutral capacity? Seeing none, that will close our hearing on LB66. We will go to LB128, and that brings us to Senator Avery who is good to open. [LB66 LB128]

SENATOR AVERY: Thank you, Senator Lathrop. My name is Bill Avery. For the record, B-i-l-l A-v-e-r-y. I represent District 28. Last year, I did have a bill, LB190, that required DNA testing of all convicted felons. Let me just say up front I don't have a dog in this fight. I care about LB190. It's a good law enforcement instrument and I think we ought to work to make it work. When we put LB190 together, we brought the Attorney General's Office in. We had the State Patrol working with us. We had the Department of Corrections, the state crime lab, and they all worked together because they saw that this was an important bill. What I want to know is why is it that the people who are charged with carrying out the law or enforcing the law in the state can't get together on this important issue? Why is it that the sheriffs say: Well, I don't want to do it. Probation

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will say: I don't want to do it. I don't understand that. It seems to me that we all ought to be saying this is something we need; let's make it work; let's find a way to make it happen. What LB128 simply does is give the authority to the courts. Let the courts decide; let the judges decide. And the probation people just said: Well, we don't like that either. Why? Well, maybe they might ask us to do it. I don't know what the sheriffs say about that, but my guess is they might say the same thing. Let me say this: The Department of Corrections took two months to get it done in the penitentiary. They got everybody tested and they were quite happy to do it. We would have been happy, if we had the money, to find another way to pay for this, but having no money, we decided that the best way to get it done would be to have the felons pay. That seemed to be reasonable. I could suggest to you one way you might resolve this is to change LB190 to have the collection occur upon arrest. Because fingerprinting takes place at that time, you could simply do the DNA test at the same time. Now that's an expansion of LB190, I realize that, and it raises issues that made me uncomfortable, which is the reason I didn't include it in the original legislation. But it seems to me that this is too important a law for us to let it languish because we don't have agreement on how it ought to be implemented. I do want to raise one issue that is not contained in LB128. I have been told that in some jurisdictions judges have been waiving the \$30 cost of DNA collection and testing, leaving the counties holding the bill. Some counties cannot afford this. And I don't know exactly what to do about that but I would hope that this committee would keep that in mind in anything that you decide to do in fashioning a bill that will resolve this problem. I hope that LB128 gives you an additional option to the ones that you have before you. Thank you. [LB128]

SENATOR LATHROP: Great. Thanks, Bill. I will...just as an aside, I don't think we can make this change when we do it and swab everybody that's getting arrested without having a public hearing on that idea, because that would be a... [LB128]

SENATOR AVERY: Well, we could consider this the public hearing? (Laugh) [LB128]

SENATOR LATHROP: Well, no, no. But it's not a bill and we don't have, like, the ACLU and the people that would naturally come in if you're going to change it from a conviction to arrest, but. And we do...of course, we now have two bills on who should be doing this, so I trust that the committee will get to the bottom of it and assign that task. [LB128]

SENATOR AVERY: I trust that you can do it. [LB128]

SENATOR LATHROP: But we appreciate it. Any questions for Senator Avery? Senator Lautenbaugh. [LB128]

SENATOR LAUTENBAUGH: Thank you for bringing this, Senator Avery. And just briefly, the impression I get from the sheriffs is that they're willing to do what they can

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officially do to collect the DNA, but they don't want to be put in a position of doing things with people they wouldn't be having contact with postconviction. [LB128]

SENATOR AVERY: Meaning probationers, right? [LB128]

SENATOR LAUTENBAUGH: No, the sheriffs I'm saying. Yeah, the... [LB128]

SENATOR AVERY: Yeah, the people who get probation. [LB128]

SENATOR LAUTENBAUGH: So I get the feeling they're willing to do their part, just not the whole thing. Is that your understanding as well? [LB128]

SENATOR AVERY: Maybe I was unfair to the sheriffs, for which I apologize. [LB128]

SENATOR LAUTENBAUGH: I'm not a sheriff so it's okay. [LB128]

SENATOR LATHROP: Okay. Thank you, Bill. [LB128]

SENATOR AVERY: But you can understand my frustration. [LB128]

SENATOR MCGILL: Yeah. [LB128]

SENATOR LATHROP: We appreciate your frustration. And it's very clear, after these two bills, what it is, and presumably that means there will be fewer people testifying on your bill. But we'll see. Anybody here as a proponent on LB128? Okay. Anybody here in opposition to LB128? Seeing no one...and the record should reflect, of course, the testimony of those who have testified on the last bill. Anyone here in a neutral capacity? Well, that went well. Bill, do you want to close? [LB66 LB128]

SENATOR AVERY: No. [LB128]

SENATOR LATHROP: Okay. Good. Senator Avery waives closing and that will close our hearing on LB128, and that brings us to our own Senator Lautenbaugh and LB136. [LB128]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. I brought this bill at the request of the Attorney General. We had the Secretary of State here as a testifier to talk about why this is important, and I think due to the lateness of the hour we lost him. But I'm...they'll be a substitute, it looks like out there, willing to testify. What this does is basically streamline the pardons process by extending the number of years between applications. The problem that we're trying to deal with is, with currently allowing every two years, you have people that are never going to qualify taking time away from people who might qualify--the frequent fliers of the world who

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keep coming back, coming back, coming back. This would move the limit up to five years for a reapplication, just to clear the backlog, if you will, and get to the ones who have a legitimate shot at parole sooner. I'd be happy to take any questions, but I think Mr. Cookson might be a better source of information. [LB136]

SENATOR LATHROP: All right. And with that, it appears that Senator Council has a question. [LB136]

SENATOR COUNCIL: I just have one question, and then Mr. Cookson and I will go at it a little bit. I appreciate the concern that's being addressed but the...what do you do...I mean this, I think, adversely affects the individual who really doesn't understand the pardons process, hasn't had the benefit of legal counsel. Files a pardons application. Doesn't have a hearing granted, which is an automatic denial--when they don't get a hearing granted, it is denied. And then to say to that person, you've got to wait five more years, when, you know, if they had had some assistance in preparing their application, may have at least received a hearing, I guess I could understand that, the need to do the backlog when you're talking about hearings. But I've experienced far too many people who already have been granted a hearing. And then to tell those people that the mere fact that you submitted an application, you have to wait five more years before you can pursue another attempt at a pardon. When these convictions are prohibiting people from trying to successfully reenter into our communities when they have these convictions on their record, whether they're eligible or not, maybe you want to change the pardons process and let these people know you're not eligible for a pardon; we're not going to give you a pardon. But to say the mere fact that you've submitted an application, whether we've heard your application, had a hearing on your application or not, you have to wait five more years. You know, the pressure we're putting on communities to try to have these ex-offenders reenter when they have no possibility...and when, in many instances, they have done everything they want to do. And I'm going to give an example, because I was really irritated by it. I had an individual who was convicted of a sexual assault 25 years ago when he was a 19-year-old at Wayne State College. Had sex with a young woman who consented, who was determined subsequently to be underage. Submitted an application, letters of reference, everything. This guy didn't get a hearing. And here he is, trying to better his life. And now you're going to tell him, well, you can't come back in two years; you have to wait and come back in five years, when I think in actuality the Pardons Board wouldn't consider him, period, because they have a bias against granting pardons on sexual offenses regardless of the circumstances of the offense. So I mean I have a real problem. And I'm just telling you, Mr. Cookson, you're going to have to be very convincing and very persuasive to get me to consider changing this from two to five years. I've sat through the hearings. I know how much time they spend. You only have pardons hearings four times a year, unless you've expanded it. The last I checked they were only scheduled every three months. Maybe you're doing them more frequently. But I don't see the burden and I think it puts an undue burden on citizens that we're trying to

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have successfully reenter our communities. [LB136]

SENATOR LATHROP: Okay. [LB136]

SENATOR COUNCIL: So I've said my...I won't say anything else. [LB136]

SENATOR LAUTENBAUGH: I'm not sure how to answer your questions anyway. [LB136]

SENATOR LATHROP: Maybe we better bring him up here so he can answer...we can turn that into a question, but. [LB136]

SENATOR COUNCIL: That's a question. [LB136]

SENATOR LATHROP: We certainly appreciate your concerns and your personal experience with the process, Senator Council. And if there are proponents...or no other questions for Senator Lautenbaugh, we'll bring up the proponents. And then... [LB136]

SENATOR COUNCIL: I've got a question. [LB136]

SENATOR LATHROP: Then perhaps the proponents can spend some of their five minutes answering what is surely going to be the question. Come on up, Mr. Cookson. [LB136]

SENATOR COUNCIL: I'm going to ask that question, you know. [LB136]

SENATOR LATHROP: We'll let him testify and then you can ask a question. Go ahead, Mr. Cookson. [LB136]

DAVID COOKSON: Vice Chairman Lathrop, members of the committee, I'm substituting for Secretary of State Gale who had a previously scheduled meeting he had to return to his office for. I'll go directly to the question and the point of what's trying to be done. This is not a mandatory five-year waiting period. It simply expands the discretion of the Pardons Board, which they use very judiciously with regards to when people who are ineligible are allowed to refile. Since 2006, in 1,100-plus total applications, only 490 were actually eligible for consideration. The Pardons Board is a small...it's basically a one-person staff. That person advises those folks what they need to do to be eligible and what to do to file. If there's a particular case that we can look at, we're happy to do that. I'd like to give you some background about the Pardons Board process. Prior to the current board, as it's constituted and which started in '06, there was a roughly 12-year period in which no pardons were granted, period. Despite numerous applications of deserving people, no pardons were granted. The current Pardons Board has taken upon itself to return to what was the normal operation of the Pardons Board in reviewing

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deserving cases. They have a criteria which they use with regards to misdemeanor cases and a criteria that they use for felony cases. Basically, for a misdemeanor, you need to...it has to have been three years since the conviction and you've had to have no contact with law enforcement or court convictions during that period. For felonies, it's ten years. There are a number of difficult cases that come before the Pardons committee that take a lot of time to investigate, which our office does the primary investigation, in which we sift through the entire record. In fact, one case that Mr. Bartle represented, which he might speak to when he gets here, we literally spent weeks going back, reinterviewing witnesses, reinterviewing arresting officers, going back through all of the information to try to get a handle on whether or not that particular individual deserved to be pardoned. In the end, the Pardons Board made the decision to pardon that individual. But all we're asking for here is an increase in discretion to deal with not even the majority of those 700 ineligible people, but the people who continue to file and file, even though they know they're not eligible, that takes away from the time it takes to review people who truly are deserving. And you're right, there are a number of cases where it's important for the Pardons Board to give that kind of consideration, because people can't get into the military, people can't get jobs, people who have made a mistake, done their time, and not only done their time but then lived an exemplary life after for the period that the Pardons Board think is appropriate, and we want to be able...the Pardons Board wants to be able to do that. They want to be able to have that kind of review, so that, for instance, I can't remember the gentleman's name but there was a gentleman who had been convicted of felony homicide who had been the driver of a vehicle, who his buddy had run into a bar, killed a number of people, along with someone else. The two guys who actually were in the bar and pulled the trigger had long since been out, and the driver was stuck because his pardon came up when the Pardons Board changed and they stopped granting pardons. This Pardon Board remedied that situation. So what we want to encourage is getting the right people the opportunity to have their pardons heard. And they take every case on the merits. So with that, I'd be happy to answer any questions. [LB136]

SENATOR LATHROP: Okay, we'll see if there's any more. [LB136]

SENATOR COUNCIL: Additional question. [LB136]

SENATOR LATHROP: Senator Council. [LB136]

SENATOR COUNCIL: And, thank you, Mr. Cookson. And you did address some of my concerns and you're aware of some of the issues here. But can you provide data that shows how many applications...when you say people are ineligible--and there's ineligibility based upon the Pardons Board's review of the facts and there's ineligibility due to their failure to meet the prerequisites. [LB136]

DAVID COOKSON: Right. [LB136]

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SENATOR COUNCIL: What percentage of these applications fall within ineligibility due to it hasn't been three years if it's a misdemeanor, and it hasn't been ten years if it's a felony? Is there a significant percentage of those? [LB136]

DAVID COOKSON: I believe so, but let me get the actual information from Sonya at the Pardons Board and I will get that to you and the committee. [LB136]

SENATOR COUNCIL: Okay, because I think, if that's the case, that we can provide for an amendment that remedies that in terms of when those people can reapply. But what I'm concerned about are people who have satisfied the requirements that are set forth in the pardons application, and I made this statement to some Pardons Board officials. The...on the felony it says any felony is eligible. [LB136]

DAVID COOKSON: Right. [LB136]

SENATOR COUNCIL: But I think you know as well as I do that there are certain felonies that this current Pardons Board doesn't consider to be eligible. [LB136]

DAVID COOKSON: I can only speak to the review done by one member of the Pardons Board because I'm... [LB136]

SENATOR COUNCIL: Okay. Well, okay, but... [LB136]

DAVID COOKSON: I'm intimately familiar with that part of it, and we look at each case on the merits regardless of the offense. [LB136]

SENATOR COUNCIL: Okay, but would that be helpful to the Pardons Board... [LB136]

DAVID COOKSON: Yes. [LB136]

SENATOR COUNCIL: ...to deal with those ineligible applications by virtue of...? [LB136]

DAVID COOKSON: And I think that's ultimately what the board is trying to get at by increasing their discretion. They're not going to use...they use the...they don't even use the two years that often. But they're using the two years for a number of people who continue to file even though they're probably not going to be eligible to get a pardon because of contact with law enforcement and multiple DUIs. [LB136]

SENATOR COUNCIL: Well, I'd like to...I offered it to work with you and try to bring it to... [LB136]

DAVID COOKSON: I will try to break that down. [LB136]

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SENATOR COUNCIL: ...because I don't want to bar those people who, you know, are eligible but don't realize, you know. I had one guy who, it had been ten years, but he had an assault that was diverted and he thought that meant he didn't have contact with law enforcement. [LB136]

DAVID COOKSON: Right. [LB136]

SENATOR COUNCIL: And I can understand their little tweaks and things. But if it's the ineligibility by virtue of you don't meet the minimums, I think we can come up with some way to be fair to everyone involved. [LB136]

DAVID COOKSON: I will get that information from the Pardons Board and get it to the committee. [LB136]

SENATOR COUNCIL: Okay. Thank you. [LB136]

SENATOR ASHFORD: Senator Lautenbaugh. [LB136]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. So simply put, the Pardons Board now has discretion to say "and don't come back for two years." [LB136]

DAVID COOKSON: Right. And there's a handful of folks that they have to use that for because even though it's explained to them why they're ineligible, they continue to file. And what that does is it just...it clogs the docket and things grind to a halt. If you've ever had to sit through one of these hearings, Pardon Board hearings, they take an entire day. Sometimes they break it up and do two half-days. And I do think they meet more often than four times but I'm not positive. It seems like it from our perspective. Because when you go to a Pardons Board meeting, the stack of documents is literally this high because it's everything regarding the underlying offense and everything that's occurred since the underlying offense. As you can imagine, for some of these folks it's a voluminous record. In the case in which Mr. Bartle was involved, we actually went back and got the physical evidence out of storage, out of the Omaha Police Department, to review it to see whether or not it squared with the applicant's version of events. And again, it's important that the deserving people get an opportunity to have their case thoroughly vetted as opposed to maybe how things happened in the past. [LB136]

SENATOR LAUTENBAUGH: So your answer is yes? [LB136]

DAVID COOKSON: Yes. [LB136]

SENATOR LAUTENBAUGH: Okay. (Laugh) [LB136]

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DAVID COOKSON: Sorry. [LB136]

SENATOR COUNCIL: He fell into the Senator Council syndrome. Don't worry about it; it is contagious. [LB136]

SENATOR LAUTENBAUGH: So then this bill gives them discretion to up to five years. [LB136]

DAVID COOKSON: Right. [LB136]

SENATOR LAUTENBAUGH: The whole pardons process is at their discretion, is it not, anyway? [LB136]

DAVID COOKSON: Correct. Yes. [LB136]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB136]

SENATOR LATHROP: Okay, thank you. [LB136]

DAVID COOKSON: Appreciate it. [LB136]

SENATOR LATHROP: Next proponent. [LB136]

SENATOR ASHFORD: Thank you, Senator Lathrop. [LB136]

SENATOR LATHROP: Always happy to pick up. Keep things moving. Hello, Bob. [LB136]

ROBERT BARTLE: Good morning...or good afternoon. (Laugh) I'm sorry. Good afternoon. I'm Bob Bartle and I'm wearing two hats here today. I was asked to testify by the Attorney General. One is as president of the Nebraska State Bar Association. And the second is one who in two occasions--the so-called Beatrice Six case where I represented four of them in their civil actions, and the case of Reginald Bennett, which was only the second instance of the Pardons Board granting a reduction of a life sentence to a term of years in the past 20 years. That's why I am here to report, first of all, that the legislative council of the bar association did have a lively discussion, raising some of the questions that Senator Council raised. And we were, or I should say the legislative council that I simply chair, the bar association is in support of the concept because of the clog, the backlog, and to have an efficient administration of the Pardons Board process. We understood the five years to be a ceiling, not a bar. I mean not a limitation. But I'm here secondly because in two occasions...I alluded...and I don't think I have to spend much time with Beatrice Six. That was an extraordinary case of the Pardons Board really digging in, and then the Attorney General's Office investigating for

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you at an actual grant of a pardon and six lives affected as far as folks that had nothing to do with the particular crime, and a previously unsolved crime solved. But in the Reginald Bennett case, I went back and I went back and I went back after the Secretary of State initially looked at this case of a young man doing nearly 30 years for a crime. He did commit a crime, there's no question. But it was a single act of a person where it would have been an involuntary manslaughter, at most, but just had one mistake after another in terms of his representation and just was doing a lot of time. And it took a Pardons Board close examination of the process to realize this was a truly worthy person to have a life sentence commuted to a term of years, and they did that. But my point is to...as counsel, I did want to make that point. I did come back each and every year, and there was never a ceiling put on me. And little by little...we had the Secretary of State, initially, and then we eventually got the Attorney General to get the second vote to have the pardon. So it does work if meritorious cases are presented to this board. And I commend this board for breaking the impasse, the political impasse that the Board of Pardons had for several years. That's why I individually support the concept also. Any questions? [LB136]

SENATOR ASHFORD: Thanks, Bob. Congratulations on your new... [LB136]

ROBERT BARTLE: Thank you for (laugh)...for finishing on the yellow light, yes. [LB136]

SENATOR ASHFORD: Exactly. That's what I meant. (Laughter) [LB136]

ROBERT BARTLE: Thank you, Senator. [LB136]

SENATOR ASHFORD: Thanks. Any other testifiers? Okay. Who introduced this thing? [LB136]

SENATOR LAUTENBAUGH: This was me. Do you want me to close? [LB136]

SENATOR ASHFORD: Oh, yeah. Go ahead. [LB136]

SENATOR LAUTENBAUGH: Briefly, since it's late. You've heard the arguments. And this is discretion that we're giving to them, that they already have absolute discretion in this process anyway over the ultimate result, whether or not they're going to hear something, whether or not they're going to give it short shrift or dismiss it out of hand. This is a reasonable acknowledgement of the reality and giving them a little bit more discretion. And I'd urge your support. [LB136]

SENATOR ASHFORD: Good. Well said. I'd like to spend about ten minutes in Exec Session, so do we have a motion? [LB136]